

# CO-GOVERNANCE

## and the Case for Shared Decision Making

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### Abstract

This article explores some of the key features of co-governance, or shared decision making, between Māori and the Crown. Co-governance models create the conditions for making better decisions by sharing decision making with Māori where Māori communities have a distinctive interest. Such models are able to draw on the distinctive experiences, knowledge and expertise that Māori communities can bring. Shared decision making enhances the legitimacy and durability of decisions by giving effect to rights under te Tiriti o Waitangi. The article also identifies some key principles of effective co-governance and provides some brief examples where shared decision making is being implemented to illustrate the range of situations in which such models are applicable.

**Keywords** co-governance, shared decision making, Treaty of Waitangi, Māori rights, Treaty settlements

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‘Co-governance’ is a term which has been the subject of considerable political debate in recent times. That debate has often taken place without much examination of what the concept might or might not include. In reality, ‘co-governance’ is a term which captures a whole range of different ways of sharing decision-making authority. This article points to some key benefits of co-governance, identifies principles for effective shared decision making, and concludes with a brief survey of a small number of examples of existing and proposed models of shared decision making.

### Co-governance and benefits of shared decision making

In understanding co-governance, it may be useful to first consider the concept of governance. One explanation of governance is as follows:

Governance is a system that provides a framework for managing organisations. It identifies who can make decisions, who has the authority to act on behalf of the organisation and who is accountable for how an organisation and its people behave and perform. (Chartered Governance Institute UK and Ireland)

‘Co-governance’, therefore, reflects a system which has a framework for *shared* decision making, authority and accountability. Put simply, co-governance is a mode of shared decision making and shared responsibility over something or some place. It can apply to any form of shared responsibility where there are separate groups that have interests.

Shared decision making is not an end in itself. Fundamentally, models of shared decision making are about making better decisions. Shared decision making contributes to better decisions in two ways: first, by bringing a wider range of interests, experiences and perspectives to the substantive decision; and secondly, by providing opportunities for a more

mechanisms for decision making to be shared between the Crown and a particular iwi in relation to the governance of significant lands or waterways in instances where the iwi has historically, in breach of te Tiriti, been excluded from exercising decision-making authority (for example, Te Awa Tupua (Whanganui River Claims Settlement) Act 2017). This is often in circumstances where ownership and control was wrongfully asserted by the Crown. The intention of these mechanisms is not merely to increase the diversity of decision makers per se, but rather to include decision makers from those communities that have distinctive rights and interests in the specific land or waterway in question, distinctive

account of citizens’ rights cannot command legitimacy and are likely to be unsustainable in the long term. Far from undermining our democratic institutions, where shared decision-making models are used to better recognise and provide for Māori rights, the legitimacy of our democratic institutions is strengthened.

Therefore, we should consider in which aspects of public policy development and implementation, and broader government activity, will shared decision-making models be appropriate and beneficial. At one level, the question to determine whether a shared decision-making model should be adopted is a straightforward one: do Māori have distinctive rights or interests in the subject matter, alongside the legitimate interests of government and other New Zealanders? While that question is simple, the answer might not always be obvious. And it may also lead to other questions, including between whom, specifically, should decision-making authority be shared?

The Waitangi Tribunal adopted this basic framework in recommending that shared decision making should be a component of environmental governance in Aotearoa. In its 2011 report *Ko Aotearoa Tēnei*, the Waitangi Tribunal noted that a Treaty-compliant system of environmental governance should be capable of delivering the following:

- *control* by Māori of environmental management in respect of taonga, where it is found that the kaitiaki interest should be accorded priority;
- *partnership* models for environmental management in respect of taonga, where it is found that kaitiaki should have a say in decision making but other voices should also be heard; and
- *effective influence and appropriate priority* to the kaitiaki interests in all areas of environmental management when the decisions are made by others. (Waitangi Tribunal, 2011, p.112)

The Tribunal further noted that ‘It should be a system that is transparent and fully accountable to kaitiaki and the wider community for its delivery of these outcomes’ (ibid.).

The partnership models envisaged by the Tribunal are models of effective shared decision making. The Tribunal notes that

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inclusive process, which better understands and recognises the range of rights that are relevant, leading to enhanced legitimacy, effectiveness and durability of decisions made.

