Ngā Kaitiaki Rēti Ngahere Karauna
Crown Forestry Rental Trust

MĀORI EXPERIENCES
OF THE DIRECT NEGOTIATION PROCESS

Case studies and personal experiences of various negotiators on the negotiation process with the Crown to settle claims under the Treaty of Waitangi.

First Published 2003

Crown Forestry Rental Trust
PO Box 2219, Wellington, New Zealand

Ph: (04) 915 1500, Fax: (04) 916 7806
Email: contact@cfrt.co.nz

IBSN 0-9583708-3-4

Cover image courtesy of Alexander Turnbull Library: Artist unknown
[Maori meeting, Bay of Islands, 1860s?] (G-230-1)

ACKNOWLEDGEMENTS

The Crown Forestry Rental Trust would like to thank Professor Hirini Moko Mead, Peter Adds, Esther Gray, Wikiriwhi Hetaraka, Danielle Harris, Maurice Takarangi and Greg White for generously donating their time, energy and experience in the compilation of this report. Their generosity ensures that Māori groups considering the direct negotiations path will do so with knowledge of what lies ahead.

Additionally I would like to thank the staff of the Crown Forestry Rental Trust for their support. Particular acknowledgement must be made to my respected colleague, David Armstrong, who first struck upon the idea to carry out this project.

Dion Tuuta
Sector and Comunications Analyst
Crown Forestry Rental Trust

CONTENTS

INTRODUCTION

The direct negotiations process has been available to Māori since 1989.[1] During this time, a number of Māori groups have negotiated with the Crown to settle their historical claims under the Treaty of Waitangi.

The Crown has amassed a considerable amount of experience in dealing with Treaty settlements since this time. The process has developed over time as a direct result of this experience.

The Crown's experience of negotiating with Māori is centralised within the Office of Treaty Settlements. This organisation is responsible for leading negotiations concerning the settlement of historical Treaty claims on behalf of the Crown. This experience informs and assists the Crown in developing new strategies and policies for settling Treaty claims. Before the Crown begins any new Treaty settlement negotiations, it has a wealth of experience and knowledge that it can draw upon in its negotiations with new groups.

This contrasts with a highly dispersed pool of Māori knowledge concerning the direct negotiation process. While the Crown is now relatively experienced in the direct negotiation process, it would be fair to state that the majority of Māori groups begin negotiations with relatively limited knowledge of the demands the process places on them.

This project captures some of the views and experiences of five Māori negotiators who have participated in the direct negotiation process as claimant negotiators. This project is not a definitive study of Māori experiences of the direct negotiation process, but offers some insights for Māori groups considering direct negotiations with the Crown as a starting point.

The project has been carried out with the intention of showing Māori some of the realities experienced by other groups who have undertaken direct negotiations with the Government.

It is important to note that the settlement process is a dynamic and changing process. While each negotiation will be unique due to the nature of each group's claims and historical issues, a number of common themes and issues were raised by each of the participants.

All of the participants began their negotiations with the previous National Government and have continued negotiating with the present Labour Government. While there have been some minor changes to Government Treaty settlement policy, the substantive issues faced by each of the groups in this study remain current and topical for any Māori group considering entering into direct negotiations with the Crown.

This project is based on the experiences of negotiators from Ngāti Tama, Te Atiawa, Rangitaane o Manawatu, Ngāti Awa, and Te Uri o Hau. Each of these groups has either settled their claims or signed a Heads of Agreement or Deed of Settlement with the Government, major milestones in the settlement process.

---

1. Kā Tika ā Muri, Kā Tika ā mua, Healing the Past, Building a Future, Office of Treaty Settlements, page 21.

TE URI O HAU – ESTHER GRAY

Te Uri o Hau is a large hapū of Ngāti Whatua whose rohe is located in the Northern Kaipara region.

Te Uri o Hau's settlement relates to land purchases prior to 1840, other Crown purchases, the operation of the Native Land Court and land administration structures and practices in the 20th Century. Te Uri o Hau participated in stage one of the Waitangi Tribunal's Kaipara Inquiry. In 1999, following the completion of their hearings, Te Uri o Hau entered into direct negotiations with the Crown.

On 18 October 2002, the Te Uri o Hau Claim Settlement Act was passed settling their historic claims. Te Uri o Hau received $15.6 million worth of assets in compensation.

Te Uri o Hau Company Ltd represented Te Uri o Hau in their negotiations with the Crown. Esther Gray was a member of the Te Uri o Hau negotiating team. Esther was involved in the Te Uri o Hau claims to the Waitangi Tribunal firstly as a communications manager then later as a claims manager.

NGĀTI AWA – HIRINI MOKO MEAD

Ngāti Awa is based in Whakatane. Ngāti Awa is an iwi of the Eastern Bay of Plenty descended from Awanuiarangi II of the Mataatua Waka. Ngāti Awa has approximately 13,000 members and 22 hapū.

The Ngāti Awa settlement is based on Crown acknowledgements of its breaches of the Treaty of Waitangi. Chief amongst these was the confiscation of approximately 245,000 acres of land within the Ngāti Awa rohe in 1866. Fighting broke out between the Crown and Māori in the early 1860s in Taranaki and Waikato. By 1864 there was some tension in the Bay of Plenty area. The killing of a Crown official, James Te Mautaranui Fulloon, and three others by some Ngāti Awa supporters of Pai Marire in July 1865 led the Crown to send an expeditionary force, drawn mainly from neighbouring tribes, to execute arrest warrants. This force destroyed Ngāti Awa property and laid siege to a number of pa. In September 1865, the Crown issued a proclamation stating that if those responsible for the murders were not given up, the Crown would take parts of the lands of those concealing the murderers. In October 1865 over 30 men were arrested for the murders and related offences; all were imprisoned and 2 were later executed. The Crown deemed Ngāti Awa to have been in rebellion and confiscated their land. This affected all Ngāti Awa including the many hapū who had not been involved in any conflict.

The subsequent compensation process, by which some land was returned to Ngāti Awa, was inadequate. Lands Ngāti Awa did gain title to through this process and later through awards by the Native Land Court were awarded to individuals rather than hapū or iwi and became more susceptible to partition, fragmentation and land alienation. The cumulative impact of these events undermined the traditional tribal structures of Ngāti Awa and left the iwi landless.

Ngāti Awa has sought justice since this time. In the modern era, Ngāti Awa participated in the Waitangi Tribunal process before entering into the current direct negotiations process with the Crown in 1996. On 27 March 2003, Ngāti Awa signed a Deed of Settlement with the Crown for a settlement package worth $42 million.

Te Rūnanga o Ngāti Awa Māori Trust Board represented Ngāti Awa in its negotiations and its chairman, Professor Hirini Moko Mead, was appointed chief negotiator. Hirini Mead is a prominent writer and commentator on Māori issues.

NGĀTI TAMA – GREG WHITE

Ngāti Tama is one of the eight iwi of Taranaki. It is located in Northern Taranaki and has approximately 1,000 members. Ngāti Tama, along with other Taranaki iwi, opposed land sales in Taranaki in the 1860s and provided active support to Te Atiawa. At the time, the Crown deemed this support an act of rebellion and hostilities began. During the war, the Crown confiscated much of the land within the Ngāti Tama rohe, destroying villages and crops. Later, as a result of civil action at Parihaka, a number of Ngāti Tama were imprisoned in harsh conditions in the South Island.

Ngāti Tama joined with other Taranaki iwi and participated in the Waitangi Tribunal process from 1990 to 1995. Following the release of the Taranaki report in 1996, Ngāti Tama joined with their relations Ngāti Mutunga and Te Atiawa and entered into direct negotiations with the Crown. Formal negotiations began in 1998.

On 20 December 2001, Ngāti Tama signed a Deed of Settlement settling their claim for $14.5 million. Ngāti Tama awaits the passage of their settlement legislation before the settlement assets can be transferred to their new governance structure.

Ngāti Tama Iwi Development Trust was responsible for leading Ngāti Tama in their negotiations with the Crown. Greg White was the Ngāti Tama chief negotiator. Greg is a former trade union advocate and is currently a director of Te Tai a Kupe Fisheries Limited.

TE ATIAWA – PETER ADDS

Te Atiawa is one of the iwi of Taranaki. It is located in the vicinity of New Plymouth and has approximately 13,000 potential beneficiaries.

The claim relates to breaches by the Crown of its obligations under the Treaty of Waitangi and in particular to land purchased from Te Atiawa during the 1850s. This culminated in the disputed Waitara purchase in 1860. Opponents of the sale blocked a survey of the land, and the Crown deemed this an act of rebellion and hostilities began. During the war, the Crown confiscated much of the land within the Te Atiawa rohe including 185,000 acres of land in 1865, destroyed villages and crops and imprisoned a number of Te Atiawa men, women and children in harsh conditions in the South Island.

With their Ngāti Tama neighbours, Te Atiawa participated in the Waitangi Tribunal process and entered into direct negotiations with the Crown following the release of the Taranaki report. In November 1999, Te Atiawa representatives signed a non-binding Heads of Agreement in which the Crown offered Te Atiawa $34.5 million to settle their historic claims. Te Atiawa continues to work towards moving this agreement to a final settlement.

The Te Atiawa Iwi Authority led Te Atiawa in its negotiations with the Crown. Peter Adds was appointed chief negotiator. Peter is a senior lecturer in Māori Studies at Victoria University of Wellington.

RANGITAANE O MANAWATU – DANIELLE HARRIS AND MAURICE TAKARANGI

Rangitaane o Manawatu is based in Palmerston North. Rangitaane o Manawatu has approximately 1,000 members.

The Rangitaane o Manawatu claim relates to breaches by the Crown of its obligations under the Treaty of Waitangi mainly regarding two large Crown purchases in the 1860s, and the operation of the Native Land Court. Rangitaane o Manawatu decided to bypass the Waitangi Tribunal process and entered into direct negotiations in 1997. On 25 November 1999, Rangitaane o Manawatu representatives signed a non-binding Heads of Agreement, in which the Crown offered Rangitaane o Manawatu $8.5 million to settle their historic claims.

Tanenuiarangi Manawatu Incorporated, the mandated iwi authority for Rangitaane o Manawatu led the iwi in their negotiations with the Crown and appointed Ruth Harris, Tanenuuiarangi Te Awe Awe, Rangi Fitzgerald, Danielle Harris and Maurice Takarangi as negotiators. During the negotiations process, negotiators Rangi Fitzgerald and Tanenuuiarangi Te Awe Awe passed away.

Danielle Harris has a legal background, and has been significantly involved in the Manawatu Māori Health sector. Danielle has previously worked for Te Puni Kōkiri, the Ministry of Māori Development, the Māori Trust Office and Kensington Swan legal services.

Maurice Takarangi has been involved in Rangitaane o Manawatu iwi affairs for a number of years.

PART I: CURRENT SETTLEMENT PROCESS

1.1 INTRODUCTION

This chapter examines the various negotiators' views of current Crown policy on negotiating settlements with Māori, and explores some of their personal views on how the direct negotiations process could be improved.

1.2 TE URI O HAU

Esther Gray of Te Uri o Hau believed the Crown's policies guiding the direct negotiations process favoured the Crown. She did not think the negotiations were conducted on a level playing field:

> *I think it's level in the sense that if you played a hand of poker, whoever had all the cards won the game. Sometimes Te Uri o Hau did not have all the cards. Most of the time Te Uri o Hau had the cards that were dished out to them under policy.*

Esther believed that settlement negotiations were not really negotiations in the sense of equal parties meeting to finalise a settlement. Her personal opinion was that the Crown had predetermined the amount of settlement redress Te Uri o Hau would receive before negotiations even began:

> *In reality, let's say, my husband runs an oyster farm, provides spat for Sanfords, when we negotiate finance, we negotiate what does Sanfords want, what do we want out of the deal, this is our terms, and then that's negotiation.*
>
> *Basically, what these negotiations … I think the Crown has always had a set settlement cost for every claim in New Zealand and a set cultural redress package. So that tells you that the Crown know but Te Uri o Hau don't know.*

Esther was saddened by the amount of division she witnessed amongst her people during the direct negotiation stage, something she believed originated in land loss facilitated by the Native Land Court. In addition to this, she was alarmed by the apparent lack of knowledge about the settlement process on the part of some politicians during the Māori Affairs Select Committee consideration of the Te Uri o Hau Settlement Bill.

Esther was concerned that the Treaty of Waitangi Act allowed for any individual to lodge a claim, something that she believed had the potential to slow down the hearings process and delay settlement at the direct negotiations stage:

> *… the Treaty of Waitangi Amendment says clearly that individual whānau, hapū, iwi can lodge a claim. It really fragments us when we, if we take the Select Committee, we went down to the Select Committee hui, we had Te Uri o Hau sitting here, you had the Select Committee, Māori Select Committee sitting there, all, most of them were Māori MPs there was only two which was ACT leader, Prebble and Douglas Kidd.*

Those were the only two other, that weren't Māori. Te Uri o Hau were sitting here, counter-claimants were sitting out the back, our own whānau out the back and our own whānau in the front. The Crown were asking questions like, way over the top, Select Committee members asking us about, why did we settle on such a small settlement. Could we have made that settlement go higher? Why didn't we do settlements for whānau, include whānau?

Now they all come to that Select Committee under political party and under party policies, now, you know, the reality is I thought they never even read their bloody party policies! Why ask the claimants, the other Treaty partner, why didn't you go for more, why didn't you add that ratchet clause, when these politicians should know this, know that, and of course they were actually playing the part of our whānau … I thought it was very ugly.

I thought you know, it really made me think we as Māori have become so fragmented and European-colonialised that we kill ourselves … the objectives were behind the politicians basically, so not only was Te Uri o Hau trying to say this was the best deal we could get under present policy … to the Crown, who were telling us we should have changed it, but also to our own family members. And that sucks. I thought that was a real grotty process. If anything it depletes our mana as Te Uri o Hau and as Māori. And most of the people objecting were our age group.

1.3 NGĀTI AWA

Professor Hirini Mead of Te Rūnanga o Ngāti Awa was critical of the way the Crown portrayed the process as a negotiation:

Well in our experience the whole notion of negotiation itself requires to be looked at. Very often, there is no negotiation, but rather there is a statement that this is the Crown's policy, and this is what you have to live with.

And there's a point at which you can't negotiate past those policy issues, they're set, they can't be changed … they will maintain and hold their ground, for instance, the issue of tax. We have a particular tax status, Te Rūnanga o Ngāti Awa, all Māori Trust Boards remain the same.

So you would imagine that since we already have that status that we ought be able to carry it over to the new governance structure. The Crown say no. Government policy says that you cannot carry over the tax benefit that you have now. And there's no negotiation. Next, you can't have a Māori Trust Board as your governance structure, no negotiations. That's a policy issue, so a lot of the Crown's negotiations are negotiations by decree.

Professor Mead was also highly critical of the length of time the negotiations took, something that Ngāti Awa had not expected:

… we're now into our sixth year of direct negotiations, so it's taken a long long time. And I think it's in everyone's interests to reduce this time sharply. It's really ridiculous taking this long to negotiate the case.

And I understand that even the Office of Treaty Settlements are trying to speed up the process themselves by not really separating a Heads of Agreement and a Deed of Settlement. Collapsing those two processes together is a way of speeding things up or by saying that once you've got the Heads of Agreement that's probably it, and there's not much negotiation after that.

Professor Mead noted that some of the hapū of Ngāti Awa were growing weary of the amount of time it had taken to negotiate the settlement. Professor Mead puts a lot of the delay down to the Crown lacking clear policy on how to deal with particular issues:

> *One way to do that would be for Crown policy to be very clear in how it deals with all of the different issues that arise in each stage. With all of the experience that they're building up from the different settlements, they ought to be close to find ways to ease the way and not take so long to sign the Deed of Settlement.*
>
> *One of the delaying issues is cross claims, the cross claim policy of the Crown. It actually invites cross claimants to delay the process. That's a fact in our case. It is probably a fact in Te Uri o Hau's case, probably a problem in other cases. We are having to deal with them. It is too open to dealing with parties other than the Crown.*

One particular matter that concerned Ngāti Awa was the issue of post-settlement governance. Hirini believed this was an area where much improvement could be made:

> *And the other huge concern is the matter of governance and in our view the situation there is not satisfactory. The Crown and Iwi need to sit together and work out some models, governance models that claimants can choose from, choose whichever one they want, and not go through the agonising debates that we went through. And the issues are, first, Government policy of not using, not supporting the governance structure with an Act of Parliament. And for us that's an issue because our Trust Board was set up by an Act of Parliament. What is proposed as a replacement has no statutory authority at all and it has less mana than what we have now.*

Under Government settlement policy, Ngāti Awa is required to create a new governance structure to receive the settlement assets. This means that the Crown wants Ngāti Awa to give up its statutorily recognised Māori Trust Board status:

> *So that's an issue the fact that this new governance body that the Crown wants us to set up is not really the kind of body that we want. We want one that does have good legal standing, firm legal standing, is Māori friendly, that meets the needs of our people, that meets concerns of tino rangatiratanga and that is also supported by an Act of Parliament, rather than relying on present laws dealing with Trusts.*
>
> *In our case, an issue is this, we've spent months and months designing the governance structure that we want, and setting up a charter which will be its governing charter, only to find that, while the people can mandate the charter by voting on it, the Crown may not accept it. The Crown's new governance structure can be set, namely the people vote for it and therefore mandate it, but it's really not the most suitable kind of organisation that the people need.*
>
> *The main difficulty is that the Crown does not want to give teeth to the proposed governance structure by putting in a few words of empowerment in the settlement legislation. It has an aversion to doing that. Now we could go by private legislation which is the model that Ngāi Tahu used, but the present Government is not prepared to support us if we do. Which means that option is not really on the table, it will only delay things and make things much more difficult for us if the present Government is not willing to support it. So it puts us into a bit of a bind.*

While the Crown is willing to acknowledge that this new governance structure does represent Ngāti Awa and it says that it is a body of Ngāti Awa, that doesn't really satisfy us at all. You know it's just another body, and the Crown can talk to all these different bodies. Well we're not like that at the moment. We are the body at the moment under the Māori Trust Board Act and the people voted a few years back that the Rūnanga would be the voice of the people.

