

**Ngātiwai Trust Board**  
***Preliminary Analysis of PSGE Representative Models***

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## Summary

As part of the settlement process, the Ngātiwai Trust Board (NTB) must develop a proposal for a Post Settlement Governance Entity (PSGE) to receive and manage the settlement assets on behalf of the beneficiaries. Other iwi have established PSGEs using a wide range of electoral models (sometimes referred to as “representative models”), reflecting the varying attributes and circumstances of the iwi. Whatever model is adopted to elect trustees to the PSGE, the trustees must represent and act in the best interests of all beneficiaries of the settlement. Based on submissions made during the mandating process, discussion at the engagement hui, and other relevant inputs, factors that may influence the selection of an appropriate electoral model in order to establish a Ngātiwai PSGE include:

- A. Providing a voice for hapū and/or marae;
- B. The existence of overlapping claims;
- C. The separate settlement of claims by Ngāti Manuhiri and Ngāti Rehua – Ngātiwai ki Aotea;
- D. Consistency with Ngātiwai tikanga;
- E. The need for accountability and transparency;
- F. Compliance the Crown’s governance principles and 20 questions;
- G. The intended relationship between NTB and the PSGE;
- H. NTB’s existing statutory functions and status as a Mandated Iwi Organisation;
- I. The intended functions of the PSGE, including oceans governance; and
- J. Efficiency and cost of governance.

The five basic types of PSGE electoral model are based on:

- 1) Marae – i.e., members exercise their vote through their marae;
- 2) Hapū – i.e., members exercise their vote through their hapū;
- 3) Individuals – i.e., members exercise their votes as individuals;
- 4) Takiwā – i.e., members exercise their vote within geographical electorates;
- 5) Combination approaches – members have more than one vote (e.g., a marae vote and a hapū vote).

Within each model there are many potential variations. The Ngātiwai PSGE could in theory be based on any of these models – each has its own advantages and disadvantages and the final choice will depend on what best meets the aspirations of Ngātiwai members. Given the range of possible variations and elaborations on PSGE structures, it is recommended that discussion start from the basic models before working down to more detailed design elements. Once a preferred electoral model has been selected, templates for detailed operating provisions can be obtained from other similar PSGEs.

## Introduction

2. The Ngātiwai Trust Board (NTB) is seeking a mandate from Iwi members to enter into direct negotiations with the Crown on the settlement of historical Treaty claims. As part of the settlement process NTB will be required to develop a proposal for a Post Settlement Governance Entity (PSGE) to receive and manage the settlement assets on behalf of the beneficiaries. The NTB is a charitable entity and, as such, is not eligible to receive settlement assets. The settlement process therefore provides an

opportunity to establish a PSGE that meets the needs of the Ngātiwai claimant community and reflects Crown requirements.

3. One of the main issues to consider when developing a proposal for a PSGE is the representative structure – i.e., how the trustees who will sit on the PSGE board will be elected. Throughout the mandating process NTB has made it clear that Ngātiwai’s current marae-based electoral process does not predetermine the best representational arrangement for Ngātiwai in a post-settlement environment. Other iwi who have received settlement assets have established PSGEs with representation derived from voting based on marae, hapū, takiwā, individuals, or combinations of these approaches. The different PSGE electoral models reflect the varying populations, structures, interests, politics and aspirations of individual iwi.
4. Ngātiwai members began providing input to the design of a PSGE during the mandating process, including through submissions on the Deed of Mandate (DoM) and discussion at NTB’s engagement hui. NTB has undertaken to hold further discussions, including a wānanga, on options for the PSGE. A final proposal for a PSGE will then be presented to Ngātiwai members for ratification at the same time as a settlement offer from the Crown is presented for approval and ratification.
5. In the meantime, NTB wishes to obtain an understanding of the range of potential electoral models for the PSGE and the advantages and disadvantages of each, with specific reference to the issues raised by the Ngātiwai community during the mandating process. This report:
  - 1) Briefly explains what a PSGE is;
  - 2) Distils the main issues relevant to the design of a PSGE that were raised during the mandating process;
  - 3) Identifies other considerations relevant to the design of a PSGE for Ngātiwai;
  - 4) Summarises the range of PSGE electoral models that have been adopted by other iwi; and
  - 5) Analyses the advantages and disadvantages of each PSGE electoral model with respect to the specific issues facing Ngātiwai.

## What is a PSGE?

6. A PSGE is not a traditional Māori structure – it is a relatively new type of entity established under a set of Crown requirements for a very specific purpose. That purpose is to hold and manage the settlement redress transferred to the claimant group under the Deed of Settlement. The Crown will not complete settlement until a PSGE has been legally established and ratified by the claimant group.<sup>1</sup> A PSGE therefore has to meet the specified Crown requirements, as well as reflecting the needs of the claimant community. Although the first-established PSGEs have now been in place for some years, the understanding among iwi and the Crown about how PSGEs should be structured is still evolving and developing. Ngātiwai is therefore in a position to benefit from the lessons learnt elsewhere.

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<sup>1</sup> Crown Forest Rental Trust (2007). Aratohu Mō Ngā Rōpū Kaitono. Guide for Claimants Negotiating Treaty Settlements. Page 253

### ***Crown principles***

7. The Crown's requirements are prescribed in a set of "governance principles" and are intended to ensure that the PSGE:
  - adequately **represents** all members of the claimant group;
  - has **transparent** decision-making and dispute resolution procedures;
  - is fully **accountable** to the whole claimant group; and
  - provides that the beneficiaries of the settlement and the beneficiaries of the PSGE are identical when settlement assets are transferred from the Crown to claimant group.
  
8. In order to be representative of the claimant community (the Crown's first principle) the trustees of the PSGE must be elected in a democratic process by the community that the PSGE represents. It is the structure of this electoral process that is the main subject of this paper. However, it is important to note that once elected, the primary role of each of the trustees is to represent and act in the best interests of all the beneficiaries of the settlement. A trustee, like the PSGE as a whole, is therefore representative of all the beneficiaries. When the word "representative" or "representative model" is used in this paper, it is used in the sense of "representative of the Ngātiwai community as a whole", rather than representative of a marae or hapū or other grouping within Ngātiwai.
  
9. In addition to representing the iwi in a democratic sense, the PSGE needs to be able to:
  - function as a commercial business – i.e., to receive and manage settlement assets as a platform for future development of the iwi;
  - deliver services and other benefits to iwi members, including by making decisions about the distribution of benefits; and
  - work closely with central and local government to fulfil the roles set out in the settlement, including through protocols and statutory acknowledgements with Crown agencies.

