

REVIEW OF TRUST DEED: ANALYSIS OF SUBMISSIONS

A REPORT FOR NGATIWAI TRUST BOARD

Report prepared by Wayne Peters and Jo Welson

INTRODUCTION

1. This report is addressed to the Ngatiwai Trust Board ("NTB") and has been provided to assist the Board with its consultation process.
2. This report was originally prepared in anticipation of the meetings with the submitters. Only two of the four submitters kept their appointments and a meeting was held at our offices on 1 September 2014. This report has been updated to reflect further analysis emanating from discussions with the submitters.
3. The draft proposed Trust Deed has also been updated following the consultation process – which is now at an end.
4. We consider that the proposed Trust Deed is stronger for the contributions of all submitters and, while not all of their observations have been accepted in our analysis, all submitters should be thanked for their time and effort.
5. The starting point for the draft Deed was to rectify the obvious concerns and has been framed in a form that will be acceptable to the majority of members and to the relevant statutory bodies.

Review completed by Wayne Peters Lawyers.



WAYNE PETERS
Principal

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BACKGROUND

6. NTB's current Trust Deed has an array of problems. There is no question that it requires amendment.

SUMMARIES OF VARIOUS SUBMISSIONS

7. We have endeavoured to summarise the thrust of each submission for the Board's consideration. Please note that we have not outlined every critique as to the proposed amendments in this section of the report as these will be analysed in a later table. This section is intended to summarise the theme of each submission and to address any comments regarding the review process.
8. There have been 4 submissions in total. It would appear that 2 of these have been prepared with reference to each other and we suggest that these submissions should be read together. We have given close consideration to each of the submissions made.
9. When viewed holistically, the submissions cover the full ambit of the proposed Trust Deed and accordingly we have approached this analysis by analysing each submission, or where there the submissions have been supported by more than one submitter, have collated the matter at issue with reference to the submitters who have commented on that particular matter.

McCarthy, Winston

10. Winston McCarthy has sent his submissions via a chain of emails dated 15 July 2014 and 16 July 2014.
11. Winston McCarthy began his submissions by stating that it was good to see that a review of the Trust Deed had been completed and that it appeared that a number of key clauses have been improved.
12. Winston McCarthy's comments seem to focus on the democratic nature of NTB and whether it can be improved. His first email expressed frustration that there was no set protocol surrounding the Chairperson's endorsement of a nomination for trustee elections. Jim Smillie replied via an email dated 16 July 2014 and explained that the proposed amendments remove the "power of veto". It is unfortunate that this remained in our commentary due to an oversight caused by the time taken to prepare the commentary while amendments were still being made to the document. We apologise for the confusion this has caused.
13. Winston McCarthy also raises a question regarding the tensions between the roles of a NTB Trustee and a trustee of a Marae trust – analysed in the below table as observation (37).
14. Winston McCarthy attended the 1 September 2014 meeting via telephone.

McGee, Ngaio

15. Ngaio McGee's submission is dated 4 August 2014 and is 444 pages long. The body of her submission is contained in two pages with the remainder being appendices.
16. Ngaio McGee's submission focuses on the process of the Trust Deed review rather than the content of the proposed amendments. In regard to the process, Ngaio McGee submits:
 - a. The review process should be "a long process of hui wananga and review"; but she acknowledges this is not feasible given the need to make changes before treaty claims settlement.
 - b. The Board ought to gather the submitters and form "a think tank" on the proposed amendments.
 - c. The hui to discuss the proposed amendments with the Members ought to be advertised via a range of mediums.
 - d. The Board ought to consider employing Rowan Tautari and possibly one other to facilitate the review process.
 - e. The Board ought to provide Members full access to Trust Minutes since 2006 so that they may read references to the review of the Trust Deed.
17. We urge the Board to consider Ngaio McGee's comments regarding the process. That said, we do not necessarily advise the Board to adopt her suggestions. While beneficiary involvement in the consultation process is imperative, it is not necessary or appropriate for the Board to employ a beneficiary to facilitate the review process. Further, we refer to our correspondence addressed to the Board regarding the provision of Trust Minutes to Members.
18. Ngaio McGee makes one critique of the content of the proposed amendments and this is discussed in the analysis table as observation (162).
19. Ngaio McGee did not attend her scheduled meeting at our offices. No explanation for non-attendance was provided by Ngaio McGee.

Seve, Huhana

20. Huhana Seve emailed her submission on 11 August 2014. Her submission is four pages long and also attaches a discussion paper comparing the NTB governance model with other Maori entities.
21. Huhana Seve observes that the proposed amendments make the Trust Deed easier to read. She also observes that it endeavours to increase transparency for Members.
22. Huhana Seve has made a list of specific observations, questions and criticisms and these are discussed in the analysis table.
23. In essence, Huhana Seve's observations focus on the governance structure of NTB and its relationship/responsibilities to beneficiary groupings such as hapu and Marae. Huhana has also looked at the election process. We urge the Board to consider Huhana Seve's critique closely.

24. Huhana Seve was critical of the requirement that a chairperson of a Marae endorse a nominee to stand as a Trustee. As explained above, this was removed from the proposed Trust Deed but, unfortunately, remained in our commentary.
25. Her discussion paper analyses Te Runanga o Toa Rangatira Incorporated Board, Ngati Rangi Trust, and Ngati Kahungunu Iwi Incorporated. Each entity is described with reference to its status, role, membership total, types of membership at Board level and its goals and objectives. While consideration of different ways of endeavouring to create successful Maori entities and to promote Maori interests is desirable, we note that NTB is different from the examples listed in Huhana Seve's discussion paper. The most significant difference is that NTB is Marae based. Previous discussions to alter NTB's representative structure proved unsuccessful after consultation.
26. Huhana Seve attended the 1 September 2014 meeting in person.

Tautari, Rowan

27. Rowan Tautari has provided two submissions, including one received before the proposed amendments were published. The first submission is 94 pages and was emailed on 1 May 2014. The second is a letter and was emailed on 13 July 2014; it is largely concerned with the process of the review of the Trust Deed.
28. Rowan Tautari's submissions appear to combine a review of the Trust Deed and a criticism of how NTB currently operates. This report is focused on the Trust Deed itself and as such we have not included reference to all of Rowan Tautari's arguments as some of them are outside the scope of this review. By way of example, Rowan Tautari questions whether the operative Trust Deed allows NTB to negotiate Treaty claims.
29. Rowan Tautari's submission dated 30 April 2014 is comprised of a two page cover letter which makes various allegations against NTB and attaches her analysis of the Trust Deed and recommendations for its improvement. This submission was based on Annual Reports and her "*limited communications*" with the Trust. It is important to note that one of the purposes of her analysis was to "*highlight inconsistencies between the Deed and Trust practice*". While the Trust Deed review process will involve an analysis of areas where practice differs from current policies or where the policies might be improved, the review has been conducted with a forward thinking mind-set rather than with an attempt to find fault with the current operating system. There will be areas where the proposed amendments address current problems – but that is not the focus of the review process and as such we have included only observations which are directed at the Trust Deed review.
30. Rowan Tautari's submission dated 13 July 2014 criticises the process of the Trust Deed review. We have addressed the suggestion as to how the process should be managed in terms of a submission on the wording of the clause within the Trust Deed governing the alteration of the Deed.
31. It is interesting to note the emphasis Rowan Tautari puts on NTB's website. It is clear that she believes the website should provide much more information that it currently does and

we would go so far as to suggest that she believes it should be used as the main method of communication between NTB and its members. There is a certain appeal to this. The website is free for members to access and does not discriminate based on location. The 2013 census data shows that 70.1% of people who identified as Ngatiwai lived in a house with internet access. The website is also inexpensive to run and to add information to. That said, there are some disadvantages:

- a. We would strongly caution against using the website to provide financial information about the worth of NTB and its associated entities. This information is provided in Annual Financial Reports. To make it so easily accessible would put NTB entities at a commercial disadvantage. There is a risk NTB entities might lose bargaining power and might therefore not achieve as profitable results as they otherwise would have. This would be contrary to the interests of the members.
 - b. In addition, there are certain transactions or contracts with NTB associated entities where the Board has no interest in the financial or background information.
 - c. There will be members who do not have ready access to the internet or do not have the skills to navigate a website.
 - d. It does not necessarily follow that the greater the volume of information provided, the more effective the Trust. Information is best provided to beneficiaries (some of whom do not have day-to-day knowledge or involvement with commercial entities) in a concise manner which summarises the relevant information in a digestible fashion. If an individual beneficiary is interested in more detailed information, he/she can make that request.
32. Another consistent theme of Rowan Tautari's submissions appears to be based on confusion between governance on the one hand and operational matters on the other. In other words, the difference between constitutional powers/obligations (with which this Trust Deed Review is concerned) and policies and Board operations on the other. Rowan Tautari makes a number of submissions on matters such as Trustee training which one would not usually find in a constitution as they are operational matters. Issues of governance are generally treated differently from day-to-day management. Operational matters require a degree of flexibility that a constitutional document cannot provide. Imposing managerial best practice issues on a constitutional level is impractical because managerial best practice targets change over time. Similarly, technology can change how Trustees operate. Imposing requirements such as timeframes might also fail to work practically due to a lack of new information, lack of interest or other practical issues such as a lack of resources; if these are required in the constitution they can create very real problems whereby the Trustees are bound to continue with a flawed model or risk breaching the Trust Deed. As this process has shown, altering a Trust Deed is no small feat.
33. As previously discussed, there is a balance to be struck between prescriptiveness and future-proofing. To this we add that there is a balance to be struck between being comprehensive and creating a disincentive for frequent referral. The Trust Deed is already a lengthy

document and the risk with any lengthy governance document is that it is off-putting to a reader (whether they be a Trustee or a member) and that it is not referenced as often as it should be. For this reason we urge the Board to ask whether adding new obligations into the Trust Deed improves the usability of the documents or whether it is an elaboration of a core Trust obligation. To that end, we suggest that many of suggestions made by Rowan Tautari could be classified as “falling” within a policy of how the Trustees might best achieve their obligations under the Trust Deed.

34. It is also apparent that Rowan Tautari has very deep concerns about the current Board. Her “concerns” column has largely been outside the scope of our analysis table below but we would like to draw the following concern to your attention as an example of her potential inflammatory comments which we feel do need to be addressed in some forum. In regard to clause 13.1, which is a partial indemnity for Trustees, Rowan Tautari comments at page 83 of her submission dated 30 April 2014:

“This would not be an issue if Trustees were not making decisions without notifying beneficiaries or briefing them fully.

Who takes responsibility for Trustees’ lack of knowledge?

What about Trustees with a questionable legal status to act as Trustees?”

