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**Joint Management Agreement between Taupō District Council and Ngāti
Tūwharetoa:
A summary of lessons for local government**

**A thesis presented in partial fulfilment of the requirements for the degree of
Master of Resource and Environmental Planning
at Massey University, Manawatu,
New Zealand**

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2011

ABSTRACT

The first Joint Management Agreement created under s36B of the Resource Management Act 1991 was signed on 17 January 2009. The parties involved were Taupō District Council and Ngāti Tūwharetoa. The JMA provides for publicly notified resource consents and plan changes applying to multiply owned Māori land to be decided upon by a panel of decision makers chosen equally by Council and Ngāti Tūwharetoa. It is the first example of an iwi authority having an equal share of decision-making power within statutory resource management decision making in New Zealand.

This research considers the Joint Management Agreement within the context of other agreements between councils and iwi authorities in New Zealand, and government and indigenous bodies internationally. In addition, the research comments on the progression of Māori involvement in the statutory resource management framework in New Zealand, with a particular focus on the implications of recent Te Tiriti o Waitangi settlements.

Findings of the research include that Ngāti Tūwharetoa's position and ability to enter into a Joint Management Agreement is in part the result of their dominant land owner status in the Taupō District, with these land holdings being relatively unchanged by colonialist land takes. The over-arching lesson of the agreement is that each council must look at its own specific situation with iwi in its district, and look at all tools available in order to improve those relationships. S36B of the RMA 1991 was a tool that had not been used before but proved to be an efficient and effective one in this case.

ACKNOWLEDGEMENTS

Firstly, I would like to thank my supervisors, April Bennett and Christine Cheyne, for their support and guidance throughout this project. The path to completion was not a straight one and I undoubtedly would have got lost along the way without their help.

My research participants were very generous with their time and comments. I know that they have a million things to do on any given day and I am very grateful for the time and consideration that they gave to this research.

Approval from the Massey University Human Ethics Committee: Southern B was obtained in November 2009 (09/45).

TABLE OF CONTENTS

ABSTRACT.....	ii
CHAPTER 1: INTRODUCTION.....	1
Introduction	1
Background	1
Justification	3
Methodology.....	4
Limitations	4
Research Objectives.....	4
Outline of Thesis	5
CHAPTER 2: BACKGROUND	8
Introduction	8
Te Tiriti o Waitangi – The Treaty of Waitangi.....	8
The Principles of Te Tiriti.....	11
History of Māori Resource Management	13
Planning legislation in New Zealand	21
The Resource Management Act 1991.....	22
Ngāti Tūwharetoa History.....	29
Taupō District Council.....	34
Conclusion.....	34
CHAPTER 3: LITERATURE REVIEW	36
Introduction	36
What Constitutes Co or Joint Management	36
International Examples of Agreements	38
New Zealand Examples of Agreements	44
Best Practice.....	55
Conclusion.....	57
CHAPTER 4: RESEARCH DESIGN	58
Introduction	58
Case Study Method.....	58
Data Collection.....	62
Limitations	63
Ethical Considerations.....	65
Conclusion.....	69
CHAPTER 5: RESULTS.....	71
Introduction	71

Document Analysis.....	71
Document Analysis Summary	86
Interviews.....	86
Conclusion.....	106
CHAPTER 6: DISCUSSION	108
Introduction	108
Elements that led to the JMA and the use of S36b	108
The Process	109
S36b Compared to other Methods	111
Characteristics specific to Taupō District Council	113
Relationships.....	115
Reviewing the context	115
Conclusion.....	118
CHAPTER 7: CONCLUSIONS.....	120
Introduction	120
Key Findings	120
Conclusion.....	122
REFERENCES	124

Tables

Table 1 Models of Joint Management Agreements in Australia.....	399
Table 2 Advantages and Disadvantages of Agreements in Australia	411
Table 3 Summary of Local Government New Zealand Case Studies Described in 2007 Report	45

Figures

Figure 1 Summary of Joint Management Agreement Process	79
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Appendices

Interview Schedules.....	Appendix 1
Approval from Massey University Human Ethics Committee: Southern B.....	Appendix 2
Introductory Letter.....	Appendix 3
Information Sheet.....	Appendix 4
Participant Consent Form.....	Appendix 5

CHAPTER 1: INTRODUCTION

Introduction

On 17 January 2009 Taupō District Council and Ngāti Tūwharetoa entered into a Joint Management Agreement (“the JMA”) that provides Ngāti Tūwharetoa with the ability to take an active role in how their lands can be developed¹. The JMA was the first to be created under s36B of the Resource Management Act 1991, and the first to provide a delegation of decision-making powers to Māori. The agreement is a landmark in Māori representation in statutory resource management, and the ability of the iwi to exercise tino rangatiratanga (chieftanship) over their lands. The JMA reflects the changing nature of iwi and local council relationships within New Zealand.

Background

Tino rangatiratanga (chieftanship) over Māori lands was promised to Māori in Te Tiriti o Waitangi (Te Tiriti), signed in 1840. However, since the signing of Te Tiriti o Waitangi, Māori have been excluded from the resource management framework and therefore have been without powers to exercise tino rangatiratanga (Matunga, 2000).

When the Resource Management Act (RMA) was passed in 1991 it included many potential improvements to the ability of Māori to participate within the statutory resource management framework, including a specific reference to Te Tiriti principles (s8), a requirement to consult with iwi prior to the preparation of policy and plans, and a provision (s33) which allowed for the transfer of powers from a local

¹ On notified resource consents or plan changes that apply to multiply owned Māori land.

authority to a public authority, such as an iwi authority. However, s33 has never been utilised by a local authority and in practice many other sections of the Act have failed to result in any substantive changes to the role of Māori within statutory resource management. Because of this, Matunga states that the RMA 1991 has been “deprived of its dimension of action” with respect to Māori rights (2000, p. 44).

In the 2005 amendments to the RMA 1991, a provision (s36B) was inserted which allowed for Joint Management Agreements (JMAs) to be created between local authorities and public and iwi authorities². The agreement between Taupō District Council and Ngāti Tūwharetoa was the first JMA to be created under s36B. As such, it is an important landmark in Māori participation in statutory resource management. There is little published material in New Zealand surrounding the use of JMAs and a large gap in terms of the use of s36B. The Taupō District Council and Ngāti Tūwharetoa JMA therefore presented an opportunity for a qualitative study from a local

² Joint Management Agreement is defined in Section 2 of the Resource Management Act 1991 as an agreement that—

- (a) is made by a local authority with 1 or more—
 - (i) public authorities, as defined in paragraph (b) of the definition of public authority;
 - (ii) iwi authorities or groups that represent hapu; and
- (b) provides for the parties to the joint management agreement jointly to perform or exercise any of the local authority's functions, powers, or duties under this Act relating to a natural or physical resource; and
- (c) specifies the functions, powers, or duties; and
- (d) specifies the natural or physical resource; and
- (e) specifies whether the natural or physical resource is in the whole of the region or district or part of the region or district; and
- (f) may require the parties to the joint management agreement to perform or exercise a specified function, power, or duty together; and
- (g) if paragraph (f) applies, specifies how the parties to the joint management agreement are to make decisions; and
- (h) may specify any other terms or conditions relevant to the performance or exercise of the functions, powers, or duties, including but not limited to terms or conditions for liability and funding

government perspective. Additional outcomes sought included identification of the elements that led to the decision to utilise s36B for this agreement, and the methods that were used with respect to best practice promoted in local government policy.

The research provides the opportunity to explore the aspects of this specific situation that led to the use of s36B which may help other local authorities to also form JMAs within the statutory framework of the RMA. The research is carried out within the context of international and national examples of JMAs, as well as providing a background to the specific nature and progression of Māori land holdings and statutory resource management. The presentation of the findings in this way highlights the importance of the agreement.

Justification

The JMA was signed on 21 January 2009. It is the first transfer of power from a local authority to be undertaken through the RMA 1991 and the first use of s36B which allows for the creation of Joint Management Agreements under this same legislation. The agreement represents an important landmark in Māori participation in resource management and the continued pursuit by Māori of tino rangatiratanga.

By understanding the reasons behind the agreement and the process followed to create the document, it is hoped that this may help other local authorities to form agreements under s36B, as opposed to outside the statutory resource management framework. The research also has the potential to serve as an evaluation at the beginning of the implementation of the agreement, which can be reviewed at a later date.

Within a wider context, the research offers an opportunity to review and discuss

the current environment of Treaty settlements, in which the return of lands and settlement Acts are triggering agreements and/or requirements to create JMAs within Aotearoa/New Zealand. Overall it is hoped that the research will contribute to knowledge about the progression of Māori participation in statutory resource management, and what factors may influence the ability of local authorities and iwi to enter into similar power sharing agreements.

Methodology

The research is a qualitative study of a particular event, and the research used qualitative data of both primary and secondary nature. Primary data was obtained through semi-structured interviews with participants. Secondary information was collected by reviewing media, council and iwi documents.

Limitations

One key limitation to the research is that it is from a local government perspective, and does not give the perspective of Ngāti Tūwharetoa. Originally, it was hoped to undertake this research with a focus on Ngāti Tūwharetoa and the extent to which the JMA achieved the principles of Te Tiriti, and tino rangatiratanga in particular. This topic would have involved a cross-cultural research element as I am not Māori. However, it was not possible to progress with this approach with the agreement of Ngāti Tūwharetoa, and so a new perspective was required to be taken so that the research could be completed. This is the reason why this research looks at the agreement from a local government perspective, as opposed to an iwi perspective.

Research Objectives

The aim of this research is to investigate the elements which led to the creation

of the JMA between Taupō District Council and Ngāti Tūwharetoa under s36B of the RMA 1991, and to summarise the lessons of the JMA process.

The primary research question for this project is therefore:

What were the elements that led to the creation of the JMA by Taupō District Council and Ngāti Tūwharetoa under s36B of the RMA, and what lessons can be learnt from the process that was used to create the JMA?

Additional research questions which I hope to answer are:

Were there any specific factors about Taupō District Council (structure, leaders, resources etc.) that facilitated in the creation of the JMA?

What (if any) restricting factors were there that challenged the process of creating the JMA?

What is the historical relationship between Taupō District Council and Ngāti Tūwharetoa, did this influence the decision to create the JMA, and has this relationship changed since the creation of the JMA?

Has/How has the JMA changed resource management practices and decisions in Taupō District Council?

How does the agreement fit within the current New Zealand context of Treaty of Waitangi settlements?

Outline of Thesis

The thesis is divided into seven chapters. Chapter 2 explains the background to

the research topic so that its importance in the realm of Māori statutory resource management may be understood. The chapter begins with a summary of Te Tiriti, how the document has been interpreted over time and the meaning of the phrase ‘principles of Te Tiriti o Waitangi’. It goes on to detail the meaning of Māori resource management within the wider context of the Māori world-view and tikanga Māori in order to understand the complex yet flexible mechanisms for land management Māori operated under prior to colonisation. A summary of the decline in Māori land ownership and the mechanisms that were used to take Māori land is then provided, followed by an explanation of how Māori have endeavoured to hold on to rangatiratanga over their (dwindling) lands throughout history. The chapter moves on to detail the progression of the statutory resource management framework of New Zealand and how this has and has not reflected Māori views and rights, culminating with the creation of the Resource Management Act (RMA) 1991 and subsequent amendments. This includes the Resource Management Amendment Act 2005 which resulted in the insertion of s36B. Finally, the chapter provides a brief summary of the histories of both Taupō District Council and Ngāti Tūwharetoa.

Chapter 3 outlines both the international and New Zealand context for the creation of Joint Management Agreements (otherwise known as co-management agreements). Examples of international agreements are provided and their similarities with New Zealand are pointed out where relevant. For example, the agreements established in Australia with the aboriginal people in relation to recognition and return of their ancestral lands have some similarities, as well as key differences, with New Zealand examples, including the Bastion Point Whenua Rangatira (reserve). The literature review shows that an increasingly common mechanism for the creation of JMAs within the New Zealand context is through Treaty of Waitangi settlements of

land and water resource claims as redress for historical injustices by the Crown.

Chapter 4 describes the research design and methods, and ethical issues relating to the research. In particular, the ethical considerations surrounding the undertaking of research on work by the researcher's employer are outlined and discussed.

Chapter 5 presents the data obtained in both the semi-structured interviews and document analysis. The data is summarised with respect to the information outlined in the Background and Literature review and, where possible, key themes and responses are identified.

Chapter 6 analyses the results described in Chapter 5 against the research questions outlined earlier in this chapter, and will also provide discussion on how the research may have been improved or avenues for further research opportunities.

Chapter 7 provides statements of findings in terms of the key lessons for local government from this case study.

CHAPTER 2: BACKGROUND

Introduction

This chapter summarises the background to the JMA between Ngāti Tūwharetoa and Taupō District Council. A description of Te Tiriti and its principles gives an understanding of the Māori/Pākehā relationship in New Zealand. Following on from this, an explanation of the resource management statutory framework (present and past) is provided with regard to implications for Māori, their lands and taonga. Finally, brief histories of both Ngāti Tūwharetoa and Taupō District Council are provided.

Te Tiriti o Waitangi – The Treaty of Waitangi

Signing of Te Tiriti

Te Tiriti o Waitangi is the founding document of New Zealand (Te Puni Kōkiri, 2001, p. 14). Signed in 1840, Māori ceded the power to govern in New Zealand to the British Crown, and in exchange, the Crown promised to protect their chiefly authority, including their rights to their lands and other possessions. Te Tiriti consists of three articles which outlined the agreement between the British Crown and Māori. The document was created in both English and Māori texts, with the majority of Rangatira (chiefs) signing the Māori text (Waitangi Tribunal, 2011).

Fleras and Elliot (1992, p. 179) explain that Te Tiriti was a relatively enlightened social contract for its time, giving Māori British citizenship and rights to their resources, in exchange for British sovereignty over New Zealand. They state that the significance of Te Tiriti for Māori:

...cannot be underestimated. It symbolises and legitimises the status of Māoris (sic) as partners in and constitutional contributors to the reconstruction of a post-

colonialist society. (Fleras and Elliot, 1992, p. 179)

While Te Tiriti is not a constitution as such, Keith argues that Te Tiriti “...marked the beginning of constitutional government in New Zealand” (1992, p. 28). It is an integral part of New Zealand’s constitutional arrangements and is the key source of the government’s moral and political claim to legitimacy in governing New Zealand (Te Puni Kōkiri, 2001, p. 14).

There was, however, a “crucial tension” (Gibbs, 2005, p. 1368) between the grant of sovereignty to the Crown in Article 1 (English text) and the retention of tino rangatiratanga by the Māori chiefs in Article 2 (Māori text). Gibbs (2005) explains that this tension is at the heart of issues regarding the rights of Māori to natural resources and the settling of historical land grievances.

What Treaty?

After signing Te Tiriti, the spirit and accommodation that had characterised early Māori-Pākehā relations disappeared, with the colonising Pākehā refusing to accept any other role than a controlling one (Fleras and Elliot, 1992). Te Tiriti was regarded legally as “a simple nullity” (*Wi Parata v The Bishop of Wellington*) and the settlement of New Zealand proceeded under the assumption of absolute Crown sovereignty (Gibbs, 2005, p. 1368).

Matunga states that:

...the Treaty is also a ‘charter of affirmation’ of pre-existing planning rights. Significantly, it did not confer environmental management and planning rights on iwi, but affirmed such rights already existing and would be protected. In doing so it affirmed the actual existence of a Maori environmental planning paradigm with its

own beliefs, values, techniques, institutions of authority. The right, therefore, of Maori to plan, rather than be 'planned' for is firmly grounded in the Treaty and its affirming intentions. (Matunga, 2000, pp. 38 – 39)

However, in the period following the signing there was a rejection of this affirmation. The alienation of Māori occurred not only in the physical sense from the land itself (confiscation and selling both of which are discussed in more detail later on in this chapter), but also in the right to plan, manage and develop remaining resources. Therefore, in the opinion of Matunga:

The current state of Maori underdevelopment needs therefore to be seen historically. Returning resources alone is not enough. Restoration of planning authority and development rights is also required. (2000, pp.39-40)

Matunga (2000) argues that Te Tiriti provided a basis for the evolution of a dual environmental planning tradition. One side would be based in Māori traditions, philosophies, principles and practices, while the other would comprise the imported and evolving traditions of an introduced 'western' planning tradition. However, Matunga (2000) explains that as it currently stands the mainstream environmental management system holds on to its colonial roots and continues to exclude Māori.

Walker (2005, p. 56) states that the first step that the government took towards acknowledging Te Tiriti was the centennial celebrations in 1940, which involved the building of memorial halls and meeting houses. Twenty years later, the first legislative move to recognise Te Tiriti was made with The Waitangi Day Act 1960, which declared 6 February as a national day of thanks-giving. However, Walker goes on to argue that:

The top-down unilateral development of the commemoration of the Treaty of

Waitangi by the government was predicated on a sanitised view of New Zealand's colonial history. The government was unaware of the depth of the transgressions by its nineteenth century forebears against the Crown's guarantees in the Treaty that it was now wont to celebrate. The government was also unaware that many of its existing policies continued to transgress the Treaty. For the Māori, there was little to celebrate in the destruction of their language, culture, identity, and economic power by the alienation of ninety-five per cent of their land in a matter of 120 years...While the government acknowledged the Treaty as the foundation of nationhood, it did so in a prevailing social climate of historical amnesia. (2005, pp. 56-57)

Fleras and Elliott observe that Te Tiriti has evolved from the peripheral position of a 'legal nullity' (1877 ruling) to a social contract (1992, p. 179). This contract calls on Māori and Pākehā to conduct themselves 'reasonably' and in 'good faith' for the fulfilment of mutual obligations (Kawharu, 1989). Durie proposes that Te Tiriti provides a mechanism for the Crown and Māori to reach agreement on how tino rangatiratanga can be implemented, with each party's roles outlined in Te Tiriti (2005, p. 16). Durie goes on to say that the fact that agreements about Te Tiriti have been about the resolution of past disagreements should not overshadow the premise on which Te Tiriti was signed, namely, to guide the future development of New Zealand as a modern state (2005, p. 16).

The Principles of Te Tiriti

The phrase "the principles of the Treaty of Waitangi" was first introduced into New Zealand legislation in 1975 by the passage of the Treaty of Waitangi Act (Crengle, 1993, p. 8). The use of the principles reflects that the English and Māori texts of Te Tiriti are not translations of one another and do not convey the same meaning. The

reference to 'principles' was designed to overcome these differences.

The use of 'principles' is understood to recognise that the strict wording of Te Tiriti assumes an equality and fairness which does not exist. As explained by Judge Heron in The Lands Case (1987):

...it is an unspoken premise when one speaks of principles of the Treaty of Waitangi that land and estates, forests, fisheries and other properties transferred or taken at some earlier time often shrouded in history were transferred or taken allegedly contrary to the principles of the Treaty. So, when one is speaking of the principles one is not just referring to the letter of the Treaty but to the events that have occurred since it was signed. (New Zealand Māori Council v Attorney-General, 1987, p. 646)

The Waitangi Tribunal is another source for decision-makers on the principles of Te Tiriti. The Waitangi Tribunal was established by the Treaty of Waitangi Act 1975. The Crown determines the Tribunal's jurisdiction (Crengle, 1993). The Treaty of Waitangi Act's purpose was:

... to provide for the observance, and confirmation, of the principles of the Treaty of Waitangi by establishing a Tribunal to make recommendations on claims relating to the practical application of the Treaty and to determine whether certain matters are inconsistent with the principles of the Treaty. (Treaty of Waitangi Act 1975, Title)

The Court of Appeal and the Waitangi Tribunal have both said that at the heart of the Treaty is a partnership between the Crown and Māori. The principle of partnership carries with it an obligation on the Crown or its delegate to act with the utmost good faith. The related obligation on the Crown to actively protect the Māori

interest is also relevant in this regard (Williams, 1993).

The approach taken by the Court of Appeal and the Waitangi Tribunal to-date reflects the intentions of Parliament when enacting the principles. Under this approach, the principles are applied to situations without any narrow interpretations on any of the matters referred to in the Treaty such as "lands, forests, estates and fisheries" of the English text and "whenua, kainga and taonga" of the Māori text. Similarly, the Court of Appeal and the Tribunal take a broad view of the rights conferred by the Treaty such as "sovereignty", "full, undisturbed and exclusive possession", "kawanatanga" and "rangatiratanga" (Crengle, 1993; Sullivan, 2005).

History of Māori Resource Management

Māori Resource Management

Māori relationships with the environment stem from a traditional Māori world-view. Durie explains that:

Māori views of the world are based on the proposition that the environment is an interacting network of related elements, each having a relationship to the others and to earlier common origins. The personification of the earth and the parents Rangi and Papa underlines that point. (1998, p. 21)

The governance of natural resources sits within the wider scope of tikanga which Durie (1994, in Erueti, 2004, p. 41) describes as the norms that maintained law and order prior to colonisation (parts of which are referred to as customary law within post-colonial society). This system encompassed Māori customary society in all matters including spirituality, religion and morality (Erueti, 2004, p. 41).

Pre-colonial Māori society was dependent on local natural resources for survival,

with rangatiratanga depicting the right to control all aspects of resources within a certain area (Stephenson, 2002, p. 172). The allocation of resource use rights to hapū, whanau and individuals was established, with use rights controlled for the interests of the group as a whole (Stephenson, 2002, p. 172). As rights could be activated in either a community of birth or a community higher up in a person's family history, in order to qualify for the ability to make use of resources, individuals were required to accept the community's authority and traditions, and to make regular contributions to the community. This is known as the principle of ahikā which means 'keeping the home fires burning' (Erueti, 2004, p. 47). Once established, use rights could be kept alive by their continued use. However, absence from a community after a substantial (but undefined) amount of time did result in a loss of membership (Erueti, 2004, p. 48).