### ***Legal form of the PSGE***

10. Over the years the Crown has recognised various types of entities as PSGEs. However, in more recent settlements the most common PSGE structure has a **private trust** as the parent body, with subsidiary trusts or companies set up underneath it to manage the settlement assets – typically a commercial arm (company) to manage the asset base, and a charitable arm (incorporated charitable trust) to deliver services to iwi members (see Figure 1).
  
11. A private trust is sometimes referred to as an unincorporated trust or common law trust. The key feature of any trust – whether a private "family" trust, or a trust with charitable status such as the NTB or some other community-based trust – is that the people appointed to be the legal owners of the trust's property (i.e., the trustees) have a special duty to hold and manage that property for the benefit of others.<sup>2</sup> In the case of a trust that is a PSGE, the trustees are obliged to act in the interests of all the

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<sup>2</sup> Community Law (New Zealand) website. <http://communitylaw.org.nz/community-law-manual/chapter-3-community-organisations-and-the-law/choosing-the-right-legal-structure-for-your-group-chapter-3/>

beneficiaries of the settlement. This is one of the reasons why private trusts are favoured as PSGE structures – i.e., the common law requirement for the trustees to act in the interests of the trust’s beneficiaries mirrors the Crown’s requirement for the PSGE to be representative of the beneficiaries of the settlement.

### 1: A simple PSGE structure



12. In addition to enabling accountability to beneficiaries (through the appointment of trustees), private trusts also offer flexibility of purpose and activities, and the ability to reflect the tikanga of the group.<sup>3</sup> The Crown considers that private trusts are acceptable governance entities, provided the trust rules or trust deed satisfies the Crown’s governance principles and 20 questions (as discussed below).<sup>4</sup> The Crown has developed a template private trust deed that complies with the Crown’s governance requirements for claimant groups to use, if they choose, to develop a PSGE.<sup>5</sup>
13. There are certain types of governance entities that the Crown will not accept as a PSGE, including charitable trusts, companies, incorporated societies and Māori trust boards established under the Māori Trust Boards Act 1955.<sup>6</sup> The Crown no longer supports the establishment of a PSGE as a statutory body (as was the case, for example, when Te Rūnanga o Ngāi Tahu was established by the Te Rūnanga o Ngāi Tahu Act 1996). If Ngātiwai favours a statutory body for a PSGE, then private legislation would be required in order to establish it. However, establishing a PSGE using private legislation is a time consuming, costly and uncertain process, especially if Crown support is lacking.

<sup>3</sup> BERL, December 2007. Functions and Costs of operating a Post-Settlement Governance Entity. Report to Crown Forest Rental Trust.

<sup>4</sup> Post Settlement Governance Entities: A Guide. Office of Treaty Settlements.

<sup>5</sup> See <http://www.ots.govt.nz/>

<sup>6</sup> Post Settlement Governance Entities: A Guide. Office of Treaty Settlements.

### ***Separation of governance from asset management***

14. The separation of governance of the parent entity from management of the assets, as shown in Figure 1, is crucial for the effective management of settlement assets and is common to all PSGE structures. This separation allows the right skills to be focused on the right tasks. Typically the trustees who are elected to govern the parent body are experienced at political representation and do not necessarily have the business experience essential for the effective management of the commercial settlement assets. A separate commercial arm enables the PSGE trustees to appoint company directors with the necessary mix of skills and experience.
15. The careful specification of functions and responsibilities across different components of the PSGE structure is an important aspect of designing an effective PSGE. In particular, the relationship between the corporate entity and the PSGE needs careful consideration with respect to objectives, powers, reporting and management support.<sup>7</sup>

### **PSGE issues raised in submissions and at engagement hui**

16. The DoM describes the PSGE only in very general terms and notes that a detailed proposal cannot be developed until mandate is obtained. For this reason, submitters and participants in engagement hui seldom commented directly on the PSGE, other than to note the (inevitable) lack of detail on what it might look like. However, submitters' comments on the current representational structures for Ngātiwai and the proposed structures and processes for the negotiations enable some underlying issues about representation and governance to be identified. Based on submissions and discussion at engagement hui, the following matters should be considered when developing a PSGE for Ngātiwai.

#### ***A. Providing a voice for hapū and/or marae***

17. A small but significant number of submitters seek a stronger voice for hapū in the Ngātiwai representative structure. Reasons provided for this view include a preference for a "traditional hapū driven" approach, the current lack of hapū input to NTB, and concerns about the current marae-based representation process in the NTB Trust Deed. While these comments relate to the current NTB structure rather than the PSGE, the sentiment expressed by this group of submitters is likely to be similar in relation to the PSGE.
18. The preference of some submitters for hapū-based representation may also reflect:
  - The separate settlement processes that the Crown has embarked upon with Ngātiwai hapū:
    - Ngāti Manuhiri, whose claims are now settled; and
    - Ngāti Rehua – Ngātiwai ki Aotea, whose claims are in the process of being settled; and
  - The desire of several other Ngātiwai hapū to similarly pursue separate hapū-based settlements directly with the Crown – i.e., Te Patuharakeke, Te Kapotai, and Te Waiariki / Ngāti Kororā / Ngāti Takapari.<sup>8</sup>

<sup>7</sup> More detailed discussion of these matters is included in a paper by Damian Stone (Bell Gully). What Happens after Treaty Settlements? June 2009.

<sup>8</sup> The Crown has indicated that it is prepared to negotiate only with Large Natural Groupings.

19. Balancing the desire of some submitters for a hapū-based structure, submissions in support of NTB's mandate implicitly support the appropriateness of NTB's current marae-based representative structure, at least for the purposes of direct negotiation with the Crown.
20. While the NTB DoM lists 13 hapū, only four submissions from hapū were received,<sup>9</sup> suggesting that only a small proportion of the listed hapū may currently have an internal leadership structure sufficient to claim a representative mandate for their hapū. This assumption is confirmed in the Hapū Response Report prepared by NTB for the Office of Treaty Settlements, which found that many Ngātiwai hapū are represented primarily through their associated marae rather than through formal hapū organisations.<sup>10</sup> In comparison, seven of the 13 marae listed in the DoM provided submissions on behalf of the marae.<sup>11</sup>
21. When considering demands for a stronger hapū or marae voice on the PSGE it is important to recall that trustees on the PSGE do not and cannot represent their hapū or marae. Instead, the PSGE trustees have a responsibility to represent the interests of all the beneficiaries of the settlement. Therefore, the primary way in which a hapū or marae is able to influence the representation on the PSGE is through the nomination or endorsement of candidates, irrespective of the electoral model adopted.

