

**Museums, iwi, and other heritage organisations have various options available for governing their organisation. This guide takes you through a process of decision making on governance, with a focus on New Zealand's bicultural context.**

**Governance – what and how to decide**

How do you assess what type of governance structure will best suit your organisation? What process can you follow to help you decide? How can you put a commitment to biculturalism into effect through your structure?

You may find this guide useful if your organisation is:

- in development and needs to make decisions on how it will be governed
- in existence and wishes to reassess its current structure.

Various options for governance structures are outlined here, along with examples of how they might be applied. A process for deciding on the most appropriate option is also suggested.

**Why bicultural governance?**

Bicultural governance is a significant issue for New Zealand museums. Many parties involved in the museum sector (e.g., local and central government) are committed both to putting the principles of the Treaty of Waitangi into practice and to biculturalism.

Also, here as elsewhere in the world, many objects in museum collections are the taonga (cultural treasures) of indigenous people. There is strong local and international concern that these objects be managed in the best way possible, with the involvement of the relevant indigenous group.

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# Governance and *management*



Orongomai Marae

Governance, as it is understood in mainstream commercial practice (based essentially on English law), is distinctly different from management.

Governors of an organisation:

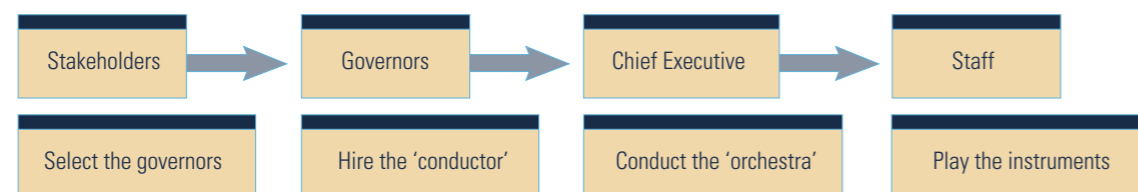
- set the organisation's broad objectives
- choose the chief executive – the hand of management
- provide the tools (e.g., agree on a budget) to achieve the objectives
- agree on ways to measure progress and receive reports on this.

The chief executive:

- leads the organisation's management
- is responsible for ensuring the organisation meets objectives set by the governors.

The governing body has a direct relationship with the organisation's stakeholders – the individuals or groups who have a 'stake' or interest in the success of the organisation.

The diagram below illustrates a commonly accepted model of this.



# Selecting the *governing body*

Whatever type of governance structure you decide on for your organisation, your key decision initially will be how you select the members who form its governing body. With this decision, you are setting the interface between you and your stakeholders. This is a crucial consideration in bicultural governance, which in the New Zealand context usually means that the organisation's governing body reflects the interests of the cultural partner (Tangata Whenua or Tangata Tiriti) as a stakeholder (see Further Reading on page 16).

How you select your governors will have a profound influence on your stakeholder Relationships throughout the life of the organisation.

## Options for the selection process

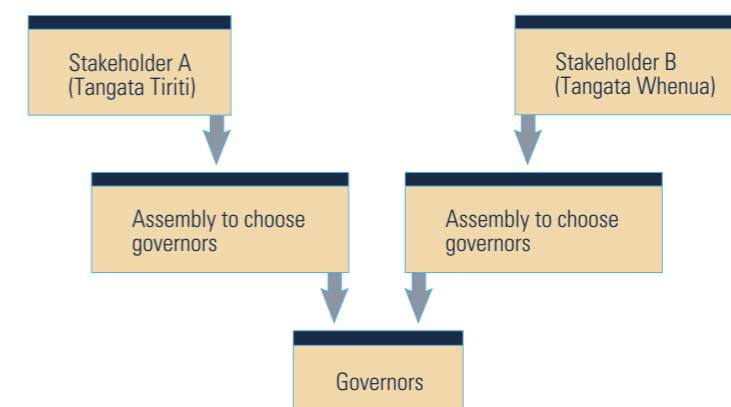
There are three main options for selecting governors – bicameral, representative, and responsible. The bicameral approach is of particular relevance to bicultural governance, though the 'representative' and 'responsible' options will also serve this purpose.

### Bicameral

This option involves the concept of two 'houses' and is commonly seen in political structures, e.g., the Houses of Lords and Commons in the British Parliament. Bicameral structures are increasingly being considered in New Zealand, with Tangata Whenua and Tangata Tiriti represented in two separate houses.

