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To cite this article: Karen Webster & Christine Cheyne (2017): Creating Treaty-based local governance in New Zealand: Māori and Pākehā views, Kōtuitui: New Zealand Journal of Social Sciences Online, DOI: [10.1080/1177083X.2017.1345766](https://doi.org/10.1080/1177083X.2017.1345766)

To link to this article: <http://dx.doi.org/10.1080/1177083X.2017.1345766>



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RESEARCH ARTICLE



# Creating Treaty-based local governance in New Zealand: Māori and Pākehā views

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## ABSTRACT

This article explores the need for Treaty-based local governance, raised to national prominence by the 2014 outrage against New Plymouth Mayor Andrew Judd, who advocated a Māori ward for 2016. The Treaty of Waitangi influenced the creation of Māori seats in Parliament in the nineteenth century, and a provision for Māori seats in local councils in 2001. There has been limited uptake of the latter and Māori remain significantly under-represented. Innovations in governing arrangements have allowed non-elected Māori to take up advisory roles and, in some cases, decision-making roles. We argue that these do not ensure fair and effective Māori representation. Ad hoc and unpredictable structures have failed to deliver fair and effective representation to all New Zealanders. There is a pressing need for a New Zealand constitutional debate – a conversation among Māori and non-Māori – to devise a governance model that addresses the Treaty of Waitangi as New Zealand's founding document.

## ARTICLE HISTORY

Received 7 December 2016  
Accepted 16 June 2017

## KEYWORDS

Governance; Kaupapa Māori; local government; New Zealand; Treaty-based

## Introduction

In 2014, following its triennial representation review, New Plymouth District Council voted in favour of establishing a Māori ward for the 2016 elections. However, in a citizens' initiated referendum in 2015, 83% of voters opposed the council's decision (New Plymouth District Council 2015). Then mayor of New Plymouth District, Andrew Judd, gained national prominence for his stance in favour of a Māori ward on council and his call for Māori to fill half the seats on New Zealand's councils (Judd 2015).

Despite strong support for Judd nationally, including from the Race Relations Conciliator, he was the focus of much opprobrium nationally and locally. In response to Judd, TVNZ presenter Mike Hosking argued that there was no issue with Māori representation and that any Māori who wanted to stand could do so. His comments generated formal complaints to the Broadcasting Standards Authority which, although not upholding the complaints, stated that Hosking's comments 'were dismissive of a valid issue in

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 Supplemental data for this article can be accessed at <https://doi.org/10.1080/1177083X.2017.1345766>

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New Zealand which deserves meaningful discussion' (Broadcasting Standards Authority 2016, at para 24).

This ongoing challenge to recognition of The Treaty in local government has been sustained through successive local government reforms. In the late 1980s, widespread structural reorganisation in local government in New Zealand resulted in the amalgamation of small units (often single purpose bodies) into larger, multi-purpose councils. As well as this structural change, there were significant changes (reflecting managerialist principles) to the way local councils were governed and managed. These changes emphasised the need for local government to be more responsive and accountable to its communities, and to provide opportunities for public participation in the new annual planning process introduced in 1989 (Cheyne 2006). This emphasis on public participation was further strengthened following a major legislative review in 2000–2001. The new Local Government Act (LGA) 2002 included a statutory long-term planning process with enhanced scope for public participation in the development of community outcomes and specific requirements relating to Māori contributions to decision-making 'in order to recognise and respect the Crown's responsibility to take appropriate account of the Treaty of Waitangi' (section 4). However, for Māori local government remains a site of struggle for fair and effective representation, recognition and participation in planning and decision-making processes. Although progressive settlements between government and hapū and iwi (Māori tribal groupings) under the Treaty of Waitangi Act 1975 have empowered Māori, systemic discrimination has been widespread – documented via the Waitangi Tribunal and evidenced in government policy and practice. Māori remain very under-represented in local government and lack effective and meaningful opportunities for participation in local authority decision-making processes (Durie 1998; Webster 2009; Ruru 2010; Hayward 2011; Tawhai 2011; Came 2013). For example, it was October 2016 when the first Māori woman was elected to Wellington City Council, and five months later appointed as the city's first Māori deputy mayor.

Steps to improve Māori representation in local government were taken with a provision in the Local Electoral Act 2001 for the establishment of Māori wards or constituencies (similar to Māori seats in Parliamentary elections). However, there has been only minimal use of this provision (Bargh 2016a). Although there have been proposals to establish Māori wards, no district council has successfully implemented a Māori ward under this legislation. Just one regional council has established Māori constituencies under the 2001 Act: Waikato Regional Council established two Māori seats for the 2013 elections and these remained in 2016. One other regional council, Bay of Plenty Regional Council, has Māori seats. However, the seats were established under separate empowering legislation.<sup>1</sup> In addition, the Act provides for councils to choose to use single transferable vote (STV) – a system of proportional representation – as their electoral system. This was used by only eight councils in the 2016 elections. As Godfery (2016, p. 75) observes,

proportional representation has helped lift Māori representation in Parliament to a point where they make up a slightly larger proportion of Parliament than they do in the population as a whole.

STV was first introduced in 2004, and while it has increased Māori representation on district health boards (Hayward 2016), it has had no observable effect on Māori

representation on local councils. Bargh (2016b) notes that a focus on population underpins efforts to increase Māori representation using wards/constituencies, rather than a focus on mana whenua status, that is, the authority to make decisions about resources derived from the possession and occupation of tribal land. Recognition of mana whenua status has been the basis of some new governance arrangements which allow Māori to contribute to decision-making. It is our argument here that, while essential to recognise mana whenua status, it is also vital to consider the scope for elected members to implement Treaty-based governance in local councils.

