



**Ngātiwai Trust Board Deed of Mandate
Further analysis of process and outputs to date**

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Introduction

Context

1. The Ngātiwai Trust Board (NTB) has sought a mandate from Iwi members to enter into direct negotiations with the Crown for the settlement of all remaining historical Treaty claims of Ngātiwai. As part of the mandating process, NTB wishes to obtain a thorough understanding, based on independent analysis, of any issues raised by Iwi members in relation to the Deed of Mandate. To that end, in 2013 and 2014 NTB commissioned the following two independent reports:
 - **Ngātiwai Trust Board Mandate Strategy. Assessment of process and analysis of submissions** (14 October 2013, amended 20 June 2014). This report summarises submissions received on the NTB Mandate Strategy; and
 - **Ngātiwai Trust Board Deed of Mandate. Independent Analysis of Submissions** (7 November 2014). This report summarises submissions received on the NTB Deed of Mandate, identifies key issues and themes, and evaluates how NTB addressed the issues raised.
2. Since the Independent Analysis of Submissions (**IAS**) was prepared, further information relevant to NTB's Deed of Mandate has become available as a consequence of:
 - late submissions on the NTB Deed of Mandate received after the closing date of 6 September 2014 and therefore not included in the IAS; and
 - NTB's *Communications and Engagement Plan from December 2014 to March 2015*, which sets out a course of action for NTB to engage and communicate with the Ngātiwai community on a range of matters related to the mandate and negotiation process.
3. NTB has now commissioned further independent analysis of the new information.

Purpose and structure of this report

4. The purpose of the current report is to build on the IAS by summarising and analysing the new information pertinent to the NTB Deed of Mandate. Specifically, the report:
 - Summarises the main issues raised by Ngātiwai members;
 - Analyses how NTB has addressed the issues; and
 - Identifies any new issues raised by Ngātiwai members, including any procedural concerns or substantive issues.
5. The report covers all new material received from Ngātiwai members or prepared by NTB in the period from the closing date for submissions on the Deed of Mandate (6 September 2014) to the current time (mid May 2015). The further analysis does not repeat matters addressed in the IAS, except to the extent this is necessary in order to place new material in context or understand any new issues raised.
6. The report is in three sections, as follows:

- (1) **Issues raised in submissions** – summarises the main issues raised in the late submissions and outlines how NTB has addressed the identified issues;
- (2) **Issues raised at engagement hui** – summarises the main issues arising from NTB’s engagement hui and outlines how NTB has addressed the identified issues; and
- (3) **Conclusions** – evaluates the current state of engagement between NTB and the Ngātiwai community and identifies the main issues arising since the IAS was prepared.

(1) Issues raised in submissions

Background

7. Twenty seven submissions on the Deed of Mandate were received after the closing date of 6 September 2014. On the submission index prepared by the Office of Treaty Settlements (OTS), these submissions are identified as number **243** (a video submission) and numbers **244 to 269** (written submissions).¹ The 26 written submissions support NTB’s Deed of Mandate and the video submission opposes it.
8. A further submission (not included in the OTS index) was received by NTB in March 2015. The submitter retracts his support for any letter or statement that he signed or made opposing the NTB mandate. This submitter supported NTB’s mandate in an earlier submission (**162**), so his retraction of any opposition to the mandate does not alter the overall level of support or raise any new issues.

Submissions in support

9. Of the 26 written submissions, three are brief email statements of support (**252, 253, 255**), three are original letters (**249, 250, 251**) and the remaining twenty use NTB’s submission form. Of those submitters who use the submission form, eight also add comments of their own.
10. Where the submissions include reasons for supporting NTB’s mandate, these reasons are similar to those identified in other submissions summarised in the IAS. Submitters consider that NTB is the appropriate organisation to act in the best interests of Ngātiwai (**249, 262**) and that NTB’s procedures have kept submitters informed throughout the mandate process (**250, 264**). Two submitters mention a general desire for unity and self-determination of Ngātiwai (**250, 269**) and one comments that the Deed of Mandate is appropriate in terms of whakapapa, tribal rohe and history (**251**).
11. Most of the submissions are from individuals, although some are made on behalf of other family members (**250, 251, 261, 262**) – for example, submitter **251** speaks also for his ten adult children, 31 adult grandchildren and seven great grandchildren. All 26 submitters state that they are Ngātiwai members, although this has not been independently verified by the reviewer.
12. Two submissions – from the chairman of Pataua marae (**268**) and the Otetao marae trustees (**266**) – are clearly made on behalf of marae. A further four submitters identify that they hold positions of responsibility for their marae (**256, 263, 264, 267**) although it is not clear whether their submissions are

¹ Submissions 1-233 (written submissions), 234 (petition) and 235-242 (video submissions) are summarised and analysed in the Independent Analysis of Submissions dated 7 November 2014.

made on behalf of the marae or the individual author. Other marae identified in the late submissions are Otetao (five submitters), Oākura (four submitters), Matapōuri (three submitters), and Omaha, Motairehe and Mōkau marae (one submitter each). The inclusion of the late submissions provides a different picture of the level of support at marae level for the NTB Deed of Mandate from the picture at the time the IAS was prepared. For example, the IAS recorded that all eight submitters who identified with Otetao marae opposed the Deed of Mandate, whereas among the late submitters, all six from Otetao marae (including the marae committee), support NTB's mandate. A table analysing all written submissions by marae is included in **Appendix 1** and updates Table 1 in the IAS.