35. This comment is one of the more overt criticisms of the current Board. We suggest that it reveals a fundamental misunderstanding regarding the Board’s scope to make decisions as elected officers. This is a classic tension in democratic bodies; there will always be people who believe that the elected officers should revert to their constituency for all decisions. The reality is that they are elected to make decisions within a framework set down by the constituency and they will be democratically accountable for all decisions they make. On a practical level, every time that the Board go through a consultation process it incurs significant cost. While that cost is obviously justified for issues which go to the core of the Trust’s purpose, it is not in the best interests of the Members to incur that cost on issues which are within the Board’s ambit especially when we suggest the majority of Members do not wish to be involved in the day-to-day operations of the Board.
36. Rowan Tautari was also concerned about the Marae chairperson’s power to effectively veto nominees. This has now been removed.
37. Please note that given the table form of Rowan Tautari’s submission, a number of her observations were repeated throughout the table where they attached to related provisions in the Trust Deed. We have endeavoured to list these as one observation with multiple references.
38. Rowan Tautari elected not to attend the meeting scheduled with her. Her reason being that she wanted Kaumatua present. She was advised that it was our intention to have technical issues covered off in the first instance with the opportunity for Kaumatua to support her in tikanga matters at a later meeting.

39. A number of Rowan Tautari's observations required further explanation however this was unable to be obtained in the consultation process – these are marked “unable to be analysed”.

ANALYSIS OF CRITIQUE OF THE PROPOSED AMENDED TRUST DEED

40. We have organised the observations of the submitters into general themes.
41. The themes of the observations are:
- a. The purpose and structure of NTB,
 - b. Trustee powers and obligations,
 - c. Management of conflicts of interest and the relationships with employees and advisors to NTB,
 - d. Trustee meetings (including the duties of Alternates),
 - e. Register of Members,
 - f. Marae,
 - g. Reporting requirements and availability of information to Members,
 - h. Elections,
 - i. AGMs,
 - j. Asset Holding Companies, Fishing Enterprises, and Joint Ventures,
 - k. Disputes procedure, and
 - l. Process for alterations to the Trust Deed.
42. All observations have been paraphrased in an objective manner. Where an objective paraphrase was not possible we have used direct quotations with speech marks.
43. Reference in the analysis tables refers to the proposed amended Trust Deed.

The Purpose and Structure of NTB

Kaupapa

	Observation	References	Analysis
Ob (1)	<i>The incidental purposes of NTB should include reference to Treaty claims.</i>	<ul style="list-style-type: none"> • Submitter: Ngaio McGee. • Trust Deed: clause 3.2. 	We have already included a reference to Treaty claims – see clause 3.2(q).

Ob (2)	<p><i>The purposes of the Trust should be amended to clarify the following questions:</i></p> <ul style="list-style-type: none"> - <i>Whether NTB can spend funds from fisheries settlements on the general public including non-Ngatiwai,</i> - <i>To what extent NTB represents Ngatiwai, and</i> - <i>To what extent Ngatiwai members are bound by decisions made by NTB.</i> <p><i>The submission is that a charitable trust might not be the most appropriate entity structure for managing Treaty settlements.</i></p>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 3.1 	<p>It is a recognised principle that all charitable trusts are public trusts rather than identifiable beneficiaries.</p> <p>In addition, a fundamental concept of trust law is that you cannot fetter the power of trustees if they act within their objectives/purposes.</p> <p>We consider that the purposes of the Trust Deed are clear and do not need further elaboration regarding the distinction between NTB the charitable trust and Ngatiwai the iwi.</p> <p>NTB is a charitable trust where the people of Ngatiwai iwi are the Members. In that sense, descendants of Ngatiwai are free to have their own views and expressions separate from NTB. Where NTB has a mandate through a process of elections voted by Ngatiwai the iwi, then outside bodies will legitimately deal with NTB. In that sense, Members of NTB are “bound” by the decisions of the Trustees elected by majority support.</p>
Ob (3)	<p><i>The incidental purposes of NTB should be clarified. There is a tension between hapu responsibilities and what NTB purports to</i></p>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 3.2(a)? 	<p>Unable to be analysed – relevant objectionable clause not able to be identified.</p>

	<p><i>represent – by removing the right of whanau and hapu to pursue their Treaty grievances, NTB is seeking to extinguish mana whenua and mana moana.</i></p> <p><i>If that is NTB's intention, the purpose identified in the Trust Deed should be explicit about it.</i></p>		<p>In regard to Treaty grievances, the Crown has made it very clear that they wish only to deal with large clusters of natural groupings – i.e. iwi. That is the general rule.</p> <p>Whanau and hapu can achieve representation on the Board through Marae.</p>
Ob (4)	<p><i>There should be definitions for Rangī-nui and Papatuanuku</i></p>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 1.1 and 3.2(a) 	<p>We do not consider that this is necessary.</p>
Ob (5)	<p><i>NTB needs to make a policy decision as to whether it will provide information to iwi members explaining its resource management role and creating a reporting process to allow participation therein, or it needs to remove mention to proving knowledge and support on resource management.</i></p>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 3.2(b) 	<p>Policy decisions are outside the scope of this review.</p>
Ob (6)	<p><i>One of the incidental purposes of NTB is to represent the interests of all Ngatiwai in issues relating to the determinations of authorised statutory bodies and to meet legal requirements set down by such bodies. This should be expanded to say which statutory bodies, whether consultation with the iwi is required before representation is made, and</i></p>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 3.2(c) 	<p>We do not believe it would be wise to list the authorised statutory bodies in respect of which Ngatiwai might have an interest in the determinations. This is because statutory bodies are frequently restructured to fit the policy ambitions of particular governments. If a list was included, it could become out of date very quickly and therefore</p>

	<i>how NTB can represent Marae without compromising the independent of Marae.</i>		<p>restrict NTB's ability to represent the Member's best interests.</p> <p>In terms of an elaboration to set consultation or authority standards, this is an operational issue as the Trust Deed makes the objectives clear.</p>
Ob (7)	<i>The incidental purposes should be amended such that beneficiaries get the complete or significant benefit of fisheries settlement funds where these settlement funds are applied for community projects – rather than benefiting or being aimed toward the New Zealand public generally.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 3.1(d), 3.2(e) 	The current Trust Deed permits this to happen but Charitable Trust Law needs to be taken into account.
Ob (8)	<i>The geographical boundaries of NTB should be defined.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 3.2(i) 	We cannot see any benefit to this. NTB is about people not a geographical area.
Ob (9)	<i>The Trust Deed ought to detail the process to determine a mandate or remove the incidental purpose of determining, receiving and holding any Treaty settlement assets.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 3.2(l) (o), and (q) 	Not agreed.
Ob (10)	<i>When carrying on and accepting the administration and management of any lands, properties, business or other undertakings, the goal should be support beneficial owners "to eventually regain</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 4.6(g) 	Not practical. Critical mass is the acknowledged model for iwi management.

	<i>management of their own lands, properties, or businesses"</i>		
Ob (11)	<i>Reference to Treaty negotiations and settlement should be removed from the incidental purposes of NTB until a hui is called on the matter.</i>	<ul style="list-style-type: none"> • Submitter: Huhana Seve. • Trust Deed: cl 3.2 (o) – (q) 	See Addendum. Clause 3.2(q) addresses this issue. Carefully read, it is clear that without a mandate the Board does not have an authority to start Treaty negotiations.

The legal (and charitable) nature of the Trust

	Observation	References	Analysis
Ob (12)	<i>Which laws is NTB bound by?</i>	<ul style="list-style-type: none"> • Submitter: Huhana Seve. • Trust Deed: no reference provided. 	See Addendum. As a trust, NTB is bound by all of the laws of New Zealand. Some Acts are more relevant than others.
Ob (13)	<i>The Trust should list all legislation relevant to its governance and operations and make links available on its website.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 9.2 	<p>A common misconception is that NTB is subject to Te Ture Whenua Maori Act. It is not a trust formed under that Act 1993. It is subject only to the Maori Land Court on issues surrounding Maori land or interests in Maori land.</p> <p>The most relevant legislation is:</p> <ul style="list-style-type: none"> - Trustee Act 1956 - Charitable Trusts Act 1957 - Charities Act 2005 - Maori Fisheries Act 2004 - Maori Commercial

			<p>Aquaculture Claims Settlement Act 2004</p> <p>- Resource Management Act 1991</p> <p>Having links on the website is an operational issue outside of the scope of the review of the Trust Deed.</p>
Ob (14)	<p><i>It is paternalistic to say that the Trustees may deal with the Trust Fund as if they are the absolute owners of same.</i></p> <p><i>It is also inconsistent with the Treaty of Waitangi which recognises the rights of hapu and not charitable trusts.</i></p>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 4.6(b) 	<p>The Trustees are responsible for the trust fund. While we acknowledge the sentiment in this observation, that is the legal reality.</p>
Ob (15)	<p><i>The Trustees have absolute and uncontrolled discretion except where expressly provided by the Deed – this should be altered to ensure more accountability and reporting to iwi members.</i></p>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 4.6(d) 	<p>We consider that the Trust Deed strikes the right balance with accountability. Ultimately, this Trust Deed (for the purposes of amendment) is subject to approval by 75% of Members and must be approved by two statutory bodies (as the operative Trust Deed was).</p>
Ob (16)	<p><i>The Trust should have regular external and internal reviews of its structure, Deed, policies and practices.</i></p>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 4.6(d) 	<p>We do not believe that it is necessary or desirable to set time-frames for formal reviews within the Trust Deed.</p> <p>We also would like to emphasise that any review process diverts resources from other projects.</p>

Ob (17)	<i>A minimum percentage of all profits should be taken as a dividend for charitable purposes. This should be set out one year in advance and made public via NTB's website.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 4.6(c) 	<p>Critical mass is a greater priority.</p> <p>We completed an exercise on this point last year. At a 10% dividend, the money for each Member would be less than \$30. NTB can achieve greater benefits for the people by using the money for community projects.</p>
Ob (18)	<p><i>In regard to the charitable status of the Trust,</i></p> <ul style="list-style-type: none"> - <i>"the Trust to review whether its business operations and lack of transparency to the people is consistent with its charitable status"</i> - <i>All services for taxpayer-funded contracts should be transparent.</i> - <i>The quality of services provided to the Trust should be monitored.</i> 	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 4.6(c) 	<p>We do not accept that the Board has a "<i>lack of transparency</i>" – if there are any valid concerns in this regard they are not a fault of the Deed; they are an operational issue. Any criticism of the operation of the current Board is outside of the scope of the review of the Trust Deed.</p>
Ob (19)	<i>The Trust Deed should specify which percentage of various funding streams must be distributed to Members.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 3.2(g) 	Refer observation (17).
Ob (20)	<i>The Trust's compliance with the Maori Fisheries Act ought to be subject to review.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 8.1(m)(v) 	<p>It is. The Board believes it is compliant with the Maori Fisheries Act 2004. Further, the Trust Deed has to be approved by TOKM so this should satisfy all Members that the Trust Deed is compliant with the Maori Fisheries Act.</p>

