

Kanohi ki te kanohi, pakihwi ki te pakihwi

Constitutional Review

Report to the Trustees of the Heretaunga Tamatea Settlement Trust

21 December 2020

Baden Vertongen

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He Mihi

*Titiro ake au ki te hāro o te kāhu e tui, tui, tui, tuia
Tuia te rangi e tū ake nei, tuia te papa e takoto iho nei
Tuia te here tangata o Heretaunga, o Tamatea, ka rongo te pō, ka rongo te ao
Tuia te muka tangata i ahu mai i ngā hapū kārangaranga o Tamatea, o Heretaunga ko tātau nei
me ō tātau tīpuna i ekea nei Te Moana-nui-a-Kiwa mai i Hawaiki nui, Hawaiki roa, Hawaiki
pāmaomao, te hono i wairua ki te whaiao ki te ao mārama
Tihei mauri ora!*

*Kei ngā ihoiho o ngā maunga whakahī e tū kāwekaweke mai nā i ō tātau nei rohe taurikura o
Tamatea, o Heretaunga tēnā rā tātau katoa.*

*E tika ana kia tukuna atu ngā whakaaro ki a rātau mā ko ngā rauopiopio me nga kowhakararo
kua purea atu e ngā hau maiangi, e ngā hau pūkerikeri ki tua o te ārai. Ko rātau hoki ko ngā
manu noho mātārae me ngā rauotītapu i tautokona tohenga tēnei o ngā whawhai mai i te rautau
tekau mā iwa tae noa ki tēnei rautau, arā ko te tītoko o te rangi, te kukū o te manawa, okioki ai.
Kāti, rātau te tira mātāi pō ki a rātau, waiho ake ko tātau te tira mātāi ao ki a tātau.*

*Otirā, tēnā anō rā koutou katoa kei ngā manu taupua, koutou i topa iho mai i te tīkokekoketanga
o te rangi. Tēnā hoki koutou i raro hoki i te āhua o ngā kupu kōrero ā kui mā, ā koro mā me ngā
tāhuhu kōrero o te rohe taurikura nei tō tēnā hapū, tō tēnā marae, o Heretaunga, o Tamatea.*

*Kei te Rua tekau mā toru, o Tamatea, o Heretaunga, nei anō te maioha ki a koutou me te mea ai
hoki ki a tātau katoa e hāpai tonu nei i te reo karanga o te wā me tēnei haerenga, ina koa mai i
taua hui i te marae o Kahurānaki i te tau 2003, te wā i whakamanatia te kaupapa nei, e whai ana
i ōna ake tikanga. Nā wai rā, i puāwai te tira hou e kiia nei, He Toa Takitini; tēnā rā tātau katoa.*

*Nō mātau ko te rōpū arotakenga nei, te whakamīharo ki te tukua nei te pūrongo hei pānuitanga e
rangitāmiringia nei ngā kōrero, ngā whakaaro me ngā wawata tō tēnā, tō tēnā, tō tēnā kei te
rohe whānui o Heretaunga, o Tamatea. Ahakoa kua tae mātau ki tēnei wā e whai ana i ngā
whakaritenga ā ngā tuhinga o mua, ehara tēnei i te mutunga o te haerenga nei; i te mutunga iho
he mahi anō ki te whai.*

*Heoi anō, kua whakatewhatewhangia ngā kōrerorero me ngā whakaaturanga, ā, nei te pūrongo
e kawea mai ngā tino whakaaro e hopukia nei te ia o te kōrero me te ngako o ngā whakaaro i
whakaaturia mai e ngā hapū me ngā marae o Tamatea, o Heretaunga. E ai ki a mātau o te rōpū
arotakenga, ko te pūrongo nei he whare kōrero kua hangaia e ngā marae me ngā hapū, i
whakamahia anōtia ngā rauemi o ngā marae me ngā hapū; arā, ko ngā pou kōrero, ko ngā heke
whakaaro, ko ngā pātū wawata nō te marea o Heretaunga, o Tamatea. Kua whakamanatia ēnei
e whai ana i ngā tikanga ā kui mā, ā koro mā me tētahi kōrero nō te ao kōhatu i whakamahia
anōtia e te tipuna rongonui, ko Te Whatuiāpiti - Kanohi ki te kanohi, pakihwi ki te pakihwi.*

*Nō reira, hei tatatata mai te tuakaihautanga me te wā ka puta te Ihu o Hineraumati, mā Ngā Atua
katoa tātau e ārahi ai, e tiaki nei kia taea e tātau te whakatā i ō tātau ake whānau me ā tātau ake
hoa i tēnei wāhanga o te tau. Otirā, kia tau te rangimārie, kia tau te aroha, ki tau anō i ngā
manaakitanga o te wā.*

Tēnā rā koutou, tēnā rā tātau katoa.

Executive Summary

We were engaged to undertake a 'constitutional review' of the Heretaunga Tamatea Settlement Trust. As part of that process, we held Whare Kōrero to provide the opportunity for members of Heretaunga Tamatea to present their views. We then met separately with a range of groups and individuals, and received written feedback. A brief electronic survey was also undertaken.

That process provided us with a wealth of comments, views, and suggestions. These covered a wide range of matters. Some of these matters will require ongoing discussion amongst Heretaunga Tamatea. As a result, where we can we have made recommendations about particular actions – but in a large number of other cases we can only suggest further discussion and a possible direction that those discussions may take.

We feel that there are important, fundamental, discussions that need to happen about how Heretaunga Tamatea describes itself, and about how the various institutions, entities, and groups within Heretaunga Tamatea relate to each other. Therefore, we have proposed that:

- **Recommendation 1:** Marae, hapū, and the claimant community generally, wānanga to develop appropriate names to describe both the claimant community currently referred to as 'Heretaunga Tamatea' and then for the Heretaunga Tamatea Settlement Trust;
- **Recommendation 2:** HTST, along with the Heretaunga Tamatea membership and other institutions or entities within Heretaunga Tamatea, facilitates the development of an overarching 'constitution' for the Heretaunga Tamatea 'nation'. That 'constitution' should be expressed in way that is meaningful and appropriate for Heretaunga Tamatea;

We have not recommended any change to the current size and structure of the HTST Board. While we feel the Board may be too large it is unlikely that it will be possible to make a significant change to the size and structure of the Board given the depth of support for marae-based representation.

Instead, at this time, we have focused on recommendations that work within the current Board structure to address a number of issues that were raised with us. These include that:

- **Recommendation 3:** HTST develop, in consultation with Heretaunga Tamatea members and existing marae, a pathway or process for recognition of additional marae within the HTST structure. Any pathway or process should:
 - Include clear criteria for marae to meet;
 - Include the ability for HTST to initially recognise additional marae, in advance of full recognition by amendment to the Trust Deed, for the purposes of HTST providing some support and assistance to that marae; and
 - Reflect that the full recognition of additional marae can only be achieved via amendment to the Trust Deed and the implications of this.

- **Recommendation 4:** HTST should work to ensure that its internal arrangements, and the way it engages with external parties, reflect how marae wish to group together to support each other. The details of what this entails should be the result of ongoing discussions with marae, and be flexible enough to change over time as the aspirations of marae change;
- **Recommendation 5:** HTST explores putting in place formal relationships with other entities providing (or who might provide) services to Heretaunga Tamatea members. These arrangements should be aimed at achieving priority outcomes for HTST via the operations of those entities;
- **Recommendation 6:** HTST explores the establishment of an asset holding entity. Such an entity should be a mechanism for growing both the assets of HTST and a vehicle by which marae can independently grow their own asset bases.
- **Recommendation 7:** HTST considers further the need for establishing a charitable entity as part of its discussions around how it might work with other entities to deliver services to its members. That consideration should include specialised tax advice and a cost benefit analysis of establishing/not establishing a charitable arm;
- **Recommendation 8:** HTST considers amending the Trust Deed to enable members to register as being associated with, and to vote for trustees from, all marae they whakapapa to;
- **Recommendation 9:** HTST considers amending the Trust Deed to provide for a single set of trustee elections once every three years;
- **Recommendation 10:** HTST works to update its membership register to ensure the details held are as up to date as possible. This should be undertaken in conjunction with any amendments to the election process;
- **Recommendation 11:** HTST develops clearer guidelines for the operation of the Whakapapa Committee; and
- **Recommendation 12:** If other changes are being made to the Trust Deed, then minor amendments should also be made at the same time to better align with the Trusts Act 2019.

It is now up to HTST trustees to consider which, if any, of our recommendations they might wish to progress further. We also provide an outline of how these recommendations might be progressed in a co-ordinated way.

Acknowledgements

Before we present our report, we would like to acknowledge the support that we have received as part of this process. The administrative and logistical support that was provided by Jo Heperi and HTST staff ensured that all of our hui ran extremely smoothly and positively. We are also extremely grateful to the staff and students of Te Aute College and Te Kura Kaupapa Māori o Ngāti Kahungunu Ki Heretaunga for hosting us and the Whare Kōrero.

Most importantly though we would like to acknowledge all of those who took the time to present to us in some form.

All of those who provided their views to us took considerable time and effort to do so – both in terms of preparing their thoughts and in the presentation of them. All of those who presented to us – no matter what their position might have been on a particular issue – did so because they were passionate about the future of their marae, hapū, and Heretaunga Tamatea generally. We extend our thanks to all the members of Heretaunga Tamatea who were part of this process.

We feel privileged to have had the opportunity to be involved.

1. Background

- 1.1. The Heretaunga Tamatea area of interest extends from the Tūtaekurī River in the north following the ridge of the Ruahine Range south to Takapau and turns seawards to Pōrangahau in the south. The rohe includes five major river systems, the Tūtaekurī, the Ngaruroro, the Tukituki, the Maraetōtara and the Pōrangahau / Taurekaitai, and comprises an alluvial plains system powered by the Heretaunga and the Ruataniwha aquifers.
- 1.2. Before the arrival of Europeans to Heretaunga and Tamatea the wetlands, swamps, and lakes in this region, together with the area's coastal fisheries and extensive bush, provided extremely rich sources of food, as well as medicine and materials for the generations since the 13th century. The names of the rivers, streams, natural features, fauna and flora of Heretaunga and Tamatea illustrate the long association between the land and the people it sustained.
- 1.3. The significant wealth and prosperity of Heretaunga and Tamatea has been sourced both from the lands and the waters of the rohe, and from the labour and generosity of generations of hapū across all of Heretaunga and Tamatea. This generosity is a prime example of the tikanga associated with manaaki tangata and ringahora, the customary practise of welcoming and embracing of others to our lands. Heretaunga Tamatea initially welcomed settlers with great expectations. Much has happened since then.
- 1.4. In 2003, the hapū and marae of Heretaunga and Tamatea came together to advance their Treaty of Waitangi claims. In 2004, He Toa Takitini (Our Strength is in Unity) was established to lead this process. In 2007, the Heretaunga Tamatea claimants decided to proceed straight to direct negotiations with the Crown rather than progress these claims through the Waitangi Tribunal. In 2011, the Crown recognised the mandate of He Toa Takitini to progress those claims and the negotiation process began.
- 1.5. In 2013/14, during the Agreement-in-Principle consultation at Hui-a-Iwi, there was disquiet from Heretaunga Tamatea members over the establishment of a Post Settlement Governance Entity [**PSGE**] to receive and hold any settlement. Much of this concern focused on directions by the Crown of the requirements for a PSGE and whether these met with aspirations of Heretaunga Tamatea. The Negotiation Team and the Board of He Toa Takitini promised a review of any PSGE so that progress towards a settlement could continue.
- 1.6. In late 2014 the members of Heretaunga Tamatea voted to ratify a Deed of Settlement and redress package that had been negotiated with the Crown. That settlement also included the establishment of the Heretaunga Tamatea Settlement Trust [**HTST**] as the PSGE for Heretaunga Tamatea.
- 1.7. The Trust Deed that governs the operation of HTST included, at clause 24, a commitment to review the constitution of HTST within two years of HTST receiving the settlement.
- 1.8. In 2019 HTST began the process of commencing this review, and a Review Sub-Committee was established for this purpose. In early 2020 HTST appointed ourselves,

as a review team, to undertake this review. Jo Heperi was also appointed to provide administrative assistance to the review team. As part of the appointment process Terms of Reference were developed to guide our work.

- 1.9. James is from Pukehou marae. James is Pou Ahurea Matua at Hastings District Council and his current role sees him advising Council about relationships with and responsiveness to Māori across the Hastings district. He does not hold any role within HTST. His mother, Liz Graham, is currently chair of HTST and this association has been acknowledged throughout this process.
- 1.10. Baden Vertongen is from Ngāti Raukawa ki te Tonga. Baden is a lawyer and mediator who has been involved in the development of a number of post settlement governance entities. Baden provided independent legal advice as part of the Heretaunga Tamatea Treaty settlement and continues to provide independent advice to HTST.