13. Most of the submitters do not identify their hapū, but the three who do each list their affiliations to Te Whānau ā Rangiwahakaahu, Te Aki Tai, and Ngāti Toki ki-te-moana and one also affiliates to Te Kapotai, Ngāti Takapari, and Te Waiariki.²
14. Submitter **254** is a named claimant for WAI 511 and WAI 1711 and submitter **256** is a named claimant for WAI 1786. These two submissions confirm the assumed support for the inclusion of WAI 511, 1711 and 1786 within the NTB Deed of Mandate that was noted in the IAS.

Submissions in opposition

15. The single video submission (**243**) received after the closing date opposes the NTB Deed of Mandate. The submitter mentions her affiliation to Whananaki and states that her mother is a named claimant for WAI 156.
16. The video outlines an extensive list of concerns about the NTB Deed of Mandate, the main points of which relate to:
 - **Inadequate claimant definition** – the submitter disputes the inclusion of tūpuna Eruana Maki and other tūpuna who are said to be imposters;
 - **Submitter's concerns have not been heard**– specifically, the submitter's comments at information hui were not noted or addressed and she did not have the opportunity to present her concerns, insufficient information was provided with the mandate strategy, and submissions were disregarded;
 - **Lack of clarity about the scope and process for negotiations** – for example, the submitter was told by NTB that WAI 156 would be withdrawn from the mandate (and so did not attend meetings) but WAI 156 was subsequently included in the mandate. NTB's position on the possibility of a parallel process (i.e., Waitangi Tribunal and direct negotiations) is questioned;
 - **Concerns about NTB's history, governance and operations** – the submitter disputes NTB's description of how and when NTB was formed. She is concerned about a lack of transparency and accountability in the governance and operation of the Trust and says she has received no benefits from NTB. She outlines problems with the NTB tribal register. She is unclear where the money the Trust has spent on achieving a mandate has gone and discusses her concerns about lack of access to research funded by the Trust. The submitter questions the representativeness of the marae-based structure and states that NTB needs to review the Trust Deed before taking

² These three submitters also identify Ngāti Rehua, which is not included in the NTB Deed of Mandate.

any further steps on the mandate. However, she is critical of NTB's recent process for reviewing the Trust Deed; and

- **Independent reviewer not qualified** – the submitter questions whether the reviewer is qualified to understand submitters' concerns, and states that the reviewer was a former colleague of the Treaty Claims Manager and did not speak to claimants or submitters.³

How NTB has addressed issues raised in the video submission

17. The issues raised in the late video submission provide additional detail, but cover the same general themes as those raised by other submitters. These themes have been summarised, together with an outline of how NTB has addressed the issues, in the IAS. Rather than repeating that analysis here, the reader is referred to the IAS, particularly the discussion of:

- Theme D: Past processes undertaken by NTB in seeking a mandate (IAS paragraphs 43 to 50);
- Theme E: NTB structure and performance (IAS paragraphs 51 to 53); and
- Theme F: Crown policy (IAS paragraphs 54 to 55).

18. Representatives of the NTB met with the submitter on 17 March 2015 to allow a sharing of perspectives on the content of the submission. NTB's responses to issues raised at this meeting and other engagement hui are summarised below. NTB also provided written responses to questions posed by this submitter about financial and structural changes to NTB and administration of Treaty claims.⁴

(2) Issues raised at engagement hui

Background

19. NTB's Communications and Engagement Plan (13 December 2014) outlines the actions that NTB planned to take over the period December 2014 to March 2015 in order to help achieve a mandate to negotiate directly with the Crown. The Plan was prepared in response to concerns raised by Ngātiwai members in submissions and at hui about a lack of communication and engagement between NTB and the claimant community. After discussions with OTS and the Minister for Treaty of Waitangi Negotiations, NTB decided to develop the Communications and Engagement Plan to enable it to engage more fully with Ngātiwai members.

20. The Communications and Engagement Plan outlines NTB's overall approach to engagement based on the principles of Te Kotahitanga, Te Aroha, Te Whakapono, Te Rangimarie and Te Tumanako. The emphasis is on an open door policy and *kanohi ki te kanohi* dialogue in addition to iwi-wide hui. The Plan contains five engagement objectives and four communications objectives.

³ In the interests of transparency it should be noted that I have never been a colleague of NTB Treaty Claims Manager Tania McPherson although we have worked on similar issues, including aspects of the fisheries settlement, for many years. I have been actively involved in various Treaty claims settlement processes dating back to the early 1990s. In order to maintain an independent perspective, I have relied solely on publicly available documentation and have not discussed my analysis with claimants, submitters or with the NTB Board members or employees.

⁴ Letter from Jim Smillie, NTB to Rowan Tautari (7 April 2015) *Re: Financial and Structural Changes to Ngātiwai Trust Board*, in response to letter from Rowan Tautari (16 February 2015).