The central function of shared decision-making models is to create space for different sets of voices to participate in decision making. Allowing for a greater diversity of perspectives to contribute to decision making is, in itself, helpful for making better, more carefully thought through and tested decisions (Goyal, Kakabadse and Kakabadse, 2019). However, shared decision making is not simply about increasing, in a general way, the diversity of decision makers within an organisation. More specifically, shared decision-making models seek to include particular voices – voices from communities that have a distinctive interest in the decisions that are being made. For example, Treaty settlement agreements have often established

knowledge and experiences in relation to it, and who continue to exercise distinctive relationships with it.

In addition to enabling an organisation to draw on a broader range of relevant experiences and perspectives, shared decision making can lead to more effective and durable decisions through enhancing the legitimacy of the process (Melnychuk and de Loe, 2020).

In the context of shared decision-making models between Māori and the Crown, the recognition of Tiriti rights is often a key catalyst for adopting such models. While the sharing of decision-making authority can be a useful mechanism as partial redress for historical breaches of te Tiriti, it is perhaps an even more important mechanism for helping the Crown to meet its Tiriti obligations now and into the future. Governmental decision-making structures and processes that do not properly recognise and take

the Treaty partnership requires that Māori are genuinely sharing decision making with the Crown – participating as decision makers, not merely providing advice to decision making bodies. The Tribunal’s view was that ‘kaitiaki control’ (that is, effectively, Māori decision making) will be appropriate where there is a taonga at stake in which the Māori interest is strong, and where there are no sufficiently strong countervailing interests which may be affected (such as, perhaps, another party’s property rights). Where there are strong and legitimate countervailing interests, a partnership or shared decision-making model will be appropriate.

In the case of environmental governance, identifying a taonga in which Māori have rights or interests can be straightforward. Land that has been alienated in breach of te Tiriti, rivers or mountains that sit within the rohe of a particular iwi or hapū, would clearly constitute taonga in which a specific Māori community has rights. However, there are many other areas of government policy in which we can identify distinct Māori rights and interests. The Treaty of Waitangi guidance issued by the Cabinet Office (Cabinet Office, 2019) asks policymakers across government to consider how any policy proposal might affect Māori differently from other New Zealanders and whether there is any aspect of the issue that Māori consider a taonga. As the courts and Waitangi Tribunal have long held, ‘taonga’ are not limited to concrete, physical things but may also include intangible things that are highly valued, such as health and wellbeing or te reo Māori. In these and other policy areas, such as justice, education and climate change, Māori are likely to have distinct interests or feel particular impacts from policies in these areas. In order to give effect to te Tiriti rights, shared decision-making models ought to be considered across all these areas.

The necessity for Tiriti-consistent models of shared decision making in these broader areas of policy is becoming ever more urgent. The increasingly visible and severe impacts of climate change suggest that it is no longer a sensible option for us to continue to do things the way we have always done and to make decisions in the way governments and public institutions

have traditionally made them. The same urgency can be seen in the need to address inequities across a range of social policy areas. It is important that we do not rely on the same policy machinery and governance settings that have created our current circumstances. Giving effect to te Tiriti moves us away from systems that have proven harmful or simply ineffective to date. Shared decision making and genuine recognition of the authority of tino rangatiratanga would promote different ways of understanding and approaching aspects of our climate change response, including urban planning and

appropriate bodies for government to share decision making with in relation to some matters. There is no ‘one size fits all’ model.

Many public and private organisations in Aotearoa are recognising the value of adopting te Tiriti-led approaches and implementing shared decision-making models. A small number of examples of such models are outlined later in this article. Before considering those different mechanisms, it is helpful to identify some key principles that underpin effective shared decision-making models.

## Effective shared decision making between Māori and the Crown requires much more than adding Māori participants to established Crown decision-making processes.

transport, and economic resilience, as well as equity-informed social policies for a just society that supports the health and wellbeing of all people and communities in Aotearoa.

