



Māori Involvement in Collaborative Freshwater Planning – Insights from Hawke’s Bay

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KEY POINTS

The Treaty of Waitangi of 1840 underpins expectations among iwi and hapū that they will be equal partners with regional councils in collaborative planning and decision-making for freshwater management.

We recommend that, at the initiation of a collaborative planning process, Māori be invited to exercise the co-governance role of Treaty partner by joining the council as a co-sponsor of the process. In this role, they would be involved in the selection of members, setting the terms of reference, ensuring opportunities for those not in the room, and empowering others by implementing robust outcomes reached through consensus.

Māori interests are not limited to “cultural values”. Māori have unique rights and interests arising from the Treaty relationship that can be identified as the basis for outcomes sought in a collaborative process.

Collaborative processes will not always be the best way to take into account the Treaty’s principles. In some cases, tangata whenua may prefer to deal directly with the council through traditional decision-making processes.

INTRODUCTION

Following the recommendations of the Land and Water Forum, recent freshwater policy reforms in New Zealand provide specifically for Māori involvement. The government is also promoting collaborative planning to encourage communities to work towards agreed freshwater outcomes.

We draw on learnings to date from Hawke’s Bay to identify how councils and iwi and hapū might meet their respective responsibilities within a collaborative planning framework.

A NEW ERA OF GOVERNANCE AND DECISIONMAKING

Section 8 of the Resource Management Act 1991 (RMA) requires that regional councils take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). More recently, the National Policy Statement on Freshwater Management 2014 directs councils to “involve iwi and hapū in the management of

fresh water and freshwater ecosystems in the region” (Ministry for the Environment 2014, p. 18).

Iwi and hapū Māori see themselves as equal partners for all collaborative planning and decision-making, guided by the principles of the Treaty (Harmsworth et al. 2013). Māori and government representatives will therefore need to resolve how freshwater management will be governed, including in the context of collaborative planning. This involves issues within and between Māori entities, i.e. who will speak for whom, and between Māori and regional councils.

There is an emerging body of practice for Māori involvement in collaborative governance and co-management of freshwater in many regions in New Zealand, summarised in Sinner and Harmsworth (2015). This policy brief outlines some of the learnings that are emerging from a collaborative planning process in Hawke’s Bay. We make some recommendations about membership and representation, values of tangata whenua, the pressure to compromise, and how to reconcile the apparent tension between co-governance and collaborative freshwater planning.

FRESHWATER GOVERNANCE IN HAWKE’S BAY

In April 2011, the Hawke’s Bay Regional Council (HBRC) established a Regional Planning Committee (RPC) as the preferred model for co-governance of the region’s natural and physical resources. The RPC consists of all nine elected councillors and tangata whenua representatives from nine Treaty claimant groups within the region. The Committee’s role includes overseeing the development and review of the regional policy statement and regional plans under the RMA. The Committee is required to make best endeavours to achieve decisions on a consensus basis or, failing consensus, by agreement of 80% of committee members in attendance.¹ The RPC met for the first time in April 2012.

Also in 2012, HBRC convened a separate collaborative stakeholder-community group specifically to recommend policy settings for freshwater management for a plan change for the Greater Heretaunga and Ahuriri zone.

¹ <http://www.hbrc.govt.nz/About-your-Council/Plans-Strategies/Pages/regional-planning-committee.aspx>

The collaborative stakeholder group is referred to locally as the TANK group, after the Tūtaekurī, Ahuriri, Ngaruroro and Karamū catchments within the Greater Heretaunga and Ahuriri area. A Council resolution has given a good faith undertaking to implement any consensus recommendations from the group provided they are consistent with the RMA and certain council policies. As of March 2015 the group had met 15 times and issued a first report that identified values and other factors the group will use to assess policy options. More meetings are planned for 2015, with the goal of making recommendations for the plan change in 2016.

MEMBERSHIP AND REPRESENTATION

One of the first questions to consider when establishing a collaborative group is its membership. Some literature (Innes & Booher 2010, p. 92ff) suggests that participation should be open to all those who have a strong interest in the outcome, but in a large and diverse geographic area with a wide range of stakeholders this is not always practical.

