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## 5. *What's usually in a partnering agreement*

**(Note: due to interchangeable terminology, content in this section also relates to relational contracts, MOUs, partnership agreements etc.)**

What is included in a partnering agreement is up to the participating parties. There are no hard and fast rules. In some cases it may be better for a partnering agreement to focus on vision, principles and ways of working together and not attempt to address funding or resourcing issues. To include funding expectations at this stage may scare some potential partners away or create the perception that the underlying agenda is to secure funding, rather than to build or strengthen relationships. In other cases where funding is known, and the partnering arrangement is for a predetermined joint project or initiative, it may be useful to incorporate a reference to funding in a high level way, noting in a general sense, what the funding is to be directed towards.

Here are some key headings that should be considered for inclusion in a partnering agreement:

### **The parties**

- Who is the agreement between?

### **Background to the agreement**

- Brief description of relevant history in terms of:
  - problem, project, issue or opportunity you have been working on, or you want to work on, and any legislative context eg. Local Government Act 2002
  - what's happened to get you to this point? Also note any specific objectives or aspirations that each party has.

### **Shared vision and purpose**

- What is it you want to do together eg. vision, purpose and goals from working together
- if you have them, also include lower level objectives - both current and future.

### **Principles or protocols for working together**

- Acknowledge a commitment to working in a partnering way
- acknowledge the Treaty of Waitangi (if applicable)<sup>11</sup>
- honesty, integrity, goodwill, good faith and open and early communication are essential

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<sup>11</sup> For some discussion on partnering agreements from a Maori community perspective and when to include a Treaty clause see appendix 3, or for more detail see the Waitakere City Maori Community Research Report by Wayne Knox on <http://www.lpg.org.nz>

- depending on the scope of your partnering arrangement, some other common working principles to think about including/adapting are:
  - supporting each others' objectives where possible
  - working towards shared outcomes and having shared processes for reporting and compliance
  - working constructively and cooperatively to achieve outcomes, goals and objectives
  - recognising others' ways of working and obligations to their organisation and its wider stakeholders
  - encouraging quality and innovation
  - being flexible and willing to modify structures, processes, and projects to better meet visions, goals and outcomes sought
  - a commitment to supporting diversity and equality within the partnership
  - building capacity of all stakeholders to enable more effective participation around the decision making table
  - commitment to protecting and supporting other parties and their involvement (eg. could mean that central and local agencies are committed to making sure that the community or community organisations are involved and resourced to participate)
  - acknowledging and celebrating success and achievement.

## Roles and responsibilities

- Include broad responsibilities of the parties and potential roles such as:
  - participant eg. active or passive
  - funder
  - research, knowledge, information, data etc
  - advice
  - brokering
  - advocacy
  - facilitation/coordination/liaison
  - networking
  - communications
  - marketing and promotion
  - administration
  - kaitiakitanga (guardianship/stewardship) role
  - fund holder
  - lead agency.
- detail on an annual work programme should be attached rather than included in the body of the agreement itself (see below).

## Resourcing

- If appropriate,<sup>12</sup> and known in advance, include the overall amount of funding in the body of the agreement. It is generally more useful to include specific resourcing breakdowns on a project by project basis, alongside tasks and milestones in an attached work programme

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<sup>12</sup> In some cases, it may be better to have a funding agreement that is separate to the main partnering agreement. The two of course will need to be related, but having a separation can assist parties to focus on developing their vision and goals for working together first rather than getting bogged down in financial details too early.

- in the main body of the agreement also consider some comments on:
  - what the funding is broadly intended to cover and;
  - what it's not intended to cover and any process for resourcing identified "extras" eg. ". . . submit a funding application to XX."
- Include non-financial resources being contributed by parties so that their contributions are also acknowledged eg. staff time, phones, administration support, data, meeting rooms etc.

