



Purpose-driven structures for Impact Entrepreneurs in Aotearoa New Zealand:

Considering Kaitiakitanga and Steward Ownership

Whatungarongaro te tangata,
toitū te whenua

*People will come and go,
but the land will remain*

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Stewardship and Kaitiakitanga are a crucial lens through which we need to look at business in the future – this paper makes that clear and provides a framework for how to think about these concepts within an Aotearoa New Zealand context.

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Introduction

There is a paradigm shift occurring in how we think about the role of business. Impact-driven entrepreneurs launch businesses for a *purpose* and generate *profits* so they are sustainable while they also deliver products or services that add value to society. These entrepreneurs often have an intergenerational perspective on the role that their ventures will play in solving social or environmental issues. They may frame their purpose by looking through the lens of the impact on some combination of the environment, society, their employees, customers, suppliers and other stakeholders over the long term. While they embrace the private enterprise as a powerful vehicle to deliver and scale impact, they measure success not in maximising profits, but in maximising the advance towards the purpose. At the same time, they recognise that financial sustainability is a necessity to ensure long term viability of a private enterprise. But what is the best structure for these future-looking entrepreneurs to adopt?

The challenge faced by impact entrepreneurs is that conventional corporate vehicles, governance systems, shareholder agreements, term sheets, liquidity horizons and return expectations are framed around the presupposition of *shareholder primacy*. This focus means they can be misaligned with the entrepreneurs' operating models and value systems. As a result, these structures can pull the business in directions that are more suited to the needs of the investors rather than a focus on delivering maximum value and impact to the purpose. Put simply: business of the past has often had a focus on being extractive rather than being regenerative.

In response, a growing movement of impact entrepreneurs and investors are taking up the challenge of rethinking, redesigning and reorienting available legal structures of ownership and finance to ensure "purpose primacy". Some have referred to these new ideas as the "fourth sector"¹ or "steward ownership".

Emerging models are innovating in the areas of:

- impact investor terms that focus on sustainable versus extractive returns, and creation of broader stakeholder benefit;
- multi-stakeholder inclusion in governance and/or economic rewards; and
- governance mechanisms that ensure economic viability, along with results towards, and protection of, the business purpose.

¹ The term "fourth sector" is used to describe organisations which are purpose driven and join the other three traditional sectors: The Private Sector (For profit), The Public Sector (Government) and the Social Sector (Non-profit). For more on this way of conceiving the world visit <https://www.fourthsector.org/>

Impact-driven entrepreneurs wanting to set up business in Aotearoa New Zealand have a range of legal structures to choose from, albeit a more narrow range than in other jurisdictions. In this short White Paper we will focus on the available legal structures in New Zealand as well as indigenous concepts of Te Ao Māori (the Māori worldview) and approaches. We will also chart some developments in thinking and legislation overseas on “steward ownership”. Our kaupapa (purpose) is that by explaining the options available in New Zealand in the context of the indigenous and stewardship models, entrepreneurs will be empowered to be creative and experiment in their choice of structure and surpass the for-purpose vs for-profit dichotomy.²

We welcome your comments and feedback on this White Paper and look forward to an ongoing dialogue about the concepts and options. We also welcome your engagement around advocating for possible changes to New Zealand law that could incentivise and further catalyse the addition of more purpose primacy models. We are excited and enthusiastic about what the future could hold.

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² Note: Every situation is going to be unique and different factors will impact decision making. It is not possible to simply adopt a structure off the shelf because there are so many variables at play. Among many other considerations, securities law (relating to who can invest) and tax implications will be key factors to consider in how an ownership structure is chosen and implemented.

Part I: Ways of thinking

Before we dive into the detail of structuring options, in this part we want to set the scene by talking about foundations – we will do that by looking at different ways of thinking. This is important because the structure options that can be chosen are best understood in the light of these ways of thinking about business, wealth generation and generational thinking.

Te Ao Māori

So much can be learned from the wisdom of Te Ao Māori (the Māori worldview) in approaching stewardship of land and the environment for future generations. Systemic long-term thinking is fundamental in Te Ao Māori, offering an intergenerational, sustainable and enduring approach to life, business and investment.

For Māori and many other indigenous peoples, the cosmology and knowledge systems (maturanga) do not separate people from land, water and the environment (Te Taiao).³ A fundamental element of the Māori worldview is whakapapa; whakapapa in one sense is your

genealogy, but the extension for Māori is that whakapapa includes lineage to your relevant mountain (maunga), river (awa), lake (moana) and land (whenua). This means that the land, water, mountains and creatures within your place are your direct relations or kin (whanaunga). And Māori have a teina/tuakana relationship with Te Taiao: we as people are the younger or junior sibling (teina) to the older or senior status of our tuakana, Te Taiao. The respect and value set of custodian or stewardship for land and water is one of caring for and nurturing our revered whānau as one of us – family, our elder, our ancient relative. This knowledge system is intergenerational, with ultimate respect for our ancestors – land and people – and for the future of those to come.