A hapu voice

	Observation	References	Analysis
Ob (21)	<i>A hapu voice is missing from NTB and this should be addressed</i>	<ul style="list-style-type: none"> • Submitter: Huhana Seve. • Trust Deed: no reference provided 	<p>See Addendum. The Board accepts that the marae-based structure of the Board does not necessarily fully reflect the complexities of Ngatiwai members' society. However, it is the model set down by the current legislative scheme. In terms of NTB, we consider that if a hapu voice was required the Board would be over 50 people and would be rendered unworkable.</p> <p>The Board could consider the possibility of some independents (i.e. not marae-based members) sitting on the Board for whom all Ngatiwai members have an opportunity to vote. This should be discussed at the AGM after discussion at Board level.</p>
Ob (22)	<i>There ought to be a structural review of NTB which leads to terms of agreement being established between Marae, hapu and NTB outlining the nature of the relationship between them.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 5.1(a)(v) 	Unable to be analysed. Also, refer Ob (21).
Ob (23)	<i>In regard to the Trustees' obligation to represent all Members (not just their Marae), the Deed should</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: Schedule 1, 	We reiterate that the marae-based structure is the one prescribed by the

	<i>clarify how Marae (as opposed to hapu, whanau, ahu whenua trusts or other entities) representation and affiliation empowers the Board to speak for all Members.</i>	Part A, paragraph 5.1	current legislative scheme.
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The introduction to the Trust Deed and key definitions

	Observation	References	Analysis
Ob (24)	<i>The Trust Deed needs to set out the history of NTB and the basis of its authority.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: Introduction 	We do not consider that this would be beneficial. The history of NTB can be found in other sources and we are wary of lengthening the Trust Deed unnecessarily. In terms of the basis of its authority, we consider that the Trust Deed already does this.
Ob (25)	<i>The introduction of the Trust Deed should clarify NTB's mandate and whether it represents Ngatiwai on a range of issues "beyond its current legislative scope"</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: Introduction 	Not relevant – see observation (24).
Ob (26)	<i>The definition of "Members of Ngatiwai" ought to define whangai and adoption and compel NTB to undertake evidential research on whangai according to tikanga Ngatiwai.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 1.1, 5.6 	<p>The definition of whangai is found in the interpretation clause. We suggest it is unnecessary to define it twice.</p> <p>NTB should not become a "search agency" and should be able to rely on the word of its Members.</p>
Ob (27)	<i>The definition of "whangai" should be the same as the</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. 	S4 TTWMA defines "Whangai" as:

	definition from TTWMA	<ul style="list-style-type: none"> Trust Deed: clause 1.1 	<p><i>"Whangai means a person adopted in accordance with tikanga Maori"</i>.</p> <p>We consider that the definition in the Trust Deed is more specific to NTB and is to be preferred.</p>
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Trustee Powers and Obligations

	Observation	References	Analysis
Ob (28)	<i>There should be a clear process for deciding whether a Trustee is unwell, or has a chronic or terminal illness.</i>	<ul style="list-style-type: none"> Submitter: Rowan Tautari. Trust Deed: clause 4.3(e) 	<p>Human rights legislation prevails. Whether a Trustee is unwell is of no relevance to NTB except where the illness is such that they no longer wish to, or are no longer able to, fulfil their duties. They may resign in those circumstances.</p> <p>If they are desperately ill, clause 4.3(e) provides that they will automatically cease to be a Trustee if they are declared unsound of mind by a medical practitioner or becomes a person in respect of whose affairs an order under the Protection of Personal and Property Rights Act 1988 is made; both of these processes require involvement from a medical practitioner.</p> <p>It is not a case of the other Trustees, or indeed Members, saying that someone is ill and therefore</p>

			should be removed from their elected position. To do so would be to discriminate on the basis of disability which is a prohibited ground of discrimination under the Human Rights Act 1993 – and everyone is free from discrimination under the New Zealand Bill of Rights Act 1990.
Ob (29)	<i>Financial background checks ought to be required to be undertaken for Trustees and Alternates</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 4.3(f) and (g) 	<p>Not a prerequisite for any statutory body, public company and therefore not required. This would need to be done for all nominees prior to elections. It would create an unnecessary cost for NTB in circumstances where it should be able to rely on the information being put forward by the nominees on the nomination form.</p> <p>There is provision at 4.3(k) to remove a Trustee if they are found to have made a false declaration on their nomination form.</p>
Ob (30)	<i>If Trustees will cease to hold office if they take office with any other “Iwi Organisation”, there should be a definition of what that is.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 4.3(i) 	There is - see Clause 1.1
Ob (31)	<i>Trustees ought to receive an induction and on-going training on topics such as interpreting the Deed, understanding the relevant</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 4.6(a) 	This is not a matter to be included in the Trust Deed. It is a common law principle that Trustees be familiar with the Trust Deed and the

	<i>legislation, and governance.</i>		objects of the Trust – this is made explicit in clause 4.7(b) which states that Trustees must be acquainted with all Trust documents, assets and business. Any inductions and on-going refreshers are policy matters outside of the Trust Deed.
Ob (32)	<i>In regard to the power to borrow and raise money, at the AGM all monies borrowed and/or lent should be declared, along with the contract of repayment, the application for loan and the reason for granting the loan.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 4.6(c) 	<p>Annual reporting declares money borrowed or lent. Recourse to the Charities Commission is available if any improper conduct is at issue.</p> <p>NB: the auto-numbering in this clause will need to be corrected.</p>
Ob (33)	<i>Any Trustee diagnosed with a terminal illness should resign from being a Trustee.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 4.10(g) 	A terminal illness is a very serious phrase which usually means that someone will die from the illness regardless of medical intervention. See observation (28) above.
Ob (34)	<i>Regarding the Trustees' powers of delegation, the responsibilities and roles assigned to each Trustee should be recorded and made available via the website.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 4.14 	This is an operational matter and falls outside the scope of the review of the Trust Deed.
Ob (35)	<i>A custodian trustee of the Trust Fund ought to require support from a resolution passed at a Special General Meeting.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 4.31 	Unable to be analysed; questionable relevance to the Trust Deed review.

Ob (36)	<i>The Trustees should seek feedback from Members prior to voting on "important matters".</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 4.10(b) 	The Trustees are elected representatives. The Trust Deed states which matters are so important as to require special resolutions.
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Management of Conflicts of Interests and the Relationships with Employees and Advisors to NTB

	Observation	References	Analysis
Ob (37)	<i>There is a question of whether a NTB Trustee can serve as a trustee of a Marae trust or whether there is an inherent and insurmountable tension.</i>	<ul style="list-style-type: none"> • Submitter: Winston McCarthy. • Trust Deed: Sch 1 Part A paragraph 5.1 	<p>See Addendum. This is worthy of being discussed at Board level and then, if necessary, at the AGM. In our opinion it would be preferable if such dual roles were not possible, however, the reality is that there is a shortage of people interested in contributing to governance of Maori entities.</p> <p>In addition, there are checks and balances to manage conflicts of interests.</p>
Ob (38)	<i>How does the Board plan to manage the new clause saying that Trustees will cease to hold office if they are "in office or employment with, or accept office or employment with, any other Iwi organisation"? Specific examples include Ngati Rehua, Ngati Manuhiri and AIP, IMA and PSGE.</i>	<ul style="list-style-type: none"> • Submitter: Huhana Seve. • Trust Deed: cl 4.3(i) 	See Addendum. Ngati Rehua and Ngati Manuhiri do not have recognised iwi status through the Crown, other than through the Ngatiwai Trust Board for settlement purposes.
Ob (39)	<i>How does the Board plan to manage the employment</i>	<ul style="list-style-type: none"> • Submitter: Huhana 	See Addendum. This is an operational issue and

	<i>and appointment of officers to NTB?</i>	Seve. • Trust Deed: cl 4.9(b)	accordingly is outside the scope of the Trust Deed review.
Ob (40)	<i>Is Jim Smillie an acting CEO or a permanent CEO?</i>	• Submitter: Huhana Seve. • Trust Deed: cl 4.9(b)	See Addendum. Not a Trust Deed matter.
Ob (41)	<i>Can Alternate Trustees be employed by NTB?</i>	• Submitter: Huhana Seve. • Trust Deed: cl 4.9(c)	See Addendum. Technically, yes. As a matter of principle it is preferable not. Alternates step into the powers and obligations of a Trustee only where a Trustee is unable to attend a meeting. We consider that there is nothing in the Trust Deed preventing an Alternate being employed by NTB. Should they be required to step into the role of Trustee in any capacity longer than one meeting, the matter would need to be looked at very closely.
Ob (42)	<i>Trustees should have to disclose interests other than financial interests – such as legal counsel and accountancy services.</i>	• Submitter: Huhana Seve. • Trust Deed: cl 4.21	See Addendum. Privacy issues and relevance questions. We do not consider that trustees obtaining legal or accountancy services for non-Board related matters are “interests” and certainly do not require disclosure. We assume that this submission is based on a belief that using the same professional advisors might create a conflict of interest in some way. The legal and

			accounting professions are governed by their own professional rules which prevent acting in cases where there are conflicts of interest. It would be in breach of the individual trustees' privacy to require them to disclose services they use which are unrelated to their roles as trustees.
Ob (43)	<i>To avoid individuals making profits out of the Trust, the Trust Deed ought to specify an open process for the appointment of directors to entities owned or associated with NTB. This process should be publically available.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 3.4 	<p>First, there are already adequate protections (see clauses 4.21, 4.25 – 4.29) against any exploitation of the Trust or commercial gain to the detriment of the Trust's charitable objects. However, the entities owned by or associated with NTB operate in a commercial paradigm where people would not provide services unless they were compensated for those services.</p> <p>Secondly, it would be against the privacy rights of applicants to directorships to make information about their identities, qualifications or experience publically available (presumably for scrutiny).</p> <p>Thirdly, clause 4.25 already addresses the point of Trustees profiting from the Trust.</p>
Ob (44)	<i>Annual Director and Trustee fees should be listed on the</i>	<ul style="list-style-type: none"> • Submitter: Rowan 	This information is publicly available in the Annual