Whereas, in the case of environmental governance, it is relatively clear with whom government ought to be sharing decision making, when it comes to broader policy issues it may not be a specific iwi, hapū or whānau that holds the rights and interests at stake. Sometimes, the implementation of social policy can be addressed on a local or regional basis, as with a number of accords arising out of Treaty settlement agreements (including the framework for the Wairoa region that is discussed below). In other instances, it may be that decision making ought to be shared at a national level, with a national representative body, such as the National Iwi Chairs Forum, appointing appropriate individuals to share decision making with Crown appointees. Or it may be that specialist Māori organisations, such as Te Hunga Rōia Māori o Aotearoa (the Māori Law Society) or Te Rōpū Whakakaupapa Urutā (the grouping of Māori health experts that came together to respond to Covid-19), are

### Principles of effective shared decision making

Effective shared decision making is grounded in relationships and agreed principles. It is not simply a question of changing the numbers of decision makers representing particular communities of interest that sit around the decision-making table. The Office of the Auditor-General’s 2016 report *Principles for Effectively Co-governing Natural Resources* (Office of the Auditor-General, 2016) identified four key principles for establishing and maintaining effective relationships for shared decision making:

- Having a shared understanding of purpose  
Parties need to understand each other’s objectives and aspirations and build and maintain a shared understanding of purpose, which will be necessary for working towards common goals and outcomes. The arrangements for shared decision making should be regularly reviewed to ensure that those arrangements continue to be fit for purpose and support the shared objectives.
- Working together

Effective shared decision making requires that the parties work together to establish and maintain robust processes for planning and decision making. Parties should develop mechanisms that reflect their joint understanding of their decision-making authority and support the shared purpose. Maintaining effective shared decision-making processes will involve a commitment of time and resources from the parties to ensure decisions are fully informed by the aspirations of both parties and that options are co-designed as well as co-determined.

- Getting people with the right experience and capacity

The parties need to ensure that there are processes in place for sound financial management and transparent reporting. In organisations where decision making is shared between Māori and the Crown, it is likely that there will be important lines of accountability to both Māori and the Crown. For example, in the wānanga governance reforms referred to below, it is envisaged that some wānanga may wish to have formal accountabilities back to iwi, as well as maintaining reporting to relevant government agencies.

Effective shared decision making between Māori and the Crown requires much more than adding Māori participants

decision making and help to deliver on the mission of the organisation. That is consistent with the key principles identified in this section.

The examples that are briefly outlined in the next section illustrate some of the mechanisms that are currently proposed or are already being used to implement principles of effective shared decision making across different areas of public policy.

#### **Models of shared decision making**

There is no single model for how organisations share decision-making authority. Sharing decision-making authority can be achieved in a number of different ways and can be applied to any organisation, subject matter, or type of decision. Many organisations have already adopted mechanisms for shared decision making and, consequently, there are many examples of successful structures and practices for shared decision making that are already in operation or currently being implemented in Aotearoa.

To give some indication of the range of shared decision-making models currently operating or being implemented, this section provides brief descriptions of four mechanisms for shared decision making between Māori and the Crown. The Waikato River Authority and the proposed water services reforms are examples of shared decision making in environmental governance/management of natural resources. The Wairoa Region: Social and Economic Revitalisation Strategy Framework and the new governance arrangements for wānanga are examples of shared decision making in relation to social and economic policies and their implementation.

#### ***Waikato River Authority***

The Waikato River Authority is a result of the settlement of historical claims in relation to the Waikato River. The authority is established by the Waikato–Tainui Raupatu Claims (Waikato River) Settlement Act 2010.

The authority has a ten-member board, with five members appointed by Māori (specifically, by the iwi of Tainui, Te Arawa, Tūwharetoa, Raukawa and Maniapoto) and five members appointed by the Crown.

## The reform of the management of drinking water, storm water and waste water infrastructure and services (formerly known as ‘Three Waters’) is often pointed to as an example of co-governance.

Having people involved who, collectively, have the necessary mix of skills and experience is important for effective governance in general, but particularly essential for effective shared decision making. A key purpose of shared decision making is to bring particular voices into the governance of the organisation. In relation to the governance of natural resources, this might mean that people with a particular community connection to specific lands and waters are involved. For governance in a broader policy context, it may be people with experience of the impact on Māori communities of relevant policies that are required. In the context of shared decision making between Māori and the Crown, people with knowledge and experience of te Tiriti and the purpose of shared decision-making models may be necessary.