The ability to transfer rights to other individuals or groups meant that certain areas, while under the control of a certain hapū or group could still be traversed or used by another hapū or individuals. In addition, competing claims of rights to land or resources were subject to general contestation or challenge, and resolved through a variety of customary mechanisms including war or public resolution (Erueti, 2004, p. 55). As such the mechanisms for resource and land use were established and complex, but overall flexible.

In the present day, where Māori have been separated from their ancestral lands in terms of ownership (in both the Māori and western sense of the word) and physical distance, Māori resource management is not without its conflicts. For example, Mataamua and Temara (2010, p. 105) outline the current situation of Tuhoe iwi and Te Urewera National Park. The Park has been under the ownership and management of the Department of Conservation since 1954. The Park is subject to a number of Waitangi Tribunal claims by Tuhoe, who wish to have ownership returned to them

(Office of Treaty Settlements, 2011). However, problems within the park are present which Tuhoë say did not exist when it was taken to be put under DOC management - for example, introduced pests such as opossum damage the health of the forest. Yet local Tuhoë living in nearby settlements utilise these same pests for their main source of income, and combined with the introduced pigs and deer who also live in the forest, are perhaps the main reason for the iwi still visiting the forest (where others have moved away or do not participate in these activities) (Mataamua and Temara, 2010, p. 105).

As such, while the fundamentals of kaitiakitanga are retained by Māori, the methods by which they enact these have had to be adjusted to the present day. This is also the case for Ngāti Tūwharetoa who have had to enter into the statutory resource management framework in order to ensure their values are reflected in the decisions made over the use of their land.

Māori Land

The term 'Māori land' refers to land that has never been alienated from Māori ownership and accordingly has cultural and spiritual importance as a source of tribal identity (Royal Commission on the Māori Land Courts, 1980; Stephenson, 2002, p. 105). Generally, Māori land has multiple owners who are linked to the land genealogically (Royal Commission on the Māori Land Courts, 1980). Owners may hold shares, a specific block of land or a number of blocks depending on tribal affiliations. Unlike general land, Māori land is under the jurisdiction of the Māori Land Court (MLC) and is controlled through Te Ture Whenua Māori (the Māori Land) Act 1993 (TTWMA).

In 1840 nearly 30 million hectares of New Zealand was Māori land. This fell by almost half to just over 15 million hectares by 1852, and in 1996 only 1.5 million

hectares of land remained in Māori ownership (Durie, 1998, p. 119). By the beginning of this century only 6.1% of New Zealand's land area was Māori land (Stephenson, 2002, p. 105). The degree of ownership varies throughout the country; in the South Island only 0.47% of land is Māori land, whereas 15.3% of land in the North Island is Māori land (Stephenson, 2002, p. 105).

Durie (1998, p. 117) explains that the alienation of land from Māori was sanctioned in laws passed by the settler government with the use of three mechanisms: confiscation, Crown land purchases, and Māori Land Court decisions. War and the law were used to vacate Māori of their land in the North Island, and in the less populated South Island Crown purchases achieved a similar effect (Durie, 1998, p. 116). Because only the best land was being taken in these ways, Māori land holdings diminished in accessible areas and Māori were left with the current situation of being the owners of poorer quality land in more isolated areas (Stephenson, 2002, p. 172-173). Consequently, a significant portion of land is undeveloped or has reverted to bush and this, in turn has led to almost 50% of all privately owned indigenous vegetation being located on Māori land presently (Stephenson, 2002, p. 105).

In addition to being alienated from Māori ownership, land which remained in Māori ownership but was converted from customary title to free-hold (firstly through the Native Land Act 1862) saw ownership vested in individuals, often with equal shares to anyone the Courts could identify at the time (for example those who were present on the land) (Erueti, 2004, p. 55; Durie, 1998, p. 122). Once ownership was established, shareholdings descended with equal shares to descendants unless specified otherwise in a will. These principles ignored the basic and established elements of Māori resource management (the right to the use of resources) explained earlier in this chapter, and the impact of the shareholding rule in particular has left much land in the

ownership of an indeterminate number of small, unworkable interests (Erueti, 2004, p. 55; Stephenson, 2002, p. 172). The combined actions of the physical taking of land through sale and raupatu, and the removal of the traditional mechanisms of Māori resource management of their lands has led to a situation where, with what little land Māori have, there is no dual framework in which they have rangatiratanga over that land.

As noted earlier, since the establishment of the Waitangi Tribunal in 1975 iwi and hapū have been able to make claims on land that the Crown has taken unfairly. The Tribunal assesses the claim against the requirements of the Treaty of Waitangi Act (1975) and once any other relevant claims have been made, investigates the claim to see if the Crown has breached the principles of Te Tiriti by particular actions, inactions, laws, or policies (Waitangi Tribunal, 2011). The Tribunal presents its findings in reports culminating in a recommendation of whether redress is required. The Crown then has an opportunity to consider the report and may or may not decide to accept the Tribunal's recommendations (Waitangi Tribunal, 2011).

If a recommendation for redress is made by the Tribunal and accepted by the Crown, then the following process is managed by the Office of Treaty Settlements (OTS). The OTS acts as a separate entity within the Department of Justice that reports to and advises the Minister in Charge of Treaty Settlement Negotiations with respect to claims (Boast, 2004, p. 15). Boast (2004, p.15) explains that there is no statute which underpins this aspect of the claim negotiation; however, settlements are invariably settled by statute. Recent settlements include the Waikato River, Taranaki Whanui ki Te Upoko o Te Ika, and Te Arawa (Lakes) (Office of Treaty Settlements, 2011). In some cases, settlements have led to co-management agreements, with a selection of these instances discussed in Chapter 3.

Tino Rangatiratanga

As outlined above, tino rangatiratanga was promised to Māori in Te Tiriti o Waitangi. However, debate remains about what this phrase means and how Māori can achieve it in the present day. Tino rangatiratanga has been discussed by the Waitangi Tribunal in the *Orakei Report* (1987). The report concluded that tino rangatiratanga equated with full authority and that to Māori it conveyed a meaning similar to mana (section 10.1). Durie also explains that Māori debate whether tino rangatiratanga is relative only to tribes in respect of their properties and human resources, or whether it is about Māori people generally being able to assert control and management over their resources, future development and their own policies (2005, p. 4). The term has also been linked to general well-being and control over all policies and resources, regardless of whether speaking about resources or people (Durie, 2005, pg.5). Durie goes on to argue that:

...self-determination as an equivalent of tino rangatiratanga captures a sense of Māori ownership and active control over the future and is less dependent on the narrow constructs of colonial assumptions. (2005, p. 5)

Kawharu (2005, p. 105) states that in addition to the literal translation of chieftanship, tino rangatiratanga means trusteeship, customary authority and wise administration. In addition, Kawharu explains that rangatiratanga is also about reciprocity (2005, p. 100). As outlined by the New Zealand Māori Council:

In its essence it is the working out of a moral contract between a leader, his people, and his god. It is a dynamic not static concept, emphasizing the reciprocity between the human, material, and non-material worlds. In pragmatic terms, it means the wise administration of all the assets possessed by a group for that group's benefit: in a word, trusteeship. (1983, p. 5)

With respect to the provision for tino rangatiratanga in Te Tiriti, Stephenson (2002, p. 170) states that that Te Tiriti provided that Māori would retain tino rangatiratanga over their lands and other resources, albeit within an overarching Crown sovereignty. This guarantee was not only about possession itself, but also authority to control their 'possessions' within a Māori socio-legal framework (Manukau Report, 1985). Te Tiriti conveyed an intention that Māori would retain power over their lands, homes and anything important to them (Orakei Report, 1987). In addition, Te Tiriti also included elements of management, control and self-regulation of their resources (Whanganui River Report, 1999). While Tribunal settlements may go some way towards redressing past grievances with the return of possession itself, the matters of management, control and power of these possessions remains lacking in many cases. Durie (2005, p. 16) explains that the realisation of tino rangatiratanga can be measured in two ways – one is the level of authority which is gained by the establishment of tino rangatiratanga, while the second is Māori social economic or cultural advancement.

Previous attempts at trying to achieve tino rangatiratanga

The pursuit of Māori to achieve their right to tino rangatiratanga over their lands is documented throughout New Zealand's history. Marsden and Henare (1992) note the example of Hone Heke who cut down the flagstaff which stood overlooking the Pewhairangi Harbour in the Bay of Islands in 1844. Governor Fitzroy had imposed excise duties and customs upon Pewhairangi Harbour and as chief of the area, Heke demanded that Fitzroy remove them. Fitzroy refused and, as a sign that he was not willing to accept dominance over him or his people, Heke cut down the flag staff flying the British flag a total of four times before proceeding to overthrow the garrison.

Heke acted on the understanding that the Crown had a centralised authority,

but as Rangatira for the area, he had local authority (as guaranteed under Article Two of Te Tiriti o Waitangi) to control the access of other people and his own tribal members to the resources within his area (Marsden and Henare, 1992).

The continued resistance to the taking of Māori lands, which started as early as 1841 with the Land Claims Ordinance 1841,³ shown by the Land Wars of the 1860s, the non-violent resistance movements in Taranaki in the 1870s and the attempts to antagonise the surveying of confiscated land in the 1880s illustrates the unrelenting desire of Māori to retain tino rangatiratanga over their lands. The King Movement, which began in 1858 and is still going, and the Māori parliament (Te Kotahitanga) in 1892 are also signs of this (Matunga, 2000)

In the statutory realm of resource management, these attempts are also substantiated through the countless appeals, demonstrations and attempts to play a meaningful role in the decision-making process over the development and treatment of land. As will be discussed, there is a conflict between the rights of Māori as defined in the Treaty (which specifies an agreement between the Crown and Māori people) and the devolutionary approach taken to environmental management, as dictated by the RMA 1991. This research documents an example of an iwi who have achieved some progress in terms of the recognition of the need for tino rangatiratanga over their lands.

³ This Act deemed that all 'unappropriated' or 'waste land' other than that required for the "rightful and necessary occupation of the aboriginal inhabitants" was Crown land.

Planning legislation in New Zealand

Matunga proposes that since the signing of Te Tiriti, Māori have been excluded from statutory resource management and therefore without powers to exercise tino rangatiratanga (2000). Prior to the RMA 1991, resource management in New Zealand was practised legally under the Town and Country Planning Act (TCPA) 1977 and its predecessors. The TCPA 1926 had no reference at all to Māori people or rangatiratanga and was in force for over 25 years. The TCPA 1953 was reviewed with no change to the lack of recognition of Māori. Matunga (2000, p. 40) describes this as a “consolidation of exclusion” and explains that at this time Māori planning was considered to be outside the mainstream planning process. Twenty-four years later the TCPA was reviewed again. This time the review coincided with Māori protests over land, resources and planning (Matunga, 2000) and, as a result of this, the TCPA 1977 acknowledged the unique relationship between Māori and their environment with Section 3(l)(g) recognising “The relationship of the Māori people and their culture and traditions with their ancestral land” as a matter of national importance.

According to Rikys:

It was not until the first statutory recognition of Maori values in the planning legislation, as a result of a reform of the same planning laws which came into effects as the Town and Country Planning Act 1977 [Section 3(l)(g)], that local government was forced into some recognition of the underlying Maori reality. Even that small concession had to be battled past New Zealand Local Government Associated gatekeepers during the reform process, by the New Zealand Maori Council. It is not surprising therefore that what recognition there was – was at best begrudging recognition. (Rikys, 2004, pp. 18-19)

Progress was made during a landmark case during this time which was the Royal Forest & Bird Protection Society v Habgood Ltd (M65/86 High Court). The High Court overruled the Planning Tribunal's view that ancestral land had to be in Māori ownership to qualify for recognition under s3(l)(g) of the TCPA 1977.

Section 6(3) of the TCPA 1977 also saw the first attempt of inclusion of Māori at a local government level. This was through a provision which enabled a Māori representative to sit on the Planning Committee of the Auckland Regional Authority. However, the position was advisory and non-voting, and further amendments were made in 1988 to allow for two representatives. Rikys reports that this was due to both Ngāti Whatua and Tainui wishing to be recognised as mana whenua in Auckland (Rikys, 2004, p.19).

At the same time, the Manukau Claim (1985) to the Waitangi Tribunal showed that the government was willing to allow degradation of the environment. Matunga (2000) explains that the Tribunal's report highlights the degree of exclusion endured by the traditional owners of the Manukau and also notes how the tribes had maintained kaitiaki responsibilities over the harbour during this time of exclusion. The Manukau Claim report recommended that a new approach to managing the harbour be investigated, including a role for Māori trustees, to restore the health of the harbour (Manukau Report, 1985, p. 150 – 151). Matunga (2000) states this report, released in 1985, was one of the catalysts for the upcoming environmental law reform.

The Resource Management Act 1991

The RMA culminated from a lengthy process of resource management law reform that began in 1986 (Perkins & Thorne, 2001, p. 641). Rikys holds that Māori

tried to be very involved in the reforms; however, goes on to say that the Māori Consultative Group (MCG) constructed by the government to consult Māori on key issues was under-resourced (2004, p. 47). A report prepared in March 1989 by the MCG showed:

...that Maori sought a mix or range of mechanisms which they wanted to come out in the reforms that were Treaty based and that would provide for effective Rangatiratanga. There was also almost universal Maori support for a strongly worded Treaty compliance provision in the Local Government Act. These stances were totally consistent with the independently articulated position taken by the New Zealand Maori Council, the statutory voice of the Maori people, in its submission on the reforms. (Rikys, 2004, p. 48)

While these provisions were not included in the final RMA 1991, a number of provisions were included which set the RMA 1991 apart from the TCPA 1987. These were:

- A requirement to take account of the principles of the Treaty of Waitangi (s.8)⁴;
- A requirement to recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga (s.6(e));
- A requirement to have particular regard to kaitiakitanga (s.7a);

⁴ See Durie, 1998, pp. 28-29 for a discussion on the wording of s8 – the use of ‘principles’ rather than ‘provisions’ and the decision to vary the stronger wording contained in the State-Owned Enterprises Act 1986 “Nothing in this Act shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi.”

- A requirement to consult with iwi authorities in the preparation of plans and policies; and
- The ability for local authorities to transfer powers to a public or iwi authority (s33).
(Crengle, 1993, p. 8; Durie, 1998, pp. 28-32; Majurey and Whata, 2005, p. 827)

The RMA was created at a time when neoliberal thought was influential. Among other things neoliberals favoured the delegation of responsibilities from the Crown to local authorities. Barns argues that the delegation of duties from Crown to local authorities was viewed as contrary to the Crown-iwi relationship established through Te Tiriti (1988, p. 310). In addition, the Waitangi Tribunal also insists that that the Crown cannot avoid its Treaty obligations by transferring its functions to another (Manukau Report, 1985).

Other points of difference in the RMA included that local councils were now required to seek the views of iwi authorities prior to the preparation of policy statements and plans (Clause 2(2), Clause 3(1)(d) and Clause 20(4)(f) of the First Schedule). No other group is required to be consulted with in this way. However, once the policy process is in motion (publicly notified), the rights recognised to be held by Māori are then potentially deferred to others, as the RMA requires that the interests of all community groups/persons be considered (MfE, 2000, p. 7).

The recommendations of the Tribunal's Radio Frequency Report (1990) related to the distribution of radio frequencies to iwi on the basis that radio frequencies were not a resource which the Crown had unimpeded rights to distribute commercially. However, what the report does show is that there is a recognition within the legal framework of New Zealand that Māori rights to resources sit below the Crown's obligations to conserve and manage these resources. As such, in order for tikanga

Māori to be incorporated within the decision making process in relation to the management of resources, all the provisions of the RMA 1991 must be utilised (including Sections 36 and s33), rather than just the basic statutory framework outlined in Sections 5 – 8.

Section 33 – Devolution of Powers

One of the most important provisions of the RMA 1991 for Māori was Section 33 (s33) which allowed for the transfer of powers from a local authority to a public authority, such as an iwi authority. Stephenson refers to s33 as:

...potentially the most powerful tool in the RMA for recognising rangatiratanga as it is the only provision which allows for a shift in the locus of decision-making from the local authority to iwi authorities, albeit that the power to approve policy statements and plans remains with the local authority. (2002, p. 175)

As Matunga (2000) says, Te Tiriti promised a collaborative partnership between Māori and the Crown. Unfortunately, s33 has never been utilised by a local authority (for reasons outlined below). A report prepared by the Parliamentary Commissioner for the Environment (PCE) in 1998 stated that:

Tangata whenua generally perceive councils to be fearful and distrustful of the idea of devolution to Māori. Such concepts are seen as falling still into the 'too-hard basket'. Tangata Whenua are impatient with councils' timidity in this area, and keen [sic] to demonstrate their practical abilities and commitment. (1998, pp. 70-71)

The PCE report goes on to report that tangata whenua told of widespread reluctance within councils to even consider the possibilities provided under s33, with

no applications from tangata whenua for s33 transfer of powers ever to have been granted (1998, p. 71). A report prepared by MfE in 2000 (MfE, 2000) similarly states that iwi are actively seeking utilisation of s33 for aspects of resource management, monitoring for example (MfE, 2000, p. 4). Data obtained by Rennie, Thomson & Tutua-Nathan supports this stating that:

Where requests have been received (over 12 in total) they have been declined.

Primary reasons in most cases have been:

- The use of inappropriate process,
- Concern over the applicant's status as an iwi authority,
- The lack of specificity of the application, and
- Concerns over the structure and resources (financial and technical) of the applicant. These concerns were also identified as probable inhibiting factors by those who had not yet received applications. (2000, p. 1)

The PCE report (1998) suggests that:

Tangata whenua believe that there would be constructive opportunities, with a more direct tangata whenua role, to determine more culturally sensitive management approaches to avoid or mitigate some of the negative environmental impacts of current methods. It was noted that there would also be employment and training opportunities for hapū and whanau to develop and consolidate skills in environmental management. (PCE, 1998, p. 71)

The report by the PCE (1998) also records that tangata whenua drew attention to many councils' pursuit of contractual arrangements for various procedural, technical and management tasks with consultants and external providers, for which councils

appear to be happy to commit to. This is in contrast to the apparent reluctance to consider similar options for Tangata Whenua involvement (PCE, 1998, p. 71). There was also a remaining concern:

that the provisions of s33 are significantly constrained, in that councils retain the ultimate responsibility, and can change or withdraw the delegation at any time.
(PCE, 1998, p. 71)

Section 36(B) – Creation of Joint Management Agreements

Section 36(B) was inserted by way of the 2005 amendments to the RMA 1991. There is little published material on the reason or lobbying behind the insertion. Most discussion at the time related to other changes such as the provision for ‘limited notification’ resource consent applications and clarification on iwi input into resource consent and plan change processes also included in the amendments (MfE, 2005). However, it is understood that the section was introduced as a ‘stepping stone’ towards the full transfer of powers provided under s33 (LGNZ, 2011).

Changes for Māori under the Resource Management Act 1991

A report prepared by the Ministry for the Environment (MfE, 2000) outlines the findings of a number of interviews of iwi and local councils with respect to the implementation of the RMA. The report notes iwi regularly commented that the partnership stated as a key basis of Te Tiriti has not been achieved with local government. Some iwi members believed that this was due to local councils not seriously wanting a partnership relationship (MfE, 2000, p. 4).

On kaitiakitanga, the MfE report explains that iwi understanding of this extends beyond guardianship. Kaitiakitanga has a:

deeper meaning relating to a committed obligation that cannot be relinquished.

(MfE, 2000, p. 4)

As a general consensus, iwi members stated they were generally unhappy with the “soft” language used to reference Te Tiriti obligations in treaty documents. Efforts to remedy this by attempting to get stronger recognition written into planning documents had not been successful (Mfe, 2000, p.5).

From councils’ perspective, the MfE report states that:

Some council personnel described their council’s relationship with iwi as a partnership. It was noted that current case-law and central government guidance does not identify the partnership as one that gives iwi primacy over other community groups. In making decisions about how to meet RMA obligations and the interests of iwi, council pointed out that local government needs to be mindful of the wider community. Local government politicians represent a community of which iwi constitute one element. (2000, p. 5)

The role of iwi within resource management practices also remained unclear:

There was consensus that iwi had a right to participate in resource management processes, and often as a group with a special status. Some uncertainty existing as to the nature and extent of the role of iwi in resource management processes. In some instances it was felt that iwi sought to replace local government’s roles and responsibilities under the RMA. (2000, p. 5)

Stephenson finds that:

...in reality little has changed for Māori land since the RMA was enacted, apart from the prevention of it being compulsorily taken as a reserve contribution. This is

largely because the major planning constraint on the use and development of Māori land is through the provisions of district plans. (2002, p. 174)

This situation is confounded by situational issues such as multiple legal ownership, financing, skills, the quality of land and its inaccessibility.

Stephenson's (2002) review of District Plans post-RMA found that even the most general of Māori development needs – papakāinga housing – required planning consent in half of those surveyed. This number was no different to District Plans prepared under the TCPA (Stephenson, 2002, pp. 174-175). Stephenson (2002) also surveyed the District Plans for policies on rangatiratanga and kaitiakitanga relating to Māori land. Few plans addressed these matters, and where it was mentioned consultation was given as the method to address them. Generally, District Plans contained some provision for section 6(e) matters, but little covering s7(a) (Kaitiakitanga) or s8 (Treaty Principles). No plans made any mention of the ability to transfer powers as per s33 of the RMA 1991.

