Chapter 3

Early Preparation

Contents

KEY POINTS

- Ensure the historical claim(s) for your tribal group are submitted to the Waitangi Tribunal by 1 September 2008
- Develop a claimant reference library
- Get an understanding of the full settlement negotiations process (read this Guide) and what other claimant groups have achieved
- Talk with other mandated bodies and governance entities, settlement experts and Treaty sector agencies
- Do a stock-take on the people in your claimant group with the right skills mix to be part of the negotiation process
- Do your homework on funding sources
- Decide on your settlement pathway
  - after the Waitangi Tribunal reports on the claim, or
  - a standard Waitangi Tribunal inquiry but start negotiating before the report, or
  - direct negotiations that bypass the Tribunal altogether, or
  - other alternatives

- Develop a long-term strategic plan, but be prepared to amend it as circumstances change
- Establish a competent project management team – Treaty settlement negotiations are not for hangers-on
- Ensure all essential research is completed or well progressed before engaging directly with the Crown

Remember...

- Success depends on quality not quantity – a 'padded' mandated body soaks up time and money
- The standard of research will shape the outcomes of the negotiations
- Short cuts usually take you nowhere

STARTING OFF

Make no mistake, the road to a Treaty settlement is long. Typically from seeking a Deed of Mandate to a negotiated Deed of Settlement through to the implementation of the Treaty settlement package (where the post settlement governance entity actually receives the settlement assets) can take five or more years. Thorough and early preparation is essential.

A claimant group should consider the following three areas: develop knowledge of the settlement process, identify resources, and develop a preliminary plan. Complete these tasks early, well before formally engaging with the Crown.

1. DEVELOP KNOWLEDGE OF THE SETTLEMENT PROCESS

First and foremost submit a claim to the Waitangi Tribunal at the very latest by 1 September 2008. This is the final date set by law for the Tribunal to receive historical claims; that is, those raising grievances from before 21 September 1992.

Establish a claimant reference library. Include for example, publications from Office of Treaty Settlements, Crown Forestry Rental Trust, Te Puni Kōkiri, the Waitangi Tribunal, and other published sector experts as well as several examples of Deeds of Settlement, Deeds of Mandate, Terms of Negotiation and available Agreements in Principle. These documents are on the websites of the respective organisations.

Gain an understanding of the settlement negotiations process, both Waitangi Tribunal hearings followed by settlement negotiations with the Crown, and the process and requirements for going directly to the Crown in settlement negotiations.

Get an understanding of what other claimant groups have achieved in their settlements. Make realistic comparisons between your circumstances and similar groups (e.g. size of iwi, type of Treaty breach).

Determine what negotiations are going on in your region. Check whether you have an interest in these claims then find out how to engage in the process so you can protect your interests in the (overlapping) claims and settlement negotiations.

Talk with:

- members of mandated bodies and negotiators currently engaged with Office of Treaty Settlements in settlement negotiations
- those who have settled their claim
- claimants who have been through Waitangi Tribunal hearings
- Treaty sector agencies and Tribunal staff – if you are considering having your claim heard
- Office of Treaty Settlements staff – if you are contemplating direct negotiations with the Crown
- Trust staff with knowledge of the Treaty sector who may be able to assist with funding through the process
- Te Puni Kōkiri staff familiar with government policies and processes and Treaty sector issues.

There are a number of experts you need to contact, in particular legal counsel and historians with experience in the Treaty sector together with other specialists and experts, should you choose to enter negotiations with the Crown. The Trust can facilitate and help fund hui at early stages of claimant preparation.

2. IDENTIFY YOUR RESOURCES

Take stock of people in your iwi who are available and able to assist and navigate your claim through the settlement process. Essential core skills required for a successful settlement outcome include leadership, project management, financial, and negotiation. Contract specialist advisors as required, but the core attributes – leadership, people and relationship management – must come from within the claimant group.

Check likely funding sources. The Trust may fund a claimant group with a claim on Crown forest licensed land and Office of Treaty Settlements also fund claimant groups through the process. The Legal Services Agency can fund legal services for claimants in Waitangi Tribunal inquiries. Find out the funding process and criteria for each agency (see Funding Sources below).

3. DEVELOP A PRELIMINARY PLAN

At this point, develop a long-term strategic plan (outline what will be done, when, and by whom) for the full duration of settlement negotiations, from preparing a mandating plan through to implementing the settlement.

The plan should identify the goals, timetable, key resources, funding and personnel required for each phase of the Treaty settlement process.

The strategic plan should incorporate a communications plan, mandating plan and negotiations strategy. These may be developed and refined later during the pre-negotiations phases (Deed of Mandate and Terms of Negotiation) of the settlement process.

The long-term strategic plan would be delivered via an annual operational plan or business plan.

A good business plan sets out what the claimant group (negotiating body) proposes for the year. It should include objectives, key milestones, activities/tasks required to achieve the milestones, and measures of success. The plan would include resources required to perform the tasks, and detail task allocation, responsibilities and budgets.

The Annual Business Plan is a crucial tool for managing the claimant group negotiating body through the settlement process, and forms the basis of applications to funding agencies and preparing project briefs for service providers.

PROJECT MANAGEMENT

Negotiating a settlement with the Crown is a lengthy and complex process. It involves executing a number of tasks, investigations and strategic projects, many of which run at the same time. This Guide cannot stress enough the importance of having an established project management team and good project planning. Indeed the vital role project management plays in negotiations is emphasised repeatedly.

This section briefly sets out the relationship between the governance board (mandated body), the project manager and the tasks and activities the claimant group undertake through the settlement process. This outline is no substitute for an experienced project manager.

The two key aspects to effective project management are an effective governance board, and a management team with the range of skill sets required to support the mandated body through the process.

The governance board provides strategic leadership to the organisation, encompassing high-level direction-setting and purpose. Good governance provides the unifying influence to the three core groups of the claimant organisation: the board, the management team (general manager/chief executive officer and staff), and claimant beneficiaries. Good governance also enables the claimant organisation to self-monitor progress towards a defined outcome, such as settlement with the Crown or establishing a business enterprise.

