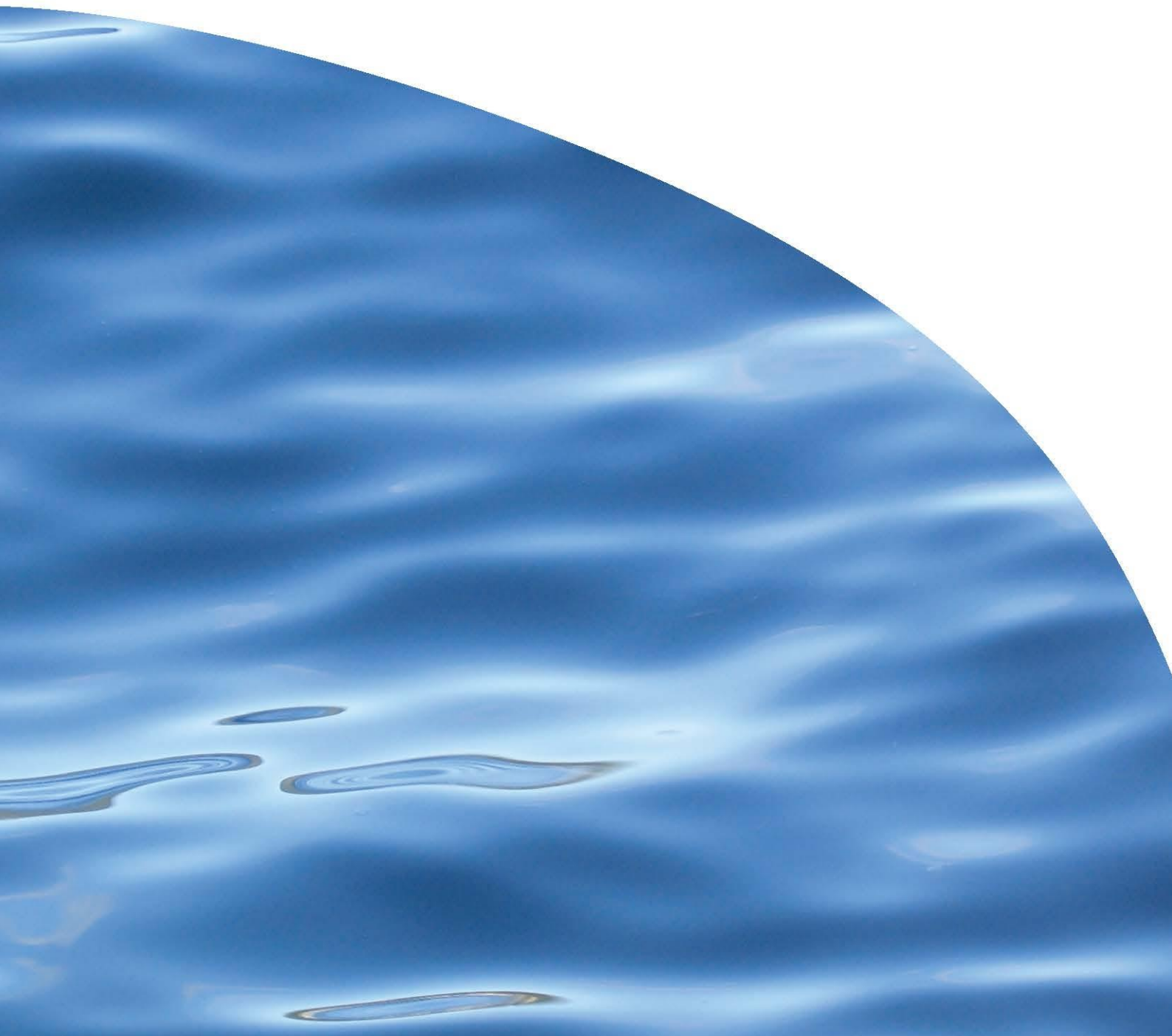




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MĀORI AND COLLABORATIVE FRESHWATER PLANNING: EMERGING INSIGHTS



MĀORI AND COLLABORATIVE FRESHWATER PLANNING: EMERGING INSIGHTS

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EXECUTIVE SUMMARY

The entities, structures and practices through which Māori interact with the government and regional councils continue to evolve. The Treaty of Waitangi (Te Tiriti o Waitangi) of 1840 continues to underpin these relationships and the expectations of iwi and hapū today. This includes an expectation of an equal partnership in collaborative planning and decision-making, guided by the principles of the Treaty.

