

Final Report of the Independent Advisor, David Gray
(Principal, Kia Tū Rangatira Ai Consulting)

to

Te Rūnanganui o Ngāti Porou

concerning the

Review of Trust Deed

FOR DISTRIBUTION

November 2017



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Executive Summary

This is the final report of the independent advisor, David Gray, on the review of the trust deed of Te Rūnanganui o Ngāti Porou. Both this report and the two earlier reports of the independent advisor have been prepared pursuant to clause 10 of the deed, which requires a review to be held five years after the establishment of the Rūnanganui.

To date, the review process has comprised—

- an initial series of hui around New Zealand and Australia to provide information about the process and to engage Ngāti Porou;
- a call from the Rūnanganui for submissions from the members of Ngāti Porou, resulting in a wide variety of submissions through several channels and culminating in the presentation of a first report to the Rūnanganui containing 12 recommendations;
- a decision by the Rūnanganui to adopt 11 of the 12 recommendations, and to propose certain actions in relation to some of the adopted recommendations;
- a second round of follow-up hui to test the Rūnanganui's decisions and to seek further feedback; and
- an opportunity for Ngāti Porou to make further submissions on the review process.

The purpose of this final report is to set out the independent advisor's concluding views in relation to the review process.

In general terms, the independent advisor is satisfied with the steps that have been taken in the review process since the first report was submitted. The advisor is pleased with the Rūnanganui's decision to adopt almost all of the recommendations.

The advisor notes that attendances at the follow-up hui have been very light, but that, with this proviso, the outcomes of the hui suggest that the Rūnanganui is on the right track with the review process. No substantially new or different views were expressed during the follow-up hui compared to the earlier hui, and no strong objections to the Rūnanganui's direction of travel were voiced. Opposing views were certainly expressed during these hui and in the further submissions that were made; however, these did not differ materially from the views expressed in the first round of consultation and presented to the Rūnanganui in the first report.

The timeframe leading up to the annual review in November is perhaps tighter than desirable and may exclude some voices from the feedback process (especially those who were expecting a wider range of feedback mechanisms to be available, as for the first round of consultation). Nevertheless, provided the Rūnanganui publicises any resolutions it intends to put to the annual general meeting in a timely way, the overall process is unlikely to be compromised by this factor.

The Rūnanganui faces at least two challenges subsequent to the completion of the review process. Firstly, it faces the challenge of working through the detailed implications of each of the recommendations, a process that will take considerable time and effort on the part of the elected representatives. Secondly, it faces the challenge of winning back the confidence of those members of Ngāti Porou who have expressed concern about, or opposition to, aspects of the Rūnanganui's approach to governing the iwi. Both of these challenges go to the heart of good governance, and it is to be hoped that the Rūnanganui rises to them in the way Ngāti Porou expect and deserve.

Review of Trust Deed

A. Terms

In this report,—

elected representative	means a member of the governing body of the Rūnanganui elected under clause 7 of the trust deed
Group	means the Rūnanganui and all of its subsidiaries
member	means a member of Ngāti Porou
Ngāti Porou	means the iwi
Report 1	means the first report written by the independent advisor dated June 2017
Rūnanganui	means Te Rūnanganui o Ngāti Porou, the parent entity of the Group
trust deed	means the deed establishing the Rūnanganui

B. Introduction

This is the final report of the independent advisor, David Gray, on the review of the trust deed of the Rūnanganui. Each of the reports of the independent advisor (i.e. the first report in June 2017, a second, interim report in October and this final report) has been prepared pursuant to clause 10 of the trust deed, which provides as follows:

10. REVIEW OF TRUST DEED

10.1 After 5 years from the date of the election of the First Elected Representatives, Te Runanganui o Ngati Porou shall undertake a review of this Trust Deed and its operation with a view to reporting to the next Annual General Meeting of Te Runanganui o Ngati Porou after the completion of the review on the effectiveness of the arrangements set out in this Trust Deed. Such report shall include recommendations as to the alterations (if any) that should be made to this Trust Deed.