- Accountability, transparency and financial accountability

to established Crown decision-making processes. As outlined above, sharing decision making can contribute to better outcomes and strengthens the legitimacy of our public institutions. But the effectiveness of sharing decision-making authority is limited if it is only applied to one part of a decision-making process. For example, if the governing board of a company or public entity invites mana whenua to appoint 50% of the board members but does not change anything else about the board’s structure, its relationship with management, the process for setting budgets and strategic plans, or mechanisms for monitoring and reporting on performance, then the impact of including mana whenua appointments will be limited. Ideally, shared decision making would be reflected in all aspects of governance, with Māori having a say in the design of organisational structure and governance arrangements and decision-making style and processes, and input into an agreed set of values which will guide

The purpose of the authority, as stated in the Act (s22), is to:

- set the primary direction through the vision and strategy to achieve the restoration and protection of the health and wellbeing of the Waikato River for future generations;
- promote an integrated, holistic, and co-ordinated approach to the implementation of the vision and strategy and the management of the Waikato River;
- fund rehabilitation initiatives for the Waikato River in its role as trustee for the Waikato River Clean-up Trust.

By including appointments from the five iwi, decision-making authority is shared with specific communities of interest, bringing distinctive knowledge, expertise and relationships to the decision-making process. Central to the operation of the authority is the clear statement of agreed purpose.

#### *Water services reform programme*

The reform of the management of drinking water, storm water and waste water infrastructure and services (formerly known as ‘Three Waters’) is often pointed to as an example of co-governance. Under the Water Services Entities Act 2022, the yet to be established regional water entities will each have a regional representative group as a high-level oversight body. Each regional representative group will be comprised of equal numbers of mana whenua and local government members. The primary functions of the regional representative groups are to appoint and remove board members of the water services entities, participate in setting strategic direction and performance expectations, and review the performance of the entities. The regional representative groups are required to make decisions by consensus where possible or, where consensus cannot be achieved, by 75% of the regional representatives present and voting. Shares in the water services entities will be held by territorial authorities, with the number of shares allocated to each territorial authority dependent on the population of its district.

The Water Services Entities Act therefore also provides for distinct voices to share decision making through the

regional representative groups. The composition of those groups is intended to include those communities with distinctive rights and relationships to water resources and the local environment more broadly. While there is provision for equal numbers of mana whenua and local government representatives, the emphasis on consensus decision making could help to support a shift to more collaborative decision making, based on common objectives.

#### *Wānanga reforms: Education and Training Amendment Bill (No 3)*

Another form of shared decision making can be seen in the proposed new framework for wānanga, Māori

functions, and governance arrangements).

The proposed reforms in relation to wānanga provide a good example of the ways in which formal financial and governance accountability can be jointly located with the Crown and Māori in shared decision-making models.

#### *Wairoa Region: Social and Economic Revitalisation Strategy Framework*

The Wairoa Region: Social and Economic Revitalisation Strategy Framework (New Zealand Government, 2021) formed part of the settlement of the historical claims of the iwi and hapū of Te Rohe o Te Wairoa. The framework is intended to establish new relationships between the settling iwi and government agencies with broad

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tertiary education providers. The recently introduced Education and Training Amendment Bill (No 3) would establish a new framework for wānanga that ‘better recognises the mana and rangatiratanga of wānanga, and the unique role that wānanga play in the tertiary education system’. A central component of the bill is the provision for new governance and accountability arrangements for wānanga. The three existing wānanga, which are currently Crown entities, will be able to either ‘reconstitute themselves as a Crown entity wānanga, with bespoke purpose, functions, and governance arrangements; or convert to a non-Crown entity wānanga (that is primarily accountable to iwi, hapū, or another Māori organisation while retaining some accountability to the Crown, and has a bespoke purpose,

responsibility for social and economic development policies. It sets out the way in which the parties will work together to develop a strategy to improve the social and economic circumstances of people in the Wairoa region. The government agencies that are party to the framework are: the Ministry for Primary Industries; the Ministry of Business, Innovation and Employment; the Ministry of Social Development; the Ministry of Education; and Te Puni Kōkiri.

Although this is only a framework for how a strategy will be developed, it is grounded in some important principles.

First, the Crown formally acknowledges, in the framework agreement, the mana motuhake of the iwi and hapū of Te Rohe o Te Wairoa, and the framework also records that the government agencies listed

above will support the iwi and hapū of Te Wairoa mission for mana motuhake and their vision of their tikanga, including:

- a) *Te Kawa o Te Wairoa*: recognising the customary philosophies and practices of the iwi and hapū of Te Rohe o Te Wairoa; and
- b) *Mana Whenua*: recognising the role the iwi and hapū of Te Rohe o Te Wairoa have as stewards of those customary roles through whakapapa and maintenance of te ahi kā roa.

