

**TE ROROA WHATU ORA AND MANAWHENUA TRUSTS**

**TRUST DEEDS REVIEW**

**REPRESENTATION DISCUSSION DOCUMENT**

**June 2014**

## BACKGROUND

1. The Trustees of the Te Roroa Whatu Ora and Manawhenua Trusts (“the Trustees”, “the Whatu Ora Trust”, “the Manawhenua Trust” and “the Trusts”) have been undertaking a review of the Trust Deeds for the Trusts (“the Trust Deeds”).
2. The Trust Deeds include a requirement that they are reviewed after the Trusts have had some time to operate. This review allows issues identified during this initial period of operation to be dealt with and any other refinements to be made. If the Trustees find as a result of the review that amendments should be made to the Trust Deeds, they are put to a Special Resolution process and the members of Te Roroa will vote to decide whether the amendments are made.
3. The Trustees have held five Trust Deeds review hui, three in October and November 2012 at Whakamaharatanga Marae and two in December 2012 and February 2013 at Waikara Marae.
4. These hui were independently facilitated by Kevin Prime. The hui were not limited to any specific issues or questions. Since these hui, the Trustees have considered all feedback and suggestions received. The Trustees have also considered whether there are other amendments which should be made to the Trust Deeds and sought legal and accounting advice where appropriate.
5. The Trustees have received a great deal of helpful feedback. There is now only one issue on which the Trustees feel that they need further feedback, as explained below.

### Further chance to provide feedback on representation

6. The Trustees seek further feedback in relation to representation. How Te Roroa are represented on the Trusts is an important issue but the feedback received so far has been mixed.
7. Therefore we would like to give members of Te Roroa one further chance to provide feedback before deciding what we will propose in a Special Resolution. The representation questions are set out below at page 3.
8. You are not being asked to make a decision now. Any decisions must be made by Te Roroa through a Special Resolution (see paragraph 21 on page 5). We are simply asking for feedback on what should go into the special resolution on which Te Roroa will vote. We encourage you to take this last opportunity to provide feedback before a proposal is voted on. You can do this at the **hui a iwi at 10am on Saturday 12 July 2014 at Waikara Marae, Waikara Road, Aranga**, or as set out in paragraph 20 on page 5.

### Update on structuring

9. The Trustees would also like to take this opportunity to update Te Roroa on what we intend to propose in the Special Resolution in relation to the Trusts structure. The Trustees have already received a lot of feedback about structure so do not seek any further feedback. However we want to highlight our proposals so that members can begin to consider them before the Special Resolution process starts later this year as they are also important. The structure update is set out in the Appendix.

## FEEDBACK SOUGHT ON REPRESENTATION

10. The Trustees seek further feedback on representation before finalising amendments to be put to a Special Resolution process. The current model is set out below followed by questions for Te Roroa.

### Current Representation Model

11. The current representation model for the Trusts is:
- 11.1. There are 12 Trustee positions;
  - 11.2. Each registered member of Te Roroa nominates an affiliation to one of the six Te Roroa marae (Whakamaharatanga, Matatina, Pananawe, Waikara, Waikaraka or Te Houhanga) for the purpose of trustee elections;
  - 11.3. The members registered as affiliating to a marae can nominate, stand and vote in Trustee elections for that marae. There are 2 Trustee positions for each marae, and a total of 12 Trustee positions. Any person affiliated to a marae can stand for election but marae are advised of all nominations;
  - 11.4. Trustees serve on both the Whatu Ora and Manawhenua Trusts; and
  - 11.5. Trustees serve two year terms, which are staggered so half of the Trustees are replaced every year.

### Questions for Te Roroa

12. We seek your feedback on the issues below.

#### *Number of Trustees*

13. The Trustees have found it almost impossible to keep 12 Trustees in office. The advice we have received is that 12 Trustees is a very large number for a group our size. ***The Trustees propose that there be less than 12 Trustee positions. The Trustees suggest that around 6 Trustee positions is more manageable. Do you agree?***

#### *Representation model*

14. We received many different comments about the appropriate representation model for the Trusts, including that Trustee positions should not be according to marae, and that marae should have a greater role in elections for example by being able to approve or reject nominations before voting opens. These comments have raised additional questions. For example some groups with marae based Trustee positions also have Taurahere positions to represent those living away from the rohe. Other groups have all positions voted on by all members, so the representation is purely skills based. We therefore seek your feedback on the following questions:
- 14.1. ***Do you think that Trustees should continue to be elected on the basis of Marae?***
  - 14.2. ***Do you think there should be Taurahere and/or skills based representation?***