Ngāti Tūwharetoa History

Ranginui Walker (1995) states that the only iwi who maintained their mana ariki after the dispossession of land in the late 1800s were Tainui and Tūwharetoa. Tūwharetoa's land in the central plateau was regarded as infertile and undesirable by the colonists. In addition, confiscation was avoided when their Chief Te Heuheu (Horonuku) gifted Mt Ruapehu, Tongariro and Ngauruhoe to the Crown – the country's

first National Park⁵. Walker explains that Sir Hepi Te Heuheu, the late chief of Ngāti Tūwharetoa, was able to act like an ariki because of the tribe's wealth. The tribe still owns their land and forests and have an agreement for Lake Taupō that generates revenue from trout and boating facilities licences. With this money he could provide loans or call a hui and host a thousand people (Melbourne, 1995).

The origins of Ngāti Tūwharetoa go back to the Te Arawa canoe (Ngatoroirangi and Tia). The iwi also have a close relationship to the Mataatua canoe (Grace, 1959, p. 90). Tūwharetoa was a powerful chief who lived in the Bay of Plenty during the sixteenth century and was known as both a warrior and an intellectual. Tūwharetoa was a descendant of Ngatoroirangi (of Te Arawa canoe) and married Hinemoa. Sons of Tūwharetoa travelled around and overtook the iwi around Lake Taupō, the last of which who were Ngāti Hotu. One son, Poutomuri, did not go to Taupō but stayed in Kawerau. After his death the tribe became known as Ngāti Pou (Grace, 1959, pp. 103-132).

The many tribes of Taupō were led by chiefs who ruled independently of one another. When Te Heuheu (Mananui) journeyed to the Rotorua district to sign Te Tiriti, it was explained to him that the mana of the Māori people would be subject to that of the Queen of England. He stated that he would never consent to his mana coming under that of a woman by saying:

Hau wahine e hoki I te ahu o Tawhaki!

⁵ See Te Heuheu (2009, pp. 132 – 135) and Bargh (1995) for a different perspective on the way in which the Tongariro National Park became Crown land.

The phrase means that the hau or sacred prestige or physical force of the demi-god Tawhaki conquers that of a woman. The remaining chiefs of Te Arawa (Te Heuheu's brother Iwikau had already signed) also refused to sign (Grace, 1959, p. 238). The Te Heuheu leadership of the tribe continues to this day with Tumu te Heuheu (Te Heuheu Tukino VIII) as Paramount Chief of the iwi.

The iwi is represented politically by the Ngāti Tūwharetoa Māori Trust Board. The Board was established in 1926 under section 16 of the Native Land Amendment and Native Land Claims Adjustment Act 1926. The need for a Board was the result of ongoing discussions and negotiations over the desire of the hapū of Ngāti Tūwharetoa who wished to sell fishing rights and access provisions to Lake Taupō, and the desire of the government to have the Lake and a public reserve strip around it vested as public reserve (Te Heu Heu, 2009, pp. 59-60). The vesting rights were granted in return for £3,000 a year which was to be paid to the newly established Board, which would be expended for the benefit of the hapū of Ngāti Tūwharetoa. In addition to the base fee, when any yearly revenue from licences and fines exceeded £3,000 the Board would receive half of these. A number of free licences would be granted each year to persons nominated by the Trust Board, and the Department of Internal Affairs would have the right to issue permits for launch operators (Te Heu Heu, 2009, p. 60).

The objectives of the Trust Board are: to make available education grants to assist young Māori students through secondary schools, colleges and universities, and to train Māori dental and medical nurses; to subsidise medical and hospital services for the tribe; assistance with housing (such as insulation); and for the improvement of marae and the installation of water supplies. Since its establishment in 1926 it has played a key role protecting Taupō Moana (Lake Taupō) and its tributaries for its people and advocating for the collective tribal position where appropriate

(Tūwharetoa, 2009).

History of Ngāti Tūwharetoa Land Holdings

The landholdings of Ngāti Tūwharetoa in the Taupō District are unique, with approximately 60% of the District existing as undisputed ancestral Māori lands. The origin of this unique status extends back to the Kingitanga movement circa 1854 (Bargh, 1995, p. 74). As an offshoot of the wider movement to establish Māori autonomy in the central North Island, a petition concerning an area of land known as the Rohe Potae was sent to Parliament in 1883, claiming to represent the wishes of Ngāti Maniapoto, Ngāti Raukawa, Ngāti Tūwharetoa and the Whanganui tribes. The petition stated that they wished to prevent the opportunity for the Native Land Court and land speculators to obtain their land (Bargh, 1995, p. 66-68). The tribes asked Parliament to pass a law to secure the lands to them, making them absolutely inalienable by sale.

Parliament accepted the petition (on the belief that some of the land would in fact be available to the Crown and that a railway would be permitted to be constructed through the area) and the surveyors arrived to begin the documentation of the area to be included in the Native Land Alienation Restriction Act 1884 (Bargh, 1995, p. 64). While the remainder of the tribes united to finalise the mechanisms of control over the Rohe Potae, Ngāti Tūwharetoa were not entirely on-board due to the fact that not all of their lands were included within the area to be protected as part of the Rohe. Te Heuheu Horonuku is reported as saying to Tawhiao (the Māori King at the time) “your boundary splits me [my land] in two”. Te Heuheu spoke with feeling:

What about the half of me that is left outside? Who is to save that part? No, I prefer my people to die together as a whole. (Ward, ‘Whanganui ki Maniapoto’ p.

As a result, Te Heuheu Horonuku applied to the Native Land Minister in 1885 to have all of the Ngāti Tūwharetoa lands, only half of which were included in Rohe Potae, excluded from the Act. The decision was approved in 1886 and as a result Te Heuheu Horonuku and Ngāti Tūwharetoa had confirmed ownership of their lands (Bargh, 1995, p. 72 - 74).

The legal ownership of the beds of the Taupō waters was restored to Ngāti Tūwharetoa in 1992, along with some adjoining tributaries. Ngāti Tūwharetoa have also recently been recognised as part legal owners of the Waikato River (refer to Chapter 3 for further discussion on this).

Tūwharetoa Involvement in the statutory legal resource management framework

The first noted legal agreement made by Ngāti Tūwharetoa appears to have been with the Tongariro Timber Company (during the leadership of Tureiti Te Heuheu between 1888 and 1921) (Te Heuheu, 2009, pp. 46-47, 58-65). The agreement provided for the company to have tree-cutting rights over much of the timber lands between Lake Taupō and Taumarunui, on the condition that the company constructed a railway and paid the owners substantial royalties. However, the Timber Company struggled for much of its tenure and the relationship was fraught. A third company, the Egmont Box Company, was brought in by the Tongariro Timber Company to finance the railway. The agreement culminated in a 1935 decision whereby the board was ordered to pay £23,500 to the Box Company. The money was paid; however, the chief of the time, Hoani Te Heuheu, sued the District Māori Land Board (who had agreed to the payment) for negligence. The case failed in both the Supreme Court and the Court of Appeal, but was followed by a case taken to the Privy Council in 1940 that the

decision was contrary to Te Tiriti. This was perhaps the first set-back for Māori rights under Te Tiriti within the resource management framework, with the Privy Council declaring that rights under a treaty of cession could not be enforced in the courts except in so far as they had been incorporated into domestic law (Te Heuheu, 2009, pp. 58-95, Te Heu Heu Tukino v Aotea District Māori Land Board (1941), Privy Council). Such was the beginning of Ngāti Tūwharetoa's history with involvement in statutory resource management.

Taupō District Council

Taupō District Council covers an area of 6,790km² centred around Lake Taupō. The District's general boundaries extend from Mangakino in the northwest, Kaingaroa Forest to the east, and Tongariro National Park to the south. The District is crossed by four regional authorities – Waikato Regional Council, Bay of Plenty Regional Council, Hawkes Bay Regional Council and Horizons Regional Council (Manawatu-Wanganui). The majority of the District falls within the jurisdiction of Waikato Regional Council. In addition, the Council shares District boundaries with Rotorua District, Whakatāne District, Wairoa District, Rangitikei District, Ruapehu District, Waitomo District, Otorohanga District and South Waikato District.

The District is home to four different iwi: Ngāti Tahu, Ngāti Whaoa, Ngāti Raukawa and Ngāti Tūwharetoa. As stated earlier, the District is unique in that over 60% of the land is owned by Ngāti Tūwharetoa.

Conclusion

This chapter has provided the context in which the Ngāti Tūwharetoa and Taupō District Council JMA was created within. The history of Māori land holdings and

management in New Zealand has been fraught, and the experiences of Ngāti Tūwharetoa have reflected this broader context. However, Ngāti Tūwharetoa managed to retain full ownership of a large amount of their ancestral lands. The RMA 1991 included a number of promising provisions in terms of recognising Te Tiriti obligations and the Māori resource management framework. However, research undertaken by LGNZ (2002) showed that only some progress has been made since the introduction of the RMA 1991 by 2002. None of the provisions which allow for a shift in power structure had been utilised until the creation of the JMA in 2009.

CHAPTER 3: LITERATURE REVIEW

Introduction

The purpose of this chapter is to provide an understanding of what existing research has identified with respect to co and joint management agreements. International examples will be outlined, as well as other New Zealand examples of co-management agreements. This chapter has focussed on providing examples of joint management agreements to build on the background provided in the preceding chapter, as opposed to any further discussion of the local government context in which the agreements are created within. This is to ensure that the distinguishing characteristics of the Taupō District Council and Ngāti Tūwharetoa JMA can be clearly identified and discussed in the following chapters.

What Constitutes Co or Joint Management

In a paper prepared by the World Conservation Union which:

...addresses conservation professionals... interested in pursuing the collaborative management option... (Borrini-Freyeraband, 1996, p. 3)

the author provides an explanation of co-management as it applies to protected areas as:

The term 'collaborative management' (also referred to as co-management, participatory management, joint management, shared-management, multi-stakeholder management or round-table agreement) is used to describe a situation in which some or all of the relevant stakeholders in a protected area are involved in a substantial way in management activities. Specifically, in a collaborative management process, the agency with jurisdiction over the PA (usually a state agency) develops a partnership with other relevant stakeholders (primarily including local residents and resource users) which specifies and guarantees their

respective functions, rights and responsibilities with regard to the PA. (Borrini-Freyeraband, 1996, p. 12)

Further illustration of the concept is provided within a thesis which examined co-management options for the Rotorua Lakes in the central North Island of New Zealand. Sunde (1996) summarises the key features of co-management agreements as:

- Shared decision making
- Upper-tier government commitment
- Formal and long-term agreement
- Authority for decision making
- Human and financial resource for process and implementation
- Development of **mutually** acceptable systems of ensuring accountability
- Recognition and use of aboriginal information and RM systems

Taiepa et al supports these views and also adds that within a co-management agreement a partnership is “...developed and implemented co-operatively by the mutual agreement of all parties involved” (1997, p. 237) and that:

We consider the most effective form of co-management involves two or more parties who share decision making in an equitable arrangement. This is characterised as ‘strong co-management’ in that real decision making power is devolved. It is distinct from ‘mild co-management’ (Borrini-Feyerabend, 1996) where a minor party gives advice to another party that remains as the decision maker; indeed we would rather dismiss the latter as not meaning co-management at all. Mere ‘consultation’ or a ‘meaningful advisory role’ is no longer a sufficient surrogate for true co-management involving Māori and Pākehā because it does not meet the constitutional principle of partnership articulated by the Treaty of Waitangi. (1997, p. 237)

International Examples of Agreements

Internationally, JMAs tend to focus on the co-management of traditionally state-controlled assets such as forests and water. Examples of this include the joint forest management policy in India which emerged in the 1990s and the community forest management policy which emerged in Nepal in 1992 (Menon, Singh et al., 2007). The status of the indigenous populations within these agreements is often complicated by the fact that many do not legally own the land on which they depend upon to survive (Menon, Singh et al., 2007). Such agreements are generally described as 'co-management' and allow for the joint sharing of resources between different cultures and conflicting values (Richardson and Green, 1989, p. 259 in (Notzke, 1995).

Australia

Increasing legal recognition of aboriginal rights to traditional lands began in Australia with the passage of the *Aboriginal Land Rights Act (Northern Territory) 1976*. This legislation applies only in the Northern Territory, with other states providing their own mechanisms for the return of lands to Aboriginal peoples (Smyth, 2001). As the legislation varies from state to state, so too does the method and scope of the agreements.

The table on the following page outlines the main features of four of the joint management models throughout Australia that have been created since the first for Gurig National Park (northern territories) in 1981.

Table 1 Models of Joint Management Agreements in Australia

Model	Gurig	Uluṛu	Queensland	Witjira
Territory	Northern	Northern	Queensland	South
Parties	Aboriginal Peoples and Northern Territory Government	Aboriginal Peoples and Commonwealth Government	Aboriginal Peoples Queensland Government	Aboriginal Peoples and Commonwealth Government
Ownership	Aboriginal	Aboriginal	Aboriginal	Lease to Aborigines
Indigenous Representation in Decision Making	Equal	Aboriginal majority	No guarantee of Aboriginal majority	Aboriginal majority
Leaseback agreement	No leaseback to government agency	Leaseback to government agency for long period	Leaseback to government agency in perpetuity	No leaseback – ownership remains with the government
Fees	Annual fee to traditional owners	Annual fee to traditional owners, community council, or board	No annual fee paid	No annual fee paid
Examples	Gurig National Park	Uluṛu-Kata Tjuṛa, Kakadu, Nitmiluk, Brooderee ⁶ , and Mutawintji ⁷ National Parks	None finalised	Witjira National Park

Source: Adapted from Smyth, 2001

Gurig National Park, Northern Territory, Australia

The joint management of Gurig National Park is governed by the *Coburg Peninsula Land and Sanctuary Act 1981* (Northern Territory). The park is managed day-to-day by the Conservation Commission of the Northern Territory (now called the Parks and Wildlife Commission). However, the commission takes direction from the

⁶ Brooderee rent payments are to the Wreck Bay Community Council which represents residents of Wreck Bay, as opposed to traditional owners

⁷ Mutawintji rent payments are made to the Board and must be spent in the park, as opposed to traditional owners.

board of management which comprises eight members. Four members are traditional owners and four are representatives of the Northern Territory government. The board is chaired by one of the traditional owner members, who has an additional casting vote (Smyth, 2001).

The *Coburg Peninsula Land and Sanctuary Act 1981* sets out the functions of the board and commission. For the board these include direction to: prepare plans of management; protect and enforce the rights of the traditional owner group to use and occupy the park; determine the rights of access to parts of the sanctuary for persons who are not part of the traditional owner group; ensure adequate protection of sites in the park of spiritual or other significance in Aboriginal tradition; make bylaws with respect to the management of the park; and to carry out any other functions as imposed by the plan of management. The Act states that where there is a difference of opinion between the commission and the board, the issue shall be decided by a resolution of the board (Smyth, 2001).

The Gurig National Park agreement is significant in the Australian context as there is no requirement for traditional owners to lease their lands back to the government. Aboriginal peoples are provided with secure tenure over their traditional lands, as well as nominal control over decision making through their majority on the board. As members of the board and operators of the Parks and Wildlife Commission the Northern Territory government retains a strong role in the management of the park also (Smyth, 2001).

There are both advantages and disadvantages from the agreements outlined above. Smyth (2001, p. 87) outlines these as follows:

Table 2 Advantages and Disadvantages of Agreements in Australia

	Aboriginal owners	Government conservation agency	Biodiversity conservation	Park visitors
Potential Advantages	Recognition of traditional ownership	Enhanced opportunity to protect and interpret cultural values of park	Enhanced recognition of cultural values associated with park's biodiversity	Enhanced opportunities to appreciate cultural values of park
	Participation in decision making on management of national park	Enhanced opportunity to access and apply Aboriginal knowledge in management of the park	Improved protection and management of biodiversity values through application of Aboriginal knowledge and practices	Enhanced opportunities to communicate with Aboriginal owners and/or employees
	Training and employment of Aboriginal people	Enhanced opportunity to contribute to reconciliation		Enhanced Opportunities to participated in process of reconciliation
	Resources for infrastructure and support services			
	Enhanced opportunities to protect cultural sites and heritage			
	Enhanced opportunities to educate people about Aboriginal culture and contribute to reconciliation			
	Income derived from lease payments and/or percentage of entrance and franchise fees, etc.			
Potential Disadvantages	Requirement to share management of traditional land with government agency	More complex management structure	Increased pressures on biodiversity through reintroduction of Aboriginal hunting and gathering	Additional cost associated with use, either via taxation or entrance fees
		Additional demands for financial and other resources to implement joint management agreements		Additional restrictions on destinations and/or activities within park due to cultural protection
		Additional restrictions on access to park areas		
		Additional demands to train and supervise staff		

Source: Adapted from Smyth (2001, p. 87)

One further advantage for the Government Conservation Agency would be that

the resource (previously taken through unjust means) is retained for their use. Further disadvantages for the aboriginal owners would be the emotional stress of having visitors disrespect values (e.g. climbing up Uluru when asked not to) and settling for a share in the management of their lands, as opposed to having full control.

Canada

In Canada there have been five major agreements with legislative backing. These are: the James Bay and Northern Quebec Agreement (1975), the Inuvialuit Agreement (1984) in the western Arctic, the Nunavut Agreement (1993) in the eastern Arctic; the Yukon First Nation Settlement Agreement (1995); and the Nis'gaa agreement in northern British Columbia (Borrini-Feyerabend, 1996).

Inuvialuit Final Agreement, Western Arctic, Canada

This agreement was the first to be negotiated under the *Comprehensive Land Claims Policy (1974)*. The agreement is one aspect of a range of goals the Inuvialuit have with regard to their comprehensive claims settlement. These goals are summarised by Doubleday (1989, p. 211) as cultural identity, integration and conservation (in (Notzke, 1995).

This agreement has two principal management structures – the Inuvialuit Game Council and the Inuvialuit Regional Corporation. The Game Council is the body primarily concerned with renewable resources management. Its purpose is to represent the collective Inuvialuit interest in wildlife as a conservation-focussed body (Doubleday, 1989, in Notzke, 1995, p. 192). In comparison, the Inuvialuit Regional Corporation is a development-orientated body which manages the settlement of land and cash compensation. The tensions between the two (conservation and development) are resolved by five committees also created under the agreement,

which are co-management bodies – half Inuvialuit/Inuvialuit Game Council appointed and half government appointed, with a chair person appointed by the government with Inuvialuit consent. Doubleday states that the agreement recognises:

...participation in management, relevance of traditional knowledge, and modern scientific approaches to conservation – all of which represents elements of special status and self-government necessary for the survival of indigenous peoples. (1989, p. 221 in Notzke 1995, pp. 192-193)

The Government of Canada's goals in the settlement of comprehensive claims are detailed in a 1974 policy statement entitled 'In All Fairness'. The policy includes a statement that:

In addition to dealing with the protection of their rights to hunt, fish and trap the settlements should provide for the involvement of Native people in a much wider spectrum of activities affecting the whole area of wildlife. (Government of Canada, 1981, p. 24 in Notzke, 1995)

Doubleday summarises the government's goals as fairness to native and non-native Canadians, specification of native rights under Canadian jurisdiction, and legal certainty (1989, p. 212 in Notske, 1995, p. 192). Unlike the Australian examples, the Inuvialuit peoples do not hold any legal ownership of their lands, regulation is not decentralised and final decisions are made by government ministers, as opposed to the Inuvialuit (Notzke, 1995).

Broughton Island and Clyde River Communities (Hunters and Trappers Associations), Northwest Territories, Canada

This agreement is in the form of a Letter of Understanding rather than a formal

co-management agreement. This agreement did not result in the creation of specific co-management institutions and procedures. It was a cooperative approach by government which resulted in successful mobilization of self-regulation on the part of the aboriginal community (Notzke, 1995).

Borrini-Feyerabend argues that co-management should not be considered as static, but as a process (1996, p. 23). In addition to the Broughton Island and Clyde River Communities example above, another example of a non-formal agreement is the Great Barrier Reef in Australia. The specific authority that manages the park used to widely consult with local stakeholders (including those that lived in the park) but now stakeholders sit on the Management Board of the Authority itself. These stakeholders include representatives of the Aboriginal Peoples of the area.

New Zealand Examples of Agreements

In January 2007 Local Government New Zealand, in partnership with officials from Te Puni Kōkiri, the Ministry for the Environment, the Department of Internal Affairs and the Department of Prime Minister and Cabinet undertook a detailed case study of five co-management agreements throughout New Zealand (LGNZ, 2007). The decision to undertake the research was the result of a LGNZ survey in 2004 in which 24% of local authorities advised that they had, or were working on, some form of co-management (LGNZ, 2007). More recently, in 2011 LGNZ released a further report on another four arrangements.

The 2007 report covers co-management agreements which covered day-to-day responsibilities and management of particular areas. The 2011 report covered new arrangements on local authorities and Māori working together on strategy, policy and governance (LGNZ, 2011). The 2011 study includes the JMA which is this subject of this

thesis. Therefore, only the three other arrangements will be summarised in this section, with the JMA information being included as part of the assessment within Chapter 6 (Results) of this thesis.

Local authorities' interpretation of co-management obtained through the 2007 study ranged from a low level of Māori involvement (enhanced consultation, where Māori were assured input into a local authority process) to a high level of Māori involvement (where Māori have authority and control over a resource, or a casting vote on a committee that manages the asset) (LGNZ, 2007). The following table provides a summary of four of the five case studies reviewed in the 2007 study. These studies have been grouped due to the non-Māori ownership of the land in question.

