



Ministry for the  
**Environment**  
*Manatū Mō Te Taiao*

A DRAFT GUIDE TO

# Collaborative planning processes

UNDER THE RESOURCE MANAGEMENT ACT 1991

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# Collaborative planning process

This guidance is for councils or participants considering, or carrying out, a collaborative planning process under Part 4, Schedule 1 of the Resource Management Act 1991 (RMA). It may also be useful for councils or participants undertaking some form of collaborative decision-making under Part 1, Schedule 1.

The relevant provisions in the RMA for the collaborative planning process are:

- Schedule 1 Part 4 clauses 36–74 – **The collaborative planning process**
- Schedule 1 Part 2 clause 21 – **Restriction on private plan changes**
- Schedule 1 Part 1 clause 4 – **Requirements to be inserted before notification of proposed district plans**
- Schedule 12 Part 2 clause 14 – **Transitional provisions for existing collaborative processes**
- Section 80A – **What a collaborative planning process may be used for**
- Section 277A – **Appeals by way of rehearing to the Environment Court.**

There is separate guidance, specifically for where designations, heritage orders, or notices of requirement are to be addressed through a collaborative planning process. This can be found on the [Ministry for the Environment's website](#) and should be read in conjunction with this guidance.

Both guides are being released initially as drafts as we welcome your feedback or suggestions. If you would like to provide feedback, please email [info@mfe.govt.nz](mailto:info@mfe.govt.nz). The guides will be finalised in June 2018.

**Caveat:** Examples used here are of collaborative processes that have not been undertaken using the prescribed process in the RMA. Now that the collaborative planning process has been passed into law 18 April 2017 this guidance will be added to over time, using case studies of collaborative processes that have been undertaken using the process set out in Part 4, Schedule 1 of the RMA.

**Support for collaborative planning processes:** Councils considering carrying out the collaborative planning process, or transitioning an existing collaborative process to the collaborative planning process, are encouraged to contact Ministry for the Environment at [info@mfe.govt.nz](mailto:info@mfe.govt.nz). We can provide advice on the process, tailored for a council's specific requirements. We will provide one or more 'collaborative mentors' to be a point of contact over time, including a practitioner with direct experience in a collaborative process.

## What is a collaborative process?

A collaborative process is where a range of stakeholders are involved in developing planning solutions rather than being consulted on established proposals. Councils partner with their communities to share knowledge and work together to generate a better understanding of the issues and differing views; they then develop, evaluate and implement solutions to those challenges together.

A collaborative process has the community at its core, and has been described as moving away from the traditional model of *decide–consult–defend* on council-generated planning solutions to *engage–deliberate–decide* on community-generated planning solutions.

Collaborative decision-making is being used both internationally and in New Zealand as an effective way to harness the wisdom of the community and address complex resource management issues.

Some regional councils have already implemented a more community-focused, collaborative approach to freshwater planning and engaging collaborative groups in developing plans. If they wish to, councils can continue to establish and use their own collaborative process under Part 1, Schedule 1 for their planning processes, rather than using the prescribed collaborative process in Part 4, Schedule 1.

For a good overview on collaborative decision-making see Tim Hartnett’s web page: <http://consensusdecisionmaking.org>.

## What is the collaborative planning process in the RMA?

The collaborative planning process is a prescribed collaborative process in Part 4 of Schedule 1 that can be used as an alternative planning track for policy statements and plans. It is optional and available where a council is undertaking a review, change, or preparing a new plan or policy statement, including a combined regional and district document.

The collaborative planning process has many of the same features as the current Part 1, Schedule 1 planning process, for example:

- a publicly notified plan/policy statement
- submissions/further submissions
- a submissions summary report with a hearing (by a review panel)
- appeals (albeit available under specific circumstances).

The collaborative planning process also includes additional steps, including details around the convening of a collaborative group, establishing terms of reference, provision of consensus recommendations in a report, and a requirement for the council to ‘give effect’ to the consensus recommendations through the proposed plan/policy statement.

The diagram below outlines the process, broken down into eight steps.

**Figure 1: Collaborative planning process – Part 4, Schedule 1**





## What does consensus mean?

Consensus decision-making is a deliberative process used by groups seeking to generate widespread levels of participation and agreement. Consensus decision-making can vary on the degree of agreement necessary to finalise a group decision – this is called the decision rule. This may range from: the person in charge decides; to majority consensus; to unanimity.

The definition of consensus used as the basis for developing the RMA collaborative planning process is unanimity, or, the opinion or position reached by a group as a whole. Unanimity is achieved when the full group consents to a decision. Giving consent does not necessarily mean that the proposal being considered is an individual's first choice. Group members can add their consent to a proposal because they choose to cooperate with the direction of the group, rather than insisting on their personal preference.

Consensus recommendations from the collaborative group under the collaborative planning process in the RMA should be unanimous. This is because the council must give effect<sup>1</sup> to the consensus position through the notified plan provisions and the availability of appeals is linked to whether the consensus position carries through to the final plan/policy statement. It would be inappropriate to preclude appeals on the basis that the plan reflects the consensus position of the collaborative group if not all members of the group agreed (if, for example, the decision rule was based on an 80 per cent majority).

Achieving unanimity is not easy. Most groups can agree the simple matters, but getting full agreement on the last 10–20 per cent that makes up the 'hard stuff' is difficult. For collaboration to be successful, however, the collaborative group has to have certainty that all views will be equally considered and unanimity achieves that.

Not requiring the collaborative group to reach consensus decisions unanimously would potentially divide the collaborative group members, and remove the incentives for members to participate. Using unanimity as the decision rule sends an important message to all participants that their perspectives will not be overlooked by the group; this is a significant influence in achieving a good group dynamic, and promoting cohesiveness of the group.

Councils should set clear expectations about consensus recommendations and the decision rule in the terms of reference.

For an excellent discussion on the types of decision rule, see Tim Hartnett's book *Consensus Oriented Decision Making – the CODM model for facilitating Groups to Widespread Agreement* (Hartnett, 2011).

## Incentives to reach consensus

The prescribed process in the RMA is designed to provide a robust planning process, while incentivising the collaborative group to reach consensus on difficult issues. Incentivising the collaborative group is achieved in two key ways.

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<sup>1</sup> Unless, in giving effect to the consensus position, the proposed policy statement or plan would not comply with the relevant provisions in Parts 4 and 5 of the RMA, or any other provisions of any legislation that apply to the preparation or change of a policy statement or plan under the RMA.

First, the process requires councils to ‘give effect’ to the consensus position in the notified planning instrument. This means the collaborative group is assured there will be no ‘cherry picking’ of the group’s recommendations by the council, which could result in a situation where the concessions made by some members are taken up, but not the associated wins.

Secondly, appeals on the final plan or policy statement are available only in certain circumstances. This gives a measure of assurance that where consensus is reached, this is given effect to in the plan, and it will not be undone through appeals except in those circumstances where appeals are available (see step 8 for detail on appeals).

Collectively these provisions provide assurance that once the collaborative group reaches a consensus position their recommendations will be given effect to in planning documents and not undone through appeals. The reason these two key elements have been built into the process is to:

- **incentivise participation in the collaborative planning process**  
If you knew your hard work of the past two years to reach consensus could be challenged and undone through an appeal by someone who chose not to get involved early in the process, why would you invest the time in those early discussions?
- **encourage the collaborative group to reach agreement on as many matters as possible**  
Where the group does reach consensus, then the ability to appeal that agreement is constrained and this ensures the consensus position will carry through to the final plan.
- **give weight and protection to the consensus decisions of the collaborative group**  
Where consensus is reached, the council **must** give effect to that consensus in the plan.
- **encourage upfront engagement in planning rather than by appeal at the end**  
As appeals are available only in certain circumstances, and then by rehearing, there is no guarantee that there will be an appeal; if there is, the court has discretion over any new material to be introduced – this encourages participation and full disclosure of information at the start of the process.

## Background and policy intent

The collaborative planning process in the RMA is based on the Land and Water Forum’s (LAWF’s) recommendations, which aimed to “incentivise the adoption of, and good faith participation in, collaborative processes”. LAWF further noted:

“The task of nesting collaboration within the RMA and incentivising effective collaboration is a complex one. It requires an integrated package of interventions comprising statutorily prescribed process steps and principles, and non-statutory guidance and implementation support. It is not possible to compel parties [through legislation] to collaborate in good faith and collaboration can be vulnerable to gaming so it is important that the incentives to collaborate are strong.”<sup>2</sup>

The basic premise of collaboration is that people with differing views work together to build a common understanding of the issues and test alternative options (including the costs and benefits) at an early stage in the planning process, rather than challenging the merits of a single proposal through an appeals process at the end. The expectation is that this will result in

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<sup>2</sup> Land and Water Forum, 2012 (page 30).

planning decisions that are supported by the community, because they have been developed by community representatives and transparently tested with the wider community.

## What can the collaborative process be used for?

The collaborative process is available for all planning matters – including policy statements, full or part plan reviews or combined plans. It can be used for any resource management issue but collaboration is most beneficial for complex issues where there are strongly held opposing views, and/or where common-pool resources are increasingly under pressure. Examples of where the collaborative planning process could be used include zoning in district plans, coastal planning, large designations (eg, roading corridors), and freshwater management and planning.

## Benefits of a collaborative process

Evidence from case studies of collaborative approaches show these processes can generate higher quality, creative, and durable agreements, which are more successfully implemented due to increased public buy in and reduced conflict. Decisions are more likely to be palatable and legitimate in the eyes of the stakeholders, although this may rely on continued socialisation by the collaborative group members, and through involvement in the implementation phase.

The collaborative planning process encourages greater front-end public participation, deliberation and engagement to produce plans that better reflect community values. The process can improve community awareness of the issues, develop a better understanding of others' positions and views, and generate community-designed outcomes that are mutually beneficial.

While it might not solve all of the community's concerns, collaboration can decrease the likelihood of issues escalating to the courts, and improve social capital by building lasting relationship networks. This can reduce litigation costs and lengthy delays later in the process, and lead to better, more enduring outcomes.

In the long term, collaboration can increase the capacity of the community to engage in council planning processes, help develop new community leaders, expand their networks, and improve implementation of resource management programmes. Collaboration can generate social capital by facilitating improved relationships between stakeholders, generating new stakeholder networks, enhancing communication skills, and co-producing new solutions with stakeholders (from Landcare Research – [Evaluating a collaborative process](#)).

## When would a collaborative process not be appropriate?

The collaborative planning process requires the participation of a wide range of people, and can be a lengthy and resource-intensive process. This means it should only be used for a situation that requires, and will benefit from, this level of participation and investment.

Situations when the collaborative planning process would **not** be appropriate:

- where issues are well understood and there is considerable consensus around solutions, or relative certainty about how the decision will play out in the system

- if there is insufficient time for the process eg, where immediate decisions are necessary
- there is an inability to engage any of the major stakeholders
- mandate or commitment from councils and/or capability to lead the process are lacking
- for minor technical matters or matters too costly or too small in scale
- where there are intractable levels of conflict among stakeholders
- if there are already socio-ecological consequences of the problem (ie, already at a crisis)
- where stakeholders are not interdependent and so have no reason to engage with each other to find mutually beneficial solutions.

## Timeframes

The collaborative process is not necessarily intended to provide a faster first-instance planning route (although it can if litigation is a likely outcome). Experience is showing that these processes take time, and the best results are gained when the group is not unduly time constrained.

The set-up stage can take longer than expected. It is highly iterative, and there can be a lot to learn by both the council staff (about how to conduct a successful collaborative process) and the participants (what is required of them, the legislative framework, and an in-depth understanding of the issues they are addressing, among other things). Appropriate resourcing can take time to establish as it will likely include scientific or technical reports and other material. Experience has shown it is more efficient to have as much of this material ready before the collaborative group is convened.

By way of comparison with Part 1, Schedule 1 processes to date, it may be worth noting that the *Report of the Minister for the Environment's Technical Advisory Group 2009* (Ministry for the Environment, 2009) found that **on average** it takes councils 2.5 years of research, drafting and consultation before a proposed plan is notified. In addition, the appeals process for some plans takes on average six years, but there have been some that have taken up to 10 years (see table 1).

**Table 1: Planning timeframes**

Plan	Total time (not including an average of 2.5 years pre-notification work)
Auckland Air, Land and Water Plan	10 years (notification 2001, operative 2010 (except discharges))
Southland Regional Plan	10 years (notification 2000, operative plan 2010)
Environment Waikato Variation 5	6 years (notification 2005, hearings 2006, decision 2007, Environment Court hearing 2008, negotiation/caucusing 2009/10, operative 2011)
Environment Waikato Variation 6	5 years (notification 2006, hearings 2007/08, decision 2008, Environment Court hearing 2011, operative 2011)
Canterbury NRRP: Variations 1, 2, 4 and 14	6 years (variation 1 notification 2004, operative 2011)
Otago Plan Change 1A: Water	1 year (notification 2005, operative 2005)
Otago Plan Change 1B: Minimum Flows	1 year, 3 months (notification 2008, operative 2010)

Source: Land and Water Forum Second Report (2012: page 43)

## Collaborative processes – resources and references

We recognise the need to share lessons from existing collaborative processes and have commissioned guidance and case studies of freshwater planning and management processes and operate a ‘collaborative exchange’ for practitioners to share experiences and learnings. The full range of this material can be found on our website at [www.mfe.govt.nz/fresh-water/nps/implementing-national-policy-statement-freshwater-management-1](http://www.mfe.govt.nz/fresh-water/nps/implementing-national-policy-statement-freshwater-management-1). This includes the report *Making collaborative processes work: A guide for those involved in collaborative processes*.