Decisions about who should represent Māori within such collaborative groups require an understanding of the complex hierarchical nature of Māori society (Table 1).

When considering who should be on the TANK Group, HBRC staff spoke to various iwi, hapū, and marae members and HBRC's Māori Standing Committee. HBRC invited Ngāti Kahungunu Iwi Incorporated (NKII) to participate and provide an iwi perspective, and sought NKII's advice on how to engage more broadly with Māori groups.

Table 1. Māori society, governance and decision-making

Level of Māori society	Areas of activity and interest	Scale (e.g. for decision-making, co-management)	Main representation (constituents)
Iwi	Highest level governance (political, Treaty claims, tribal assets, regional entities, iwi authorities)	Regional–national (large geographic areas, tribal boundaries)	Representation by iwi, hapū, marae, and whānau
Hapū	District–hapū development, local politics & decision-making, hapū and whānau values	District (small geographic territorial areas/river- lake catchment areas (e.g. based on local geography, hapū boundaries)	Strong representation by whānau and marae
Marae	Social and cultural development	Generally specific sites but also wider districts and catchments	Strong representation by local hapū and whānau (e.g. ahi kaa*)
Whānau	Human, social, cultural and economic capital within families	Both local and dispersed throughout NZ and overseas (e.g. Australia)	Extended families, individuals

* *Ahi kaa* refers to the home people – the ones who live on their whenua (land) and keep the home fires burning. They keep their place, particularly the marae, alive.

HBRC invited a number of other regional and district Māori representatives, including a Taiwhenua group (a sub-group of NKII) representing hapū in the Heretaunga area; representatives from three local marae; a Treaty claimant group; a tangata kaitiaki group; and a wider group formed to advocate for Māori interests in water in Hawke's Bay, Tē Roopu Kaitiaki o tē Wai Māori. The Council's Regional Planning Committee was later briefed on Māori membership of the TANK Group, as part of the Council's co-governance arrangements.

In 2014, two more tangata whenua groups asked to join the TANK Group, one an umbrella group for many marae, the other representing four hapū of the Tūtaekurī catchment. Existing members welcomed the new members, provided they accepted the Terms of Reference. With membership of the TANK Group

then at 30, HBRC recommended, and the TANK Group agreed, that further requests to join the group would not be accepted, due to the size of the group and the difficulties for newcomers to catch up.

There can be good reasons for including representatives from multiple levels of Māori society, even if these sometimes overlap. For example, if there are particularly significant water management issues at one or two marae, i.e. more so than at other marae, it might be appropriate for those two marae to be represented in a collaborative process covering the wider catchment. Representatives from hapū or iwi, or possibly other Māori entities or structures, can represent tangata whenua on the wider issues while deferring to the two marae representatives on their local issues.

COMMUNICATION WITH OTHER MĀORI GROUPS

In the TANK process, no one group has been specifically mandated to speak on behalf of all hapū and marae regarding water management issues. Ensuring a ready two-way flow of information between those in the TANK Group and wider tangata whenua is therefore critical – and can be a significant exercise. One option for TANK tāngata whenua would be to run associated hui for marae, hapū, trust boards, and other tangata whenua organisations who wish to be involved. This is under consideration as part of a hapū/iwi engagement plan for the TANK plan change.

Within the TANK Group, the Māori participants formed a “tangata whenua/mana whenua” group so they could discuss upcoming TANK topics together in their own space, before discussion in the wider forum. Five meetings were held but because of conflicting schedules and competing demands it became progressively more difficult to keep this group together. For such an arrangement to be successful, it will need to have a specific mandate and dedicated resources.

OVERLAPPING ISSUES AND PROCESSES

Within every region in New Zealand, iwi and hapū are contending with overlapping issues ranging from biodiversity strategies and freshwater management plans to coastal development and management of Māori commercial enterprises. Meanwhile, there are Treaty claims being negotiated that directly overlap with many of these same issues. This will affect group dynamics within Māori society and how Māori view planning activities led by councils. There will be times when iwi and hapū are not ready to engage with councils or participate in collaborative planning because of these other conflicting issues. Capacity and capability issues also arise for iwi and hapū – there is a limit to how many issues and processes to which they can contribute at any one time.

