

# Deed of Mandate



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## Deed of Mandate

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## KEY POINTS

- Read the Red Book
- Meet relevant officials at Office of Treaty Settlements (and Te Puni Kōkiri)
- Draw up your Mandating Strategy (see *A Mandating Strategy*, page 7) especially:
  - Do you meet the Crown's large natural group status?
  - What claims will it apply to?
  - Who is the Deed of Mandate on behalf of? Define your claimant group
  - Which area does it apply to?
  - Decide how members will be represented on your mandated body
- Form the representative entity which will seek the mandate
- Draft the rules that will govern the activities of the mandated body
- Plan your hui and consultation process with adequate public notice and clear and accountable voting procedures
- Employ a competent project manager to run the process
- Ensure all relevant papers are included when you submit the Deed of Mandate to the Crown
- Design your register of members and begin registrations as soon as possible
- Develop a robust communication strategy, eg pānui, website

### **Remember...**

- Short cuts tend to take you nowhere
- If you decide to ignore Crown advice be aware of possible negative consequences
- Document and record everything
- Use expert (and often expensive) advice when you need it; not just because it's there
- Always be prepared to know and admit when you do need that advice
- Don't get sucked into 'mandate wars' with another section of your claimant group; the Crown will not recognise two mandates over the same claims
- It's human nature; some members will always oppose your mandate no matter how robust it is; keep them in perspective – don't let the tail wag the dog
- Once the rules are written for the mandated body – stick to them
- A mandate does not last forever; it must be maintained
- Too much communication with iwi members is better than too little



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### INTRODUCTION

The purpose of this chapter is to comment on aspects of the Deed of Mandate process as it affects hapū and iwi. While this chapter refers to the Red Book, its particular focus is matters that the Red Book does not cover, or covers, but not in enough detail.

Each claimant group needs to obtain a Deed of Mandate to negotiate Treaty settlements with the Crown. This chapter discusses:

- mandates
- Crown expectations of Deeds of Mandate
- the role of Office of Treaty Settlements and Te Puni Kōkiri in the mandate process
- funding issues
- key claim management tasks
- the development and implementation of a mandating strategy, and
- maintaining a mandate.

For an example of a Deed of Mandate see Appendix 1 to this chapter.

### MANDATING STRATEGY – CROWN REQUIREMENTS

#### What is a mandate?

In the context of Treaty negotiations, a Deed of Mandate signals that the mandated body has widespread support from members of the claimant group to carry out one specific task; namely to negotiate a settlement of perceived Treaty breaches by the Crown over the hapū and iwi to which those members belong.

The entity or body that has their mandate conferred by the claimant group and recognised by the Crown is called a ‘mandated body’ (the Red Book term is ‘mandated representatives’).

#### *Who speaks for the hapū/iwi?*

During the last twenty years of Treaty settlements, it has not always been clear who spoke for a certain hapū, group of hapū or iwi. The Crown has recognised this problem and since the mid-1990s developed a process that aims to protect itself from creating new problems by dealing with the wrong people.

For sound reasons, the Crown needs a high level of certainty that the mandated body with whom it is negotiating has widespread support from the members of the hapū and iwi they purport to represent. This does not mean the mandated body must get one hundred percent support from members – no politician gets that level of support. But the Crown must be sure that it is ‘talking to the right people’ when negotiating a claim.

It is equally important that the claimant group has confidence in the mandated body and the process that put it there. The task during the mandating process is to get the support of the members in such a way that any dissent can be seen as a legitimate, but minor, not sufficient cause for the Crown to stop negotiating with the mandated body. This can be tricky – vocal dissenters can be very noisy and may make it appear they have a lot more hapū/iwi support than they really have.

For example, imagine during the mandating process that the same small group of dissenters attended most hui, during which the proposed body received widespread support. The same small group could bombard the Crown with their opposition, perhaps using a solicitor to add weight to their arguments.

If the mandated body can demonstrate to the Crown

*‘Yes, they came to hui and expressed their opposition on the marae (here is the list of attendees and the resolutions passed at the hui), but our people still gave us strong support to go forward,’*

Then the negotiation process is not likely to be hindered.

However, if the dissenters can show that they were cut out of the consultation and mandating process the ‘mandated body’ will have a problem. It is conceivable that the Crown might decline to recognise the mandate because of justifiable doubts that the process was fair and open to all hapū/iwi members. Or, even worse, the mandated negotiators spend their blood sweat and tears negotiating a deal that the Crown can live with but the Waitangi Tribunal recommends be overturned.

Even if those who oppose – or are reluctant to support – the mandating process are relatively low key it is important that the mandating team finds ways to include them. It is essential to be able to show that they are not locked out. How this is done will be up to the skills, tikanga, and ability to be found in each group seeking the mandate to compromise.

In the light of these potential difficulties the Crown insists that dispute resolution provisions are included in the rules or constitution of the proposed mandated body before the mandate strategy/Deed of Mandate is endorsed by the Crown.

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**CROWN'S MANDATE EXPECTATIONS**

Anyone who intends seeking a mandate to negotiate a Treaty settlement should familiarise themselves with the Crown expectations of the mandating process and outcomes before designing their mandate strategy (see the Red Book, pages 44–51). The Red Book offers some sound advice, including: *'the Crown does need assurance that the mandate is secure before starting negotiations'*.

*Who gives the mandate?*

The initiators of the mandate strategy may need to remind members of the claimant group that the Crown does not give the mandate. Members of the claimant group give the mandate. The Crown simply decides whether it is able to recognise that mandate.

**OFFICE OF TREATY SETTLEMENTS AND MANDATING**

Claimants often say that discussing the proposed mandating strategy with Office of Treaty Settlements and, to a lesser extent, Te Puni Kōkiri, before beginning the Deed of Mandate process dilutes claimant control and mana.

The fact is, that ultimately, Ministers choose whether or not to recognise or reject a proposed mandate and claimants should not lose sight of that.

There is anecdotal evidence of claimants drafting and implementing their own strategy and Deed of Mandate process with little, or inadequate discussion with Office of Treaty Settlements. This has resulted in the Deed of Mandate ultimately not being recognised by the Crown.

Office of Treaty Settlements is the face of the Crown in Treaty negotiations. Some claimants are suspicious of Crown officials in relation to Treaty settlement matters, mistrust that translates into comments about officials such as 'they are too young,' 'ihu hupe,' 'inexperienced,' and 'don't understand tikanga'.

Despite these conclusions, claimants are still strongly encouraged to engage with relevant staff from Office of Treaty Settlements from the early stages. The officials have a specific task – to provide advice and assistance to claimants to achieve a robust mandate. Their measure of success is identical to that sought by the initiators of the mandating strategy; a strong mandate to negotiate Treaty claims for the claimant group.

The mandate initiators can:

- discuss issues and possible problems with officials at Office of Treaty Settlements
- look for solutions to meet their needs, and
- establish Crown requirements for a Deed of Mandate.

Claimants can always reject the officials' advice and walk away, or do the mandate 'their way'. If they do, however, they should do so having carefully evaluated the likely outcomes of that approach, as noted above.

While claimants might not agree with the Crown's mandating requirements, at the end of the day officials are working in instruction from Ministers. Policy is set by the government and Office of Treaty Settlements works to that policy. In that light, keep in mind that policy can change with changing political circumstances.

For example, Ministers may have a different view on some issues when an election is drawing near. Whether they will be more – or less – flexible will depend on circumstance. Because of this, those planning the full negotiation strategy should regularly evaluate the political landscape.

**ROLE OF TE PUNI KŌKIRI**

Broadly speaking, Treaty settlements are a priority for Te Puni Kōkiri as the Minister of Māori Affairs, together with the Minister in Charge of Treaty of Waitangi Negotiations, is delegated authority from Cabinet to:

- recognise the mandates of claimant groups for the purpose of entering Treaty settlement negotiations
- recognise claimant settlement ratification results
- approve post-settlement governance entities, and
- make decisions about the addition to or release of properties from the Crown settlement landbank.

The key Te Puni Kōkiri role is probably during mandating. Office of Treaty Settlements (the lead agency) and Te Puni Kōkiri advise claimants on matters such as mandate strategies, wording of advertisements, resolutions at hui and contents of Deed of Mandate. Consequently, claimants should talk to both Te Puni Kōkiri and Office of Treaty Settlements at an early stage. Te Puni Kōkiri officials would normally travel with Office of Treaty Settlements to have early engagement with claimants about entering the process for seeking a mandate.

**IMPORTANCE OF PLANNING**

The importance of planning cannot be overstated. Not only is good planning common sense, it should also minimise the risk of any legal challenges, or if challenges are made, minimise their prospect of success. A common feature of Treaty settlements is the abundance of political and legal challenges that occur. Such challenges are very costly and time consuming.

The time and effort put into planning should be seen in the context of the likely duration of the entire

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settlement process. Filing a Deed of Mandate through to the settlement itself can take from four to ten years. The decisions the planners make now can – and almost certainly will – be referred to later, including in Court, the Waitangi Tribunal and select committee hearings.

From the outset, planning will require claimant group members to deliberately decide that they wish to promote the prospect of a mandate being obtained for the purposes of negotiation with the Crown in settlement of their Treaty claims. The process does not start or run by itself, it requires the initiative and input of specific members of the claimant group (the ‘initiators’).

It is at this stage that serious planning needs to occur. The initiators need to draft and consider a claimant mandating strategy at a strategic level.

*(While the term ‘mandating strategy’ is used here it should be noted that a ‘claimant’, as defined in the Treaty of Waitangi Act 1975, may not in fact be part of the group drafting or implementing a mandate strategy, nor have any role in the Deed of Mandate.)*

Completing and filing a Deed of Mandate with the Crown should not occur until the claimant mandating strategy has been agreed between initiators and officials, and then implemented. The steps in the mandating strategy are summarised in Table 1 (page 7) and detailed in the pages that follow.

Finally, do not leave detailed planning until the last minute; start as early as possible.

### CLARIFY THE DEED OF MANDATE NATURE AND SCOPE

The key questions are:

- *Who* is the Deed of Mandate on behalf of? Provide a clear definition of the hapū/iwi and marae who comprise the claimant group, as well as the ancestor of the group if applicable.
- Over *what claims* will it apply? The Crown will want all pre-1992 ‘historical claims’ to be comprehensively settled.
- Over *which area* does it apply? What is the rohe/area of interest of the relevant hapū/iwi? This is particularly important in the context of overlapping claims.

While answers to these questions may appear obvious that is not always the case. Such matters have been challenged in the Court, the Tribunal and also at the select committee during previous settlement processes.

