Public Participation in Environmental Management:

The Christchurch Rebuild

A Case Study

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List of Abbreviations

CBD	Central Business District
CCC	Christchurch City Council
CCDU	Christchurch Central Development Unit
CCP	Central City Plan
CERA	Canterbury Earthquake Recovery Authority
IAP2	International Association for Public Participation
LGA	Local Government Act 2002
RMA	Resource Management Act 1991

Table of Legislation

Canterbury Earthquake Recovery Act 2011

Canterbury Earthquake Response and Recovery Act 2010

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Resource Management (Simplifying and Streamlining) Amendment Act 2009

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Introduction

The 2010 and 2011 earthquakes struck one of New Zealand's oldest cities, a community with deep ties to the land, the environment and each other.

The devastation was wide spread, especially in the central city.

Some questioned whether central Christchurch could ever be the same again.

It won't be.

It will be even better.

That was the promise the Christchurch City Council (CCC) made to their communities following the devastating earthquakes that struck the Canterbury region during 2010 and 2011. The immediate response was one of emergency. As the dust began to settle, the City had to look to the future. Recovery was the next task and it wasn't going to be easy. With this task however, came an unprecedented opportunity to rethink, revitalise and renew central Christchurch. As Christchurch Mayor Bob Parker recognised:[1]

> Out of adversity comes an unprecedented opportunity. We are embarking together on one of the most exciting projects ever present to a community in New Zealand, perhaps the world.

Within two months, the CCC with the aid of Central Government had begun the recovery effort. It required an extensive rebuild project. To spearhead this recovery effort, the CCC began developing the Recovery Plan for the Central Business District. This Recovery Plan was to provide the framework for redevelopment in the central city. In order for the plan to succeed, it had to meet the needs of the local communities. The only way this could occur was if the public had an input in the plan's development. The Council was quick to recognise the crucial role the people of Christchurch would play in developing the plan. Hence facilitating public participation in the plan's development became a priority.

Public participation is a fundamental legal principle in local governance and environmental management. It is founded on the desire to achieve sustainable decision making; the idea that better decisions will result by involving those who are affected by a decision in the decision

[1] Christchurch City Council *draft Central City Plan, August 2011 – Volume One* (Christchurch City Plan, August), at iii.

making process. Public participation found particular resonance in environmental law matters due to the complex and dynamic nature of environmental issues. Such issues are intrinsically political yet involve both public and private interests. Hence they require flexible and transparent decision making that accounts for the array of knowledge and values that exist within the relevant audience. Public participation developed as a fundamental procedural principle for achieving sustainable decision making, receiving recognition both nationally and internationally. Public participation found further support based on the normative argument that purely technocratic decision making is incompatible with the democratic ideal. Public participation should be inherent in democratic governance. Hence public participation enjoys both a sound legal and theoretical backing.

The development of a Recovery Plan that was to facilitate the redevelopment of central Christchurch would require not only an extensive exercise of local governance, but was intrinsically environmental in nature. For that reason, the opportunity for public participation was vast. By examining how public participation was utilised in the central Christchurch rebuild, it will be possible to assess the current status of the principle in today's legal environment.

Chapter One of this paper will look at the response by Central Government to the Canterbury earthquakes. It shall discuss the Government's initial response to the September earthquake to demonstrate how the implications of that response influenced the Government's later response to the February earthquake. It shall outline the recovery structure developed by Parliament including the emergency legislation enacted that ultimately directed the response by local government.

Chapter Two shall consider the extent of the mandate Central Government handed to the CCC by way of their emergency legislation. In doing so, this analysis shall explore the legal foundation the CCC was to work from, in developing their Recovery Plan, paying particular attention to the provisions it provides for public consultation.

Chapter Three will consider the theoretical underpinnings of this concept of public participation. It will look to define public participation as an environmental management principle. In doing so, it will explore the many benefits public participation is recognised for providing. Conversely, the chapter will look at a number of common pitfalls decision makers fall foul of when engaging public participation.

Chapter Four looks to further this theoretical understanding of public participation by tracing it's development through New Zealand's environmental management scheme. This assessment shall draw on the historical developments of international environmental law so as to understand the influence this had on national law. This exercise will demonstrate that public participation has come to be a fundamental principle of both international and also national environmental management.

