

REPORT

Evaluation of Governance Arrangements (Stage Two)

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(David Gray)

to

Te Rūnanga-ā-Iwi o Ngāpuhi

Executive Summary
and
Recommendations

January 2021

Executive Summary

1. This is a report of the second part of a review of the governance arrangements of Te Rūnanga-a-Iwi o Ngāpuhi.
2. The review has been carried out by an independent reviewer with considerable experience in the field, David Gray.
3. The review was conducted against an evaluation framework developed specifically for the review. The framework was constructed from elements common to four authoritative governance codes or standards and comprised the following five domains of governance:
 - foundation and form;
 - governance culture and performance;
 - purpose and direction;
 - organisational performance; and
 - risk and assurance.
4. The review methodology comprised—
 - (i) a desktop review of the Rūnanga’s governance arrangements against the evaluation framework;
 - (ii) one-on-one interviews with the trustees and senior managers of the Rūnanga and the main entities within the Group, together with a number of others, focused on relevant elements of the framework;
 - (iii) interviews with the members of takiwā committees, again focused on relevant elements of the framework;
 - (iv) hui-ā-takiwā;
 - (v) a synthesis of the findings of a survey carried out by PwC as those findings relate to the framework; and
 - (vi) benchmarking of the Rūnanga’s governance arrangements (and especially its representation model) against those of other iwi.
5. The findings of the review are profoundly critical of the Rūnanga and its trustees, but are made with the best long-term interests of Ngāpuhi in mind.
6. In the first domain, *Foundation and Form*, the review finds that the trust deed of the Rūnanga is not fit for purpose, containing a number of problematic provisions and some notable omissions, as well as many errors and inaccuracies. The document is dated, verbose and

patronising, and needs to be comprehensively revised and rewritten. Some of its provisions which ought to apply are being ignored or overlooked by the trustees.

7. The review takes strong issue with the Rūnanga’s representation model, the takiwā system, attributing many of the adverse findings of the review to the model. The review notes that the model serves to severely constrain the pool of candidates eligible for election as trustees, by virtue of the operation of the “active participation” requirement in the trust deed, with predictable consequences for the competence of the persons so elected. The model and its associated processes are themselves, however, fair and transparent.
8. Data from the PwC survey, together with the interviews conducted by the reviewer, strongly suggest widespread disillusionment with the model amongst Ngāpuhi.
9. The formation of takiwā under the model has also served to create certain other issues, including in relation to the cultural ‘fit’ of takiwā within Ngāpuhi, the tension between the obligations of a trustee to his or her takiwā and the general law, and population imbalances amongst the takiwā.
10. Another feature of the model, proxy trustees, does not enjoy strong support.
11. Largely as a consequence of the impact of the representation model, the standard of trusteeship within the Rūnanga is poor. Although there are clear criteria in the trust deed and the governance manual of the Rūnanga pertaining to trustee skills and competence, these criteria are not applied or enforced, and do not serve to ensure the election of appropriately-qualified trustees.
12. The Rūnanga’s provisions relating to conflicts of interest are clear and appear generally to be complied with.
13. In relation to tikanga and values, the review finds that the role of Te Rōpū Kaumātua Kuia o te Whare Tapu o Ngāpuhi is under-resourced and undervalued. The group is excluded from several functions within the Rūnanga which might reasonably be presumed to fall naturally within its ambit. Consequently, the group is dispirited and in need of rejuvenation.
14. The review also finds that there is scope for hapū rangatiratanga, one of the core features of Ngāpuhi, to be better-expressed within the Rūnanga, in particular in a redesigned representation model.
15. In the second domain, *Governance Culture and Performance*, the review finds many failings.
16. There are few formal mechanisms for engagement between the members of Ngāpuhi and the Rūnanga, and some of the mechanisms which do exist, such as the takiwā system, have proven over time to be largely ineffective for this purpose. Accordingly, the Rūnanga is at risk of its legitimacy being progressively eroded through inadequate engagement.
17. The Rūnanga needs to distinguish, in governance terms, between its owners and its customers, and engage with the respective parties appropriately.

