

Can collaboration trump adversarial environmental planning? Insights from New Zealand's Land and Water Forum and proposed statutory collaborative planning process

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Abstract

New Zealand's Resource Management Act (RMA) 1991 was initially much lauded for its public participation mechanisms. However, it rapidly became the focus of intense criticism for institutionalising an adversarial approach to decision-making characterised by high litigation costs and lengthy delays. In an attempt to address growing public concern about the failure of the Act to effectively manage freshwater, the New Zealand government sought to short-circuit the traditional planning approach by establishing a collaborative approach known as the Land and Water Forum (LAWF). The perceived success of the LAWF in engaging diverse and competing freshwater stakeholders led the government to include a proposal to allow local authorities to use a collaborative planning process as a key plank in a package of amendments to the RMA 1991 currently before Parliament. Despite some controversy surrounding other elements in the package, it is expected that the option for a collaborative planning process will be available in the near future as part of fostering greater front-end public engagement, and, at least rhetorically, developing plans that better reflect community values.

This paper critically reviews the New Zealand experience of collaborative freshwater planning and examines the extent to which the Land and Water Forum has been an effective model of collaborative planning for freshwater. First, the paper examines the nature of collaboration as evidenced by the LAWF and questions whether this model of collaborative planning can be implemented more widely in the New Zealand planning system especially when key stakeholders have withdrawn from the process. Second, pertinent constitutional and legislative features of the institutional arrangements associated with the Land and Water Forum are identified. In particular, the nature of intergovernmental relations is identified as a key political dynamic which has shaped freshwater planning in New Zealand, and other areas of planning (e.g. transport planning), and which presents a challenge to collaborative planning. Based on analysis of institutional design and political culture, it is argued that, being a unitary state with a centralising national government, and weak local government (to which much environmental administration is devolved), the potential for the proposed collaborative planning process to achieve the goals of more inclusive, timely and durable plans is questionable.

Introduction

After a lengthy and comprehensive review of New Zealand's resource management legislation the Resource Management Act (RMA) 1991 was passed ushering in a new policy and planning framework in which much environmental administration was devolved to local government (regional councils and territorial authorities) with significant emphasis on public participation in planning processes (including consenting of applications for use and development of resources). In addition, the RMA recognised the traditional environmental management role of Māori (the indigenous people of New Zealand) and placed important obligations on those exercising responsibilities under the Act to consult with iwi (Māori tribes) in developing plans and policies and encouraged early consultation with Māori by those making applications to use and develop resources). These provisions were informed by the Treaty of Waitangi, a founding constitutional document signed in 1840, which at the time was considered to promise a "collaborative partnership between Māori and the Crown" (Matunga 2000, 3).

Despite the notion of collaborative approaches in environmental management in New Zealand dating from the earliest years of European settlement, and the promise of participation in the RMA 1991, planning and decision-making has become increasingly adversarial which has also been very costly for councils and communities as a result of litigation of decisions. In addition, planning and decision-making have often failed to deliver solutions to the environmental challenges they sought to address. Despite the historical promise of a collaborative partnership involving Māori in resource management, and despite the strong influence of New Public Management in New Zealand from the mid-1980s, use of collaborative approaches in environmental decision-making has been surprisingly slow. In other areas of policy, there has been an emphasis on partnerships, reflecting a neo-liberal preference for rolling back the state. With increased momentum associated with a central government policy of settling historic grievances associated with breaches of the Treaty, and growing acceptance of the Treaty-based claims of indigenous groups to share in governance, particular of natural resources, there has been increasing emphasis on co-governance and co-management involving Māori and central and local government and also more broadly in environmental planning, especially in relation to freshwater, with the aim of arriving at consensus and more durable solutions for management challenges. By the early 2000s planning for freshwater had become highly contentious with significant problems associated with degradation of water bodies and over-allocation.

In New Zealand, environmental administration is largely devolved to regional and territorial councils with regional councils responsible for managing water quality. Under section 30(1)(e) and (f) of the Resource Management Act 1991 regional councils are responsible for control of use and pollution of freshwater. Existing mechanisms provided by the RMA 1991 were clearly failing to address the problems and a 'circuit-breaker' was needed to overcome the impasse that had developed. A collaborative approach was proposed by a leading environmental NGO the Environmental Defence Society (EDS) and other key environmental advocates (in particular, Guy Salmon) in the mid-2000s. This approach involved the establishment of a multi-stakeholder body, the Land and Water Forum (LAWF)¹, to develop some consensus around key freshwater management policies where traditional planning had failed. The perceived success of the LAWF in engaging diverse and competing freshwater

