

Beyond Consultation: Getting Good Outcomes for Everyone in Cross-Cultural Resource Consent Practice

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Abstract

When the Resource Management Act (RMA) was introduced in 1991 it brought in new requirements for the consideration of Māori knowledge and values. Nearly 20 years on, consultation with Māori has become a normal part of the resource consent process, and many best practice guidelines are available on how to consult. Less attention has been paid to what a good outcome might look like and how this might be achieved. Our research seeks to identify what makes for good resource consent processes where Māori knowledge and values are given appropriate consideration and inclusion in the process and outcomes. We report here on the first four stages of a 3-year research process. Firstly, a review of formal national guidelines on consultation and incorporating Māori values in decision making. Secondly, analysis of Environment Court decisions and how the court deals with Māori witnesses and their knowledge. Thirdly, interviews with Māori and Pākehā (New Zealanders of European descent) involved in resource consent processes in a variety of roles. Finally, we discuss a case study of a “win-win” situation in which both the hapū (kinship group) and the developer of a significant coastal development are happy with the process and outcomes in a situation where significant cultural values were at stake.

Keywords

Māori knowledge and values, mātauranga, resource consent

Introduction

The 3-year research project, *Māori Knowledge and the RMA*, was funded by the Foundation for Research, Science and Technology and commenced in October 2008. This paper is an interim report at the halfway point of the project. It summarises some of the key points to come out of the research so far, and indicates the direction in which we think the research will go from here.

The project is led by the Cawthron Institute with a subcontract to the University of Otago. Team members are Marg O'Brien and Jim Sinner (project leaders, Cawthron), and Lisa Kanawa, Siu Montgomery and Janet Stephenson (CSAFE, University of Otago). We also draw from aligned research projects by University of Otago students Chris Hancock (MPlan) and Rachel Hogg (BA/LLB). We would also like to thank the many participants who have shared their time and knowledge with us.

The Aims of the Research

When the Resource Management Act (RMA) was introduced in 1991 it brought in new requirements for the consideration of Māori knowledge and values. Nearly 20 years on, consultation with Māori has become a normal part of the resource consent process, and many best practice guidelines are available on how to consult. Less attention has been paid to what a good outcome might look like, and how this might be achieved. Our research set out to discover what the current issues are for stakeholders in relation to the consideration of Māori knowledge and values in RMA processes, and to develop a user-friendly toolbox for iwi (tribes), local authorities, the Environmental Court and other end users that provides guidance on how consultation can be improved.

The first year of the research (2008–2009) looked at the experiences of iwi and hapū members involved in resource consent processes; the existing guidelines on Māori knowledge and values and how these are utilised; and how Māori concerns and values are being considered by the Environment Court. This resulted in three pieces of work—a problem statement, a Master’s thesis and a research report.

In the second year (2009–2010) we changed tack to look at examples where both parties to a resource consent—applicants and iwi/hapū—were happy with the process and outcomes. The intention here was to record examples of good practice, and to identify “what went right”. As far as possible we wanted to record participants’ own stories of how they went about the process and what worked for them and why. We are still part way through this stage and so far have recorded one case study—that of Ngāti Torehina and Mataka Station in the Bay of Islands (presented at the conference). Once we have completed further case studies, we hope to draw some conclusions about what constitutes good practice to achieve win–win situations: where the local council, applicants and Māori believe that a fair process has occurred, within which Māori knowledge and values have been respected and effectively integrated to provide an all-round, successful outcome.

In Year 3 (2010–2011) we will be drawing all of this work together and developing some suggestions on how to encourage good practice more widely. We will take our draft conclusions back to the various participants in our study to see if they support them and how they think our findings should be communicated. While initially we thought of a “guidance” publication, we realise increasingly that words on paper don’t necessarily have much effect. We will therefore think creatively (and are open to suggestions) about how best to make sure the findings are heard by the people who need to hear them. At the very least we would like the success stories of our participants to be an important part of the final product, using their words and examples.

Research Findings to Date: Year 1

What Sort of Guidance Is Already Out There and How Is It Used?