The report has been written by me, David Gray, in the first person from this point on, in order to make it as accessible as possible to the reader.

C. Background to Report 1

All post-settlement iwi are required to conduct a review of their post-settlement arrangements within a certain period from the date of settlement—generally between two and five years. The wording of the requirement is almost exactly the same in every case, given that almost all iwi are required to use the same trust deed template supplied by the Office of Treaty Settlements.

The wording of the review requirement, as shown in clause 10 above, is very broad: the review is to cover “...*the effectiveness of the arrangements set out in this Trust Deed.*” Given that “the arrangements” set out in the deed include the establishment of the Rūnanganui itself, the electoral system for choosing members of the governing body, the requirement for commercial and cultural subsidiaries, the criteria for membership of the iwi, and a host of other matters, the scope of the review is unavoidably broad. In my view, this is a good thing. In some cases, up to ten years or more will have passed since discussions originally began about some aspects of the post-settlement arrangements, so it is fitting to pause and reflect on whether what was originally intended has, in fact, been achieved.

In the case of Ngāti Porou, the process began in October 2016 with a decision by the Rūnanganui to initiate a review. The process is scheduled to be completed in November 2017, when any recommendations the Rūnanganui decides to make to Ngāti Porou will be voted on (including, where necessary, by special resolution) at the annual general meeting.

Between October 2016 and May 2017, a series of hui were held around New Zealand and Australia to explain and promote the review process. Supporting collateral was developed by the Rūnanganui’s communications team and disseminated in various ways.

In April of this year, I was engaged to provide independent advice to the Rūnanganui on the review process. My brief was to—

- receive and collate submissions from the first round of consultation;
- compile a preliminary (thematic) report on the submissions [*Report 1*];
- present the preliminary report to the Rūnanganui;
- receive and collate submissions from a second round of consultation;
- prepare and present a further report and recommendations to the Rūnanganui [*Report 2*];
- prepare a final report, with recommendations, for the members of Ngāti Porou [*this report*]; and
- present any final recommendations to a general meeting of the Rūnanganui.

Once I was appointed, the Rūnanganui’s communications team issued a call for submissions to be made. All of the submissions came directly to me, in part so that submitters could be afforded confidentiality. The number and nature of submissions received, including the responses to an online questionnaire developed by the communications team, was described in Report 1.

The content of Report 1 comprised—

- an analysis of the submissions received in the first round of consultation and an explanation of how the analysis was carried out;
- a key recommendation regarding the Rūnanganui’s governance practices;
- the 11 other recommendations which comprised the substance of the report;

- some of my own observations and recommendations as the independent advisor to the Rūnanganui;
- a description of certain other matters that were raised by some of the submitters and which were to be dealt with separately by the Rūnanganui; and
- the raw data from the submissions.

The 12 recommendations in Report 1 are included in this report as Appendix 1 on page 14.

D. Background to this Report

Since Report 1 was submitted to the Rūnanganui, several further steps have taken place in the review process.

(i) Decision to Adopt Recommendations

Firstly, the Rūnanganui has considered each of the 12 recommendations in Report 1 and has decided to implement 11 of the 12 recommendations. I comment further on this decision in Part F of this report.

(ii) Proposed Responses to Recommendations

Secondly, the Rūnanganui has taken specific positions on some of the recommendations in Report 1, which it presented as proposals to the second round of consultation hui.

Recommendation 2 in Report 1 read as follows:

THAT, during the second round of consultation in this trust deed review process, the Rūnanganui formulates alternative approaches to dealing with the issue of noho kaenga versus kei te whenua, including those contained in submission 262, and consults specifically on these approaches.

In relation to this recommendation, the Rūnanganui proposed retaining the current provisions in the trust deed. In the presentation made to the second-round consultation hui, the Rūnanganui expressed the view that the present representation model is capable of being inclusive, that there was strong support for the model during the PSGE ratification process, and that concerns raised by taurahere groups during the first round of consultation are able to be addressed without changing the model.