¹ For further info on the LAWF see <http://www.landandwater.org.nz/>

stakeholders led the government to mandate a collaborative planning process in amendments to the RMA 1991 passed in 2017. First, this paper outlines the background to the establishment of the LAWF, the nature of the collaborative process and the outcomes to date from the LAWF. Questions are asked about whether this model of collaborative planning can be implemented more widely in the New Zealand planning system especially when key stakeholders have withdrawn from the process. Second, the importance of institutional design for collaborative planning processes is highlighted. Evidence from a current collaborative planning processes for freshwater in the Hawkes Bay region, the TANK process², is also presented that reinforces the importance of institutional design and political culture. Both reveal shortcomings in the design of the collaborative process linked to broader features of institutional design and political culture aspects. Based on the analysis, the paper concludes that collaborative processes may fail to achieve the desired goals of more inclusive, timely and durable plans if these shortcomings are not addressed.

The Land and Water Forum 2009-2017

As noted above, in the 2000s support for collaborative planning processes for freshwater management had been growing among key environmental policy actors in the mid-2000s, including a senior Member of Parliament, Nick Smith, then in opposition. In 2006, Smith had published a discussion document, *A Bluegreen Vision for New Zealand*, which sought feedback on a number of environmental policy proposals. One of these proposals was for a collaborative approach to determining national environmental goals. The discussion document outlined the Nordic experience, in particular, Finland and Sweden which reportedly utilised roundtable processes incorporating industry and environmental stakeholders together with government (including elected politicians from across parties). The roundtables worked together over a lengthy period deliberating and developing consensus or near-consensus. Smith indicated that if elected to government National would seek to use a consensus process to reach agreement on up to 20 long-term national environmental goals (Smith 2006). Previously there had been successful collaborative processes in relation to environmental policy (going as far back as a 1991 Forest Accord) so collaboration was not unknown. However, these were in relation to isolated issues, and collaboration was not a central plank of government policy. In late 2008, following a general election and change of government, Smith subsequently became the Minister for the Environment. By then, tensions around freshwater had escalated.

In June 2009 Smith announced a new policy initiative to reform freshwater management. This included the creation of a new body called the Land and Water Forum which would lead a collaborative process to develop a shared understanding of outcomes, goals and long-term strategies for freshwater management. Following an initiative by the EDS arising out of its 2008 conference, a Sustainable Land Use Forum had been established to instigate a collaborative process around primary production. It comprised a range of industry groups, environmental and recreational NGOs, iwi groups³ and other relevant organisations. Smith asked this forum to expand its original membership and focus (for example, to include urban water issues), to include scientists, and other organisations with a stake in freshwater and land management along with central and local government

² TANK is the acronym that refers to the first letter of the four river catchments, Tūtaekuri, Ahuriri, Ngaruroro and Karamu that are the focus of the collaborative process.

³ The term 'iwi' means 'tribe' and refers to indigenous Māori who are recognised as having a key role in natural resource management.

representatives as ‘active observers’.⁴ It was renamed the Land and Water Forum.⁵ Smith’s interest in a collaborative process was also influenced by scholars in the United States and elsewhere who referred to the need for a shift from so-called first generation environmental management systems characteristic of the twentieth century that were bureaucratic, prescriptive and adversarial processes, to second generation systems characterised by collaborative governance processes (see, for example, Durant *et al.* 2004, Selin and Chevez 1995, Gray 1989b, Ostrom 1991).

The LAWF’s work falls into three phases as outlined below.

Phase 1: 2009-10

The LAWF produced three reports between September 2010 and November 2012 in Phase 1 of its work. The first report, *A Fresh Start for Freshwater* (Land and Water Forum 2010), identified a set of outcomes and goals for freshwater management and recommended policy changes to achieve these. Public meetings took place throughout the country to discuss the report. The government responded to the report’s recommendations in September 2011 and asked the LAWF to continue its work and come up with recommendations on the methods, tools and governance processes required for setting and managing limits on water quality and quantity.

Phase 2: September 2011-November 2012

Two further reports were published in 2012, the first on a general framework for setting limits, including the governance arrangements which would ensure the successful involvement of all stakeholders, and a second on the methods and strategies required to achieve and manage those limits, through better land use management and improved allocation mechanisms (Land and Water Forum 2012a, Land and Water Forum 2012b). The third report contained 156 recommendations to the government with a strict caveat, supported by all forum members, that the government should not ‘cherry pick’ but should adopt the Land and Water Forum recommendations as a package.

