

ARTICLE

Reconciling Traditional Forms of Māori Governance with Models of Western Corporate Governance

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The post-settlement space is an area where cultural and economic imperatives collide, and two world-views come into direct contact and can either clash, or reinforce the other. In the post-settlement era, iwi are faced with adopting post-settlement governance structures to receive, manage and develop their commercial assets. Reconciling traditional Māori governance with models of Western corporate governance is an elusive task as both systems are inherently dissimilar. This paper provides an overview of general governance principles, good corporate governance practice and aspects of traditional Māori governance. It contends that it is important for post-settlement governance entities (PSGEs) to incorporate both traditional Māori governance measures alongside good principles of corporate governance due to the reality of operating within the commercial sector and the necessary skill-sets this requires. Retaining traditional Māori governance is important to ensure cultural match, which in turn supports the legitimacy of these governance structures within the community they represent. The post-settlement space provides iwi with the opportunity to strategically advance the aspirations and objectives of their people, in accordance with their own tikanga and bottom lines. Both aspects make post-settlement governance unique. The overarching goal for any PSGE is to achieve transformative governance to transform the deprivation and disempowerment experienced by Māori throughout New Zealand following colonisation.

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I Introduction

The post-settlement era represents a crossroads, where the pursuit for acknowledgement and compensation for past grievances ends, and a new road towards recovery, growth and prosperity begins. This new operating environment is a space where cultural and economic imperatives collide, and two distinct worldviews come together and can either clash with, or reinforce, the other. Iwi and hapū now have the opportunity to utilise corporate governance structures to manage their commercial assets in order to address prevalent socio-economic issues that are persistent within Māori communities, post-colonisation. The social and political context underpinning the Treaty settlement process has resulted in a bitter relationship between Māori and the Crown, however settlement offers a way forward for Māori to assume greater control over their own affairs.

For iwi and hapū to realise their aspirations, they must first choose an appropriate post-settlement governance entity (PSGE) to receive and manage the commercial assets received as part of a treaty settlement package. This is a new dawn for Māori entities who are newly tasked with instituting, governing and managing large corporate structures that hold the economic asset base on behalf of current and future generations. This endeavour requires appropriate leadership, governance tools and capabilities in conjunction with culturally appropriate structures in order to maintain successful economic development. Examples of the corporate vehicles commonly used include private trusts, charitable trusts, incorporated societies, companies and statutorily created entities, showing that there is a multitude of options available for iwi who are yet to settle.¹

Reconciling traditional forms of Māori governance with models of Western corporate governance is a challenge as tension naturally arises from both systems being underpinned by disparate value paradigms. A key driver for Māori, when choosing a corporate governance structure, is the ability to exercise as much control as possible in designing a structure that suits the overall aspirations, objectives and values of the iwi.² While there is some debate on the effectiveness of PSGEs in representing iwi and hapū, this article focuses on the realities of the need to operate commercially and to choose appropriate corporate vehicles to develop a group's economic base. It is important to acknowledge that different governance methods are suitable in different contexts and one size does not fit all. There is no single governance model appropriate for all iwi and hapū.

This article will discuss the broad commonalities and differences between Māori and Western forms of governance. It will then discuss whether they can be reconciled in the commercial space, and what insights can be drawn from both paradigms. Governance can be seen as a tool that helps grow the capital base of PSGEs to bring prosperity to settlement beneficiaries. This article will look at specific iwi, namely Waikato-Tainui, Ngāi Tahu and Tūhoe, to demonstrate examples of corporate governance methods incorporated within a tikanga Māori framework with the aim of providing insight for iwi and hapū who are yet to settle. It is crucial that governance is legitimised by the Māori groups concerned, and that these communities are involved in the architecture of their own corporate governance entities. Ultimate commercial and transformative success usually rests on iwi governance entities implementing corporate structures that align with local tikanga.

1 Law Commission *Māori Custom and Values in New Zealand Law* (NZLC SP9) at 90–91.

2 See Robert Joseph “Indigenous Peoples’ Good Governance, Human Rights and Self-Determination in the Second Decade of the New Millennium – A Māori Perspective” (2014) 11 Māori LR 1.

II Post-Settlement Era

The Treaty settlement process is arduous and can be emotionally relentless for those navigating negotiations with the Crown, or claimants bringing their claims before the Waitangi Tribunal. The violent historical and political events of the 19th century, and the impacts of colonisation contextualise the Crown-Māori relationship and settlement processes.³ Māori Marsden highlighted the impact colonisation had on Māori throughout New Zealand in the following statement:⁴

It is our contention that there is a direct link between economic deprivation, oppression, dispossession ... and the development and escalation of social ills within Maoridom. The reality within Maoridom is that having lost his lands, estates, forestries, fisheries and other “taonga” he has been pushed to the extreme lower end of the economic spectrum. He has no resources whereby he might build an economic base for himself.

Marsden outlined the connection between colonial processes and the socio-economic issues that afflict contemporary Māori societies today. This is the backdrop of the post-settlement era and explains why economic development is a crucial means for addressing widespread deprivation. One function of a PSGE is to enable Māori to rebuild traditional social, political and economic institutions.⁵ Historic grievances caused by breaches of the Treaty of Waitangi will always occupy an important place in iwi and hapū history. The historic context underpins the significance of Treaty settlements to the people who receive them and strengthens the drive for PSGEs to achieve economic success. The post-settlement process often involves settling the pain of the past in order to move forward.⁶ This process does not entail forgetting past grievances, which remain an undeniable part of one’s history. Tatau pounamu is a concept referenced in the Te Urewera settlement⁷ that conveys moving through greenstone doors, and allowing parties to willingly reconcile their conflicts in order to progress forward, so that they are not debilitated by past injustices.⁸

Evidently, some Māori groups are critical of the settlement process and view it as insufficient redress for the true cost of Treaty breaches. Others see settlement as an opportunity to autonomously move forward economically, socially, culturally and politically. This dual perspective is summed up below in the Chairman’s Review section of Waikato-Tainui’s annual report:⁹

While some may argue that the monetary and asset settlement was insufficient redress for what our people suffered, our reality today is that we have been able to move on from our mamae to design a hopeful, more positive future for our whaanau, hapuu and iwi.

3 Initial Scope of Crown/Māori Relations portfolio [CAB-18-MIN-0078] at [2-4].

4 Māori Marsden “Prognosis for the Socio-Economic future of Māoridom” in Te Ahukaramū Charles Royal (ed) *The Woven Universe: Selected Writings of Rev Māori Marsden* (The Estate of Rev Māori Marsden, Otaki, 2003) 119 at 133–134.

5 Law Commission *Waka Umanga: A Proposed Law for Māori Governance Entities* (NZLC R92, 2006) at 12.

6 Waitangi Tribunal *A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity* (WAI 262, 2011) at 247.

7 Tūhoe Claims Settlement Act 2014, s 10(8).

8 The Hon Christopher Finlayson “Address to Tūhoe-Crown Settlement Day in Taneatua” (22 August 2014).

9 Waikato-Tainui *Puurongo-aa-tau o Waikato-Tainui 2015* at 6.

This extract provides an important rationale that supports PSGE as a platform for iwi and hapū to positively grow and enable transformative economic development.

A PSGE is the corporate entity that receives and holds settlement assets on behalf of a claimant group. This entity decides how commercial assets are managed and distributed to beneficiaries.¹⁰ Before the Crown transfers the settlement assets, a PSGE must fulfil certain criteria which includes being representative, transparent and accountable to the claimant group.¹¹ A PSGE serves a wider purpose than to exclusively develop and grow an asset base.¹² They also serve as a representative body that provides a unified voice on behalf of iwi members, one that can drive the collective interests and vision of the group.

A defining feature of PSGEs is that assets are held in common for all beneficiaries of a Treaty settlement by virtue of whakapapa, on an intergenerational timeline.¹³ The Law Commission has argued that if a standard model entity is necessary, then it needs to be fiduciary in nature so that the interests of the collective are safeguarded, and that governors or managers make decisions that reflect the best interests of all iwi and hapū members.¹⁴ Asset ownership under the PSGE model assumes a business ethic that is longer-term to reflect intergenerational economic, social and cultural development. This point differs from the general short-term approach of mainstream corporate governance.¹⁵ Tikanga Māori and kinship-based representation is fundamental to any governance structure that is chosen.¹⁶ Maintenance of relationships is critical to functioning governance systems. Governance entities are created to represent iwi and hapū, not to replace these groups, as a PSGE should be the servant of those represented, and not the master of them.¹⁷

There are valid concerns with corporatising iwi and hapū due to the risk of tikanga being consumed by commercial imperatives. Mason Durie warns against the use of economically oriented organisations that fail to capture the cultural basis of the Māori.¹⁸ Māori need to exercise caution in avoiding assimilationist philosophies that come hand in hand with corporatising iwi and hapū through the underlying settlement policy.¹⁹ This process is subtle but still leads to culturally devastating impacts, much like past assimilationist policies were highly successful in detribalising Māori communities and

10 Office of Treaty Settlements *Post Settlement Governance Entities: A Guide* at 4.

11 Law Commission *Treaty of Waitangi Claims: Addressing the Post-Settlement Phase* (NZLC SP13, 2002) at 14–15.

12 Kel Sanderson, Matthew Arcus and Fiona Stokes *Functions and Costs of Operating Post Settlement Governance Entity* (Business and Economic Research Limited, BERL 4560, December 2017) at 20.