Recommendation 5 in Report 1 read as follows:

THAT the Rūnanganui carries out a review of the role and functions of Toitū Ngāti Porou, with a view to determining its continuing existence.

In relation to this recommendation, the Rūnanganui proposed leaving the status of Toitū Ngāti Porou unchanged (although it also proposed making certain constitutional changes to permit all of the trustees of Toitū to be elected representatives). The Rūnanganui expressed the view that the concerns expressed about Toitū during the first round of consultation could be addressed by means other than disestablishing the organisation, and that the

current Group structure, including the Toitū charitable trust, is a tax-efficient structure with demonstrable benefit to Ngāti Porou.

(iii) Consultation Hui

Thirdly, a series of 16 follow-up hui has been held (six within the rohenga tīpuna, the remainder outside the rohenga tīpuna, including two in Australia). The purpose of these hui was described as follows (according to notes that have been provided to me):

The purpose of these hui was to report back to Ngāti Porou, provide an update on the Board's response to the Independent Reviewer's 12 recommendations and seek feedback about these recommendations and key areas that relate to changes to the Trust Deed.

Each follow-up hui has comprised—

- a presentation by one or more elected representatives describing the review process to date¹;
- a description of the recommendations contained in Report 1;
- an explanation of the Rūnanganui's proposed responses to some of the recommendations (as described above);
- an opportunity for attendees to provide feedback to the elected representatives about the recommendations and proposed responses; and
- an explanation of the remaining steps in the review process.

The notes made at each of the follow-up hui have been collated and given to me for review.

(iv) Call for Further Submissions

Finally, a further call was made to Ngāti Porou to make submissions on the decisions of the Rūnanganui in response to Report 1. In contrast to the first round of consultation, the approach to soliciting submissions was (in my view) somewhat low-key and did not include either the on-line option or the opportunity to make kanohi-ki-te-kanohi submissions to me as the independent reviewer.

In accordance with my original brief, I have now been asked to provide this final report to the Rūnanganui on the review process. The report principally comprises—

- a summary of the feedback and further submissions that have been received since the Rūnanganui received and responded to Report 1; and
- my own concluding comments and observations on the steps that have been taken in the review process since Report 1 was submitted.

¹ A copy of the Powerpoint presentation made at these hui is available on request from the Rūnanganui office.

E. Feedback and Submissions

As described in the preceding section of this report, a number of steps have been taken to ascertain the views of Ngāti Porou since Report 1 was received and considered by the Rūnanganui.

It has been suggested to me that much less effort was made by the Rūnanganui to publicize these steps than was made for the first round of submissions. I am not privy to the actual decisions that were made in this regard, but it is true to say that the volume of feedback and submissions from the second round of consultation was less than from the first round. This is mainly due to the fact that some of the mechanisms for giving feedback (as noted above) that were available for the first round of submissions were not used for the second round.

I refer the reader to page 13 of Report 1, where I commented on the extent of engagement in the consultation process for the first round of submissions. I commented that it was very hard to determine the exact number of individuals who had engaged in the process, and said that my “best guess” was around 300-400 individuals. I also gave some figures for the numbers of individuals or groups engaging in the process. The following table seeks to compare those numbers with the numbers for the second round of submissions:

<i>Table 1: Engagement in Consultation Processes</i>		
Mechanism	Round 1	Round 2
Individuals attending consultation hui	150	200
Individuals completing and submitting online questionnaire	73	n/a
Individuals, whānau or groups e-mailing written submissions	40	41
Individuals or whānau sending hard-copy submissions	17	0
Individuals making kanohi-ki-te-kanohi submissions	15	0

As with the first round of consultation, I hesitate to put a figure on the actual number of individuals who have engaged in the second-round process, and leave it to the reader to draw conclusions about this.

I comment as follows on the two principal sources of feedback in the second round of consultation: the consultation hui and written submissions.