2. The Process We Followed

- 2.1. Once appointed we prepared a discussion paper [the **Discussion Document**] to be provided to members of Heretaunga Tamatea as a starting point for the discussions that would follow. The initial draft of the discussion paper received some input from a small number of individuals as a 'test run' to ensure it would generate useful discussion. HTST's Review Sub-Committee also provided some input to ensure readability and consistency with our Terms of Reference.
- 2.2. Ultimately though, the Discussion Document was our own work.
- 2.3. That Discussion Document, and timing of the steps to be followed, was released on 30 September 2020. This material was made available to Heretaunga Tamatea members by HTST via the HTST website, email, and hard copies that were made available at hui.
- 2.4. A unique email address was also established for this review process. This address was included in the Discussion Document, and other supporting material, and Heretaunga Tamatea members were invited to provide written submissions to this address or use the address as a means of arranging further discussions with the Review Team.
- 2.5. The review process was launched on the 6th of October 2020 at Te Aute College.
- 2.6. At the launch of the review, we outlined the process that would be followed and how members could provide input to us. Some initial discussion about the detail of the Review also took place – primarily in relation to process.
- 2.7. Whare Kōrero were then held the following week, on the 13th and 14th of October, at Te Aute College and Te Kura Kaupapa Māori o Ngāti Kahungunu Ki Heretaunga respectively. These were an opportunity for groups or individual to provide us with uninterrupted presentations of their particular concerns, aspirations, ideas, or any other whakaaro they wished to share.
- 2.8. A list of groups that provided us with presentations as part of this process is attached as Appendix 1.¹
- 2.9. Following the Whare Kōrero, we also met separately with other individuals or groups who had signalled a wish to present to us. Where possible these hui were held in person, though some were also held electronically. The meeting process was extended longer than initially anticipated in the Discussion Document so that we could meet with as many people as possible. As far as we are aware, we were able to meet with everyone who requested a meeting.
- 2.10. A list of these is also included in Appendix 1.

¹ We have avoided, as far as practicable, identifying individuals who presented to us. Instead we have referred to submissions that are associated with marae or other organisations. In doing so we are aware that some presentations were made 'on behalf of' particular organisations, while others were made by individuals who associated with marae or other organisations. The exception to this approach is where we heard from particular 'office holders' in that capacity.

- 2.11. We also received a number of separate written submissions. This included submissions that had been earlier provided to HTST as part of the development of HTST's Strategic Plan.
- 2.12. These are also listed in Appendix 1.
- 2.13. A brief electronic survey was also conducted, with the assistance of HTST staff over the period from the 25th of November to the 9th of December. The results of this survey have also informed our views and are included as Appendix 2.
- 2.14. We also undertook our own independent research. This included a consideration of constitutional documents of other iwi or post settlement groups – some of which we were pointed to by submitters, and others we felt were useful to refer to ourselves. We also considered various writings on good governance practice generally, and writings on international examples of indigenous governance issues.
- 2.15. We have also considered the implications of the Trusts Act 2019 as part of this review. This Act will come into force in January 2021 and amends the current Trustee Act 1956 as well as incorporating number of common law principles that already apply to trusts into a single piece of legislation. As a result, this Act has some implications for the HTST Trust Deed and is useful to consider as part of this review process.
- 2.16. Other than the steps noted above as part of the review process itself, we have not discussed the issues that form part of this review with HTST staff or trustees. No HTST staff or trustees have been provided with early drafts of this report, nor sought to influence our thinking in developing this report. This report is our own, independent, view.

3. What We Heard

3.1. During our discussions, across all of our various hui, we heard a wide range of views and a variety of issues from members of Heretaunga Tamatea. All of these were valuable to, and have informed, our considerations.

3.2. It is not possible to fully set out all of those views here. Instead, we must summarise and distil some of the issues that underpinned these discussions. What we heard included:

- A broad acknowledgement of, and support for, the work that has gone into securing the Treaty settlement and bringing Heretaunga Tamatea to the where they are today. At the same time there was a view that there is much yet to be done in addressing the historical harms done to Heretaunga Tamatea;
- A need for the inclusion of tikanga Māori as a visible presence in these constitutional arrangements. These constitutional arrangements sit in Te Ao Māori and so Te Ao Māori should guide and shape them;
- A desire to have a rangatahi voice and presence in some form as the purpose of these arrangements was ultimately to benefit future generations;
- That a large focus of the HTST structure should be on growing the assets HTST hold. There were a wide variety of views on how this might be done, and what is important in doing so. These included ethical investment, consideration of mana whenua, ensuring visibility and accountability to members, etc;
- That a key purpose of that asset growth should be to enable the growth and rangatiratanga of marae and hapū. A central structure like HTST should grow and prosper but it should also be growing marae and hapū at the same time through distributions and other opportunities;
- A desire not to reinvent the wheel when it came to providing outcomes for Heretaunga Tamatea, but instead to build alliances with other bodies to make sure services are as efficient as possible;
- A strong focus on marae remaining as the key element in any structures. There was a particular emphasis on the rangatiratanga of marae and that need for HTST to focus on support for, and the empowerment of, marae;
- There were a range of different views about the structure of the HTST Board. Some felt it was too large and therefore inefficient and not nimble enough. A range of different options to reduce the size were put forward. Equally many felt that the current size was appropriate and that it was important for marae to have a seat at the table regardless of what that meant for size;
- A number of proposals from marae and hapū who wished to be recognised within the HTST structure. There was support from some existing marae, and individual submitters, for some of these marae – though at the same time some concern was

expressed that there was no criteria for recognition and that it may be inappropriate to acknowledge some other marae in the future;

- A variety of views regarding the relationship between Tamatea and Heretaunga. These include a desire for fairness and equity between Heretaunga and Tamatea and the ability to apply local solutions to local issues. There were range of views of what fairness and equity might look like. Equally there were strongly expressed views about the need to retain unity and a collective approach. Underpinning all of these discussions though still remained a strong focus on the rangatiratanga of marae and hapū;
- The importance of good communication. This included communication from HTST trustees to their marae, and from HTST to the membership more generally. Some pointed to where communication worked well – such as the efforts made by particular trustees. Others noted the need to improve communication and to develop a sense of involvement by members in the day to day work of HTST;
- The need for HTST to provide support to marae. That support ranged from help with concerns over water issues, developing marae governance capacity, assistance with resolving disputes within marae and hapū, and growing the economic strength of marae; and
- The need to protect taonga of Heretaunga Tamatea, which ranged from wāhi tapu, Heretaunga Tamatea history, te taiao, etc.

3.3. Importantly too, our consideration has also been informed not just by what we heard in any formal presentation or submission. We have also been informed by what has wrapped around those presentations and our hui in general – for example, karakia and waiata we also heard.

3.4. As just one example, we have particularly noted the closing words of the Ngāti Kahungunu oriori, *Pinepine Te Kura*:

Taia te waka nui, ka kai ki te kirikiri, ka kai ki te ponga. Ka kai ki te mamaku, ka kai ki te ngarara whakawae, ka kai ki te pananehu, e tama, e!

Eventually the great canoe nibbles at the sand, gnaws on the ponga log. It munches on the mamaku shoot, devours the obstructing insects, and savours the young bracken shoots, o son of mine!

3.5. We see the Heretaunga Tamatea community as being an example of a waka referred to here. This review process provides Heretaunga Tamatea with the opportunity to acknowledge te tino rangatiratanga of hapū and marae within Heretaunga Tamatea and their growing strength, confidence, and capacity. This then enables them to, collectively, overcome the obstacles in their way and continue to move forward - *e hoki whakamuri kia anga whakamua*.

4. Our Approach To Considering What We Heard

- 4.1. Having heard a wide range of views, from across the Heretaunga Tamatea membership, we then had to consider what we could do with those views.
- 4.2. Our starting points for this consideration are our Terms of Reference and clause 24 of the Trust Deed. To summarise these, we were to focus on:
 - The Trust Deed, and particularly the election process for trustees;
 - The role of marae, or groupings of marae, in the HTST structure in the context of fairness and equity;
 - Any other entities established by HTST – and as none have been established to date we have taken this to mean a consideration of whether there is a need for associated entities;
 - The relationship between HTST and external entities that may also represent Heretaunga Tamatea members; and
 - Any other issues that we felt were relevant.
- 4.3. A number of issues were raised by Heretaunga Tamatea members that sit outside of the scope that we were given.
- 4.4. In particular there were a number of matters raised that were more ‘operational’ than ‘constitutional’. These included the passionate discussion by a number of submitters on the support that HTST might provide marae on issues such as freshwater. The issue of improving communication from HTST to the membership was also important and reoccurring – but outside our scope. There was also some discussion about challenges that particular marae may be facing internally and how HTST can assist with these which fall outside of our scope. The need to ensure rangatahi engage with, and be supported by, HTST was also stressed by a number of submitters.
- 4.5. These are, unfortunately, not issues that we discuss in the context of this report. That is not to say that they are not important though, it is just that they are outside our scope. It is likely that we will have further discussions with HTST staff outside of this process to ensure that some of these issues and concerns are captured in some way.
- 4.6. In terms of the matters that do fall within our scope, we are tasked with preparing a report – i.e this report – on those issues. This report is to recommend any necessary changes to the Trust Deed, or identified issues that might need to be further discussed before any amendments can be developed.
- 4.7. We have started with a discussion of the name ‘Heretaunga Tamatea’.
- 4.8. This was an issue that was raised a number of times in the course of our discussions. We feel that this is a relevant issue for us. We see it as relating to the role of grouping of marae in the structure (an issue that we are specifically directed to consider), and if we are wrong in that then we treat it as being one of the ‘other issues’ we can consider.

- 4.9. We then set out some thoughts on the wider 'constitutional' context that HTST, marae and hapū, and other entities sit within. We see this relating to the role of marae and the relationship with other entities – but also as being broader than this and one of the 'other issues' that are relevant.
- 4.10. We then discuss our thoughts on specific elements of the HTST structure.
- 4.11. We finish with some suggestions as to next steps moving forward and a summary of our recommendations.

5. The Name 'Heretaunga Tamatea'

- 5.1. As noted above, our starting point is a consideration of the name 'Heretaunga Tamatea'.
- 5.2. We heard from a number of submitters regarding this name.
- 5.3. There was a generally consistent view that re-considering the name of the Heretaunga Tamatea Settlement Trust would be helpful, though for a variety of different reasons.
- 5.4. Some felt that the name was divisive as it entrenched a Heretaunga and Tamatea distinction at the very outset; a them and us construct that creates issues of power, relationship dynamics, and equity. Others felt that the name was an inappropriate mixing of whakapapa and ancestor names with geographic descriptions.
- 5.5. Other views were that the name was a holdover from the Crown approach to defining large natural groupings in the settlement process and therefore reinforced a 'kāwanantanga' approach as opposed to an empowering and more enabling 'rangatiratanga' approach. Revisiting the name was therefore seen as a way of shaking off some of the Crown-imposed structures and redefining the way forward on the claimant community's own terms.
- 5.6. Underlying all of these views seemed to be a desire to ensure that the name accurately described the relationships within the collective group.
- 5.7. We agree. Our view is that it would be a helpful exercise to reconsider the name of both the collective group (i.e. 'Heretaunga Tamatea') and the trust that carries that name (i.e. the 'Heretaunga Tamatea Settlement Trust').
- 5.8. We understand that iwi and hapū Māori have a number of traditions associated with names and naming processes, methods and practices. Those traditions have been profoundly impacted by colonisation and or what others have referred to as missionisation². While, even now in the 21st century, Māori groupings or entities have sought to 'name' in innovative, creative and meaningful ways, this has often been restricted by a need to adopt naming norms of a dominant culture.
- 5.9. The history of establishing and naming a 'large natural grouping' to meet Crown policies for Treat Settlement negotiations, and then the naming of an entity to hold redress from that process, reflects some of these challenges associated with naming post-1840.
- 5.10. Therefore, now that hapū and iwi are reclaiming their past heritage in multiple ways, there is clearly an opportunity to revisit the name of both the Heretaunga Tamatea Settlement Trust and the grouping (i.e. 'Heretaunga Tamatea') that it represents. We agree with many of the submitters that this is an appropriate exercise of rangatiratanga and an important step in moving past a Crown dominated process to a future that is defined by Māori.

² Steeds' (1999) research on Māori naming transcends the traditional Te Ao Māori worldview period through to the colonisation and or missionisation period. Her research attempts to trace the customary concepts that framed the 'naming' process Māori tribes enjoyed through to the early colonists, the mark that they indented on customary practices that was ultimately supported through the work of the missionaries in the early 19th century

5.11. We note that while we highlight this as an issue, and agree new names are needed, we do not see it as our role to develop those names. This should be done by marae, hapū, and the claimant community.

5.12. Therefore, we **recommend that**:

Marae, hapū, and the claimant community generally, wānanga to develop appropriate names to describe both the claimant community currently referred to as 'Heretaunga Tamatea' and then for the Heretaunga Tamatea Settlement Trust.

5.13. The challenge that this recommendation now poses for us is that we do need terms to use for the rest of our report.

5.14. We still need a way to refer to the collective grouping of marae, hapū, and claimant community that is current described as 'Heretaunga Tamatea'. We still need to refer to 'HTST'. We also do not want to influence any future discussion regarding names by suggesting alternatives now.

5.15. As a result, for this report, we will continue to refer to the collective claimant community as 'Heretaunga Tamatea' and to the PGSE that holds the settlement on its behalf as 'HTST'. But we do so simply because they are the terms currently in use and no more should be read into our use of them than that.