So now those tino rangatiratanga things are being diminished, so they're real issues … but it's information that other claimants need to know. They need to be aware of the fact that governance is a big issue, that the Crown really has not done its homework properly on designing the type of governance structure that many iwi can be happy with. A model has been recommended by the Law Commission but it needs to be put into legislation and established by Parliament.

1.4 TE ATIAWA

Te Atiawa Chief Negotiator Peter Adds disagreed with the Crown's concept of full and final settlement, something that he believed to be impossible under the current financial constraints the Crown places on the settlement process:

I don't think you can ever lay it to rest. It's always going to be in the consciousness of the people, it's part of the tribal history. The issue is whether or not people can let it lie and not bother the Government about it.

I think the reality is that while we're going to be asked to sign a full and final settlement over this particular round, it won't be full and final because the Government simply can't afford to make it full and final.

That's the reality. They haven't got enough money to compensate us fairly for the breach that occurred. And everyone knows that, I think. While there's a perception that the thing should be fair and just, it just simply isn't, it's not fair and just.

This is just a process where the Government gives us some money to get on and do some things, hopefully we can use that money to create a platform for our own tribal development.

In terms of the overall negotiation process Peter's view echoed that of Hirini Mead:

Well negotiation … it's not a negotiation because the Crown … negotiation implies you got two equal partners across the table from each other working out a common position. A position that you can both be happy with.

But what happens with OTS is not like that. They have everything and it's a case where you go to them begging to get something from them and they say yes or no, or you can have a little bit, but not that much. And, that's the process.

It's not where you've got some stuff to give away, they've got everything and you're asking them for it, so that's what it's about and you need to understand that before you go in. So I don't think that's negotiating, that's begging.

Peter explained how he believed the process should work but noted that the reality was quite different to his expectations:

… ideally this should be two groups of people sitting down to achieve a common outcome. It should theoretically be a win-win situation, and you could work quite amicably to achieve that, but the way that OTS operates sometimes over certain issues is anything but amicable and that can become problematic.

I think that the organisation is affected a lot by the politics of what's going on at any one time in Government and by public perception …. And I think my view is that they do a reasonable job in difficult circumstances.

From Peter's experience, he believed the settlement process could be streamlined and improved if the negotiations were conducted in a less adversarial tone:

Yeah, the main thing I would say, is it would be much better if the Crown were prepared to be more cooperative and more collegial in the way that they operate. It's what I was talking about before. It started off unnecessarily in my view, being litigious and argumentative, and I think they assumed that this was going to be a big fight so they made it one. It doesn't really have to be like that.

With the benefit of hindsight, Peter believed he would advocate to take a different path from the one Te Atiawa chose as he believes it has taken too long for the settlement to reach the stage it has:

Too long, far too long. Knowing what I know now about the Tribunal process, I'd cut that out and get into direct negotiations. There is benefit in going through the Tribunal but you've got to make a decision on is whether that benefit outweighs the loss of asset, and if you can get your asset quicker and make money off it, it probably outweighs the value of taking the time to go through the Tribunal.

But that's a judgement call that you need to make, and in hindsight it's easy for me to say that, but knowing what I know now, and if I was to start the whole thing again I would go straight into negotiations and forget the Tribunal because in the end, the Office of Treaty Settlements said they didn't accept all of our Tribunal report anyway.

1.5 NGĀTI TAMA

After experiencing both the Waitangi Tribunal and Office of Treaty Settlements processes, Ngāti Tama Chief Negotiator Greg White believes there is a lot of room for improvement within the entire Treaty Settlement process, including the Waitangi Tribunal.

Ngāti Tama participated in the Waitangi Tribunal process as part of the Taranaki Inquiry, a process that lasted from 1990 until 1995. In 1998, Ngāti Tama began direct negotiations with the Crown with their immediate neighbours Ngāti Mutunga and Te Atiawa.

Greg recalled that Ngāti Tama began negotiating with the expectation that their Waitangi Tribunal report and experience of that process would have prepared them for the negotiations process. However, this did not necessarily prove to be the case:

Okay, well, firstly I think that the, the whole Crown Treaty settlement process is flawed right from the beginning however I understand that the Tribunal processes have tightened up since Taranaki presented, but certainly when we went through we presented our evidence, but the Crown only ever responded on one matter, and that was their rejection to our application to have the findings of the Sim Report accepted.

Apart from that the Crown presented no evidence at all. In spite of the fact that they were given the opportunity following every submission they just sort of mucked around and wasted our time. Surprising given that they've got all the resources. We were not to know then but blow me down they were able to use this argument through the negotiation process, the Crown claimed that in spite of them not having presented, the Tribunal had produced an interim report based only on our evidence – and the Crown didn't necessarily accept either our research or the Tribunal's view.

We argued that the Crown knew the Tribunal process, they had not bothered to either challenge our evidence or present their own therefore we said how sad, too bad, never mind, but at the end of the day, the Crown determined and wrote their own historical account that forms the basis of their apology. The only choice available to us was to go back to the Tribunal and have the Crown account tested but even if the Tribunal rejected their submissions there is nothing to force the Crown to concede. The only guarantee was that negotiations would have taken a lot longer.

Greg believed a major flaw within the current negotiations process lies in the lack of any independent arbiter able to oversee Māori-Crown negotiations and ensure that both parties act fairly. Greg was frustrated by the Crown's outright rejection of Ngāti Tama's position on certain historical matters, such as the legality of confiscation. The Tribunal had commissioned Professor F M Brookfield to research the topic. In the opinion of Professor Brookfield the confiscations were unlawful:

But do you think we could get the Crown to accept Brookfield's opinion? They could think of 99 reasons why they didn't want to accept it and then surprise surprise at the end of the day they said well, we actually don't agree with Brookfield's opinion. Take it or leave it. The Crown view was also reinforced by the Minister.

[And I said, well once again,] Well we went through the same old how sad too bad routine we knew that the Crown had a fixed position. We had nowhere else to go. That's why I argue so strongly for an independent arbiter.

We need some entity there that can say, okay, this is the mandated party here, this entity can represent the Crown let the negotiations commence. And so, they sit there and facilitate the negotiations, rather than the current process where the Crown dictates everything.

In a similar way to Hirini Mead, Greg was astounded by the length of time it took to negotiate the Ngāti Tama settlement. He thought the length of time settlements were taking to conclude was too long and believed this had the potential to test Māori patience and place the process at risk:

But sadly I think this whole process has taken so long that the world, for Māori at least, has moved on. Now we've actually got some Māori health providers who are actually getting contracts to deliver health services that are extremely lucrative and over time will probably be greater than what their Treaty settlements quantum might be.

And so they're able to make some decisions now, that may have been different a couple of years ago. Certainly when it comes to settlements anything around that ten million paddock is marginal now.

As part of the process Greg believed that New Zealand as a whole needed to understand its history in order to understand current Māori demands for justice and reparation for past wrongs:

I think there's a whole education process that needs to take place. The Crown have said several times, both Governments have said that that's their responsibility and they will do it, but to date they just haven't. And I don't think they've got any intention of because it'd be too embarrassing for them.

1.6 RANGITAANE O MANAWATU

Danielle Harris of Rangitaane o Manawatu was concerned that the Crown's focus on resolving historical Treaty claims took place in isolation from its present-day relationship with Rangitaane o Manawatu:

I think at a bigger picture level the Crown really is still looking at Treaty settlements in a vacuum. On the one hand they're negotiating with us to settle our claim but then in other areas they're continuing to commit Treaty breaches against us, so settlements have to be looked at widely across the board about overall relationships with Crown agencies.

Crown agencies should be dealing with us as the true Treaty partner when some of them they aren't, and, or there's actions of the Crown, they do something in this area that's stepping on our mana but they go ahead and do it and you know, you find it quite hard, you're supposed to be negotiating with the Crown about your Treaty claims but they continue to breach them in a modern day context so I mean that's quite an irritating thing that happens.

Maurice Takarangi believed that both the large number of claims before the Waitangi Tribunal, and length of time that process took, could influence some groups to choose to enter the direct negotiations path. However, he also believed the Crown would need to speed up the direct negotiation process before this would be a more attractive option:

It seems to me that the logic is that, with the number of claims now over 1000 of which less than ten percent have been settled in my understanding, it's more likely that unless the Tribunal process itself is shortened up and made far more efficient, that claimants for the pragmatic reasons that we've already observed and for the further pragmatic reason that if you're in the remaining ninety percent of the claims that are unresolved and unsettled at this time, may be preferring to go with the direct negotiation mode.

Given that that's logically true, then it seems to me that the focus on a more efficient process for conducting direct negotiations and therefore settling more claims more quickly should be the process that's being encouraged, versus the Tribunal process, which by its nature is difficult to push along hard, even, although the more recently appointed judges under the new Chief Judge is attempting to do so.

Danielle noted some areas where she believed the current process could be improved, saving time and resources for both claimants and the Crown. Danielle believed the Crown could do more to disclose more relevant information at the start of the process:

I guess for me there are two areas where I could see that the process could be improved. One is I think that the Crown could be more up front at the beginning and put their cards on the table. They tend to let claimants go off on a path or something and you go so far down a path and then you think you're making progress and they turn around and say, oh well, no we can't do that because it's Crown policy or you come to get the offer and they say well, this is the criteria that we apply to the offer and this is why you got the offer that's made.

It would have been helpful if they'd have told us back in 1998 what that criteria was gonna be and we could have just, you know, cut out a lot of the difficulties that we had to go through to get there, and, it would have saved time for the claimants and the Crown. It would have saved costs for the claimants and the Crown and it would have got to the nitty gritty pretty quick instead of going around in circles and then coming to the quantum because the Crown already have preconceived criteria policies that they're going to apply to the process anyway.

So I think if they were more up front and put their cards on the table then that would improve the process. The other thing is that when they apply guidelines or policies, they want you to do all the work but you feel like you're a bit in the classroom where you, like produce say the governance entity discussion paper, then they review it and they say, well no you need to do this and you need to do that, well they can be developing the precedents that they want and save us all time and money and we can then just change the precedents to suit our circumstances.

1.7 CONCLUSION

All of the negotiators believed that the direct negotiations process favoured the Crown by virtue of the fact that the Crown and the Crown alone determined the rules under which negotiations took place.

All found it to be a highly prescribed process. Some suspected that the boundaries of what could be achieved were set before they had even sat down for their first negotiation meeting.

It was noted that the process lacked any independent arbiter that could oversee the negotiations to ensure that both parties acted fairly.

It was clear that all of the negotiators believed that negotiation should be a process that took place between equally resourced and informed parties, ideally on a level playing field with full disclosure of information at the outset of proceedings.

All the participants agreed that the Crown's Treaty settlement negotiations did not meet this description, as the parties simply were not equal. All of the participants believed the Crown could exert more influence over the process as it held all of the cards.

PART 2: MANDATE

2.1 INTRODUCTION

This chapter examines some of the negotiators' views on the mandating process.

Mandating is one of the most important parts of the direct negotiation process. It could be argued that mandating is the single most important part of the negotiations process, as it gives a negotiating team authority to make decisions for a claimant group concerning the settlement negotiations.

Once the Crown is satisfied that a particular group has proved it has the necessary level of support to negotiate the claim on behalf of its members, it may officially recognise the claimant group's mandate to proceed and negotiations can begin.

One major difference between the direct negotiations process and the Waitangi Tribunal process is that the Crown insists on negotiating with a single entity representative of a particular claimant group. This contrasts with the Waitangi Tribunal where any Māori individual may lodge a claim. This is an important difference between the two processes.

The Crown can also withdraw its recognition of a group's mandate to negotiate if constituent support is not maintained. The claimant group carries out mandating activities without any funding assistance from the Crown. Mandating activities can entail considerable time and cost.

2.2 TE URI O HAU

After completing Waitangi Tribunal hearings Te Uri o Hau turned its attention to the direct negotiation process. Throughout the Tribunal process, a number of Te Uri o Hau groups and individuals had lodged claims. Esther Gray explained that when Te Uri o Hau approached the Office of Treaty Settlements to negotiate they discovered that the Crown would not negotiate with two Te Uri o Hau groups:

> *The first thing we had to do was, we had two groups in Te Uri o Hau, Otamatea and Pouto, so the first thing we had to do was combine those groups before the Crown would even look at us. At that time Otamatea was under a charitable Trust status, Pouto were under a Ture Whenua Māori Land Trust. And that's when we went into Te Uri o Hau Limited Liability Company to bring both groups together. It was the cheapest process.*

Te Uri o Hau representatives complied with the Office of Treaty Settlements processes and procedures and sought a mandate to negotiate from ngā marae o Te Uri o Hau. Esther explained that the process of securing a mandate from the people and having this acknowledged by the Crown entailed a lot of hard work. Esther thought that the Office of Treaty Settlements gave Te Uri o Hau a broad outline of what a mandate would require but this did not necessarily explain all the details:

> *... the mandate was a bit of a headache because you have to design the mandate, the Deed of Mandate to have all these legal requirements but also explain it to the kaumātua and kuia which was*

very difficult. You know there's tikanga but there's also law, which is very difficult. There's quite a bit of criteria that's attached to the mandate that is not in the little red book, the little black book, I'm not too sure on the green book.

After preparing their Deed of Mandate, Te Uri o Hau Company Ltd lodged it with the Office of Treaty Settlements to demonstrate they had the support of their people to enter into negotiations. The Office of Treaty Settlements advertised this in local and national newspapers and sought views and comments from interested parties.

Seeking the mandate was not without its problems. Esther noted that internal friction within Te Uri o Hau meant that a number of individuals objected to their mandate:

There's always friction. So when the mandate was advertised we had something like, I think it was roughly 20 to 30 submissions against it.

Esther explained that Te Uri o Hau did attempt to resolve the issues that objectors had raised, but this proved to have its own problems:

You can only resolve an objection if you sit down and talk. Not many of them came to sit and talk at the marae.

After receiving the submissions on the mandate of Te Uri o Hau, the Office of Treaty Settlements was in a better position to assess whether it should accept their mandate. Te Puni Kōkiri assisted the Office of Treaty Settlements in this task by providing independent advice:

… based on the TPK report they decided to go into negotiations, remembering at that time too that Muriwhenua was in, then out, then in, then out, and so was Te Roroa.

Following the mandate assessment process, the Crown formally acknowledged the Te Uri o Hau mandate in 1999. Esther explained the role of Te Puni Kōkiri in the process:

What TPK had to look at was the other claimants involved in the district, how it would affect it if Te Uri o Hau had the support and the right I suppose, instead of using the word mana, the right to take the claim through the negotiations.

2.3 NGĀTI AWA

Hirini Mead explained that Te Rūnanga o Ngāti Awa followed the same process as Te Uri o Hau, a process that entailed numerous hui to explain the process and what the Rūnanga wanted to achieve for the people of Ngāti Awa:

We had to get every hapū signing in and agreeing to mandate our negotiators. At the time we attended meeting after meeting. It is supposed to be advertised here and in the main national papers, same process as others and then the negotiators are recognised by the Crown as having a mandate. That has not been a problem for us to be able to get the mandate. So far we've lost some members.

He explained that the work involved in getting the mandate required a large amount of time and attention:

It's quite a lengthy process, and quite a meticulous one. You have to go through every step carefully. So we did all of that, gave it the attention that it deserved, but it took a long time to achieve.

2.4 TE ATIAWA

Peter Adds of Te Atiawa explained that the four northern Taranaki iwi of Ngāti Tama, Ngāti Maru, Ngāti Mutunga and Te Atiawa formed a coalition to negotiate immediately after the Waitangi Tribunal hearings process had ended:

> *We formed in Taranaki, I think it was 1995 or 6, I can't remember now, we formed the coalition of Tama, Mutunga, Maru and Atiawa, to negotiate together. And we formed the CPT, the Claim Progression Team.*

The Taranaki Claims Progression Team, or CPT, then approached the Office of Treaty Settlements once the Tribunal issued its report on the Taranaki claims. Mandate was the first issue to confront the team:

> *Immediately after the report came out. And they said, right here's the process, you have to get mandated. And of course, Tama and Mutunga already had their iwi authorities well established, Maru's was in various states of disarray, but good enough at that point. And ours of course had been affected by the pull out of Puketapu from the Iwi Authority, which had been formed in '95. And Puketapu of course came out against the Iwi Authority's mandate.*
>
> *Now the mandate process required the Crown to advertise the fact that the Te Atiawa Iwi Authority had said that they've got a mandate to negotiate the settlement, Peter Adds is the negotiator, because I'd been pulled in as the negotiator. This of course is an open invitation for everyone to say well who the hell is Peter Adds? Who's the iwi authority? And a swathe of letters came, 69 letters came in, I think, we did an analysis.*

The Te Atiawa Iwi Authority faced a protracted mandate dispute that involved a hapū of Te Atiawa challenging the mandate of the Iwi Authority to negotiate on their behalf. This complication meant that the Crown was reluctant to recognise the Iwi Authority's full mandate until it was sure it would be supported. The Crown granted Te Atiawa a conditional mandate on the grounds that they work out their internal mandate divisions.