	<i>Trust website – and required to be under the Trust Deed.</i>	<p>Tautari.</p> <ul style="list-style-type: none"> Trust Deed: clause 3.4 	<p>Reports – see clause 4.27.</p> <p>Refer observation (58).</p>
Ob (45)	<i>The Trust Deed should state that directorships “should be performance-based”.</i>	<ul style="list-style-type: none"> Submitter: Rowan Tautari. Trust Deed: clause 3.4 	<p>The Trust Deed states that the Trustees must exercise all reasonable care and skill. The same duty applies to directors of entities associated with NTB pursuant to the companies legislation. A further clause is unnecessary.</p>
Ob (46)	<p><i>In regard to the ability to appoint, remunerate and dismiss officers and employees:</i></p> <ul style="list-style-type: none"> <i>- there is an assertion that the current matrix of staff favours one whanau from Matapouri,</i> <i>- priority should be given to suitably qualified NTB members,</i> <i>- Employment policies should be set out on the website, and</i> <i>- There should be a selection panel to include a beneficiary who does not receive an income or consultancy fee from the NTB.</i> 	<ul style="list-style-type: none"> Submitter: Rowan Tautari. Trust Deed: clause 4.9(b) 	<p>This is primarily an operational issue and accordingly is outside the scope of the Trust Deed review.</p> <p>Decisions regarding officers and employees have to be made within the framework of the Board’s duties made express in clause 4. A further clause is unnecessary.</p> <p>Criticism of the current Board’s operational processes is outside of the scope of this review.</p>
Ob (47)	<i>To avoid conflicts of interests, trustees should not be appointed as employees or consultants.</i>	<ul style="list-style-type: none"> Submitter: Rowan Tautari. Trust Deed: clause 4.9(c) 	<p>Clause 4.9(c) already states that Trustees cannot be employed by the Board. In regard to consultants, we do not foresee a situation where this would eventuate</p>

			except in a rare situation and only where there is unanimous consent from the Trustees.
Ob (48)	<i>Consultancy services should be put to tender.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 4.9(c) 	The Trust Deed states that the Trustees must exercise all reasonable care and skill. This duty applies to the use of consultants. A further clause is unnecessary.
Ob (49)	<i>A provision should be inserted such that an entity that provides services to NTB must not be owned wholly or in part by a current or former Trustee, Director or advisor.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 4.9(d) 	We disagree with this submission as to former Trustees. Former Trustees should not necessarily be excluded from being engaged.
Ob (50)	<i>NTB should check employee qualifications.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 4.19(a) 	<p>Again, decisions regarding officers and employees have to be made within the framework of the Board's duties made express in clause 4. A further clause is unnecessary.</p> <p>In addition, this is an operational issue.</p>
Ob (51)	<i>Professional advisers should be appointed according to specific criteria and an "open and transparent tender process".</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 4.19(a) 	<p>A tender process is a realistic policy for the selection of professional advisers and has been applied by the Board in recent years.</p> <p>However, there are many professional services for which a "tender" is not necessarily a meaningful selection tool. For example, lawyers and accountants may use different charging methods</p>

			for different types of work and accordingly it is not feasible to make accurate comparisons through tender.
Ob (52)	<i>In regard to the ability to rely on advice, there should be a definition of "proper inquiry" and evidence that is required to show that this has been completed.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 4.19 and 4.20 	This is an operational issue and accordingly is outside the scope of this review.
Ob (53)	<i>Disclosure of an interest does not provide enough protection from trustees, directors or consultants benefitting from NTB's financial decisions.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 4.21 	<p>Disclosures of interests is accepted practice.</p> <p>This is a balance of Trustees' judgement and operational implementation.</p>
Ob (54)	<i>No trustees, directors of holding companies, or advisers to the Trust should profit personally from the Trust's business activities.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 4.21, 4.24 	<p>Clause 4.25 already addresses the point of Trustees profiting from the Trust.</p> <p>In regards to directors and advisers, there are already adequate protections against any exploitation of the Trust or commercial gain to the detriment of the Trust's charitable objects. However, the entities owned by or associated with NTB operate in a commercial paradigm where people would not provide services unless they were compensated for those services.</p>
Ob (55)	<i>Current and former trustees should not be made employees or consultants to the Trust. In terms of</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. 	The default position is that no one should benefit at the expense of the Board from their prior knowledge.

	<i>former Trustees, a specified time frame should be imposed by the Trust Deed.</i>	<ul style="list-style-type: none"> Trust Deed: clause 4.21 	<p>Clause 4.9(c) already states that Trustees cannot be employed by the Board.</p> <p>In regard to former Trustees, we do not believe that a blanket ban would be appropriate nor that a time frame would be in the interests of Ngatiwai. Trustees might resign for a variety of reasons including family commitments. A Trustee might not be able to commit to continuing as a Trustee but they might be the best person for a particular alternative role. Again, decisions regarding officers and employees have to be made within the framework of the Board's duties made express in clause 4.</p>
Ob (56)	<i>Regarding disclosures of interests, whanau and other connections must also be considered - including in-laws, siblings, nieces and nephews, grandchildren and aunts and uncles.</i>	<ul style="list-style-type: none"> Submitter: Rowan Tautari. Trust Deed: clause 4.22 	<p>The reality is that a line needs to be drawn as to what constitutes an interest required to be disclosed. We consider the current clause draws an appropriate (and commonly accepted) line. Public company/local government practices provide a reasonable guide.</p>
Ob (57)	<i>Clause 4.23 ought to be re-written for clarity.</i>	<ul style="list-style-type: none"> Submitter: Rowan Tautari. Trust Deed: clause 4.23 	Unable to be analysed.
Ob (58)	<i>Policies and processes regarding Trustee remuneration should be</i>	<ul style="list-style-type: none"> Submitter: Rowan Tautari. Trust Deed: clause 4.25, 	Annual reports include this information – see clause 4.27.

	<i>made available on the website and annual reports should provide a detailed breakdown of payments to individual Trustees.</i>	4.27	<p>It is not common practice to have a level of detail higher than that prescribed by clause 4.27.</p> <p>Whether policies and internal processes are published in a public forum is an operational matter but would seem an unusual step.</p> <p>See observation (44).</p>
Ob (59)	<i>Trustees should not provide any services apart from their defined role as Trustees.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 4.25(c) 	In general, agreed. See observation (47).
Ob (60)	<i>In selecting directors to be appointed to asset holding companies, fishing enterprises or subsidiaries, conflict of interests are to be avoided and paid advisers to the trust are not to be placed in a position of being able to benefit personally from transactions.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 8.3 	<p>Please see analysis above in observation (54).</p> <p>No issues are evident.</p>

Trustee Meetings (Including the Duties of Alternates)

	Observation	References	Analysis
Ob (61)	<i>The honorary secretary for Trust Board meetings and the AGM should be fluent in Te Reo Maori. This would ensure that all discussions are recorded accurately.</i>	<ul style="list-style-type: none"> • Submitter: Huhana Seve. • Trust Deed: cl 4.13 	See Addendum. While this may be preferable at a policy level, difficulties could arise if this were a requirement under the Trust Deed. If (for whatever reason) the fluent secretary could not attend a meeting it could mean that

			<p>a meeting could not be held. This could jeopardise the Board's ability to function in a timely manner.</p> <p>This is a policy decision for the Board rather than a Trust Deed issue.</p>
Ob (62)	<i>The definition of "Alternates" should refer to paragraph 4 of Schedule 1 rather than paragraph 3.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 1.1 and Sch 1, Part A, paragraph 3 and 4 	The change in the Schedule means that the reference is now correct.
Ob (63)	<i>Alternates ought to attend all meetings and must be informed when the incumbent Trustee has indicated they are unable to attend.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 4.3 	This is a matter to be decided between the Trustee and their Alternate (if there is one elected). By definition, an "Alternate" should not be required or able to attend unless the relevant Trustee is unable to attend.
Ob (64)	<i>Alternates should receive all information received by Trustees at the same time as Trustees receive the information.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 4.3 	<i>This is worthy of discussion.</i>
Ob (65)	<i>All Trustees should be required to have an Alternate.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 4.3 	All Marae are entitled to appoint an Alternate but the Trust Deed recognises that this might not be possible if there are not enough nominees. We consider that the current provisions regarding Alternates are appropriate.
Ob (66)	<i>The Trust Deed should clarify:</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. 	Not accepted. The Trustees are required to meet their statutory requirements but

	<ul style="list-style-type: none"> - <i>How often the Trust meets,</i> - <i>When the dates are confirmed for meetings,</i> - <i>Whether the meeting dates are made public,</i> - <i>Are iwi members entitled to be present,</i> - <i>Can iwi members request the opportunity to speak at meetings?</i> 	<ul style="list-style-type: none"> • Trust Deed: clause 4.10 	it is not for the Trust Deed to be prescriptive of how the Trustees should act.
Ob (67)	<i>The agenda for Trustee meetings should be listed on the website</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 4.10(b) 	This is an operational issue.
Ob (68)	<i>Members should be able to request to know how Trustees voted (i.e. whether for or against a particular motion)</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 4.10(b) 	Not accepted. This is not best practice. Decisions from the Board are Board decisions – not individuals. The principle of collective responsibility is to be upheld.
Ob (69)	<i>Notices for trustee meetings, trustee minutes and trustee resolutions should be placed on the Trust website. The website should also note trustee attendance.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 4.10 (c), (e), (f), (i). 4.14(d) 	This is an operational issue not a matter for a Trust Deed review. Need to distinguish between best practice and governance. Trustees attendance not to be used as a forum for beneficiaries trying to influence decision making.
Ob (70)	<i>Alternates ought to be given 1 week notice of Trustee unavailability to attend Trust meetings.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: Schedule 1, Part A, paragraph 3.2 	This is an issue between the Trustee and their Alternate. It is not a practicable requirement – a Trustee would not necessarily know that they might be ill a

			week in advance.
Ob (71)	<i>Alternates should be given all Trust documents provided to Trustees.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: Schedule 1, Part A, paragraph 3.2 	<i>Worthy of discussion but essentially an operational issue.</i>