At the initiation of a collaborative planning process, Māori should 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.

In collaborative planning, Māori should be represented by as many or as few individuals as necessary to represent their values, perspectives and interests, while maintaining relativity with other interests.

Māori interests should not be pigeon-holed as 'cultural values', for this encompasses a broad range of ecological, social and economic values that are shared by many non-Māori. Māori have unique rights and interests arising from the Treaty relationship, which can be identified as the basis for outcomes sought in a collaborative process.

Collaborative processes will not always be the best way to give effect to the Treaty. In some cases, tangata whenua may prefer to deal directly with the council through traditional decision-making processes.

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1. INTRODUCTION

Following the recommendations of the Land and Water Forum, recent freshwater policy reforms in New Zealand aim to improve decision-making and include specific provisions for Māori involvement. Other provisions would facilitate collaborative planning processes to reflect a wide range of community, industry and iwi values and encourage communities of interest to work towards agreed freshwater outcomes. Over time, this is expected to build stronger relationships and trust.

These reforms are changing the dynamic between councils and iwi and hapū, raising new issues about how they should work together within a collaborative planning framework.

We draw on learnings to date from experiences with a collaborative process in Hawke's Bay and insights from other regions to identify how councils and iwi and hapū engaged in collaborative freshwater planning might meet their respective responsibilities.

This work has been conducted as part of the Freshwater Values Monitoring and Outcomes research programme funded by the Ministry of Business Innovation and Employment (contract CO9X1003).

2. MĀORI AND FRESHWATER DECISION-MAKING

The 1840 Treaty of Waitangi is still the defining and guiding document for relationships between iwi and the Crown, and the New Zealand Government's freshwater reforms must be seen within this historical context. 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).

The entities, structures and practices through which Māori interact with the government and regional councils continue to evolve. A range of Māori governance entities have emerged in recent decades, many as a result of Treaty negotiations, settlements and other developments. These organisations include post-settlement governance entities, iwi corporate structures and authorities, incorporations, and trust boards that are increasingly controlling and managing assets on behalf of iwi and hapū.

The Government's freshwater reforms are now giving rise to new relationships between the Crown (including Government agencies and regional councils) and Māori organisations. The Crown typically addresses freshwater issues within the context of the RMA and related legislation, in response to societal values as well as economic pressures and opportunities. For Māori, issues of freshwater ownership and management are deeply rooted in indigenous rights, collective ownership, the common law doctrine of native title, and the legal framework under the Treaty and subsequent legislation, which continue to be debated and discussed inside and outside of the courts.

These different contexts give rise to different perspectives. One example is the use of the term 'water rights' in New Zealand by water users and agencies. This term suggests a permanent property right to water, when it actually refers to time-limited resource consents to use water. In contrast, many Māori groups challenge the notion of water rights held by others, arguing that iwi and hapū never relinquished their aboriginal rights to water. Ngāti Kahungunu and other iwi have lodged claims with the Waitangi Tribunal, which has found that iwi do have continuing rights and interests in fresh water. Exactly how these rights might be expressed remains a matter of discussion and negotiation, as shown through the Land and Water Forum process and direct negotiations between iwi and the Crown.

Māori strive to be acknowledged as equal partners in natural resource governance. Therefore, Māori and government representatives need to resolve the institutional arrangements through which they will negotiate and govern freshwater management, 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.