Initiators need to pay attention to detail on these matters as they formulate the mandating strategy and subsequent implementation leading to filing a Deed of Mandate.

Certainty in addressing these key questions cannot be underestimated. From a legal perspective, major issues of ownership and entitlement arise out of these questions, the significance of which may only be fully appreciated when the Deed of Settlement is about to be ratified.

In some cases, the *who*, *what* and *which* will be easier to define than in others. The particular facts of each case need to be carefully assessed and applied.

For instance, the Ngā Raurū Kaitahi Settlement is an example of a wide mandate, covering *all* the people of Ngā Raurū Kaitahi, *all* the relevant claims of those people, and over a *clearly defined area*. This was due to the nature and size of Ngā Raurū Kaitahi as a people, and the fact that they had not previously settled any of their historical Treaty claims.

By comparison, the *who*, *what* and *which* questions were much more complex for the Affiliate Te Arawa Iwi/Hapū due to their very different circumstances.

Firstly, not all Te Arawa Iwi/Hapū mandated a body to negotiate on their behalf – some Te Arawa Iwi/Hapū have still to mandate a body and enter negotiations with the Crown.

Secondly, some aspects of the Affiliate Te Arawa Iwi/Hapū historical claims – the Te Arawa Lakes – had already been negotiated and settled by another mandated body.

#### *Large natural groupings*

The Crown has in the past been willing to recognise the mandate of, and enter into negotiations with claimants who represent varying population numbers and land areas. For at least the last six years the Crown has stated a preference to negotiate with large natural groupings. While aimed at reducing the overall number of separate negotiations the Crown has to undertake, it is yet to be seen whether this will make the *who*, *what* and *which* questions any easier to answer for Deed of Mandate purposes.

The controversial issue of large natural groupings and the impact this policy can have on hapū/iwi will be discussed in more detail throughout this Guide. It is an important matter that claimant leaders need to confront.

What is clear however, is that when formulating then turning a mandating strategy into a Deed of Mandate

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process, if there are marginal areas in terms of the *who*, *what* and *which* questions, a prudent position for initiators will be to adopt a wider, rather than narrower position in the Deed of Mandate. Once a Deed of Mandate is filed with the Crown, the claimant body cannot easily go back to their claimant group to expand the Deed of Mandate.

	<b>Action</b>	<b>Comment</b>
1	Read Office of Treaty Settlement 'Red Book' contact relevant officials at Office of Treaty Settlements (OTS)	This will give an idea of Crown expectations and bottom lines and save unnecessary time and expense. Informal discussions with key OTS staff may help clarify issues and smooth the mandating process
2	At preliminary meeting with OTS discuss whether the claimant group meets Crown 'large natural group' status	Do not proceed until OTS agrees in principle that your claimant group will meet large natural group (LNG) parameters set by the Crown
3	Identify all Wai numbers with interests likely to be included in the proposed negotiations; identify any (other hapū / iwi) to be excluded	The Crown preference will be to include all Wai numbers affiliated to the hapū / iwi to be included in one settlement. Discuss exclusions with OTS
4	Identify other Treaty claim interest groups in the area who might seek an independent Deed of Mandate	Ensure different groups do not end up pursuing the same Deed of Mandate
5	Discuss the issue of representation with the relevant iwi organisation (runanga)	Will the local iwi runanga stand aside or compete for the mandate: resolve this before beginning
6	Meet OTS to confirm the proposed representation of the claimant group meets Crown 'large natural group' status	Do not proceed until OTS agrees that your claimant group will meet large natural group parameters set by the Crown
7	Define the claimant group: all hapū (including a note of hapū no longer in existence) and associated marae	Listen carefully to OTS advice – but you hold the pen
8	Identify the claimant area of interest	Essential to help identify overlapping claims from other hapū and iwi
9	Decide the mode of representation on the mandated negotiating body, from iwi whānui, hapū, marae or another combination (or use an existing representative organisation)	Design a form of representation which ensures all members feel included – any who feel excluded may oppose the mandate. Balance that with the need for a workable model
10	Plan the hui and consultation process	Work out the full consultation process
11	Write the resolution(s) members will be asked to approve	Give careful thought to the text Have OTS check to ensure all bases are covered
12	Public notice of hui and consultation process – what, when, where and how	Discuss the procedure with OTS
13	Carry out the consultation and mandating hui process	Ensure accurate records are kept to demonstrate a fair and open process and agreed outcome
14	Assemble all the necessary documents to support the Deed of Mandate. Present the Deed of Mandate to OTS	Meet OTS to review the papers and ensure all relevant details are included (full and accurate records speed the Crown turn-around of the papers)

Table 4.1: Mandating strategy

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**DEVELOPING THE MANDATE STRATEGY**

Seeking a mandate can be time-consuming, expensive and sometimes very stressful. It is worth doing once and worth doing properly.

Challenges to mandates, even when the mandated representatives have carried out an open process, can siphon off huge sums in legal fees and delay a settlement by months, if not years. Not surprisingly, if the Waitangi Tribunal upholds a mandate, members of the mandated body still feel frustrated, emotionally drained and diverted from the job claimant group members put them there to do.

**ON WHOM IS THE MANDATE CONFERRED?**

A mandate to negotiate Treaty claims can be conferred in two ways:

1. on named individuals who personally carry the mandate, or
2. a body or entity, either
  - a. an existing representative organisation such as an iwi runanga, or
  - b. a new entity formed specifically to negotiate the Treaty claim.

**Named individuals**

A fundamental problem with mandating individuals as opposed to a body or entity is that there is a major issue to deal with when an individual either no longer wishes to act, acts outside the scope of the mandate, or dies. Associated with that are significant legal problems of certainty and accountability. There are other issues too, but the potential issues of accountability and certainty are sufficient in themselves to warrant mandating an entity or body rather than an individual.

**A body or entity**

The mandating of a body or entity (as opposed to individuals), is the most common practice. While there is no set formula, a tried and tested general mandated body/entity framework is set out in diagram form (see Figure 1, page 14).

**An existing representative organisation**

Initiators may choose to have the claimant group mandate a body or entity that is already in place, for example, a body that acts for the hapū / iwi in another capacity such as the local Iwi Runanga.

Caution is urged in this approach. Check that the rules required for a mandated body are already included in the existing body's rules, or the existing rules can be altered satisfactorily. Consider the nature and scope of the

existing body – can it legally be the mandated body for the claimant group?

**A new entity formed specifically to negotiate the Treaty claim**

The newly mandated body can, and should, set out detailed rules to accommodate all relevant matters such as accountability and how funding is held and used (see Table 4, page 24). In doing so Crown prerequisites for mandate recognition can also be accommodated.

Of equal importance, such rules give the claimant group hapū / iwi certainty and assurance as they embark on such a significant journey, and will prove invaluable further into the settlement process.

**FULL MANDATE STRATEGY**

The start-to-finish steps in the mandating process focus on mandating a new entity. Most steps and principles also apply to:

- mandating individuals, or
- an existing representative organisation.

**Mandating individuals**

Neither CFRT nor Office of Treaty Settlements recommends this approach.

**EXISTING REPRESENTATIVE ORGANISATION**

An existing runanga or iwi organisation which is well known to hapū / iwi claimant group members, has capable leaders and a good reputation for quality delivery, could assume the mandate without much difficulty.

**Note:** Although the iwi organisation's 'general mandate' may be widely acknowledged in the community, Office of Treaty Settlements will not automatically recognise an assertion that they have a mandate to negotiate a Treaty settlement.

The mandate to negotiate Treaty claims is an explicit mandate.

For example, a Mandated Iwi Organisation recognised by the Māori Fisheries Act does not have a mandate to negotiate a Treaty settlement. The runanga or iwi organisation will still need to go to the hapū/iwi to seek that particular mandate.

Existing representative organisations seeking a claimant group mandate should use the relevant steps set out in the following sections.

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Initiators need to remember possible limits on the scope and authority of the existing representative organisation. For instance, an existing organisation may be able to act for only a narrow class of beneficiaries and for limited purposes. It may not be possible to amend those limitations to accommodate the proposed mandate strategy.

### ENTITY FORMED SPECIFICALLY TO NEGOTIATE THE TREATY CLAIM

When members of the claimant group – hapū or iwi – have taken the initiative to form a mandated body to negotiate with the Crown, where do they start? Table 2 gives 14 steps.

1	Read the Red Book, talk to OTS
2	Can we form a 'large natural group'?
3	What about my Wai number? Identify all relevant claims to be settled
4	Identify other groups who might independently seek the Deed of Mandate
5	Talk to the iwi runanga
6	Confirm mandate strategy proposal with OTS
7	Who are we? Define full claimant group
8	Where is our whenua? Define area of interest
9	Representation on proposed mandated body
10	Planning the hui and consultation process
11	What decisions are the claimant group making?
12	Public notice: why, what, when, where, how
13	Record keeping and mandating hui
14	Submit Deed of Mandate to Office of Treaty Settlements

Table 4.2: Fourteen steps in gaining a mandate

### STEP 1: READ THE RED BOOK AND TALK TO OFFICE OF TREATY SETTLEMENTS

In the first instance, read the relevant sections of the Red Book and contact Office of Treaty Settlements. Although claimants might not agree with the stance of Office of Treaty Settlements it is vitally important claimants do not waste energy and resources on a strategy that will not deliver a useable mandate. Make no mistake: the Crown will not enter into negotiations if it is not confident that the negotiating body has carried out an open mandating process.

In seeking a Deed of Mandate some things **must** be done and others should **not** be done.

It is better to identify them at the start.

Claimants who insist on being 'staunch' and carry out a mandate process without any discussions with Office of Treaty Settlements must be prepared for the possibility that Ministers will not recognise the mandate – not because Office of Treaty Settlements was not consulted but because Ministers are not confident that a fair and open process was used to gain the 'mandate'. Claimants who go down that road should be aware that the Courts are unlikely to intervene, on the grounds that recognition of mandate is adjudged to be a political decision by Ministers over whom the Courts have no jurisdiction.

There is a distinct possibility that the mandate initiators will get pressure from claimant group members to not consult with Office of Treaty Settlements on the grounds that it is a 'Crown' mandating process dictated from on high. They will need, therefore, to be able to demonstrate to their members the advantages of getting a sound mandate that follows tikanga processes as much as possible, while still achieving the desired outcome – the Crown's acceptance of the mandate.

### STEP 2: CAN WE FORM A 'LARGE NATURAL GROUP?'

The Crown's 'large natural group' policy is a very controversial topic in the Treaty settlement environment. In the Red Book, Negotiations with large natural groups (page 44) begins:

*'The Crown strongly prefers to negotiate settlements with large natural groups of tribal interests, rather than with individual hapū or whānau within a tribe.'*

From the Crown's point of view this makes sense. If claims were negotiated by individuals or even on a hapū or whānau basis, it would take many decades to negotiate existing claims and many claimants would have passed away before their claim even reached the negotiating

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table. Thus the Crown ‘encourages claimants to aggregate a number of claims into one negotiating process for the ‘natural group’.