18. The governance architecture of the Rūnanga—the system of policies, practices and tools employed by the trustees in the governance of the Rūnanga—is dilapidated and in urgent need of repair. Whereas the role of the trustees is to focus on purpose, performance and assurance, there is plenty of evidence that they focus on everything but those core areas. The absence of basic governance tools, such as an annual work plan, robust governance policies and processes, and focused meeting practices—and indeed of any semblance of a governance system—results in the squandering of governance resources and very poor governance outcomes. Some of the tools which do exist, such as the Rūnanga’s governance manual, are such that they actually serve to undermine good governance.
19. Some of the Rūnanga’s board committees are unnecessary, while one appears to over-function. All would benefit from a review of their terms of reference and from a separation of managerial functions from governance functions. The functions of two of the committees could be delegated to Te Rōpū Kaumātua Kuia.
20. Every appointment made by the Rūnanga to an external body should be the subject of an individual terms of reference.
21. The elephant in the room when discussing the Rūnanga’s governance culture and performance is the almost complete absence of any form of measurable outcome statements for the Rūnanga or its subsidiaries. No amount of governance architecture will compensate for this deficiency. As a consequence, not only the CEO and staff of the Rūnanga but also the wider membership of Ngāpuhi are left to guess at what the Rūnanga is trying to achieve. The PwC survey graphically illustrates the hopes and aspirations of the iwi, yet the Rūnanga does nothing either to moderate these hopes and aspirations in view of its relatively-meagre resources or to spell out what steps it will take to realise them. The resulting disillusionment and disengagement are entirely predictable.
22. The trustees are largely overlooking or ignoring the requirements of the trust deed in relation to their power to delegate.
23. The Rūnanga does not have a single, central set of governance policies, although the governance manual does contain a number of policies and/or statements which might approximate such a set. Thus, the trustees’ job description is whatever they decide it is from time to time, rather than an agreed role in the performance of which they can readily be measured, whether by themselves or by other parties. As it stands, the trustees make no effort to measure their own performance.
24. Despite being required by the trust deed, there are no mechanisms in place to enable governance of the wider Group. The trustees rely instead on informal and *ad hoc* mechanisms to do so.
25. In Domain 3, *Purpose and Direction*, there are many issues. The strategic architecture of the Group—the number and arrangement of the subsidiaries—is adequate in the circumstances. There is, however, no strategic framework across the Group to translate the purpose of the organisation (which, as noted, is nowhere expressed) into specific strategies, plans and initiatives designed to achieve that purpose. Such components of a strategic framework as

do exist—such as the Rūnanga’s five-year strategy—are inadequate and ineffective. Consequently, the subsidiaries feel adrift from the parent entity.

26. The core problem in Domain 4, *Organisational Performance*, is that both performance criteria and performance measurement mechanisms are almost completely absent from the Rūnanga, making it impossible to evaluate the overall performance of the organisation against its purpose. Consequently, such reporting as takes place is of activities rather than of outcomes.
27. In Domain 5, *Risk and Assurance*, the Rūnanga is performing moderately well, due largely to the efforts over time of the Audit and Risk Committee. There is a need, though, for all of the trustees to understand and be engaged with this aspect of their responsibilities.
28. In summary, the governance arrangements of the Rūnanga are in very poor shape. The review finds that the trustees have a considerable amount of work to do over the next one to three years to get their house in order.

Recommendations

This report makes the following recommendations to the trustees of the Rūnanga:

1. That the trust deed of the Rūnanga be completely revised and rewritten.
2. That the Rūnanga’s representation model and electoral processes be redesigned to ensure that the best possible candidates are eligible for election.
3. That the redesign of the Rūnanga’s representation model incorporates hapū rangatira-tanga as the primary organising principle.
4. That the Rūnanga reviews the role and functions of Te Rōpū Kaumātua Kuia o te Whare Tapu o Ngāpuhi, including its status vis-à-vis the Rūnanga.
5. That the revised trust deed of the Rūnanga includes robust requirements for member engagement.
6. That the trustees take steps to incorporate the use of appropriate governance tools, including an annual work plan, a standard-form agenda, a revised governance manual and a set of meeting rules, into their governance practice.
7. That the trustees review the need for each of the Rūnanga’s standing committees and revise the terms of reference for those committees which are retained.
8. That the trustees adopt a terms of reference for every external appointment made by the Rūnanga.
9. That the trustees prepare and adopt a set of strategic outcomes for the Group which spell out the purpose of the organisation.
10. That the trustees design and implement a strategic framework for the Group.
11. That the trustees prepare and adopt a set of board practice policies.
12. That the trustees prepare and adopt a schedule to monitor their performance against their board practice policies.
13. That the trustees design and implement appropriate mechanisms for Group governance encompassing all of the major subsidiaries.