Hancock’s Master of Planning thesis (Hancock, 2009) set out first to assess the use of national guidance material relating to Māori participation in planning, including issues of concern to them, and to establish the effectiveness of the guidance in achieving its goals. He reviewed literature on participation and guidance, and carried out a content review of guidance material on this topic made publicly available by the Ministry for the Environment (MfE). Interviews were carried out with regional and district council planners, iwi resource management specialists and planning consultants in three case study areas, to ascertain the use of this guidance material in practice. Findings from the literature review, relevant guidelines—such as the MfE’s *Iwi Management Plan Guidelines*—and the case studies were used to determine the effectiveness of the guidance material.

Of the 19 guidance documents on Māori issues available from the MfE and Quality Planning websites, half were over 10 years old, and the most recent was dated 2006. The most common topics were consultation, participation and iwi–council accords. The majority were aimed at iwi–council relationships, with only five having some relevance to applicants for resource consents. Surprisingly, there was almost no use and very little awareness of the national guidance material by practitioners. Those who were aware of the material described it as not helpful, too general and out of date. There was no evidence of unwillingness by practitioners to incorporate Māori values and concerns into the process, but they said that this was informed by such things as locally produced guidance and training workshops rather than reference to national material. Local tools included protocols and memoranda of understanding (MOU) with iwi and hapū, cultural impact assessments, iwi management plans, checklists, GIS maps, in-house training, district and regional plans and the RMA itself. For many interviewees, however, the quality of relationships between councils and iwi/hapū, and the personal relationships they themselves had developed, were the key to guiding good process.

These findings were somewhat surprising as we had anticipated that formal guidance would be more consistently used. On the other hand, it was heartening to see the widespread appreciation of the

importance of relationships. But a good relationship does not necessarily mean a good process, and this is explored in the next two sections.

How Does the Environment Court Respond to Māori Knowledge and Concerns?

Hogg's research paper, *Mātauranga Māori in the Environment Court* (2009), explored the extent to which the Environment Court supports different forms of knowledge and legitimises knowledge holders. Given that the court proceedings set the tone for council-level hearings, it is particularly instructive to look at how Māori witnesses, and their knowledge and values, are treated during hearings and in formal decisions. Hogg's research analysed three environment court cases where Māori parties opposed the granting of resource consents involving freshwater: *Te Maru o Ngāti Rangiwewehi v. Bay of Plenty Regional Council*; *Mōkau Ki Runga Regional Management Committee v. Waikato Regional Council*; and *Walker v. Hawkes Bay Regional Council*. Quoting her findings:

In each of these cases, Māori had varying levels of success in having their concerns addressed or mitigated. These ranged from a clear acknowledgement of the desecration of Māori culture, and a reduced term of resource consent in *Rangiwewehi*, to the acceptance of a traditional fish passage in *Mōkau*, and conditions placed upon the spraying of Roundup in *Walker*.

I propose that the achievements of Māori in these cases, and particularly in *Rangiwewehi*, can be regarded in two contradictory ways. First, it can be argued that the mātauranga Māori discourse used by the claimants was an empowering process that enabled Māori to express their knowledge, and environmental worldview in the Court. Furthermore, the use of te reo, the acceptance of narrative evidence, and the agreement of the Court to mitigate some adverse effects of the resource consents can be regarded as a recognition of mātauranga Māori as an acceptable knowledge system through which to understand such environmental issues.

The second way, however suggests that the achievements of Māori in these cases masks the power relationships underpinning the legal process. I submit that this is the more plausible understanding of these cases. In *Rangiwewehi*, I argue that the frequent, yet vague references to the protection of Māori "culture" allowed the Court to avoid a deeper discussion into epistemological differences between Māori and Pākehā perspectives on the environment. While the Court in *Rangiwewehi* referred often to the need for "sensitivity" towards Māori culture, none of these cases discussed the nature of Pākehā culture and the values that underpin scientific evidence presented in resource consent cases. I propose that the concessions given to Māori by way of the natural fish passage in *Mōkau* and the conditions placed on the spraying of Roundup in *Walker*, are further evidence of the Court evading more fundamental questions of power and knowledge. (Hogg, 2009, p. 28)

Hogg also found that scientific evidence given by experts was regarded as being superior to mātauranga (Māori knowledge) evidence given by Māori witnesses. The experience and standing of Māori witnesses (for example, kaumātua (elders)) were largely ignored by the court except where this fitted with Pākehā hierarchies (for example, university dean, farm consultant). In her conclusion, Hogg argues for a more thorough discussion on the needs and philosophies that lie beneath different worldviews. She considers also that there are missed opportunities to discuss how a Māori perspective on an environmental issue can benefit all New Zealanders.

