

Te Rūnanga o NgāiTakoto - Trust Deed Review

Te Rūnanga o NgāiTakoto (the **Rūnanga**) was established in 2013. The Rūnanga is the post settlement governance entity, or PSGE for NgāiTakoto.

The Rūnanga commissioned a review of the trust deed. This is the first review of the trust deed since the Rūnanga was established. Initial findings were reported back to iwi members at the Hui-a-iwi on 19 October 2024.

The purpose of this document is to provide a summary of the issues that were discussed, so that iwi members have the necessary information to make decisions on next steps.

1 ISSUE ONE – THE COMPOSITION OF TRUSTEES

Trustees play an important role, they are elected to make decisions on behalf of the collective, the beneficiaries. Further trustees have duties under the trust deed, and trust law generally. Getting the composition right is important, and needs to be fit for purpose for NgāiTakoto. Current composition includes the ability for marae to elect up to two (2) trustees each. This is known as a marae-based model. At the hui-a-iwi, we discussed a range of options. While there a range of options and combinations, we set out some key options below for discussion.

1.1 OPTION ONE – A HYBRID APPROACH

A hybrid approach, includes a composition whereby trustees are elected by marae *and* trustees are elected generally.

This could be done by each marae appointing one (1) trustee (resulting in four (4) trustees), and three (3) further trustees being elected generally. Practically, this will involve:

- Every beneficiary electing one marae, as the marae they can vote for in elections.
- If there is more than one nomination for a particular marae trustee, there will be an 'election', whereby beneficiaries registered with that marae, can vote.
- Separately, a 'general election' is held which allows for all beneficiaries to participate in a general vote. This will only apply, if there are more candidates, than trustee spots available.

This approach retains the marae-based model, together with opening up trustee spots for others, for example, for those that may live outside of the rohe, but this would not be a requirement. The risk in the hybrid approach, is that you may end up with some marae being represented (from a number of trustees perspective) more than others.

1.2 OPTION TWO – A GENERAL ELECTION ONLY

This option is the easiest to administer, and is simply a general election whereby the people with the most votes, are elected. Variations to this option, include:

- Requiring a certain number of trustees to be from a spread of marae;
- Requiring a certain number of trustees, to reside in the rohe; or
- Allowing for reserved spots, i.e. for kaumatua.

Without the variations above, there is no guarantee the composition of trustees will include a balanced marae view, and/or the views of those beneficiaries who live within the rohe. On the other hand, the

approach is arguably the fairest. A reminder, that all trustees elected, no matter how they are elected, must act in the best interests of all beneficiaries.

1.3 OPTION THREE – RETAIN WHOLLY MARAE-BASED MODEL

There is of course, the ability to retain the current model – which allows for each marae to appoint two (2) trustees each. This approach allows for a guaranteed spread across marae, but arguably does not allow for those who live outside of the rohe, to participate in the same way.

1.4 MAXIMUM CLAUSES?

We **recommend** a maximum term clause be inserted. A maximum term clause will mean that trustees serve a maximum of terms - for example three terms, of three years. This could apply retrospectively, or from the date the changes are made.

While not a legal requirement, this allows for succession which can be important for a PSGE. The downside is that you may lose trustees with significant historical context and experience after the maximum term.

1.5 THE APPOINTMENT OF THE CHAIRPERSON(S)

The Chairperson can be appointed, either by the trustees, or iwi members at large. The more common approach is that trustees appoint a chairperson.

If iwi members agree to a Co-Chairpersons, the trust deed needs to provide for this also.

1.6 A ROTATIONAL SYSTEM?

Many trust deeds introduce a rotational system to avoid the risks associated with an “all on, all off” system. The downside of a rotational system is the costs associated with holding elections more frequently. We ultimately **recommend** a rotational system.

1.7 THE USE OF CO-OPTING TRUSTEES

Trust deeds can often include the power for trustees to co-opt other trustees, to avoid the requirement to hold elections, which can be costly. Co-opting can be useful in certain scenarios, for example to fall below a minimum number of trustees. We **recommend** co-opting be used, but in a limited way.

2 ISSUE TWO – ELECTION AND REMOVAL PROCESSES

It is important to understand and follow the correct election processes set out in your trust deed. Failure to do so, can leave the Rūnanga and individual trustees exposed. The current election process is prescriptive, and complex.

We **recommend** adopting a simplified approach, that allows for flexibility and cost savings where possible. The approach will need to empower marae to facilitate the election process, if a marae based model is retained in some form.

Removal of trustees is also an important issue. Removal can occur for a range of reasons, including misconduct by trustees, and the potential removal by marae of trustees (if a marae based model is retained). We **recommend**:

- Removal provisions relating to misconduct of trustees – this is important as trustees can put other trustees, and the PSGE at risk; and
- If removal by marae is preferred, that a fair and transparent process be adopted.

3 ISSUE THREE – THE SHIFT TO A ‘CORPORATE TRUSTEE’ MODEL

One matter that was discussed at the hui-a-iwi, is a potential shift to what is known as a ‘corporate trustee’ model. The model means that a company is established, and the company acts as the trustee. Elected individuals still make decisions on your behalf, but trustees shift to being directors of the trustee company, rather than trustees personally. The model is beneficial for the following reasons:

- It means that trustees are not acting personally, rather they are acting through a company. This mitigates any risk exposure to their personal assets if there is any liability issues (even if there is no wrongdoing on the part of the trustees).
- It provides some practical benefits, some of which are currently covered by the current custodian trustee, for example land and other trust property are held by the company and not trustees personally and you do not have to change titles, every time trustees change.

Importantly, it does not change the way trustees are elected, the objects of the Rūnanga, or commercialise the Rūnanga at all.

We **recommend** the appointment of a corporate trustee.

4 NEXT STEPS

Please direct any pātai or feedback you have on the above issues to the Rūnanga, to: feedback@ngaitakotoiwi.co.nz, feedback will be collated and amendments progressed.

This document does not set out every proposed amendment, rather it focusses on the significant issues that were discussed at the hui-a-iwi. Any amendments to the Trust Deed need to be approved by a Special Resolution of iwi members at a general meeting of the Rūnanga. Further information, including a full set of amendments will be shared before any decisions are sought.