Not surprisingly claim leaders can be deeply offended when the Crown tries to force them into groups to suit the Crown’s needs but which may not reflect the reality on the ground.

Groups who have no strong historical or whakapapa connections may be justified in resenting Crown attempts to group them together to meet the Crown’s political needs. If these groups do agree to aggregate, problems can still arise.

- 1 What if two groups subsequently have irreconcilable differences and their working relationship disintegrates? Will the Crown promise in advance that it will continue to engage with both parties or does the whole negotiation grind to a halt?
- 2 What if one of the groups identified by the Crown as part of a ‘large natural group’ refuses to participate in the mandating process? How will Office of Treaty Settlements deal with that? What assurances can they give to hapū / iwi leaders who want to move to negotiations?

There may be occasions when hapū / iwi leaders decide that it is not worth moving forward because of the affront to the mana of their hapū and iwi. For example, it could be argued that each of the iwi identified in the Māori Fisheries Act are a ‘natural group’ in their own right – regardless of their population or size of rohe – and should not be forced into any larger group, either for negotiations or to form a post-settlement governance entity. If any of those iwi should choose to aggregate by their own free will, then that is another matter.

In some cases aggregation into a ‘large natural group’ is fairly straightforward. For example there may be several claims lodged by individuals, whānau and hapū who everybody accepts all affiliate to one widely recognised iwi. It does not fly in the face of tikanga for all these claims to be negotiated under one banner, especially if the iwi is relatively small in population and rohe area. This approach can have considerable positive outcomes for claimants:

1. their costs for the whole negotiation process from start to finish are greatly reduced, and
2. they can ‘pack a bigger scrum’ against the Crown during negotiations.

On the other hand, leaders of small hapū of perhaps a few hundred people would be unrealistic in the current political climate to think the Crown would negotiate with them directly.

This large natural group approach is much more complicated if the iwi has a huge population and covers a large area. For example Ngāti Kahungunu has approximately 60,000 members, numerous hapū and marae, and its rohe extends from northern Hawke’s Bay to Cook Strait. From the Ngāti Kahungunu perspective overarching claims including oil and gas, flora and fauna, foreshore and seabed, fisheries and te reo might be managed by the iwi representative organisation.

However, within Ngāti Kahungunu it is generally considered that claims relating to lands, forests and wahi tapu are best devolved to appropriate groupings of hapū.

The main lesson from this is that claimants should engage with Crown officials at an early stage to discuss the viability of their claimant group. It may be self-defeating to ignore the Crown in these early stages. Who has the time and money to spend on a mandating process that will not deliver a Deed of Mandate because the Crown asserts that they do not form a ‘large natural group’? If the Crown view is so offensive, the leaders of the claimant group might choose to simply walk away. That is their decision to make.

### **STEP 3: WHAT ABOUT MY WAI NUMBER? IDENTIFY ALL RELEVANT CLAIMS TO BE SETTLED**

An issue initiators will face in developing a mandating strategy to represent the hapū / iwi who comprise the claimant group is the position of individuals who already have, either individually or with others, filed a claim with the Waitangi Tribunal.

The Crown’s political Deed of Mandate requirement that a mandate be sought and held for large natural groupings can be contrasted with the statutory right to file a claim with the Tribunal. So long as the core aspects of Treaty breach and prejudice are evident, to file a claim and have standing with the Tribunal, any Māori individual can file a claim without the support or approval of anyone else. Contrary to some expectations, a Wai number is not a modern property right and entitlement. It is, however, an essential first step in the procedure for Waitangi Tribunal hearings.

For many claimant groups (whānau / hapū / iwi) there are dozens, even scores of Wai numbers. In some cases an individual Māori has a Wai claim; in others it may

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be on behalf of a whānau, hapū or iwi. Clearly so many claimants cannot all have a seat on a single mandated negotiating body. It would be unworkable. It is critical, therefore, to move beyond individual or whanau expectations to the Treaty aspirations of the collective hapū / iwi so that the Treaty grievances of the entire claimant group can be settled. This is a standard Crown expectation.

Occasionally individual Wai claimants think that because the Waitangi Tribunal has registered, or even heard their claim, that it has ‘recognised’ their mandate and they can negotiate as of right. Consequently they may be very resistant to another body negotiating a claim to settle what they may perceive to be their exclusive interests and might not be prepared to be part of a bigger representative group. It may be important to note that the Waitangi Tribunal has every right to recognise a claimant’s mandate to bring their claim, as opposed to the Crown’s requirement of a quite distinct mandate to negotiate the settlement of Treaty claims.

The mandated body needs to be able to demonstrate to Office of Treaty Settlements that it has discussed the matter of representation with as many of these people as possible, especially any who choose to stand outside. On the other hand, Office of Treaty Settlements does not consider this level of consultation to be mandatory on the grounds that it is not always possible or practical. As noted above, ‘ownership’ of a Wai number does not confer any extra ‘rights’ on that ‘owner’ compared to other members of the hapū and iwi, although they are the holders of the claim being negotiated.

Because the Crown’s mandate process does not specifically require the consent of Wai claimants to a Deed of Mandate (other than as individual members of the wider claimant group) it is quite possible that many – or all of – the Wai claimants might not be part of either the initiator group proposing the Deed of Mandate or the subsequent mandated body. In the past this has led to a number of legal challenges to a Deed of Mandate and through the settlement process generally. Unless well managed at the outset, this can lead to tension and conflict, not just in the mandating process, but also the entire settlement process. This should be avoided.

**STEP 4: IDENTIFY OTHER GROUPS WHO MIGHT INDEPENDENTLY SEEK THE DEED OF MANDATE**

As the previous section indicated, the question arises ‘Are there other interest groups in our hapū / iwi who might independently seek the mandate to represent us?’

As long as it might take, it is important to identify and talk to all other interest groups, with the aim of getting them on board, keeping in mind that there are usually some who will not join. This process, usually easier for smaller claimant groups, can be difficult for larger ones – people who have invested a lot of time and labour on a claim may naturally be reluctant to ‘disappear’ into the wider claimant group’s Deed of Mandate.

What do the mandate initiators do if they kick-start a rival group who then try and ‘beat’ the initiators to the mandate to represent the same claimant group?

They should contact relevant officials at Office of Treaty Settlements and tell them exactly what has happened. Resist the temptation to get drawn into ‘mandate wars’. Again, the emphasis is that those seeking a mandate cannot be compelled to do what Office of Treaty Settlements wants, but they should be aware of likely outcomes if they ignore official advice and take steps they were advised to not take.

**STEP 5: TALK TO THE IWI RŪNANGA**

What is the proposed role of the local iwi organisation or rūnanga? It would be prudent for the initiators (if not already part of the local runanga) to meet iwi representatives to discuss the process. In some areas the existing iwi organisation may be willing to have the task of negotiating a settlement picked up by a new body. It is a good idea to get this formally recorded.

The iwi organisation may already have plans to seek the Deed of Mandate and consequently the issue would need to be talked through. For example four major settlements: Waikato-Tainui, Ngāi Tahu, Te Arawa Lakes and Ngāti Awa were negotiated by the existing runanga or Trust Board. Other iwi representative organisations also intend to negotiate the claims for their constituent hapū / iwi. It is not worth using the ‘gold rush’ approach and trying to get the mandate before the existing iwi organisation begins its process or to compete for the same mandate at the same time. This tactic can prove very wasteful of time and resources and force divisions within the claimant group that become difficult to bridge.

If the local iwi organisation has a high profile and good track record the Crown is not going to ignore its opposition to a Deed of Mandate strategy from which it has been excluded. If these issues can be worked through from the start so there are no surprises, the whole negotiation strategy is more likely to have a successful outcome.

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It is also important to begin early discussion on the form of the post-settlement governance entity. If iwi runanga are already in existence initiators need to consider if the existing iwi organisation can be adapted to take that role or consider whether an entirely new organisation needs to be formed. If so, is it likely that the existing iwi organisation will become redundant?

Expect at least some current iwi representatives to be wary of this. If they have invested vast amounts of time and energy into building up an organisation, they will naturally be reluctant to see it relegated to history, no matter how sound the reasons. Keep talking it through, focussing on the potential benefit to all members if the Treaty negotiation process is successfully completed and a new post-settlement governance entity established.

**STEP 6: CONFIRM MANDATE STRATEGY PROPOSAL WITH OFFICE OF TREATY SETTLEMENTS**

By this stage the initiators of the mandate strategy have done a lot of background work, including detailed discussions with appropriate officials at Office of Treaty Settlements and Te Puni Kōkiri. It is now time to meet Office of Treaty Settlements and confirm that the proposal for the claimant group representation meets the Crown 'large natural group' status. Claimants are strongly advised to not proceed to the next stage until agreement with officials has been reached.

**STEP 7: WHO ARE WE? DEFINE THE FULL CLAIMANT GROUP**

Who will the mandated body's negotiators be negotiating on behalf of? In other words, define the claimant group. This is an essential item on Office of Treaty Settlements' checklist and cannot be avoided. As a minimum this requires:

- the name of the claimant group
- any founding ancestor(s)
- the names of any iwi and hapū, and
- the associated marae.

Office of Treaty Settlements can be nervous about inadequate definition of the claimant group. It does not want a large section of the claimant group telling them they were never given the chance to participate. And the Crown does not want to later discover hapū not identified in the claimant rohe now making claims against the Crown. That is why Office of Treaty Settlements prefers to identify hapū that may not have not been active for generations.

It is recommended that mandate planners discuss their claimant definition with officials before issuing public notice of the consultation hui and mandating process.

This is critical, especially in the context of large natural groups.

Keep in mind that Office of Treaty Settlements may have a different view on the composition of the claimant group, especially in the light of its large natural group policy. It is conceivable that Office of Treaty Settlements view will be so offensive to the mandate initiators that they will refuse to go any further unless Office of Treaty Settlements is prepared to accept their self definition. This is likely to become increasingly complex in certain regions if the Crown adheres to its large natural group policies.