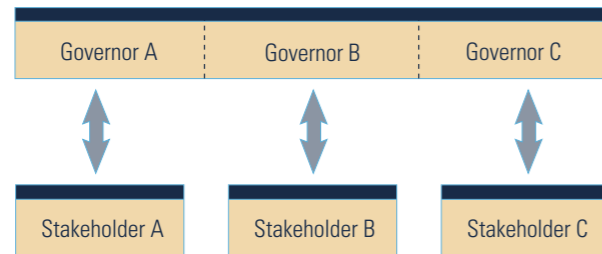
The bicameral structure can form the governing body in two ways:

- The two houses exist to select the members of the governing body (see the diagram, below).
- The two houses are the governing body. As a result, unanimity, or at least lack of dissent, is needed for any decision.



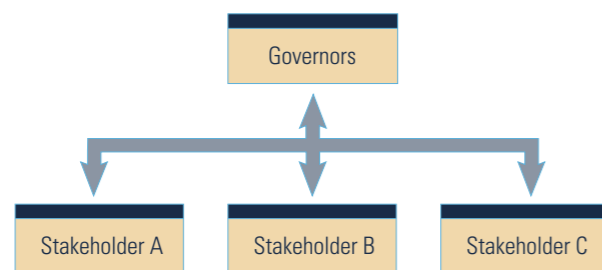
### Representative

With this option governors are selected to each represent the interests of particular stakeholders.



### Responsible

With this option all governors selected are responsible to all stakeholders. The basis for selection is often the best possible combination of skills.



### Additional mechanisms for bicultural governance

Organisations can couple any of the above options with mechanisms that increase consultation, such as:

- an advisory committee or board
- a memorandum of understanding with stakeholders, and regular meetings with them
- a requirement to consult with a particular party.

These mechanisms may be particularly useful with the 'responsible' board option. They can be included in the constitution, making them integral to the organisation – they cannot be removed without changing the constitution.

In the New Zealand context, two specific examples are:

- Pākehā organisation running a museum, with or without a Tangata Whenua or Māori advisory board. A number of facilities in the heritage sector are run in this way.
- Rangatiratanga: an organisation run by an iwi (tribe).



## Bicultural governance and bicultural management

In considering how bicultural governance will apply in your organisation, you should also consider to what degree that will lead to bicultural management.

For instance, is the museum managed down a single line of command or does the partnership run right through the organisation with parallel lines of command, or is there a combination of the two structures?

You can take a step towards bicultural management decisions by requiring the organisation to consult a particular stakeholder before making certain decisions. Using an advisory group is one way of doing this. This has become a common way in New Zealand to couple the English-based concept of governance with a growing acceptance of the concerns of Māori as stakeholders.

## Common governance

# frameworks

There are various frameworks available for organisations to choose as their governance structure. This section introduces some common structures and their characteristics and shows how they might look in practice. These include:

- adding a new activity to an existing structure (see below)
- trust (page 6)
- partnership (or joint venture) (page 7)
- corporation (page 8)
- company (page 9)
- incorporated society (page 10)
- structures under the Te Ture Whenua Māori Act 1993 (page 11).

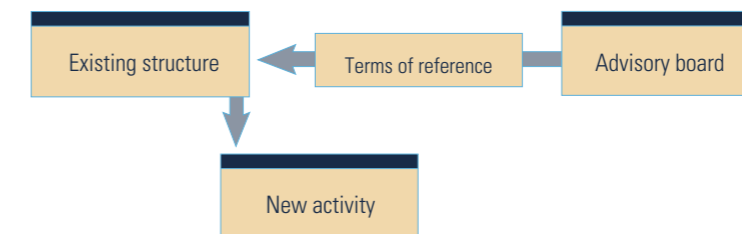
You may want to use these structures as building blocks and customise them to your organisation's needs – see page 11.

Note that in some of these structures, the title of 'governor' will change to 'trustee', 'director', and so on.

### Adding a new activity to an existing structure

The advantages of this framework are simplicity and direct control. Many of your choices will be determined by the type of body that the parent organisation is. For instance, if you add a museum to a local authority, you accept that the local authority will choose the museum's directors or governors, and so on. As a result, it doesn't matter much whether the new body is a separate company or an integral part of the parent organisation.