13 Chapman Tripp *Te Ao Māori: Trends and insights* (June 2017); and Ngāi Tahu *Annual Report 2013* at 1.

14 Law Commission, above n 11, at 14.

15 Te Puni Kōkiri “What is governance” <tpk.govt.nz>.

16 Torivio A Fodder, Priscilla Davis-Ngatai and Robert Joseph *Ka Takahia ano o tātou Tapuae: Retracing our steps – A Māori Governance Overview and Literature Review* (Te Mata Hautū Taketake (University of Waikato), Hamilton, 2014) at 8.

17 Robert Joseph “Contemporary Māori Governance: New Era or New Error?” (2007) 22 NZULR 682 at 706.

18 M H Durie *Te Mana Te Kāwanatanga: The Politics of Māori Self-Determination* (Oxford University Press, Auckland, 1998) at 226–227.

19 Ani Mikaere “Settlement of Treaty Claims: Full and Final, or Fatally Flawed?” (1997) 17 NZULR 425 at 453.

leading to the Westernisation of Māori institutions.²⁰ Therefore, maintaining cultural integrity alongside commercial development is vital in ensuring successful outcomes.

As Stephen Cornell and Joseph P Kalt have articulated, “[a] tribe laying claim to the right of self-determination must be armed with capable institutions of self-governance.”²¹ In line with this, iwi and hapū who have ambitions of exercising tino rangatiratanga or mana motuhake over their own environmental, social, economic and cultural affairs must also create institutions that will allow for robust systems of governance that incorporate tikanga Māori.

III Governance

Governance is important whenever a group of people come together for a collective objective,²² such as managing a large commercial asset base for the benefit of hapū and iwi. Governance traces its ontological roots to the word *gubernare* or *gubernator*, which means to steer a ship.²³ This is a fitting metaphor for Māori who have strong navigational roots and illustrates that governance is about the overarching direction an organisation is heading. A helpful definition is provided by Tim Plumtre and John Graham:²⁴

[G]overnance involves the interactions among structures, processes and traditions that determine how power is exercised, how decisions are taken, and how citizens or other stakeholders have their say. Fundamentally, it is about power, relationships and accountability: who has influence, who decides, and how decision-makers are held accountable.

This statement reflects the core importance of leadership within governance.²⁵

A Broad examples of good governance principles

A clear vision and established values are important to ensure that the entire corporate structure is focused on achieving unified outcomes and that all parts are moving in the same direction. Aligning a group focus is important to ensuring a streamlined system. Good governance should create enabling conditions to achieve the vision of the collective.²⁶ Transparency ensures that decision-makers are held accountable, as shown by the Law Commission’s assertion “that ‘sunlight is the best disinfectant’”.²⁷

20 David Williams *‘Te Kooti Tango Whenua’: The Native Land Court 1864-1909* (Huia Publishers, Wellington, 1999) at 89.

21 Stephen Cornell and Joseph P Kalt “Reloading the Dice: Improving the Chances for Economic Development on American Indian Reservations” (Native Nations Institute and The Harvard Project on American Indian Economic Development, JOPNA No 2003-02, 2003) at 17.

22 Joseph, above n 2, at 2.

23 John Farrar *Corporate Governance Theories, Principles and Practice* (3rd Ed, Oxford University Press, Victoria, 2008) at 3.

24 Tim Plumtre and John Graham *Governance and Good Governance: International and Aboriginal Perspectives* (Institute on Governance, 3 December 1999) at 3 (emphasis omitted).

25 Federation of Māori Authorities and Te Puni Kōkiri *Hei Whakatinana i te Tūrua Pō: Business Success and Māori Organisational Governance Management Study* (Wellington, 2003) at 11.

26 Law Commission, above n 5, at 85.

27 Law Commission, above n 11, at 17.

Further, Ani Mikaere warns against a corporate elite who pursue power through the representative positions they occupy, without being servants to their people.²⁸ Representatives need to be accountable to the people they represent and exercise their functions in line with iwi and hapū aspirations. The Waka Umanga report suggests that the governance principles for a representative entity should be defined within the charter.²⁹ It is recommended that this practice needs to be implemented within iwi corporate structures in conjunction with the incorporation of removal mechanisms that both protect the mana of the representative member involved, and also the interests of the iwi collective.³⁰ In doing so, the value of whanaungatanga is recognised. This reflects traditional Māori leadership discourse, where leadership authority is bestowed by the represented people and ceases if the leader no longer serves the interests of the people.³¹ Governance institutions do not create absolute nor unquestioned authority to rule over a group of people.³² People are elected into governance positions for the purpose of furthering the overall interests of the group in accordance with their localised and distinct interests.

Enabling Māori to have greater autonomy in making governance decisions over their own affairs creates a greater linkage between the decision and the outcome, as the decision-maker will either benefit from or pay the costs of the decisions that are made.³³ Since iwi and hapū are kinship-based groupings, representatives need to look after the interests of their whānau. Representative institutions can be elected at marae or hapū level, for example Te Whakakitenga of Waikato Tainui,³⁴ and then that group generally elects from within themselves an executive board which has a management function, ensuring that managers have a direct whakapapa link to the group being represented. Waikato-Tainui's decision not to elect two independent members to their board, Te Arataura, reinforces the importance of whakapapa and that connection with those elected to these positions. In a Māori context, governance is important specifically because it allows Māori entities or groups to look after the needs of their own people without outside imposition or paternalism.

It is good practice for governance structures to incorporate internal dispute resolution mechanisms to ensure that governance processes avoid as much disturbance or internal instability as possible.³⁵ Waikato-Tainui previously suffered the problem of having no internal dispute resolution mechanism within their governance entity leading to increased litigation.³⁶

Constitutionalism reinforces governance as the concept relates to the act of governing based on a set of foundational principles, values or rules.³⁷ As Stephen Cornell noted, “[a] constitution is a blueprint for collective action.”³⁸ Theoretically, leaders cannot act unrestrained in their own self-interest because decision-makers are subject to

28 Mikaere, above n 19, at 453.

29 Law Commission, above n 5, at 16.

30 At 54.

31 Waitangi Tribunal *Muriwhenua Land Report* (Wai 45, 1997) at 29.

32 Law Commission, above n 5, at 152.

33 Cornell and Kalt, above n 21, at 15–16.

34 Waikato-Tainui “Te Whakakitenga” <www.waikatotainui.com>.

35 Gina Hefferan “Post-Settlement Dispute Resolution Time to Tread Lightly” (2004) 10 Auckland U L Rev 212 at 227–228.

36 At 227–228.

37 Stephen Cornell “‘Wolves Have A Constitution:’ Continuities in Indigenous Self-Government” (2015) 6(1) IIPJ 1 at 2.

38 At 2.

constitutional rules, which may be written or unwritten. This resonates with Indigenous societies as Indigenous peoples have a body of norms or rules that have been developed over centuries and are well-known within the society. Decision-making should be guided by a body of essential principles or predictable rules that relate to the identity of the community, the community's values, authority structures and decision-making processes that the wider group deems appropriate.³⁹ Principles and predictable rules clarify the scope of a decision-maker's authority and mandate.⁴⁰

Literature concludes that there is no global "one size fits all" model for best practice governance due to differences in legal systems, institutional frameworks and cultural traditions.⁴¹ Any form of governance develops against a contextualised backdrop relative to a society's distinctive culture.⁴² Good governance methods may not be suitably applied in certain contexts — for example, in Western utilitarian communities, efficiency might be the most valuable governance principle whereas in Indigenous societies, achieving consensus may be valued over efficiency.⁴³ This is why values must be outlined at the outset of any enterprise so that decision-makers can act in accordance with the group's distinct culture.⁴⁴ Further, corporate governance has been impacted by neoliberal policies which emphasise the value of the open market and individual rights. Individualism is inconsistent with Indigenous conceptions of governance which are inherently collective, reinforcing the importance of context.⁴⁵

Large corporate failures have been attributed to weak governance arrangements and poor governance decisions.⁴⁶ Farrar supports this view and states that internal difficulties relating to corporate governance were just as causative of corporate failure as external forces.⁴⁷ Therefore, good corporate governance is crucial to successful economic development. Waikato-Tainui implemented strong diversification strategies in order to ensure safer investments.⁴⁸ This is an example of strategy and policy reflecting the direction and commercial expertise within Tainui Group Holdings (TGH). TGH is the assets holding company and commercial arm, which differs from Te Arataura, the development arm.

Implementing a clear set of guiding values is important, particularly when there is a dominant economic bottom line within mainstream corporate governance, albeit tempered by emerging popular business ethics of social responsibility. An economic bottom line does not fit within a Māori corporate governance framework. Instead, a quadruple bottom line is more appropriate, as social, cultural, economic and environmental factors are holistic and equally important.⁴⁹

39 At 2.

40 At 2.

41 Financial Markets Authority *Corporate governance in New Zealand: Principles and guidelines* (2014) at 4. See Joseph, above n 17.

42 John H Farrar "Corporate Governance" (1998) 10 Bond LR 141 at 141.

43 Joseph, above n 2, at 3.

44 Law Commission, above n 5, at 8.

45 Maria Bargh "Māori Development and Neoliberalism" in Maria Bargh (ed) *Resistance: An Indigenous Response to Neoliberalism* (Huia Publishers, Wellington, 2007) at 41–42.

46 Grant Kirkpatrick *The Corporate Governance Lessons from the Financial Crisis* (Organisation for Economic Co-operation and Development (OECD), 2009) at 2.

47 Farrar, above n 23.

48 Tainui Group Holdings <www.tgh.co.nz>.

49 Tony Burton *The Treasury Approach to the Living Standards Framework* (The Treasury, 22 February 2018).

B *Corporate governance principles*

(1) Governance and management distinction

There is a clear distinction between governance functions and the day-to-day management of a corporate entity.