The framework also records the following core principles which guide the relationship between the parties:

- a) *Mana Motuhake*: Respect for the authority, autonomy, relationships and mandates of the parties and their individual roles, responsibilities and practices;
- b) *Anga Whakamua* – kia puāwai, kia tutuki ngā wawata: Be forward looking and seek to achieve results that benefit the people of the Wairoa region;
- c) *Kanohi e kitea*: The importance of engaging with the iwi and hapū of Te Rohe o Te Wairoa; and
- d) *Kōrero Pono*: Open, honest and transparent communication.

Alongside the wānanga reforms, the Wairoa Region: Social and Economic Revitalisation Strategy Framework shows the applicability of shared decision making outside of environmental governance. It also illustrates how a framework for shared decision making can be structured around agreed principles to bring organisations and communities with specific interests,

relationships and expertise together to deliver on common goals.

The examples briefly outlined in this section illustrate that shared decision making can be implemented through various kinds of structures and processes and can be applied to a wide range of subject matter. Consistent with principles identified above, in each of these examples there is a clear, common purpose that Māori and the Crown are working towards and an agreed framework for making decisions and exercising shared decision-making authority.

### Conclusion

There are significant benefits to adopting models of shared decision making. These models can be structured in various ways in order to be tailored to the particular organisations involved, the subject matter that decision makers will be addressing, and the aspirations of those communities that have distinctive interests in or perspectives on decisions to be made.

The benefits of shared decision making arise from being able to draw on different expertise, knowledge and experiences, and from the enhanced legitimacy of processes that include specific communities of interest and appropriately recognise relevant rights and obligations. This produces better substantive decisions, which are likely to be more durable and effective. Shared decision making, therefore, should not be viewed as an end in itself. Rather, it is a mechanism for improving outcomes for distinct communities that are

particularly affected by the decisions made and for taonga that are the subject of those decisions (for example, lands, waterways, health and wellbeing).

Shared decision making is not something new or unknown. In many ways, it could be seen to be central to any form of corporate governance and a core part of living in a democratic society. Shared decision making is not a concept that was created through the settlement of historical Treaty claims. While there is much to learn from the shared decision-making mechanisms that have been created through the negotiated settlements, there is no reason for shared decision making between Māori and the Crown to be defined or limited in any way by the mechanisms that are used in settlement agreements.

Shared decision making is relevant to the full range of subject matter that our public institutions address and any decisions that will have an impact on Māori communities ought to include Māori voices in the decision-making process. Te Tiriti provides a framework for establishing shared decision-making models and there is real value to us all in developing innovative approaches that draw on the distinctive knowledge, experience and relationships that sit within Māori communities. Shared decision-making models offer us opportunities for more inclusive processes, driven by agreed principles and objectives, and, ultimately, better outcomes for us all.

### References

- Cabinet Office (2019) 'Te Tiriti o Waitangi/Treaty of Waitangi guidance', Cabinet Office circular, CO (19) 5, 22 October
- Chartered Governance Institute UK and Ireland (n.d.) 'What is governance?', <https://www.cgi.org.uk/professional-development/discover-governance/looking-to-start-a-career-in-governance/what-is-governance>
- Goyal, R., N. Kakabadse and A. Kakabadse (2019) 'Improving corporate governance with functional diversity on FTSE 350 boards: directors' perspective', *Journal of Capital Markets Studies*, 3 (2), pp.113–36
- Melnychuk, N. and R. de Loe (2020) 'Legitimacy assessment throughout the life of collaborative water governance', *Environmental Policy and Governance*, 30 (1), pp.14–28
- New Zealand Government (2021) 'Wairoa Region: Social and Economic Development Revitalisation Strategy', 19 May, <https://www.govt.nz/assets/Documents/OTS/Iwi-and-Hapu-of-Te-Rohe-o-Te-Wairoa/te-wairoa-social-and-economic-revitalisation-strategy.pdf>
- Office of the Auditor-General (2016) *Principles for Effectively Co-governing Natural Resources*, <https://oag.parliament.nz/2016/co-governance>
- Waitangi Tribunal (2011) *Ko Aotearoa Tēnei: a report into claims concerning New Zealand law and policy affecting Māori culture and identity*, WAI 262, Wellington: Waitangi Tribunal