

ATTACHMENT 2 - TE RUNANGANUI O NGATI POROU TRUST DEED AMENDMENTS – SUMMARY EXPLANATORY NOTE

Change	Reasoning
Terminology changes	There were some inaccurate references to “Elected Representatives” instead of “Trustee” and these have been fixed (Subject 1. in Traffic Light).
Interested Elected Representatives	That Elected Representatives should still count towards making a quorate meeting even though they are excluded from deliberations and voting on issues where they are interested (Subject 7. in Traffic Light).
Eligibility to be an Elected Representative	That a new list of eligibility criteria for Elected Representatives be inserted, replacing the earlier one, with the idea that this list is aligned across Ngāti Porou entities when possible (Subject 16. in Traffic Light, Second Schedule para 2 Trust Deed);
Trusts Act 2019-related changes	The following changes are proposed: - the concept of the rule against perpetuities has been removed (Subject 2. in Traffic Light, cl 1.5 of Trust Deed); - the terminology for Custodian and terms of appointment have been updated (Subject 4. in Traffic Light, cl 6 of Trust Deed) - that the documents that trustees are required to keep as records are listed as well as how long they need to keep them (Subject 5. in Traffic Light, cl 12.4 Trust Deed and Subject 11. In Traffic Light, cl 26 of Trust Deed) - that the Trust Deed describes what Trust information Beneficial Members are entitled to (Subject 6. in Traffic Light, cl 14 and 15 of Trust Deed); - that the Trust Deed outlines what further information Beneficial Members can ask for about the Trust and what the Trustee needs to consider when deciding what to disclose (Subject 6. in Traffic Light, cl 14 and 15 of Trust Deed);

	• that the liability of the Trustee be clarified (liable for gross negligence, wilful misconduct, dishonesty) and no reference be made to liability of Elected Representatives (Subject 9. in Traffic Light, cl 20 of Trust Deed); • that the Trustee's indemnity be specified (indemnified for everything except gross negligence, wilful misconduct, dishonesty) (Subject 10. in Traffic Light, cl 21 of Trust Deed); • that the indemnity for Elected Representatives be aligned with the maximum indemnity permitted by the Companies Act from a company to its directors (Subject 10. in Traffic Light); • a definition of Trusts Act be included and Matariki added as a public holiday (Subject 13. and 14. in Traffic Light, cl 30 of Trust Deed); • to align the power of delegation with what is permitted for Trustees (Subject 17. and Subject 21. in Traffic Light, Third Schedule para 7.1 and Fifth Schedule para 1.2(a) of Trust Deed); • to remove standing authority to sign contracts on behalf of the Trustee (Subject 18. in Traffic Light, Third Schedule para 11 of Trust Deed); • to update the language of the general power of trustees (Subject 19. in Traffic Light, Fifth Schedule para 1.1 of Trust Deed); • to remove any specific powers of the Trustee as the broad power covers everything that is required (Subject 20. in Traffic Light, Fifth Schedule para 1.1 of Trust Deed); • listing the Trustee's mandatory duties (Subject 22. in Traffic Light, Fifth Schedule para 2 of Trust Deed); • clarifying that the Trustee's required general standard of care modifies the Trusts Act (Subject 23.a in Traffic Light, Fifth Schedule paragraph 2.1(e) of Trust Deed)
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	• inserting the required standard of care when investing (a slightly modified version of the Trusts Act standard) (Subject 23.b. in Traffic Light); • excluding the duty in the Trusts Act not to bind the trustee to future decisions (Subject 23.e in Traffic Light); • clarifying that the duties in the Trusts Act relating to profit and remuneration of the Trustee are modified (Subject 23.h and 23.i in Traffic Light); • inserting grounds for removal of the Trustee from office (Subject 24. of Traffic Light, Fifth Schedule para 3 of Trust Deed) and inserting the power to appoint a new Trustee (also as a Special Resolution of Members). It is also inserted that the power to appoint and remove Trustees is a fiduciary power and must be exercised in good faith and honestly. The provision deeming the Elected Representatives to be trustees if the Trustee is removed is deleted; and • adding a proviso onto the Trustee's ability to delegate to the CEO, requiring that the delegation not exceed what the Trusts Act allows (Subject 25. in Traffic Light, Sixth Schedule paragraph 1 of Trust Deed); • inserting a general power to enter into alternative dispute resolution for any disputes in addition to disputes regarding membership and Elected Representatives bring TRONP into disrepute (which have their own procedures) (Subject 27. in Traffic Light, clause 27.1 and Eighth Schedule para 1.4 of Trust Deed). These updates ensure that the Trust deed reflects current trust law in Aotearoa New Zealand.
Minor drafting amendments	Minor amendments to correct errors, update cross-references, update language, and correct any formatting errors

ATTACHMENT 3 - TE RUNANGANUI O NGATI POROU TRUST DEED REVIEW 2024

Key

	An amendment to the Trust Deed is strongly recommended
	An amendment to the Trust Deed would be highly desirable for best practice
	An amendment to the Trust Deed would be "nice to have" but the issue could be dealt with outside of the Trust Deed or there is a choice for the Trustee to make
	Nothing is required, the clause is mentioned for information