**STEP 8: WHERE IS OUR WHENUA?**

**DEFINE THE AREA OF INTEREST**

What is the land over which the claimant group's Treaty claim extends? The answer will help Office of Treaty Settlements identify:

- whenua over which only the claimant group has any claim, and
- areas of overlapping claims. Keep in mind the Crown's position noted in the Red Book (page 48):

*'The Crown does not attempt to define precise boundaries through the settlement process. Rather, general 'areas of interest' are recognised within which redress may be made available to a claimant group, subject to overlapping claims being addressed to the satisfaction of the Crown.'*

Note the official position about, 'overlapping claims being addressed to the satisfaction of the Crown.' There is no reference to 'the satisfaction of the claimant group'. What is certain is the uncertainty attached to overlapping claims:

- do both parties accept that the area concerned has traditionally been recognised as a 'buffer zone' between the hapū/iwi?
- is the overlapping claim an unsubstantiated claim by persons who hold no representative status within their hapū or iwi?

Claimants are strongly advised to not leave overlapping claims to be resolved by the Crown and to insist on at least an equal role in dealing with this potentially risky matter. The claimant group should have better knowledge than the Crown to deal with overlapping claims, and will certainly have some whakapapa and historical connections to use as a starting point. Keep in mind that the conservative Crown view may tend towards 'if in doubt, leave it out' for any settlement redress. In some cases extensive 'overlaps' could mean very little land is available for certain mandated bodies to negotiate over.

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The mandated body is strongly advised to engage directly with overlapping claimants at the earliest opportunity with the optimum goal of resolving matters without direct Crown involvement. Negotiators should always keep in mind the potential for a settlement to be overturned on an overlapping claim issue.

**STEP 9: REPRESENTATION ON THE PROPOSED MANDATED BODY**

For argument's sake assume there is an iwi made up of a number of hapū and their associated marae. That immediately offers at least three different means of representation on the proposed mandated body:

1. representatives drawn from the iwi whānui
2. representatives chosen by hapū, or
3. marae form the basis of representation.

The main driver on the system to use will probably be the tikanga of the iwi and hapū because it is most likely to be supported by a 'don't fix it if it ain't broken' approach from members. If the proposed system is not consistent with tikanga, take care to explain to members why it is being adopted and its advantages compared with a more tikanga-based system of representation.

Regardless of which mode is chosen, the rules on how people can be elected and removed from the mandated body must be clear and accessible to all members of the claimant group.

*1. Representatives drawn from the iwi whānui*

Small iwi are more likely to adopt this model, especially if they only have a very small number of hapū and marae or if hapū are no longer part of that iwi social fabric.

*2. Representatives are chosen by hapū*

This is the most common model because it accords with the tikanga of many iwi. Office of Treaty Settlements will almost certainly accept a system of representation that clearly identifies all existing hapū in its structure.

Problems can arise if there are many hapū; for example fifty hapū cannot all be directly represented at the negotiating table. Where iwi already have takiwā or taiwhenua in their rohe they can adapt this system to accommodate all hapū. However, if that system is not already in place internal discussions are needed to work the matter through to determine which hapū will combine to put one mandated representative into the mandated body. This can be a delicate matter of mana.

Even for iwi with only a few hapū, care is needed to ensure that the number of 'resurrected' hapū does not spiral out of control, especially if Office of Treaty Settlements insists that these old hapū are identified in the Deed of Mandate. It is not unusual for iwi members to bring up hapū names that have not been active for generations and insist that they are directly represented on the body. This can be very divisive.

As insurance, the managers of the mandating process may want to sit down with their kaumātua at the start to discuss and agree on the active hapū and identify hapū which are no longer active. They might need to take a strong line with the Crown and insist on the status of the inactive hapū. In other words, although their historical existence is freely acknowledged by kaumātua they cannot be directly represented on the mandated body. This is a case where tikanga may clash with Crown policy.

*3. Marae form the basis of representation*

The same principles and processes apply to marae representation as they do for hapū.

*Form the proposed entity*

Once the claimant initiators have decided on the form of the entity they can begin getting representatives selected by the constituent parts of the proposed entity as discussed. That entity with its rules and established accountability mechanisms can then 'go to the people' to seek the mandate. This is the most common means of establishing a mandated body to negotiate Treaty settlements. See Figure 1 below.

**Deed of Mandate**

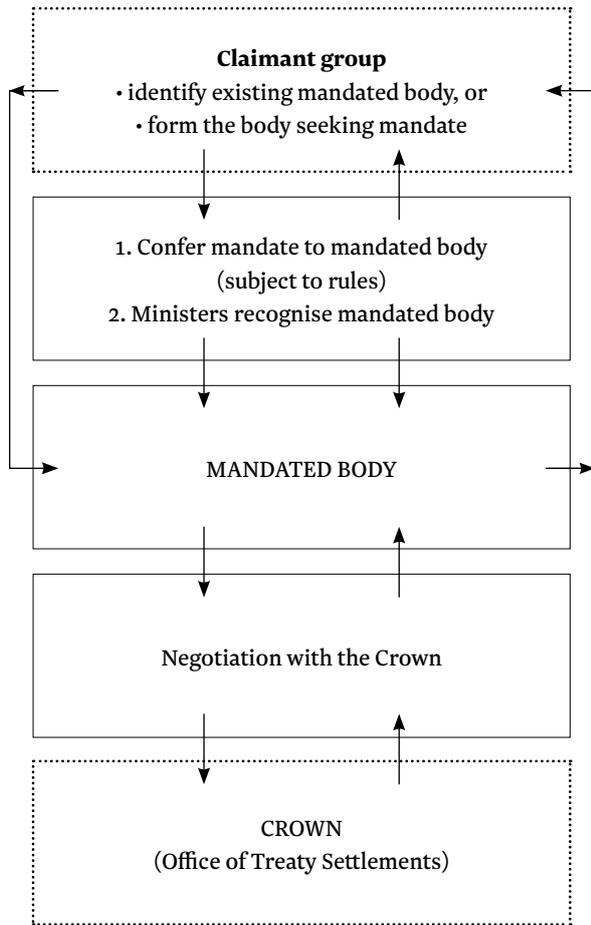


Figure 4.1: Establishing a mandated body

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**Deed of Mandate**


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**STEP 10: PLANNING THE HUI AND  
CONSULTATION PROCESS**

Careful analysis of where claimant group members live will point to where hui should be held, certainly within the hapū / iwi rohe but also in key cities and areas where members live in any significant numbers. Census data may be useful in identifying where iwi members live. Office of Treaty Settlements will have a view on where hui should be held.

Planning the full itinerary before consulting with members will reduce advertising and travel costs because the full schedule can be included in the one public notice and travel planned sequentially.

Depending on the circumstances of each claimant group, the hui might require two phases; first, a series of consultation hui; second, hui at which claimant group members will make decisions.

**STEP 11: WHAT DECISIONS ARE THE CLAIMANT  
GROUP MAKING?**

The mandating process has evolved over the last decade. The most common method now is for an entity to be formed and representatives to be placed on it by claimant group members. That entity then embarks on the process to have the mandate conferred by members. This option is currently favoured by Office of Treaty Settlements.

It will not be productive for the first discussion at hui to be free flowing without any structure. The organisers have a responsibility to provide as much information as possible to the hui and have people there who can answer the hard questions. The members must be absolutely clear in their own minds what they are deciding on and how to cast their vote.

If decisions are required from hui a voting process will need to be designed. Keep the resolutions simple and straightforward. If an existing representative organisation is seeking the mandate, wording could be along the lines of:

*That members of Ngāti Mea confirm the mandate of Te Rūnanga o Ngāti Mea to enter into negotiations with the Crown regarding the comprehensive settlement of all Ngāti Mea Historical Treaty Claims.*

Wording would be similar for a new entity formed with the express purpose of obtaining the mandate to settle the Treaty claims of the claimant group:

*That members of Ngāti Mea confirm the mandate of the Ngāti Mea Claims Committee to enter into negotiations with the Crown regarding the comprehensive settlement of all Ngāti Mea Historical Treaty Claims.*

The organisers will need to have devised a process for claimant group members to elect and remove their representatives to the mandated body, and to ensure the process is included in the rules of the mandated body. This advice is given recognising that the level of representation in hapū varies greatly throughout the country.

Some hapū have legal entities in place with widely recognised leaders, others may have a loose representation but no legal entity. Other hapū which have neither of these will need to build from the ground up. The political dynamics will vary considerably between these representation scenarios, each hapū needs to design a system that best meets their needs.

It will be important to ensure that claimant group members are aware that although they are electing the mandated body, only the mandated body has the authority to make the decision on who the negotiators are.

**STEP 12: PUBLIC NOTICE: WHY, WHAT, WHEN,  
WHERE AND HOW?**

Any public notices should be discussed fully with Office of Treaty Settlements before they are published. While Office of Treaty Settlements generally describes the requirements for such hui, to ensure greater likelihood of a robust outcome not just in this mandate process, but the entire settlement process, it is suggested that Office of Treaty Settlements' guidelines be considered minimums only.

It is not uncommon for both political and/or legal opposition to be raised when a Deed of Mandate is formally filed, on the basis that 'we did not have enough notice' and/or 'did not receive correct notice' and/or 'the resolution passed at the hui was incorrect or vague'.

*Why a public notice?*

A key element in the mandate process is ensuring members of the claimant group have the opportunity to participate. Whether individuals choose to take up that opportunity is up to them but the mandated body must be able to show all members were given that chance.

*What goes in the public notice?*

As well as stating time and venue, the public notice should be clear and specific about the purpose of the hui.

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For instance, if the purpose is to seek the support of the people at the hui to mandate a body to negotiate the historical claims of a specific claimant group, it should say just that.

It should also set out the specific resolution/s to be put to the hui. For example there is a difference in meaning between:

To **discuss** representation of Ngāti Mea to negotiate a settlement of historical Treaty claims and

To **give the mandate** to the Ngāti Mea Claims Committee to negotiate the Ngāti Mea historical Treaty claims.

The first notice signals **discussion** but not a vote or resolution. The second signals that a **vote** may be taken on the resolution.

These differences in meaning may have a significant influence on whether people attend. A member of Ngāti Mea might be happy to miss the first type of hui but be keen to attend the hui where members are making a decision. If a decision was made at the first hui the Deed of Mandate could be challenged – perhaps successfully – by members of Ngāti Mea who could state they did not know a vote was going to be taken. Better to get it right the first time!

The specific resolution in the public notice should be the only one put for the hui to decide. No other resolutions should be put at the hui nor should the publicly notified resolution/s be varied in any way at the hui – to do so increases the risk of legal and/or political challenge to the Deed of Mandate.

In practice this may sometimes prove difficult, as Kaumātua may say that a function of hui on marae is to arrive at a decision by consensus. In that case the ultimate decision on wording a resolution may be different from that drafted by the organisers. In the context of a mandating process the Crown is unlikely to accept the outcome of an ‘amended’ resolution. A resolution should be as advertised.