Table 3 Summary of Local Government New Zealand Case Studies Described in 2007 Report

Case Study	New Plymouth Port Assets	Te Whiti Park	Owhiwa Harbour	Taharoa Domain – Kai Iwi Lakes
Agreement	Memorandum of Understanding	Te Whiti Park Custodial Agreement	Strategy	Taharoa Domain Reserve Management Plan (under the Reserves Act 1977)
Parties	New Plymouth District Council Port Taranaki Ltd (port company owned by Taranaki Regional Council) Ngāti Te Whiti Hapū Society Incorporated	Hutt City Council Te Runanganui O Taranaki Whanui ki Te Upoko o Te ika a Maui	Environment Bay of Plenty Opotiki District Council Whakatane District Council Whakatohea Upokorehe Ngāti Awa Tuhoe	Kaipara District Council Te Roroa Te Kuihi
Area	Ngamotu Beach and Pioneer Park	Te Whiti Park	Ohiwa Harbour and catchment	Taharoa Domain
Ownership	Port Taranaki	Hutt City Council under Reserves Act 1977	Not defined	Crown

Significance to Māori	Previously in Māori ownership, taken for development of Port and for 'Public Health Reasons'	Previously in Māori ownership. One of few parcels of land from a larger block that was taken by the Crown under the Public Works Act.	Land surrounding Ohiwa Harbour consists of ancestral Māori lands with hundreds of archaeological and historic sites. The harbour is also recognised as taonga for its food supply.	Taonga
Description of Agreement	<p>Memorandum of Understanding which established a representative group called the Ngamotu Port Taranaki Liason Group. The group's role is to facilitate discussion, consultation and monitor the management of the port area.</p> <p>Formally sets out process.</p> <p>Two representatives from each party of the Ngamotu.</p>	<p>Mechanism for Council and the Runanga to work closely together on the management of the park.</p> <p>Seen as a platform that will enable to Runanga to take a greater role and responsibility over the management of the park in the future.</p>	<p>Parties developed a strategy that incorporates statutory and non-statutory implementation actions.</p> <p>An iwi planning document has also been produced to support the strategy.</p>	<p>To ensure provision for tangata whenua to participate in the management of the domain. Established Taharoa Domain Governance Committee which meets every two months and decides on the management of the reserve.</p> <p>A joint committee representing tangata whenua and Council manages the reserve in accordance with the Reserve Management Plan.</p>

Source: Adapted from LGNZ, 2007

Okahu Bay/Whenua Rangatira Reserve

The fifth case study was the Whenua Rangatira Reserve Management Plan, created by Auckland Council (formerly Auckland City Council) and Okahu Bay/Whenua Rangatira Reserves Board, a statutory board which represents the Ngāti Whātua o Orakei Māori Trust Board. The Management Plan relates to the Okahu Bay/Whenua Rangatira Reserve in Auckland and outlines the goals, values, activity areas, and

planning process for the reserve.

This case study is fundamentally different from the above four agreements due to the legal status of Ngāti Whatua as owners of the land since the Orakei Act 1991. Prior to 1991 this land was disputed, with a history of Crown breaches of Te Tiriti. The final episode of dispute involved members of Ngāti Whatua protesting about the final block of land (the Orakei block) being disposed of by the Government, for which the hapū had notified their interest in claims to the Waitangi Tribunal.

Despite 140 years of tension between both the Crown and the Auckland City Council, Ngāti Whatua o Orakei still decided to allow full public use to parts of the returned land, including the Joseph Savage memorial, the Whenua Rangatira and the beaches around Okahu Bay. Ngāti Whatua agreed to work in partnership with the Auckland Council to develop a reserve plan for these areas. The overall mission statement for the plan is:

The development of the Whenua Rangatira is to reflect the spiritual, social and cultural heart of Ngāti Whatua o Orakei (Marae / Urupa / Papakainga) and promote the Whenua Rangatira as a taonga to be treasured by all people living and visiting in Tamaki Makaurau (Auckland).

All decisions relating to the Whenua Rangatira are directed to the Ngāti Whatua o Orakei Reserve Board. The Board holds quarterly meetings, which are administered, supported and recorded by Auckland Council staff. The plan guides the decision making of the Board, hence decisions are guided by a document that is a product of both iwi and local government goals and objectives.

Rotorua Te Arawa Lakes Strategy Group

This is a co-governance committee between Bay of Plenty Regional Council, Rotorua District Council and Te Arawa Lakes Trust, first established under the Local Government Act (LGA) in 2002, before the group was formally established via the final Te Arawa Lakes Settlement Act 2006 (the Settlement Act). The purpose of the committee is to consider issues that contribute to the promotion of the sustainable management of the Rotorua Lakes and their catchments (Okareka, Ōkaro, Okataina, Rerewhakaaitu, Rotoehu, Rotoiti, Rotokākahi (Green Lake), Rotomaā, Rotomahana, Rotorua, Tarawera and Tikitapu (Blue Lake)) (LGNZ, 2011).

The decision to create the committee came about through a public process to begin developing a strategy for the management of the lakes. A report assessing options was prepared in 2001 and it was decided that a co-management entity could be created through the Treaty settlement process to include both local authorities and Te Arawa.

The committee provides a footing for Te Arawa to provide cultural understanding and perspective to the forum. This is supported in the MoU relating to the committee which specifies that Bay of Plenty Regional Council's and Rotorua District Council's roles are to undertake their functions under the RMA 1991 and take lead roles in water quality, urban sewerage and storm water management issues, while the Trust's role is "To provide cultural advice on all aspects pertaining to the Lakes" (Rotorua Lakes Restoration MoU, 2007, p. 4).

In terms of representation, the Te Arawa Trust forms one third of the committee with the second and third portions being made up of Bay of Plenty Regional Council and Rotorua District Council. It is also noted that the agreement is still bound by the

provisions of the LGA 2002 with regard to the appointing of sub-committees (Part 30 of Schedule 7, LGA 2002). As such the powers of the committee still fall under the overall control of the Councils. The only exceptions to these provisions are the ability for non-elected members (of the Trust) to be part of the committee, and that the committee can only be disestablished with the agreement of all parties (Section 48, Te Arawa Lakes Settlement Act 2006).

Waikato River Co-Governance / Co-Management Arrangements

Waikato-Tainui's land settlement in the Waikato was signed in 1995. Their claim also included the Waikato River. However, this was set aside for future negotiations. The Waikato River Agreement in Principle was signed on December 16, 2007 and addressed the health and wellbeing of the Waikato River through the principle of co-management (Waikato River Claim Agreement in Principle, 2007). The Agreement incorporates the mana whakahaere (authority, rights of control) of Waikato-Tainui and other Waikato River Iwi (Ngāti Tūwharetoa, Ngāti Raukawa, Te Arawa and Ngāti Maniapoto) into a governance framework which included the establishment of the Guardians of the Waikato River and a document called the 'Vision and Strategy for the Waikato River'. Local authorities within the framework are Environment Waikato, Hamilton City Council, Waikato District Council, Waipa District Council and Taupō District Council (LGNZ, 2011, p. 7).

The initial panel considering the Agreement determined in April 2009 that the proposed arrangements consisted of too many entities, plans and processes. They recommended the creation of one primary document called the 'Vision and Strategy' for the Waikato River, and one entity called the Guardians of the Waikato River.

It was intended that the Vision and Strategy document be given the status of a

National Policy Statement. This was a significant intention due to local authorities being required to amend existing district and regional plans in accordance with the National Policy Statement (s55 RMA 1991) as well as to have regard to a National Policy Statement when making a decision on a resource consent (s104 RMA 1991). The document proposes an approach to manage the entire river/catchment (including the Waipa River and its catchment) (Panel, 2009). Following the revised signing of the Waikato-Tainui Deed of Settlement in 2009 (original signed in 2008) the Vision and Strategy for the Waikato River was finalised in 2010. The objectives of the document include: the restoration and protection of the relationship of Waikato-Tainui with the Waikato River; the integrated, holistic and coordinated approach to management of the natural, physical, cultural and historic resources of the Waikato River; and recognition that the river is degraded.

Strategies used to achieve the objectives include: developing targets for improving the health of the river by utilising mātauranga Māori and latest available scientific methods; encouraging and fostering a 'whole of river' approach to the restoration and protection of the Waikato River; and establishing new, and enhancing existing, relationships between Waikato-Tainui, other Waikato River Iwi and stakeholders with an interest in advancing, restoring and protecting the health and wellbeing of the River. The final document does appear to hold up Steenstra's (2009) comment that the document would be influenced by the final Deed of Settlement, and as such incorporate Māori knowledge, cultural and social relationships and economic wellbeing in an integrated, holistic, and co-ordinated approach when managing the resources of the river.

Specifically, the co-management provisions allow for:

- Individual joint management agreements between each river iwi and their local authorities;
- Integrated management plans;
- Recognition of customary activities; and
- Co-management agreements for managed lands and sites of significance (Waikato Tainui only).

LGNZ, 2011, p. 19

The JMAs will include provisions for iwi to become involved in river related resource consent processing; monitoring and enforcement of river-related resource consents; state of the environment, permitted activity and policy effectiveness monitoring; preparation, review, change or variation of RMA planning documents in relation to the vision and strategy document; and customary activities by way of exempting river iwi from consent requirements for activities fundamental to their relationship with the river (LGNZ, 2001, pp. 23-24). The JMAs must be established within 18 months of the settlement legislation being fully enacted (LGNZ, 2001, p. 24).

The implementation of the Vision and Strategy is undertaken by the Waikato River Authority, a body established through the settlement legislation with 50:50 Crown-Māori membership⁸. The Authority is also responsible for funding the

⁸ Consisting of five Crown-appointed members and one member from each river iwi. Environment Waikato nominate one Crown member and a further is nominated by the territorial authorities. There are two co-chairs, one appointed by the Minister for the Environment and the other voted on by iwi. A member of Waikato-Tainui will be the iwi co-chair for the first five years.

rehabilitation of the river through the Waikato River Clean-Up Trust. A first action of the Authority was a workshop in February 2011. As yet, the Vision and Strategy document has not been presented as a National Policy Statement. However, its objectives have been included in the latest Waikato Regional Policy Statement (notified November 2010, expected to be finalised 2011/2012).

Te Upoko Taiao – Natural Resource Plan Committee

Parties to this committee are the Greater Wellington Regional Council (GWRC) and the seven iwi authorities in the greater Wellington region (Te Rūnanga o Raukawa Incorporated, Te Rūnanga o Āti Awa ki Whakarongotai Inc, Te Rūnanga o Toa RangatiraRangatira Inc, Wellington Tenths Trust (Nga Tekau o Pōneke), Te Rūnanganui Taranaki Whanui ki te Upoko o te Ika a Maui Inc, Ngāti Kahungunu o Wairarapa Taiwhenua Inc and Rangitāne o Wairarapa Inc) (LGNZ, 2011).

The Local Government Act enabled committee consists of seven non-council members and seven council elected members. The non-elected committee members are appointed for their skills, attributes or knowledge relevant to the work of the committee, including their knowledge of relevant rohe to which they belong. Each of the region's seven iwi authorities recommendations are given regard to in making the appointments. Each of the committee members who are not accredited under the RMA must complete the Making Good Decisions programme. Others are also encouraged to take the programme so that everyone has the relevant skills to assist them in carrying out their responsibilities within the committee. The committee has delegated authority from the regional council to develop the regional plans for the Wellington Region (LGNZ, 2011).

The committee oversees the development of the region's (from the south coast

to Otaki, Mt Bruce and Castlepoint in the north) natural resource management plans.

Specifically, their mandate is to:

- Review the operative regional plans;
- Prepare proposed regional plans;
- Prepare any variation to proposed regional plans;
- Prepare any plan changes in relation to operative regional plans;
- Recommend to council that any draft proposed plans, variations or plan changes have reached a stage where they can be notified as proposed; and
- Appoint hearings committees panels to hear and decide submissions on proposed planning documents.

LGNZ, 2011, pp. 28-29

GWRC made a proactive decision to create the committee after recognising the impact of the present and upcoming Treaty settlements within the region, along with the need of the Council to review regional plans and the knowledge that iwi of the region had a strong desire to be involved in decision-making (LGNZ, 2011, p. 29). GWRC saw Treaty settlement methodology as limited in terms of allowing for coordinated local authority and tangata whenua input into the management of natural resources. Iwi (primarily through Ara Tahi, a joint council and iwi engagement group) were also highly involved in the review of the Greater Wellington Regional Policy Statement (now operative except for outstanding appeals). The process for agreeing the committee structure took approximately 6-months after a review of the available co-management and co-governance options (LGNZ, 2011).

Te Waihora (Lake Ellesmere) Joint Management Plan

This agreement was made between the Department of Conservation and Ngāi Tahu, and was the first land management plan to be created as a result of specific legislation (Okeroa, 10 December 2005; Tahu and DoC, 2004). Ngāi Tahu are the legal owners of the lake, with the bed returned to the iwi in the Ngāi Tahu Claims Settlement Act 1998 (Okeroa, 2005).

The plan was created within a public process, so the final plan is representative of government, iwi and public aspirations for Te Waihora (Okeroa, 2005). The plan is effective for 10 years and provides guidance on recreation and commercial use of the lake, wildlife habitat, landforms and landscapes, historic resources and methods for implementation and review.

Joint Project for Lake Taupō

The preparation of the *2020 Taupō-nui-a-Tia: Integrated Sustainable Development Strategy for the Lake Taupō Catchment* was a three-year joint project between the Tūwharetoa Māori Trust Board and Environment Waikato. The project was funded by the Ministry for the Environment and provided a framework for the management of Lake Taupō and its catchment that incorporates scientific knowledge with the values and aspirations of Ngāti Tūwharetoa and the wider community (Tūwharetoa, 2004).

The strategy is a non-statutory long-term action plan and is supported by central and local government (Ministry for the Environment, Department of Conservation, Department of Internal Affairs, Environment Waikato, Taupō District Council), the Tūwharetoa Māori Trust Board and the Lakes and Waterways Action Group LWAG, a community-based environment advocacy group.

The agreement is implemented by a group called the 2020 Joint Management Group. The Group includes representatives from Tūwharetoa Māori Trust Board, Environment Waikato, Taupō District Council, Department of Conservation, Department of Internal Affairs and LWAG. Meetings for the Group are held quarterly.

Best Practice

A report by the PCE (1998, pg. 115) summaries key factors which contribute to positive and practical systems for iwi and hapū, councils and developers to work well together. These are:

- A genuine willingness within council to recognise and deal with Tangata Whenua concerns;
- Tangata Whenua are well-organised, with robust administration systems, and expertise in environmental policy and advocacy processes;
- Developers and resource consent applicants are willing to recognise and work with Tangata Whenua;
- Consultation with Tangata Whenua is undertaken at the earliest possible stage in the development of policies, plans or projects;
- There is mutual agreement on the processes and criteria to be followed;
- Processes are efficient, consistent and reliable, and there is sufficient resourcing available for relevant groups to participate with maximum usefulness;
- There is a clear focus on the environmental objectives and outcomes – processes are the means to an end and not an end in themselves; and
- There is a clear sense of the longer-term horizons, and the ongoing imperative of sustainable management of natural taonga, places and resources.

In 2006, Te Puni Kokiri (TPK) undertook a series of case studies throughout New Zealand to review how Māori engaged with councils under the RMA and the issues that affected this engagement. The key findings of the research included that Māori participation in resource consents was primarily at the processing stage, as a result of an information agreement with the authority that the iwi would be sent copies of applications. Māori groups consistently expressed a desire to move from reactive to proactive participation in resource management. However, major capacity and capability barriers affected the ability of Māori to be able to move to a more proactive position (Te Puni Kokiri, 2006, p. 7). These barriers include lack of staff with relevant expertise or formal training and the need to prioritise involvement in line with the strategic direction of iwi.

The research also provided some guidance in terms of relationship building between Māori and councils. One finding was that good relationships tended to be initiated and built through ongoing informal engagement and were dependent on trust, transparency and goodwill. However, formal relationship documents such as memoranda of understanding were seen as important, primarily for confirming and clarifying what had already been created through an informal agreement. Further still, successful council-Māori relationships cannot be based solely on strict adherence to legislative requirements. Councils must appreciate both the role of tangata whenua in their own communities, and the value their extensive local knowledge can add to achieving positive community outcomes (Te Puni Kokiri, 2006, p. 7). For example, Auckland City Council (now Auckland Council) covers the costs to iwi when making an information request and considers their input along the same lines as other specialist advice (Te Puni Kokiri, 2006, p. 25).

Conclusion

The key themes from this literature review that are relevant to this research are that there is a wide range of co and joint management agreements in existence throughout the world. These agreements have often come about as a result of specific legislation and as a result of redress of previous Crown injustices.

A common feature of the agreements is that as part of the redress package a negotiation has taken place to work out the details of the decision making authority who will continue to make decisions on the use of the land in question. In the examples outlined above the indigenous group involved often has a role within this decision making. However, the final decision remains with the local authority. This is somewhat different to the JMA studied as part of this research, and the following chapters will explore the reasons behind this in more detail.

CHAPTER 4: RESEARCH DESIGN

Introduction

This research represents a qualitative enquiry into an event that was of particular importance within the New Zealand statutory resource management framework. A case study method of research design was relied on in part, and a discussion on this aspect of the design follows. Following on from this an explanation of the different types of data that were collected will be provided, as well as a discussion on the specific and general ethical considerations and practices that were incorporated into the research.

Case Study Method

Research on human communities has a long history, with roots in the colonialist need to interpret new frontiers to report back to the homeland (Denzin and Lincoln, 2008, pp. 1-2). The field of qualitative research has its own history, with different groups of academia developing their own specific requirements and lenses through which to observe people (Denzin and Lincoln, 2008, p. 4). Notwithstanding this complex background, Denzin and Lincoln argue that:

Nonetheless, an initial, generic definition can be offered: Qualitative research is a situated activity that locates the observer in the world. It consists of a set of interpretive material practices that make the world visible. These practices transform the world. They turn the world into a series of representations, including field notes, interviews, conversations, photographs, recording and memos to the self. At this level, qualitative research involves an interpretive, naturalistic approach to the world. This means that qualitative researchers study things in their natural settings, attempting to make sense of, or interpret, phenomena in terms of

the meanings people bring to them. (2008, p. 4)

This research is interested in questions relating to how and why the Taupō DC and Ngāti Tūwharetoa JMA was created, within the context of contemporary examples of co-management arrangements. From this point, the data will be analysed with the aim of providing insight and help to local authorities. The research describes and attempts to understand an aspect of social life in terms of actors motives and understanding. As such, it can be said that this research is undertaken with the use of the 'abductive' research strategy (Blaikie, 2007, p. 68).

There are numerous strategies of qualitative enquiry available to researchers. Approaches include participatory research (where the research project is shared and community based), ethnography (where the researcher participates in the daily life of a society's members), social justice (focusing on equitable distribution of resources, fairness and eradication of oppression), and case studies (which are interested in particular case(s)) (Kemmis & McTaggart, p. 273; Tedlock, p. 151; Charmaz, p. 203; Stake, 119; Eisenhardt, p. 534).

Yin (2002, p. 4) suggests that the case study method is used when wanting to understand complex social phenomena, whilst retaining the holistic and meaningful characteristics of real-life events. Robson further defines this approach as follows:

Case study is a strategy for doing research which involves an empirical investigation of a particular contemporary phenomenon within its real life context using multiple sources of evidence. (1993, p. 5)

Taking into account the objectives of this research to understand more fully the reasons behind the creation of the JMA within its specific context, and the wider

situation of agreements within New Zealand and internationally, it was considered that the case study approach also provides some relevant considerations in terms of research design. Stake explains that:

For a research community, case study optimises understanding by pursuing scholarly research questions. It gains credibility by thoroughly triangulating the descriptions and interpretations, not just in a single step but continuously throughout the period of study. For a qualitative research community, case study concentrates on experiential knowledge of the case and close attention to the influence of its social, political, and other contexts. For almost any audience, optimising understanding of the case requires meticulous attention to its activities. (2008, p. 120)

Yin (2009, p. 40) outlines a number of steps to ensure the quality of research designs that use the case study method. There are four steps: construct validity; internal validity; external validity and reliability. Construct validity is concerned with justifying the use of 'subjective' judgements to collect data within a case study. This can be overcome by using multiple sources of evidence in a way that encourages convergent lines of enquiry (Yin, 2009, p. 40). For example, in this research different interviewees were spoken to at different times and further data was obtained by other (secondary) methods. This reduces the potential for criticism over the selection of participants and the information obtained. Other methods include establishing a chain of evidence (meaning the source of evidence is readily identifiable) and by having the case study report reviewed by key informants.

Yin suggests using established methods of analysis such as 'pattern matching' and logic models to ensure internal validity (2009, p. 43). The use of pattern matching within Chapter 6 – Analysis of this report allowed the primary data to be grouped with

respect to common themes identified within Chapter 3 – Literature Review. Themes/variables identified included land ownership, council relationships and process.

External validity is concerned with the problem of knowing whether a study's findings are able to be generalised beyond the immediate case study (Yin, 2009, p. 43). It is noted that, unlike a case study exercise proper which would look at the JMA in detail compared to other agreements, this research investigates the JMA in the singular. Smith argues that learning from a particular case is possible:

How we learn from the singular case is related to how the case is like and unlike other cases we do know, mostly by comparison. It is intuition that persuades both researcher and reader that what is known about one case may very well be true about a similar case. (1978, in Stake, 2007 p. 134)

Reliability is a concern for all research methods – the need to ensure that if the same investigation was to be undertaken at a later date, then the same conclusions would be arrived at. However, within a social science research project it would be difficult to assume the same 'results' could be determined given that each researcher has their own particular lens (knowledge) through which observations are filtered. It is for this reason that the use of triangulation is promoted as a means to ensure that researchers are not criticised for being inaccurate or without confirmation (Stake, 2007, p. 133). Triangulation is:

... generally considered a process of using multiple perceptions to clarify meaning, verifying the repeatability of an observation or interpretation. (Stake, 2007, p. 133)

Triangulation can involve the use of multiple investigators (Eisenhardt, 1989, p.

533). However, within this research triangulation was achieved by comparing the data obtained with extracts from other case studies, as well as discussing findings with supervisors to ensure that results related to a wider context, were realistic and understandable.

Data Collection

One of the strengths of case study research (and qualitative research generally) is the ability to use many different sources of evidence (Yin, 2009, p. 114). This research used both primary and secondary nature qualitative data.