21. The focus of the analysis below is on issues identified by Ngātiwai members as a result of the implementation of **Objective 1**, which is to:

Engage with the following people or groups:

- *Individual kaumātua or groups of kaumātua;*
- *Individual WAI claimants or groups of WAI claimants and key submitters;*
- *Representatives of whānau, hapū, marae and other local groups.*

22. To implement Objective 1, NTB organised a series of engagement hui between the Treaty Claims Committee and individuals or small groups. The hui were held during the period from late November 2014 to the end of March 2015. The summary of issues below is based on the minutes of the hui, which were recorded by NTB and subsequently supplied to the hui participants, OTS and the reviewer. Following the opportunity for feedback and incorporation of any changes, the minutes were formally signed off.⁵ For ease of reference, each engagement hui is referred to using an index number (in bold type) assigned to the hui schedule, as set out in **Appendix 2**. The minutes of hui with one participant are confidential (**5/8**), at the request of the participant and are not included in the summary below.

Main issues arising at engagement hui

23. The issues discussed at the engagement hui are similar to those raised in the submissions and summarised in the IAS. The main issues of general relevance to the Deed of Mandate are:

- The need for more communication and engagement between NTB and various groups within the Ngātiwai community (**1, 3, 4, 6, 12, 16, 17**);
- The historic and current performance of NTB (**1, 3, 6, 12/19, 13, 16, 18**), including:
 - financial accountability;
 - privacy of vote counting;
 - distribution of benefits from other settlements or arrangements (sand royalties, fisheries revenue);
 - a view that NTB is dominated by pakeha rules and “too corporate”; and
 - the review of the Trust Deed;
- A desire among some members to be represented through hapū rather than marae (**2, 9, 12, 16, 17**);⁶
- Fixing problems with the NTB register and the distribution of voting packs (**3, 7, 17**);
- Discussion of alternative approaches to settlement including full Waitangi Tribunal process, direct negotiations and a parallel process (i.e., Tribunal hearings followed by direct negotiation) (**1, 2, 3, 15, 16, 17**); and
- What the Post Settlement Governance Entity (PSGE) will look like (**2, 3, 4, 16**).

⁵ One hui participant (engagement hui (**16**)) subsequently communicated to NTB that she was not happy with the notes of the meeting she attended and would forward a separate account in due course. That account was not received in time to include in this summary.

⁶ A similar view was expressed by representatives of Te Patuharakeke at a meeting with OTS in April (NTB was not present but meeting notes were made available to NTB).

24. In addition to these general issues, hui participants also discussed matters specific to their own claim, hapū, or whānau, including values, whakapapa and land ownership (**10, 11, 13**). Progress was made on clarifying some of the overlapping claims, notably:

- WAI 2022 (Motukokako Ahu Whenua Trust) claimants noted that Patu Keha are not Ngātiwai but agreed that some Motukokako beneficiaries have tūpuna who are Ngātiwai. The participants concluded that they will take the issue back to the Motukokako Trust beneficiaries and hapū for discussion (**10**);
- A group of Ngātiwai ki Whangaruru claimants have been presenting their claims at Waitangi Tribunal hearings in the Te Paparahi o Te Raki inquiry alongside Ngāpuhi claimants. The group is accessing funds through the Whāngarei collective Te Manamotuhake ā rohe o Whāngarei which would no longer be available if NTB gains a mandate. The claimants are therefore willing to engage with NTB over access to funding and research (**15**); and
- A claimant for WAI 532 (not included in the NTB mandate) discussed the possibility of partnering with NTB because of difficulties he had experienced with the Ngāti Manuhiri Settlement Trust (**11**). NTB representatives expressed a desire to be inclusive, and potential mechanisms for engagement were subsequently discussed in correspondence between the claimant and NTB. NTB indicated an interest in further dialogue on matters specific to the Deed of Mandate but, in the end, the claimant preferred to deal directly with OTS.⁷

25. Several of the WAI claimants emphasised the importance of their claims being heard by the Waitangi Tribunal (**1, 2, 15, 16, 19**), but there was also an openness from some to considering a parallel process involving both hearings and direct negotiation, for example:

- WAI 1954 claimants stated that they would be happy to have the claim heard at the Tribunal in February 2015 and then move on to direct negotiations (**1**);
- Claimants for WAI 1961 and WAI 1973 are also appearing at a Tribunal hearing, but would be prepared to consider a parallel process – *“one that allows two to walk side by side, but not to over-run the rights of the other and affect the other claim”* (**2**); and
- Claimants for WAI 1544 and WAI 1677 will be heard in February 2016 and want to wait for a Tribunal report, but are prepared to *“come together with the Trust Board to discuss and brainstorm what a parallel process... means to us”* (**15**).