Subject	Clause in TRONP Trust Deed		Brief explanation	Suggested change	Sub -Committee recommendation to Board
1. Use of "Elected Representatives" in place of Trustee				There are many references in the trust deed to the Elected Representatives having powers, taking action and doing things which instead should refer to the Trustee. The risk of attributing powers and functions to the Elected Representatives is that they themselves are deemed to be trustees rather than directors of the Trustee. See for example paragraph 1.14 which must refer to the Trustee making the payments of income and capital, not the Elected Representatives. We have not listed all of the places in which change should be made in this table but have done so in a separate document.	That suggested changes are accepted.
2. Rule against Perpetuities	1.5		The Perpetuities Act has been repealed and replaced with a longer duration for trusts but	Replace heading and text of clause with:	That this recommendation be accepted.

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			this does not apply to the Trust in any case.	Duration. <i>The limit on duration of trusts does not apply to the Trust as set out in section 17 of the Act (as amended by the Trusts Act 2019).</i> <i>Note that "the Act" is defined as the Ngati Porou Claims Settlement Act in clause 30 of the trust deed.</i>	
3. Guiding Principle, context and objectives of the Trust			The Trusts Act enhances the weight to be given to the wishes of the settlor(s) and the context and objectives of the Trust. Section 4(a) of the Act requires trustees to have regard to the principle that a trust should be administered in a way that is consistent with its terms and objectives. The objectives of the Trust are relevant for the performance of all duties and in some particular functions such as investing. A Guiding Principle has been inserted into the Act, requiring trustees to	Clauses 1.6 and 1.8-1.10 set out clearly the context and objectives of the Trust. These provisions now have more statutory emphasis.	N/A

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			have regard to the context and objectives of the Trust in the performance of all duties.		
4. Custodian trustee	Clause 6		The Trusts Act has changed the law on custodians of trust assets – it has changed the term from custodian trustee to just custodian, confirmed they are not trustees and narrowed the categories of persons who can be appointed custodians.	Change heading and clause to read: Custodian 6.1 <i>The Trustee may at any time by resolution in writing appoint a person who is eligible to be a custodian under clause 67 of the Trusts Act to be a custodian of the Trust's assets or a part of them on such terms and conditions as the Trustee thinks fit.</i> 6.2 <i>Having made an appointment under clause 6.1 the Trustee must keep the arrangements, and how those arrangements are being put into effect, under review and, if the circumstances make it appropriate to do so, consider whether it should intervene in any manner including, but without limitation, amending, revoking, terminating or replacing the appointment.</i>	That this recommendation be accepted.
5. Annual Reports, Accounts and Auditor	Clause 12		There is a new precise obligation on a Trustee to retain core trust documents (which are listed non-exhaustively in the Trusts Act) for the length of its trusteeship and then pass them to its successor. This differs	Option A (detailed) We could insert a new clause 12.4 entitled Core documents saying: <i>"The Trustee must keep the Core Documents, so far as is reasonable for the duration of its trusteeship."</i> We could then define Core Documents in clause 30 to align with the legislation, as follows (from the legislation):	That Option A be chosen.

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			from and runs parallel to the obligation to retain documents for 7 years under tax law.	Core Documents means: (a) the trust deed and any other document that contains terms of the trust: (b) any variations made to the trust deed or trust: (c) records of the trust property that identify the assets, liabilities, income, and expenses of the trust and that are appropriate to the value and complexity of the trust property: (d) any records of trustee decisions made during the trustee's trusteeship: (e) any written contracts entered into during that trustee's trusteeship: (f) any accounting records and financial statements prepared during that trustee's trusteeship: (g) documents of appointment, removal, and discharge of trustees (including any court orders appointing or removing trustees): (h) any letter or memorandum of wishes from the settlor: (i) any other documents necessary for the administration of the trust: (j) any documents referred to in paragraphs (a) to (i) that were kept by a former trustee during that person's trusteeship and passed on to the current trustee. The definition in the deed could provide the list above or refer to the Act.	

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				This ties into clause 26 which we have suggested is amended. Option B (not detailed) Option B would be a less fulsome (more vague) description that relies on the reader going back to the Trusts Act for detail, merely saying: <i>"The Trustee has the obligations contained in Part 3, Subpart 3 of the Trusts Act to keep documents relating to the Trust."</i>	
6. Disclosure of information	Clauses 14 and 15		There are new expansive rules around the provision of information to beneficiaries and a long list of reasons the Trustee can take into account if deciding not to make certain information available to beneficiaries. It is clear that TRONP makes available a lot of information to Members, including financial information and meeting minutes, but only minutes of those meetings where Members are able to attend (AGMs, SGMs). Members are also entitled to	We suggest that the existing clause 14 have a new heading <i>"Provision of Information"</i>. Then the existing clause 14 can become clause 14.1 and we would leave the content of that clause as is. We would insert a new 14.2 dealing with the provision of basic information and trust information although you will need to decide how much content you wish to include in the trust deed – all of it is set out in the Trusts Act, although that is not necessarily helpful for a Beneficial Member who wants to know what he or she can ask for and the grounds on which that request can be rejected. What the clauses in the Act say are: - The Trustee has to give all beneficiaries the "basic information" - that they are beneficiaries, the contact details for the trustee, including if it changes, and the right of the beneficiary to request a copy of the trust deed and "trust information". - "trust information" is any information regarding the terms of the trust, the administration of the trust or the	That Option A be accepted, to include the suggested new 14.2 describing all information beneficial members are entitled to and all they can ask for and then all of the criteria the trustee can apply for withholding the information.

