

**Review of the Constitutional Arrangements of  
Te Rūnanga o Toa Rangatira and  
Associated Entities**

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## 1. Background

- 1.1. In August 2018 Te Rūnanga o Toa Rangatira [the **Rūnanga**] engaged us to undertake a review of the Rūnanga structure. The scope of this review was set out in a discussion paper dated 8 August 2018, and noted that the scope should include matters such as:
  - Membership;
  - Size of the Board;
  - Make up and functioning of the Board, including remuneration and the different types of representation on the Board;
  - The Toa Rangatira Trust [the Trust] and the relationship between the Trust and Rūnanga;
  - Tax status of various entities;
  - Whether various entities are located in the most appropriate part of the structure; and
  - The iwi's aspirations for post settlement governance structures.
- 1.2. The process for review envisaged:
  - Consultation with iwi members; and
  - Production of a report recommending any changes to the current structure and the process towards making those changes.
- 1.3. It was specifically noted that we were to act independently and our role was to provide advice to the Rūnanga only. The Rūnanga retained the right to determine which recommendations to accept or reject and how to proceed.
- 1.4. We note that what has not been included in this review is the operation and performance of the Rūnanga, the Executive Director, and staff of the Rūnanga and associated entities.
- 1.5. Instead, the focus of the current review has been on the structural arrangements within which these operations take place. We understand that operational matters are to be considered as a second stage of a wider review process.
- 1.6. The exception to this approach has been where specific operational functions are contained in the constitutional documents (for example the process for holding Annual General Meetings). We have considered these types of issues, as any changes to these functions also require constitutional amendments.

## 2. Our process

- 2.1. We met with iwi members throughout the rohe at a number of hui which were advertised on the Rūnanga website and pānui. There were hui held in:
  - Blenheim (7 November 2018);
  - Nelson (8 November 2018);
  - Hamilton (20 November 2018);
  - Takapūwāhia (27 November 2018); and
  - Hongoeka (13 December 2018)
- 2.2. An additional hui was also held at Takapūwāhia (22 January 2019) following a request at the original hui.
- 2.3. At those hui we asked a number of questions to guide discussion around what iwi members wanted to see from the Rūnanga structure and how they felt it was currently meeting those aspirations.
- 2.4. Our aim at these hui was to understand what iwi members felt the underlying purpose of a Rūnanga structure was. This was important because for us to be able to develop ideas on what the Rūnanga and associated structures might look like we first needed to examine what those structures were ultimately 'for'. We were also interested in views on particular issues that had been of concern in the past – such as the role of spouses.
- 2.5. These hui were generally well attended. They all generated interesting and useful debate.
- 2.6. During the hui, and on the Rūnanga website, we provided an email address to enable iwi members to provide us with further feedback. We received written submissions from iwi members – some of which were extremely detailed and were clearly the result of significant thought and effort. Again all these submissions were extremely helpful and appreciated.
- 2.7. As a result of this process we had a request to meet again with a particular group of submitters to discuss their submission in person. On the basis of that request we did meet with representatives of that group to hear more detail on their written submission.
- 2.8. We also met collectively with a group of senior staff of the Rūnanga to gain their particular perspective on constitutional arrangements and how these might affect day-to-day operations.
- 2.9. We also met directly with the Board of the Rūnanga on two occasions to discuss their perspective on the constitutional arrangements. We offered to meet individually with Board members, but in the end were not taken up on this offer.

- 2.10. Following the hui we then met, ourselves, a number of times to discuss the outcomes of the hui and submission process, and to formulate our views on recommendations.
- 2.11. We discussed a draft version of this report with the Rūnanga to ensure there were not any fundamental misunderstandings in how we had approached our task.
- 2.12. We would like to specifically acknowledge and thank all the iwi members who took the time to attend hui and/or provide us with written feedback. We have greatly appreciated all the views that have been put forward. Even where views have differed, and there was robust and passionate debate, it was clear to us that without exception all those views came from an underlying desire to strengthen Ngāti Toa Rangatira and provide for future generations.
- 2.13. This report sets out our rationale based on the hui, written submissions, and our professional experience and opinion. We also provide recommendations relating to the constitutional arrangements as a result of our analysis.
- 2.14. This paper does not set out a redrafted set of Rūnanga rules or a fresh Trust Deed. Instead what this paper does is set out our views on what those constitutional documents should try to achieve or reflect.
- 2.15. The technical details of what the Rūnanga rules or Trust Deed say will turn on whether or not our views are accepted, rejected, or amended by the Rūnanga and iwi. As a result the detailed drafting of amendments is a step that should follow discussion of our report.

### **3. The Rūnanga and associated entities**

- 3.1. In developing this report we are primarily concerned with the Rūnanga itself – Te Rūnanga o Toa Rangatira Incorporated, an incorporated society with charitable tax status.
- 3.2. We are also particularly interested in the structure of the Toa Rangatira Trust [**the Trust**] and its relationship with the Rūnanga. The Trust is a private trust governed by a Trust Deed and the Rūnanga administers the Trust as the sole trustee. The Trust is a Māori Authority for tax purposes.
- 3.3. The Trust, with the Rūnanga acting as trustee, holds and administers Ngāti Toa's Treaty of Waitangi settlement assets. Some of those specific assets are held and managed in subsidiary entities owned by the Trust.
- 3.4. The Rūnanga separately holds and manages a range of other tribal assets (such as fisheries and aquaculture settlement redress). The Rūnanga does this either directly or through subsidiary entities (such as asset holding companies for fisheries assets). The Rūnanga is also the entity that delivers social services to the iwi, either itself or through its subsidiaries.
- 3.5. Collectively we refer to all these various entities as the "**Ngāti Toa Group**" in our report.

