

Supplementary Analysis Report: Ngāpuhi Investment Fund

Advising agencies	Te Arawhiti
Decision sought	Approach to investment fund and entity type to manage the fund
Proposing Ministers	Minister for Treaty of Waitangi Negotiations, Minister of Finance

Section 1: General information / Decisions already made

1.1 Purpose

Te Arawhiti has prepared this Supplementary Analysis Report (SAR) and is responsible for the analysis and advice set out in it, except as otherwise explicitly indicated. This has been produced for the purpose of fulfilling Cabinet’s impact analysis requirements.

Te Arawhiti and The Treasury agreed the scope of the SAR covers:

- analysis relating to the decision to establish an investment fund; and
- analysis relating to the approach to management of the fund.

1.2 Decisions already made, options that were ruled out of scope, and marginal impact

A decision was made early on to pursue an investment fund-type approach (decision one). The possibility of a direct transfer to Ngāpuhi or the establishment of a Ngāpuhi-run fund was considered and dismissed on the basis that there was no mandated entity for Ngāpuhi negotiations and so it was not possible to be sure that a transfer would in fact go to Ngāpuhi.

Decision one can be compared with taking no action. Taking no action is a low-risk low-return option, i.e. standard Crown proceeds of investment. This option has no direct costs and is low risk compared with establishing a fund. The disadvantages, compared with the option taken, is that it provides no improvement to the Crown’s position, and is not a public demonstration of government commitment to its relationship with Ngāpuhi.

Taking decision one necessitated a decision on an entity to hold and manage the fund (decision two). Decision two, therefore, cannot be compared with taking no action.

1.3 Key Limitations or Constraints on Analysis

Decision one was constrained by Ministers' early decisions. [REDACTED]

s.9(2)(j)

[REDACTED]

This initiative has been developed on the assumption that there will be value to the Crown and, ultimately, Ngāpuhi, over and above ultimately offering the equivalent of the cash as the predominant settlement redress. A partnership approach has not been taken to the design of the Fund because it is held by the Crown, seeded by Crown money and has Ministers as the shareholders. The risk of financial loss is borne by the Crown. While the Fund is intended to appeal to Ngāpuhi it will only belong to Ngāpuhi when a duly mandated entity or entities resolve to acquire the Fund as redress.

A range of possible fund-type approaches were considered as part of decision two. These are outlined below.

1.3 Responsible Manager (signature and date):

Tania Heyrick

Programme Director, Ngāpuhi Investment Fund Team

Te Arawhiti

15 December 2020

Quality Assurance Assessment:

Morgan Hodgson [TSY]

No Regulatory Impact Statement (RIS) accompanied this proposal when it was introduced to the Cabinet. Pursuant to the Cabinet's impact analysis requirements, Te Arawhiti has produced a Supplementary Analysis Report (SAR) for the proposal on establishing the Ngāpuhi Sovereign Fund. The joint panel including the Treasury, the Ministry of Justice and Te Arawhiti considers that the information and analysis summarised in the SAR partially meets the quality assurance requirements. There has been limited engagement with public and industry stakeholders on the establishment, design and implementation of the fund due to the commercially sensitive nature of the proposal.

Section 2: Problem definition and objectives

2.1 What is the current state within which action is proposed?

Ngāpuhi are the largest iwi grouping and their rohe covers an area characterised by significant economic and social deprivation.

[REDACTED] Remaining unsettled comes at a cost to Ngāpuhi in the form of missed opportunities to invest and grow settlement redress, provide greater support to their communities, and broaden and strengthen relationships with government agencies.

s.9(2)(g)(i)

[REDACTED]

s.9(2)(j)

Currently, ngā hapū o Ngāpuhi are developing mandate proposals so they can represent their groups in negotiations. Given the work ahead to enter negotiations, there is value in demonstrating the Crown’s commitment to developing attractive redress.

2.3 What is the policy problem or opportunity?

The Crown needed to overcome the lack of Crown-owned assets in Northland to form part of a Treaty settlement commercial redress package. Ministers decided to address this through an investment fund (the Fund), leading to the subsequent problem of a lack of existing appropriate structures to administer a fund.