After briefly outlining the evolving nature of Māori involvement in governance at the local level and the legislative provisions in Aotearoa New Zealand, we report on the findings of a study of the views of local elected members and Māori leaders, on changes in local governance and how Treaty-based local governance can be advanced. Webster (2009) employed an original research design that incorporated Kaupapa Māori methodologies and conceptualised a three-house model (Winiata 2005; Community Sector Taskforce 2006) that is inclusive of both Te Ao Māori and Western approaches to governance. We then outline initiatives by the local government sector and other key government agencies towards a more treaty-based form of governance and decision-making at the local level. In concluding, we acknowledge that a different approach is urgently needed for local governance to be inclusive of Māori values and to incorporate Māori voices in decision-making.

### **Māori involvement in governance at the local level – legislative provisions**

The provisions of the LGA 2002 relating to Māori and the Treaty of Waitangi focused on three key areas: (1) recognition of the Crown's obligations under the Treaty of Waitangi (section 4); (2) contributions of Māori to decision-making (s 14(d) and s 81); and (3) the requirement to have a policy on postponement of rates on Māori freehold land (s 108). The LGA 2002 was the first time that the obligations of local authorities, with respect to recognition of Te Tiriti o Waitangi, were expressed in legislation. At the time of drafting, there was debate about local government's Treaty responsibilities. It was noted that the Treaty was an agreement between the Crown (central government) and (some) iwi and there were concerns about the implications of Treaty claims if local government was seen as sharing the Crown's Treaty obligations. However, it was also recognised that local government implicitly, if not explicitly, has a role in kāwanatanga (government) and councils must recognise mana whenua status of iwi and hapu in their rohe. Hence, the LGA 2002 placed obligations on territorial authorities and regional councils, with respect to the contributions of Māori to decision-making and recognition of the principles of Te Tiriti o Waitangi.

While there is little statutory detail about the role of elected members in the LGA 2002, s 39 provided a set of governance principles emphasising effective, open and transparent processes, separation of the regulatory and non-regulatory roles of councils, clarity in the relationship between elected members and management, and the requirement for local government to be a good employer (Local Government New Zealand 2003, p. 17). These governance principles in the Act are related to 'good governance' in terms of corporate governance and, while expressly concerned with how elected members exercise their governance role, do not acknowledge the Treaty.

The silence about the Treaty in Part 4 of the Act, which deals with governance and management, reflects the view taken by the legislators that local government did not share the Crown's Treaty responsibilities (Hayward 2011). Numerous subsequent reports, however, suggest that this view of the lawmakers is questionable; rather, shared governance at the local level is required of councils in order to implement the partnership envisaged by the Treaty. At the same time, it was noted in a 1997 report that

in terms of its capacity, it can be a challenge for a local authority to participate in shared decision-making or collaborative processes, especially, for instance, with iwi, Māori, and community sector organisations. (Controller and Auditor-General 2007, p. 30)

As Bargh (2016b, p. 146) argues, making a distinction between the Crown and local government 'obfuscates the reality that local government has been devolved powers and responsibilities by central government and, like central government, therefore holds obligations under the Treaty'.

In Part 6 of the Act, section 81 addresses Māori contributions to decision-making. Godfery (2016, p. 73) emphasises that 'there is no zone of discretion'; local authorities are required to establish and maintain processes for Māori participation.

Webster (2009) observes that the sustainable development purpose of local government in New Zealand (enacted in 2002 and in force until the 2012 amendments)<sup>2</sup> was a catalyst for elected members to reconsider their role. Some chose to retain their focus on what has been traditionally referred to in New Zealand local government as the 'the three Rs': roads, rubbish and rates. Others chose to embrace the concept of sustainable development that had emerged from the 1992 Earth Summit, the United Nations' first Conference on Human Development, and was then enshrined within LGA 2002 section 3(d), purpose of the Act, which was to provide:

for local authorities to play a broad role in promoting the social, economic, environmental, and cultural well-being of their communities, taking a sustainable development approach.

Section (d) was replaced in 2012 but, in the decade from 2002 to 2012, the initial wording above led elected members to take an active role in promoting sustainable development as part of their governance role.

The Local Government Act 2002 contains clear guidance about the purpose of local government and the nature of governance at the local level. In Part 4, 'governance' is distinguished from 'management'. Whilst governing is seen as the domain of elected members, the term 'governance' – which is distinguished from 'government' – recognises that governments in many Western nation-states (including Aotearoa New Zealand) interact with a wide range of policy actors (Kooiman 1993; Loorbach 2010). As Loorbach argues:

In other words, interaction between all sorts of actors in networks often produces (temporary) societal consensus and support upon which policy decisions are based. This development is far from trivial in light of the many complex, persistent problems that face Western societies, and for which sustainable development can neither be planned nor emerge spontaneously. (Loorbach 2010)

While the Treaty is between iwi and the Crown, at the local level, iwi, hapū, and in some cases, non-iwi or pan-iwi organisations are also important social, economic and political actors. However, the well-established Treaty principle of partnership recognises that it is

the right of tangata whenua to share governance as a partner of the Crown. Section 4 of the LGA 2002 notes that Parts 2 and 6 are intended to

recognise and respect the Crown's responsibility to take appropriate account of the principles of the Treaty of Waitangi and to maintain and improve opportunities for Māori to contribute to local government decision-making processes.