#### **4. Tax issues and subsidiary entities**

- 4.1. We have also turned our minds to the range of subsidiary companies that are held under both the Rūnanga and the Trust.
- 4.2. However, we are of the view that in the majority of cases how these entities are structured, where they are located in the Group, and the details of their constitutional documents are more appropriately seen as strategic or commercial issues for the Rūnanga and/or the Trust. Their arrangements are driven more by issues such as tax treatments, legislative requirements, or the need to manage commercial risk.
- 4.3. As a result we have less to say in relation to these subsidiary entities, as we do not see our role as second-guessing commercial decisions that have been taken by the Rūnanga or Trust.
- 4.4. We also considered our direction to look at the tax status of particular entities. No significant structural concerns that were driven by tax issues were raised during our discussions. As a result we again largely consider this to be a commercial decision for the Rūnanga and Trust themselves.
- 4.5. We do note that the difference in tax status between the Rūnanga and the Trust does have the potential to become an issue at some point in the future – for example if acting as a corporate trustee is no longer seen as a charitable purpose of the Rūnanga.
- 4.6. However, it is almost impossible for us to predict what that future event may be, and what changes might be required to address it. It also occurs to us that such an event is likely to be of such significance that a further review of the Ngāti Toa Group structure will be required at that time, in any event. Our view is that it is not necessary to incur the costs and disruption of significant change at this time to address what may never be an issue in the future.
- 4.7. We therefore make no recommendations in this regard.

#### **5. The broad structure of the Ngāti Toa Group of entities**

- 5.1. The overall purpose and aims of the Ngāti Toa Group, as a whole, is most significantly driven by the underlying purposes of the Rūnanga - as set out in section 3 of the existing Rūnanga Rules, and the objectives of the Trust (as set out in clause 4 of the Trust Deed).
- 5.2. These purposes are broadly consistent with each other (though we note the difference in membership which will be discussed later) and are focused on the best interests of the iwi.
- 5.3. During our consultation we did not hear any significant challenge to these fundamental purposes.
- 5.4. There were clearly strong, and differing, views over how to achieve these purposes and what priority to give to particular aims or actions. We also heard divergent views on whether or not the Rūnanga and the Ngāti Toa Group were achieving these purposes.

- 5.5. This is not a bad thing – there will always be differing views on the right path to take to achieve a particular purpose. We instead took this as an indication that the iwi is passionately interested in the work of the Rūnanga and the Ngāti Toa Group.
- 5.6. But the point we did note is that while views on the pathway to take may differ, the ultimate aim of working in the best interests of the iwi was consistent.
- 5.7. As a result, our view is that the underlying purposes of the Rūnanga and Trust were sound and did not require changes.
- 5.8. Our consultation hui saw a range of views put forward about the overall ‘group’ structure and the place of the Rūnanga within it. These ranged from ‘scrap it and start again’ to ‘it hasn’t had time to be fully put in place, so leave it as it is’.
- 5.9. Generally though, the impression we took from these discussions was that the overall structure, and the place of the Rūnanga within it, was consistent with what was expected of a post settlement tribal structure. We did not hear any overriding push from the iwi for major structural change to the way the Rūnanga and its associated entities (including the Trust) fit together. If there was debate it was more focused on ‘how’ the structure works than ‘what’ the structure is.
- 5.10. Our view is that there are good reasons for the close alignment of the Rūnanga and the Trust. This is particularly in terms of avoiding the duplicating election requirements and in ensuring alignment between the functions of the Rūnanga and the Trust. In the absence of compelling reasons to change this underlying structure, we recommend no change to the general structure of the Rūnanga group of entities.
- 5.11. Having said this, we do note that some concern was expressed about the lack of implementation of arrangements for assets holding companies and other subsidiary entities. But even here, our view is that this is an issue of ‘how’ the structure operates more than ‘what’ the structure is. We discuss this particular issue in more detail shortly.
- 5.12. We also note that our general view is that the status quo remains, in terms of the overall structure. However, this does not prevent the structure being revisited in the future. In particular as the Rūnanga group of entities grows, or the functions of particular entities changes, it may become necessary to amend this structure (for example if the role of Trustee brings the Rūnanga into conflict with its charitable purposes at some point in the future).
- 5.13. Finally, there is an inconsistency between the membership of the Rūnanga and the beneficiaries of the Trust. We address this to some extent in our discussion of spousal membership. In any event, we were not pointed to this inconsistency causing any practical difficulties for the operation of the structure at the present time.
- 5.14. Our view is that this inconsistency does not require urgent structural change to the relationship between the Rūnanga and the Trust. However, this process is an opportunity to consider the reasons why those differences occurred in the past and if they should continue to exist today. That is why this particular issue is considered in the context of spousal membership.

**Recommendation 1:**

*That there be no change to the purposes or objectives of either the Rūnanga or the Trust.*

**Recommendation 2:**

*That there be no change, at this time, to the underlying structure of the Ngāti Toa Group and the relationship of the various entities within the Group. The structure should continue to be monitored and amendments may be made in the future if required.*

**6. Inclusion of specialist and independent skills in governance**

- 6.1. During our consultation there was a significant amount of debate regarding the need to ensure that decision makers in the Rūnanga group of entities, including the Rūnanga itself, have the necessary skills and experience to work effectively in those roles.
- 6.2. One view commonly expressed was that there was a need for specialist and independent decision makers. At the same time there was a strong view that Ngāti Toa should be responsible for making decisions regarding Ngāti Toa.
- 6.3. There is an inherent tension between these views, and we were sympathetic to both.
- 6.4. We agree that it is important that Ngāti Toa utilises specialist skills and expert knowledge in growing Ngāti Toa's assets and delivering outcomes to the iwi. At the same time, it is important that decisions about what is best for Ngāti Toa are made by Ngāti Toa. The Rūnanga has an important role as the tribal voice and it would be inappropriate to have external individuals exercising or influencing that voice on some matters.
- 6.5. We also felt that to some extent this debate was affected by the difficulties and delays in the establishment of asset holding structures under the Trust. In other iwi post-settlement structures it is the asset holding entities where specialist decision makers might have been placed, and this is a gap in the current Ngāti Toa arrangements.
- 6.6. We also heard a number of views around the role of the current Audit and Risk Committee [ARC] in this context. These were not criticisms of the ARC, which was generally seen as positive and important.
- 6.7. But there was some discussion around whether its role was transparent. There was also some concern that because the ARC is heavily relied on for its external expertise

there may be a risk of 'mission creep' that would see the ARC gradually moving from assessing decisions before the Rūnanga to making more strategic governance assessments.