*When to advertise the notice?*

Advance notice should be long enough that a member of the hapū / iwi could attend the scheduled hui or meeting. One or two weeks’ notice is not enough because many people tend to be booked up in such a tight time frame. Three or four weeks is more reasonable and provides time for a member to make alternative plans if they want to attend the hui.

In terms of defending a Deed of Mandate from challenges the mandated body would then be able to show that all claimant group members were given ample notice of the planned hui.

*Where to advertise the public notice?*

Advertise where the people are, keeping in mind that a majority of Māori no longer live in their traditional rohe. Have public notices in the rohe and anywhere where there is a significant concentration of members. For most iwi in Te Ika a Māui that means at least Auckland and Wellington – for bigger iwi it means everywhere.

*How shall we advertise?*

Advertising can be expensive so it needs to be well placed using the most appropriate media. Key national newspapers are essential but not everybody reads them. Some groups have used the weekly community newspapers distributed free in most cities and towns, and local Māori radio has been very effective at reaching members. In all cases there are costs attached. In some cases an established iwi or hapū website may be available.

**STEP 13: RECORD KEEPING AND MANDATING HUI**

Accurate record keeping is a key aspect of ‘bullet proofing’ a mandate. Keep all correspondence and replies, including any to members who have expressed doubts or opposition to the proposed mandate, especially form letters all generated from the same point. Skilful opponents to a mandate can generate a vast amount of paper to make it look as if opposition is much stronger and widespread than it really is.

It is also important to ensure that in addition to ‘keeping to the script’ in terms of proposed resolutions at the hui, planners are conscious that whatever they say at the hui must be consistent in all material respects with their mandating strategy and the Deed of Mandate they propose to file. Planners who do not follow this rule increase the chance of political and/or legal challenges further down the settlement road.

At hui, accurately record all attendees who whakapapa to the claimant group by having them sign a register at the door which notes their affiliation – and age if they appear near voting age. Beware of hui padded with people who do not affiliate by whakapapa to the hapū/ iwi and ensure that they do not vote. Take the same precaution with minors who have not reached the voting age for the mandating process – generally set at eighteen. The mandated body does not want to have to defend challenges against its mandate on the grounds that children or young teenagers voted for them at the hui.

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It is vital that any vote is recorded with absolute accuracy. The soundest method is to use voting papers that can be kept as a permanent record. The organisers of the hui should provide for the hui to decide whether to have a secret ballot. There is more chance of ‘buy-in’ from members if they have the opportunity to decide for themselves rather than having the type of ballot ‘dictated’ to them. In some cases, however, a secret ballot may be necessary to prevent attendees from being intimidated at the hui and being too wary to vote in public.

### Independent observers

Independent observers can also be used to report on the hui, Office of Treaty Settlements strongly encourage this practice. Even though they may have been a small minority, those who oppose the mandate at the hui can swamp Office of Treaty Settlements with their objections so they look a lot more substantial than they really are. A neutral observer is able to report:

- fairly on the presence of objectors at the hui
- that the objectors had a chance to put their point of view, and
- that the objectors were not supported by the majority.

Te Puni Kōkiri officials from the Head Office Policy Wahanga attend mandating hui as ‘independent’ observers. They are not there to ‘take sides’. Although Te Puni Kōkiri only attends hui at the claimant group’s invitation this invitation is nearly always forthcoming. Regional Te Puni Kōkiri staff sometimes attend because of their knowledge of local personalities and tribal dynamics. It is open to claimant groups to invite other observers, but it is worth pausing to reflect on the all-round advantages of having independent Te Puni Kōkiri staff attend.

It is very important to note that as observers, Te Puni Kōkiri officials cannot and do not participate in the hui. They are introduced to the hui but their role cannot be to explain the Crown’s settlement process to members of the claimant group. That is the job of those seeking the mandate; it is not the role of Te Puni Kōkiri to influence the outcome of the hui.

The presence of neutral Te Puni Kōkiri observers provides some insurance against later comeback for those seeking the mandate in that the quality of their presentation and process will be noted, for example how well they responded to questions from the floor.

### *Voting at hui and/or by postal ballot*

A postal ballot can be carried out as an ‘optional extra’ but hui must also be used. Office of Treaty Settlements

accepts postal votes based on robust registers but also expect voting to take place at hui. In fact the Crown places much greater weight on voting at hui where attendees hear the presentation and are able to ask questions before voting.

Remember, if planners decide on a postal vote their register of members of the hapū / iwi will need to be well developed. Consequently it is likely that only established iwi representative organisations would be able to use this method. The fact that postal voting has recently been noted as an option for mandating is perhaps an acknowledgement that the Deed of Mandate and Deed of Settlement ratification processes could (and perhaps should) be more consistent with each other.

While this method of voting is likely to increase political and legal certainty with Deed of Mandate processes, there are other issues that need to be clarified before such a process could occur in a robust manner, such as register validity. These issues are discussed in detail in the chapter on ratification of the Deed of Settlement.

Postal voting would be particularly useful when a number of consultation hui have been held and pānuī distributed to claimant group members at those hui. Members have then had a chance to listen, speak and register. When they receive voting papers they will have a deeper understanding of the background leading up to the matter on which they are to vote.

### *Use identical wording for all hui and ballots*

As discussed, the organisers of the ballot will need to ensure that identical wording is used at all hui and on the postal ballot, and that an independent and neutral scrutineer has full control over the ballot papers. The organisers can do without being falsely accused of voting irregularities and having to do some things again because the paper trail was faulty. If voting is by show of hands a careful count should be done. There may be no need for a scrutineer, as the count will, in theory, have been subject to the scrutiny of those at the hui.

### *What happens if there is a conflicting outcome?*

The issue of voting is such an important part of the mandating process that it is strongly recommended that initiators – when deciding on the method of voting – ensure that Office of Treaty Settlements agrees with the process. Their agreement should include a clear indication as to what would happen if there were a conflict in outcome if a dual voting system (postal and hui) was used.

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Planners need a system that ensures members cannot vote twice. Planners may also want to anticipate what they would do if the two voting systems produced different outcomes, for example a majority of 500 postal votes were in favour but only a minority were in favour at hui attended by 400 members eligible to vote.

*Te Puni Kōkiri report on mandating process*

At the end of each set of mandating hui, Te Puni Kōkiri observers write an overview report on the process and provide it to both the body seeking the mandate and OTS. The contents of that report are Te Puni Kōkiri's independent observations and are provided to the claimant body for their information – not for comment and amendment. The overview report is one of the tools officials use to assess whether or not to recommend to Ministers that they should recognise the mandate of the claimant body.

**STEP 14: SUBMIT THE DEED OF MANDATE TO OFFICE OF TREATY SETTLEMENTS**

Using the Red Book (page 50) assemble all relevant documents and prepare to submit the Deed of Mandate to Office of Treaty Settlements. The time the Crown takes to process the Deed of Mandate will be governed in part by the completeness of the papers. The Deed of Mandate advertised in the national press is only a part of the full Deed of Mandate papers that have been submitted. The Crown can advertise the smaller 'condensed' Deed of Mandate because it holds all relevant supporting material submitted by the mandated body.

Meet the appropriate officials at Office of Treaty Settlements and have them review the papers to ensure they are complete before formally filing them with Office of Treaty Settlements. Ensure everything is correct, keeping in mind that all papers will be accessible to members of the public via the Official Information Act 1982.

*Omissions from documents*

The most common omissions are details on accountability mechanisms; for example how a representative can be removed by their hapū, or more importantly, the process for part of the claimant group (hapū or marae) to withdraw from the mandated body.

Office of Treaty Settlements and Te Puni Kōkiri officials initially assess the Deed of Mandate. They may require more information if, in their view, the Deed of Mandate is incomplete. If the material is complete, the officials will advertise the Deed of Mandate so interested parties can make submissions to either support or oppose the mandate. One month is usually allowed for submissions.

*Submissions – analysis and recommendation*

Office of Treaty Settlements, in full consultation with Te Puni Kōkiri, analyses the submissions and writes a briefing paper to joint Ministers on whether to recognise the mandate. Te Puni Kōkiri also writes a separate briefing paper to their Minister reiterating the position taken in the briefing to joint Ministers.

*Ministers recognise the mandate*

If Ministers agree to recognise the mandate, they formally notify the mandated body in writing. The next step towards Terms of Negotiation can begin. This process takes at least four months.

*Objections to the mandate*

If submissions objecting to the mandate require a detailed evaluation by officials, the time line will be extended, especially if they come back to the mandated body for further documentation. That is why it is so important to get it right first time.

**Waiting for the Crown to recognise the Deed of Mandate**

It is months between submitting a Deed of Mandate and having the mandate recognised. But there is plenty to do – the following issues are significant and will keep the team fully occupied. They include:

- Establishing or continuing the registration process
- Confirming Freepost and 0800 facilities
- Building a website
- Deciding the negotiators
- Agreeing on the key issues to take to negotiation
- Deciding the best negotiation strategy (a Plan A and a Plan B)
- Checking the document bank is complete – what else is required?
- Determining the best experts to help during negotiations – checking they are available
- Confirming funding by the Trust and the Crown
- Finalising the budget to submit to the Trust and the Crown
- Establishing Terms of Negotiation bottom line.

*Long-term strategic vision for the iwi*

There are also far reaching matters to consider, particularly the long-term strategic vision for the iwi: 'Where do we want to be in ten years?'

The possible shape of the post-settlement governance entity is extremely important, for example, if there is a Mandated Iwi Organisation under the Māori Fisheries Act what is its role? Will the iwi have two separate organisations with different functions (and duplicate administration costs and resources)?

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Another decision concerns who the negotiators will be. Although the entity may have the mandate to settle the claim, the elected representatives to that mandated body might decide they need ‘bigger guns’ or different sets of skills for the actual negotiation. In some cases the majority of negotiators may not be the representatives on the mandated body. That does not matter, what matters is picking the right team for the job.

There are a number of tasks that should be carried out. Precisely when they are begun will depend on the resources available to the initiators of the mandate plan.

For example if an established rūnanga is seeking the mandate it is likely to already have a register of members.