6. Placing HTST in a Wider Constitutional Context

- 6.1. We have been asked to undertake a 'constitutional evaluation' of HTST. In doing so we have been directed to look at the HTST Trust Deed and a number of other matters.
- 6.2. What has become clear to us is that the Trust Deed is not a 'constitution'. It is sometimes conflated or misunderstood as one, but it is not one.
- 6.3. It is a set of legal rules that defines how the trustees will hold and manage assets on behalf of Heretaunga Tamatea. While it connects with marae for some of these processes under the Trust Deed (such as elections) it does not define the relationship with marae. The Trust Deed does not interfere in the operation of marae themselves. Similarly, the Trust Deed does not define relationships with other entities.
- 6.4. Each of those entities – from marae to the Taiwhenua – have their own set of rules, trust deeds, or marae charters that govern out how they operate. They all stand as independent institutions in their own right.
- 6.5. These rules, trust deeds, and charters (including HTST's own) are creations of Pākehā law that are designed to meet the specific legal requirements of one entity only.
- 6.6. What these rules (including HTST's own) don't do is appropriately deal with how all of these individual entities or organisations relate to each other. They cannot appropriately reflect relationships that are based on tikanga-ā-iwi, kawa or whakapapa connections between individuals and groups, nor reflect how tino rangatiratanga and mana motuhake are expressed.
- 6.7. This gap is a source of frustration. We clearly heard the call, from many submitters, for constitutional structures that were more firmly rooted in Te Ao Māori and tikanga. Though at the same time there was some acceptance that legal entities, like HTST, would be needed to engage in the modern Pākehā-centric world.
- 6.8. This gap, and frustration, occurs because, despite a plethora of rules, deeds, and charters, a 'constitution' is missing.
- 6.9. We see a 'constitution' as being a high-level set of understandings of a collective group about how the institutions and individual of that group relate to each other, their roles and responsibilities, and their shared values. Nations have constitutions. Institutions within nations have rules or trust deeds.
- 6.10. Within Heretaunga Tamatea there are a number of institutions, such as HTST. But Heretaunga Tamatea, as a 'nation', as a whole, is missing a 'constitution'. It is missing a shared understanding about how those institutions relate to each other and to individuals.
- 6.11. To put this another way, we heard at our first Whare Kōrero, an analogy of how HTST is the jawbone of the whale, providing a strong setting for the marae that are the teeth.
- 6.12. But, it seems to us, that the teeth and the jaw can only function properly with sinew that binds them to the body, muscle that moves them, and skin that wraps them all together.

- 6.13. For these reasons, we think that there needs to be a fundamental discussion about what that sinew, muscle and skin looks like. What is the shape of the Heretaunga Tamatea 'nation' and the role of the institutions like HTST, marae, Taiwhenua, and other entities within it?
- 6.14. These are issues that we feel need to be discussed in more detail.
- 6.15. We see the process for that discussion as being one that must be grounded in tikanga Māori, tikanga-ā-iwi, kawa, mātauranga Māori, mātauranga-ā-iwi, and whakapapa. It should be a process that is driven by tino rangatiratanga and set within Te Ao Māori. Similarly, the outcome must be one that is relevant within Te Ao Māori.
- 6.16. Exactly what that process might look like, or what that outcome might be – whether it is a korowai that lays across HTST, marae, hapū, and other relevant entities; a whare that houses them; a whāriki for them to rest upon; or a waka to carry them – will be for Heretaunga Tamatea to determine.
- 6.17. We do, however, have some suggestions to help guide that process.
- 6.18. For example, we are mindful that a 'constitutional' discussion about what a Heretaunga Tamatea 'nation' should look like may create some concern that the autonomy of various groups might be subsumed within that wider 'nation'.
- 6.19. We wish to be clear that this is not what we are suggesting, nor recommending. We have, instead, stressed that need for recognition of the rangatiratanga and mana motuhake of the various entities within the Heretaunga Tamatea nation as a starting point. The discussion should be about how those entities relate to each other, when they might decide to act as a collective, how this occurs, and the support required for this.
- 6.20. The type of constitution for the Heretaunga Tamatea 'nation' we have in mind is not a 'top down' one that takes over the rights of groups within it and imposes its sovereignty on them.
- 6.21. Instead, it is one that might be more like a European Union, the original idea of the United States of America, or a United Nations. That is a collective of sovereign and independent states/countries who collectively develop a framework of how they can work together, with shared tikanga and kawa that applies to them all, whilst retaining their own respective rangatiratanga and mana motuhake. In this particular model, the 'nation' has only the roles and functions granted to it by the bodies agreeing to work together within it.
- 6.22. There are also precedents in the history of Heretaunga Tamatea and Ngāti Kahungunu generally, for this.
- 6.23. In times immemorial, marae and hapū would come together in the face of adversity or a major crisis. They did so without undermining each other's rangatiratanga, but instead acted in accordance with understood relationships and shared norms.
- 6.24. Later, post-1840, a number of movements began within Ngāti Kahungunu that looked to develop a more defined and unified body politic such as the Repudiation Movement, the

Te Kotahitanga Movement and Te Kotahitanga Parliament. All of these movements, along with tikanga-ā-iwi, whakapapa, and mātauranga-ā-iwi, may provide key learnings for the Heretaunga Tamatea nation today.

- 6.25. We also note that when we talk of a 'constitution' for a Heretaunga Tamatea nation we do not necessarily mean a written constitution.
- 6.26. A constitution can take many forms - both written and unwritten.
- 6.27. Some care is therefore needed when talking of a constitution not to jump to Pākehā concepts and assumptions of what a constitution is or should be.
- 6.28. Ultimately a constitution is just a set of collectively understood guiding rules, practices, aspirations, or norms.
- 6.29. These shared aspirations and norms may or may not be captured in some sort of written statement. Buy they could just equally be expressed by waiata or whakataukī. They could be depicted in whakairo and raranga. Or they could be expressed by ongoing practices. A constitution may also be a combination of some, or all, of these constructs.
- 6.30. For example, Te Whare o Rangi standing at Te Aute College can be seen as just as much a 'constitutional' expression as any written charter for Te Aute. The elements of the whare give anyone standing inside it a sense of their place in the universe, their relationship with their atua, their own tūpuna, with others who descend from different tūpuna, with mana whenua, and their connection to shared future aspirations. It is as effective, if not more so, at doing this than any written statement.
- 6.31. How a 'constitution' is set out and expressed is therefore as much a discussion for Heretaunga Tamatea as is what it should contain. That discussion should not be limited by any pre-existing assumptions about what a constitution should be.
- 6.32. Therefore, we **recommend that:**

HTST, along with the Heretaunga Tamatea membership and other institutions or entities within Heretaunga Tamatea, facilitates the development of an overarching 'constitution' for the Heretaunga Tamatea nation. That 'constitution' should be expressed in way that is meaningful and appropriate for Heretaunga Tamatea.

7. The Structure of the Heretaunga Tamatea Settlement Trust

- 7.1. Having recommended that there be a wider constitutional discussion for the Heretaunga Tamatea 'nation' as a whole, we now turn our focus to HTST as a particular entity within that nation. This discussion, i.e. how HTST structures itself internally as an entity within the wider 'nation', should not prevent or prejudice that wider discussion.
- 7.2. Our earlier summary of the presentations and submissions we received showed that there were a wide range of points made to us about the details of the HTST structure. This is also the primary focus of the task we have been given by our Terms of Reference and the Trust Deed.
- 7.3. We do not propose to individually discuss separate points from specific submissions. This is because many of these issues are inter-related and give rise to other issues.
- 7.4. Instead, we have grouped these together to discuss under the broad headings set out below. Together these capture the scope set for us by the Terms of Reference and the Trust Deed. They are:
 - The size and structure of the HTST Board;
 - The inclusion of additional marae within the HTST structure;
 - The relationship between Tamatea and Heretaunga;
 - The relationship between HTST other entities delivering services to Heretaunga Tamatea members;
 - The potential for other entities with the HTST structure - e.g. assets holding and charitable/service deliver entities; and
 - The processes for electing trustees.
- 7.5. We also make some comment on minor amendments that might be made to the Trust Deed as a result of the new Trusts Act 2019.

8. Board Size and Structure

- 8.1. We heard a wide range of quite different views about the current (and possibly the future) size of the HTST board.
- 8.2. Currently the Board consists of up to 23 trustees. Trustees are elected on the basis of marae, but once elected as a trustee they have an obligation to act in the best interest of all members of Heretaunga Tamatea rather than their marae³.
- 8.3. The board currently oversees all of the functions of HTST - from investment decisions to delivery of services to members. This places a large burden on trustees. While some functions may be devolved to subcommittees, or to management, all trustees (individually and collectively) remain responsible for those decisions and responsible for exercising their duty as trustees. In doing so they are expected to apply the same knowledge and care as 'is reasonable to expect of a person acting in the course of that kind of business or profession'⁴.
- 8.4. This is a large governing board.
- 8.5. There is some advice and commentary on good governance practice that suggests a governance board size of between 6 and 12 is the most efficient⁵.
- 8.6. However, board size, particularly for a community body, is also determined by what voices need to be represented at the board table⁶. A large board, that includes all marae equally, achieves this.
- 8.7. The role that a board is expected to play is also a factor in the appropriate size of a board. A more hands-on, executive, board will likely need to be smaller than a board whose primary role is strategic oversight.
- 8.8. There is no 'right' answer to board size. Ultimately the 'right' result is a balance between these factors, and what will be 'right' will vary significant between organisations. Different post settlement groups have struck different balances. Some PSGEs have governing boards that are as large, or even larger than HTST⁷. Some have boards that are significantly smaller⁸. A number are 'in the middle'⁹.

³ Clause 3.3 of the Trust Deed.

⁴ See section 29 of the Trusts Act 2019, which is largely a re-statement of the existing duty of care on trustees.

⁵ For example:

The New Zealand Institute of Directors recommends a board of between 6-8 (<https://www.iod.org.nz/resources-and-insights/starting-a-board/what-makes-a-good-board/#>);

The Australian Institute of Company Directors makes a number of recommendations that vary between different types of organisations (http://aicd.companymdirectors.com.au/~media/cd2/resources/director-resources/director-tools/pdf/05446-3-1-mem-director-tools-gr-number-of-directors_a4-web.ashx)

⁶ As noted in the Australian Institute of Company of Directors advice. Also other surveys, such as BoardSource's *Nonprofit Governance Index 2010* which reviewed US based not-for-profit organisations (available at https://leadingwithintent.org/wp-content/uploads/2017/09/Governance-Index_2010.pdf) found larger board size in not-for-profit or community organisations are common and can be effective.

⁷ Ngāi Tahu has a board of 18 representatives (<https://ngaitahu.iwi.nz/te-runanga-o-ngai-tahu/ngai-tahu-governance/>);

Waikato Tainui has a two-tier structure with 136 governance representatives who then appoint an executive of 12 (<https://waikatotainui.com/learn-post/governance/>)

Ngāti Awa has a board of 22 hapū representatives (<https://www.ngatiawa.iwi.nz/governance/hapu-representatives/>)

⁸ Tūhoe has a board of 7 (<https://www.ngaituhoe.iwi.nz/governance>) <https://waikatotainui.com/learn-post/governance/>);

Ngāti Whātua ki Ōrākei has a board of 8 (<https://ngatiwhatuaorakei.com/trust-members/>);

⁹ Ngāti Porou has a board of 14 (<https://waikatotainui.com/learn-post/governance/>);

Raukawa has a board of 16 (<https://raukawa.org.nz/about-our-organisation/>);

- 8.9. We heard a number of different views about where this balance should lie for Heretaunga Tamatea and HTST.
- 8.10. Some had strong views that the current structure was the right one. These views emphasised the need for marae to be at the HTST decision making table and noted that large boards were a feature of other post settlement groups. These were probably the dominant views, and the survey results suggest they may also be the more widely held views amongst Heretaunga Tamatea members.
- 8.11. But there were also strong (if not as numerous) views that the size should be reduced to be more efficient and nimble, and this might mean marae having to 'cluster' in some way to find a smaller number of representatives.
- 8.12. We also heard a number suggestions about how to avoid making any trade-offs between efficiency and representation. For example, there were suggestions that the Board could be kept at the same size, but the role changed to achieve a better balance. These options ranged from greater use of subcommittees within the existing Board structure, or greater reliance on entities sitting under HTST.
- 8.13. The need to find a balance between representation, efficiency, and role also means that the issue of board size is deeply connected with a range of other issues raised as part of this process. For example, the ability to recognise other marae in the structure potentially continues to increase the size of the board. The establishment of other entities within an HTST may change the role and function of the board and so shift where the balance lies.
- 8.14. We also note that the present board structure has primarily fallen out of the Treaty settlement process and so there has been little opportunity for Heretaunga Tamatea to fully consider some of these issues, and where this balance best sits.
- 8.15. Taking all of this into account, we have concerns at the size of the current Board in the context of the current role it plays. While it provides representation of, and oversight by, marae it is likely to be too large to as efficient and effective as possible.
- 8.16. However, we do not recommend a change to the Board size and structure at this point.
- 8.17. Marae representation and rangatiratanga is fundamental for Heretaunga Tamatea. We feel it unrealistic to suggest a change to the Board size and composition that would move away from this fundamental principle. The indications are also that such a change would never reach the required threshold required for a change to the Trust Deed. We are also concerned that the process of trying to reach that threshold would be divisive.
- 8.18. It may be that this is an issue that can be revisited in the future as the HTST structure evolves, and its place in the Heretaunga Tamatea 'nation' becomes better defined. There may be a point in the future when marae collectively feel the role they have within HTST can be different. As a result, this issue should continue to be monitored and discussed.

