

Kluwer Mediation Blog

Working on Water – Again: A collapsing Consensus

Ian Macduff (NZ Centre for ICT Law & School of Law, Auckland University) · Sunday, March 26th, 2017

In two earlier blog posts, I commented on the work of and risks to the Land and Water Forum in New Zealand. That there is cause to write again on this topic begins to feel like shaping up to the blog equivalent of Douglas Adams' *Hitchhiker's Guide to the Galaxy: a Trilogy in Four Parts* – given the complexities of water politics, consensus building, political adherence (or not) to scientific standards, and economic priorities, it's likely that we've not heard the last of this.

In my [first blog](#) on this topic, I commented on a process – the Land and Water Forum (LWF), that was established in 2009 in order to seek consensus between the multiple interests in and users of water, on two main issues: water allocation rights and water quality. The remarkable thing about this process is that, in time and with careful facilitation, a working process was established and consensus achieved. When one looks at the array of those with an interest in water allocation and quality, it's impressive that they even came to the table together, let alone found a working accommodation. As the former chair of the LWF mentioned in a recent conversation, these are not necessarily people who would have a great deal of time or respect for each others' perspectives: dairy farmers, environmentalists, recreational users, indigenous groups, hydro energy producers, gold miners, wine growers, scientists . . . a quick glance at the list of the 67 members of the [Plenary](#) group will give you an idea of the scale of the challenge in seeking consensus.

There seemed to be early political support for the process and indeed for the prospective outcomes, given the degree to which the NZ economy rests on the productive and aesthetic values of water. Indeed, the then Ministers for the Environment and Conservation were on record, noting – with approval – that this was an exercise in “collaborative governance”. It must be noted, however, that while Ministerial officials attended the meetings, they did not do so as stakeholders, but rather as observers. Hold that thought for a moment.

For those with an interest in the substantive outcomes of the deliberations and extensive public meetings between 2009 and 2016, the four main reports and recommendations can be found [here](#). Again, the key achievements have been in finding consensus on four issues in respect of fresh water resources: management, allocation, quality, and an ongoing commitment to collaborative processes.

So far, so good – and a boost, it seemed, not only for water management but also for the efficacy of collaborative processes. However, not long after that, I was compelled to return to the topic in a [second blog](#) as it transpired that the government, while extolling the virtues of collaborative governance, was busy planning changes to the Resource Management Act – changes that would

effectively undermine the protections that the planning and approvals process ensured, and that would foster or at least not impede the ongoing competition for fresh water resources. At the time, it seemed that the government might not get those changes through Parliament as it lacked the clear majority to do so, and required at least the voting support of one minority party that was unlikely to be forthcoming. [At the time of writing this current blog, it looks as though there will be sufficient coalition support to push through the changes before the General Election in September.]

Fast forward to the last couple of months, and there are now two further developments that undermine optimism that this carefully crafted consensus, and the recommendations on water quality (in particular) will be implemented. First, the Government has announced a set of standards for fresh water quality that fall well short of those recommended by the LWF. For a nation that, at least for tourist publicity, prides itself on its “clean, green” reputation, there is an appalling level of degradation of fresh water quality and quantity, through a combination of poor farming practices, overuse through agriculture (primarily a rapidly expanding dairy industry), a cavalier disregard for rivers as dumping grounds and so on. The new standards for water quality, announced by Dr Nick Smith, the Minister for the Environment, are for the majority of rivers to be “swimmable” by 2040 (no, they’re currently not). “Swimmability” is dependent on E.coli levels and the length of time that a waterway is above or below the established standard.

The related concern here is that fresh water scientists take strong issue with those standards, suggesting – as one university ecology scientist has – that the government is trying to “pull a swifty” by appearing to improve standards while doing exactly the opposite. Further, in a chilling echo of Trumpian rhetoric, the Minister dismissed those concerns as “junk science” – and, to the shame of our media, was not challenged on that point.

The second concern is that four of the environmental groups have now withdrawn from the LWF, principally because they regard the government’s moves as contrary to the policies and standards recommended, and because the government has implemented no more than 10% of the recommendations. Those four groups are Federated Mountain Clubs, Forest and Bird, Environmental and Conservation Organisations (ECO – an umbrella group) and Fish and Game (which left in 2015). There is a dual concern here: first, the point made by those departing groups, that the Forum had lost its impact and legitimacy through being bypassed by government on water policy; and second, the departure of those environmental groups diminishes the representative voices on the LWF.

For those interested in consensus building, environmental policy, the potential of collaborative processes in addressing complex, multi-stakeholder contemporary issues, I draw a few tentative conclusions:

- first, a risk that these departures, because of the failure of the government to implement the recommendations and their pursuit, instead, of reduced standards, will be seen as a ‘[failure of collaborative processes](#)’;
- second, as most mediators will know, if there’s a party with an interest in the outcome and that can undermine agreed outcomes (spoilers), ensure that they’re part of the process: observer status, it’s clear, falls well short of collaboration and certainly doesn’t ensure commitment;
- third, in what purports to be an open political context, there need to be ways of ensuring commitment other than the usual triennial and electoral nod to our democratic hopes – at which

point, anyway, other inducements to vote will have been unearthed and given primacy;

- fourth, an ongoing challenge is that of commitment to evidence-based outcomes; though, as cases such as Hawaii's [Mauna Kea dispute](#) over the siting of a Thirty Meter Telescope show, science and sacred values both form part of the mix;
- finally, a risk to this and comparable processes that they will be dismissed as politicised: those that leave the process may discount it as having being captured by political and economic interests; and those who leave are likely to be dismissed as merely environmentalists, without a practical concern for economics and employment (it's always a good cynical ploy to see a trade-off between jobs and environmental values).

So, quite apart from the substantive issues of water, which have become even more contentious of late with concerns about the depletion of the water table through the commercial extraction of large quantities for bottling, there's more work to be done on embedding a collaborative ethos in the political and public consciousness, including ensuring that the conventional rule-makers understand collaborative commitments.


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