The implications of Te Atiawa's problems in securing an uncontested mandate went wider than Te Atiawa itself. The delays caused through the mandate challenges also impacted upon Te Atiawa's negotiating partners Ngāti Tama and Ngāti Mutunga:

> *But anyway, you know, we cut through that and Doug Graham said to Mutunga and Tama, okay, we'll accept your mandate. But because we're in this coalition they waited for Atiawa's to be recognised by the Crown. It took Doug Graham 18 months to recognise the Atiawa one, following the release of the report.*

2.5 NGĀTI TAMA

Greg White of Ngāti Tama drew a distinction between the mandate required to run a claim through the Waitangi Tribunal, as being different from that required by the Crown to negotiate the settlement of the claim:

> *To complete the research and present the evidence, the mandate to represent the iwi through the Tribunal process was reasonably straightforward. Those who had been responsible for managing iwi affairs prior to the land claim simply continued to represent. Very few knew much about the process and even less about the history of the land.*

Even fewer were prepared to put their hands into their pockets and pay for research. It was an expensive exercise. Like most other iwi we had very few resource people within the iwi and therefore we had to rely heavily on people from outside the iwi. At the same time we had individuals who thought they actually knew everything about everything and because the Tribunal hearings were held on marae, dissenting groups had the opportunity to raise their concerns in relation to the iwi mandate.

Greg explained that Ngāti Tama had dissenters at the Waitangi Tribunal stage of the process:

And with respect to Ngāti Tama, we had individuals who approached the Judge outside of the hearing, during lunchtime, to complain about the Iwi Authority's mandate. I understand that the Judge assured them that the Tribunal process was open and that they could make submissions accordingly. The dissenters never took the opportunity to publicly challenge the iwi mandate, but this did not stop their behaviour.

Once Ngāti Tama had completed going through the Waitangi Tribunal process Greg noted that a number of leadership challenges appeared:

Once the Tribunal Report was released, that was when we had a new group of interested individuals. There were a number of individuals who had never publicly identified as Ngāti Tama before. Others who were opposed to the Iwi Authority making the claim against the Crown in the first place. All wanting to not only participate in the rest of the process but actually wanting to take control of it. Basically they considered that they had greater capacity than the mandated group because many of them had worked within a Pākehā environment and been successful, while the mandated group were still involved with those Māori pa type activities like tangi and hui.

They went further and claimed that those who had the capacity to take the claim through the Tribunal process weren't capable of dealing with negotiations. I'm talking about people who have had nothing whatsoever to do with Ngāti Tama before – people who were often embarrassed about being Māori beforehand wanting to take control. And so we had those tensions. Tensions made all the more difficult because many of the dissenters had lost all contact with iwi and marae activities and consequently didn't even know how to get themselves into the game. Now how basic is that. What they did understand however was Pākehā process and politicians. So they started writing letters to politicians protesting about the iwi mandate. And true to form politicians reacted and gave credit where it was not due.

The Ngāti Tama Iwi Development Trust followed the Office of Treaty Settlement's mandating policy and also received submissions against their claim to hold a mandate for Ngāti Tama.

We followed the Crown mandating policy to the letter. We held hui, lodged the result of the hui ballot with OTS. They publicly notified the iwi mandate, and then the submissions or objections took on a life of their own. And rather than the Crown dealing with the submissions and testing them against their own policy, they threw the problem back at us and told us to solve the bloody problem. It was pretty difficult given that certain individuals felt intimidated within a marae environment.

Our problem was compounded because we had clustered with three other iwi for the purposes of negotiations and while the four of us had our mandates published at the same time, the question

of mandate became the hot issue at the time. Local dissenters became puppets for a Wellington based group of Atiawa who have opposed the process from the beginning.

Greg believed the mandating process would always be difficult for the Crown because its approach was viewed in terms of individual rights. Greg's views have drawn criticism from the Office of Treaty Settlements:

… I think that mandate issue is always going to be an issue for the Crown, because fundamentally they can't see past democracy and to my mind there's absolutely no difference between democracy and the individualisation of titles way back in the 1860s. You've got the same net result and it's all Crown driven. The Crown saying you know, individuals had entitlement to land, they've lost it, they're now saying individuals have got entitlement, have to have entitlement in this democratic process. Now if we lose it all, if we lose all our resources, all of our settlement, we can actually point directly back to the Crown and say well you insisted upon democracy …

Greg did not necessarily support the idea that whakapapa alone gives an individual automatic equal rights within a kin group:

… you can get a blimmin person one day out of a bloody psyche unit or a person that's lived in London all their lives, born you know, what is it, 1982 or 1983, who's just turned 18 and they've got equal rights within the management of your resources, or even supporting a mandate. It's really that absentee landlord mentality where you take your mana with you wherever you go and you can exercise it from wherever, well to my mind that is wrong and it just ain't gonna work, and I believe that it has the potential to all turn to custard in my lifetime.

In addition to this, Greg believed that the democratic nature of the mandating process doesn't take into account existing traditional lines of authority within iwi, hapū and whānau:

I don't know what the answer is. But to my mind, for instance when a certain person says yes, I don't give a stuff what his moko's or his kids say, they just don't, their voices are just silent as far as I'm concerned.

Now you will get a person who, if she agrees to something, then what all those blimmin radicals say is totally irrelevant. It doesn't have any force. It's just noise. There's nothing intelligent about it even though they may think it's probably sort of earth shattering important stuff, it's just noise. This person's voice is sufficient to cover all of her kids, all of her grandkids, and if she's got any great-grandkids, and she's only doing, making decisions based on her worldview and based on looking after the whānau, you know that sort of maternal stuff? But this democratic process doesn't provide for it you know? It just works against the way things have been done in the past.

Ngāti Tama Iwi Development Trust found it to be expensive and time-consuming work establishing a mandate to negotiate a claim on behalf of Ngāti Tama. Greg believed this process was made more difficult by the Crown's inability to comply with its own mandating policy:

We went through the same process as Ngāti Mutunga, Ngāti Maru, and Atiawa. Ngāti Mutunga is the only mandate that has not been challenged yet. The rest of us have been through a horrible period trying to resolve the issues. Fortunately we have managed to keep going, unlike Atiawa who have been bogged down by a few individuals and absentee landlords who want to be in charge. Unfortunately for the people of Atiawa, the Crown ignore their own policies when it suits.

2.6 RANGITAANE O MANAWATU

Rangitaane o Manawatu decided to bypass the Waitangi Tribunal process and went directly to the Office of Treaty Settlements and direct negotiations. Danielle Harris explained the process Rangitaane o Manawatu went through to enter into negotiations:

> *So I guess the first condition that we had to meet was, one, they had to see that we had a prima facie case to go into direct negotiations, and they accepted that we did, though I don't think they actually wrote us a letter to say that, but I mean they accepted it, and then we had to get what they had invented as this Deed of Mandate which as Maurice said is the mandate to go into negotiations, to appoint negotiators to negotiate your claim, that kind of thing, so we obtained that through hui-a-iwi in 1997. And we then lodged that with the Office of Treaty Settlements.*
>
> *Their process was that they then advertised it in all the main papers throughout the country over a period of about a month and basically the ad was along the lines of, so and so's put in a Deed of Mandate to negotiate the claim, if you have any objections or you wish to make any comment send a submission to the Office of Treaty Settlements.*
>
> *So that went on for a month, you had a month to put submissions in, submissions were then received and then the Office of Treaty Settlements made a decision based on all the information that was received and they recommended that our mandate be accepted so it went to Cabinet for approval and Cabinet approved our mandate to enter into direct negotiations. And once that was approved we were basically in direct negotiations.*

Hand in hand with the need to produce quality research, Maurice noted that the need to secure a robust mandate was vital for negotiations to proceed with surety:

> *… the conditions that were previously required to be met then haven't changed substantially to those which would be required to be met now. Perhaps there is greater emphasis on aspects of the later conditions as both the Crown and the claimants become more experienced in realising what elements can go wrong. Danielle referred to obtaining the agreement through various hui-a-iwi of beneficiaries, in order to proceed. This agreement by its nature, relates to the mandate to begin and proceed, and the mandate to be able to continue, which is now called a robust mandate. And it is apparent that the emphasis on mandate both to begin and to continue is a justifiable one as some of the recent experiences demonstrate.*

Rangitaane o Manawatu found that Te Puni Kōkiri received objections from neighbouring iwi:

> *And then they also received objections I guess from what we call the cross claimants, OTS call them overlapping claimants now, but we call them cross-claims still who had put objections in because they could see that we were going into the direct negotiations process.*
>
> *So those were the kinds of objections that OTS tends to get, and they made their assessment. They also liaised with the likes of Te Puni Kōkiri to see if Te Puni Kōkiri had any concerns about our mandate and they usually get a report from TPK on the mandate as well before they approve it.*

Rangitaane o Manawatu also found that the Office of Treaty Settlements examined their legal structure when assessing their mandate:

> *... one of the things that they assess when they look at your mandate is they look at your constitution, of your entity, just to make sure that it's open and accountable and transparent. We'd gone through the requirements for TOKM [Te Ohu Kai Moana] so ours was pretty much okay, we had to make one change I think, which we made, it wasn't a major change, so they look at your constitution and you could be required to make changes there.*

2.7 CONCLUSION

Most of the negotiators found the mandating process to have similar sets of difficulties, particularly in the areas of cross-claims.

Mandate challenges were common for most of the participants and a common problem appeared to be an inability for some parts of the claimant community to cooperate effectively. Many of the participants believed that some of the problems were created by personality problems rather than substantive issues regarding the claim.

While some mandate challenges were relatively minor, some participants faced challenges in the Courts involving expensive and protracted litigation that delayed the negotiations for considerable periods of time.

It is clear that securing a mandate can be a time-consuming task involving a great deal of effort and resources.

The importance of mandate is demonstrated by the fact that the Crown will not agree to negotiate with any group unless it can demonstrate that it has a secure mandate from its constituent members. A robust mandate assures the Crown that it is dealing with the correct body representative of, and supported by, the wider claimant community.

It is important to distinguish the mandate given by the people of a claimant group and the recognition of that mandate by the Crown. Although a claimant group might 'mandate' a group to progress negotiations on their behalf, this cannot occur until the Crown has approved it.

This mandate is assessed in order to protect both parties from potential challenges. Once the Crown accepts a particular group's mandate negotiations can begin. This process is undertaken to protect the integrity of the negotiations that take place.

PART 3: STRUCTURES AND SKILLS

3.1 INTRODUCTION

This chapter examines how the various groups organised themselves to tackle the task of negotiating with the Crown and offers some of their personal insights into some of the skills and qualities needed to form an effective negotiating team.

3.2 TE ATIAWA

Peter Adds explained how the Taranaki Claims Progression Team adopted the Ngāi Tahu model during their negotiations and believed this model worked well. As has already been explained the Taranaki Claims Progression Team was a collective strategy involving Te Atiawa, Ngāti Tama and Ngāti Mutunga:

> *… we'd taken that directly from Ngāi Tahu. That was the process that they'd used in their negotiations. We'd talked to them about that. And there was a corresponding Crown A team, Crown B team, and Crown C team. The Crown A team were Ministers and the PM. And so the idea was that if the negotiations ever got deadlocked that the A teams would meet and they'd try and break the deadlock. It never actually happened.*
>
> *Basically the B team was the team that worked out strategy, policy and negotiation positions. And the C team would do the across the table grunt work negotiations on a daily basis. And they'd take the positions that we'd established in the B team to those negotiations and try and get them.*
>
> *If they couldn't get them they'd come back and say well this is what they've offered, is it good enough? And each of us in the B team would sponsor a particular issue in the negotiations, and so we'd be on the table as well. And then we'd sort of sit around and brainstorm all this stuff, and then if we ticked it off at the B team level, it then went to the A team for final approval.*
>
> *And the A team would say okay, we've had a look at that, that's done. And that's how the process worked, and so there was a Crown B team as well and that was composed of OTS officials and senior government departmental officials, Treasury and DOC, and so on. And their C team, the OTS officials that were doing the negotiations, were accross the table from us. So there was a bit of integration between the A, B and C teams sometimes, but loosely speaking, that's how it worked. And it was a good structure, and it worked well, because, I mean the important thing from our point of view was it provided a sort of, a level of accountability back to iwi.*

Peter explained that the Taranaki team met with Ngāi Tahu representatives seeking their advice and experience on negotiating with the Crown:

> *Yeah we did. We had quite a long conversation with them about how they set up their structures to enter into the process. We took a lot of advice from them actually.*

Peter found this advice extremely helpful and recommended that any group contemplating negotiations with the Crown should seriously consider talking with a group that had experienced the negotiation process first-hand:

> *Oh absolutely. I mean it's one of the things about this process though is it's a sort of fairly evolving state of affairs, you know? And so if you're going to talk to someone, talk to someone who's been in the process recently.*

Peter explained that the teams were made up of a range of individuals with different skills. The overall team also included people from outside the tribes, hired specifically for their particular skills and knowledge including four lawyers, an economist and a political lobbyist. Peter believed the political lobbyist was a good addition to the team because of his political networks and connections:

> *To present, because you have … in the event our lobbyist turned out to be the most valuable resource we had. He was able to go … he had direct access to Ministers, just walk in and say hello, this is what these guys wanna do. And he had a reputation for getting things done. If you wanted something done politically, he would make it happen. And so he was a great resource and so he was part of our B team and often put up counter views to the lawyers, which we found useful.*
>
> *And so he knew how the bureaucracy, Government bureaucracy worked and how to cut through all the bullshit and get outcomes. He was great, really good. So that was the B team, and then the C team were basically, lawyers, and Greg and I in the end, and mostly Greg actually. Greg was really good at that negotiating stuff you know?*

Peter explained that the structure was useful in that it provided clear lines of communication and accountability:

> *Through the A, B and C teams structure we had regular meetings – each of the teams met regularly, and we also had monthly meetings with the A team to brief them on everything that was going on. Each member of the A team, for each of the tribes, reported back to their relevant iwi authorities, and from the iwi authorities back through their own structures and back to the tribe.*
>
> *So that was the reporting and accounting mechanism. We set that up very deliberately to be like that so we couldn't be accused of not keeping people informed you know. And so it was shared responsibility, it wasn't just our job to communicate because each team had a line of accountability that they were responsible for, and so if information wasn't getting out there, we could work out exactly where the logjams were.*

In terms of abilities and qualities that make up a good negotiator, Peter reflected that a wide range of skills and attributes was needed:

> *You need to be able to persevere. You need to be able to communicate with your own people. You need to understand the issues and you need to know when to pull back and allow your advisers to go in and have a good go. Negotiators … you're not actually negotiating often.*
>
> *The job that I ended up in, most of it wasn't actually negotiating, most of it was organising and pulling teams of people together to discuss positions and points of view and trying to get sort of common ground over issues and then taking that common ground into a meeting with the Crown to try and get some agreement with them about that position.*

And in the end it wasn't just me doing that it was really the lawyers and a team of us that were doing that together, so I suppose being a team player is a huge asset. If you're an egomaniac I don't think it will serve you particularly well. You or your iwi.

3.3 TE URI O HAU

Te Uri o Hau used an identical structure to that used by the Taranaki Claim Progression team, with similar lines of accountability and communication. The Te Uri o Hau negotiating team ultimately reported to Te Uri o Hau Company, a limited liability company formed to negotiate on behalf of Te Uri o Hau:

We had the 'A' team and the B and C team. Now the A team negotiated directly with the Ministers. The B and C team were with the Office of Treaty Settlements (OTS) and all the other officials.

So if I could put the A team in the governance part, the governance heading, the B and C team are the management. That would break it down so it would give you work content.

Esther thought that the structure worked well for Te Uri o Hau. She also explained what she thought to be the key ingredients for a successful negotiations team:

I think it's understanding first the dynamics of the A team and the B and C team. Now that's the personality dynamics. And learning, especially for the B and C teams, learning to concede. That's quite a hard one. You can only put forward recommendations to the A team. The A team can still make the final decision.

As with Te Atiawa, the Te Uri o Hau B and C teams would go back to the A team and take the deal as it had been negotiated. The A team would give the sign-off if it was deemed to be acceptable:

Yeah, like cultural redress. We concentrated on cultural redress, that includes mana-enhancing tools that the Crown [indistinct] which is statutory acknowledgements and protocols.

3.4 RANGITAANE O MANAWATU

Rangitaane o Manawatu organised themselves in a similar manner to the other groups already discussed. Danielle Harris explained that cost was a major factor in determining the size of the Rangitaane o Manawatu negotiating team:

I guess a lot of it was driven from cost. We're not an iwi that has a lot of resources behind us say like Tainui and Ngāi Tahu did in terms of you know incorporation land and businesses and having a trust board that receives income and that kind of thing so we really had a small team right from day one.