3. COLLABORATIVE FRESHWATER PLANNING ACROSS NEW ZEALAND

There is an emerging body of practice for collaborative governance and co-management in many regions in New Zealand.

In Canterbury, a regional committee consisting of council and community members developed a regional water strategy. It has targets across 10 broad themes (*e.g.* kaitiakitanga, irrigated land area, drinking water, *etc.*) to measure progress against the vision, priorities and principles of the strategy¹. Ten water zone management committees, each with representation from community members and a local rūnanga of Ngāi Tahu, develop implementation plans to achieve these targets in their

¹ <http://ecan.govt.nz/get-involved/canterburywater/targets/Pages/Default.aspx>

respective zones, aiming for consensus recommendations. Māori representation in this process reflects the Ngāi Tahu Treaty settlement with the Crown in 1998, through which the iwi body Te Rūnanga o Ngāi Tahu was recognised by the Crown as the mandated iwi authority.

The Waikato River Authority (WRA) was established in 2010 as a co-management structure arising out of Treaty claims by Tainui, Ngāti Tūwharetoa, Ngāti Raukawa and Te Arawa². The Authority has 10 members, five appointed by iwi and five by the Crown. It is responsible for setting the vision and strategy for the river, to which the Waikato Regional Council (WRC) must then give effect. The WRA has also been involved with the WRC in the establishment of a collaborative stakeholder group, including the selection of members, which will make recommendations to the WRC and WRA on a plan change for improving the health of the Waikato River as required by the vision and strategy³. The stakeholder group held its first meeting in March 2014.

The Greater Wellington Regional Council is establishing catchment-based whitua committees to facilitate good engagement process and partnerships for collaborative planning and management of freshwater from the mountains to the sea (ki uta ki tai). Each whitua will be asked to create a unique vision and to prioritise objectives for land and water management in the catchment area, and to recommend regulatory or non-regulatory ways to achieve the whitua vision. The process is being overseen by Te Upoko Taiao—a joint committee comprising seven elected Greater Wellington councillors and seven appointed members from the region's mana whenua⁴.

Northland Regional Council has also established collaborative processes for freshwater planning⁵, including working with Auckland Council and the Integrated Kaipara Harbour Management Group⁶. The Integrated Kaipara Harbour Management Group (IKHMG) was established in 2005 to “promote integrated management and inter-agency coordination and kaitiakitanga of the Kaipara Harbour” (Integrated Kaipara Harbour Management Group 2011, p 10). The group has representatives from Te Uri o Hau Environs Holding Trust, Ngāti Whātua ki Kaipara, and Te Wahanga Te Manaakitanga i Te Taiao, as well as two government departments, Northland Regional and Auckland councils, and 22 additional interested parties (Integrated Kaipara Harbour Management Group 2009).

The IKHMG is an iwi-led process with co-chairs representing the two iwi, Ngāti Whātua ki Kaipara and Te Uri o Hau. The group acts by consensus, although the chair has the option of calling a vote (Integrated Kaipara Harbour Management Group 2009). The group is a non-statutory body and relies on good faith and the commitment

² <http://www.waikatoriver.org.nz/>

³ <http://www.waikatoregion.govt.nz/healthyrivers>

⁴ <http://www.gw.govt.nz/whaitua-committees/>

⁵ <http://www.nrc.govt.nz/Your-Council/Council-Projects/Waiora-Northland-Water/What-is-Waiora-Northland-Water/>

⁶ <http://kaiparaharbour.wordpress.com/>

of the parties to the terms of reference and common vision for the Kaipara Harbour (Integrated Kaipara Harbour Management Group 2009). One of the key tools identified within the group's strategic plan is kaitiakitanga (Integrated Kaipara Harbour Management Group 2011). This represents an opportunity for Kaipara hapū to apply their responsibilities as kaitiaki and their knowledge to achieve cultural aspirations identified by their marae or hapū (Integrated Kaipara Harbour Management Group 2011).