26. Less opportunity for common ground was apparent at some of the other hui, as follows:

- WAI 156 claimants reiterated a desire to progress their own claims (**16**);
- Another hui participant (**13**) sent a follow-up letter to NTB stating that *“the people of the Mahurangi coastline do not recognise a Ngātiwai claim or Ngātiwai mana in this area. There is no valid overlapping Treaty claim to Mahurangi.”* Other correspondence from this submitter

⁷ Email correspondence between NTB Treaty Claims Manager Tania McPherson and April 2015.

supports this statement with extensive references to Native Land Court investigations for Mangatawhiri, Tawharanui and Pakiri;⁸

- At a hui organised by OTS (with NTB representatives in attendance) several speakers from Te Waiariki, Ngāti Takapari and Ngāti Korora reiterated the thrust of their submissions that Te Waiariki is not Ngātiwai and that they would seek to protect Te Waiariki's lands through the courts if need be. However, some speakers at this hui expressed an alternative view supportive of NTB's mandate, based on common ancestry of Te Waiariki and Ngātiwai (**14**); and
- At a hui organised by OTS at which NTB was not present, representatives of Te Patuharakeke acknowledged their links to Ngātiwai, Ngāti Whātua and Ngāpuhi but expressed a desire to negotiate their own claims directly with the Crown (WAI 745, 1308, 1392, and 1512). Crown representatives stated that the Crown will not negotiate a separate Patuharakeke settlement.

27. The prior settlement of Ngāti Manuhiri's claim to Hauturu and the implications of this for other Ngātiwai claims was commented on at a number of hui (**4, 11, 13, 16, 18, 19**). Some members expressed concern that Hauturu had been "given away" and others commented that they wanted the same opportunity as Ngāti Manuhiri to settle separately. NTB explained that the Ngāti Manuhiri settlement was part of the Tamaki collective and did not extinguish all Ngātiwai rights to Hauturu.

28. Specific suggestions for procedural or structural changes to settlement processes were made at some of the hui, including:

- Follow the Tuhoronuku model (i.e., establish a negotiating entity controlled by hapū and independent of NTB) (**1**);
- Mechanisms for involving rangatahi (defined as 18 to 50 years) and kaumātua in the settlement process (**3**);
- Provision of financial support or access to funding for claimants (**2, 15, 16**);
- Dedicated hearing time for Ngātiwai at the Tribunal hearings (**15**); and
- Inclusion of claimants on the Treaty Claims Committee (**15, 18**).

How NTB has addressed issues raised at the engagement hui

29. Much of the discussion at the engagement hui covered issues and themes that submitters had already raised in their submissions. The IAS evaluated how NTB had addressed these issues at that time (i.e., in the period leading up to November 2014). The analysis below does not repeat material from the IAS but focuses instead on NTB's actions and communications in the period from December 2014 to March 2015.

The need for more communication and transparency

30. The NTB Communications and Engagement Plan was developed in response to concerns about lack of engagement with the claimant community. NTB has made progress on implementing the five engagement objectives in the Plan as follows.

⁸ Letters from _____ to NTB, 18 March 2015 and 10 April 2015. Matters raised in this letter are being addressed in a separate NTB report to OTS.

1. Engage with the following people or groups

- *Individual kaumātua or groups of kaumātua*
- *Individual WAI claimants or groups of WAI claimants and key submitters*
- *Representatives of whānau, hapū, marae or other local groups*

NTB has engaged directly with the individuals and groups identified in Appendix 2. So far, 17 engagement hui have been held, as well as one follow-up skype call, and an “open door policy” hui on communication issues. A further nine individuals or groups have either not responded to NTB’s invitation to meet or have declined to meet.⁹

Meeting notes indicate that the face to face meetings have enabled a frank two-way exchange of information and perspectives, allowing particular fears and potential ways forward to be identified and worked through. The hui have succeeded in initiating a greater level of understanding between NTB and the Ngātiwai community.

Although the hui did not always end in unqualified agreement or support for NTB’s mandate, in nearly all cases there was a commitment to continue to engage and find ways of moving forward together.

2. Release monthly Board summaries via NTB trustees and NTB communication channels (ie website and facebook)

Summaries of the key issues discussed at monthly NTB Board meetings for November and December 2014 and February, March and April 2015 are available on the NTB website and Facebook (there was no January meeting).

3. Hold a special general meeting to review the NTB Trust Deed on 28 February 2015

The Special General Meeting was held on 28 February 2015 but the Board decided that no resolutions regarding the Trust Deed would be put to the floor. This decision reflected consistent feedback from Ngātiwai members that "more time is needed to discuss and respond to the issues".

The SGM agreed on a process to generate a more structured discussion about the Trust Deed. This process entails the formation of a Focus Group to carry out a review aided by an independent facilitator, and with the NTB Trustee reporting back to marae.¹⁰

4. Commence planning to hold a wānanga that discusses PSGE representation after the DoM has been endorsed

This work is underway, although a date for a wānanga cannot be set until NTB’s mandate is endorsed. NTB has sought advice on what other iwi have done in similar circumstances and who should be contacted in order to identify lessons learnt.¹¹

5. Initiate quarterly hui-ā-iwi to report back on work of the NTB and

NTB held its first quarterly hui-ā-iwi on 28 March 2015 at Te Puna o Te Mātauranga Marae, NorthTec. The quarterly hui are

⁹ See Appendix 2

¹⁰ Minutes – NTB Special General Meeting 28 February 2015

¹¹ Email correspondence between NTB Treaty Claims Manager Tania McPherson and _____, April 2015.