Governance relates to strategic direction, vision and values, such as exercising effective leadership, establishing a vision, creating policy, monitoring managerial performance, including the views of stakeholders, managing risks and auditing accounts.⁵⁰ It also includes recognising external social and cultural factors that require consideration.⁵¹ This must be done with transparency, accountability, fairness, legitimacy and with a representative function.⁵²

Day-to-day management relates to everyday tasks that fit within the wider processes, policies and long-term goals of the governing body.⁵³ Waikato-Tainui has had long-standing issues with ensuring that a clear distinction was made between governance and management functions.⁵⁴

An example of this distinction relates to the similar operation of Te Kauhanganui, with a democratic parliament, and Te Arataura being tasked with the control and management of Te Kauhanganui's affairs.⁵⁵ The line is often blurred and leads to instability within the governance structure. Instability is also exemplified by the influx of litigation that affected Waikato-Tainui, supporting the objective importance of a clear definition of roles and responsibilities.

(2) Board composition and capacity

In the Māori corporate space, there is a tendency to appoint internal directors due to the importance of whakapapa, whanaungatanga and ensuring that representative bodies have an astute cultural awareness in relation to the iwi and hapū. Independent board members are seen as an asset in terms of board composition because they have no personal interest in the assets, provide an impartial voice and are able to scrutinise decisions and management practice.⁵⁶ Within iwi corporate structures, companies have boards of directors that are external to fulfil the need for the best expertise possible, at least until iwi and hapū can develop their own internal expertise.⁵⁷ In the absence of highly skilled corporate talent, iwi outsource managers and directors who have the right skills and knowledge to grow the PSGE for the benefit of all iwi and hapū members.

Capability is an important issue for iwi corporate governance. Board directors and board members should have the requisite business acumen necessary for making good

50 World Bank *Governance and Management* (April 1992) at 3.

51 At 3.

52 At 4.

53 At 1.

54 Waikato-Tainui has been involved in a lot of litigation. Some of the litigation focuses on the need to make the distinction between governance and management roles. See *Roa v Morgan* [2009] NZAR 162 (HC) at [5].

55 At [36].

56 *Statement of Investment Policy and Objectives Te Ngakinga o Whanganui Investment Trust/Whanganui Iwi Fisheries Limited* (July 2017) Ngā Tāngata Tiaki o Whanganui <www.ngatangatatiaki.co.nz>.

57 For example, Ngā Puhi utilises three independent Directors for their wealth of commercial expertise. See Te Rūnanga-Ā-Iwi O Ngāpuhi *He waka putanga* (Annual Report, 2015) at 36.

commercial decisions. Some board members are elected based on their mana or whakapapa within an iwi context, rather than on corporate expertise.⁵⁸ A lack of specific corporate expertise is problematic in a business context relating to the governance and management commercial assets. While cultural and tikanga-based expertise is crucial for Māori leadership in a governance context, corporate expertise is also necessary in PSGE structures in order to achieve financial success.⁵⁹

Te Whakaturanga 2050 describes Waikato-Tainui's objective of building capacity and capability within its tribal membership so that future generations will be able to take up governance and management roles in the corporate structure.⁶⁰ Ngāi Tahu is similarly working on building iwi commercial capabilities through cadetship programmes.⁶¹ These approaches assist iwi members to develop corporate expertise and leadership capacity from within their own iwi groups.

(3) Separation of the commercial and social arms

Separating the commercial arm from the social arm of a corporate structure is regarded as an important principle of corporate governance because it “enhances clarity and accountability”.⁶² Commercial aims and social aims often conflict, therefore separation ensures that this conflict does not disrupt commercial operations.⁶³ Economic development is an important focus of a PSGE and must function successfully in order to build the economic base for the benefit of iwi and hapū members. This does not mean each arm is isolated from the other; for example, Waikato-Tainui is focussed on streamlining TGH with other operations within the group.⁶⁴ As Ngāpuhi's annual report in 2011 stated, “[i]t is the economic horse that pulls the cultural cart.”⁶⁵ The commercial arm has the mandate to grow the asset base through financial investment. While the commercial arm serves a discrete purpose, it still operates under the mana of the iwi as represented by the board members and governors.⁶⁶

Separation allows holding company directors to focus solely on business performance and growing the economic base without interference from internal politics and the consequent instability that is often present within governance bodies. The distributive or social arm can then decide how best to distribute funds for social, cultural and environmental purposes, or to hold onto the funds for further investment.⁶⁷

The development arm is in charge of representative governance and tribal development. This is where Māori can determine where funds are distributed in order for the iwi and hapū to achieve their aims and aspirations. This can be done in conjunction

58 Roger Wallis *Governance Trends in 2019* (7 May 2019) Chapman Tripp <www.chapmantripp.com>.

59 Linda Te Aho “Corporate Governance: Balancing Tikanga Māori With Commercial Objectives” (2005) 8(2) Yearbook of New Zealand Jurisprudence 300 at 301.

60 Waikato-Tainui “Te Ara Whakaturanga 2050: The Five Year Plan FY20 to FY24” <www.waikatotainui.com> at 2–4.

61 Te Rūnanga o Ngāi Tahu *Te Rūnanga o Ngāi Tahu Group: Summarised Accounts 2015* at 2–3.

62 Bank of New Zealand *Distribution & Spending Policies: Considerations for Iwi* (December 2012) at 11.

63 At 39.

64 Jamie Small “Tainui's success, Waikato success” (2 July 2014) Stuff <www.stuff.co.nz>.

65 Te Rūnanga-Ā-Iwi O Ngāpuhi *Annual Report 2011* at 12.

66 Edward Ellison “Ngā haumi a iwi – Māori investment” (11 March 2010) Te Ara – The Encyclopedia of New Zealand <www.teara.govt.nz>.

67 Te Rūnanga o Ngāi Tahu *Ngāi Tahu 2025* at 37 and 42.

with the commercial arm operating separately. In fact, the commercial arm generates profit solely for the use of the social arm. Implicitly this suggests that the commercial arm serves the purpose of the representative governance entity and thus the collective.⁶⁸ For example the Fisheries Act makes the following provision:⁶⁹

Kaupapa 10

The elected directors, trustees, or officeholders, as the case may be, of a mandated iwi organisation must not comprise more than 40% of the total number of directors, trustees, or officeholders of an asset-holding company, a subsidiary established by an asset-holding company, or a fishing enterprise established in accordance with Kaupapa 9.

This same concept has also been implemented in Ngāi Tahu's charter document called Te Kawenata o Ngāi Tahu:⁷⁰

The Kaupapa Poutahu is the principle that the assets of Ngāi Tahu will be managed separately from the bodies that spend and distribute the income earned from those assets. Both cases illustrate the importance of separating the social and economic arms within a Māori context.

Some iwi may prefer a single integrated entity, which may align with their view that economic development should be under an overarching governance umbrella. In fact this was the subject of the *Roa v Morgan* litigation, which occurred in the context of a governance and management tension. Te Arataura, the executive board of Te Kauhanganui, wanted to initiate a governance restructure where the trustee company would be removed from the corporate structure and TGH would report to Te Arataura.⁷¹ This was viewed as a bad corporate governance decision as the tribal development body would also be responsible for decisions relating to the economic arm which threatens system stability due to internal politics.⁷²

Relationships can be maintained between the corporate and social arms within a structure while ensuring that there is a division of functions. For example, Waikato-Tainui's executive board and asset holding company have regular meetings to ensure that the vision for the broader iwi is maintained in all endeavours.

It is imperative that PSGEs can implement successful corporate governance structures in order to generate profit and ensure successful economic development. This is the platform by which Māori, through their corporate entities, can address the needs and improve the wellbeing of their people.

C Māori governance

Having outlined the basic governance and corporate governance principles, it is important to now outline the Māori context within which everything fits. The values and institutions of traditional Māori governance are dissimilar to mainstream corporate governance as both systems are underpinned by distinct value paradigms. Māori governance is

68 Tainui Group Holdings <www.tgh.co.nz>.

69 Maori Fisheries Act 2004, sch 7.

70 Te Rūnanga o Ngāi Tahu *Charter of Te Rūnanga o Ngāi Tahu* (November 2014).

71 *Roa v Morgan*, above n 54, at [4].

72 At [37] and [43].

underpinned by tikanga Māori and corporate governance is underpinned by Western neoliberal individualist ideologies.

Māori have had systems of governance and effective economic structures since before Europeans arrived. In fact, the “Report of the Commission Appointed to Inquire Into the Subject of the Native Land Laws” supported this reality by stating:⁷³

When the colony was founded the Natives were already far advanced towards corporate existence. Every tribe was a quasi-corporation. It needed only to reduce to law that old system of representative action practiced by the chiefs, and the very easiest and safest mode of corporate dealing could have been obtained. So simple a plan was treated with contempt. The tribal existence was dissolved into its component parts. The work which we have with so much care been doing amongst ourselves for centuries—namely, the binding-together of individuals in corporations—we deliberately undid in our government of the Maoris.

Traditional Māori social organisation was corporative due to the joining of different hapū for different purposes such as resource sharing and warfare.⁷⁴ Colonisation and the introduction of European legal institutions led to detribalisation and the disestablishment of existing social organisation structures, undoing the fabric that already existed. Examples of contemporary iwi approaches to corporate governance demonstrate resilience and adaptability. Different PSGE structures show that Māori are able to use traditional forms of Māori governance and Western models of corporate governance to achieve their aspirations.⁷⁵

There are four important elements to economic development within a Māori business context: culture, sovereignty, institutional capability and leadership.⁷⁶ The starting point, however, goes back to the essence of Māori society, which is an appreciation and understanding of tikanga Māori through a Māori worldview.