- 6.8. Our view is that some change is needed to ensure that specialist and external governance skills are drawn into the Rūnanga group of entities in some way. It is also important to ensure that the way this is done is transparent and does not risk confusing the role of developing and making decisions with a risk assessment of those decisions.
- 6.9. Change is also needed because drawing in specialist skills and independence at a strategic or governance level has not occurred to date, and so arguably the 'settings' within the constitutional arrangements of the Rūnanga group are not effective enough in pointing towards what the iwi want to see and what is good practice.
- 6.10. Given our view that some change is needed, the question then becomes what that change might look like, and also where in the wider Ngāti Toa Group that change might be made.
- 6.11. We considered whether change should be focused on the Rūnanga board itself, or as a greater emphasis on establishment of asset holding/subsidiary entities, or within the Trust. Each of these is discussed in turn.

#### Considering changes to the Rūnanga Board

- 6.12. We do not consider that it is appropriate to incorporate independent, non-Ngāti Toa decision makers directly onto the Rūnanga board itself.
- 6.13. This is because, as noted above, the Rūnanga plays an important role as being a voice for the iwi in a number of matters. This should be retained.
- 6.14. We also do not consider that it is desirable to set some form of skills-based criteria for election of Ngāti Toa representatives to the Rūnanga.
- 6.15. This is because setting criteria means someone will then have to apply those criteria. That will require someone to make a determination as to whether or not a candidate to the Rūnanga meets the subjective requirement of being suitably qualified. We anticipate that there may not be consensus as to who should make such a determination. In addition, because applying criteria means there would need to be a process of accepting or rejecting nominations and that process would be open to potential manipulation that may undermine the democratic nature of the Rūnanga.
- 6.16. Prescribing a set of criteria in the rules would also 'lock-in' those criteria and may reduce flexibility to enable a diverse range of views to be represented on the Rūnanga. We also believe that ultimately the iwi members are already able to make the decision as to what skills and experience they want to see on the Rūnanga via the election process. Essentially we prefer to retain faith and trust that iwi members know best who should represent them.

#### Considering changes to asset holding and subsidiary entities governance

- 6.17. We also considered amendments to the various constitutional documents of the Rūnanga group to provide a stronger requirement for the establishment of asset holding companies and also require that a certain proportion of the decision makers on these be independent directors based on skill.
- 6.18. Our view is that it is important that the Rūnanga develops specialist asset management structures for holding and managing commercial assets held on behalf of Ngāti Toa.
- 6.19. However there is no perfect, one size-fits-all, answer to how to achieve this. Some post settlement iwi have put in place arrangements that are very separate from the overall tribal governance, while others remain closely linked to tribal governance. Both approaches have positives and negatives – separation of commercial decision-making can bring greater commercial rigour but at the same time risks conflicting with wider cultural or economic priorities.
- 6.20. Ultimately, we felt that it was important to ensure that the Rūnanga and Trust retained the flexibility to decide themselves how their subsidiaries are to be structured. We cannot predict today what all possible future entities might look like. As a result we are reluctant to prescribe hard and fast rules that might make sense now but which may unreasonably bind the hands of the Trust or Rūnanga at a later date.
- 6.21. Therefore we do not recommend any changes to the requirements surrounding the establishment of asset holding companies and other subsidiaries of associated entities.

#### Considering changes to the trustee arrangements of the Trust

- 6.22. We note that the unique structure of the Rūnanga and the Trust may provide a way to incorporate independent and specialised expertise in the governance arrangements of the Rūnanga group.
- 6.23. One submission in particular pointed out that it would be possible to add an independent view at the governance level of the Ngāti Toa Group by appointing independent advisory trustees to sit along side the Rūnanga in its role as the corporate trustee of the Trust. This would mean the Trust Deed would set out that the trustee of the Trust continues to be the Rūnanga, and the Rūnanga ultimately retains the decision making role, but that the Rūnanga must appoint independent advisory trustees to assist the Rūnanga in this role.
- 6.24. This would appear to retain the nature of the Rūnanga as an exclusively Ngāti Toa voice, while incorporating independent expertise into how assets of the iwi are managed.
- 6.25. It may also assist in adding some clarity to the role of the ARC and provide a buffer against the risk of ARC coming under pressure to provide thinking that is more appropriately done at a governance level. We do not see this as undermining the work of the ARC, but rather complementing it.
- 6.26. We envisage that the inclusion of an independent view at this level would then also influence discussions around the establishment of subsidiary and associated entities help ensure that independence and specialise expertise flows down. This may therefore

also go some way to addressing concerns regarding the establishment of asset holding entities as discussed above.

- 6.27. We suggest that 'independent' in this context is 'independent of the Rūnanga' rather than independent of Ngāti Toa. This is because a wider view of 'independent' would prevent Ngāti Toa accessing the skills of individuals who may whakapapa to Ngāti Toa but are not actively engaged in Rūnanga or who may primarily rely on other tribal affiliations.

**Recommendation 3:**

*That the Trust Deed of the Trust be amended to provide that:*

- (a) Two (2) individuals, who are independent of the Rūnanga, must be appointed as Advisory Trustees to assist the Rūnanga in its capacity as trustee of the Toa Rangatira Trust;*
- (b) Those advisory trustees are to be appointed by the Rūnanga on the basis of their independence, expertise, and skills; and*
- (c) Any appointments must be notified to the iwi, including the rationale behind their appointments.*

## **7. The structure of the Rūnanga Board**

- 7.1. An area that generated significant debate in all our discussions, no matter who they were with, was the structure of the Rūnanga Board. This included whether, and how, the various Board seats should be representative of particular groups within the iwi.