(i) Consultation Hui

As described above, a series of 16 follow-up hui was held at venues around New Zealand and Australia during September. The purpose of these hui was to give Ngāti Porou a chance

to provide feedback, firstly, about the recommendations in Report 1, and secondly, about the Rūnanganui's proposed responses to the recommendations.

As the table on the preceding page shows, attendances at the hui were light—an average of 13 attendees at the hui for which numbers were available to me at the time of writing. By any measure, this constitutes a low turnout. It must be noted, therefore, that very few members of Ngāti Porou appear to have been motivated to provide feedback. The reasons for such a low turnout are a matter for speculation.

Having said that, I have carefully read all of the feedback recorded at the hui. I have two broad comments to make about this feedback.

Firstly, the tone and content of the feedback was very similar to the feedback received in the first round of consultation. I believe I am being fair to those who expressed their views at the follow-up hui when I say that **there were no substantially new or different views expressed at those hui compared to the views expressed earlier in the process**. By and large, the same matters were raised and the same kinds of comments were made. Once again, I understand the implications of making as broad a statement as this, but I believe I am justified in doing so based on the comments that were recorded at the hui.

Secondly, the feedback does not record any strong objections to the Rūnanganui's decision to adopt 11 of the 12 recommendations, nor to the proposals it had subsequently presented in relation to Recommendations 2 and 5. I view this positively: if there was widespread concern about the Rūnanganui's intentions, it would surely have come through in the feedback from the hui, notwithstanding the relatively small number of attendees.

This does not mean that there was no opposition at the hui to the actions taken or proposed by the Rūnanganui; on the contrary, the feedback records a number of dissenting voices. However, my interpretation of the overall thrust of the feedback is that there was nothing sufficiently new or different in the feedback to warrant a change of direction on the part of the Rūnanganui.

I therefore conclude that the outcomes of the follow-up hui are generally supportive of the Rūnanganui's actions thus far in the review process.

(ii) Further Submissions

As the table on the preceding page shows, I have received 41 submissions from individuals and whānau during the second round of consultation. Of the 41 submissions, 27 were in support of the second-round submission made by Te Taurahere o Ngāti Porou ki Pōneke.

(The reader may recall that Te Taurahere o Ngāti Porou ki Pōneke was the author of submission 262 described in Report 1, which proposed amending the Rūnanganui's structure and re-establishing its purpose, changing the Rūnanganui's representation model and implementing a financial distribution model; see page 70 of Report 1.)

Te Taurahere o Ngāti Porou ki Pōneke's second-round submission—

- supports the adoption of Recommendation 1 in Report 1 and offers to assist in the process;
- re-emphasizes the group's support for the changes to the Rūnanganui's representation model proposed in submission 262 (but also expresses support for an alternative representation model comprising a single roheka tipuna and equal numbers of elected representatives from noho kaenga and kei te whenua);
- supports Recommendations 3, 5, 6, 7 and 8 and asks for a progress report on the implementation of these recommendations to be given to the annual general meeting;
- supports Recommendation 4 provided it entails more precise language about conflicts of interest;
- supports Recommendations 9 and 10, including designing a more streamlined and user-friendly registration process and disestablishing the Membership Committee; and
- supports Recommendations 11 and 12.

The submission also proposes—

- removing the requirement that the chairperson be noho kaenga and have served at least one term on the Rūnanganui;
- removing any delegations containing the wording “at the chairperson’s discretion” or with similar intent;
- reducing the maximum number of terms an elected member may serve to two; and
- opening meetings of the Rūnanganui to members of Ngāti Porou.

As with the feedback from the consultation hui, I have read each of the written submissions carefully and am confident that I can say, without in any way doing a disservice to any of the submitters, that no substantially new or different views were expressed in the submissions compared to the views expressed in the first round of consultation. Again, I am at pains to say that I do not wish to be seen to be dismissing any of the submissions lightly or acting in any way unfairly, but I am quite confident that the summary statement I am making in this paragraph is accurate. Most of the submitters made their points articulately and with plenty of passion; nevertheless, the points they made were not new and were simply supportive of perspectives that have already been expressed to the Rūnanganui in Report 1.