Part 1 contains Section 14(d) of the Act, which encourages local authorities to provide opportunities for Māori to contribute to decision-making processes. This was emphasised in section 77(1)(c), which required local authorities to take account of Māori, and their culture and traditions with respect to ancestral land, water, wāhi tapu (sacred sites), valued flora and fauna and other taonga (treasures). Part 6 contains section 81 which deals with planning, decision-making and accountability, provides for contributions to decision-making by Māori (as distinct from iwi) with section 81(b) stating that each local authority must 'consider ways in which it may foster the development of Māori capacity to contribute to the decision-making processes of the local authority' (Local Government Act 2002). Sections 81(1)(a) and 82(2) of the Act further required local authorities to establish processes that facilitate an ongoing rather than sporadic relationship with Māori. Thus, it appears that providing for Māori to contribute to decision-making constitutes fulfilment by local government of its obligations in relation to the Crown's Treaty responsibilities.

We argue that it is important to interrogate this assumption. It is not self-evident that providing for Māori contributions to decision-making is consistent with the notion of shared governance which is envisaged by the Treaty of Waitangi. Furthermore, we argue, any ambiguity surrounding the Treaty responsibilities of local government needs to be removed. We note further that section 81 requires local authorities to consider how to foster the development of Māori capacity to contribute to local authority decision-making processes. Clearly, this indicates that Māori contributions to decision-making are seen as essential.

As noted above, a number of reports from the late 1990s and through the early 2000s examined Māori participation in local authority planning and decision-making, and, in particular environmental decision-making. A common theme throughout these reports was that there was insufficient inclusion of Māori in planning and decision-making and need for more inclusion drawing on best practice examples (see Local Government New Zealand 2002, 2004, 2007, 2011; Ministry for the Environment 1998b, 2003). Long-standing issues have included: early involvement and supply of information for Māori to effectively participate; ongoing difficulties experienced by councils in identifying who to consult with; the adequacy of resources (both funding and support) for Māori to participate effectively; the availability of resources and skills for iwi/hapu to develop iwi resource management plans; limitations of Māori professional expertise in resource management processes; and the need for some guidance to councils to develop a better understanding among staff and elected members of Te Ao Māori concepts and the Treaty of Waitangi (Ministry for the Environment 1998a). While the majority of councils have, in the last decade, implemented formal consultation, information sharing and decision-making processes, their effectiveness across the sector varies (Local Government New Zealand 2011, 2015).

With the advent of Treaty settlements, the terms 'co-management' or 'co-governance' are used in relation to environmental decision-making to reflect shared governance.

Specific examples include: Te Whakaaetanga ma te Whakakotahinga a Rōpū Whakahaere – a joint management agreement between Taupō District Council and Tūwharetoa Māori Trust Board relating to the hearing of resource consents and private plan changes on multiply-owned Māori land; Rotorua Te Arawa Lakes Strategy Group – a governance body formed by Bay of Plenty Regional Council; Rotorua District Council and Te Arawa Lakes Trust to promote the sustainable management of the Rotorua Lakes and their catchments; Waikato River Settlement – a summary of the local authorities and iwi co-governance and co-management provisions as relating to the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 and agreements with Ngāti Tūwharetoa, Raukawa and Te Arawa (upper river iwi); and Te Upoko Taiao – Natural Resource Plan Committee – a Greater Wellington Regional Council (committee established to oversee the review and development of the Council's second generation regional plans (Local Government New Zealand 2011). The number and range of 'iwi participation agreements' continues to expand as a result of ongoing Treaty settlements (Local Government New Zealand 2015).

The importance of shared governance arrangements at the local level was even more critical given the nature of the electoral system used for local elections in Aotearoa New Zealand. As noted above, proportional representation has been a feature of parliamentary elections since 1996, but is only optional for local elections and not widely utilised. As a result, the number of Māori elected members in local government is disproportionately small.

In the absence of fair and effective representation, particular attention needs to be given to how local authorities carry out their statutory responsibilities to foster Māori contributions to decision-making. In a number of places councils are now ensuring a place for Māori in local governance, but efforts are still patchy and *ad hoc*, with individual councils taking different approaches (see discussion on models of governance on page). A more systematic and sustained approach is needed with appropriate structures. As Webster (2009) and Bargh (2013) demonstrate Māori have strong aspirations for shared governance and alongside this engage in politics in a wide variety of ways. This includes standing for office, contributing to joint governance committees, participating in consultation, providing environmental and cultural advice and services.

Further, there is a strong movement among Māori tribal and non-tribal organisations for constitutional change that reflects the Treaty of Waitangi, initiated by Māori leaders in 2008, which facilitated 252 hui nation-wide, between 2012 and 2015. This independent working group proposed engaging with the Crown and local government over the need for constitutional transformation and a Te Tiriti convention by 2021 (Tawhai and Gray-Sharp 2011; Matike Mai Aotearoa – The Independent Working Group on Constitutional Transformation 2016). The government responded to this initiative by establishing a Constitutional Advisory Panel in 2011, led by the Ministry of Justice (Constitutional Advisory Panel Te Ranga Kaupapa Ture 2013). The panel comprising 10 members, 5 of whom were renowned Māori leaders and academics, engaged New Zealanders nationwide through 120 hui and community hosted meetings, held the length of the country. Among the panel's many recommendations, and of relevance to this discussion, are that government: affirm The Treaty as the foundational document; invite and support New Zealanders to continue the conversation about the place of the Treaty in the New Zealand constitution; investigate how Māori parliamentary representation may be improved; investigate how local government processes can better reflect the views of

tangata whenua; and ensures a Treaty education programme is developed. However, disappointingly no timeline was proposed to progress this constitutional conversation.