- 8.19. What should change at present is the type of role that HTST plays and the support structures that it relies on. We note that while there are other examples of PSGE boards of a similar size to that of HTST these are part of a wider group structure, with key roles performed by subsidiary entities. Our view is that it is important that subsidiary entities are also established within the HTST structure to carry some of the load of the Board's current responsibilities if the Board is to remain the same size.
- 8.20. We do not believe that this can be achieved by greater division of roles within the Board itself – such as through the greater use of subcommittees or a division of roles between groups of trustees.
- 8.21. The concern we have here is that this type of approach essentially aims to achieve the same type of structure as establishing other entities would – but it does so in a way that creates significant risks for the trustees and without the same benefits.
- 8.22. For example, it aims to achieve smaller decision-making groups. However, all trustees will retain responsibilities for the actions and decisions of the trust, even those made by subcommittees. Therefore, a greater use of subcommittees means a trustee continues to be responsible for decisions while having less of a role or oversight in how they are made. This risk grows as HTST grows and the numbers of decisions that must be made grow and become more complex. Using a separate entity is a way of 'ring fencing' decision making responsibility so that those who make a decision are responsible for it.
- 8.23. The use of separate entities to take on some of the functions of the Board does not necessarily need to be too different in practice from how HTST might currently use subcommittees. But it is a better way of defining risk and responsibility.
- 8.24. What further entities might look like are discussed in more detail when we turn to a consideration of other entities that might sit within an HTST structure. At this point we stress how important that discussion is also for the issue of the size and role of the Board.

9. Recognition of Additional Marae

- 9.1. At present the HTST Trust Deed references 23 marae. This list, as we understand it, reflects much earlier discussions that were part of the Treaty settlement negotiations.
- 9.2. The implication of being listed as one of the 23 marae is that, under the Trust Deed, there is place at the HTST board table for a trustee who is elected by members of that marae. In practical terms, being formally listed as a marae also has implications for who HTST engages with, and how, given the strong emphasis that Heretaunga Tamatea place on marae and the specific references of the Trust Deed¹⁰. We also heard how marae recognition by HTST has implications for how groups might engage with third parties – including Crown agencies.
- 9.3. We heard from a number of groups that were seeking recognition as an additional marae within the HTST structure¹¹.
- 9.4. A key view put forward by these groups was that the HTST structure should be one that is open to growing and evolving. Te Ao Māori is not fixed or locked into a single point in time. As a result it would be wrong to lock up the HTST structure for all eternity as just recognising the current marae. The structure needs to be able to reflect the growth that comes with a thriving, revitalised, community.
- 9.5. We heard very little, if any, disagreement with this general view that HTST should be able to adapt and grow.
- 9.6. As a result, there was also general agreement that it should be possible for other marae to be recognised as part of the HTST structure. When it came to the detail of what this might look like in practice there were some differing views on whether recognition of one or another particular marae might be appropriate at this point in time. There was a widely shared view that some clear criteria to guide discussion would be helpful.
- 9.7. We do not see it as our role to decide which marae should be recognised by HTST at this point in time. We do not feel we have the expertise to do so, and we have no criteria or guidelines to apply to that decision. But, we do note the strength of a number of presentations to us and have little doubt that if there were a criteria for recognising additional marae then some will meet those.
- 9.8. We agree that it would be helpful for HTST to have a clear process or pathway that marae might follow to become recognised as an additional marae with the HTST structure.
- 9.9. This should include clear, and easily available, guidelines or criteria that marae would need to meet at particular steps along the process. This would be helpful for HTST to ensure some consistency in approach, and also for those seeking to be recognised it

¹⁰ In particular, clause 2.3(c) sets out a key object of HTST as being supporting ‘Heretaunga Tamatea Marae’ (i.e. those marae that are listed in the Trust Deed).

¹¹ For the purpose of this discussion, we note that we have assumed that any additional marae we are discussing are representative of whānau and hapū that fall within the existing definition of Heretaunga Tamatea members in the HTST Trust Deed. As a result, there is no issue surrounding HTST’s obligation to act solely for the benefit of Heretaunga Tamatea members.

provide some certainty about a pathway forward and what needs to be shown along that path.

- 9.10. We also do not see it as our role to develop those guidelines. We feel that this is best done by HTST in consultation with the existing marae and the Heretaunga Tamatea membership.
- 9.11. But we do note that those guidelines should include both tikanga based considerations (such as whether the traditional practices of marae are being exercised, the views of associated marae, etc) and legal ones (e.g. is there a legal structure in place, does the marae membership align with the Heretaunga Tamatea membership, etc).
- 9.12. In terms of what any pathway or process for recognition might look like, and what the effect of recognition might be, there are two strands to this. The first is the practical relationship that HTST has with marae. The second is the role of marae within the context of the Trust Deed (i.e. primarily the election of trustees).
- 9.13. In particular, it is open to HTST to recognise, and build relationships with, marae that are not formally listed as marae in the Trust Deed. While the Trust Deed directs HTST to work with the listed Heretaunga Tamatea Marae¹² it also directs HTST to more generally promote cultural advancement and support and grow places of cultural significance¹³. This could be read as a power to help support other marae in some way.
- 9.14. The nature of this support and engagement is likely to be different between 'Marae' (with a capital 'M' as they are defined by the Trust Deed) and other marae to reflect the distinction within the Trust Deed between listed 'Marae' and other places of significance.
- 9.15. But any pathway or process towards inclusion of additional marae might reflect this, include some initial recognition, and set out what this level of recognition might entail. For example, this might include what type of support and assistance might be unlocked while a marae works towards greater inclusion.
- 9.16. Any greater inclusion that would recognise 'marae' as 'Marae' defined under the Trust Deed will require a change to the Trust Deed. That change would need to name the marae, increase the size of the HTST Board by an additional trustee from that marae, and possibly require other consequential changes to other parts of the Trust Deed.
- 9.17. That change to the Trust Deed would require 75% approval from Heretaunga Tamatea members who vote, in a postal ballot, for that change. This means that, even if a marae met any and all criteria that was set by HTST for inclusion this would still require wide acceptance from the Heretaunga Tamatea members to implement.
- 9.18. Therefore, any pathway or process for inclusion of additional marae should reflect that, ultimately, the decision lies with the wider Heretaunga Tamatea membership. It should also consider the implications of what might happen if HTST and a marae were to put forward proposals for inclusion that failed to meet the 75% threshold. For example, if, and when, marae might retry for recognition.

¹² At clause 2.3(c) of the Trust Deed.

¹³ At clause 2.3(b) of the Trust Deed.

- 9.19. For completeness we also note that this issue is closely connected to the size and structure of the HTST Board – given the addition of marae to the Trust Deed this will increase the number of trustees.
- 9.20. In particular, if there was a fundamental change to the HTST structure to reduce the Board size then there would be scope to also consider more flexible arrangements for how additional marae might be recognised.
- 9.21. In particular, if marae no longer performed an electorate function in the Trust Deed then recognition of additional marae would have less structural impact. It might then be appropriate to enable additional marae to be recognised in other ways – by HTST trustees themselves, by a lower threshold of Heretaunga Tamatea members, or other mechanisms.
- 9.22. We have considered whether it would be appropriate to amend the current Trust Deed to enable some greater flexibility to enable fuller marae recognition without amending the Trust Deed each time – for example by lowering the 75% threshold for a change to the Trust Deed for this one particular issue. However, we do not recommend doing so at this time. This is because, while recognition of marae is directly linked to the number of trustees it is a fundamental structural issue for HTST and so one that it is appropriate that Heretaunga Tamatea members also consider. However, this may be an option to revisit in the future if the inclusion of other marae proves difficult in practice.
- 9.23. Therefore, we **recommend that:**

HTST develops, in consultation with Heretaunga Tamatea members and existing marae, a pathway or process for recognition of additional marae within the HTST structure. Any pathway or process should:

- **Include clear criteria for marae to meet;**
- **Include the ability for HTST to initially recognise additional marae, in advance of full recognition by amendment to the Trust Deed, for the purposes of HTST providing some support and assistance to that marae; and**
- **Reflect that the full recognition of additional marae can only be achieved via amendment to the Trust Deed and the implications of this.**

10. The Relationship Between Tamatea and Heretaunga

- 10.1. One of the most challenging issues we have had to consider is the relationship between Heretaunga and Tamatea. We have heard a number of strong views on this issue from a variety of perspectives.
- 10.2. For example, there were some deeply felt arguments put forward for greater autonomy for Tamatea and for a greater share of resources. It was strongly argued that some of the challenges facing Tamatea are different from those affecting Heretaunga, and that Tamatea should take the lead in addressing Tamatea's issues.
- 10.3. We heard equally strong arguments for the continued unity of Heretaunga Tamatea and that any idea of a 'split' should be rejected. It was felt that there was more strength in acting as a collective and that the process of separating would be harmful and divisive. We also heard concerns that there was not a clear distinction between Tamatea and Heretaunga, and that some hapū and marae straddle both areas. As a result, any division would have serious consequences for those groups.
- 10.4. At times we also heard positions that were somewhat self-contradicting. For example, it was not unusual to hear of opposition from one group to a 'split' by others, and particularly the transfer of assets that might go with any split, while that same group also strongly arguing that settlement assets within their own rohe should be separated from the collective asset pool and provided directly to them.
- 10.5. It also appeared to us that some of this discussion was closely intertwined with issues arising from the settlement process - such as how redress was calculated and where particular redress assets are located. For example, we heard how the greater land loss in the Tamatea area was a factor in the calculation of the settlement quantum. We also heard how the greater population of Heretaunga was a similar factor. Both positions are, ultimately, equally true.
- 10.6. We are aware that we had a very privileged view to this debate. In particular, it occurred to us, that despite what initially appeared to be very strongly opposing views there is some common ground. There are shared aspirations between these positions, even if they are being expressed in different ways. There is much to be gained from everyone hearing the views and aspirations of each other, as we have been lucky enough to do.
- 10.7. To help further those discussions we want to set out what we feel are some important starting points, where we see some common ground, and where we feel further discussion would be particularly helpful. These are:
 - Any discussion should be forward looking. It should not be about how the settlement was arrived at and how assets currently held by HTST might be divided. This is because the result of the settlement was a complex trade-off between a number of competing issues - e.g. both population and land loss were factors, and land redress in one area was acquired based on quantum cash generated by land loss and population in other areas, etc. Decisions on where those trade-offs best lay were made at the time, under the pressure of that time, based on information and support held at that time. Those decisions were ultimately ratified by Heretaunga Tamatea

as a whole with a 94% approval. Therefore, the settlement is what it is. We cannot unscramble the eggs that made this particular omelette;

- The issue, as we see it, is not one of a 'split' between two groupings and the use of the term 'split' is particularly unhelpful;
- Instead, we see this issue as primarily one of marae autonomy, recognition of rangatiratanga, and equitable treatment between those marae. We understand this as being a common aspiration for all marae. The difference seems to come about as marae within Tamatea use that autonomy to choose to act with a more unified voice as a result of common challenges and concerns; and
- There is a difference between equity and equality. Equality centres on treating everyone the same, particularly in terms of input (for example the level of support). Equity is focused on the outcome we might achieve. It recognises that people and groups are not the same that as a result different individuals or groups may need different support to realise their aspirations or goals. In a Heretaunga Tamatea context equity suggests that different types of levels of support may be needed for different marae to achieve their own rangatiratanga.

- 10.8. Bearing this in mind, we see the way forward as one in which the HTST structure allows marae to grow and chart their own direction into the future with equitable support to do so from HTST.
- 10.9. If some marae wish to cluster in particular ways to support their growth, that should be their decision. If that leads some marae to grow in a different direction, from shared roots, then that is an appropriate exercise of their own rangatiratanga. Similarly, so is growth that might see marae becoming more closely intertwined.
- 10.10. The HTST structure should be flexible and supportive enough to reflect that marae might wish to grow in different ways and directions. At present, there does appear to be enough flexibility within the basic HTST structure that enables and directs HTST towards this aim. We note, for example, the key objective in clause 2.3(c) of the Trust Deed that HTST should support '**groupings** of Heretaunga Tamatea Marae' in an equitable way (our emphasis).
- 10.11. However, exactly how HTST might achieve this objective is likely to be a slow and evolving process. A number of options may be tried and adapted as HTST moves forward.
- 10.12. The first step may be to look to some agreement on what the common aspiration might be that HTST is working towards.
- 10.13. This might be a statement that reaffirms the clause 2.3(c) objective and places it in the context of the rangatiratanga of each marae. For example, that it is up to marae themselves to determine their own direction into the future, including how they may group together for support, and it is HTST's role to support that exercising of rangatiratanga by marae.