The opportunity of decision one is to develop a diversified portfolio to offer to Ngāpuhi in negotiations, including by laying the groundwork for the potential expansion of the Ngāpuhi tribal footprint in its rohe through land-based investments.

The nature of the problem is such that it can only be addressed by Crown action.

Decision two addressed the lack of an obvious ‘home’ for an investment fund of this nature. The Fund has unique requirements, given it is intended to ultimately be part of redress for ngā hapu o Ngāpuhi, so the possible existing vehicles would either have had to change to take on a function relating to settlement and/or the objectives of the Fund would have been compromised. Analysis led to the recommendation of a bespoke management entity.

2.4 What do stakeholders think about the problem?

There has been a range of reactions from Ngāpuhi to the Ministerial announcement that a fund is in development. There has been some strong support. The main concern and criticism has been around the lack of Ngāpuhi ownership of the fund and the lack of engagement on its design.

The Minister for Treaty of Waitangi Negotiations and the Minister for Māori Development met with approximately 350 members of Ngāpuhi on 8 December 2019 at Waitangi. Some attendees at this meeting expressed broad support for the Fund and also expressed an expectation that it would be co-designed between Ngāpuhi and the Crown.

Treasury raised concerns about the proposal. Treasury advised the proposal does not constitute a good way of providing additional settlement value to Ngāpuhi, given costs may exceed the financial benefits, and it is unclear whether the non-financial benefits would be achieved.

Treasury further advised the proposals are also riskier than the conventional mechanism for increasing redress, given the potential for the fund to incur losses, with impacts on the operating balance and the Crown's net worth. Investment funds are suited to meeting long-term objectives so that fluctuations in market returns are smoothed out. It considers using an investment fund to meet potentially short-term objectives to be risky.

2.5 What are the objectives sought in relation to the identified problem?

The primary objective in relation to the lack of Crown-owned assets was to acquire a broader diversity of assets for the Crown to offer Ngāpuhi as financial and commercial redress than would otherwise be available. This, in turn, is intended to improve the chances of settlement with ngā hapū o Ngāpuhi (in the medium term) and signal the Crown's commitment to its relationship with Ngāpuhi (in the immediate term).

Related, additional objectives are to:

- grow financial value for Ngāpuhi;
- signal the value of settlement by making disbursements to Ngāpuhi uri with social development purposes, and disbursements for governance capability purposes; and
- demonstrate the positive potential of a well-resourced entity operating for the benefit of Ngāpuhi in ways similar to a post-settlement governance entity.

Additionally, the opportunity was identified to contribute to secondary objectives of stimulating economic development and supporting job creation in Northland.

The Fund is intended to develop a diverse portfolio of assets that is not usually available in settlements: a commercial investment portfolio and a commercially-viable asset banking portfolio.

Section 4: Impact Analysis

Decision one can be compared with taking no action. Taking no action is a low-risk low-return option. This option has no direct costs and is low risk compared with establishing a fund. The disadvantages, compared with the option taken, is that there is no opportunity for higher returns, and it is not a public demonstration of government commitment to its relationship with Ngāpuhi. It does not move the Crown towards achieving the objectives.

Decision one necessitates a decision on the fund structure, so decision two cannot be compared with doing nothing. Multi-criteria analysis for decision two is set out in Appendix One. The criteria considered were as follows, with the desired direction of each criteria noted against it:

Costs of establishing the chosen entity form: lower is better

Time taken to implement the chosen entity form: faster is better

Does the chosen entity form have clarity in its purpose: more clarity is better

The extent to which the chosen entity form can carry a commercial imperative: a more robust commercial imperative is better

The extent to which the chosen entity form can carry a public policy purpose: a clearly articulated public policy purpose is better

Ongoing operating costs of the chosen entity form: lower is better

Section 5: Conclusions

5.1 What option, or combination of options is likely to best address the problem, meet the policy objectives and deliver the highest net benefits?