14.3. ***Do you think members should continue to vote only for their Marae Trustees or should all members vote for all Trustees?***

14.4. ***What should be the nomination process? Should there be a new role for Marae in approving nominations?***

#### *Length of term*

15. The Trustees have found that the two year term with Trustees changing every year is very disruptive and ineffective, as time and resources every year are taken away from Trust operations to complete elections. We have received advice that this is an unusually short term and high level of Trustee turnover. ***The Trustees propose that the Trustee term be increased from 2 to 3 years. Do you agree?***

16. The Trustees would also like your feedback on whether staggered elections are still appropriate. The rationale behind having only half of the Trustees end their terms at any one time was to ensure that institutional knowledge was retained. This has not worked particularly well in practice because it has meant that twice as many elections are required which is onerous. Also we find that it is the staff of the Trust who tend to hold the institutional knowledge. In other groups and structures (for example local body and general elections) all representative positions end together and there is the potential for a completely clear slate. We are interested in what members of Te Roroa think about this issue. ***Should Trustee elections continue to be staggered so all of the Trustees are not removed at once or is it better to be able vote on all Trustee positions at once?***

#### *Role for kaumatua/kuia/hunga kainga*

17. We received some feedback that it would be appropriate for kaumatua and kuia and/or hunga kainga to be consulted about important decisions relating to land and wahi tapu. Examples given were decisions about whether to sell or mortgage commercial land, and decisions about who should be appointed as kaitiaki for wahi tapu. Some other groups have kaumatua available to provide advice on any decisions that the Trustees seek their expertise. We are interested in whether there is support for a greater role for kaumatua/kuia/hunga kainga and would like your feedback on the following questions:

17.1. ***Should there be a new role for kaumatua/kuia/hunga kainga?***

17.2. ***If yes, what should that role be or what decisions should kaumatua/kuia/hunga kainga be involved with?***

17.3. ***Which kaumatua/kuia/hunga kainga should be involved in any particular case?***

#### *Disputes*

18. The Trustees have found that there are differing opinions about what should happen when there is a dispute between Trustees. We are interested in your feedback on this issue. ***Where a dispute has been triggered, is a short suspension period appropriate to allow the dispute to be resolved? Should marae have a formal role in dispute resolution involving the Trustees that represent them? If yes, how might this work?***

*Any other feedback on representation*

19. The Trustees are interested in any other feedback related to representation that does not fit under the questions set out above. ***Do you have any other feedback regarding the Te Roroa representation model?***