The report *Review of collaborative governance: Factors crucial to the internal workings of the collaborative process* (O’Brien, 2010), prepared for the Ministry of the Environment, explores the international literature on collaborative governance to identify factors that are important for people to contribute meaningfully to a successful collaborative governance process. The review is cross-disciplinary, drawing on ideas from business management, public administration, political science, learning theory, social psychology, mediation and facilitation.

The review covers several themes that might be crucial for a successful collaborative process:

- the lead-in to the collaborative process and the requirement for the process must have legitimacy
- how to optimise the development of the collaborative process to ensure success
- the commitment to: change and over-riding purpose; flexible leadership and shared authority; authentic dialogue; and the development of a learning culture
- the need to establish ‘common ground’.

### *Examples of Collaborative processes*

#### Environment Canterbury website

This site includes a video and text providing high level information on the process followed in Canterbury in setting up a collaborative process for freshwater plan-making, including establishing a committee, selecting members, the importance of the terms of reference, determining the mandate and power of the group and facilitating discussions. Particularly noteworthy are the ‘real talk’ sections in the ‘telling our story’ document See

The report *Canterbury Water Management Strategy – a case study in collaborative governance* (Salmon, 2012), prepared for the Ministry for the Environment, looks at collaborative governance and its significance. It provides a qualitative case study of the steering group responsible for developing the Canterbury Water Management Strategy (CWMS). The report analyses the development of the CWMS through asking three questions about the process:

- In what sense was it democratic?
- How effective was it in achieving an integration of different policy perspectives?
- How did it alter the institutional norms, incentives and risks facing resource users and the Government?

A further report detailing the collaborative process involved in the Canterbury Water Management Strategy is *The Canterbury Water Management Strategy: ‘Smart management’ of collaborative processes (A)* (Eppel and Tyson, 2016).

#### Collaboration in the Waikato catchment

(Prepared by Wendy Boyce consulting for Ministry for the Environment, 2015).

This case study of the Healthy Rivers Wai Ora project highlights the practicalities of implementing a comprehensive collaborative process to design water quality policy. The focus is on the establishment and early implementation phases of this project from a council practitioner's perspective. This case study provides some lessons learnt establishing the Waikato Healthy Rivers Wai Ora collaborative group. Topics covered include the establishment phase, establishing a collaborative group in line with the Te Ture Whaimana o Te Awa o Waikato, the Vision and Strategy for Waikato River, the decision-making structures related to the collaborative group, appointing the group's chairperson, facilitator and support staff. It captures reflections from council staff about the initiation of the process and the operation of the collaborative group in its first year (as at April 2015).

Policy Brief 2 Collaborative Evaluation (Landcare Research). This is an ongoing project on a framework to evaluate collaborative processes, using the Hawke's Bay TANK process.

# Step 1: Entry considerations

Legislative requirements: Clauses 37–38

## Choosing between different planning processes

The collaborative planning process is an optional alternative process that can be used by regional and territorial councils for preparing or changing a policy statement or plan (including regional coastal plans), or producing a combined plan. It is contained (predominantly) in Part 4 of Schedule 1 of the Resource Management Act.

Councils may also use the current Part 1, Schedule 1 process, or the streamlined planning process (Part 5, Schedule 1). A comparison of these three planning processes, and information on which approach would be most appropriate for a particular resource management issue, is set out in the [planning tracks summary comparison table](#) on the Ministry for the Environment’s website.

The collaborative planning process is good for complex problems where different or intractable values are at play, and/or where there is increasing pressure on resources that may have a significant impact on the community. Information on when to use a collaborative process can be found in the [Collaborative planning process](#) section of this guide.

## Considerations before undertaking a collaborative planning process

The legislation provides a list of matters a council must consider before making a decision to use the collaborative planning process. Seven matters are listed in the legislation (clause 37) that signal the things a council must consider before deciding to use a collaborative process. For instance, the collaborative planning process must not be used if to do so would be inconsistent with the council’s obligations under any relevant iwi participation legislation or arrangement.

We will now look at the matters contained in clause 37 in detail.

- a. **Whether the resource management issues would benefit from the use of the collaborative planning process, having regard to the scale and significance of the relevant resource management issues** (clause 37(2)(a))

Relevant factors here could include:

- The policy problem is of significant and long-term social, economic or environmental importance. Factors that would contribute to this are a:
  - culturally, socially or economically significant area affected
  - environmental sensitivity
  - scarce and/or impacted resource
  - large and diverse community.

- The policy problem is ‘wicked’ ie the policy problem is characterised by a lack of certainty, knowledge and disagreements over norms and values, and is not well understood. Factors that would contribute to this are:
  - contentious decisions are required that will have a large impact on the community
  - balance is required between different values in the community
  - there are a wide range of values
  - there is a high level of interest towards the policy problem.
- The policy problem is not well understood. There is no point attempting something complex and time consuming if the issues are well understood and there is general agreement on solutions.

**b. The views and preferences expressed by persons who are likely to be affected by those resource management issues or who have an interest in them (clause 37(2)(b))**

It is likely that some level of consultation with the community will be required to determine the views and preferences of people who are likely to be affected. Consultation on the choice of process is **not** a required step as it may add unnecessary time and cost, for example, if the views are already well understood additional consultation would be redundant. The degree of consultation required will be influenced by the resource matter to be considered, the extent of the area that is subject to the proposed policy statement or plan, and any previous consultation and/or council’s understanding of the community’s views.

Feedback from councils is that determining the extent of consultation required on a case-by-case basis is appropriate. Councils undertake consultation regularly, and they understand how best to conduct consultation in their area. Note that in the next clause, clause 38, where the council is required to publicly notify their intent to undertake a collaborative planning process, the notice must include ‘the reasons’ for that decision. The intent is that this will include a summary of the considerations identified in clause 37, including the views and preferences expressed by the community.

**c. Whether the council has the capacity to support the collaborative planning process, having regard to the financial and other costs of the process (clause 37(2)(c))**

An important consideration is the capacity of the council to support the collaborative process for its duration. Good support, including secretariat and technical support, is essential for the process to be successful.

The collaborative approach is resource hungry for the council and participants. There are likely to be increased initial costs to councils as well as iwi, community members, and stakeholders, particularly at the front-end of the process. Lessons learned from existing collaborative processes are that the amount of time and resource required has been underestimated by participants and councils.

There can also be power and resource imbalances among collaborative group members. In particular, there are often significant differences in skill among group members with regard to science, planning/policy and collaborative process, meaning some participants are less able to have their views heard. This will need to be balance with a combination of information and facilitation. Consideration will need to be given as to how to support those members with fewer resources or skills (see also [Tools/information for the collaborative group](#) in Step 4).



These costs should be considered against the costs of participating in the existing planning process (Part 1, Schedule 1), in which the likelihood of legal proceedings is greater. The collaborative planning process should lead to a significant reduction in costs of litigation at the end of the plan-making process. A study of collaborative action in New Zealand found the large initial investment was likely to pay off in the long term, as transaction costs decreased through collaboration and the benefits of new management practices on the ground were realised. For example, see the [Fiordland Marine Guardians case studies](#).

The collaborative process can take longer than may be anticipated. Existing processes have found the following factors influence the time required by the group:

- time required for participants to convey their own views, and to understand other participants' views
- time required for group members to digest complex/scientific information
- development and provision of the required technical information/reports
- time required to create the conditions to bring a group together and help them build the capacity to learn about the issues and create/evaluate solutions.

Evidence suggests plans under the current Schedule 1 process take an average 2.5 years to develop before notification. The collaborative group could deliberate for this amount of time. Experience has shown the best results are obtained when there are not undue time restrictions on the group, and they do not feel pressured for time. Equally the group should not be able to deliberate for an undue amount of time. Including a timeframe in the terms of reference will address this.

#### **Example: Environment Canterbury's zone committee costs**

Environment Canterbury's (ECan's) overall annual budget for 11 committees (10 zonal and one regional) is \$1,965,000. This includes \$1,300,000 for overall staff support and \$665,000 for overall expenses other than staff time.

On top of this, field trip, accommodation and staff travel costs relating to ECan's zonal committees are around \$70,000 annually. Committee members receive an honorarium payment of \$4,000 to \$6,000 per year from ECan, depending on their position, and there is a \$70,000 budget for rūnanga representatives across 11 committees.

Each committee is supported by a full-time facilitator, and ECan staff and contactors provide technical expertise. One ECan staff member focuses their time solely on administrative support for the 11 collaborative processes.

As an indicator of input required from stakeholders to participate in the Canterbury Water Management Strategy, the number of meetings ranged from fewer than 20 meetings for the Upper Waitaki zone, to 60 meetings for the Hurunui-Waiapu zone, with meetings generally lasting 4–6 hours. An extreme example is a collaborative stakeholder group in Canterbury that met more than 50 times in one year.

ca. **Whether a requirement, designation or heritage order could be considered within a collaborative planning process** (clause 37(2)(ca))

Where a territorial authority is undertaking a full plan review, or receives a notice of requirement and is considering undertaking a collaborative process, they should consider if this can be appropriately accommodated in a collaborative process. A council should have regard to the number of existing designations in a district plan (eg, schools, railways and road corridors) and therefore multiple requiring authorities (Ministers, territorial authorities and network utility operators).

Additionally, under the RMA, decisions on designations and heritage orders (when considered through a planning process) are made by requiring authorities and heritage protection authorities respectively. A change in the planning track selected may mean a change in the decision-making and appeals process. This will depend on whether the requiring authority agrees to be part of a collaborative group.

The process developed for collaborative consideration of designations or heritage orders was developed specifically to provide for the dual situation where a requiring authority agrees to use of the process or where they decline to be involved. For a notice of requirement to be considered through a planning process the requiring authority must agree to be on the collaborative group and the council must appoint them to the group.

Councils may wish to consider whether the designation would add an unacceptable amount of 'noise' to the core elements of the plan that are up for deliberation, or whether a collaborative process would provide a good mechanism for considering a large and potentially contentious designation. For a detailed discussion on the process for incorporating designations/heritage orders and notices of requirement, see the [designations guidance](#) on the Ministry for the Environment website.

d. **Whether there are people in the community able and willing to participate effectively in the collaborative planning process as members of a collaborative group.** (clause 37(2)(d))

It is important that key stakeholders are represented in the process. Adequate representation of all values is a necessary condition for collaborative dialogue and learning (see 'Representing the views' discussion on page 30 of this guide on the role of the collaborative group members as conduits for information – both in and out of the group).

All parties must be willing and able to participate. Without this, collaborative dialogue is not possible. Stakeholders must be willing to invest their time and energy in a collaborative process, and feel they can achieve more by being in the process than by staying outside of it. It can be a substantial time commitment for participants, which can particularly impact those representing a sector in a voluntary capacity (eg, for community or iwi representatives). Feedback from current collaborative processes is that iwi participants in particular struggle with an already heavy workload of council engagement.

Some commentators on collaborative governance suggest that for the collaborative group recommendations to have legitimacy, the members must have a formal mandate to represent their sector or organisation. While there is undoubtedly value in this, it also automatically excludes those potential (and equally valid) participants who are not part of a formal body (ie the general public/neighbourhoods/business owners), or those with a unique interest/viewpoint which don't fall neatly into an already established organisation. For this reason it is not specified that members of the collaborative group must have a formal mandate to participate.

The idea of having a mandate is valid, however, and will help with buy-in to the final recommendations of the collaborative group (and therefore planning provisions). A potential remedy is to note that throughout the course of the collaborative group deliberations, members must engage with the wider community (clauses 40 and 45). As part of this, it may be possible for a member without any particular organisational mandate to develop a network or 'community of interest' for which they then have responsibility for conveying the viewpoints of and responses to proposed solutions back and forth to the collaborative group. There may be some that still do not accept the outcomes proposed by the group as being able to speak for them, but this is why wider public participation in the collaborative group stage is provided for and encouraged.

While the legislation does not specifically require councils to call for nominations to be considered for inclusion on collaborative group, in some cases this may be required to gauge the level of interest from the community in participating.

Another relevant factor is whether there are people available to assume a leadership role. It is important that these roles are filled by trusted and respected leaders to help successfully navigate a collaborative process (see in particular discussion on appointing a chair in the [Group size and establishing the chair section](#)).

