



Constitutional Evaluation Review 2020

DISCUSSION DOCUMENT

Heraanga Taiao-a-te-iwi o te whanau

*Prepared by Mr Baden Vertongen
and
Dr James Graham
(Review Team)*

29 September 2020

TABLE OF CONTENTS

	<i>TOPIC</i>	<i>PAGE No.</i>
INTRO: Heretaunga Tamatea : Reviewing the Constitution		1
1. Our Journey		2
2. This Review		3
3. Thinking about the Heretaunga Tamatea Settlement Trust		5
4. Issues to consider and questions to discuss		7
Issue 1: What are the most important purposes or functions of the Heretaunga Tamatea Settlement Trust for the future?.....		7
Issue 2: What are the important voices to be heard in the HTST Board structure?.....		8
Issue 3: What relationships are important in the HTST structure, and how should they be reflected?		8
Issue 4: Assessing the performance of HTST		9
Issue 5: What are the types of skills and experience that are needed for HTST to perform its role?		10
Issue 6: What else is important to you?		10
5. What next?		10
6. Having Your Say		11



Heretaunga Tamatea: Reviewing the Constitution

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 Heretaunga, o Tamatea
I takea anōtia i Hawaiki nui, Hawaiki roa, Hawaiki pāmaomao
Te hono i wairua ki te whaiao ki te ao mārama
Tīhei mauri ora!

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

E tika ana kia tukuna atu ngā whakaaro ki a rātau mā ko ngā rau-o-piopio 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 tohengia i 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 mātai pō ki a rātau, waiho ake ko tātau te tira mātai 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 ngā marae rua tekau mā toru o Heretaunga, o Tamatea, nei anō te maioha ki a koutou me te mea ai hoki ki a tātau 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 ūna ake tikanga. Nā wai rā, i puāwai te tira hou e kiia nei, He Toa Takitini; tēnā rā tātau katoa.

Nō mātau te whakamīharo ki te tukua nei te puka kōrerorero hei pānuitanga mā te ohu e kōkiri nei i te arotakenga kāwanatanga o te Heretaunga Tamatea Settlement Trust; tēnā tātau katoa.



1. Our Journey



- 1.1. Before the arrival of Europeans to Heretaunga and Tamatea, a system of wetlands, swamps, and lakes extended from the Heretaunga plains through the Pekapeka wetlands and Ngā Puna-a-Tara to Lake Whatumā in the south. This, 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.
- 1.2. Heretaunga Tamatea's 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 / Tāurekaitai, and comprises an alluvial plains system powered by the Heretaunga and the Ruataniwha aquifers.
- 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. We were one of six Large Natural Groupings negotiating the settlement of the historical Treaty of Waitangi claims of Ngāti Kahungunu. 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-lwi, there was disquiet over the dictation by the Crown of what a Post Settlement Governance Entity [**PSGE**] must look like, the implications of a single PSGE for the smaller number of Tamatea marae, elections and representation and the size of the PSGE Board, and the terms and operation of any PSGE Trust Entities. The Negotiation Team and the Board of He Toa Takitini promised to review all arrangements to do with the PSGE in exchange for pressing forward and expediting the Settlement.

- 1.6. By late 2014 a Deed of Settlement and redress package had been negotiated and was ratified by 96% of voting Heretaunga Tamatea members. The establishment of a new PSGE, the Heretaunga Tamatea Settlement Trust [**HTST**], to receive and hold the redress was ratified by 94% of Heretaunga Tamatea members. The Trust Deed of the new PSGE included, in clause 24, a commitment to review the constitution of the PSGE to begin within two years of ‘settlement date’. This process is fulfilling that promise.

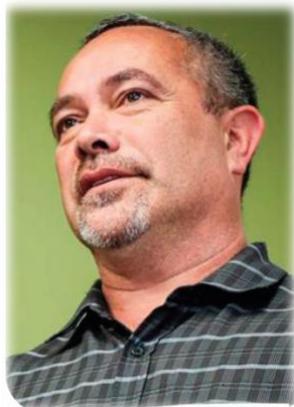


2. This Review

- 2.1 The HTST Board is committed to reviewing the Heretaunga Tamatea Settlement Trust constitutional arrangements as set out in clause 24 of the Trust Deed for HTST [**the Trust Deed**]. As noted above, this is because the review has been promised in return for the peoples trust in 2014/15 when quickly progressing the claim to Settlement, and so that some of the issues that were key at that time can be considered again without the pressure from the Crown in the settlement process. They were issues like:

- The size of the board, the appropriateness of marae representation and aspects of the election process including the marae electorate (having to declare for one marae only);
- The arrangements of marae groups inside the Heretaunga Tamatea Trust with particular concern over fairness for the smaller Tamatea rohe marae and the possibility of new marae groups emerging;
- The operations of the Board as a strictly ‘kawanatanga’ organisation and the role of assuming a ‘Tino Rangatiratanga’ stance with regard to the PSGE

2.2 To meet this requirement HTST has appointed a number of independent individuals to conduct that review [**the Review Team**]. The Review Team is made up of:



Dr James Graham. James is from Pukehou marae. He has supported Pukehou marae’s participation with HTST since its journey started in 2003 at Kahurānaki 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.



Baden Vertongen is from Ngāti Raukawa ki te Tonga. Baden is a lawyer and mediator who has worked for five years on the Heretaunga Tamatea Treaty settlement. He has been involved in the development of a number of post settlement governance entities and reviews of those structures following settlement.

- 2.3 In undertaking this review the Review Team intends to discuss issues associated with the HTST structure in detail with members of Heretaunga Tamatea and provide many ways for members to have a say.
- 2.4 This paper has been prepared by the Review Team to help guide these discussions. As you can see, the current structure of HTST has largely been driven by a mix of legal considerations, and Crown requirements as part of Treaty settlement process. The current review is an opportunity to take a step back, now that the Treaty settlement process has been completed, and check if the balance that has been struck between these requirements is appropriate in a post-settlement phase.

- 2.5 It may be that other issues or questions will come up in the course of those discussions, and the Review Team welcomes these as well.

3. Thinking about the Heretaunga Tamatea Settlement Trust



- 3.1. The current purpose of HTST is to receive, manage, hold and administer the various assets that it has received as a result of the Heretaunga Tamatea historical Treaty Settlement. It does this for the benefit of the present and future members of Heretaunga Tamatea.
- 3.2. Those assets include invested cash, land, and shared interests in a forestry company. They are also a mix of commercially focused assets and land that has been returned as cultural redress.
- 3.3. HTST is just one of a number of post settlement entities that hold some Treaty settlement redress for parts, or all, of the wider Ngāti Kahungunu community. These include Ngāti Pāhauwera Development Trust, Maungaharuru Tangitū Trust, Hineuru Iwi Trust, Mana Ahuriri Trust and Ngāti Kahungunu Iwi Incorporated.
- 3.4. HTST is a trust. This means that HTST is, essentially, simply a collection of individuals (the trustees) who have agreed to hold and manage assets on behalf of the members of Heretaunga Tamatea (the beneficiaries).
- 3.5. The Trust Deed provides that there are up to 23 trustees of HTST. They are elected on the basis of marae associated with Heretaunga Tamatea. However, once elected each trustee is required to act in the best interests of all members of Heretaunga Tamatea irrespective of marae.
- 3.6. Membership of Heretaunga Tamatea is based on whakapapa to a Heretaunga Tamatea tīpuna. Members also select a primary marae that effectively acts as an 'electorate' for the purposes of electing trustees. This means that even though individuals might whakapapa to a number of marae each person is still only able to vote once in each trustee election process.

- 3.7. The Trust Deed has a number of provisions that gives HTST the ability to establish a range of subsidiary or associated entities to help perform its objectives in the most efficient way. To date HTST has not exercised this ability but has instead been focusing on consolidating its own operation.
- 3.8. Tax is always an important driver for a body like HTST. HTST is currently not charitable, but it does have a lower tax rate than normal because it is a ‘Māori Authority’. This was also a requirement of the Crown settlement policies. It has both negatives (i.e. a higher tax rate than a charity) and positives (i.e. more flexibility in what outcomes can be provided).
- 3.9. As a trust, the ground rules for how the trustees must do things are set out in a Trust Deed. The Trust Deed also sets out the basic rules around issues like how trustees are elected, when Annual General Meetings should be held, etc.
- 3.10. Not all the rules that apply to how HTST works are set out in the Trust Deed though. There are some other legal rules that come from legislation that will apply, as well as rules that come from the common law/court decisions. There are also policies or practices that HTST might develop to guide how it works within the framework set by the Trust Deed. Tikanga is also another fundamental source of rules that will apply, in a number of ways, to how HTST is structured and works.
- 3.11. When reviewing the HTST Trust Deed it is therefore important to keep in mind that the Trust Deed needs to connect with these other rules. Also in some cases a particular rule might be written in the Trust Deed, but other times a rule might be located somewhere outside the Trust Deed.
- 3.12. This is not saying that not all issues, or rules, will be considered as part of this review – but instead it is acknowledging that sometimes the answer may sit outside the Trust Deed. For example, will it be appropriate to define a particular issue of tikanga in a legal document like a Trust Deed or should the Trust Deed point to somewhere else for the answer?



