

# **SPECIAL RESOLUTIONS PROPOSAL**

## **TRUST DEEDS REVIEW 2015**

### **INTRODUCTION**

1. In this special resolution process the Trustees of the Te Roroa Whatu Ora and Manawhenua Trusts (“the Trustees”, “the Whatu Ora Trust”, “the Manawhenua Trust” and “the Trusts”) are asking you to vote on three resolutions.
2. This proposal explains why you are being asked to vote about each of the resolutions, what effect each of the resolutions will have if it is passed and what the voting process will be.
3. You will also have the chance to ask questions about the proposed resolutions at the Special General Meeting on Saturday 21 November 2015 at Waikara Marae, 11.00am.

### **BACKGROUND TO THIS PROCESS**

4. 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 found as result of the review that amendments should be made to the Trust Deeds, they are to put these to a Special Resolution process so that the members of Te Roroa can vote to decide whether the amendments are made.
5. The Trustees 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 independently facilitated by Kevin Prime. The Trustees considered all feedback and suggestions received, and considered whether other amendments should be made. The Trustees also sought legal and accounting advice where appropriate.
6. The received a great deal of helpful feedback. On the issue of representation, however the feedback was mixed. The Trustees therefore released a discussion document in June 2014 and held a hui a iwi in July 2014, seeking further feedback on the following representation issues:
  - 6.1. The number of Trustees;
  - 6.2. The representation model (Marae, taurahere and/or skills based representation, role of Marae in nominations);
  - 6.3. Length of Trustee term;
  - 6.4. Role for kaumatua/kuia/hunga kainga; and
  - 6.5. A new Trustee dispute resolution process.
7. The Trustees have taken some time to consider the further feedback received on representation. However, they have not been able to come to a final position on what representation changes, if any, should be put to Te Roroa to vote on. The issues of representation are very important and the Trustees do not want to rush them. However, they also do not want the other more straightforward amendments to the Trust Deeds to be delayed unnecessarily while the issue of representation is worked on. The Trustees have therefore decided to seek Te Roroa approval for the more straightforward amendments now. Three resolutions are proposed as follows:
  - 7.1. Resolution One is to clarify, correct, update and use the full names of the Trusts;

7.2. Resolution Two is to ensure the inalienability of Te Roroa Manawhenua Trust land, simplify subsidiaries and make it harder to dispose of the Trust fund; and

7.3. Resolution Three is to simplify and modernise notice requirements.

8. The Trustees remain committed to properly considering representation issues. The Trustees will undertake this further consideration over the next few months and report back to Te Roroa in early 2016 for feedback.

## **THE THREE RESOLUTIONS IN DETAIL**

9. Detailed explanations of each of the three resolutions are set out below along with an explanation of what effect each of the resolutions will have if it is passed.

**Resolution One: That the proposed amendments to the Te Roroa Whatu Ora Trust Deed and Te Roroa Manawhenua Trust Deed to clarify, correct, update and use the full names of the Trusts are made.**

10. During the Trust Deeds Review process, members of Te Roroa, Trustees and advisers have identified a number of amendments that should be made to the Trust Deeds.

11. We propose making a number of amendments as follows:

11.1. **To clarify:** amendments for the sake of clarity where there has been confusion or for ease of reference or for the sake of completeness;

11.2. **To correct:** amendments to correct minor errors and inconsistencies;

11.3. **To update:** amendments to update parts which have become obsolete or outdated or can now be more precisely drafted (for example because we now have the Te Roroa Claims Settlement Act 2008 for reference); and

11.4. **To use the full names of the Trusts:** Feedback from the Trust Deeds Review process preferred using the full name of the Trusts are throughout the Trust Deeds (Te Roroa Whatu Ora Trust and Te Roroa Manawhenua Trust) rather than shortened versions (the Whatu Ora Trust and the Manawhenua Trust). This does not create any practical change of effect.

