



# **FIRST NATIONS DECISION-MAKING IN BC**

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As decision-making changes in BC through negotiations between Crown and First Nations governments, it is important to understand the multiple and often parallel ways First Nations are involved in enforceable decisions. We have classified four levels of First Nations decision-making that are recognized by Crown governments:

1. Baseline: Duty to Consult
2. Co-Management Instruments: Land Use Planning
3. Statutory Decision-Making: Declaration Act Section 7 Agreements
4. Joint Decision-Making: Legislative carve-outs

## **BASELINE: DUTY TO CONSULT**

The duty to consult and accommodate is a constitutional obligation arising from Aboriginal Rights guaranteed in section 35 of the Constitution Act, 1982 and specifically established through the *Haida Nation* decision in 2004, and other case law. In British Columbia, it requires the Crown to consult First Nations when it has knowledge of asserted or established Aboriginal rights or title and contemplates decisions that may adversely affect those rights.

**Consultation is procedural, not jurisdictional. It gives First Nations a legally protected role in decision-making processes, but it does not transfer decision-making authority or provide a general veto over Crown decisions.**

The scope and depth of consultation depend on:

- the strength of the claimed right or title, and
- the seriousness of the potential impact.

Consultation can range from notice and information-sharing to deep, iterative engagement and accommodation measures, such as changes to project design or mitigation conditions.

In practice, First Nations are involved by:

- receiving referrals on proposed decisions,
- providing input, studies, and Indigenous knowledge,
- negotiating accommodations to reduce impacts,
- and influencing how decisions are shaped before they are finalized.

However, final authority remains with the Crown, except where Aboriginal title has been proven or consent is otherwise legally required. The duty ensures decisions are made honourably and informed by Indigenous interests, but it does not create shared or joint decision-making.

In short, the duty to consult:

- constrains Crown discretion,
- embeds Indigenous participation in decision-making,
- and creates enforceable procedural rights,
- but it stops short of recognizing Indigenous governments as decision-makers within provincial law.

In practice, the duty to consult is often delegated to the proponent, who logs consultations and demonstrates that they have carried out consultation when seeking a permit. This can have positive or negative results. A proponent may collaboratively design a cut block with a customary title holder, leading to functional Free Prior and Informed Consent, for example. Or a proponent may present to a community once and classify that as consultation.

The only parts of consultation that cannot be delegated to a proponent are:

- the legal obligation to consult,
- the assessment of consultation adequacy,
- the decision about whether accommodation is sufficient,
- or the ultimate balancing of Indigenous rights against public interests.

## CO-MANAGEMENT INSTRUMENTS: LAND USE PLANNING

Land use planning in BC is fraught. The Lands and Resource Management Planning processes from the late 1990s and early 2000s produced cumbersome plans with no effective way to monitor and evaluate them. These LRMPs continue to constrain decision-making since they have been labelled “higher level plans” within the context of legislation such as the *Forest and Range Practices Act*, which governs forest harvesting. The Province began “modernized land use planning” in 2018-2019 in order to update these plans (none of which included First Nations) to align with the Declaration Act, integrate stewardship goals, and improve certainty for economic investment.

We are most familiar with Forest Landscape Planning as one type of modernized land-use planning.

**Forest landscape planning leads to collaborative decision-making with First Nations by moving the most important forestry decisions upstream and making them jointly negotiated rather than decided project by project.**

Instead of consulting First Nations after permits are proposed, forest landscape plans are developed early, at a large scale, through processes that include the Province, First Nations, and, usually, other stakeholders, including Forest and Range licensees and sometimes members of the non-Indigenous community. First Nations help determine where logging can occur, which areas are protected, and what values must guide forest management. Once approved, these plans operationalize permitting through Forest Operations Plans, which are spatial harvest plans covering a five-year timeframe.

**While forest landscape plans do not automatically transfer legal authority or require consent, they create collaboration by embedding Indigenous priorities into binding planning rules that limit unilateral Crown decision-making.**

## STATUTORY DECISION-MAKING: DECLARATION ACT SECTION 7 AGREEMENTS

Section 7 of the *Declaration on the Rights of Indigenous Peoples Act* provides a framework for First Nations to enter into joint decision-making with the Province. Functionally, these frameworks bring First Nations into already established decision-making structures – permitting or environmental assessment, for instance – rather than creating new structures for First Nations to make decisions or repealing Provincial laws.