### Size

- 7.2. We felt that there was a general view that the size of the current Board was 'too big'.
- 7.3. We agree with that view. We note that there is guidance from organisations such as the Institute of Directors that suggests a board size between 6-8 members is ideal for an average corporate body. We are of the view that for iwi organisations, where transparent representation or reflecting the views of individual hapū or marae is important, there may be some justification for a board size at the upper end of this range, or even slightly larger.
- 7.4. We therefore suggest, for the specific reasons discussed in more detail below, a Rūnanga Board of up to eight (8) members. We note our earlier recommendation above and that when acting as the trustee of the Trust the practical effect will be a 10-person board – being the eight (8) Rūnanga members plus two (2) advisory trustees.

### Rangatahi representation

- 7.5. We also believe there was a common feeling that it is important to ensure the development of governance skills and experience in Ngāti Toa rangatahi. However there was also common ground that Board representation for rangatahi may not have achieved its intended purpose.
- 7.6. We agree with those views. We would remove formal rangatahi representation on the Board. But in doing so we suggest the Rūnanga develop mechanisms to support the development of rangatahi – this might range from working with organisations such as the Institute of Directors so that rangatahi can access their training and ‘young directors’ programs to exploring the use of associate directors across Ngāti Toa entities. Those mechanisms do not need to be set out in the Rūnanga Rule or the Trust Deed – but we encourage the Rūnanga to explore them nonetheless.

#### Kaumatua representation

- 7.7. Similarly, we also heard that it was vital that kaumatua retain a voice to the Board, and that there was also a way in which the Board was able to access the cultural expertise held by kaumatua. However, there was some doubt as to whether placing kaumatua in Board positions where they were potentially taking on significant personal duties and liabilities was an appropriate way to do this.
- 7.8. We again agree with these views. We would remove the formal kaumatua representation on the Board. This should also be accompanied by other steps to ensure kaumatua are supported and that the Rūnanga are able to access cultural support that kaumatua provide. We discuss what this might be as separate recommendations.

#### Marae representation

- 7.9. Other than the points above, there was very little agreement or common view on how the Board might be reduced, and no common theme on what the design of a Board structure should try and achieve.
- 7.10. There were suggestions that all Board seats should come from iwi wide elections. There was a suggestion of whānau based seats. There were also suggestions of various options for marae or wahi based representation. And numerous combinations of all these options were also discussed. We have considered all of these views in developing a suggested structure for the board.
- 7.11. Our view is that it is appropriate that a significant proportion of the Board representation comes from marae. Marae are a core functional unit, and the cultural centre of the iwi. We would keep marae-based seats in some form.
- 7.12. We would, however change the basis of representation so that all four existing marae are represented by only one representative each.
- 7.13. We recognise that the population of marae are not equal – and that Takapūwāhia is significantly larger than others. But the point of marae representation is to give each *marae* a voice.

- 7.14. We would also retain the nomination process for marae representation so that an individual being put forward as a marae representative to the Board does require some indication of support from or connection to that marae.
- 7.15. We acknowledge that having marae seats provided for in this way is likely to give additional weighting to individuals who are connected to particular marae rather than necessarily the governance experience of those individuals.
- 7.16. But if marae based representation is important, then that weighting is the point – they are intended to provide a voice for the marae as a key component of the iwi. We also note that we are not recommending all the Rūnanga seats be marae based to allow for a balance of skills, experience, and views on the Board.
- 7.17. In addition, the voting arrangement for marae-based seats should change so that this is conducted by postal or electronic ballot in the same way other seats are elected.
- 7.18. This is because a general reduction in Board numbers makes it more important that every person is entitled to vote. It is also because the connection to the marae is being reflected in the nomination process for the Board member and it is not necessary for a person voting to demonstrate an ahi ka connection in the same way. Finally, there was strong dissatisfaction during our consultation hui regarding the process for voting for marae representatives and we are persuaded that this needs to change to reflect iwi views.

#### *Iwi wide representation*

- 7.19. We also believe that the balance of the seats on the board should be allocated on the basis of an iwi-wide nomination and voting process. Essentially this would retain the existing process for a number of iwi-wide seats.
- 7.20. We believe four (4) such seats would be an appropriate number, and balance iwi-wide and marae representation.
- 7.21. Our view is that iwi-wide seats will provide flexibility for electing Board members who may not be as strongly tied to particular marae as other candidates, but bring particular skills and experience to the role. As a result the nomination and voting process for these seats should be open to all adult members.

#### *Employees as Board Members*

- 7.22. During our consultation it was also pointed out to us that currently there is no restriction on an employee of the Rūnanga standing for, and being elected to, the Board of the Rūnanga. It was felt that while this has not been an issue to date it did create the potential for a conflict between governance and management to arise in the future.
- 7.23. We agree that significant conflicts of interest may result if a person were both an employee of the Rūnanga and a Board member and that this is not good governance practice. As a result some change is helpful.

- 7.24. We do not believe that this change should be to require an employee to leave their employment if they stand for a seat on the Board. That employee/employer relationship is a contractual one and not necessarily something that can be determined by the Rūnanga Rules.
- 7.25. We also do not believe that a person should be disqualified from standing for election simply because they are an employee. They may not be successful in this process and leaving their employment to simply take their chances in an election is a high bar. In addition the key difficulty comes when a person takes on a Board role rather than when they seek it.
- 7.26. As a result, we suggest that the Rūnanga Rules be amended to disqualify an employee from being a Board member, but not being nominated for election. If an employee is nominated and then elected the effect of this would be that they would not be eligible to take up that position until they resigned their employment. This change would also have the effect of meaning that if a Board member accepted employment by the Rūnanga after their election their appointment as a Board member would end.