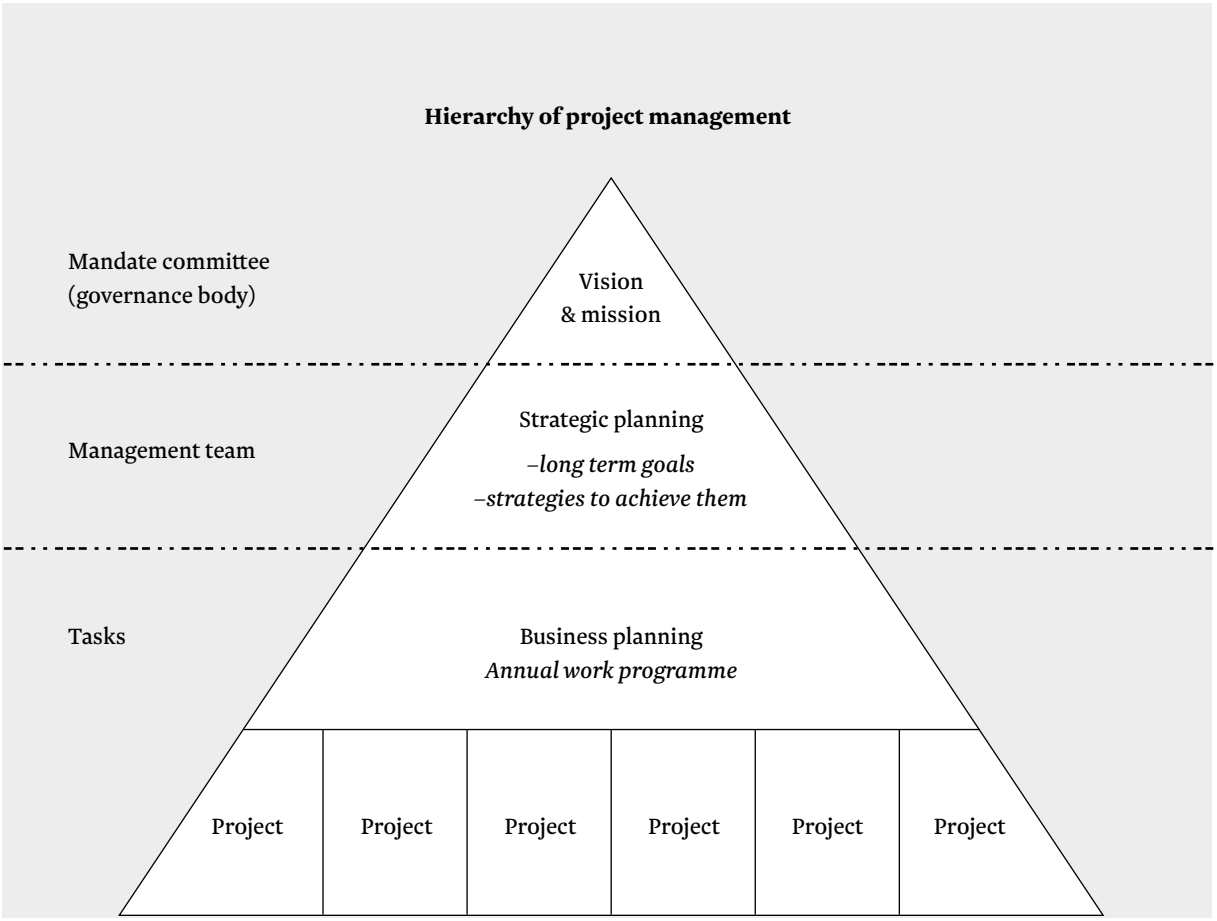
The management team focus is the day-to-day running of the organisation, reflecting the vision and mission approved by the board through long term goals and strategies. The business plan sets out the organisation's annual work programme to achieve the goals and strategies.

Project management is what the management team does to organise and manage resources (people, money, time) to achieve a defined output (scope of the project).

Project management particularly suits the settlement process – a series of defined intermediate steps with a clear goal of settling historical grievances with the Crown. Using a project management approach in a claimant organisation allows management to implement a range of tasks that are in line with the board's strategic direction.

The board and staff monitor progress against milestones. They form the basis of reporting to claimants and funding agencies requiring regular financial and progress reports on claimant progress with negotiations.

The diagram below depicts the hierarchal relationship between the governance board, management team and project management.



Project management information

There is a large amount of publicly available material on project management. Some references are suggested below. The Guide summarises two key aspects common to all project management:

- key roles and accountabilities
- the principle stages of a project and the tasks in each stage.

Key roles and accountabilities

The table below summarises the key roles and accountabilities assigned to those working on a project. Project stages and tasks follow.

Key roles	Accountabilities
Steering group	• Approve settlement goals • Approve negotiation strategy and claimant business plan • Ultimate authority for the work programme • Usually two to three members of claimant group's mandated body
Project sponsor	• Overall project direction • Obtain project funding and provide resources • Usually CEO or designated member of executive team
Project manager	• Achieve project objectives to the required quality level, on time, within budget and resource levels • Accurate and timely project progress reports to project sponsor and steering group
Project team and consultants	• Complete planned project activities and outputs on time at the direction of the project manager

Table 3.1 Project management – key roles and accountabilities

Project stages and tasks
The diagram below outlines the stages and tasks in a typical project. The lifecycle of a project has four stages: concept, planning, implementation and review.

Project management process

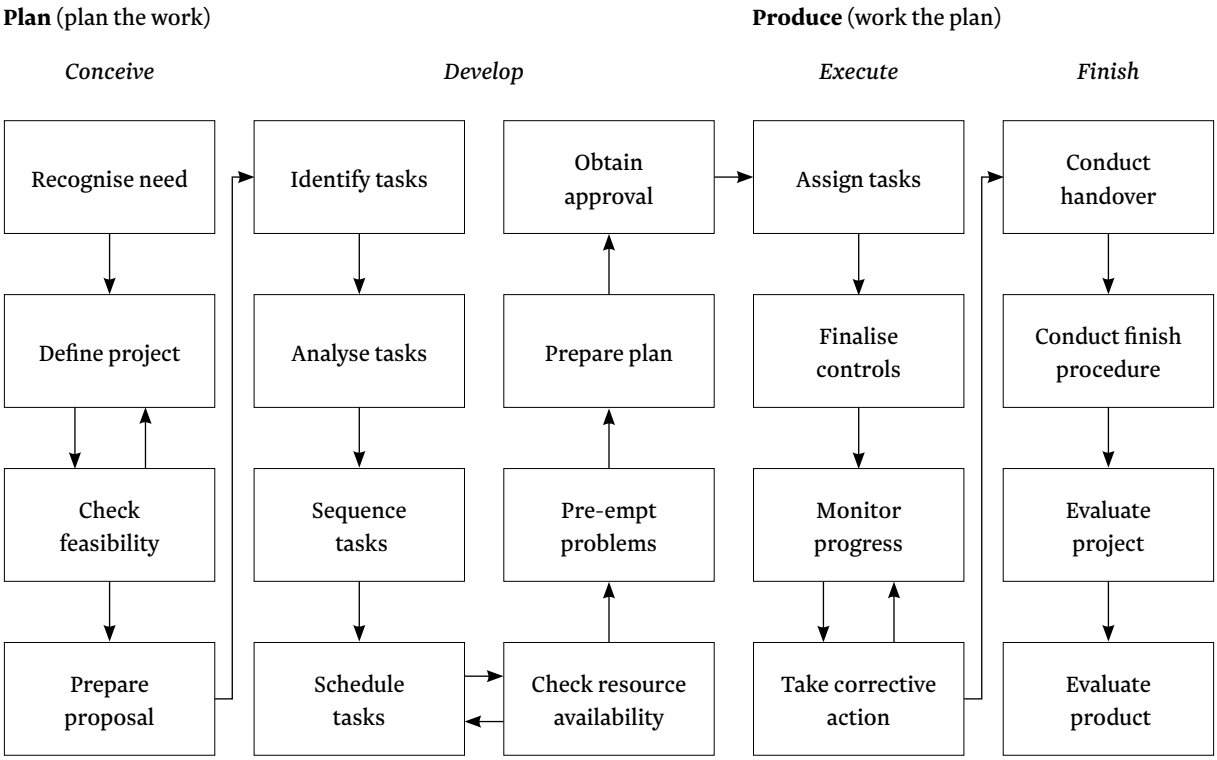


Figure 3.2: Project management process – four stages of a project lifecycle
From: Dr Jim Young Orchestrating your Project (page 35)

Further reading
Black, R. (2005). *The complete idiots guide to Project Management with Microsoft Project 2003*. Alpha Books, USA.
Bradbary, D. (2005).*Herding Chickens: Innovative Techniques for Project Management*. Harbor Light Press, San Francisco, USA.
Lewis, J.P. (2005). *Project Planning, Scheduling and Control*. McGraw-Hill, New York, USA.
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Newton, R. (2006). *Project Management Step by Step*. Pearson Education Ltd, Harlow, UK.
Young, J. (2002). *Orchestrating Your Project*. New Zealand Institute of Management. Wellington, NZ.
Young, J. (2007). *The Framework for Successful Project Management*. SkillPower Ltd. Wellington, NZ.