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			attend Trustee meetings with notice. We have tried to weave the existing attitude towards disclosure in with the extended obligations and wider scope of information contemplated to be shared under the Trusts Act.	trust property that is reasonably necessary for a beneficiaries to have to enable the Trust to be enforced. This does not include reasons for trustee decisions. - The trustee can charge the beneficiary the cost of obtaining the information. - The trustee can withhold the basic information or trust information on any number of grounds specified in the Act including things like confidentiality, the age and circumstances of the beneficiaries, the effect of giving the information on the beneficiaries or trustee, practicalities, number of beneficiaries – quite a lot of factors. Some trusts (including other iwi trusts) prefer to keep the detail outside of their deed and merely have a clause in the deed saying that the Trustee will comply with its obligations in relation to information disclosure as set out in the Trusts Act. They might then have a policy and procedure for dealing with requests, depending on how frequent or demanding they anticipate them to be. It appears to us that TRONP's deed errs on the side of disclosure, and therefore it may be appropriate to include the fuller version. So, following on from the above description, these would be the alternative wordings for your options. Option A (detailed) Basic Trust Information <i>"The Trustee will make the Basic Trust Information available to every Beneficial Member (or a Beneficial Member's</i>	

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				<i>representative) unless having regard to the factors set out in clause X the Trustees reasonably consider that the Basic Trust Information should not be made available to every Beneficial Member but some or all of it should be withheld from one or more Beneficiaries."</i> <i>"The Basic Trust Information is:</i> <i>• The fact that a person is a Beneficial Member</i> <i>• The name and contact details of the Trustee and such details of any subsequent appointment</i> <i>• The right of the Beneficial Member to request a copy of the terms of the Trust or Trust Information under this clause.</i> <i>The Trustee must consider at reasonable intervals whether they should be making the Basic Trust Information available under this clause."</i> Trust Information <i>"The Trustee will make available any Trust Information requested in writing by any Beneficial Member (or a Beneficial Member's representative) unless having regard to the factors set out in clause X the Trustee reasonably considers that some or all of the Trust Information requested should not be made available to the Beneficial Member."</i> <i>"Trust Information is any information regarding the terms of the Trust, the administration of the Trust or the Trust property that it is reasonably necessary for a Beneficial Member to have to</i>	

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				<i>enable the Trust to be enforced but does not include reasons for Trustees' decision."</i> <i>"The Trustee may require any Beneficial Member to whom Trust Information is given to pay the reasonable cost of providing that information before it is provided."</i> Factors that Trustee may consider <i>"The factors to be considered by the Trustees in making a decision under clauses Y and Z are as follows:</i> <i>(a) the nature of the interests in the Trust held by the Beneficial Member and the other Beneficial Members of the Trust, including the degree and extent of the Beneficial Member's interest in the Trust and the likelihood of the Beneficial Member receiving Trust property in the future;</i> <i>(b) whether the information is subject to personal or commercial confidentiality;</i> <i>(c) the expectations and intentions of the Settlers at the time of the creation of the Trust (if known) as to whether the Beneficial Members as a whole and the Beneficial Member in particular would be given information;</i> <i>(d) the age and circumstances of the Beneficial Member;</i> <i>(e) the age and circumstances of the other Beneficial Members of the Trust;</i>	

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				(f) <i>the effect on the Beneficial Member of giving the information;</i> (g) <i>the effect on the Trustees, other Beneficial Members of the Trust, and third parties of giving the information;</i> (h) <i>the effect of giving the information on relationships within the family and the relationship between the Trustees and some or all of the Beneficial Members to the detriment of the Beneficial Members as a whole;</i> (i) <i>in a trust that has a large number of Beneficial Members or unascertainable Beneficial Members, the practicality of giving information to all Beneficial Members or all members of a class of Beneficial Members;</i> (j) <i>the practicality of imposing restrictions and other safeguards on the use of the information (for example, by way of an undertaking, or restricting who may inspect the documents);</i> (k) <i>the practicality of giving some or all of the information to the Beneficial Member in redacted form;</i> (l) <i>if a Beneficial Member has requested information, the nature and context of the request; and</i> (m) <i>any other factor that the Trustees reasonably consider is relevant to their determination.</i>	