## **Moving towards a more collaborative approach to governance**

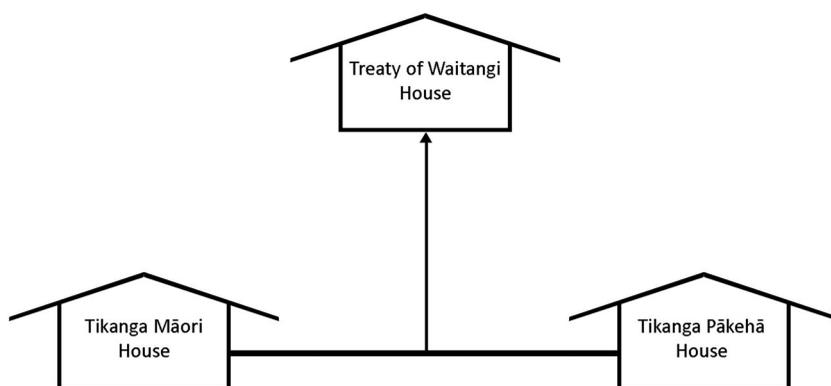
Across western liberal democracies, commentators and scholars have noted a significant change, as a result of new public management reforms in the late 1980s and 1990s, in the way governing at the local level is undertaken. In particular, they highlight a shift away from ‘top down’ process-driven local government to a more ‘bottom-up’ and community-centred form of local governance, which involves complex networks of actors (Kooiman 2003; Denters and Rose 2005; Evans et al. 2005; Rhodes 2007). In turn, the role of elected members has also changed (Berg and Rao 2005; Denters and Rose 2005; Evans et al. 2005).

Scholarship focusing on the elected member role in Australia (Bain, cited in Newnham and Winston 1997), the USA (Mouritzen and Svava 2002), Europe (Leach and Wilson 2000) and New Zealand (Drage 2004, 2008; Webster 2009) is relatively recent and highlights the characteristics of their local authorities, including representation roles/tasks; management; leadership and external relations; and monitoring and review roles. Similarities identified in the way elected members’ focused on tasks and how they prioritised their time included involvement in more networked governance. This move away from an exclusive reliance on government for governing, to more collaborative arrangements and use of partnerships meant elected members at the local level needed to be more externally focused and engaged with the multiplicity of actors involved in delivering services fostering social, economic and environmental well-being.

Drage (2004) argues that elected members typically saw themselves as an interface between the council and the community, or likened their role to that of a board of directors, and the city to a business. The introduction of a statutory long-term community planning process from 2003 with a requirement to work with the community and other key stakeholders (including central government) to define community outcomes resulted in a considerable shift, with the role of elected members becoming more focused on working collaboratively and providing community leadership. However, subsequent legislative reforms removed obligations on councils to have participatory and collaborative processes for identifying community outcomes. Moreover, the new statutory long-term community planning process did not bring about Treaty-based governance. Yet, Schedule 10 of the Local Government Act 2002 (which sets out content of long-term plans) requires long-term plans to provide information on development of Māori capacity to contribute to decision-making processes. This, we argue, demands the development of a Treaty-based approach to governance. We now discuss what this might look like, drawing on research with elected members and Māori leaders.

## **Developing a Treaty-based approach to local governance**

Webster (2009) applied the Raukawa Trustees’ Partnership-Two Cultures Development model (Winiata 2005), shown in Figure 1, also known as the three-house model (Community Sector Taskforce 2006), to conceptualise a Tikanga Māori House and a Pākehā House, where understandings about governance could be explored based on Te Ao Māori and



**Figure 1.** Partnership-two cultures development model.

Western values. A Treaty House provided for findings to be brought together and conclusions framed in a way that was inclusive of both Te Ao Māori and Western approaches to governance.

Māori methodologies guided the exploration of the Tikanga Māori House. These included: Research involving Māori (Cunningham 1998); Whakapapa (genealogy, ancestral links) (Sadler 2007); Whakawhanaungatanga (establishing a whanau of interest) (Bishop 1998); and the three-house model (Winiata 2005; Community Sector Taskforce 2006).

For the Tikanga Māori House, an in-depth study of the foundational values of Te Ao Māori established the practice for the conduct of the *kanohi ki te kanohi* interviews with 14 Māori leaders. Māori participants were recruited using the whakapapa (tribal connections) and whakawhanaungatanga (relationships) of three *awhi* (mentors) guiding conduct of the ‘Research with Māori’ (Cunningham 1998). Participants interviewed in 2008 and 2009,<sup>3</sup> represented hapū and iwi from Te Rawara and Ngāti Hine in the far north of the North Island, to Ngai Tahu in the South Island; and were academics, local elected members, politicians, corporate governors, community workers, professionals representing Māori on government organisations, court mediators, chief executives, lawyers, Te Tiriti o Waitangi claimants and administrators. Analysis of the findings was undertaken using NVivo™ to identify a Te Ao Māori and Te Tiriti framework emerging from the interviews. Mātauranga Māori was recognised as a taonga at all phases of the research (Cunningham 1998; Tomlins-Jahnke 2005).