**e. Whether any matters of national significance are likely to arise and if so whether these could be dealt within the collaborative planning process (clause 37(2)(e))**

Collaboration is underpinned by the premise that local solutions and decisions are best made by the community that is affected by them. If the resource matter at hand is nationally significant or has national implications it may be unsuitable for consideration by a locally derived community group. Examples may include a notice of requirement for a state highway roading corridor, or significant water storage project.

**f. Whether the relevant provisions of any iwi participation legislation that applies in an area could be accommodated within the collaborative planning process, as required by this Part (clause 37(2)(f)) and,**

**Clause 37(3) before determining to use the process the council must determine if to do so would be inconsistent with council's obligations under any relevant iwi participation legislation or arrangement.**

The two clauses 37(2)(f) and 37(3) work in tandem. The first states that the relevant provisions arising under any iwi participation legislation must not preclude, and can be incorporated into, a collaborative planning process. The next clause clarifies that where it cannot be incorporated (ie, is inconsistent) a collaborative planning process must not be used.

Note: iwi participation legislation is defined in section 58L of the RMA as "legislation (other than this Act), including any legislation listed in Schedule 3 of the Treaty of Waitangi Act 1975, that provides a role for iwi or hapū in processes under this Act".

The intent is to ensure councils consider whether a collaborative planning process would work in light of other legal obligations councils may have, which have arisen under Treaty settlement legislation, including mechanisms such as:

- joint committees (eg, Rangitaiki River Forum provided for in the Ngati Manawa Settlement Claims Act 2012) with statutory functions

- joint management arrangements between settlement groups and councils (eg, Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010).

Good practice would be for the council to discuss and agree with settlement entities whether the collaborative process can be used (rather than the council just consulting relevant iwi authorities).

For settlement Acts that require joint management agreements and joint working parties to decide processes for preparing policy statements or plans for freshwater management the obligations under those Acts will prevail (eg, a joint management agreement is required under the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010). Therefore, the decision on whether to use the collaborative process should be made by the relevant joint working party if settlement legislation (or a joint management agreement under settlement legislation) requires this.

For settlement Acts that provide for advisory committees to be set up to advise councils, there could potentially be some challenges presented by a collaborative process. Councils should discuss these matters with settlement entities and work through the implications of any settlement obligations before making decisions.

Where settlement legislation requires documents to be prepared and to have a particular status under the RMA, this is specifically provided for by requiring the council to:

- identify any relevant obligations in the terms of reference for the collaborative group
- give effect to the consensus position of the collaborative group but only to the extent that this is not inconsistent with the council's obligations under other legislation (which the council should have made clear to the group so they could ensure any recommendations were consistent and able to be given effect to).

### **Lessons from the Healthy Rivers Wai Ora project**

#### *Take time to get the set-up right*

- Embarking on a collaborative process should be a conscious choice by the relevant decision-making authorities, with strategies, policies and resources put in place to sustain this commitment.
- The planning and project set-up stages take longer than most key parties expect, and are highly iterative and conflicted. Advocate for sufficient time at the front-end of policy processes, so resources are in place to give effect to collaboration.
- The meaning of collaboration should be understood, shared and clearly championed, preferably from the top down.
- Understand the difference between consultation and collaboration, and explore the meanings that stakeholders ascribe to collaboration in the early stages.
- Ensure the 'commitment to collaborate' is aligned with council's strategic direction and embedded in the regional policy statement, long-term plan and preferably other partners' and stakeholders' plans.
- Understand the decision-making process and communicate it clearly to others.

#### *Begin co-management discussions early*

- Create early, ongoing and meaningful opportunities for dialogue with iwi. Expect rich contributions, new networks, and an expanded circle of influence for the project as a result.
- If your council is embarking on co-management relationships, ensure the processes and resources are in place to support these new relationships, preferably before embarking on the collaborative process.
- Be aware of, and responsive to, the multiple commitments and responsibilities iwi office-holders undertake. Put in place multiple strategies to support their involvement in the collaborative process.

#### *Internal stakeholder relationships and linkages are important*

- Collaboration begins at home. Begin planning a collaborative process with staff early, and secure their buy-in at programme and performance plan level.
- Consider the capacity of a council to commit to a collaborative process, including whether internal project management practices are well established, and contact management and other administration systems are in place. Create a culture where staff understand and use risk management plans as a preferred tool for channelling concerns, as this may increase the efficiency with which they are handled and reduce some of the uncertainties of a collaborative process.

## **Notification of the planning process to be adopted**

Clause 38 requires the council to publicly notify its decision to use the collaborative planning process. This must include information on:

- the area the plan will cover
- the subject matter of the plan
- where the decision and reasons for the decision can be inspected.

The intent is that this notice should address and provide a summary of the considerations contained in clause 37. This is to help ensure the selection decision is transparent, and the pros and cons of the decision are well understood. Consultation on the choice of process is not specifically required, however, this may be a decision that is best made following consultation with the community on their preference for which Schedule 1 planning process should be used.

## **Binding commitment to undertake collaborative planning process**

Once a commitment is made to a collaborative planning process, the council is required to follow it through and cannot withdraw from the process (clause 38(2)), except if any one of the conditions detailed in clause 38(3) occur. These include grounds to withdraw from a collaborative planning process in situations where the:

- council is unable to appoint a group that meets the requirements detailed in clause 40 [see Step 2 – Collaborative group established]

- collaborative group has breached its terms of reference and the council has followed the dispute resolution process detailed in the terms of reference to no avail
- collaborative group was unable to reach consensus on sufficient matters for a plan or policy statement to be drafted 'predominantly' on consensus recommendations (clause 38(3)(c)). This decision can only be made after undertaking the dispute resolution process detailed in the terms of reference (clause 41), and it must be made jointly with the council.

## Private plan change applications

If a council decided to adopt a private plan change request for their own and then decided to undertake a collaborative process, the subject matter of the private plan change request could be incorporated into the collaborative process. A restriction is applied, however, through clause 21 of Part 1, Schedule 1 constraining the ability to request a private plan change any earlier than three years after the date a collaboratively derived plan or policy statement became operative.

The intent behind this is to avoid the situation where a plan resulting from a collaborative process could be immediately changed by an individual request. This is one of a number of elements of the collaborative planning process designed to provide assurance to the collaborative group that their hard work won't be undone as soon as the plan or policy statement is operative.

### Further reading

[Criteria for choosing collaboration](#). This paper includes a brief review of scholarly literature identifying critical criteria for when to use a collaborative planning process in natural resource management.

[Values, Collaborative Processes and Indicators for Freshwater Planning](#) (Prepared for Auckland Council: National Policy Statement Freshwater Management Implementation Programme. Cawthron Report No. 2353, 2013). The report looks at collaborative governance, the benefits of using collaboration, when to use a collaborative process, the role of the council, and designing a collaborative process.

[Second Report of the Land and Water Forum \(2012\)](#). This report provides information on designing a collaborative process, when collaboration should be used, time and cost of collaborative process, capacity for collaboration, principles of collaboration, and a description of collaborative process pp 29–46, 51–52, 76–87.

[A Fresh Start for Freshwater](#) (Land and Water Forum, 2010). This report looks at pre-requisites for collaboration, when collaboration should be used, and provides case studies pp 48–51.

[Criteria for choosing collaboration \(Cawthron Institute 2015\)](#). This paper includes a brief review of scholarly literature identifying critical criteria to use when running a collaborative planning process in natural resource management, and then discusses the theory in relation to current practice and understanding within regional councils. It finishes with recommendations for developing future guidance for councils considering whether to choose collaborative planning processes.

EDS Collaboration Workshop, 5 August 2014. This paper provides a snapshot of collaborative processes that were discussed during the Environmental Defence Society conference on collaboration in 2014. It includes key learnings from current collaborative processes.

New Zealand Journal of Marine and Freshwater Research – *Building collaboration and learning in integrated catchment management: the importance of social process and multiple engagement approaches*: vol 45, 2011 Issue 3 Integrated Catchment Management. This paper reviews emerging lessons around how to engage stakeholders in ways that support social learning. It focuses on the experience of an integrated catchment management (ICM) research programme based in the Motueka catchment in New Zealand and provides a simple framework for distinguishing conversations across different communities of practice. It highlights the need to use multiple engagement approaches to address different constituent needs and opportunities, and to encourage the informal conversations that spring up around these. The paper then illustrates the range of platforms for dialogue and learning that were used in the programme during 10 years of ICM research. It also sets out lessons learnt from across the programme to guide research leaders and managers seeking to improve collaboration in other integrated science, management and policy initiatives.

Interrogating participatory catchment organisations: cases from Canada, New Zealand, Scotland and the Scottish–English Borderlands Cook, B. R., (2013), *The Geographical Journal*, 179: 234–247. This paper identifies principles associated with unsuccessful problem resolution and identifies four questions that highlight the need to consider the practicality of evolving relations amongst governments, publics, and the organisations that have come to mediate catchment management.

Community perceptions of collaborative freshwater planning in three New Zealand regions. Cawthron Report 2844. Funded by Ministry of Business Innovation and Employment’s Science and Innovation Group, 2016). This study assessed the views of members of the general public on freshwater management in areas using collaborative planning processes, and compared the results to areas without such processes.

Collaboration and modelling – Tools for integration in the Motueka catchment, New Zealand, (2008). A conceptual model of integrated catchment management is presented to achieve both ecosystem resilience and community resilience. Review of collaborative governance: Factors crucial to the internal workings of the collaborative process. This report explores the international literature on collaborative governance to identify factors that are important for people to contribute meaningfully to a successful collaborative governance process. The review covers several themes which might be crucial for a successful collaborative process: the lead into the collaborative process and the requirement for the process to have legitimacy.

Structured Decision Making for Freshwater Futures (Berkett, Cradock-Henry). This report provides an overview of some key criteria related to the design and structure of collaborative processes and then presents some preliminary results of an evaluation of the TANK process.

## Step 2: Collaborative group established

Legislative requirements: Clauses 39–40 and 43

If a council publicly notifies its intention to use a collaborative process, it must appoint a collaborative group (clauses 39- 40) and the council must publicly notify the membership of the collaborative group (clause 43).

### Membership of the collaborative group

The membership of the group must reflect and meet the requirements contained in the legislation (clause 40).

The council must appoint a group whose membership, “collectively reflects a balanced range of the community’s interests and values, and investments in relation to the relevant resource management issues” (clause 40(8)). The membership may or may not comprise representatives of an organisation or sector, but membership must reflect the range of values, interests and investments in the community. The requirements are discussed in detail below.

### Mandatory appointments

Clause 40 sets out the requirements for the composition of the collaborative group. This includes a number of mandatory appointments contained in the legislation:

1. **At least one person chosen by iwi authorities to represent the views of tāngata whenua**

The council must appoint at least one of the persons nominated by iwi authorities to represent the views of tāngata whenua. The mandatory appointment recognises the importance of iwi/hapū participation in local planning.

The provision is for **at least one** person to represent the views of iwi authorities. The wording is intended to cover a scenario where a very localised or specific planning matter is being considered, with a correspondingly small collaborative group. It ensures there is at least one person to represent the views of tāngata whenua. It allows the council to appoint more if they wish. Good practice would be for the appropriate mix of tāngata whenua members on a collaborative group to be decided jointly by the council and its iwi partners at the initiation of a collaborative process.

Note that this may be one of the things established through a Mana Whakahono ā Rohe/Iwi Participation Arrangement between iwi and the council under section 58(R) of the RMA. Feedback from current collaborative processes has been that groups have varying degrees of iwi representation. Some councils have other layers of iwi representation either within council, on council committees, or in an advisory capacity. Treaty settlement status often impacts and determines iwi representation. Collaborative processes may not always be able to accommodate Treaty settlement agreements/legislation (which is why this is identified as a pre-process consideration in clause 38). In some cases, tāngata whenua may prefer to deal directly with the council through traditional decision-making processes.



A commonly asked question of the collaborative planning process is what to do if there are multiple iwi across a region, such that it would be impractical to appoint a representative for each iwi/hapū to the collaborative group.

By way of responding to that question, there are two considerations to convening a collaborative group that, while not providing a definitive solution, may assist in providing a way forward.

First, as discussed elsewhere in the guidance, it is key that collaborative group participants are conduits of information both in and out of the group. Group members will need to be willing to hear the views (sometimes multiple) of others from their wider networks, and convey these back to the group. Therefore, it is not strictly necessary to have a representative for each value or diverse interest, as long as participants acknowledge their role in conveying the broader views of others.

Where there are multiple iwi/hapū there will likely be diverse interests, as well as capacity issues with regard to participation. In this case it may be appropriate to undertake an exercise to build understanding and trust so the iwi/hapū within a region can reach agreement about how they are going to be (collectively) represented and by whom.

The other consideration is effective group size. This is discussed elsewhere in the guidance, but essentially experience has shown that larger groups are generally less effective. There is no formula for determining an effective group size versus one that represents all values. If a collaborative process is being considered, however, then getting off to a good start by working **with** potential representatives to determine an effective and productive group would be a good way of reflecting the intent of the working relationship for the future.

