



Ngātiwai Trust Board Deed of Mandate
Analysis of responses to questions about hapū and iwi

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Introduction

Context

The Ngātiwai Trust Board (NTB) has sought and obtained a mandate from Iwi members to enter into direct negotiations with the Crown for the settlement of all remaining historical Treaty claims of Ngātiwai. The Crown recognised the NTB's Deed of Mandate (DoM) on 21 October 2015. Since then the Waitangi Tribunal has received eleven applications for urgent hearings regarding the Crown's recognition of the DoM. On 2 May 2016 the Tribunal granted the applications and specified that the following matter would be heard:

- a) Are the claimants themselves, or any group of Maori of which they are a member prejudicially affected or likely to be prejudicially affected by a policy or practice, act or omission of the Crown that is inconsistent with the principles of the Treaty?*
- b) The policy, practice, act or omission alleged is the Crown's recognition of a mandate held by the NTB in relation to the hapū referred to in the NTB's Deed of Mandate without the support and consent of those hapū.*

The NTB convened a Hui-a-Iwi on 1-2 July 2016 at which workshops were held to discuss four questions relevant to the central theme of the hearings. Around 35 people participated in the workshops. As a follow-up to the Hui-a-Iwi, the NTB sought wider feedback on the same four questions through an on-line survey that was open from 3 July to 4 August 2016. The survey elicited 58 written responses.

The questions posed at the workshops and in the survey were:

1. What makes a hapū and what makes an iwi?
2. What does being Ngātiwai mean to you and what makes us Ngātiwai?
3. Do you agree with one collective Ngātiwai settlement or should there be several separate settlements?
4. How do we know who are the representatives for each hapū so that we can seek their consent?

Purpose and scope of report

This report synthesises the range of responses to the NTB's questions about hapū and iwi, and what it means to be Ngātiwai. Feedback recorded at the Hui-a-Iwi and written responses to the on-line survey were reviewed in order to:

- a) Summarise the views presented and identify key themes; and
- b) Analyse the responses in the context of the central theme of the hearings – i.e., whether survey respondents and workshop participants believe they (or anyone else) will be prejudicially affected by the Crown's recognition of the NTB DoM without the explicit support and consent of the hapū named in the DoM.

A) Summary of views and key themes

Q1. What makes a hapū and what makes an iwi?

Around a quarter of the survey respondents answered this question in a general sense (i.e., without distinguishing between iwi and hapū). They identified people, tangata whenua, whānau, whakapapa, mana, toto, and tino rangatiratanga as the foundations for hapū and iwi. The remaining survey respondents and the workshop participants distinguished between hapū and iwi. Although the most common response was that a hapū is a collection of whānau and an iwi is a collection of hapū, the responses as a whole were diverse.

What makes a hapū?

Hapū and whānau were closely related in many of the responses – for example, *“hapū is the birth of your own family life”*; *“hapū is close whānau and iwi wider whānau”*; *“hapū is grandparents, siblings and descendants”* or *“hapū is where more relationship happens”*. Several respondents associated hapū with marae – for example, *“hapū is the whānau/marae connection”* or *“hapū have a sense of kinship to a mountain and a marae”*.¹

Some respondents emphasised common ancestry or tūpuna whereas others emphasised the rohe within which the hapū resides. Several commented on the role of hapū in relation to land – for example the workshops identified concepts such as tangata whenua, ahi kaa roa and the right of hapū to defend their lands. One survey respondent thought that *“beneficiaries should be the descendants of the original shareholders in the land”*. At the workshops, tikanga and kaitiakitanga were identified as elements central to the identity of a hapū and the importance of *“active involvement”* was noted.

What makes an iwi?

While many survey respondents said an iwi was a group of hapū, others considered an iwi to be a group of marae or whānau or *“the community of people in the area”*. Some emphasised whakapapa and descent from common ancestor, whereas others emphasised the region or rohe of the iwi. Two respondents proposed that external recognition or designation (for example, as provided in the fisheries settlement) was also relevant.

Characterising hapū and iwi

While there was consensus that hapū and iwi exist at different scales, respondents had diverse ways of expressing that difference in scale – for example, in terms of geographical extent, closeness of relationships or whakapapa, functions and responsibilities and so on. For example, one respondent evoked the interdependence of hapū and iwi with the statement *“iwi is the fruit, hapū is the seed”*. Another suggested that hapū have blood connections whereas iwi have geographical and historical connections.