Chapter Five will look at what the CCC did in light of their legislative duties, to construct the Central City Plan. It shall explore the level of public participation the Council engaged, drawing on the theory from Chapter Two for an understanding as to why.

Chapter Six will consider what effect the actions of the Minister following the development of the Central City Plan, has had on the public participation process engaged by the Council.

The aim of this paper is to use Christchurch as a case study to examine the position of the principle of public participation in New Zealand's national law. The evidence suggests that public participation has over the past sixty years received unquestioning support as a fundamental principle of environmental management. However the analysis this case study provides, demonstrates that this commitment by Central Government to public participation is not as sound as it may have once been. The legislative framework established, compounded by the action of the Canterbury Earthquake Recovery Minister, highlight a serious reprieve by Government from this commitment to public participation, to the point that it threatens the future of this principle.

CHAPTER ONE: Central and Local Government Response

I. Parliament's Response

a. The September Earthquake

At 4.35 am on 4 September 2010, a magnitude 7.1 earthquake struck the Canterbury region. The Government's reaction was immediate. Within hours, the Minister of Civil Defence and Emergency Management, the Hon John Carter had activated the National Crisis Management Centre to coordinate a national response to the earthquakes,[2] declaring a state of local emergency for the Christchurch City, Selwyn and Waimakariri Districts.[3] In doing so the Minister instigated the Civil Defence Emergency Management Act 2002, (CDEM Act) and its statutory powers of emergency management. Part 5 of the Act provided delegated emergency powers to allow for immediate action to be taken as required free from the usual legal constraints.[4]

As the state of emergency was lifted, the Government recognised the need for this delegated authority to extend throughout the recovery phase, hence the Government enacted the Canterbury Earthquake Response and Recovery Act 2010 (CERR Act). The purpose of the Act was to; provide adequate statutory powers to assist with the response, to enable the relaxation or suspension of other enactments that may detract from this response, to facilitate relevant information gathering and to provide protection from liability for certain acts or omissions.[5] To support the response, the Act established the Canterbury Earthquake Response Commission,[6] the function of which was to advise the Earthquake Recovery Minister on possible Orders in Council that may be required, the prioritisation of any resources and the allocation of funding. The commission was intended to be the central point of contact between central and local government in the management of the situation.[7] Pursuant to the newly allocated powers of the CERR Act,[8] the Governor-General on the advice of the Executive Council and recommendation of the Earthquake Recovery Minister, passed the Canterbury Earthquake (Civil Defence Emergency Management Act) Order 2010.

[2] Alexandra Marett *Canterbury earthquake timeline: Government's and Parliament's Response* (Parliamentary Library, Parliamentary Research Paper 2010/05, 09 November 2010) at 1.
[3] Civil Defence Emergency Management Act 2002, s 69. [CDEM].
[4] Ibid, ss 84, 85, 88, 91, 92.
[5] Canterbury Earthquake Response and Recovery Act 2010, s 3. [CERR Act]
[6] Ibid, s 9.
[7] Ibid, s10.
[8] Ibid, s 6.

The purpose of the order was to modify and extend the provisions of the CDEM Act beyond the state of emergency which included extending the emergency powers it provides until the close of 29 November 2010.

While a national response was necessary, the Government received significant criticism regarding the effect of their emergency legislation. The CERR Act permitted government ministers to suspend or make exemption to a large portion of New Zealand laws simply by Order in Council. This transferred the vast lawmaking power from the Legislature to the Government Executive.[9] A number of national and international academics expressed concern that the Act was lacking in constitutional values and principles, setting a dangerous precedent for future emergency situations.[10] This concern was reiterated by the New Zealand Law Society that appealed to Parliament to amend the law to ensure the vast powers it conferred were not abused.[11]

b. The February Earthquake

At 12.51 pm on Tuesday, 22 February 2011 another violent earthquake struck Christchurch. This earthquake caused extensive widespread damage across the region, particularly in the central and eastern suburbs. The extent of the recovery effort needed in Christchurch had magnified. Parliament was once again swift in its response. By 23 February the Government had declared a state of national emergency,[12] once again empowering the Civil Defence Minister to administer a national response.[13]