More recently, Northland Regional Council has established five catchment groups of local people to provide input and recommendations on maintaining and improving freshwater in their area. Catchment groups have nominated representatives from a range of local interests – iwi/hapū, landowners, industry (like farming and forestry), environmental groups, recreational users and councils. For example, one such group has been established in the Puotō catchment at the northern end of the Kaipara Harbour. Of 18 total members, it has two representatives from Te Uri o Hau, two from a local hapū and one from a Māori trust⁷.

The Hawke's Bay Regional Council (HBRC) established a Regional Planning Committee (RPC) in April 2011 as the preferred model of co-governance for management of the region's natural and physical resources. The RPC consists of all nine elected councillors and tangata whenua group representatives from nine Treaty claimant groups within the region. The Committee oversees the review and development of the Regional Policy Statement, regional plans and plan changes under the RMA. It 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. This is a notable difference from the typical decision-making by majority or chair's casting vote⁸. Legislation has been drafted which, if enacted, would see the RPC and its roles more permanently established in statute.

In 2012 HBRC convened a collaborative stakeholder-community group to make recommendations for freshwater management in the Greater Heretaunga and Ahuriri area. Referred to locally as the TANK group, after the Tūtaekurī, Ahuriri, Ngaruroro and Karamū catchments that comprise the area, the group has been asked to recommend policy settings, including allocation limits and water quality targets, for the plan change.

The four catchments include both significant urban areas and highly productive agricultural and horticultural land with substantial demand for water. The plan change aims to give effect to parts of the National Policy Statement for Freshwater Management that direct councils to establish objectives, targets and limits for water bodies based on values. The plan change would, among other things, provide

⁷ <http://www.nrc.govt.nz/Your-Council/Council-Projects/Waiora-Northland-Water/Priority-areas/Pouto/>

⁸ <http://www.hbrc.govt.nz/About-your-Council/Plans-Strategies/Pages/regional-planning-committee.aspx>

guidance for considering applications to replace a large number of water permits expiring from 2015 onwards.

A Council resolution has given a 'good faith' undertaking to implement any consensus recommendations from the group provided they are consistent with the RMA, the council's regional policy statement and certain other council policies (Hawke's Bay Regional Council 2012, p 9). As of October 2014 the group had met 14 times and issued a first report that identified a wide range of values and other factors the group will use to assess policy options (TANK Group 2014). More meetings are planned, with the goal of making recommendations for the plan change in 2016. Among other things, Māori and others have asked for more work on identifying values.

In addition to drawing on experiences from other regions, this policy brief outlines some of the learnings that are emerging from the collaborative planning process in Hawke's Bay and makes some recommendations about membership and representation, values, and co-governance of collaborative freshwater planning.

4. MĀORI MEMBERSHIP OF COLLABORATIVE GROUPS

One of the first questions to consider when establishing a collaborative group is its size and membership. Some literature (Innes & Booher 2010, p 92 ff) suggests that participation should be open to all those who have a strong interest in the outcome. However, in a large and diverse geographic area with a wide range of stakeholders, this is not always practical. In Hawke's Bay, the council could have set up a separate process for each of the four catchments. However, that would have caused difficulty in managing physical and social connections between the TANK catchments, including the groundwater in the Heretaunga aquifer. There is no easy solution to the question of size or scope.

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

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 territorial areas, e.g. river-lake catchment areas, based on local geography or hapū boundaries)	Strong representation by whānau and marae
Marae	Social and cultural development: sites, districts, catchments	Location-based, specific sites	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.

In Hawke's Bay, Ngāti Kahungunu Iwi Incorporated (NKII) is a recognised iwi authority for purposes of consultation under the RMA and was the mandated iwi authority that negotiated with the Crown on fisheries claims. The iwi authority has also progressed other claims on behalf of the iwi, including foreshore and seabed, water, petroleum, flora and fauna, intellectual property, and te reo and tikanga Māori (language and customs). In the TANK area, in addition to NKII and a large number of hapū and marae, there are other tangata whenua groups and associated organisations with declared interests in freshwater management.