Several respondents thought about iwi and hapū in relation to their own identity – for example, *“iwi is my broader family and area where people like me are from, hapū are my closer family but still as important”*.

¹ The extracts from written responses to survey questions are shown in italics. Spelling has been standardised (e.g., with the use of macrons) and in some cases grammar has been corrected without changing the meaning of the comment.

One distinguished iwi and hapū in terms of process: *“To me what makes a hapū is listening as a group/whānau and then agreeing to a process everyone is happy for. Iwi to me is collectively all hapū want the same direction or goal then moving with purpose to fulfill our Ngātiwai heritage”*. Some expressed the difference between iwi and hapū on the basis of their functions and responsibilities – hapū look after local issues and responsibilities whereas iwi have wider responsibilities, including relationships with central and local government.

Qualities that some respondents attributed to iwi were considered by others to be qualities of hapū. For example, one of the comments recorded at a workshop – *“iwi arose to defend our common territories when we needed help and support”* – was repeated by a survey respondent, but in relation to hapū.

A comment made at a workshop and by several survey respondents was that iwi is a modern government concept designed to collectivise hapū: *“We are hapū, iwi is an English created term”*. Some of these respondents also noted that Te Tiriti was signed on behalf of hapū.

Workshop participants expressed a range of views on the role of the NTB within the wider question of iwi and hapū identity. The workshop notes include a comment that NTB’s marae-based structure undermines hapū, alongside other comments that *“our tūpuna created the NTB, they decided our representation”* and *“hapū have become secondary to us because we used our marae as a focal point”*.

Q2. What does being Ngātiwai mean to you and what makes us Ngātiwai collectively?

Most survey respondents did not distinguish between the two parts of this question. Five main themes are apparent in the responses – i.e., whakapapa and identity; whenua and moana; shared history and tradition; unity/working together; and organisation.

Whakapapa and identity

Many respondents said Ngātiwai was their identity, and used terms such as iwi, hapū, whānau, tūpuna, whanaungatanga and whakapapa to express this concept – for example, *“He kāwai heke tātou i a Mania-taumata-rau”*; *“it tells everyone who my whānau is in the big picture”* and *“a birth right through whakapapa that connects us to the whenua and moana”*.

Several expressed their pride in being Ngātiwai and the sense of confidence and support that their Ngātiwai identity provides. For example, one survey respondent commented *“I love being Ngātiwai. We are a small iwi that punches well above its weight and I am proud of that”*.

Many wrote or spoke specifically about their own family origins – whether in terms of the area they are from, where their grandparents or parents grew up, their wider whakapapa, or their tūpuna. Typical of this set of responses were comments such as *“where my father and his siblings spent part of their childhood”*; *“holidays were always at the beach... all we knew was we were from all of these whenua”* and *“family roots that have to be maintained”*.

Manawhenua, manamoana

The concept of place was a very strong theme in survey responses – typical comments include *“a place people are from and that we can all go back to”* or *“an area where your ancestors come from and you come from the same area”*. Several respondents described Ngātiwai rohe boundaries and others identified specific places as important to their Ngātiwai identity. Some workshop participants noted the importance of active presence on the land – for example, *“to show my existence upon this earth – pou whenua”* and *“ahi ka of all the marae up and down the coast”*. Others emphasised the role of Ngātiwai in reclaiming and protecting land: *“to save our land for our children – don’t want to let it go”*.

A large number of survey respondents and workshop participants referred to Ngātiwai as the people of the sea or the children of the moana and identified the moana as a binding element for all Ngātiwai – *“everything that makes us Ngātiwai comes from the sea and ties us together”*.

Shared history and tradition

Several respondents referred to kaitiakitanga, *“the Ngātiwai way”* and traditions or knowledge passed down from tūpuna – *“the gift our tūpuna left us”*. Others referred to shared history within Ngātiwai, as well as historical extensions to other local or more distant iwi. One said *“for me it is about supporting the local hapū to fulfil their aspirations, but also requires that we build a strong collective decision to emphasise our Iwi-ness in a way that is uniquely Ngātiwai.”*

Unity, working together

Workshop participants and survey respondents used terms such as kotahitanga, force in numbers, collective strength, power and influence with government to express the sense of unity and collective achievement that is part of being Ngātiwai. One likened Ngātiwai to a seed and said *“collectively we all have a little to contribute to keeping the seed alive”*. However, another said *“I’d like to believe we can be collectively as one for the many but in the past 15-20 years I don’t see that”*.