Primary Data

Semi-structured interviews were used to collect the primary data for this research due to their exploratory nature. Semi-structured interviews (also referred to as informal, conversational or 'soft' interviews) allow for partially structured, orderly conversations that allow the interviewer to receive information from key informants (Longhurst, 2003). Participants were identified through researching public information about the JMA and, to some extent, the 'snowball' method where participants suggest others who may wish to be involved in the research.

Four interviews were undertaken. Three of these were TDC employees who consisted of the Group Leader of Environmental Services at the time the JMA was created, the Strategic Relationships Manager within TDC and a Team Leader within the Policy team of TDC. The fourth interviewee was an independent resource management consultant who was engaged by TDC to work for Ngāti Tūwharetoa throughout the process.

Copies of the schedules of interview questions are included as Appendix 1. The

interviews were recorded (with consent) to allow for concentration and discussion of topics without the need to attempt to write all of the participants' words down (Longhurst, 2003). The interviews were then transcribed and copies given to participants to review prior to analysis being undertaken.

Secondary Data

Secondary data collected included newspaper articles, websites, political statements and iwi and council documents. Yin points out that when relying on evidence of this form, it is important to appreciate the purpose and audience that these documents were prepared for in terms of interpreting the usefulness and accuracy of the records (2009, p. 106).

The benefit of relying on this type of data is that it is generally readily available on the internet or from the source itself. For example, the Taupō District Council District Plan is available from the Council website, and media articles from the Taupō Times (local paper) are also available on-line. Media documents were identified by searching for relevant keywords within the time-frame of the agreement (from 2008 onwards), and other documents were identified by a comprehensive search of the TDC website to identify any documents which may have included discussion on Ngāti Tūwharetoa and the JMA.

Limitations

One key limitation to the research is that it is from Taupō District Council's perspective. Originally, it was hoped to undertake this research with a focus on Ngāti Tūwharetoa and the extent to which the JMA achieved the principles of Te Tiriti, and tino rangatiratanga in particular. As I am a Pākehā researcher, the proposed study would have involved a cross-cultural research element as I am not Māori. As such,

ethics approval was obtained from the Massey University Ethics Approval committee in 2009 (a copy of this approval is included as Appendix 2).

To obtain ethics approval for cross-cultural research, a research methodology was required to be prepared and submitted to a panel of advisors for their review. The methodology put forward included defining a set of culturally correct assumptions (assuming the Māori world view and way of organising knowledge, acknowledging the need to represent mātauranga Māori in a correct manner and ensuring that the research was Māori-centred, as opposed to Euro-centric). Practical implications of this meant relying on a relationship with the Ngāti Tūwharetoa Trust Board to guide me through the research project, as well as a need to recognise that, as a non-Māori I would need to remain flexible and aware during the process. Once submitted to the panel approval was relatively quick to obtain, with the whole process taking approximately one year.

However, once I had obtained ethics approval and I was able to approach Ngāti Tūwharetoa, their agreement to assist in the research was not obtained⁹. As such, and in-line with the provisions in my established methodology that had considered this possibility, a new perspective was required to be taken so that the research could be completed. This is the reason why this research looks at the agreement from a local government perspective, as opposed to an iwi perspective.

⁹ Due to staff member changes since the beginning of the research project.

Ethical Considerations

Potential Conflict of Interest

My initial knowledge about the JMA originated because one of my employers was engaged as a consultant to help negotiate the agreement. There was therefore potentially what Snook (2003, p. 77) describes as a 'conflict of role' between my role as a student at Massey University undertaking research and my role as an employee. It was understood that while some participants involved in the agreement would take my employment as the straight-forward link to my interest in the subject that it was, there may be others that felt obligated to participate in the project because of this link. In addition, there might have been others who distrusted my ability to present the information in an honest manner.

Based on Snook (2003) it was considered that the best manner in which to deal with this issue was to ensure that my role within the research was that of a student of Massey University, under the guidance of supervisors and with the approval of the Massey University Human Ethics Committee, rather than as an employee of one of the consultants who negotiated the agreement with Ngāti Tūwharetoa. As a researcher, I needed to always be aware of the potential for participants to regard me as a representative of my employer as opposed to a student of the University.

It was considered that my position presented some similar ethical considerations as would occur if I were undertaking a commissioned piece of research. While I did not receive any funding to undertake the research, literature suggests that researchers receiving funding can be presented with a feeling of obligation (or contractual requirements) either to publish, undertake the research in a certain manner or present the results in a certain way (Ham, 1999). In this case, there is a

potential for others to perceive that I may act in the interests of my employer above the overall aim of the research.

In terms of addressing these issues in my research approach, I:

- a) Ensured that participants were aware of the potential conflict of roles (as deception of the existence of the conflict would create further ethical issues) (Sieber, 1983); and
- b) Provided reassurance that my role while undertaking the research was that of a student of Massey University. This was done through written information provided to each participant and a verbal statement at any presentations prior, during or after the research was undertaken.

There was also a potential for harm to myself, as an employee undertaking research on my employer. It was possible that I may end up in a position with knowledge of information that may affect my job. However, it was not considered that this risk was much greater than that experienced by any academic undertaking research within their field of work. As Ham notes:

...all social research involves compromise in method and an almost certain dissatisfaction with results. Such research seeks a 'truth' that is at best only approachable, uses a rationality which is fallible, and manifests a constant tension between the real and the realistic. (1999, p. 281)

Ham goes on to explain that what legitimises the enterprise is a weighing up of moral considerations. Any academic research must be done on the assumption that other professionals (whether they are academic or not) will act in a moral manner – otherwise research of this type would not continue (Ham, 1999, p. 281).

In doing the research, I did not observe any hesitation or discomfort in participants in general, and therefore none that could be attributed to any of the potential issues outlined above. I was also fortunate in that all feedback related to my employer was positive, and therefore was not presented with a potential for damage to my employment role.

General Ethical Considerations

As well as the specific ethical considerations outlined above, more general ethical codes of conduct such as informed consent and participant review of transcripts were also followed. Simons (2009, pp. 100-101) explains that it is these more formal procedures that are necessary to form the appropriate conditions for the building of trust and relationships with participants.

For those participants who were still employed at Taupō District Council an initial letter to the Chief Executive Officer of the Council was sent to introduce myself and outline my intention to undertake the research with members of the CEOs staff (refer to Appendix 3). This was considered both ethical and polite given that I was likely to be visiting the staff at the Council offices at some point. Following this, as I had not met any of the potential participants prior to the research project an initial introductory email was sent to employees (past and present) again introducing myself and my desire to undertake the research. Attached to the email was a copy of an information sheet which outlined the objectives of the project, my current employment (with respect to the issues outlined above) and the general approach to the research. A copy of the information sheet is included as Appendix 4 and contains a statement that there was no obligation to participate in the research and that participation could be withdrawn at any time. Given the option to not participate, I considered that an initial contact by email would give participants the opportunity to

consider the request before they provided an answer on whether they wished to participate. All participants responded very promptly and were happy to oblige my request.

Informed consent is traditionally obtained through participants being asked to sign a form prior to being interviewed or taking part in the research (Simons, 2009, p. 103). A copy of the form participants were asked to sign as part of this project is included as Appendix 5. Simons (2009, p. 103) highlights the need to consider whether the concept of informed consent may need to be considered further into the research, particularly if difficult issues arise in the field. In this case, no such difficulties arose and the single signed consent form was considered appropriate.

Giving voice and participant control is another ethical procedure recommended by Simons (2009, p. 104). Allowing participants to review and edit their comments allows them to retract or amend comments that may be damaging to themselves or others. Allowing these comments to be removed by the participants themselves also alleviates the decision which would then have to be made by the interviewer in terms of whether or how to incorporate the comments into the published research (Simons, 2009, p. 104).

Confidentiality and anonymity are two further procedures recommended by Simons (2009, pp. 106-107). Confidentiality means that participants are able to provide information in confidence, and the researcher will respect their request to not include the comments in the research, and further will not ask questions beyond any boundaries established throughout the process. Anonymity is the use of pseudonyms or general references to refer to participants to offer protection and privacy. In the case of this research, confidentiality was utilised during the obtaining and transcribing

of participant interviews. However, as a study on a particular local authority (Taupō District Council), anonymisation in the true sense would never be possible as it would always be possible to trace staff involved, particularly those at a higher level. In these cases referring to staff in their role is used as an attempt to provide confidentiality to participants, and this was the approach taken in this instance. The ability for people to be able to identify participants even with the use of their roles, rather than names, was made clear at the outset of research within the information sheet. None of the research participants raised any concerns over this potential identification.

Simons (2009, p. 108) outlines procedures for when anonymisation is not possible and where there is disagreement between a participant/institution and the findings of the report – the opportunity for the participant/institution to provide a response to the findings is generally included within the report. In this instance, no disagreements were identified and this process was not therefore necessary.

Conclusion

This chapter has outlined the reasons behind the use of the case study method chosen to undertake the research project, as well as how the specific aspects of the research seek to ensure that the methodology is academically sound. In addition, the specific hurdles faced in the undertaking of the research, in terms of the obtaining of formal ethics approval and general ethical approaches, have been detailed.

The key aspects of this research design are that it is accepted that there are limitations with the use of only local authority participants. However, this limitation was not able to be overcome and it is nonetheless considered that the responses of the participants present the opportunity for worthwhile findings and discussion. In addition, the approach to the research (interviews and document analysis) is sound.

The next chapter will present the results of the interviews and document analysis.

CHAPTER 5: RESULTS

Introduction

This chapter presents data obtained from interviews and document analysis to answer the research objectives and questions outlined in the Introduction Chapter (Chapter 1). The chapter is divided into two sections, with information categorised by source with respect to the data analysis and, for ease of interpretation, themes and sub-themes within the interview section.

Document Analysis

Documents analysed include the JMA document, Taupō District Council documents including the District Plan provisions and strategies, newspaper articles, media releases and Ngāti Tūwharetoa documents such as their Iwi Management Plan. Each of these sources is discussed below.

Joint Management Agreement – Te Whakaatetanga ma te whakakotahinga a Rōpū

Whakahaere

The JMA is a 12 page document with 15 sections as follows:

Whakamāramatanga / Definitions

Kaupapa / Purpose

Ngā Tikanga o te Hononga / Principles of the Relationship

Ngā whakaaetanga / Decision Making

Te Hōkai o te Whakaaetanga a Rōpū Whakahaere / Scope of the Joint

Management Agreement

Te Kōwhirianga ki Waho / Opting Out

Te Kawenga me te Kanohi Atu / Process and Representation

Tohu Whakamana i te Māia Hangarau te Mākohakoha Rānei / Warranty of
Technical Capability or Expertise

Ngā Tikanga ma te Pooti / Voting Rights

Ngā Pānga Papā / Conflicts of Interest

Te Rarā Pūtea / Financial Implications

Te Whakatau i Ngā Papā / Conflict Resolution

Tirohanga Hou / Review Process

Te Aukatinga / Termination

Te Whakamana / Attestation

The sections are worded in clear, concise language with te reo and English versions provided beside each other. They outline the basis for the agreement, what it is intended to achieve, its goals and limitations. Administrative details such as review, payment for the decision making panel and the ability to terminate the agreement are also covered. In terms of the specific requirements of s36B, Section 8 states that in signing the agreement:

Representatives of the Taupō District Council and Tūwharetoa Māori Trust Board selected as the panel of commissioners herein confirm that they have the technical or special capability or expertise to perform or exercise the function, power, or duty jointly under this agreement, pursuant to section 38B(1)(A) of the Act.

Taupō District Council Website

The Joint Management Agreement is listed under ‘Key Documents’ on the TDC web page. The link provides access to a summary of the meaning of the agreement (stating it is the first time that a New Zealand local authority has transferred powers to an iwi). Further links from the summary page provide access to the document itself, and a ‘JMA Landowner Guide’. The JMA Landowner guide provides a summary of when the JMA is relevant to Māori land holders and what it means in terms of the consent or plan change process.

Taupō District 2050 Growth Management Strategy

The Taupō District 2050 Growth Management Strategy (Growth Strategy) was adopted by Council in 2006. It indicates where TDC would like to see growth occur in the region. A specific reference is made to Ngāti Tūwharetoa in *Volume 1 Part 2 – Ngāti Tūwharetoa*, which recognises the iwi’s status as both mana whenua and majority land holder of the region. The section acknowledges the difficulties in terms of developing Māori land but goes on to state that it is anticipated that Ngāti Tūwharetoa lands will be developed in the longer term. Lastly, the section makes reference to Ngāti Tūwharetoa’s Iwi Management Plan which was finalised in 2004 and notes:

The iwi is pleased that its positive relationship with Taupō District Council has led to recognition in this document of the different considerations facing Māori in the

development of their lands. (p. 16)

Ngāti Tūwharetoa are also referenced within Volume 1 Part 5 – Focus on Taupō District, where the development of multiple owned Māori land is noted as “...progressively becoming a key player in the development of the District” (p. 47). It is stated:

At present Ngāti Tūwharetoa as a tribe have indicated that they are still determining their future development aspirations for their land. Many of the specific land owning trusts are in a similar situation. Taupō District 2050 will be reviewed in 2008 and thereafter on a three yearly basis. Those reviews will be able to take into account the views of Ngāti Tūwharetoa as they evolve over time. (p. 47)

Volume 1 – Part 7 Strategy, Strategic Direction 6 (p. 88) provides a set of policies for issues relating to tangata whenua. These include:

The ongoing management of growth will reflect the strong partnership between Tangata Whenua and the Taupō District Council. (Policy 6.2, p. 88)

and

To recognise the significant presence of Tūwharetoa in terms of mana whenua, land holdings, and population numbers. (Policy 6.3, p. 88)

This section also provides a list of action points with respect to the policies relating to Tangata Whenua; the action for Policy 6.2 is to:

Continue dialogue between Trusts and the Council to assist in the development of an approach to achieve Māori land owner aspirations and implementation of Taupō

The action for Policy 6.3 is:

Promote use of Iwi/hapū management plans to meet protection and development aspirations for incorporation into the Proposed District Plan. (p. 89)

Taupō District Plan

The Landscape and Natural Values Plan Change (Plan Change 24 and Variation 25 to the Operative Taupō District Plan) was notified on 19 December 2008. As identified later on in this chapter and discussed in Chapter 6, this plan change was the trigger for the creation of the JMA between Ngāti Tūwharetoa and TDC.

As part of the Landscape and Natural Values Plan Change references were included in appropriate places to the JMA. This included Section 3h.3 which provides a list of methods to achieve the objectives relating to Landscape Values and associated policies. Method 3h.3 states “The implementation of any Joint Management Agreement between Council and Iwi.”

The same method was included in Section 3i.3 which provides a list of methods to achieve the objectives relating to Natural Values and associated policies including:

Recognising the extent of Significant Natural Areas under Māori land tenure, and the need to provide for the relationship of Māori and their culture and traditions with their ancestral lands and taonga. (Policy b)

While the Natural Values Plan Change did not affect any other objectives, policies or rules of the other chapters of the District Plan, this same method was inserted into all other method sections of the District Plan within the Landscape and

Natural Values Plan Change¹⁰. After a resolution of appeals the plan change was made operative in 2010, with changes being referenced as operative in the District Plan from 19 November 2010.

Prior to the Landscape and Natural Values Plan Change, the Operative District Plan included Section 3g (Tangata Whenua Cultural Values) which states that a specific objective of the Council is to:

Recognise and provide for the cultural and spiritual values of Tangata Whenua in managing the effects of activities within the District. (Objective 3g.2.1)

Policies set out to achieve this objective include: taking into account the principles of the Treaty in the management of the natural and physical resources of the District; ensure activities have regard for the cultural values of Tangata whenua as Kaitiaki of their culture, traditions, ancestral lands, water and other taonga; and ensure activities on or near sites of significance to Tangata Whenua are undertaken in a manner which provides for the cultural and spiritual value and significance of the site.

Methods outlined to achieve these goals include: conditions on resource consents; resource consents being sent to Hapū for comment; Hapū/Iwi management plans; voluntary instruments such as Memoranda of Understanding, protection incentives to help encourage landowners to take enhancement and voluntary

¹⁰ In sections Residential Environment 3a.3.xi; Rural Environment 3b.5.vii, Town Centre Environment 3c.3.xi, Industrial Environment 3d.3.xi, Land Development 3e.3.x, Traffic and Transport 3f.3.xii, Tangata Whenua Cultural Values 3g.3.xiv, Historic Values 3j.3.xvi, Activities on the Surface of Water 3k.3.viii, Natural Hazards and Unstable Ground 3l.3.xvi, Hazardous Substances 3m.3.xv, Network Utilities 3n.3.vi, Geothermal Activity 3o.3.x, Notable and Amenity Trees 3p.4.viii, and Mapara Valley Structure Plan Area 3q.3x.

protection measures such as rates relief, and to undertake the transfer of powers to iwi provided for by s33 or to committees of council under Section 34 of the RMA 1991. The Taupō District Plan was notified in 2000, prior to the inclusion of s36B within the RMA 1991. Even though it was made fully operative in late 2007, this is the most likely reason why s33 is referred to and not s36B.

Council Agendas and Minutes

The JMA is referenced within two TDC meeting documents. The agenda documentation for the TDC meeting on Tuesday 30 September 2008 includes a report by the Principal Planner Environmental Policy on the proposed JMA. The report covers the background to the JMA and references a workshop held on 22 July 2008 to discuss the possibility of entering into a JMA. No specific details of the workshop are provided, except that the outcome was that the development of the JMA was to be progressed and brought back to Council for approval. The report goes on to outline the three options available to the councillors:

1. Do not adopt the JMA: Entering into such an agreement is voluntary and the option exists of retaining the status quo. This is not the preferred option as it is considered that it would be a missed opportunity to reflect the principles of the Resource Management Act in the way that we work.
2. Amend the JMA. While Officers believe that the draft JMA reflects the consensus as the previous workshop, proposed amendments could be made, although as this is an agreement between two parties, any changes would need to be referred back to Tūwharetoa for further consideration.
3. Accepting the JMA: Acceptance of the JMA and embarking down the joint hearing process would have significant benefits for Council's relationship with

Tūwharetoa and their support for current District Plan policy projects. (Agenda of Council Meeting, 30 September 2008, Item 8, Section 4)

The report outlines the financial and legal considerations of entering into the JMA, commenting that the JMA would not result in any further costs to Council and that any costs of implementing the agreement would be borne by the applicants, who may opt out of the process. With respect to legal considerations, it was noted that the draft JMA was consistent with the requirements of the RMA for such agreements.

The report notes that further communication and consultation with Ngāti Tūwharetoa would be required if the agreement was entered into to bring the document to the attention of Māori landowners in the District. This was anticipated to be a joint exercise and complemented by a guide to landowners to be written in a readily understandable manner. Wider communication was also anticipated to be required in light of the groundbreaking nature of the agreement and the interest it would create.

Risks were considered to be negligible on the basis that: the process of deferring hearings to Commissioners was one already adopted by the Council; the JMA wording addressed potential conflicts of interest; an annual review was provided for in the agreement; there was an ability to terminate the agreement by either party; and the concept was completely in accordance with the Resource Management Act and the Principles of the Treaty of Waitangi. The report also noted that if the Council endorsed the agreement, then it was intended that a ceremonial public signing would take place between the two parties.

A diagram of the process for notified resource consents on multiple owned Māori land was included in the report as follows:

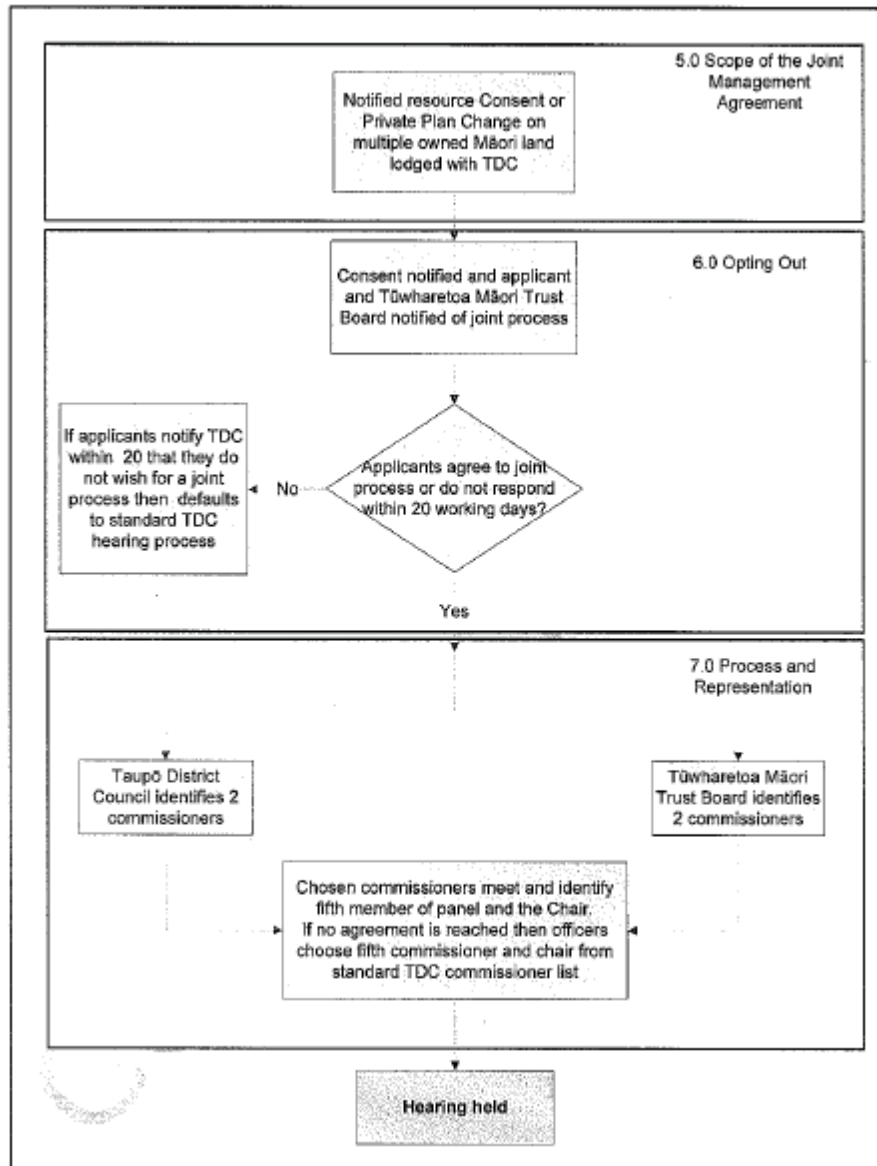


Figure 1 Summary of Joint Management Agreement Process

Source: Council Minutes 30 September 2009

Finally, a draft version of the agreement was included for the councillors to review. There are no changes between the draft, which is all in English, and finalised version of the agreement. However, the final agreement contains the Māori version (in Tūwharetoa dialect) of the agreement alongside the English wording. The final document also has a new title page which reads: *'Joint Management Agreement, Te Whakaatetanga Ma Te Whakakotahinga A Rōpū Whakaere'* and a Ngāti Tūwharetoa

whakatauki is included on the first page of the final version as follows:

Kia ata whakatere i te waka

Kei pariparia e te tai, kei monenehu te kura

Whakamarotia atu ano,

Me hoki mai ki te kapua whakapipi

Be careful when launching your canoe

Lest it be overcome by the tide, and its plumes be drenched

It is all very well that we go our separate ways,

But our strength is in working together

The 30 September TDC meeting was attended by a representative of the Tuaropaki Trust, the Ngāti Tūwharetoa Māori Trust Board and an officer from Environment Waikato. The Councillors resolved that Council would enter into the agreement in accordance with the draft. The minutes state:

Mayor Rick noted that the entering into of the Agreement was a great step forward in improving relationships and also improving engagement with the local iwi. Members agreed wholeheartedly. (p. 6)

The second reference to the JMA was at a Council meeting on 16 December 2008. This was a reference noting the “Signing of a landmark Partnership Agreement between Tūwharetoa and Council” (p. 12) on 17 January 2009. No other description or mention of the agreement or process is made.