The recovery of Christchurch according to Parliament was not just a local issue but of national significance. It recognised that the scale and extent of the damage caused by the February earthquake far surpassed that suffered in September. Recovery as a result would be

[9] See generally, P. A. Joseph "Constitutional Law" (2012) (Part 2) N.Z.L.Rev. 515.
[10] A group of 27 legal academics with expertise in constitutional law and politics expressed their concern in an open letter to Parliament calling for the Government to rethink the law assisting the Canterbury recovery. "We feel their action was a mistake, and they too quickly and readily abandoned basic constitutional principles in the name of expediency. We hope that with a period to reflect on their action and the consequences this might have that they now will revisit this issue in a more appropriate manner." Sourced from; Andrew Geddis "An open letter to New Zealand's people and their Parliament" <http://pundit.co.nz/content/an-open-letter-to-new-zealands-people-and-their-parliament>.
[11] Letter from Jonathan Temm (President of the New Zealand Law Society) to the Hon Christopher Finlayson (Attorney-General) regarding the Canterbury Earthquake Response and Recovery Act 2010 (30 September 2010).
[12] CDEM, s 66.
[13] Ibid, s 84.

such that it went beyond the capabilities and resources of the local authorities. It would require the exercise of regulatory powers outside of the normal statutory processes, and a level of resources and funding that only central government could offer. Government therefore was fast to assume the role of director, facilitating the recovery effort for Canterbury. Parliament acknowledged that their initial response in September would be insufficient to cope with the needs of the present situation. Furthermore, Parliament recognised that no central or local government agency already in existence, including the Commission, had the power or capabilities to manage and oversee the now exacerbated recovery task needed for Christchurch.[14] The Government quickly disestablished the Commission and sought to establish a new public service department to coordinate the response. On 29 March 2011 the Government established, under s 30(A)(1) of the State Sector Act 1988 by way of Order in Council, the Canterbury Earthquake Recovery Authority (CERA). CERA was "to provide strategic leadership and to coordinate activities to enable an effective, timely and coordinated rebuilding and recovery effort in Christchurch."[15] In doing so, CERA was expected to draw heavily on and support the efforts of local, regional and central government bodies, businesses and community group, the voluntary sector, iwi, and other affected people. By working in such partnerships, CERA was to rely as much as possible on local knowledge, resources and personnel.[16]

In addition to establishing CERA, the Government enacted new emergency legislation, the Canterbury Earthquake Response Act 2011 (CER Act), to deal with the exacerbated situation. The purpose of the Act was to provide appropriate measures to ensure that greater Christchurch and the Councils and their communities respond to, and recover from, the impacts of the Canterbury earthquakes.[17] According to the Legislature, the measures put in place were done so having considered the scale and extent of the natural disaster, and the lessons learnt from international experience and the recovery planning following the September earthquake.[18] The Act recognised the need for timely and effective decision making powers and the need for coordination across all concerned agencies and entities.[19] To this end the Act vested significant powers in the Minister and CERA "necessary to enable an

[14] Canterbury Earthquake Recovery Bill 2010 (286-1) (explanatory note) at 2 [CER Bill (explanatory note)].
[15] Minister for Canterbury Earthquake Recovery *Foreword from the Minister for Canterbury Earthquake Recovery*, (April 2011).
[16] Ibid.
[17] Canterbury Earthquake Recovery Act 2011, s 3 [CER Act].
[18] CER Bill (explanatory note), above n 19 at 1.
[19] Ibid.

effective, timely and coordinated recovery for greater Christchurch following the recent events."[20] According to the Minister,[21] the Act employed sufficient checks and balances to ensure the powers were used appropriately.[22]

To structure the recovery process the Act provided for the creation of a Recovery Strategy.[23] Section 11 required the chief executive of CERA to develop a Recovery Strategy that would provide a long-term strategy for the reconstruction, rebuilding and recovery of greater Christchurch. The Recovery Strategy was to be developed by the chief executive in consultation with the CCC, other local authorities, local iwi and any other persons that the Minister considered appropriate.[24] The Recovery Strategy was to be submitted to the Minister for consideration who may then recommend that the Governor-General approve it by Order in Council pursuant to s 11(2). At this point no Resource Management Act 1991 (RMA) document or instrument referred to in s 26(2) of this Act,[25] could be interpreted or applied in a way that is inconsistent with the Recovery Strategy.

