



Meeting: Rangitāiki River Forum

Meeting Date: 2 June 2023

Item under Separate Cover

As noted on the Rangitāiki River Forum Agenda for the meeting on Friday 2 June 2023, the following item is included under separate cover:

Ngā Pūrongo Reports

Hei Pānui Anake Information Only

Agenda Item 10.5 Options for establishing a Charitable Trust

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Pūrongo Ki: Rangitaiki River Forum
Report To:

Rā Hui: 2 June 2023
Meeting Date:

Kaituhi Pūrongo: Jane Waldon – Co-Governance Secretariat
Report Writer:

Kaupapa: Potential Charitable Trust for the Rangitaiki River Forum
Purpose:

Options for establishing a Charitable Trust

Whakarāpopototanga Executive Summary

This report is to provide legal advice on the potential to set up a Charitable Trust to apply for and distribute environmental funding for projects on the Rangitaiki River.

- Toko Kapea and Indiana Shewen will be present from Tuia Group – Legal Advisors. They will be available to answer any questions and provide advice.

Ngā tūtohutanga Recommendations

That the Rangitaiki River Forum:

- 1 Receives the report, Options for establishing a Charitable Trust.**

1. He Whakamārama Introduction

In my March 2023 report to the Forum, I included a discussion on the potential to set up a Charitable Trust to apply for and administer funding for environmental projects on the Rangitaiki River. Currently the Rangitaiki River Forum (the Forum) is unable to apply for external funding to undertake environmental projects on the river, as it is not provided for in the Treaty legislation that created the Forum.

Te Maru o Kaituna River Authority do have the ability to apply for external funding (under their Treaty legislation) however we have found Council's processes to be cumbersome (mainly around managing timeframes and therefore meeting milestone dates). At the last meeting of the Forum, legal advice was requested.

2. **Legal Advice - Tuia Group**

Tuia Group in Wellington were commissioned to provide legal advice to the Rangitaiki River Forum members. That advice is attached. As noted, Toko Kapea and Indiana Shewen will be present at the hui to answer any questions and provide advice.

3. **Ngā Mahi Whai Ake
Next Steps**

No decisions will be made at this hui as this is an opportunity to ask questions and gather information. Any decision to create a Charitable Trust can be made at a later date.

Attachment 1 - Tuia Group Memorandum: Options Paper - Charitable Entity

Attachment 1



MEMORANDUM

From: Tuia Group
To: Rangitāiki River Forum – c/o Jane Waldon
Date: 29 May 2023
Re: Options Paper – Charitable Entity

Introduction

We refer to our discussions with Jane Waldon on 15 May 2023 in respect of the above matter.

Rangitāiki River Forum (River Forum) has asked Tuia Legal's advice on options available to the River Forum to form a charitable entity that will meet outcomes required by all members of the River Forum.

The River Forum is interested in incorporating a legal entity that would fit their purpose, values, and kaupapa while offering some flexibility for the possibility of additional parties being involved later (or some parties joining earlier than others).

The expectation for the structure is to enhance the River Forum's activities and have an independent legal structure to execute on social and environmental opportunities for the Rangitāiki catchment area.

In response we advise as follows:

- 1) We recommend that the River Forum establishes a Charitable trust; and
- 2) We prepare a draft Trust Deed for your review and consideration.

The establishment of a charitable trust (subject to appropriate approvals) could be set up within 2-4 months. The actual drafting process is not that long – the full charity application and eventual approval can take some time.

Background Information

The River Forum is a multi-stakeholder group focused on the sustainable management and protection of the Rangitāiki river and its tributaries.

The primary objective of Rangitāiki is to protect and enhance the environmental, cultural, and spiritual health, wellbeing and sustainable use of the Rangitāiki River and its resources, for the benefit of present and future generations.

The desired outcome of River Forum are as follows:

- *Mauri*: Mauri of the water is protected.

- *He Taiao*: We want bountiful rivers that people cherish, where native habitats and customary harvesting practices sustain people, and where native species, including whitebait and tuna (eels), abound.
- *He Tangata*: We want a balanced, connected, and respectful relationship with the rivers and resources, which will be the foundation for resilient, sustainable, and thriving communities in the Rangitāiki.
- *He Awa*: We want a clean and healthy environment, characterised by clean water, healthy ecosystems, and the return of some threatened species. We want to see people use and enjoy this environment for their spiritual, cultural, and recreational needs and to celebrate its heritage with pride.