12. One of the clarifications referred to in 11.1 above records that the AGM and SGM of either Trust can be held together or with the AGM or SGM of the other Trust. This was an issue raised at hui, and the Trustees have received advice that there is no issue with these meetings being held together, particularly to save costs.

13. These proposed amendments are also set out in more detail in a table available on the website. Copies of the full Trust Deeds showing all of the amendments being proposed can be viewed at the SGM or at the Te Roroa office during office hours.

14. If more than 85% of those Adult Registered Members who validly cast a vote say yes to this resolution then it will be passed and these amendments will be made. If this resolution is not passed, the amendments cannot be made and the current provisions will remain.

**Resolution Two: That the proposed amendments to the Te Roroa Whatu Ora Trust Deed and Te Roroa Manawhenua Trust Deed to ensure the inalienability of Te Roroa Manawhenua Trust land, simplify subsidiaries and make it harder to dispose of the Trust fund are made.**

15. The current structure is two Trusts with the same Trustees for each and Custodian Trustee Companies providing the corporate entity for each Trust.

*Te Roroa Whatu Ora Trust*

16. Treaty Settlement land held by the Te Roroa Whatu Ora Trust can be disposed of for more than 50 years only by Special Resolution (85% of votes must be in favour).
17. Spending, selling or purchasing other assets worth more than half the value of the Trust Fund only allowed by Special Resolution (85% of votes must be in favour).

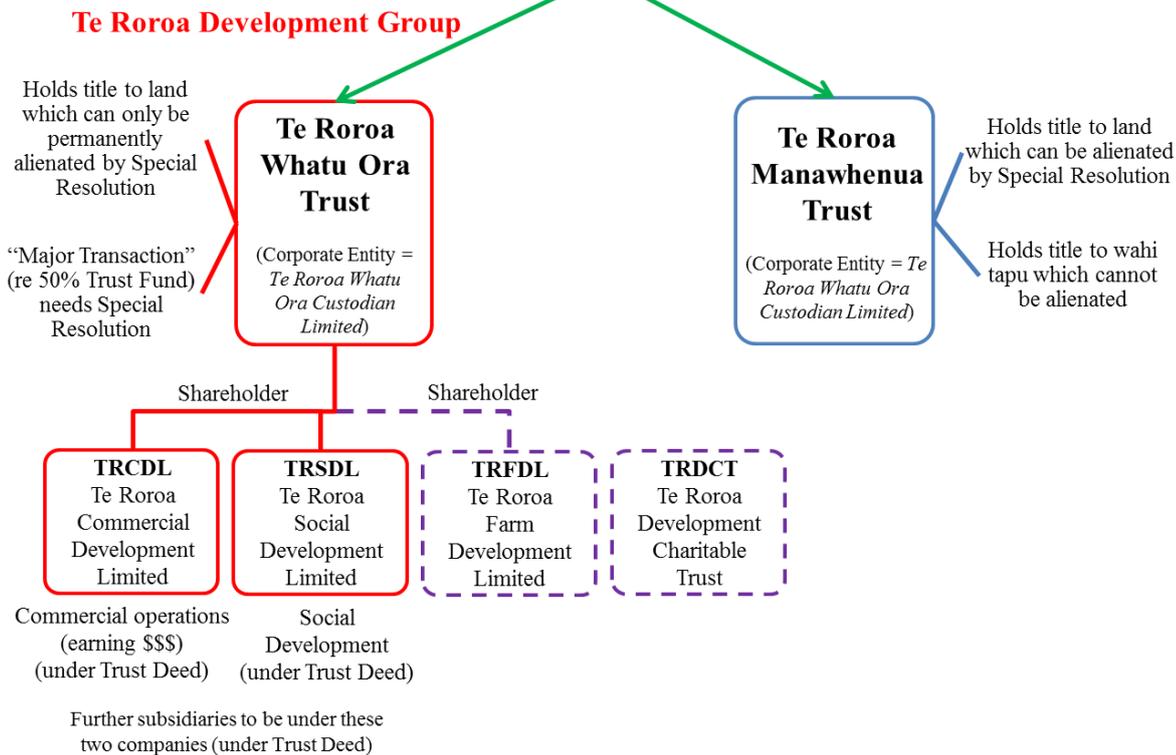
*Te Roroa Development Group*

18. 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. 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.
19. 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.