The research process was grounded in Te Ao Māori and the principles of kaupapa Māori research (Cunningham 1998, p. 397–402; Jackson 1998, p. 74). Cultural safety for participants, mentorship of the Pākehā researcher by kaumatua and cultural relevance and appropriateness were given priority. The betterment of Māori, Māori access to the findings and control of the knowledge were essential components of the research design.

For the Pākehā House, five case study local authorities (north, central and south of the North Island, and central South Island) were selected for their predominantly urban population; reputation for innovation; significant Māori population and Māori representation; and ethnic diversity. The case study local authorities were: the then Auckland City Council,<sup>4</sup> Tauranga City Council, Rotorua District Council, Porirua City Council and Christchurch City Council. Each case study incorporated analysis of key planning

documents and a self-completion survey of elected members, which explored their understanding, awareness and practice of local governance and sustainability. Thirty elected members out of a total 72 completed the survey. Ethics approval was granted by the AUT University Ethics Committee (AUTEK), for the research comprising the Tikanga Māori House and the Tikanga Pākehā House.<sup>5</sup>

A chain of evidence was established (Yin 2003) across the findings from the Tikanga Māori and Pākehā Houses. Analysis was undertaken using Minitab, MS Excel and Inspiration SE mind-mapping software. The key findings are summarised below.

## **Tikanga Māori House – Māori leaders' views of local governance**

The kōrero (conversations) with Māori leaders described Māori and constitutional models of governance; experiences of Pākehā governance; how Māori view whenua (land); and environmental management (Webster 2009, p. 29). To begin with, 'government' and 'governance' were two distinct concepts to many of the participants. 'Government' meant sovereignty or the exercise of tino rangatiratanga (chiefly authority) (Webster 2009, p. 312). Among those for whom the distinction was important, Māori development was inconceivable within a Westminster model of government. Governance, that is participation in decision-making, was viewed in a Treaty (Article 3) context – Māori having the same rights and duties of citizenship as Pākehā (non-Māori) New Zealanders.

### ***Models of governance***

Traditional Māori governance models based on ariki (bloodline) (Came 2013) or rangatiratanga – and after the arrival of European settlers, kingitanga – have survived into the twenty-first century and are still practised (Webster 2009). The Māori concept of rights as part of a collective society clashed with western governance models, based on the rights of the individual. Hapū was acknowledged as the pre-eminent governance structure in pre-contact times, and was likened to the Polynesian village culture from which they originated, and the early European clan system. The marae committee model had been widely adopted among rural and urban Māori.

One Māori chief emphasised the difference between the two cultures views of governance by saying 'the tyranny of "the majority rules" is very un-Māori'. Another kaumatua highlighted the need for a model that could accommodate hui, described by many as the Māori way of governance:

Hui is broad and circling, and about the notion of a decision being made. As decision making it [is] often less explicit than in a Pākehā forum ...

If you want [a governance system] that is authentically Māori, you've got to transfer hui ... the custom of debate and consensus into our parliamentary system. (Ngati Kahungungu kaumatua)

Rūnanga (assembly) were seen to reunite iwi following the separations that resulted from 160 years of divisive and land-alienating legislation and the migration of Māori to the cities for work in the post-world war periods. Urban marae were described as a place

that participants conceived 'was Māori, run in terms of their culture, their values, their kawa (protocol)' (Rongomai Wahine kaumatua).

National Māori bodies and pan-tribal entities such as the National Māori Congress and the New Zealand Māori Council<sup>6</sup> were established as Māori felt the need to unite. They served to give voice to concerns over the Crown's treatment of Māori. They comprised North and South island iwi, bonded by common issues, e.g. poor education and health outcomes. Māori were seeking a Treaty-based relationship with the Crown (Webster 2009).

Awhi (guidance) was identified as an important aspect of leadership. The support, encouragement and mentoring Māori received to take on governance roles came through rangatira (leaders), kaumatua and tohunga (priest) within their whānau, hapū, iwi and national networks. Māori who served as elected members in local and central government were generally selected by their kaumatua.

The kōrero generated discussion around how local and central government could recognise Te Ao Māori. Options ranged from accommodating Te Ao Māori within the existing Westminster system to constitutional change. Changes were envisaged to benefit Māori, and at the same time be to the advantage, or at least not disadvantageous to Pākehā and other New Zealanders.

There were reservations amongst a number of the Māori leaders about retaining the current parliamentary system in any form. It was, nevertheless, acknowledged that there was much work to be done to establish options for constitutional change. The three-house model (Winiata 2005; Community Sector Taskforce 2006) of government and governance was seen as a viable option in the New Zealand context by those who sought constitutional change, as was the bi-cameral model of the South African parliament, which comprises a national assembly and provincial committees.

A new constitutional framework was envisaged that would enshrine rangatiratanga, and provide for Māori and Pākehā to share decision-making equally. Such change would need to reflect on indigenous governance practices and involve a shift in the balance of power. The Anglican Church constitution (1992) was identified as a successful working bi-cameral model in New Zealand that had potential to meet these criteria and result in process that reflects mutual respect for Māori and Pākehā world views. Experiences such as the Anglican Church constitution have provided a foundation from which to explore broader Treaty-based governance (Anglican Church in Aotearoa New Zealand and Polynesia 2008).