Organisation

Some respondents answered the question with respect to the NTB, observing *“Ngātiwai is the organisation but that does not however mean that they are the only roopu with a claim”*. These respondents’ views about the NTB were not always positive. For example, *“we are all Ngātiwai, but NTB is trying to rob hapū of their settlements and this is challenging my feeling of belonging to the collective Ngātiwai”* and *“NTB’s ancestry itself originates from a piece of pakeha law titled Maori Development Act [and] I vehemently question whether that act holds the same mana as Ngātiwai whānau/hapū whakapapa”*.

Q3. Do you agree with one collective Ngātiwai settlement or should there be several separate settlements?

There was no clear consensus in responses to this question. Many of the survey responses were nuanced or sought to reconcile the two approaches. A relatively large group of respondents were undecided, open minded or could see the advantages and disadvantages of both approaches. Participants at the two workshops also expressed a range of views. The reasons given for each of the three main responses are summarised below.

Collective settlement

Those who support a collective settlement considered that Ngātiwai can achieve more collectively – “*he totara wherua, he kai na te ahi*”.² A workshop participant commented that “*we should approach the Crown collectively, the Crown is the thief*”. Pragmatic considerations were also identified, such as the settlement process would be properly resourced and kept on track, and settlement would be reached more quickly and in a manner that was politically acceptable (to the Crown, presumably). Underlying this set of responses were beliefs such as “*we are one*”, “*it comes down to trust*” and “*dividing leads to greed, separation and a repeat of history*”.

Several supporters of a single settlement noted that there should be a place for hapū or individual claimants within the settlement process – for example, “*I do think that individual hapū need to be included in the process so that they can have a voice for their grievances*”. Similar sentiments were expressed in a more general sense: “*Yes I do agree with one collective settlement, but I think a level of autonomy and mana needs to be given to hapū to manage the local affairs to a certain extent*”.

Separate settlements

Respondents who support separate settlements considered that whānau and hapū can look after their own interests – for example, “*individual rohe/whānau know their own needs thus making it more important to them*”. In some cases support for separate settlements was linked to a desire for each hapū to record its own history (and presumably not have someone else do that on their behalf). One respondent said “*E ai ki ngā kāwai whakapapa ehara a Te Waiariki I tētahi hapū o Ngātiwai*”.³

In two cases, support for separate settlements was based on disagreement with the NTB being the mandated body. It is not clear whether these respondents would support a collective settlement with a different mandated body. One of these respondents felt that the NTB was “*pushing the OTS kaupapa of kicking the mana of whānau/hapū out the door*” and that NTB should instead have presented alternatives to OTS’s approach. Another respondent who initially supported a collective settlement changed his or her mind as “*it does not work for the many hapū, they seem to be consistently not heard*”.

Within this group of respondents, different views were provided on the scale at which individual settlements should be provided – some preferred hapū claims but a workshop participant and several survey respondents preferred individual family settlements. Several commented on the fact that there are already separate Ngātiwai settlements: “*As you already have two separate hapū going their own way I am inclined towards separate settlements*”.

Like the supporters of a collective settlement, some respondents looked for ways to accommodate a wider iwi role with suggestions such as “*NTB can play a key role but at whānau/hapū level not marae trustee level*” and “*allow hapū to have their own settlement with support from Ngātiwai*”.

² “A split totara becomes firewood” (translation provided).

³ “According to the whakapapa lines, Te Waiariki isn’t a hapū of Ngātiwai” (translation provided).

Open to either approach

Those who were undecided or expressed ambivalent views made a range of relevant comments. Some thought that hapū or whānau issues could be addressed explicitly within a wider settlement – for example, *“I think any settlement should address each hapū’s issues and each hapū should be ‘equal’”* and *“it might be a good idea to separate the claims into various regional issues, but the clout that a larger group have, the support we can give each other in various claims is obviously amplified if we do it at an iwi level”*. Others suggested some claims should be settled collectively and some at hapū level.