(1) Tikanga Māori

Whakapapa binds Māori society by connecting people to the environment, the atua, their ancestors and future generations.⁷⁷ The strands of whakapapa are woven together by whanaungatanga which characterises the principle of relatedness within Te Ao Māori. Whanaungatanga is the tikanga principle that outlines the way in which Māori form relationships with all aspects of the physical and spiritual world.⁷⁸ Iwi corporate governance involves an intergenerational responsibility, and must always remain a core ethic in corporate governance as business decisions impact on a range of different stakeholders. Both whakapapa and whanaungatanga endow a person with mana, or the

73 William Lee Rees, James Carroll and Thomas Mackay “Report of the Commission Appointed to Inquire Into the Subject of the Native Land Laws” [1891] II AJHR G1 at xviii.

74 Williams, above n 20, at 89; and Angela Ballara *Iwi: Dynamics of Māori Tribal Organisation from C.1769 to C.1945* (Victoria University Press, Wellington, 1998) at 31.

75 Jason Mika and John O’Sullivan “A Māori approach to management: Contrasting traditional and modern Māori management practices in Aotearoa New Zealand” (2014) 20(5) *Journal of Management & Organisation* 648 at 658.

76 Whaimutu Dewes “Governance Options” (paper presented to the New Zealand Law Society “Governing and running Maori Entities: Tribal Development and the law in the 21st century” Intensive Conference, August 2009) 43 at 46.

77 Cleve Barlow *Tikanga Whakaaro: Key concepts in Māori culture* (Oxford University Press, Auckland, 1991) at 173–174.

78 Hirini Moko Mead *Tikanga Māori* (revised ed, Huia Publishers, Wellington, 2016) at 32.

authority to act, which is imbued with a spiritual quality.⁷⁹ Te Ao Māori is characterised by a distinct worldview where the physical and spiritual worlds are interconnected and inseparable. Wellbeing relates not only to physical manifestations, but also spiritual wellbeing. This is an important factor when dealing with issues of Māori governance, as spiritual wellbeing is integral to development, whereas in a Western model it is not.

The importance of whanaungatanga is elucidated by Henare Arekatera Tate as being:⁸⁰

In sum, the identity of each individual tangata is constituted by a whole network of whanaungatanga relationships that define the individual with great accuracy within his/her generation, assigning roles, and linking him/her with earlier generations through whānau, hapū and iwi links.

Under this explanation whanaungatanga is the basis for accountability within Te Ao Māori. As a result, those who assume positions of leadership in representative governance boards owe a duty to the people they represent to fulfil their roles adequately and in the best interests of the entire constituency. One of the important dynamics of whanaungatanga is that group members are able to exert and enhance the mana of the collective group, and have their own mana reciprocally enhanced.⁸¹ Therefore the maintenance of relationships is also the maintenance of mana.

Another important principle is utu, which pertains to reciprocity and ensuring that balance is maintained.⁸² In circumstances where mana is diminished through some form of action, then utu is instituted to replenish the mana that has been depleted. This principle of tikanga is crucial in situations where disputes arise, which is regularly within the corporate space.

Additionally, kaitiakitanga relates to the ethic of stewardship. In the corporate space this would relate to looking after the economic asset base that has been transferred through settlement for the benefit of all shareholders of the collectively owned assets. These principles, while very briefly outlined and non-exhaustive, are of particular importance in relation to corporate governance structures.

(2) Social organisation

Prior to European arrival in New Zealand the main social grouping in Māori society was the whānau unit which included the immediate family and formed the basic building block of the entire system.⁸³ Each whānau belonged to a hapū, which consisted of extended families and was the most important political unit of pre-colonial Māori society.⁸⁴ Each hapū had a rangatira or ariki who exercised the chiefly function of leadership and ensured that the needs of the hapū were met.⁸⁵ Hapū served economic, social and political functions. Every individual was dependent on the group and all needs were taken care of by the group. Māori society revolved around the collective and decisions were made

79 At 34.

80 Henare Arekatera Tate "Towards Some Foundations of a Systematic Māori Theology: *He tirohanga anganui ki ētahi kaupapa hōhonu mō te whakaponu Māori*" (PhD Thesis, Melbourne College of Divinity, 2010) at 58.

81 At 163.

82 Mead, above n 78, at 35.

83 Hirini Moko Mead *Tikanga Māori: Living by Māori values* (Huia Publishers, Auckland, 2003) at 213.

84 Ballara, above n 74, at 19.

85 Mead, above n 83, at 229.

collectively in an open forum on the marae. All members participated in coming to a decision either by direct participation or through a whānau or hapū representative if discussions were at an iwi level. These hui would often take a very long time and would not conclude until consensus had been achieved, or concerns had been dealt with.⁸⁶

An iwi was a confederation of hapū. Each hapū belonged to a wider iwi, however the function of an iwi was not of primary importance in pre-colonial Māori society as the hapū group took care of all immediate societal needs.⁸⁷ The iwi grouping was important in times of war, but its dominance had not taken hold until the twentieth century as a result of Crown policy in relation to treaty settlement negotiations.⁸⁸

Accordingly principles of tikanga operated as customary law and “[t]he forces that controlled the social system were the institution of tapu, public opinion and the influence of [the rangatira].”⁸⁹ European law functioned to dismantle the traditional social structures. This is particularly evident through the erosion of the leadership of the rangatira, which was incrementally undermined through the individualisation of tenure whereby rights to resources were no longer determined by the group.⁹⁰

All Māori social organisational structures are underpinned by whakapapa, as each member was connected by common descent to an eponymous ancestor.⁹¹ In pre-colonial society ahikā was another basis for membership within the group, and continued involvement within the community was important particularly as everybody has a role to play.⁹² This is a point of difference to today’s society, whereby whakapapa is the sole determinant of membership to an iwi. This reflects the changing dynamics of society and social organisation being fit for purpose in contemporary times.

Since the 1830s, rūnanga and komiti were established as Māori councils or vehicles for decision-making.⁹³ In fact, rūnanga were ancient systems utilised by Māori which represents the contemporary resurgence of traditional systems.⁹⁴ However, rūnanga and komiti began to adopt European elements of procedure when dealing with issues of iwi and hapū.⁹⁵

Tikanga is fundamentally fluid and flexible, and is able to adapt to the ever changing nature of society.⁹⁶ It does so in alignment with a higher body of principles that remain constant.⁹⁷ This has continued since ancient times in which tikanga was part of a dynamic system that was subject to constant change and responded to the needs of the time.⁹⁸ It would be mistaken to view tikanga Māori as fixed in position in the pre-European period. The ancient mechanisms of traditional governance should not automatically be applied to contemporary governance structures, as this is an entirely different context. Instead

86 Ballara, above n 74, at 145.

87 At 21.

88 Malcolm Birdling “Healing the Past or Harming the Future?: Large Natural Groupings and the Waitangi Settlement Process” (2004) 2(2) NZJPI 259 at 267.

89 Mead, above n 83, at 231.

90 Waitangi Tribunal *The Taranaki Report Kaupapa Tuatahi* (WAI 143, 1996) at 3.

91 Mead, above n 83, at 227.

92 At 296.

93 Vincent O’Malley “Reinventing Tribal Mechanisms of Governance: The Emergence of Maori Runanga and Komiti in New Zealand before 1900” (2009) 56 *Ethnohistory* 69 at 73.

94 At 73.

95 At 73.

96 Mead, above n 78, at 355.

97 Mason Durie “Planning for Maori Futures” in Witi Ihimaera (ed) *Vision Aotearoa: Kaupapa New Zealand* (Bridget Williams Books, Wellington, 1994) 66 at 10.

98 Mead, above n 83, at 210.

cultural institutions should be protected to ensure iwi and hapū can continue to adapt over time, as stated below:⁹⁹

... culture is production and not a product, we must be attentive in order to not be deceived; what we must guarantee for the future generations is not the preservation of cultural products, but the preservation of the capacity for cultural production.

Tikanga is rooted in fundamental principles and it is these that should inform our critical analysis of new structures and whether they align with tikanga Māori. Hirini Moko Mead suggests that the importance of entrenched tikanga is that it connects us to our ancestors, which is a powerful linkage and important to notions of identity.¹⁰⁰

In traditional Māori society, leadership was exercised by a rangatira, ariki or tohunga. Leaders had the mana to exert authority on behalf of the people they represented. This authority was bestowed on them by their communities. As Justice Fenton states:¹⁰¹

The chief alone has no power. The whole tribe deliberate on every subject, not only politically on such as are of public interest, but even judicially they hold their “komitis” on every private quarrel. ... The system is a pure pantocracy, and no individual enjoys influence or exercises power, unless it originates with the mass and is expressly or tacitly conferred by them. In case of a war the old chief would be a paramount dictator: in times of peace he is an ordinary citizen.

Therefore, authentic leadership was mandated by the people so that leaders acted in the best interests of the collective. Assimilationist policies failed to completely undermine tribal collectivity, and old forms of governance had been re-implemented in order to ensure cohesiveness.¹⁰²

Under tikanga Māori, any violation of an individual’s mana is also an attack on the mana of the wider iwi or hapū.¹⁰³ Tikanga provided different mechanisms to deal with transgressions, involving hui, which are often long processes. This serves the function of ensuring that decisions were appropriate and sanctioned by the entire membership group. Through this process of reaching consensus, it was hoped that any disagreement could be dealt with in an appropriate way and a resolution could be reached. Disputes were fleshed out kanoahi ki te kanoahi (face to face) to ensure that both parties to a dispute could deal with the issue at hand.