Māori were cautious about expecting change in the short term and acknowledged the work required to establish the momentum for such a change. There was reticence among the participants considering constitutional change, for Te Tiriti to be enshrined in legislation, as tino rangatiratanga is vulnerable to subordination in law.

Models that facilitated Māori involvement in western-style local government were advocated as an interim step. Experience of tangata whenua standing committees and 'Māori seats' had emphasised how vulnerable these mechanisms were to political change. Advisory committees were seen as a limited response to incorporating a Māori voice. Notwithstanding this, examples of Māori governance committees – Te Arawa Standing Committee in Rotorua, and the Taumata Rūnanga in Waitakere – were viewed as having enhanced Māori participation and well-being. While these committees

were 'useful', the general view was that a meaningful response to sustainable development would require a change in values at the institutional level.

Recent developments in Rotorua include Te Arawa partnership model, establishing an independent Te Arawa Board sitting outside of the council, and Te Arawa Board appointees to certain council committees, RMA consent hearing panels and strategic working groups (Rotorua District Council 2016). Governance reforms enhancing Māori voice in the Wairarapa and joint management agreements under the RMA represent significant progress (Local Government New Zealand 2011), notwithstanding the non-mandatory nature of the LGA provisions.

Giving Māori effective voice in local government was perceived by Māori elected members, to be fundamentally, a threatening model (Webster 2009) and continues to be challenged in the public arena (Harris 2016). Objections were attributed to the age cohort of Pākehā elected members, and as such, was seen as a generational issue. It was emphasised that in areas where Māori were the majority, the impact of local government meeting Treaty obligations to Māori, in terms of participation and protection, would be minimal on non-Māori, e.g. in Opotiki and Gisborne in New Zealand's central North Island. The sense of constitutional dilemma Māori leaders experienced working within a system that was to them 'entirely Eurocentric' was a common theme in the kōrero (Webster 2009, p. 319).

Establishing an environment that was more conducive to debate and consensus decision-making, was one way Māori elected representatives sought to overcome this sense of constitutional dilemma. Creating a system that was fair for Māori who live in their rohe, and fair to urban Māori who live and work in the cities, was seen as a challenge. Such a system would need to respect the role of mana whenua (trustees of land), while providing for taurahere (Māori living away from their ancestral lands) voice. Failure by central government to respond to this need risked further alienating Māori from local government. The absence of genuine consultation, even on matters concerning Māori had caused grief amongst mana whenua and tauwiwi Māori. The fiscal envelope policy (Walker 2004, p. 301) and the Foreshore and Seabed Act 2004 (Walker 2004, p. 377–389) were two examples cited (Webster 2009, p. 320).

The concept of who could represent Māori in a local government setting was a vexed issue (Webster 2009). Māori were adamant that local government needed to get alongside Māori, understand Māori processes of representation. Local authorities frequently approached different Māori groups about similar issues and knowledge was not shared across councils. According to participants, there was reticence amongst many public groups to acknowledge mana whenua and involve Māori in protocol, such as powhiri, for official events. Such experience gave the impression that Māori time and expertise was not valued.

Ongoing contentious issues such as rating of Māori land which was noted by all the Māori leaders interviewed have often persisted because of the limitations of local government structures and lack of shared governance. One Māori elected member expressed frustration over the effort involved in successfully advocating change in a predominantly Pākehā council, through the introduction of a new and fairer rating system, for low-income Māori living in rural areas. The shortcomings of current governance arrangements underscores the need for the Treaty-house approach.

Māori leaders involved in health and education approached the relationship between Te Tiriti and their work as a partnership – it was about ‘showing respect and treating others fairly’. One participant described the significance of the Treaty in her life, by saying ‘It’s just who I am. My mother’s Pākehā, my father’s Māori. It has always been about partnership and respect and all of those things that are the Treaty’ (Ngati Whatua o Orakei community leader).

The new generation of Māori leaders was expected to be less tolerant of a subservient position for Māori. As Treaty settlements progressed and Māori become significant land holders and decision-makers at the local level, they were seeking recognition and representation at the local governance table.

### ***The importance of shared governance for environmental management***

The research highlighted that in the area of environmental planning, there had been some innovation in governance arrangements with a range of different models being implemented throughout New Zealand to recognise Te Ao Māori. One kaumatua described the significance of whenua (land) as the symbol of difference:

I’ve come to see the difference in how Māori and Pākehā view land as being the symbol of where difference [in world views] begins. And it seems to be where the gap widens as you take in more aspects of our world ... my relationship to land is based on our whole literature. It’s based on a spiritual religion that ties the land to us. I’m not saying its better, I am just saying it is different ... we are not the same. (Ngati Kahungunu kaumatua)

This quote expresses the Māori view of whenua as embodying whakapapa, the links with past and future generations. This sense of ‘continuity of consciousness’ was described by one central North Island kaumatua as sustainability, and inherent in the holistic nature of Te Ao Māori, the view of whenua or the physical world and the celestial realm as being interconnected.

It was widely acknowledged that the environment was inextricably linked to the well-being of the people living on that land, and to the economy that supports environmental and social well-being. For progress, government and governance structures needed to give expression to the foundational values of Te Ao Māori, and provide for equitable power sharing.

The issues relating to environmental management were summarised as: loss of control over ancestral lands; concern over the pollution of lakes, rivers and harbours and the impact on the sustainability of the environment and Māori well-being; and exploitation of natural resources, such as water. Local government officials’ poor understanding of Te Ao Māori with respect to whenua, kaitiakitanga and effective consultation had compounded environmental management. There were examples of both disappointment and elation in the relationships between Māori and their local authorities. All the Māori leaders interviewed had experience of local government and environmental issues that put Māori at a disadvantage. The kōrero described cultural insensitivity through to outright discrimination, individually and collectively.