In the TANK process, the management of the Ahuriri Estuary was included in the TANK Group’s terms of reference. Later, through a separate Treaty claims process, Crown agencies and HBRC agreed to work with Mana Ahuriri² to develop a management plan for the estuary. This created ambiguity over which process was tasked with making recommendations on the management of the estuary. Mana Ahuriri has since withdrawn from the TANK Group, citing their representation in other groups and fora at present. This could become a source of tension if the TANK Group proposes policy measures with which Mana Ahuriri does not agree or vice versa.

² Mana Ahuriri Incorporated represents a collective of Ngāti Kahungunu hapū that have a Treaty of Waitangi claim and mana whenua interests in and around the Ahuriri estuary.

As collaborative processes evolve around New Zealand, it is likely to become clearer how well outcomes for Māori (and also for communities and industry) are being achieved, and in what circumstances tangata whenua may prefer to deal directly with the council.

THE ‘CULTURAL VALUES’ CATEGORY

Decision methodologies, such as “structured decision making” (SDM) used by the TANK Group (Gregory et al. 2012; Sinner et al. 2014), often involve identifying values and objectives concerning the issues under consideration. In the TANK process, the group originally sought to identify values and objectives in five themes: Social, Ecological, Economic, Cultural, and Assets & Rates. It became evident, however, that Māori values were relevant across all themes and could not be confined to a cultural values category.

The TANK Group therefore defined a mana whenua/tangata whenua theme that covered “matters reflecting more formal rights and interests of Māori in access to resources, governance and management”. This distinction between rights and interests unique to Māori, e.g. arising from the Treaty relationship, and other more general cultural values resulted in greater clarity when these were included as objectives in the SDM framework.

For example, for the value “habitat/Indigenous biodiversity”, the TANK Group has adopted the objective of “safeguard the life-supporting capacity and enhance the mauri of waterways”. The performance measures include mauri and mahinga kai availability but also area and condition of wetlands – these are ecological as much as cultural matters and of interest to many stakeholders, not just Māori. However, for the objective “recognise and provide for tangata whenua values and interests in freshwater and improve opportunities for Māori to access and use freshwater resources” the performance measures are quite specific to Māori, e.g. tangata whenua involvement in governance and Māori water allocations (see Table 2).

THE PRESSURE TO COMPROMISE

A TANK Group member said that tangata whenua values are still not well understood and acknowledged, and this causes them to feel pressure to compromise. This is compounded because Māori aspirations can be more difficult to translate into catchment plans than, e.g., requests for a lower minimum flow. However, given these factors, Māori are likely to have difficulty in traditional plan-making processes as well because the strength of one’s position inside a collaborative process depends in large part on what one could achieve through other means in the absence of consensus. Those who are able to achieve most of their ends without consensus are in a stronger position than those who cannot. Hence, for any stakeholder, an inability to secure outcomes in a traditional process will mean a weaker position in a collaborative process.

Table 2. Māori society, governance and decision-making

Values	Objectives	Performance Measures
<ul style="list-style-type: none"> Life-Supporting Capacity Mauri and Taonga Habitat /Indigenous biodiversity 	Safeguard the life-supporting capacity and enhance the mauri of waterways	<ul style="list-style-type: none"> Macroinvertebrate assemblage including community index score Mauri Richness and abundance of native fish Area of wetlands Condition of wetlands Mahinga kai quality and availability Richness and abundance of native birds
<ul style="list-style-type: none"> Kaitiakitanga Mana Mauri and Taonga 	Recognise and provide for tangata whenua values and interests in freshwater and improve opportunities for Māori to access and use freshwater resources	<ul style="list-style-type: none"> Tangata whenua involvement in governance Use of Mātauranga Māori in environmental monitoring and reporting Māori water allocations

In terms of how this plays out in a collaborative planning process, the theory of collaboration is clear. Participating in a collaborative group does not mean that any party should agree to something that would make them worse off. “Giving in” is actually in no one’s interest, because it leads to resentment and lack of on-going support for the agreed outcome:

... since durable agreements are deeply rooted in people’s interests, both hard bargaining (insisting on one’s way) and soft bargaining (giving in to avoid conflict) are equally destructive. The soft bargainer resents the other player afterwards, and the hard bargainer may not get true agreement. Thus for collaborative dialogue to produce durable conclusions, every participant must both know his or her interests and explain and stand up for them. Finally... if you win at the expense of the other party, you create an enemy, but if you can find a mutual gain solution, you create an ally. This insight carries over to collaborative dialogues, which build social and political capital that lasts into the future (Innes & Booher 2010, p. 28).