## Processes for managing the partnering arrangement

- **Structures and governance:** note any special arrangements to support the partnering arrangements. For example, how will the tension around the differences in political decision making processes be addressed? In the case of local government, there are legislative obligations for public transparency and general disclosure of information before Council decisions are made. Cabinet protocol allows decisions to be announced but not necessarily the processes involved to arrive at those decisions. This can put central and local government officials at odds and should be dealt with early in any central/local partnering process.
- **Communications and media:** including processes, spokespeople, use of logos, branding and ways to ensure the principle of "no surprises" is upheld etc.
- **Ownership of information and intellectual property:** including
  - how you recognise what exists now
  - how new information/property will be managed, owned or commercialised
  - how you will approach cultural intellectual property.<sup>13</sup>
- **Contact points:** identify key people with responsibility for management of the relationship on behalf of each agency. Where large organisations are involved it's also useful to document, as an attachment, key contacts within each organisation and a process for liaison at more operational levels.<sup>14</sup>

## Processes to guide what happens

- **Issues resolution:** include a commitment to address any issues or problems at an early stage by:
  - adhering to partnering principles within the partnering agreement
  - meeting on a regular (eg. 6 monthly or annual) basis
  - observing communications and issues resolution protocols within the agreement
  - utilising specialist mediation services if all else fails.
- **Reporting and performance:** some written output and outcome based reporting that goes back to various funding agencies will generally be required. Partnering outcomes are also strengthened by including some of the following relational tools:
  - having funders attend a joint meeting to monitor/review progress
  - holding stakeholder forums to discuss, reflect and report on progress
  - producing a simple annual summary of progress that can be widely distributed to interested parties.

<sup>13</sup> Note: where interaction/partnering extends to Maori (or other cultural) organisations, consideration of intellectual property is important. Processes or protocols may need to be developed whereby cultural rights and ownership of knowledge are acknowledged and/or protected. See appendix 4 for more.

<sup>14</sup> For example, in its Memorandum of Understanding with Police, Waitakere City Council has identified a number of different levels/areas where interaction is desirable and developed timeframes/processes for engagement (attached at appendix 5)

- **Evaluation and review:** it's important to include a timeframe and process for reviewing the agreement in terms of visions, actions and relational aspirations eg. how the partnering arrangement is working, effectiveness of principles, processes, structures etc.
- **Termination of agreement:** it may be seen as a 'negative' to include dissolution clauses, but some funders may require them. Also consider including:
  - a process for reporting breaches of agreement
  - a process for termination and what should happen next eg. for return of monies
  - including a "sunset" clause (final date) to formally prompt review of the partnering arrangements and the agreement itself.

## Health and safety

- Legal obligations should be noted, especially with regard to employees working on behalf of the partners.

## Signatories and date

- Consider who in each organisation should sign in order to bring maximum gain to the agreement process. Generally speaking, signatories should be at the highest possible level within each organisation eg. Chief Executive or Mayoral/Minister.

### 5.1 Develop and attach an associated work programme

Joint projects and tasks that will contribute to achieving the partners' shared vision should be incorporated in an annual work programme. It's often the case that the work programme is developed well after the partnership agreement has been signed. The key point is that there is a work programme. Without a task orientated action plan it's frequently the case that nothing tangible results from a partnering agreement.

If it has been developed at the same time as the agreement, include the work programme in a schedule or appendix to the main agreement. The work programme should be kept as simple as possible, noting relevant:

- tasks
- roles and responsibilities
- stakeholders
- milestones
- timeframes
- funding sources
- key contacts.

### 5.2 Partner and fund holder challenges

As new groups of agencies come together it is often the case that one of the partnering agencies is often appointed as the "fund holder". This is generally the case where there is no existing or established joint structure to handle project monies.

For the fund-holding agency, this role has considerable implications. The challenges noted below will need to be explored in more depth so that effective ways to minimise fund holder tensions can be found. Key issues identified to date include<sup>15</sup>:

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<sup>15</sup> Adapted from Craig & Courtney (2004) - Potential of Partnerships; page 85

- Significantly increased risk by being accountable for outcomes without being in control of decision making processes, expenditure, or actual service delivery. The fund holder is generally just one of many partners round the decision making table. Other partners, or sub contractors, may in fact be the direct deliverers of services or projects.
- Potentially substantial agreement establishment and administration costs that may or may not be compensated for within the agreement framework – in many cases these costs are not covered. Key tasks here include contract preparation and negotiation, legal advice, fulfilling reporting requirements, budget management and review, financial administration such as approval and payment of accounts etc.
- Being expected to indemnify the Crown for any losses or risks associated with the partnership.
- Becoming an intermediary between the funder and the partners to the project.
- Impact on relationships with the funder should the partnership be terminated or the accountabilities for funding for specific programmes or projects not be able to be met. It is often the case that partnership projects have moving timeframes and changes of direction – often for very good and fully mandated reasons. However the need to accommodate changes of direction and timing are not always appreciated by some contract managers who sit at arms length from the partnering table. This means the fund holder often has to ‘wear the flak’ and spend considerable time resolving contract issues or disputes.
- Aligning the contracting requirements of your individual organisation with those of the partnering arrangement and the funder.
- Taking on employment roles for contractors or coordinators needed to support the partnership, with associated health and safety and employment risks and responsibilities.
- Taking on funds and the responsibilities of the fund holder role before the relationships between the parties and work programmes are fully established.