Tikanga Māori has had to endure the changing tides. As emphasised by Stephen Cornell, governance is not about “resuscitat[ing] traditional governing systems [rather the task is] to develop a governing system ... that has the support of those being governed and that can govern effectively” to enable those people to meet their objectives.¹⁰⁴

The Hui Taumata conference in 1988 concluded with six themes critical to positive Māori development. Those were the Treaty of Waitangi, tino rangatiratanga, iwi

99 Manuela Carneiro Da Cunha “Children, Politics and Culture: The Case of Brazilian Indians” in Sharon Stephens (ed) *Children and the Politics of Culture* (Princeton University Press, 1995) 282 at 290.

100 Mead, above n 83, at 210.

101 Vincent O’Malley *Beyond the Imperial Frontier: the Contest for Colonial New Zealand* (Bridget Williams Books, Wellington, 2014) at 85.

102 Mead, above n 83, at 223.

103 Valmaine Toki “Will Therapeutic Jurisprudence Provide A Path Forward For Māori?” (2005) 13 Wai L Rev 169 at 176–177.

104 Stephen Cornell “Economic development, governance, and what self-determination really means” (2010) 6 Native Title Newsletter 3 at 5.

development, economic self-reliance, social equity and cultural advancement.¹⁰⁵ Tribal economic development was seen as an important vehicle for Māori advancement.¹⁰⁶ Durie's view was that there was an expectation Māori could gain greater economic self-sufficiency through the utilisation of their own unique social structures, iwi and hapū, in order to develop their own tribal resources and assets.¹⁰⁷ Indigenous discourse views development as a means of liberation from the shadow of colonial domination, and a way to exercise tino rangatiratanga.¹⁰⁸ In the early 1980s economic success within Māori control was viewed as "social and cultural emancipation".¹⁰⁹ There is therefore strong support for governance systems that are constructed using traditional structures, for example hapū based governance systems.

Excellent Māori governance involves using both tikanga Māori and good corporate governance principles.¹¹⁰ Transformative governance is seen as the most important form of governance as it enables iwi or hapū to prosper. Transformative outcomes are achievable through effective transactional governance, the generation of profit, and the implementation of traditional governance structures which ensures that the overall structure is culturally appropriate and fits within a Māori context.¹¹¹

A sound economic base is a crucial step towards achieving any real political autonomy or cultural survival.¹¹² This is because it allows iwi to pursue autonomous modes of self-governance rather than being dependent on the government, which ensures that the aims and aspirations of iwi and hapū remain under their own control. Initially there was apprehension about economic development and a concern that encouragement of this policy was a ploy of the state to engineer their own agendas at the expense of fulfilling a government obligation of collective state responsibility.¹¹³ Efforts for Māori control and autonomy are often threatened by expectations of conformity and assimilation.¹¹⁴ Yet there was and is no denying that many Māori communities are economically deprived and in need of a solution.¹¹⁵ As Durie has highlighted:¹¹⁶

Economic self-sufficiency was not to be merely another name for the abolition of state responsibilities, it was to be an opportunity for Māori to reach full potential on their own terms and for their own reasons.

Another concern is that "corporate warriors" are forming an elite class, and the financial benefits are not flowing to the wider beneficiaries.¹¹⁷ One might question what the point of intensified economic development is if the most needy within the constituency do not see any of the benefits.

105 Durie, above n 18, at 8.

106 At 6.

107 At 7.

108 At 7.

109 Cherryl Waerea-I-Te-Rangi Smith "Kimihiā Te Maramatanga: Colonisation & Iwi Development" (MA Thesis, University of Auckland, 1994) at 102.

110 Fodder, Davis-Ngatai and Joseph, above n 16, at 17.

111 Joseph, above n 2.

112 Durie, above n 18, at 7.

113 At 11.

114 At 11.

115 At 11.

116 At 11.

117 Elizabeth Rata "The Political Strategies of ethnic and indigenous elites" in E Rata and R Openshaw (eds) *Public policy and ethnicity: The Politics of ethnic boundary making* at 40.

IV Reconciling Māori and Western Forms of Governance

Economic development needs to be underpinned by tikanga Māori, and consistent with an approach that is by Māori, for Māori.¹¹⁸ Transactional governance is about building the commercial asset base and generating profit, however, “[c]ultural assimilation is not a prerequisite for economic development.”¹¹⁹ This idea is emphasised by the Harvard Project on Economic Development which suggests that decisions about governance structures need to be made by the Indigenous members concerned in order for those governance structures to have legitimacy.¹²⁰ This concept is known as cultural match, and indicates that economic success occurs when governance structures fit the culture of the Indigenous group that institutes it.

The New Zealand Law Commission has stated two reasons for PSGEs being constrained in their operation. First, the Crown sets out criteria that must be complied with for the claimant group to receive the assets, leaving overall control out of iwi hands.¹²¹ Secondly, although there is some level of flexibility, not all available commercial entities are suitable for Māori corporate governance as they are derived from Western frameworks.¹²² For instance, Māori have multiple accountabilities to beneficiaries and external stakeholders, and to both present and future generations. Investment policies should be long-term and holistic, prioritising environmental, cultural, and social elements of wellbeing alongside economic growth. Various cultural practices are implemented in the boardroom through karakia and the provision of kai. However, fundamental values are often lost in the rules or through debate, such as Waikato-Tainui’s commitment to representatives upholding the values of whakaiti, rangimārie and ki tūpato,¹²³ outlining the difficulty in retaining cultural practice and values in a corporate space.

A Dispute resolution

Schedule 2 of the Central North Island Forests Land Collective Settlement Act 2008 sets out the dispute resolution process in accordance with cultural practice. Central North Island forest lands are allocated to iwi on the basis of mana whenua and the agreements reached between iwi in a kanohi ki te kanohi process, or as otherwise determined by the parties through the appropriate resolution process.¹²⁴ Tikanga is incorporated into the dispute resolution process in sch 2 cl 2(3), which is set out as follows:

The iwi acknowledge their commitment to a resolution process that—

- (a) enhances and promotes the mana and integrity of all iwi; and
- (b) is open and transparent; and
- (c) promotes whanaungatanga, manaakitanga, and kotahitanga amongst the iwi; and
- (d) recognises the desirability of post-settlement collaboration between them in the collective management of assets.

118 At 52.

119 Law Commission, above n 11, at 6.

120 Cornell and Kalt, above n 21.

121 Law Commission, above n 11, at 11.

122 At 11.

123 This translates to humility, peace and diligence.

124 *Central North Island Forests Land Collective Settlement Act 2008*, sch 2 cl 2(1).

Interestingly, the mediation section provides that a board of the company may appoint mediators to mediate iwi disputes. One of the requirements is that the mediators should be fluent in te reo Māori, have knowledge of tikanga and skills in tikanga based dispute resolution.¹²⁵ This represents the “interface between Māori and state governance”, and the implementation of culturally appropriate dispute resolution mechanisms within a legislative framework.¹²⁶

Diane Austin-Broos has identified “a false opposition between assimilation and self-determination”.¹²⁷ To suggest that engagement in the economy is assimilationist would be detrimental to forms of sustainable development which are reliant on the economy and on commercialism. It discounts the ability of Indigenous people to implement governance regimes that are legitimate within their own communities. However, groups must remain vigilant in safeguarding their identities as Māori and being able to control the process of implementing self-governance institutions, and ensuring that commercial decisions align with their quadruple bottom lines.

V Waikato-Tainui

Waikato-Tainui was the first iwi to reach settlement through direct negotiations with the Crown and signed their deed of settlement in 1995.¹²⁸ A land-holding trust was established through the Waikato Raupatu Claims Settlement Act 1995, which initially transferred the settlement assets. Settlement gave Waikato-Tainui the opportunity to choose its own methods of governance through a tribal parliament, aptly named Waikato-Tainui Te Kauhanganui Incorporated (Te Kauhanganui).¹²⁹ This allowed Waikato-Tainui to dissolve the Māori trust board that previously managed tribal assets before settlement, which had been imposed on them, and did not reflect tribal tikanga or traditional forms of governance. Te Kauhanganui was formally incorporated under the Incorporated Societies Act 1908 in 1999.¹³⁰ Its purpose was to provide strategic direction and governance in conjunction with the core objectives, as outlined in the rules of the society. In summary, the rules of Te Kauhanganui were to support and protect the kīngitanga, advance and unify the interests of Waikato and to foster among the members of Waikato the principles of whakaiti, rangimārie and ki tūpatō.

Te Kauhanganui is the representative body of Waikato-Tainui. Formerly, each of the 61 marae elected three members to comprise the representative caucus which totalled 183 members. This has since changed following the governance review to being two members elected by each marae which now totals 136 representative members of the tribal parliament. This election of representatives by marae follows a marae-based model. The sheer number of members means that organising annual, special and general meetings

125 Schedule 2 cl 6(7).

126 Carwyn Jones “Whakaeke i ngā ngaru — riding the waves: Māori legal traditions in New Zealand public life” in Lisa Ford and Tom Rowse (eds) *Between Indigenous and Settler Governance* (Routledge, Abingdon, 2013) 174 at 184.

127 Diane Austin-Broos “Economy, change and self-determination: A Central Australian case” in Lisa Ford and Tom Rowse (eds) *Between Indigenous and Settler Governance* (Routledge, Abingdon, 2013) 108 at 119.

128 New Zealand Parliament “Historic Treaty Settlements” (8 October 2014) <www.parliament.nz>.

129 Through the governance review, Waikato-Tainui has changed the name of their representative body to Te Whakakitenga o Waikato-Tainui.

