

RM REFORM UPHOLDING SETTLEMENT – TE RŪNANGA O TOA RANGATIRA HUI

AGENDA AND NOTES

8 February 2024

Te Rūnanga o Toa Rangatira Office, Porirua

Attendees

Name	Role	Organisation
Rawiri Faulkner	Pou Taiao	Te Rūnanga o Toa Rangatira
Ella Jaspers	Senior Advisor	Te Rūnanga o Toa Rangatira
Robert McLean	Principal Advisor	Te Rūnanga o Toa Rangatira
Ben White	Engagement Lead	Ministry for the Environment
David Haines	Principal Advisor	Manatū mō te Taiao
Arron Cox	Manager, Fast-track Consenting	Manatū mō te Taiao
Shannon Wallace	Principal Advisor Delivery and Oversight	Manatū mō te Taiao

Items

1	Mihi whakatau, karakia
2	Purpose
3	Overview
4	Discussion
5	Next steps
6	Whakakapi, karakia

Meeting Notes

Discussion Notes	D1	<ul style="list-style-type: none"> Rawiri opened and noted the Treaty partnership is about enabling each other to succeed. As partners want a meaningful and authentic relationship. Ngāti Toa does not appreciate the timeframes being imposed to deal with such an important kaupapa (te taiao). It appears government wants to give perception of meaningful consultation on something that looks like a fait accompli. With regards fast-track consenting, Ngāti Toa have nothing to react against – e.g. there is no draft bill. Difficult to have a meaningful conversation. Everything we assume today could be wrong tomorrow. But keen to have a discussion with officials – what can we as Ngāti Toa do to help you advise Ministers? Ben – thanked Rawiri for his generosity in hosting us at such short notice. Acknowledged point about timeframes and noted process is at the “inform” end of the engagement spectrum. Ben introduced Kaupapa. Context – this process is a continuation of RM reform discussions with Ngāti Toa over the past two years. Recapped the 3 phases of RM reform set out in Minister Bishop’s letters to Ngāti Toa of 13 December and 31 January: <ol style="list-style-type: none"> 1. Repeal NBA and SPA (completed in December) 2. Establishment of a standalone fast-track consenting regime and changes to the freshwater management (currently underway) 3. Repeal RMA and replacement with a new statute this parliamentary term (detail yet to be worked out).
	D2	<p>Fast-track consenting</p> <ul style="list-style-type: none"> Rawiri – acknowledged fast-track can have some benefits but also presents a risk to their people and rohe. Government is committed to upholding settlements -- the Crown can’t change settlements unilaterally and any amendment must be by agreement. This requires meaningful engagement with Ngāti Toa. Rawiri – not so much changing settlement as policy changes – e.g. an activity previously prohibited is now allowed like a marina in Porirua harbour. Fast-tracked. Can be interpreted as adversely impacting settlement. Who makes that assessment? Ben – to be frank, haven’t yet sorted out that level of detail in fast-track regime. Next phase of decisions and keen to talk about it.