### **5.3 Relationship between partners and subcontractors**

It’s not always the case that partners do the doing together – in fact, it’s neither practical nor the best way of getting things done. In some instances, one of the partners may be given responsibility for certain actions or a third party may be subcontracted.

In both instances, strategic direction from the partners (or their governance body) should be given on what is done and how it’s done. Allow an opportunity for early shared discussion on the broad scope of the task or project and any special elements that need to be incorporated in the contracted action plan eg. linkages with other projects or partners, identification of key contacts, emerging funding opportunities etc.

Subcontractors roles and relationships with the umbrella partners’ group, and the principles of the base agreement, should be referenced in any resulting contract or agreement with any special reporting requirements, or ways of working, noted. Where a subcontractor is expected to operate under the principles and protocols developed by the partners, talk this through to ensure they understand what this means in practice. Problems down the track can be avoided by making all expectations explicit. Take the time to make sure that partners, lead agencies, fund holders and subcontractors are all talking and working from the same page.

### **5.4 Monitoring partnering agreements**

The issue of monitoring and measuring performance against the partnering agreement is critical to the achievement of goals. This is especially so with relationships and partnering arrangements

that do not involve financial commitments or obligations. For example, accords around host responsibility and alcohol safety that have included and conducted regular reporting processes have ensured ongoing support and participation from participating agencies.

Agreements are not end points in themselves – the proof is in the action that follows. The process of reviewing the agreement is equally important as it can be an important catalyst for conscious thinking about:

- whether the vision you're working to is the right one
- what has been achieved and why
- whether individual aspirations of the parties/the collective are being realised
- whether the structures and processes to support the partnering arrangement are actually working
- whether the stated values and principles for interagency working are being followed
- what's changed since the agreement was written eg: what else needs to be included or amended.

Agreements should be regularly reviewed, either formally or informally and, generally, on an annual basis. It may be helpful to include a more frequently occurring agenda item that provides an opportunity to discuss how the relationship is working in practice and any modifications that may be needed.

A more substantial annual review could take the form of a third party independent report or it could be as simple as a reflective chat or a whiteboard brainstorm among the partners. A more formal written report or check against planned and actual activity and outcomes is also helpful. The process of review acts as an excuse to get together and renew relationships, as well as remind agencies of what's been committed to and why. This can be reaffirming and empowering for those doing the day-to-day interagency working – assuming of course that results from the review are largely positive.

In summary, the partners need to make sure they are reviewing themselves in terms of expected deliverables and the working effectiveness of partnership. In this way, process and relational gains will be captured alongside more task orientated measures.

An action plan that addresses the issues/opportunities raised in the review should also be prepared.

## **5.5 Is a partnering agreement legally enforceable?**

Partnering agreements are usually legal documents. They are a form of contract. If there is written intent to do something or act in a particular way then the agreement is generally legally enforceable. This is especially so if there is funding involved.

In practice, many lawyers still feel uncomfortable with the open and flexible nature of partnering agreements. Lawyers may require an out clause to be included before they will sign off an agreement on behalf of their agency. An example of this is:

*"This Agreement is not legally binding and does not create legal relations between the parties, but the parties have a mutual interest in the purpose and principles of this Agreement".*

In the spirit of partnering, inclusion of such clauses seems to defeat the purpose of preparing an agreement. In the short term, these clauses are likely to be unavoidable. However, as

partnering practices become better accepted and more mainstream, the validity of including these kinds of clauses will need to be increasingly challenged and changed.

## **5.6 The complete package**

Having an agreement does not guarantee action. Similarly, it's not as simple as "any old agreement will do". What makes a difference is investing time and effort into:

- the process of developing an agreement
- getting the framework and wording right
- making sure an action plan is developed
- getting together to review performance against objectives and expectations.

Together, these four tasks make up the complete agreement package. Leaving out or ignoring any one of these four components is likely to have a negative impact on results.