At an operational level, Rangitaane o Manawatu employed a hierarchical strategy similar to that employed by Te Uri o Hau, Atiawa and Ngāti Tama. As with the other groups Danielle found that this structure had its advantages when seeking time to consider Crown positions on certain matters:

… we took the approach that Maurice and myself if you like did a lot of the face to face negotiations with the Crown and we really only brought in the other negotiators at the higher level in terms of you know, we saw our elder negotiators and our CEO on a par with the Minister so really they would come in at that level and we saw ourselves if you like as equivalent to the officials, and we would meet with the officials and I guess do a lot of the spade and grunt work.

And that also gave us the opportunity if things got tight in the negotiations to be able to say, well hang on we can't make a decision on that, we have to go back and talk to the rest of our negotiators, so it gave us a bit of an out clause if you like if we needed to get out of something if negotiations were getting difficult.

So we really had the negotiators at a certain level and underneath we had people doing projects and that for us that would feed into the direct negotiations process, for example our legal counsel did our Treaty breaches paper. We actually didn't bring in our legal counsel very often up to the Heads of Agreement stage, well not at all really, we really had them in the background and we would communicate with them and get advice from them, as we needed it. I guess we were fortunate in a sense as by having legal backgrounds ourselves we didn't really need to have lawyers there.

Whereas, I mean with other claimants and that, they may need to have a lawyer present because they don't have any legal expertise within their own team. And that actually worked out to be quite good because what we found is that they hardly ever had their Crown lawyer present as well, so I guess it took away that adversarial approach to negotiations which really, negotiations you know isn't really about trying to be adversarial, you leave that for the Court. So that's how I guess our team worked in terms of its approach to negotiation …

Maurice Takarangi noted that while structures and organisation were important, a quality negotiating team would ultimately depend upon the people involved, and the skills and attributes they brought with them:

… I'd just like to make some other points about it. That is that, tongue in cheek perhaps, that quality of negotiators is perceived to be better than quantity. Always cost driven of course and a huge amount at subsidy. And availability of suitable persons, quantity or quality notwithstanding. There is a … there is a total imbalance really between the human resources that the Crown can call on and the human resources that the claimant can call on, and this is true of our case as it would be true of most of the other claimants.

So far, the effect of this, our structure is at least satisfactory to the beneficiaries thus far and there hasn't been any perceptible disagreement among beneficiaries as to the number, nature and quality of the negotiators and the negotiating team, but often when you are in a small team and you are squaring up to the immense resources that the Crown has in terms of human resources in particular, it becomes very very difficult indeed, and by and large, unlike perhaps popular belief, being a negotiator is not necessarily a privilege at all. It is a difficult, tedious, thankless by and large job.

Maurice reflected on what he believed to be the desired qualities that needed to be considered when assembling an effective negotiating team:

But you need a mixture of skills to be in, in my opinion if I may start, to be an effective negotiator and in your team you need to have people, male and female, who can bring to the negotiations different perspectives. I would, for one, not be recommending that your negotiating team be made up of persons, male or female, who bring one discipline only or a restricted discipline. They should have, your team should be made up of people that, that have a various, varying number of disciplines that they can bring, a various amount of experience, preferably longer experience than shorter.

And obviously people who have got some experience of dealing with government, be it local government, be it central government matters. So variation, mixture of disciplines, preferably gender mix, because we do live in that age and the Crown is represented in that way as well and I make the remark about quantity because first of all there is the availability of suitable persons which is a problem I believe amongst the iwi themselves whatever they might think, and then there is the question of, you know, what numbers make up an effective team in the end, given what you're trying to achieve.

I am also mindful that behind the negotiating team there could be an A, a B, a C and a D team so that your upfront negotiators as it were, are almost invariably backed by other levels that make up the team so, I don't like using the word A, B, and C because it denotes quality but my point is that invariably, as is the case in our case, there are other people involved in the claim at other levels.

An enormous amount of patience should be present as a common factor in the team, although it does pay perhaps to have one who's a Rottweiler type and another one who's elephantine in their patience.

Danielle agreed with Maurice's appraisal and explained some of her experience of fronting up to a much larger Crown team:

I mean we'd go to some meetings one day and you would go into their boardroom and it's got this big table and you have about twelve seats on either side and Maurice and I would go in and we'd be facing up against twelve officials, that's the immensity of their team versus our team.

So while they had people that specialise in particular areas like cultural redress or a statutory acknowledgement or someone from the Ministry of Culture you know we have to be experts in everything whereas they only have to be experts in one particular area and you know sometimes they're hitting you from twelve times at once so you've gotta be able to hit back (laughter) so you know those are the kinds of dynamics you can get involved in as a negotiator and like Maurice says, I mean, your average beneficiary will never know frankly what you have to put up with. (Laughter)

Danielle also noted that unity amongst the claimant negotiators was important and that every member of the team needed to know exactly what their role in the negotiations was:

And I guess it's extremely important that your negotiation team always appears unified in negotiations. There's a lot of times when you have disagreements and that amongst yourselves but you should never allow that to trickle over into your direct negotiations with the Crown because they see that as a weakness and an opportunity I guess to put in a lever if they can so there's always that to bear in mind as well.

I guess in terms of the skills, I mean you clearly need people who understand the negotiation process and understand the basis of your claim and that kind of thing. I think you need people that have very good analytical skills in terms of being able to isolate the issues quickly because the Crown can be very good at talking for an hour without saying too much so you really need to be able to pick up where they're coming from.

So you really need to have good, oral I guess as well as listening skills and it is almost a bit like, I guess, going into court and being in a play in the sense that Maurice said, you need to have people on your team that are going to play the different roles. You know, if you know that you're going to be the Rottweiler well you know when you have to be the Rottweiler, and if you're going to be the one who's the patient unassuming person then that's the role that you play, so it's very important for you to define as a team what the roles are within the team and who's gonna talk on what, like for example I tended to address the cultural matters and that kind of thing and governance entity stuff and whereas Maurice addressed like the commercial kinds of issues so we have our little niches within the team and we become the spokespeople on those as well.

So you need to define that within your team as well. I think it's good for you to have maybe a younger negotiator as a learning curve for someone within your iwi, because you know, a lot of the

negotiators tend to be a bit older and they're not going to be around you know maybe in 30 or 40 years time but if you have a younger person there who is part of that history making, because it is history that you're making, then you know they're going to have an ability to really be aware of what it was all about and what those negotiators were fighting for. I mean you can take observers and that kind of thing in as well, as long as they know they just can't get in and talk and that, they've got to really defer to whoever's mandated to be doing the speaking.

3.5 NGĀTI AWA

Ngāti Awa organised their negotiating team in a slightly different way to the other groups interviewed.

After gaining the mandate to negotiate on behalf of Ngāti Awa, the Trust Board appointed a negotiating team consisting of four members. All were selected for their various skills and knowledge. This core negotiation team was augmented by a negotiations support team and further input and advice was supplied by a settlement policy committee.

Hirini Mead explained that the Ngāti Awa negotiations were really an extension of negotiations and organisation that first began in 1980:

Well first of all it began way back in 1980 and we formed a central body as the first step. And the central organisation that Ngāti Awa first established at that time was a charitable Trust. It was the only Act we could use at that time although we applied to be a Māori Trust Board. We applied to become a Māori Trust Board in the year 1988, 1988 was the year the Act was passed.

The Ngāti Awa negotiators were therefore directly responsible to Te Rūnanga o Ngāti Awa. Hirini explained how over time the formal structure of the negotiation team changed:

There were three in the ancillary team, we're down to two. So our team now is really about five. Well it's really one team, which is augmented when required. Now we're virtually dealing with just one team.

3.6 CONCLUSION

Most of the groups followed a similar pattern of organisation based on the system used by Ngāi Tahu and the Crown during their settlement negotiations. The model usually consisted of a system of three teams, usually called the A, B and C teams.

The A team typically had overall responsibility for guiding the negotiations by providing overall approval to ideas and suggestions. The B team was typically responsible for developing negotiation strategy and policies on behalf of each particular group. The C team would normally take the policy and strategies developed by the B team, and use these negotiating positions in the actual across-the-table negotiations with the Office of Treaty Settlements.

A good claimant negotiating structure is important to enable timely and clear communication. It also sets out clear decision-making processes in order that those involved in doing the actual work of negotiation are clear on what they need to achieve.

Although an efficient and robust structure is important, an effective negotiations team will ultimately depend on the quality of the individuals that form the team. The selection of negotiators is an extremely important matter requiring serious consideration, and an in-depth analysis of the skills and knowledge available within a particular group.

PART 4: FUNDING AND RESOURCES

4.1 INTRODUCTION

The issue of funding for the process proved to be an important issue for the Māori negotiators.

Crown policy is to make what it considers to be a 'reasonable contribution' towards certain expenses for mandated groups. This means that the Crown does not cover all of the claimants' expenses and expects claimants to cover some of their own costs.

4.2 TE URI O HAU

Esther Gray highlighted a particular difficulty experienced by Te Uri o Hau in regard to the milestone-based funding system adopted by the Crown:

> *It was stop start and then we had to restructure our funding but for this here, for Otamatea we went on no salary for eight months until we could get funding to go carry us through, at that time the Otamatea Māori Trust Board helped us to carry on but we had to cut right back down to two staff, one on part-time, one full-time.*
>
> *So you couldn't get travel expenses, you couldn't get telephone expenses you know. I think that the system really needs to look at that if you're going to go to the heartlands of Māoridom to … to ask them to research their claim and go into direct negotiations then you must be prepared to maintain a structure to keep that going.*

Esther noted that although the Crown insisted upon a rigorous auditing process for Te Uri o Hau to demonstrate how its funding was applied, Te Uri o Hau was given no indication of the resources the Crown applied to its own work:

> *The other thing that you know, with utmost good faith is the Crown know how much we spent on negotiations, Te Uri o Hau however, don't know how much the Crown spent.*
>
> *It would be nice that there would be a balance you know? If we only had 500,000, the Crown should only have 500,000.*

Esther noted that the Crown could apply significantly more resources to the process than Te Uri o Hau:

> *Sometimes we walked into a team of fifteen. We only had three. So we had questions just firing at you and at times we had to split our three-man team up so the work was running backwards and forwards between me and Will.*
>
> *It all boils down to the resources, whether they be human or monetary to Māori. That's what it comes down to.*

Esther believed that Te Uri o Hau could have completed their settlement a lot quicker had they been better resourced, but doubted whether extra funding would have necessarily enabled them to achieve a larger settlement quantum due to the Crown's underlying policy of classifying claims on the nature of the Treaty breach:

> *I think for you to get a better settlement you would first need to change that assessment criteria that the Crown use for settlement. Raupatu, old land claims, Native Land Court. The raupatu we tried to argue was that if anything, confiscation, raupatu, taking the land, actually made the Māori come together, made the tribes stick, consolidate like a fighting community.*
>
> *The Native Land Court actually separated us, it started to fragment us at the very foundation of Māoridom, which is whānau, by consolidating the title into one person and that's what really, that really fragmented and that put suspicion from whānau to whānau, hapū to hapū, marae to marae. That would be a good example of fragmentation of Māori.*

4.3 NGĀTI AWA

Hirini Mead was critical of the Crown's approach to funding the direct negotiations process. Despite Crown Forestry Rental Trust funding assistance through the Waitangi Tribunal process, he noted that the long time involved in negotiating the claim caused Ngāti Awa financial hardship:

> *Yes, the Crown Forest Rental Trust invested quite a bit of money into our claim. It kept us afloat for quite a while, to get us through the process. It got us through the hearings process, and got us through the Heads of Agreement, and then there's been all this tooing and froing, six years, trying to get through that process.*
>
> *And during that period, we've got into financial difficulties. The Crown has limited its contribution to what it considers fair. It does believe it should be a 50-50 thing and there's a grievance right there. What iwi has the sort of funding that is required to mount a long-term negotiation?*

In regard to the Crown's policy of making a contribution towards costs, Hirini noted:

> *They think that the world is a level playing field, that iwi are equally resourced as the Crown. That seems to me to be a ludicrous position and they must know it's not the case.*
>
> *Many iwi do not have the resources to carry through a negotiations process that goes on and on, and cynics would argue that part of Crown policy is to run iwi into the ground. Perhaps by running them into the ground, running them into debt, the iwi might be more ready to settle. That might be an underlying policy but no one can say that.*

He described the Crown's contribution as 'totally inadequate':

> *Totally, and it's been based on a deficit funding policy, so they never give us enough to do the job.*

Like Rangitaane o Manawatu, Ngāti Awa have had to find other avenues of funding or use their own resources:

> *We've had to service debt, and we've had to deal with a rising debt.*

One of the major issues concerning funding identified by Professor Mead, is the extended nature of the negotiations process adding extra expense to iwi:

Of course there are all kinds of problems. One is the drawn-out nature of the negotiations. I think the whole thing could be streamlined and then the policies made fair and not changed so the goal posts don't change along the way. The whole process of negotiations could be reduced sharply.

The issue of cross-claims has also impacted upon the ability of Ngāti Awa to settle their claims quickly. As Professor Mead explains, this time delay carries extra cost and added frustration:

Well there is a financial burden. Delays mean a huge cost. There's also a feeling of general frustration by the iwi, it's been so long. We meet time and again … and in the meantime we have a crisis meeting to settle one issue, but along comes another issue. So it's been a frustrating process.

Several hapū have grown tired of the whole thing. It has taken a long time and they want us to negotiate and get on and bring it to a close.

And we are trying to do just that but it's not at any cost to the tribe. We are trying to do our best to make sure that we come out alright and not have to compromise too much. The whole negotiation process is a matter of compromise.

4.4 TE ATIAWA

Like the other groups, Te Atiawa had limited financial resources and was reliant on funding from the Crown to conduct their negotiations. According to Te Atiawa Chief Negotiator Peter Adds, at times this placed Te Atiawa at a disadvantage:

We've got no money of our own so we were wholly reliant on Government handouts, which they used against us actually.

When things got sticky for them, oh sorry can't give you your money this month, and of course that meant we couldn't pay lawyers. Lawyers won't work without money, although our lawyers were actually quite good they did give us a discount they said.

I've never worked out how, but they did and did sort of bankroll us for a while but there was a limit to that and so we were, it was always a very fine balancing act with working out the money.

We put quite severe restrictions on how we used that money. We put in place a really rigid and tight financial management policy, which we imposed on ourselves, which exceeded Inland Revenue's policies about how they manage their own money.

And that was a sort of a self-discipline, a thing that we imposed on ourselves deliberately right from the start. And so you know, there were regular audits, we got four audits done a year, all that sort of stuff and kept a really tight rein on how that money was used.

Peter believed that the Crown's contribution towards Te Atiawa's negotiation costs was inadequate. He believed this lack of funding impacted upon Te Atiawa's ability to negotiate:

It restricted the amount of research that we could do and the amount of planning that we could do and the numbers of experts that we could bring in.

And in fact the ones that we brought in were prepared to work without payment for a period of time, and that was just a reality for us, and some of them still haven't been paid. Yeah.

So we owe them. Hopefully when settlement comes in they'll get it. It also means that you know, that we weren't able to be paid, we never paid ourselves.