Thus the solution is driven by iwi rather than the other options of the council either appointing all those nominated (not practical) or picking some from amongst all those nominated.

#### **Further reading**

[Collaborative Freshwater Planning Insights From Hawke's Bay \(Landcare Research\)](#) case studies the Gisborne TANK process and investigates issues with information sharing and selecting members that are representative and include all relevant tāngata whenua. This includes the establishment of a 'tāngata whenua/mana whenua' group to discuss upcoming topics in their own space, before discussion in the wider forum.

[Maori and Collaborative Freshwater Planning: Emerging Insights \(2015 Cawthron Report\)](#) draws on learnings to date from experiences with a collaborative process in Hawke's Bay and insights from other regions to identify how councils and iwi and hapū engaged in collaborative freshwater planning might meet their respective responsibilities.

## **2. In the case of a regional policy statement or plan, at least one person to represent the views of territorial authorities**

In the case of a regional policy statement or plan (other than one prepared by a unitary authority), relevant territorial authorities will be able to appoint at least one member to the regional council's collaborative group. In the case of a collaborative process that is relevant to a number of territorial authorities (eg, a regional policy statement that covers the whole region), this may mean that one representative is selected to represent a number of territorial

authorities, as including a representative from each of the relevant territorial authorities would result in a large and unbalanced membership of the collaborative group (see comments in previous section on appointing iwi representatives).

The provision is for at least one person to represent the views of territorial authorities. This allows the regional council to appoint more if they decide this is appropriate.

The appointment could be addressed by allowing each relevant territorial authority to nominate a representative for the collaborative group. The regional council would then appoint an appropriate number of the representatives to be members of the collaborative group. Ideally, this selection would be undertaken in consultation with the relevant territorial authorities.

### **3. In the case of a regional coastal plan, one person chosen by any customary marine title holder to represent the views of any customary marine title groups**

In the case of a regional coastal plan, the provision is for one person chosen by any customary marine title holder to represent the views of any customary marine title groups in the relevant area. Customary marine title recognises the relationship of an iwi, hapū or whānau with a part of the common marine and coastal area and is awarded under the [Marine and Coastal Area \(Takutai Moana\) Act 2011](#).

### **4. Other persons who, in the opinion of the council, have the knowledge, experience, and skills (including skills in collaboration) that are relevant to the resource management issues to be considered by the group**

The intent here is to signal that the council should consider not only members who collectively reflect “a balanced range of the values, interests and investments” of the community (clause 40(8)) but also those who may have some experience or skills in the matters identified. For example, this might include a member with previous experience in collaborative processes or skills in facilitation. The intent of this clause is to signal that specialist skills are also a valid criteria for appointment to the group.

The legislation is silent on how to appoint a chair for the collaborative group. It may be that the council delegates the role of appointing the chair to the collaborative group, or alternatively the council may decide to appoint a chair based on experience or specific skill.

### **5. In the case of designations/heritage orders/notices of requirement**

Where a territorial authority is undertaking a 10-year plan review that includes consideration of designations or heritage orders, the council must appoint a representative of each requiring/heritage protection authority where they signal a willingness to be part of the collaborative group (clause 40(2)). Note that there is no requirement for the authority to be on the collaborative group, and the designation/heritage order may still be considered via a collaborative process as long as it is identified in the terms of reference (eg, see the linked guidance on designations).

When the council issues a Schedule 1; clause 4 notification to the requiring authority, or notifies the heritage protection authority of the intent to undertake a collaborative process, it must also request the nomination of a member for the collaborative group. Where a member is nominated by the authority they must be appointed.

In the case where there are multiple designations with many requiring authorities, the feasibility and practicalities of having a representative from each requiring authority should be

considered before deciding to undertake the process (clause 38). Note that it is also possible to have a collaborative planning process where some requiring authorities are on the collaborative group but not others.

The council must also invite landowners and occupiers identified as being **directly** affected by the decisions relating to the designation/heritage order, and any other persons the territorial authority identifies as being affected. However, the council has discretion as to how many, if any, they appoint to the collaborative group. The purpose of this clause is to ensure affected persons are identified, from which a member or members for the collaborative group may be drawn and/or a 'community of interest' is identified whose views can be sought by the collaborative group.

The second purpose for identifying this particular community of interest is to fulfil the requirements of clause 56(1A) regarding notification of a council's decision following the review panel report. This clause requires the territorial authority to serve the notice on land owners and occupiers likely to be directly affected by their decision in respect of a requirement/designation or heritage order.

## Other appointments

The collaborative group can include one elected member from the council undertaking the collaborative process or, in case of combined plans (under section 80) one elected member from each council (40(1)(b)). The policy intent of restricting the numbers of elected members is to avoid loading the collaborative group with council representatives rather than community members.

The council cannot appoint employees or officers of any council.

The collaborative process does not specifically provide for representatives of government departments (such as the Department of Conservation or the Ministry of Business, Innovation and Employment) to be appointed to the collaborative group. Where a government department has a significant interest in the resource management issues being considered (such as owning land in a catchment area), the relevant regional council will need to think about how to involve them, as they would for other relevant values, interests and investments. This may involve appointing a member of the department to the collaborative group, but could also involve having active observers making submissions or providing other support to the collaborative group (eg, providing staff). Any involvement from a government department would have to recognise and provide for any legal constraints or Cabinet requirements that constrain a department's ability to act independently.

## Process for establishing a collaborative group

The legislation does not prescribe a process for appointing members, nor does it provide a mechanism for contesting appointments. If a collaborative process is considered an appropriate planning approach, then it would be desirable for the process for selection to reflect the basic tenet of collaboration, which is greater community involvement. The intention of not prescribing a process through legislation is to provide some flexibility as to how this stage is undertaken.

Councils can set their own process, taking into account time, cost, prior knowledge, and the resource matter being considered. There is no requirement to call for nominations but, except

in very specific circumstances, this would likely be necessary to fulfil the group composition requirements (ie, to ensure the group reflects a ‘balanced range of the communities’ interests, values and investments’).

Calling for nominations would be considered ‘good practice’ and it could be combined with the requirements in clause 37, in which councils, when considering whether undertake a collaborative planning process, must “consider the views and preferences expressed by persons affected by the resource management issue” and determine if there are “people able and willing to participate effectively in a collaborative planning process”.

While clauses 37 and 40 do not explicitly require full public consultation, communication with the community is desirable and it may be efficient to combine seeking feedback on the idea of undertaking a collaborative planning process with calling for expressions of interest for collaborative group membership.

#### **Environment Canterbury selection process**

In Canterbury members are selected in conjunction with the district councils and Ngāi Tahu rūnanga. A working group first compiles a shortlist, and then attends a selection process with the applicants. The selection process requires shortlisted applicants to give a presentation. Following this, the participants’ workshop an issue together to demonstrate an ability to work collaboratively. To be eligible for appointment to a zone committee, the candidate must either live in or have a significant relationship with the zone.

Recommendations on community members for the Orari-Temuka-Opihi-Pareora Zone Committee were made to Environment Canterbury, Timaru District Council, and MacKenzie District Council by a working group of representatives from Environment Canterbury, Timaru District Council, MacKenzie District Council, and Arowhenua Rūnanga. The recommendations took into account the balance of interests required for Orari-Temuka-Opihi-Pareora, geographic spread of members, and the ability of the applicants to work in a collaborative, consensus-seeking manner. Environment Canterbury, Timaru District Council, and MacKenzie District Council collectively made the appointments.

## **A note on mandates and diversity of representation**

Some commentators on collaborative governance consider that for the group’s recommendations to have legitimacy, membership should be restricted to those who have a formal mandate from a body, sector or organisation to represent their interests and negotiate/accept any compromise on their behalf. Restricting membership in this way, however, excludes general public, and means those values or interests that are not represented by a formal body would never have representation (see box below, on diversity).

It is of course up to each council to determine the make-up of a collaborative group but to meet the requirements detailed in the legislation, the ‘general community’, as well as specific sector groups (including the environment), are going to need to be represented.

It is crucial to understand that being part of the collaborative group means the member is a conduit of information both in and out of the group environment, and a member may have to find new avenues (ie, create networks) to disseminate information and convey multiple views (not just those of their sector). It is not intended that the collaborative group go into a huddle

and emerge with a solution – that would be no different to the decide–announce–defend model that collaboration seeks to avoid. Nor is it expected that group members will stick firmly to the views of their clique. Collaboration will not be successful if this is the attitude of the participants.

The idea that collaborative group deliberations should involve wider networks is discussed at length in the literature on collaboration, and is signalled in the Resource Management Act by requiring the collaborative group to report how group members **obtained and considered** the views of the wider community throughout their deliberations ( clause 44(2)(e)).

### Diversity

In *Planning with Complexity*, Judith Innes and David Booher discuss the conditions required to meet the definition of collaboration (collaborative rationality) and for it to be successful. They consider there are three conditions that are critical to achieving this. They are:

- include the full diversity of interests among participants
- ensure interdependence of the participants (ie, they cannot get their interests met independently)
- engagement of all via face-to-face ‘authentic dialogue’ that meets Habermas’ basic speech conditions.

They expand on the condition of diversity as follows: “The condition of diversity implies that a collaboratively rational process must include not only agents who have power because they are ‘deal makers’ or ‘deal breakers’, but also those who have needed information or could be affected by outcomes of the process. There must be many values, interests, perspectives, skills and types and sources of knowledge in the process for robust ideas to develop and for the system to build a capacity to adapt over time. A social system needs this variety, just as an ecological system needs biodiversity. If one strategy or idea does not work, other possibilities float around the dialogue that can be explored or combined to produce new approaches. In practice it is not uncommon for powerful agents to exclude some affected interests or perspectives, but when this happens, the results of the dialogue are likely to be infeasible, uniformed or unjust. While such processes may be called collaborative by some, they are not collaboratively rational. Keeping this distinction in mind is critical to preventing the misuse and misrepresentation of what we regard as pseudo collaboration, which can co-opt players and deceive the public into thinking a proposal has taken into account a wide set of perspectives”. *Planning with Complexity*; JE Innes and DE Booher: Routledge 2010.

## Group size and establishing the chair

The council can include as many people on the collaborative group as it considers appropriate considering the scale and significance of the resource management issues (clause 40(4)). The literature on collaboration, however, commonly discusses group size (smaller rather than larger) as a factor for success (see further reading material below).

In establishing a collaborative group, consideration should also be given to achieving a successful collaborative process, such as appointing members who are able and willing to work with others, and being mindful of group dynamics, including the differing roles that typically emerge in group situations which may be adopted by particular participants.

See the links in the ‘further reading’ section below for examples of how groups have been established in collaborative processes.

Consideration should be given to the selection of the chairperson. There is no particular direction given in the collaborative planning process for how this should be done. How the chair is appointed, and who it should be, can be determined by each council in conjunction with the collaborative group. The chair may be a professional facilitator, although this decision may be subject to cost considerations. Equally it could be left to the group to determine who will be the chair from the appointed members.

#### Further reading

[Setting up a Collaborative Process: Stakeholder Participation \(Landcare Research Policy Brief\)](#) This document gives insights for practitioners to use as they make decisions about the design of collaborative processes. It presents three design considerations related to stakeholder involvement in collaboration: group composition, stakeholder recruitment, and mandate. The role of tāngata whenua in collaborative processes is also highlighted.

#### [Collaborative Processes and the Roles of the Council](#)

A focus on fresh water may not be relevant to the collaborative planning process requirements. Regional councils hold a number of roles in a collaborative process. Articulation of these roles is necessary so council staff and stakeholders understand when and what roles are being undertaken at any one time. The Policy Brief 8 offers recommendations for how councils can manage the likely tensions between the various roles they can play in collaborative processes.

#### [Environment Canterbury website](#)

This site includes a video and text providing high level information on the process followed in Canterbury in setting up a collaborative process for freshwater plan-making, including establishing a committee, selecting members, the importance of the terms of reference, determining the mandate and power of the group and facilitating discussions.

[Representation and legitimacy in collaborative freshwater planning: Stakeholder perspectives on a Canterbury Zone Committee \(Cawthron Report 2787 Prepared for Ministry of Business, Innovation and Employment, 2015\)](#). This report focuses on the issue of representation – how affected interests are involved in collaborative deliberations – and specifically the perceptions of the legitimacy of this approach by those not directly involved in the deliberations themselves.

## ‘Representing the views’

There has been a lot of concern about how to select a single individual to represent the views of a particular group (ie, a single iwi representative where there might be many iwi in a region) or interest (ie, the environment). The perception seems to be that this person will arrive perfectly informed and there can only be one viewpoint per representative. In reality this is unlikely to be the case, for two key reasons.

First, views will change as members become better informed. Members will increase their understanding of the issue and others’ viewpoints as the process unfolds; and, in fact, it is necessary for this to occur to ensure a successful process. Arriving with an open mind and a commitment to find common ground and solutions that benefit all should be one of the criteria for acceptance to the collaborative group. Experience has shown that collaboration will

not be successful if the members expect to turn up, state their view, and argue it to what would literally be the 'bitter end'.