Ngāti Tūwharetoa Environmental Iwi Management Plan

Ngāti Tūwharetoa prepared an Environmental Iwi Management Plan (EIMP) in 2003 which outlines the overall approach of Ngāti Tūwharetoa to environmental matters. Within the plan, Ngāti Tūwharetoa establishes policies and baselines with respect to kaitiakitanga, partnerships and taonga. Of note are the repeated references to “Promote and enhance partnerships between nga hapū o Ngāti Tūwharetoa and central government, regional and district councils...” (Tūwharetoa Environmental Iwi Management Plan, 2002). This shows a clear intent to enter into partnerships within the statutory resource management framework. The EIMP represents an exercise of Ngāti Tūwharetoa tino rangatiratanga over resources as provided by Article II of Te Tiriti o Waitangi. Also of note within the EIMP is a method to “Lobby for experts in Ngāti Tūwharetoa tikanga to be appointed to Hearing Committees on applications for resource consents that may affect ngā hapū o Ngāti Tūwharetoa”(Tūwharetoa Environmental Management Plan, 2002).

Media

The following information was obtained from a search from 2009 onwards on the Newstext database, with all of the media statements/articles obtained from the search discussed. The earliest item found was on Radio New Zealand on 2 October 2008 *‘Iwi set to make resource consent decisions.’* The piece noted that Ngāti Tūwharetoa were to discuss the possibility of shared decision making with the Taupō District Council. The Mayor of TDC was quoted as saying that if the agreement is ratified by a hui in the following week, it would usher in a new era of collaboration (Radio NZ, 2008)

The Dominion Post of 17 January 2009 carried a short article *‘Taupō iwi get*

planning power’ that reported that councils were closely watching a historic move by Taupō District Council to transfer resource consent administrative powers to iwi. The details of the ceremony were provided, which was to take place on the day of the article. The Mayor of TDC was quoted as saying that:

given Tūwharetoa’s importance to the district, it was appropriate they should have some real authority. (p. 19)

The vice-president of Local Government New Zealand was quoted as saying that:

Taupō District Council was taking a significant step away from common consultation practices with Māori adopted by most local bodies. “We’re waiting to see how it turns out. (p. 19)

In the Daily Post of 19 January 2009 in an article entitled *‘Taupō iwi, council working together’* it was commented that:

Taupō has led the way for power sharing between iwi and local government on resource consent decisions.

A Te Arawa spokesman said in the same article that there was no rush to follow suit in Rotorua. It was further stated that it was something that the Rotorua District Council and Te Arawa would have to consider, but other things were being addressed first such as water and geothermal resources: “Those need to come first”. A Rotorua District Councillor is also noted as saying that it could be a lucrative way to plan how to address the full use of Māori-owned land but it would need their people (elected officers) to consider the ramifications of such a move and where they could work together to benefit the whole community. A Ngāti Tūwharetoa spokesperson is reported as saying that the iwi had been asking for the opportunity to be part of such

discussions since the inception of its trust board in 1926.

In the 20 January 2009 issue of the Rotorua Daily Post, the column *'Māori Briefs'* contained a short article stating that Ngāti Tūwharetoa and Taupō District Council had signed a Joint Management Agreement. The author wrote that this meant that iwi would now have equal representation by accredited people on the council when it came to deciding their resource management issues. The article quoted the Mayor of TDC as stating that the agreement allows the iwi to be masters of their destiny.

The Daily Post, 29 June 2010 *'Council's relationship with tribe rewarded'*, was a report of Taupō District Council receiving the Institute of Public Administration New Zealand's Gen-i public sector excellence award for Excellence in Crown-Māori Relationships for the JMA. A Taupō District Councillor is quoted as saying

The agreement is a big step and we now have to work diligently in order to ensure it works as intended...Our iwi partners have a huge knowledge base pertaining to their ancestral lands, the direct application of that will be of immense benefit to fully consider the merit of each application.

The Institute's judges commended the council and the trust on the "innovative and constructive" approach, with each party seeking to understand the viewpoint, circumstances, capability and operating environment of the other and to compromise when required.

Local Government New Zealand 2011 Study

As mentioned in Section 3, LGNZ released a study in 2011 which discussed the JMA between Ngāti Tūwharetoa and Taupō District Council. The findings of that research are included within this results section as secondary data. However, it is

noted that as a study undertaken by the governing body of local government, findings are likely to be presented in a positive manner with little criticism of agreements discussed.

Notwithstanding the above, the LGNZ study advises that:

The JMA provides for Ngāti Tūwharetoa participation in resource consent decision making and an enhanced consideration and recognition of the relationship of Ngāti Tūwharetoa to their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga.

The agreement also facilitated a step forward in improving relationships and engagement between Taupō District Council and Ngāti Tūwharetoa. (LGNZ, 2011, p. 9)

The report goes on to say that the JMA “represents the first agreement arising from the introduction of section 36B into the RMA Amendment Act 2005” and that:

The provision was specifically introduced into the RMA as a “stepping stone” towards the full delegation of local authority responsibilities as provided for by section 33 of the Act. (LGNZ, 2011, p. 11)

In terms of the background to the establishment of the JMA, the LGNZ study comments that the situation for Ngāti Tūwharetoa is unique from other iwi given the retention of iwi historic title (as discussed earlier in Chapter 2). The background section goes on to explain that in early 2005 Taupō District Council proposed to “provide for the protection of the landscape and natural values” on much of the district’s land under the Landscape and Natural Values Plan change. The document was appealed by iwi and, following on from further discussions it was identified that Ngāti Tūwharetoa’s

concerns were:

- their lack of representation, with no Ngāti Tūwharetoa representation on the Council;
- the inequity in the proposed protection mechanisms, in that they proposed further development restrictions of lands that were predominantly Māori land
- their lack of involvement in planning processes, particularly in terms of the process through which consents are considered
- the lack of effective engagement to handle these issues
- the negative impact of these issues on tribal rangatiratanga. (LGNZ, 2011, p. 13)

Against this backdrop, advantages of the agreement were:

For Ngāti Tūwharetoa, the JMA represents the opportunity to directly apply their unique knowledge and understanding to the management of ancestral land resources on an equal footing with a local authority.

For Taupō District Council the JMA has promoted a greater acceptance of the participation of tangata whenua in decision-making processes and a significant step forward in terms of improving relationships and engagement with the tangata whenua. It also allowed the Landscape and Natural Values Plan Change to progress.

For both parties the unique governance arrangement process and innovative structure for the realising of the Treaty of Waitangi and closer relationships at operational, political, governance levels. (LGNZ, 2011, p. 13)

The report concludes that to date the arrangement has not been used, but that:

The arrangement is however viewed as an important stepping stone in terms of relationship development and Tūwharetoa representation in Council activities. (LGNZ, 2011, p. 14)

Document Analysis Summary

The documents outlined above provide a background to the feedback that was received publicly around the signing of the agreement, details of the political process which the team went through to progress the agreement, and a summary of the reasons for and outcomes of, the agreement from a local government perspective. While it is acknowledged that the LGNZ studies are unlikely to be critical of the agreements discussed, there is an assumption that the findings of the studies are nonetheless valid in terms of providing accurate information on the details of the various agreements.

The following sections will provide first-hand accounts of the reasons behind the creation of the agreement and the process followed.

Interviews

The following sections are summaries and extracts of interviews undertaken with Council staff and the resource management consultant engaged to progress the agreement on behalf of Ngāti Tūwharetoa. The data has been organised to identify key points and themes.

Relationship

In terms of the status of Tūwharetoa in the District, the overlap between the District and Tūwharetoa's rohe, their ownership of not only the lake bed but also conditional ownership of the mountains with DoC, as well as their substantial

undeveloped farm lands means that, while there are other iwi whose rohe extend into the District, TDC is primarily focussed on Tūwharetoa. This makes sense from not only a governance perspective but, as one Council Officer explained:

If Tūwharetoa was told by the Paramountcy not to pay rates, they wouldn't. And that, from our rating capital is a problem.

Notwithstanding their stakeholder status within the District, according to a TDC officer:

The relationship with TDC has been varied over the years, both at iwi and hapū level. And up until this it was very much on a reactionary basis, so it was either when TDC did something wrong to upset hapū or iwi there would be a discussion around that, or, if we wanted to consult on a plan or a policy or a project. So it was very much that reactionary based sort of relationship. I think several relationships were good on a personal level, on a person to person basis, but from an organisation to organisation basis it was almost formal. Particularly the governance relationship. It wasn't a close or equal relationship.

In terms of formal agreements, TDC has a Management Agreement with Ngāti Tūwharetoa which outlines a process for the Paramouncy and the CEO of the Council to meet quarterly. The only other agreement held by the Council with another iwi is with Raukawa, with whom they have a Memorandum of Understanding.

Natural and Landscape Values Plan Change

A combination of ancient volcanic formations, complex mountain ranges, lakes and expansive un-built areas mean that the Taupō District has some outstanding scenery. TDC has duties under the RMA 1991 to protect both outstanding landscape

and natural features from inappropriate use, development and subdivision. As such, a decision was made to progress a plan change to protect these areas. The process began in 2000 with an initial desk top study by ecologists to identify significant natural areas in the District. As a result of this initial assessment, certain areas were identified in the new District Plan notified in 2000 as significant landscapes.

A TDC officer explains that the initial landscape areas covered over 40% of the land area of the District, with the majority of the areas identified being Māori land. Another TDC Council officer explained that the landscape areas:

... got appealed by Tūwharetoa in particular, but from both ends of the spectrum – from farmers through to Tūwharetoa. It got appealed, and mainly around methodology and process.

The appeals were resolved on the basis that a new plan change be notified after a new assessment with greater emphasis on public and landowner consultation was undertaken.

In 2005 TDC began consultation with Tūwharetoa about progressing the plan change. According to a TDC officer a hui at the Waitetoko marae was a turning point for the iwi in terms of accepting that the plan change was going to happen, but also for TDC with Tūwharetoa making it clear that the plan change was “... a really big issue. And that they needed time to look at it as an iwi...” At that stage Council officers felt that:

...no matter what we did, we were going to end up down the same path. Because, we were being pushed by the environmentalists on one-side, farmers on the other and Tūwharetoa and their unique situation here in terms of their land, and in

particular the land we were talking about.

Council officers worked with hapū and other land owners for the next couple of years. Unfortunately, once words were put to paper and discussed with the trusts and incorporations and hapū, the iwi considered they were back where they started (which was a stand-off between Council's obligations to protect significant landscapes and Ngāti Tūwharetoa's uncertainty and hesitation as to what this would mean for them). At this stage TDC resourced an independent resource management consultant to work for the iwi, alongside the iwi's own resource management officer. The Tūwharetoa Trust Board then went and undertook some internal consultation within the iwi. A TDC officer gave details that:

The research identified that there was no Tūwharetoa representation at Council... and that while ...Tūwharetoa recognised the value of these areas... what they were concerned about was that tikanga, and at least Tūwharetoa's values, weren't going to count in the decision making process at the end of it. That was seen as a major issue for them and a major concern.

As a result of the internal consultation and the identification of this concern to Tūwharetoa, thoughts turned to how the concern could be addressed, with the aim of getting some confidence in decision making on multiple owned Māori land. The Resource Management Consultant explained that:

...it was clear to me from the outset that there was a big divide between both parties, a big conflict, and it seemed to be a lack of trust and communication between the parties that made discussions on the plan change very difficult.... seeing all this tension between both parties I thought, well there has to be another way of doing this so I suggested that both parties look at coming together through

a Joint Management Agreement process...It just seemed very logical to bring both parties together and empower Tūwharetoa so they felt a part of the process moving forward...

It was as a result of these discussions that a decision was made to use s36B of the RMA to formalise the JMA.

The benefits of s36B

Opinion was divided on whether such an agreement would have been possible without the s36B framework. All interviewees believed that with the personnel present at the time, and the common desire to achieve a positive outcome, a solution would have been found. A Council officer said:

...it's not like the discussion around the table was 'oh and there's s36B' we could actually do a JMA. It was about how do we get some confidence in decision making in multiply owned Māori land, the joint wish list was to do that, and then it was – how do we do that. We could do it by giving an undertaking that when an officer selects commissioners they will be from this pool, but then it was about let's get something more certain and clear than that. I think we still would have got to the same place without s36 but for me it would have been more difficult to talk our councillors through that process.

The resource management consultant explained that s36B provided a legal framework and opened the door to the JMA. Without the backing of the RMA as a sort of agreement framework, the consultant did not believe that the Council would have ever entered into such an agreement.

There is also the question of being able to legally delegate the powers of

councillors. Councillors have the authority to make decisions on behalf of their electorate. These powers cannot be passed on to just any member of the public or group. S36B provides the ability for powers to be delegated, and the resource management consultant explained that without using this provision:

...there would have had to have been another Act, like the Waikato River Act [Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010], or something else to enable them to do it.

Respondents were unanimous that without the statutory framework of the RMA behind such a proposal, political support from TDC councillors would have been hard, if not impossible to obtain. As a TDC officer explains:

...from my perspective, talking to my council it made things a lot easier to have something set in legislation to say – this was envisaged. It made it easier to get it across the line. Because, whilst we were upfront with them in terms of this being the first one to be done, which they saw as a positive, it was set in the Act and therefore envisaged by parliament. And they saw some comfort in that.

Meeting the requirements of s36B

S36B(1)(b) states that in order to create a JMA the local authority must be satisfied that:

- i) that each public authority, iwi authority, and group that represents hapū for the purposes of this Act that, in each case, is a party to the joint management agreement—
 - a) represents the relevant community of interest; and
 - b) has the technical or special capability or expertise to perform or exercise the function, power, or duty jointly with the local authority; and
- ii) that a joint management agreement is an efficient method of performing a function, power, or duty;

The Resource Management Consultant explained that:

...it was one of the first tasks that I went through with Tūwharetoa. When we were discussing the agreement we explored firstly, can we do this under the legislative constraints of 36B, or the tests within 36B and we went through each of them and we decided that each of them could be dealt with. That was a big thing we looked at first.

With regard to ensuring the iwi represented the relevant community of interest, the role of the Council's strategic relationship manager helped in this respect.

As our adviser if the question had been put to [Strategic Relationship Manager] (which it was) and he had come up to me previously and said "No I'm nervous about this" then that would have changed the next steps. But, as it was [Strategic Relationship Manager] was able to stand up and say "We're all good" (Council officer).

The need for the iwi to have the technical or special capability or expertise to perform or exercise the function of a commissioner was met with a requirement for nominated people to have completed the Making Good Decisions Programme, a programme run by the Ministry for the Environment. According to a TDC officer:

Within the Trust we had to have the Making Good Decisions Programme. And that is a condition of this, is that the only people who will act in capacity as commissioners, will be those that have undertaken that training. I think we are sitting at about six, from Tūwharetoa now. To that point that [member of Ngāti Tūwharetoa Trust Board] is on the board for Ruapehu DC's District Plan. And they understood that, they understood that we had to have that.

The Process

It was not only councillors that needed convincing that the JMA was a good idea. The resource management consultant spent time with both parties, taking them through the opportunities that s36B would create for them. The consultant promoted the idea that there was nothing daunting about the transfer of power, that it was a matter of trust, and that with both parties working together and trusting each other the process would work fine. For TDC in particular, there was an opportunity to form a strong relationship with the council's major stakeholder. According to the Resource Management Consultant:

...the biggest obstacle was really convincing Tūwharetoa that this was just the start of hopefully a long journey to provide more delegation and power to Tūwharetoa over time... We had to convince Tūwharetoa that it was small steps and that this was just the start of a journey because obviously they want to have input into public plan changes, they wanted to have the right to sit on public plan changes which affected their land and also hopefully involvement in the annual plan process one day, and the LTCCP process and other internal council processes.

Once both the council team and the iwi were in agreement, the next step was working through the key principles that an agreement would set out in terms of the transfer of power. This included which aspects of council's decision making power would be transferred, how they would be transferred and how they would be managed in the future. Because of the knowledge that the agreement was going to be a big step for councillors, a decision was made to not present the idea until a full and agreed copy of the agreement had been created. In this way the Council officers and the iwi could present a united team in front of the councillors, without having to then go back to work on the wording of the document. A Council officer explains that:

From start to finish it was a very simple process, it was a lot easier than we expected. The document itself is not long, it's not overly complex. And once we got around what it should look like and what we should agree, which because we had a good working relationship with [the resource management consultant and iwi resource management officer] it was pretty easy to do and it was done in a very workable and social atmosphere, it was good. There was no clashing of heads, we were all sitting around thinking in the same direction.

Once the team had the document together they initiated a two-step process with the councillors. The first was a confidential, or closed, workshop where Tūwharetoa presented and left, and then the Council officers presented and left. A Council officer recounts:

I think there was a lot of hesitancy from some members of the council about one – this is our job, we have been voted in to do this, they weren't so why should they do it? And the other was why hasn't anyone else done it before, are we taking a big step in the dark? Our sales pitch was the wider relationship side of things, those benefits that aren't in the document but you are going to get to working closer with Ngāti Tūwharetoa. It's a commitment which goes a long way. Also, it has been legally reviewed etc. so we were able to provide a degree of certainty and security around that.

Time was then taken to ensure the councillors had sufficient information to consider the proposal:

..it was a really big step for some of them – a leap of faith – to get to a point where they had the trust to get to that point. So there was a heck of a lot of talking and persuading – massaging. Whether or not they would have got there if there was not the threat of the landscape stuff over their heads, I don't know. It would be an

interesting thing to go back in time, and if you didn't have the landscape thing and you just had the JMA on its own – would the council of the day (today's council are quite different), whether if they didn't have that hanging over if they would have got to that point so easily. I don't know but they got there. (Council officer)

A second workshop was held to essentially agree to the draft wording that the team had marked up. It was then up to Tūwharetoa to formally confirm that they would sign the agreement. Then, the final step in the process was a ceremonial signing of the agreement, witnessed by the Governor-General. In the same way that it was understood that the significance of the signing was more important than what the document itself said, a public signing was considered to be the most appropriate way to recognise the significance of the document.

It didn't have to be a ceremonial signing, it could have been that we just put it on the mayor's in tray and he scribbled on it one day, and then it was taken to the chief and he scribbled on it and that was done. But given that significance and what it was all about, that's why we did that, why we got in the Governor General to witness it. As I said it was more than what this thing says. (Council officer)

The Agreement Document

One obstacle faced by the creation of the document was the perceived conflict issue:

In that applications involving Tūwharetoa land, with Tūwharetoa representatives sitting on the decision making panel creates the perception to the general public that there is a conflict of interest. So the JMA had to be very clear – a fundamental part of the JMA was being clear on the conflict issues and how they would be resolved, as and when they came up through the process...That was resolved through the requirement to choose independent commissioners to sit on these panels, so it wouldn't necessarily be a Tūwharetoa representatives, it could just be

an independent commissioner who they knew understood iwi values on these panels. Or it could be that, if the application involved one hapū it could be another hapū who had the appropriate qualifications to sit on the panel. So it was resolved through that section 7 process [Process and Representation] and also managed through the s10 conflict of interest clause which was fundamental to the agreement. (Resource Management Consultant)

A Council officer further explains:

Tūwharetoa acknowledged that and all the way through they were clear that this wasn't necessarily about having a beneficial owner on the panel, it's not even necessarily about having someone from the same hapū, and it's potentially not having someone from Tūwharetoa, and potentially it's not even about having someone of Māori descent. It's just for them to have the ability to choose part of that decision making panel. So there is nothing in there that means Tūwharetoa have to get a Māori person from here, or from Rotorua or from anywhere else, and likewise there is nothing in there preventing TDC (as we do) having Māori commissioners which we use. So it was not a race issue in terms of that, it was about being able to influence the decision making of who was going to be making the decision. It was the cultural knowledge associated with that that we wanted. Because it's knowing why Mount Tauhara is significant to the Tainui people, in a way that putting a waste water treatment plant on its base would have a problem with the fact that that's where the food supply is from. It's coming from that place.