**Recommendation 4:**

*That there be an eight (8) member Rūnanga board made up of:*

- (a) One representative for each of the marae currently reflected in the Rūnanga Rules; and*
- (b) Four (4) Board members elected on an iwi wide basis.*

**Recommendation 5:**

*That voting for Board seats be on the basis that:*

- (a) All marae representatives be done by postal or electronic ballot open to all adult iwi members who have indicated their affiliation with that marae; and*
- (b) Voting for iwi-wide Board members remain as it currently is within the Rūnanga rules.*

**Recommendation 6:**

*That the Rūnanga Rules be amended to provide that employees of the Rūnanga are not eligible to be Board members.*

**Recommendation 7:**

*That the Rūnanga put in place a programme for the development of governance skills by rangatahi. This should include exploring internal mechanism (for example alternative director programmes within the Ngāti Toa Group) as well as external mechanisms (such development opportunities offered by the Institute of Directors). Changes to the constitutional documents of the Rūnanga or Trust are not required to put such a programme in place.*

## **8. Other changes to the functioning of the Board**

### Subcommittees

- 8.1. We have earlier noted that the status and role of the ARC was mentioned in the course of our discussions, including whether the role and status of this committee was transparent to iwi members.
- 8.2. We do note that there is a power to establish subcommittees that is suggested by the existing Rūnanga rules. However, with the exception of a membership committee, there are no specific provisions in the Rūnanga rules that clarifies the process for doing so and the extent of the powers of any subcommittees.
- 8.3. As a result we suggest the rules be updated to clarify the Rūnanga has the power to establish sub-committees generally, and that in doing so it should set terms of reference for those committees. Those terms of references should be available to iwi members on request.
- 8.4. One submission also pointed out to us that the ARC plays a valuable role in testing the financial implications of decisions coming before the Rūnanga. But there is no equivalent cultural 'audit' or check of those decisions. We were pointed to examples of other iwi that maintain the cultural equivalent of an ARC.
- 8.5. To a large extent that cultural test has been something the kaumatua representation on the Board may have been expected to provide, and so would be lost under the changes discussed above. It was also pointed out to us that in today's world much of the cultural knowledge of an iwi might be held by individuals who are not kaumatua. Also, the application of cultural tests to modern day issues (such as how cultural values are reflected in a social-media driven world) may require both kaumatua and rangatahi input.
- 8.6. Therefore a cultural audit committee has some appeal for us, and we suggest it is explored further.
- 8.7. We would suggest that both ARC and a 'Cultural Audit Committee' (along with the existing requirement for a membership committee) be specifically noted in any new sub-committees clause to ensure their status.

### Remuneration of Board members

- 8.8. As part of our discussions it was suggested that the provisions covering how remuneration of Board members is set should change. Currently rule 8.35(e) of the Rūnanga rules simply provides that the Board itself, on advice from the Executive Director, sets an honorarium.
- 8.9. There was a common view from our discussions that a more independent process was needed. This was not necessarily a criticisms of how this decision has been made in the past, but simply an acknowledgement that in a post-settlement environment this process may not be fit for purpose any more.

- 8.10. We do not have the expertise to determine what the level of an honorarium might be set at. Even if we did, setting this in the Rūnanga rules would not be helpful, as it would 'lock in' a rate that might need to change from time to time. Instead, what is more appropriate is to set out a process for determining that rate and for keeping it 'fresh'.
- 8.11. We suggest that clause 8.35 be amended to provide that the Rūnanga must set the honorarium at a rate that is no more than that indicated by external advice regarding fees paid to governors of other similar entities. This should include any honorarium to be paid for membership of any subcommittees and may reflect different rates for different roles that Board members undertake.
- 8.12. The Rūnanga will provide that rate, and the advice it was based on, at each AGM. The Rūnanga should also maintain a policy that sets out how that advice will be sought and also how often, as that level of detail does not need to be set in the constitution itself.

### Term of Board members

- 8.13. Some submissions and discussions also suggested we consider setting a limit on how many elections in a row an individual could be elected as a Board member. The aim of this suggestion was to ensure the skills on the Board were 'refreshed' regularly.
- 8.14. We broadly agreed with this intention. However we were also mindful that Ngāti Toa is a relatively small iwi and that term limits may have inadvertent consequences in excluding skilled and talented individuals from the Board when they are needed.
- 8.15. We are also mindful that we have recommended a range of structural changes to the Rūnanga Board, as well suggesting other supporting processes that the Rūnanga should explore (such as support for rangatahi). We are not sure how these other changes will affect the degree to which there is a natural 'turnover' of Board representation rather than it being forced by the Rūnanga Rules. For example, will a significant reduction in Board size increase 'competition' for seats and mean they change more regularly?
- 8.16. It also occurs to us that it is likely these constitutional arrangements will be reviewed again at some point in the future as the Rūnanga continues to keep itself 'fit for purpose'.
- 8.17. Therefore, on balance, we are not suggesting imposing a term limit on Board members at this time. We would instead make the other changes we suggest and take some time to see the effect they have on Board representation. Term limits may be an issue to then revisit in any future review process.

**Recommendation 8:**

*That the Rūnanga rules be amended to clarify the Rūnanga has the power to establish sub-committees, which may include individuals who are not members of the Rūnanga, and in doing so must issue terms of reference for each subcommittee and make these available to an iwi member if requested to do so.*

**Recommendation 9:**

*That any new subcommittee clause provides that the Rūnanga must establish:*

- (a) A Membership subcommittee (as currently required under the Rules);*
- (b) An Audit and Risk subcommittee; and*
- (c) A Cultural Audit subcommittee.*

**Recommendation 10:**

*That the Rūnanga rules be amended to provide that the Rūnanga must:*

- (a) Set the honorarium to be paid to Board members at a rate that is no more than that indicated by external advice regarding fees paid to governors of other similar entities;*
- (b) Provide that rate, and the advice it was based on, at each AGM; and*
- (c) Maintain a policy that sets out how that advice will be sought and also how often it will be sought. That policy must be available to iwi members on request.*