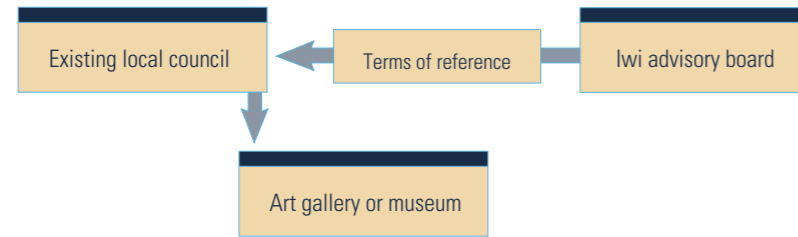
Adding an advisory board is common practice to give a voice to particular stakeholder interests (e.g., those of Tangata Whenua).



### Key features – adding to an existing structure.

Owned by:	Parent organisation.
Controlled by:	Parent organisation.
Profit goes to:	Parent organisation.
Responsible for losses:	Parent organisation.
How to change who runs it:	Parent organisation makes the decisions.

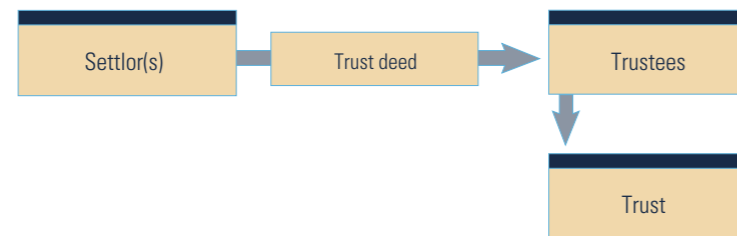
**Example**



In this case, the gallery or museum is part of the council. Staff are council employees, and the advisory board is purely advisory. Legal requirements imposed on the council, e.g., accountability, financial reporting, and auditing, will apply to the museum. A number of art galleries and museums of art and history are organised in this way, as are some smaller facilities associated with universities.

**Trust**

Trusts are among the oldest of the recognised structures. The terms of a trust are contained in the trust deed, which must specify the trust's beneficiaries. A key factor here will be who the trustees are, and how they are appointed and replaced. Significant stakeholder interests are often represented among trustees. As the 'governors', trustees choose the chief executive of the organisation. It is important to get governors who will govern rather than meddle in management. In particular, governors should be cautious in advancing the interests of the group(s) they represent.

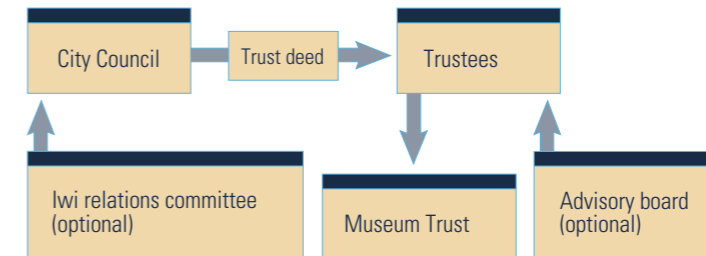


**Key features – trust**

- Owned by: Trustees, subject to holding the asset for the benefit of the trust's beneficiaries.
- Controlled by: Trustees, subject to the terms of the trust (defined in the trust deed).
- Profit goes to: The trust accumulates income and holds capital. The terms of the trust define what happens to this. Trustees don't benefit personally.
- Responsible for losses: Trust. Settlor and trustees are not personally responsible.
- How to change who runs it: The trust deed specifies how to appoint trustees.

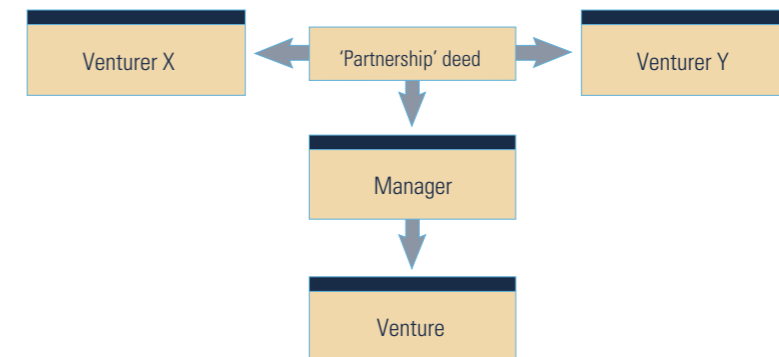
**Example**

This approach distances the facility from the council. It could be useful, for instance, when a funder wants to fund a museum, but not give the money directly to council. Sometimes trusts are set up in the hope of either escaping public sector audit and accountability requirements or achieving a different tax status (e.g., charitable). You should regard both of these propositions with caution.