TCC engagement and communications work on 28 March 2015

intended to provide a regular forum away from the formality of an AGM so members have a better opportunity to raise and discuss issues. Through this initiative NTB hopes to gain better insights into issues and therefore be better able to respond to them.

31. The Plan also outlines a number of more general communications initiatives that NTB is undertaking, including:

- Finalising the NTB Strategic Communications Plan by April 2015. At the time of writing, this work is in progress and is awaiting approval of a draft plan at the July NTB Board meeting, followed by a process for obtaining feedback from Ngātiwai members;¹²
- Reviewing, refining and maintaining current database function by March 2015 (ongoing);
- Redeveloping and integrating NTB social media and e-newsletter communications by 25 January 2015 (completed, but requiring ongoing maintenance); and
- Recruiting interim and permanent (by April 2015) communications personnel (in progress).

The historic and current performance of NTB

32. NTB has taken a number of steps to improve the financial accountability and transparency of the NTB group operations. Recent changes include the resignation of director Bryce Moffat from various board entities and the appointment of a new chief financial officer.¹³ Newsletters and summaries of monthly board meetings are available on the NTB website and provide Ngātiwai members with up-to-date information on the NTB group structure and other measures being taken to improve internal capacity and transparency of financial accounting. For example, the January 2015 e-pānui explains the context of the financial and structural changes contained in the NTB's 2013 and 2014 Annual Reports. In addition, NTB has communicated directly (and in considerable detail) with members who raised specific concerns about the NTB Group's financial performance and accountability.¹⁴

33. NTB representatives discussed the privacy of vote counting directly with engagement hui participants who raised these concerns.¹⁵ NTB provided assurance that the vote counting was handled entirely by the independent returning officer (Elections NZ) and that no NTB trustee or staff member had access to the voting papers.

34. Several submitters stated that they had personally received no benefits from NTB arising from the distribution of other settlements or arrangements. However, information on the various benefits that NTB offers Ngātiwai members is available on the NTB website and in monthly newsletters and board summaries, including information on scholarships, sponsorships, marae grants and other benefits.

¹² For a description of the proposed feedback process, see Communications Report to the Quarterly Hui ā Iwi, 28 March 2015.

¹³ Summaries of NTB Trustee meetings, 28 November 2014 and 27 March 2015

¹⁴ For example, see letter from NTB to _____, 7 April 2015.

¹⁵ For example, see notes of hui (3)

35. Concerns about NTB being “too corporate” were discussed at the relevant engagement hui, with NTB acknowledging that there was room for improvement in incorporating Ngātiwai tikanga into the settlement process. The Deed of Mandate includes supporting structures to enable participation of kaumātua in the settlement process, in part to provide advice and guidance to the NTB on matters of Ngātiwai tikanga.¹⁶ However, there has been little opportunity to progress the establishment of the supporting structures to date.
36. As outlined in Objective 3 of the Communications and Engagement Plan, NTB is currently engaging with Ngātiwai members on proposed changes to the NTB Trust Deed, including at a Special General Meeting on 28 February 2015. In discussions at the engagement hui NTB representatives clarified that in the longer term the PSGE will be a new entity and will provide further opportunities for issues of representation and accountability to be addressed (see below).

Representation through hapū

37. NTB’s structure is currently based on marae. As a result, NTB has relatively good information about registered members’ affiliations with marae, but information about Ngātiwai hapū membership is poor. The Deed of Mandate lists 14 Ngātiwai hapū but, based on the submissions received, only three hapū have an internal leadership structure and claim to hold a representative mandate for their hapū (noting that no evidence of mandate was provided). The three hapū groups – Te Kapotai, Te Waiariki (and associated hapū Ngāti Takapari and Ngāti Korora) and Patuharakeke – have each indicated that they wish to settle separately from Ngātiwai.
38. Although hapū representation was raised and discussed at several of the engagement hui, during the submission and engagement period none of the other eleven hapū in the NTB Deed of Mandate took the opportunity to identify spokespeople or provide contact details to NTB.
39. Together, these factors create challenges for improving hapū representation in the direct negotiation process. The Deed of Mandate nevertheless does provide for hapū involvement in the supporting structures¹⁷ and at the engagement hui NTB representatives re-iterated the intention to involve hapū. NTB has also indicated a desire to improve its understanding of hapū affiliations of Ngātiwai members and, as a first step, is redesigning its registration form to collect hapū and marae information more accurately. This information will help inform future discussion about representation on the PSGE.¹⁸ (see e-pānui, February 2015).

Fixing problems with the NTB register

40. NTB is aware of the need for the membership database to be comprehensive and accurate in order to communicate effectively with members, understand the demographics and needs of Ngātiwai, and meet the stringent requirements of the settlement process. NTB is in the process of reviewing and refining the functionality of the database (Communication and Engagement Plan, communications objective 2).

¹⁶ NTB Deed of Mandate, page 21.