Ministers decided on a preferred option (decision one) of an investment fund with both an 'asset-banking' portfolio and a 'commercial investment, post-settlement governance entity-type' portfolio. The preferred option for the entity (decision two) was for the fund to be governed and managed by a new Schedule 4A Crown company – reflecting mixed commercial and policy objectives – and fit for purpose.

It has the following advantages over other options:

- a. Schedule 4A companies are anticipated to have mixed commercial and policy objectives, and balance ministerial direction and independence;
- b. they are timely to establish as they only require an order-in-council for establishment, not primary legislation;
- c. they follow standard Crown entity reporting and accountability requirements; and
- d. it would allow for new, fit-for-purpose appointments to a dedicated governance board with a sole focus on the Fund.

A number of entity types that could hold and manage the Fund were assessed against six key criteria. Analysis of the options against these criteria is summarised in the table in Appendix One. It was considered whether an existing entity (e.g. New Zealand Superannuation Fund, Public Trustee, Māori Trustee), new trust, new statutory entity, new Crown company, or a government agency (e.g. Te Arawhiti, Treasury) was best placed to hold and manage the fund.

Using an existing statutory entity such as the New Zealand Superannuation Fund had some benefits. Such an entity could provide a strong investment track-record, could utilise existing board appointments with investment experience, and possibly provide some cost-savings through use of existing infrastructure and portfolio managers.

However, the acquisition of diverse assets for Treaty settlement purposes would be a new function for any of the Crown's investment management entities. This raised issues of compatibility with existing functions and the potential for the function to be outside the entity's areas of expertise. Adding this function to an existing entity would also require time-consuming legislation. It is also likely that such an entity would still need to bring in some additional expertise to support the full range of activities proposed for the Fund (e.g. buying and holding land).

Agency rating of evidence certainty

We have confidence that a Fund will improve the attractiveness of a commercial redress package, compared with no Fund. However, it is difficult to quantify the additional value above other options such as an alternative approach to diversify the commercial redress package or a different entity to manage an investment fund.

The current lack of mandated entities means it is not possible to be in any way definitive about the possible impact in negotiations. Notwithstanding that, our view is that, on