Register of Members

	Observation	References	Analysis
Ob (72)	<i>The Trust Deed is unclear as to whether online beneficiary registrations will be accepted.</i>	<ul style="list-style-type: none"> • Submitter: Huhana Seve. • Trust Deed: no reference provided 	See Addendum. <i>Worthy of discussion.</i>
Ob (73)	<i>Who currently oversees the Members' Register?</i>	<ul style="list-style-type: none"> • Submitter: Huhana Seve. • Trust Deed: cl 5 	See Addendum. It an obligation of the Trustees to maintain the Register.
Ob (74)	<i>How accurate is the data on the Members' Register and what is the ability to update data and contact information?</i>	<ul style="list-style-type: none"> • Submitter: Huhana Seve. • Trust Deed: cl 5 	See Addendum. This is an operational issue.
Ob (75)	<i>The task of overseeing the Members' Register should be assigned to an employee.</i>	<ul style="list-style-type: none"> • Submitter: Huhana Seve. • Trust Deed: cl 5 	See Addendum. We understand this already occurs. However, it is an operational issue.
Ob (76)	<i>There should be a definition of Ngatiwai tupuna.</i>	<ul style="list-style-type: none"> • Submitter: Huhana Seve. • Trust Deed: cl 5 	See Addendum. Further explanation required. Tupuna is not used in the Trust Deed - the phrase "primary ancestor" is used.
Ob (77)	<i>Who are the Roopu Kaumatua? Who determines this?</i>	<ul style="list-style-type: none"> • Submitter: Huhana Seve. • Trust Deed: cl 5 and cl 9 	See Addendum. <i>The current definition in clause 1.1 reads "Roopu Kaumatua Kuia means the committee appointed under clause 9.3(a)". It is</i>

			accepted that this could be expanded upon. Further discussion worthwhile.
Ob (78)	<i>Do the Roopu Kaumatua Kuia really have input into registration processes for uri?</i>	<ul style="list-style-type: none"> • Submitter: Huhana Seve. • Trust Deed: cl 5 	<p>See Addendum.</p> <p>Acknowledged that this could be more clearly explained.</p> <p>The Trust Deed provides for involvement; whether it is used or not is an operational issue. Involvement is only when necessary rather than assumed.</p>
Ob (79)	<i>The process for a Registered Member to change the Marae they affiliate to should be updated to reflect the new process for elections – specifically the independent electoral officer.</i>	<ul style="list-style-type: none"> • Submitter: Huhana Seve. • Trust Deed: cl 5.11(b)(iii) 	See Addendum.
Ob (80)	<i>The definition of “Registration Form” currently implies that Whangai are not treated as Members where they are included in the definition of “Members” – reference to Whangai should be deleted from the definition of “Registration Form”.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 1.1 	Accepted. When read together, the two definitions could create confusion. Whangai are to be seen as full Members as if they were descended from a primary ancestor.
Ob (81)	<i>The definition of “Roopu Kaumatua Kuia” should require a formal process of appointment.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 1.1 	The Trust Deed allows for the Trustees to use their discretion. We consider this is appropriate. It is not tikanga to have elders subscribe to an interview. Worthy of discussion as to how “Roopu Kaumatua

			<i>Kuia</i> ” are appointed.
Ob (82)	<i>It needs to be clear whether the Trust is maintaining the Member register or Marae are.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 5.1 and 5.2 	Clause 5.1(a) states that the Trustees must “ <i>have and maintain</i> ” the Member Register. That means that the Member Register is the responsibility of NTB not the Marae – execution is an operational issue. We consider this is clear.
Ob (83)	<i>The registration form ought to be amended (following widespread consultation) to explain how the information will be used and privacy protected.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 5.1(a) 	This is outside the scope of the review of the Trust Deed.
Ob (84)	<i>Inspection of the Members’ register should be guided by the Privacy Act.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 5.1(a) 	In compliance with privacy rights, beneficiaries may view only his/her own registration – not someone else’s. The only exception is parents or legal guardians when the child is under 18.
Ob (85)	<i>All registration for Members under the age of 18 should be reviewed on the Member’s 18th birthday by that individual. The Trust should write to them prior to their 18th birthday explaining their responsibilities and entitlements.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 5.1(a)(iii) 	Not accepted. Onerous and outside the scope of the review of the Trust Deed.
Ob (86)	<i>A full Members’ register with names against registration numbers should be available on the Trust website (excluding “personal details”). There should also be a public</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 5.1(a)(iv), 5.3(a) 	<p>We strongly advise against this for a variety of reasons, the primary concern being the privacy of Members.</p> <p>We would also add that the concern would be that someone might use the</p>

	<i>notification when a Member's name is removed due to death or withdrawal.</i>		Members' Register to contact members – which could be attempted via the names of the register alone. If all information was removed, the only information left would be the fact of how many Members are registered.
Ob (87)	<i>The Board ought to be compelled to create a strategy to increase beneficiary membership and report on this at the Annual General Meeting</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 5.1(b) 	Clause 5.1(b) already compels the Board to seek to register all Members. Clause 7.3(a) requires the Board to include information of the steps taken to achieve that goal in the Annual Report.
Ob (88)	<i>The application to register as a Member must be the same form whether it is completed on paper or online. The information provided should be consistent with current legal requirements.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 5.5(a) 	Agreed. This does not necessarily require a further clause; can be dealt with at an operational level.
Ob (89)	<i>Where a Member is registered by their legal guardian, NTB should request proof of their legal guardianship.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 5.3(a), 5.4 	Disagree. This would create a level of administrative requirements that is not required. If the registration form is found to be invalid, the matter can be addressed then. It is unrealistic to expect proof of guardianship. This is particularly true of Members who are descended through the paternal line and their parents may not be married or their father may not be named on the birth certificate for various

			reasons. At a more fundamental level, the Trust should be able to rely on information received from its Members.
Ob (90)	<i>There should be policies and processes regarding Roopu Kaumatua Kuia and their involvement with registration of Members.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 5.3, 9.3, 9.5 	<i>Worthy of discussion; but as this is an operational matter, Board discretion must prevail.</i>
Ob (91)	<i>Trustees should not fill out Membership application forms. Only the individual or their legal guardian should do this.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 5.5 	This is not accepted. As with most legal documents, the issue is not the completion of the form but rather who signs it.
Ob (92)	<i>"Primary Ancestor" ought to be defined.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 5.5(b) 	Agreed. Clause 5.6(d) explains that it is for the Roopu Kaumatua Kuia to determine who is a Primary Ancestor. It would be clearer if this were also defined at clause 1.1.
Ob (93)	<p><i>"Ngatiwai descent" ought to be defined. The concern is that these definitions and whakapapa will be different for different areas because "they pertain to individual hapu and lived whanau experience".</i></p> <p><i>Any definition will need to reflect the fact that this is an evolving concept and cannot be a definitive statement.</i></p>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 5.5(b), 5.6(b), 5.6(d) 	<p>Unable to be analysed as not clear what is suggested.</p> <p>A definition is "definitive" by its nature.</p>
Ob (94)	<i>The Trust Deed ought to identify where people might find "evidence" verifying their affiliation to the iwi.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 	Not accepted. Again, NTB is not in the business of challenging people's versions of their lineage.

		5.6(a)	
Ob (95)	<i>There ought to be a process to ensure that deceased beneficiaries are removed from the Members register.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 5.8 	Agreed in principle but this is not without some costs to the Board.
Ob (96)	<i>NTB must identify the benefits of being a Registered Member as opposed to being an Unregistered Member.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 5.9 	We consider this is clear from the Trust Deed.
Ob (97)	<i>Formal explanations (policies and procedures) are required to explain the processes regarding de-registration by Member and requests to change, amend or update the Register.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 5.10 and 5.11 	This is an operational issue.
Ob (98)	<i>There needs to be a definition of what it means for a Registered Member to affiliate to a Marae – including tupuna pertaining to particular Marae.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 5.11(b)(iii) 	Unable to be analysed.
Ob (99)	<i>An explanation ought to be provided as to why a Registered Member may not request to change their Marae affiliation more than once every three years.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 5.11(b)(ii) 	<p>Refer the electoral system where it is not possible to switch between the Maori electorate and the general electorate every election term.</p> <p>This timeframe aims to prevent any manipulation of Marae elections.</p>
Ob (100)	<i>Policies and procedures ought to be instituted regarding Marae affiliation for Members.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 5.11(b) 	Unable to be analysed.
Ob (101)	<i>The Trust should be required to conduct an</i>	<ul style="list-style-type: none"> • Submitter: Rowan 	Not accepted. No regard to practicality or cost has been

	<i>annual review of the register by contacting all Members.</i>	<p>Tautari.</p> <ul style="list-style-type: none"> Trust Deed: clause 5.12 	considered. In addition, this observation implies that if a Member could not be contacted they risk being removed from the register which would not be appropriate.
Ob (102)	<i>The Trust should establish a process for removing people from the register.</i>	<ul style="list-style-type: none"> Submitter: Rowan Tautari. Trust Deed: clause 9.3, 9.4 and 9.5 	Unable to be analysed. Costs/benefits to be considered.
Ob (103)	<i>The entire Members Register should be able to be viewed (excluding personal information) by Marae and iwi members.</i>	<ul style="list-style-type: none"> Submitter: Rowan Tautari. Trust Deed: Schedule 1, Part A paragraph 8.1, paragraph 15(a) 	<p>Refer observation (86) above.</p> <p>It is also important to note that Marae have different beneficiaries to NTB – their beneficiaries might have a narrower or wider definition than descendants of Ngatiwai. This means that a beneficiary of a Marae might not be a beneficiary of NTB and beneficiaries of NTB are not beneficiaries of all the Marae affiliated to NTB.</p>

Marae

	Observation	References	Analysis
Ob (104)	<i>A definition for Marae should be inserted.</i>	<ul style="list-style-type: none"> Submitter: Huhana Seve. Trust Deed: no reference provided. 	See Addendum. Accepted – a marae is a meeting place as decided from time to time.
Ob (105)	<i>The Trust Deed should describe how a Marae affiliates to NTB.</i>	<ul style="list-style-type: none"> Submitter: Huhana Seve. Trust Deed: no reference provided. 	See Addendum. This could only be applicable for a new marae. This is worthy of discussion – e.g. a marae in Auckland (considering the

			2013 census data).
Ob (106)	<p><i>The definition of "Marae" should be defined per s338 TTWMA and reg 7 Maori Reservations Regulations.</i></p>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 1.1, Schedule 2 	<p>S338 TTWMA is a section regarding Maori reservations Gazetted under TTWMA. Reg 7 of the Maori Reservations Regulations requires all Marae set aside as a Maori reservation to have a charter.</p> <p>There are no legal obligations for all Marae to be Gazetted as a Maori reservation. A Marae and a Maori reservation are not synonymous.</p>
Ob (107)	<p><i>The definition of "Marae" should include criteria for a Marae to become and remain affiliated to NTB, such as:</i></p> <ul style="list-style-type: none"> - <i>What is the minimum number of Members?</i> - <i>Should there be a Marae reserve?</i> - <i>Is there a list of current trustees?</i> - <i>Is there a Marae committee?</i> - <i>Is the Board trustee required to keep the Board informed of who the current Trustees are?</i> - <i>What evidence to indicate regular communication between Board trustee and Members?</i> 	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 1.1 	<p>As to the proposal to remove any Marae that does not meet performance targets from having a seat at NTB, that would be contrary to the Trustees' obligations for a variety of reasons. Primarily, NTB is for the people of Ngatiwai rather than representing a coalition between Marae. It would be fundamentally contrary to the objectives of NTB to exclude Members from a particular area.</p> <p>It is in the best interests of the Members to have strong Marae across the rohe for a number of reasons, not the least being that they represent a link to tradition and heritage, and if any Marae is finding it difficult to fulfil its function then it is for the benefit of</p>

	<i>If the Marae falls below these criteria, it should be removed from having a seat on the Board.</i>		NTB Members for that Marae to have help rather than the Marae be punished. In addition, Marae are autonomous. It would be inappropriate for NTB to act as if Marae are submissive to NTB.
Ob (108)	<i>The Deed should explain the process for inclusion or exclusion of Marae as an affiliated Marae under Schedule 2.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: Schedule 1 Part A paragraph 2.8, Schedule 2 	See observation (105) above – worthy of discussion.
Ob (109)	<i>The Trust should identify the year each Marae was affiliated, the composition of Marae trustees and committees and the number of members affiliated to each Marae.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: Schedule 2 	We consider this is unnecessary and certainly not something for inclusion in the Trust Deed.