The concept of nature as an ancestor has been honored and reflected in New Zealand law by according legal personality to nature. In 2014 the Tūhoe-Crown settlement legislation made Te Urewera, a former National Park of immeasurable value to Tūhoe, a legal person with its own identity.⁴ This personification was repeated for

Te Awa Tupua (the Whanganui river) and most recently Taranaki Mounga (Mount Taranaki).⁵ In the cases of Te Urewera and Te Awa Tupua boards of persons are appointed to exercise kaitiakitanga (guardianship) over the land and water. They do not “own” it but actively act on its behalf and are responsible for promoting and protecting its health and wellbeing.⁶

The notion of exercising guardianship of the environment and ensuring its wellbeing and regeneration for itself and future generations can (and we would say should) be broadly applied in today’s world. When constructing a board of guardians (kaitiaki) of purpose it would suggest having appointees whose role is to actively represent the environment (Te Taiao) and future generations (mokopuna). These representatives would be necessarily forward-thinking and proactive, assuring regenerative outcomes are achieved for both.

³ In relation to indigenous wisdom of Australian First Peoples see “Sand talk, How Indigenous Thinking can Save the World”, Tyson Yunkaporta, 2019

⁴ Te Urewera Act 2014, section 11.

⁵ Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, ss 12–14. The agreement for Taranaki Mounga is in a record of understanding with Government which will form part of settlement legislation.

⁶ Other examples of guardianship of assets for people and a purpose can be found in post Treaty-settlement governance entities, usually established (or endorsed) by statute, e.g. Te Ohu Kai Moana Trust <https://teohu.maori.nz/who-we-are/about-us/>

Steward ownership

Te Ao Māori is directly relevant to the idea of “Steward ownership” which is an emerging term being used in the United States and Europe that refers to a different way (both old and new) of thinking about “ownership”. The foundational thinking is that ownership is not a commodity to simply be bought and sold, but as a responsibility to carry forward an enterprise that exists for a purpose. It derives from a constellation of principles and beliefs including shared prosperity, service and contribution, ecological regeneration, and responsibility for guardianship for the future. It can perhaps be summed up by this way of thinking: *we are not inheritors of past wealth from our parents – instead, we are guardians of the future for our children*. In some respects this is a translation of the Māori spiritual concept of kaitiakitanga into a Western legal structure in that its stewards use the tangible rights attached to share ownership as the tools to vote and protect purpose.

The specific legal structures can vary across organisations and countries. At their core, they embed the premise that corporations should contribute to some purpose beyond generating profits for shareholders and should consider holistic long-term impacts. Since conventional corporate and investment structures are more geared towards shorter term profit maximisation and shareholder primacy, it often involves thoughtful redesign of existing legal structures

to reset the goals and incentives that drive decision making in companies to guide them towards the inherent value of two key principles:

1. Profits Serve Purpose

Profits are used primarily as an engine to support a company’s purpose/mission. In other words, profits are not an end in themselves, but a means by which the purpose is furthered. Profits are needed to make the organisation sustainable but that is just one factor to be aware of. Practically, this means the profits are reinvested in the business, shared with stakeholders who are contributing to the purpose (e.g. employees, suppliers, community, customers), and/or donated to purpose-aligned charities. Both founders and investors are fairly compensated with capped or non-extractive returns/dividends.

2. Self-Governance

While investment can come and go over the company lifecycle, control of the company is not sold, it is kept with “stewards” – people who are actively engaged in, or connected to, the business and are responsible for ensuring it delivers impact to benefit and further the purpose. This typically begins with Founders and is then passed on through natural growth of the company culture and through formal governance structures that over time enhance the stewardship ethos. As such, the business is

not seen as a manager for short-term private wealth generation, but as a living system of people working towards a shared purpose.

Social Enterprise

This is a label which has been helpful to distinguish purpose driven initiatives from traditional business. Ākina have been helping empower this ecosystem of purpose driven initiatives for many years and have many resources available.⁷ Back in February 2014 the Government statement still is accurate in summarising some of the key elements, where they said:

“Social enterprises use commercial methods to support social or environmental goals. They principally reinvest surpluses in the social/ environmental purpose rather than maximising profit for shareholders and owners. Potential benefits of social enterprise include innovative responses to societal issues, new employment opportunities, and sustainable income generation.”

In our view, and the view of Ākina, the terminology is evolving very quickly and shifting towards the word “Impact” to best describe the concepts we are dealing with. We prefer the term ‘Impact Enterprise’ because that covers more than just the ‘social’ impact implied by the term social enterprise.⁸ For that reason we will mainly be talking about impact enterprises rather than social enterprises.