### ***B. Overlapping claims***

22. Included within the Ngātiwai DoM are claims which are also listed in the mandates of adjacent iwi or large natural groupings (LNGs), leading some submitters to argue that they prefer their claims to be pursued as part of other LNGs. NTB has made it clear throughout the mandating process that overlapping claims will only be settled by NTB to the extent that they relate to Ngātiwai tūpuna. Given the extent of overlapping claims within Ngātiwai's Area of Interest, it is possible that the settlement may include collective redress with other iwi. The Crown advises that if this were to eventuate, any consequences may need to be taken into account in the design of the PSGE.<sup>12</sup>
23. The settlement of the claims of various iwi related to the Waikato and Waipa rivers provides an example of how overlapping claims may be settled using collective redress across the relevant iwi.

### ***C. Ngātiwai hapū involved in separate settlements***

24. Ngāti Manuhiri and Ngāti Rehua – Ngātiwai ki Aotea are Ngātiwai hapū but are excluded from the DoM to the extent that their claims have been prosecuted or are in the process of being prosecuted by the Ngāti Manuhiri Settlement Trust and Ngāti Rēhua – Ngātiwai ki Aotea Trust. These two hapū will nevertheless need to be involved in discussions on the development of a PSGE for Ngātiwai because:

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<sup>9</sup> The four hapū submissions were from Te Whanau a Rangihakaahu Hapu Trust (in support of the DoM), Patuharakeke Te Iwi Trust Board (oppose) and legal representatives for Te Kapotai (oppose) and for Te Waiariki/Ngati Korora/Takapari (oppose).

<sup>10</sup> Ngātiwai Trust Board Deed of Mandate. Hapū Response Report – Draft. July 2015.

<sup>11</sup> Tūparehuia, Ngaiotonga, Otetao, Oākura, Matapōuri, Ngunguru, Pataua

<sup>12</sup> Post Settlement Governance Entities. A Guide. Office of Treaty Settlements

- marae associated with the two hapū (Omaha, Motairehe and Kawa) are part of the current NTB representative structure, and therefore any changes to the NTB structure will affect Ngāti Manuhiri and Ngāti Rehua – Ngātiwai ki Aotea;<sup>13</sup> and
- Ngātiwai members who affiliate to Ngāti Manuhiri and Ngāti Rehua – Ngātiwai ki Aotea are entitled to benefit from the Ngātiwai fisheries settlement through the NTB's status as a Mandated Iwi Organisation (MIO) under the Maori Fisheries Act 2004.

25. Although the claims of Ngāti Manuhiri and Ngāti Rehua – Ngātiwai ki Aotea have been or are in the process of being settled, Ngātiwai members who affiliate with the two hapū and trace their ancestry back to common Ngātiwai tūpuna named in the DoM are also entitled to benefit from the wider Ngātiwai settlement. This may give rise to tensions when designing representation on the PSGE. In particular, the inclusion of Ngāti Manuhiri and Ngāti Rehua – Ngātiwai ki Aotea within the PSGE electoral processes may lead to perceptions of “double dipping” from other claimant groups included in NTB's DoM. On the other hand, if Ngāti Manuhiri and Ngāti Rehua – Ngātiwai ki Aotea are not included in the PSGE electoral structure, then the PSGE may not be fully representative of the beneficiaries of the settlement. This tension will need to be resolved through careful consideration within the Ngātiwai community.

#### ***D. Consistency with Ngātiwai tikanga***

26. During the mandating process some submitters requested the inclusion of kaumātua in the supporting structures to provide oversight, direction and guidance. In response to these submissions, NTB expanded the role of the kaumātua group to provide advice, particularly on matters of tikanga, during the negotiations.
27. Provision for kaumātua input will continue to be a relevant consideration in the development of a PSGE proposal. It is not uncommon for a PSGE to appoint a kaumātua committee to validate applications for membership and provide advice on matters of tikanga, management of cultural redress sites, and dispute resolution. The NTB already has a similar role established in its Trust Deed for the Roopu Kaumātua Kuia.

#### ***E. Accountability and transparency***

28. Dissatisfaction with aspects of NTB's historical performance was noted at engagement hui and by some submitters, particularly in relation to issues of communication, accountability and transparency. In response to these concerns, NTB has already put in place a number of initiatives, including increased communication and a review of the NTB Trust Deed.
29. Accountability and transparency are important attributes of PSGE performance irrespective of the electoral model adopted, and are usually addressed in the decision-making processes of the proposed PSGE – for example, through provision in the trust deed for AGMs, annual reports, annual and five year business plans.

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<sup>13</sup> This issue was raised directly in a submission from Ngāti Rehua – Ngātiwai ki Aotea



## Other design considerations

30. In addition to the matters raised in submissions and at engagement hui, a number of other considerations will influence the selection of an appropriate representative model for the Ngātiwai PSGE.

### ***F. The Crown's governance principles and 20 questions***

31. The Crown's governance principles for PSGEs focus on representation, transparency and accountability. Although the principles are general in nature, a list of 20 questions requires claimant groups to satisfy the Crown that the PSGE complies with the principles at a much finer level of detail. In practice, these questions will be addressed by developing specific text in the constitution or deed of the proposed PSGE, once the basic PSGE structure has been determined. At this early stage, however, the focus is primarily on the first principle – i.e., to develop a PSGE that adequately represents all members of the Ngātiwai claimant group.
32. The Crown's three questions on representation are:
- *How can the beneficiaries of the settlement participate in the affairs of the PSGE?*  
Who are the beneficiaries of the settlement? Are all beneficiaries entitled to register as members? What are the benefits of registration? Are there any registration requirements? How will eligibility for registration be verified? Who makes decisions on registration and how are those decisions made? Can those decisions be appealed and, if so, how?
  - *How do members have a say in who the representatives on the PSGE will be?*  
How many representatives will there be on the PSGE? Who can be a representative? Are they chosen on iwi, marae, hapū, whānau or other group basis? How will they be chosen? How do members know when an election is due? How do members exercise their vote?
  - *How often and how will the representatives change?*  
What is the term of office for a representative? Under what circumstances (if any) can a representative be removed?

### ***G. Relationship between NTB and the PSGE***

33. A key question for Ngātiwai is what will happen to the NTB once the PSGE is established. The main options are:
- a) The PSGE replaces NTB and the assets and existing functions of NTB are transferred to the PSGE;
  - b) NTB and the PSGE run in parallel; or
  - c) The PSGE is established within the existing NTB structure.
34. Many iwi have found it more efficient to run a single governance entity with merged assets (option a), but this is only possible if the current beneficiaries of NTB are identical to the beneficiaries of the settlement. If the PSGE is designed to effectively represent all Ngātiwai, including those members who affiliate to the two hapū which are involved in separate settlements with the Crown, then a single merged governance entity would be an efficient option.