Reporting Requirements and Availability of Information to Members

	Observation	References	Analysis
Ob (110)	<i>Annual Reports and Annual plans should be published and circulated to Members well before the AGM.</i>	<ul style="list-style-type: none"> • Submitter: Huhana Seve. • Trust Deed: clause 7.3 	See Addendum. We consider clause 7.2 is adequate.
Ob (111)	<i>Costs paid to the Trustees ought to be included in the financial reports.</i>	<ul style="list-style-type: none"> • Submitter: Huhana Seve and Rowan Tautari • Trust Deed: cl 4.6(f), 7 	See Addendum. Annual reports include this information – see clause 4.27.
Ob (112)	<i>The definition of “confidential information”</i>	<ul style="list-style-type: none"> • Submitter: Rowan 	We consider the current definition is appropriate.

	<i>should be amended so that the presumption is that members can access all information, rather than restricting access to most information. The definition should specify what information Members are not privy to.</i>	<p>Tautari.</p> <ul style="list-style-type: none"> Trust Deed: clause 1.1 	We note that Trustees must act in accordance with all their duties when making a decision as to whether information is confidential.
Ob (113)	<i>The annual report ought to include a list of all funding received from the Crown.</i>	<ul style="list-style-type: none"> Submitter: Rowan Tautari. Trust Deed: clause 3.2(f) 	All revenue streams are accounted for in the annual reports.
Ob (114)	<i>There should be reporting mechanisms set up between Trustees and the people they represent.</i>	<ul style="list-style-type: none"> Submitter: Rowan Tautari. Trust Deed: clause 3.3 	That is the purpose of an AGM.
Ob (115)	<i>All Trustee policies ought to be placed on the Trust website.</i>	<ul style="list-style-type: none"> Submitter: Rowan Tautari. Trust Deed: clause 4.3 	This is an operational issue.
Ob (116)	<p><i>The Trustees should hold workshops for Members to explain the Trust Fund and incomes received from holding companies.</i></p> <p><i>The Trust should provide written explanations on the flow of money between the holding companies and NTB and specifically identify the amounts that are spent on Members who are not Trustees, Directors, or employees of NTB.</i></p>	<ul style="list-style-type: none"> Submitter: Rowan Tautari. Trust Deed: clause 4.6(e) 	This is not an issue relevant to the review of the Trust Deed.
Ob (117)	<i>Annual reports should include "detailed accounts" including written explanations on the performance of every entity</i>	<ul style="list-style-type: none"> Submitter: Rowan Tautari. Trust Deed: clause 4.6(d) 	We consider that clause 7.3 is adequate.

	<i>and investment associated with NTB.</i>		
Ob (118)	<i>The tasks and responsibilities of each person employed by NTB should be recorded and made available via the website.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 4.14 	We strongly advise against this. We consider that any such action would be against the good faith obligations of the employment relationship. In addition, we do not see the benefit of providing this information to Members (and the general public).
Ob (119)	<i>NTB should provide a strategic plan on the website along with a process for review.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: 	This is not relevant to the review of the Trust Deed.
Ob (120)	<i>Information regarding the delegation of Trustees' powers must be made available on the website.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 4.14(e) 	This is not relevant to the review of the Trust Deed.
Ob (121)	<i>Professional or expert advice provided to the Trustees should be made available to members on the Trust's website.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 4.19 	Ill considered. In addition to weakening NTB's bargaining position in any number of situations, it is highly likely that it would be in breach of professional obligations for some professional advisors and a breach of intellectual property rights for others.
Ob (122)	<i>Constitutional documents for asset holding companies should be available on the website.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 5.4(b) 	<p>Constitutional documents are available to the public from the Companies Office. It is not necessary for NTB to provide same.</p> <p>More fundamentally, this is not relevant to a consideration of the review</p>

			of the Trust Deed.
Ob (123)	<i>Policies and processes should be supplied to Members regarding the disposal of Income Shares or Settlement Quota or the conversion of Quota to Settlement Quota.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 5.4(c), 7.4 	This is not relevant to a consideration of the review of the Trust Deed and in any event there are restrictions in the legislation.
Ob (124)	<i>All Income Shares should be listed on the Trust website.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 6.1 	This is not relevant to a consideration of the review of the Trust Deed.
Ob (125)	<i>Settlement Quota should be listed on the website.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 6.1 	This is not relevant to a consideration of the review of the Trust Deed.
Ob (126)	<i>All disposal of Settlement Quota should be listed on the website.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 6.1 	This is not relevant to a consideration of the review of the Trust Deed.
Ob (127)	<i>The Trust should be required to provide regular reports throughout the year in addition to the Annual Report.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 7.1 	This is an operational issue.
Ob (128)	<i>Individual Annual Reports and statements of corporate intent on each asset holding company and joint venture enterprise should be produced annually and made available on the website.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 7.1(b), 7.4, 8.3(b) and (c) 	Clause 7.3 is adequate. We would advise against wide publication of annual reports and corporate intent for reasons of commercial sensitivity. In addition, NTB does not necessarily have operational control of those entities.
Ob (129)	<i>Annual reports should be made available on the website 1 month prior to the AGM.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 7.3 	Clause 7.2.

Ob (130)	<i>The Annual Report should include a supplementary report listing inquiries made by Members throughout the previous year and the Trust's responses.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 7.3 	We do not consider that this would be a sensible use of Trust resources or would be pertinent information for all beneficiaries.
Ob (131)	<p><i>The Annual Report should provide detailed information on the steps taken to increase the number of Registered Members including:</i></p> <ul style="list-style-type: none"> - <i>Who is responsible,</i> - <i>What strategy has been adopted,</i> - <i>Quality control measures,</i> - <i>An annual review identifying the numbers of deceased members and withdrawals,</i> - <i>An annual review identifying the numbers of new Members, and</i> - <i>The cost of maintaining the Members Register.</i> 	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 7.3(a) 	We consider that this is adequately addressed in the proposed Trust Deed. Clause 5.1(b) already compels the Board to seek to register all Members. Clause 7.3(a) requires the Board to include information of the steps taken to achieve that goal in the Annual Report.
Ob (132)	<i>In the Annual Report, the Trust should identify its performance objectives each year in a specific and measurable format.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 7.3 	Clause 7.4 states that every Annual Plan must list objectives and clause 7.3 states that the Annual Plan must report against the objects in the matching Annual Plan. We do not consider that it would be appropriate to specify a particular format for those objectives as that is an operational issue.

Ob (133)	<i>The Annual Report should provide an analysis of why/how the Trust Fund's value has changed from the previous year.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 7.3(b)(i) 	We consider that clause 7.3(b) achieves this aim.
Ob (134)	<i>The Annual Report should clearly identify where Trustees or consultants "are able to personally gain from any interactions".</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 7.3 	<p>Annual reports include this information – see clause 4.27.</p> <p>In terms of consultants, confidentiality provisions apply. This is an operational issue rather than governance.</p>
Ob (135)	<p><i>In regard to the Annual Report on "the interactions of the Trust in fisheries matters",</i></p> <ul style="list-style-type: none"> - <i>"interactions" should be defined,</i> - <i>Interactions with other Ngatiwai entities should be listed and tabled along with an explanation of the purpose of such interaction,</i> - <i>Interactions with other Mandated Iwi Organisations or with Te Ohu Kai Moana Trustee Ltd should be similarly listed, tabled and explained.</i> 	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 7.3(e) 	Confidentiality to be considered as well as commercial sensitivity(s). Unable to be analysed.
Ob (136)	<i>All constitutional documents of the Trust and subsidiary entities and joint ventures should be placed on the Trust website.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 7.4, 8.1 	This is outside the scope of the review of the Trust Deed.

Ob (137)	<i>Settlement Quota and Income Shares allocated by Te Ohu Kaimoana should be noted on the website.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 8.1(e) 	This is outside the scope of the review of the Trust Deed.
Ob (138)	<i>All dividends should be listed on the website.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 8.1(f) 	This is outside the scope of the review of the Trust Deed.
Ob (139)	<i>The Annual Report should contain information on the requirements of the constitutions of asset holding companies, fishing companies or subsidiaries in a readily accessible form.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 8.3 	The Trust Deed is clear about the requirements of constitutions of such companies. We do not consider that that it would be necessary to include this information in an Annual Report.
Ob (140)	<i>Policies and processes for appointing Directors should be placed on the website.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 8.3 	This is outside the scope of the review of the Trust Deed.
Ob (141)	<i>The Trust should establish a communication policy that enables Members to understand the Trust's undertakings in detail.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 9.1 	Unable to be analysed.
Ob (142)	<i>The Trust should publish regular newsletters that "are balanced and include genuine input from beneficiaries".</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 10.4 	This is outside the scope of the review of the Trust Deed.
Ob (143)	<i>Resignations of Trustees should be notified to Members.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 4.3 	This is outside the scope of the review of the Trust Deed.