**Next Steps**

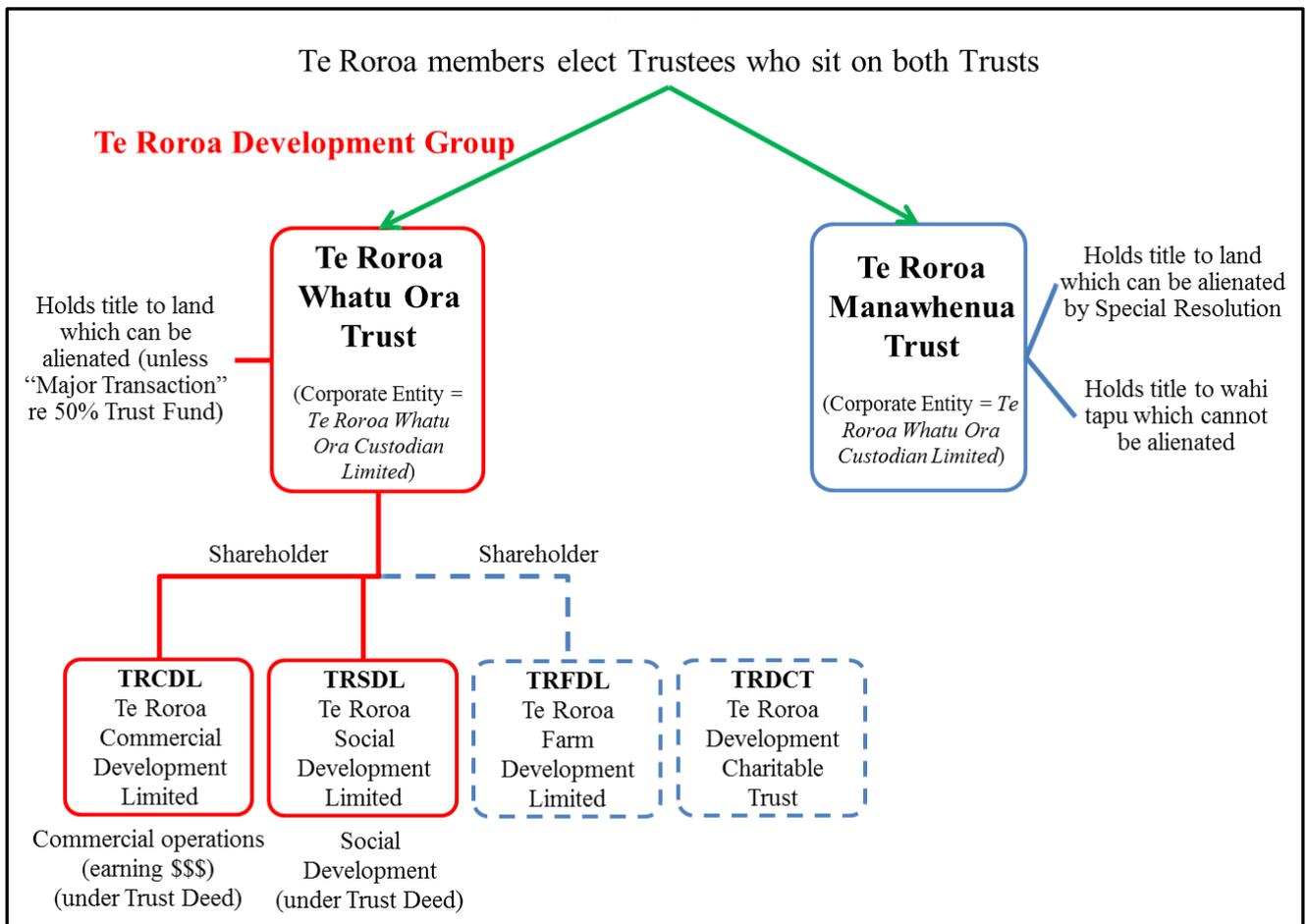
20. If you would like to provide feedback, you can do this orally at the hui a iwi at 10am on Saturday 12 July 2014 at Waikara Marae, Waikara Road, Aranga. You can also provide feedback in writing. A feedback form is attached which can be handed to the Trustees at the hui or emailed to [secretary@teroroa.iwi.nz](mailto:secretary@teroroa.iwi.nz) by Monday 14 July 2014.
21. Following the end of the consultation period, the Trustees will consider the feedback received and prepare proposed Trust Deed amendments which will be put to Te Roroa for approval through the Special Resolution Process. The Trustees anticipate the Special Resolution process will commence in August 2014, and this process will involve:
- 21.1. Release of a document setting out the proposed Trust Deed amendments and an explanation of each;
  - 21.2. A Special General Meeting; and
  - 21.3. A postal ballot.

## APPENDIX: UPDATE ON STRUCTURE

1. The Trustees have received helpful feedback on structuring, much of which the Trustees agreed with. The Trustees currently intend to propose some important structuring amendments to the Trust Deeds. This will be put to Te Roroa later this year to vote on in a Special Resolution process. We do not seek any further feedback, but are highlighting the proposals now so that members can begin to consider them before the Special Resolution process starts.
2. The current structure is set out below, followed by amendments which will be proposed in the Special Resolution process.

### Current Structure

3. A diagram of the current Te Roroa governance structure is set out below:



4. The structure is two Trusts with the same Trustees for each and Custodian Trustee Companies providing the corporate entity for each Trust.
5. The Trustees were required under the Te Roroa Whatu Ora Trust Deed to incorporate two companies, Te Roroa Commercial Development Limited ("TRCDL") and Te Roroa Social Development Limited ("TRSDL"), wholly owned and controlled by the Trustees. With the Whatu Ora Trust, these companies and their subsidiaries comprise the Te Roroa Development Group. The Trustees of the Whatu Ora Trust are required to plan for and report on the whole Te Roroa Development Group.