⁷ See the materials on social enterprise at <https://www.akina.org.nz/>

⁸ The “Structuring for Impact” report is worth reading for more details and depth on this area. See Horan, Rowland, Wilkie, Hosking and Moe, “Structuring for Impact: Evolving Legal Structures for Business in New Zealand” at <https://www.theimpactinitiative.org.nz/publications/structuring-for-impact>

Part II: Available structures in New Zealand

The following are legal structures in New Zealand available for entrepreneurs and investors who are seeking to integrate the principles and practices of kaitiakitanga or “steward ownership”. Usually they benefit from adjustment to make them bespoke and better enshrine such concepts because no existing model perfectly captures the concepts of kaitiakitanga and stewardship. We hope that new structures will exist in the future that motivate and incentivise stewardship ownership for a purpose but, for now, we must work with the tools that are available.

Limited liability companies

The most common vehicle used to run an enterprise is a limited liability company. A company is a relatively flexible vehicle that provides familiarity for investors and allows for return of profits to entrepreneurs and investors.⁹

As a starting point, a company’s commitment to purpose or mission can be illustrated at an operational, policy and procurement level rather than being embedded in constitutional documents. Many impact enterprises in New Zealand operate in this way – looking at

their company constitution would give you little idea as to their purpose and commitment to that purpose. In fact, a constitution is not even legally required and neither is there a need to say what the mission of the company is (an oversight in our legal system that we hope is one day corrected).

The risk of the approach of not enshrining mission in the company’s constitution is that directors’ duties, shareholder primacy and reporting obligations are not visibly coloured by an express constitutional commitment to purpose and a desire to account to stakeholders other than shareholders.

The alternative to create more clarity and strength is to enshrine the company’s special character into its constitution. That document is publicly available.

The key elements that those focused on impact should look to enshrine in order to differentiate themselves from a “normal” company are (i) the purpose/mission of the company, (ii) the stakeholders that will be considered when making decisions, (iii) the rights attaching to the shares, (iv) who can hold them (e.g. only those committed

to the mission), (v) commitment to reinvest a percentage of profit and (vi) commitment to reporting regularly on impact and how the purpose/mission is being achieved. These provisions can be entrenched, so far as possible, so that they cannot be easily amended later on.

In addition, shareholders can enter into an agreement with each other which should echo and compliment what the constitution provides but also set out how the shareholders will relate to each other. These shareholder agreements are not held on a public register.

Despite best intentions, this commitment to purpose is fallible in that it relies on one or more individuals to continue to hold the voting shares for the duration of the enterprise to prevent dilution of the mission or sale of the business to non-like-minded owners. When a business is successful and value grows, the temptation to sell out of steward ownership inevitably becomes even stronger. A limited liability company can be a good choice for impact-driven entrepreneurs seeking simplicity but may be more effective when implemented as part of a dual entity structure such as those considered below.¹⁰

⁹ See the recent changes to the NZBN, where entities will have the option to self-identify as a Māori business based on a number of factors. <https://www.nzbn.govt.nz/about-us/news/a-true-picture-of-maori-business-activity/>
In theory this self-identification concept could be broadened to enable entities to identify as a social, environmental or impact business.

¹⁰ See Dual Entity Structures.

Co-operative company

A co-operative is a corporate model where the workers are the owners/decision-makers and the investors are necessarily outside of this group.¹¹ The co-operative structure secures protection of the mission for so long as there are worker-owners.¹² Fonterra is a large and high profile example while a well-known example of a worker co-operative impact enterprise in New Zealand is Loomio.¹³

Capital raising through this structure is complex as equity needs to be held by workers. Although Loomio had a successful fund raising issue of redeemable preference shares, they reported that their legal structure rendered investment so difficult that they were required to rethink their legal structure to remain competitive in their tech market.¹⁴

Limited Partnerships

Basically it involves a “General Partner” which is responsible for the liabilities and the debts of the partnership and also “Limited Partners” who are also liable but only for the amount they put in. There are tax reasons why limited partnerships

may be used and advice should be taken. But they provide a flexible structure particularly in the context of several different entities wanting to work together. We often see this form of entity set up to pursue impact investing opportunities.¹⁵ To embed the principles of stewardship, partnership agreements can be tailored to reflect the aforementioned elements in an LLC structure, to reflect the purpose for which the partnership exists and how profits will be used to serve purpose.

Incorporated Society

Incorporated societies have purposes and a membership base committed to those purposes. However, they are primarily used for non-profit structures such as amateur sports clubs, as there is no ability for members or investors to share in profits. They can become politicised as officers are voted in. We mention them because in some contexts they could be useful, but for impact-driven entrepreneurs it is less likely they will be appropriate.

B Corp status

B Corp status is available in New Zealand for businesses that undergo a rigorous assessment

and certification process. This does not create a different type of legal entity, rather it is an objective stamp of approval, which is internationally recognised, on an existing enterprise. The status creates a market incentive for companies to become and remain certified. To be certified as a B Corp an enterprise must achieve a minimum score on the B Impact Assessment, which assesses the business's impact on workers, customers, community and environment and requires them to publicly report their impact. To be a B Corp a business must adhere to certain terms which include considering the impact of board decisions on a broad range of stakeholders and recertifying the business within 90 days of undergoing a change of control.