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				Option B (not detailed) <i>"The Trustee has the obligations in the Trusts Act to provide some information to a Beneficial Member, or to his or her representative, subject to certain considerations. In relation to these, the Trustee shall perform its obligations having regard to the context and objectives of the Trust, the terms of this deed and section 53 of the Trusts Act."</i> Option C Option C would be a hybrid of A and B. For example, not listing out all of the factors that the Trustee can consider but referring back to the Trusts Act for that.	
7. Conflict of interest (Elected Representatives)	Clause 17.3		Usually interested parties are excluded from voting but included in the quorum – this means that a decision could still be made without them. Imagine that there were multiple parties who were 'interested' and couldn't vote but their removal from the quorum meant that a quorum could not be reached.	You could exclude interested persons from voting but have them included in the quorum – this would change 17.3.	That interested persons should be able to be counted towards the quorum while being excluded from the deliberations and the vote.
8. Prohibition of benefit	Clause 18		This clause is relevant to charities seeking an	This clause could be deleted as could the associated definition of Related Person in clause 30. It could be retained if there was	That no change be made.

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			exemption from income tax under CW42 of the Income Tax Act 2007 but TRONP is not charitable.	ever a possibility that TRONP could apply to be charitable (which is a permitted possibility for a PSGE post-settlement).	
9. Elected Representatives' Liability	Clause 20		The Trusts Act provides that the terms of a trust must not limit or exclude a <i>trustee's</i> liability for any breach of trust arising from the trustee's dishonesty, wilful misconduct or gross negligence. This law change means that there is an additional category where trustees have personal liability - where a breach is attributable to that trustee's gross negligence.	Clause 20 is the appropriate place to talk about Trustee liability rather than the liability of Elected Representatives. We suggest clause 20 is replaced by: <i>Liability of Trustee</i> <i>"The Trustee will be liable only for any loss suffered by the Trust or a Member attributable to the Trustee's dishonesty, wilful misconduct or gross negligence. No Trustee will be liable for any other loss attributable to any breach of trust by the Trustee."</i> <i>Assuming the protection of the corporate veil, the liability of the Elected Representatives falls to be determined under the Companies Act which has different culpability tests. If a director of a corporate trustee has liability it is ordinarily as a result of a breach of one of the duties it owes the Company, for example, failure to act in the best interests of the company.</i>	That this recommendation be accepted.
10. Indemnity and Insurance	Clause 21.2		Similarly, the Trusts Act provides that the terms of trust must not indemnify a trustee for any loss arising from the trustee's dishonesty, wilful misconduct or gross negligence. This	This section addresses the indemnities and insurance for the individual Elected Representatives rather than for the Trustee and the standards for the two are conflated. The indemnity for the Trustee should be specified here first. We suggest that a new clause 21.1 be added in as follows: <i>"The Trustee will be entitled to full and complete exoneration, indemnity and reimbursement from the Trust for any and all</i>	That this recommendation be accepted regarding specifying the Trustee's indemnity.

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			law change means that there is an additional category where the Trust cannot indemnify any trustee - where a liability is attributable to that trustee's gross negligence.	<i>liability and expense which that Trustee incurs in relation to (including in defending or prosecuting any proceedings in relation to the Trust) and which is not attributable to that Trustee's dishonesty, wilful misconduct or gross negligence."</i> Does the Trustee have insurance? If so we would suggest that is authorised and provided for in another subclause. The indemnity provided to Elected Representatives in 21.2 is greater (better) than what is permitted for trustees (who are necessarily liable for their own dishonesty, wilful default and gross negligence) and for directors from the company of which they are director (they retain all criminal liability and liability for breach of the duty to act in the best interests of the company). Technically this is possible but there is a chance that a court would read it down to the director indemnity from company threshold.	That changes be made to give the Elected Reps the same indemnity as is contemplated in the Companies Act as being the maximum indemnity a company can give its directors and not a better indemnity. Elected Reps should be expected and encouraged to operate at a commercial level.
11.Archiving of records	Clause 26		Records need to be retained and accessible for longer than the 7	The Trustee has to keep the Core Documents for the duration of its trusteeship and on the cessation of its trusteeship pass such	That this recommendation be

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			year tax obligation: section 47 of the Trusts Act.	documents to its successor trustee so this needs to be reflected in clause 26. Clause 26 should be replaced with: <i>The Core Documents of Te Runanganui o Ngati Porou and all minutes and other records of any proceedings of Subsidiaries shall be held by the Trustee for the duration of its trusteeship and on the cessation of its trusteeship the Trustee shall pass such documents to its successor trustee.</i> If the Trust still wants the ability to be able to store records offsite (archiving) then we can say something about that – as long as they are still accessible to the Trustee that would comply with its obligation to retain them.	accepted. Will also deal with archiving.
12. Core Trust Documents	Clause 30 (Definitions and Interpretations)			See comment above in relation to record-keeping. This definition could refer to the list in the Trusts Act or list them out.	Yes it is recommended to include the full list.
13. Trusts Act	Clause 30 (Definitions and Interpretations)		The deed should have a definition of the Trusts Act 2019 as it will be relevant for the modification of some of the default duties that appear in that Act.	<i>"Trusts Act" means the Trusts Act 2019 as amended from time to time;</i>	That this recommendation be accepted.