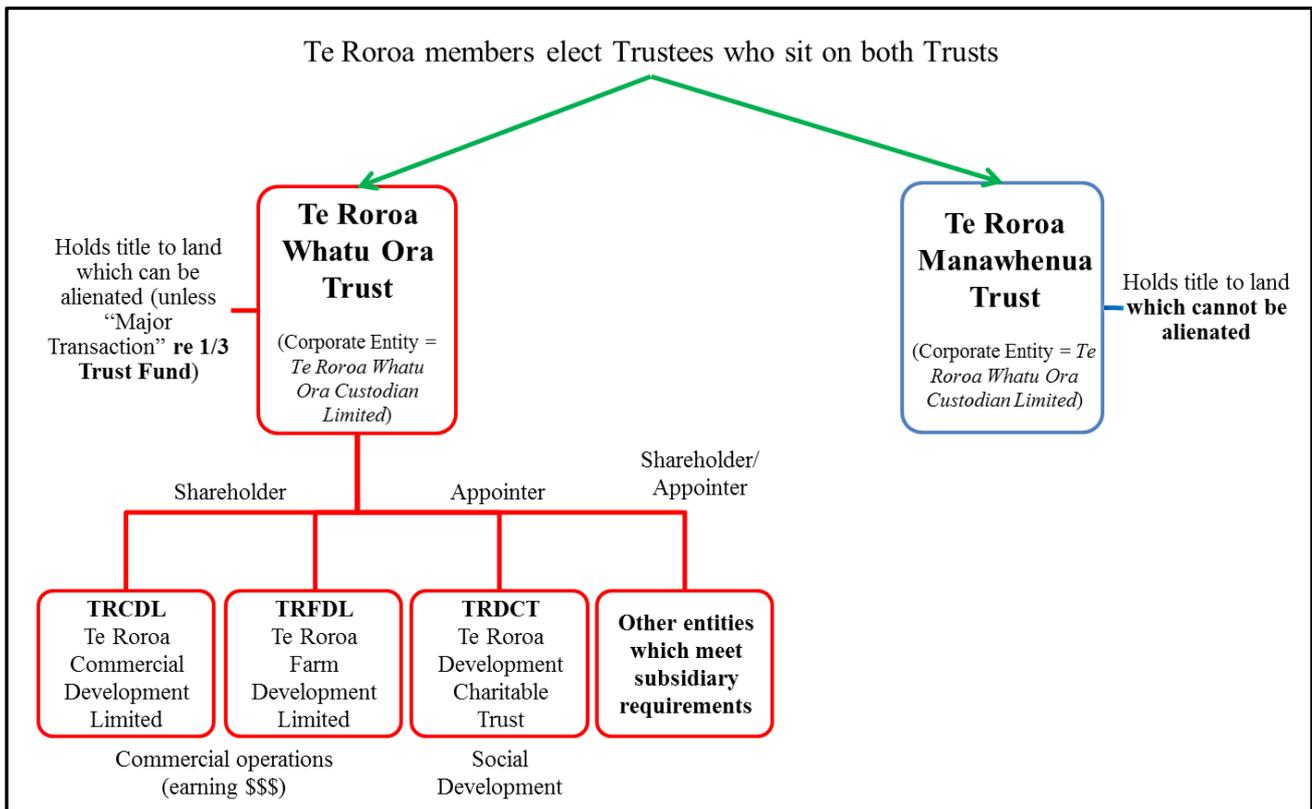
6. The Trust Deed anticipates that TRCDL, itself and/or through subsidiaries, will undertake all Commercial Activities of the Te Roroa Development Group. TRSDL is to undertake cultural and social development activities.
7. The Manawhenua Trust holds two types of land:
  - 7.1. Land which cannot be removed from the power of the Manawhenua Trust, charged for security or otherwise alienated except by Special Resolution passed by 85% of those who vote at a Special General Meeting and by postal ballot; and
  - 7.2. Wahi tapu which cannot be removed from the power of the Manawhenua Trust, charged for security or otherwise alienated unless the Deed of Trust is amended to allow this by Special Resolution passed by 85% of those who vote at a Special General Meeting and by postal ballot. Land can be protected as wahi tapu following a vote passed by 50% of those who vote at an AGM.
8. Land held by the Whatu Ora Trust can be removed, charged for security or otherwise alienated. However, land which is more than half the value of the Trust Fund (being all the assets of the Whatu Ora Trust) cannot be removed, charged for security or otherwise alienated except by Special Resolution because it is a "Major Transaction". The Special Resolution must be passed by 85% of those who vote at a Special General Meeting and by postal ballot.
9. Spending, selling or purchasing assets (including money) worth more than half the value of the Trust Fund of either Trust is also a Major Transaction and must be approved by Special Resolution passed by 85% of those who vote at a Special General Meeting and by postal ballot.
10. Recently two further entities have been established, Te Roroa Farm Development Limited ("TRFDL") and Te Roroa Development Charitable Trust ("TRDCT"). TRFDL is owned by Te Roroa Whatu Ora Custodian Limited. TRDCT does not yet have a formal link to the Whatu Ora Trust but is intended to be part of the Te Roroa Development Group.