Participating in a collaborative group requires engaging in good faith by explaining positions and disagreements so the full group can try to resolve them and meet everyone’s aspirations. Parties should only agree to a proposed consensus if they feel it is better than pursuing a non-collaborative course of action.

While Māori might feel pressure to compromise, collaborative processes offer the opportunity for Māori (and other parties) to get a better outcome than they would have achieved without it. Through collaborative dialogue, the non-Māori members will gain a greater understanding of Māori interests and perspectives. In addition, the focus on overall outcomes rather than positions (e.g. a river being good for fishing rather than a specific minimum flow) encourages discovery of innovative ways of achieving desired outcomes, e.g. including ways to translate Māori aspirations into planning language.

In a collaborative process, it is in everyone’s interest to find a way to make everyone else happy, because achieving consensus greatly increases the likelihood of all parties securing gains without the cost of an adversarial process.

COLLABORATION, CO-MANAGEMENT AND CO-GOVERNANCE

Freshwater reforms are promoting collaborative planning just as Treaty settlements are granting some iwi co-management and co-governance arrangements. This raises the question of how iwi and hapū can exercise a co-governance role and at the same time be part of a multistakeholder collaborative process.

In early 2014 the Regional Planning Committee was asked to endorse the TANK process and give the same undertaking as the full Council had done 18 months earlier. The RPC said it would “have particular regard” to TANK recommendations, thus reserving its right to vary the decision (Hawke’s Bay Regional Council 2014, p. 5). In practice, this may not be very different from the Council’s undertaking, since legally the Council cannot waive its responsibility to reach its own judgment. For the RPC, however, having only recently established the co-governance relationship, the wording was important to make clear that it was not giving away its newly acquired authority.

Collaborative planning presents councils with a dilemma in terms of their own role – how can a council endorse collaborative planning and give a decision-making role to others when the council is the duly elected decision-making body for the regional community? Why would any elected body willingly share power with another unelected group?

Iwi and hapū face the same dilemma – why, just as they are gaining a share of power through a co-governance arrangement, would they diminish that power by delegation to a wider collaborative stakeholder group?

One way to address these concerns would be for a council, when it is considering establishing a collaborative stakeholder group, to work with its Māori partners to develop the terms of reference, determine the membership of the group, and decide how the group will be facilitated and managed. Tangata whenua can then have greater confidence that any consensus recommendations that emerge will appropriately reflect the range of Māori rights, interests, and concerns.

Both councils and their tangata whenua partners are also stakeholders in their own right with interests in the outcome of the collaborative process, and need to engage with the other stakeholders in good faith in an attempt to reach consensus. Both retain the right to block consensus within the stakeholder group and refer the matter back to the council for a decision. In Hawke's Bay, that would give the elected councillors and Māori, through the RPC, an equal say in the final decision.

Empowering others to make decisions is also a form of governance, and is consistent with both Māori and western democratic values that encourage reasoned debate by all concerned as the preferred means of resolving difficult issues. The sponsors of the process, e.g. a council together with the Māori Treaty partner, do not need to control the outcome but rather to ensure the integrity of the process by convening a group with diverse interests and perspectives to find an outcome acceptable to all (Berkett & Sinner 2013). Such an approach shares power but it also shares the responsibility.

CONCLUSIONS

Councils will need to build capability in running collaborative processes with stakeholders, communities and Māori. One of the greatest challenges will be clarifying and enhancing the role of iwi and hapū in decision-making processes under both a Treaty relationship and a collaborative planning framework.

This can be achieved if Māori and councils work together as partners and joint sponsors of collaborative processes. In this role, they protect the integrity of the process, ensure opportunities for those not in the room, and empower others by implementing the outcomes reached through consensus.

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