There are 33 certified B Corps in New Zealand at the time of writing. While the certification is helpful to show commitment to purpose, B Corp status by itself is not capable of achieving protection of the mission.¹⁶ Companies that have the status have shown a commitment towards considering factors which most companies do not, so we include it here for that reason.

¹¹ Co-operatives are on one end of the spectrum and for profit is on the other end. Organically Grown Company is ‘just right’ with the appropriate balance of power and economic benefit, see https://medium.com/@aner_55228/goldilocks-and-the-three-term-sheets-94b68a9fc7e6

¹² For resources on co-operatives have a look at the Cooperative Business New Zealand site here <https://nz.coop/>

¹³ <https://www.theimpactinitiative.org.nz/case-studies/loomio>

¹⁴ Horan, Rowland, Wilkie, Hosking and Moe, Structuring for Impact: Evolving Legal Structures for Business in New Zealand, see <https://www.theimpactinitiative.org.nz/publications/structuring-for-impact>

¹⁵ For more on Limited Partnership see <https://lp-register.companiesoffice.govt.nz/help-centre/about-limited-partnerships/what-a-limited-partnership-is/>

¹⁶ Note there is a significant leap forwards for B Corps in Australia where they have introduced a new legal requirement where their constitutional documents must contain a commitment to consider the impact of their decisions on all stakeholders. It is hoped that New Zealand will consider and adopt an equivalent mechanism. <https://www.bcorporation.com.au/legal-requirement>

Charitable entity

In New Zealand it is possible for impact-driven entrepreneurs to choose a charitable overlay to their legal entity. In New Zealand there are currently around 27,000 registered charities. Any type of company, trust or incorporated society could have such a charitable status. One of the major advantages of being a charity is that your charitable purpose and mission is enshrined in your entity's governing documents and cannot be 'undone'. Also, a charitable entity can exist in perpetuity.

It is necessary to be able to bring the mission and purpose of the entity under one of the four "heads" of charity – advancing education, reduction of poverty, advancing religion and purposes beneficial to the community. If a company's purpose fits within one of these categories, it may be possible to apply for charitable status. It is worth emphasising that "beneficial to the community" has been interpreted narrowly and doing something that is nice or helpful does not necessarily mean that it will be charitable at law. While law of charities evolves with societal pressure and change, these four categories do not reflect all purposes which a mission-driven impact entrepreneur may objectively pursue for societal good. For example,

many of the United Nations Sustainable Development Goals would not be considered a charitable purpose.

Charities are well understood to be "for good" in advancing a charitable purpose. Being a registered charity is a mark of regulated approval, making grant funding easier to attract than for a non-charitable entity. Being a charitable entity also confers an exemption from income tax and the ability to issue tax deductible receipts to donors which incentivises giving to the cause. But there are trade-offs, the main one being that there cannot be private gain for individuals or other non-charitable organisations. This does not prevent a reasonable salary being paid for services, but it would prevent a charitable company paying dividends to non-charitable shareholders, which could limit capitalisation strategies, or providing benefits to people other than for a charitable purpose, which could curtail broader stakeholder engagement.

In terms of generating revenue, charities in New Zealand are able to trade and may trade in a business unrelated to their charitable purposes, unlike the rule in many other jurisdictions. In terms of fundraising, charities can borrow and pay interest but are not attractive to an equity investor as there can be no upside unless the investor is itself charitable.

While an entrepreneur might not naturally think of charity structures for their ventures it is still true that for the right project a charity structure can provide unique benefits. It really depends on the source of funding for the initiative – an entrepreneur may find that there is grant funding or donations which are available to a charitable entity whereas a private company cannot access such funding streams.

Private trusts

New Zealand law currently provides for private trusts as well as charitable trusts.¹⁷ Unlike a corporate entity, a trust is not a separate legal person, it is a relationship between the trustees (the stewards of the assets) and the beneficiaries, or in a charitable trust, the charitable purposes. A trust can trade, but has no facility for equity investment (that is, it cannot issue shares).

While New Zealand has a number of specific statutory examples of non-charitable purpose trusts, for example, community trusts, electricity consumer trusts, several categories of Māori land trust, there is no general recognition of a non-charitable purpose trust. Nevertheless, a private trust can be validly established provided that there is an intention to create the trust (i.e. divestment of the assets from the former holder to the trustees), there is trust property and there are people that stand to benefit from the trust

¹⁷ A more comprehensive legislative framework for trusts is coming into force in January 2021 – the Trusts Act 2019 – replacing the Trustee Act 1956.

and hold the trustees to account. A trust that holds assets such as company shares for the benefit of one or more well-defined groups of stakeholders could be a valid express trust, as in the case of employee share trusts.¹⁸

A trust with beneficiaries that can hold the trustees to account (i.e. natural persons, entities or organisations) can currently exist for 80 years, but that will be extended to 125 years in January 2021. Trusts with charitable purposes (the four heads described above) can exist in perpetuity.