4. Issues to consider and questions to discuss



As noted above, the current structure of HTST has largely been driven by a mix of the views of Heretaunga Tamatea members, legal considerations, and Crown requirements as part of the Treaty settlement process. The current review is an opportunity to take a step back, now that the Treaty settlement process has been completed, and check if the balance that has been struck between these requirements is appropriate in a post-settlement phase.

To help with this some questions and discussion points are set out below. These are intended to start, not limit, the discussion. There are likely to be many more issues that will be raised throughout this process and we are interested in hearing all of these.

There is no single right answer to these questions. In many cases the questions are about balancing a wide range of competing factors and we are interested in both what some of those factors that need to be balanced are as well as where the balance lies.

ISSUE 1

What are the most important purposes or functions of the Heretaunga Tamatea Settlement Trust for the future?

As noted above, HTST was established to receive and hold settlement redress on behalf of Heretaunga Tamatea as part of the Treaty settlement process. An important question to start thinking about is the best future structure for HTST. If HTST is a vehicle, then we need to think about the destination so we pick the right vehicle to get us there.



⇒ ***Having now achieved the Settlement, is there a role for HTST in the Heretaunga Tamatea community in the future? If there is, then what are the types of issues, opportunities, problems that HTST should be focusing on moving into the future? If there is not, then what sort of structure (or structures) should hold and manage settlement assets?***

ISSUE 2

What are the important voices to be heard in the HTST Board structure?

The HTST structure is focused on marae as the key groupings within Heretaunga Tamatea. These are therefore the voices that are heard the most at the trustees' board table and within the organisation.



⇒ ***Is the focus on Marae still appropriate in a post settlement phase?***

Currently the HTST board is relatively large with 23 Trustees – one for each marae. However, a large board can sometimes cost more to run and slow the decision making process.



⇒ ***Is the size of the Board and current balance between representation and efficiency right?***

There may be other groups who wish to be represented at the PSGE Board table or in other decision making roles. For example other PSGEs have traditional hapū representation, Kahui Kaumatua, or youth representative panels.



⇒ ***Are there other groupings, voices, or perspectives that could be represented in decision-making roles? Who might they be? What sort of decisions should they be heard in? Why is that important?***

ISSUE 3

What relationships are important in the HTST structure, and how should they be reflected?

There are close whakapapa connections between Heretaunga and Tamatea. At the same time Heretaunga and Tamatea, and the individual marae and hapū within each, have distinct identities. Balancing both connections and separate identities is challenging – and it was particularly challenging in the past with the pressure of concluding a settlement being felt. This review process provides the opportunity to consider whether the balance that was struck during the negotiation process is still appropriate.

This review is also a chance to consider whether there are other things than can be done to recognise the connection and separate identities of groups within Heretaunga Tamatea.



- ⇒ ***What issues are important to think about when considering if a structure provides for fairness and equity between groupings?***
- ⇒ ***Does the present structure give the right, fair, balance between Tamatea and Heretaunga?***
- ⇒ ***What is important in recognising the identity of groupings within Heretaunga Tamatea. Is it the ability to have a voice on particular issues? Is it having some direct control over others?***

ISSUE 4

Assessing the performance of HTST

HTST currently performs certain functions around care of assets, developing Heretaunga Tamatea presence in Hawke's Bay and certain cultural and social functions. These are set out in the current Strategic Plan as well as the Trust Deed. This review may highlight other functions. However setting out how performance is measured is often just as important - organisations tend to focus on doing what they are measured against.



- ⇒ ***How should Heretaunga Tamatea assess how well it is doing? What should we measure HTST's performance against? How should that performance be presented to Heretaunga Tamatea members?***

Currently the HTST Trust Deed sets out details around the holding of Annual General Meetings and other hui as the main way to do this. The rules also include the types of information and reports that need to be prepared and made available by HTST trustees to the members of Heretaunga Tamatea.



- ⇒ ***Are these arrangements working? Are they providing you with the type of information you want to see about how HTST operates? What sort of information would you like to see in the future, and why?***

ISSUE 5

What are the types of skills and experience that are needed for HTST to perform its role?