**Partnership (or joint venture)**

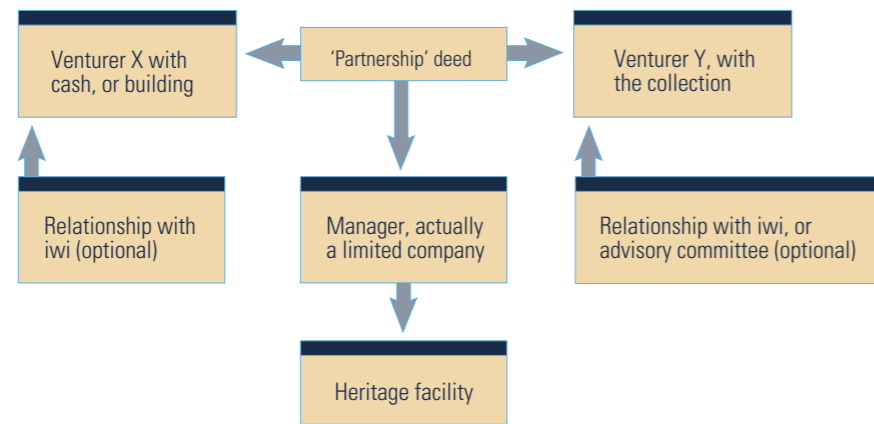
A true partnership, where venturers are each liable for all the debts of the venture, is unlikely to be an option for a museum. Instead, this is more likely to be an activity by two or more venturers, managed or operated through a separate corporate structure. This structure may be useful where one venturer has something significant to provide, e.g., a collection, while the other has cash or a building to house the collection. A joint venture works best where there is a reasonable balance of power between the venturers. If power is distributed unevenly, a trust may be a better choice.



**Key features – partnership / joint venture**

- Owned by: Venturers, subject to the terms of the deed. This may specify their shares.
- Controlled by: Venturers, subject to the deed, which specifies how to appoint management and make decisions.
- Profit goes to: Venturers share the surplus, according to the deed.
- Responsible for losses: Depending on how the venture is constructed (e.g., if it's a limited liability company), venturers may not be liable for all losses.
- How to change who runs it: Venturers choose and replace managers, subject to the deed.

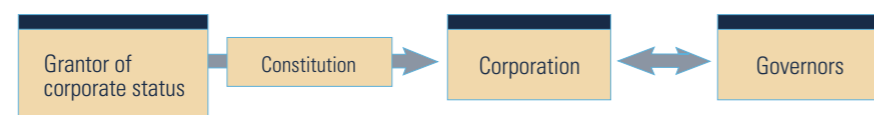
**Example**



**Corporation**

A corporation is an independent body in the same way as a trust, but it does not need to specify beneficiaries. In New Zealand, corporation status requires a grant from the sovereign (a Royal Charter) or an Act of Parliament.

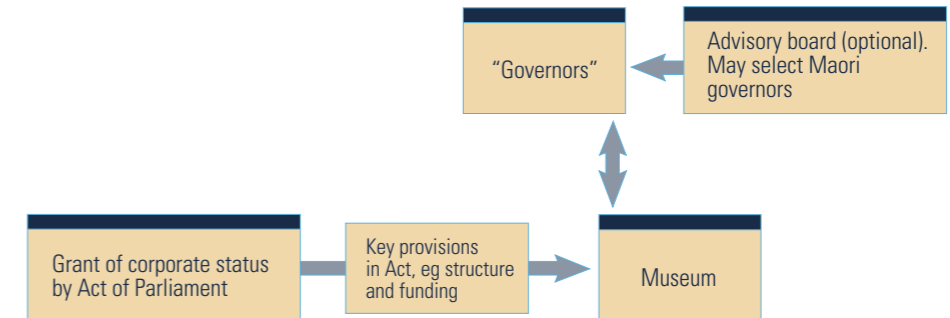
Typically, local authorities are corporations, and that status should not be ruled out for any other new museum. However, Parliament would want evidence that the structure's desired characteristics could not be achieved by any other means.