Elections

	Observation	References	Analysis
Ob (144)	<i>Does the Board intend to run elections under the Trust Deed or the current election process as coordinated by the independent electoral officer?</i>	<ul style="list-style-type: none"> • Submitter: Huhana Seve. • Trust Deed: cl 7.11 	See Addendum. The Board must act in compliance with the Trust Deed.
Ob (145)	<p><i>The definition of “Marae Elections” should be amended to outline a process whereby the NTB communicates with the Marae chairperson concerning Marae trustee elections.</i></p> <p><i>In addition, the outcome of this process ought to be recorded in writing and available to iwi members to view.</i></p>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 1.1 	<p>Marae autonomy to be considered.</p> <p>Unable to be analysed.</p>
Ob (146)	<i>Trustee ought to be required to provide biographies and detailed CVs listing qualifications, skills, and qualifications and/or experience the role which would be uploaded on the Trust website prior to elections.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 3.3, 4.2(e) 	Marae to determine their own protocols regarding Trustee credentials.
Ob (147)	<i>Financial background checks ought to be required to be undertaken for Trustees and Alternates.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 4.3(f) and (g) 	This would need to be done for all nominees prior to elections. It would create an unnecessary cost for NTB in circumstances where it should be able to rely on the information being put forward by the

			<p>nominees on the nomination form.</p> <p>There is provision at 4.3(k) to remove a Trustee if they are found to have made a false declaration on their nomination form.</p>
Ob (148)	<i>A definition is required for "explanatory documents" in relation to public notices of voting for Marae elections.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: Schedule 1, Part B, paragraph 11 	This is outside the scope of the review of the Trust Deed.
Ob (149)	<i>Explanatory documents are to be placed on the website.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: Schedule 1, Part B, paragraph 11 	This issue is outside of the scope of the review of the Trust Deed.
Ob (150)	<i>The definitions of voting words should match the election processes described in the Trust Deed.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 1.1 	Agreed in principle – to be clarified at meeting.
Ob (151)	<i>Marae elections should be able to be held via postal ballot.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 5.4, Schedule 1 Part A paragraph 2 	This is provided for in paragraph 8 of Schedule 1.

Meetings with Members (Including the Annual General Meeting)

	Observation	References	Analysis
Ob (152)	<i>At the AGM all Trustees ought to be required to report on what they have achieved in their roles over the past year.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 3.3 	<p>This is a policy issue rather than a governance one.</p> <p>Further, it could be seen to go against the policy of collective responsibility.</p>

Ob (153)	<i>Votes on resolutions must only be valid if they comply with the voting procedures set out in Schedule 1 (Schedule 1 relates to voting for elections)</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 6.1 	Unable to be analysed.
Ob (154)	<i>Special resolutions should be able to be passed by postal votes.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 6.1 	<p>Unable to be analysed in full as not clear what is suggested.</p> <p>The concern would be that postal voters would not have the opportunity to hear discussion about the resolution. In addition, there would be practical complications due to increased time and cost and the difficulty regarding late votes or non-votes. If postal votes were to be accepted, a decision would need to be made as to whether a majority was expected of the votes received or all people entitled to vote. In all circumstances, the majority is calculated on votes received.</p>
Ob (155)	<i>It needs to be clearer whether the 50% or 75% majority required to pass a resolution is a majority of all Registered Members, or simply a majority of those Registered Members present at the General Meeting.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 6 	<p>We accept that the phraseology used in the Trust Deed is not consistent in this regard:</p> <ul style="list-style-type: none"> - Clauses 6.1 and 6.2 state that a 75% majority is required of <i>"the Adult Members of Ngatiwai who are entitled to vote and actually cast a valid</i>

			<p>vote...".</p> <ul style="list-style-type: none"> - Clause 6.3 states that a 50% majority "<i>of the Adult Registered Members of Ngatiwai who are entitled to vote cast a valid vote</i>" is required. - Clauses 10.1(c) and 10.2(c) and 11.1(b) read "<i>passed by a majority of 75% at a General Meeting</i>" <p>The majority is always of the votes cast; not the ultimate Members' Register.</p> <p>The wording of these clauses could be improved and be more consistent.</p> <p>The final draft will ensure consistency of wording.</p>
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Asset Holding Companies, Fisheries Enterprises and Joint Ventures

	Observation	References	Analysis
Ob (156)	<i>The Trust is to provide information on its fishing enterprise.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 8.2 	Not relevant to the Trust Deed review.
Ob (157)	<i>The Trust is to provide information on measures taken to employ Ngatiwai descendants within the fishing enterprise.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 8.2 	Not relevant to the Trust Deed review.

Ob (158)	<i>The constitutions of corporate entities should also be consistent with Ngatiwai tikanga.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 10.2 	We consider that clause 8.3 is adequate in terms of the requirements of constitutions for Asset Holding Companies or subsidiaries thereof.
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Disputes Procedure

	Observation	References	Analysis
Ob (159)	<i>What is the “Act” referred to in the disputes procedure clause?</i>	<ul style="list-style-type: none"> • Submitter: Huhana Seve. • Trust Deed: clause 9 	See Addendum. The definition of “the Act” is the same throughout the Trust Deed and is defined in clause 1.1 as the Maori Fisheries Act 2004.
Ob (160)	<i>The Trust should have a process for determining which concerns/disputes are covered by part 5 of the Maori Fisheries Act 2004.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 9.1 	This is worthy of discussion but is ultimately an operational issue.
Ob (161)	<i>There should be a process for determining which concerns/disputes are covered by other legislation or Courts (e.g. the Maori Land Court).</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 9.1(c) 	This is worthy of discussion but is ultimately an operational issue.

Process for Alterations of the Trust Deed

	Observation	References	Analysis
Ob (162)	<i>The process for amendment of the Trust Deed should require an external review commencing with widespread consultation to ascertain a process which enables Members to participate in a meaningful</i>	<ul style="list-style-type: none"> • Submitters: Rowan Tautari and Ngaio McGee • Trust Deed: cl 10 	AGM to determine any outcome. Any potential changes may not always require a review.

	way.		
Ob (163)	<i>The Trust Deed should be regularly reviewed by Trustees and Members as part of a 3-yearly cycle.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 10.1 	Unable to be analysed.
Ob (164)	<i>The Trust Deed should be consistent with Ngatiwai tikanga as well as relevant legislation.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 10.1 	We consider that this is achieved in the current Trust Deed.
Ob (165)	<i>There should be a process for consultation on amendments to the Trust Deed prior to the General Meeting taking place. This should be recorded in writing and posted on the website.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 10.1 	This is an operational issue.
Ob (166)	<i>Any General Meeting advertising should include a list of motions being moved regarding amendments to the Trust Deed.</i>	<ul style="list-style-type: none"> • Submitter: Rowan Tautari. • Trust Deed: clause 10.1 	This is already required.

OBSERVATIONS FROM LATEST TRUST DEED APPROVED BY TE OHU KAIMOANA AND OTS

44. We have taken the time to read a recent Deed of Trust approved by Te Ohu Kaimoana and OTS. What is of note is that it bears a striking similarity both in the form and content with the Trust Deed we propose. Given that the NTB Trust Deed will be required to be approved by Te Ohu Kaimoana and that any settlement assets will not be received by the NTB but will be received by a new entity i.e. such as a Settlement Trust, we do not think it appropriate to divert too far away from the form already approved by Te Ohu Kaimoana in 2006/2007 and more recently approved in the case of another Maori legal entity.

RECOMMENDATIONS

45. Our preliminary analysis of the submissions has led to the conclusion that a number of observations from submitters should be accepted and we recommend amending the proposed Trust Deed accordingly. Other observations are worthy of further discussion with

the submitters and with the wider iwi – these have been identified by the colour red in the analysis tables above.

46. Our observations from the latest Deed of Trust approved by Te Ohu Kaimoana and OTS have confirmed our belief that the Trust Deed as proposed is capable of being accepted by those bodies.
47. We recommend the following amendments in accordance with our analysis of the submissions received:
 - a. It is accepted that the current definition for "*Roopu Kaumatua Kuia*" could be expanded upon.
 - b. It is acknowledged that clause 5 regarding the input of Roopu Kaumatua Kuia into registration processes for uri could be more clearly explained. The Trust Deed provides for involvement; whether it is used or not is an operational issue. Involvement is only when necessary rather than assumed.
 - c. It is accepted that when read together the two definitions "*Registration Form*" and "*Members*" in clause 1.1 could create confusion. Whangai are to be seen as full Members as if they were descended from a primary ancestor.
 - d. It is agreed that the application to register as a Member must be the same form whether it is completed on paper or online and that the information provided should be consistent with current legal requirements. This does not necessarily require a further clause and can be dealt with at an operational level.
 - e. It is agreed that it would be clearer if "*Primary Ancestor*" was defined. Clause 5.6(d) explains that it is for the Roopu Kaumatua Kuia to determine who is a Primary Ancestor. It would be clearer if this were also defined at clause 1.1.
 - f. It is accepted that a definition for Marae should be inserted to read "a marae is a meeting place as decided from time to time".
 - g. It is agreed that the definitions of voting words should match the election processes described in the Trust Deed – we would invite further discussion on this matter.
 - h. We accept that the phraseology to determine majority required to pass a resolution used in the Trust Deed could be improved and be more consistent.

CONCLUSION

48. The consultation process has now been completed. We suggest that matters arising from the consultation be discussed at Board level then taken to the beneficiaries at the AGM. The Trust Deed must still be passed by 75% majority at the AGM, approved by Te Ohu Kaimoana and the Charities Commission.

ADDENDUM: FURTHER COMMENTS AFTER DISCUSSION WITH SUBMITTERS

Ob Ref	Observation	References	Analysis	Discussion with submitter
McCarthy, Winston				
Ob (37)	<i>There is a question of whether a NTB Trustee can serve as a trustee of a Marae trust or whether there is an inherent and insurmountable tension.</i>	<ul style="list-style-type: none"> • Submitter: Winston McCarthy. • Trust Deed: Sch 1 Part A paragraph 5.1 	<p>This is worthy of being discussed at Board level and then, if necessary, at the AGM. In our opinion it would be preferable if such dual roles were not possible, however, the reality is that there is a shortage of people interested in contributing to governance of Maori entities.</p> <p>In addition, there are checks and balances to manage conflicts of interests.</p>	<p>Suggestion: Could be raised in AGM forum for discussion.</p> <p>Suggest discuss at Board level in first instance.</p>
Seve, Huhana				
Ob (11)	<i>Reference to Treaty negotiations and settlement should be removed from the incidental purposes of NTB until a hui is called on the matter.</i>	<ul style="list-style-type: none"> • Submitter: Huhana Seve. • Trust Deed: cl 3.2 (o) – (q) 	<p>Clause 3.2(q) addresses this issue. Carefully read, it is clear that without a mandate the Board does not have an authority to start Treaty negotiations.</p>	<p>Discussed and agreed no change required.</p>