Websites
Governance Good Practice www.governance.tpk.govt.nz
New Zealand Institute of Management www.nzim.co.nz
Project Management Institute of New Zealand www.pmi.org.nz

FUNDING SOURCES

Negotiating a Treaty settlement is expensive. Some iwi have sufficient funds so can begin the process without any outside funding but that is not the case for many groups. Claimants entering settlement negotiations have two primary sources of funding – Crown Forestry Rental Trust (the Trust) and Office of Treaty Settlements.

If a claimant group has Crown forest licensed land within its area of interest the Trust will provide funds to assist the full settlement process. Activities that are funded by the Trust were discussed in the previous chapter (Crown Forestry Rental Trust).

Claimants may be eligible for legal aid through the Legal Services Agency if they can demonstrate they have insufficient means to pay for the legal services they require to properly engage in the Waitangi Tribunal process. Access to legal aid for specialist legal advice on settlement negotiations and documentation is also available. Strict criteria apply to this legal aid and claimants are encouraged to discuss opportunities for assistance with staff in the Legal Services Agency early in the planning phase for negotiations.

Office of Treaty Settlements provides funding assistance to claimant groups that are in settlement negotiations with the Crown. Office of Treaty Settlements provides a contribution towards the costs of:

- seeking a mandate to negotiate on behalf of the claimant group (after the mandate has been recognised by the Crown)
- negotiating and agreeing to the Terms of Negotiation with the Crown
- negotiating a Deed of Settlement (including the intermediate step of Agreement-in Principle [AiP])
- establishing a post-settlement governance entity which will receive and manage the settlement assets
- ratification by claimant group members of both the Deed of Settlement and the governance entity to receive the settlement package.

The level of funding provided is determined by a number of factors including: the size and spread of the claimant group, the complexity of the claim, the amount of research required to support negotiations, other claimant interests in the area, and whether the claimant group has access to Trust funds.

The claimant group may apply to Office of Treaty Settlements for advances on interest on the settlement quantum to support them through the important settlement legislation and the implementation phase of the settlement process.

Claimants are advised to contact Office of Treaty Settlements directly for information on its funding criteria and application process.

SETTLEMENT PATHWAYS

The decision to proceed with a claim against the Crown rests with the claimant group. Claimant leaders may choose not to enter the Treaty settlement process (and some iwi leaders have done just that). But if leaders do choose to do so, there are three courses of action.

A claimant group may:

- choose to complete the Waitangi Tribunal hearings process before entering negotiations with the Crown, or,
- choose to have a fast-track modular Tribunal inquiry and, optionally, depart before its completion in order to begin settlement negotiations; or
- elect to go directly into negotiations with the Crown via Office of Treaty Settlements without going through the Waitangi Tribunal process.

This section summarises in brief what each process entails, then lists some factors that claimants may wish to consider before proceeding with either process.

1. WAITANGI TRIBUNAL

Inquiries into historical claims

The Waitangi Tribunal provides a public forum in which Māori may set out their claims against the Crown. Once a claim is registered, it is grouped for joint inquiry with other claims in the district into which it falls. The issues surrounding the claim are researched and hearings are held so claimants and the Crown can present their cases. At the conclusion of the hearings, the Waitangi Tribunal considers the evidence and reports its findings.

If the Waitangi Tribunal finds that Crown action has resulted in a Treaty breach and prejudice to the claimant group it may make recommendations to the Government on ways in which that prejudice might be removed.

New approach to historical Treaty claims

Since 2001 the Tribunal has operated a new approach to hearing historical Treaty claims, which is designed to streamline the Treaty inquiry process and enable speedier hearings and Tribunal reports. This allows claimants to move into negotiations much sooner than was the case with the early district inquiries.

The standard district or regional inquiry process completes its entire cycle within 5–7 years. Fast-track modular inquiries are quicker. For example, the Central North Island Tribunal – which covered three inquiry districts and 175 claims – finished its Stage One report on generic issues just over four years after agreement on the inquiry process and research planning.

Common to both a Tribunal hearing and settlement negotiations are the requirements for historical research which, depending on the complexity of the issues to be researched, may take from eighteen months to three years to complete.

2. OFFICE OF TREATY SETTLEMENTS

As a first step the claimant group should approach Office of Treaty Settlements to discuss:

- the scope of claims proposed to be covered
- what tribal groups are proposed to be included in negotiations, and whether the Crown would consider the group sufficiently large to be a priority for negotiations
- what mandating and representation processes would meet the Crown and claimant group's criteria for recognising a mandate and provide a sound base for negotiations, and
- the historical research that claimant groups will require to support the claim upon entering negotiations.

Subject to the outcome of these discussions, the initiating group would develop a mandating strategy and seek a mandate from the claimant group for representatives, or a mandated body, to negotiate the proposed settlement.

Following Ministerial recognition of a Deed of Mandate, discussions can begin towards negotiating a Deed of Settlement. Once the settlement has been negotiated and agreed by the claimant group and the Crown, legislation is passed to confirm the finality of the settlement and enable it to be put into effect.

The settlement assets are then handed over to the claimants' post-settlement governance entity established for that purpose, the body having been previously vetted by the Crown, and ratified by the claimant group. Negotiations towards a settlement package and the return of assets can take at least five years and often longer.

A Waitangi Tribunal inquiry leading into direct negotiations	
Pros	**Cons**
Forum for claimants 'their day in court'. A public 'Truth and Reconciliation' process	May not be needed if the claimant group is thoroughly prepared before entering negotiations
Thorough research and investigation of the issues, usually followed by a comprehensive report	Unnecessary detail covered causing delay and risking damage to claimant group coherence
Body of research will assist subsequent settlement negotiations	Sometimes additional research will be needed for specific points of negotiation
Evidence becomes part of the public record	
Tribunal report can provide a solid platform and basis for settlement discussions and negotiations with the Crown	Crown not obligated to accept Waitangi Tribunal recommendations (unless they are binding) Tribunal process and report unlikely to influence or increase negotiated quantum redress
Tribunal hearings may provide a common bond and unify the claimant group in common action	Divisions on identity and issues between claimant groups may persist, and small claims may be difficult to bind into cohesive larger groupings The process is too long for groups to sustain their enthusiasm, coherence and organisation
Overlapping claims may be resolved in the Tribunal environment	The Tribunal's forum could be exploited by competing groups to advance rival cases
Tribunal inquiry may take four years (modular approach) or five+ years (standard process)	Process problems may lengthen inquiry timeline Direct negotiations may achieve a quicker settlement if they go well, but take longer if a Tribunal inquiry is needed to pave the way
A fast-track modular inquiry speeds entry into negotiations and provides options for a partial, rather than, comprehensive inquiry	Reduced research, selective evidence, hapū not fully heard, and the Tribunal report limited to either broad generic issues or a few high priority issues in depth
Direct settlement negotiations with the Crown	
Pros	**Cons**
Bypasses the costs of a Tribunal hearing	
Settlement package negotiated on case by case basis – anything is possible	A Tribunal inquiry may help to define the claim issues to be settled and the seriousness of the Treaty breach and prejudice
Short-cut to reaching settlement, thus opportunity cost on income forgone in settlement investments reduced	Under-researched or poorly defined claims may take much longer to settle
Informal hearings to enable 'our stories' to be told	Tribunal hearings require the Crown to face up to the claimants' case in an accountable public forum
May increase goodwill by signalling confidence in the direct negotiations process	Risk of disillusionment if the process breaks down
Rewards well organised groups focussed on post-settlement goals	Members of claimant group may feel short-changed if claims not heard
Effective iwi leadership recognised and rewarded	Picking winners may damage relationships with overlapping groups and meet resistance from hapū that feel marginalised, possibly leading to lengthy delays