<b>Task</b>		<b>Comment</b>
1	<ul style="list-style-type: none"> <li>• Design registration form</li> <li>• Identify software which will meet all needs</li> <li>• Begin registering members (if using a postal vote for Deed of Mandate the register must already be established)</li> </ul>	<ul style="list-style-type: none"> <li>• Look at other iwi registration forms on the web</li> <li>• Pick all the good points</li> <li>• Keep the form simple</li> <li>• Ensure the form collects all vital information in the first sweep</li> </ul>
2	Set up Freepost and 0800 facilities	Make it easy for members to contact the mandated body – they will have more confidence in a body with the door always open
3	If possible build a website	Look at the sophisticated websites of other claimant groups
4	Design a pānui format for regular mailouts to households	The first pānui should outline: <ul style="list-style-type: none"> <li>• the mandated representatives’ constitution, and</li> <li>• accountability mechanisms (especially on financial matters)</li> </ul>

*Table 4.3: Managing the claim process: four key tasks*

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**REGISTER OF MEMBERS – GET IT RIGHT THE FIRST TIME**

‘Who are our members, and where are they?’ The earlier this issue is addressed the better, because the Crown will later require members to ratify the Deed of Settlement and post-settlement governance entity. If the mandated body can demonstrate that it knows the identities of the majority of the hapū / iwi members and that they were able to take part in the mandating decisions, they are half way to achieving ratification. The key is to ‘start the register of members today’.

*Designing a register*

When designing a register try to anticipate what information is essential and limit the registration form accordingly. The bigger and more complicated the form, the less likely members are to complete it.

However, the mandated body does not want to have to send out another registration form because vital information required for ratification or other voting processes is missing. If members get a second form they may lose confidence in the mandated body’s administrative skills and not bother to fill it in a second time.

Equally, they may open the envelope, see the familiar material and bin it because they don’t read the covering letter carefully. And if a mandated body has, say 2,000 adults on the register it will cost at least \$2,000 just for the mail-out. Many iwi websites have online registration, and it is worth visiting the sites to pick the best features.

Some claimant group members think that registering gives their mandate at that point. That is not so. The covering letter with the registration form will need to make this clear and that their decisions on whether to:

- give the mandate to the proposed body, or
- ratify the Deed of Settlement are separate issues to decide and vote on at a later date.

*Legal issues*

Legal issues also need to be considered, especially the Privacy Act 1993. It is prudent to have a reference to privacy issues on the registration form. The purpose of the registration form needs to be absolutely clear, especially what it can and cannot be used for. It is worth seeking legal advice on the draft registration form.

*Software*

The software needs to be up to the job. Unless the claimant group is very small, flat databases such as Excel may not be able to do all that is required. The mandated

body need a relational database which can extract categories of members. The designers of the register should seek advice from appropriate IT professionals.

**FREEPOST AND 0800 NUMBER**

A trap to avoid is sending out return envelopes with attached stamps. The 2,000 return envelopes will take \$1000 in stamps but only a fraction may be returned – a waste the mandated body cannot afford. The solution is to set up a Freepost facility with New Zealand Post so the mandated body pays postage only on envelopes actually sent back. Over a full negotiating process, that can add up to several thousand vital dollars.

Many mandated groups have found an 0800 free phone number useful. Members can contact the mandated body directly about the mandating and negotiating processes, including asking for registration forms.

**TE AKA KŪMARA – KEEPING MEMBERS INFORMED WITH A WEBSITE AND PĀNUI**

A well thought out communication strategy pays dividends. If people feel included they are more likely to support the mandated body. As is known, hui tend to reach only a small fraction of iwi and hapū members, most of whom live outside the rohe. Many of those members have the same interests and expectations of being kept informed so extensive and varied means of communicating with members is essential.

Other than hui, the two most common methods are websites and pānui that can be mailed to members. Recently mandated bodies have learned a lot from earlier claimants and have developed highly sophisticated websites and pānui. Mandated bodies are recommended to use the web to find them and copy all the strong points in their own communication strategy.

A website can be updated daily but regular pānui are useful, too. They can be emailed (saving postage) or sent by regular mail. When using regular mail have register software that recognises households, so only one pānui goes to each household. Some households may have four or more members – costs can escalate unnecessarily if several envelopes with the same pānui go to the same address.

**PROJECT MANAGEMENT: WHO WILL DO THE WORK?**

Nothing associated with negotiating a Treaty claim, including getting the mandate, happens by itself. There is a mass of work to do. The sooner the drivers of the claim set up project management the better, although this depends on resources – both people and money.

## Deed of Mandate

### *Project manager skills*

An early objective, therefore, is to find someone with the right skills to act as project manager, then resource them to carry out the task. For an existing runanga with a good performance track record this should be fairly straightforward, but new groups can find it a strain. But it has to be done. The project manager needs to have an oversight of communications, hui and travel organisation, keeping records, and – not to be understated – keep a firm hand on finances.

### *Office and equipment*

The team is going to need some office space, and if funds are scarce this can be nearly impossible. Financial pressure should be relieved once the Deed of Mandate is recognised because the Crown is now prepared to provide funds to assist the negotiators. The Trust provides funding to assist with the mandating process once Office of Treaty Settlements has confirmed that it accepts the claimant group's mandating plan.

### Remember:

- if a group's mandating strategy bypasses Office of Treaty Settlements it will not be eligible for Trust funding
- Trust funding is restricted to those claimant groups who have, or may have, an interest in Crown forest licensed land.

### **Crown funding**

The Red Book discusses funding, and notes (pages 54–56):

*‘The Crown does not necessarily provide funding for all the costs that a claimant group has to meet when negotiating historical claims. But the Crown will contribute towards certain expenses for mandated groups.’*

This includes a contribution to mandating costs available only after the Crown has recognised the mandate.

The Trust recommends that the mandated body familiarise itself with Crown policy and engage in serious discussions with officials about the level of Crown funding for the negotiation process up to Settlement Legislation.

### **RISK TO MANDATE, INCLUDING MANDATE MAINTENANCE**

#### **Does our mandate need a warrant of fitness?**

Yes. Negotiators do not get a ‘mandate’ then put in a drawer and forget it. As with a politician's mandate,

mandates needs to be regularly reaffirmed. Similar principles apply to a mandate to negotiate a Treaty claim.

### **OFFICE OF TREATY SETTLEMENTS AND THE DEED OF MANDATE**

The Crown will require certain provisions in the Deed of Mandate to accommodate mandate issues. These may include:

- identifying certain hapū or marae whose interests must be protected and processes to effectively represent them
- a dispute resolution process in the event of challenges to or within the mandated body
- processes for the removal of representatives and the withdrawal of constituent parts of the claimant group such as hapū or marae
- an agreement to provide Office of Treaty Settlements with regular reports on the state of the mandate
- an agreement to reconfirm the mandate after a set period, for example, two years.

Take these matters seriously. No one wants to go back to the beginning. The best way for a mandated body to avoid having their mandate to negotiate stalled is to be up front about any representation and accountability issues and what they are doing about them. There is no point in trying to hide opposition within the claimant group from the Crown. Doing so will only slow the process down.

### **HOW TO KEEP THE MANDATE ‘WARM’**

There are three ways to keep a mandate warm: communication, communication and communication. An accusation that is sometimes heard from members goes along the lines of: ‘We never hear from the mandated body; they tell us nothing.’ If those claims are well founded, the chance of a settlement being ratified by members is substantially reduced. But if members have been kept informed of developments – including challenges to the mandate by other members – they are more likely to vote to ratify the negotiated settlement.

Establishing a register of members, building a website, regular pānui, and an 0800 free phone form, with the hui, the essential glue that holds a mandate together. Get hold of as many different pānui as possible; visit the websites of other runanga and claimant groups; look for key messages that other groups have put out to their members; and get experienced negotiators and leaders from nearby iwi to come and talk to the strategy team. Don't reinvent the wheel.

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**Deed of Mandate**

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**THREATS TO THE MANDATE**

The most dangerous threats to a mandate are internal. If one or two representatives on the mandated body become unhappy with some aspects of the process, one of the first things they are likely to do is to try and take their hapū out of the mandated body. The importance of covering this in the rules of the mandated body was mentioned elsewhere. There should be a process that representatives must follow. Unfortunately this does not always happen.

*Role of each hapū representative*

The most common misunderstanding is the role of each individual hapū representative. In most cases they have been granted representative status for their hapū on the mandated body. They usually do not have the authority to unilaterally withdraw their hapū from the mandated body. During the consultation process their hapū made two decisions, firstly to participate in the mandated body, secondly to appoint a representative to the mandated body.

*Process for hapū withdrawal*

Logically, if the hapū representative wanted to withdraw their hapū a publicly notified hui would be expected to be held to the same standard as the original hui at which the hapū resolved to join. The new resolution would be on whether the hapū wished to stay with the mandated body. For reasons of natural justice it could be expected that representatives from the mandated body should be present at the hui to ensure their point of view was also made known to hapū members. However, if the hapū representative is the only person presenting at the hui they could be tempted to put their view and perhaps not give a fair balance.

*Replacing a hapū representative*

Should the hapū decide to stay in the mandated body they have to decide whether to keep their current representative. If that person expresses ongoing hostility to the kaupapa of the mandated body there is little point keeping them there. The mandated body has identified the Crown as the opponent – it can do without one in the whare.

**RULES OR CONSTITUTION OF MANDATED BODY**

It needs to be remembered that while the claimant group will ultimately have the opportunity to judge the mandated body on the quality of the negotiated settlement outcomes in the ratification process, the Courts and Tribunal will judge them on compliance and process. Time working at the front end on a mandated body or entity with clear, robust rules, then ensuring ongoing compliance, will be well spent.

To minimise the risk of legal challenge to a mandated body, both in the process of implementing a mandating strategy and through the entire settlement process (and therefore promoting mandate maintenance on an ongoing basis), Office of Treaty Settlements requires that rules be drafted and made available as a fundamental part of the mandate process. Such rules need to cover all key issues in detail. A non-exhaustive list of the minimum matters to be addressed is in Table 4 (page 24), Key issues to cover in mandated body rules.

*Complying with the rules*

Assuming a Deed of Mandate is recognised by the Crown, and the mandated body is in place with its rules, it is very important to always comply with the rules of the mandated body/entity. This in turn ensures the mandated body are proactive in mandate maintenance, the importance of which cannot be overstated.

Once negotiations start it may be that the rules are not always strictly adhered to and followed. Failing to observe the rules – by accident or design – is a mistake that may well jeopardise the mandate's ongoing stability and 'warrant of fitness'.