Hogg's research alerted us to pay attention to what goes on in the decision-making process (hearings plus formal decisions), rather than just looking at what happens in the lead up to this. At a superficial level justice may have been seen to be addressed, but at a deeper level there are cultural constraints being played out, of which even the participants may not be aware.

Is There a Problem?

We also needed to establish if those involved in resource consent processes thought there was a problem with incorporating Māori values and concerns. Accordingly, we carried out a series of face-to-face interviews with 16 people, including iwi resource management practitioners, council planning

and iwi liaison staff, an independent hearing commissioner, resource management lawyers and relevant MfE staff. The purpose was to build a picture of the issues and opportunities around incorporating Māori knowledge and values into the resource consent decision-making process. Key findings of these interviews were as follows:

We Don't Have the Capacity to Deal With This Issue Effectively

Māori resource managers were concerned they lacked the people and financial resources to keep up with the complexity and ongoing demand of the resource consent proceedings. A need to react in these circumstances undermines their ability to work more strategically on the holistic long-term development of iwi and hapū.

Māori were not alone in their concern about capacity. Key issues for council staff were that high staff turnover meant the institutional knowledge around issues of mātauranga Māori and the RMA was lost rather than developed.

There Are Enough Tools

Both Māori and European respondents felt there were enough resource management tools available to ensure that Māori knowledge and concerns are properly considered in the resource management process. These tools include joint management agreements, transfers of functions and powers, iwi management plans, submissions, sections 6, 7 and 8 of the RMA, and “affected party status”. Local Government Act provisions (specifically s81 and s40) are also relevant to consultation and decision making with Māori and Māori representation opportunities.

The sticking point is that the implementation and use of these tools leaves much to be desired. Some are little or rarely used, and others are not used in ways that are seen to be successful. Throughout the interviews, we found that the successful implementation of these current tools was seen as an opportunity to improve the interface between Māori knowledge and the RMA.

Implementing the Tools Is a Different Matter

Overall, six themes emerged regarding the implementation of the tools:

RMA tools are not effectively implemented to meet the needs of Māori.

There is a lack of capacity on both sides and the variable performance of both councils and iwi is attributable in part to limited resourcing.

There is not enough understanding about the process of consultation from either side; that is, neither the council/developer understanding of consultation of iwi and hapū nor the Māori understanding of the consultation process within the RMA process.

Decisions are made by decision makers without appropriate training or knowledge and experience in engagement with Māori.

Attitudes on both sides may be less than constructive.

The importance of appropriate engagement and participation, and the potential for rich relationships to develop as part of a partnership, is not appreciated.

At their core, these concerns reflect three key issues: limited *resourcing*, limited engagement in *relationships* and a level of *resistance* that may well build as a direct result of the limited resourcing and engagement in relationships. It will be important to bring all these matters to the fore in developing our “toolbox”.

Research Findings to Date: Year 2

At the end of Year 1, with the findings above, the team re-assessed the role and purpose of the project. We decided that seeing things always as a problem suggests blame and can blind us from seeing solutions. From our discussions with interviewees it appeared there had been some excellent outcomes

to resource consent processes, but the way we worded the research project mitigated against us hearing about these cases. So, we proposed a change, to look at successful experiences with resource consent processes—win–wins—where tangata whenua (people of the land) *and* the applicant are happy with the process and outcome. Would we learn more from this approach? We tested the proposal on the people we had interviewed above and found general support for the idea. So, the research team now shifted from problem identification to success identification. In particular we wanted to know: Was success dependent on good resourcing and relationships? If not, how were these earlier issues overcome? Also, how was resistance, if any, played out throughout the process? What were the ingredients that ultimately led to success? Our first case study (and the only one to date) was Ngāti Torehina/Mataka Station in the Bay of Islands.

Win–win cases for this project are defined as those that are successful from a Māori perspective first and foremost. We found that Ngāti Torehina have been keen for a long time to talk about their project and share the learnings with others. This research afforded them the opportunity.

Mataka Station is an 1160-hectare site on the Purerua Peninsula in the Bay of Islands. Originally a dry-stock farming unit, the station was later put on the market and the site purchased for subdivision development. The original resource consent for subdivision was granted in 2000, for 28 allotments ranging from 30 to 90 hectares. A variation to the resource consent was applied for in 2004; Ngāti Torehina became involved at this stage. They forwarded a submission on the Variation to the Far North District Council (the council) and so began their engagement with this project. The key kaumātua on this project were Hugh Rihari and Whakaaropai Rihari.