In response to the LAWF’s recommendations, in March 2013 the government issued a public consultation document *Freshwater reform: 2013 and beyond*. This document contained a set of reform proposals which the government claimed were “based on and consistent with” the recommendations of the Land and Water Forum (Ministry for the Environment 2013, 8). However, Sir Geoffrey Palmer, a former Labour government Minister for the Environment pointed out:

In fact, they contain some significant differences from those recommendations – although these differences are not acknowledged or explained. Less than half of the 153 recommendations of the Land and Water Forum have been included in the reforms (Palmer 2013, 40-41).

⁴ It was specifically noted that “officials will take an active part in LAWF discussions but will not be asked to join the consensus” (Minister for the Environment, 2015, 3). See Appendix 1 for details of current LAWF membership.

⁵ For information about the Land and Water Forum see <http://www.landandwater.org.nz/Site/default.aspx>

During 2013 and 2014 the LAWF met from time to time in to assess the government's response to its reports. It also considered what future role if any it might seek to play in relation to land and water management, and how it might best organise itself in order to do so.

Phase 3: February 2015-December 2017

In the current phase, the LAWF was tasked with giving specific advice to Ministers on managing within limits, and review overall changes to water policy and implementation. In November 2015 the Forum released its fourth report (Land and Water Forum 2015). This focused on how to maximise the economic benefits of freshwater while managing within water quality and quantity limits that are set consistent with the National Policy Statement on Freshwater Management 2014. It also recommended exclusion of livestock from waterways on plains and lowland hills, addressed a number of urban issues and suggests tools and approaches to assist the Crown's exploration of rights and interests with iwi. The LAWF's first recommendation in the report was the need for the government to act on its recommendations:

This is therefore not a blue sky report in the way its predecessors were. Much of it is somewhat technical, but adds to and enhances our previous work. It gives it renewed currency and we hope – it is our first recommendation to the government – that the recommendations in earlier reports can now be implemented in full and without delay. Managing land and water better, is, as recent environmental reporting show, a matter of urgency (Land and Water Forum 2015, v)

In February 2017 the government released a consultation document, *Clean Water 2017*, with a set of further proposals (Ministry for the Environment 2017) for changes to the National Policy Statement on Freshwater Management. Public consultation closed at the end of April and as yet the government's response to submissions has not been finalised.

The policy proposals included some of the recommendations from the LAWF but not all. Despite its support for the LAWF, and its desire for policy to be informed by a collaborative process, central government has frequently disregarded recommendations from the LAWF as pointed out by the LAWF in its response to the Clean Water 2017 proposals:

The Forum's recommendation for compulsory monitoring and reporting of macroinvertebrate communities has been adopted, but not the use of MCI [Macroinvertebrate Communities Index]. There is a requirement "to develop (for example) an action plan" if monitoring suggests freshwater objectives are not being met, but these requirements lack the specificity and discipline of the Forum's recommendations. The Forum is concerned that without a specific requirement to take action to remedy a downward MCI trend or a low absolute level, that the monitoring requirement would not change the outcome.

Since the publication of the Clean Water proposals the Forum has had no satisfactory scientifically based explanation for why its recommendations should not apply. The Forum, through its own members and the NOF [National Objectives Framework] Reference Group,

has discussed again the scientific basis for these recommendations and remains convinced they are robust.

Throughout its response to the government's Clean Water package, the LAWF's concern (and even frustration) with the government's disregard for its recommendations was evident as it reiterated recommendations. Below is but one example (in paragraphs 15-20 of many of the 88 paragraphs where the LAWF pointed out shortcomings in the government's proposals:

15. The Forum recommended in August 2016:

- a. that the NPS-FM should have a requirement to set in-stream concentrations for dissolved inorganic nitrogen (DIN) and dissolved reactive phosphorus (DRP), as objectives in regional plans, to support the existing periphyton attribute in Appendix 2 of the NPS-FM.
- b. the development of a mandatory decision support tool councils would have to use to derive and set the DIN and DRP concentrations.
- c. that there would be benefit in a multi-variate lookup table for DIN and DRP concentrations, which should be provided in guidance to give councils and communities a broad idea of what nutrient concentration ranges were appropriate in a variety of conditions. ...

16. While a "note" has been added to the bottom of the periphyton attribute table in Appendix 2 of the NPS-FM, it is not clear that this has any legal force to require councils to set DIN and DRP concentrations in their plans for rivers where periphyton is being managed. The Forum recommends that the NPS-FM be clarified to make it clear councils are legally required to do this using the mandatory decision support tool.

17. The wording of the "note" implies that DIN and DRP concentrations must be set before setting periphyton objectives. This is incorrect. We suggest it be reworded ...