4.5 NGĀTI TAMA

As with Te Atiawa, Ngāti Tama was reliant on the Crown to fund their negotiations. Ngāti Tama Chief Negotiator Greg White's experiences of the process, are similar to those of the other participants:

> *The costs were primarily met by funding made available by the Crown. But quite often their funding was only paid after the event and in our case a number of years after we had work completed.*

Greg believed that the lack of funding for claimants places them at a distinct disadvantage and skews the process in favour of the Crown. In addition, time delays on the part of the Crown place extra expense on iwi:

> *Of course, no, there was never a blimmin level playing field and never ever will be until negotiations have an independent arbiter.*
>
> *During negotiations we met as iwi on a regular basis and were always prepared to move forward. We could have actually fronted up every day, responded to issues the same night, then come back to the Crown the next day.*
>
> *The Crown on the other hand would take for ages, three, four weeks or how ever long they wanted to turn around stuff, all that time, lawyers actually found something to talk about to one another, and their clock keeps ticking, so the point is the length of time it took the Crown to respond is a real expense to iwi.*

As with the other groups, Ngāti Tama has found it necessary to use their own resources to progress their negotiations:

> *I know that if our current issues go for another 12 months we're going to have some difficulty paying our lawyers with the money the Crown provided.*

Greg's experience of the process made him highly sceptical concerning the Crown's motivation behind its funding policy, and he noted some of the expensive realities facing those groups who elect to take on account funding:

> *They just completely control your processes with the way they just don't release funding. You know in the case of Ngāi Tahu, I understand that the Crown gave them 10 million on account. This allowed Ngāi Tahu to plan and manage their negotiations free of financial worries and Crown control. The Crown decided it would not do the same with us. Perhaps they learnt from Ngāi Tahu and wanted greater control.*
>
> *It costs exactly the same for us to keep bloody lawyers ticking over or on standby, for example drafting a Trust Deed costs the same for iwi with small settlements as it does for those with large ones. The only difference is that larger iwi have higher consultation costs. Obviously all costs are relative to the size of the final settlement figure.*

4.6 RANGITAANE O MANAWATU

Rangitaane o Manawatu found their expectations of the funding required for the direct negotiations contrasted significantly with that of the Office of Treaty Settlements. Danielle Harris explained the extent of this gap:

> *Basically, we prepared a budget of what we thought it would cost for the direct negotiations process. We submitted that budget and it'd be fair to say that OTS cut it in, a third, we got a third of what we asked for and OTS make a specific point that they are not there to fund the process, they are there to make a contribution to the process.*
>
> *So what they gave us was a contribution towards the direct negotiations process. As Maurice has already said the reality is two very different things, so there is actually a huge burden on claimants to try and source other avenues of funding to fund the direct negotiations process.*

Danielle notes that Rangitaane o Manawatu's budgeting was based on their expectation of how long their negotiations would take. However, for various reasons beyond Rangitaane o Manawatu's control, this timeframe proved too optimistic:

> *Well the budget that we put in at the time was based on us I think being able to achieve a settlement in something like two years, so there's been a lot of external factors that of course impacted on that and have, as a result the cost of the direct negotiations process has probably cost us about three times of what we had initially budgeted for.*

Maurice Takarangi highlighted his concern over the Crown's funding policy and the timing of when mandated bodies actually received approved funding from the Office of Treaty Settlements. Maurice noted that a large amount of work still needed to be carried out before Crown funding was available:

> *… the decision by the Office of Treaty Settlements representing the Crown to make a contribution is one that's interesting in the light of the fact that, having accepted that a claimant has a prima facie case therefore has a grievance to settle, I find it curious that the only agreement that's made of our costs is a contribution to costs. That means then that they presuppose that the other contributions to the real costs are obtainable from elsewhere.*
>
> *Now the elsewhere is very restricted as we know, and most of the elsewhere is the Crown Forestry Rental Trust fund. The other elsewhere is of course the organisation and the hapless people who happen to be involved in taking the claim to fruition. So in fact I would like to bring some emphasis on to the decision by the Crown to continue with the policy of partial funding only, or a contribution, and then of course putting the burden back on to the CFRT to fund up the balance, or part of the balance and then that leaves the claimants themselves to fund up the actual balance of the real costs.*
>
> *So far as those processes, one and two is concerned, it's evident that by and large, apart from an element of retrospectiveness about costs for mandate, in fact, the claimants are carrying the costs right through to the moment that, unless they can get funding prior to from CFRT, the claimants are carrying the costs to that point of being accepted by Cabinet as an acceptable direct negotiating body, and secondly, Cabinet deciding in that case to fund them all retrospective. Now the gap between beginning and that point, and if CFRT has no involvement, is a considerable time, and that can inhibit the enthusiasm of claimants to proceed, and their effectiveness as well.*

Danielle was critical of the way claimants are resourced to participate in the direct negotiations process, and saw this as the major issue needing to be addressed in the current process:

> *There's only one fundamental thing that really would have to be looked at or done differently is, is the resourcing of the process. That's the most fundamental issue that really needs to be addressed in the whole claimant process is putting the claimants on a more level playing field with the Crown so that they can actually negotiate from a better playing field than they've been able to in the past.*
>
> *That for me is the most crucial matter that's got to be addressed and dealt with. You know, the Crown contribution, if you ask me, is a breach of the Treaty in itself in that you're not seeking to bring a 50-50 partner to the table.*

Maurice agreed with Danielle's assessment and highlighted what he saw as one of the main difficulties facing claimants in trying to prepare budgets for direct negotiations:

> *There's an inherent problem in that in so far as, when claimants embark upon the Tribunal process or the direct negotiation process, they are crystal ball gazing cause they're entering a new territory completely. So they're obliged to, to estimate what the costs are likely to be without really knowing cause there's nothing to go on, and consequently any resourcing matter that arises in new territory has to be of the nature of prove the costs and they'll be paid.*
>
> *To me the whole area of resourcing should be conducted on the basis of, we will meet the real costs of the claim, because that is how the Crown is running its costs. They meet the real costs of the claim, their end of the claim, as far as we know without any necessity to pre-prove those costs internally, they just meet them.*
>
> *And so, the fundamental flaw, if you like and arguably a Treaty breach itself as Danielle has mentioned is the decision, in the first place, to put the claimant to estimates and then modify those estimates and then to make a contribution only to the estimates. Claim cost, therefore what's the solution? Claim costs should be met on a real basis, on a proven real cost basis, per se, and that's how the claim process should be conducted.*

Maurice believed that the ability of the Crown to call on a larger pool of resources meant that the process was skewed in favour of the Crown from the start:

> *… you talk about a level playing field and you talk about teams, and you talk about team leaders and so on, in fact the team is totally imbalanced. The teams are not really well matched at all and so you're always in a position where you're squaring up to a Crown team which will always be better resourced than the claimant. I know of no case where that's not true.*
>
> *So the negotiating environment is set right from the start to be one where there's an imbalance. So you're always gonna try and do the best you can and further to that it's not supposed to be, in negotiation, you and I lose, but, it's supposed to be a win-win, and if you approach it from that angle it seems to me to be more likely that you may produce a better result for your beneficiaries. But only the fullness of time will prove that to be true or otherwise.*

4.7 CONCLUSION

All the participants found the direct negotiations process to be an expensive exercise. All participants believed that the Crown's policy of making a contribution towards claimant's costs was inadequate.

All of the groups were required to pay their own mandating expenses before the Crown would agree to negotiate. This often entailed considerable expense for which claimants would only be partially refunded if they were successful in gaining the mandate.

All discovered that the Crown released funding based on the achievement of milestones. This meant that the work needed to be completed before the Crown would pay out the funding. Often, many groups did not have the resources to begin the work and so this system could create difficulties.

All of the claimants were reliant on the Crown for negotiation funding and most had no other sources of money. All of the groups involved were required to find their own alternative sources of funding to cover any shortfalls.

The Crown's retrospective funding policy drew considerable criticism from all of the participants.

Each participant believed that funding struck right at the heart of the ability of mandated groups to prepare themselves and negotiate effectively. Some of the negotiators believed that the Crown completely controlled their processes through the retrospective funding policy.

PART 5: THE NEGOTIATING ENVIRONMENT

5.1 INTRODUCTION

This section examines how the negotiators perceived the negotiating environment and some of the activities and processes in which they were involved.

5.2 TE URI O HAU

The majority of Te Uri o Hau's settlement negotiations took place in Wellington at OTS offices. This required a large amount of travel on the part of Te Uri o Hau's negotiating team:

> *The only time it came to Whangarei was when the A team was dealing. But the B and C team had to travel. It was quite a long process, I tell you, it wears you out.*

Esther Gray explained that this impacted on her personal time to a large degree:

> *My husband actually said one day that he'd slap a Wai number on himself so he could actually visit me. And this was at one of our hui. So it was often.*

Esther noted that the large amount of travel and the demanding nature of the actual settlement negotiations were extremely taxing:

> *It is, the reality is that all these people here, most of them are kuia and kaumātua, if we were if they were to be the B and C team it would have just drained them so a lot of the claimants need to understand the workings of it. They need to have some young people in there and train them instead of themselves. We lost quite a few during that process a lot of the old people died.*

The Te Uri o Hau negotiators were bound by strict terms of confidentiality. This meant that neither Te Uri o Hau nor the Crown, was allowed to divulge what was being negotiated. Esther explained that the matter of confidentiality sometimes created difficulties for the Te Uri o Hau negotiators:

> *Well it's mainly … the Crown do have an insistence on … what is it called? Prepared without prejudice or something and there's always confidentiality on it while we are in negotiations so you can't release too much information and it was very difficult to keep our people updated especially my generation who, they jump pretty high, you know. We could let the A team know, the mandated representatives, but to send it out in a newsletter, we didn't, we couldn't, we had signed that agreement. Which is called the terms of negotiations.*

Esther felt somewhat frustrated by the confidentiality clause, which restricted the ability of the negotiators to communicate their activities to the wider membership of Te Uri o Hau. She believed the confidentiality clause created problems for Te Uri o Hau further into the settlement process, in the form of opposition to the settlement at the Select Committee stage:

> *It did, created a lot. My generation felt isolated. And a few of them showed that in some of the submissions, the objections to the legislation.*

Esther believed the consequences of keeping the details of the negotiations confidential made her own job more difficult:

> *… because you've got to understand that it's a Māori community and they all know you and where you live. And they know your phone number and they just bug you. And you can understand why. And what I have noticed with my generation is that they wanted to be here because they understand the process.*

During the negotiations, Te Uri o Hau found that the leader of the Crown team changed three times:

> *While going through negotiations we had Ross Phillipson as our claims manager and he was also the director, after Ross we had Paul Barker and he stayed for a little while, after Paul we had Andrew Hampton.*

Te Uri o Hau found the change of claims managers by the Office of Treaty Settlements to be somewhat problematic, as each new claim manager had to be brought up to speed with the progress of the negotiations:

> *It did in the sense in that we had to update them on what was going on, you know, where we, where the last one had left off.*

Te Uri o Hau found that although their day-to-day negotiations took place with the Office of Treaty Settlements, the Crown Law Office played a major role in their negotiations, scrutinising every part of the Te Uri o Hau settlement:

> *Well you can go through all negotiations you like, but at the end of the day Crown Law's got to go through it. And Crown Law's main objective is to protect the Crown.*

As Esther explained, the Crown Law Office represents the New Zealand Government in legal proceedings. Esther believed that Crown Law had a large amount of influence over the Office of Treaty Settlements:

> *They check all the documentation that comes through … even though OTS might agree with it, it still has to go through Crown Law and then it comes back to us if Crown Law doesn't agree with it. … they're a law unto themselves basically. They protect Crown, legally protect the Crown.*

During the drafting of the Crown's apology Esther was struck by a particular incident that made her wonder how much attention Crown Law officials had paid to particular details of New Zealand's history:

> *And there was an area in there, in the apology that she wanted to change a word in the English version and whenever you change it in the English version you've got to change it in the Māori version. And anyhow she says to, she comes in and I said to her look we can't get this translated, our old people are coming by bus, I can't ring anyone at home back up north to get the translation.*
>
> *It was only a minor little word, and that always helped, if your claim managers aren't doing the translation it always helps because that gives you that fall back. You know time to actually seek kaumātua. You know and she says well, let's not worry about it, let's just change it in the English version and leave the Māori, and I said and that's what happened with the Treaty and that's why you and I are sitting here today, and yet they still wanted to do that. I know it was only a minor word but I just couldn't help myself, I had to remind her, that's how it happened.*

Esther summed up her role as a negotiator for Te Uri o Hau as a time of extremely hard work and personal growth:

> *Well to be honest with you, I was really a tool, I tell you you've gotta look at yourself, you're a tool of the people. So while you're there as like, a little hammer, just bang bang bang bang. At the end of the day it would be my A team, our A team that would come and say yes that now is right. Personally, you know I can only give you a personal, from Esther Gray personally. There's a lot of changes that need to happen, and it needs to happen in policy, and in Crown and government's outlook.*

5.3 NGĀTI AWA

Ngāti Awa found themselves in a similar situation to Te Uri o Hau when negotiating. One particular aspect of the negotiations that Professor Mead found problematic was dealing with local authorities:

> *Settlement requires dealing with local authorities and that's another problem. It's an issue because local authorities can interfere with the settlement because some parts of the settlement have to be run past them.*
>
> *Sometimes the iwi and the local authority are in competition for the local resources. But one does have to deal with relationships that are built up over time. But again you see, until settlement, iwi is always the poorer partner.*

Hirini noted that little negotiation took place with the Crown over the level of financial compensation Ngāti Awa would receive:

> *Well we presented a wish list and the Crown came back with its quantum. And there's really been no negotiation over the quantum. There's been very little, having reached what the Crown decided was the right level of the quantum it has not moved.*

Ngāti Awa found that the Crown provided little in the way of justification for the amount of financial compensation it offered Ngāti Awa. He highlighted this:

> *Not really, it decides this is where your claim fits in, in this category, and any claim in that particular category is worth so much. Te Uri o Hau is one category, they're worth so much, and the different Taranaki ones fit into another category worth so much. We've been pegged pretty much to Whakatohea.*

Despite the issues concerning fiscal compensation, Ngāti Awa found the Crown to be more flexible when negotiating cultural redress:

> *Really in respect to cultural redress I think there's a lot more flexibility in this area and in terms of the apologies and historical background. The climate of negotiations from the iwi's point of view is difficult and very frustrating. It is difficult and I think people need to know that. It is not an easy ride getting into direct negotiations with the Crown. It's not an easy ride towards signing a settlement. It's a very very difficult road.*

Ngāti Awa participated in the Waitangi Tribunal process before entering into direct negotiations with the Crown. When reflecting on whether this experience helped Ngāti Awa, Hirini made the following comments:

> *It helped and it didn't help. It certainly helped in defining the rohe where Ngāti Awa influences are very strong and it also assisted in confirming our own position about the legality of the actions*

taken by the Crown in respect of confiscation. So it's helpful, it's always helpful to have the findings of the Waitangi Tribunal because that becomes part of the record.

He believed it was important to have experienced legal representation when entering into negotiations. He offered some advice on the use of legal experts when negotiating with the Crown:

Well there's always the matter of whether you enter negotiations on your own or with your lawyers. Our experience has been that you need your lawyers, you need legal advice otherwise iwi could find themselves compromising far too much and then making decisions not really knowing the legal repercussions of those decisions. The lawyers are there to protect the iwi, to protect their position. We have found it absolutely necessary to have lawyers. And if it were a big claim it would be foolish for the iwi to think that they could do the negotiations by themselves without any legal expertise and legal advice.

5.4 TE ATIAWA

In a similar manner to Ngāti Awa, Taranaki iwi Te Atiawa, also progressed through the Waitangi Tribunal process before entering into direct negotiations with the Crown.

Te Atiawa Chief Negotiator Peter Adds noted that the various iwi of Taranaki, actually turned down an early offer to negotiate a settlement with the Crown for two main reasons:

And in fact, we'd been approached by Doug Graham at one of the hearings in Parihaka, to abandon the Tribunal process and get into direct negotiations with him. We said we'd rather go through this process for two reasons. One was that we wanted a report for negotiations, but the other was that we saw it as a valuable tool for educating our own people. That was really the primary reason.

In 1996, the Waitangi Tribunal released the Taranaki report. Armed with this report Te Atiawa, and their coalition partners of Ngāti Tama, and Ngāti Mutunga resolved to enter into negotiations to settle their claims. However, as Peter explained, while the Tribunal had been hearing the Taranaki claims, the Crown had been learning some lessons of its own through its negotiating experiences with Tainui:

… while we were going through the Tribunal process the other thing that's happening in OTS is that they've learnt some hard lessons from the Tainui negotiations … And of course, [OTS] have developed their own process, a new process for dealing with negotiators, and negotiations generally.

And they come up with their six-phase model, you know there's the whole mandating thing, Terms of Negotiation, Negotiation, Heads of Agreement and so on. And so we came into that process just as they were implementing it at the start. After, so we got our report, we said to OTS, right we want to negotiate a settlement now.

The members of Northern Taranaki Alliance secured their respective mandate and entered into negotiations. Peter recalled how the nature of the negotiations changed over time, moving from an adversarial environment to a more cooperative approach:

But what's interesting about that process was that at the start of the negotiations it was very confrontational, very litigious. Crown, especially on the history, and especially over the Crown apology and what the Crown were actually saying sorry for.

We'd worked out that if we could get them to say sorry for certain things that was tantamount to an admission of guilt over various issues, and so we worked very hard on getting them to say certain things. Which they resisted, and so we spent a long time actually arguing over just, over small sentences sometimes, and even words, in their apology. Sometimes there were heated arguments, walkouts, that sort of stuff. That's what it was like. So that was the start of it, and it was very stressful actually. But over time, the process became much mellower. And it developed into a process over a period of time where we started to work together to get a common outcome rather than fighting against each other to get that. I think in the end they saw the sense in that.

Peter noted that in his experience there was no such thing as a typical day on the job when the negotiations got going. Peter also noted that it was important to know which people to use in particular situations. Peter's views contrast somewhat with those of Hirini Mead over the use of lawyers in the negotiation process:

They were all different probably as it depends on the issue. If you're dealing with a hard issue it can be incredibly frustrating. Like, you know, there were various times when we were, especially over issues in our apology, we'd argue about the merits of particular words because we were trying to get a particular point of view put into the apology. And over some historical points of view as well which were pretty frustrating.

Often there were historians that were arguing with each other, often our lawyers argued with their lawyers, and sometimes these meetings went into the night, late into the night, and you'd come out of the meeting wondering what the hell you'd achieved, and sometimes you hadn't actually achieved anything. So you'd go back the next day and try and work it out and so some of the things were agonisingly slow but some things were developed quite quickly as well, so there really wasn't a typical day.

But it wasn't just the across the table stuff that was part of your day, a probably more important part was prior to the negotiations, you'd meet with the team, your lawyers and so on, to work out what your position was going to be over any one issue and the strategy that you were going to use across the table. In the event, we took the advice of the lawyers over a lot of that stuff, which may have been a mistake. Knowing what I know now about the way that lawyers operate, I wouldn't recommend that you take lawyers into negotiation, that you instead use people that are proper skilled negotiators, and that you only use lawyers to review legal issues after the event, rather than take them with you.