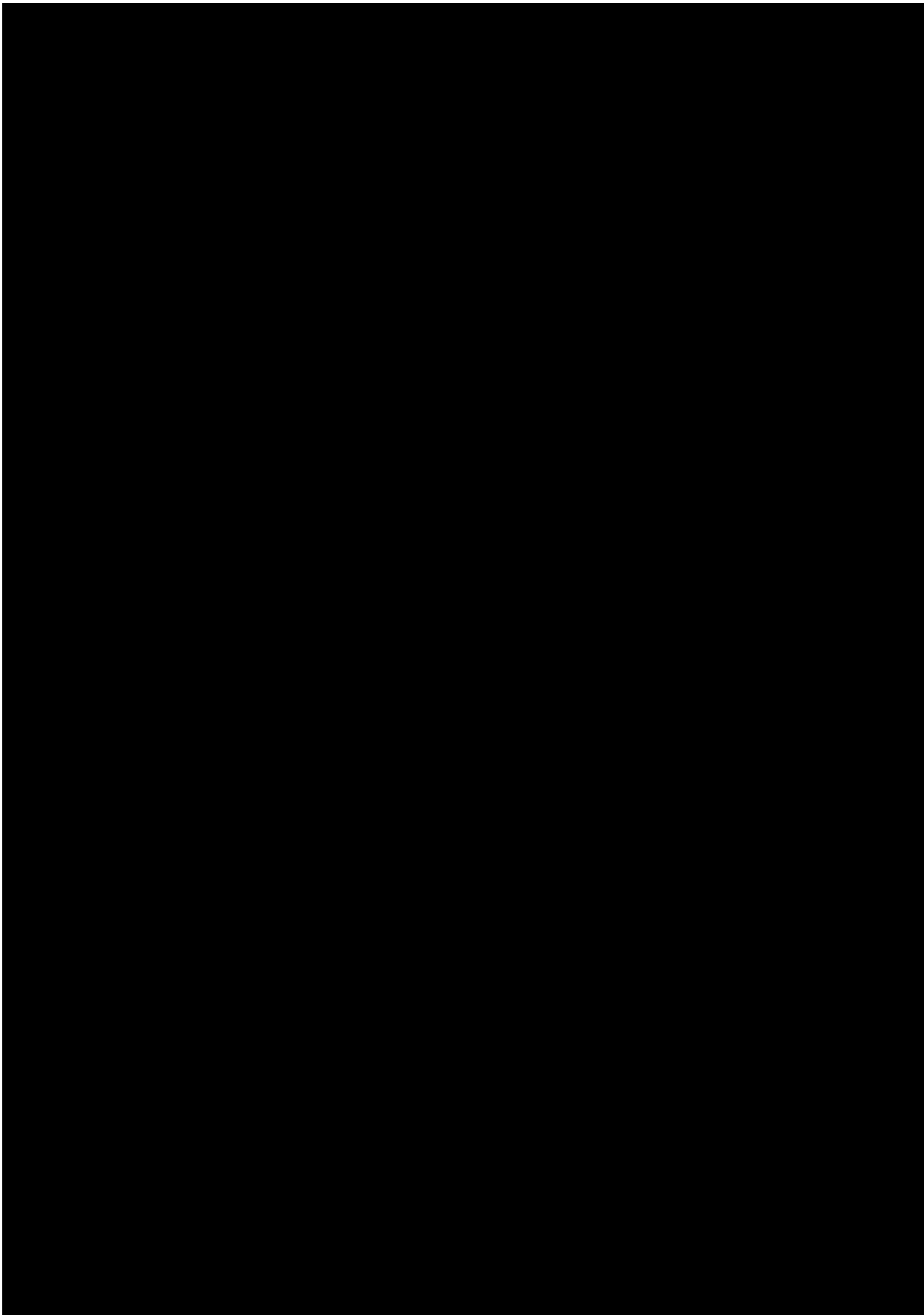
balance, this initiative is more likely to be viewed as a positive demonstration of the Crown's commitment to Ngāpuhi than not.

There is confidence in the evidence that past approaches to bring Ngāpuhi to the negotiating table have not been successful and that "more of the same" will also not be.

Who are the main expected beneficiaries and what is the nature of the expected benefit?

Ultimately, ngā uri o Ngāpuhi will be the beneficiaries. If the Fund is profitable, they will benefit from the possibility of a more varied and valuable commercial redress package in a Treaty settlement, than would otherwise be the case.

Prior to settlement, some of Ngāpuhi will benefit from disbursements from the Fund's proceeds. Some of the Fund's revenue will be disbursed to Ngāpuhi uri for social development purposes and to support governance capability (i.e. supporting the development of sound governance arrangements and the governance capability of leaders).



s.9(2)(f)
(iv)
and
s.9(2)(g)(i)

Section 6: Implementation and operation

6.1 How will the new arrangements work in practice?

A new Crown company has been established by an Order in Council to add the company to Schedule 4A of the Public Finance Act 1989. A board of directors has been appointed to govern the company.

Existing funding in the Treaty of Waitangi Negotiations Multi-Year Appropriation will be used for the investment fund.

Te Arawhiti will be the primary monitoring agency with support from The Treasury as the secondary monitor.

6.2 What are the implementation risks?

The most significant risk is that the Fund is not attractive to ngā hapū o Ngāpuhi as part of any commercial settlement redress, i.e. the intervention does not work. This may or may not be because it loses money or does not operate as a sound investment fund or could be for another reason. There is an underlying uncertainty about how positively Ngāpuhi uri will assess the Fund, once it is operational.

Given the company is intended to make investment decisions with a long-term horizon and the inherent volatility in the performance of investment-based funds, especially in the short-term, there is potential for negative returns in any particular year.

There is a risk that the benefits are not sufficient to outweigh the costs.

The risks are mitigated by taking a conservative approach to investment and seeking the most cost-effective way of administering the Fund. The risk of ongoing significant losses is low, should Ministers convey expectations of a relatively cautious approach and the avoidance of the riskiest asset classes, coupled with governance by those with the relevant expertise and experience that make decisions in line with Ministerial expectations.