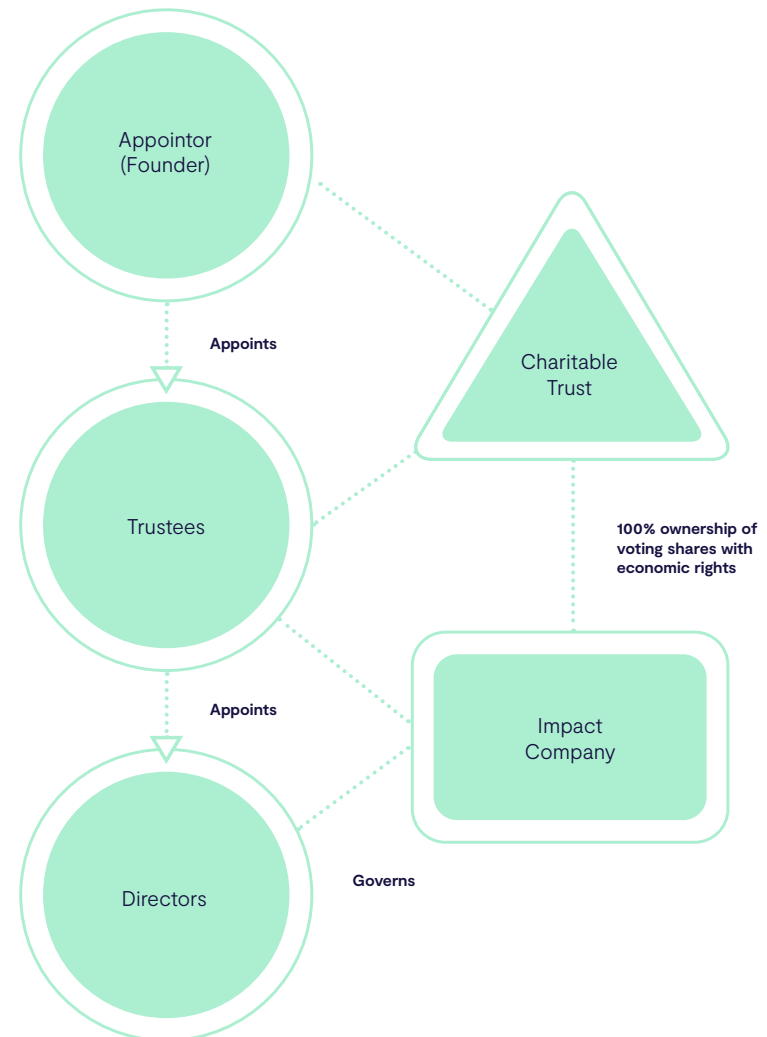
Dual entity structures

For profit company with shares owned by charitable trust

In New Zealand we only have companies limited by shares and shares need to be owned. This is in contrast to many jurisdictions that have companies limited by guarantee which do not have a separate tier of ownership. A common structure for an impact driven enterprise is to have a charitable trust owning the shares in a for-profit company.¹⁹ This dual-entity structure enables the business to raise funds from investors, while also contributing such profits as they choose to a charitable organisation by way of dividend or donation. If their constitutions are appropriately worded and they are carrying on their business for the benefit of the charity they have traditionally been able to claim a tax exemption on business income. IRD has recently changed their position and requires that a business claiming this exemption needs to themselves register as a charity.

It is sometimes considered a benefit to have a charity within an otherwise for-profit structure (separate but aligned to the for profit side of the endeavour) to be able to attract grant funding for the underlying goods or services provision. This comes with an extreme health warning as it poses a risk to the charity's tax exemption. If this sort of structure is chosen then it is important to ensure independence between the charity and company. Tax advice is highly recommended.

Example:



¹⁸ For those who would like to explore Employee Ownership Trusts which are private purpose trusts whose designated beneficiaries are the employees, we suggest looking at Graeme Nuttall's work in the UK here <https://esopcentre.com/what-is-employee-share-ownership/employee-ownership-trust/> as well as the work of Chris Michael in the United States here <https://www.eolaw.com/what-is-an-eot>

¹⁹ Examples are Choice or Patu, see Structuring for Impact above at note 8.

Charitable company owned by charitable trust

It is possible for an enterprise to have a dual charitable entity structure. This will be necessary if the primary trading entity is a charitable company with the shares needing to be held by another charitable entity.²⁰ There will be situations where this will be an appropriate solution – for example, it can be used to ring fence liability with assets owned by the trust and the risk taken on by the business (if it falls over, the trust can continue).