And the same for other experts as well actually. What really, what you want in negotiations is someone, either someone that you hire or someone from within the tribe who is a good, hard-nosed, skilful negotiator. You don't have to have a lawyer. In fact what we found was that when we took lawyers in, and they started arguing legal arguments, you got corresponding legal arguments from Crown Law, the whole thing got bogged down in that sort of legal bloody detail, unnecessarily in my view. But at the time we didn't sort of appreciate, and it's only looking back on it, and now sort of seeing how it transpired that you sort of understand that.

Because while this stuff is going on, the issues are incredibly complex, and you try to work out what it all means and how it all fits together and what you should report back to the iwi and all

of that sort of stuff you know, and so in the midst of all that it's difficult to sort of see an overview and where things are at, so it's sort of after the event that you start to appreciate some of that stuff really. Which is where the value comes in seeking advice from other iwi that have been though the process.

In a similar fashion to the Ngāti Awa negotiators, Peter discovered it was difficult to understand what methodology the Crown used to determine the amount of financial compensation to offer the three northern Taranaki iwi. Peter was highly sceptical of the way the Crown calculates the amount of compensation for historic Treaty claims:

They kept their cards pretty close to their chest and it was always pretty weird in the end, but they, we asked, well what methodology are you using to arrive at these numbers? And they said well, they said, we've got a methodology but we're not going to tell you what it was. Well there was no methodology, these were figures just plucked out of the air for no particular reason. It was what they perceived to be fair based on all sorts of spurious understandings and arguments, that was our view anyway.

As with all the other groups, Te Atiawa was bound by a strict confidentiality agreement while in negotiations. While he acknowledged that it could cause difficulty, Peter noted why it was in Te Atiawa's interest to adhere to this agreement:

… absolutely, the terms of negotiation require certain levels of confidentiality over certain issues and the main reason for this, as was explained by the lawyers, was that it was to do with commercial sensitivity over some issues, as well as political expediency I suppose. But we signed up to that in the Terms and we had to honour it and that's just the way that, that's just part of the nature of the process. People aren't necessarily happy with it, you just have to take the time to explain it.

But, in fact, that was really insisted on by the Crown, to some extent, but our lawyers also advised us that in the interests of keeping potential asset prices and values low it was also in our interests. Because, you know, if there are a whole lot of properties in the land bank or elsewhere that people found out about that we were interested in then values would skyrocket, and it would cost us. So there were good reasons for confidentiality but with that you've also got to have good reporting mechanisms.

Although the Office of Treaty Settlements was responsible for coordinating the overall negotiations, often officials from other Government departments would participate in the negotiations, particularly in areas such as cultural redress. Because of this, Te Atiawa and their negotiating partners were often faced with a much larger Crown team than they were able to muster:

… that was fairly common. It would depend on the issue because if you were working on an issue that affected a number of Government departments then they would bring their officials in. So if you were working on a particular DOC (Department of Conservation) issue for example there would be the DOC representatives.

There's also a DOC person appointed full-time to the negotiations over cultural redress anyway but if it were a particular property for example, then they'd bring in other people from DOC familiar with that property and the conservation values associated with it. And there was, sometimes you'd have Treasury people in there as well, and so you know, that was a common experience. Personally, we didn't mind that, it wasn't a sort of, I didn't perceive that as a ganging up on us, in fact most of the time they were responding to us, rather than us responding to them.

5.5 NGĀTI TAMA

Ngāti Tama chief negotiator Greg White was blunt in his description of the direct negotiations process:

> *All it is, is the Crown is a big bully. They talk about getting rid of bullies out of the school grounds and what not, but make no mistake the Crown is the biggest bully of the lot. This is it; you take it or leave it. You can kick, you can scream, you can do whatever you like, but they're not interested. There is only so far that you can go before you have to do the Whakatohea shuffle, in other words if the negotiators or the iwi reject the Crown's offer you go to the back of the negotiations queue.*
>
> *So that's why I say there's a need for an independent arbiter. Someone to keep the Crown on track. The Crown say that they consider raupatu to be a more serious breach than non-raupatu and that while that might be okay for us but if you've lost your bloody land, no matter which way the Crown took it, it's the same, you know, you've lost it, it's still a loss, so they need to deal with land loss as an issue.*

Greg had a similarly low opinion of the way the Crown conducted itself during the negotiations. He was particularly scathing of the Crown's reluctance to explain its methodology for assessing loss and arriving at figures for settlement offers:

> *How did the Crown conduct themselves in negotiations? Poorly. They know that they've got all the cards; they know that they can cut off money supply whenever they want to. Things like the relativity clause that Tainui and Ngāi Tahu both have in their settlements were denied to us. Now we've seen the internal Crown memo regarding the relativity clause and how the Crown set about a process on how to get rid of them from future settlements.*
>
> *Now how can the Crown expect to treat iwi differently and not create a Treaty breach? They claim that they have calculated for that in the offers that they have made subsequent. But, unless they are transparent, unless the Crown clearly identifies their methodology for valuing those losses and arriving at the figures that they arrive at, then all we are left to rely on is the integrity of a few faceless Crown officials.*

Greg was also highly critical of the length of time it took for Ngāti Tama and the Crown to negotiate the settlement offer, something that he blamed on the Office of Treaty Settlements:

> *How long did negotiations take? Too long. Two years and it's still continuing, because we believe the Office of Treaty Settlements obviously haven't got the mandate to negotiate on behalf of the Crown.*

Greg's comments surrounding the Office of Treaty Settlements mandate to negotiate were further explained:

> *Well the Office of Treaty Settlements obviously haven't got the mandate to negotiate on behalf of the Crown because, I'll give you an example, we sent our Trust deed down to the Office of Treaty Settlements to see if it met with Crown policy. They came back with a number of things that they wanted to change. We made the amendments because they were sort of rather minor … we sent the amended copy down to them now they sent it across to a different set of officials for their opinion including Te Puni Kōkiri if you please.*
>
> *They say that they won't be able to get back to us until the week starting the eighth of April. Now given the length of time they've had to paw over it, how long should it take to turnaround a 40-page document? It's just Crown nonsense really, large amounts of time and costs could be saved in this part of the process if the Crown wanted to.*

Then once we get everything sorted and the Bill goes to the House, politicians, and usually the least qualified of all will all have another chew at it, and then it goes across to the Māori Affairs Select Committee, and every Tom, Dick, and blimmin Nora wants to jump in there and, and they will. So what's the point of the Office of Treaty Settlements? If they can't cut a deal, what are they doing there? What is their role?

To my mind Treaty settlements should be between Ministry of Justice and Treasury. Justice would identify the breach and Treasury would value the breach. Treasury could negotiate with the Department of Conservation if the Crown can't afford to pay. Now what happens is claimants are actually arguing directly with the blimmin Department of Conservation and then you got the Office of Treaty Settlements playing a game somewhere else and it's just, it's messy. OTS just hasn't got the capacity to negotiate.

Greg had no previous experience of negotiating with the Crown and his personal expectations of what it would be like were not met. He believed that the negotiations process needs an independent arbiter to address the power imbalance between claimants and the Crown:

Of course not, there was never a blimmin level playing field and never ever will be until they get an independent arbiter.

Greg was frustrated by the Crown's attitude when negotiating Ngāti Tama's claim:

Difficult part in negotiations, well, the Crown just had a hundred ways of saying no. And even when they say yes it's often a no answer that is dolled up in a yes dress.

Ngāti Tama's negotiations involved intensive discussions with the Department of Conservation. Ngāti Tama found this to be an uninspiring time and continued to be distrustful of the Department as a result:

… even though the Deed of Settlement is signed, they're still chipping away at whatever concessions that they think that they've actually made to us. Totally dishonourable, and I'm really pleased that we managed to get that blimmin Chairman's role in the management committee because at the end of the day we simply can't trust the Department of Conservation any which way.

Greg believed it was important to have a broad perspective and knowledge base when considering Ngāti Tama's position on their claims:

I've read every one of those Tribunal reports cover to cover and as soon as they come out I grab them and read them. I have noted that some people that are involved in the Treaty settlement negotiations simply read their own report. Very sort of iwi-centric.

I was totally intimidated with the strange environment and the even stranger individuals in the first couple of meetings that we had with Doug Graham. This certainly changed for me once I learnt how the system worked. One of the tactics we used was that when we took our kaumātua and A team to meet with the Minister they were under strict instructions to say nothing but keep their eyes firmly fixed on Mr Graham at all times, just like an eye dog does on an old ram. Of course they were courteous at all times, but silent as well. From the feedback we received I understand that the Minister was uncomfortable with our approach.

5.6 RANGITAANE O MANAWATU

Danielle Harris and Maurice Takarangi of Rangitaane o Manawatu had similar experiences when they first entered into the direct negotiations process. Rangitaane o Manawatu sought out information on the direct negotiations process a number of years before actually seeking to enter into negotiations. A major factor in helping Rangitaane o Manawatu to choose the direct negotiations path, was the fact that Rangitaane o Manawatu's claims were low on the Waitangi Tribunal's priority schedule:

> *We'd had preliminary discussions a few years before and decided to go into OTS to find out about the direct negotiations process, how it worked, that kind of thing, so we had preliminary discussions with OTS. When we decided to go into direct negotiations we basically told them that we'd had hui-a-iwi and that the outcome was that our people wanted to go into direct, so we went in and met with them and said well this is the way that we want go, how do we go about getting into direct and they said, well you need to do this and that, and away we went.*
>
> *So I mean, we, we had done sufficient research to be able to lodge it with the Tribunal if we wanted to go that way but, we knew that it was five to ten years before they were coming up our way so it would have just sat there, so I don't know what the process is if the claimant just turns up on OTS door and says well we want to go into direct but we haven't done any research, we don't know if OTS say well you've got to go back and do some research, we'd assume that that would be the case.*

Rangitaane o Manawatu had been researching their claims for a number of years prior to deciding to enter direct negotiations. The Office of Treaty Settlements requires that claimants demonstrate that the Crown has breached the Treaty of Waitangi before it will agree to negotiate. The level of research required to do this is generally accepted to be less than that required by the Waitangi Tribunal process, but, as Maurice Takarangi noted, this does not mean it is less rigorous:

> *I am satisfied that there is less quantity of material and therefore less requirement for witnesses if we had gone in, if the Tribunal, than there has been to date for the purposes, for this purpose of prima facie with the OTS. We will never know that absolutely because you'd have to go through the other process to prove it but yes I'm satisfied that it's true. Now, there's a danger I guess in using the word less of a burden of proof because that can conjure up the possibility that people may think that well you can get away with, shall we say, more shonky submissions in your research about your grievances. That is not what is meant in my opinion by less of a burden of proof.*
>
> *What is really meant is that you cut to the essence of your grievance much more quickly and concisely with the Office of Treaty Settlements and it's simplistic in that sense in that you either do have a grievance or you don't have a grievance. If you do, what is the nature of your grievance? And Danielle earlier referred to the nature of our grievance being of the purchases rather than the confiscation type grievances, so the merit is you cut to the quick of the essence of your grievance and then you get on with a settlement quantum that is relevant and relative to your situation vis a vis other claimants.*

Once the Crown had recognised Rangitaane o Manawatu's mandate, a funding contribution from the Crown was approved and the team moved into the first stage of negotiations. Until this point, Rangitaane o Manawatu had funded the work themselves:

> *Basically the funding was approved and we had to reach certain milestones before we'd get funding, so the initial lot of funding we received was to partially cover the mandating process. We didn't*

receive any funding at all during the mandating process that was all paid retrospectively; we had to carry the cost of that.

The next step was to develop what they call a Terms of Negotiation, and that's basically like the guidelines and the principles as to how the parties will negotiate, that they'll negotiate in good faith, they'll share media releases, things like that, this is how they'll communicate with each other, all that kind of stuff.

Danielle found the process of negotiating a Terms of Negotiation to be an early indication of how the rest of the negotiations would proceed:

… we signed our Terms of Negotiation on 27th of July 1998. I guess it would be fair to say at the outset that they call it a negotiation process but myself personally I haven't really found it a negotiation process in the true meaning of the sense. It's been a very one-sided process, in favour of the Crown so the Terms of Negotiation was really developed for us and given to us, and we really didn't have much opportunity to tinker with words too much.

They had specific words that they wanted in there because of what the meaning was externally, for example, they always talked about a fair comprehensive final durable settlement so what they were always trying to communicate all the way through is that it's a full and final settlement and whether you agree it's fair or not, fair is what gets put in anyway.

Then it talks about acting in good faith in the spirit of cooperation so they're quite generic larger principles, they're not really, the Terms of Negotiation really isn't like a detailed document it's a generic principle kind of document, and basically it makes comments like the Crown agrees that we've made allegations about the nature and extent of Crown wrongs said to be in breach of the Treaty, and that the Crown accepts that we've been properly mandated to go into the direct negotiations.

They always put in things like cross claims issues need to be resolved before you can get to a Deed of Settlement and really I guess on the cross claim issue we all know they're never gonna be fully resolved because that's, part of the principle basis of a lot of the Treaty breaches in that the Crown went and negotiated with the wrong iwi in the first place and if they'd negotiated with the right iwi in the first place we wouldn't have a lot of these Treaty breaches. So really when they talk about resolving cross claim issues it's really more to the satisfaction of the Crown and the Crown once again determines the level of that satisfaction.

And then you have procedural matters and the terms talk about who the negotiating team is, that the Crown will have a negotiating team, that you will have alternate meetings chaired, that the meetings will be in private and confidential, and they're on a without prejudice basis so it's you know all care, no responsibility. That you'll meet the ratification process when you go to the Deed of Settlement and that kind of thing and then it also outlines what the scope of negotiations is going to be. So that's really what you're negotiation's going to be about and what your settlement will be about and that covers things like the Crown apology, the fiscal amount, your cultural redress etc.

Rangitaane o Manawatu's day-to-day negotiations were handled by Crown officials from the Office of Treaty Settlements rather than the actual Minister in Charge of Treaty of Waitangi Settlements:

… it had shifted a bit unlike the Ngāi Tahu days where you actually had negotiations with the Minister, instead of negotiating with the Minister you actually negotiated with his officials and as you reached certain milestones you met the Minister.

Danielle's expectations of how negotiations would proceed were quickly revised once Rangitaane o Manawatu got down to the actual business of negotiating:

I had studied the Tainui and the Ngāi Tahu settlement so I'd had perceptions about the kinds of things that were on the table and I pursued a lot of those kinds of packages that Ngāi Tahu and Tainui had pursued, like one of the things that we wanted was that, that clause that if the overall settlements go over a billion then your settlement's enhanced. Those were kinds of things that we'd taken for granted, well, the precedent had been set so you know all claimants should have that and we learnt pretty quickly that the Crown had learnt from the experiences of Ngāi Tahu and Tainui and it definitely was starting to learn what the true meaning and effect of such clauses were and the potential cost to the Crown.

So there were things that were pretty much taken off the table straight away without negotiation. You're basically just told, well this is the Crown policy on that matter so no you won't be having that clause whether you like it or not. So I guess to me, I learnt pretty quickly that this negotiation process was really about the Crown being in the idea of negotiations but it wasn't really going to be what you were gonna get.

There was also set areas where matters were negotiated on, I mean you had your concepts; you had your commercial redress, your cultural redress. Your commercial redress was made up of your quantum, your landbanked properties, and the properties you wanted to buy back and like your right of first refusal. Your cultural redress was these concepts of statutory acknowledgements and deeds of recognition that are really not much more than tokenism.

It wasn't really getting proper, real cultural redress to the extent that we wanted, like for example, Ngāi Tahu have got Aoraki back and they received a certificate of title on settlement day and then it was transferred back into the Crown's name. We wanted to do something like that with the Tararua ranges but we were told, oh no, Aoraki is just a one off special thing because of what that maunga meant to them.

Well the Tararuas mean to us exactly what Aoraki means to Ngāi Tahu, to what Taranaki means to the Taranaki people. So you are always in a bit of an up-hill battle and they came up here and they undertook a site visit where we took them around one day to a lot of our sacred sites but a lot of those sites were out of the settlement because they're no longer on Crown land and there's the problem that you can only get the statutory acknowledgements and deed's of recognition over Crown land and so a lot of our sites aren't able to be addressed in the settlement because of that. So there were those kinds of issues.

Danielle noted that the Crown's negotiating team was also bound by settlement policy, which is ultimately set by the Government:

… at the end of the day you have to remove the fact that across the table you're dealing with Crown officials who are under instructions to negotiate packages according to a certain criteria or

policy or form and, and it's important to distinguish that and I think we've worked hard to try and do that because there has been mutual respect for some of them, for the majority of the Crown officials we've dealt with, especially up to the Heads of Agreement phase, who, without saying it on a personal level, know that we're not getting a fair deal but that's the way the game is. So from that point of view you have to take that on board.

Overall I mean we've found that the people that we've dealt with, especially up to the Heads of Agreement, have conducted themselves in a very fair way. There's a lot of ignorance there and you have to do a lot of educating people about cultural things, Māori things, tikanga, that kind of thing, because the Crown likes to fit everybody in a box, and Māoris don't fit in a box, that's what makes us Māori. So you have to deal with those kinds of issues and try and find a common ground on which to move forward.

