

COUNCIL-MĀORI ENGAGEMENT: THE ONGOING STORY

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The contemporary "story" of Māori local government engagement begins in earnest with the reform of local government in 1989 and the passage of the Resource Management Act 1991 (RMA.) Local government reform, which saw the consolidation of more than 850 different local bodies into 86 multi-purpose local authorities, set the scene by creating organisations with a capacity to more significantly affect local outcomes. It also modernised local authority processes by requiring, for example, councils to consult with their communities when preparing their annual plans and budgets and making decisions on significant issues. The RMA, which likewise consolidated a number of previously separate statutes governing environmental matters, devolved environmental administration to local government including responsibility for involving tangata whenua organisations at various points in the policy-making and implementation process.

In 2002 the new Local Government Act (LGA) drew on these experiences and introduced a new set of requirements for councils to work with and build Māori capacity. It also made councils' obligation to promote community well-being explicit.

In the twenty or so years since reform, councils and Māori have built up a considerable body of experience with regard to what works and what doesn't; and relationships, both statutory and non-statutory, have waxed and waned. More recently, following the settlement of a number of major Treaty claims, new engagement models have begun to develop. These are tending to take the form of co-governance arrangements and there is considerable debate as to whether these might be the model for the future, particularly in relation to the governance of major natural resources.

WHERE DOES LOCAL GOVERNMENT FIT IN A CONSTITUTIONAL SENSE?

The community's understanding about local government and where it sits in our constitutional arrangements is at best mixed. This is not surprising. Councils are complex organisations that deliver a range of services and operate under a range of different legislative and community mandates. Technically they are statutory corporations. Their powers are defined by legislation in the same way that companies acquire the right to trade and own property through the Companies Act and many third sector organisations acquire the right to exist and operate through the Incorporated Societies Act. They are not the Crown, although they may undertake some activities on behalf of the Crown, in the same way that many iwi, hapū and NGOs have contracts with the Crown to deliver social services.

Local government is the mechanism through which communities get to make decisions about local public matters - those things that are important to localities and regions and which have little or no national significance. Unlike the state, local government is not a new model of decision-making – it has been around for at least 3,000 years. It seems to be in the nature of humankind that when communities develop one of the first things its inhabitants will do is set up a mechanism for making collective decisions to at least protect, if not promote, their quality of life.

Accountability in local government rests with citizens rather than the government; it is citizens after all who pay the bills. Of course the Crown, being sovereign, sets the rules and when it feels the national interest might be jeopardised by local decisions or non-decisions it has shown itself willing to intervene, most recently in the case of Environment Canterbury. These kinds of interventions are, of course, very rare. In relation to the Treaty of Waitangi councils tend to operate in the world of Article Three. However, when performing delegated functions, such as resource management roles, they are bound by the Crown's obligations and Article Two considerations are often paramount. It is a widely accepted principle that governments cannot avoid obligations by delegating them.

WHAT DO WE KNOW ABOUT MĀORI LOCAL GOVERNMENT ENGAGEMENT?

Māori local government engagement since the early 1990s is a surprisingly well-researched area (see references.) In fact it is hard to find another area of public policy, especially affecting local government, which has been subject to as much research as this one.

One piece of recent research commissioned by the Local Government Commission (LGC) and undertaken by Colmar Brunton (see LGC 2008) sought to identify the level of knowledge about citizens held about local government and their level of participation. In relation to Māori citizens it found:

- 53 per cent of Māori rated their knowledge of their councils as “do not know much” compared to 45 per cent of all respondents
- 30 per cent of Māori were unaware of the difference between territorial and regional councils, compared to 22 per cent of all respondents
- 65 per cent of Māori voters were aware of councils' long-term plans compared to 51 per cent of other voters
- Māori (42 per cent) are more likely than others (15 per cent) to mention poor facilities and services
- Māori were more likely (33 per cent) than others (18 per cent) to be dissatisfied with their council's contribution to well-being
- Māori (87 per cent) are more likely than others (81 per cent) to consider it important to have a say in council decisions
- On the most effective ways to influence councils, Māori were more likely than others to attend meetings run by the council (81 per cent to 68 per cent.)

Compared to the overall population Māori tended to know slightly less about the operation of councils but were more ready to exercise their citizenship rights by attending meetings or raising a concerns directly with the council. Like all

citizens, although to a slightly stronger degree, Māori citizens consider it important to have a say in council decisions and their greater knowledge of long term plans, and willingness to complain when services are poor, reinforces their greater political literacy. It is also a statistic that seems to give the lie that people are uninterested in local government as well as suggesting that citizens prefer more direct methods of engagement than simply voting.