## 9. Engagement with Te Tau Ihu

- 9.1. During our consultation in Te Tau Ihu we heard a significant amount of concern at the lack of visibility for the Rūnanga, and Ngāti Toa generally, in Nelson and Marlborough. We understand that similar concerns were raised during the development of the strategic plan, and it appears little has been done to address this. Instead the concern has grown.
- 9.2. We were particularly mindful that these concerns went to the legitimacy of a single Ngāti Toa structure that was centred in Porirua. It was noted that ahi kā cannot be maintained if there is no visible and regular presence being exercised in an area.
- 9.3. Our view is that it is difficult to amend the constitutional documents of the Rūnanga group to force better engagement with Te Tau Ihu. How the Rūnanga best engages with members, and particular groups of members, is ultimately a function of the Rūnanga itself.
- 9.4. However, because this appears to have been a serious issue for sometime, and has not been adequately addressed, we do believe that some constitutional change is needed to signal the importance of this function and bring it to 'front of mind'.
- 9.5. Therefore we feel that it is appropriate to amend the constitutional documents of the Rūnanga group to give a stronger direction around providing a visible connection to Te Tau Ihu.
- 9.6. In doing so we are also mindful of the additional costs and administrative burden that is required in additional engagement. As a result, while some submissions made strong argument for, for example, more than one AGM in a year, we are conscious of the difficulties that this might cause (including the burden of advertising in fixed timeframes etc). But having considered this we again return to the point that a visible presence in all parts of the takiwā is a fundamental concern.
- 9.7. We note that similar concerns about lack of engagement were expressed at our Hamilton hui. There were suggestions that regular hui were needed outside the takiwā, and at a number of our hui issues around how to engage with iwi members living outside the rohe was discussed.
- 9.8. We have some sympathy for these views, and suggest that the Rūnanga should consider in some detail how it engages with iwi members outside of the takiwā.
- 9.9. However our view is that this engagement is not necessarily the same as concerns at lack of engagement with centres within the takiwā. Engagement within the takiwā raises issues of maintaining ahi kā and so becomes an issue that 'must' be addressed rather than 'should'.
- 9.10. For that reason we do not recommend changes to constitutional documents aimed at driving engagement outside of the rohe, though do note this as a particular issue for the Rūnanga to consider further.

- 9.11. We also encourage the Rūnanga to explore different technologies that would allow wider participation – such as the live streaming of AGM etc. However, at the end of the day these are unlikely to replace kanohi ki te kanohi engagement and so our recommendations reflect this.

**Recommendation 11:**

We recommend that the Rūnanga Rules be amended to:

- (a) Require one Board meeting in each calendar year be held at a venue in Te Tau Ihu (to be determined in consultation with Te Tau Ihu representatives);
- (b) Require the Annual General Meeting be held at a venue in Te Tau Ihu once every four years; and
- (c) Reduce the quorum required for AGM to reflect that attendance may be lower at Te Tau Ihu.

## **10. Accountability to, and communication with, iwi members**

- 10.1. One concern that did emerge from our consultation was a feeling within the iwi that there was a lack of connection with what it is that the Rūnanga actually does, whether this aligns with iwi expectation, and how the Rūnanga was performing its functions.
- 10.2. Our view is that these concerns are primarily issues associated with how the Rūnanga and associated entities are operating and how they are communicating back to iwi members.
- 10.3. As with a number of other issues we have considered, making constitutional changes to the rules of the various entities in the Ngāti Toa Group can only have limited impact. These concerns primarily go to how the Rūnanga and the Group operates in practice rather than the underlying rules and framework it works within.
- 10.4. However, given the nature of the feedback we do feel that is important to make some changes to that framework to stress the importance of engagement with iwi members. It is also important to provide additional clarity around how the Rūnanga undertakes and communicates particular strategic functions so that everyone's expectations are 'on the same page'.
- 10.5. For example, it is not our role or the function of the constitutional documents to decide if the focus of the Rūnanga should be (for argument's sake) providing support to marae versus provision of health service or delivery of both. But what the constitutional documents can do is provide some clarity around how those priorities are set and worked towards. If an individual disagrees with the strategic priorities of the Rūnanga they should at least be able to have confidence that setting the direction was an active decision and be able to hold the Rūnanga to that decision.
- 10.6. With that in mind, it appears to us that a key shortcoming is that the existing planning, accountability, and reporting framework in the Rūnanga rules are aimed at meeting Māori Fisheries Act 2004 requirements rather than providing iwi members with the type of feedback and information that they are looking for.
- 10.7. Our view is that there are a number of changes that can be made which are specifically targeted at providing clarity around how the Rūnanga sets priorities, what it then does to achieve those priorities, and whether or not it is ultimately successful.
- 10.8. These changes should not be too prescriptive, particularly in terms of outcomes, to enable flexibility to cope with future, unforeseen, circumstances. We suggest that this could be achieved through the inclusion of a new planning section in the rules, with links to the reporting requirements in the AGM currently set out at clause 15 of the Rūnanga rules. This would include a requirement to develop both longer term strategic plans as well as annual plans aimed at achieving those strategic objectives.
- 10.9. We are not suggesting changes to the rules so that they have the effect of detailing what it is the Rūnanga must do in a practical, day to day, sense. But, what the rules can do is require the Rūnanga to clearly report to the iwi on those matters so that there is some

transparency around this, and therefore some practical pressure on the Rūnanga to meet the priorities the iwi members themselves have.

**Recommendation 12:**

The Rūnanga Rules be amended to provide that the Rūnanga must:

- (a) Prepare a strategic plan that sets out the Rūnanga's strategic priorities for itself and any associated entities (including the Trust);
- (b) Ensure that the term of the strategic plan is adequate to set aspirational targets and measure their achievements;
- (c) Develop that plan through consultation with iwi members;
- (d) Include in its annual report to each AGM a report on the progress that has been made towards achieving the annual and strategic plans; and
- (e) Set out goals and objectives for the next year in an annual plan that identifies how the Rūnanga intends to achieve the strategic priorities set out in the strategic plan.