Table 3.2: Factors to consider: Tribunal or direct negotiation with the Crown

Further reading

Office of Treaty Settlements (2002) – *Ka tika ā muri, ka tika ā mua – Healing the past, building a future: A Guide to Treaty of Waitangi Claims and Negotiations with the Crown.*
Waitangi Tribunal (2000) – *Guide to the Practice and Procedure of the Waitangi Tribunal.*
Waitangi Tribunal (2001) – *The Claims Process of the Waitangi Tribunal: Information for Claimants.*
Waitangi Tribunal (2005) – *The New Approach Revisited: A Discussion Paper on the Waitangi Tribunal's Current and Developing Practices.*

ALTERNATIVES TO SETTLEMENT NEGOTIATIONS

Introduction

Claimants should always be aware of other avenues to which they have recourse to settle their claims other than settlement negotiations with the Crown. The claimant group needs to carefully weigh the costs, possible benefits and risks associated with pursuing alternative settlement negotiations.

This section discusses three possible alternatives to settlement negotiations:

1. Applying to the Waitangi Tribunal to exercise its binding powers of recommendation in respect of memorialised lands and Crown Forest Licensed lands.
2. Recourse to the general courts in relation to Treaty-based actions or Crown action or inaction based on such issues as fraud and breach of fiduciary duty.
3. Approaches or complaints relating to Treaty claims to international bodies such as the United Nations.

An important consideration for any claimant group when assessing the merits of any of the above alternatives is that settlement negotiations with the Crown are very likely to be discontinued if an alternative recourse to settlement is embarked upon. Indeed, the Terms of Negotiations invariably include an undertaking by the mandated body not to undertake proceedings in the courts, including the Waitangi Tribunal, while they are in negotiations. Nonetheless, the mandated body can prepare for this eventuality if negotiations are not going to provide the settlement that their constituents are likely to accept.

If a claimant group elects to pursue one of these options prior to engaging in settlement negotiations with the Crown (and has a positive outcome in terms of settling their claim), then the claimant group may forego other aspects of the settlement redress from the Crown. On the other hand, if the claimant group has assessed the merits of an alternative course and wishes to proceed down that road (because the outcomes are likely to be better) their claims will not be fully settled and negotiations may also be possible later on if the Crown wishes to settle those claims.

The Trust does not fund claimants through general court proceedings or presentations at international bodies such as the United Nations. However, the Trust will consider funding support to a claimant group making an application to the Waitangi Tribunal for a resumption order as it relates to Crown forest licensed land.

APPLICATIONS TO THE WAITANGI TRIBUNAL TO MAKE BINDING RECOMMENDATIONS

Most types of recommendation that the Waitangi Tribunal may make are non-binding on the Crown and the Crown is under no legal obligation to follow or adopt them. There are, however, a few exceptions which the Tribunal may invoke in respect of any well-founded claim. In other words, although the binding remedies may be narrowly defined, many claims may be entitled to access these remedies.

The exceptions are principally properties with section 27B *(State-Owned Enterprises Act 1986)* or section 212 memorials *(Education Act 1989)* on their title (generally former Crown-owned land which was transferred to State Owned Enterprises during the restructuring of state agencies after 1986), and Crown forest licensed lands. In these cases the Treaty of Waitangi Act 1975 provides the Waitangi Tribunal with binding powers of recommendation with respect to these properties. The Tribunal's interim recommendations, which become final after 90 days if the parties fail to negotiate a settlement, are for convenience referred to here as 'resumption orders'.

To date there has only been one successful application for a resumption order. *(An order in relation to a relatively modern breach of the Treaty, land taken and not offered back to the original owners in the late 1950s and early 1960s as required under the Public Works Act 1981.)* Ngāti Turangitukua applied for the return of land taken under the Public Works Act for the establishment of the Tūrangi township to service the construction of the Tongariro hydroelectric scheme. The parties negotiated a settlement before the 90-day limit expired, which culminated in the Ngāti Turangitukua Claims Settlement Act 1999.

Until recently, few claimants have applied for remedies hearings and binding recommendations from the Tribunal. After the *Whanganui-a-Orotū 1995 Report* was released the Wai 55 claimants sought binding recommendations in respect of their historical claims. The Tribunal issued a first remedies report in 1998 that gave leave to the claimants to return if negotiations were unsuccessful. They did so in 2004 but, as a result of the Tribunal hearing, resumed discussions with the Crown and the inquiry remains suspended.

Starting with the release of the *Mōhaka ki Ahuriri Report* in 2004, the Tribunal has begun issuing a series of comprehensive district reports covering all the historical and contemporary claims in each inquiry. Several hundred claims have been reported on to date and both small and

large tribal groups covered. Subsequent delays in Crown mandate recognition and negotiation start-ups have led to a number of applications for remedies being filed with the Tribunal since early 2006. Currently, the Tribunal has before it applications from a range of substantial claimant groups, including Te Aupouri, Ngāti Kahu, Ngāti Whātua o Kaipara ki Te Tonga, the Hauraki Māori Trust Board, Ngāti Hei, Ngāti Hineuru, Ngāti Tū and associated hapū, and Ngāti Pahauwera. These applications have not been concluded to date while submissions in a general remedies process are under consideration.

Two general conditions must usually be satisfied for an application to the Waitangi Tribunal for a resumption order to proceed. First, the statement of claim should include remedies in the relief requested. Second, the claim must be fully reported on and adjudged well founded. In such cases the Tribunal may either recommend remedies or, more usually, give leave to the claimants to apply later for remedies should good faith attempts to negotiate a settlement with the Crown not succeed.

The most likely scenarios for a claimant group to apply for such an order are:

1. After the claimant group has had its claim(s) heard and favourably reported on by the Waitangi Tribunal and when subsequent negotiations with the Crown have discontinued owing to the lack of support for the settlement package on offer from the Crown.
2. Where the claimant group has bypassed the Waitangi Tribunal hearings process and has opted to negotiate directly with the Crown and these negotiations have broken down. In this case the group would first need to have its claim fully heard.
3. Where the claimant group has not entered negotiations with the Crown and is seeking a resumption order on a specific parcel(s) of land. Again, the claim would first need to be fully heard.

The Waitangi Tribunal is currently considering submissions on a general remedies process. In the meantime, the Turangitukua and Wai 55 proceedings have established some standards, procedures and precedents. These precedents strongly suggest that the Waitangi Tribunal is only likely to consider a resumption order in Scenario 1 above. This is on the assumption that the Waitangi Tribunal will want to be certain that the claimant group has first had its claims fully investigated, heard and adjudged well-founded, and that the claimant group subsequently has used its best endeavours to settle its claim by way of negotiation with the Crown. Remedies proceedings form the final part of a particular inquiry rather than a separate new inquiry. They are usually organised as a distinct phase some time after the release of the Tribunal's main report on the claim. First, the Tribunal considers applications on the papers filed or at a judicial conference. If granted, the Tribunal hears pleadings and evidence and then issues a report. Since much of the business will comprise process evidence and legal argument, a remedies inquiry is likely to have the character of an urgent inquiry.