35. However, if the PSGE does not represent all Ngātiwai, then it cannot replace NTB or take over NTB's current assets and statutory roles (as discussed below). In this case, NTB would continue to sit alongside the PSGE (i.e., option b). An iwi which has adopted this approach is Ngāti Apa ki te Rā Tō, which has two representative bodies – Ngāti Apa ki Te Rā Tō Trust (a charitable trust and MIO) and Ngāti Apa ki Te Rā Tō Post Settlement Trust (a private trust and PSGE).
36. Option c) is illustrated by Ngāti Toa Rangatira, which has established a new trust to hold the settlement assets, with the existing iwi governance entity as the trustee. This allows the settlement to be held separately and meet Crown requirements, but still within the existing tribal structure.

#### ***H. NTB's existing statutory functions and status as a MIO***

37. If the PSGE replaces the NTB as in option a) above, the NTB's existing statutory functions will need to be transferred to the PSGE, including NTB's status as a MIO under the Maori Fisheries Act, an Iwi Aquaculture Organisation under the Maori Commercial Aquaculture Claims Settlement Act 2004, and an iwi authority for the purposes of the Resource Management Act 1991. Typically, fisheries assets can be included within a PSGE structure by transferring the MIO status from the current entity to the PSGE, with the Fisheries Asset Holding Company included as part of the commercial arm of the PSGE structure.
38. If the Ngātiwai PSGE is also intended to be a MIO, then:
- The PSGE must represent all Ngātiwai members, including those who affiliate to Ngāti Manuhiri and Ngāti Rehua – Ngātiwai ki Aotea; and
  - The PSGE constitutional documents (e.g., the trust deed) must comply with the “Kaupapa Applying to Constitutional Documents of Mandated Iwi Organisations” set out in Schedule 7 of the Maori Fisheries Act (for example, all adult members of an iwi must have the opportunity, at intervals not exceeding three years, to elect the trustees).
39. Te Ohu Kaimoana has prescribed a process for transferring MIO status and fisheries assets to a PSGE. The following steps, which are based on the requirements of sections 18A to 18G of the Maori Fisheries Act, apply:
- NTB provides proposed constitutional documents for the new PSGE to Te Ohu to assess against the requirements of the Maori Fisheries Act and, if the documents comply, Te Ohu provides written approval;
  - NTB notifies the ratification vote for the PSGE;
  - NTB holds a vote among adult members to ratify the PSGE constitutional documents and the proposal to transfer MIO status and fisheries settlement assets to the PSGE. Te Ohu must be satisfied that a voting threshold of 75% approval from those voting has been achieved; and
  - NTB provides Te Ohu with a proposed transfer date within 15 months of the ratification. Prior to the transfer date, Te Ohu authorises the transfer of fisheries settlement assets and income

shares to the Asset Holding Company. On the transfer date, Te Ohu recognises the PSGE as the MIO for Ngātiwai in place of the NTB.

### ***I. Form follows function***

40. The design of the PSGE should be strongly influenced by its anticipated functions. As noted above, the PSGE needs to function as a business, represent the iwi, and work closely with central and local government. While the existing businesses and functions of NTB provide an effective starting point, consideration should also be given to the design of a PSGE that is well matched to:
- The anticipated redress, including size of settlement and components of settlement. Redress typically includes cash, commercial properties, cultural properties, as well as protocols and statutory acknowledgements concerning the ongoing relationship between the Crown and the PSGE. However, Ngātiwai also has a unique focus on the marine environment and, to the extent settlement redress may include ocean governance, this is a matter to consider in the design of the PSGE; and
  - Ngātiwai’s vision for the future and priorities.

### ***J. Efficiency and cost of governance***

41. Efficiency is an important consideration in the design of a PSGE because if the cost of governance consumes a large proportion of the income generated by the settlement, there will be little room for future iwi growth. According to research undertaken for the Crown Forest Rental Trust (CFRT), for many iwi, governance costs consume up to one third of their annual income.<sup>14</sup> Although not the only factor, the size of the PSGE in relation to the size of the iwi and the anticipated settlement has an important bearing on the cost of governance. CFRT’s researchers suggested an “ideal” PSGE board should be 5-8 trustees although it is not clear on what basis this advice is provided. Certainly a smaller board may be more efficient but it may not suit the particular circumstances and structure of the iwi.
42. Iwi of similar population size to Ngātiwai<sup>15</sup> who have established PSGEs have board sizes ranging from 8 to 16 trustees. However, the sizes of these boards reflect the number of marae (for those who have adopted a marae-based electoral process – e.g., Rongowhakaata) or the number of hapū (for those who have adopted a hapū-based electoral process – e.g., Ngāti Ruanui) rather than being driven by a notionally efficient PSGE size.

## **Range of potential PSGE electoral models**

43. A PSGE must be representative of all members of the claimant group. In practice, this means that all adult registered members must have an opportunity to vote for the representatives (i.e., the trustees) on the PSGE. The different electoral models for PSGEs reflect the different ways in which individual members may exercise their vote.

<sup>14</sup> BERL, December 2007. Functions and Costs of Operating a Post-Settlement Governance Entity. Report to Crown Forest Rental Trust.

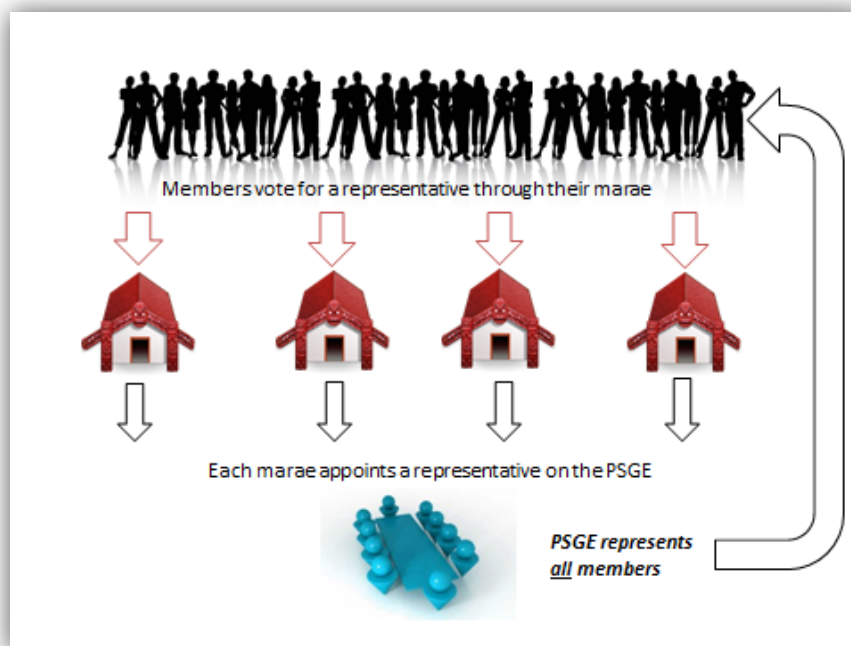
<sup>15</sup> Based on the nominal iwi populations recorded in the Maori Fisheries Act