When establishing the TANK Group, HBRC staff spoke to various iwi, hapū and marae members and the Council's Māori Standing Committee when considering which Māori groups should be on the TANK Group. The Council invited NKII to participate and provide an iwi perspective, and sought NKII's advice on how to engage with Māori groups more broadly. The authority proposed setting up a 'tangata whenua/mana whenua' group to discuss matters in advance of TANK meetings.

The Council also invited a number of other regional and district Māori representatives to join the TANK Group. These included:

- a Taiwhenua group (a sub-group of NKII) representing hapū whose rohe are in the Heretaunga area

- representatives from three local marae
- a Treaty claimant group (invited when it was recognised by the TANK Group that Māori from a particular area were not well represented)
- a tangata kaitiaki group
- a wider group formed to advocate for Māori interests in water in Hawke's Bay, Te Roopu Kaitiaki o te Wai Māori.

HBRC's Regional Planning Committee was later briefed on Māori membership of the TANK Group, as part of the Council's co-governance arrangements with Māori (Hawke's Bay Regional Council 2013).

In the end, the Māori groups that were represented on the TANK Group had overlapping jurisdiction and different types of mandate. There have also been a number of changes in the Māori membership. In 2014, two more tangata whenua groups asked to join the TANK Group, one an umbrella group for many marae and the other representing four hapū of the Tūtaekurī catchment. Existing TANK members welcomed the new groups, provided they accepted the Terms of Reference. With membership 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.

As shown by the Hawke's Bay experience, determining Māori membership on a collaborative group can be challenging. Essentially, Māori should be represented by as many or as few individuals as necessary to represent their values, perspectives and interests, while maintaining relativity with other interests.

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, but would defer to the two marae representatives on their local issues. The appropriate mix of tangata whenua members on a collaborative stakeholder group should be decided jointly by the council and its Māori partners at the initiation of a collaborative process – more on this below.

5. REPRESENTATION: WHO SPEAKS FOR WHOM?

Within a collaborative planning environment, an individual may represent themselves, *i.e.* an individual perspective, or may represent a group or constituency. According to

Innes & Booher (2010, p 99), members in a collaborative process gain legitimacy when they have decision-making authority on behalf of clearly-defined groups or entities, although they can also contribute legitimately by speaking for the knowledge, concerns and interests of a category of people even if they have no formal mandate to do so.

In the TANK Group, all participants identified particular groups they were representing. In dialogue during TANK meetings, however, as participants explore values, knowledge, options and opinions, the distinction between individual and constituency views and perspectives is often blurred. Individual views will inevitably feature prominently at various times during collaborative dialogue. In practice, we suggest that clarity of representation is only necessary when decisions are being made, so that all participants know who is agreeing to what.

The Māori participants in the TANK Group formed a ‘tangata whenua/mana whenua’ group and HBRC offered to facilitate a series of meetings so they could discuss upcoming TANK topics together prior to 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 instance local hapū are involved in Treaty land settlement negotiations and making decisions about related post-settlement governance entities. Many local hapū leaders are carrying out multiple roles.

The theory of collaborative planning (see e.g. Healy 2006; Ansell & Gash 2007; Warner 2007; Fisher *et al.* 2011); and Innes & Booher 2010, especially pp 35-39 ff) suggests that all perspectives should be heard and debated, so there is certainly no reason in principle that Māori should be expected to coordinate their positions. However, there might be times when it is beneficial strategically for Māori participants to coordinate positions with each other, with producer groups, or with environmental groups, depending on their interests and concerns within a particular context. Certainly, numerous management plans, strategies and related documents have consistently identified high level goals and aspirations that are common to most hapū and tangata whenua, e.g. swimmable rivers, healthy mahinga kai (food gathering).

In the TANK process, it is not feasible for all hapū and marae to be members of the TANK Group, and no one group has been specifically mandated to speak on their behalf on 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.