*Te Roroa Manawhenua Trust*

20. The Te Roroa Manawhenua Trust holds two types of land:
- 20.1. Land which cannot be removed from the power of the Manawhenua Trust, charged for security or otherwise alienated except by Special Resolution (85% of votes must be in favour); and
  - 20.2. Land protected as wahi tapu following a vote passed by 50% of voters at an AGM. 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 (85% of votes must be in favour).
21. A diagram of the current structure is below:

Te Roroa members elect Trustees who sit on both Trusts



22. The Trustees propose some changes to this structure which are set out in the following paragraphs. The Trustees highlighted that these changes would be proposed in the June 2014 discussion document and at the hui a iwi on 26 July 2014, so members have already had some time to start thinking about these proposals.
23. 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 important lands 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 propose a change to the double Trust structure.
24. It has always been intended that the land held by the Te Roroa Manawhenua Trust be inalienable. This was confirmed through the review process. Our advisers have identified that land held by the Te Roroa Manawhenua Trust can be alienated, but it is very difficult, requiring a special resolution supported by 85% of those who vote. Wahi tapu land held by the Te Roroa Manawhenua Trust could be alienated if the Trust Deed was amended, which could happen if supported by 85% of those who vote in a special resolution. It was also strongly expressed that no land should be able to be used as security, including land held by the Whatu Ora Trust. We propose amendment as follows:
- 24.1. **Inalienability of Te Roroa Manawhenua Trust land:** amendments to provide that all land held by the Te Roroa Manawhenua Trust is treated the same and that no land held by the Te Roroa Manawhenua Trust now or in the future can be alienated. Also amendment to provide and the Trust Deed cannot be amended to change this part. This is intended to help protect land held by the Te Roroa Manawhenua Trust from being lost again; and

24.2. **No security:** No land may be used as security.

25. The Trustees have found the subsidiary requirements of the current structure 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. Also, hui held to date generally support retaining TRDCT, which is a recognised charity and has donee status with the IRD, over TRSDL. We propose the following amendments:

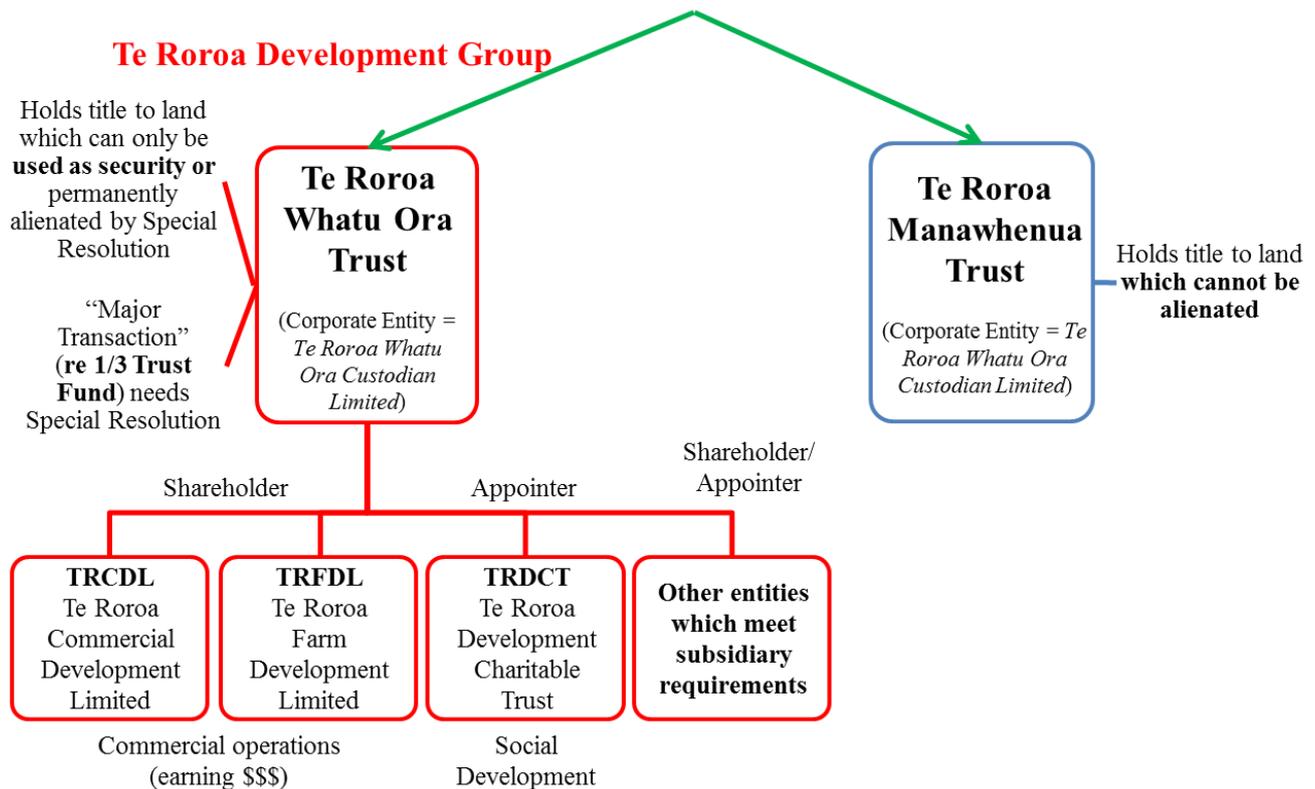
25.1. **Subsidiaries:** amendments to provide that TRCDL and TRSDL are not mandatory. Instead that the Whatu Ora Trust can establish subsidiaries as required as long as the subsidiaries act to fulfil the Trust purposes, their shareholders (for a company) or appointer (for a Trust) are the Trustees or another subsidiary, their directors/board are appointed by the Trustees or another subsidiary, and the Trustees exercise strategic governance oversight through mandatory planning processes. This is intended to provide flexibility to deal with changing circumstances or legal climate and reduce administration costs.

26. Concern was raised through the review process about the threshold that the Trustees can deal with up to 50% of the Whatu Ora Trust Fund without reference back to the Members of Te Roroa. A transaction dealing with 50% or more of the Whatu Ora Trust Fund is called a “Major Transaction” and requires approval of the Members of Te Roroa by way of a Special Resolution (with 85% of those voting in favour of the Major Transaction going ahead). We propose the following amendments:

26.1. **Stricter “Major Transaction” threshold:** amendments to provide that the threshold Trustees cannot spend, sell or purchase assets worth more than a third of the value of the Trust Fund without a Special Resolution. This is intended to provide greater protection for the Trust Fund.

27. A diagram of the proposed structure is below:

Te Roroa members elect Trustees who sit on both Trusts



Any subsidiary can have further subsidiaries which meet subsidiary requirements in Trust Deed

28. These proposed amendments are also set out in more detail in a table available on the website. Copies of the full Trust Deeds showing all of the amendments being proposed can be viewed at the SGM or at the Te Roroa office during office hours.

29. If more than 85% of those Adult Registered Members who validly cast a vote say yes to this resolution then it will be passed and these amendments will be made. If this resolution is not passed, the amendments cannot be made and the current provisions will remain.