Danielle noted that this was made more difficult by the fact that the Crown's negotiating team changed on three separate occasions:

… with us it's happened three times since 97, we had a team that took us through to the Heads in 98, and then that team was basically disbanded, the leader of that team went over to the Minister's office, so we still had part of the team and another person was brought in but the old team slowly moved out of our area on to other projects and we had a new team leader for about a year, but basically she was then taken off and put on other projects which were seen as higher in priority and we now have another chap that we're dealing with who works for OTS on contract. So we've had three changes you might as well say. Team leaders or whatever they're called. And I guess we're luckier because we've heard stories of claimants who have had you know more. This is also a Crown tactic to ensure officials and claimants don't build up too close a rapport.

Maurice generally supported Danielle's assessment of the Crown team's conduct, but noted his belief that the entire context of settlement policy is stacked in the Crown's favour:

Well the Crown is there to negotiate a settlement that's most economical for the Crown, okay? That's number one, that's how I perceive them, okay?

… the negotiations have been conducted in an environment where there is a measure of mutual respect. We haven't had, we've had of course as you might expect, some verbal, some mind and verbal boxing, that's inevitable. The playing field however, is almost entirely one made up of the Crown's own parameters and from time to time, the playing field goal posts change, particularly when there's a new government as we've already mentioned.

The other element that's very obvious is that as more settlements occur before our settlement, and we could just note Ruanui and Tama more latterly, the Crown gathers more experience in negotiating a settlement that's better, ***"from the Crown's point of view"****, so as we move towards settlement, not so much the conduct of the Crown changes, but the accumulated wisdom, the accumulated experience from other settlements comes to bear so that we are in a process which, by its nature is dynamic and evolutionary and arguably, the longer it takes for us to settle, the less comprehensive our settlement may turn out to be from a claimant's point of view.*

5.7 CONCLUSION

All of the participants found the direct negotiations process to be different from what they had expected. Most had studied other settlement negotiations, such as Tainui and Ngāi Tahu, in order to learn from their example. However, some found that the Crown had also learnt lessons from these negotiations, and had changed its policy to remove such things as relativity clauses from settlements.

The majority of the negotiators, had little experience of negotiating with Government before undertaking their respective roles and most, if not all, found the work to be highly demanding and sometimes disillusioning.

Most of the negotiators found the confidential nature of the negotiations created the potential for tension and feelings of exclusion by members of the wider group, but recognised that this was a requirement of the process that had to be endured.

Some of the negotiators felt that the Crown used its dominant position to control the entire negotiations process and had an adversarial approach. Some went as far as to state that there were no negotiations over the financial compensation at all. Most agreed that there was more scope for negotiations concerning matters of cultural redress.

All of the participants experienced frustrations within the negotiating environment to varying degrees, but some of the negotiators expressed a measure of respect for Office of Treaty Settlements staff with whom they had each negotiated their respective settlements.

PART 6: COMPENSATION

6.1 INTRODUCTION

This section discusses the negotiators' views of compensation negotiated in the settlement packages, and the process required to secure those settlements.

This section discusses some of the negotiators' original expectations concerning settlement, and how these changed over time as they became exposed to the reality of the negotiation process.

6.2 TE URI O HAU

Esther Gray explained that many members of Te Uri o Hau did not fully realise what the settlement process would provide in terms of actual redress or compensation. Esther recalled that some kaumātua thought the settlement process would return all of Te Uri o Hau tribal estate. Many did not understand the parameters of the settlement process:

> *… this older group here wanted all the land back. That was the concession they would have to make. The Crown doesn't deal in private land. They wanted all the land back.*

Esther recalled that although the reality was a difficult pill to swallow for many, the members of Te Uri o Hau were mindful that the settlement was for the benefit of their descendants. Explaining the reality of what Te Uri o Hau were going to receive made Te Uri o Hau focus on future development for the benefit of their children:

> *I think yes it was to explain it to them. Because then you have to give the alternative and the alternative meant going forth in the future. There's one thing that our kaumātua and kuia, and I think it's throughout Māoridom, is what is good for their mokopuna? They will go with it.*
>
> *If you were to say to me why didn't Te Uri o Hau just stop the negotiations, I would say to you that I would hate to see my son go through this or my grand-children. That'd just take some, I started in 1994 and I'm still bloody going in 2002.*
>
> *It's a hell of a drain, it takes you to places you've never been, and you meet people you'd never met and probably wouldn't meet and it's given me a lot of experience, but still I wouldn't want my son to go through it or my grand-children.*

Part of the Te Uri o Hau settlement included an offer by the Crown to assist in fostering a relationship between Te Uri o Hau and the various local government bodies within their rohe. Esther believed that these relationships were important, but noted that the ability of the Crown to influence local government was extremely limited. In addition to this, she was sceptical as to what power a Memorandum of Understanding would provide Te Uri o Hau in it's dealings with local government:

At the moment we are going through an MOU with Kaipara District Council, that's what Wikiriwhi's working on, and then we start with Northland Regional Council and Rodney District in Auckland. What you're asking me is does this settlement give Te Uri o Hau under the settlement manawhenua, mana moana and under a Crown scenario with Crown entities, like these district councils, to say that out here in this area Te Uri o Hau are manawhenua, not really.

It's how well you push your MOU and a section in here the Crown will endeavour to help regional and district councils enter into and supporting entering into an MOU but the likely body has no legal binding agreement between local body and the Crown. So Crown can't say you have to do this to local bodies.

Wikiriwhi Hetaraka worked closely on developing the Memorandum of Understanding between Te Uri o Hau and the Kaipara District Council. Although the Crown supported this process in the Deed of Settlement, Wikiriwhi believed that Te Uri o Hau could have established the same relationship without a Treaty settlement:

… some of the thoughts I've had too are, at some of our meetings for negotiations, something I've thought about, you really didn't need a deed to have put it together? It's just straight talking, forming a relationship and you didn't need a deed to do that.

Te Uri o Hau also received a number of statutory acknowledgements in their Deed of Settlement. Esther was unsure what level of protection these acknowledgements would provide for Te Uri o Hau interests in the significant sites covered:

They were called the mana-enhancing tools for Māori. That's what Crown call mana-enhancing. If you were to say to me, will these statutory acknowledgements help Te Uri o Hau as a legal instrument to go and fight against let's say a developer calling up the Ministry of Economic Development, going in the harbour and mining, not really. It'd be really just to acknowledge them, but whether they'll give a legal ruling on it hasn't been set … there's been no legal precedent set on it.

The Crown insists that all descendants of a particular group should be able to benefit from a Treaty settlement. While she did not disagree with this idea, Esther personally believed that any distribution of benefits from the settlement should give an initial preference to the ahi kaa groups:

I mean it's a bit pointless not doing the people inside the rohe who maintain ahi kaa and going outside to the bigger cities. The breakdown of our beneficiary registry is that 60% live in Auckland, no probably less than that, probably 55% live in Auckland and 45% live inside the rohe.

Not many government agencies like seeing you … you know, they like you to go to where the concentration of beneficiaries are, but if it's a settlement, a claim, Treaty claim settlement, this is only my personal opinion, then the claim is here, the grievance is here, so first we must tidy up here and keep the people here and in fact attract the people from Auckland to come home by providing employment, housing, because we're going to need all of them to actually take us into the 25-year plan. They wouldn't give us charitable status … the government.

Esther believed Te Uri o Hau had achieved the best settlement possible for their people under the present Treaty settlement policy:

We've got more, if you break it down to a beneficiary ratio, than Tainui, per beneficiary. Tainui had other, the ratchet clause similar to Ngāi Tahu which means the Crown cannot settle on a higher value than what they've already settled with Ngāi Tahu and Tainui, so they can actually revisit that, so that, I think, I believe that's determined, made the Crown keep within that fiscal envelope I reckon.

It's the best deal we could get out under today's present government and policy.

6.3 NGĀTI AWA

Ngāti Awa encountered a number of difficulties when negotiating its compensation with the Crown. A particular issue of importance centred on the valuation of forestry assets contained in the settlement package. Ngāti Awa and the Crown had to agree on a fair valuation of forestry assets included in the settlement package. Hirini Mead recalled that this was not an easy process:

But in our case there are a whole lot of issues that were not easily resolved and required the Crown to really do a lot of thinking, and these are to do with the forestry valuation.

We are trying to get a proper valuation, a fair valuation of the forests that are included in our settlement so that we are not being prejudiced by the Crown charging us too high a price when the whole industry seems to be going into a period of depressed sales.

That's been a concern of ours to ensure that we're not paying too high a price for forests that are being transferred to us .... And we're not going to be saddled with a huge drop in the value of our assets after we receive the land!

Hirini stated that Ngāti Awa entered into the process with the assumption that any eventual settlement outcome would be based on fairness and justice. Hirini recalled that over time the Ngāti Awa negotiators came to realise that although these are guiding principles for the negotiations process, the whole settlement process is essentially a political process in which Māori are expected to compromise:

It is a political deal. It's not really based on fair compensation, fair and adequate compensation. It's not based on that at all and that's the difficulty. Iwi must understand this because a lot of the ones who protest about the inadequacy of the settlement and say it isn't fair do not know how it is. It takes quite a while for them to realise that that's not the basis of the settlement.

The basis of the settlement from the Crown's perspective is to arrive at a quantum that will help to lift the tribe economically. You see it's not designed to be fair and adequate and for many that's a bitter pill.

The Crown is very open about that. In parts of our deed it says it's a compromise, the settlement that we've made is a contribution to the economy of the nation, so those acknowledgements are made in every Deed of Settlement.

The iwi has made a contribution to the development of the nation, and so that makes it clear that the Crown is not really compensating in full for the wrong done. It's not. It is a political settlement.

Hirini recalled that this realisation concerning the political and compromising nature of the negotiations process came when the Crown first explained that it could not afford to compensate Ngāti Awa fully for the losses they had suffered:

A lot of agonising occurred over that policy, a straight economic policy that every claimant will find that. … And it's probably why the protestors take the stance that we shouldn't even get into negotiations because of that fact, that the Government can't provide fair compensation, and they think that if we wait long enough we will get that other piece of largess.

But the reality is, I doubt that will ever come. The Government says the country cannot afford it, to pay full compensation. There's a statement somewhere that says that. So what it aims to do is to make a contribution to the economic development of the iwi, to give them a lift up.

Hirini explained that the Ngāti Awa negotiators had to explain the reality of the settlement process to their people, a task that involved some hard lessons concerning how the settlement would be managed. Hirini noted that some members of Ngāti Awa thought the settlement package would be divided up amongst the individual members of the iwi, something that the Ngāti Awa negotiators were determined would not happen:

… we've had to explain that, to understand the policies, to understand that it is a political decision. And in many ways we've had to bite the bullet, and say well this is it, if we manage this very carefully it might be grown so as to improve our lot. If we're stupid about it we might lose the lot and then we would have wasted years of effort trying to get our settlement.

The other difficult aspect that needs to be known by the iwi is that this is not an individual settlement. It's not a settlement for every individual, because some have this unreal expectation that settlement means that they just get a cheque, what is going to happen is that we're going to disburse the whole lot to individual members of the iwi.

We won't be doing anything like that. We'll be making it clear that it's the profits that we can distribute. And that our aim is to build up our assets so that what is available to distribute to them grows larger and larger.

Although he thought the settlement compensation was a compromise, Hirini believed it would offer Ngāti Awa a good basis to build a positive future. He thought the biggest benefit to Ngāti Awa from the settlement would be the independence and freedom gained through having their own resources:

Probably the biggest factor would be that iwi are able to manage their own affairs and set their own goals and pay their bills without having to rely on anyone else except those programmes that are funded by Government anyway.

Despite his misgivings about the underlying nature of the settlement process, Hirini was confident that the settlement would give Ngāti Awa a measure of tino rangatiratanga over its future:

It does. The settlement will enable the iwi to enjoy a measure of tino rangatiratanga. The point being that it can appoint people to do jobs, fund people to do those jobs and it can get on with its life, its future and be more positive about our place in the world.

6.4 TE ATIAWA

In April 1998, Te Atiawa, Ngāti Tama and Ngāti Mutunga began intensive negotiations with the Crown. Peter Adds explained that he had high expectations of what the settlement process would provide for Te Atiawa but that these expectations were not met:

And we started negotiating on the three things. So there's cultural redress, Crown apology and the money, the fiscal stuff. But most of the early negotiations were focusing on the cultural redress. We put a lot of effort into that over about three or four months, it might be six months actually.

Then it occurred to Greg and I that well, while the cultural redress was good stuff, and it's stuff that the iwi are interested in and can participate in, the thing that's gonna make or break the deal in the end is the money, how much money the Crown's prepared to front up for us. And so we said, all right let's go and see Doug Graham and see how much he's prepared to give us.

Yeah, so we went in there, and he made us an offer for the three tribes, which was 43 million dollars from memory. And we said, you've gotta be joking.

Peter recalled that the initial offer was a shock for all three northern Taranaki iwi negotiators who were forced to re-evaluate their initial expectations about what a Treaty settlement would provide. Peter recalled that this proved to be a difficult time for some of the kaumātua in particular who had seen what Tainui had got in their Treaty settlement.

This was also difficult for the negotiators, all of whom were also disappointed with the settlement offer, but in a similar position to the Ngāti Awa negotiators, had to explain the political nature of the negotiations process:

… so Doug Graham gives us this offer, we take it back to the A team, the A team says you've gotta be joking, and one person in particular says we want 170 million dollars each.

And at that point we had to spend a lot of energy and time, especially with the lawyers and the merchant banker in particular, talking about the realities of what the settlement was about. And for certain members of our group that was extremely, really difficult, you know, to understand that this wasn't a process about justice, or fairness, it was just about getting some asset, and educating the team about that was really quite time consuming.

And in the end they agreed that we should go back to the Minister with 120 million as the counter offer, which we did, and he laughed and walked out. And at that point the negotiations broke down for a couple of months actually, because you know we had this sort of stalemate that hadn't been resolved.

Then we went back to Doug Graham, and he came back with another offer, which we took back to the A team.

The northern coalition turned this offer down and negotiations broke down. However, after further discussion and negotiation, the Crown came back with one final offer:

And, so we eventually, they came back with 63 million, we took it back to the A team, and they reluctantly accepted after a lot of agonising actually, and it was a very fine call as to whether the negotiations were going to continue at that point. In the end they had to work out well are we going to accept 63 million dollars and take this as, you know, the compensation for the raupatu? Or are we going to stand on principle and say, no we don't want the settlement, it's just not good enough. And in the end, I was lobbying fairly vigorously, take the money, take the money, it's the best you're gonna do for now.

6.5 NGĀTI TAMA

Greg White believed the levels of compensation being offered to Māori are inadequate. Greg believed that the Crown needs to be more generous in compensating Māori for their loss and sometimes found it difficult to understand how the Crown prioritises its tax spending:

> *This redress stuff. Once again, redress is never going to be enough … the Crown spend 250 million every year on foreign aid, so perhaps Māori should be negotiating with Foreign Affairs. By comparison they spend about 50 million a year on Treaty settlements.*
>
> *Now we live on a group of islands at the back of beyond and we've all gotta get on. We've actually got to make decisions with one another and among one another, and if we haven't got community or if we haven't got balance or if fairness is being denied one group, just because they happen to be Māori, then the durability of the whole process, it just won't last, it just can't last.*
>
> *So the Crown needs to develop a way of valuing the actual losses and working out some way, with agreement of the claimant community on how that can best be budgeted for. I think yesterday or the day before's paper there was one of those bloody government MPs were talking about the notion of raising income tax on higher salary earners, you know, so that we can pay, nurses and teachers and those sorts of things, rather than saying listen well hang on, we're already getting billions of dollars every week in income tax, how do we actually spend what we've got better?*
>
> *I think the average taxpayer has become immune to tax hikes and the way in which Ministers lobby on budget night. We all consider that Governments just don't know how to budget and waste our taxes. Sooner or later they will have to be more accountable.*
>
> *What would be so wrong with redirecting some of the funds from Foreign Affairs or the Department of Conservation or the Arts towards Treaty Settlements? Even then there would be insufficient to fully compensate so why not look at Crown assets? The DOC Estate for instance, why not transfer ownership back to tangata whenua as a sign of good faith you know, the benefit for the Crown would be immeasurable in my view. You can still insist on keeping those conservation values up and the like and get that joint management, but it's just this Pākehā mental mindset.*

Greg believed the low levels of financial compensation set by the Crown would have a major impact on whether Māori seek to renegotiate in the future:

> *I think that the moment things are, our settlement says that the settlement is fair in the circumstances. And it's in the circumstances that you've gotta come to terms with. And can anything, can you honestly say, is anything fair in the circumstances if it is so unfair? If you're paying less than one percent of the actual loss, if you're paying less than one percent back in compensation, under any circumstances is that fair?*
>
> *And because these are political negotiations and settlements, it's the community that is stuck down on these blimmin few islands that will determine whether or not they're fair. And if they look back on the year 2002 in 50 years time and say oh well it simply wasn't fair, under any circumstances, well there goes the durability question you know?*

As with Peter Adds, Greg remembered that initial expectations of the Northern Taranaki Coalition were high despite being advised of the reality of the situation:

We actually took some advice and the best piece of advice that we received, we rejected on the advice of our lawyers. We were advised how to disorientate the Crown and put them on the back foot but sadly for the strategy to work we also had to manage the expectations of the iwi downwards and that turned out to be an impossibility. Doug Graham certainly did that when he made the first offer but by that time it was all too late. We had lost the initiative.