In addition to the preparation of an overarching Recovery Strategy, the Minister could direct one or more Recovery Plans to be developed for all or parts of greater Christchurch. Recovery Plans had to be consistent with the Recovery Strategy,[26] and could include provisions relating to any social, economic, cultural or environmental matter or any particular infrastructure, work or activity.[27] The Minister could determine how a Recovery Plan was to be developed including requirements as to consultation and public hearings.[28] In exercising this power, the Minister had to have regards to: the nature and scope of the Recovery Plan and the needs of the people affected, any possible funding sources and implications, the need

[20] (12 April 2011) 671 NZPD 17898.
[21] CER Bill (explanatory note), above n 19 at 5.
[22] Ibid, at 6. Similar concerns had been raised in relation to this significant allocation of power to the Minister and CERA, as those aired in regards to the earlier CERR Act. The Minister responded by insisting there had been no abuses of power under the original Act despite these concerns, and the same would be for this Act. The checks and balances the Minister referred to, was the availability to seek judicial Review pursuant to the Judicature Amendment Act 1972, and the obligation on the Minister to submit a quarterly report to the House of Representatives, on the operation of the Act.
[23] CER Act, ss 8 and 9.
[24] Ibid, s11(4).
[25] Ibid, s26(2). This provision lists the RMA instruments that so far as they apply to greater Christchurch, must not be interpreted or applied inconsistently with either a recovery strategy or recovery plan. These instruments include but are not limited to; annual plans, long-term plans, regional land transport strategies and plans, general conservation policies, management strategies, management plans.
[26] Ibid, s 18(1).
[27] Ibid, s 16(2).
[28] Ibid, s 19(1).

to act expeditiously and the need to ensure consistency between Recovery Plans.[29] Section 19(3) provided that, neither the Minister nor any other responsible entity had a duty to consult any person about the development of a recovery plan, except as explicitly provided for by this Act.[30]

II. Christchurch City Council's Response

As the territorial authority for Christchurch,[31] the CCC is responsible for promoting the social, economic, environmental, and cultural well-being of its communities, in the present and for the future.[32] Their purpose as local government is to enable democratic local decision making and action by, and on behalf of, communities.[33] Inherent in their duties as local authority is the expectation that they have in place a civil defence emergency management plan, in case of a natural disaster. They are under a statutory duty to ensure that should an emergency occur, they are able to function to the fullest possible extent, even though this may be at a reduced level during and after an emergency.[34] Therefore when the Canterbury earthquakes struck the region, the CCC was under a legal duty to respond to the emergency so to promote the well-being of its communities as best it could in that situation.

The Council's recovery response, following their immediate relief efforts was largely directed by Central Government according to the provisions of the CER Act. In addition to their consultative role in respect of the Recovery Strategy,[35] the Act specifically mandated the CCC lead the development of a Recovery Plan for the whole or part of the Christchurch central business district (CBD), in consultation with affected communities.[36] Subsection 4 imposed a timeframe of nine months in which to develop this plan.[37] Given the urgent nature of this mandate, this became the priority of the Council. Responding to this mandate, Christchurch Mayor Bob Parker stated:[38]

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[29] Ibid, s 18(2).
[30] "Responsible entity" is defined in s 4 of the CER Act to mean the chief executive, a council, a council organisation, a department of the Public Service, an instrument of the Crown, a Crown entity, a requiring authority, or a network utility operator.
[31] Local Government Act 2002, sch 2, pt 2, Territorial Authorities [LGA].
[32] Ibid, ss 10 and 11.
[33] Ibid, s 10.
[34] CDEM, s 64.
[35] CER Act, s 11(4).
[36] Ibid, s 17.
[37] Ibid, s 17(4).
[38] Christchurch City Council "Mayor says residents will have their say in earthquake recovery plans" (Media Release, 29 March 2011).