**Deed of Mandate**

<b>Purpose of section in Rules</b>	<b>Commentary</b>
Definitions	It is recommended that the Rules have a front-end definitions section. For the purposes of this Schedule it is recommended that all words / terms below in initial capitals should have a detailed definition so as to avoid legal uncertainty
Overview of the mandated body	Include detail on what the name of the Body is and who the representatives are. The general basis on which representatives must act (i.e. if the body is a special purpose Trust, the representatives will be trustees)
Describe specifically what the purpose of the body is	In this context, the purpose of the body will be to constitute a Body through which the claimant group, through representatives, enters settlement negotiations with the Crown over specific Claims. It is recommended that specific detail be provided covering further specific authorised purposes (or not) of the body on a range of matters such as: Deed of Mandate, Agreement in Principle, authority to act in any Court or Waitangi Tribunal proceedings, Register of Beneficiaries, Deed of Settlement, etc
Specify what the powers of the body are	To further assist with achieving the purposes of the body (above) it is recommended to outline the powers of the body, cover how capital and income of the body can be used, and when and how the mandated body can be wound up
Representatives on the body	From a legal perspective it must be clear at all times, who the representatives on the body are. This goes to the legal authority of the body to act. Name the representatives and how they are elected and removed. Include who has the power to elect / remove a representative, how that power must be exercised and who facilitates the procedure, for example, an independent party. If so, how? Is the election outcome confirmed by Declaration Notice? When does it take effect? Clearly set out how a representative ceases to be a representative, include for example a written resignation. Cover scenarios where the claimant group consider a representative is deemed to 'cease being a representative' due to particular circumstances, for instance, it is quite common to provide that a person cease to be a representative if they refuse to act, are bankrupt, or have been convicted of a serious offence, etc
Roles and Duties of representatives	It is of fundamental importance to the claimant group that rules on representatives' duties are clear. Detail what the duties are (standard of care, how information and advice can be taken and used, etc), to whom they are owed (claimant group), what the representative liability is, to whom, and if they receive remuneration – if so, how? Decide if representatives must act together or can they form committees? If so how?
Records, Accounts, Audit	This section or combination of sections needs to provide clear rules on these matters, including: records that must be kept (meetings, minutes, register of Representatives, Beneficiaries Register, etc). Decide how records must be kept; who has access to records, verifying records, what information is confidential, to what standard accounts must be kept and audited, who has access to accounts, who has authority to bind the body, etc.
Reporting	Claimant groups typically grant a mandate if they have confidence in the Representatives, and are clear on reporting procedures. Include details on what reports will be provided, when, and to whom, etc
Increase or Decrease in Claimant Group mandate to the Body	As negotiations progress, interests may want to join or, more commonly, withdraw from the Body. It is highly recommended that the Rules include a specific process giving the basis upon which the body recognise the addition or withdrawal of a particular interest group. This is very important and ensures the authority of the body to negotiate is clear through the entire settlement process. Drafting a Schedule to the Rules is recommended, rather than having it set out in the main body of the Rules.
Amendments to the Rules	The Rules are fundamental to the mandate of the body and the claimant group so should clearly set out how they can be amended. Set a high threshold for constitutional amendment
Meetings	Set out all aspects relevant to meetings of the body and representatives. Include when the Annual Meeting will be, what its purpose will be (i.e. Annual Accounts, appoint Auditors, review operations and progress, etc). How to call regular and special meetings, meeting notice and meeting quorum requirements, meeting procedure, who chairs meetings, Resolutions (Special, Ordinary) that can be passed, dealing with conflicts of interest, etc.

Table 4.4: Key issues to cover in mandated body rules



# Appendix 1

**Disclaimer:** note that this document is provided as a sample and guide only of key issues to be covered in a Deed of Mandate. Each Deed of Mandate should be tailored to the needs of the mandated group in discussions with the Office of Treaty Settlements and Te Puni Kōkiri.

Note also that this sample Deed of Mandate is an Office of Treaty Settlements template, *not* an OTS Deed of Mandate



Office Of Treaty Settlements

**SAMPLE**

# DEED OF MANDATE

Executed on the  
[Day] of [Month] 2007

At  
[Location]



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**Example Deed of Mandate**

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**MANDATE TO NEGOTIATE A TREATY OF WAITANGI SETTLEMENT**

This Deed of Mandate (the Deed) formally demonstrates that the [NAME OF MANDATED BODY] has obtained a durable mandate to represent the [NAME OF IWI GROUP/COLLECTIVE] people in negotiations with the Crown for a comprehensive and final settlement of all our historical Treaty of Waitangi claims. The mandate achieved by [NAME OF MANDATED BODY] was conducted in fair, open and transparent manner.

Note that additional mandate material in relation to the mandating hui programme and other supporting evidence are attached to the Deed.

*Comprehensive Negotiations*

The [NAME OF MANDATED BODY] on behalf of the tribal collective situated in and around the [NAME] region seek to enter into direct settlement negotiations for the comprehensive and final settlement of all [NAME OF IWI GROUP/COLLECTIVE] historical Treaty of Waitangi claims. We seek to resolve all the Treaty of Waitangi breaches of [NAME OF IWI GROUP/COLLECTIVE] whether registered or not registered that occurred prior to 21 September 1992.

*Large Natural Grouping for Negotiations*

On [date] the [NAME OF MANDATED BODY] wrote to the Minister in Charge of Treaty of Waitangi Negotiations to seek formal recognition that the [NAME OF IWI GROUP/ COLLECTIVE – list of iwi groups if required] is a suitable large natural group for settlement negotiations with the Crown. On [date] the Minister in Charge of Treaty of Waitangi Negotiations responded to our request and formally recognised [NAME OF IWI GROUP/ COLLECTIVE].

*Description of Tribal Grouping*

The tribal groups that comprise the [NAME OF IWI GROUP/COLLECTIVE] share common affiliation to the [NAME OF WAKA]. We, the people [NAME OF IWI GROUP/ COLLECTIVE] share common descent from the following founding (eponymous) tūpuna: Tuatahi, Ruarua, and Torutoru.

*Proposed Area of Interest for Negotiations*

The settlement Area of Interest of [NAME OF IWI GROUP/ COLLECTIVE] – example description – extends from the Kotahi River mouth on the Tasman Sea, inland in an easterly direction to Mt Tuarua, following the ridge line south to Mt Tuarima, from Mt Tuarima and the Tokotoko River across the Tukutuku plains to the Papakainga Settlement north of Point Wānanga on the Tasman sea.

In the proposed area of settlement are the Kotahi and Tukutuku Rivers, as well as the Paetahi Crown licensed forest (Map setting out the settlement Area of Interest is attached). The total settlement area of interest is approximately 250,000 acres.

*Hapū and Marae Affiliations*

The hapū and marae that are affiliated to [NAME OF IWI GROUP/COLLECTIVE] and located in the settlement area of interest are listed below. In addition, a list of historical tribes is attached to the Deed of Mandate.

## Appendix 1

Affiliated Hapū	Affiliated Marae	Location
Ngāti Rangitahi	Tahi Marae	Kotahi Settlement
Ngāti Rangitoru	Toru Marae	Kotahi Settlement
Ngāti Pōtangotango	Tangotango Marae	Tuarua Hills
Ngāti Rātaketake	Taketake Marae	Kotahi Settlement
Ngāti Tūkawa	Tūkawa Marae	Tukutuku Plains
Ngāti Tūkoro	Tūkoro Marae	Tukutuku Plains
Ngāi Te Kaiarahi	Kaiarahi Marae	Kaitiaki Township
Ngāi Te Kaitiaki	Kaitiaki Marae	Kaitiaki Township

### *Large and Distinct*

The tribal groups of [NAME OF IWI GROUP/COLLECTIVE] share historical alliances and contemporary relationships for Resource Management and the Fisheries Settlement. According to the Statistics New Zealand Census 2006, the population of our [NAME OF IWI GROUP/COLLECTIVE] is approximately 15,000 people. The number of people on [NAME OF MANDATED BODY] tribal registrar is approximately 9,563 members.

### *Historical Claims for Negotiation*

The following list of historical Treaty claims are registered by members of [NAME OF MANDATED BODY] or in the name of tribal groups of the mandated body. The historical claims are as follows:

Wai claim	Registered Claimant(s)	Listed Tribal Group
1 2 3	L. Himatangi and others	Ngāti Rangitahi and Ngāti Tūkawa
2 3 4	H. Tangimoana and others	Ngāti Rangitoru
3 4 5	Y. Horowhenua and others	Ngāti Tūkawa and Ngāti Tūkoro
5 6 7	F. Manawatu and others	Ngāti Pōtangotango
6 7 8	A. Kapiti and others	Ngāti Rātaketake
7 8 9	W. Waikanae and others	Ngāi Te Kaiarahi
8 9 0	B. Pukerua and others	Ngāi Te Kaitiaki
9 0 1	T. Porirua and others	Ngāti Rangitoru and Ngāti Tūkoro

### **Overlapping Interests**

The [NAME OF MANDATED BODY] acknowledge that the proposed settlement area of interest overlaps and in some instances is shared with other neighbouring tribal groups along our southern and northern boundaries. Ngāti Kawakawa and Ngāti Tuterangi have overlapping interests along our northern boundary including the Kotahi River. Ngāti Korokoro is a related tribal group that borders our southern boundary, and has shared interests with parts of the Tokotoko River and other sites of significance.

The [NAME OF MANDATED BODY] has implemented a formal consultation process to keep the overlapping parties informed about the negotiations with the Crown. (Please refer to the Risk Management Report for further details).

### **Mandate Maintenance**

The mandated body and its representatives have developed a risk management process to identify and manage any potential issues to the mandate and negotiations. The document discusses the areas which have been identified as posing some degree of risk to achieving a durable Treaty settlement such as overlapping interests. (Please refer to the Risk Management document for further details).

## Example Deed of Mandate

### Mandated Body and its Representatives

In [date] the [NAME OF MANDATED BODY] was established to represent the [NAME OF IWI GROUP/COLLECTIVE] people in settlement negotiations with the Crown. After a series of consultation hui and meetings by the tribal group representatives, it was agreed on [date] to formalise the collective as a [legal or non-legal entity] for settlement negotiation purposes. The mandated body has [ten] representative positions to the management committee (or Trust Board).

The mandated body and its representatives will seek the mandate to negotiate an initialled Deed of Settlement that will be signed-off by the claimant community through a robust ratification process. The Representatives to the [NAME OF MANDATED BODY] are as follows:

Name of Mandated Rep	Tribal Group Affiliation	Official Position
[Full Name]	[Name of Tribal Group]	[Position on mandated body]
-	-	-
-	-	-
-	-	-
-	-	-
-	-	[Add columns if needed]

### Mandated Body and its Accountabilities

The accountabilities set out the open and transparent processes that the mandated body and its representatives will adhere to, throughout settlement negotiations. The role and responsibilities of the mandated body and its representatives include the decision making process, reporting and communication procedures, disputes and mediation processes, registration processes, provisions to amend the Deed of Mandate, processes for tribal representative(s) and member group(s) to be replaced, removed and appointed. Provisions to remove the mandate from the representative body can be discussed further with Crown officials. Included are the accountability processes and purpose of the iwi negotiators.