**Key features – corporation**

- Owned by: Corporation owns itself.
- Controlled by: Governors.
- Profit goes to: Corporation.
- Responsible for losses: Corporation.
- How to change who runs it: The constitution will determine how to change governors.

**Example**



**Company**

A company created under the Companies Act comes with the benefit of well-understood rules about the roles of its participants, i.e., shareholders and directors. A company can be created with nominal share capital, even with just one share. In the case of running a museum, a single company with shares held in various proportions by stakeholders is likely to create tensions among directors. They may find it hard to act as a group when the board's composition simply reflects the divisions among shareholders.

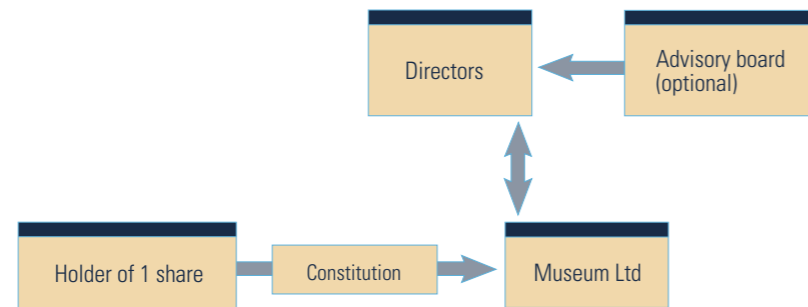
In not-for-profit situations, it may be most appropriate to create a company with a trust as a single shareholder. Trading or operational activity can be carried on through the company while the trust owns the underlying assets. If you want to avoid the risk of losing assets to creditors in an insolvency, this may be more suitable than a company alone. (See page 15 for a more detailed example of this.)



**Key features – company**

- Owned by: Shareholders.
- Controlled by: Directors, who are elected subject to the constitution.
- Profit goes to: Shareholders, who get a dividend. If the company is sold, the shareholders will get their capital back.
- Responsible for losses: In most cases a company is a 'limited liability' company. Shareholders are not responsible for losses.
- How to change who runs it: The constitution will specify this.

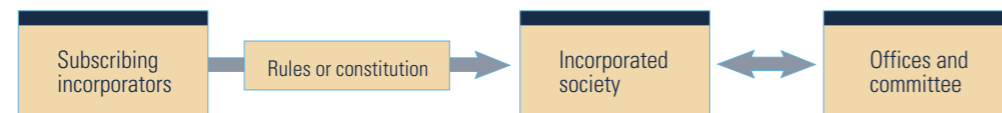
**Example**



**Incorporated society**

An incorporated society under the Incorporated Societies Act 1908 is one of the most common structures in the voluntary sector. It has simple start-up requirements, but its tax requirements can be demanding.

If an incorporated society with not-for-profit tax status is wound up, its assets must be passed on to a society with similar status, to be used for a similar purpose. This can cause difficulties if the society has amassed significant assets.



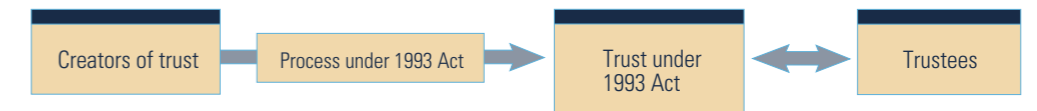
**Key features – incorporated society**

- Owned by: Society owns itself.
- Controlled by: Officers/committee.
- Profit goes to: Society, although most will have not-for-profit tax status.
- Responsible for losses: Society.
- How to change who runs it: Constitution specifies how to re-elect the officers/committee.

**Structures under Te Ture Whenua Māori Act 1993**

These structures, if thought of in terms of English legal concepts, are basically variations on a trust. They are a possibility for iwi-based museums. Structures can be based on an iwi (tribe), hapū (sub-tribe), or whānau (family).

The trustees' role under the 1993 Act may be split into several parts – advisory trustees, custodian trustees, and managing trustees. A custodian trustee holds trust property and administers, but is not a decision-maker. This allows professional trustees to be involved, while key decisions are still made by those members of the iwi chosen to be managing trustees.