There was widespread support for the mandatory development of iwi management plans under the Resource Management Act 1991, to bind the local authority in certain environmental practices and to be compulsory, e.g. as a district plan is compulsory. This was seen as a way to encourage iwi to take the initiative about the things that are a priority

for them. As one senior Māori judge expressed, the system needed to treat iwi organisations as public authorities, not as private associations, and to conceive of iwi as necessary players in environmental management, 'If there is no iwi voice in the mix of instruments then the job is not complete. In the same way that if there is no district plan, there has to be one'.

What it means to be Māori and to practice Te Ao Māori could be traced through every aspect of the kōrero that described the Māori leaders' views of governance, whether expressed by someone working at 'the grass roots' (community) level, or by a rangatira.

Awareness of two distinctly different worldviews was prominent among the Māori leaders interviewed. The differences between the Pākehā and Māori view of land became the symbol of difference between the two worldviews. This was enhanced by the Māori collective, social structure based on kinship and the practice of hui, as a consensual process of decision-making. The hapu-level nature of Māori governance, which is 'bottom up', contrasted with the more centralised, western model of government, which can be described as 'top down'. Cultural difference was further accentuated by the Te Ao Māori holistic view of continuity between the physical world and the celestial dimensions.

### **The Pākehā House – New Zealand elected members' views**

In research by Non-Māori, elected members were presented with a range of descriptions of their role<sup>7</sup> drawn from international literature on the elected member role. When asked to reflect on these, the greatest number of elected members considered governance (policy-setting and decision-making) to be of greater priority than other aspects (Webster 2009, p. 179). This was consistent with the findings of the Australian, UK, US and the earlier NZ findings (Newnham and Winston 1997; Leach and Wilson 2000; Mouritzen and Svava 2002; Drage 2008).

Representing community, providing leadership and task accomplishment were next in importance, followed by reviewing performance and maintaining cohesiveness. Consultation was acknowledged by only a few elected members. Political lobbying and influence was unsurprisingly, the least acknowledged role, based on the largely non-partisan nature of New Zealand local government (Webster 2009, p. 179). While the increasingly complex networks of organisations involved in local governance were acknowledged, multi-level governing was one of the last aspects of contemporary governance to be adopted by elected members in the sample.

The time required to meet legislative, organisational and political tasks posed a challenge for the New Zealand elected members (Webster 2009, p. 198) and they frequently spent time on aspects of their role that were not their personal priorities. Maintaining cohesiveness was described as important for the 'credibility of council'. Enhancing external relationships was considered by just a few to be 'the way of the future'.

Elected members were presented with a range of long-term plan tasks,<sup>8</sup> drawn from international literature on contemporary role of elected members, and asked to consider their importance, and how well their council was delivering on them.<sup>9</sup> Councils were seen to be underperforming in the areas of developing vision, and promoting efficient and effective use of resources. Further, underperformance was perceived around the tasks that were newest, for example, collaborating with other councils, engaging the general public and responding to feedback.

Providing opportunities for Māori to contribute to local government was of least importance and effectiveness among the 80% of non-Māori elected members (Webster 2009, p. 183). The majority of respondents believed their local authority was moderately or highly effective in this task, an assessment not supported by research undertaken with Māori over the same period (Local Futures 2005; Shand et al. 2007; Local Government Commission 2008). This low ranked task was again new to local authorities (Webster 2009, p. 198). As Memon and Thomas (2006) had observed, the way in which local authorities engaged with Māori had been expected to change significantly following implementation of the LGA 2002. Clearly, based on the results of this elected member survey, a more inclusive approach to Māori was required by elected members for the LGA to bring about fundamental change in the nature of governance.

Elected members ranked roles that were relatively new to them, and with which they were less familiar lowly, such as collaboration, engagement with constituents and organisations, and working with Māori, compared with governance and the traditional aspects of representation with which they were more familiar. The consistently low ranking given to opportunities for Māori emphasised, generally, the low priority of Te Tiriti o Waitangi among non-Māori elected members (Webster 2009).

### **Conclusion: Growing urgency for a Treaty House**

Effective inclusion of Pākehā and Māori in governance arrangements at the local level is a significant requirement of the Treaty of Waitangi and also pre-requisite for progress towards treaty-based governance in Aotearoa New Zealand. To achieve this would require a fundamental shift in the balance of power, and for local government to give expression to Te Ao Māori.

Despite a few tentative steps with the Local Electoral Act 2001 and the LGA 2002, to date Parliament has failed to provide for effective Māori representation at the local level, much less to ensure that there is Treaty-based governance at the subnational level in New Zealand. Treaty settlements have ushered in some important and novel arrangements in relation to the conservation estate (such as the shared governance model for Urewera National Park and it is likely that this will continue to happen). However, appropriate, Treaty-based structures for local governance have not yet emerged.

From the data gathered in Webster's 2009 study, ongoing studies of Māori-local government engagement (Local Government New Zealand 2011, 2015), and subsequent discussions about constitutional reform there is a clear consensus evident that shared governance is now overdue at the subnational level. There are two clear ways forward to enhance Māori participation in local government are offered: (1) a new Treaty-based system of local government that provides for the expression of Māori tino rangatiratanga as an equal form of governance; and (2) changes to the existing system that acknowledge Te Ao Māori and sit alongside effective Māori representation.