- 10.14. The next step may then be to clarify what any existing clusters or grouping of marae are that would best support the growth of marae and their equitable support by HTST.
- 10.15. This may be groupings of Heretaunga and Tamatea marae, it may include a third grouping, in may be a single collective group. It may include marae that wish to remain unaligned or that feel they fit within more than one grouping. Ultimately this is a decision that marae should be making themselves.
- 10.16. Alongside this discussion about how, and if, marae might cluster to support their growth is a discussion about why grouping is important. What are the issues where it is particularly important for marae to be clustered in particular ways - is it about pooling economic resources, effective delivery of social services, environmental concerns, etc?
- 10.17. This discussion may drive what some of those groupings or clusters look like. It will also then drive how HTST might respond to support those clusters. It may be that marae may choose to group together in different ways for different purposes or in response to different challenges. This discussion also then feeds into wider discussions about the HTST structure - for example:
- If one of the underlying drivers for clustering is about representation, then this may feed into continuing discussions about the size of the HTST board and the nature of representation on it;
 - If one of the underlying drivers is about how economic outcomes are delivered to marae then this may feed into discussions around the need for, and role of, asset holding structures; and
 - If one of the underlying drivers relates to delivery of social services or environmental outcomes then this may factor into a range of other discussion about the process of how HTST delivers those services, including the process of partnering with other entities or establishing new ones.
- 10.18. We note that there is a wide amount of flexibility as to how HTST might then put in place arrangements that best support marae, including any decisions they make about grouping together. Those arrangements may grow and develop over time. For example, they may begin as cluster subcommittees with HTST for particular issues, or an agreement that clusters will be equally represented on any committees or other entity appointments. Depending on how those arrangements work they may transition into more separate representational bodies for some clusters.
- 10.19. We also note our next discussion, in Section 11, on how HTST might work with other entities. This discussion should also be read an opportunity for groupings of marae to put in place their own structures to meet their own needs, and partnering with HTST to support those. Support for marae, or groups of marae, does not need to be 'top down' or internal (i.e. divisions within HTST), but can also be external/bottom up.
- 10.20. Ultimately though any form should follow the function that it is intended to achieve. The starting place remains clarifying exactly what is it marae, and clusters of marae, want to achieve and what may be needed to support this.

10.21. We are aware that we have not come to any firm conclusions here. We are mindful of the need to ensure that any outcome is one that marae develop themselves to best meet their aspirations. But we do stress that this should not be taken as an excuse that nothing might be done.

10.22. Instead, we emphasise that we feel there is a need to ensure that marae are equitably (and not necessarily equally) treated within HTST. This should include considering how marae wish to be grouped together or represented collectively – for example as Tamatea. The current Trust Deed points HTST towards such an approach in an appropriate way. Therefore, this is a discussion that should happen and should continue. If it does not it will continue to be a weakness in the HTST structure and the relationships within it.

10.23. In summary, **we recommend that:**

HTST should work to ensure that its internal arrangements, and the way it engages with external parties, reflect how marae wish to group together to support each other. The details of what this entails should be the result of ongoing discussions with marae, and be flexible enough to change over time as the aspirations of marae change.

11. The Relationship Between HTST and Other Entities Providing Services to the Heretaunga Tamatea Members

- 11.1. A focus of our review, as directed by the Trust Deed, is to consider the relationship between HTST and other entities that represent HTST members. We understand those entities to be ones such as the Taiwhenua. It also includes Ngāti Kahungunu Iwi Incorporated [NKII], even though NKII may represent wider interests. It includes groups such as the marae bodies themselves. We have also taken this direction to mean entities that currently exist as well as the potential for developing relationships with new ones that might be created.
- 11.2. Our view is that an approach to considering the relationship between these entities begins with a consideration of how these entities relate to each other in Te Ao Māori rather than in a legal sense. This level of consideration is part of the wider constitutional discussion we have signalled in our earlier discussion in Section 9 above.
- 11.3. In addition, as we have discussed in Section 10, we see the role that HTST has in supporting the rangatiratanga of marae as including the ability to recognise how marae themselves wish to work together and support themselves. As a result, to a large extent the 'who' HTST may build relationships with should be guided by these views and the type of initiatives marae might take themselves.
- 11.4. However, what has not been captured in some of these earlier discussions is a consideration of the practical or operational relationship between HTST and other entities. This is what this section considers.
- 11.5. Our starting point for this consideration is the role of HTST. This is because the types of practical relationships that HTST might have with other organisations will, or should, be driven by what HTST wants to achieve. Form should follow function.
- 11.6. We note that defining a role for HTST is an ongoing discussion and will always be so. The existing Strategic Plan for HTST sets out some views on the role and direction of HTST. These will continue to be refined in documents such as annual plans or operational steps. Eventually these will all be reviewed too. Our thinking here is not intended to predetermine these processes. It is intended to suggest ways forward that might evolve and adapt to reflect those discussions.
- 11.7. As a starting point we heard a general consensus that the role of HTST is primarily one of supporting and growing the capacity within Heretaunga Tamatea - and particularly supporting and growing marae. This is also replicated in HTST's mission, as set out in the current Strategic Plan, of "*kia whanake te kura/to nurture and grown each and every treasure*". The Strategic Plan also usefully sets out a number of pou or focus areas for this support and grown. All of this is consistent with, and enabled by, the existing structure of the Trust Deed.
- 11.8. At the same time, we also heard a strong view that HTST should avoid 're-inventing' the wheel. It was noted that other entities exist within the region that already provide a range of services to the Heretaunga Tamatea membership.

11.9. It therefore occurs to us that while HTST has a clear strategy and vision as to what it wants to achieve (and this is consistent with the views of HTST's membership) HTST does not have to achieve these goals by doing it all itself. Nor do its members expect, or want, it to do so. It may be possible for HTST to leverage off the experience, skill, and capacity of other organisations to achieve the aspirations of HTST and the Heretaunga Tamatea membership.

11.10. We therefore **recommend that:**

HTST explore putting in place formal relationships with other entities providing (or who might provide) services to Heretaunga Tamatea members. These arrangements should be aimed at achieving priority outcomes for HTST via the operations of those entities.

11.11. Exactly what those relationships might look like is something that may vary significantly between organisations, or between issues.

11.12. They might range, for example, from Memorandums of Understanding, contracts for service, secondment arrangements, to funding contacts, etc. Ultimately this will be up to HTST and other organisations to determine based on what they want to achieve and the most efficient way of doing so.

11.13. In developing those relationships, we think it is important to note:

- Any discussions should start from what it is HTST wants to achieve for its members and associated marae and hapū. The form of any relationship agreement should follow the goal, rather than a goal being forced to fit an assumption that a particular form of relationship is needed. There is scope to be innovative here;
- Those discussions, and any outcomes, should reflect the views of marae and hapū regarding what will work for them and how they wish to support each other. For example, if a cluster of marae feels that X organisation is the best vehicle to provide particular services or support to them then this is a key issue to consider;
- It should be kept in mind that there are some mechanisms that sit within the Treaty Settlement that are to be specifically exercised by HTST. For example, rights of first refusal or mechanisms like statutory acknowledgements. Any arrangements should provide for this;
- The need for any relationships to be as transparent and open as possible so that they can be seen to be free of any conflict of interests and supported by the Heretaunga Tamatea membership;
- There may be wider legal and tax implications to consider in how relationships develop. These factors also inter-relate with the discussion about the need for other structures within HTST. For example, can HTST achieve similar tax benefits from partnering with existing entities as those that would come from establishing a charitable entity within its own structure?

- The entities that HTST might consider partnering with may not necessarily all be existing entities. There may be scope for HTST to support the growth of new external entities as the most efficient way to deliver outcomes to Heretaunga Tamatea members – and we note the discussion above in Section 10.

12. The Potential for Other Entities Within the HTST Structure

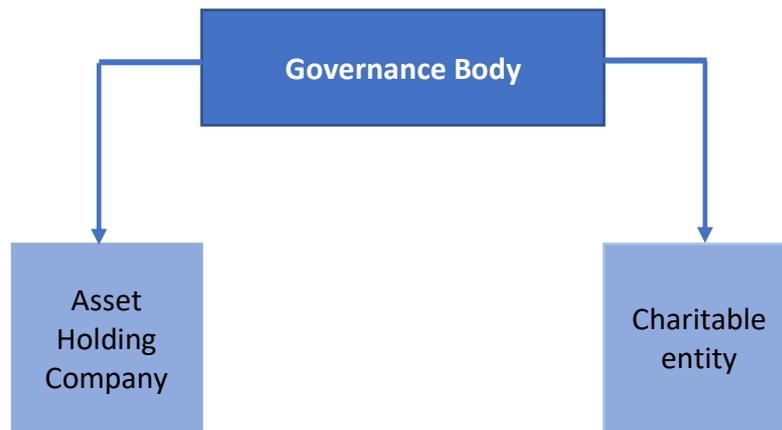
- 12.1. We have also been tasked with considering 'Trust Entities' – i.e. other entities established and controlled by HTST. Given these have yet to be established, we have taken this as a direction to consider whether there is a need to establish such other entities. For example, are they needed to assist HTST perform its function more effectively, and if so what might those entities do?
- 12.2. We note that the standard post settlement governance model is based around a PSGE trust that receives a treaty settlement from the Crown (i.e. HTST in this instance).
- 12.3. That trust is then supported by an asset holding entity, e.g. an Asset Holding Company or 'AHC'. This entity holds and manages commercial assets and is, usually, tasked with making the best financial return on those assets. It may do this within a set of guiding principles set by the PSGE. Such an entity is governed by a small board of directors that are appointed by the PSGE and work within any broad direction given by the PSGE. Appointments to the board of an AHC are generally focused on commercial experience, with possibly some representation from the PSGE trustee board as well.
- 12.4. This is not a structure that is unique to the Aotearoa/New Zealand Treaty settlement process. There is some international work that also notes the benefits of separate commercial structures in indigenous governance models¹⁴.
- 12.5. There may also be a charitable arm established as part of this standard PSGE structure. This arm generally provides charitable services to the claimant group - health, education, environmental, cultural, etc. This entity might be governed by a small board appointed by the PSGE. That board might be predominately made up of PSGE trustees, but also may include external specialists. This entity is funded by the PSGE and also may work with a broad set of principles set by the PSGE.
- 12.6. There are a number of benefits of this model (and we note that it is the model that is used by many PSGE groups, including some of the consistently most successfully performing ones¹⁵).
- 12.7. In very broad terms the aim is that the PSGE provides strategic oversight of, and sets the broad vision and direction for, the whole structure. The asset holding arm is then tasked with the primary focus on generating the best economic return with the context of that vision and direction. A charitable arm enables the group to deliver services to the claimant community while also minimising the groups' tax exposure. Because there is a mix of entities, with different tax status, the group as a whole is not locked into just performing charitable purposes (as would be the case if the main PSGE body became charitable) - but different functions can be performed by different parts of the organisation.

¹⁴ The Harvard Project on American Indian Development (<https://hpaied.org>) provides a wealth of discussion on this topic (and others). Some of the work of the Harvard Project on this issue in particular is summarised in *Chapter 7 – Managing the Boundary Between Business and Politics in Rebuilding Native Nations – Strategies for Governance and Development* (2007) Jorgensen (ed), University of Arizona Press.

¹⁵ See the reports that are produced by TDB Advisory on iwi investment performance:
<https://www.tdb.co.nz/wp-content/uploads/2019/02/TDB-2018-Iwi-Investment-Report.pdf>
<https://www.tdb.co.nz/wp-content/uploads/2020/02/Iwi-Investment-Report-2019.pdf>

Links to the governance and corporate structures of some of these groups have been provided earlier.

12.8. Such a structure often looks like the diagram below:



- 12.9. However, these are not perfect models. For example, there can be feeling that there is a loss of transparency when decision making is devolved to entities sitting under a PSGE. There may also be a sense that the entities under the PSGE might not be fully engaged with the priorities of the claimant group but 'run off and do their own thing'.
- 12.10. As with other issues we have discussed, there is no single right answer. It is instead a question of balance. Some successful post settlement iwi have struck the balance differently¹⁶ to others that have followed this more standard model.
- 12.11. In our discussions where to find this balance was the subject of a number of competing views. Some strongly felt additional entities were needed, some felt they were not, some felt one type of entity was needed but not another.
- 12.12. The Heretaunga Tamatea claimant community was also in a unique position to discuss these issues. This is because it has, collectively and through individual members, seen how other post settlement groups have fared, and because it has had direct experience of post settlement structures through the earlier fisheries settlement.
- 12.13. This issue is also closely tied to the relationships that HTST might have with entities that already exist and provide services to members. To some extent the standard PSGE model assumes it is the only, or first, post settlement structure – whereas for Heretaunga Tamatea the HTST structure sits alongside earlier structures like NKII and the Taiwhenua.
- 12.14. As a result, there is a strong sense of caution within the claimant community, and a particular reluctance to look at normal asset holding models. This is warranted, but at the same time shouldn't necessarily detract from the benefits that establishing supporting entities might provide.

¹⁶ For example Tūhoe (as linked to earlier) appear to have put in place a different model. Ngāti Toa Rangatira also have a unique model (<http://www.ngatitoa.iwi.nz/runanga/te-runanga-o-toa-rangatira>). However there should be some caution in looking to some of these models as precedents to follow. Their uniqueness may reflect unique differences in the nature of the assets returned as part of a settlement process or the need to incorporate pre-existing structures.

12.15. Our view is that Heretaunga Tamatea arrangements should be tailored to meet the aspirations of the Heretaunga Tamatea claimant community rather than simply following the standard model because it is the standard model.

Asset holding entities

12.16. Our view is that there are benefits in using an asset holding model. In particular it enables a stronger and targeted focus on the growth of the settlement assets, more efficient management of those assets, better access to external expertise, better management of risk, etc.