	<ul style="list-style-type: none">• Rawiri concerned the opportunity for Ngāti Toa to work with the government will pass due to timeframes. Concerned about future processes such as claims under Takutai Moana Act?• Arron explain that the FTC bill is proposed for introduction by 7 March – 4 weeks away. Building the rocket as it flies. Cabinet has agreed the broad outline of the regime. Understand following introduction it will be referred to select committee that will be a 4-6 month process with enactment around September – October.• The new system is modelled on the COVID Fast Track legislation, key differences/similarities include:<ul style="list-style-type: none">- Approvals under other statutes to be included – e.g. Pouhere Taonga Act, Conservation Act, Wildlife Act, Reserves Act. Also discussions in relation to including Public Works Act and EEZ Environmental Effects Act.- Expert panels will set conditions but have very limited ability to decline applications.- Open to any project that meets regional/national significance test.- No activities specifically omitted – housing, infrastructure, aquaculture, resource extraction all within scope- Proposal to include listed projects in the Bill that are automatically referred to an expert panel.- Transport, Infrastructure, Regional Development are relevant ministers.- Carry over panel composition, limited appeal rights from Covid fast-track.- EPA likely to be secretariat for panels. Looking at remuneration for panel members.• Rawiri and Ella noted it may be difficult to attract panel members given constraints being placed on role.• Rawiri – national dialogue is focused on Treaty principles bill/referendum. This stuff (fast track, freshwater) is likely to have much more impact. Govt being disingenuous.• Rawiri – agree cost being the main driver of resistance to ability to impose conditions. But greater cost without. Broader concept of “cost”. Adverse effects can be much more in long term. Gave example of the Waituhi fast-track project. Rawiri sat on panel. Rare to have a hearing. No ability to test information with experts. Limited ability to test with fellow panel members. Paper-
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	<p>based exercise. Limited ability to say no. Whole process disquieting. Things missed, things come back to bite you later.</p> <ul style="list-style-type: none">• Robert – proposal to take parts of other legislative processes eg Heritage into “one stop shop” undermines the integrity of those Acts. Will be litigated.• Rawiri – Ministers are being lazy and not undertaking rigorous policy analysis. Let’s just allow everyone to build, the RMA an inconvenience.• In response to being asked what advice officials were providing Ben noted he was contributing to advice on Treaty settlements and how an assessment will be made about impact o of a project on Treaty settlements. Also what kind of general Treaty protections should be in the legislation?• In terms of Treaty protections and the legislation it was noted:<ul style="list-style-type: none">- Uncertainty created by not including a Treaty clause as Courts will interpret the legislation in terms of the Treaty.- Redress negotiated in context of RMA. How will this upheld under the fast-track legislation if the protections of RMA does not apply?• Robert pointed out local authorities generally know who their iwi partners are, keep an eye out for them in consenting, plan-making, etc. When fast-track comes along, a central govt-led process, can make for a slower process as opens up the door to a longer list of iwi/hapū.• Ella expressed concern about the likelihood of the expert panel having the same amount of time to issue its report as they did under the COVID fast-track legislation.• Rawiri spoke about the importance of expert panels having deep cultural expertise to navigate complex issues about Māori rights and interests at place. Ella noted its hard to find such people and that they may not be willing to be on these panels.• Example of Grenada North subdivision -- went through fast track process but has ended up taking longer than it would have under a normal process.• Rawiri asked whether it is worth Ngāti Toa putting time and energy into providing feedback on this proposal. Ben responded officials would provide feedback to Ministers but that they have no control over whether Ministers will take the advice.• Rawiri – the drivers for the Covid fast-track and Canterbury earthquake recovery legislation were clear, they were also time-limited. Drivers not clear in this case, and it is permanent.
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- Ben noted MfE is working closely with Iwi Advisors to NICF and that this is a robust discussion traversing these issues.
- Robert – since 2014 Ngāti Toa settlement a lot of good intent to translate settlement into plans. All of them contain chapters/sections – not just SAs and other cultural redress instruments. The settlement has been “given legs” and this could be lost through projects in their rohe being dealt with under the fast-track legislation.
- Ben – we are grappling with these issues. Taking decisions away from planning process – how does that effect settlements, what safeguards need to be put into place?
- Rawiri – easy in iwi space to look at things through a deficit lens. How can we benefit while mitigating risks? We have always considered Treaty redress as a starting point – e.g. statutory acknowledgements do not give you anything more than what should be happening under the RMA anyway. But to Ngāti Toa they provide a platform to build off. We need to look at Treaty settlement redress and ask does it enable the outcomes and realise the original intent. Is there the opportunity to build on this? Don’t want what was agreed in 2014 in our settlement to be an anchor that holds us back.
- Ben – government is interested in iwi as developers and the opportunity the bill presents for them. Rawiri – some internal tensions around this between the development and Taiao kaupapa. Ngāti Toa developing their own housing/infrastructure -- not anti-development but this cannot be at the expense of the environment or communities.
- Rawiri – as soon as there is more information on FTC, want to have conversations in a timely manner. Who pays? It appears there will be a cost to Ngāti Toa to participate in the process. Will have to use settlement money if want to engage -- how to we justify this to our CE in light of other competing priorities. Ben noted that previously funding was available to support PSGE engagement on upholding settlements in the RM reforms but no funding is available at this stage.
- Rawiri -- you have confirmed my “presumption of chaos” – “I thought it was s*** and it’s been confirmed as s***”.
- Arron – can have another hui not next week but week after. Too late to input feedback but can let you know how things have developed. Ben will set up meeting – potentially online.



	D3	Out of scope
	D4	<p>Closing remarks</p> <ul style="list-style-type: none">• Rawiri noted the concerns that he had coming into the hui had been heightened. Ben noted the challenge was how can we make this mutually beneficial.



		<ul style="list-style-type: none">Robert noted that if key players including iwi aren't working together there could be a system breakdown that will not be pretty. Ben noted that in terms of legal risk the most material issue the Crown faces is the damage to the Māori Crown relationship resulting from any litigation.
Actions	A1	<ul style="list-style-type: none">Ben to set up further hui