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14. Matariki	Clause 30 (Definitions and Interpretations)		"Working day" means a day of the week other than— (a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, and Labour Day;	Include Matariki in the list of public holidays	That this recommendation be accepted.
15. Register	First Schedule paragraph 7.3			There have been concerns raised regarding the Privacy Act 2020 and registered iwi members' rights to view other registered members' details on the register. This issue has not been tested at law yet. KPMG has made a comment in the context of data collection that one main issue is the boundaries of the Privacy Act and the extent to which it enables or constrains the sharing of information with, and across Maori entities, where whanau are registered. Interestingly (but not a required change for the purposes of TRONP's trust deed), in 2008 the Law Commission in its review of the Privacy Act 1993 noted: The Privacy Act does not, therefore, protect against disclosure of information about groups or deceased persons, or disclosure of non-identifiable information. It has been argued that the individualistic focus of privacy law does not take account of the collective interests of Māori groups.	N/A

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				In addition, it may be considered that some types of personal information belong not to the individual but to the group. The Law Commission then recommended the development of a code of practice for the regulation of the handling of personal information in connection with iwi registers. This recommendation has not yet been implemented.	
16. Eligibility for appointment as an Elected Representative (See Attachment 6 and Attachment 7)	Second Schedule para 2		The Trusts Act has comprehensive factors for eligibility to act as a Trustee. The TRONP deed applies those, more or less, to the Elected Representatives.	This list must, at a minimum, reflect (or refer to) the Companies Act disqualifiers from being a director as the Elected Representatives are directors. Other disqualifiers can be added. The list in the Trust Deed is wider than the list in the Companies Act, which gives a flavour of the standard that Ngati Porou expects of Elected Representatives. We suggest that this list and the list in paragraph 6.3 of the Toitu trust deed are aligned with each other (closer, even if not identical), reflecting at least the statutory disqualifiers for directors and charitable trustees. See the separate list that we have suggested.	That the recommended list is accepted – to incorporate all disqualification lists from all relevant Acts but refer back to them and not list every limb. Also to list separately “lacking capacity” as being a disqualification factor from appointment but also a removal factor if capacity is lost during someone’s term of office.

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17. Delegation	Third schedule, paragraph 7.1		This clause would be normal in a company constitution but, where the company is a trustee, delegation by the Trustee has specific parameters/prohibitions set out in the Trusts Act.	It is the Trustee that is delegating (and who remains liable), not the Elected Representatives. We would suggest deleting paragraph 7 of the Third Schedule. We will deal with delegation instead in the Fifth Schedule as a Trustee power.	That this recommendation be accepted.
18. Form of contracts	Third Schedule paragraph 11		Companies that are trustees are subject to trustee rules on delegation as well as company rules.	This is based on a provision of the Companies Act and does not belong in the trust deed. It is in the constitution of the Trustee company. The Trustee can determine how it will sign documents (and deeds) provided that it complies with the minimum requirements in the Companies Act. The usual course would be for a contract to be approved by the Trustee at a meeting or in a written resolution and the same resolution would authorise someone (or two) to sign it on behalf of the Trustee. The risk of this clause is that it appears as a standing authorisation for people to sign documents on behalf of the Trustee which skips over the need for the Trustee to authorise entry into every document. We would suggest that this clause is deleted from the trust Deed and amended in the constitution. While companies are permitted (subject to their constitution) to appoint attorneys to act generally the overlay of trust law means that companies that are trustees can only appoint attorneys for specific limited tasks and not as a general standing appointment. So the clause in the constitution needs to reflect that. We would also suggest	That this recommendation be accepted.

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				that the clause is permissive rather than mandatory ('may' rather than 'shall') as a counterparty to a contract with the Trust may require some different more onerous method of contracting.	
19. General Powers	Fifth schedule, paragraph 1.1		The Trusts Act gives trustees "all the powers necessary to manage the trust property, including all the powers of an absolute owner of the property and all the powers necessary to carry out the trust". The trust deed wording has the same intent but different language. We suggest bringing the two into line.	We would replace 1.1 (a) and (c) with the wording of the Trusts Act, saying: <i>The Trustee has all the powers necessary to manage the trust property including:</i> <i>(a) in relation to the trust property, all the powers of an absolute owner of the property; and</i> <i>(b) all the powers necessary to carry out the Trust, including powers incidental to (a).</i>	That this recommendation be accepted.
20. Specific Powers	Fifth schedule, paragraph 1.1		Fifth schedule, paragraph 1.1 very briefly lists some of the powers of the Trustees, without setting the scope of those powers out in full or outlining any limitations placed upon them.	Previously (including for Ngati Porou Oranga) we have suggested that a schedule of powers be added so that trustees can see the list in front of them. Now we are moving towards 'less is more' and recommending leaving the broad powers to stand alone without a specific schedule. If however you wanted the approach to be consistent between the trusts we could insert a more detailed schedule of powers.	That the recommendation to have the broad powers and not a detailed list be accepted.