6. OVERLAPPING ISSUES AND PROCESSES

Within every region and catchment in New Zealand, iwi and hapū are contending with a large number of 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 influence the degree of participation, discussion and agreed outcomes within a collaborative planning environment. 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 has been included in the group's terms of reference. Later, through a separate Treaty claims process, another division of HBRC agreed to develop a management plan for the estuary with Mana Ahuriri⁹. This created ambiguity over which process was tasked with making recommendations on the management of the estuary, and raised the question of whether it should remain 'in scope' for the TANK Group. Mana Ahuriri has since withdrawn from the TANK Group, preferring to discuss estuary management directly with HBRC. This could become a source of tension if Mana Ahuriri identifies goals and priorities that the wider TANK Group does not agree with or vice versa.

This development reflects a general quandary for tangata whenua. They must decide whether a collaborative process is likely to give them a better outcome, in line with the Crown's obligations under the RMA and the Treaty, than direct discussions with a council followed by a standard submission process. As collaborative processes evolve around New Zealand, it is likely to become clearer how well outcomes for Maori (and also for communities and industry) are being achieved, and in what circumstances tangata whenua may prefer to deal directly with the council.

7. THE 'CULTURAL' CATEGORY

The TANK Group has employed a 'structured decision-making' methodology (SDM) (Gregory *et al.* 2012; Sinner *et al.* 2014). This involves, among other things, identifying values and objectives of relevance to the management issues under consideration. During an early meeting, the TANK members were formed into five small groups to identify these objectives by theme. These themes were originally defined as Social, Ecological, Economic, Cultural and Assets and Rates. In the small groups, however, it

⁹ Mana Ahuriri Incorporated represents a collective of Ngāti Kahungunu hapū that have Treaty of Waitangi claim and mana whenua interests in and around the Ahuriri estuary.

became evident that Māori values were relevant across all themes and should 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 matters as much as cultural, 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.

Table 2. Some of the TANK Group’s values, objectives and performance measures (TANK Group 2014, p 28).

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

8. THE PRESSURE TO COMPROMISE

Despite iwi and hapū in Hawke's Bay having long-established, recognised and absolute values based on their traditions and beliefs, tangata whenua members of the TANK group feel their values are still not well understood and acknowledged. A TANK Group member said that, in a collaborative process, tangata whenua feel "immense pressure to compromise" for three main reasons (N Tiuka, pers. comm., 21 July 2014):

- There is a lack of understanding and/or acceptance of the Māori world-view, which contrasts with the majority view. Presentations about the Māori world-view can help to address this, particularly for those with little experience on the subject.
- Industry groups often have very specific agendas and often know exactly what they want to achieve on behalf of their industry. They can usually quantify or specify the plan provisions they want to achieve a desired outcome, e.g. minimum low flow at point X should be Y litres/sec.
- Marae/kaitiaki participants typically know what they want in general terms, e.g. restoring the mauri to a desired state, or rivers and streams that are safe for swimming and with healthy mahinga kai. However, these more general aspirations are holistic crossing the well-beings (cultural, social, economic, and environmental) and can be much more difficult to translate concisely and specifically into catchment plans.

Taken together, these factors can put tangata whenua in a weaker bargaining position relative to other interests. However, this can be true irrespective of whether a process is collaborative or is a traditional consultation and hearing process. If Māori values and perspectives are not well understood and their desired policy outcomes are difficult to translate to planning language, Māori are likely to have difficulty in traditional processes as well. Indeed, for any stakeholder, an inability to secure outcomes in a traditional process will mean a weaker position in a collaborative process. This becomes more pressure to compromise, because the other parties will know that the weaker party's best strategy is probably to get what they can within the collaborative process, even if it is much less than they want (Fisher *et al.* 2011).

Thus, while the pressure to compromise is still present, collaborative processes offer the opportunity for Māori (and other parties) to get a better outcome than they would have achieved without it. This is partly because there is a greater chance that, through collaborative dialogue, the non-Māori members will gain a greater understanding of Māori interests and perspectives. The other reason is that collaborative dialogue and its focus on interests rather than positions (i.e. the end result rather than a specific policy setting) encourages discovery of innovative ways of achieving desired outcomes, perhaps including ways to translate Māori aspirations into planning language, because everyone is trying to find a way to make everyone else happy.