44. Five basic types of electoral model have been adopted by other iwi when establishing a PSGE, based on:
- 1) Marae – i.e., members exercise their vote through their marae;
  - 2) Hapū – i.e., members exercise their vote through their hapū;
  - 3) Individuals – i.e., members exercise their votes as individuals;
  - 4) Takiwā – i.e., members exercise their vote within geographical electorates;
  - 5) Combination approaches – members have more than one vote (e.g., a marae vote and a hapū vote).
45. Within each model there are many variations. The five models are described in more detail below, with examples from other iwi. In this discussion, where the word “representative” is used, it means a PSGE trustee who represents the beneficiaries of the settlement, rather than a representative of a marae or hapū or other grouping.

### ***Marae-based electoral models***

46. Under a marae-based model, each marae elects one or more representatives to the PSGE board (Figure 2).

#### **2: Marae-based PSGE**



47. Iwi with marae-based PSGEs include:

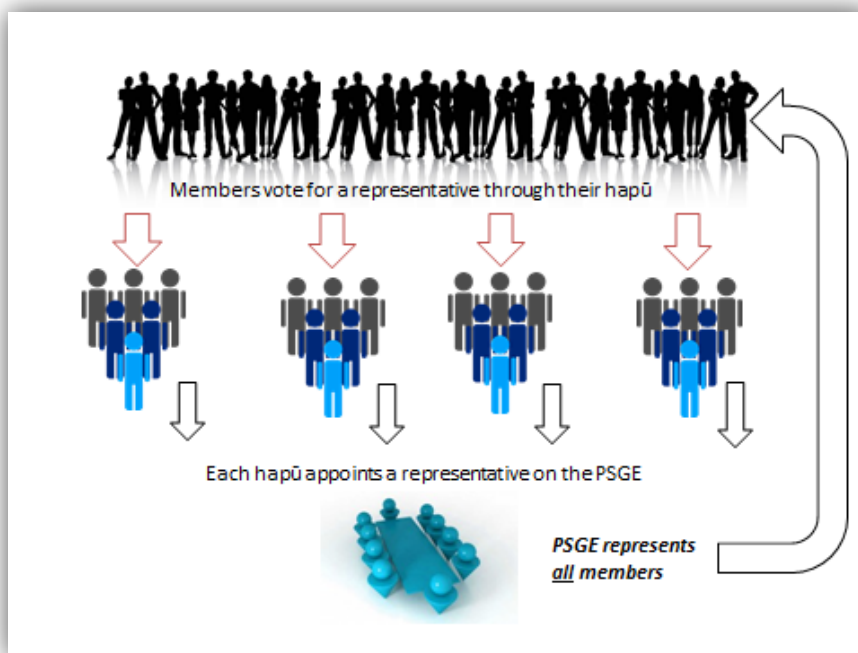
- Rongowhakaata – ten representatives, two elected by each of five marae;
- Ngāi Takoto – eight representatives, two elected by each of four marae; and

- Waikato-Tainui – 205 representatives, three elected by each of 68 marae plus one appointed Kaahui Ariki representative. Following a recent review, Waikato-Tainui has decided to reduce the number of representatives from each marae from three to two.

### ***Hapū-based electoral models***

48. Under the simplest version of a hapū-based model, each hapū elects one or more representatives to the PSGE board (Figure 3).

#### **3: Hapū-based PSGE**



49. Variations on the model include:

- Hapū are grouped into clusters and each cluster elects a representative (for a smaller board); or
- Hapū each elect different numbers of representatives, depending on the population of the hapū.

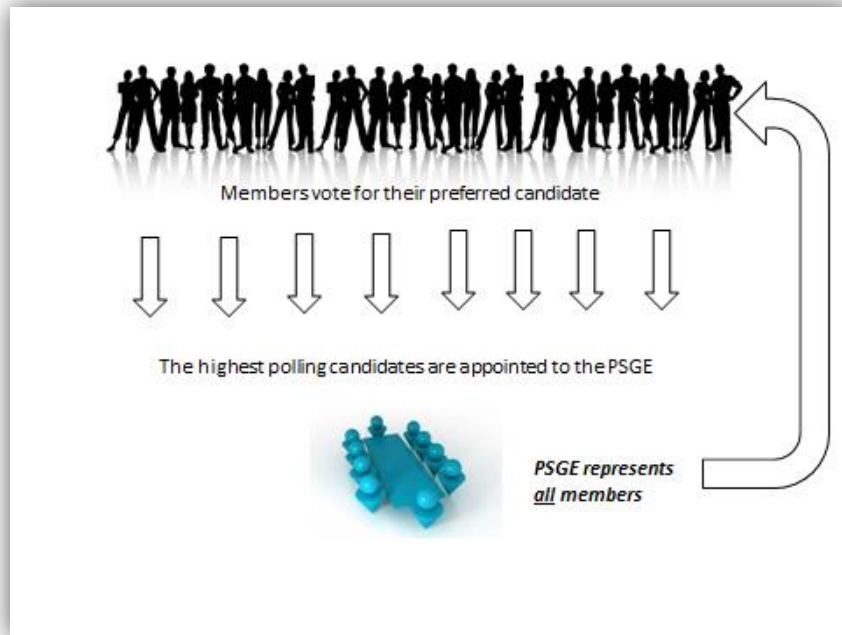
50. Iwi with hapū-based PSGEs include:

- Ngāti Awa – 23 representatives, one elected by each hapū;
- Ngāti Ruanui – 16 representatives, one elected by each hapū;
- Ngāti Apa – eight representatives, two elected by each of four hapū clusters;
- Te Arawa – 15 representatives, nine iwi/hapū each elect one representative and two iwi/hapū each elect three representatives.

### ***Individual electoral models***

51. Under this model, iwi members are not divided up into electoral sub-groups such as marae or hapū. Instead, each registered adult member is able to vote for the candidate of their choice from an iwi-wide pool of candidates (Figure 4).