## 11. Recognition of spouses in the constitutional documents

### Background

- 11.1. Currently the Rūnanga rules enable spouses who are not of Ngāti Toa descent to become Rūnanga members. Those spouses are entitled to vote in Rūnanga processes but are not able to stand for the Board. They are also not recognised as beneficiaries of the Trust.
- 11.2. As we understand it, the main rationale for this arrangement is that it provides some recognition of the contribution that a number of spouses make to functioning of marae and to the life of the iwi in general. One hui attendee described them as 'a taonga of the iwi'.
- 11.3. We also heard that what was important in this arrangement was not the right to vote itself, but the fact that an individual was acknowledged as being part of the wider Ngāti Toa community. Other rationale for the inclusion of spouses included that they provided a voice for minor children who were iwi members (though this is a separate criteria for membership as well).
- 11.4. The contrary view was that spouses should not be entitled to be members of the Rūnanga, as they did not share the whakapapa connection with the iwi. Manaaki obligations to spouses were met through services that were provided to the community of their whānau.
- 11.5. There was also concern that the way the mechanism was currently structured created a significant amount of uncertainty as to who may become a member – for example the ease with which de-facto partners may achieve recognition. The current arrangement was also seen as a blunt tool to recognise the contribution of some individuals – i.e. it recognised spouses who did not significantly contribute but did not enable recognition of other individuals who may have made a significant contribution to the iwi in some other way.
- 11.6. The inclusion of spouses as Rūnanga members, while not as beneficiaries of the Trust, also creates a difference in the underlying duties of the two entities, as they must act for the best interests of two slightly different groups. We understand that this has not been an issue to date given how closely aligned those two groups are. But there is a potential for difficulties in the future, and the less-risk option would aim to have greater alignment between the members of the Rūnanga and the beneficiaries of the Trust.
- 11.7. Views were strongly divided amongst iwi members regarding the inclusion of spouses as members of the Rūnanga. We note that this division of view is likely to make achieving any change difficult given it will require 75% support.

For this reason we provide a more detailed discussion of our thinking than we have for other issues. In particular we felt that it was important to transparently show how we have considered a range of issues and come to our preferred option. We hope that this

more detailed discussion with assist with the further discussion that will be required within the iwi.

11.8. In considering various options, and coming to our recommendation, we have kept in mind:

- That the underlying purpose of including spouses was to provide a mechanism to recognise the contribution of particular individuals to Ngāti Toa;
- The importance of whakapapa;
- The relationship between membership of the Rūnanga and being a beneficiary of the Trust; and
- That any pathway forward should not disadvantage any current member or diminish the mana of any individuals.

#### Complete removal of spousal registrations

11.9. We considered whether a way forward would be to amend the definition of members to remove any reference to spouses. This would have the effect of excluding spouses from being members of the Rūnanga.

11.10. This approach would mean that spouses would not be able to register as new members. It would also have the effect of removing Rūnanga membership from a number of individuals who currently are members.

11.11. We are uncomfortable with this approach.

11.12. We do not believe that it is appropriate to take away standing or status from any individuals, or to put in place changes that might impact on their mana. We are also concerned that doing so may create a perception that those individuals are not welcomed or supported by the Rūnanga and iwi when this is absolutely not the case.

#### Associate membership

11.13. We have also considered whether some form of 'associate membership' might be created for spouses, or even other non-Ngāti Toa members, who contribute to the iwi.

11.14. We considered this type of approach because one of the reasons we heard for originally allowing membership of spouses was to provide some recognition of the contribution some make to the iwi. A new form of associate membership might provide such an acknowledgement. It could be structured so that it gave an associate member a right to receive pānui and other notices but not vote or stand for the Board.

11.15. Ultimately though, we felt that this was an unsatisfactory option as it gave no real recognition and may feel patronising as a result. We also noted that there was nothing preventing the Rūnanga, or even individual marae, from making other acknowledgments of the commitment that non-Ngāti Toa members may have made to the iwi, and that this may be more meaningful.

Doing nothing – i.e. the status quo

- 11.16. We also considered retaining the current membership arrangements as they were. We noted the views that the original rationale for this structure was to acknowledge the contribution that some had made to the iwi and the place of spouses within the Ngāti Toa community generally. We also heard the view that this membership was aimed at providing representation for children with Ngāti Toa whakapapa where the Ngāti Toa parent was unable to act on their behalf.
- 11.17. On balance we felt that a change to the membership arrangement should be made – or at least proposed and tested by the iwi.
- 11.18. We felt that a number of arrangements had changed since the original arrangements were put in place and that this had reduced the need for spousal membership. For example changes to the Rūnanga rules over time have enabled minors to be registered in their own names.
- 11.19. We were also mindful that the effect of membership for spouses is that the post-settlement structures do contain a mis-match between the membership of the Rūnanga and the beneficiaries of the Trust. While this is not an immediate problem for the Rūnanga this is an opportunity to address this gap before it becomes an issue.
- 11.20. We also felt that was a majority view within the iwi for change, though were not certain it was a 75% majority. Uncertainty as to whether a 75% threshold for change can be reached was not a reason to avoid testing any changes. The issue has been an ongoing one and it may be better to put an option forward and not receive approval than to avoid asking the question and letting the issue ‘simmer’ behind the scenes.
- 11.21. As a result we felt that it was important to put forward some change rather than rely on the status quo.

Our preferred option – gradual removal of membership

- 11.22. Our preferred solution is to remove membership for spouses from the Rūnanga rules, but to do this as a gradual transition.
- 11.23. We suggest doing this by removing the ability for spouses to register as members of the Rūnanga going forward, but not ‘cancelling’ the existing membership of any spouses that have registered in the past.
- 11.24. Such a change should be drafted so that it is effective from 1 January 2019, and would not apply retrospectively beyond that (i.e. spouses who are had registered as members before this date would not have their membership removed). Setting the date this change would apply from in the very recent past aims to prevent spouses who have not previously registered rushing to do so before the change is made.
- 11.25. Our view is that this option would provide for a transition from the current membership arrangements for spouses to a new one while not ‘taking away’ the current rights or standing that any individual has. Again, we note that this is important to ensure any

change does not give the impression that an individual is not welcome or diminishes an individual's mana.

- 11.26. While there is no perfect solution to this issue, we believe this approach is one that moves the Rūnanga towards a membership arrangement that reflects the majority view of the iwi, but in a way that respects the mana of existing members and the original rationale for inclusion of spouses in the Rūnanga's early days.