Several respondents were less interested in whether there was one or several settlements, and more interested in the governance and distribution of the benefits of the settlement – for example, *“this depends on the management of distribution”*; *“if Ngātiwai do the settlements then the hapū should receive the benefits given to them”* or *“I will need to see the proposal first... this for me is about more than a financial settlement... [it is about returning] our lands back to the rightful owners”*. Several respondents in this group wanted more opportunity to consider and discuss the question.

Workshop participants proposed that there may be solutions to this question in the ratification of the settlement, in the design of the Post Settlement Governance Entity, and the historical account in the settlement legislation.

Q4. How do we know who are the representatives for each hapū so we can seek their consent?

Once again there was no clear consensus on this seemingly straight-forward question. The responses can be grouped into seven general themes, with a relatively even number of respondents favouring each of the themes.⁴

Ask the kaumātua and kuia

This group of respondents suggested representation could be found among kaumātua, kuia or rangatira (*“you would find the chieftain line within that hapū”*) or by asking for guidance from this group. For example, one commented *“so difficult, kaumātua and kuia is what I believe, not marae trustees or trusts”* and another suggested *“iwi should have an iwi kaumātua taumata from the hapū, for the board to come back to”*.

Ask the hapū

“Hapū mana, hapū rangatiratanga, hapū tikanga” is typical of the tenor of responses under this theme. Respondents noted that several hapū have been operating independently for years. A common suggestion (or perhaps assumption) among this group of respondents was that hapū should have their own trust boards, elected through robust processes. One suggested that *“each hapū should nominate a rep who is both local and who has in depth knowledge of all whānau and claim issues. They must understand that they have a fiduciary duty to act in the best interests of all claimants”*.

⁴ Each theme was expressed by at least six respondents.

Ask the marae

Marae, marae taumata, and marae trustees were all suggested as contact points – for example, *“would that not come from each marae? They would know the whānau”*. One of the workshop groups and several individual respondents proposed asking the hapū via the marae (i.e., by holding hui-a-hapū at each marae). The workshop group that made this recommendation also discussed which marae were associated with each hapū.

Ask the people

“The whānau knows”, “the people will tell you”, “meet them and know them” and *“[ask] general hapū members for input”* were typical comments from this group of respondents.

Look for specific attributes or individuals

Some respondents identified desirable attributes of representatives – for example, *“someone who can be trusted”* or *“he toka tumoana e akina na nga tai, tangata ringa raupa, koi te hinengaro anoki pea”*.⁵ Others suggested that the most visible and active members can be assumed to be hapū representatives. One proposed that hapū representatives are the named claimants on the Wai claims. Another invited the NTB to talk to him directly for clarification and one suggested named relatives.

Look at the records

Most of these respondents assumed that the information about hapū representatives was already recorded on the Ngātiwai register or in other records accessible to the NTB.

Don't know

Several respondents said it was the NTB's job to know (or to find out) who the hapū representatives are. The remainder of respondents in this group didn't know how representatives might be identified. A couple of respondents commented on how challenging the issue of hapū representation was – for example, *“I have no idea because there is so much diversity now compared to when I was a young woman. We knew who our elders were and believed in them, now it is hard to say who is the representative”*.

B) Analysis

This section of the report analyses the key themes of the responses (as summarised above) with respect to the central theme of the urgent hearings – i.e., whether workshop participants and respondents to the survey believe they (or anyone else) will be prejudicially affected by the Crown's recognition of the NTB DoM without the explicit support and consent of the hapū named in the DoM.

Common threads among diverse views

The workshop reports and survey responses provide an insight to the extensive range of views within the Ngātiwai community on the questions of hapū, iwi and Ngātiwai identity. Although survey respondents were

⁵ “A stable rock, bashed by the tides, hard-working, and of sharp mind maybe” (translation provided).

not required to state their place of residence, some of the responses suggest a difference in perspective and emphasis between those who live in the Ngātiwai rohe and/or are active in Ngātiwai or hapū affairs, and those who have Ngātiwai whakapapa but live outside the region.