#### **4: Individual voting PSGE**



52. There are several different options for obtaining nominations for candidates, as follows:
- Candidates are self-nominated;
  - Candidates are self-nominated but require endorsement from a specified number of members;
  - Candidates are nominated by or endorsed by marae or hapū (but once nominated, are elected by the full registered iwi membership).
53. It is also possible to adjust the voting rules so as to ensure, or at least encourage, a spread of elected representatives on a marae or hapū or geographical basis (depending on which is preferred). For example, if a spread of representatives across hapū is desired, then:<sup>16</sup>
- Candidates are nominated by or require endorsement from hapū and, preferably the pool of candidates includes at least one nominee from each hapū;
  - Each iwi member has one vote and is able to vote for any candidate;
  - The highest polling nominee of each hapū fills one of the specified number of trustee positions. If a hapū has no nominees, the position is filled by the overall next highest polling nominee.

<sup>16</sup> Model described in more detail in advice provided to Ngātiwai Treaty Claims Manager from Toko Kapea, email of 24 April 2015

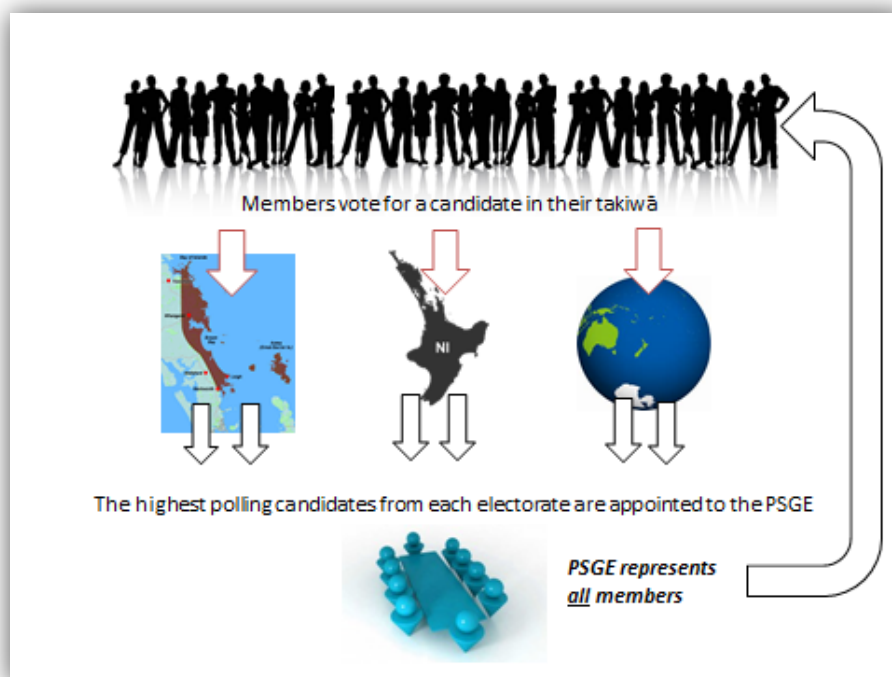
54. Examples of groups with PSGEs based on individual voting include:

- Taranaki Iwi – seven representatives elected by the iwi members;
- Ngāti Manuhiri – three representatives elected by the iwi members; and
- Ngāti Apa ki te Rā Tō – three representatives elected by the iwi members, comprising two who are the highest polling candidates from each of Ngāti Apa’s two hapū, and one who is the next highest polling candidate.

### ***Takiwā-based electoral models***

55. With a takiwā-based model, voting occurs in electorates which are geographically defined (Figure 5).

#### **5: Takiwā-based PSGE**

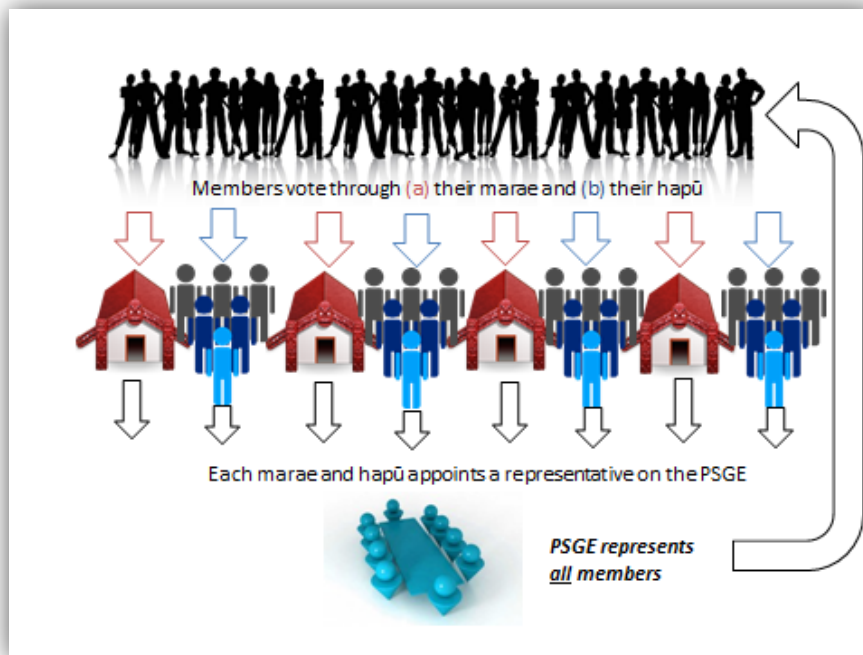


56. Although this is not a widely adopted model for PSGEs, there are a few existing takiwā-based electoral processes. For example, Ngāti Kuri members are divided into three electorates – the rohe of Ngāti Kuri, Muriwhenua and General (i.e., elsewhere) – based on their primary place of residence. Each candidate must be endorsed by at least three registered members from the electorate they will be standing in. Three representatives are elected by registered members residing in the Ngāti Kuri electorate, three by members residing in the Muriwhenua electorate and five by members residing in the general electorate.

### ***Combination electoral models***

57. Combination or hybrid PSGE electoral models combine more than one form of voting, meaning that voters can exercise more than one vote (Figure 6).

### 5: Combination model (e.g. marae and hapū)



58. Several iwi have adopted more complex hybrid systems to elect representatives on their PSGE. For example:

- Raukawa has up to 26 representatives, with representation based on a combination of marae and hapū clusters. Each of the 16 marae elects one representative and up to 10 representatives may be elected based on hapū rohe clusters (three clusters with differing allocations of hapū representatives, based on population); and
- Ngāti Toa has 16 representatives, as follows:
  - six members elected individually by registered adult members,
  - six marae representatives elected by members affiliated to the four Ngāti Toa marae (two marae elect two representatives each and two marae elect one representative each); and
  - one kaumātua, one kuia and two young persons elected individually by registered adult members.