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21. Management Powers	Fifth Schedule paragraph 1.2(c)			<p>This needs to be replaced to align with the permitted delegations under the Trusts Act. It also replaces paragraph 7 of the Third Schedule, which we have suggested is deleted.</p> <p>We would rename the clause and word it as follows:</p> <p><i>Appointing other persons to exercise powers or functions</i></p> <p><i>"The Trustee may, on such terms and conditions and otherwise in any manner in its absolute discretion:</i></p> <p class="list-item-l1">(a) <i>Appoint a person to exercise or perform specified powers or functions in relation to the Trust on behalf of the Trustee, including but not limited to implementation of Trustee decisions; and</i></p> <p class="list-item-l1">(b) <i>Appoint a person to make specified decisions in relation to all or part of the Trust property,</i></p> <p><i>provided that the delegation does not contravene section 67(2) of the Trusts Act. (see note below)</i></p> <p><i>The terms of appointment of any person appointed under clause A above will include that the person appointed does not take on the duties of the Trustee, but must act in accordance with the terms of the appointment and with any directions of the Trustee and is liable to the Trustee for any failure to comply with those terms or directions.</i></p> <p><i>Having made an appointment under clause A above, the Trustee must keep the arrangements, and how those arrangements are being put into effect, under review and if the circumstances make it appropriate to do so, consider whether they should</i></p>	That this recommendation be accepted.

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				<i>intervene in any manner including, but without limitation, amending, revoking, terminating or replacing the appointment.</i> <i>The Trustee will not be liable to any Beneficial Member for any act or default of any person appointed under clause A above, unless the Trustee failed in any duty under clause [list all duty clauses] in appointing the person or failed to fulfil the obligations in clause B [referring to monitoring].</i> <i>Note: The list in section 67(2) is extensive and therefore restrictive and there is hope that it will be relaxed over time. As such we would suggest that it is not pasted into the trust deed. It can be contained in an information note to the Trustee.</i>	
22. Mandatory Duties of the Trustees	The Trust Deed has Trustee duties in the Fifth Schedule, paragraph 2		The Trusts Act provides five mandatory duties cannot be excluded or modified by the trust deed and are imposed on all trustees: - a duty to know the terms of the trust, - a duty to act in accordance with those terms, - a duty to act honestly and in good faith, - a duty to act for the benefit of	While there is no need to have these in the trust deed (as they are in the Act), we can make minimal changes to the deed to include them. We can make a few amendments to paragraph 2 and expand a couple of sub paragraphs which will have the effect of including the mandatory duties. We don't think you need to take the next step and say that they are mandatory. For example: - <i>in 2.1(b) we would add the word 'honestly' (the Trustee will act honestly and in good faith); and</i> - <i>in 2.1(d) we would add that the Trustee must be familiar with the Trust Deed; and</i> - <i>We would add in a new sub para saying that the Trustee must exercise its powers for a proper purpose.</i>	That this recommendation be accepted and the description of them as being "mandatory" should be included in the Trust Deed.

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			beneficiaries/charitable purposes, and - a duty to exercise the trustee's powers for a proper purpose.		
23. Default Duties of Trustees			The Trusts Act provides 10 default duties which apply to all trusts unless they are excluded or modified by the trust deed:	There is no need to address all of these duties in one place – it is fine to have them throughout the deed but it is advisable to modify or exclude those that should be modified or excluded (subject to the proviso that the Trustee cannot make these changes to benefit itself).	
23.a	Fifth Schedule paragraph 2.1(e)		When administering a trust, a trustee must exercise the care and skill that is reasonable, having regard to that trustee's specialist knowledge and if a trustee is in business, to special knowledge that it is reasonable to expect from them.	Paragraph 2.1(e) says "The Trustee when exercising powers of [sic] performing duties as Trustee, must exercise the care, diligence and skill to be reasonably expected of a person acting in like circumstances, taking into account any special skills or experience the Elected Representatives have." Ordinarily we find that trustees want to modify this duty to not have special skills taken into account. This is perhaps more relevant where you have a board of trustees with differing skill levels as some would be held to a higher standard of care than others. The TRONP trust deed has anticipated this duty and modified it slightly. From our perspective there is no need to change it (except to fix the typo) unless you have had a change in philosophy. We would however add an extra sentence saying that the duty has been modified:	Recommendation that the typo be fixed and that the sentence clarifying that this duty is modified be added into the Trust Deed.