The potential perception risk if the fund does not perform well is mitigated by the fact that any losses will be borne by the Crown and will not affect settlement quantum.

[REDACTED]
The mitigations are that the unique nature of Ngāpuhi negotiations justify a fund in this case and there are some precedents for these types of activities in the Crown’s preparation for settlement:

- assets are acquired and held by the Crown for use in future settlements for all iwi, even if no other iwi has had a dedicated fund for this purpose established by the Crown;
- the Crown provides accumulated rentals on Crown licensed forest land at settlement and this is not charged against quantum; and

- **[REDACTED]**

Further, there is a rationale for a novel approach, given the unique factors of the Ngāpuhi Crown relationship:

s.9(2)(g)(i)

s.9(2)(j)

- Ngāpuhi are the largest iwi grouping, and progress with them is a key Crown priority for Treaty negotiations – we need to innovate to get there;
- there is a lack of suitable Crown-owned land for use as commercial redress in the Northland region - therefore, the Fund seeks to acquire assets of interest for the purpose of redress;
- whilst Ngāpuhi remain unsettled, opportunities to purchase assets and potential gains are being lost.



s.92(g)(i)

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

Te Arawhiti, with support from Treasury, will monitor the company's performance against its objectives as set out in the company's constitution. Crown company accountability requirements will set the framework for the development of the company's reporting. This will include advising Shareholding Ministers on the company's performance and risk profile, including comments on the board's business plans.

Key performance indicators will be developed over the first six months of operations to support performance assessments. It will include assessing performance against various dimensions such as leadership, results, organisational performance, strategy, investment, and the company's alignment with its objectives.

7.2 When and how will the new arrangements be reviewed?

The Fund's performance will be reviewed after two years.

Regular Crown company accountability processes will provide opportunities for earlier review/response by Shareholding Ministers, if required. Shareholder expectations will be conveyed through annual letters of expectation, with more frequent letters if needed.

Appendix One – Entity form multi-criteria analysis

The table is coded in terms of the extent that each option aligns with the desired direction of each criteria.

Entity form	Establishment costs	Establishment time	Clarity of purpose	Commercial imperative	Public policy purpose	Running cost
Existing Entity (e.g. NZSF, public trustee, Maori trustee)	Moderate – opportunity to piggyback on entity’s existing infrastructure.	Long – requires legislative amendments to existing entity mandate.	Possibly confused or conflicted with existing purpose.	Strong if existing entity already has commercial function.	Would impact existing entity’s policy purpose.	Low - economies of scale with other investment activities.
New Trust	Low – Trust model requires significantly less set-up than a commercial-type model.	Short – only requires registration of the Trust.	Directly ties Fund benefit to Ngāpuhi beneficiaries and requires Fund to be held by trustees, not the Crown.	Moderated by obligations to beneficiaries.	Moderated by obligations to beneficiaries.	Moderate – standalone investment capability required and some back-end requirements.
New Statutory Entity	High – everything newly established.	Long – requires new legislation.	Clear from legislation.	Embedded in legislation.	Embedded in legislation.	Moderate – standalone investment capability required and some back-end requirements.
New Crown Company (Schedule 4A, Public Finance Act 1989)	Moderate – requires a full suite of establishment activities such as branding and accommodation although there is the possibility of sharing costs with a similar entity.	Moderate – requires Order-in-Council.	Crown writes constitution.	Dictated in constitution.	Explicit by inclusion on public-purpose company schedule.	Moderate - standalone investment capability required and some back-end requirements.
In-house management	Moderate – limited formal	Short – limited formal	Te Arawhiti would be conflicted as the agency	Low – commercial imperatives rarely carried	Te Arawhiti does not have fund	Low – limited investment activities require

<p>by Te Arawhiti</p>	<p>establishment activities.</p>	<p>establishment activities.</p>	<p>leading the negotiations for settlement with Ngāpuhi.</p>	<p>by departments.</p>	<p>management expertise.</p>	<p>reduced investment staff.</p>
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