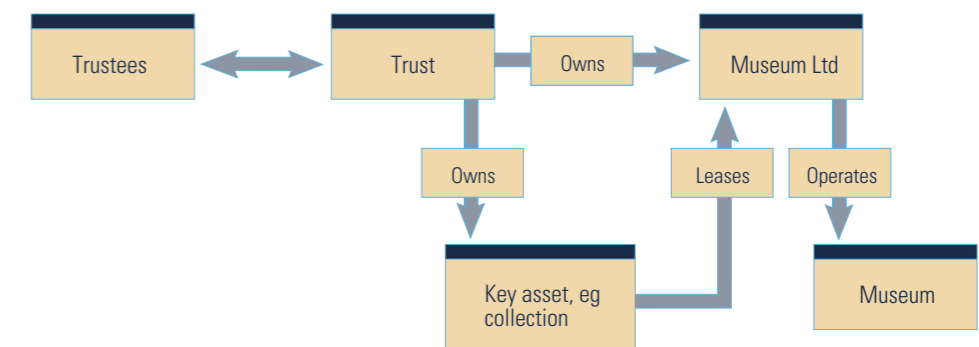


**Key features – Ture Whenua Māori structure**

- Owned by: Trustees, for benefit of beneficiaries.
- Controlled by: Trustees, for benefit of beneficiaries.
- Profit goes to: Depending on tax status, income may be paid to beneficiaries.
- Responsible for losses: Trust.
- How to change who runs it: Trust document and 1993 Act specify how to change trustees.

**Using common structures as building blocks – for advanced players only!**

Various governance structures can be combined to take advantage of the features of more than one structure. The following example shows a company used with a trust. This is commonly used to protect a key asset from trading risk by holding it within a separate structure. It can also improve the balance of power among stakeholders and insulate decision-makers from stakeholder pressure.



# Deciding on a **governance** *structure*



The following steps outline a process for working through decision making on a suitable governance structure for your organisation.

For an example of how the process might work in practice, see pages 14-15. This shows how one museum worked through the first six steps, and the conclusions they came to as a result.

## 1 Identify stakeholders

Who are all your stakeholders?

Do they have any particular requirements? What?

## 2 Decide on key principles important to stakeholders

Decide on the relationship governors will have with stakeholders. In New Zealand, this may involve recognising Treaty of Waitangi obligations.

## 3 Decide how governors will be selected

What model will you use for selecting governors – bicameral, representative, or responsible? (See pages 3-4.)

How will you appoint, review, and reappoint or discharge them?

## 4 Consider structural issues

Will you be:

- part of central government or a local authority?
- part of another type of organisation, e.g., a university?
- a separate organisation, but linked to another body through ownership or control?
- wholly separate, as your own corporate body?

## 5 Draft possible structures

Which of the basic structures (pages 5-11) best suits your needs?

Do you need to combine two or more structures to get the overall characteristics you want?

## 6 Decide on the structure

## 7 Consider management issues

Do you want bicultural governance to extend into bicultural management? (See page 4.)

## 8 Decide on key items for the constitution

When developing the trust deed or constitution, critical points for bicultural governance will be:

- statement of purpose (which may extend to an expression of good intentions)
- initial selection and subsequent replacement of trustees or governors
- powers of trustees
- whether the organisation is managed down a single line of command or on some other basis (i.e., does any ‘partnership’ run right down the organisation?)
- any requirements to consult with particular stakeholders before certain decisions are made. This might be the subject of a memorandum of understanding between the museum and a stakeholder
- choice of chief executive
- any requirements for the desired tax status
- what happens on cessation, in particular to the collections.

## 9 Make initial decisions for the board

You might want to develop memoranda of understanding between the museum and key stakeholders. A charter can be a useful place to state the commitment to, and process for, ongoing stakeholder relationships.

You may want to look for particular personal qualities in governors. The responsible model works better with a mix of skills on the board. The representative model obviously requires that you cater for stakeholder interests in proportions that are not unsatisfactory to any stakeholder.

This tension between the responsible and representative models suggests that a code of conduct for the board may be useful to set out the duties and responsibilities of governors if their stakeholders’ interests ever diverge from those of the museum.