RECOURSE TO THE GENERAL COURTS IN RELATION TO TREATY-BASED ACTIONS

The general courts in recent years have regularly been a forum for litigating various aspects of the Treaty settlement process. Issues such as mandate, overlapping interests or cross claims issues, and in the case of the fisheries settlement, the distribution of settlement assets, have been prominent matters before the judiciary. This section does not directly address the use of the general courts to adjudicate those particular issues.

The general courts have not been regularly used as a forum for taking claims in relation to Treaty of Waitangi issues. The key reason for this is because in general, legal proceedings cannot be based on the Treaty itself except to the extent that the Treaty is recognised by statute.

A second reason is that while the Waitangi Tribunal has jurisdiction to consider whether the Crown has breached the principles of the Treaty of Waitangi, its findings are not binding on or enforceable in the general courts. Accordingly proceedings in general courts will need to be based on a legally enforceable basis rather than based on the Treaty itself.

Significantly, proceedings based on what might be described as a 'Treaty clause' or recognition of the Treaty as a relevant consideration or standard would not address the standard historical Treaty claims issues such as invasion, imprisonment, historical land loss and the Native Land Court.

While it has not been explored in great detail recently, proceedings in the general courts by claimant groups on other grounds may warrant further investigation especially contemporary claims, for example, land taken under the Public Works Act 1981.

APPROACH TO UNITED NATIONS OR OTHER INTERNATIONAL BODIES

From the outset claimant groups must understand that, as opposed to rulings of the general Courts in New Zealand, rulings of international bodies are not

binding on the Government. For many claimant groups this in itself may be enough to question the value of pursuing such a course of action. If claimant groups still wish to proceed down this avenue (even though it would not be binding on the Crown), the process to be followed will depend on the particular forum in which the claimant group seeks to be heard.

The complaint to the Human Rights Committee of the United Nations in relation to the fisheries settlement and the recent Report of the United Nations Special Rapporteur on the foreshore and seabed issue are examples of the use of international fora and instruments in relation to what could broadly be described as Treaty-related complaints. The Report of the United Nations Special Rapporteur on the foreshore and seabed issue was critical of the Government's actions. However, despite its findings, it did not result in any change in Government policy or legislation.

RESEARCH

Introduction

Claimants may negotiate the settlement of their historical claims at any time, provided the mandate of the body appointed to negotiate their claims has been recognised by the Crown. The three possible scenarios are where claimants:

a) elect to have their claims heard in the Waitangi Tribunal and receive a Tribunal report before entering negotiations with Office of Treaty Settlements
b) choose to participate in the Waitangi Tribunal process in order to obtain the benefits of commissioned research, issue definition and possibly hearings, but elect to proceed to negotiations before the Tribunal has reported
c) elect to by-pass the Waitangi Tribunal process entirely and go straight to negotiations.

In each case it is vital that the claim is properly researched. Without adequate research neither the claimants nor Office of Treaty Settlements will be able to form a clear appreciation of the nature and significance of the claim. Good research is also essential for key aspects of the various agreements that are developed in the course of settlement with the Crown, including quantum, the 'Agreed Historical Account', details of the Crown apology and issues surrounding 'sites of significance'.

Over recent years the Trust, the Waitangi Tribunal and Office of Treaty Settlements have developed policies designed to speed up the claims hearing and settlement process, and these have implications for research. The Trust provides funding and other assistance to claimant 'collectives' or 'clusters'. These groupings may be iwi-based, or may occupy a geographical area. The Waitangi Tribunal hears claims grouped into a district inquiry and Office of Treaty Settlements will only negotiate claim settlements with what it describes as 'large natural groupings'.

Among other things this means that individual hapū and whanau claims are no longer necessarily researched separately in detail for Tribunal or direct negotiation purposes. Instead research is based around large natural groupings, collectives or 'clusters'. In Tribunal inquiries, research is focussed on issues, whether they are shared by many claimants or unique to particular claimants.

Carrying out research for 'collectives' or large natural groupings is said to make the process more efficient by reducing the amount of detail and avoiding duplication of research. On the other hand, apart from 'case studies' (often research on specific land blocks) or tangata whenua evidence, this may limit the extent to which hapū can research their own specific land and other issues.

Although all hapū in a large natural grouping will be named in the historical account, Deed of Settlement and Crown apology, it may not be possible under these circumstances to refer in any detail to particular hapū or whanau, or address specific historical issues which impacted upon them as part of a claim settlement.

The key point, however, is that claimants should get the research that will meet their interests in settlement negotiations, and if they do need to address issues relating to particular hapū, then they should get that research done. Ideally the claimants should begin the process by asking themselves, "What are our key grievances and what are the key things the Crown did to us that we need to discuss with them?" and then generate their research programme from the answers to those questions.

CLAIMANT OPTIONS AND RESEARCH: WAITANGI TRIBUNAL OR DIRECT NEGOTIATIONS

Under the first two scenarios above, the claimants will have been involved in a Tribunal research programme and will have the benefit of that. If the first scenario has been chosen they will also have the Tribunal's assessment of the research and its findings in the form of a Tribunal report.

An extensive body of high quality research is also required by those groups who choose the third scenario – direct negotiations without a Tribunal inquiry or Tribunal report.

Office of Treaty Settlements requires good quality research that clearly substantiates the key grievances of the claimant group. In some cases breach and Apology redress has been successfully negotiated on the basis of a small number of very good – and targeted – research reports. The manner in which research plans are developed and carried out – and the nature and scope of research required in all three situations – is described in the following sections.

TYPES OF RESEARCH

The research on historical Treaty claims necessary for both the Waitangi Tribunal and Office of Treaty Settlements direct negotiation purposes takes four basic forms: Tangata Whenua, Manawhenua or 'Traditional history', 'Technical' historical research, and Maps.

The research generated for Tribunal inquiries is usually aimed at substantiating the breach basis for the claims, and establishing a narrative of what happened. This is also the research that will prove most useful for Apology negotiations. Claimant groups will have other research needs, including being able to establish their connections with sites of significance in some depth for cultural or commercial redress purposes. This latter type of research is really more important for settlement negotiations than for Tribunal hearings.

The essentials of each type of research are set out below. All are equally important, and taken together they should provide an integrated, complete and accurate body of research sufficient to withstand close scrutiny within either the Tribunal or Office of Treaty Settlements environment.

Tangata whenua evidence

In the Waitangi Tribunal process claimants present briefs of evidence that describe in their own words how Crown actions have impacted upon their communities, land and resources in both the historical and contemporary sense. Contemporary natural resource issues (including environmental issues) often form an important part of this work, as do current relationships with local bodies and Crown agencies such as the Department of Conservation.

Tangata whenua or claimant research can take many forms, for example:

- audiovisual recordings of people's lived experience of Crown actions or prejudicial effects
- community memory of past actions, events and living conditions
- documentary resources, including privately held records in claimant communities
- filmed evidence of sites of significance or environmental impacts

Manawhenua or 'traditional history' research

This research describes who the people are, how they connect to the land and their relationships with neighbouring hapū and iwi. Much of this work is carried out by the claimants themselves.