130 *Porima v Te Kauhanganui o Waikato Inc* [2001] 1 NZLR 472 (HC) at [14].

was a difficult and expensive task. Te Arataura is the executive board made up of 11 members, ten of which are elected by the representative body and the final member is elected as the kāhui ariki representative. As the tribal parliament or representative body of Waikato-Tainui, Te Kauhanganui has the responsibility of allowing tribal members to participate in a forum about wider governance issues facing the collective. This is an important responsibility that must have strong governance structures to ensure the efficient governance of tribal assets.¹³¹

The Kīngitanga has an important role within Waikato-Tainui and is intrinsically linked to tribal identity. The first coronation occurred in 1858 with Kīngi Pōtatau Te Wherowhero. The Kīngitanga movement sought to unify the interests of Māori in response to rapid land confiscations and alienation.¹³² Importantly, the Kīngitanga is an integral part of Waikato-Tainui's tribal identity and traditional governance measures.¹³³ Hammond J articulates this point in his judgment:¹³⁴

And in the case of Tainui, the Maori way of doing things is inextricably intertwined with the kīngitanga. Tainui regard that spiritual and temporal mantle as their most precious taonga, and one which has borne them through their historic tribulations.

The kīngitanga also has a constitutional importance, as it has been incorporated into Waikato-Tainui's settlement legislation.¹³⁵ Without defined parameters, there can be conflict between the power of the kīngitanga and Te Kauhanganui, which illustrates a clash between both new and old systems of traditional governance. The kīngitanga was the pre-eminent political and executive body that governed tribal affairs within Waikato-Tainui following widespread raupatu within New Zealand, whereas Te Kauhanganui has the responsibility to govern tribal assets for the future as a vehicle for the advancement of Waikato-Tainui. Problems arise with the use of a Western corporate vehicle to house the Te Kauhanganui as they must follow the rigid rules of the society, and are also governed by the Incorporated Societies Act. This tension is powerfully articulated in *Porima v Te Kauhanganui o Waikato Inc* where the two systems ultimately clashed.

Hammond J in *Porima* articulates the clash as follows:¹³⁶

Having got their settlement, Tainui were then going to have to manage it. The Maori way of doing things (tikanga) is not the same way as the pakeha way of doing things. In particular, in its own form of collectivism, Maori allow things to evolve through means and mechanisms that are peculiarly their own. ... But, all of that said, Tainui still have to operate in the modern world of commerce and technology, and with the benefit of substantial assets, which are to be applied for the benefit of the Tainui people.

Because Māori now have to operate within the commercial sector, Māori have to be able to stand in both the Māori and the European worlds, which is difficult given the different value systems that support each realm. There is room for choice when establishing a PSGE, however this is confined to the options available to Māori before the Crown will agree to transfer assets. Waikato-Tainui faces constraints based on the corporate vehicle they have chosen because of its rigid nature and increased risks of litigation and judicial review.

131 "Te Whakakitenga", above n 34.

132 Waikato Raupatu Claim Settlement Act 1995, preamble.

133 "Te Ara Whakatupuranga 2050", above n 60, at 13.

134 *Porima*, above n 130, at [12].

135 Waikato Raupatu Claim Settlement Act, preamble.

136 *Porima*, above n 130, at [12].

In *Porima*, an ordinary meeting was called by Te Kauhanganui and as a result, a resolution was passed which pledged allegiance to Te Arikinui and empowered her to appoint members of Te Arataura.¹³⁷ Essentially all governance functions were assigned to her. This case occurred in the context of the iwi being in a state of turmoil due to governance and management failures that had cost the iwi a large portion of their settlement redress, due to a variety of poor financial decisions and ventures that did not make the expected financial return.¹³⁸ Waikato-Tainui required cultural and spiritual leadership in order to remedy this dysfunction as balance needed to be restored through tikanga Māori. The factual context was that five members of the executive board had resigned and the remaining six stripped Sir Robert Mahuta of his directorships, and he subsequently refused to attend meetings and the quorum could not be established.¹³⁹

One of the complaints issued by Sir Robert Mahuta was that bringing a claim “against Te Arikinui [wa]s an unforgiveable attack on her mana, and diminishes Tainui itself”.¹⁴⁰ It was asserted that Te Arikinui is the spiritual and physical manifestation of the Kīngitanga,¹⁴¹ and garners the highest level of respect from the people of Waikato-Tainui. Furthermore, the values of the people of Waikato-Tainui are to maintain and protect the values of the Kīngitanga. Instead, however, litigation ensued challenged the decision of the Te Arikinui. Hammond J acknowledges the relevance of tikanga Māori within his decision, but ultimately decided in line with the rules of the incorporated society.¹⁴² His reluctance to interfere in the cultural parameters of the issue highlights the complexity and inappropriateness of bringing such cases to the Courts. This reflects the tendency of the New Zealand legal system to prioritise English law over tikanga Māori which makes litigation an inappropriate dispute resolution mechanism for Māori. Litigation damages the relationships between parties or, at least, does nothing to restore them.

Hammond J held that the meeting breached the rules of the Society as quorum was not reached, therefore, the resolution was not enforceable. In order to preserve the status quo, the six trustees who had been dismissed would be reinstated until a further meeting was held in order to determine the board make-up, thus restraining the operation of Te Kauhanganui due to the imposition of Western law.¹⁴³ In effect, this litigation presented a barrier to govern in accordance with tikanga Māori. Therefore the internal politics, dismissals and litigation relating to the board prevented the key aim of ensuring that the collective’s interests were protected and that the kīngitanga was upheld and respected. Litigation is a costly and inefficient mechanism,¹⁴⁴ and is not a prudent use of the iwi’s assets.

There is sufficient room for Waikato-Tainui to incorporate their tribal tikanga into the rules of the society, and ensure that the tribal parliament operates in accordance to the tikanga of Waikato-Tainui. The corporate vehicle was chosen because it suited the “collective and kinship nature” of the iwi and the large number of members in the

137 At [31].

138 At [28].

139 At [29].

140 At [36].

141 At [36].

142 Hefferan, above n 35, at 217–218.

143 At [100]–[101].

144 At [100]–[101].

representative body.¹⁴⁵ However, decisions must still be made in accordance with the law which poses a constraint on how Waikato-Tainui can operate.

In *Porima*, the Court held that Te Kaunhanganui did not operate in accordance with the rules of the society, but they were free to make rule changes as they wished as long as the changes were made in the prescribed form.¹⁴⁶ This illustrates that although Māori have relative freedom to create rules in accordance with their aims, values and aspirations, they are limited by the prescription of Eurocentric legal frameworks. It would be beneficial given the current Treaty jurisprudence for the law to expand to better facilitate expressions of Māori values into the legal system.¹⁴⁷ Therefore, this is not true mana motuhake, but rather a leashed form, as Māori can govern in the correct capacity but are required to operate in line with the rules of the game. In fact, Waikato-Tainui did not want to choose a vehicle under Te Ture Whenua Māori Act 1993 because they did not want to be under the paternalistic jurisdiction of the Māori Land Court (MLC).¹⁴⁸ This possibly would have been more desirable than the jurisdiction of the High Court because the MLC has already considered issues relating to collectively held land or assets.¹⁴⁹

Underlying litigation is the true damage to relationships that are caused, impacting on the principle of whanaungatanga. As Carrie Wainwright has written:¹⁵⁰

Litigation is a “winner takes all” strategy. The corollary is that it creates losers. This makes it entirely inappropriate for resolving conflict within kin-groups, or even between kin-groups, who cannot escape having an ongoing relationship. In such situations, a means of resolving disputes that leaves the mana of the parties intact is infinitely preferable.

Litigation undermines the kinship links shared between the members of the board and representative bodies, and operates adversely to tikanga Māori. Tikanga is pragmatic, fluid and adaptable to respond to the needs of the day. Tikanga can be reinterpreted to fit current day concerns. However, balance is important within tikanga Māori and litigation does not promote balance, rather it disrupts it. Therefore, it is an entirely inappropriate means for dealing with Māori disputes.

In *Morgan v Martin*, a resolution was passed which dismissed Morgan from his role as representative of his marae, and also as Chief Executive of Te Kaunhanganui, on the basis that he brought Te Kaunhanganui into disrepute.¹⁵¹ The Court held that in accordance with the rules the required majority was not achieved and therefore Morgan was not dismissed from his role.¹⁵² The litigation had nothing to do with the impact that internal politics were having on the relationships of the people involved, but rather rules on trivial issues of legal mechanics. In light of tikanga Māori, the relationships between the Chief Executive of Te Kaunhanganui and Te Arataura were not mended; rather, litigation caused further damage and embarrassment which directly contravenes principles of whanaungatanga and a Māori approach to dispute resolution.

In further litigation, dealt with in *Roa v Morgan*, Te Arataura wanted to implement governance changes that would remove the corporate trustee company from the

145 Tom Roa, Shane Solomon and Dr Robert Joseph “Submission to Law Commission on the reform of the Incorporated Societies Act 1908” at 5.

146 *Porima*, above n 130, at [101] and [116].

147 Roa, Solomon and Joseph, above n 145, at 6.

148 At 5.

149 Te Ture Whenua Maori Act 1993, s 18.

150 Carrie Wainwright “Māori Representation Issues and the Courts” (2002) 33 VUWLR 179 at 191.

151 *Morgan v Martin* HC Hamilton CIV 2011-419-1305, 23 September 2011 at [30].

152 At [64].

governance structure. This litigation arose due to the tension between management and government with Te Kauhanganui and Te Arataura.¹⁵³ This was a cause for concern because removing the corporate trustee would involve mixing both tribal and commercial management.¹⁵⁴ TGH has the function to grow the asset base for Waikato-Tainui, and the planned changes would mean that the manager of TGH would be accountable to both the TGH board of directors and also a new office called Te Tumu Whakarae.¹⁵⁵ Accountabilities would relate to both the commercial and tribal welfare aims. This has the impact of increasing instability and allowing internal politics to get in the way of commercial development. The short terms of elective office prescribed by most tribal constitutions politicises nearly all decision-making which is the cause of instability. Successful management of business requires some form of insulation from the short term orientation and rapid changes of tribal politics.