F. Independent Reviewer's Comments

(i) General Comment

In general terms, I am satisfied with the steps that have been taken in the review process since Report 1 was submitted, although I might have wished for a more comprehensive effort to have been made to generate feedback in the second round of consultation. In

particular, I am very pleased that the Rūnanganui has decided to implement all but one of the recommendations in Report 1.

(ii) Response to Recommendations

In my view, the Rūnanganui has shown courage in agreeing to implement 11 of the 12 recommendations in Report 1.

I understand that the Rūnanganui has deferred its response to Recommendation 12, which reads as follows:

THAT the present non-recurring requirement in clause 10 of the trust deed be amended to require periodic reviews of the Rūnanganui at not less than five-yearly intervals.

I understand that the Rūnanganui's preference is to wait until the present process has been completed (and the costs finalised) before making a final decision on this recommendation. I am happy with this position.

I accept the Rūnanganui's proposed response to Recommendation 2 (i.e. to make no changes to the representation model), on the basis of the reasoning presented in the second-round consultation hui:

- that the current model can be inclusive of all Ngāti Porou and sufficient kei te whenua candidates can be elected under the existing provisions;
- that support from Ngāti Porou for the noho kaenga provisions was substantial and strong during the consultation process leading to the ratification of the current post-settlement arrangements, including from Ngāti Porou taurahere; and
- that most of the matters raised during the first round of consultation (e.g. better information to all Ngāti Porou, greater support for taurahere groups) can be addressed without changing the noho kaenga provisions.

I would, however, encourage the Rūnanganui to be mindful of the strong feedback that was received about this matter and to ensure that it takes positive steps to address the range of concerns raised. In particular, there appears to me to be considerable ground to be made up in improving relationships between the Rūnanganui and several of the taurahere groups, and I urge the Rūnanganui to address this matter.

I also accept the Rūnanganui's proposed response to Recommendation 5 (i.e. that the existing arrangements in relation to Toitū Ngāti Porou be retained), although I would again remind the Rūnanganui of the strength of feeling behind many of the submissions and would encourage the Rūnanganui to ensure that the performance of this entity is placed under the microscope so that the many concerns expressed are actually addressed over time. In particular, I think it will be important to carry through on the Rūnanganui's stated intention to "...develop and confirm distribution policies and frameworks that ensure more direct resourcing opportunities to Ngāti Porou hapū and taurahere for charitable, cultural development purposes." As with the preceding point, there appears to me to be

considerable ground to be made up in improving the status of Toitū Ngāti Porou in the eyes of many Ngāti Porou, a challenge I encourage the Rūnanganui to take up.

G. Concluding Remarks

In complying with its obligation under clause 10 of its trust deed to conduct a review of “the effectiveness of the arrangements” under the deed, the Rūnanganui has implemented a wide-ranging and thorough review. The initial phase of the review process generated a large amount of feedback, which resulted in a total of 12 recommendations being made to the Rūnanganui in Report 1.

The Rūnanganui has courageously chose to adopt almost all of the recommendations in Report 1². The series of follow-up hui that took place in September did not cast any significant doubt on the decision of the Rūnanganui to adopt the recommendations, nor did the hui surface any additional information that might materially affect the Rūnanganui’s thinking in relation to the review process. The relatively small number of written submissions received predominantly reiterated positions expressed earlier in the review process, including the weighty submission of Te Taurahere o Ngāti Porou ki Pōneke, but did not materially influence the overall findings of the review.

It remains, therefore, for the Rūnanganui to formulate the specific resolutions to be taken to the forthcoming annual general meeting, and to publicise these widely in order to foster well-informed debate.