Because of the relatively small number of participants and responses, a quantitative analysis of the responses is not helpful, but some general conclusions, based on the weight of commentary, can be reached. For this reviewer, some of the key themes that emerge across the responses to all questions are:

- A strong sense of identity and belonging – both to hapū/whānau and to Ngātiwai;
- A deep-seated collective identification as the people of the sea (this identification is expressed at the level of Ngātiwai as an iwi, rather than individual hapū); and
- A desire, and a considerable amount of good will, to work towards the settlement of all historical claims associated with Ngātiwai in a timely, realistic, and inclusive manner.

There was no clear consensus on the question of whether there should be one or several settlements.⁶ Nevertheless, the more detailed responses conveyed a level of pragmatism and a general belief that Ngātiwai iwi interests, as well as the interests of individual claimants and/or hapū, can be incorporated into the negotiation process (irrespective of whether there is one or several settlements).

Hapū consent to the DoM

The diversity of responses to the question about hapū representation helps illustrate why ‘hapū consent’ was not explicitly sought for the NTB DoM. Clearly, hapū representation is not a straightforward issue for Ngātiwai given the longstanding marae-based structure of the NTB.

One of the workshops proposed seeking hapū consent by approaching hapū through the Ngātiwai marae. Many survey respondents assumed a strong linkage between particular marae and particular hapū, whereas others implicitly or explicitly rejected that assumption. The diversity of views on this question may reflect the diversity of organisational capacity among Ngātiwai hapū, and the respondent’s own experiences of the hapū to which they are affiliated. For instance, respondents may assume that if their own hapū has a readily identifiable self-governing structure, then other hapū will (or should) be similarly placed. That is not, however, the reality.

Will respondents be prejudicially affected by Crown recognition of NTB’s DoM?

It is clear that a small number of respondents do not support the NTB’s DoM. However, that is not the same thing as being prejudicially affected by the Crown’s recognition of the DoM. The answers provided to the survey and at the workshops do not provide evidence or otherwise indicate that the respondents or anyone else will be prejudicially affected by the Crown’s recognition of the NTB DoM.

This is perhaps not surprising, since the respondents were not asked directly about any actions or omissions of the Crown. Instead, the questions focused on internal Ngātiwai matters. While a small number of

⁶ Both perspectives were reflected in workshop commentary. Of the written responses, 24 favoured a collective settlement, 15 supported separate settlements and 19 expressed no clear preference. Included in the 19 are 3 respondents whose views could not readily be determined from their responses.

responses questioned the NTB's mandate none referred to the Crown's recognition of the NTB DoM. The only references to the Crown were in the context Ngātiwai iwi and hapū collectively pursuing the settlement of historical claims against the Crown. Furthermore, most respondents approached the questions as individuals and not as representatives of whānau, hapū or Wai claimants.

Other factors highlighted in the responses that may be relevant to the question of whether parties may be prejudicially affected by the Crown's recognition of the NTB DoM include:

- The variations in the organisational capacity of Ngātiwai hapū (as discussed above). For instance, while a relatively small number of responses expressed a strong desire for an independent hapū-based approach to negotiation and settlement, there was also an implicit (in one case explicit) concern for the interests of smaller or less well-resourced hapū if separate settlements were to be pursued;⁷ and
- The implicit differences in perspective from those who are active in Ngātiwai or hapū affairs and those who live away or have less active involvement with iwi and hapū.

It is also notable that many of the more critical comments in the responses relate to internal Ngātiwai matters (for example, the marae-based constitution of the NTB) which are outside the scope of the urgent hearings.

Looking forward

Some of the matters of concern to respondents relate to the post settlement period – i.e., how will settlement assets be governed, how will the benefits be distributed, what authority do hapū have in relation to their lands and people, and so on.

The solutions to these issues lie not in the Crown's recognition of the NTB DoM, but in the design of the Post Settlement Governance Entity (PSGE) and the ratification of the settlement and PSGE by Ngātiwai members. It is reasonable to conclude from the survey responses that people's sense of identity and belonging to hapū will not be threatened or undermined by the Crown's recognition of the NTB's DoM. To the contrary, the development and establishment of a PSGE for Ngātiwai should provide an opportunity to consider and reconcile the various views put forward in the workshops and survey responses on the identity and role of hapū and marae as part of the wider Ngātiwai collective. And, as a workshop participant said, *"in the end we all get to choose if we agree with it or not"*.

⁷ The implicit concern is apparent in the numerous comments to the effect that a collective negotiation and settlement can provide greater support to individual and collective claims.