We also have a considerable amount of information about the techniques and mechanisms used by councils and Māori organisations to engage, although it is now beginning to be dated. The last national survey, in which all councils participated (there were 84 councils at that stage), was undertaken in 2004 and it indicated that:

- 69 councils had a formal process for consulting with Māori
- 79 had informal processes for consultation and information sharing
- 43 held one or more Iwi Management Plans
- 55 had provided funding for one or more joint initiatives
- 22 had established a co-management regime for managing a site, activity or resource
- 57 provided internal training for councillors or staff on issues ranging from statutory obligations, tikanga Māori or the Treaty of Waitangi
- 39 had set up Māori standing committees
- 42 councils involved iwi / hapū representatives in sub-committees and / or working groups
- 44 had established relationship agreements with iwi organisations, such as charters or memoranda
- 32 had dedicated iwi liaison staff.

The survey was undertaken by *Local Government New Zealand*, the Department of Internal Affairs (DIA) and Te Puni Kōkiri and replicated an earlier survey undertaken in 1997 which allowed for some longitudinal analysis. Pleasingly we found that, compared to 1997, engagement had increased across almost all dimensions.

In its report to the government in 2008 the LGC provided a summary of existing research on the issue of engagement. It found that engagement was predominantly with tangata whenua rather than taurahere organisations; often involved more than a single iwi and in some cases involved structures that were representative of both tangata whenua and taurahere. Not surprisingly engagement was dominated by land, water and resource issues within the context of the RMA. In general the LGC found that the "experience of engagement has led to increasingly better relationships and engagement processes and has helped build capability both within councils and within Māori organisations" (LGC 2008 p.11.)

Despite the success stories the quality of engagement was also found to be patchy with some processes described by the LGC as "token." Interestingly, Māori interviewed by the LGC commented that local authority staff appeared to be more committed to building effective relationships than elected members.

STATUTORY OBLIGATIONS TO “ENGAGE” WITH MĀORI

Councils operate under a number of statutory regimes that require an obligation to either consult or engage with Māori or tangata whenua in some capacity. The most frequently used terms in the legislation are to “consult,” “engage” and “provide opportunities for participation.” Underpinning all terms is the assumption that dialogue should be occurring in order to understand the values, aspirations and interest of local and regional Māori organisations. The two dominant frameworks are the RMA and the LGA, but provisions are also found in legislation governing conservation, coastal management, flood management and transport.

The RMA 1991

Engagement within the context of the RMA is by far the dominant framework as it deals with regulatory matters that involve the use of land and water which can have considerable impact on iwi and hapū interests. While it is the framework where we have the most experience of local government Māori engagement it is also a very complex series of relationships as Māori participate within the RMA context in a diverse range of ways, from having a right to be consulted on plans and proposals, being advisers as well as being the holders of essential information, such as, information about the location of taonga.

The RMA promotes the sustainable management of natural and physical resources in a way that enables communities to provide for their environmental, social, economic and cultural well-being. The Act recognises Māori interests in natural and physical resources and contains specific provisions for consulting and working with tangata whenua. Some of the key provisions in the RMA that are most relevant to this topic are:

- Section 6:** recognises the national importance of the relationship of Māori and their culture and traditions and their ancestral lands, waters, sites, wahi tapu, other taonga and historic heritage
- Section 7:** requires that particular regard be given to kaitiakitanga and that the principles of the Treaty of Waitangi be taken into account.
- Section 8:** applies the same obligations to “all persons exercising powers under the RMA” to take into account the principles of the Treaty of Waitangi.

The RMA guarantees tangata whenua an opportunity to contribute to the preparation of plans and policies. “Tangata whenua” is defined to include iwi authorities, tribal rūnanga, iwi and hapū trust boards, land trusts or directly as representatives of whānau, hapū and iwi. The legislation does not provide the same guarantees in relation to individual resource consent applications, although it is accepted as good practice for resource consent applicants to consult with tangata whenua where their proposals affect matters covered by the RMA.

Essentially, where tangata whenua have a legitimate interest in, or are affected by, an application they also have the right to have their views considered in the decision-making process.

THE LGA

The LGA includes a statement which establishes that the Crown, not local government, is the Treaty partner but that in recognition of the Crown's obligations local government has certain responsibilities. These are largely Article Three responsibilities and involve Māori participation in decision-making processes, enhancing Māori capacity to participate and options for enhanced representation by Māori (Māori seats). The relevant provisions are:

Section 4: "In order to recognise and respect the Crown's responsibility to take appropriate account of the principles of the Treaty of Waitangi and to maintain and improve opportunities for Māori to contribute to local government decision-making processes, Parts 2 and 6 provide principles and requirements for local authorities that are intended to facilitate participation by Māori in local authority decision-making processes."