In terms of compromise, the theory of collaboration is clear. Agreeing to participate in a collaborative group does not mean that tangata whenua or any other party should agree to something they do not feel they can accept e.g. because it would make them worse off. 'Giving in' is actually in no one's interest, because it leads to resentment and lack of ongoing support for the agreed outcome (Innes & Booher 2010).

... 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 agreement to engage 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 a better outcome than they could achieve through other means.

9. COLLABORATION, CO-MANAGEMENT AND CO-GOVERNANCE

Co-management and co-governance arrangements are meant to provide equitable frameworks for building relationships, partnerships and collaborative planning. Fundamental questions for Māori include, as a Treaty partner, what constitutes effective and equitable collaborative planning under this framework (Harmsworth *et al.* 2013), and how the new reforms will clarify and enhance the role and interests of iwi and Māori in freshwater management decision-making processes. This is especially important if such involvement has been lacking or inconsistent. In Hawke's Bay, while relationships with HBRC may have worked well for some tangata whenua, others have been dissatisfied. Ngāti Kahungunu Iwi Inc. for example, considers that its relationship with HBRC has not been properly founded on the Treaty, and that lack of tangata whenua representation in decision-making has been detrimental to sustaining cultural values and water resource interests (pers. comm. N Tiuka, 21 July 2014).

A key question for councils is how to acknowledge the co-governance role of iwi and hapū groups as a Treaty partner and at the same time engage with iwi and hapū groups as part of a multi-stakeholder collaborative process.

In early 2014, the RPC was formally asked to endorse the TANK process and give the same undertaking the full Council had done 18 months earlier. The RPC expressed concern that they might be bound by the recommendations of an external stakeholder group. The Committee said it would “have particular regard” to TANK recommendations, thus reserving its right to vary the decision. In practice, this may not be very different than 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 also presents councils with a dilemma in terms of their own role—how can a council (or other government body) 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?

If New Zealand is to honour the spirit of the Treaty partnership, then how we answer this question should be essentially the same for Māori as it is for councils.

One way to address these concerns would be for a council, when it wants to establish a collaborative stakeholder group, to work with hapū and iwi to (1) develop the terms of reference (2) determine the membership of the group and (3) 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 tangata whenua rights, interests and concerns. In this way, the council and its Māori partners would be the joint co-sponsors of the collaborative process, in line with the Treaty relationship.

Both councils and their Māori 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 leaders and

sponsors of the process, e.g. a council together with its Māori Treaty partner, do not need to control the outcome but rather to ensure the integrity of the process by getting a diverse range of interests and perspectives together in the room (see Berkett & Sinner 2013). The collaborative parties then strive to achieve their goals and objectives through consensus.

Many councils have established formal relationships with iwi and hapū entities regarding their involvement in resource management decision-making. Because these relationships vary considerably, so will the strategies for reconciling co-governance with collaborative stakeholder processes. For any collaborative process, though, a strong relationship and agreement between the Treaty partners on scope, membership and terms of reference is pivotal, and will clarify the co-governance vs collaborative planning roles of iwi and hapū from the outset.

10. CONCLUSIONS

The entities, structures and practices through which Māori interact with the government and regional councils continue to evolve. The 1840 Treaty of Waitangi is still the defining and guiding document for these relationships, and the government's freshwater reforms must be seen within this historical context.

Councils will need to build capability in running collaborative processes with stakeholders, communities and Māori to meet different (and possibly increased) demands as they commit to and engage in collaborative planning. This will require new skills—for example, skills in running an intensive community process, turning technical information into 'plain English', and understanding Māori values and interests.

One of the greatest challenges will be clarifying and enhancing the role of iwi and hapū in decision-making processes under both a Treaty and 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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