12.17. But the 'standard model' needs to be refined in a way that fits the Heretaunga Tamatea context. It needs to give marae greater transparency in the functioning of the asset holding entity. The operation of the asset holding company should also enable marae themselves to grow, and in a flexible way so that marae have control over their own future rather than being locked into a particular arrangement.

12.18. We are aware that other iwi have begun to look at these same issues and begun to explore ways to use asset holding entities that are different from the standard model.

12.19. For example, it may be that an asset holding entity/AHC is used as an investment vehicle not just for the PSGE but also for the marae themselves.

12.20. Under this type of approach, the AHC still manages the assets of the PSGE to achieve the best economic return. At the same time the AHC might provide the opportunity for marae, or clusters of marae, to make fixed term investments with the AHC (and there are a number of mechanisms for doing this depending on the detail of the structure). At the end of each investment term the marae may choose to reinvest again with the AHC, or explore other opportunities themselves.

12.21. This provides an opportunity for each marae to access the benefits of the economic power of the PSGE and AHC if they wish.

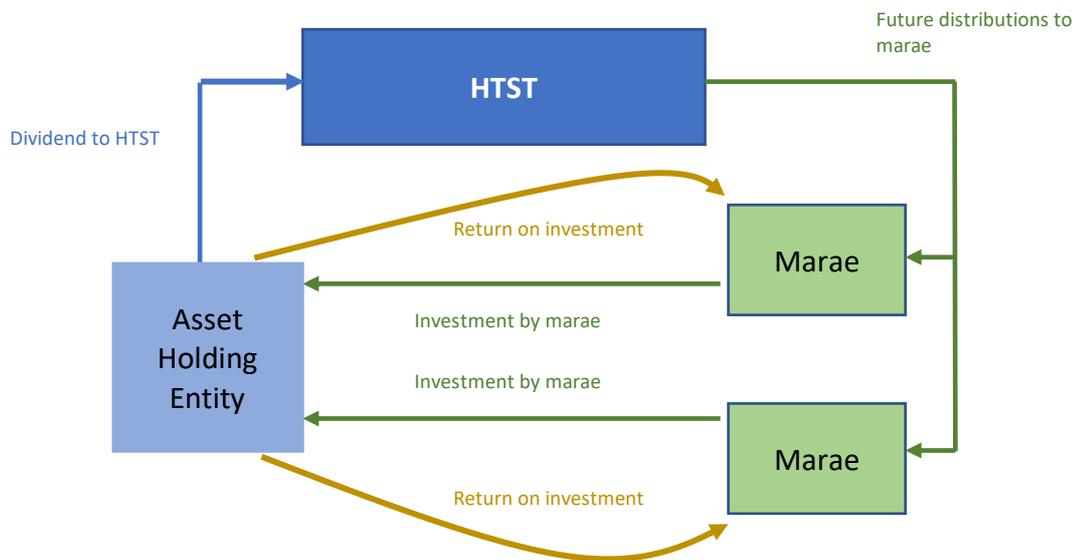
12.22. This arrangement may also be combined with any future distribution program that HTST might put in place. For example, HTST may offer the option to marae of taking future distributions immediately or as short-term investments in the AHC.

12.23. It occurs to us that there are a number of aspects about this arrangement that fit particularly well with the aspirations of Heretaunga Tamatea. In particular:

- It is driven by a recognition of marae rangatiratanga. Marae are able to choose to invest their own assets with the AHC and utilise the leverage that comes from the PSGE asset base. Or marae would be free to use their assets in other ways, or a combination of both;
- At the same time, it leverages off the collective strength of Heretaunga Tamatea generally;

- It may address some of the concern that an AHC may lack scrutiny from the wider membership. In particular as marae would effectively be deciding whether or not to be re-investing their own assets regularly with the AHC there is a pressure on the AHC to be open and transparent about their operation to those marae and therefore to the wider Heretaunga Tamatea membership. If marae are not happy with the AHC then they will simply invest elsewhere; and
- Marae stand to potentially benefit in two ways - though the increased growth in the assets of the PSGE and the potential for further distributions from that growth, and also in the growth of their own assets alongside those of the PSGE.

12.24. Such an arrangement may look like the diagram below:



12.25. We therefore **recommend that:**

HTST explores the establishment of an asset holding entity. Such an entity should be a mechanism for growing both the assets of HTST and a vehicle by which marae can independently grow their own asset bases.

Charitable, or service delivery, entities

12.26. As noted above, the standard model for a PSGE envisages the establishment of a charitable entity that delivers services to the claimant group.

12.27. However, the key difference between Heretaunga Tamatea and other PSGE is that, as already discussed, some aspects of these service delivery structures already exist because of the unique settlement pathway Ngāti Kahungunu have followed. As noted above this may mean that HTST does not need to establish these structures to serve its members, and there is a strong desire not to 're-invent the wheel'.

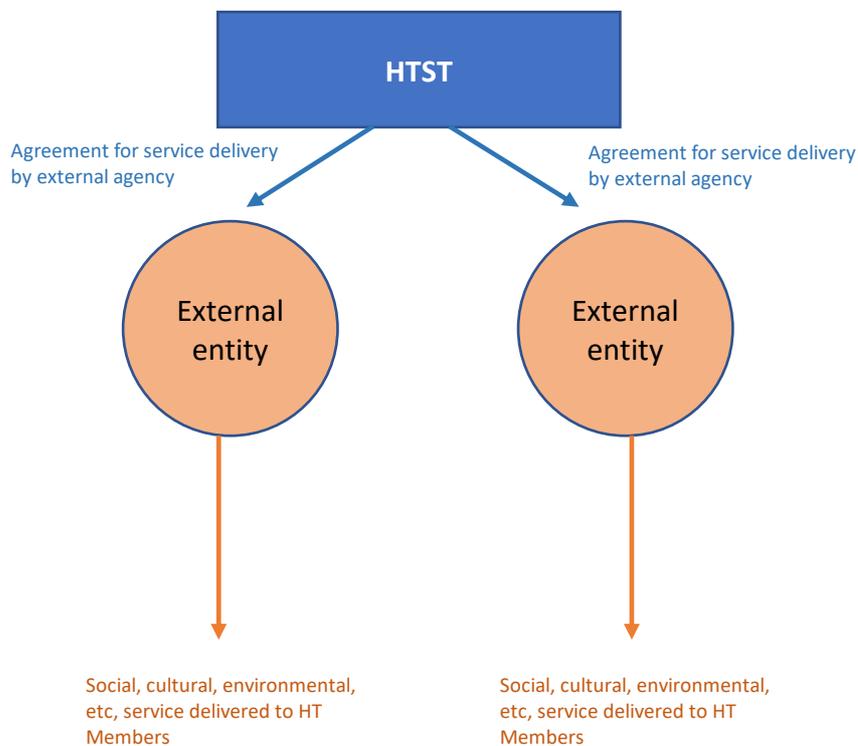
- 12.28. The difficulty this creates though is that HTST may lose the tax benefits that might come from having a charitable entity associated with it.
- 12.29. As a result, even if a charitable entity is not required to directly deliver services to Heretaunga Tamatea members, it may be that there is still some benefit in a charitable entity being established in some form. That role might be more limited than charitable entities in other post settlement structures – for example it may simply receive funding from HTST for charitable purposes and then act as a contracting agency with other entities to deliver particular outcomes. But this adds an extra layer of cost and complexity to the structure.
- 12.30. We also received a suggestion that there should be separate charitable/service delivery arms for Tamatea and Heretaunga.
- 12.31. We note our views in Section 10 that any entities HTST might establish should reflect how marae themselves wish to group in an equitable way, and the need to partner with external entities discussed in Section 11. In relation to any charitable entities established as part of the recommendations in this section, we would therefore expect that their governance reflects a strong Tamatea voice (if that is how a significant number of marae wish to cluster). We would also expect that the other entities HTST might engage with reflect the views of marae, and groups of marae, as to have to provide services to the Heretaunga Tamatea members they represent. We also are mindful of the additional costs and complexities of establishing more than one charitable/service deliver arm (if one is needed at all).
- 12.32. Therefore, at this point in time we would not go so far as recommending separate charitable/service delivery arms for Tamatea, or other clusters of marae. But this may be an issue to return to as the structure evolves and as HTST partners with external entities.
- 12.33. At this point we do not feel we are in a position to make any final recommendations on whether there ultimately is a need for a charitable entity/service delivery arm within HTST, and if so what might that look like.
- 12.34. Instead, there is significantly more work that needs to be done to make this assessment. We suggest that such an assessment should consider issues such as:
- Whether there are other entities HTST might partner with for service delivery;
 - If there are, whether they are charitable and the extent to which they able to deliver tax benefits to HTST. Our understanding is that some of the entities are charitable (such as the Heretaunga Taiwhenua) while others do not appear to be at this time (such as the Tamatea Taiwhenua);
 - The extent to which HTST will undertake service delivery itself; and
 - The costs vs benefits of establishing a charitable arm - i.e. are the savings in terms of tax outweighed by any additional costs of a new entity?

12.35. Therefore, we recommend that:

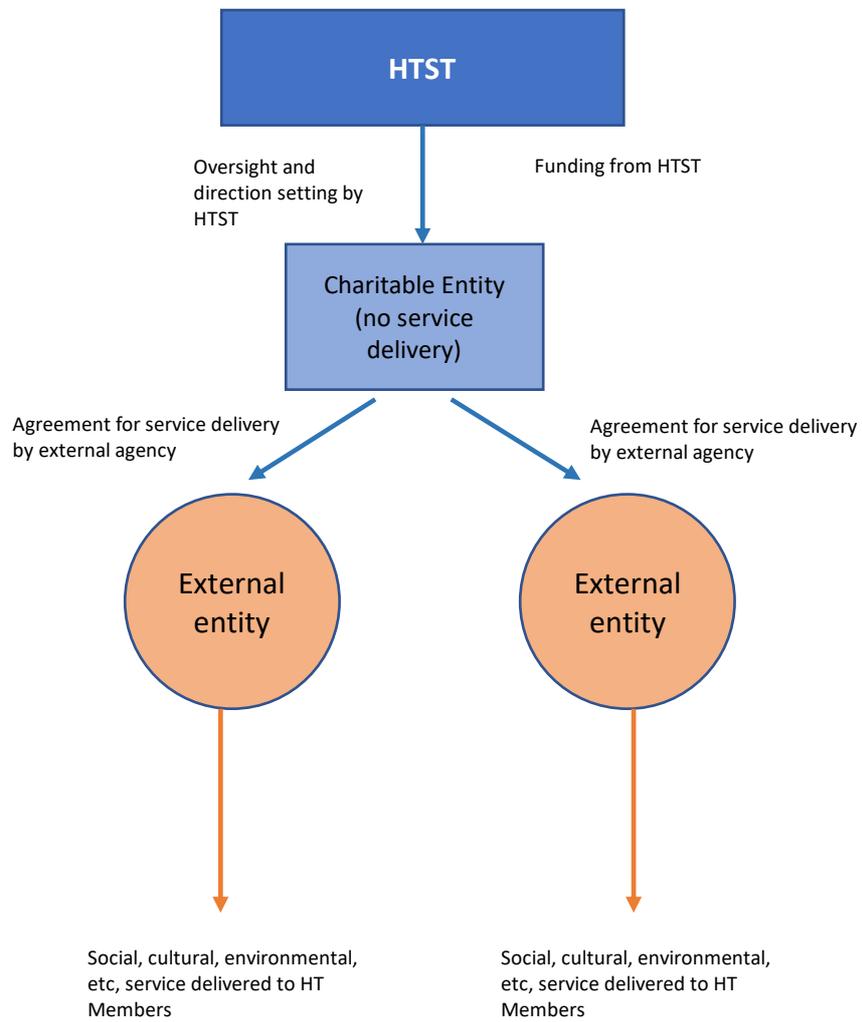
HTST considers further the need for establishing a charitable entity as part of its discussions around how it might work with other entities to deliver services to its members. That consideration should include specialised tax advice and a cost benefit analysis of establishing/not establishing a charitable arm.