18. The process set out in the note above should be set out in detail in the mandatory decision tool.

19. Our recommendation of a mandatory decision-support tool has simply not been addressed. While the steps in the process have already been developed and can be used, the technical support that sits behind each step in the process has not yet been developed, despite the fact that there has been ample time since August last year to do so.

20. We re-recommend the development and mandatory use of a decision-support tool for setting these concentrations based on the flow chart presented in the Appendix to the Forum's letter to Ministers in August 2016. The flow chart, with any necessary modifications, and the detailed technical support that sits behind each step in the process, can be developed in 3-4 months. This is important to support a consistent nationwide process for addressing nutrients, which will reduce costs and prevent litigation.

In the final paragraph the LAWF referred to difficulties in the interactions between government officials and the Forum which had resulted in the departure of two leading environmental organisations from the Forum in October 2016:

88. Finally, it would be remiss not to comment that the roll-out of the Clean Water proposals caused confusion and an unnecessary level of controversy. The result has unsettled some members and caused some to withdraw (hopefully temporarily). New policy proposals always involve debate. The material in the proposals, especially that dealing with “swimmability” standards is very complex and challenging to communicate. However, the degree of controversy and withdrawal of some members could have been avoided through greater transparency of process, rigour and openness in the interactions between officials and the Forum in the lead-up to the launch of the proposals. The Forum welcomes the undertaking by the Minister to correct this and we look forward to ongoing effective engagement that will mark an important step forward for freshwater management.

While it was hoped that the departures (prompted by concerns that the government was ignoring the LAWF’s advice) would be temporary, as yet the groups have not returned to the Forum.

As at the time of writing (June 2017), the government had not released its final decisions in relation to Clean Water package but it indicated it wished to involve the LAWF in the finalisation of changes to the National Policy Statement on Freshwater Management following analysis of submissions. The Forum intended to conclude Phase 3 at the end of this year with a review of the overall changes to water policy and its implementation, lessons learned and further work required to achieve improved water management.

Institutional design and political culture factors

Since the early 1990s the concept of collaborative governance has increasingly attracted the interest of political and managerial leaders in the UK, Europe and indeed most parts of the world, who have increasingly promoted collaborative working across government and with other stakeholders in a range of policy domains. For many ‘wicked issues’, characterised by complexity and requiring action by multiple agencies across legal and administrative boundaries (Rittel and Webber 1973), collaboration amongst a range of government, business and civil society actors is now seen as not only desirable but necessary (Berkes 2010, Gray 1989a, Selin and Chevez 1995, Healey 1992, Healey 1998). Notwithstanding the optimism and enthusiasm about collaborative processes, there is also a large body of evidence highlighting the need to critically assess the characteristics of so-called collaborative arrangements for and to review the theoretical claims against collaboration in practice (see, for example, Sandström *et al.* 2014, Plummer and FitzGibbon 2004, Fortier *et al.* 2013, Berkes 2010, McCreary *et al.* 2016, Eppel 2013, Ansell and Gash 2008, Brisbois and de Loë 2016, Margerum and Robinson 2016). Institutional design (in particular, the composition and authority of the collaborative body) and political culture (in particular, the nature of interactions between the government and the collaborative body and government’s responsiveness of government to the consensus recommendations of the collaborative body) are two factors considered below.

The Land and Water Forum has been significant for at least three reasons. First, it was sponsored by central government. Second, it had a considerable degree of success in achieving consensus in relation

to an increasingly contested resource. Third, it carried out the first national-level collaborative planning process and serves as a model for future collaborative planning by central and local government. Moreover, it had recommended that local government (which has significant responsibilities for freshwater planning and management) use collaborative processes in freshwater planning. Each of these three significant elements is discussed in a little more detail.

Government mandated collaboration

Central/federal government mandate of collaborative planning provides a powerful endorsement of the process. However, robustness and resourcing of the process are also critical to the success of any collaborative process. A set of protocols guided the process (see Appendix 2).

In March 2011 the LAWF published a document, 'Note on Collaboration', in which it noted that there was a range of work being undertaken by public and private research and other organisations about the use of collaborative techniques as well as an international literature (Land and Water Forum 2011). The Forum noted the following defining attributes of a collaborative process:

- a. It is open to all interested groups to send their own representatives (and in the case of a catchment the process should be open to all landholders) and includes iwi representation
- b. It operates with a consensus rule
- c. It has a skilled independent facilitator/chair
- d. Where a consensus cannot be reached options should be set out
- e. It is supported by the provision of information on economic, social, cultural and environmental aspects of resources and their management, and by scientific information about them, in order to allow the participants to come to an integrated understanding
- f. It has a mandate from a public decision-making body to address an issue or group of related issues, and reports to that body, but it can also be an applicant-led process undertaken in support of an identified development project, or come about through a community or industry initiative.
- g. It has a realistic timetable within which it is required to complete its work. Collaborative processes take time but need time constraints.
- h. It is resourced to do its work. Funding may come from the decision-making body and participants may also contribute resources. It is important that the resources that the collaborative process has at its disposal are utilised for the benefit of the process as a whole (Land and Water Forum 2011, 2).