## Transfer to a new structure

You will also need to decide when to implement your new structure. If you’ve started your activity under an interim group, you will be deciding when to transfer the activity from interim to permanent. This can be at an early or later stage.

Consider:

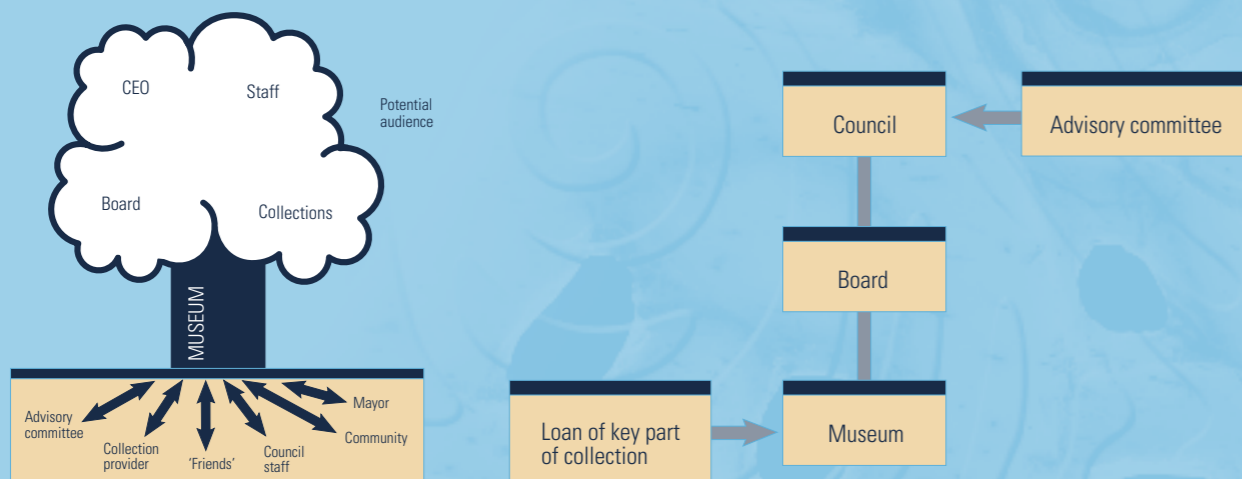
- what structure seems best suited to actually building a museum
- funders’ requirements about the legal status of the body receiving funding
- the tax status of the project and of the museum.

One tactic is to set up a trust for the specific purpose of creating the museum, and then transfer it to the permanent structure.

Remember you should make decisions about structure reasonably early in the project’s life.

## Drawing up structures

It can be very helpful to draw diagrams of possible structures. Putting them down on paper (or up on a whiteboard) stimulates discussion, helps people think visually, and lets them see each other’s ideas. There can be surprises sometimes too – different people may see the same structure very differently! These two diagrams are simplified versions of how two staff from the same museum drew their organisation’s structure.



# One museum's

# process



Left to right: Alan Cooper, Penny Robinson, Pam Erni (Chair) Rangi Wills, Sharon Dell, Kahukura Taiaroa, Ann McNamara, Michael Payne, Grant Huwylar

One museum went through a major process of change over several years in order to increase tangata whenua participation. They explored the various governance models and eventually settled on the bicameral one.

The museum's working party followed the decision steps from pages 12-13 to assess possible governance structures for their new museum. These are the conclusions they came to.

### 1 Identify stakeholders

Stakeholders included the iwi and local authority. Significant funders were yet to be determined. There were also another local authority and various local groups with a long-standing interest in the collection and the museum's predecessors.

### 2 Decide on key principles important to stakeholders

The need to recognise the Treaty of Waitangi partnership was the main issue.

### 3 Decide how governors are selected

The working party expressed a strong preference for the bicameral option. This could be implemented through two separate colleges which choose their representatives to be governors or trustees.

### 4 Consider structural issues

The local authority had something of an arm's-length attitude to the museum. This was taken to mean that the council was involved with and would resource, but might not want to own, a museum.