> The announcement gives us certainty around the role of the Government, the Council, other territorial authorities, interest groups and residents in the recovery plan for Canterbury. It also puts a timeline around the way forward for the city's central business district.

The following chapter explores the extent of this mandate.

CHAPTER TWO: Public Participation within the Legislative Mandate

Chapter One explored the response by Parliament to the earthquake, noting the mandate handed to the CCC by virtue of the CER Act instructing them to develop a Recovery Plan for the CBD. This chapter shall consider the extent of this mandate, paying particular attention to the allowances it makes for public participation. It shall consider the provisions the Act made, for consultation, notification and appeals, three common routes of public engagement in such matters. By contrasting certain aspects of the Act's mandate to typical RMA processes it shall highlight the gaps left within the CER Act.

I. The Mandate

The CER Act provided for the creation of a Long-Term Recovery Strategy to set the overall direction of the recovery. In addition to this, the Act provided for the development of a series of Recovery Plans that were to set out, in detail, what needed to be done, where, and how this was to be implemented. In general, recovery plans were at the discretion of the Minister. However s 17 mandated the development of Recovery Plan for the CBD.

Section 17. Recovery Plan for the CBD

1) A Recovery Plan for the whole or part of the CBD must be developed, and the CCC, in consultation with the affected communities must lead the development of this plan.
2) CERA, Environment Canterbury, and Te Rūnganga o Ngāi Tahu must have the opportunity to provide an input in the development of the Recovery Plan for the CBD.
3) The Minister may require the CCC to enable other specified persons or organisations to have the opportunity to provide an input into the development of the Recovery Plan for the CBD.
4) A draft Recovery Plan for the CBD must be developed within 9 months after the date on which this Act comes into force.
5) The process for the development of the proposed Recovery Plan for the CBD must include 1 or more public hearing as determined by the CCC, at which members of the public may appear and be heard.
6) The CCC must have regard to s 77 of the LGA 2002 in the development of a Recovery Plan for the CBD.

Section 17(1) provided the CCC was to lead the development of the Recovery Plan, in consultation with affected communities. CERA, Environment Canterbury (ECan), and Te

Rūnganga o Ngāi Tahu (Ngāi Tahu) were also required to have an opportunity to provide an input into the development of this plan.[39] The Act however fell short of ascribing a particular consultation regime. According to explanatory note accompanying the Bill "it was expected the CCC [would] develop a consultation plan to engage the many views from within the Christchurch communities."[40] This was to be balanced against the need for a timely, focused and expedited recovery for Canterbury.[41] Parliament clearly intended community consultation to be an integral component of the development of such plans. The Act itself however, despite Parliament's ostensible commitment to public participation imposes a very light consultation duty on the CCC. It mandates only one public hearing followed by public notification of the proposed plan inviting public comment. Furthermore, the Act provides no further guidance as to how or who the CCC should be consulting with. Given the lack of direction the CER Act provides, it is necessary to look to other law that may be applicable to the situation for guidance.

a. Consultation

The CER Act provides the CCC is to lead the development of this Recovery Plan "in consultation with affected communities," but fails to elucidate on this. Typically the LGA oversees all instances of local governance. In doing so it imparts on local authorities considerable duties concerning local authority decision making and public consultation for certain matters.[42] Following the September earthquake, Parliament passed the Canterbury Earthquake (Local Government 2002) Order 2010 that provided exemptions from certain provisions within the LGA, to the extent that a decision, act or omission to act is directly necessary or desirable to further one or more of the purposes of the CERR Act.[43] This Order was due to expire in April 2011 but pursuant to s 90 of the CER Act, was extended until the close of 31 December 2011. Sections 77 – 80 to which the Order refers, relate to the general requirements on local authorities in decision making. The Order however does not exempt the Council from any of the LGA provisions concerning consultation. It is inferred that in the

[39] CER Act, s17(2).
[40] CER Bill (explanatory note), above n 19 at 4.
[41] Ibid, 4.
[42] LGA, pt 6. Planning, Decision-making, and Accountability. Chapter Four provides further detail on this.
[43] The Order provided that while this order was in force, the Canterbury Regional Council, CCC, Selwyn District Council and Waimakariri District Council were exempt from the following provisions of the Local Government Act 2002: s 76 (but not in relation to ss 81 and 82), ss 77-80, s 97(1)(a), s101(3), s 104(4).

face of such an explicit exemption from certain provisions, silence in respect of the remainder of the Act denotes it still applies. Hence it is asserted the provisions of the LGA concerning local authority consultation duties are applicable to the CCC in this situation.