Secondly, it is not the intent that collaborative group members go off into a huddle for two years and emerge with a consensus position. The legislation requires the terms of reference to detail how the group will seek the views of the wider community (clause 41) and the collaborative group report must record how they consider those views in their decision-making (clause 43).

As such the role of the collaborative group members should be thought of as a conduit; information and ideas must flow through them from the wider community to the group and from the group back to the community. Therefore, a single representative must be able to convey multiple ideas and views with the intent of reconciling these into a consensus view. A successful collaborative group will bring the wider community along with them as they inform their thinking, and test and develop solutions.

## The collaborative group as a committee under the LGA and LGOIMA

A council is not precluded from making the collaborative group a committee under the Local Government Act 2002 (LGA). Environment Canterbury (ECan) has collaborative zone committees that operate as joint committees of the regional council, and the local territorial authority relevant to that zone. Committee members are appointed for three-year terms. ECan's zone committee's terms of reference state that groups will include four to seven community members from a range of backgrounds and interests in the community.

The collaborative planning process provisions in the RMA also apply the [Local Government Official Information and Meetings Act 1987](#) (LGOIMA) to the collaborative group as if it were a committee of the council under the LGA. This is applied to ensure transparency of the collaborative group processes, but also to protect official information and the deliberations of the group to the extent consistent with the public interest and the preservation of personal privacy.

## Changes to membership

The terms of reference requires the council to detail the dispute resolution process that will be used to remove or replace any collaborative group members. It is important to note that changes to group membership can be disruptive to progress, but equally, so too is a dysfunctional group. Careful selection of group members to ensure they are able to work collaboratively may mitigate this risk, as will support to the group to help resolve any hurdles the group faces as they arise.

The Waikato Healthy Rivers Wai Ora terms of reference contained principles to guide the collaborative group on expected behaviours and actions. See their [terms of reference](#), particularly section 2.3.1 Skills and competencies; or the Environment Canterbury, Waimakariri Zone Committee [Terms of Reference](#) for an operating philosophy.

## Further reading

### Values, Collaborative Processes and Indicators for Freshwater Planning

This report presents a case study of a collaborative process in Hawke's Bay as an example of the design challenges councils face in implementing collaborative processes. pp 27–31.

*Making collaborative groups work: A guide for those involved in collaborative processes* (Ministry for the Environment 2015). This guidance, collaboratively written by regional councils and Ministry for the Environment staff, steps the reader through the establishment, running and winding up of an effective collaboration group. Drawing on the writers' experiences, the guidance highlights areas to keep 'front of mind' and ways to address challenges.

### New Zealand's Approach To Integrated Freshwater Management With a Focus on Indigenous Interests

Investigates and assesses the role of Māori in collaborative planning processes, in particular in catchments in Waikato, Gisborne and Wellington. Reviews how the collaborative processes work with the arrangements set up through Treaty of Waitangi Settlements. The Waikato case study provides some lessons learnt and highlights some aspects of the Waikato process that has been successful pg 40–44. Gisborne pg 45–49, Wellington pg 50–55. Overall themes and lessons learnt pg 56–58.

### Collaborative Processes and Roles of the Council (Landcare Policy Brief)

#### Collaboration in the Waikato catchment

(Prepared by Wendy Boyce consulting for Ministry for the Environment, 2015).

This case study of the Healthy Rivers Wai Ora project highlights the practicalities of implementing a comprehensive collaborative process to design water quality policy. The focus is on the establishment and early implementation phases of this project from a council practitioner's perspective. This case study provides some lessons learnt establishing the Waikato Healthy Rivers Wai Ora collaborative group. Topics covered include the establishment phase, establishing a collaborative group in line with the Te Ture Whaimana o Te Awa o Waikato, the Vision and Strategy for Waikato River, the decision-making structures related to the collaborative group, appointing the group's chairperson, facilitator and support staff. It captures reflections from council staff about the initiation of the process and the operation of the collaborative group in its first year (as at April 2015).

### Values, Collaborative Processes and Indicators for Freshwater Planning

This paper discusses exploring and capturing alternative ways of knowing in decision-making processes, different types of knowledge, who may be experts, the use of technology to convey information. Pp 31–35.



## Step 3: Terms of reference developed

### Legislative requirements: Section 41 and 43 (other matters)

Getting the terms of reference right will be critical to the success of the collaborative group and collaborative planning process. The reason for this is two-fold; first, this will help avoid 'scope creep' (which has time and cost implications), and secondly because later stages of the process are directly (or indirectly) tied to detail in the terms of reference.

The terms of reference are binding on both the council and the collaborative group. A council may, at any time **after consulting the collaborative group**, amend the terms of reference that apply to the group. The council must give public notice and notice to the chairperson of the collaborative group if amendments are made to the terms of reference. This notice must state where a copy of the amended terms of reference may be inspected.

### Legislative requirements for the terms of reference

Clause 41 sets out the following requirements for a terms of reference for the collaborative group. This includes the following provisions:

#### 1. To consider specified matters

The collaborative group/review panel and a council cannot go outside the matters set out in the terms of reference in their recommendations and plan making. This is important as it reduces scope creep and clearly identifies the matters the collaborative group must consider and reach consensus on. Ensuring that the scope is clear in the terms of reference is more likely to result in the collaborative group delivering recommendations that can then be 'given effect to' by the council (because they are not spending time on matters outside of their ambit). It will also prevent introduction of matters the collaborative group did not consider by the review panel or council at later stages of the process.

#### 2. To report to a council with consensus recommendations for a proposed policy statement or plan within a specified time

In the literature on collaborative processes the level of agreement necessary to finalise a consensus recommendation is known as a 'decision rule'.

Under the collaborative planning process, the decision rule for recommendations from the collaborative group is unanimity – ie, unanimous decision-making. This is because the council must give effect<sup>3</sup> to the consensus position in the notified plan. If the process did not require the collaborative group to reach consensus decisions unanimously, this would divide the collaborative group members and reduce buy-in to the final plan provisions. For a discussion

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<sup>3</sup> Unless, in giving effect to the consensus position, the proposed policy statement or plan would not comply with the relevant provisions in Parts 4 and 5 of the Resource Management Act, or any other provisions of any legislation that apply to the preparation or change of a policy statement or plan under the RMA.

on differing decision rules possible under collaborative processes see the [Consensus decision-making website](#).<sup>4</sup>

**3. To consider how to comply with the obligations identified by the council that arise under the Resource Management Act of any other enactment that applies to preparing or changing a policy statement or plan under the RMA**

A council should identify all relevant obligations that the collaborative group should consider and set these out in the terms of reference. The collaborative group must consider how to comply with these obligations.

The intention here is that the recommendations made by the collaborative group can directly be reflected in the council's plan or policy statement. This means the recommendations must consider any obligations or requirements that a council would be required to consider in the development of a plan. This will ensure any recommendations the collaborative group come up with are legal and align with relevant policies, laws and agreements.

Examples of obligations under the RMA are in the case of a district plan, giving effect to the regional policy statement; or any of the functions of a council as detailed in section 30, complying with Reserves Act 1977 provisions as well as the specific examples listed as follows.

- 4. To consider how to give effect to the provisions of a national policy statement, the New Zealand Coastal Policy Statement, or a national planning standard that are identified by the council as relevant**
- 5. To consider how to comply with the provisions in regulations (including any national environmental standards) and water conservation orders identified by the council as relevant**
- 6. To consider how to comply with the obligations that are identified by the council as arising under the provisions of any relevant iwi participation legislation or associated agreement or legislation that requires a council in preparing or changing a policy statement or plan to give particular consideration to a document prepared under other legislation.**

Examples include the Vision and Strategy, *Te Ture Whaimana* developed as part of the Waikato River Treaty settlement agreement between the Crown and Waikato-Tainui, which has greater statutory weight than the National Policy Statement for Freshwater Management 2014.

**7. To establish and use a process for seeking the views of the community of the relevant area on the work that the collaborative group is carrying out and to specify how the council will support the collaborative group**

The process of engaging with the public should enable the community to be informed, and for the community to inform the collaborative group deliberations. This should include the council and collaborative group engaging and consulting with the wider community throughout the process of deliberations using public meetings, newsletters, media releases, and collaborative group meetings that are open to the public. The collaborative group report must include how the views of the community were obtained and considered (clause 43(2)(e)).

The idea is that the collaborative group should not go off into a huddle and emerge some time later with recommendations that have not the benefit of wider public input. Good public

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<sup>4</sup> See also Hartnett (2011), page 35, for a highly recommended discussion on differing options around the decision rule.

engagement at the collaborative group stage should result in fewer submissions (and appeals) at later stages, because the community views and concerns would be reflected in the collaborative group recommendations and the community would be well informed.

### **Developing a stakeholder communication and engagement strategy**

*Collaboration in the Waikato catchment* (Boyce 2015)

This case study describes the collaborative processes used as part of the Healthy Rivers Wai Ora project in the Waikato catchment. It provides practical information for those initiating a comprehensive collaborative process to design water quality policy, and captures reflections from council staff about the initiation of the process and the operation of the collaborative group in its first year. The Healthy Rivers Wai Ora project developed a Stakeholder Communication and Engagement Strategy, pages 9–14. It discusses a stakeholder communication and engagement strategy developed in the Waikato collaboration. This sets out lessons learnt, including:

- ✓ Invest time up-front gathering information to assist engagement planning.
- ✓ Create a rich database of contacts and a maintainable contact management system. This takes time.
- ✓ Keep an open mind about who will be interested in participating in a collaborative process and be prepared to review this on a regular basis.
- ✓ Spend time understanding what matters to stakeholders ... how they might add value to this goal, and their preferred engagement methods. Record this information accurately and respectfully.
- ✓ Respect the representative bodies of stakeholders and design an engagement package that reaches the individuals and small communities likely to be most affected by a plan change.
- ✓ Recognise the important role in stakeholder engagement held by leaders such as shareholders, boards of directors, territorial authority councillors, and other community leaders. Seek their input into the creation of stakeholder lists and find ways to connect them into the project. These people frequently wear multiple hats and are experienced communicators and networkers.
- ✓ Design an engagement approach that allows a wide range of people to have input into the process, and still allows flexibility to adapt the approach over time.
- ✓ Build community-level processes into the engagement strategy to increase connection with harder-to-reach communities. Sustain a level of local community connection throughout the project by tapping into existing networks and community events.
- ✓ Write an engagement strategy for formal approval, rather than a detailed implementation plan. Timelines change during a project and if the details of implementation are locked into the engagement strategy, then a formal change management process may be needed to make even minor amendments.

Create timely and specific opportunities for the wider community to contribute to the outputs of the collaborative group.

## **8. To prepare an evaluation of the costs and benefits of any recommendations it makes to the council**

As part of their process of finalising possible options, the collaborative group will need to evaluate the costs and benefits of the options. Requirements for the collaborative report

include summarising the costs and benefits of the consensus recommendations they provide to the council (clause 43(2)). The requirement is not for a full section 32 evaluation (this is the role of the council), but what the collaborative group provides will likely feed into that document. The council will probably need to support the group to undertake an evaluation of the costs and benefits of the various options.

## 9. Procedural matters

### a. Timeframes: The period for which the group is established

This includes the timeframe for the report of the collaborative group, and the length of time the collaborative group will be established for, which may include the period until any appeals are completed.

The collaborative process can be a lengthy process. Feedback from current collaborative processes is that the amount of time (and resources) required has been underestimated by participants and councils. Experience has shown the best results are obtained when there are not undue time restrictions on the group. There is a general sense that collaborative group participants feel they need more time than is typically given. Equally, however, the group cannot be left to deliberate with no time constraints. A potential approach would be to establish timeframes from the outset, through the terms of reference, with the understanding that this can be reviewed with the agreement of all participants.

### b. Payment

A council will need to determine whether, and how much, members of the collaborative group will be paid. This will vary depending on the resources of the council and the participants involved. Payment may be important to ensure certain groups are able to be represented, or that a certain representative can attend and dedicate time to the task. Examples of what existing council collaborative processes have paid participants is available, and detailed in their terms of reference (see links to existing terms of reference in the box that follows).

### c. Resources: how the resourcing and support for a group to enable them to reach informed consensus recommendations will be provided

An important consideration is the capacity of the council to support the collaborative process for the duration of the process. This support is essential for the process to be successful. Resourcing and support required by a collaborative group can include provision of legal or technical advice, commissioning economic or scientific research, as well as administrative support including room and travel bookings, setting up public meetings, minute taking, and distributing reading material.

Consideration may need to be given as to how to support members with fewer resources or skills to participate.

### d. A dispute resolution process

A dispute resolution process will need to be developed that the council must use if necessary in relation to a collaborative group, including the process for removing and replacing any of the group's members, or discharging the group, and the decisions that are required to withdraw from the collaborative planning process. See [Withdrawing from the collaborative process](#) in Step 4 for a detailed discussion on this.