The agreement itself is written in both Māori and English. A TDC officer explained that:

It's Māori translated to English, as opposed to English translated to Māori. And that was deliberate... We had it translated by a kaumatua. We deliberately went to

Tūwharetoa so it's Tūwharetoa dialect... It promotes it to the right context, and it also enables the values to be extenuated. Because if you look at the whole thing of the JMA: Whakakotahi = unity, so the use of that language and recognising that. Whakaaetanga – agreement, Whakahaere = management. So automatically the context of that in relation to that is totally different, and having it first actually elevates it and puts it on an equal level.

The document is reasonably streamlined and is written in plain language. This was the intent:

There is nothing in there that is rocket science. That's why when you show people they do say – what's that, we could have done that anyway, without going through that process. It is the start of a journey and it is the start of that trust and I think that's, having a document like that, that has both of our logos, both in te reo and in English – it's that more than the content. It's just as simple as being able to come together and agree on something.

Factors contributing to the adoption of the JMA

The resource management consultant explained that the fact that Ngāti Tūwharetoa are one of the only iwi in New Zealand that has uncontested land holdings meant that the JMA was a much simpler process, and would have been one of the reasons why it was the first JMA to occur under s36B:

They are one of the few iwi that has never really got challenged in terms of the Māori Land Wars or anything. They basically retain their original rohe. This made it simple in that respect, because doing a JMA with an iwi that had total, uncontested control of their land makes it a lot simpler than land that has been contested under the Treaty of Waitangi, or has multiple interests layered across it. (Resource management consultant)

In addition, the iwi's status as the most significant land-holder in the region also helped by acting as:

a pretty significant lever to negotiate with in terms of [the Council] having to take Tūwharetoa seriously given the amount of land they controlled within the District.
(Resource Management Consultant)

TDC employs a Strategic Relationship Manager to oversee the TDC's relationships with stakeholders. The position was created in 1996 in response to the need to resolve an issue between Ngāti Tūwharetoa and TDC. The aim of the position is to ensure that there is someone within Council who is able to advise TDC on potential issues, to try to avoid conflicts with iwi and other groups within the District. The benefit of having such a person during the process of creating the JMA centres around trust. As a Council officer said "we had trust that he was here to advise us and there was the trust in the Council chamber for [Strategic Relationship Manager]". Similarly, the resource management consultant reflected that:

It was very important to have that conduit between Council and the iwi and hapū. He was able to sit in-between both parties and pull them together when it was required... without that sort of person it would have been very very difficult.

The contracting of the resource management consultant by TDC for Tūwharetoa appears to have helped not only in terms of a fresh pair of eyes coming into what had been a long process, but also in terms of having a somewhat independent professional that was trusted by both parties. The consultant spent time with Tūwharetoa, talking them through the opportunities that the JMA could bring, and also with TDC in terms of forming a strong relationship with the major stakeholder of the District. A TDC officer explained that the consultant was able to act as a mediator, which was

fundamental in terms of the current personnel in both parties. The mediating role was helpful because the iwi's resource management officer was recognised as a very strong person and was always actively looking at ways to advocate environmental parity when it came to decision making, while on the other side there was a bureaucracy (TDC) that was directive as opposed to collaborative. On top of this, both the Strategic Relationships Manager and the Group Leader of Environmental Services were relatively new to TDC, and while there was ability in terms of the other Council officer involved in the project, the political ramifications of the proposal were substantial. Therefore, by having a person involved who was able to see perspective, rather than being sidelined by political implications or advocacy, the sides of both parties could be heard and balanced.

Interestingly, none of the TDC officers said that they had any help from any other government departments, such as Te Puni Kokiri or the Ministry for the Environment, or from any other local authorities. The officers felt, however, that:

...because these things are based on relationships which are different everywhere there was nothing really in terms of guidelines or procedures that we could use.

Outcomes of the Agreement

As at the time of writing (October 2011) the JMA had not been used in relation to any notified resource consents or plan changes on multiply owned Māori land. Council officers believe that this is a result of the economic down-turn since the signing in early 2009, rather than a reflection of the agreement itself.

The one thing we said with this all the way along was that, in itself the JMA wasn't remarkable, it's just a few words on a bit of paper showing a bit of intent. But, it was more, particularly where we were at the time relationship wise; it was more

we were at the start of a journey, at something bigger than that. That's not a regret, I don't think we would have done anything differently, but it probably does come back to what is the bigger regret for me is that the economy did what it did. In the two years that it's been signed we haven't had anything through to test it. We had a whole lot of momentum, not just around the JMA but around relationships and around building that relationship. Then, the JMA component of that – which was the plank to get there from a relationship perspective, has gone cold. It's still sitting there, there is still work being done – applications being created that fully intend to go through this process. But, for two years we haven't and now we have a new crop of Councillors and that relationship sort of changes again. So, whilst it wasn't something in our control, it would have been nice to have something two or three months after we signed it to test it. (Council officer)

TDC has undertaken two reviews of the agreement, as provided for in Section 13 of the document:

What we did do the last time is look at it and ask if there was anything within the JMA that was preventing it being used. So looking at the intent of it and asking 'is there something in there that is stopping it from being used?' the answer was no, it was just the time and the economy and the pace generally of aspirations. But I think that's handy generally to keep doing and then if we sit there in 10 years time and it still hasn't been used then you would have to go back and look at it and say – why not, is it not going to achieve what we thought it was going to achieve or is there a fence or a gate stopping people using it for a particular reason being cost or whatever. (Council officer)

In terms of the Council's practices, changes to date (October 2011) have been subtle, consisting primarily of general up-skilling of planners, reviewing planners checklists to ensure that they are aware of the process, particularly in terms of the fact

that it is an 'opt out' rather than 'opt in' process. This means that qualifying proposals will automatically be processed within the JMA provisions unless Ngāti Tūwharetoa advises that they do not wish this to happen. As part of the Natural Landscape Plan Change, provisions were also inserted into other chapters of the plan to refer to the need to take into account 'any' Joint Management Agreement, meaning the phrase is future proofed for any other JMAs that are created.

With respect to Tūwharetoa, a Council officer said that:

...they are a lot more aware of the RMA in relation to our functions and the Waikato Regional Council functions, especially with the [Waikato] Regional Policy Statement coming out around the Waikato River... But it will have an impact on us in terms of some of the work that we do when it comes to our District Plan review, which will be in the next two years.

Objectives

The Resource Management Consultant summed up the success of the agreement by saying that the:

Key objective was establishing trust and the relationship between both parties. The empowerment of iwi to manage their own resources in their own ways, using their own methods and understanding of the agreement was fundamental. So the main objective was – securing a formal relationship between both parties and ensuring that the iwi perspective on the environment was properly taken into account when making decisions on iwi ancestral land resources.

Changes in the relationship between the Council and Ngāti Tūwharetoa have also been noticed. However, Council officers were quick to establish that:

It's a progression from being in a really dark space to one where, it's still not light, but at least it is progressing forward. And you will notice that we are not gloating about the JMA. There is a reason for that, and it's because it's a progression. We are not perfect. It's a localised response... It's not about waving a flag it's the fact that we needed to do something to fix some wrongs, we have regulatory responsibilities that we have to fulfil, and to get to where we are now there has been a hell of a lot of soul searching from the organisation.

36B gets capacity building. The be all and end all is that we have got Tūwharetoa sitting equal to Council which has, for lack of a better word, power within themselves to actually talk at the right level. That whole thing of the paradigm within Māori of between chief to chief, and having that discussion to actually impart some knowledge from something that has been learnt from years ago. To someone that's looking at it from a perspective of – but why are you so special to me, what's so different to what you think to what I think? It works both ways, it's not just Council giving over their power, because at the end of the process we are going to have a Council that is a lot more equipped to reflect on the community as a whole.

However, and while it is not something necessarily within TDC's control, the resource management consultant believes that:

The key now is to make sure that they agreement is used in a positive way. It could just sit there and gather dust which would make the whole thing a waste of time. The agreement means nothing unless it is used positively, and if it is used positively then the lesson that comes out of it is that iwi and Councils can work together in a co-operative and positive manner which is of benefit to both parties and move forward. So I think the lessons are yet to be learnt from this agreement, it has to be used positively moving forward otherwise there will be no lessons – it's just

another piece of paper.

Landscape and Environmental Plan Change

While the JMA was never anticipated to fully address Tūwharetoa's concerns about the Landscape and Natural Values Plan Change, Council officers reported that its presence did assist in the process. TDC staff felt that they were able to successfully engage with the iwi and that there was comfort in knowing that the agreement was there for when consents came up for activities within the protected areas.

Ngāti Tūwharetoa (through the Lake Forest Trust) did lodge an appeal on the decision of the plan change issued by TDC. However, a Council officer said that this was resolved relatively quickly and the Plan Change was made operative in November 2010.

Unintended benefits

One of the unintended benefits of the agreement has been the up-skilling of Ngāti Tūwharetoa Trust Board members who are now able to act as commissioners outside of the district. This represents a fundamental change in the makeup of a hearing panel, where a local iwi board member has a role in the decision making process. Council officers see that this will have some bearing on the way their District Plan review is undertaken in the next couple of years.

Doing things differently

Asked if they would do anything differently if they had the opportunity again, all interviewees responded that they would have liked to put something into the agreement that allowed for a greater capacity at a later date. For example, the JMA required by the Waikato River Settlement Act (described in Chapter 3) could be

incorporated into the existing JMA, rather than there being two JMAs between TDC and Ngāti Tūwharetoa. While there is no reason why this cannot be done, there is no clear direction in the document that promotes this transformative approach either.

The environmental consultant believes that further delegation would have strengthened the document:

I think that part of the reason this agreement hasn't been used yet is that it is quite narrow. It only involves private plan changes and notified resource consents on their land, of which there are very few. So if we could do it again I would push harder for Tūwharetoa representation on public plan changes throughout the District. I think that would be a really important clause to bring into the agreement. And hopefully the agreement will be reviewed, and as a minimum expanded to do that. Because that would really give Tūwharetoa security that their land values are respected and are being taken into account when these very significant public plan changes are notified throughout the district. That's the key change I would make.

Next steps

Council officers would like to see the JMA used as a template for other JMAs within the region, including those that are required by the Waikato River Settlement Act 2010:

So that effectively, the Taupō District, when it comes to an issue pertaining to the land have the ability to interact with each other, talk about whether "Can you sit on this panel because we have a consent coming up for a power station with Contact Energy, a power station with Mighty River Power." Then, by us putting it through this actually allows the Board of Inquiries through the EPA to start looking at that – the communities of interest are saying this, we actually need to look at this when we are creating national policies too. Which at the moment isn't in place – it's all

‘fulfil the principles of the Treaty’ and that’s it. (Council officer)

Another challenge with the JMA is getting the agreement to apply across private land. The resource management consultant explained that:

For example, in Auckland the majority of significant ancestral lands are in private or council ownership. Creating a JMA which allows iwi to play a decision-making role across private land resources is another milestone which needs to be looked at. Because the thing with the Tūwharetoa one was that it just applied on their land... but in order for a JMA to be truly taking into account iwi ancestral land and sites of significance then it would need to extend across private land holdings in some respects – which is a big step because there is going to be a big obstacle in getting private land owners to agree that an iwi authority has a say on land that they own. But that’s another step, another milestone that should be looked at in terms of developing these documents.

Use by other Councils

Council officers are somewhat divided in terms of whether the TDC/Tūwharetoa JMA is of any benefit to other Councils. An officer explained that:

We are lucky in that we have a paramountcy that has the binding ability to call Tūwharetoa together, whereas other ones have a hapū autonomy that – you don’t have any say over here, why would you come here and talk to us when, it should be over here? So that strength within the tribe, that isn’t used often but if it’s needed it’s there, has seen us being able to talk to an iwi as opposed to having to go and have 25-26 JMAs with each individual hapū.

Another Council officer observed:

On a confidence basis also, other Councils may benefit from knowing that there is a model out there that works.

Conclusion

This chapter has presented the data obtained through document analysis and interviews that give insight into the process undertaken to create the JMA. The data highlights the political framework within which a JMA is created and the sensitivity needed when dealing with elected members who have their own views about their role in decision-making. In addition, the responses of Council officers illustrate challenges when a Pākehā dominated governing body is engaging with iwi who are its Treaty of Waitangi partner.

The key findings of the data in terms of the aims of the research are that the JMA was the result of long-term discussions between TDC and Ngāti Tūwharetoa, primarily in relation to the obligation of TDC under the RMA 1991 to progress with the Natural Values Plan Change. The JMA is also recognised by TDC as a means of restoring a relationship with Ngāti Tūwharetoa that has been damaged in the past. Other significant findings are that once it was decided that an agreement was to be created, s36B provided a readily available tool to facilitate this. While this part of legislation had never been used before, councillors were reassured by the sections existence within an existing piece of legislation and, following a well thought out presentation by Council officers, accepted the proposal. Another key point is that participants recognise that the agreement is limited in its current form. It appears that there would be support to widen the scope of the agreement to other matters such as the TDC's future District Plan review.

The data is discussed further in terms of the research objectives in the following

chapter.

CHAPTER 6: DISCUSSION

Introduction

This chapter reflects on the data detailed in Chapter 5 in the context of the objectives and questions of the research project. The chapter is organised into sections responding to the research questions, and themes identified in the literature review (Chapter 3).

Elements that led to the JMA and the use of S36b

The Landscape and Environmental Values plan change (the plan change) was the trigger that led to the creation of the JMA. In order to meet its obligations under the RMA 1991 to protect outstanding natural landscapes, the Council had to make a decision. There was a choice of continuing down a path of discussions and likely appeals through the Environment Court; or, acknowledging the concerns of Ngāti Tūwharetoa, who did not feel as if their views were represented in the existing Council framework.

It took approximately eight years from the notification of the first set of landscapes to be protected for TDC to reach the latter decision (acknowledging and responding to Ngāti Tūwharetoa's concerns). This does not mean to say that TDC was forced into creating the agreement. As always there was a choice to make and this decision was made by the personnel at the time to pursue the JMA. In addition, as has been outlined in the previous chapter, TDC as an organisation had a strong policy base mandating officers recognise Ngāti Tūwharetoa, their status within the District and the principles of Te Tiriti.

In terms of the use of s36B to create the agreement, interviewees were divided

in terms of whether such an agreement could have been created without the section already being within the RMA 1991. However, what is clear is that there would have had to have been another piece of legislation to allow for the devolution of the Council's power to the iwi, if s36B had not been used. It is also clear that the fact that s36B was a provision within the RMA 1991 did reassure the Councillors who made the final decision to delegate the decision making powers. This was shown by the comments of the interviewees, as well as the adoption of the report put to the councillors which stated that the fact that the process for the devolution was outlined in the RMA went towards mitigating the risks associated in creating the JMA.

An alternative outcome may have come in a more re-active 'plaster' approach, such as provisions within the Landscape Values plan change, as opposed to the proactive method of the JMA which has implications outside of the plan change provisions.

The Process

The process undertaken to create the JMA was straight-forward and positive from the perspective of TDC officers interviewed. This is supported by the ceremonial signing that was undertaken to formalise the document, which was well attended by both government and iwi representatives.

The processes set up to create and manage other co-management agreements throughout the country require a greater degree of management and review than the JMA. For example, the establishment of the Waikato River Settlement Authority and associated bodies took years to establish and required independent reviews. Of course, for a resource as large as the Waikato River then it is understandable that a large amount of time should be spent on ensuring that the committee and agreement

decided on is the best, and that this would be reflected in the time and money spent on deciding these aspects. However, regardless it is a positive outcome of the JMA that the one-year review can be undertaken in a cost and time efficient way by both parties, with the option of coming together if either considers it necessary. This is a lesson that could be taken away from the agreement, as consideration of the management of the agreement once it is created will save both iwi and local authorities' time and resources later on.

An interesting yet predictable factor in the process undertaken to create the agreement was the management of Councillor feed-back and expectations. This was particularly important given that the agreement was the first of its kind, with Councillors not having the reassurance that another agreement of this type could have provided. This is a case where Councillor approval was obtained within a relatively short time-frame – only 6 months. However, each council will have its own personnel, histories and circumstances to take into account when developing an agreement and to negotiate with.

The process undertaken to create the agreement corresponds with both the 1998 PCE and 2006 TPK best practice findings and recommendations. TDC expressed a general willingness to hear and respond to the concerns of Ngāti Tūwharetoa, the iwi were well organised and had their own resource management expertise (internal and consultant), both parties agreed to the process and criteria undertaken to create the agreement and at the same time, the parties recognised that the agreement and the process was the beginning of a journey, as opposed to the end of the discussion.

Importantly, the agreement allows for a move to a proactive iwi involvement within the statutory resource management framework, and by this happening within a

(paid) Council role the capacity and capability issues that iwi face are addressed in a straight forward and equitable manner.

S36b Compared to other Methods

In other countries (e.g. Australia) and within New Zealand (e.g. the Waikato River Settlement Act 2010, and the Orakei Act 1991), co-management agreements have tended to either result from their own specific legislation or, be made outside of a statutory framework entirely (e.g. Taupō Nui a Tia). Developing agreements in such a way does not guarantee that real power will be delegated to the indigenous group. As can be seen from the international examples, in Queensland there is no guarantee of a majority, in the Inuvialuit Final Agreement (Canada) all decisions are still made by central government, while in Uluru and Witjara there is an aboriginal majority in the decision making process. This leaves a wide scope of outcomes available for groups when embarking on creating an agreement with respect to the management of indigenous lands and resources through a joint management agreement.

In contrast with the co-management arrangements for the Waikato River, the JMA which is the subject of this research did not require any legislation to be passed. In addition, the JMA allows for a sharing of the decision-making powers of councillors. This means that the iwi has real power within the statutory resource management framework, as opposed to simply having a say in how the land is managed within a government framework. This is a key difference between the JMA and other examples, with the other agreements not allowing for any role in the decision making powers of the local authority. As such, while the other co-management agreements involve a sharing of decisions about the management of an indigenously owned resource, the local authority retains the usual control over the use of the land via planning

documents and government frameworks. While the agreement is limited in its current form to publicly notified resource consents and plans changes on multiply owned Māori land, the Tūwharetoa JMA stands out with its objective of giving Tūwharetoa greater input to the top tier of the decision making process.

While the use of s36B may not appear to have resulted in any ‘break-through’ type of agreement – as the team who developed the agreement have said, it is a very straight forward document – this could be its appeal to other local authorities. Rather than requiring new legislation to be passed and/or to work out how the process could be undertaken, here is a piece of legislation ready to be used, with a template for how a JMA can be developed. In addition, by starting with s36B both the local authority transferring the power and the indigenous group have an understanding of what is happening (transfer of power) and what the requirements are (tests). This should ensure the success of the agreements, and avoid the range of outcomes which is apparent nationally and internationally. Another benefit of having a number of JMAs created under s36B throughout the country would be the efficiencies gained through not repeating the process of establishing how to do something when there is already a framework.

In terms of using s36B as a template, the legislation states that the agreement must cover how the “administrative costs of the agreement will be met” (s36B(1)(c)(ii)). This was met within the JMA with *Section 11 Financial Implications* which states that commissioners are to be paid at the same rate as that paid to elected members. By ensuring this requirement is met, JMAs can go towards the repeated concern of iwi that not only do they hear about applications or issues too far down the resource consent process path, but their capacity is stretched for resources and costs in terms of being able to consider the application comprehensively, or at all. While

JMAs mean that iwi may not be involved until the very last part of the process, it is the most important part – the decision. Therefore JMAs have benefits for iwi not only in terms of providing a pro-active method for involvement in the approval process, but they can also be used to address the inequalities that result from an iwi having to assess an application in terms of its potential effects on tikanga Māori all at an individual cost. Of course, in light of potential conflict issues commissioners may not act in the direct interests of a specific iwi. However, JMAs would still contribute within a wider context by enabling decision makers with authentic understanding of issues that are important to tangata whenua, with this knowledge being given an equal voice in the decision making process.

It is acknowledged that this does not mean that all JMAs would be so straightforward to create. Ngāti Tūwharetoa are in an enviable position to many iwi throughout the country, with undisputed land holdings, legal ownership of their taonga/resource within their rohe (the bed of the lake) and a growing experience with resource management issues through their involvement in managing the lake. They are many steps forward from where other iwi currently are.

Characteristics specific to Taupō District Council

One lesson that came through in the research was that a local authority needs to make sure that, in addition to carrying through wording within council documents and policies, such policy needs to be carried through on the ground. In this example we can see that TDC 'looked good on paper' prior to the JMA being signed. For example, s33 of the RMA 1991 is referred to in the District Plan, the document also recognises Ngāti Tūwharetoa as mana whenua and largest land owner within the District, acknowledges the difficulties in developing multiply owned Māori land, and also acknowledges Ngāti

Tūwharetoa's intention to develop parts of their land in the long term. Here, TDC was consistent in its policies ultimately, and the policies were well intentioned and clear in their intent. However, it is interesting to note that it takes more than policies and references in Council policy to create a positive local government / iwi relationship, as there is often a gap between policy and action/implementation. This highlights the need for local authorities to have policies independently monitored to ensure that intended outcomes (in this case with respect to Māori engagement) are achieved.

Council officer views were that the Council could have been better in terms of 'on the ground' relationships, with good relationships at an officer level but not on an organisational level and this was reflected within Ngāti Tūwharetoa's concerns about the landscape and natural values plan change, where they expressed that they were not adequately represented in Council processes.