Greg recalled that the Northern Taranaki Coalition's expectations were shattered by the Crown's first offer:

And so Doug Graham gave them a dose of the old reality when he came up with that initial offer. He got them all down there. He said well now we've been thinking hard about this, and we've done this, and we've calculated that, we've taken everything into account, we know the population, we know the area of land and blah blah blah, and we therefore are prepared to offer you this.

We told our A team before we met just to listen to the message, don't react or respond but just keep staring at him, because it's going to be a figure that everyone's gonna be hōhā with … but even I didn't think it'd be that low. Well, they just stared at him, and he said, well, what have you got to say? And nobody spoke apart from one of us who said we would respond to his offer in writing. But certainly Doug Graham looked uncomfortable. And so we left, you know, we were dignified about it.

After several months of intensive negotiations the northern Taranaki coalition of Te Atiawa, Ngāti Tama and Ngāti Mutunga accepted that the Crown's offer of $63 million dollars was as far as the Crown would go and agreed to enter into Heads of Agreement.

In addition to the low level of compensation offered Greg was infuriated by the Department of Conservation's refusal to make any land available for Ngāti Tama's settlement package. He recalled one particular incident where Ngāti Tama discussed this with the former Minister, Doug Graham:

And then when he agreed to the 14 and a half he got us all into his office the last night of negotiations and he said well this is what I'm prepared to offer you, cause he was just sort of summarising really, and he offered us, Te Kauwau and Poutehia, which is about 2.8 hectares.

Well I was tino hōhā by this time so I said as far as I'm concerned there's 78 thousand hectares of land in Ngāti Tama that DOC own. You have told me how you have agonised and all this other bloody rubbish, and you're prepared to give us back 2.8 hectares. I said one's a rock in the middle of the bloody ocean that's eroding away.

And I looked him in the eye and said you look me in the eye and tell me that you've been fair. Well I don't think he appreciated that and he asked me, well what do you want?

We arranged another meeting for the following morning. At that hui with the Minister of Conservation I was offered 2000 hectares of land. That was amazing considering that during the negotiations with OTS over the best part of 2 years we were only offered 2.8 hectares and a 15 minute meeting with the Minister resulted in so much more. Totally bizarre, but it does make you wonder who are the individuals who are responsible for making decisions through the negotiations and what policy or rules they are working to.

Ngāti Tama eventually secured the extra 2000 hectares of land as part of their settlement package.

6.6 RANGITAANE O MANAWATU

Maurice Takarangi was responsible for assessing and estimating the loss that Rangitaane o Manawatu had suffered through Crown actions or omissions. Rangitaane o Manawatu believed that calculating this loss would assist them in arriving at a fair settlement figure, which they could use to settle their claim. Maurice was aware that this figure would be reduced through the negotiating process as the Crown brought its own perceptions to bear on what it believed the claim to be worth. Maurice believed it was necessary for claimants to be realistic when calculating a settlement figure:

> *… the point is though that in arriving at a settlement figure that you believe is fair for the iwi, for the claimant, you have to take into consideration other factors that the Crown bring in that influences that calculation. At the end of the day, the pure economic calculation is modified, inhibited, reduced considerably by the Crown's own criteria that they bring at it. I've named three of them, relativity, beneficiary numbers … and then the third one is how the land was lost, confiscation versus purchases …*
>
> *… so the net effect of these Crown-imposed criteria on your settlement packages has the net effect is that it reduces them considerably whatever analysis you may undertake of pure economics and we reached a point where we had a settlement package in mind. That settlement package as is, whether it's asked for or whether it's not asked for, our case is the same as others, we pro-offered, here is our settlement quantum, in our opinion, even taking into account the factors. And of course the result, that then goes into negotiations, and you come out with, at the end of the day, an offer by the Crown.*
>
> *… which needless to say is always much diminished, or much reduced from your own expectation. I don't know of any case that's otherwise and I don't think there ever will be. But anyway that's speculation, in our case that's how I approached my part of it anyway and we now have reached the point where the offer has been made and we've signed up to a settlement package which is, in the circumstances decided to be put to the beneficiaries for ratification.*
>
> *Now is it satisfactory? No settlement will be satisfactory in my opinion in terms of, in absolute sense, but I mean, you're talking about a settlement that needs to go to the beneficiaries for consideration in today's society, in today's terms.*

Danielle Harris noted that the close proximity of other iwi to the rohe of Rangitaane o Manawatu, had major implications for what assets the Crown could use to settle their claim:

> *The thing about our claim is that none of our redress is what you call exclusive redress, it's not just for us, so if we have a statutory acknowledgement over the Tararua ranges that will be our association to the Tararua ranges, that doesn't stop another claimant in this area from getting a statutory acknowledgement in their claim.*

Maurice has found the process to be disappointing in a number of areas, not the least of which is the amount of time the process has taken to date. So far settlement for Rangitaane o Manawatu is running two years over their originally estimated timeframe:

> *Where are we at now? Where are we at now we're at least, we're two years away in my perception of settlement, so we're running, in time terms, we're running two years behind. So two years delay in,*

I mean I suppose in the totality of things and breach, 150 years or whatever that's not a great deal, but you asked expectations, that's one, so we're two years behind. Number two, is that have the negotiations, be the process, be the funding, be lots of aspects that have gone as one would perceive? The answer to that is also no.

The cordiality of the negotiations themselves, by and large, have been acceptable and good in terms of relationships with the negotiation, negotiators for the Crown, yes. But, number, but the funding no. Infinitely disappointing if that's the right word with that advance. The elements of the settlement package itself have been very disappointing.

The total quantum package is most disappointing and that's probably putting it modestly. And that's made, that comment is made with relativity in mind, with and particularly, the relativity based on recent settlements. But, but yes, the delay and the quantum would represent the most, apart from the cost, would represent the two most disappointing aspects.

Maurice noted that the time delay has also had a negative impact on the wider iwi membership. However, he believed this is balanced to some extent by certain opportunities, which he believed the settlement negotiations have helped bring about:

The more delicate one perhaps is, I've noted, I've noted three, you could say item one, item two, item three, quantum, delay and costs. The impact on the claimant community is the other thing that I'm curious to note here without being derogatory.

There are, there were expectations raised up at the point of, the point of mandate where beneficiaries gathered together in great expectation were also of the belief that the direct negotiation would produce a result within a reasonable time. And rightly or wrongly a reasonable time in their minds was also around about the five-year time.

Naturally since that time, some of the elder ones have passed on to that marae in the sky and not lived to see a settlement in their lifetime. So the fourth one I'd like to note is simply what I call impact on the claimant community. That continues.

The impact on the claimant community has been a mixture of disappointment on not being able to settle yet. They've also noted perhaps further Treaty breaches in various forms, a lack of progress in some other areas of the partnership with the Crown on the one hand, but on the other hand they have also noted that the claimant group, namely, predominantly Tanenuiarangi Manawatu Incorporated has made progress so it's not all bad.

And in fact the settlement process has thus far enabled this claimant community, through Tanenuiarangi Manawatu Incorporated, to derive some very real benefits on the other hand. And I note the increasing ability of the iwi here to make progress, albeit slowly.

Despite their misgivings about the negotiations process, both Danielle and Maurice were confident that the settlement could provide a future for Rangitaane o Manawatu if it was managed properly. Danielle noted that although the fiscal settlement was important, the negotiations would provide other forms of recognition for Rangitaane o Manawatu:

Well I guess for me it's about gaining recognition from the Crown that, yes Rangitaane o Manawatu is an iwi that exists in New Zealand, Aotearoa, that yes, there were actions undertaken by the Crown

which amounted to breaches of the Treaty and those breaches had a fundamental impact on who we have become in today's society so it's about restoring our mana as an iwi.

It's also about equipping us with a quantum that's going to establish a strong economic base for the future for our people, because let's face it, we're really not going to see the true benefits of what the settlement's going to become in our lifetime, it's going to be the generations that come after, so that's what's important for me to see happen with the settlement.

And it'll be a wake-up call I guess in this local community too, with local bodies and territorial authorities, hey, Rangitaane o Manawatu is the manawhenua in this area, so you have to be entering into relationships with them as the Treaty partner. And it's going to hopefully enable the growth of Rangitaane o Manawatu. There's a lot of Rangitaane o Manawatu people out there who don't know that they're Rangitaane o Manawatu and that's going to take two or three generations to turn round, and we hope that with the settlement we'll be able to develop active hapū.

I mean we're only active at the iwi level, we're not lucky like a lot of iwi who have got active hapū and who know their iwi and their history and that, so we really hope, for me anyway, I hope the settlement's going to provide a base to be able to raise the self-identity of Rangitaane o Manawatu into the future so that we don't become just a part of history, that we remain a living, breathing iwi for all time.

Maurice agreed with Danielle and believed that settlement will provide Rangitaane o Manawatu with more than simply financial compensation:

The elevation. The recognition equals elevation equals opportunity to drive new partnerships. And the maximisation of that elevation to derive new partnerships, be they cultural, be they social, be they economic has given Rangitaane o Manawatu a good boost.

Of course it's ongoing and it needs to be added to and it's frustrating and all that kind of jazz but, but that has been one of the, Danielle's articulated most of the elements of what recognition means and Rangitaane o Manawatu will set, is setting about and will continue to set about, I shouldn't use the word maximising because that probably denotes that they're commercially orientated too much, but shall we say setting about restoring from a real recognition basis from the Crown, where they should have been.

And again, in the last five years there are demonstrable activities that have been promoted here by way of contract as usual from Crown funding agencies which, indicative of raising up to the highest level which is partnership, the relationship between the Crown and Rangitaane o Manawatu as an iwi. And they're all positive.

Although he believed the settlement will deliver these things to Rangitaane o Manawatu, Maurice was mindful of the fact that Rangitaane o Manawatu will need to work extremely hard in order to make them a reality. Maurice dismissed any idea that settlement will answer all of Rangitaane o Manawatu's problems:

The sentiment that's often used about you know the future generations benefiting and so on and so forth is true, and the benefits that the future generations actually get will be a combination of, one, foundation work but also, two, the environment in which they find themselves and their ability to add on to the foundation work that is being laid down.

Often I find that sentiments about the future generations benefiting are a little bit misdirected in as much as that there's an assumption that there's gonna be an enormous amount of benefit coming to later generations be they one, two, three, four or five away. The very best that we can achieve in that sense is yes a solid foundation.

Does the settlement do that? Well it does it in my opinion in part only. And in so far as that we are going, hopefully in two years, touch wood, to a settlement of a quantum package which is in any language a compromise, and it is as it were to use an old expression, the bird in the hand is worth two in the bush, from which compromise we hope to build for the next generation in a limited way.

So the real important things in my opinion about this whole settlement is the fact that Rangitaane o Manawatu has been recognised as an iwi which had specific grievances committed against it and the settlement enables the recognition to be solidified in terms of the meagre quantum, and from that, even if the Crown disagrees with that reference although I still say it's relatively small, and from that, they can build.

That's the most significant thing in my opinion about this whole settlement. It's called mana, it's called all sorts of things but in the end of the day that's what it really is, the restoration of Rangitaane o Manawatu the iwi being recognised as an iwi who had grievances committed against them, and now they can get on with a new future.

Danielle agreed with Maurice's assessment of the future and was mindful of the fact that Rangitaane o Manawatu cannot afford to make mistakes:

The challenge for the next generation is to manage and grow the quantum if we ever get a settlement finalised. This generation may obtain it, but it's up to the next generation to do something with it and the reality is, you know we only need a few bad business deals and the lot's gone. You know? We can't even afford to lose thousands because our quantum is so small.

6.7 CONCLUSION

All of the negotiators expressed the opinion that the settlements fell short of their original expectations. Some believed that the compensation being offered was insufficient to settle Māori claims for all time, as the magnitude of loss was so vast compared to what was being offered in compensation.

All accepted that the Crown simply could not meet their settlement expectations under the financial limits placed upon the current settlement process. Some found that it was difficult to explain this reality to their people; particularly those who thought the settlement process would return all of their tribal lands.

All of the groups reluctantly accepted that their settlements were compromise deals that did not fully compensate their people for their total loss. However, all believed it was the best deal that could be secured under the current process.

In spite of these concerns, each of the participants believed the settlement could offer their people an opportunity to establish a solid base for the future, but this would be dependent upon their ability to manage their settlements well.

PART 7: CONCLUSION

This study sought the views of five Māori with experience of the Crown's direct negotiations process. The aim of this study was to attempt to explain and reveal some of the realities facing Māori communities who choose to enter into direct negotiations. This study scratches the surface of what is undoubtedly a highly complex process and offers some experienced perspectives on what negotiating with the Crown is like.

All Māori groups seeking the resolution of their Treaty grievances, be it through financial compensation or simply an apology, will need to negotiate with the Crown. The more information Māori have about the direct negotiations process, the more equipped they will be to deal with the issues that arise.

From the views expressed by the participants in this study, it is clear that the direct negotiations process can be a long and difficult path.

Beginning negotiations with the Crown is more difficult than simply stating that you are ready to negotiate. The Crown requires groups to demonstrate a clear and robust mandate before it will agree to negotiate the settlement of an historic claim. Although a group may claim to have the mandate and support of their people, the Crown will not officially recognise the mandate until it is adequately satisfied that the group does have adequate support. This is done in order to mitigate risk to the Crown that it is negotiating with the correct body representative of the wishes of the wider Māori community.

It can often be expensive to gain the Crown's mandate recognition. Groups seeking a mandate must pay for this part of the process themselves. If they are successful in gaining the mandate, the Crown may then make a retrospective contribution towards the costs of obtaining the mandate. It is important to note that the Crown only makes a contribution to negotiating costs. While the Crown does provide a contribution towards claimant costs, it does not cover the claimants' full costs of negotiations.

Direct negotiations can therefore be an expensive exercise for Māori groups before the negotiating even begins. It is important for Māori to understand the full range of work and costs involved when considering the resourcing of their negotiations. Funding can determine the ability of mandated groups to conduct their case effectively.

It was clear that all of the participants believed that negotiation should be a process that took place between equally resourced and informed parties, ideally on a level playing field with full disclosure of information at the outset of proceedings. Despite the process being called 'direct negotiations', all of the participants believed there was little actual negotiation involved.

All of the negotiators believed that the direct negotiations process favoured the Crown because the Crown determined the rules under which negotiations took place. While there may be limited scope for Māori to tailor the terms of negotiations to their particular circumstances, the overall process is highly set by previous settlements. Some suspected that the boundaries of what could be achieved were set before they had even sat down for their first negotiation meeting.

The direct negotiations process is highly prescribed. Negotiation takes place within certain parameters that are ultimately defined by the Crown. Although precedents set by previous settlements may have an impact on what Māori groups can negotiate, many of the participants found that Crown precedents, such as the relativity clauses granted to Tainui and Ngāi Tahu, were unavailable to them.

The direct negotiations process lacks any independent arbiter that can oversee the negotiations and ensure both parties act fairly towards each other. At least one of the participants felt this kind of mechanism would improve the process.

It is clear that a high degree of organisation amongst a claimant group is desirable before entering into negotiations with the Crown. It is important that groups are properly organised so each participant clearly understands their role and responsibilities. The Office of Treaty Settlements is highly organised and coordinates the input of many Government departments in the settlement process. This type of coordination and organisation is also required of Māori groups undertaking settlement negotiations.

Communication is also an important factor to consider when negotiating with the Crown and this is often influenced by a group's level of organisation. Communication is particularly important when seeking to gain a mandate, but is more important in maintaining the confidence of the people being represented.

Although a high level of organisation and communication is important when entering into negotiations, this must be complemented by a good negotiating team capable of leading the negotiations and understanding the detailed work involved. A quality team can only be made up of quality individuals. The selection of negotiators is an extremely important matter requiring serious consideration and an in-depth analysis of the skills and knowledge available within a particular group. If a group lacks an area of expertise, it may seriously need to consider using individuals from outside the group.

The direct negotiations process is relatively new and continues to be refined as more and more settlements occur. It may still be misunderstood by a lot of Māori. Some of the negotiators discovered that it could not meet the expectations of their people. Most of the negotiators found the Crown to be less than generous in compensating their people for past wrongs.

All of the participants found the direct negotiations process to be different from what they had expected. The settlement of historic Treaty claims is often an emotional topic for Māori, but, direct negotiations often require Māori to put aside their personal feelings and beliefs to take a dispassionate view of the process and what it can offer.

All of the negotiators interviewed were placed into the position of explaining to their people the reality of what settlement could provide. Often, this meant dashing hopes that all their land and

resources would be returned. In a sense, each Māori negotiator was placed in the difficult position of negotiating with the Crown, and then negotiating with their own people to explain why they were unable to secure a return of everything that was lost to their ancestors.

Each of the participants in this study accepted that their settlements were compromise deals, which did not fully compensate their people for their loss. However, all believed it was the best deal they could secure under current settlement policy. Clearly, anyone undertaking the role of a Māori negotiator must possess a thorough understanding of what the direct negotiations settlement process can offer for their people and, just as importantly, what it cannot offer.

The settlement process is an extremely demanding process. This study has sought to reveal the thoughts of some Māori who have participated in this process. It is clear that Māori and Crown expectations of what constitutes a fair and durable settlement continue to remain some considerable distance apart. Whether the current direct negotiations process will result in the durable settlements the Crown and Māori both desire remains to be seen.

Ngā Kaitiaki Rēti Ngahere Karauna

Crown Forestry Rental Trust