Other matters that a council could consider putting in a terms of reference are:

- how the collaborative group will be evaluated
- the different roles within the group and respective responsibilities
- principles to guide the collaborative group<sup>5</sup>
- reporting and linkages between the collaborative group and council structures<sup>6</sup>
- how the collaborative group and council will work together
- how the collaborative group will engage within itself
- procedural matters for the group, including how often they are likely to meet, the matters they are to discuss, engagement with the community, and how they can obtain the research/science/evidence they need for their deliberations.

### Terms of reference examples

(Note none of these examples fully meet the legislative requirements of the collaborative planning process process)

[Whangarei Harbour Catchment Group Terms of Reference](#)

[Ngunguru Catchment Terms of Reference](#)

[Healthy Rivers Waioira Terms of Reference](#)

[Greater Wellington Ruamahanga Whaitua Terms of Reference](#) states that the purpose of the Ruamāhanga Whaitua Committee is to facilitate community and stakeholder engagement in the development of a Whaitua Implementation Programme (WIP). A WIP is a non-statutory report to council that will contain recommendations for specific plan provisions and work programmes for the integrated management of land and water resources within the whaitua boundary. The WIP may contain both regulatory and non-regulatory proposals.

The Ruamāhanga Whaitua Committee will operate in partnership with tāngata whenua and develop recommendations guided by the five principles created as part of the regional plan review process:

- ki uta ki tai – interconnectedness
- wairuatanga – identity
- kaitiakitanga – guardianship
- to matou whakapono – judgement based on knowledge
- mahitahi – partnership (cooperative).

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<sup>5</sup> See Waikato Healthy Rivers Wai Ora [Terms of Reference](#), particularly section **2.3.1 Skills and competencies**; or the Waimakariri Zone Committee [Terms of Reference](#) for an **operating philosophy**.

<sup>6</sup> This is particularly the case with co-governance arrangements. See the Waikato link above for a good example of this.

# Step 4: Consideration by the collaborative group, development of consensus recommendations, and notification of report

Legislative requirements: Section 43 - 45

## Running a collaborative group

Once a collaborative group has been established, the terms of reference will direct the procedural matters for the group, including:

- how often they are likely to meet
- the matters they are to discuss
- engagement with the community
- how they can obtain the research, science, evidence they need for their deliberations, for more information on terms of reference see [Step 3: Terms of reference developed](#).
- It would be possible for the council to establish a collaborative group as a committee of council under the Local Government Act 2002 (LGA). Note that section 43 of the LGA relating to indemnification is already applied to the collaborative group (clause 43(8)), along with the Local Government Official Information and Meetings Act 1987 (LGOMA) (clause 40(9)).

Many submitters on the Resource Legislation Amendment Bill, commented on the importance of having an independent chair for the collaborative group, and requested that this be required in the legislation. The intent is not to provide prescription over how the collaborative group should operate, including electing a chair, but instead to allow flexibility for the group and council to determine this according to need.

### Further reading

[Tools for improving group dynamics](#)

[Setting up a Collaborative Process: Stakeholder Participation](#)

This document gives insights for practitioners to use as they make decisions about the design of collaborative processes. This policy brief presents three design considerations for stakeholder involvement in collaboration: group composition, stakeholder recruitment, and mandate. The role of tāngata whenua in collaborative processes is also highlighted.

#### Environment Canterbury website

This site includes a video and text providing high level information on the process followed in Canterbury in setting up a collaborative process for freshwater plan making, including establishing a committee, selecting members, the importance of the terms of reference, determining the mandate, power of the group, and facilitating discussions.

#### Review of collaborative governance: Factors crucial to the internal workings of the collaborative process

This report explores the international literature on collaborative governance to identify factors that are important for people to contribute meaningfully to a successful collaborative governance process. The review covers several themes that might be crucial for a successful collaborative process, including how to optimise the development of the collaborative process to ensure success, the commitment to: change and over-riding purpose; flexible leadership and shared authority; authentic dialogue; and the development of a learning culture and the need to establish the achievement of 'common ground'.

#### Making collaborative groups work

This guidance, collaboratively written by regional councils and the Ministry for the Environment, steps the reader through the establishment, running and winding up of an effective collaboration group. Drawing on the writers' experiences, the guidance highlights areas to keep 'front of mind' and ways to address challenges.

#### Collaborative Governance for Successful Outcomes in Rural New Zealand

This report identifies key aspects that are important for ensuring that collaborative governance processes are successful in rural New Zealand.

#### Process and outcomes of the nitrogen allocation reference group (NARG) for South Canterbury Coastal Streams (SCSS) area (presented to Massey University's annual Fertiliser and Lime Research Centre workshop)

This document provides a good succinct summary of the overall stages of the process, and how the final consensus position was successfully reached. As an indication of the success of the process it contains the following quote: "The process of expressing dissatisfaction with the initial solution, the subsequent commitment to engage, to learn and understand more about different options, to respect differing points of view and that 'fairness' means compromise in recognising the situations of others and sacrificing something yourself. It has given opportunities for some to lead and all to contribute in developing a community solution to achieve outcomes for a local community."

## Tools/information for the collaborative group

The collaborative group will require a great deal of information. As a starting point the group may require a basic introduction to the Resource Management Act, hierarchy of instruments under the RMA ie, national direction (national policy statements/national environmental standards) and local government planning instruments (policy statements and plans); as well as the role and functions of a council (regional/unitary/district) under the RMA. It may also include other relevant legislative requirements (ie, other statutes or treaty legislation) as appropriate. It will be important that all participants in the collaborative group begin from the same knowledge base.

The most successful collaborative processes also have a substantial amount of background research completed in advance. This includes economic and scientific/technical information. Without this, the group spends a good deal of time asking questions that need to be answered by research before they can make progress.

Along with the provision of information, it is important that all members of the collaborative group have the same level of understanding of technical and scientific information, and ensure all members are participating on an equal level. Some participants may require specific capacity building in certain knowledge areas that others already have.

One of the most frequently noted challenges is capacity building. This includes having key iwi representatives who can understand modelling and translate the ideas and modelling approaches into language that is accessible and relevant both for iwi members and the wider community.

Good communication of economic and scientific information is important; this includes communicating scientific and economic uncertainty. We have produced [guidance on communicating uncertainty](#) specifically for implementing the National Policy Statement for Freshwater Management 2014. In giving effect to the obligations under the freshwater NPS, much of the required decision-making will be made based on uncertain information. The guide provides practical considerations, principles and methods aimed primarily at helping regional council staff identify, assess, communicate and manage uncertainty. It is relevant to communicating complex ideas in general not just those around fresh water.

National resource management policy reforms in New Zealand require development of freshwater management and decision-making approaches that recognise the potential and opportunities offered by Māori knowledge – mātauranga Māori – and its interface with science. Scientists, resource managers and Māori are in general agreement that a partnering of mātauranga Māori and science would provide a richer knowledge base and promote new insights to help develop innovative and collaborative strategies for sustainable resource management.

NIWA is undertaking a six-year (2015-2020) government-funded project called [Ngā Kete o Te Wānanga \(the baskets of knowledge\)](#). It aims to explore complementarities and synergies between science and mātauranga Māori (indigenous knowledge) to inform and strengthen freshwater decision-making. An interdisciplinary project team intends to design and implement trans-cultural collaboration, frameworks, processes and methodologies whilst also meeting the aspirations and needs of Māori.

## Supporting the collaborative group

It is essential that council staff provide administrative support and technical/planning expertise to the collaborative group. This is signalled through clause 43 (4) and (5) which states that reports may be commissioned by the collaborative group and clause 43(6) and (7), which states that council staff may provide, at the request of the collaborative group, technical, secretariat or other support, and may attend meetings as technical advisors, if the chair of the collaborative group agrees.

Each process and its needs will be unique and will change over time. It will be important for the council to try to anticipate future needs but also remain agile to respond to requests.



### Further reading

#### [Collaboration In The Waikato Catchment](#)

This document provides some lessons learnt establishing the Waikato Healthy Rivers Wai Ora collaborative group. Topics covered include stakeholder engagement strategy, resourcing, and drafting terms of reference.

#### [Collaborative Processes and the Roles of the Council](#)

Regional councils hold a number of roles in a collaborative process. Articulation of these roles is necessary so council staff and stakeholders understand when and what roles are being undertaken at any one time. Policy Brief 8 offers recommendations for how councils can manage the likely tensions between the various roles they can play in collaborative processes.

## Engaging with community

It is important that the collaborative group does not act in isolation, but actively engages and brings the community along this it. The process of engaging the public should enable the community to be informed of the collaborative groups thinking and for the community to inform the collaborative group deliberations. The council and collaborative group should (and are required to through clause 41(2)(g)), engage and consult with the wider community throughout the process of deliberations using public meetings, newsletters, media releases, including public attending the collaborative group meetings.

Robust and widespread engagement between the wider community and the collaborative group will result in fewer submissions/appeals as the community's views and concerns would be reflected in the collaborative group recommendations, and the community would be well informed.

## Collaborative group report

The collaborative group must provide a report to the council that includes a:

- a. list of consensus recommendations
- b. summary of the costs and benefits identified in relation its recommendations (similar to analysis provided by a section 32 report)
- c. summary of alternative options considered
- d. record of matters that the collaborative group considered but did not reach consensus on
- e. summary of how the collaborative group obtained and considered the views of the community of the relevant regional area (clause 44).

Any additional direction on the content of the report that the council wishes to see included should be detailed in the terms of reference.

The collaborative group's report needs to provide enough detail to then turn the recommendations into a plan or policy statement. This will require the council to work with the collaborative group and support them in terms of planning expertise. In reality the most efficient way would be for the council staff to provide draft planning provisions to the collaborative group to test as they proceed, so that in effect, the task of drafting the

plan with the collaborative group will occur in conjunction with developing consensus recommendations.

The council will be actively supporting and observing the collaborative group in their deliberations and development of their report. Therefore, it is likely the council would provide direction and instigate mediation (as set out in the terms of reference) if it looked like their report would be insufficiently comprehensive to draft a plan or policy statement.

The policy intent behind the fact that the council must give effect to the consensus position of the collaborative group is that the degree of council's discretion is directly linked to incentives to collaborate. The collaborative group has to have certainty that its work is taken seriously and will have a major influence over the final decisions.

## Matters on which consensus is not reached

The collaborative planning process provides the ability for the council to draft planning provisions on matters for which the collaborative group did not reach consensus (clause 46 (2)(b)(ii)), as long as those matters were within the terms of reference.

Where there is no consensus on a matter the collaborative group could decide to provide split recommendations or multiple options in their report to the council, and the council could decide to use these as the basis for the planning provisions. This is not specifically provided for in the legislation, but it is something the council and collaborative group could insert into the terms of reference if they chose.

In the case where a plan provision is not based on a consensus recommendation, rigour would still be provided through the section 32 cost-benefit evaluation, submissions and further submissions heard by the review panel, and the role of the review panel, which is to test the underlying analysis of the provisions in light of submissions and provide recommendations to the council along with a further cost-benefit analysis (s32AA report) (clause 54(2)(c)). Merit appeals by way of rehearing are available on those parts of the plan that are not based on a consensus recommendation (clause 60(1)(b)(i)).

The policy intent in allowing drafting to proceed on matters where consensus has not been reached is two-fold. First, this provides a mechanism to allow the plan to proceed in instances where consensus has been reached on the majority of issues, but with some exceptions. Rather than discarding all the work achieved by the collaborative group because one or more issues cannot be resolved, this will allow the planning process to continue (see [Dispute resolution and dissolving a process section](#) for a discussion on dispute resolution requirements and a threshold for not proceeding with the collaborative process).

Secondly, this is a key incentive for the collaborative group to reach consensus on all matters contained in the terms of reference. If they do not, the alternative is that plan provisions will still be drafted by the council, and these would be open to appeal. Merit appeals on those parts of the plan drafted by the council **not** based on the consensus position are available on a rehearing basis to the Environment Court, and in all instances there is a right of appeal to the Environment Court on a point of law.

In circumstances where the collaborative group and the council agree there are insufficient matters on which consensus has been reached, they can dissolve the collaborative process and revert back to a Part 1, Schedule 1 planning process. The mechanism for this is provided for in clause 38 (3)(c). The provisos for this occurring are that the dispute resolution process detailed

in the terms of reference must have been employed and council and collaborative group must agree together. This is discussed in detail below.

## Dispute resolution and dissolving a process

There is a requirement to include in the terms of reference (clause 41(3)(d)) a dispute resolution process that may be used if there are issues the group cannot agree on.

There are three grounds for dissolving a collaborative planning process. These are:

- if the council is unable to appoint a group that meets the requirements of clause 40(8), ie, appointing a group “whose membership collectively reflects a balanced range of the community’s interests, values and investments” (clause 38(3)(a)).
- collaborative group has breached its terms of reference and the local authority has followed the process specified for dispute resolution in the terms of reference, but the dispute is not resolved (clause 38(3)(b)).
- Where this dispute resolution process is unsuccessful and the dispute remains unresolved such that there are insufficient consensus recommendations (clause 38(3)(c)).

If one of these three situations are met then the council may then revert back to a Part 1, Schedule 1 process to develop the plan.