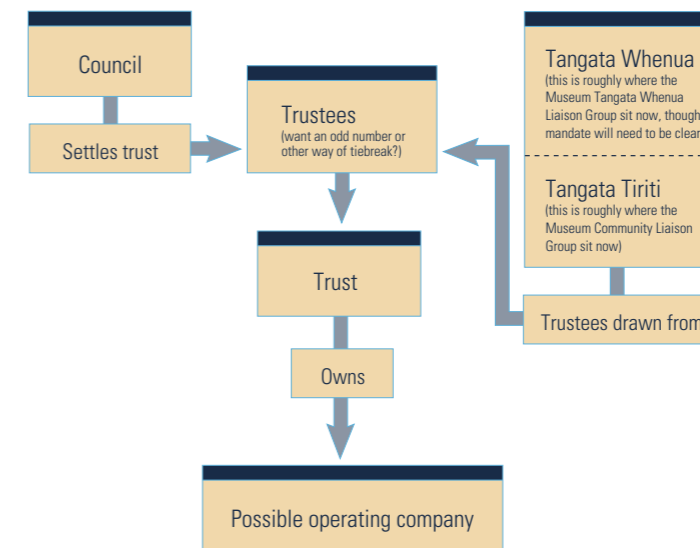
### 5 Draft possible structures

The museum would almost certainly be a separate legal structure, rather than part of the local authority. Of the separate structures, a trust of some sort seemed attractive (see the diagram on page 15) because, as a structure without shareholders, it might better suit a situation where stakeholders made differing contributions over time (at least in strictly monetary terms).

A trust, or a trust with an operating company, and possibly a joint venture carried on through an incorporated manager, all met the requirements identified above.

## 6. Decide on the structure

Trust with an operating company looks most likely.



### Checking the structure

The museum working party produced a list of more detailed requirements, which could then be checked against the suggested structure. These included:

- The local authority is the principal facilitator, a significant stakeholder, and funder.
- Separate status from the local authority will allow the museum to develop its own culture, may be more attractive to funders, escapes the strictures of local authority funding (though robust accountability could mimic these requirements), and will assist the museum in creating its own identity.
- Something not in the list, but clearly implied: a separate structure gives Māori stakeholders greater assurance that their concerns are being dealt with. If trustees are chosen using the bicameral model, there is an even better match to the tangata whenua preference.
- The prospect of more than one local authority being involved is also catered for.

## Getting the process right

The process of decision-making about a governance structure can be a very important part of building goodwill and relationships. Don't underestimate the importance of fully involving stakeholders and getting the process right.

Remember that situations can be very individual and localised, particularly with regard to issues of bicultural governance. Take account of historical and pre-existing relationships with and between local iwi.

A less than perfect structure might actually work well with the commitment and goodwill of those involved. Even an apparently good structure can fail without these.

### Glossary

**Advisory board** A body or committee with expertise in a particular area, with power only to advise the organisation.

**Bicameral governance** A governance structure involving two distinct houses (e.g., one Tangata Whenua and one Tangata Tiriti).

**Governance** Methods and structures for governing an organisation. Governance is concerned with the larger ends an organisation wants to reach (purpose and policies), rather than the day-to-day means for getting there (management).





- Governor** A member of the governing body of an organisation, e.g., the board of directors or trustees.
- Memorandum of understanding** A statement developed between two parties, stating mutual commitments and expectations.
- Representative governance** A structure where governors each represent the interests of particular stakeholders.
- Responsible governance** A structure where all governors are responsible to all stakeholders.
- Settlor** The person or party who establishes a trust.
- Shareholder** The holder of an ownership share in an organisation (usually a company).
- Stakeholder** An individual or group with an interest or stake in the success of an organisation.
- Tangata Tiriti** People who have settled in New Zealand by right of the Treaty of Waitangi.
- Tangata Whenua** Māori – the original people of the land.
- Venturer** A participant in a joint venture.



**Further reading**

Te Papa National Services Te Paerangi (2000). *He Wānanga Tirohanga Rangapū mō Te Kaupapa Tikanga-ā-rua i roto i ngā Whare Taonga: Wānanga on Bicultural Governance and Leadership in Museums*. Wellington: Museum of New Zealand Te Papa Tongarewa.

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**For further information or to discuss training opportunities related to this topic please contact:**

<b>National Services Te Paerangi</b>	Museum of New Zealand Te Papa Tongarewa	
	Cable Street, PO Box 467, Wellington	
	<b>Phone</b> (04) 381 7000	
	<b>Fax</b> (04) 381 7080	
	<b>email</b> natserv@tepapa.govt.nz	
	<b>Website</b> www.nationalservices.tepapa.govt.nz	
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