¹⁷ NTB Deed of Mandate, page 21

¹⁸

Claimants who wish to appear before the Waitangi Tribunal

41. Many of the WAI claimants who oppose NTB's mandate to negotiate directly with the Crown have a strong preference that their claims should be heard by the Waitangi Tribunal. A number of Ngātiwai claimant groups have already presented to the Tribunal and others are scheduled to present in February 2016. NTB representatives have made it clear in the Engagement and Communications Plan and in discussions at the engagement hui that:
- NTB acknowledges the Ngātiwai claimants who have already presented to the Waitangi Tribunal and notes that further hearings are planned for February 2016;
 - NTB cannot and will not prevent WAI claimants from participating in hearings; but
 - If NTB receives a mandate for direct negotiations, a key issue for WAI claimants will be the funding implications for progressing their claims before the Tribunal.
42. Funding is a key issue because the Crown Forest Rental Trust (CFRT), as a general principle, will not fund a mandated group through settlement negotiations while its members are also participating in the Tribunal hearings process at the same time. Instead, CFRT funding is generally made available only for one process or the other.¹⁹ This CFRT policy position is accurately reflected in NTB's Deed of Mandate. However, since that time CFRT has agreed to fund a parallel pathway of Tribunal hearings followed by direct negotiation for Te Paparahi/Ngāpuhi, raising the prospect that dual funding may also be an option for Ngātiwai.

Possibility of a parallel process

43. NTB representatives explained at the engagement hui that in order for a parallel pathway (similar to the Te Paparahi/Ngāpuhi process) to be available for Ngātiwai, claimants need to be united in their support for a parallel process. A parallel process could involve Ngātiwai members' WAI claims being heard in front of the Waitangi Tribunal but, instead of waiting for the Tribunal to prepare a final report, the research would be packaged and completed by the iwi and direct negotiations would then commence.²⁰ Alternatively, it could entail a dedicated Ngātiwai chapter in the Tribunal's report that is released early in order to facilitate direct negotiations. A parallel process could also potentially include a consolidated period of hearings for Ngātiwai claimants in February 2016 and a dedicated Ngātiwai site visit for Tribunal members.²¹
44. NTB and some (but not all) of the WAI claimants involved in the engagement hui are open to the concept of a parallel process. However, the meeting notes indicate that it is not clear exactly what the claimants are envisaging when they ask for a parallel process. For example, some want to wait for a full Tribunal report of their claim and then enter into negotiations – a pathway which resembles a full Tribunal process rather than a parallel process. It is likely that WAI claimants have different views about what a

¹⁹ See letter from CFRT to NTB, 8 January 2015

²⁰ This description of the opportunity for a parallel process is taken from NTB Treaty Claims Manager Tania McPherson's description of the process, as recorded in the minutes of NTB's engagement hui with _____, 27 November 2014.

²¹ Letter from NTB Treaty Claims Manager Tania McPherson to WAI claimants, *Ngatiwai WAI claimants opportunity to explore a parallel process*, 2 April 2015.

parallel process would look like. NTB is aware of these differences and is seeking to build a common understanding and clarify claimant views.

45. To that end, on 2 April 2015 NTB wrote to all WAI claimants who objected to NTB's Deed of Mandate seeking their views on a parallel settlement process. The letter informs claimants that the Crown has agreed that Ngātiwai may participate in direct negotiations alongside Waitangi Tribunal hearings, should a mandate be recognised. However, this option will only be available to Ngātiwai if:

- All parties involved (including the WAI claimants) agree to the parallel process; and
- Ngātiwai and the Crown agree on the design of a parallel process.

46. At the time of writing, NTB had received written responses from three claimants. The opportunity to discuss a parallel process is supported by legal representatives on behalf of claimants for WAI 245²² and WAI 1512²³ and opposed by a claimant for WAI 156.²⁴ Taking account of this recent correspondence and the views expressed earlier in submissions and at engagement hui, the positions of WAI claimants on a parallel process for Ngātiwai at this stage are as follows:

- Assumed support, from:
 - Claimants for **11 claims** who supported the NTB Deed of Mandate in submissions: WAI 67, 343, 511, 1711, 1712, 1717, 1719, 1726, 1786, 1960, 2243; and
 - Claimants for **up to 8 claims** who opposed the NTB Deed of Mandate in submissions, but appear willing to discuss the possibility of a parallel process, including claimants who have :
 - provided to NTB a written response expressing a willingness to discuss the possibility of a parallel process: WAI 245 and 1512; and
 - expressed an interest in a parallel process at the engagement hui: WAI 1973, 1384, 1544 and possibly also WAI 1954, 1961 and 1677;
- Assumed opposition from **1 claimant** (WAI 156) who wrote to NTB opposing a parallel process;²⁵
- Unclear position, as a result of claimants not responding or declining to engage with NTB, including:
 - Claimants from hapū representing **14 claims**, who opposed NTB's Deed of Mandate and wish to settle separately from NTB, including the Te Waiariki grouping (WAI 620, 1411-1416, 2239), Patuharakeke (WAI 504, 745, 1308) and Te Kapotai (WAI 1464, 1546); and
 - Other claimants whose position on a parallel process cannot be determined at this stage, covering **7 claims**: WAI 1392, 1528, 1529, 1530, 1539, 1955, and 2022.

²² Email from _____ to NTB Treaty Claims Manager Tania McPherson on behalf of WAI 245 claimants, 20 April 2015.