Interviews with Hugh Rihari were informative in gaining an insight to the challenges and opportunities presented as a result of this engagement. The biggest concerns for kaumātua were the historical, cultural and spiritual significance of the area and the need for the land’s integrity to be upheld. It was interesting to note that the spiritual significance of the land was of utmost value to the hapū, yet this had no standing in terms of legislative or regulatory support. The hapū has been bestowed the role of kaitiaki (guardian) through their ancestral connection to the area, and members felt they had an obligation and responsibility to be involved in the development of the site.

Hugh Rihari spoke about the need to be navigating “two worlds” as a result of being involved in the project: The need to take constant reference to the teachings of their ancestors and uphold the cultural practices established before their time, and the need to have an in-depth understanding of the Western or colonised world that created the legislative provisions within which they were forced to work. By this Hugh Rihari meant, and made reference to, the provisions of the Historic Places Act and the RMA. Hugh quoted all the relevant sections and explained how in some cases they were inappropriate; but, more importantly, he stressed the need to understand the Acts and be able to navigate one’s way through them.

Contrary to our previous interview experience, Hugh Rihari found the council was not helpful. The hapū were always involved in the reactive parts of the resource consent process and the council did not encourage proactive engagement. It provided them with very few helpful answers, and provisions were working against hapū; for example, consent conditions previously granted on original consent. However, Hugh Rihari said that in this case the hapū decided that the best avenue would be to establish a relationship with the owner and developer.

The relationship between Ngāti Torehina and the owner/developer was, in Hugh Rihari’s view, the key to the success of the project. From the outset both parties were open, honest and respectful of each other’s values and culture. As Hugh Rihari said: “We had to go back to grassroots, back to the start and get the understanding built between the parties. It was important to understand each other’s culture, and work through as partners” (H. Rihari, personal communication, May 5, 2010).

As a result the owners wanted the hapū involved in every part of the project, to help find solutions to both sides of the problem and talking and working together proactively rather than

reactively. They went a step further with this relationship and helped resource the hapū to put together a Cultural Management Plan for the entire site. A Cultural Management Plan is developed from the hapū perspective. It details the cultural and historical significance of the site but, more importantly, is a set of rules between the developer and hapū of how things are to happen on the site. For example, under such a plan, excavation activities on the site (such as levelling house sites, trenching for utilities) carry a protocol, due to the high occurrence of archaeological finds. The plan is provided to each allotment owner of the development and acts as a body corporate covenant over the allotment.

It is interesting to note that little weight was given to official archaeological assessments on the site due to their inaccuracy, and that both Hugh Rihari and the owner preferred the Cultural Management Plan approach as it provided a framework for archaeological finds and how to deal with them in a culturally appropriate way.

This approach differs from that of a Cultural Impact Assessment (CIA) which is a one-off recognition of values before a proposal is given consideration for resource consent approval. A CIA is therefore a snapshot in time for a particular area, and the council makes the decision for recognition. A cultural management plan, by contrast, is a living document of rules for considering Māori cultural values and knowledge for the life of a particular site, which is a lot more enduring.

Hugh Rihari states that the overall keys to success for this win-win case were the relationship between the hapū and the owner, and the cultural management plan. In essence, he believes the hapū would not be where they are today with this development had they not achieved either of the above.

Ways Forward From Here

Core issues that we will need to consider in the design of the toolbox include:

The relative importance of relationships, resourcing and resistance, and how these might be addressed.

The particular importance of relationships between *applicants* and tangata whenua—as compared to councils and tangata whenua, a relationship that seems to be relatively well developed.

The role of Cultural Management Plans, compared to cultural impact assessments.

The way hearing situations can give better recognition of the credibility of indigenous knowledge holders and their knowledge.

The different ways guidance could be communicated, other than the written word.

The next steps of the project involve further win-win case studies, the identification of tools to address the issues above, and work with the participants to further develop appropriate tools. The completion date of the project is mid-2011.

Glossary

hapū	kinship group
iwi	tribe
kaitiaki	guardian
kaumātua	elders
mātauranga	knowledge
Pākehā	New Zealanders of European descent
tangata whenua	people of the land
te reo	language, the Māori language

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