Subject	Clause in TRONP Trust Deed		Brief explanation	Suggested change	Sub -Committee recommendation to Board
				<i>For the purposes of sections 5(4) and 5(5) of the Trusts Act this clause is to be regarded as a modification of section 29 of the Trusts Act.</i>	
23.b			When investing, the trustee must exercise the care and skill that a prudent person of business would exercise in managing the affairs of others, having regard to special knowledge or experience and if the trustee is in business, to special knowledge that it is reasonable to expect from them.	Currently the TRONP trust deed does not deal with this duty expressly, perhaps as investment decisions are made by subsidiaries. Alternatively paragraph 2.1(e) may have been intended to apply to investing as well? In either case, the law deals with investing separately and has a higher standard of care for investing and therefore we suggest that it is dealt with separately from the exercise of other powers. Even monitoring the performance of subsidiaries is a decision about investments so the duty is still relevant. Option A Insert modified duty to mirror the general duty of care above and say: The Trustee when exercising powers of investment must exercise the care, diligence and skill to <i>be reasonably expected of a person acting in like circumstances</i>, taking into account any special skills or experience the Elected Representatives have. For the purposes of sections 5(4) and 5(5) of the Trusts Act this clause is to be regarded as a modification of section 30 of the Trusts Act. However, this is a lower standard than the Trusts Act envisages but as the duty in the Trusts Act is a default duty it can be modified.	Option B: Recommendation that the investment standard of care from the Trusts Act be inserted (prudent person of business) into the Trust Deed and not the lesser standard (reasonably expected).

Subject	Clause in TRONP Trust Deed		Brief explanation	Suggested change	Sub -Committee recommendation to Board
				Option B Insert the investment standard of care from the Trusts Act (the prudent person of business standard), slightly modified, and not a much lower standard. Note that the 'slight modification' is to exclude the imputing of knowledge and experience that might reasonably be expected of a professional, as this was also excluded from the general standard of care: <i>The Trustee when exercising powers of investment must exercise the care and skill that a prudent person of business would exercise in managing the affairs of others, taking into account any special skills or experience the Elected Representatives have. For the purposes of sections 5(4) and 5(5) of the Trusts Act this clause is to be regarded as a modification of section 30 of the Trusts Act.</i>	
23.c	Clause 19.1(b)		A trustee must not exercise a power for his or her benefit.	This duty is not modified currently and therefore applies to the Trustee. This means that the Trust Deed could not be amended in the future in a way that benefits the trustee – for example to enable the Trustee to be paid directly.	N/A
23.d			A trustee must actively and regularly consider exercising powers.	The Trust Deed does not impose a positive obligation to actively consider exercising powers, but is not inconsistent with it.	N/A
23.e			A trustee must not bind itself or future trustees to a future exercise or non-exercise of discretion.	We recommend excluding this duty with a specific provision in the Trust Deed: <i>The duty that a Trustee must not bind or commit the Trustee to a future exercise or non-exercise of a discretion is excluded. For the purposes of sections 5(4) and 5(5) of the Trusts Act this</i>	That this recommendation be accepted.

Subject	Clause in TRONP Trust Deed		Brief explanation	Suggested change	Sub -Committee recommendation to Board
				<i>clause C is to be regarded as an exclusion of section 33 of the Trusts Act.</i>	
23.f	Clauses 17.3 (Dealings with Interested Elected Representatives)		A trustee must avoid a conflict of interest between the interests of the trustee and the interests of the beneficiaries/charitable purposes.	Where you have a corporate trustee this duty to avoid a conflict is more usefully applied to the officers of the trustee – and the trust deed already does this. The Trust Deed is clear that Elected Representatives who have a conflict of interest cannot vote in respect of the matter they are interested in. There is no sense in dealing with a conflict for the Trustee itself as it is inconceivable that it would be in that position. If it is not mentioned then the Trustee is bound to avoid a conflict.	N/A. Note that some work to be done internally regarding what constitutes a conflict of interest and adhering to the conflicts clause and process.
23.g	Fifth schedule, paragraph 2.1(c)		A trustee must act impartially in relation to the beneficiaries and not be unfairly partial to one beneficiary or one class of beneficiary.	This duty requires that the Trustee does not favour one or one group of beneficiaries over another without good reason. We could insert it into the deed with the proviso that it does not mean that all beneficiaries need to be treated equally. Or we could not address it, in which case the default duty applies as it is in the Act. The Trust Deed sets out in schedule 5 paragraph 2.1(c) a reverse version of this duty (not to unfairly prejudice a Member) so we could tie the two of these together like this: The Trustee must act impartially as between Members of Ngati Porou and the Trustee must not, when exercising powers or performing duties as Trustee, act or agree to act in a manner which unfairly prejudices or unfairly discriminates against any particular Members of Ngati Porou, unless the Trustee believes on reasonable grounds that the fundamental duty set out in rule 2.1 (b) (<i>Trustee will act [honestly and] in good faith and in a manner that the Trustee believes on reasonable grounds is in</i>	Recommendation to leave 2.1(c) Fifth Schedule as is and not add additional wording around impartiality.