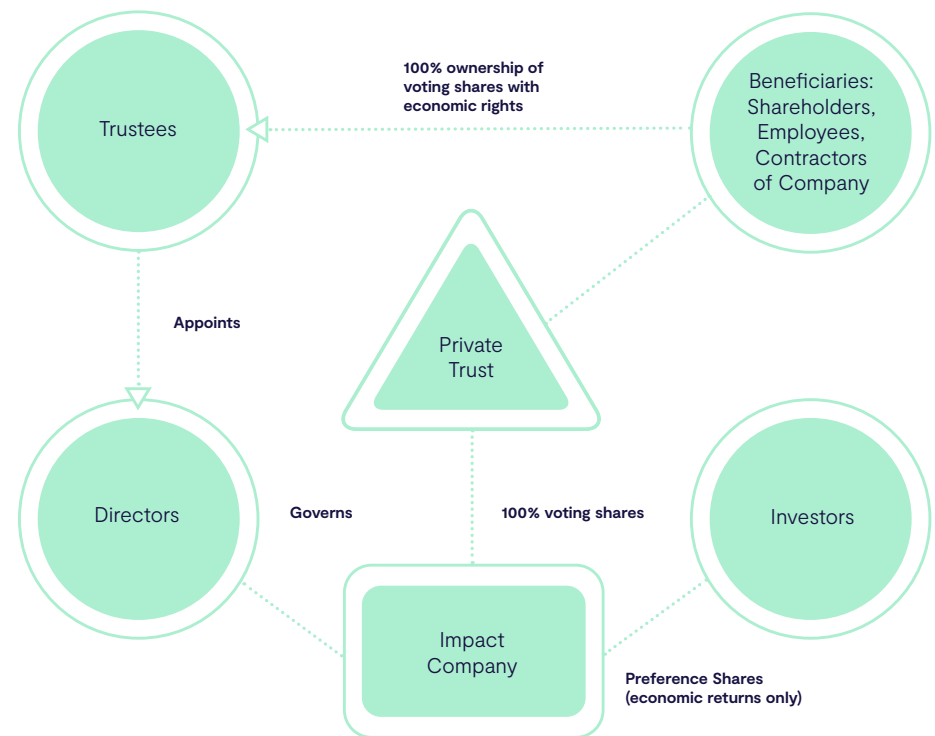
For profit company with shares owned by a private trust

Voting shares in a purpose-driven company could be held in a trust or trusts for one or more groups of stakeholders, for example, a trust for employees of and contractors to the business. Any decisions about amending the constitution, appointing directors, issuing more shares, sale of the shares, must be agreed to by the trustee shareholders. When exercising those voting rights, the trustees of the trust (as stewards of the shares), must act in the best interests of their beneficiaries. In carrying out their functions they must take into account the context and objectives of the trust(s), which can and should, in these circumstances, be written into the trust deed(s).

Trustees are actually the ideal stewards of assets for a purpose, whether the purpose be to ensure there are funds for a future generation of a family to all attend University or whether it is to prevent decisions being made that prejudice its beneficiaries. Trustees are bound by fiduciary duties and held to a high standard of care in their governance and administration, supported by both law and equity.

However, the difficulty with trustees of a private trust as stewards as opposed to trustees of a charitable trust is that they are trustees for individuals rather than for a purpose. The question of ‘what is in the best interests of the beneficiaries’ can become difficult if a buyer swoops in with a cash offer for the company. Perhaps this could be alleviated by having a broader range of beneficiaries for whom adherence to the mission has greater value than a dollar figure.

Example:



²⁰ Examples are Kilmarnock Enterprises or Kaikoura Whale Watch, see Structuring for Impact, above at note 8.

Part III: International example

Company with shares owned by a Perpetual Purpose Trust

There are multiple statutory specific options overseas for companies to combine mission and profit, including benefit corporations in the United States, community interest companies in the United Kingdom and other such social purpose corporations in other parts of the world. To our knowledge what is discussed here has not been implemented in New Zealand, but we chart the key ingredients in the hope that it will be soon.

The key elements

There are dual-entity structures where a company has a carefully designed structure of different classes of share with different rights attached. The company's constitution would record the primacy of purpose and stakeholders (being suppliers, staff, customers, community and impact investors). It would split ordinary shares into "A" shares with voting rights that would be held by people active in the business and closely related to the mission and potentially a "Golden Share". The Golden Share has the

right to veto a sale of the company or to veto any other changes to the structure that could undermine the separation of voting rights and dividend rights, or commitment to the mission/purpose. This would typically be held by an outside organisation, such as a not-for-profit or a Trust. "B" Shares have economic rights such as non-voting redeemable preferred shares and can be issued to investors, founders or employees. The terms of the shares can be designed in many ways, for example, simple variable dividend/profit sharing rights, or fixed return with a cap, or revenue/royalty share with appreciation.

We have recently been presented with a creative dual-entity structure for a business in Oregon. Organically Grown Company (OGC), a long-standing profitable organic produce retailer with a strong commitment to purpose, transitioned to a perpetual purpose trust ownership model.²¹ OGC established the Sustainable Food and Agriculture Perpetual Purpose Trust, a trust that can exist indefinitely and whose purpose is to support the operations of values-aligned independent organisations that are advancing sustainable agricultural practices and food systems. The trust owns the voting shares of OGC, and the trustee

owner mandates that OGC prioritises the mission and stakeholders over profit maximisation and shareholder return. Capital can be raised by the issue of shares with economic rights only.