### Analysis of electoral options for Ngātiwai

59. This section of the report describes how each of the five PSGE electoral models might be applied in a Ngātiwai setting, and analyses the advantages and disadvantages of each model for Ngātiwai. The design considerations identified earlier in this report (“issues A – J”) are referred to where relevant. Some of the identified design considerations are met (or are capable of being met) by all five PSGE models, and are therefore not commented on further in this analysis – i.e., all five electoral models:



- result in a PSGE that should be suitable for governing any shared redress that may be provided for overlapping claims (issue B);
- are potentially capable of being implemented in a manner that is consistent with Ngātiwai tikanga, depending on the text of the trust deed (issue D);
- allow for measures to be put in place in the trust deed to ensure that the PSGE is accountable and transparent in its operations (issue E);
- are capable of complying with the Crown’s principles and 20 questions, depending on the text of the trust deed (issue F); and
- are capable of functioning in relation to the anticipated components of the settlement, including any oceans governance component (issue I).

60. The analysis is only a starting point and is intended to be built upon through further discussion among Ngātiwai members.

### ***Ngātiwai marae-based PSGE***

61. A simple marae-based PSGE electoral model would reflect the current representative basis of the NTB, which has been in place for nearly 40 years. It would result in a PSGE with a board comprising 14 trustees, one appointed by each of the 14 Ngātiwai marae. The marae would each appoint a trustee in accordance with the result of an election among the adult registered members affiliated to that marae.
62. Currently the NTB administers election processes for each marae. The PSGE could continue to administer elections on behalf of marae or, alternatively, the details of the election process could be specified in the PSGE’s trust deed but administered directly at marae level. The appropriate administrative arrangement is likely to be influenced by questions of consistency, cost and administrative capacity.
63. For Ngātiwai, potential benefits of a marae-based electoral model include:
- Reflects NTB’s current electoral process (i.e., familiarity for members);
  - Good information about affiliation of registered members to marae;
  - Ease of transition / lower cost of implementation than other models (because the marae affiliation of Ngātiwai members for voting purposes is already known);
64. The main disadvantages of the marae-based model are:
- May be perceived as a continuation of the *status quo*;
  - Unlikely to satisfy those who want a “stronger voice for hapū” within Ngātiwai structures; and
  - There will still be a need to review marae voting and appointment procedures to address concerns identified in the current review of the NTB Trust Deed.
65. In terms of the design considerations identified earlier in this report, the trustees elected as a result of a marae-based electoral process do not “represent” their marae. However, a marae-based electoral

model can “give a voice” to marae if candidates are required to be endorsed by a marae prior to being eligible for election or, in the case of successful candidates, prior to being appointed to the PSGE (**issue A**).

66. Because all Ngātiwai marae are included in the DoM, a marae-based model is potentially able to represent all Ngātiwai, including those members affiliated with hapū who have already settled or are in the process of settling separately with the Crown (**issue C**). For this reason, it would be a relatively simple matter for a PSGE elected on a marae basis to replace the NTB and take over management of NTB’s assets and statutory functions, including NTB’s status as a MIO (**issues G & H**).
67. A marae-based PSGE would result in a board with 14 members, which is perhaps somewhat larger than is necessary for an efficient governance entity, but not exceptional in terms of PSGEs for other iwi of similar size (**issue J**). If a smaller board were desired, marae could be grouped into clusters, with each cluster responsible for the election and appointment of a trustee. There is a precedent in clustering of Ngātiwai marae in the allocation of research funding to three marae clusters.

### ***Ngātiwai hapū-based PSGE***

68. A hapū-based electoral process would provide Ngātiwai with a PSGE of either 13 or 15 representatives, depending on whether Ngāti Manuhiri and Ngāti Rehua – Ngātiwai ki Aotea are included. Each hapū would appoint a trustee in accordance with the result of an election process among the adult registered members affiliated to that hapū. As with a marae-based model, the administration of the elections could be undertaken centrally by the PSGE or the details of the election process could be specified in the PSGE’s trust deed but administered directly at hapū level.
69. Potential benefits of a hapū-based electoral model for Ngātiwai include:
- Satisfies calls from some Ngātiwai members for a stronger hapū voice; and
  - Signals a fresh approach post-settlement.
70. The disadvantages include:
- Not all Ngātiwai hapū currently have internal leadership structures and sufficient capacity to elect representatives to the PSGE – therefore, members of hapū that are less well organised may lack effective representation on the PSGE (particularly if administration of elections is delegated to hapū level);
  - Relatively poor information about hapū affiliations of Ngātiwai members (although this is being rectified by NTB); and
  - The status of Ngāti Manuhiri and Ngāti Rehua – Ngātiwai ki Aotea in relation to the PSGE will need to be explicitly addressed.
71. In terms of the identified design considerations, trustees elected as a result of a hapū-based electoral process do not “represent” their hapū on the PSGE (**issue A**). However, a hapū-based electoral model can “give a voice” to hapū if candidates are required to be endorsed by a hapū prior to being eligible for election or, in the case of successful candidates, prior to being appointed to the PSGE.

72. The relationship with hapū who have already settled or are in the process of settling separately with the Crown may be more challenging to resolve if a hapū-based representative model is adopted (**issue C**). As a consequence, care will need to be exercised to ensure the Crown's principles are complied with, particularly the principle that requires that the beneficiaries of the settlement and the beneficiaries of the PSGE are identical (**issue F**). Depending on how this matter is resolved, a PSGE elected on a hapū basis could either:

- Be established alongside the NTB, with the NTB retaining its existing assets and statutory functions, including its status as a MIO; or
- Take over the functions and assets of the NTB, provided all Ngātiwai hapū are included in the PSGE (**issues G & H**).

73. A hapū-based PSGE would result in a board with 13 or 15 members, which – like the marae-based model – is larger than is necessary for an efficient governance entity, but not exceptional in terms of PSGEs for other iwi of similar size (**issue J**). If a smaller board was desired, hapū could be grouped into clusters, with each cluster responsible for the election of a trustee.

#### ***Ngātiwai individual voting PSGE***

74. Under the simplest form of an individual electoral model, each registered adult member would vote for the candidate of their choice from a pool of candidates. As discussed above, there are many ways in which this basic model can be fine-tuned if desired. For example, candidates could be required to obtain endorsements from a Ngātiwai marae or hapū (or both). PSGEs based on individual voting tend to be smaller than marae or hapū-based models, so Ngātiwai could realistically aim for a PSGE board of around 5 – 8 representatives.