In the case of the LAWF it appears there was a reasonable level of government resourcing and also recognition by government of the amount of time required for the process although in the case of the Fourth Report the LAWF expressed concerns about the short time-frame it was given by government.

That there was this level of resourcing, and a degree of respect for the LAWF's process, has underpinned the stability of the leadership (from 2010 until mid-2016, the LAWF there was no change in the chair of the LAWF) and membership.

However, as noted above, central government's tardiness in implementing recommendations has frequently been a source of frustration and more recently resulted in defections of two key organisations. Despite its enthusiasm for a collaborative process to inform policy, from early on the government was slow to implement recommendations from the LAWF. Gary Taylor, Chair of the EDS which was instrumental in establishing the forum, observed at the end of Phase 2:

Collaboration means getting everybody to change their minds. It necessarily involves the creation of a consensus that means everybody's position or opening gambit has to shift and that occurs through a process of dialogue, through understanding the background science more thoroughly, through understanding the competing pressures on the resource and the need to be practical but at the same time have a trajectory that is going the right way. But having landed in a relatively good place itself, the Forum is now dependent on Government for implementation and that will take some years. The first tranche of decisions has been announced and is acceptable. But there is still the risk that Government will depart from the Forum consensus, invoke a weak national objectives framework or make fundamental changes to the underlying legislation (Taylor 2013, 23-24).

In April 2016, the LAWF published a spreadsheet of its recommendations detailing progress on implementation. A covering note summarised progress as follows:

- Setting of objectives and limits has largely been addressed, although with material differences and omissions from the Forum's recommendations
- Provision for collaborative processes to be used in plan making has been largely addressed through the Resource Legislation Amendment Bill, though with material differences and omissions from the Forum's recommendations;
- GMP [Good management practices] and quality management recommendations have largely not been addressed in a systematic way by central government though a number of councils and industries have put measures in place;
- A new allocation regime for water quantity has largely not been addressed;
- Governance (excluding collaborative planning) has been addressed with respect to iwi though sometimes in a different way from the way that the one that the Forum recommended, and not addressed in relation to appointments to councils or a national Land and Water Commission;
- A start has been made on addressing recommendations on information, science and data, and also on capability building where there is still much to do; and
- Stock exclusion recommendations are reflected in the Government's proposals, but these proposals do not address the associated riparian management regime, which we have recommended should be administered through councils.

Of particular concern is the departure in 2016 of two key groups (Fish and Game and the Royal New Zealand Forest and Bird Protection Society), referred to earlier, which has implications for the consensus underpinning the LAWF's recommendations. It is now clear that consensus was fragile. Implementation of the LAWF's recommendations, a responsibility of government, was patchy and this weak implementation arguably undermined the consensus achieved by the LAWF process. This illustrates a limitation of government-sponsored collaboration which in effect is only an agreement about advice to be given to the government. Implementation is subject to political whim.

Consensus reached by divergent interests

The four reports of the LAWF, as well as other advice provided to Ministers, reflected a substantial degree of consensus among the participating stakeholders. The consensus is summarised in the introductory comments of chair to the Second Report:

We think that New Zealanders are close to what might be called a new reconciliation on managing our freshwater. We accept that much of New Zealand is an inhabited landscape, that agriculture and industry are vital to our economy, and that water is a key element in our prosperity. The quality of water bodies will not be uniform, and pristine quality across the country is not a realistic goal. Equally, we want clear assurances that all essential New Zealand values and needs will be maintained and enhanced – there will be bottom lines to protect the mana⁶ and ecological health of our rivers, streams, lakes, aquifers and wetlands; that we will be able to fish, swim and gather food; that provision will be made to protect outstanding water bodies; and that, over time, the quality of our water will improve. We know that collaboration is essential to achieve this reconciliation because it depends on reaching decisions which are widely shared, and reflect both national requirements and regional and local preferences (Land and Water Forum 2012a, iii, italics added).