**Resolution Three: That the proposed amendments to the Te Roroa Whatu Ora and Te Roroa Manawhenua Trust Deeds to simplify and modernise notice requirements are made.**

30. Currently the Trust Deeds provide that when public notice is required it must be advertised in all major metropolitan newspapers in New Zealand. It is very expensive to advertise in major metropolitan newspapers and it may be inefficient to advertise in numerous newspapers. The Trust Deeds also do not allow for Members of Te Roroa to elect to receive electronic notice instead of postal notice. There is also no ability for postal ballots to include an electronic voting option or, if appropriate in the future, to be done primarily or solely by electronic voting. The SGM notice period for the Te Roroa Manawhenua Trust is also inconsistent with that for the Te Roroa Manawhenua Trust AGM or for an AGM or SGM of the Te Roroa Whatu Ora Trust. This is inefficient as it makes it harder for these processes to be combined to save costs.

31. We propose amendments to deal with these issues as follows:

31.1. Notice in newspapers: amendments to require notice to be inserted in any metropolitan and/or provincial newspapers where the Trustees consider that a significant number of Members of Te Roroa reside and any such other means as the Trustees may determine. This allows more flexibility and saves costs. It also targets the newspapers which will

hopefully be seen by the most Members of Te Roroa. Also amendments to allow additional notice by such other means as the Trustees may determine (eg the website);

- 31.2. Electronic notice: amendments to allow members of Te Roroa to elect to receive all postal notices by email instead of by post. The Trustees can allow other forms of communication, for example if in the future email is superseded by a new technology. This may be more efficient in ensuring that Members of Te Roroa receive and read notices and will save costs on printing and postage;
- 31.3. Electronic voting: amendments to allow, if appropriate, the Trustees at their discretion to offer electronic voting as an alternative or instead where postal voting is currently required (eg Trustee elections, Special Resolutions). This will be more efficient as it will make it easier for Members of Te Roroa to vote and hopefully will increase participation in voting; and
- 31.4. Te Roroa Manawhenua Trust SGM notice period: amendment to change the notice period from 60 to 30 days, to be consistent with that for the Te Roroa Manawhenua Trust AGM or for an AGM or SGM of the Te Roroa Whatu Ora Trust. This will be more efficient and reduce costs as it will make it easier to combine notice, saving on printing and postage costs and preventing Members of Te Roroa receiving multiple notices.

32. These proposed amendments are also set out in more detail in a table available on the website. Copies of the full Trust Deeds showing all of the amendments being proposed can be viewed at the SGM or at the Te Roroa office during office hours.

33. If more than 85% of those Adult Registered Members who validly cast a vote say yes to this resolution then it will be passed and these amendments will be made. If this resolution is not passed, the amendments cannot be made and the current provisions will remain.

## HOW TO VOTE

34. To be entitled to vote you must:

- 34.1. Meet the definition of Member of Te Roroa set out in the Trust Deed;
- 34.2. Be registered as a Member of Te Roroa; and
- 34.3. Be 18 years or older on Saturday 21 November 2015 (those that turn 18 during the voting period will also be sent a voting pack).

35. Voting on each of the four resolutions will be by way of postal ballot and at a Special General Meeting. Voting will commence on release of this voting papers and close on Saturday 21 November 2015.

36. The voting paper accompanies this proposal should be completed and either:

- 36.1. Returned in the enclosed stamped envelope or otherwise posted to:  
The Returning Officer  
Address

**OR**

- 36.2. Give to the Chief Returning Officer at the SGM on Saturday 21 November 2015.

37. Postal votes received no later than three business days after the closing date will be valid if the envelope containing the voting paper is post marked on or before the date that voting closes.

38. Members of Te Roroa not already registered will, upon request to the Chief Returning Officer by emailing [oruariki@gmail.com](mailto:oruariki@gmail.com) or leaving a message on (09) 439 8092, be provided with a voting

pack which contains a registration form and voting paper. The registration form must be returned with the voting paper. These votes will be counted subject to validation of the registration.

39. Once voting has closed the Chief Returning Officer will supervise the counting of the ballots and the results will be announced on the website.