Traditional evidence should be prepared at the same time as other historical evidence, or preferably in advance of it. This is because the professional historians who will prepare the 'technical reports' (discussed below) need this information if they are to fully understand land alienation and other historical issues.

It is impossible to set out any firm 'model' for such evidence, or the precise manner in which it might be presented to Office of Treaty Settlements or the Tribunal. It might be presented in written or oral form, and might also include video and/or sound recordings. This will depend on the nature of the claimant group and the interests it represents, and the preferences of kaumātua and kuia who are involved. Such evidence will, no doubt include whakapapa and traditions associated with the tupuna of the claimants who first set foot on the land, a description of traditional trails, evidence of ongoing traditional land use and occupation, and the existence and location of wāhi tapu, kāinga and pā.

Some indication of the claimed rohe is also necessary – although this need not necessarily be represented by lines on maps, which often suggest exclusivity and form an inappropriate and unhelpful way of representing overlapping and intersecting interests based on whakapapa or other customary arrangements.

It is also possible for information about sensitive issues – such as wāhi tapu – to be kept confidential to the parties (the claimants, Crown/Office of Treaty Settlements or the Tribunal), should claimants not agree to a public disclosure of sensitive material. Negotiators should also be familiar with the implications of the Official Information Act before they begin negotiations.

Traditional evidence may include a mix of oral and documentary sources, including books and other published material such as articles in the *Journal of the Polynesian Society*, Native Land Court minute books and other archival material. Published sources written by Pākehā in the late nineteenth or early twentieth centuries should not be relied on. They may contain errors, distortions or bias towards a particular iwi.

This is because Pākehā authors often relied on only one iwi or hapū as a source of information, or had a particular sympathy with one iwi. These books need to be examined in light of claimant traditional evidence and any error or bias identified.

Professional historians can assist in locating and explaining the documentary sources and critiquing published works but the main task lies with the claimants themselves. This can be a challenging task. Oral/traditional evidence relating to specific instances of land loss and other key events should also inform and support the evidence prepared by the professional historian.

In many cases a Trust-commissioned anthropologist or academic specialising in this field will provide an 'overview' of the traditional history of the wider region or Tribunal inquiry district. This is sometimes called a 'tribal landscape' report. 'Tribal landscape' reports are usually commissioned in connection with Tribunal inquiries, and are unlikely to be prepared specifically for negotiation purposes.

'Technical' historical research

This research is called 'technical' because it involves accessing information in specialist libraries and archives by trained historians, who then analyse the material and prepare written evidence. The reports which result are often necessarily lengthy and detailed, and copies of the main archival documents relied on by the historian are supplied as supporting papers (or 'document banks') to the written report. Although some claimant groups have a strong preference to carry out this work themselves, this is not usually recommended. Only trained and experienced historians have the necessary skills and training, and their work will be very closely scrutinised in the Waitangi Tribunal and by Office of Treaty Settlements.

'Technical' research is usually commissioned by the Trust, and sometimes by the Waitangi Tribunal if the claim is subject to a Tribunal inquiry. The precise nature of the work (research plan) is usually developed as a collaborative exercise involving the Trust, claimants and the Tribunal. In some Tribunal inquiries a 'Research Coordination Committee' (including the Trust, Tribunal staff and representatives nominated by the claimants) has been set up to facilitate this process and ensure that research is sufficiently comprehensive. If the claimants intend to enter direct negotiations in the absence of a Tribunal inquiry, Office of Treaty Settlements may wish to provide input into a research planning process.

For a Waitangi Tribunal district inquiry, the Tribunal will usually first commission an evaluation of research needs and consult all parties. On the basis of the assessment and feedback, it seeks a broad measure of agreement on a casebook research programme covering all claim issues to be heard and tailored to the agreed inquiry process. Project briefs are then prepared to implement the programme.

Subject to claimant approval the historians who are chosen to undertake the work will be required to report back to the claimant group on a regular basis during the course of research. Drafts of the research report are circulated and discussed, and the research in its final form is not 'signed off' until there is substantive claimant support for it and it has been the subject of a peer review by another qualified historian (commissioned by the Trust) who has not been involved in the claim.

Technical research generally covers the following topics, some or all of which may be relevant to a particular claimant group:

- pre-Treaty European purchases, and how the Crown later dealt with these (old land claims and surplus lands)
- rates and local bodies
- old land claims (pre-1840)
- early Crown purchases (1840–1865)
- pre-emption waiver purchases (1844-1846)
- raupatu (land confiscation)
- post-1865 Native Land Court transactions (Crown and private)
- public works takings
- land consolidation and development schemes
- non-land resources, including lakes, waterways and environmental impacts
- an overview of the social and economic impact of Crown acts and omissions; this may include an examination of education, health, housing and employment conditions over time and related Crown policies.

Note that while 'technical' historical research is usually carried out by professional historians, claimants should ensure that it reflects the issues, incidents, blocks of land or grievances that most concern them, including any emphasis they want to have on particular grievances of their iwi or hapū.

Maps

In order to ensure maximum clarity the research should also include a quantitative analysis of Māori land loss over time, tagged to the key processes which brought it about. The data and analysis provide important resources for some of the technical research.

A collection of maps (often referred to as 'map-books') is a most effective way of providing this information and help to clarify the more detailed descriptions of key events contained in the 'technical' reports. Maps are an essential illustrative component of the technical reports themselves. Map books should also contain information covered in the traditional research, such as pā sites and kāinga, trails, maunga, awa and other significant sites. Sensitive sites, such as wāhi tapu, can also be mapped but protected from disclosure to those not authorised to view them.

Claimants and the Trust must therefore develop a means of presenting accurate and comprehensive information about the nature and extent of land loss and the land remaining in Māori ownership today. The most appropriate format will be determined by the nature and scope of land alienation and the fundamentals of the claim. Alienation 'events' other than land purchases which can be plotted on maps may include:

- land taken for scenery preservation purposes
- land taken for public works purposes
- land taken for rates, or
- land compulsorily acquired by the Māori Trustee in the twentieth century.

Map-books might include:

- land blocks
- blocks passed through Native Land Court
- old land claims, surplus lands and pre-emption waivers
- Crown purchases
- private purchases
- raupatu
- land taken for public works or scenery preservation
- land development schemes
- land compulsorily acquired by Māori Trustee
- land taken for rates
- land currently in Māori ownership
- area within which claimant group exercised customary rights (not necessarily area of exclusive claims)
- customary resource use
- customary occupation
- maunga and awa.

The Trust offers a Geographic Information Systems (GIS) mapping service to eligible claimant groups, and will work with claimant groups and historians to identify research information to be captured in a digital format then used to produce the necessary maps. As in all aspects of research, it is important for the claimants to work closely with the Trust and the GIS technician (and/or cartographer) to ensure that effective and accurate maps are produced.

Maps can be developed in a variety of formats including printed hard copy, digital formats, specific PowerPoint images, or virtual three-dimensional maps.

Finally, it is worth noting that maps and research reports need to complement each other. For Tribunal evidential purposes, map books disconnected from historical research have limited value; and research reports lacking illustrative and interpretative maps are significantly the poorer.

INTEGRATED APPROACH TO RESEARCH

It is important that the 'technical' research (including maps) is closely linked to the traditional history research projects. It is also important that it is carried out in a way that places the key historical events impacting on the claimant group within the necessary context and reflects the inter-relatedness of the historical issues.