Here the LAWF was treading a very fine line in balancing environmental, economic and cultural values. It needs to be recognized that the degree to which that consensus had the support of the wider membership of the organisations that members represented is somewhat hazy because there is no evidence of the wider memberships being meaningfully consulted - whether those members are from industry organisations (which often had competing demands in relation to water), environmental NGOs, recreational organisations, or iwi. The nature and extent of consultation with the broader membership base occurred is something that merits further research.

A model for collaborative planning processes

A number of other requirements of collaborative processes were noted including that they should be utilized at an early stage and be independent, although decision-makers need to be involved as well as those who will be affected by the outcomes.

⁶ Māori word for 'special status'.

One of the proposals in the second report of the LAWF in April 2012 was for a new collaborative planning process to be made available to councils as an alternative to conventional RMA planning processes:

124. The design and implementation of a collaborative process must:
 - a. ensure adequate opportunities for public participation and engagement from start to finish
 - b. ensure that there is provision for a rigorous, impartial evidence-based evaluation of information and proposals
 - c. safeguard natural justice
 - d. ensure that decisions are transparent and the rationale for decisions is clear.
125. The design of a collaborative process must also address the risks of:
 - a. process capture by powerful or politically influential stakeholders
 - b. individuals or parties being marginalised throughout the collaborative process and being forced inappropriately to rely on others to represent their interests
 - c. insufficient capacity or desire at local government level to facilitate effective collaboration
 - d. a simple re-packaging of consultation as collaboration – despite sharing some common attributes these are two very different concepts, if they are confused or conflated the potential benefits of a collaborative approach will not be fully realised
 - e. over-reliance on or over-prescription of collaboration could stretch capacity too thinly – it is important that collaborative processes add value rather than additional bureaucracy
 - f. failing to change the mindset of important players in freshwater management decisions
 - g. failing to reach consensus, despite best efforts (Land and Water Forum 2012a, 31).

Five years later, legislation was passed introducing a new optional collaborative planning process albeit without some features recommended by the LAWF (such as publicly calling for expressions of interest in participation in the collaborative stakeholder group). In the meantime, a number of councils had established collaborative stakeholder groups to assist with developing consensus prior to embarking on a formal planning process. One of these was the Hawkes Bay Regional Council's TANK Project which started in late 2012 several months after the publication of the LAWF's April 2012 report which provided detailed guidance about the design and implementation of a collaborative process. While the LAWF's guidance and recommendations had not been legislated, its April 2012 report and 2011 'Note on Collaboration' nevertheless afforded councils which were contemplating a collaborative planning process valuable assistance with implementation.

The TANK process includes the establishment of a Collaborative Stakeholder Group to provide recommendations to the Hawkes Bay Regional Council Regional Planning Committee for the management of land and water in the Greater Heretaunga and Ahuriri catchment area, comprising the Tūtaekuri, Ahuriri, Ngaruroro and Karamu catchments and associated estuarine and coastal receiving environments. The group has met 29 times since October 2012 and is due to complete its

work in late 2017 by which time it is hoped to produce consensus recommendations regarding objectives, policies, methods and rules for a change to the Regional Resource Management Plan. The change to the Plan is needed to deal with over-allocation and declining water quality.

Applying the criteria outlined in a-h (see above) of the 2011 'Note on Collaboration', it is clear that the TANK process has had a number of shortcomings. First, the membership of the TANK Collaborative Stakeholder Group does not reflect the criteria proposed by the LAWF. The principle of all interested groups being able to send their own representatives is not promoted. The status of council staff and elected members is ambiguous. They are listed as group members and not as observers.

An interim report in January 2014 summarising the TANK Collaborative Stakeholder Group's work between October 2012 and December 2013 noted delays and on-going disagreement, and the intention that these be resolved during 2014 (TANK Collaborative Stakeholder Group 2014). Two key Māori organisations raised a number of concerns with specific aspects of this report, with the major iwi/tribe in the region identifying a number of areas of significant disagreement. The Collaborative Stakeholder Group had not received necessary scientific information on economic, social, cultural and environmental aspects of resources and their management, in order to allow the participants to come to an understanding of the problems and options for addressing them. The initial timetable for the TANK Project was clearly not realistic and resourcing was inadequate for the first three years. With timeframes not adhered to, and the Group's work extending far beyond the initial anticipated original completion date, additional demands were made of participants and there was turnover in the membership (as well as in the council staff resourcing the project)⁷. As a result, in December 2015 the regional council requested a review be conducted by a newly appointed senior manager. The review which was presented to the council in February 2016 acknowledged a number of frustrations and challenges associated with lack of momentum especially in 2015, lack of council leadership and resourcing (including of science inputs), changing representation within the group. Subsequently, a new master plan setting out the group's work programme was developed, the terms of reference and membership were revised, and some steps were taken to increase community engagement. These changes have resulted in renewed momentum but questions remain about the group's representativeness and about processes for achieving consensus.