The Court had to define whether the restructuring issue related to governance or management. This is another case that demonstrates inefficiency as recourse to the Courts to determine whether someone falls under the governance or management head is both time-consuming and expensive. Yet without resolving this dispute, Te Arataura would have been unable to implement a governance restructure without having the decision put before Te Kauhanganui and thus the representatives of each marae within Waikato-Tainui.¹⁵⁶ Through the governance reforms, the responsibilities of both governance and management roles have been clarified in order to prevent further litigation.

The use of a tribal parliament with two representatives from each marae enables each marae to have a voice in matters relating to governance, including the strategic vision and direction of the PSGE. This is the area which most effectively enables Māori to implement traditional governance systems through representation and leadership. Te Kauhanganui holds the mana of the people, and meetings provide a consultative and participatory forum for the tribal constituency. The overarching governance body is accountable to the collective iwi members who should not be isolated from the decision-making process.¹⁵⁷

A major criticism of the incorporated society model is the lack of internal dispute resolution mechanisms available to Māori which operates in accordance with tikanga Māori.¹⁵⁸ Incorporated societies are governed by the Incorporated Societies Act 1908, and recourse for dispute resolution comes through the courts or an independent registrar, therefore litigation is common in the context of incorporated societies.¹⁵⁹ The Incorporated Societies Act makes no mention of disputes or how to deal with them, however the courts have indicated that members of societies can bring matters before the courts to be decided either by judicial review or a breach of contract.¹⁶⁰ Consultation for the reform of the Incorporated Societies Act suggested that every incorporated society

153 At [1].

154 *Roa v Morgan*, above n 54, at [37].

155 At [42].

156 At [56].

157 Māori Marsden “‘Te Ara Hou Formula’: The Principle of Evolution not Devolution for the Department of Māori Affairs” in Te Ahukaramū Charles Royal (ed) *The Woven Universe: Selected Writings of Rev Māori Marsden* (The Estate of Rev Māori Marsden, Otaki, 2003) 137 at 154.

158 Gina Hefferan “Post Settlement Dispute Resolution: Time to Tread Lightly” (2004) 10 Auckland U L Rev 212.

159 Law Commission *A New Act for Incorporated Society* (NZLC R129, 2013) at 125.

160 At 125.

should have an internal disputes mechanism because the lack of this procedural mechanism causes a lot of issues faced by societies, especially given that litigation can perpetuate conflict which already exists.¹⁶¹ As Harrison J stated:¹⁶²

For as long as those in positions of control and responsibility within Tainui continue to fight among themselves in preference to governing collectively, collegially and lawfully, the tribe's hard won funds will continue to be wasted on legal costs instead of being expended for the good of those who most need financial support and assistance.

The Law Commission previously stated that there is no standard dispute resolution mechanism available for Māori governance entities that can resolve disputes consistently with tikanga Māori.¹⁶³ However, “[t]ikanga-based dispute resolution and arbitration clauses are becoming commonplace” in PSGE structures¹⁶⁴ and iwi have expressed aversion to using legislative standardised models because this represents a paternalistic approach by parliament.¹⁶⁵ Māori are designing bespoke clauses that work in line with their own tikanga.¹⁶⁶ In *Leef v Bidois*, a tikanga-based process to determine mana whenua was used to inform an arbitration agreement.¹⁶⁷

Waikato-Tainui recently adopted a marae-based governance model with changes that include: clarification of the roles and responsibilities at the representation and governance levels, reduction of the representation and governance numbers to promote efficiency and effectiveness within decision making, an internal disputes resolution mechanism, and a group CEO and management team among other aspects.¹⁶⁸ The governance reforms address the inherent problems within the previous models.¹⁶⁹ As noted above, one of the changes made to the rules was the introduction of an internal dispute resolution mechanism called Te Hohou te Rongo. Hohou rongo is a tikanga-based dispute resolution mechanism where mana and tapu are restored to the parties involved in a dispute.¹⁷⁰ Rongo can mean “peace after war”,¹⁷¹ which is an important principle that litigation does not achieve. As Tate has argued:¹⁷²

Violation diminishes the *tapu* and cripples the *mana* both of the individual and of *iwi*. *Hohou rongo* (restoration, reconciliation) is then needed to restore the *tapu* of the individual as well as of *iwi*.

The elements of a hohou te rongo dispute resolution process is ordered by the admission of guilt, sorrow or regret, compensation, setting free the dispute, and ending the ordeal

161 At 126.

162 *Solomon v Waikato Raupatu Trustee Company Ltd* HC Hamilton CIV-2004-419-542, 3 May 2004 at [29].

163 Law Commission, above n 11, at 1.

164 Chapman Tripp, above n 13, at 10.

165 Law Commission, above n 11, at 35.

166 Chapman Tripp, above n 13, at 10.

167 *Leef v Bidois* [2017] NZSC 202 at [1].

168 Waikato-Tainui *Governance Representation Review Workshop Handout* (2014) at 6–7.

169 At 6.

170 Waikato-Tainui *Te Hookioi* (New Zealand, 27 September 2014) at 18; and see also Chapman Tripp, above n 13, at 10.

171 Edward Tregear *The Maori-Polynesian Comparative Dictionary* (Cadsonbury Publications, Christchurch, 2001) at 423.

172 Tate, above n 80, at 76.

with food as a way to whakanoa, or balance the tapu of the situation.¹⁷³ Essentially, hohou rongu takes people who were in a negative state to noa, a positive state.¹⁷⁴ The implementation of an internal dispute resolution model will reduce the need for litigation. These reforms also illustrate the ability of iwi governance entities to design their own dispute resolution mechanisms outside of any paternalistic legislative framework in accordance with tikanga and collective values, which also has the support and confidence of the entire constituency.

VI Ngāi Tahu

Ngāi Tahu is a good example of an iwi entity that has implemented aspects of Western governance into their tribal governance structure.¹⁷⁵ Ngāi Tahu chose a statutory body as their PSGE because it allowed them the flexibility to choose the governance structure that they wanted.¹⁷⁶ Through Te Kawenata, Te Rūnanga o Ngāi Tahu (TRONT) is positioned as a servant leader to the needs of the people of Ngāi Tahu.¹⁷⁷ Authority is conditional with obligations and rights of leadership derived from the sanction of the papatipu rūnanga, or hapū of Ngāi Tahu.¹⁷⁸

Papatipu rūnanga represents the hapū of Te Wai Pounamu. This is a way in which TRONT are supporting traditional hapū groupings to thrive. Te Whakatipu is one of Ngāi Tahu's stated visions and relates to the economic empowerment and authority of each papatipu rūnanga. Hapū and marae based communities remain the repositories of tikanga Māori, the cultural beating heart of Te Ao Māori.¹⁷⁹ The importance of these communities cannot be overstated and it is appropriate that governance structures have recognised this. Cornell suggests that what is important in terms of tradition is not so much the exact methods of Indigenous government, which occurred many generations ago, but instead the "constitutional tradition itself".¹⁸⁰

The insights from Ngāi Tahu show that governance is constant and changing, and it is hard to get a structure right. Ngāi Tahu has experimented with "about every structural iteration possible" but has found that the structure itself has its limits, and the importance of governance tools and the people are more important.¹⁸¹

Since 2016, TRONT has appointed two representatives to represent the interests of Ngāi Tahu on Environment Canterbury, the Canterbury regional council. Regional council representation indicates the usefulness of corporatisation, which enables TRONT to be involved in local government processes on behalf of its papatipu rūnanga.¹⁸² This is an avenue for TRONT to advocate for the aspirations of whānau and hapū and to give greater effect to the Treaty partnership. The Environment Canterbury Act 2016 sought to make permanent appointment of two Ngāi Tahu recommended by TRONT. It should be noted

173 At 206.

174 At 203.

175 Anake Goodal "Aoraki Matatū: Being steadfast in Ngāi Tahu Identity" (paper presented to the New Zealand Law Society "Governing and running Maori Entities: Tribal Development and the law in the 21st century" Intensive Conference, August 2009) at 13.

176 Te Runanga o Ngai Tahu Act 1996, preamble.

177 Te Rūnanga o Ngāi Tahu *Charter of Te Rūnanga o Ngāi Tahu* (2012) <www.ngaitahu.iwi.nz>.

178 Goodal, above n 175, at 12.

179 Te Rūnanga o Ngāi Tahu, above n 67, at 24–27.

180 Cornell, above n 37, at 14.

181 Goodal, above n 175, at 14.

182 Environment Canterbury (Transitional Governance Arrangements) Act 2016, s 12(2).

that the Canterbury Regional Council (Ngai Tahu Representation) Bill 2018 aimed to make these arrangements permanent, but failed to gain the required support in Parliament.¹⁸³

VII Tūhoe

The governing entity of Tūhoe's PSGE is Te Uru Taumatua (TUT), a private trust established to hold and manage the settlement assets transferred to Tūhoe when they reached settlement in 2013. Tūhoe grew its net worth by 18 per cent in its first year following settlement according to the annual report, *He Korona Whakataena*, illustrating successful transactional governance.¹⁸⁴

Tūhoe's governance structure uses a traditional hapū governance system called the taraipara, which incorporates traditional social organisation structures. Taraipara is the Tūhoe management system that allows hapū located in four different whārua or regions to govern themselves and respond to issues that are directly impacting them at a grassroots level.¹⁸⁵ Traditional governance across Te Ao Māori has always been whānau and hapū based. Tūhoe have made a deliberate choice to maintain this marae-based hapū model of representation.