Section 82 of the LGA provides a list of consultation principles that must be observed by a local authority in relation to a decision or any other matter. Subsection 5 provides that where a local authority is required to undertake consultation, either under the LGA or any other enactment and that requiring provisions sets out a particular consultation procedure, the principles of consultation of subs 1 are to apply to the extent they are consistent with the specified procedure.[44] Any inconsistencies between the two and the requiring provision would take precedence. Given the lack of procedure within the CER Act concerning the Recovery Plan's development, it has been inferred that the s 82 principles of consultation were to guide this matter.[45] The CCC was required to establish their own procedures for public consultation that would satisfy this clear Parliamentary intent, but also fulfil their statutory duties under the LGA.

b. Notification

The CER Act provides for a second opportunity of public participation by way of public notification of the draft.

Section 20. Public Notification of draft Recovery Plans

1) The chief executive of the CCC must ensure that any draft Recovery Plan for the CBD is publicly notified and must also ensure that a copy of the draft is provided to the Minister, the chief executive of CERA, ECan and Ngāi Tahu.
2) .
3) The notification must –
    a. advise where the document can be viewed; and
    b. invite members of the public to make written comments on the document in the manner and by the date specified in the notice.

Public notification is a common avenue for incorporating public participation into a decision making process. However, the process within the CER Act is noticeably different to

[44] LGA, s 82(5).
[45] Compare this to the RMA. Schedule 1, cl 3(4) of the RMA provides that in consulting persons for the purpose of sub-cl 2, a local authority *must* undertake the consultation in accordance with section 82 of the LGA.

notification schemes typical of environmental or local government legislation. Consider the notification process of plan development under the RMA.[46] The most obvious difference between the two schemes is the difference in wording. Notification under the RMA invites 'submissions' which the local authority is expected to listen to, summarise and hear further on.[47] The CER Act merely invites 'comment'. The use of a different term in respect of two provisions that are effectively similar indicates an intention by Parliament to provide for different processes. The Oxford Dictionary defines submission as the "action of presenting a proposal, application, or other document for consideration or judgement." Comment is defined as "a verbal or written remark expressing an opinion or reaction." Submission according to these definitions attracts an obligation to consider that which is shared, as opposed to comment which attracts only an obligation to be heard, lacking any prescriptive process of deliberation. By deliberately choosing the weaker term for the notification processes under the CER Act, it suggests Parliament was attempting to avoid holding the Council to the onerous commitment submissions attract. By inviting only 'comment', the Council is able to gauge public opinion without being forced into action as a consequence of this. They are not at risk of being held to a level of consultation on the draft plan that submissions would otherwise attract.

c. Appeals

Another common avenue for public participation in legislative schemes is by way of appeal. Consider again the RMA. In responding to submissions on a proposed plan, a local authority must inform all submitters of their right to appeal the final decision to the Environment Court. The appeal then works on an inquisitorial basis, allowing for further input from the public.[48] Hence, public participation within the RMA provisions extends beyond merely the creation of the plan, and into its implementation phase. Unlike the RMA however, the CER Act does not provide for any public right of appeal against the final draft plan. The extent of public participation provided by the legislation ends once the draft plan has been publicly

[46] Schedule 1, pt 1 of the RMA employs a public notification scheme to invite public participation. Notification invites public submissions. This is then followed up by a round of limited further submissions. The local authority is then obligated to offer a hearing in which submitters may opt to be heard in support of their submissions. The effect of submitting means that individual is subsumed into the remainder of the decision making process and afforded significant participative rights because of this. See Chapter Four for further detail.
[47] RMA, sch 1, pt 1, cl 5.
[48] RMA, sch 1, pt 1, cl 14. The Environment Court may then direct the local authority as they see fit, which the local authority is expected to act in accordance with.

notified and public comments received. The CCC is under no duty under this Act to consult further.[49]

II. Ministerial Approval of Recovery Plans

It is at this point however that the Council loses control over the draft plan. Upon finishing the draft plan, the matter is referred to the Minister for approval.