Only a new Treaty-based system of local government that incorporated distinctively Māori ways of governance would protect the rights of New Zealand Māori to fair and effective representation that stem from the Treaty of Waitangi. Such a model could encompass a 'Māori House' and a 'Pākehā House' (Winiata 2005) and a conceptual place, such as a 'Treaty House', which was common to both cultures.

In the absence of this approach, adopting a more Māori form of governance would be seen as going some way towards achieving recognition of the Treaty. Strengthening the relationship with mana whenua, and supporting mana whenua to consult with tauwi Māori (Māori living outside of their ancestral rohe) was conceived as a way to build the capacity of mana whenua to exercise manaakitanga (hospitality) and kaitiakitanga.

Improvements in the current system of local governance were conceived as possible, based on a parallel model of effective Māori representation or the establishment of Māori wards and seats. Māori recognised the need to upskill their people and focus on leadership and succession planning.

The role of local elected members in New Zealand continues to evolve as reforms continue to impact on the purpose and structure of local government, in a quest for greater effectiveness and efficiency in pursuit of central government objectives. Reforms such as the 2010 structural reforms of Auckland local government and the 2012 amendments to the purpose of the LGA have profound implications for the roles of elected members, Māori representation and governance more broadly. With the Treaty of Waitangi settlement process, initiated in 1975 now in its fourth decade, the role of iwi as social and economic actors is now established. Notwithstanding this, their formal political role, particularly at the local level, remains very truncated and their full contribution to governance has yet to be realised. New structures are needed at the local level which recognise contemporary patterns of organisation within Māoridom – in particular, the impact of urbanisation and mobility. Digital technology needs to be utilised to allow Māori and non-Māori from outside their rohe to participate in governance processes.

Contemporary understandings of governance in New Zealand have evolved since the review of local government legislation in 2000–2001. Structures that seek to recognise Māori kaitiakitanga and facilitate a range of voices in governance at the local level are appearing, but more progress is needed. Ad hoc western and unpredictable structures that have failed to deliver fair and effective representation to all New Zealanders can no longer be supported, and a Treaty-based solution is needed. The tendency of past administrations to seize upon overseas experience is unlikely to resolve this dilemma. Māori, supported by a small group of New Zealanders, have advocated for this change since signing of the Treaty of Waitangi in 1840.

While there is ambivalence about the existing structures of local government, and new governance arrangements are emerging that are outside of these and involve hybrid structures, it is also incumbent upon our legislators to ensure that the local government legislation governing representation, participation and electoral arrangements is based on the Treaty. The Treaty of Waitangi promised partnership, protection and participation – as yet these are far from evident in local authority decision-making. It is time for the New Zealand Government to demonstrate courage and commit to progressing a wider constitutional debate – a conversation among Māori and non-Māori to devise governance arrangements at the subnational level that address the Treaty of Waitangi as New Zealand's founding document.

## Notes

1. Bay of Plenty Regional Council (Māori Constituency Empowering) Act 2001.

2. The 2012 amendments changed the purpose of the LGA to refocus local authorities' efforts on provision of 'good-quality local infrastructure, local public services, and performance of regulatory functions'.
3. Since this time, progress has been made in some rohe, with new forms of shared governance ushered in by Treaty settlements. As evidenced by Local Government New Zealand surveys and stocktakes – see discussion in earlier section entitled 'Māori Involvement in Governance at the Local Level – legislative Provisions' – there are still shortcomings in Māori participation in other rohe. The findings of the 2008–2009 research provide a rich context to the ongoing challenges experienced by Māori.
4. Now part of the Auckland Council unitary authority formed in 2010.
5. AUTECH Ethics Application 06/192, 4 December 2006. For further details of the methodology, see p. 15–48 of Webster 2009. <http://aut.researchgateway.ac.nz/handle/10292/854>
6. The New Zealand Māori Council had been a significant political voice for Māori and had successfully led legal challenges against the Crown over issues such as the sale of Māori land under the State-Owned Enterprises Act 1986, and the ownership of forests, fisheries and the broadcasting spectrum.
7. The following roles were described: Representing community – a link between electors and local government; policy development – identifying communities' needs, selecting objectives; governance – prioritisation and political decision-making; providing leadership – advocating for the city or district; political dimensions – political lobbying and influence; reviewing performance – monitoring performance of council on political and legislative commitments; maintaining cohesiveness – this recognises the importance of the relationship between elected members, and elected members and officers; enhancing external relationships – this highlights the importance of partnerships and collaboration; and task accomplishment – getting involved and taking action to ensure strategy is progressed.
8. The long-term planning tasks presented for elected members consideration included: Engaging the general public; communicating urban sustainability; providing opportunities for Māori to contribute; involving diverse groups; developing a vision for the future; collaborating with other councils; collaborating with key stakeholders; including public feedback in decision-making; responding to feedback; supporting environmental management; and promoting efficient and effective use of resources. Participants were given the opportunity to describe other tasks not listed.
9. The tasks included: Developing a vision for the future, promoting efficient and effective use of resources, engaging the general public, responding to feedback, including public feedback in decision-making, supporting environmental management, collaborating with key stakeholders, communicating urban sustainability, providing opportunities for Māori to contribute, and involving diverse groups (Webster 2008, p. 180–184).

## Disclosure statement

No potential conflict of interest was reported by the authors.

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