**Recommendation 13:**

That the Rūnanga Rules be amended to remove the ability of spouses to register as members from 1 January 2019, but retain the membership of spouses currently registered as members.

This could be done by amending clause 10 of the Rūnanga Rules to remove 10.1(c) (i.e. spouses can register) and replace it with a new clause that provides a member includes an individual who was validly registered as a member of the Rūnanga before 1 January 2019 (i.e. preserves the position of existing members).

## 12. Kaunihera Kaumatua

- 12.1. We also heard some discussion regarding the status of the Kaunihera Kaumatua. Much of this discussion was linked to the issue of the role of kaumatua representation on the Rūnanga Board.
- 12.2. We agree with the view we heard that kaumatua play a central role in the life of an iwi and are the repositories of knowledge relating to tikanga and history. Their view should be reflected in Rūnanga decision-making.
- 12.3. We also heard criticism that the existing Kaunihera Kaumatua was strongly Takapūwāhia focused. However we note the logistical difficulties in developing a takiwā wide representation.
- 12.4. We also considered whether treating kaumatua as effectively a subcommittee of a corporate entity was appropriate. Was this the best way to tap into their knowledge and expertise? Was this also the best way support and strengthen kaumatua and the role they have within each marae?
- 12.5. As we have noted above, if we are to reduce a formal kaumatua role on the Board we feel it should be replaced with some form of cultural audit committee (in which we anticipate kaumatua will be heavily, though not exclusively, represented). We felt this was a better way to access their knowledge and expertise.
- 12.6. We also felt that ultimately the status and role of kaumatua was not accurately reflected in the current Kaunihera Kaumatua. Instead we would suggest that what may be more appropriate is that the Rūnanga work with each marae to support those marae in establishing their own kaunihera and ways to support their own kaumatua to ensure a healthy and functioning marae.

### **Recommendation 14:**

That clause 7 of the Rūnanga Rules be updated to provide that the Rūnanga shall work with each marae to support those marae in establishing kaunihera kaumatua or other arrangements to support their kaumatua and ensure healthy and functioning marae.

### **13. Summary of Recommendations**

13.1. In summary, our recommendations are:

#### **Recommendation 1:**

That there be no change to the purposes or objectives of either the Rūnanga or the Trust.

#### **Recommendation 2:**

That there be no change, at this time, to the underlying structure of the Ngāti Toa Group and the relationship of the various entities within the Group. The structure should continue to be monitored and amendments may be made in the future if required.

#### **Recommendation 3:**

That the Trust Deed of the Trust be amended to provide that:

- a) Two (2) individuals, who are independent of the Rūnanga, must be appointed as Advisory Trustees to assist the Rūnanga in its capacity as trustee of the Toa Rangatira Trust;
- b) Those advisory trustees are to be appointed by the Rūnanga on the basis of their independence, expertise, and skills; and
- c) Any appointments must be notified to the iwi, including the rationale behind their appointments.

#### **Recommendation 4:**

That there be an eight (8) member Rūnanga board made up of:

- a) One representative for each of the marae currently reflected in the Rūnanga Rules; and
- b) Four (4) Board members elected on an iwi wide basis.

#### **Recommendation 5:**

That voting for Board seats be on the basis that:

- a) All marae representatives be done by postal or electronic ballot open to all adult iwi members who have indicated their affiliation with that marae; and
- b) Voting for iwi-wide Board members remain as it currently is within the Rūnanga rules.

**Recommendation 6:**

That the Rūnanga Rules be amended to provide that employees of the Rūnanga are not eligible to be Board members.

**Recommendation 7:**

That the Rūnanga put in place a programme for the development of governance skills by rangatahi. This should include exploring internal mechanisms (for example alternative director programmes within the Ngāti Toa Group) as well as external mechanisms (such development opportunities offered by the Institute of Directors). Changes to the constitutional documents of the Rūnanga or Trust are not required to put such a programme in place.

**Recommendation 8:**

That the Rūnanga rules be amended to clarify the Rūnanga has the power to establish sub-committees, which may include individuals who are not members of the Rūnanga, and in doing so must issue terms of reference for each subcommittee and make these available to an iwi member if requested to do so.

**Recommendation 9:**

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- c) Reduce the quorum required for AGM to reflect that attendance may be lower at Te Tau Ihu.

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- a) Prepare a strategic plan that sets out the Rūnanga's strategic priorities for itself and any associated entities (including the Trust);
- b) Ensure that the term of the strategic plan is adequate to set aspirational targets and measure for their achievements;
- c) Develop that plan through consultation with iwi members;
- d) Include in its annual report to each AGM a report on the progress that has been made towards achieving the strategic plan; and
- e) Set out goals and objectives for the next year which identify how the Rūnanga intends to achieve the strategic priorities set out in the strategic plan.

**Recommendation 13:**

That the Rūnanga Rules be amended to remove the ability of spouses to register as members from 1 January 2019, but retain the membership of spouses currently registered as members.

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**Recommendation 14:**

That clause 7 of the Rūnanga Rules be updated to provide that the Rūnanga shall work with each marae to support those marae in establishing kaunihera kaumatua or other arrangements to support their kaumatua and ensure healthy and functioning marae.

## 14. Next Steps

- 14.1. We note that for any changes to the constitutional arrangements of the Ngāti Toa group require a high level of support within the iwi for them.
- 14.2. We are also mindful that at this point we have come up with detailed options that have not been specifically discussed with the iwi themselves. It may be that some of these suggestions are met with support, while some might not get the support needed to effect a change.
- 14.3. Therefore, we suggest that these options be provided to the iwi as a second round of discussion to test the potential level of support for any change before going to the effort of drafting amended sets of rules and Trust Deed.
- 14.4. If taken out in this way the Rūnanga would have the opportunity to test levels of support before endorsing or rejecting particular changes.
- 14.5. Once there is a sense of what recommendation may or may not be acceptable to the iwi, the Rūnanga will be in a position to accept or reject particular recommendations and direct drafting on amended sets of rules and the Trust Deed to take place.
- 14.6. Those amendments will then need to be formally taken to the iwi to vote on.