75. The potential benefits of an individual voting model for Ngātiwai include:

- Simple and clear;
- More “democratic” than other models in that every vote is of equal weight in determining board composition. However, this is only true if the highest polling candidates are elected. If the voting rules are adjusted to obtain a spread of representatives across hapū or on some other preferential basis, then the model becomes less democratic;
- Best opportunity to secure candidates with appropriate skills (because candidates must make their case for election to all voters);
- Signals a fresh approach post-settlement;
- Flexible, in that it can be tailored to provide a stronger marae or hapū influence in the nomination or endorsement of candidates, if desired; and
- Operational efficiency from having a smaller board that is not driven by the number of marae or hapū.

76. The main disadvantages are:

- The risk of disproportionate representation affiliated with particular marae or hapū, reflecting disproportionate voting power of particular groupings. Further analysis of Ngātiwai population distribution by hapū and marae would be required in order to confirm whether this is a significant risk. In any case, disproportionate voting power can be reduced by tailoring the candidate nomination and/or appointment rules to encourage a spread of candidates, as discussed in the examples earlier in this report; and
- Members may feel less connected to the trustees (and therefore, not as directly represented by the trustees) if they are not familiar with the candidates in a marae or hapū setting.

77. In terms of the identified design considerations, candidate nomination rules may enable hapū and/or marae influence through requirements for candidate endorsement (**issue A**).
78. As each Ngātiwai member has one vote, an individual voting model is able to represent all Ngātiwai, including those members affiliated with hapū involved in separate settlements with the Crown (**issue C**). It would therefore be feasible for a PSGE of this type to replace the existing NTB structure and take over management of NTB’s assets and statutory functions, including NTB’s status as a MIO (**issues G & H**).
79. An individual voting model enables the “ideal” size of the PSGE board to be determined based on its functions and costs of governance. This is likely to result in a smaller board than would be required under a marae or hapū-based electoral model (**issue J**).

### ***Ngātiwai takiwā-based PSGE***

80. If Ngātiwai were to adopt a takiwā-based electoral model similar to that of Ngāti Kuri, the electorates could be, for example:
- Ngātiwai: members residing within the Ngātiwai boundaries;
  - Northland: members residing elsewhere in Northland; and
  - General: members residing elsewhere.
81. Alternatively, the Ngātiwai rohe could be divided into a set number of geographical electorates, with members residing outside of the rohe forming an additional electorate.
82. The number of candidates to be elected from each electorate would be determined following an analysis of Ngātiwai population distribution across the identified electorates. Voters in each electorate would have one vote each, resulting in the election of the specified number of candidates from each takiwā. As in the individual voting model, the total number of trustees would most likely be around 5 – 8.
83. The potential advantages of a takiwā-based model for Ngātiwai include:
- It signals a change from the *status quo*;
  - Operational efficiency from having a smaller board that is not driven by the number of marae or hapū;

- Depending on how the electorates are defined, it may be an effective mechanism to encourage the participation in the PSGE of Ngātiwai members who do not live within the rohe.

84. However, a takiwā model is unlikely to offer specific advantages over and above those of an individual voting model unless an iwi is very large, or has a unique population distribution that needs to be built into the representational design. The disadvantage of the takiwā model is therefore that it lacks both the simplicity of individual voting and the familiarity of marae or hapū-based electoral models.
85. In terms of the identified design considerations, marae or hapū influence can be provided, if desired thorough requirements for endorsement of takiwā candidates by marae or hapū (**issue A**). Consideration would need to be given to electorate boundaries that accommodate the identified issues arising from the pre-existing settlement between the Crown and two Ngātiwai hapū (**issues C, G & H**).
86. As with the individual voting model, a takiwā model enables the “ideal” size of the PSGE board to be determined based on its functions and costs of governance. This is likely to result in a smaller board than would be required under a marae or hapū-based model (**issue J**).

### ***Ngātiwai combination PSGE***

87. There are many potential combination models that could be envisaged for Ngātiwai, including:
- A marae / hapū combination, whereby 14 representatives are elected on a marae basis and a further specified number of members are elected by hapū clusters. For example, three hapū clusters could be established, each of which elects two representatives, providing a total board of 20. Each member would have two votes, one exercised via their marae and one via their hapū cluster; or
  - A marae / individual voting combination, whereby 14 representatives are elected by marae and six further members are elected by individual voting from a pool of candidates. (As a variation on this model, the pool candidates could be required to obtain endorsement from a Ngātiwai hapū.) Each member would have two votes – one exercised via their marae and one which could be exercised to vote for any other candidate – providing a board of 20.
88. The main advantages of combination models are that they can be a way of reconciling conflicting electoral models (e.g., marae-based and hapū-based elections can both be accommodated). However, some of the disadvantages of combination models include:
- Complexity;
  - Likely to result in larger PSGEs with a higher cost of governance, unless some form of clustering is undertaken; and
  - Reflect some of the disadvantages of their component parts (e.g., if there is a concern about Ngātiwai hapū internal structure and capacity, then this will persist in a combination model).
89. For Ngātiwai, the specific advantages and disadvantages and the consequences in terms of the identified design considerations, will depend on the specific design attributes of the combination model adopted.

## Conclusions

90. The Ngātiwai PSGE could in theory be based any of the electoral models outlined above. Each of the models has its own advantages and disadvantages and the final choice will depend on what best meets the aspirations of Ngātiwai members.
91. If the existing marae-based electoral model works well for Ngātiwai there may be no compelling reason to change it, although the establishment of the PSGE could provide an opportunity to fine-tune some of the process steps for selecting representatives at a marae level. If, on the other hand, there is a groundswell for changing the representation basis of Ngātiwai, a hapū-based electoral model is a seemingly obvious alternative. However, the establishment of a PSGE based on voting at hapū level would require additional steps to be taken including:
- Collection of accurate information on the hapū affiliation of registered members for voting purposes; and
  - Explicit consideration of the status of Ngāti Manuhiri and Ngāti Rehua – Ngātiwai ki Aotea within the PSGE.
92. Individual voting is likely to be less challenging to implement than a hapū-based electoral model as it can more easily represent Ngātiwai members affiliated with hapū involved in separate settlements with the Crown. Either individual voting or a takiwā approach may also be capable of bridging the gap between competing support for marae-based and hapū-based electoral models.
93. Iwi developing PSGE proposals are advised to “keep it simple” as complex PSGE models often just add to the costs of establishing and operating the PSGE without necessarily improving the quality of representation.
94. Given the range of possible variations and elaborations on PSGE electoral models, it is recommended that discussion start from the basic models (i.e., marae, hapū, individual etc) before working down to more detailed design elements. Once a preferred model has been selected, templates for detailed operating provisions can be obtained from other similar PSGEs.