12.36. There are a number of outcomes that might follow from that discussion. For completeness, and to aid that further discussion some of these possible options are illustrated in the diagrams below:

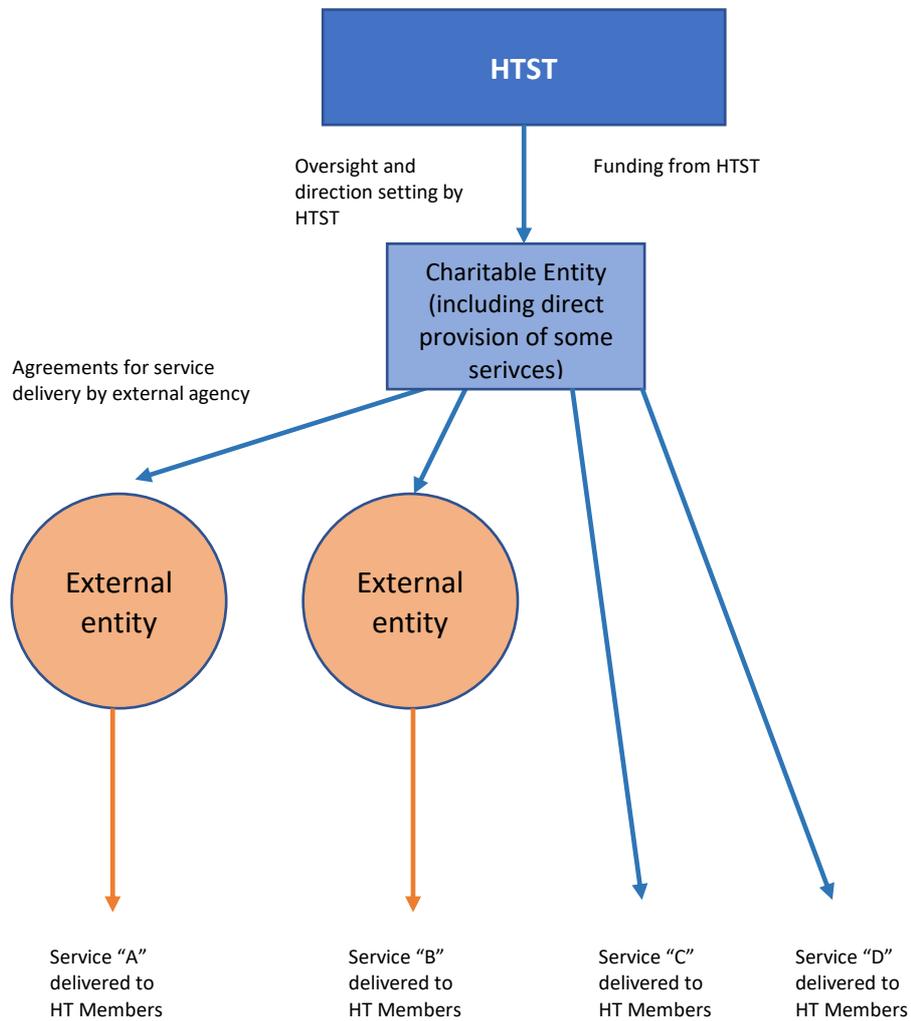
Potential structure if no charitable entity is required:



Potential structure if a charitable entity is required, but all services can be delivered externally:



Potential structure if a charitable entity is required, and HTST intends to deliver some services itself:



13. The Process for Electing Trustees

Single marae electorates

- 13.1. We heard widespread disapproval at the current arrangements for voting for trustees.
- 13.2. Currently this requires that Heretaunga Tamatea members to select one marae as an electorate in which they can vote for a trustee. We did not hear any support for this approach.
- 13.3. However, when this issue was canvassed as part of a questionnaire to the Heretaunga Tamatea membership it received 52% support (or 58% if 'no view' responses are discounted). That would not be sufficient to make a change to the Trust Deed. This result is by no means definitive, but it does suggest that views may not be as universal as it appeared from presentations to us.
- 13.4. As we understand it, the current arrangements were not intended to define whakapapa connections. Instead, they were intended to reflect a 'one person, one vote' approach and used marae as 'electorates' to do so. But there is wide concern that having to select a marae cuts across tikanga and whakapapa.
- 13.5. An alternative approach is to enable members to vote for trustee representatives of all marae that an individual may whakapapa to. This may mean that some individuals have more voting rights than others depending on how many marae an individual connects too. But it also means an individual has a say in selecting a representative for all the marae they are connected to.
- 13.6. Neither approach is right nor wrong, they are simply different approaches that reflect different assumptions.
- 13.7. Given that the current approach has been tried, and found to be an uncomfortable fit, **we recommend that:**

HTST considers amending the Trust Deed to enable members to register as being associated with, and to vote for trustees from, all marae that they whakapapa to.

Voting structure - the election cycle

- 13.8. We also heard some discussion about whether the election process should move from the current rotational election cycle, where half the trustees stand for election at any one time, to a cycle where all trustees stand for election once every three years.
- 13.9. The intention behind a rotational election cycle is to ensure that all trustee positions are not replaced at the one time. This is because this could cause a significant impact on HTST through loss of institutional knowledge.

- 13.10. The argument against a rotational approach, and for a single election, is that a rotational cycle adds additional and unnecessary costs. It may also be confusing to members, or lower participation, because elections seem to be happening all the time.
- 13.11. To some extent this issue is also linked to the size of the board. If a board is smaller there is greater competition for board roles and greater chance that a particular individual may be replaced as trustee at any election. Overall, that means a greater chance that an entire board might be replaced at one election.
- 13.12. But with a larger board, with a strong marae representation role, this risk is reduced. There is less competing for each individual board seat. In addition, the link with marae means that in practice there is often some co-ordination within marae over nominations and this further reduces competition and favours the incumbent.
- 13.13. This means that for HTST, at the current board size, there is very little risk that all 23 trustees will be replaced at any given election. There is therefore little practical benefit in a rotational election cycle.

13.14. We therefore **recommend that:**

HTST considers amending the Trust Deed to provide for a single set of trustee elections once every three years.

13.15. In saying this we note:

- That election cycles should be re-considered as part of any change to board size in the future; and
- The survey of Heretaunga Tamatea members indicated a mixed level of support for such a change (54% in favour of change, 39% in favour of the status quo) which would not be enough to make a change to the Trust Deed. While this is only indicative, it does suggest that there may be a need to clearly explain the need for a change and build further support for it.

Voting structure - membership issues

- 13.16. We have also received a number of specific comments from the HTST Returning Officer regarding the election process.
- 13.17. This included a suggestion that an update of the membership register needs to be undertaken to ensure details are correct. This will be particularly needed if changes are made to the number of marae a person can vote in.
- 13.18. It was also suggested that the process of membership validation should be looked at, and again this becomes more important if multiple marae can be selected. The ability to change marae under the current Trust Deed was also noted as needing consideration if changes are made to voting arrangements.
- 13.19. We agree with the suggestion that HTST undertake a process to update the membership register, particularly if a change is made to allow voting for multiple marae

representatives. This does not require a change to the Trust Deed though but will be an important step for HTST to undertake.

- 13.20. We agree that the process for validating membership of HTST, and membership of marae for the purpose of voting, should be given greater clarity and certainty if the Returning Officer has highlighted this as a concern. At present these issues are determined by a 'Whakapapa Committee' established under the Trust Deed and that committee has broad scope on how it approaches membership registration.
- 13.21. Our view is that there is some sense in keeping this flexibility in the Trust Deed itself. Providing a more defined or detailed process in the Trust Deed will mean that if that process does not work for some reason it can only be addressed by further Trust Deed amendments.
- 13.22. We suggest instead that HTST develop a clear set of guidelines for the Whakapapa Committee in how they approach their decision making. This should include when, and if, the committee might seek views from the marae themselves on a membership application and who at the marae comment will be sought from. Those guidelines, along with details of who sits on the Whakapapa Committee should be publicly available, and provided to marae, so that it is clear and transparent. This would provide transparency and certainty, while also ensuring that the guidelines can be amended and adapted over time.
- 13.23. We have considered the implications of our recommendations regarding the election processes in terms of the ability of registered members to change marae affiliation. We do not suggest changes to the current arrangements - as while adding some complexity the current restrictions do prevent gaming of the election process to vote for more than one marae representative by shifting marae affiliation in each year.
- 13.24. However, if changes to the election process are made, to either the ability to vote for more than one marae representative or the cycle of elections, then we agree that consequential changes would follow to ensure the process of updating or changing marae affiliation fits any new election process.
- 13.25. Therefore, we **recommend that HTST:**

Works to update its membership register to ensure the details held are as up to date as possible. This should be undertaken in conjunction with any amendments to the election process; and

Develops clearer guidelines for the operation of the Whakapapa Committee.

14. Alignment with the Trusts Act 2019

14.1. We have also noted that the Trusts Act 2019 comes into force in early 2021 and that this has implications for trusts such as HTST. We understand that HTST has been provided with separate legal advice on these issues, and that, in summary that advice notes that:

- The new Act broadly reflects existing duties and obligations on the trustees, and as a result there is no need to change these elements of the Trust Deed;
- There is no specific requirement to make changes to the Trust Deed where there are some minor inconsistencies with the Act. Any inconsistency can be addressed through policy approaches or by reading the Trust Deed in conjunction with the Act; however
- If changes are going to be made to the Trust Deed to address other issues it may be helpful to make some minor technical changes to the Trust Deed to remove any inconsistency with the new Act at the same time.

14.2. As a result, we suggest that if, and when, trustees do make changes to the Trust Deed those changes should also include:

- Updating clauses 16 and 17 of the Trust Deed, which relate to trustees' liabilities and indemnities, so that this wording mirrors that of the new Act;
- Amendments to the election process to reflect that requirement of the Act that, technically, newly elected trustees will need to have that election result and appointment confirmed by the existing trustees or some other 'person' set out in the Trust Deed;
- A requirement that a trustee's resignation is acknowledged in writing by the remaining trustees; and
- Limitations on the trustees' ability to delegate, and a requirement for ongoing monitoring of a delegation.

14.3. We therefore **recommend that:**

If other changes are being made to the Trust Deed, then minor amendments should be also be made at the same time to better align with the Trusts Act 2019.

15. Summary and Next Steps

15.1. Set throughout this discussion paper have been a number of recommendations. These are drawn together and set out in one place below. They are that:

- **Recommendation 1:** Marae, hapū, and the claimant community generally, wānanga to develop appropriate names to describe both the claimant community currently referred to as 'Heretaunga Tamatea' and then for the Heretaunga Tamatea Settlement Trust;
- **Recommendation 2:** HTST, along with the Heretaunga Tamatea membership and other institutions or entities within Heretaunga Tamatea, facilitates the development of an overarching 'constitution' for the Heretaunga Tamatea 'nation'. That 'constitution' should be expressed in way that is meaningful and appropriate for Heretaunga Tamatea;
- **Recommendation 3:** HTST develops, in consultation with Heretaunga Tamatea members and existing marae, a pathway or process for recognition of additional marae within the HTST structure. Any pathway or process should:
 - include clear criteria for marae to meet;
 - include the ability for HTST to initially recognise additional marae, in advance of full recognition by amendment to the Trust Deed, for the purposes of HTST providing some support and assistance to that marae; and
 - reflect that the full recognition of additional marae can only be achieved via amendment to the Trust Deed and the implications of this;
- **Recommendation 4:** HTST should work to ensure that its internal arrangements, and the way it engages with external parties, reflect how marae wish to group together to support each other. The details of what this entails should be the result of ongoing discussions with marae and be flexible enough to change over time as the aspirations of marae change;
- **Recommendation 5:** HTST explores putting in place formal relationships with other entities providing (or who might provide) services to Heretaunga Tamatea members. These arrangements should be aimed at achieving priority outcomes for HTST via the operations of those entities;
- **Recommendation 6:** HTST explores the establishment of an asset holding entity. Such an entity should be a mechanism for growing both the assets of HTST and a vehicle by which marae can independently grow their own asset bases;
- **Recommendation 7:** HTST considers further the need for establishing a charitable entity as part of its discussions around how it might work with other entities to deliver services to its members. That consideration should include specialised tax advice and a cost benefit analysis of establishing/not establishing a charitable arm;

- **Recommendation 8:** HTST considers amending the Trust Deed to enable members to register as being associated with, and to vote for trustees from, all marae that they whakapapa to;
- **Recommendation 9:** HTST considers amending the Trust Deed to provide for a single set of trustee elections once every three years;
- **Recommendation 10:** HTST works to update its membership register to ensure the details held are as up to date as possible. This should be undertaken in conjunction with any amendments to the election process;
- **Recommendation 11:** HTST develops clearer guidelines for the operation of the Whakapapa Committee; and
- **Recommendation 12:** Notes that if changes are made to the election process these should also include consequential changes to the ability to change marae affiliation.

15.2. For completeness we also note that we have not recommended any change to the current Board size and structure, though this should continue to be discussed. It is also an issue linked to number of other issues and recommendations.

15.3. We note that, having made our report, HTST trustees now need to consider which, if any, of our recommendations they might wish to progress further. If HTST trustees are minded to progress some of these recommendations then there is a question of how to go about this and what next steps are required. We are aware that our recommendations relate to a range of issues, some of which are interconnected and some which may be progressed separately from others.