Conclusion

With the 2017 amendments to the RMA 1991 introduced a new collaborative planning process, the government has signalled a strong support for an alternative to traditional, adversarial planning processes. While the TANK process cannot be considered typical of all council-mandated collaborative planning processes, did not adhere to the recommendations provided by the LAWF for collaborative stakeholder groups, and has preceded the new statutory provisions introduced in 2017, it nevertheless provides some important insights into the challenges facing council-mandated collaborative planning process under the new statutory provisions. In particular, it highlights risks associated with inadequate resourcing by the council, lack of representativeness, lack of professional and independent facilitation, burnout and loss of momentum. When the experience of the LAWF

⁷ Somewhat belatedly for the TANK process, in late 2015, the Ministry for the Environment published guidelines for people involved in collaborative processes (Ministry for the Environment, 2015)..

collaborative process is also considered, notwithstanding the different scale and resourcing, it is clear that significant hurdles remain to be overcome for collaborative processes for freshwater management to be successful. In particular, the LAWF experience highlights risks from political inertia.

Collaborative planning processes in New Zealand have been introduced into a context in which there has been a strong emphasis on public participation in environmental planning and decision-making and growing experience with co-governance and co-management reflecting well-established recognition of the rights of indigenous people. However, power differences among participants, inadequate timeframes, and exclusion or lack of resourcing of participation of key stakeholders that have undermined the effectiveness of traditional planning may continue to be present in collaborative planning. According to Gray (1989a) notes, power differences among participants influence their willingness to participate and redressing power imbalances might be required to encourage participation. Both the LAWF and TANK memberships have much greater numbers of industry groups whose members are typically paid employees of the organisations they represent (see Appendix 1 and 3). For community groups, participation in a collaborative stakeholder group is generally undertaken by people who are volunteers in contrast with most other participants who are employees of the organisation/sector they represent.⁸ This imbalance in the resourcing of participation compounds the disenfranchisement of groups that are numerically under-represented. Palmer argues that collaborative processes carry the risk of “process capture” whereby powerful or politically influential stakeholders could marginalise and exclude the voices of individuals or less dominant groups:

there is a real risk that “collaboration” becomes “compromise” – so that decisions are made on the basis of power of persuasion rather than objective evidence. This risk is increased by the absence of any clear principled framework against which decisions can be measured (Palmer 2013, 45).

Having such a framework may improve the robustness of the process and reduce political inertia or whim. Other key ingredients for the success of the new collaborative planning process include a transparent and inclusive process of appointing participants, financial and political support for the process, and an impartial facilitator (Landers and Day-Cleavin 2017).

Eppel argues that collaboration sponsored by government agencies demands a change of culture on the part of government:

Collaboration requires investment by organisations in reframing goals, objectives and results from an interorganisational perspective. It also requires high levels of interpersonal and inter-organisation trust, modification of standard management and accountability procedures, and different leadership approaches (Eppel 2013, 1).

It remains to be seen whether central government (in the case of the LAWF collaborative process) or Hawkes Bay Regional Council (in the case of TANK) can achieve the necessary change of political culture. This requires a strong commitment to ensuring a robust process and then implementing the

⁸ In the case of TANK there is supposed to be funding for meeting attendance but this appears to be limited to petrol vouchers for those not in paid employment of the organisation/sector they represent.

recommendations of the collaborative stakeholder group. The LAWF process has been reasonably robust but the government's adoption and implementation of recommendations has been patchy. The TANK process has lacked robustness and faltered and is some way off producing a consensus report that can inform a statutory plan change to improve freshwater management in the region. And even if a consensus is reached, without a robust process the consensus may be challenged.

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Appendix 1

Land and Water Forum Small Group Members (2017)

Beef + Lamb New Zealand	Contact Energy
DairyNZ	Ecologic
Environmental Defence Society	Federated Farmers
Fonterra	Horticulture New Zealand
Irrigation New Zealand	Mercury
Meridian Energy	National Institute of Water and Atmospheric Research
Ngati Kahungunu	NZ Forest Owners Association
Our Land and Water National Science Challenge	Te Arawa Lakes Trust
Te Runanga o Ngai Tahu	Tuwharetoa Māori Trust Board
Waikato-Tainui	Water New Zealand
Whitewater New Zealand	

Land and Water Forum Plenary Group members (2017)