Section 14: sets out a number of principles including one requiring local authorities to provide opportunities for Māori to contribute to councils' decision-making processes

Section 77: requires councils to take into account the relationship of Māori with their ancestral land, water, sites, wahi tapu, valued flora and fauna and other taonga when making significant decisions relating to land and bodies of water.

Section 81: requires councils to facilitate contributions to decision making processes by Māori by:

- establishing and maintaining processes to provide opportunities by Māori to participate in decision making processes
- considering ways of fostering Māori capacity to contribute to decision-making processes
- providing relevant information to Māori for these purposes.

Schedule 10: requires councils to set out in their long term plans what they intend to do to foster Māori capacity to contribute to decision-making processes and include in their annual reports a statement on what has been done to foster that capacity

The provisions in the LGA act as levers that can be used to influence institutional behaviour rather than specific requirements that can be easily monitored. While the degree to which councils comply with these provisions will depend on the particular circumstance of each district or city they cannot afford to ignore the provisions as judicial review is an ever present risk. To date little research has been done into what these provisions have meant in practice.

The most active agency involved in monitoring compliance is the Office of the Auditor General which uses its "self assessment" survey to measure the degree to which Māori organisations have been consulted in the development of councils' long term plans. It also ensures reporting requirements are met, such as

reporting on measures taken to enhance Māori capacity which must be included in councils' annual reports.

THE CHALLENGE OF WORKING UNDER MULTIPLE MANDATES

One of the significant differences between the LGA and RMA frameworks is the different approaches they take to the issue of who engagement should be with. The LGA quite specifically and intentionally steers away from the language of the RMA (which refers to tangata whenua) and places councils under an obligation to consult with Māori.

This has resulted in many councils running dual consultation systems with protocols that require consultation with tangata whenua groups when dealing with the natural landscape and taurahere groups when dealing with social issues, such as youth policy. As a result councils and Māori have developed a broad range of mechanisms for managing their relationships, for example:

- Māori advisory committees – while not formal committees they are usually set up to provide advice on issue relevant to Māori. Processes for selecting members vary
- working parties and sub-committees – usually project specific or set up to assist with developing longer-term relationships
- co-management arrangements – can cover a range of activities, such as co-management of a reserve or significant landscape
- Māori constituencies or wards – currently only found in the Bay of Plenty Regional Council. Can be established by council resolution or binding referendum
- formal relationship agreements – usually charters or memoranda of understanding which set out expectations of both organisations
- formal consultation processes – usually specified in the context of RMA plans, such as agreed points in a planning process where Māori have the right to be consulted
- iwi management plans – may be formal and very specific or less formal and statements of policy
- Māori standing committees – a formal council committee with the same powers as other standing committees.

OPPORTUNITIES, CHALLENGES AND GOOD ENGAGEMENT

Given the range of different engagement approaches that have been developed over recent years we have developed a reasonable understanding of what tends to work well and what doesn't. The LGC's analysis of previous research highlighted a number of lessons, none of them really surprising. For example, the LGC notes the increasing pressure being placed on both tangata whenua and taurahere groups to provide input into local government processes, pressure which is most pronounced when it comes to resources, expertise and capacity. As the Commission noted; "the legislative framework has perhaps created the vehicles but there is no petrol to make the vehicle run" (LGC 2008 p. 20.)

The other major issue identified by the LGC concerned the problem of Māori organisations having to deal with a wide array of public organisations often asking

for the same thing, resulting in considerable and unnecessary duplication of effort.

The LGC suggested that council performance ranged along a continuum, with some councils focusing strictly on compliance, some taking an active interest towards understanding Māori aspirations and a few seeking to incorporate Māori values into their day to day processes. As noted above, a key issue for councils is determining who to consult with, about what and when. Should consultation be with tangata whenua or taurahere organisations, and if so which ones?

The answers to these questions will vary according to the nature of the local issues, the legislative framework that applies and the structure of iwi / hapū organisations within the district or region. Based on their analysis and research the LGC has suggested that councils should be more pro-active and assist iwi / Māori organisations to develop iwi management plans and strategic plans so that they can better interface with local authority processes. This would involve investment in capacity building, such as:

- funding or seconding a planner to work with the Māori organisation
- providing office space, equipment etc
- providing training and development opportunities
- assistance with printing and production
- financial support.

In addition to specific support for the preparation of plans the LGC has also recommended that councils continue to develop their own staff capacity to engage with Māori, create more opportunities for elected members and staff to engage and ensure that engagement occurs with tangata whenua on their own ground.

WHERE IS ENGAGEMENT HEADING?