Currently HTST, and ultimately the settlement assets, are managed by trustees elected on the basis of marae. This provides trustees with a strong link to marae and the Heretaunga Tamatea community. Having decision makers with that type of connection is important. But there are other skills and factors that are also important for decision-makers.

- ⇒ ***Are professional and commercial skills and experience just as important?***



Different skills and experience do not have to sit in the same type of decision maker roles. For example, decision makers who set a broad strategy for an organisation might have a different set of skills from those who are in charge of particular assets.

- ⇒ ***Are there different types of decision-making roles that require different skills and experiences? Would this be appropriate for HTST?***

ISSUE 6

What else is important to you?



- ⇒ ***Are there any other issues that you think should be kept in mind when looking at the current HTST structure? What might they be? And why are they important?***

- ⇒ ***Are there any particular details around how the current Trust Deed works – for example the details of the trustee election process – that you think could be improved? If so, what are they?***

5. What next?



- 5.1 These are hard questions. They are also not questions that have a ‘right’ answer – but instead they try to find a balance between lots of competing factors. For changes to be made, and be enduring, there will also need to be a high degree of consensus amongst Heretaunga Tamatea.

- 5.2 What do you think some of the next steps might be to help build that consensus? Which of the issues we have talked about will need a longer, consensus building discussion? Are there some issues where a ‘quick fix’ is needed in the meantime?
- 5.3 What sort of outcome from this review would be the most helpful in moving those discussions forward?

6. Having Your Say

- 6.1 The Review Team will shortly be holding hui to discuss these issues and hear any views you have. Those discussions will be open to covering other relevant issues that you might want to raise. Details of these hui will be notified by HTST shortly, and will include:



- Hui-ā-iwi Launch**

Tuesday 6 Oct 2020

Venue: Te Aute College, 100 State Highway 2, Pukehou, Central Hawkes Bay
Time: 6:00 pm – 8:00 pm
(for initial discussion and information sharing)

- 6.2 As well as hui-a-iwi we would also like to provide the opportunity for particular groups to provide us specific presentations or proposals about issues of particular concern to them. This is so we can hear and discuss those directly. We are proposing to do this on:

- Whare Kōrero – Tamatea**

Tuesday 13 Oct 2020

Venue: Te Aute College, 100 State Highway 2, Pukehou, Central Hawkes Bay
Time: 10:00 am – 5:00 pm
(opportunity for detailed presentations from marae or others)

- Whare Kōrero – Heretaunga**

Wednesday 14 Oct 2020

Venue: Te Kura Kaupapa Māori O Ngati Kahungunu Ki Heretaunga, 139 Stock Road, Flaxmere
Time: 10:00 am – 5:00 pm
(opportunity for detailed presentations from marae or others)

- Additional hui for individuals or smaller groups**

4 - 6 November 2020

(if required and by arrangement)

- 6.3 If you would like to provide a more detailed presentation outside of a hui-a-iwi, please contact us at the email address below so that we can put in place a timetable for those days.

review@heretaungatamatea.iwi.nz

- 6.4 Please note that at this stage we are planning, and hoping, to hold all these hui a-kanohi. However it may be that we will be unable to do so, or can only hold hui of certain sizes, because of changes to the COVID-19 alert levels. If this happens then we will still hold some sort of engagement on these dates – but there is a risk that how we do this may change at short notice. Details of any changes will be provided via HTST's website and social media pages.

- 6.5 If you are unable to make these hui or wish to provide the Review Team with your views directly rather than in a hui, please email us any thoughts that you have to the same email address:

review@heretaungatamatea.iwi.nz

- 6.6 A questionnaire will also be available to fill out from 19 October 2020. Visit the Heretaunga Tamatea Settlement Trust Facebook Page and Website to access it.

Visit: www.heretaungatamatea.iwi.nz

- 6.7 The Review Team is also likely to hold other meetings with groups or individuals who have particular perspectives on the HTST structure as required.

- 6.8 Once the Review Team have had the opportunity to consider all the views of, and issues raised by members of Heretaunga Tamatea, a report will be prepared for the HTST trustees.

- 6.9 The Review Team understands that this process is the first step in a wider conversation that HTST wishes to have about the future for Heretaunga Tamatea and what structures are best put in place to help achieve that future. We understand that HTST will provide more details about what might happen next, and how the outcomes of this review will fit into that process, in the coming months.