Aqualinc Research Ltd	National Institute of Water and Atmospheric Research
Ballance Agri-Nutrients	Ngati Kahungunu
Beef + Lamb New Zealand Limited	New Zealand Farm Forestry Association
Business New Zealand*	New Zealand Forest Owners Association
Contact Energy	New Zealand Institute of Forestry
Dairy NZ	New Zealand Winegrowers
Ecologic	Oceania Waihi Gold
Environmental Defence Society	Oji Fibre Solutions
Federated Farmers	Opus International Consultants Ltd
Fertiliser Association	Our Land and Water National Science Challenge
Fonterra	Pioneer Generation
Foundation for Arable Research	Rural Women New Zealand
Genesis Energy	Straterra Inc.
Horticulture New Zealand	Sustainable Business Council
Ihutai Trust	Te Arawa Lakes Trust
Institute of Public Works Engineering Australasia	Tourism Industry Association Aotearoa
Institution of Professional Engineers New Zealand	Trustpower
Irrigation New Zealand	Tuwharetoa Māori Trust Board
King Country Energy	Waikato River Authority
Landcare Trust	Waikato-Tainui
Lincoln University	Tasman District Council
Massey University	Water Action Initiative New Zealand (WaiNZ)
Mercury NZ	Water New Zealand
Meridian Energy	Watercare Services Ltd

Appendix 2

Land and Water Forum Protocols

Courtesy

This forum deals with some contentious issues, on which participants have taken strong positions based on their advocacy roles. It is fundamental to this process that participants will be open-minded, treat each other with courtesy and explore their differences in a constructive and cordial spirit.

Good Faith

The participants will engage in the process in good faith and actively seek consensus, building on any past agreements. Organisations will ensure that they are represented in the process by those who have a mandate to speak for them.

Organisations will be taken to speak only for themselves except in so far as they declare a wider mandate.

Confidentiality

The process can succeed only if participants feel free to engage in frank discussions. Participants agree that they will not comment publicly on the proceedings of this forum as it continues, or its working documents. Any media commentary on the Forum's proceedings will come from the Chair.

Urgency

The participants acknowledge that the transition to environmentally sustainable land and water use is a matter of urgency for New Zealand and will work to achieve the Forum's purpose and goals as quickly as possible.

Processes

The Forum will reach its conclusions by consensus which will be registered in the Plenary. Working groups may be established to do the preparatory work on particular issues or clusters of issues.

Plenary will be attended by Chief Executives or similarly senior representatives of the organisations involved, unless there is agreement that it should meet at working level.

The Forum may commission research and analysis to assist it in its deliberations.

Appendix 3

TANK Collaborative Stakeholder Group as at 2015

Aki Paipper	Operation Patiki ki Kohupātiki Ngāti Hori
Brett Gilmore	Hawke's Bay Forestry Group
Bruce Mackay	Heinz-Watties
Christine Scott	HBRC Councillor
David Carlton	Department of Conservation
Hiri Huata	Ngā Marae o Heretaunga
Hugh Ritchie	Federated Farmers
Ivan Knauf	Dairy sector
Jerf van Beek	Twyford Irrigators Group
Joella Brown	Te Roopu Kaitiaki ō te Wai Māori
Johan Ehlers	Napier City Council
John Cheyne	Te Taiao Hawke's Bay Environment Forum
Kahu Hakiwai	Ngā Kaitiaki ō te Awa a Ngaruroro
Lesley Wilson	Hawke's Bay Fruitgrowers' Association
Marei Apatu	Te Taiwhenua o Heretaunga
Mike Glazebrook	Ngaruroro Water Users Group
Mike Butcher	Pipfruit New Zealand
Morry Black	Matahiwi Marae
Neil Eagles	Royal Forest and Bird Protection Society (Napier Branch)
Ngaio Tiuka	Ngāti Kahungunu Iwi Incorporated
Nick Jones	Hawke's Bay District Health Board
Peter Beaven	HBRC Councillor
Peter Kay	Hastings District Council Rural Community Board/Sheep and Beef sector
Peter Paku	Ruahapia Marae
Phil Holden	Gimblett Gravel Winegrowers Association
Scott Lawson	Hawke's Bay Vegetable Growers
Terry Wilson /	Mana Ahuriri Iwi Incorporated
Te Kaha Hawaikirangi	Ngā Hapū of Tūtaekuri
Tim Herman	Pipfruit New Zealand
Tom Belford	HBRC Councillor
Vaughan Cooper	Royal Forest and Bird Protection Society (Hastings/Havelock North Branch)
Xan Harding	Hawke's Bay Winegrowers
Gavin Ide	HBRC Manager Strategy and Policy (Interim Project Lead)