²³ Email from _____ to NTB Treaty Claims Manager Tania McPherson on behalf of WAI 1512 claimants, 17 April 2015 (initial expression of interest, awaiting confirmation)

²⁴ Letter from _____ to NTB, 22 April 2015.

²⁵ Note that the _____ appears to support a parallel process in video submission **243**.

47. NTB is now planning to invite WAI claimants to a meeting for further discussion of the opportunity for a parallel process.
48. Provision of ongoing financial support for WAI claimants can be considered only once the level of support for a parallel process has been clarified. For example, if NTB gains a mandate and WAI claimants support a parallel process, CFRT will consider dual funding of NTB and the claimants. However if NTB gains a mandate but there is no agreement on a parallel process, then claimants may lose direct access to CFRT funding and would instead have an opportunity to participate in the supporting structures set out in the NTB Deed of Mandate (e.g., the research group).

Details of the PSGE structure

49. NTB representatives explained at the engagement hui that the details of the PSGE will be determined as part of the settlement process, should NTB achieve a mandate for direct negotiations with the Crown. NTB has indicated that it is open to discussing representation based on hapū, marae, takiwā and other considerations. The Pātaia Mai section of NTB's April e-pānui provides a detailed Q&A on the PSGE. The proposed wānanga to discuss PSGE representation (Communications and Engagement Plan objective 3) will provide a further mechanism for Ngātiwai members to engage with NTB on this issue.

Issues specific to hapū and/or claimants

50. NTB's Communication and Engagement Plan is not intended to address every single issue raised by submitters. Nevertheless, the engagement hui have provided a platform for identifying and resolving issues specific to individual hapū, claimants or submitters. Progress is being made on clarifying aspects of overlapping claims and the renewed opportunity for a parallel process provides a potential route forward.
51. The reviewer is aware that NTB is preparing a separate report that will be provided to OTS in response to hapū WAI claimants from Te Kapotai, Te Waiariki grouping, Te Patuharakeke, Te Whakpiko hapū o Ngāti Manaia and Ngāti Rongo, covering NTB's position on matters such as whakapapa, shared histories and land ownership.

Specific suggestions

52. During the engagement hui, NTB representatives were open to suggestions for changes to the Deed of Mandate. Although no firm commitments were made at the hui, NTB agreed to consider several of the specific suggestions that were identified by speakers, including:
- Inclusion of a WAI claimant representative on the Treaty Claims Committee;
 - Inclusion of a hapū representative on the Treaty Claims Committee;
 - A parallel funding process (to provide funding for claimants alongside NTB) should NTB achieve a mandate; and
 - A role for rangatahi.

(3) Conclusions

53. The implementation of NTB's Engagement and Communications Plan, in particular the *kanohi ki te kanohi* meetings with claimants, hapū and other key groups and individuals, has allowed for a new level of engagement between NTB and the claimant community. It is evident from the meeting notes that the majority of those involved in the engagement hui now have a better understanding of each other's positions and want to continue to engage with NTB on settlement issues.
54. NTB's website and Facebook account provide the wider Ngātiwai community (those with internet capability) with timely, relevant and accessible information about the Deed of Mandate and settlement process. These communications also help improve the transparency and accountability of NTB's wider operations and generally seek to build the relationship between NTB and the Ngātiwai membership. Ngātiwai members have acknowledged and appreciate NTB's improved communication and engagement. Further enhancements to NTB's communications capability can be expected once the position of Communications Manager has been filled on a permanent basis.
55. In spite of recent efforts, some claimant groups remain outside NTB's engagement initiatives, notably:
- Te Kapotai and Patuharakeke hapū submitters declined to engage with NTB to date, although Patuharakeke did meet with OTS in early April 2015 and expressed a desire to negotiate separately with the Crown;
 - The Te Waiariki hapū grouping met with OTS in order to state that they are not Ngātiwai; and
 - a small number of other WAI claimants have so far not responded to invitations to meet (WAI 1529, 1530, 1837 and 1148).
56. More generally, hapū representation remains a key issue for further discussion, in relation to both:
- a hapū/claimant voice in the direct negotiations process (e.g., on the Treaty Claims Committee); and
 - hapū representation on the PSGE.
57. Hapū representation is not a new issue and is complicated by the lack of clarity about the internal leadership structure and mandate of the Ngātiwai hapū identified in the Deed of Mandate (with the possible exception of the three hapū groups identified above who have stated they wish to remain outside of NTB's process). Nevertheless, NTB has made provision for a hapū voice in the supporting structures in the Deed of Mandate and is continuing to work on clarifying this issue at a practical level.
58. The main new issue arising over the last five months is the renewed possibility of adopting a parallel hearings and direct negotiations process for Ngātiwai. The three key questions associated with this issue that require further clarification among NTB and WAI claimants (with guidance from OTS and CFRT) are:
- What level of agreement is there among Ngātiwai WAI claimants on the adoption of a parallel process?
 - What would a parallel process entail (processes, sequencing and timing)?

- What are the implications for funding the participation of WAI claimants in Tribunal hearings, should NTB achieve a mandate for direct negotiations?

59. NTB is aware of these issues and is currently seeking to clarify the level of support among WAI claimants, including those who support the Deed of Mandate, for a parallel process.