The threshold at which a collaborative process should be dissolved due to unresolved disputes and when it could proceed, albeit with some unresolved issues, will vary with each process. This is a decision for the collaborative group to make, in consultation with the council. No plan provision exists in isolation and therefore consideration of how other parts of the plan are impacted by a lack of consensus elsewhere will have to be taken into account.

The intent of clause 38(3) (and clause 37) is to ensure the council gives due consideration before committing to the process. The time and effort required from both the community and the council to run a successful collaborative process is significant. Ensuring the council cannot withdraw from the process except under specific circumstances outlined in clause 38(3) provides assurance to the collaborative group and the community that the council will continue with the process, and reflect the consensus recommendations in planning documents.

## Report on costs and benefits

The collaborative group report must include a summary of the costs and benefits relating to those recommendations but not a full section 32 evaluation.

Section 32 analysis and plan drafting go hand in hand. A section 32 analysis is conducted on a continuing basis as the plan, and plan options are being developed. A full section 32 evaluation also requires an evaluation of the actual wording of the plan provisions and that is why a full s32 evaluation is not required from the collaborative group at this time (ie, because the plan/policy statement has not yet been drafted).

It is likely that in practice the council will seek input from the collaborative group into the content of the section 32 evaluation and the current requirement for the collaborative group to provide a summary of the costs and benefits, and alternative options will form a core part of the final section 32 evaluation.

# Public notification of the collaborative group report

Clause 45 requires the council to publicly notify the collaborative group report.

# Step 5: Drafting, public notification, and submissions

**Legislative requirements: Clauses 46–49** (drafting and notification), **clauses 50-51** (submissions and summary of submissions)

## Drafting of the plan/policy statement

The legislation states that “as soon as is reasonably practicable after the collaborative group report is publicly notified, the council must prepare a proposed plan/policy statement **in conjunction with the collaborative group**”. In reality, preparation of the planning instrument may have already begun.

The intent is that the council should retain responsibility for finalising and approving the plan for notification, but that the collaborative group should be directly involved in drafting to ensure the consensus position is reflected as intended through the plan/policy statement provisions. To achieve this, the council might draft the plan more or less simultaneously during the collaborative group deliberations, and provide drafts to the group to check that it accurately reflects their intent.

The council must accurately reflect (‘give effect to’) the consensus recommendations of the collaborative group; they cannot pick and choose from the recommendations, change the intent, or the desired outcome of the group’s recommendations. How the council reflects the consensus recommendations of the collaborative group is very important to the success of the collaborative planning process. The collaborative group members need to have confidence that their recommendations and hard work are valued, and will be fully and accurately reflected in the notified plan. If the collaborative group do not have certainty that the council will implement their recommendations as intended, the incentives to participate in the process are diminished. **It is for that reason that the legislation requires the council to ‘give effect’ to the consensus position and to draft the plan in conjunction with the collaborative group.**

Note that the proposed plan or policy statement ‘must give effect’ to the consensus position of the collaborative group (clause 46(2)(a)) **except** where the consensus position is inconsistent with either the implementation of any national policy statement /national environmental standard, or the New Zealand Coastal Policy Statement, or the council’s exercise of its functions under the RMA, including a national planning standard (clause 46(3)). Under the terms of reference it is the responsibility of the council to provide information to the group so they understand how to comply with the obligations that arise under the RMA or any other legislative/regulatory requirements (clause 41).

The proposed plan or policy statement may also include provisions on matters where the collaborative group did not reach consensus, if those matters were within the terms of reference of the collaborative group (clause 46(2)(b)(ii)).

## Advice from iwi authorities

After receiving the collaborative group report, and before notifying a proposed policy statement or plan, the council must provide a copy of the relevant draft proposed policy statement or plan to tāngata whenua of the relevant regional area through the relevant iwi authorities, ensuring the iwi authorities have adequate time and opportunity to provide any advice to the council (clause 47).

The council must have particular regard to any advice received if that advice is not inconsistent with the consensus position. Note, however, that this section applies only if the council does not have a mana whakahono ā rohe/iwi participation arrangement (section 58) with any relevant iwi authority.

The idea underpinning the requirement to seek comment from iwi is to recognise the importance of iwi/hapū participation in resource management planning processes. During development of the collaborative planning process, a key conclusion reached was that the placement of iwi advice (with statutory weight) to council would be more influential and beneficial earlier in the planning process. Early positioning of the advice, after the collaborative group's recommendations, also enables iwi and the council to exchange views and understand each other's perspectives and constraints, which sets up the opportunity for a constructive working relationship. Similarly it was thought that provision of the advice later in the process places iwi/hapū in a position of attempting to seek late change to the emerging plan, and this is not how collaboration is intended to unfold.

Some regions have multiple iwi/hapū, and it may not always be possible to include a member on the collaborative group who represents each iwi, nor may iwi always wish to be involved. This provision recognises Treaty of Waitangi principles and provides an avenue for iwi views to be heard regardless of whether they were members (by choice or otherwise) on the collaborative group.

## Section 32 evaluation

Clause 48 requires a council to prepare an evaluation under section 32 that is to be publicly notified alongside the notified plan. The standard requirements for a section 32 evaluation apply, but where a collaborative process is used, the report must also state the extent (if any) to which the proposed policy statement or plan does not give effect to the consensus position and the reasons for that (ie, that no consensus decisions were reached or a change to comply with regulation was necessary). The evaluation must include reasons for the provisions in the plan, including a narrative on how the council has given effect to the advice and consensus position of the collaborative group.

A section 32 report requires an analysis of alternatives considered, and the costs and benefits. Note that the collaborative group is required to detail the alternatives considered, and costs and benefits of their recommendations, in the collaborative group report (required through the terms of reference) and the council will be able to use this to feed into their section 32 evaluation.

## Notifying and submissions

Clause 49 requires the council to publicly notify the proposed policy statement or plan, and lists the clauses of Schedule 1 that provide direction on this.

Clause 50 has direction on the making of submissions and applies clauses 6–8A of Part 1, Schedule 1. That entails producing (and making publicly available) a summary of decisions requested by submitters, as required under clause 7; then calling for further submissions under clause 8 and 8A.

The submissions process is the avenue to challenge whether, in the submitter’s opinion, the proposed plan/policy statement adequately gives effect to the consensus position (as detailed in the publicly notified collaborative group report).

## Council analysis of submissions (clause 51 report)

No later than three months **after the closing date** for further submissions, a council must prepare a report that provides an analysis of whether the decisions requested by submitters (in part, as reflected in the report prepared under clause 7) are consistent or inconsistent with the consensus position. It must also include the response of the council to the decisions requested. This report must be provided to the collaborative group and iwi for comment, as well as inviting comment from these two groups on the plan/policy statement itself.

## What is the purpose of the clause 51 report?

A clause 51 report provides an avenue for the council to signal their views on the decisions requested to both the collaborative group and iwi before they comment, but importantly it can also indicate to the review panel the council’s views on decisions sought by submitters and signal a preferred direction.

The council must seek comments from the collaborative group and iwi (through iwi authorities) on the analysis of submissions and the proposed policy statement or plan (clause 51(2)). The intent of this step is to improve the overall quality of the process through allowing for continuing engagement of the collaborative group and iwi; further recognising their role as partners in resource management decision-making.

Both the council report on submissions and the comments on it will be considered by the review panel to inform their deliberations (clause 74). This also provides part of the scope for the review panel to recommend changes that deviate from the collaborative group consensus (see clause 54).

## Statutory timeframes

The main timeframe prescribed in the RMA for the collaborative planning process is two years from the time at which a draft plan is notified to when a council notifies its decision on whether or not to accept the recommendations of the review panel. In that two-year timeframe, a council must publicly notify a proposed policy statement or plan, invite submissions from the public, hold hearings, and make a final decision on the recommendations of the review panel. Minimum time periods for submissions and further submissions contained in the RMA apply (Schedule 1, clause 5(3), clause 7(1)(c)). This is the same timeframe for a planning process under Part 1 of Schedule 1 (clause 10).

# Step 6: The review panel

Clauses 52–54 (role of the review panel) and 64–74 (matters relating to the review panel)

## The establishment of a review panel

The council must establish a review panel (clauses 64–74). The function of the review panel is to conduct a public hearing of submissions, and to make recommendations to the council on the plan or policy statement (clause 69).

The intent is that the review panel will provide a robust process for testing the analysis underpinning the proposed plan, provide an avenue for submitters to be heard, and recommend any changes to improve the plan/policy statement.

The council establishes the review panel in much the same way as they would establish a hearing panel.

## Review panel membership

The full requirements are contained in clause 65.

The panel can be between three to eight members, with the majority being non-elected. The council must appoint panel members who have expertise in relation to the Resource Management Act, and the particular resource planning matter at hand. All panel members must be accredited hearings commissioners, and at least one must have experience in undertaking cross-examination in a legal proceeding. Note, however, that this does not mean the member will necessarily be an active or retired Environment Court judge.

The panel must include at least one member who has an understanding of tikanga Māori and the perspectives of tāngata whenua, and is appointed after consultation with tāngata whenua through the relevant iwi authority.

The Minister for the Environment (and Minister for Conservation in the case of a coastal plan) can, if he or she chooses, nominate one person to the panel (who can be the chair) and this person must be included on the review panel. The Minister must give notice no later than five working days after the date by which further submissions must be lodged of the intention to nominate a member/chairperson (clause 64). Note also that in the case of a split vote the chairperson of the panel (whether or not they were appointed by the Minister) has a casting vote (clause 70).

The council must publicly notify the appointments (clause 66).

## Role of review panel and requirements

The review panel process will provide a forum for the wider public to present their views if they feel these were not captured during the collaborative group deliberation stage.



The review panel will hear public submissions and test the extent to which the consensus has been given effect to in the notified plan (clause 54). As part of that, the review panel will assess the rigour of the planning document in achieving the purpose of the RMA, including the evidence and analysis underpinning the plan.

The review panel must regulate its own procedure in a manner that is appropriate and fair (clause 71). A panel can commission evidence and reports on any matter considered necessary to assist them (clause 72), and convene a conference of experts for the purpose of clarifying or facilitating the resolution of a matter (clause 73), or require parties to engage in mediation if required (clause 70).

A member of the collaborative group may assist the panel (clause 53; see also the [Role of the collaborative group in procedures of review panel section](#)).

The review panel will provide for a hearing that allows for proper testing of evidence (via cross-examination and questioning), but avoids unnecessary formality. Clause 70 sets out the powers of the panel. This applies section 39 of the RMA, but not sections 39(2)(c) and (d). Sections 39(2)(c) and (d) prevents a council from permitting questioning (other than through the panel) or cross-examination respectively. Allowing the panel in a collaborative process to undertake cross-examination will provide rigorous and transparent evidence testing for the process, which is particularly important given the changes to appeal rights.

A record of the proceedings will need to be kept to capture and accurately reflect the evidence and submissions presented to the review panel, and the review panel's findings in respect of these (clause 71). The Environment Court would also draw on these findings when considering the merits of any subsequent appeal.

The information to be provided to the review panel is detailed in clause 74, although this is not an exclusive list. Additionally the review panel may commission, or require a council to commission, a report on any matter (clause 72).

The panel must provide a report to the council with recommendations on the proposed policy statement/plan and the matters raised in submissions (clause 53). Further detail on the review panel and their report follows in the next sections.

## Role of the collaborative group in procedures of review panel

The collaborative group may give notice to the council that it has nominated a representative from the group to attend the hearing to assist the review panel (clause 53). This does not preclude that member from making a submission. The member's role is to help the panel understand the matters in the plan/policy statement, and provide additional context or information that the panel may request. The member could clarify matters in the proposed policy statement or plan, discuss with the panel issues raised in submissions with the panel, and/or provide any relevant information the panel requests.

## Review panel's recommendations

The review panel must provide a report to the council with recommendations on the proposed policy statement or plan, and the matters raised in submissions (clause 54(1)). The panel's

recommendations might be to proceed as notified with the proposed plan/policy statement provisions, or recommend change to the provisions. They must detail whether the recommended changes would be consistent with the consensus position of the collaborative group (clause 54(2)). Any recommendations for changes from the review panel need to be supported by a further evaluation in accordance with section 32 AA (clause 54(2)(c)).

The legislation sets out a number of other matters that must be included in the review panel's report (clause 54(2)). This includes a statement about the extent to which the consensus position of the collaborative group is reflected in the notified plan or policy statement. Recommended changes may be made to the consensus position by the review panel, but only in certain circumstances (detailed in the section to follow) and these must go back to the collaborative group and their response detailed in the review panel report. These requirements signal the weight intended to be applied to ensuring the consensus position carries through to the final plan.

This also imposes a higher burden on submitters (effectively having to rebut the consensus position) for the review panel to consider making changes. The review panel will need to be satisfied that the process and evidence underpinning the notified plan is wrong before they could consider alternatives; ie, wrong in the sense that there are gaps or inadequate consideration of matters in evidence/analysis that underpin the plan, not just because a submitter had another idea about how to achieve a particular objective.