Section 7 agreements enable First Nations decision-making by legally requiring the Province to share or condition its statutory powers with Indigenous governments. A statutory decision maker is anyone whose decision-making power is created by law. In BC those are Ministers of the Crown, some commissioners or members of boards (such as residential tenancy boards), and regulatory decision-makers such as public servants responsible for issuing permits. These powers are granted through legislation and regulation.

**In practice, section 7 agreements turn consultation into co-decision, making Indigenous governments legally necessary participants in decisions that affect their lands and rights.**

For example, the 'Namgis Section 7 agreement, which was put in place after they drafted their Forest Landscape Plan, inserts a 'Nanaimo delegated decision-maker into decisions that are currently reserved for the Minister of Forests or the Chief Forester.

'Nanaimo and the Province share statutory decision-making authority.

For key forestry decisions – specifically establishing the Forest Landscape Plan (FLP) and approving the Forest Operations Plan (FOP) – decision-makers from both the 'Nanaimo First Nation and the Province must agree before a decision can be made. For other FLPs, the Chief Forester has total authority over whether the FLP is accepted.

Decisions are made jointly by consensus.

Instead of the Province alone making these decisions (with consultation from 'Nanaimo), a representative from 'Nanaimo and the Province each hold decision roles and must reach agreement on outcomes.

Joint technical advisory committees support the process. These committees, with equal representation from 'Namgis and BC, review technical information and advise the decision-makers.

The agreement embeds Indigenous stewardship values into statutory planning. By sharing power over FLPs and FOPs, the 'Namgis can ensure that forest management reflects their own stewardship priorities and responsibilities.

It is grounded in both DRIPA and forestry law. The agreement uses Section 7 of the Declaration Act alongside the Forest and Range Practices Act to create this shared decision framework.

## JOINT DECISION-MAKING: LEGISLATIVE CARVE-OUTS

In a few cases, there have been legislative “carve outs” to enable First Nations to gain more authority over decisions made in their territory. The *Great Bear Rainforest (Forest Management) Act* is one example of a legislative carve out that enables First Nations decision-making by embedding Indigenous authority into land-use planning, governance, and implementation across the region.

In the Great Bear Rainforest, First Nations are decision-makers through:

- Land-use plans that were jointly negotiated and agreed to. These plans set binding rules about where logging can occur, what areas are protected, and how ecosystems must be managed. They were developed with representatives from the Province, First Nations, environmental groups and other stakeholders, and technical and scientific contributors.
- Shared governance bodies, where First Nations and the Province jointly oversee implementation, monitoring, and adaptive management.
- Indigenous-led stewardship and management, including Guardian programs, ecosystem-based management standards, and First Nations-controlled conservation and economic initiatives.
- Economic authority, through conservation financing and Indigenous-led development that supports governance capacity and long-term decision-making.

While the Province still retains formal statutory authority, the Great Bear Rainforest framework limits unilateral Crown decision-making by requiring decisions to align with jointly agreed plans and governance structures. In practice, this gives First Nations durable, landscape-level control over outcomes, even where individual permits are still issued under provincial law.

## COMPARISON TABLE: FIRST NATIONS DECISION-MAKING APPROACHES IN BC

Approach	What it is	When First Nations are involved	What power it gives	Who has final authority	Key limitation
<b>Duty to Consult</b>	Constitutional obligation on the Crown to consult and accommodate	After the Crown is considering a specific decision or project	Procedural influence: ability to raise concerns and seek accommodation	Province	No decision-making power; no consent required
<b>Forest Landscape Planning</b>	Large-scale forestry planning under provincial law	Early, upstream planning at the landscape level	Structural influence: Indigenous priorities shape binding rules that constrain future decisions	Province (formally)	Consent not automatic; authority not Indigenous by default
<b>Section 7 Agreements (DRIPA)</b>	Legal agreements that restructure statutory decision-making	At the point where statutory decisions are made	Co-decision or consent: decisions must be made jointly or with Indigenous approval	Shared (or conditional on Indigenous consent)	Narrow in scope; applies only where agreements exist
<b>Great Bear Rainforest Model</b>	Region-wide negotiated land-use framework and governance system	Upfront, across the entire region and over time	Outcome control: Indigenous priorities locked into binding plans and shared governance	Province retains formal authority, but discretion is tightly constrained	Not a formal transfer of jurisdiction; relies on political durability