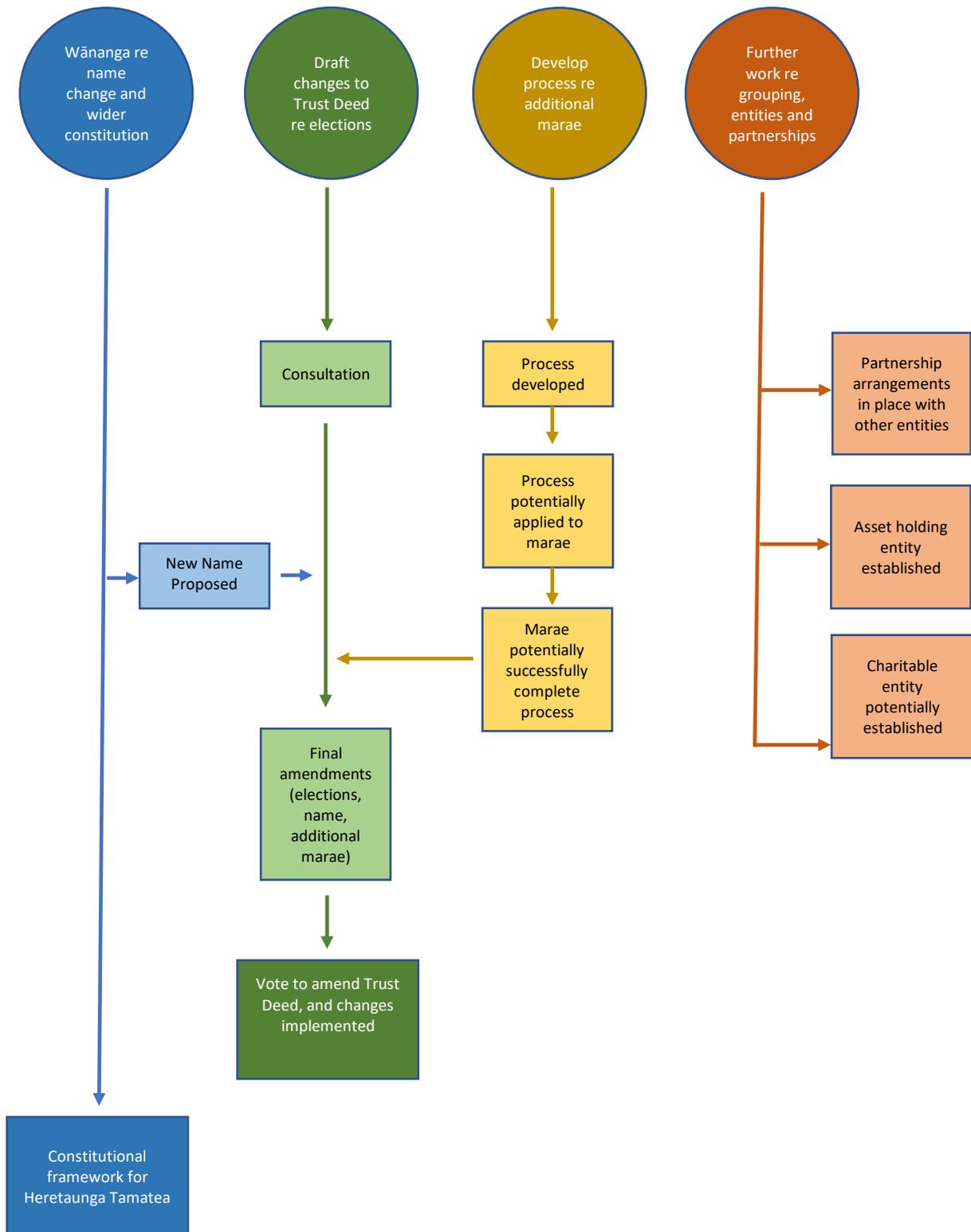
15.4. Therefore, outlining our thoughts as to the next steps may be helpful.

15.5. We see these next steps as being:

- Begin a process of wānanga with marae, hapū, and the wider Heretaunga Tamatea claimant community to examine the name and the wider constitutional framework for Heretaunga Tamatea. Ideally that process should aim to agree a name to link in with the process of making changes to the Trust Deed, while the wide constitutional discussion may take longer. This reflects Recommendations 1 and 2;
- At the same time HTST might commission draft changes to the Trust Deed that reflect Recommendations 8, 9 and 12. These draft changes might then be consulted on with the Heretaunga Tamatea membership, prior to any formal voting process, to test and build levels of support;
- HTST exploring further what is necessary to establish other entities under HTST (Recommendation 6 and 7). This should be undertaken in conjunction with work to explore what relationships might be built with existing entities (i.e. Recommendation 5) as this is a key factor in determining what a charitable/service deliver arm might look like. This work should also be informed by discussion that relates to how marae wish to group (Recommendation 4).

- HTST also develops a pathway/process and criteria for the recognition of new marae (Recommendation 3). This might be done as soon as possible so that some marae have the opportunity to test their current position against those criteria and seek recognition in the Trust Deed alongside other changes that might be made to the Trust Deed;
- The outcome of discussions surrounding a change to the name Heretaunga Tamatea, consultation on other proposed Trust Deed amendments, and any initial consideration of recognition of new marae should be captured in a final set of proposed changes to the Trust Deed. They can then be put to Heretaunga Tamatea members to vote on.

15.6. Such a process might look like that set out below:



Hei Whakamutunga Kōrero

Kanohi ki te Kanohi Pakihiwi ki te Pakihiwi

Kanohi ki te kanohi, pakihiwi ki te pakihiwi is a mantra and saying that is synonymous with the renowned local tipuna, Te Whatuiāpiti. While this saying may not have necessarily been coined by Te Whatuiāpiti, he certainly made this saying his own during his lifetime where his esteem, mana and status were testament to the manifestation of this saying through his deeds and legacy.

Kanohi ki te kanohi, pakihiwi ki te pakihiwi or face-to-face and shoulder to shoulder communication is a key principle of knowing, being and doing as Māori. It allows us to not only see who or what we are communicating with, but also to hear, feel, touch, and ‘smell’ that presence and or the relationship¹⁷. Our marae are the quintessential place today that provide and promote strong foundations for Māori and Māori culture. Marae personify the notion of *Kanohi ki te kanohi, pakihiwi ki te pakihiwi* engagement through both formal and informal encounters. In doing so, our marae encourage connection, re-connection, assertion and reassertion of whānau, hapū and iwi; all things Māori where in 2020, these phenomena remain especially important for marae and hapū across Heretaunga and Tamatea.

Returning to Te Whatuiāpiti, he was a man of mana, integrity, charisma and personality, and so when it came to leadership and important decisions being made, it was he who would convey and communicate the necessary directives or instructions; kanohi ki te kanohi, pakihiwi ki te pakihiwi, with whom ever needed to be spoken to. For instance, if there were scores to be settled with his adversaries, the only way that these could be settled was by meeting kanohi ki te kanohi, pakihiwi ki te pakihiwi to talk or to do battle. Te Whatuiāpiti’s words followed up by his actions spoke volumes of the mana that he had and held over the whole district that at one time included from North Wairarapa through to just south of Napier. Simply put, he achieved his goals as a leader for his people through this philosophy and approach to life. It is this very disposition that the review team has witnessed throughout the review process some 350 years later, as Heretaunga and Tamatea marae have come together to disclose their respective aspirations; distinct and common.

While *Kanohi ki te kanohi, pakihiwi ki te pakihiwi* is about a physical presence, it also relates to mana tangata (status) and credibility in words, actions, or intentions¹⁸. This idea of fronting up provides people with a sense of integrity, honesty, truth; tika, pono and aroha. *Kanohi ki te kanohi, pakihiwi ki te pakihiwi* adds mana to kōrero and the conveyance of key messaging. The kōrero can be challenging, confrontational, and or intimidating at times but in the same vein, rewarding, fulfilling and highly meaningful. Taking a *Kanohi ki te kanohi, pakihiwi ki te pakihiwi* approach to issues and or all matters, incites certain expectations, obligations and responsibilities that those ‘delivering the kōrero’ will stand by their words in order to maintain their integrity and credibility¹⁹; thus holding true to one’s or a group’s vision, mission and core values.

Kanohi ki te kanohi, pakihiwi ki te pakihiwi is regarded within Māori communities as critical when important issues need to be dealt with. Accordingly, this type of engagement and consultation

¹⁷ Ngata, W. (2017). Kanohi ki te kanohi: face to face in digital space. GLAMS: Libraries, Archives & Museums in Aotearoa.

https://www.waikato.ac.nz/_data/assets/pdf_file/0009/394920/chapter23.pdf

¹⁸ O’Carroll, A.D. (2013). Kanohi ki te kanohi – An examination of Māori use of social networking sites and the implications for Māori culture and society. https://mro.massey.ac.nz/bitstream/handle/10179/5323/02_whole.pdf?sequence=2&isAllowed=y

¹⁹ Mead, H.M. (2003). Tikanga Māori – living by Māori values.

allows the people in the community and or the participants at hui, to use all of their senses as complementary sources of information for assessing and evaluating the advantages and disadvantages of becoming involved²⁰, before then providing their own views, position and whakaaro on the issue or kaupapa at hand.

While phase one of the Heretaunga Tamatea review process has been a relatively short process, across three months, notions of *Kanohi ki te kanohi, pakihwi ki te pakihwi* have undoubtedly guided the process.

In looking back at our history and the past, the tenets of *Kanohi ki te kanohi, pakihwi ki te pakihwi* are highly visible. With respect to the present and the last three months, we have had the opportunity to get up close and personal on important issues that will have significant bearing on future directions of whānau, hapū and marae across Tamatea and Heretaunga holding fast to the mantra of *Kanohi ki te kanohi, pakihwi ki te pakihwi*.

This process has been empowering, enabling, and fulfilling across multiple layers and as mentioned at the outset of this review, a privilege and honour for the review team to be a part of. Moving forward, these very words adopted by Te Whatuiāpiti remain critical in the next phase of the Heretaunga Tamatea constitution review process, as well as in the greater picture of the Heretaunga Tamatea 'nation', as whānau, marae and hapū aspire to realise their goals and assert their rangatiratanga, walking in the footsteps of their tūpuna; *Kanohi ki te kanohi, pakihwi ki te pakihwi*.

²⁰ Cram, F. and Pipi, K. (2000). (IRI, in conjunction with Te Rōpū Rangahau Hauora a Eru Pōmare) (2000). Māori Research Development, Vol. 1. Māori Provider Success. Research Report to Te Puni Kōkiri, Wellington. June 2000.

Appendix 1 List of Hui and Participating Marae / Groups

HTST Constitutional Review Hui-ā-iwi, Te Aute College, October 6th 2020

Baden Vertongen
James Graham
Jo Heperi
Hui-ā-iwi attendees – discussion from the floor.
HTST Office Support

Whare Kōrero, Te Aute College, October 14th 2020

Whare Kōrero Presenters:

- Te Rongo-a-Tahu Marae
- Tamatea Taiwhenua
- Te Taitimu Trust
- Rākautātahi Marae
- HTST Returning Officer
- Tapairu Marae
- Mataweka Marae
- Pukehou Marae
- Ngāi Te Whatuiāpiti members
- Rongomaraeroa Marae
- Kohupātiki Marae

Whare Kōrero TKKM o Ngāti Kahungunu ki Heretaunga, October 15th 2020

Whare Kōrero Presenters:

- Te Kura Kaupapa Māori o Ngāti Kahungunu ki Heretaunga
- HTST Returning Officer
- Te Taiwhenua o Heretaunga
- Houngarea Marae
- NZ Māori Council
- Ōmāhu Marae
- Ngāti Hinemanu, Ngāti Te Ūpokoiri members
- Waipatu Marae
- Mangaroa Marae

Presentations by Other Groups and Individuals Over Various Dates and Venues:

- Tamatea Taiwhenua
- Ngāti Hinemanu, Ngāti Te Ūpokoiri members
- Waitangi Marae
- Te Taiwhenua o Heretaunga
- Kohupātiki Marae
- Rongo-a-Tahu Marae,
- Rākautātahi, Takapau
- Ngāti Hinemoa, Pakowhai
- HTST Chief Executive

- HTST Chair
- Korongatā Marae and Ngāti Pōporo whānau

Other, or additional, written submissions received from²¹:

- Waitangi Marae Committee (submission originally presented to the Strategic Plan review and referenced to this process as well);
- Ngā Karanga Hapū o Kairākau;
- HTST Returning Officer
- Ngā Hapū of Rūnanga Trust on behalf of Rūnanga Marae;

²¹ Note that written material was also provided during various presentations which are not listed here. These have been considered to be part of the presentations listed above.

Appendix 2 - HTST Constitutional Review Electronic Survey Questions

Q1 Kōrero Whakapā / Contact Details

- 75 Respondents

Q2 - Tō Huritau / Birthdate

- 75 Respondents

Q3 - Marae Affiliation

- 75 Respondents

Q4 - Currently, members can only vote in one Marae electorate, rather than all the Marae they whakapapa to. Should an individual member be able to register to, and vote for representatives of all marae they whakapapa to, even if that means some people may get more votes than others?

- Yes 52.24%
- No 37.31%
- Other 10.45%

Q5 - Some submitters suggested that a smaller HTST board could be achieved by clustering marae together into a number of electorates. Others suggested that it was important that representatives are elected from each marae and the large board that resulted was ok. What are your views?

- Marae should be 'clustered' for voting to achieve a smaller board 32.58%
- A large board, with representatives from each marae, is appropriate 61.29%
- Other 16.13%

Q6 - If elections were to take place on the basis of clusters of marae, should individuals be able to vote in any cluster they whakapapa to?

- Yes 57.14%
- No 26.98%
- Other 10.45%

Q7 - At present the election cycle for Trustees sees two elections every three years. This means not all the Trustees are up for election at any one time. We have heard from some submitters that one election every three years would be better. What are your views?

- One election per cycle is best, even if it means all Trustees stand for election at once 54.10%
- Keeping the current process is best so that not all Trustees stand for election at once 39.34%

- Other 6.56%

Q8 - To date, there has been a lot of discussion about the need for marae rangatiratanga and motuhaketanga. At the same time there has also been discussion about the need for kotahitanga and a collective approach on some issues. Where is the best balance between these two pressures?

- Marae autonomy is most important 15.25%
- It's a bit of both 52.54%
- Unity as a collective is most important total weighted average 25.42%
- No comment 6.77%

Q9 - Are there any other issues you would like to raise? What might they be? Why are they important?

- Yes 39.62%
- No 60.38%