Ob Ref	Observation	References	Analysis	Discussion with submitter
Ob (12)	<i>Which laws is NTB bound by?</i>	<ul style="list-style-type: none"> • Submitter: Huhana Seve. • Trust Deed: no reference provided. 	As a trust, NTB is bound by all of the laws of New Zealand. Some Acts are more relevant than others.	Discussed and agreed no change required.
Ob (21)	<i>A hapu voice is missing from NTB and this should be addressed</i>	<ul style="list-style-type: none"> • Submitter: Huhana Seve. • Trust Deed: no reference provided 	<p>The Board accepts that the marae-based structure of the Board does not necessarily fully reflect the complexities of Ngatiwai members' society. However, it is the model set down by the current legislative scheme. In terms of NTB, we consider that if a hapu voice was required the Board would be over 50 people and would be rendered unworkable.</p> <p>The Board could consider the possibility of some independents (i.e. not marae-based members) sitting on the Board for whom all Ngatiwai members have an opportunity to vote.</p>	<p>Discussed and agreed possibility of independents sitting on Ngatiwai Trust Board to be discussed at Board level and then, if necessary, at the AGM.</p> <p>Huhana to send document on hapu of Whangarei.</p>

Ob Ref	Observation	References	Analysis	Discussion with submitter
			This should be discussed at the AGM after discussion at Board level.	
Ob (38)	<i>How does the Board plan to manage the new clause saying that Trustees will cease to hold office if they are "in office or employment with, or accept office or employment with, any other Iwi organisation"? Specific examples include Ngati Rehua, Ngati Manuhiri and AIP, IMA and PSGE.</i>	<ul style="list-style-type: none"> • Submitter: Huhana Seve. • Trust Deed: cl 4.3(i) 	Submitter to explain further. Ngati Rehua and Ngati Manuhiri do not have recognised iwi status through the Crown, other than through the Ngatiwai Trust Board for settlement purposes.	Discussion – has the consent to Ngati Manuhiri/Ngati Rehua undermined the Ngatiwai Trust Board? No, if they accept they are a hapu, not iwi.
Ob (39)	<i>How does the Board plan to manage the employment and appointment of officers to NTB?</i>	<ul style="list-style-type: none"> • Submitter: Huhana Seve. • Trust Deed: cl 4.9(b) 	This is an operational issue and accordingly is outside the scope of the Trust Deed review.	-
Ob (40)	<i>Is Jim Smillie an acting CEO or a permanent CEO?</i>	<ul style="list-style-type: none"> • Submitter: Huhana Seve. • Trust Deed: cl 4.9(b) 	Not a Trust Deed matter.	-

Ob Ref	Observation	References	Analysis	Discussion with submitter
Ob (41)	<i>Can Alternate Trustees be employed by NTB?</i>	<ul style="list-style-type: none"> • Submitter: Huhana Seve. • Trust Deed: cl 4.9(c) 	<p>Technically, yes. As a matter of principle it is preferable not.</p> <p>Alternates step into the powers and obligations of a Trustee only where a Trustee is unable to attend a meeting. We consider that there is nothing in the Trust Deed preventing an Alternate being employed by NTB. Should they be required to step into the role of Trustee in any capacity longer than one meeting, the matter would need to be looked at very closely.</p>	<p>Agreed current arrangement does create potential conflicts. Clause could possibly be amended to ensure no conflict will occur.</p> <p>To be discussed at Ngatiwai Trust Board level.</p>
Ob (42)	<i>Trustees should have to disclose interests other than financial interests – such as legal counsel and accountancy services.</i>	<ul style="list-style-type: none"> • Submitter: Huhana Seve. • Trust Deed: cl 4.21 	<p>Privacy issues and relevance questions.</p> <p>We do not consider that trustees obtaining legal or accountancy services for non-Board related matters are “interests” and certainly do not require disclosure. We assume that this submission is based on a belief that using the same professional advisors might create a conflict of interest in some way. The legal and accounting professions are governed by their own professional rules which prevent acting</p>	<p>Discussed Trustees personal arrangements are not a matter for public record.</p> <p>Discussed tender process for external advisors desirable but already in place. Huhana Seve suggested Morris Pita could be a suitable reviewer of current advisors.</p> <p>[NB: JS conscious of learning curve as a result of changing</p>

Ob Ref	Observation	References	Analysis	Discussion with submitter
			in cases where there are conflicts of interest. It would be in breach of the individual trustees' privacy to require them to disclose services they use which are unrelated to their roles as trustees.	consultants.] Discussed that it could be a proposal that Ngatiwai Trust Board may like to consider. Also discussed Ngatiwai Trust Board already putting in place sessions to enhance Trustee skillset.
Ob (61)	<i>The honorary secretary for Trust Board meetings and the AGM should be fluent in Te Reo Maori. This would ensure that all discussions are recorded accurately.</i>	<ul style="list-style-type: none"> • Submitter: Huhana Seve. • Trust Deed: cl 4.13 	While this may be preferable at a policy level, difficulties could arise if this were a requirement under the Trust Deed. If (for whatever reason) the fluent secretary could not attend a meeting it could mean that a meeting could not be held. This could jeopardise the Board's ability to function in a timely manner. This is a policy decision for the Board rather than a Trust Deed issue.	Not a Trust Deed issue however it could be a matter to be discussed at Board level and then, if necessary, at the AGM.
Ob (72)	<i>The Trust Deed is unclear as to whether online beneficiary registrations will</i>	<ul style="list-style-type: none"> • Submitter: Huhana Seve. • Trust Deed: no 	Worthy of discussion.	The proposed Trust Deed does not prohibit online beneficiary registrations and there is currently an option to register online

Ob Ref	Observation	References	Analysis	Discussion with submitter
	<i>be accepted.</i>	reference provided		however NTB are currently looking at changing systems allowing beneficiaries to update their own data online.
Ob (73)	<i>Who currently oversees the Members' Register?</i>	<ul style="list-style-type: none"> • Submitter: Huhana Seve. • Trust Deed: cl 5 	It an obligation of the Trustees to maintain the Register.	Discussed analysis. Operational issue but the Trustees recognise the register should be current and accurate.
Ob (74)	<i>How accurate is the data on the Members' Register and what is the ability to update data and contact information?</i>	<ul style="list-style-type: none"> • Submitter: Huhana Seve. • Trust Deed: cl 5 	This is an operational issue.	Discussed Ngatiwai Trust Board will continue to do annual audits to ensure data is accurate.
Ob (75)	<i>The task of overseeing the Members' Register should be assigned to an employee.</i>	<ul style="list-style-type: none"> • Submitter: Huhana Seve. • Trust Deed: cl 5 	We understand this already occurs. However, it is an operational issue.	Discussed – operational issue.
Ob (76)	<i>There should be a definition of Ngatiwai tupuna.</i>	<ul style="list-style-type: none"> • Submitter: Huhana Seve. • Trust Deed: cl 5 	Further explanation required. Tupuna is not used in the Trust Deed - the phrase "primary ancestor" is used.	There is no known register of Ngatiwai primary ancestors. Consider removing the reference to "primary ancestor" and inserting a definition of Ngatiwai Tupuna. Suggest a matter to be

Ob Ref	Observation	References	Analysis	Discussion with submitter
				discussed at Board level and then, if necessary, at the AGM.
Ob (77)	Who are the Roopu Kaumatua? Who determines this?	<ul style="list-style-type: none"> • Submitter: Huhana Seve. • Trust Deed: cl 5 and cl 9 	The current definition in clause 1.1 reads " <i>Roopu Kaumatua Kuia means the committee appointed under clause 9.3(a)</i> ". It is accepted that this could be expanded upon. Further discussion worthwhile.	Suggest discuss at Board level (and then, if necessary, at the AGM) how to go about recognising Roopu Kaumatua Kuia and concept of their role in the overall affairs of the Board
Ob (78)	Do the Roopu Kaumatua Kuia really have input into registration processes for uri?	<ul style="list-style-type: none"> • Submitter: Huhana Seve. • Trust Deed: cl 5 	<p>Acknowledged that this could be more clearly explained.</p> <p>The Trust Deed provides for involvement; whether it is used or not is an operational issue. Involvement is only when necessary rather than assumed.</p>	See comments in Ob (77) above.
Ob (79)	The process for a Registered Member to change the Marae they affiliate to should be updated to reflect the new process for elections – specifically the independent electoral officer.	<ul style="list-style-type: none"> • Submitter: Huhana Seve. • Trust Deed: cl 5.11(b)(iii) 	Submitter to explain.	A registered member can only change the marae they affiliate with once every three years and may only participate in elections for the marae they are registered with. Averts elections being "distorted".

Ob Ref	Observation	References	Analysis	Discussion with submitter
Ob (104)	<i>A definition for Marae should be inserted.</i>	<ul style="list-style-type: none"> • Submitter: Huhana Seve. • Trust Deed: no reference provided. 	Accepted – a marae is a meeting place as decided from time to time.	A definition for Marae is already included.
Ob (105)	<i>The Trust Deed should describe how a Marae affiliates to NTB.</i>	<ul style="list-style-type: none"> • Submitter: Huhana Seve. • Trust Deed: no reference provided. 	<i>This could only be applicable for a new marae. This is worthy of discussion – e.g. a marae in Auckland (considering the 2013 census data).</i>	<p>Submitter concerned that a large number of Ngatiwai people know they are Ngatiwai but do not know which marae they should affiliate to.</p> <p>Worthy of further discussion. Desirable for the Ngatiwai Trust Board to discuss first and at then possibly at the AGM.</p>
Ob (110)	<i>Annual Reports and Annual plans should be published and circulated to Members well before the AGM.</i>	<ul style="list-style-type: none"> • Submitter: Huhana Seve. • Trust Deed: clause 7.3 	We consider clause 7.2 is adequate.	Discussed papers currently published on website within timeframe allocated in the Trust Deed. Further noted that they are not sent out via post. Ngatiwai Trust Board put on website and facebook and members are asked to contact Ngatiwai Trust Board if they would like a hard copy sent

Ob Ref	Observation	References	Analysis	Discussion with submitter
				to them.
Ob (111)	<i>Costs paid to the Trustees ought to be included in the financial reports.</i>	<ul style="list-style-type: none"> • Submitter: Huhana Seve and Rowan Tautari • Trust Deed: cl 4.6(f), 7 	Annual reports include this information – see clause 4.27.	Agree it is desirable for NTB to show Trustee costs and attendance at Board meetings in future Annual Reports. Suggest include new clause 4.27 (a) “The attendance by Trustees at Trustee meetings.”
Ob (144)	<i>Does the Board intend to run elections under the Trust Deed or the current election process as coordinated by the independent electoral officer?</i>	<ul style="list-style-type: none"> • Submitter: Huhana Seve. • Trust Deed: cl 7.11 	The Board must act in compliance with the Trust Deed.	NTB trustee and marae elections will be coordinated by independent electoral officer.
Ob (159)	<i>What is the “Act” referred to in the disputes procedure clause?</i>	<ul style="list-style-type: none"> • Submitter: Huhana Seve. • Trust Deed: clause 9 	The definition of “the Act” is the same throughout the Trust Deed and is defined in clause 1.1 as the Maori Fisheries Act 2004.	Discussed and no change required.