When considering the broader application of the findings of this research it is necessary to consider whether there were factors unique to Taupō District Council that made the agreement happen. It can be noted that the team that developed the agreement also had the benefit of the Resource Management Consultant working as a mediator between the two parties who suggested that a JMA be created. In addition, the Council staff includes a relationship manager who is Ngāti Tūwharetoa and who, while acting for the Council had the trust and respect of both parties. Therefore, while it appears that there was no one key person for the development of the JMA, all the people involved at the time supported the process and made it happen. In addition, Council policy endorsed working in partnership with Ngāti Tūwharetoa.

The agreement has not been used yet for a test of its functionality, which means that it is not possible to learn how such an agreement may affect the processes within

the Council. Nonetheless, the Council does appear to have set up practices and processes to manage the dual decision making process, once a qualifying application is made to Council. For example, the insertion of the reference to JMAs throughout the Operative District Plan, not just those sections affected or created by the Landscape Natural Values Plan Change, shows an intent and an understanding that there will be more JMAs to come. In addition, TDC has carried through its intention to provide a document for Ngāti Tūwharetoa land holders which explains the JMA process for land owners.

Relationships

It is clear from those involved in the JMA that the relationship between Ngāti Tūwharetoa and Council has been varied over the years, and dominated by reactive rather than proactive decisions and processes. While this research cannot speak for Ngāti Tūwharetoa, officers involved with the agreement do feel that the JMA has helped with progressing this relationship forward in a positive manner. Unfortunately, with the JMA not having been used yet, there has not been an opportunity to test this relationship.

Reviewing the context

What has happened in the Taupō District represents, in many ways, what is happening with other iwi in other districts throughout the country. TDC is required under the RMA to protect its natural landscapes, which extended over Māori land. Similarly, other local authorities are being required to remediate polluted rivers and lakes, in conjunction with local iwi, often as part of Treaty of Waitangi settlements. This is a tipping of the balance for iwi from being recognised as a special interest group of the general public, with little power within the statutory resource management

framework (as described in Chapter 2), to a stakeholder with (returned) land holdings, money and therefore 'real' power. As a result of these changes local authorities are not only having to 'have regard' to Te Tiriti and the requests of iwi, but to enter into meaningful partnerships with them, often by way of JMAs.

This is undoubtedly what should have been occurring between local councils and iwi long ago. Read correctly there are clear expectations within the RMA 1991 (and Local Government Act 2002) with respect to Māori participation in resource management, and in addition Māori have been clear in their expectation of involvement with respect to Treaty obligations (as discussed with respect to the reforms of the late 1980s in Chapter 2). Yet local authorities are unlikely to take the lead ahead of central government leadership. So, as central government progresses in rectifying its past wrongs, so too is it more likely that local authorities will begin to fulfil their Tiriti obligations. This means entering into meaningful partnerships with iwi, and protecting their taonga, rivers, lakes and forests.

The JMA between TDC and Ngāti Tūwharetoa is expected to be just one of many to be created over the coming years. Taupō is ahead of many parts of the country due to the fact that Ngāti Tūwharetoa's lands were left largely intact during the period of systematic land takings throughout the 19th and 20th centuries. Both TDC policy and Council officers have supported that Ngāti Tūwharetoa are a recognised major stakeholder and land owner within the District. The management of the lake has been resolved; the next step was logically a proactive one, to set out a process for the management of the multiply owned land in the region – an issue which was clearly on TDC's mind given their reference to it within the 2050 document.

It is an agreement that was developed by a core team of only five people or so,

yet has implications for a relationship between an entire iwi and local authority. Perhaps what the agreement shows more than anything is that the sharing of power does not need to be an intimidating, highly politicised process, when done in an appropriate manner and within an established framework.

Looking back, a list of priorities for Ngāti Tūwharetoa may be summarised as:

- Retain land ownership (Rohe Potae process)
- Secure resource ownership (the lake)
- Ensure restoration of resource (Taupō Nui a Tia)
- Proactively provide for development of secured lands

For other iwi, steps 1-3 are occurring in a much reduced time-frame, if not at the same time. For example the Waikato River Settlement Act which gives redress, and also outlines the process for remediation. If other iwi are to follow Tūwharetoa in terms of the steps in re-assertion of control, then we can expect many other JMAs to cover the management of land resources in a pro-active way in the near future, as opposed to only the management of resources in a retrospective way (pollution remediation). Nevertheless, the sequence of steps would have the resources of a region managed first, as was the response of the Te Arawa spokesperson about their addressing of the water and geothermal resources of the region before a similar agreement would be looked at by saying “Those need to come first.”

In terms of future steps for TDC and Ngāti Tūwharetoa, it seems possible that the parties would agree to broaden the scope of the agreement. Ruapehu District

Council, have allowed a member of the Ngāti Tūwharetoa Trust Board to sit on their panel of decision makers for their district plan review, and this would be a further positive step for TDC to take in the future review of their District Plan.

There are some lessons that can be learned from this process. Not the least of which is respect:

It sounds stupid and cheesy but it is respect. If you over complicate it to anything else than respect and valuing what you are giving and what they have got, then you have got issues. That's probably the simplest way that I can put it. (Council officer)

This does sum up the relationship between the two, because for the councillors to give away a share of their power, they must have had to respect where that power had come from (Te Tiriti in the first instance), and the power held by Ngāti Tūwharetoa in terms of their position within the district.

Conclusion

This chapter has reflected on the data summarised in the preceding chapter within the context of the overall objectives of the research. It has been identified that the primary trigger for the JMA was the need for TDC to progress the Landscape and Natural Values Plan Change, and that this situation is likely to be representative of many others around the country in the near future, when the obligations of local authorities are impacted on by iwi with restored lands and resources. The discussion shows that while settlements and agreements are likely to be the result of specific legislation, s36B provides an efficient and effective means of creating joint management agreements and should not be overlooked by local authorities.

Another outcome of the discussion is the need for local authorities to not only

have sound policy frameworks to identify goals (as in creating meaningful partnerships with iwi), but for these to be monitored to ensure that these goals are being achieved. While local authorities are directed by the Crown in terms of their responsibilities, in terms of Treaty obligations efforts must be made by individual authorities to ensure that they are aiming for optimum results rather than the bare minimum.

The limitations of the agreement are recognised by those involved in its creation. However, with ongoing support and progress changes to the existing JMA, or future JMAs appear to be a distinct possibility. The following chapter will provide a summary of conclusions from the research and suggestions for further research.

CHAPTER 7: CONCLUSIONS

Introduction

The main objective of this research was to investigate the reasons behind the use of s36B to create this JMA and to review the process undertaken to develop the agreement with the aim of providing some insights for other local authorities. The research also sought to answer questions on the relationship of the two parties and whether the objectives behind the creation of the agreement have been met. The research has also provided an opportunity to reflect on the current context of settlements within New Zealand in particular. The preceding chapter has provided some discussion on these findings, the purpose of this chapter is to provide some concluding statements.

Key Findings

As explained above and throughout this research, the main objective of this research was to identify the reasons behind the creation of the JMA and the use of s36B to do so. The trigger for the agreement has been clearly identified as the Landscape and Natural Values Plan Change that TDC needed to progress to fulfil its obligations under the RMA 1991. In this respect, and as discussed in Chapter 2, The RMA 1991 has been criticised for its inability to result in meaningful changes for Māori. However, for TDC it was the mechanism that provided for transfer of power to an iwi as a tool to improve a relationship and move forward with its statutory obligations. TDC was the first, and to-date the only, local authority to use these mechanisms within the Act, yet they are available to all.

In terms of the process that was followed to create the agreement, it has been found that what mattered in this agreement was that the specific context of Ngāti

Tūwharetoa, their status within the district and their individual needs. The agreement was created by them, appears in their dialect and is there for them to utilise when needed. The process was also carefully managed by TDC officers in terms of their knowledge of councillor expectations and the inherent concerns that come along with the sharing of power between different parties. In addition, while there does not appear to have been any specific factors relating to Taupō District Council that specifically facilitated the creation of the JMA, there was nonetheless a sound policy foundation for the agreement to be based on, with the policy being ahead of its time in terms of not quite representing the on-the-ground relationship between the two parties prior to the agreement.

In terms of the objectives of the agreement, while the JMA has not been utilised, it has clearly served its purpose from the Council's perspective in terms of enabling the Landscape Natural Values Plan Change to proceed and become operative. In addition, and in terms of research questions about relationships, the agreement served a wider purpose in terms of going towards rectifying past wrongs of the Council and beginning a journey to create a positive relationship between Council and Ngāti Tūwharetoa. And, while the Landscape and Natural Values was the obvious trigger for the JMA, the relationship was put forward as a fundamental reason for the recommendation within the planner's report put before the Council as a reason to convince the councillors to proceed with the JMA.

With regard to questions of best practice, the JMA compares very well internationally in terms of the sharing of councillor decision-making powers with Ngāti Tūwharetoa, and enabling them to take back some control over the use of their lands. Similarly, within a national context the agreement leads in terms of the power that has been shared. It is, however, recognised that the scope of the agreement is limited, and

this may need to be amended in the near future to avoid the document remaining unused for too long. Another key point is the need for further thought to be given to the ability for s36B to be utilised across private lands, which is where many sites of significance to iwi are located in other parts of the country.

Each iwi has its own structures and management practices. For example, many other iwi may not be able to come together in their hapū to decide on a decision making framework like this as an iwi. Similarly, each local authority has their own history and decision making processes to manage. However, what this JMA has shown is that the sharing of power is possible and it does not necessarily need to be a costly or timely process. Also importantly, while it may be that many forthcoming JMAs result from specific legislation, s36B is workable and provides a framework for an agreement that is comprehensive and pragmatic. These are the lessons that should be taken away from this research by local government.

The limitations of this research have been discussed throughout this report. While it is considered that the findings of this research do provide insights into the creation of the agreement and learnings for local government, more balanced views taking into account the Māori view of the agreement could be obtained by undertaking a similar exercise with Ngāti Tūwharetoa. In this way the concept of tino rangatiratanga and the principles of Te Tiriti could be explored in further detail in terms of how the agreement may, and may not, go towards addressing these issues.

Conclusion

The value of this JMA is that it strengthens the expectation that power in resource management decision-making can be shared with iwi. With land being returned to or compensated for iwi throughout the country the balance of power is

changing. Whether the agreements are created under s36B or specific legislation should not be the most important consideration (although as detailed in the discussion there do seem to be advantages to working within an existing legislation as opposed to creating new ones), what is important is that the agreements work for the specific context they are created within, improve trust and the decision making processes for both iwi and local authorities and are seen as steps towards a harmonious and fair treatment of resources, rather than a final answer.

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Appendix 1

Interview Schedules

Taupō District Council Interview Schedule

Introduction

1. Please could you explain your role within TDC?
2. What role did you have, or now have within the JMA process?

Elements Leading to Creation of JMA

3. What was TDC's relationship with Ngāti Tūwharetoa like prior to the JMA? Was this relationship similar or different to those of the other iwi within the District (Ngāti Tahu, Ngāti Whaoa and Ngāti Raukawa)? How?
4. Had TDC been involved in any agreements (co-management or otherwise) with Ngāti Tūwharetoa, or any other group or iwi (Ngāti Tahu, Ngāti Whaoa and Ngāti Raukawa) prior to the JMA?
5. How did TDC come to agree to create the JMA with Ngāti Tūwharetoa?
6. In your opinion, is there anything unique about Ngāti Tūwharetoa that may have led to the creating of this JMA under s36B (and not outside s36B)?
7. In your opinion, is there anything in particular about TDC (structure, personnel or leaders) that you think helped in creating the JMA under s38B (and not outside s36B)?
8. Was there any particular political support for the creation of the JMA?

Process

9. What were the steps involved in creating this JMA with Ngāti Tūwharetoa? Were there any aspects that were particularly easy, or particularly difficult?
10. S36B (36B(1)(b)(i)(B)) contains some 'tests' which must be met to enable to create of a JMA. The tests include being satisfied that the iwi (in this case) represents the relative community of interest and; has the technical or special capability or expertise to perform or exercise the function, power, or duty jointly with the Council.

Were you involved in ensuring that Ngāti Tūwharetoa met these tests? If yes, how did you go about doing this?

11. If you were to repeat this process (creating a JMA), would you do anything differently?
12. Was there any guidance available from local government authorities when preparing the JMA? Any particular references (policies/literature/best practice?) or personnel?
13. How would the process, and the Agreement itself have differed if s36B was not utilised to create the JMA?
14. Do you think that there are any new understandings /lessons that have been created through this process that will help TDC and Ngāti Tūwharetoa in any future projects? If yes, do you think that any of these lessons could be applicable to other councils or government entities?

Outcomes of the Agreement

15. Do you feel that the relationship between Ngāti Tūwharetoa and TDC has changed as a result of the JMA? If yes, in what ways?
16. What were the main objectives in the creation of the JMA? What aspects of the agreement do you feel contribute, or detract from these objectives?
17. Have any attempts been made to utilise the JMA in practice?
18. Are you aware of any changes within TDC that have resulted from the formation of the JMA – through either its implementation or the process to create it?
19. What benefits do you feel have resulted from the creation of the JMA?
20. Have TDC or are TDC considering the creation of any other JMAs?
21. Have you spoken to any other Council about creating legislative agreements with iwi? If so, did you find similarities or differences in your experiences?

Resource Management Consultant Interview Schedule

Introduction

Please could you tell me how you came to be involved in the JMA process?

Are you able to explain please what your role in the JMA process involved please?

Elements Leading to Creation of JMA

Please could you explain the steps which were involved in creating this JMA? Were there any aspects that were particularly easy, or particularly difficult?

Have you been involved in any similar projects – i.e. the creation of agreements between iwi and local authorities? If yes, is there anything in particular you can single out from this agreement that may have led to the utilisation of s36B?

In your opinion, is there anything specific to TDC or Ngāti Tūwharetoa that you think helped in the creating of the JMA? Anything in particular that meant that s36B was used?

Process

S36B (36B(1)(b)(i)(B)) of the RMA contains some ‘tests’ which public groups, in this case an iwi, must be able to meet to allow the agreement to be made. Were you involved in showing TDC that Ngāti Tūwharetoa met these tests? If yes, how did you go about doing this?

Where there any particular obstacles in forming the JMA? If so how did you overcome these?

Was there any guidance available from local government authorities when preparing the JMA? Any particular references (policies/literature) or personnel?

Would there be anything that you would do differently if you were to repeat the process (creating a JMA)?

Are you able to consider how the process, and the Agreement itself may have differed if s36B was not utilised to create the JMA?

Outcomes of the Agreement

Do you think that there are any new understandings /lessons that have been created through this process that will help TDC in any future projects? If yes, do you think that any of these lessons could be applicable to other local councils or other local government organisations?

Did you see any change in the relationship between Ngati Tuwharetoa and TDC as a result of the JMA?

What were the main objectives in the creation of the JMA? What aspects of the agreement do you feel contribute, or retract from these objectives?

If you could make any changes to the current form of the JMA, what would those be and for what reasons?

In your opinion, do you feel as if the JMA (under s36) provides the opportunity for a dual planning framework? That is, Pākehā statutory resource management working in parallel with Māori resource management? Why or why not?

Have you spoken to any other councils or iwi about creating JMAs? Under s36B or outside of this?

Appendix 2

**Approval from Massey University Human Ethics
Committee: Southern B**



Massey University

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16 November 2009

FILE

Ms Sonja Hancock
114 Clonbern Road
Remuera
AUCKLAND

Dear Sonja

Re: HEC: Southern B Application – 09/45
Does the Joint Management Agreement between Ngāti Tūwharetoa and Taupō District Council achieve the principles of Te Tiriti o Waitangi (Treaty of Waitangi)?

Thank you for your letter dated 13 November 2009.

On behalf of the Massey University Human Ethics Committee: Southern B I am pleased to advise you that the ethics of your application are now approved. Approval is for three years. If this project has not been completed within three years from the date of this letter, reapproval must be requested.

If the nature, content, location, procedures or personnel of your approved application change, please advise the Secretary of the Committee.

Yours sincerely

Dr Sharon Stevens, Acting Chair
Massey University Human Ethics Committee: Southern B

cc Ms April Bennett
School of People, Environment
& Planning
PN331

A/Prof Christine Cheyne
School of People, Environment
& Planning
PN331

Mrs Mary Roberts
School of People, Environment
& Planning
PN331

Appendix 3

Introductory Letter



MASSEY UNIVERSITY
COLLEGE OF HUMANITIES
AND SOCIAL SCIENCES
TE KURA PŪKENGĀ TANGATA

Rob Williams
Chief Executive Officer
Taupo District Council
Private Bag 2005
Taupo Mail Centre
Taupo

20 April 2011

Dear Mr Williams,

Re: Request to interview staff for research

My name is Sonja Hancock and I am conducting Masters research in the School of People, Environment and Planning at Massey University. The research is a case study of the Joint Management Agreement (JMA) that Taupō District Council has with Ngāti Tūwharetoa.

As part of the process of collecting data for my research, I would like to interview staff in your organisation who were involved in the creation of the JMA, or who have since become involved in the use or implementation of the JMA. Each interview would take around one hour and be held at a time and place that is convenient for the staff member. If the staff member agrees, the interview will be audio-recorded and transcribed. They would then have the opportunity to review and amend their transcript if they wished.

Participation in the research is completely voluntary. There is no obligation to participate, and in the event that your staff were able and agreed to participate, they could withdraw from the study within three weeks of completing their interviews.

I have attached an Information Sheet about the research project. Contact details for me and my supervisors are on page 2 of this sheet, should you have any queries or concerns.

Thank you for your time. I look forward to hearing from you.

Yours sincerely,

Sonja Hancock

Ph. 09 375 0907

Appendix 4

Information Sheet



*A case study of the Joint Management Agreement between Taupō District Council
and Ngāti Tūwharetoa: A summary of learnings for Local Government*

INFORMATION SHEET FOR PARTICIPANTS

Thank you for taking the time to consider taking part in my research. This sheet contains information about my research that will help you decide if you wish to participate. Participation is voluntary. If you do decide to take part, you can withdraw from the research later.

What is this research about?

I am doing this research as part of my Masters studies in the School of People, Environment and Planning at Massey University. I would like to examine/analyse the Joint Management Agreement (JMA) between Taupō District Council and Ngāti Tūwharetoa, with the aim of providing some insight into what factors led to the decision to utilise s36B of the Resource Management Act (RMA), and what lessons could be learnt from the process that may be helpful to others.

How will the research be carried out?

For this research, I would like to interview people who were involved in the creation of the JMA with Ngāti Tūwharetoa, or are involved in the application of the JMA currently.

Should you be happy to be interviewed, the interview will take around 1 hour and be held at a time and place that suits you. The interview will be informal, and questions will focus on the methods and processes of creating the JMA. If you agree, I will audio-record our interview to ensure that I have an accurate record of it. At any time during the interview, you may ask to have the recording equipment turned off. The interview will be transcribed. If you would like a copy of your transcript to review and amend, I will be happy to send one to you. The interview recording and transcript will remain secure in a locked office or on my computer, which is accessible by password only, both during the research and after it is finished.

What will happen to the information?

I will use the information from the interview for my Masters thesis. I may also use it in publications arising from the research, such as articles. In the event that I would like to use some of the quotes from our interview in a publication, I will ask your permission first.

Your rights

You are not obliged to accept this invitation to participate in this research project. If you decide to participate, you have the right to:

- decline to answer any question;
- withdraw your information from the study up until three weeks after participating in the research;
- ask any questions about the study at any time during participation;



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TE KURA PŪKENGĀ TANGATA

- provide information on the understanding that your name will not be used in the final thesis unless you give me permission;
- be given access to a summary of the research findings when it is finished;
- ask for the recorder to be turned off at any time during the interview.

Participant confidentiality

Please let me know if you would like your identity to remain confidential within the thesis or any subsequent publication. If you would like your identity to remain confidential, please be aware that because I will be carrying out the research with people who are likely to have connections to one another (i.e. other Council staff), it may be possible for participants to identify one another and difficult to maintain confidentiality outside of the written thesis.

For more information

If you have any queries about this study, please feel free to contact me or my supervisors:

April Bennett ph. 06 356 9099 ext. 4825, email A.L.Bennett@massey.ac.nz and Associate Professor Christine Cheyne ph. 06 356 9099 ext. 2816, email C.M.Cheyne@massey.ac.nz

Thank you for your time.

*Sonja Hancock
823 New North Road, Mount Albert
Auckland
Telephone: 09 3750907 (work)
Mobile: 029 6380789
Email: sonja_louise@hotmail.com
Occupation: Planner and part-time student*

This project has been reviewed and approved by the Massey University Human Ethics Committee: Southern B, Application 09/45. If you have any concerns about the conduct of this research, please contact Dr Karl Pajo, Chair, Massey University Human Ethics Committee: Southern B, telephone 04 801 5799 x 6929, email humanethicsouthb@massey.ac.nz.

Appendix 5

Participant Consent Form



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A case study of the Joint Management Agreement between Taupō District Council and Ngāti Tūwharetoa: A summary of learnings for Local Government

PARTICIPANT CONSENT FORM - INDIVIDUAL

This consent form will be held for a period of five (5) years

I have read the Information Sheet and have had the details of the study explained to me. My questions have been answered to my satisfaction, and I understand that I may ask further questions at any time.

I understand that Sonja Hancock (the researcher) is undertaking the research as a student of Massey University, under the guidance of the supervisors detailed on the Information Sheet and that no information will be shared with her employer (or any other party) prior to the finalisation of the research document.

I agree to participate in this study under the conditions set out in the Information Sheet.

I agree/do not agree to the interview being sound recorded.

I wish/do not wish to have my recording returned to me.

Signature:.....**Date:**.....

Full name – printed:.....