It is possible that some parts of the plan will not reflect a consensus position (ie, where the collaborative group was not able to reach consensus). In this instance the council can draft provisions as they see fit and the review panel can recommend changes, but as with other parts of the plan these would have to go back to the collaborative group for comment unless they were changes made to comply with legislative requirements. If the collaborative group could not originally reach consensus but did so on the review panel proposal, this would mean (as long as the council accepted the recommendation) that appeals on points of law only were available on those parts of the plan (clause 59; see [Step 8 – Appeals](#)).

## Review panel's ability to recommend changes

While the review panel can recommend changes to the proposed plan/policy statement there are three provisos or threshold that constrain this ability.

- 1) The review panel must not recommend changes to the plan unless the changes are needed to comply with legislative or regulatory requirements (clause 54(3)).
- 2) Unless the collaborative group is given the opportunity to comment on recommendations the panel proposes and this is included in the panel's report. The comment must include a statement on whether the collaborative group agrees or otherwise with the recommended change. Their agreement or otherwise will go on to influence the availability of appeals (see next section).
- 3) These, recommendations must be within the 'scope envelope' contained in clause 54(6). This states that the review panel may only make recommendations that are within the scope of the proposed policy statement or plan as notified, the submissions received, any collaborative group/iwi authority's comments on the summary of submissions report, or any of the information provided to the review panel under clause 74.

# Step 7: Final policy statement or plan

Legislative requirements: Clauses 55–57

## Council accepts or rejects the review panel recommendations

As soon as possible after receiving a report from a review panel, the council must decide whether to accept or reject each of the recommendations in the review panel's report (clause 55(1)).

If a recommendation is rejected, the council must propose an alternative and give reasons for the alternative (clause 55(2)).

Any alternative provision must be within the scope of a matter raised in a submission; the reports and comments provided to the review panel under clause 74; comments received under clause 51(2)(b) ie the summary of submissions or 54(3)(b) ie the collaborative groups comments on proposed changes from the review panel (clause 55(3)).

Before deciding on an alternative provision (clause 55(4)), a regional council must:

- prepare a section 32 evaluation
- identify if it is inconsistent with the review panel recommendations
- identify if any inconsistency is necessary to ensure the proposed plan complies with relevant legislation, including treaty settlements
- identify any other reasons why the alternative provision is preferred.

The council retains responsibility for making and publicly notifying the final decisions on the plan/policy statement, subsequent to receiving the hearings panel recommendations and advice from iwi/Māori. The council must produce a report that states the reasons for its decisions, including any reasons for deviating from the notified plan and/or the recommendations of the review panel.

Within two years of notifying a proposed policy statement or plan a council must publicly notify its decisions (clause 57).

# Step 8: Appeals

Legislative requirements: Section 277A and clauses 59–62

## How are appeals different?

Under the collaborative planning process, the nature and availability of appeals is different to those available under a Part 1, Schedule 1 process. Under a Part 1, Schedule 1 process appeals on merit are made to the [Environment Court](#) and a point of law appeal may follow to the High Court. Under the collaborative planning process merit appeals are available only in certain circumstances and are by way of a rehearing to the Environment Court. Any point of law appeals are also to the Environment Court (an appeal to the High Court may follow) .

## Appeals on points of law

Appeals on points of law are detailed in clause 61, and are available to any group or person specified in clause 60(2) on any matter where there is not right of appeal by way of rehearing. Under the collaborative planning process, appeals on points of law are made in the first instance to the Environment Court (rather than the High Court as would be the case for Part 1, Schedule 1 plan/policy statement process). The decision of the Environment Court may be appealed to the High Court.

The reason for taking appeals on a point of law to the Environment Court is that the design, composition and powers of the review panel means it carries out many of the functions currently carried out by the Environment Court. The review panel process ensures evidence is well ‘tested’ before a point of law appeal to the Environment Court. This is similar to the way evidence presented on appeal to the High Court has been tested by the Environment Court under a Part 1, Schedule 1 process.

Some commentators have questioned the value of having the Environment Court hear point of law appeals, adding that a second point of law appeal to the High Court would potentially add time and cost. This change was made because the Environment Court is a specialist Resource Management Act Court, and is well placed to test the findings of a lower jurisdictional body (review panel) on points of law. The change could also provide for appeals on merit and on points of law to be heard at the same time. Under the current process, the two grounds for appeal are split between two jurisdictions, bringing associated difficulties in case management and co-ordination that can create unnecessary difficulties and inefficiencies. Combining hearings can lead to significant improvements in case management and early resolution of appeals.

## Appeal by way of rehearing

An appeal by way of rehearing is the standard form of appeal in New Zealand courts, however, it is new for the Environment Court. The Environment Court usually considers matters afresh (or on a *de novo* basis). The Environment Court does not review the earlier decision: it hears any evidence it requires and makes its own decision, which replaces that of the council. It

focuses on the merits and substance of the particular decision or issue, not the deliberative process of the executive authority (council) that made the initial decision.

In contrast, an appeal by way of rehearing is not a new hearing of the matter. The Court considers the issues determined at the original hearing (to the extent that they are relevant to the appeal) and the effect of the evidence then heard as it appears on the record of proceedings (*Pratt v Wanganui Education Board* [1997] 1 NZLR 476).

A rehearing appeal typically restricts when new evidence can be admitted to and heard by the Court. Section 277A (Part 11) sets out the powers of the Environment Court in relation to evidence heard on appeals by way of rehearing for the collaborative planning process. The collaborative process uses the High Court rules on admitting new evidence. These rules include provisions that state that the Environment Court has full discretion to rehear all or any part of the evidence received by the council or panel whose decision is the subject of the appeal. Similarly, the Court can rehear evidence if the Court believes the record of evidence is incomplete in any material way.

The Court can admit new evidence only if it is convinced the evidence was not able to be produced earlier. For example, the evidence relates to matters that have arisen after the date of the decision appealed against. All other provisions contained in the RMA apply to the Environment Court, including the provision for witness allowances and the ability to award costs. The reasoning for changing to merit appeals by way of rehearing is detailed below.

## What is the reason for the change to appeals?

The purpose of changing the nature and availability of appeals is to incentivise collaboration.

The rationale for changes to the availability of appeals is two-fold. First, it is designed to encourage participation by the wider community in the planning process during the plan development stages (because there may not be an avenue for appeal at the end). Secondly, the change provides assurance to the collaborative group that where they have taken the time to reach consensus, there will not be an automatic right of appeal at the end in which the consensus decisions may be overturned. (See [When are appeals available?](#) section for further detail.)

Note that the consensus position is tested through the submission/review panel process, and the council still has the final decision about whether they accept the consensus position or not (where they do not, then appeals are available). The changes to the availability of an appeal are balanced with increased and more effective opportunities for parties to engage in the collaborative and review panel steps of the planning process. At these stages, the different values and interests of the community can be examined, information and evidence can be transparently 'tested', and 'win-win' solutions can be developed – leading to better informed and durable decisions.

The change to the nature of appeals (ie, by way of rehearing rather than *de novo*) is intended to encourage participants to table all information and evidence during the collaborative group and review panel stages because even if there is an appeal, new information may not be admitted by the Court (under the rules of a rehearing). This ensures all relevant information is available at the early stages of the process to better inform decisions.

The changes to the nature and availability of appeals are a way to encourage engagement and participation at earlier stages in the planning process to resolve the hard issues and develop community-derived solutions for better planning outcomes. It is a crucial element in the move away from the *decide–announce–defend* model of top-down decision-making to the more inclusive *engage–deliberate–decide* model of collaborative planning.

## When are appeals available?

- A. Appeals by way of rehearing to the Environment Court are available in the following situations:
- Where the council has made a change that is inconsistent with the recommendations of the review panel.
  - On any matter in the plan that is **not** based on a consensus recommendation.
  - Where the review panel recommended a change to the consensus position with which the collaborative group did not agree/or agreed with changes (regardless of which option the council puts in).
  - Where the review panel made a change to a requirement, designation or heritage order that the requiring/heritage authority did not support or supported with changes (see [designations guidance](#) for detail on this).

Appeals by way of rehearing are linked to instances where the council deviates from either the consensus position and/or the recommendations of the review panel for the final plan/policy statement. Linking appeal rights to retaining the consensus position and/or adhering to the recommendations of the review panel creates strong incentives for a council to accept the work that has gone into developing the plan. This is considered appropriate, given the collaborative group and review panel recommendations will have been informed by the consensus building process, including iwi advice, submitters, and through rigorous testing of the information and evidence underpinning the plan.

- B. Point of law appeals are available to the Environment Court where there is no right of appeal by way of rehearing detailed above.

Where the final plan maintains the consensus position and is consistent with the recommendations of the review panel (including where they have made a recommended change with which the collaborative group agrees) then appeals are available on points of law only.

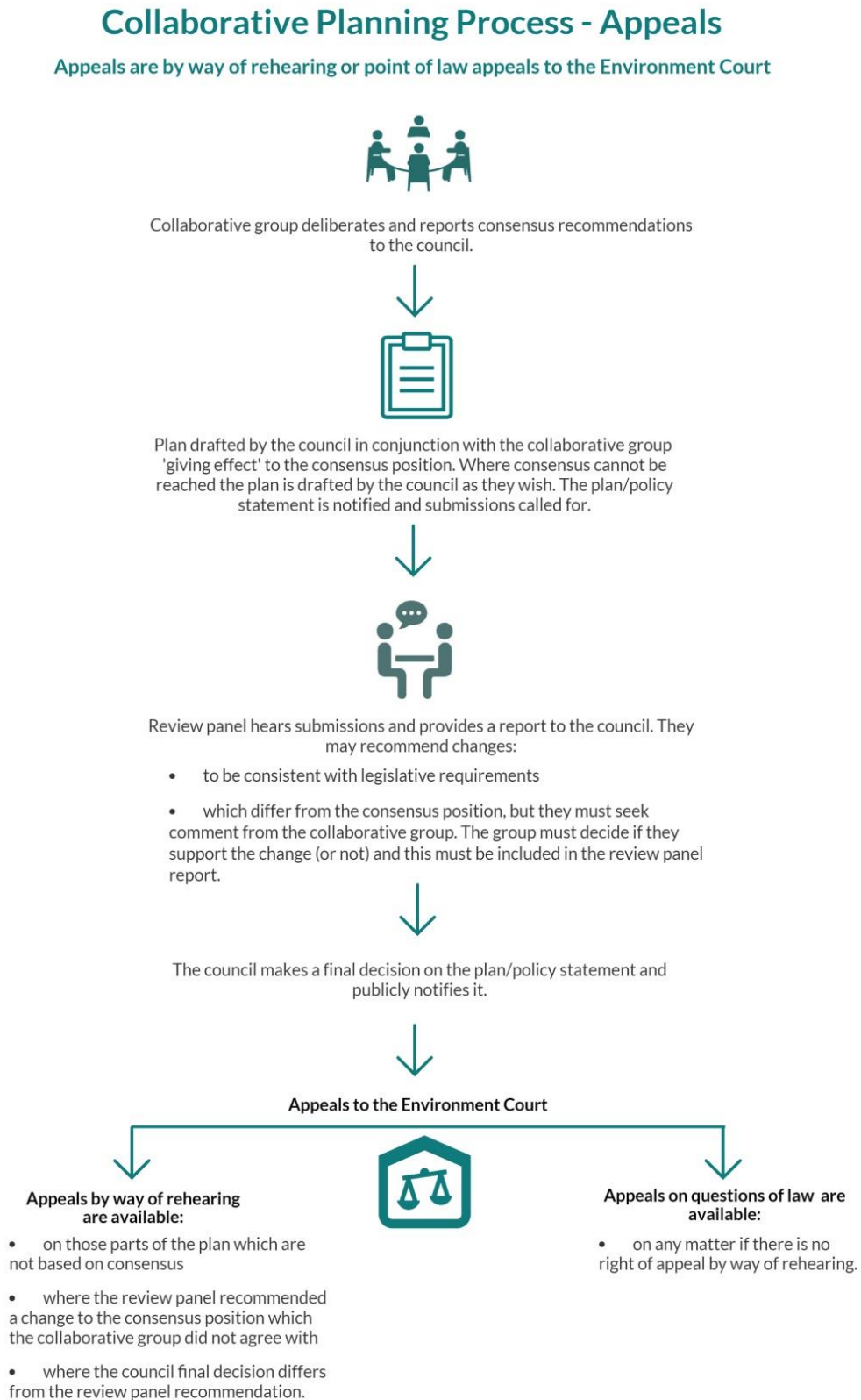
If the council's final decision deviates from the notified plan (or a review panel recommendation) and the council records that this change is to:

- ensure that the plan complies with the RMA, or
- other relevant legislation – including Treaty settlements

then appeals are also only available on points of law (clause 60). Judicial review is available in all circumstances.

The following flow chart shows the various appeal avenues.

Figure 2: Collaborative planning process appeals



Note: see designation guidance for appeals on these.

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