How long does the research take?

The time taken depends on the nature of the claims and the historical issues, the area covered and the nature of the claimant group. It is safe to say, however, that research reports will seldom take less than six months to complete and often take longer. Major reports on big issues will commonly take about a year to complete.

It is crucial that sufficient time is allowed to properly research the key historical issues, and that claimant collectives are provided with sufficient opportunity to assess draft reports and provide comments and feedback. If 'district-wide' research is being undertaken on behalf of a group of claimant collectives a large number of draft reports requiring claimant feedback may all arrive at the same time. Reading and commenting on thousands of pages of detailed research is not an easy task, and sufficient time must be set aside for that.

There are no short-cuts in research

It is sometimes claimed that sufficient Treaty claims research has been carried out, and it is no longer necessary to provide detailed 'technical' historical evidence. A significant number of Tribunal reports are available, which address and make findings on most of the key historical issues. Several claim settlements have also occurred, and the historical accounts and Crown apologies acknowledge a wide range of historical Treaty breaches.

It is true that over the last 25 years many hundreds of research reports have been written in connection with

Tribunal claims and over a hundred Tribunal reports have been produced – many of them highly detailed and discursive. But claimants are still required to demonstrate that the issues discussed in Tribunal reports, existing settlements and research concerned with other iwi and hapū are directly applicable to them and reflect their own historical experiences. It is not enough to simply point to similar claims or historical issues in other districts that may already have been characterised by the Tribunal as serious Treaty breaches.

In its Red Book, Office of Treaty Settlements concedes that virtually all of the major mechanisms resulting in Māori land loss – pre-1840 land transactions; New Zealand Company purchases; pre-emption waiver purchases; pre-1865 Crown purchases; raupatu; the Native Land Court; and twentieth century processes – may indeed involve breaches of the Treaty to some extent. However, in order to ensure the Crown has an accurate understanding of the grievances of each claimant group, and can therefore provide them with a meaningful Apology, Office of Treaty Settlements still needs research that demonstrates each claimant group's historical experiences.

RESEARCH AND THE WAITANGI TRIBUNAL

A desire to facilitate claim settlement has resulted in changes to Tribunal processes over the past few years. Some discussion of the current Tribunal process and its implications for research and negotiations is set out below. It should be stressed, however, that these Tribunal processes do not reduce or limit the historical evidence required by claimants.

The 'new' approach

Two inquiry processes have been developed under 'new approach' auspices:

The standard inquiry process covers all claim issues that the claimants wish to pursue and that the Crown declines to concede. The claims are heard and the Tribunal prepares a comprehensive report.

The modular inquiry process is designed to assist claimants wishing to enter early negotiations. It organises inquiries into modules: at the end of each module claimants may depart to start their negotiations.

The standard inquiry process

Under the standard inquiry process the research programme, mostly commissioned by the Trust under the circumstances described above has a district-wide perspective. It may also take account of particular iwi/hapū land and other issues through the use of case studies and tangata whenua evidence. As the Tribunal notes, 'it is necessary for generic issues to be covered, together with a sampling of more detailed case studies that illustrate the breaches and their effects at hapū and whanau level'. 'Generic' issues are broad-brush. They may, for example, address the more general impact of the Native Land Court or land purchasing over a wide area. But while there is some provision for specific claims research in the form of case studies, this should be kept to a minimum. Otherwise the process would, according to the Tribunal, 'run the risk of running over time and creating unnecessary duplication'.

The 'modular' inquiry process

This 'modular' inquiry process was designed in 2003 to further speed inquiries and provide claimants with an enhanced opportunity to move into negotiations (see District Modular Approach flowchart, page 20). It was recently trialled by the Tribunal in the Central North Island. The 'modular' method is a refinement available to claimants who wish to further speed up the process in order to start negotiations earlier. As the Tribunal notes, it is designed to 'meet the particular needs and aspirations of the Crown and the claimants'. In general, the volume of research is reduced and is concentrated either on 'big picture' reports with less detail or on a few key issues researched in depth.

Under the 'modular' method the Crown and claimants agree to the division of the inquiry into a series of 'modules'. At the end of any of the modules some, or all, of the parties may decide that they have made sufficient progress to commence negotiations. This is designed to achieve an even speedier entry into negotiations, based on 'key big-picture grievances of concern'. The modular approach will not, according to the Tribunal, suit claimants who need to describe their whole historical experience of colonisation, as there will be insufficient time available. The standard new approach is the better choice for claimants in this situation'.

First module research

The first module commences with the release by the Tribunal's Chief Historian of a discussion paper identifying the 'big-picture' historical issues, the research currently available in respect of these issues, and any proposals for additional research. These papers are reviewed by the Tribunal, claimants, the Crown, and a committee of research experts representing the parties (a 'Research Coordinating Committee'). This results in an agreed definition of the more significant historical issues (which may involve all or some of the major historical themes described above) for inclusion in a casebook (a compilation of research reports).

If further research is required some will be commissioned by the Trust on behalf of claimants, while some may be carried out concurrently by the Crown. This is a matter for discussion among the parties. When the casebook is closed, the Tribunal asks the parties whether they wish to continue.

Second module – defining issues to be heard
The Tribunal's Chief Historian reviews all the casebook evidence and advises whether it is sufficient for the Tribunal to hear the agreed claim issues. There will usually be no time to do any substantial gap-filling research for a modular inquiry. After considering the casebook, claimants may amend their statements of claim and the Crown produces a statement of its position. Whether they do so or not, the Tribunal prepares a high-level Statement of Issues. The Tribunal then requests the parties to confirm whether they wish to continue to hearing and if so, on what issues.

Third module – hearings
An expedited round of hearings commences. Both technical and tangata whenua evidence is heard but on a more selective footing than in a full standard inquiry. At the end of the hearings the parties are asked to indicate whether they want a Tribunal report and if so, on what issues.

Fourth module – Tribunal report
The Tribunal prepares its report as rapidly as possible, focussing on big picture issues shared by most claimants. A modular report does not make detailed findings on specific claims. Depending on the requirements of the parties the report may be either brief, or form a 'substantial historical analysis and narrative'. In either case the Tribunal states that it expects to produce a report substantially faster than 'a full, standard new approach report' – possibly within six months but more usually over 12-18 months. A report on a single district is likely to be completed more quickly than for a large region.

Fifth module – outstanding claim issues
After a suitable period for reflection, the Tribunal may consult the parties on whether they wish to resume the inquiry. This would not usually be an expected outcome since the starting assumption was that all parties were committed to early negotiations. If sufficient numbers of claimants decide that they want a fuller Tribunal inquiry, either into specific claims or into general issues not dealt with in the first stage, the Tribunal may decide to start a second stage. This would follow the standard inquiry method but be geared to completing the inquiry in good order by hearing a limited range of outstanding issues. Further research would be required.

Conclusion
For the Tribunal, speed and efficiency are key elements in its 'standard' and 'modular' inquiry processes. So is the adaptation of the inquiry process to the objectives of the parties. It should be stressed that a much higher level of agreement and cooperation between claimants and Crown is required to make the fast-track modular process work well. The standard process, requiring less initial agreement and providing more comprehensive research, hearings and Tribunal reporting, is always an option. Ultimately it is for the claimants themselves to decide.

It should be stressed that both the standard and 'modular' methods are based on the existence of a substantial body of high-quality research. Indeed, the ability of both processes to deliver faster settlements is lessened if research is unavailable or inadequate.