Beyond any changes that may be made to the trust deed at the annual general meeting, there remains a great deal of work for the Rūnanganui to do to implement the recommendations. Most of them require considerable deliberation and debate, so I would expect them to form an integral part of the Rūnanganui’s work plan for at least the coming year.

The Rūnanganui knows that there is a body of opinion within Ngāti Porou which opposes the stance it has taken in response to the review, and it also knows that there is much work to be done to win back the confidence of these members. This is not unusual amongst post-settlement iwi, and is not a cause for alarm; it is simply a challenge to the Rūnanganui to exercise wise and inclusive governance as it responds to the outcomes of the review. Provided the Rūnanganui carries through on its stated intention to implement the recommendations, the eventual outcome should significantly enhance the quality and impact of the governance being exercised by the Rūnanganui and the benefits being enjoyed by Ngāti Porou.

² I am assuming that the ‘Additional Matters’ on page 28 of Report 1 have been dealt with by the Rūnanganui on a case-by-case basis.

Appendix 1: Recommendations

This appendix sets out the list of recommendations made by the independent advisor in Report 1:

Recommendation 1

THAT the Rūnanganui takes the time to spell out, in clear and precise terms, exactly what outcomes it is trying to achieve for all Ngāti Porou—and, by implication, what it is not trying to achieve—together with the broad strategies it is using to achieve the outcomes;

THAT the strategies so described be used as the basis of a review of the structure and functions of the Rūnanganui; and that the strategies form the basis of the Rūnanganui's planning and reporting systems and processes; and

THAT the Rūnanganui drafts, consults on and adopts a comprehensive set of governance policies, including a policy setting out its governance philosophy.

Recommendation 2

THAT, during the second round of consultation in this trust deed review process, the Rūnanganui formulates alternative approaches to dealing with the issue of noho kaenga versus kei te whenua, including those contained in submission 262, and consults specifically on these approaches.

Recommendation 3

THAT the Rūnanganui drafts, consults on and adopts a governance policy setting out its philosophy towards Ngāti Porou hapū.

Recommendation 4

THAT the Rūnanganui drafts, consults on and adopts a governance policy containing clear conflict-of-interest provisions in relation to elected representatives and their immediate whānau; and

THAT the Rūnanganui reviews its policies and practices relating to fees for all governance roles within the Group and presents the findings of this review to the next annual general meeting of the Rūnanganui.

Recommendation 5

THAT the Rūnanganui carries out a review of the role and functions of Toitū Ngāti Porou, with a view to determining its continuing existence.

Recommendation 6

THAT the Rūnanganui reviews the information available about the Group and ensures that a simple, plain-language guide to the Rūnanganui and the Group, covering (amongst other

things) the structure of the Group and the purpose, funding and governance of each entity within the Group, is readily available to, and easily comprehensible by, the members of Ngāti Porou; and

THAT a review be carried out of the suitability of the information presented to the members at the annual general meeting.

Recommendation 7

THAT Ngāti Porou Holding Company Ltd be directed to prepare a description of both its investment philosophy and its investment activities in plain-language format, and that this information be disseminated widely amongst Ngāti Porou.

Recommendation 8

THAT the Rūnanganui clarifies (a) the outcomes it is aiming to achieve in the health domain; (b) the role the Hauora is intended to play in achieving these outcomes; (c) the alternative strategies it has considered for achieving the outcomes; and (d) how and at what cost the Hauora will continue to play a role in achieving the outcomes.

Recommendation 9

THAT, in the process of implementing Recommendation 3, the Rūnanganui re-evaluates the role and function of, and the need for, the Membership Committee.

Recommendation 10

THAT the Rūnanganui reviews the registration process with a view to making it as streamlined and as user-friendly as possible.

Recommendation 11

THAT the Rūnanganui considers including the requirement for a policy on participation in its trust deed.

Recommendation 12

THAT the present non-recurring requirement in clause 10 of the trust deed be amended to require periodic reviews of the Rūnanganui at not less than five-yearly intervals.