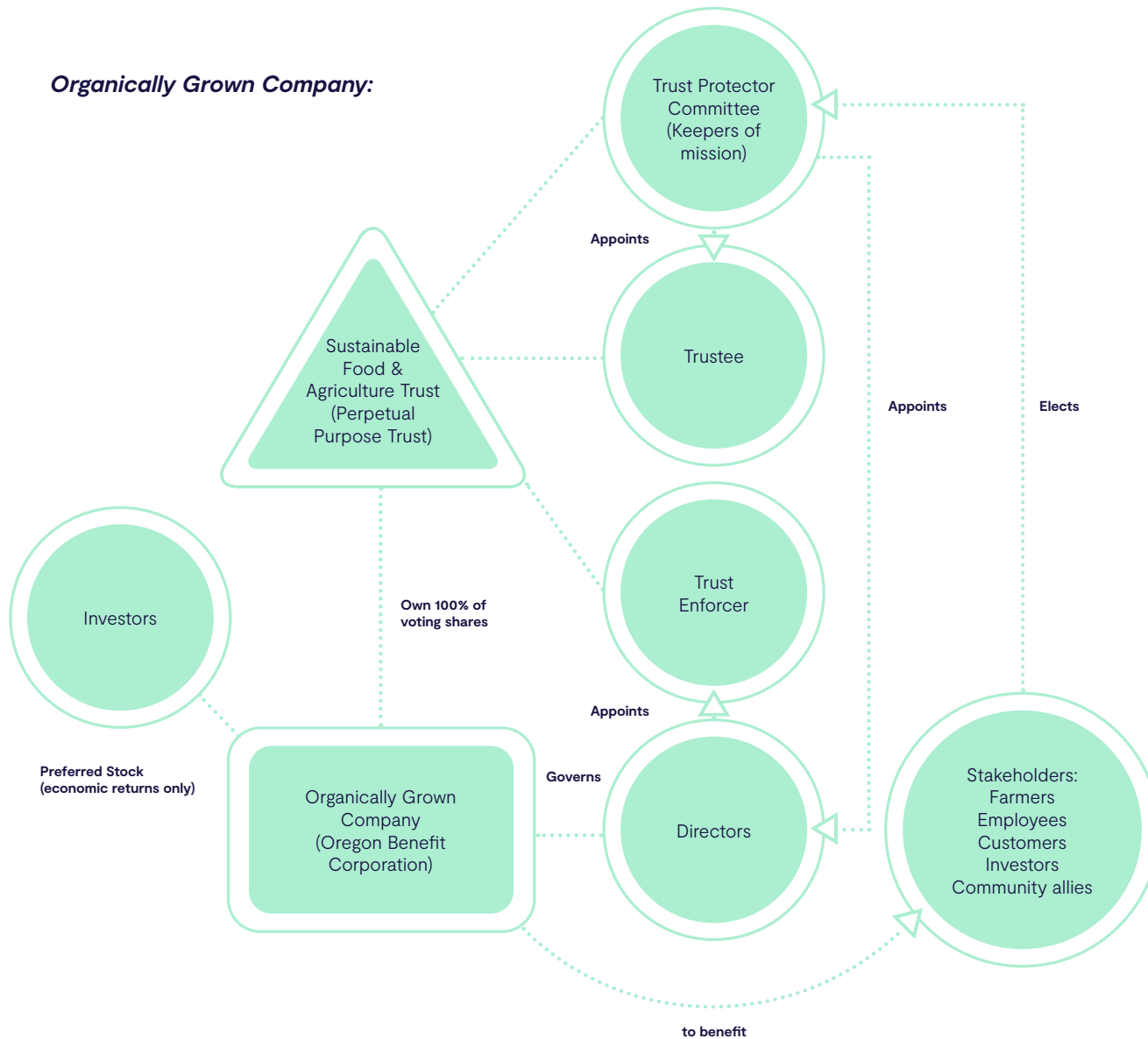
The Trustee is held to account by a Protector Committee, and that Committee is appointed by the stakeholders in the business, namely employees, customers, suppliers, the community, and non-voting preferred shareholders. The Trust Protector Committee is responsible for hiring/firing and in many cases directing the Trustee and also appoints the company Board of Directors.

What can New Zealand learn from this model?

Although we do not have a legislated category of benefit corporation or perpetual purpose trust, our company law is flexible. Our Companies Act 1993 does not hinder the design of multiple different share classes with very different rights, including a so-called "Golden Share" with company sale veto provisions such as we see in the stewardship ownership movement in the United States and Europe. Persons permitted to hold the different classes can be defined and their roles enforced. Different

²¹ In the United States, a number of states, including Delaware, Maine, Nevada, New Hampshire, South Dakota, and Wyoming permit some variation on perpetual purpose trusts. In 2019 Oregon enacted a statute authorising a "stewardship trust," a type of perpetual purpose trust based on the OGC model. The Oregon statute includes the structural features used in the OGC trust: a trust stewardship committee elected by stakeholders, a trustee whose actions are directed by the trust stewardship committee, and a trust protector who protects the purpose of the trust (the mission of the business owned by the trust).