In the last few years we have seen the development of a number of new approaches at ongoing engagement, such as the Māori Statutory Board in the Auckland Council, Greater Wellington's Te Upoko Taiao Committee, and the new co-governance models, such as that established to manage the Waikato river.

Auckland's Māori Statutory Board

The purpose of the Māori Statutory Board is to assist the Auckland Council to make decisions, perform its functions and exercise its powers. Members are appointed by an electoral college that has been established by the Auckland specific legislation and members are also represented on all council committees. The board has two over-arching roles:

- to put forward the cultural, economic, environmental, and social issues that are significant for mana whenua and Matawaka groups
- to ensure that the council complies with statutory provisions that refer to the Treaty of Waitangi.

In short the board is required to ensure that the council takes Māori views into account when making decisions. The board is required to develop a list of prioritised issues that are significant to Māori in Auckland which the board will consider when developing its work programme. One aspect which is quite distinctive is the way in which the legislation has made the board largely independent of the Auckland Council. The board and the council must meet at least four times each year to discuss the council's performance of its duties.

Te Upoko Taiao: the natural resources committee

The Upoko Taiao committee is responsible for preparing the Greater Wellington Regional Council's (GWRC) plans and policies as required by the RMA. It is made up of seven elected GWRC councillors and seven appointed members from the region's mana whenua organisations. GWRC has had a Charter of Understanding with the seven iwi in the region for some time (in fact it was the first council in New Zealand to negotiate a charter of understanding with iwi) and has an active relationship with those iwi, each being invited to nominate somebody with the appropriate skills for the new committee.

Although the Māori members have been nominated by the region's mana whenua, like the seven elected councillors, their role is to ensure that the new regional plan provides for the needs of the region as whole.

Waikato River Co-governance and Co management arrangements

These co-governance and co-management provisions were an outcome of the Waikato-Tainui Raupatu Settlement Act 2010 and subsequent agreements with Ngāti Tūwharetoa, Raukawa and Te Arawa.

The Waikato River settlement creates a co-governance and co-management framework for the river between the Crown and river iwi. The primary instruments of the framework are the Waikato River Authority and individual co-management agreements between river iwi and relevant local authorities. Co-management involves:

- individual joint management agreements between each river Iwi and their local authorities, including the regional council
- integrated management plans
- recognition of customary activities
- co-management agreements for managed lands and sites of significance.

This co-governance approach is summarised in the recent report, 'Local Authorities and Māori: Case Studies of Local Arrangements' (LGNZ 2011) and involves a vision and mission for the Waikato river which is focused on restoring and protecting the health and well-being of the river for future generations. This vision and strategy document is deemed to be part of the Waikato Regional Policy Statement (RPS.) In practice this means it must be inserted into the RPS and measures taken to ensure the council's policies and plans are not inconsistent with the document.

Local authorities are obliged to ensure RMA planning documents such as regional, coastal and district plans give effect to the vision and strategy document. The document prevails where there are any inconsistencies with national policy statements or New Zealand coastal policy statements. The Waikato River

Authority has been established as the co-governance entity. Its task is to set the primary direction and achieve the restoration and protection of the health and well-being of the Waikato River for present and future generations.

There are 10 members on the Authority: five Crown-appointed members and five from each river iwi. One Crown member is nominated by Environment Waikato with a second nominated by territorial authorities.

CONCLUSION

Despite the uncertainty that goes with political decision-making we do have a good understanding of some of the mechanisms employed to manage these relationships and also some information on how they are working in practice.

The recent DIA paper which examined four case studies (DIA 2009) interviewed participants in both councils and Māori organisations and highlighted features that were important for engagement to work and meet the expectations of both partners. Key ones involved council staff's understanding and appreciation for Māori issues and local histories; strong support for the relationship from the council leadership; engagement throughout all levels of the council and adequate resourcing to follow up the engagement process. Underpinning all these features was the need for relationships to be based on trust and mutual respect.

The legislative requirements that require councils to develop specific mechanisms for engaging with tangata whenua or Māori, and which sit on top of more "generic" requirements to consult and engage with citizens, place local authorities between a rock and a hard place. They are required to balance the views of their citizens (which will also include Māori citizens acting in accordance with their Article Three rights) with the views of mandated tangata whenua and Māori organisations while at the same time exercising governance for the good of the district or region as a whole. This poses a significant challenge for elected members and their advisers as it does for the Māori organisations with which they engage. Local government is ultimately a political environment and every three years the political "goalposts" are at risk of changing.

Ultimately, engagement involves a dialogue and to the degree that dialogue is conducted with good will by both parties then there is a reasonable chance of arriving at outcomes that will meet both the expectations of Māori and the needs of the community as a whole.

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