#### **Amendments which will be proposed for Special Resolution later this year**

11. The Trustees received comments from some members that they did not understand the double Trust structure and it seemed to duplicate reporting requirements, such as the requirement to hold an AGM or distribute reporting documents annually. The double Trust structure was chosen to try to provide extra protection to wahi tapu from the risks of commercial operations. We have received advice not to change this structure as it is unclear what the consequences of this change might be. We have also received advice that this structure does not need to create unnecessary duplication. Legally the Trusts can hold AGMs for both Trusts on the same day and send out Annual Reports for both Trusts together. We do not intend to propose a change to the double Trust structure.
12. The Trustees received a lot of feedback proposing that the Manawhenua Trust only hold wahi tapu which cannot be charged for security or sold. We intend to propose this in the Special Resolution.
13. The Trustees have found certain aspects of the current structure to be inflexible and impractical. In particular, the requirement that all commercial activities of the Te Roroa Development Group be undertaken by TRCDL and subsidiaries of TRCDL is restrictive, does not allow for restructuring of subsidiaries based on advice from specialists (eg

tax), changing circumstances or legal climate, and requiring that subsidiaries are through TRCDL adds a layer of administration costs which is not consistent with the size of the Te Roroa putea. Hui held to date generally support retaining TRDCT, which is a recognised charity and has donee status with the IRD, over TRSDL. We intend to propose instead that the Whatu Ora Trust can have as many subsidiaries as required (including TRCDL, TRFDL and TRDCT), as long as the subsidiaries meet certain requirements, such as that they act to fulfil the Trust purposes, the Trustees appoint their directors/board and the Trustees exercise strategic governance oversight. Amendments to the constitutions of TRFDL and TRDCT would also be required.

14. We have received feedback that it should be harder for the Trustees to make large scale financial decisions without the support of the members. At present the Trustees cannot spend, sell or purchase assets worth more than half of the value of the Trust Fund without a Special Resolution supported by 85% of voters. We intend to propose that the threshold should be stricter, so the Trustees cannot spend, sell or purchase assets worth more than a third of the value of the Trust Fund without a Special Resolution.
15. A diagram of the proposed Te Roroa governance structure is set out below:



## NEXT STEPS

16. No further feedback is sought on structure. The Trustees will draft proposed Trust Deed amendments once consultation on representation is complete (see pages 3 to 5 above) which will be put to Te Roroa for approval through the Special Resolution Process which is explained at paragraph 21 on page 5 above.

# FEEDBACK FORM

## TE ROROA WHATU ORA AND MANAWHENUA TRUST DEEDS REVIEW REPRESENTATION

Name: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

The Trustees of the Te Roroa Whatu Ora and Manawhenua Trusts seek feedback on representation from members of Te Roroa. Please answer the questions below and hand to the Trustees at the hui a iwi at 10am on Saturday 12 July 2014 at Waikara Marae, Waikara Road, Aranga, or email to [secretary@teroroa.iwi.nz](mailto:secretary@teroroa.iwi.nz) by Monday 14 July 2014. Alternatively you can give your feedback orally during the hui a iwi.

### *Number of Trustees*

- 1. The Trustees propose that there be less than 12 Trustee positions. The Trustees suggest that around 6 Trustee positions is more manageable. Do you agree?**

### *Representation model*

- 2. Do you think that Trustees should continue to be elected on the basis of Marae?**
- 3. Do you think there should be Taurahere and/or skills based representation?**
- 4. Do you think members should continue to vote only for their Marae Trustees or should all members vote for all Trustees?**
- 5. What should be the nomination process? Should there be a new role for Marae in approving nominations?**

*Length of term*

- 6. The Trustees propose that the Trustee term be increased from 2 to 3 years. Do you agree?**
  
  
  
  
  
  
  
  
  
  
- 7. Should Trustee elections continue to be staggered so all of the Trustees are not removed at once or is it better to be able vote on all Trustee positions at once?**

*Role for kaumatua/kuia/hunga kainga*

- 8. Should there be a new role for kaumatua/kuia/hunga kainga?**
  
  
  
  
  
  
  
  
  
  
- 9. If yes, what should that role be or what decisions should kaumatua/kuia/hunga kainga be involved with?**
  
  
  
  
  
  
  
  
  
  
- 10. Which kaumatua/kuia/hunga kainga should be involved in any particular decision?**

*Disputes*

- 11. Where a dispute has been triggered, is a short suspension period appropriate to allow the dispute to be resolved? Should marae have a formal role in dispute resolution involving the Trustees that represent them? If yes, how might this work?**

*Any other feedback on representation*

- 12. Do you have any other feedback regarding the Te Roroa representation model?**

Please use as much additional paper as you need.