District modular approach

CLAIMANTS WHO PROCEED DIRECTLY INTO NEGOTIATIONS

Claimants may wish to proceed into direct negotiations without the benefit of Tribunal hearings or a Tribunal report. In this case a research programme will usually be developed and managed by the Trust in conjunction with claimants. Office of Treaty Settlements will possibly be involved in the development of this research programme. Processes for claimant feedback and peer review are the same as those outlined above. The level of research required by Office of Treaty Settlements will not be less than needed for the Tribunal's standard and modular inquiry processes. Office of Treaty Settlements will insist that all grievances are fully set out in order to ensure finality and a comprehensive settlement. Settlements might prove less durable if key historical issues are not directly addressed or are omitted from the historical account, apology, or Deeds of Settlement.

For the Apology redress, Office of Treaty Settlements are driven by what the claimant group considers to be their key grievances and what type of text they will want in their historical account and apology. That usually requires less research than is generated for a Waitangi Tribunal hearing; for example they may only need to show three examples of native land court processes affecting them. That is why the Crown developed the 'broad brush' approach to breaches in settlement negotiations – to cut down on the level of research needed. Office of Treaty Settlements does want claimant groups to set out all their grievances, but their experience is that may not align with the usual research programme generated for a Tribunal hearing.

Note, however that for cultural and commercial redress the Office of Treaty Settlements may want more than is available through the research programmes generated for Tribunal inquiries.

As in the case of current Tribunal inquiries, claimants are faced with the challenge of achieving the right balance in their research. They will be discouraged from going into the minutiae or every historical event and the particular historical experience of each hapū or whanau, but at the same time they must not sell themselves short.

Claimants should therefore expect to enter negotiations equipped with a body of research which conforms to the outline provided above; namely tangata whenua evidence, manawhenua or traditional history, 'technical research' and maps. Note that claimants may choose to present tangata whenua evidence directly to the Crown through negotiations rather than in written form, particularly on matters like the impact of Crown actions on the claimant group.

The quality and extent of this research should be at least equal to current Tribunal casebook standards. It should disclose the extent of historical land alienation and a comprehensive and properly contextualised account of the processes which led to it. As with research commissioned for Tribunal inquiries these processes may involve one or more of the major historical themes set out above, or a combination of them. The research may result in a series of historical reports, map books, and other necessary material. Evidence on traditional history is also essential (as it is in a Tribunal inquiry).

The best option for claimants is to keep the lines of communication open during the research process. It may be, for example, that Office of Treaty Settlements will concede certain points on the basis of prima facie (preliminary research findings) without the need to go into further detail.

In summary, claimants entering into direct negotiations in advance of, or in the absence of, a Tribunal inquiry process may require:

- a traditional history evidence identifying the people and their connections with the land, and their relationship with the whenua and resources
- tangata whenua evidence, setting out the impact of land loss and Crown actions on the claimant group, and addressing contemporary resource and environmental issues
- one or more historical reports setting out the key historical themes in the area subject to the claim
- a map book illustrating the nature and extent of historical land alienation, aspects of tangata whenua evidence and traditional history, and current claimant landholdings.

Sites of significance, Crown land database and map books

Maps form an important part of the evidence presented at Tribunal inquiries. As noted above, they can shed much light on crucial aspects of the claim.

Maps used for negotiation purposes serve a somewhat different purpose. This is because they must contain more detailed information about sites of significance than might have been presented to the Tribunal. The Tribunal requires evidence of claimant associations with the land, and often all wāhi tapu and other significant places need not be identified for this purpose. In the negotiations context claimants may wish to identify and map all their important sites as part of the cultural redress aspects of the claim.

Maps required for negotiation purposes may also include Crown lands currently existing within the claimant groups' rohe, as the return of such lands may form a key part of the redress sought by claimants. It is not necessary to provide this information to the Tribunal, but the location and extent of such lands is crucial within the negotiation context.

Sites of significance
Sites of significance are places within the rohe which are particularly important to the claimant group. They may include pa sites, awa, maunga, wāhi tapu, or other places or particular cultural or spiritual significance.

The Crown recognises the importance of cultural redress in contributing to what it describes as a 'balanced settlement package' that will meet the cultural as well as the economic needs of the claimant group. But Office of Treaty Settlements needs detailed evidence of cultural associations with these sites, particularly if a return of the site is sought.

As part of this process the claimants must accurately identify their sites and locate them on maps. It is not enough to simply say 'we were there'. Evidence about the importance of the site and associations with it is required. This evidence may be sourced in historical documents (such as Native Land Court minutes or early descriptions written by Pākehā travellers) and/or oral traditions. Further information can often be obtained from the archaeological record. Historians can assist in locating and compiling such information, but the main source of information will always be the claimants themselves. They can best speak of the significance and meaning of these places.

Claimants need to not only ensure that all such sites are identified, but that the redress sought in respect of each of them is discussed and agreed among themselves in advance of negotiations. Research on sites of significance should therefore be carried out well in advance of negotiations.

Up to date information about the current legal status of the land is also crucial. This will indicate whether the land is in private or Crown ownership, or whether it is part of the Department of Conservation estate. Knowledge about the legal status of the land is important when claimants are deciding on the redress they seek. If the land is in private ownership, or controlled by Department of Conservation, this will obviously have implications for redress.

Accurate land title information can be located by GIS technicians using a number of sources.
Negotiators should obtain a copy of the DoC Conservation Management Strategy so that they can identify land in their area of interest that is in the conservation estate.

As explained earlier, the location of sites of significance requires technical input from GIS experts, which the Trust can facilitate. Claimants should not simply leave the task with technicians, but should work closely with them in identifying sites so as to ensure accuracy, given that knowledge of these places is often confined to the claimant group.

There may be a few dozen such sites, or several hundred. Sometimes sites will not be a mere single point on the landscape, but will include a number of interrelated areas covering a wider area. Kāinga, pā sites, urupā, mahinga kai, trails, cultivations and natural resource areas may form a complex of occupation and use, covering a significant area.

Crown lands database
A database – and perhaps a series of maps – of all Crown-owned land and land owned by Crown entities within the claimant rohe (including Crown licensed forest and State Owned Enterprise lands) should also be compiled in advance of entering negotiations. Such a database provides claimants and their expert advisors with the opportunity of assessing current and potential use of land available as part of a settlement, and the present and future economic viability of these lands. Claimants who undertake this exercise will thus be in a better position to seek appropriate commercial redress.

This information can be compiled by GIS technicians working with the claimant group, but keep in mind that the Crown can provide Crown lands data generated from LINZ databases at no cost to the claimants. Negotiators will probably still need to provide the Crown with the precise locations of sites of significance.

It is preferable for the claimants to acquire accurate and up to date information at an early stage, principally so that they can carry out the necessary research into future land viability and other key issues such as this prior to entering into negotiations.

Map books
Map books setting out in graphic form the key historical aspects of the claims almost invariably form an important element of Tribunal casebooks (as noted above), and should similarly form an integral part of any direct

negotiation. They are particularly crucial if claimants choose direct negotiation in the absence of a Tribunal inquiry and report, given that Office of Treaty Settlements historians and officials may be unfamiliar with the claimants and the historical issues.

As maps are a primary means of effectively presenting claims to Ministers and Office of Treaty Settlements officials, it is therefore crucial that the manner in which the information is presented is agreed well before formal presentations. It is worth having a competent Information Technology person to operate equipment.