#### *Meeting Procedures*

The mandated body and the management (Trustee) representatives will meet on a monthly basis to discuss, co-ordinate and manage the settlement negotiation process. Special meetings can be called for in accordance with the provisions set out in the Trust Deed. Records will be kept on file of all meetings and decisions made by the representatives, and will be available on request.

#### *Decision Making Process*

The mandated body and its representatives will make decisions by consensus. Where there are occasions that the mandated representatives cannot make a unified decision, it is acceptable [that a majority of 70% will be needed] to endorse a decision in accordance with the provisions set out in the Trust Deed.

#### *Reporting Process*

[The mandated body and its representatives will present a formal annual report, each calendar year at a publicly notified annual general meeting. Included in this will be a Negotiators Progress Report]. In addition, the mandated body and its representatives will report to the claimant community every three months by way of hui-a-iwi (if required):

- Annual General Meeting (AGM) / Hui-ā-tau; and
- Hui-ā-iwi / Wānanga (SGM).

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**Appendix 1**

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*Communication Strategy*

The mandated body and its representatives will implement a communication strategy that aims to inform all members about the progress in settlement negotiations, profiles on the mandated representatives and the negotiators, important matters for their consideration regarding negotiation milestones, brief summaries of the histories about the people (tribal groups) and the Treaty of Waitangi breaches and grievances. For example:

- Hui-ā-iwi/Wānanga reporting on negotiation progress;
- Pānui/Newsletter by Mandated Representatives and Negotiators; and
- Website for negotiation updates and information.

**The Negotiators**

The negotiators will be accountable to the mandated body and its representatives throughout settlement negotiations. The negotiators will make decisions by consensus, and will ensure that all decisions are endorsed by the mandated body and its representatives. The negotiators will meet on a monthly basis and will report to the mandated representatives every month.

**Appointment and replacement of Mandated Representatives***Individual Representatives*

The rule's covering the appointment and replacement of mandated representatives to the mandated body. For example, if a mandated rep wishes to resign and must be replaced the following steps will be carried out:

- a nominations process is carried out by the mandated body, or, a nominee is selected by the appropriate tribal representative group, (if that was the manner the representative was appointed originally);
- the mandated body, endorses appointment of replacement rep by way of resolution at a meeting of the management committee;
- the mandated body informs claimant community of change to the mandated body by way of hui-ā-iwi and/or pānui, or newsletter; and
- the mandated body amends the Deed of Mandate to reflect the change of representative, and the hui minutes are added to the Deed of Mandate as supporting material.

Note that the constitution for the mandated body sets out thorough guidelines for holding publicly notified hui-ā-iwi. All documentation will be kept and attached to the Deed of Mandate and supporting material.

*Member Tribal group*

The mandated body and its representatives will implement a formal disputes process if a member tribal group of the collective decides to withdraw from the mandated body, and subsequently the negotiations process. In accordance with advice from the Crown, any hapū seeking to withdraw their claims and representation from the mandated body will need to demonstrate that their concerns are valid and have the clear support from their membership to follow this course of action.

- Individual rep(s) puts in writing a summary of concerns, and the attempts made with the chair of the mandated body to resolve these concerns by informal means. For example, discussions are held between the chairman of the mandated body and the individual representative to assess the validity of the claim and resolve it. If no resolution is achieved, then;
- If the outcome is that the rep continues to seek withdrawal of its claims and tribal group from the mandated body. Then the mandated body and its representatives will seek mediation and employ a mediator to bring the parties together, if the mediation process fails;
- the individual rep(s) and the mandated body arrange a publicly notified hui-ā-iwi to put the issues to the affected claimant community. Te Puni Kōkiri should be invited to attend as independent observes. The public notice must set out the purpose, background, parties involved, agenda and the resolution; and
- if removed, the Deed of Mandate will be amended, supporting material attached to the Deed and the wider claimant community informed by pānui and newsletter.

Note that if the outcome of this hui is for an individual tribal group to withdraw, then we as the mandated body will meet with the Crown to determine whether there would be an impact on the large natural group status of the mandated body.

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**Example Deed of Mandate**

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**Authority to amend Deed of Mandate**

The mandated body and its representatives will have the authority to amend the Deed of Mandate when changes have occurred. These provisions will allow the mandated representatives to amend the Deed to make the management of negotiations more effective. Note that if these changes are of a significant nature that could affect the large natural group status of the mandated collective, then this decision should also be considered by a publicised hui-a-iwi.

**The Mandate Hui Programme**

The location of the mandate hui(s) are in areas where there are large populations of the claimant community reside. The times for holding these hui aim to ensure that as many members as possible can attend. The mandate hui will be held in [Hamilton, Auckland, Wellington, Christchurch, and Hawke's Bay, Gisborne, Whakatāne and Palmerston North] where members of the [NAME OF IWI GROUP/ COLLECTIVE] can discuss the mandate proposal and to vote on the mandating resolution.

Note that if there is a need for further mandate hui, we the mandated representatives will determine the merits, following feedback and discussions with the representatives of [NAME OF IWI GROUP/ COLLECTIVE] Te Puni Kōkiri and the Office of Treaty Settlements.

*Mandate Hui Purpose*

The purpose of the mandate hui is for [NAME OF MANDATED BODY] and its representatives to explain and present the mandate proposal that [NAME OF MANDATED BODY] represents the [NAME OF IWI GROUP/COLLECTIVE] in settlement negotiations with the Crown for the comprehensive and final settlement of all [NAME OF IWI GROUP/COLLECTIVE] historical Treaty Claims.

*Mandate Hui Presentation*

At each Mandate hui the representatives delivered a standardized presentation which explained:

- the Purpose of the Hui;
- a summary of the Claimant Groups historical claims;
- the Claimant Group;
- definition of settlement area;
- historical claims to be settled;
- identity of the body seeking mandate;
- names of mandated Representatives;
- accountabilities of [NAME OF MANDATED BODY] as set out in the constitution;
- decision-Making;
- Crown policy and procedures; and
- resolution to be proposed and voted on by the claimant community.

*Mandate Hui Discussion*

Each hui provided the opportunity for attendees to discuss and debate the mandate and negotiations proposal and to vote on it. The process undertaken was fair, open and transparent and included:

- details of the mandate and negotiations proposal will be presented to the hui;
- any key issues raised will be discussed and the outcomes or resolutions minuted;
- all resolutions presented will be voted on, counted and recorded for official record keeping; and
- independent observers will be invited to attend from TPK.

*Mandate Hui Voting Process*

[NAME OF IWI GROUP/COLLECTIVE] members who are 18yrs or older were eligible vote at the mandate hui. Note that an attendance register was available at each hui, these were checked by knowledgeable persons of [NAME OF IWI GROUP/ COLLECTIVE] and are attached to the Deed:

- voting on resolutions took place by show of hands at each hui;
- votes shall be counted at each hui by two identified scrutinisers and the results recorded; and
- an independent observer from TPK was present at all hui to observe proceedings.

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**Appendix 1**


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**The Mandate Resolution**


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*Resolution to Mandate the Representative Body*


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1. This hui mandates [NAME OF MANDATED BODY] to represent the [NAME OF IWI GROUP/COLLECTIVE] in settlement negotiations with the Crown for the comprehensive settlement of all [NAME OF IWI GROUP/COLLECTIVE] historical Treaty claims.
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**The Mandate Hui Programme**
*Mandate Hui*

As noted above the mandate hui were held in regions where there are large numbers of [NAME OF IWI GROUP/COLLECTIVE] people. At each of these mandate hui there was a standard presentation delivered to mandate hui attendees. At the conclusion of each hui, the resolution was put to the eligible voters.

**Summary of Voting**

The results of the voting process for [NAME OF MANDATED BODY] are set out below. There was a total of [number] people who attended the series of mandate hui. Of the total number of eligible voters, [number] voted yes to the resolution, [number] voted no, and [number] abstained.

Mandate Hui Location	Hui Attendees	Eligible Voters	Voted Yes	Voted No	Abstained
[Venue 1]	-	-	-	-	-
[Venue 2]	-	-	-	-	-
[Venue 3]	-	-	-	-	-
[Venue 4]	-	-	-	-	-
[Venue 5]	-	-	-	-	-
[Venue 6]	-	-	-	-	-
[Venue 7]	-	-	-	-	-
[Venue 8]	-	-	-	-	-
[Venue 9]	-	-	-	-	-
<b>Total</b>	-	-	-	-	-

**AVAILABILITY OF THE DEED OF MANDATE**

The Deed of Mandate, together with the supporting material, may be made available by the Crown to anyone from the claimant community who requests this information.

Therefore, we, the representatives of [NAME OF MANDATED BODY] agree to the Crown making the Deed of Mandate known through a public notification process, and to provide the Deed of Mandate, together with the supporting information, to members of the claimant community who requested it.

We also acknowledge that the Deed of Mandate with the supporting material may be released under the Official Information Act. We request that the [NAME OF MANDATED BODY] are informed and included in all correspondence.

**Example Deed of Mandate****SUPPORTING MATERIAL TO THE DEED OF MANDATE**

The list of documents attached to the Deed of Mandate as supporting material is as follows:

- Copy of [NAME OF MANDATED BODY] letter seeking LNG recognition;
- Copy of Crown letter recognising Large Natural Group;
- Copy of Constitution (or Trust Deed) for [NAME OF MANDATED BODY];
- Copy of Area of Interest Map for [NAME OF IWI GROUP/COLLECTIVE];
- Copy of List of Historical hapū for [NAME OF IWI GROUP/COLLECTIVE];
- Copy of all Mandate Hui Notices, Advertising and Pānui (complete Set);
- Copy of all Mandate Hui Attendance Registers;
- Copy of all Mandate Hui minutes; and
- Copy of Risk Management Report.

**SIGNATORIES TO THE DEED OF MANDATE**

Set out below are the names and signatures of the mandated representatives formally executing the Deed of Mandate for [NAME OF MANDATED BODY]

<b>Name Of Mandated Rep</b>	<b>Tribal Group Affiliation</b>	<b>Official Position</b>	<b>Signed</b>	<b>Date</b>
<i>[Full Name]</i>	<i>[Name of Tribal Group]</i>	<i>[Chairman]</i>	<i>[Signature]</i>	<i>[Date]</i>
-	-	-	-	-
-	-	-	-	-
-	-	-	-	-
-	-	-	-	-
-	-	-	-	-
-	-	-	-	-

**Disclaimer:** note that this document is provided as a sample and guide only of key issues to be covered in a Deed of Mandate. Each Deed of Mandate should be tailored to the needs of the mandated group in discussions with the Office of Treaty Settlements and Te Puni Kōkiri.