The process of electing TUT representatives follows each hapū electing a tribals representative from each whārua. The four tribals then elect seven members to the TUT board. The tribals resemble small councils who work directly with marae and hapū creating a forum where hapū can raise both governance and general issues from within their whārua. They are responsible to their marae-hapū members and the hapū can access support from the tribal with any kaupapa.¹⁸⁶ Governance for each tribal is still maintained at the hapū level, however there is also the opportunity for TUT to govern at the iwi level in order to promote tribal unity and manage the tribal assets for all constituent members. This is hapū representation within an iwi model. The board is committed to getting the best and right skills, advice and expertise from both within and outside of Tūhoe. The settlement assets and resources must be preserved and grown to support development now and into the future.¹⁸⁷

Tūhoe marae and whārua have always practiced collective decision-making. A tribal-based model allows for each hapū to govern themselves independently, and enables an overarching governance body to make decisions at a corporate level for the entire iwi such as making distributive service management plans.¹⁸⁸ This is an appropriate form of representation and allows Tūhoe within the post-settlement governance space to return to their own autonomous governance mechanisms.¹⁸⁹ The mission of TUT is to unlock the potential of Mana Motuhake. Tūhoe wish to be self-governing in accordance with their tikanga and kawa, but also wish to use their commercial asset base to uplift their communities.¹⁹⁰ An aspect of the mana motuhake redress is the innovative Service Management Plan, which is a non-legal long-term relationship agreement between Tūhoe

183 (3 April 2019) 737 NZPD 10228.

184 Tūhoe Te Uru Taumatua *He Korona Whakataena* (2014–2015) at 18.

185 Rawinia Higgins "Tūhoe-Crown settlement – Te Wharehou o Tūhoe: The house that 'we' built" (2014) October Māori LR.

186 Ngāi Tūhoe "Te Uru Taumatua" Tuhoe <www.ngaituhoe.iwi.nz>.

187 Ngāi Tūhoe, above n 186.

188 Tūhoe *The Blueprint: New Generation Tūhoe Authority* (2015) at 13 and 31.

189 At 13.

190 At 19.

and Crown agencies.¹⁹¹ It was implemented to address issues concerning welfare, health and education. While the Government will always have a role in providing support services for all New Zealand citizens, Tūhoe wish to be autonomous in accordance with true mana motuhake, and take care of the needs of their iwi members by utilising their commercial assets and Crown relationships.¹⁹² This Service Management Plan is an example of collaborative governance and the effective use of relationship structures.

TUT has an investment committee within their corporate structure to provide sound commercial advice on investments.¹⁹³ TUT also recognises the importance of kaumatua leadership, and have approaches for receiving strong cultural advice.¹⁹⁴ A proper advisory board that is composed of expert members and that is structured accordingly can be an excellent tool in corporate governance. The advisory group can provide non-binding and informed advice, but needs to have a clear-cut purpose. The investment committee deals with the Statement of Investment Policies and Objectives, which sets out the rules, functions, objectives, asset allocations and strategies of the Trust. These are reviewed annually and provide an effective means to ensure the trust board does not dilute control over governance. The investment advisory board must report to TUT, which promotes the principle of accountability.¹⁹⁵ The advisory boards also ensure that TUT is receiving quality advice for governance matters concerning their commercial assets. The governance board has the ultimate control of the commercial enterprise.

VIII Is One Governance Model Needed?

The Waka Umanga (Māori Corporations) Bill is the first and only step that the New Zealand government has made in regards to implementing a standardised governance entity for Māori corporations.¹⁹⁶ This bill did not receive the required support in Parliament. The Waka Umanga report suggests that current governance mechanisms are inappropriate for Māori corporations as they seek to achieve different objectives and are not based on Māori values.¹⁹⁷ Existing structures fail to align with tikanga Māori.¹⁹⁸

Many iwi groups opposed the implementation of a legislative Waka Umanga model. First, it was seen as a “one-stop shop” approach as the Bill’s homogenised design did not reflect tribal rangatiratanga and the individual right of hapū and iwi to determine their governance structures.¹⁹⁹ A further criticism was that the Bill encouraged the paternalism of the Crown, rather than the inherent tikanga of various iwi.²⁰⁰ The Treaty Tribes Coalition also said that the Bill’s timing would undermine the functional governance entities that iwi had already instituted through fisheries settlement, Treaty settlements and for Treaty negotiations.²⁰¹ TRONT suggested that any appropriate governance entity must be self-

191 Tūhoe *Ngāi Tūhoe Service Management Plan* (2015) at 2.

192 At 3–4.

193 Ngāi Tūhoe *He Korona Whakataena 2018–2019* at 27.

194 Tūhoe, above n 188, at 27.

195 At 59.

196 Waka Umanga (Māori Corporations) Bill 2007 (175-2) at 3.

197 Law Commission, above n 5, at 21.

198 Law Commission, above n 11, at 11.

199 (11 December 2007) 644 NZPD 13858.

200 Māori and Indigenous Governance Centre *Ka Takahia Ano o Tātou Tapuae: Retracing our steps* (Te Mata Hautū Taketake, 2014) at 83.

201 At 84.

defined by the tribal group and one which they consider to be “authentic contemporary translations of traditional precedents”.²⁰²

Furthermore, iwi have been proven to be able to utilise current structures. As Hon Georgina Te Heuheu has stated:²⁰³

Maori in the 21st century are quite capable of developing their own entities and managing their own affairs. In fact, there are a number of increasingly high-profile Māori entities in New Zealand now, which bears testament to the fact that Māori are capable of managing their own affairs.

While they are not perfect, iwi have continuously shaped their governance entities and instituted reforms to ensure that defects are remedied. A new standard model would be a further and unnecessary option, because any model would need to conform to the needs of the commercial space in order to operate effectively, which is essentially where the tension lies.

The Māori party ultimately could not support the Waka Umanga Bill due to a range of substantive concerns voiced by hapū and iwi. It was viewed that a Waka umanga model suggests that iwi and hapū could not come up with their own governance models, or use existing structures.²⁰⁴ The New Zealand Māori Council was unconvinced that the Waka Umanga Bill would solve the problems that had arisen in the context of existing entities. They also viewed a Waka Umanga model as suggestive that iwi and hapū could not come up with their own models. Existing structures could work and have worked.

There are complex Māori governance challenges that exist in terms of dispute resolution, governance and management disputes, participation in the management of beneficial assets, and the incorporation of tikanga Māori within the governance entity structure and representation.²⁰⁵ These factors limit good governance from a Māori perspective, therefore a new model could be necessary for iwi. As Liam McKay notes, there is no entity that can currently address the issues faced by Māori collectives who have a unique makeup.²⁰⁶ That would need further consideration. Moreover, iwi have options to set up representative bodies through statute, set up a trust, company or incorporated society, and incorporate issues around representation into a trust deed, charter or rules.²⁰⁷ This is also an opportunity to construct internal resolution processes that accord with traditional measures.²⁰⁸

202 At 84.

203 (11 December 2007) 644 NZPD 13860.

204 Waka Umanga (Māori Corporations) Bill 2007 (175-2) (Bill Digest).

205 Law Commission, above n 5, at 24.

206 Liam Remi McKay “Waka Umanga: Has the Government Missed the Boat on Māori Collective Assets Management?: Rethinking New Zealand Law for the Post-Settlement Era” (LLM Thesis, University of Otago, 2011) at 95.

207 Chapman Tripp “Iwi corporate structures and governance” (presented at Te Tau Ihu Economic Summit, October 2012).

208 John Dawson and Abby Suszko “Courts and Representation Debates Disputes in the Treaty Settlement Process” (2012) 35 NZ L Rev 35 at 61.

IX Conclusion

Truly reconciling traditional Māori governance in its original sense with models of Western corporate governance remains an elusive task because both systems are divergent. This article contends that it is important for PSGEs to incorporate both traditional Māori governance measures alongside principles of good corporate governance due to the reality of operating within the commercial sector and the necessary required skillset. Retaining traditional Māori governance is important to ensure cultural match, which in turn, supports the legitimacy of these governance structures within the community. Following from this, iwi members should be able to participate in the process of designing governance models as this fosters autonomy, which in turn promotes integrity and control over the governing process.

It should not be assumed that governance must match conceptions that existed before colonisation as social contexts have changed and those structures may be unhelpful within a contemporary corporate governance framework. Culture is fluid and ever-changing, and adapts to ensure survival. PSGE structures have to meet the challenges of the present day in order to survive within national and global economies. Poor governance structures would lead to devastating consequences due to the unique characteristics of PSGEs.

Iwi and hapū within New Zealand have utilised corporate structures to grow and develop their commercial asset base while utilising traditional structures and values in accordance with a Māori worldview, and also enlisting the assistance of Western models of governance in order to thrive. Traditional governance is fundamental within the representative bodies of a PSGE as this relates to Māori leadership and tikanga. Māori governance and corporate governance can coexist when purposes are clearly outlined and tikanga is not overwhelmed by a dominating commercial paradigm. Māori groups must be careful when operating within a commercial context, as it is easy to fall into the trap of subtle cultural assimilation.

The overarching goal for any PSGE is to achieve transformative governance to reverse the deprivation impacting Māori communities throughout New Zealand in the aftermath of colonisation. The post-settlement phase is a unique opportunity to achieve this goal through the construction of a solid economic base for iwi and hapū groups. The journey for those who have settled has not been easy and mistakes have been made, however Māori entities are always seeking to improve their corporate governance structures and valuable lessons can be learnt from the journey of those who have had the opportunity to learn through experience.