Appendix 1 – Analysis by marae (updated table from Independent Analysis of Submissions)

Table 1 summarises the positions of the submitters who identify their marae in a written submission (including submissions received after the closing date). An asterisk (*) indicates a submission from a marae chairperson.

Marae	Number of submitters supporting	Number of submitters opposing
Tūparehuia	3 *	6
Ngaiotonga	12 *	6
Punaruku	4	-
Otetao	6 *	8
Mōkau	2	11
Oākura	9 *	-
Whananaki	1	1
Matapōuri	13 *	-
Ngunguru	15 *	-
Pataua	1 *	-
Takahīwai	4	2
Omaha	1	1
Motairehe	2	-
Kawa	-	-
TOTAL	73	35

Video submitters: Four of the video submitters come from Whananaki and the others do not identify their marae.

Petition signatories: Of the 119 signatories to the petition, 26 identify their marae as Mōkau, Oākura, or Whakapaumahara (Whananaki), with a majority of these signatories listing all three marae. No other marae are identified.

Appendix 2 – NTB Treaty Claims Committee Engagement Hui Schedule as at 23 March

(Tables supplied by NTB)

#	Day/Date	Time	Venue	Submitter(s)	WAI Claim or Submission No
1	Tuesday 25 November 2014	10 am	Helena Bay School		WAI 1954 Sub 100
2	Thursday 27 November 2014	1 pm	NTB		WAI 1973, Sub 98 WAI 1961, Sub 106
-	Friday 28 Nov	10 am	NTB	Board Meeting	
3	Wednesday 3 December 2014	10 am	36 D Morningside Drive, Whangarei		Sub 236
4		1 pm	NTB/phone conference		WAI 244 & 245, Sub 85
-	Friday 19 Dec	10 am	NTB	Board Meeting	
5	Tuesday 20 January 2015	2 pm	40A First Ave Whangarei		WAI 504 & 2243 Sub 102
6	Thursday 12 February 2015	10 am	NTB		N/A
-	Friday 27 February 2015	10 am	NTB	Board Meeting	
7		1:30 pm	NTB		Sub 84
8		3 pm	NTB		WAI 504 & 2243 Sub 102
-	Saturday 28 February 2015	10 am	NorthTech Marae	Trust Deed Review Special General Meeting (SGM)	
9	Thursday 12 March 2015	10 am	NTB		Sub 238 (video)
10	Friday 13 March 2015	10 am	NTB		WAI 2022
11	Saturday 14 March 2015	9 am	NTB		WAI 244 & 532 Sub 45
12		11 am	NTB/Skype from Perth		WAI 1384, Sub 49
13		3:30 pm	Taumata B , 260 River Road Pakiri		Sub 104
14	Sunday 15 March 2015	11 am	Ngunguru Marae		WAI 620, 1411-1416, 1681 and 2239, Sub 23, 46, 109
15	Monday 16 March 2015	4 pm	NTB		Wai 1544, 1677 Sub 103, 181
16	Tuesday 17 March 2015	1 pm	NTB		WAI 156, Sub 158, 227, 229, 230,

²⁶ Note that this meeting was not a targeted TCC engagement hui but a NTB staff meeting to discuss communications consistent with our open door policy set out in the engagement and communications plan.

17	Wednesday 18 March 2015	1 pm	NTB		Sub 200, 233
18	Friday 20 March 2015	1 pm	Mt Albert Auckland		WAI 1512 Sub 63
-	Friday 27 March	10 am	NTB	Board Meeting	
19	Saturday 21 March 2015	11 am	NTB/Skype from Perth		WAI 1384, Sub 49
-	Saturday 28 March 2015	10 am	North Tech Marae	First Quarterly Hui – A – Iwi Report on progress for first quarter	
-	Wednesday 8 April 2015	11am	Unknown	Hapū meeting between OTS and Patuharakeke Trust Board	WAI 504, 745, 1308 Sub 47

Submitters who have not responded or declined to meet

WAI Claimants (already included in DoM)	WAI Claim or Submission Number(s)	Comments concerning progress with meeting arrangements
	WAI 1528	has verbally declined to meet with the TCC as is happy to support his kaumātua and whom we have met with.
	WAI 1529	No response to date. Have requested inclusion in meeting with on 11 March 2015. Did not show up.
	WAI 1530	No response to date. Not clear who is legal representative.
Additional Wai Claims (to be included in DoM)		
	WAI 1837	Repeated requests sent to meet but responses have indicated desire to pursue Waitangi Tribunal hearings with no acknowledgement or acceptance of meeting request. Claimant presented BoE to the Waitangi Tribunal during the February 2015 hearings week which confirmed that the claim contains Ngātiwai elements.
	WAI 1148	Repeated requests sent for meeting including follow up phone call but no response received.
Key Submitters		
	Video 3 OTS File note 237, Sub 26	No response received until recently when verbally confirmed that will not be available to meet until after March
	Video 6, OTS File note 240	No response to request to date. No other contact details.
Hapu Submitters		
Te Kapotai	WAI 1464, 1546, Sub 112	Te Kapotai have declined to meet with OTS

²⁷ Follow-up meeting requested by

with Tania McPherson to discuss details.