Organically Grown Company:



returns can be provided to different share classes. Purpose and mission can be written into company constitutions and be elevated to a primary consideration in the exercise of all powers and functions of directors.²² The company can be authorised (or required) to consider the effects of their decisions on a broad range of stakeholders, including shareholders, employees, customers, community and the environment. Directors' duties could be framed in light of the above considerations. A percentage of profit can be required to be reinvested. Impact reporting using internationally-recognised impact measurement tools can be required. The share class that holds the rights to amend the constitution can be held by the founders, trustees of a private trust, or, if there is an aligned charitable purpose, on charitable trust for that purpose.

²² See the work of the Bryan Philpot Research Foundation investigating how kaupapa/purpose of organisations in New Zealand can be better communicated and understood, <https://berl.co.nz/our-foundation/kaupapa-led-organisations>. See also Rosemary Teele Langford, 'Purpose-Based Governance: A New Paradigm?' (2020) 43(3) University of New South Wales Law Journal.

Conclusion

We believe that kaitiakitanga and stewardship models are the way of the future as we move from an extractive economy to a regenerative one. Many legal permutations are possible to support impact-driven businesses in New Zealand – although none are specifically designed to motivate or incentivise impact-driven entrepreneurship. Each general structure covered in this White Paper has its benefits and limitations, and what works best for one organisation’s aims will be different to what works for another’s aims.

With the benefit of the overview in this White Paper, we hope that impact driven entrepreneurs will feel empowered to explore the currently available options and overlaying concepts and develop a New Zealand structure to implement their vision. If that can be done, then we will move towards more models being available in our toolkit that enhance stewardship options for the future. In addition, we look forward to proposals about possible changes to our laws in New Zealand that could further catalyse more purpose primacy models.

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Steven Moe



Steven Moe is a Partner at Parry Field Lawyers with a focus on 'for purpose' organisations and is in

Cohort 7 of the Edmund Hillary Fellowship. He hosts seeds podcast with 225+ interviews of inspiring people from across Aotearoa and has worked as a lawyer for 20 years including 11 years overseas based in Tokyo, London and Sydney and is now based in Christchurch with his young family. He is Chair of Community Finance (impact investing for social housing which has recently raised \$40 million), writes on purpose and impact for Spinoff here and wrote "Social Enterprises in New Zealand: A Legal Handbook" He shared his journey in 6 minutes here.

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Natalie Reitman-White



Natalie Reitman-White co-launched Alternative Ownership Advisors, is a Trustee of the Sustainable

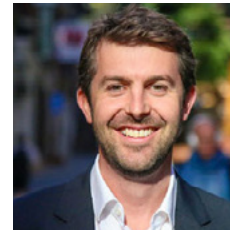
Food & Agriculture Purpose Trust, and is in Cohort 5 of the New Zealand Edmund Hillary Fellowship for Global Change Makers. She is a recognized leading US executive and change-maker in efforts to make food supply greener, healthier and equitable. Most recently she was Vice President of Organizational Vitality and Trade Advocacy at Organically Grown Company, one of the largest independent distributors of organic produce in the country, where in 2018 she led a groundbreaking move to restructure the company ownership under a Perpetual Purpose Trust.

This initiative was featured in 2019 Fast Company's "World Changing Ideas". She founded and served as the Executive Director of the Sustainable Food Trade Association (2008-12), she was on the University of Oregon faculty of Institute for Sustainable Environment, serves on numerous advisory boards throughout the organic food sector.

Recently Natalie has shifted her focus to transformative finance and ownership models that ensure mission maximisation, shared prosperity for multiple-stakeholders and lasting independence through growth or business transition. In the last year she supported the Purpose Foundation to grow the movement toward a new paradigm of "steward-ownership" in the U.S. through field building, infrastructure development, and investment.

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Murray Whyte



Murray Whyte is a director at Avid.legal, with a focus on ownership structures, venture capital, M&A, and

technology law. Murray brings energy and a practical approach to each engagement he is involved in. When working with impact driven organisations, Murray's aim is to help clients create pragmatic solutions that balance the complexities of harmonising purpose and various stakeholder interests.

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Phillippa Wilkie



Phillippa Wilkie is a special counsel with Chapman Tripp. She is an expert in trust law and operation and

advises charities, trusts and social businesses. She sits on Chapman Tripp's corporate social responsibility committee and makes a significant contribution to the firm's pro bono work. Phillippa was one of the co-authors of Structuring for Impact, a report commissioned by the Ākina Foundation which examines how current legal structures hold back social impact-driven businesses and calls for change.

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Supporters



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