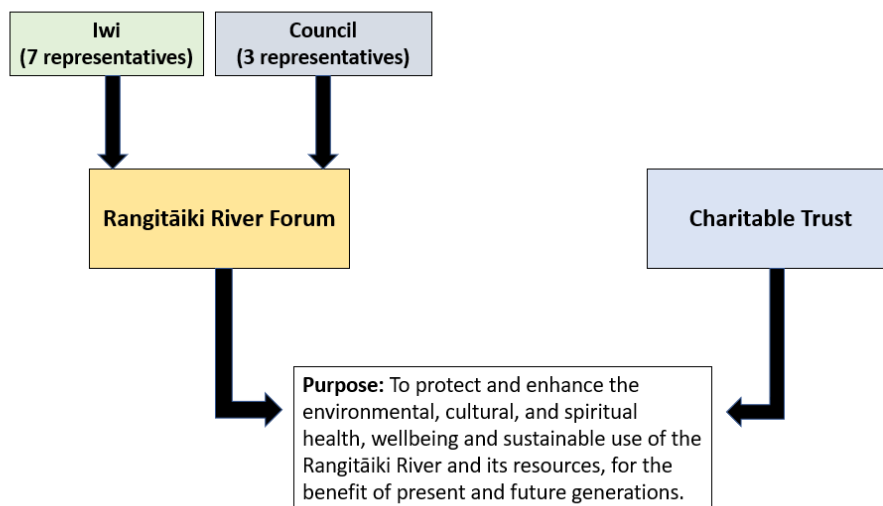
The current River Forum membership includes representatives from the following organisations:

- Te Rūnanga o Ngāti Whare
- Te Rūnanga o Ngāti Manawa
- Bay of Plenty Regional Council
- Ngāti Tūwharetoa (BOP) Settlement Trust
- Te Rūnanga o Ngāti Awa
- Hineuru Iwi Trust
- Tūhoe Te Uru Taumatua
- Whakatāne District Council
- Taupō District Council
- Ngāti Tūwharetoa

Our Recommendation – Set up a Charitable Trust

The first and most important thing is confirming what the charitable trusts’ purpose(s) are. Then you can agree a set of objectives. If you wanted to, you could simply replicate the River Forum’s current purpose and key objectives and use those a base for the application to set up a charitable trust. By adopting a list of objectives that are broad enough to align with the aspirations of all participants, the trust can be useful for all.

We have included a structure diagram below.



Once the trust is established, the River Forum could delegate or assign certain roles and responsibilities to it. Depending on the overall strategic and operational plan objectives, certain projects could be carried out by River Forum and in other cases, the charitable trust could pick up other activities. To ensure that there is transparency on what entity is responsible for, the River Forum may agree more defined and limited objectives in the trust deed so that the trust does not overtake the role of the respective members of the River Forum. For example, the Iwi will always have their mana whenua and kaitiaki roles. It is just that the charitable trust may be better placed to carry out certain projects and activities.

Trustee Responsibilities

In summary, the risk of being a trustee is akin to any other trustee or director role for an organisation. From a commercial/financial risk perspective, it would be at the at the lower threshold of risk levels. Normal prudent and professional behavioural standards would apply. If there is gross negligence or fraud, then there should be repercussions.

In some more detail:

Trustees of a charitable trust have certain financial responsibilities and obligations. These responsibilities include the prudent management of trust funds and assets, ensuring compliance with legal and regulatory requirements, and ensuring that it is achieving its charitable objectives.

Here are a few points regarding the financial implications for trustees:

Fiduciary Duty: Trustees have a fiduciary duty, which means they must act honestly, in good faith, and in the best interests of the trust. They must exercise reasonable care, skill, and diligence when managing the trust's finances.

Investment and Financial Management: Trustees are responsible for managing the trust's investments and financial affairs. They must make informed decisions and exercise prudence in managing the trust's assets. Trustees should consider seeking professional advice when making significant financial decisions.

Compliance with Trust Deed and Legal Requirements: Trustees must comply with the terms of the trust deed, which outlines the purpose and objectives of the trust. They are also responsible for complying with relevant laws, such as the Charities Act 2005.

Financial Reporting: Trustees are generally required to maintain proper financial records and prepare annual financial statements. These statements may need to be audited, depending on the size and nature of the trust's operations. Financial reporting requirements are outlined in the Trusts Act 2019 and other applicable legislation.

Liability: Trustees can be held personally liable for any losses incurred by the trust if they breach their duties or act negligently. However, trustees may be protected from personal liability if they act in accordance with the trust deed, seek professional advice where necessary, and fulfil their fiduciary duties.

Next Steps - Setting up a Charitable Trust

We have recommended that the overall purpose of the River Forum is replicated for the purposes of setting up a charitable trust. Some work will be required on clarifying the list of objectives.

Determine Trustees

Trustees will need to be selected. Trustees are responsible for managing the trust's affairs. In New Zealand, trustees must be at least 18 years old, not bankrupt, and have full legal capacity. They should be individuals who are committed to the trust's purpose and have the necessary skills and expertise. It is common to have a diverse group of trustees representing different stakeholder interests. It would be fine to have council representatives and iwi representatives become trustees. We recommend that you do not have too many trustees. All that is needed is 4-6 trustees. Opportunities to rotate trustees can be made available as and when required.

Trust Deed and Establishment of Charitable Trust

We are happy to assist with the drafting of a trust deed. The trust deed is a legal document that sets out the trust's objectives, rules, and governance structure. It should include provisions related to the trust's purpose, the appointment and removal of trustees, decision-making processes, and how any funds will be managed.

We hope that this advice is useful. Please feel free to contact us if you have any questions or if any aspect of the above is not clear to you.

Ngā mihi

TUIA GROUP

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