Subject	Clause in TRONP Trust Deed		Brief explanation	Suggested change	Sub -Committee recommendation to Board
				<i>the interests of the Members of Ngati Porou</i>) requires such action and that the action will not breach the Trustee's fiduciary duties and obligations. We would also say that this duty has been modified.	
23.h	Clause 19.1(a)		A trustee must not profit from the trusteeship.	The Trustee in this case is not profiting from the trusteeship directly but the Elected Representatives personally are able to be paid for their time by the Trust which is a benefit to the trustee. What we would suggest is that we insert a clause saying: <i>"The duties not to make a profit and not to take a reward from acting as trustee are modified pursuant to sections 5(4) and 5(5) of the Trusts Act. The Elected Representatives (as officers of the Trustee) are entitled to remuneration and reimbursement from the Trust in accordance with clause 19.1.</i>	That this recommendation be accepted.
23.i	Clause 19.1(a)		A trustee must not take a reward for acting as trustee.	Suggested to be dealt with as above.	That this recommendation be accepted.
23.j	Third schedule, paragraph 6.1		If there is more than one trustee they must act unanimously.	This is not relevant to the Trust as it has a sole trustee. If there was a time when multiple trustees were contemplated then the deed would need amendments to accommodate this. Currently the trust deed embeds a single corporate trustee with multiple directors as its governance arrangement.	N/A
24. Removal of Trustee	Fifth Schedule		This paragraph deems the Elected Representatives to be the	We suggest this paragraph be deleted. We suggest that the Fourth Schedule paragraph 2.1(h) be amended to read:	That this recommendation (Fifth Schedule

Subject	Clause in TRONP Trust Deed		Brief explanation	Suggested change	Sub -Committee recommendation to Board
	paragraph 3		Trustees if the Members remove the trustee. There are new mechanisms in the Trusts Act that apply to the appointment of trustees including that their consent is required – so deeming people to be trustees would not work.	<i>(h) remove the trustee as trustee of Te Runanganui o Ngati Porou; or</i> <i>(i) appoint a new trustee to be trustee of Te Runanganui o Ngati Porou.</i> Query whether you would like some criteria around when the Trustee could be removed so that it was well reasoned, or you could place a proviso onto the ability to remove a Trustee which is that a replacement trustee must be appointed at the same time? Note that the Trusts Act imposes fiduciary duties on the persons holding the power of removal of a trustee (and appointment) – the powers have to be exercised honestly in good faith and for a proper purpose. There are some factors listed in the Trusts Act which could lead to removal – the most relevant to a company is being subject to an insolvency event but in theory repeatedly refusing or failing to act as trustee could also be relevant.	paragraph 3 be deleted) be accepted. That the recommendation that the Fourth Schedule paragraph 2.1(h) be amended be accepted. That criteria for removing a Trustee should be inserted to discourage vexatious actions: insolvency, and repeatedly refusing or failing to act as trustee. That it be inserted into the Trust Deed that the power of appointing and removing trustees is a fiduciary power with corresponding obligations (must be exercised honestly and in good faith

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					and for a proper purpose).
25. Chief Executive Officer	Sixth Schedule paragraph 1		The functions described that may be delegated to the CEO need to have a proviso that they must be able to be delegated under the Trusts Act.	We would add onto the end of 1.2(b) "provided that the delegation does not contravene section 67(2) of the Trusts Act."	That this recommendation be accepted.
26. TRONP not to be brought into disrepute	Eighth Schedule para 1.3			In the third line of 1.3 it refers to the Trustee and should say Elected Representative.	That this recommendation be accepted.
27. Dispute resolution	Clause 27.1 Eighth Schedule paragraph 1.4		The Trusts Act empowers a trustee to refer a dispute to an alternative dispute resolution procedure (negotiation, mediation, arbitration) if the trust deed does not provide for one. These provisions can be contracted out of completely.	The clause in the trust deed is narrow and only deals with membership disputes. You could include this, although it only reflects the Trusts Act so it is really only informative rather than actually empowering: <i>To enter into alternative dispute resolution</i> <i>The Trustee may agree that any dispute that may give rise to legal proceedings, or any legal proceeding brought by or against the Trustee, in relation to the Trust and between the Trustee and a Beneficial Member or between the Trustee and a third party, may be referred to an alternative dispute resolution process designed to facilitate the resolution of the matter.</i> <i>Any agreement to enter into an alternative dispute resolution process under this clause will be on such terms and conditions as the Trustee may from time to</i>	Yes include this power to enter into alternative dispute resolution for any disputes.

Subject	Clause in TRONP Trust Deed		Brief explanation	Suggested change	Sub -Committee recommendation to Board
				<i>time in its absolute discretion agree with any other party to the dispute.</i> <i>The Trustee will be under no obligation to agree to any alternative dispute resolution process including in relation to any dispute with a Beneficial Member notwithstanding the power to do so under this clause , or that a Beneficial Member requests that the Trustee enter into such a process.</i> <i>The Trustee may take all steps necessary or desirable in the Trustee's absolute discretion to reach agreement on any matter referred to an alternative dispute resolution process including, without limitation:</i> (a) <i>payment from the Trust Fund of all or any costs and expenses in relation to the alternative dispute process;</i> (b) <i>entering into an enforceable settlement agreement on such terms and conditions as the Trustee in its absolute discretion agrees; and</i> (c) <i>giving binding undertakings in relation to the matter (including undertakings that may bind or commit the Trustees to a future exercise or non-exercise of a discretion.</i>	
28.Minor drafting amendments	Throughout the deed		Minor drafting amendments to improve the deed	Minor amendments to correct errors, update cross-references, update language, and correct any formatting errors	That this recommendation be accepted