Section 21. Approval of Recovery Plans

1) Following the development and consideration of a draft Recovery Plan, the Minister may –
    a. make any changes, or no changes, to the draft Recovery Plan as he or she thinks fit; or
    b. withdraw all or part of the draft Recovery Plan.
2) The Minister may approve a Recovery Plan having regard to the impact, effect, and funding implications of the Recovery Plan.
3) The Minister must give reasons for any action take under subs 1 and 2.

The CER Act by way of s 21 has provided the Minister with the ultimate veto power over the draft Recovery Plan developed by the Council. The current situation draws particular analogies to an issue addressed in the case of *Pigeon Bay Aquaculture Ltd v Canterbury Regional Council.*[50] The Court in that case considered the effect of the RMA empowering the Minister of Conservation with final approval in respect of proposed regional coastal plans (RCP).[51] Schedule 1, cl 19 of the RMA provides for ministerial approval of a proposed RCP in a number of ways: the Minister prior to approval may require the Regional Council to make any amendments to the plan specified by the Minister, the Minister may require the Regional Council to make an amendment that is in conflict or inconsistent with any direction of the Environment Court if the Minister made a submission on the provisions when the provision was when it was referred to the Court. The Court in this case stated: [52]

[49] CER Act, s 19(3).
[50] *Pigeon Bay Aquaculture Ltd v Canterbury Regional Council* [1991] NZRMA 209.
[51] RMA, s 28(b).
[52] *Pigeon Bay Aquaculture Ltd, Canterbury Regional Council* above n 50, at [45]. It is noted that the Court's main concern was the effect the ministerial approval power on had the important constitutional convention of the separation of powers. However, their comments referring to the Minister's ability to circumvent any public consultation scheme of the Council is directly relevant to the current situation.

> It is thus clear, that provided that the Minister made a submission on the relevant part of a proposed regional plan, the Minister may override the participatory and judicial process of hearing by the Council and the Court and substitute his own decision for theirs…It is giving one party to the process a no-lose solution: the Minister can take citizens through the Council hearing and appeal process, and at the end substitute his or her own decision for the judicial decisions of (possibly) both the Council and this Court. That process seems fundamentally unfair to the public. We imagine the public might ask 'why bother?' when invited to be a part of the process of regional coastal plans.

This same argument may be made in respect of s 21. The effect of s 21 empowers the relevant Minister with discretion to override any participatory process the Council may engage in the development of their Recovery Plan, they too are in a no-lose situation. Hence the Minister may encourage the Council to develop strong public consultation processes in developing their plan, yet all the while aware that at the end of it all he has the ability to substitute the Council developed plan with one of his own accord. This seems fundamentally unfair, both to the public but also the Council. It would be unfair that public that they be led to believe they have a real opportunity to influence the plan if at the end of it all; the final say rests in the hands of the Minister. The Council, in accordance with the statutory mandate and the additional duties under the LGA, will invest significant time and resources in establishing a consultation regime to develop a plan, the success of which is dependent on the Minister's approval. The inclusion of s 21 has the potential to undermine any achievements of public participation the Council may make in developing their draft plan. This issue will only become operative should the Minister choose to employ s 21(1).

In order to make an informed assessment of how the CCC went about engaging public participation, it is important to first have a sound understanding of this concept of public participation. The following chapter shall consider the theory behind public participation before Chapter Four considers it accession into national law.

CHAPTER THREE: The Theory behind Public Participation

The earlier chapters have outlined the respective responses by central and local government to the Canterbury earthquakes. The CCC was mandated the role of leading the development of a Recovery Plan for the CBD. In order to be able to assess the role public participation played in developing this Recovery Plan, it is important to understand the theory behind the concept. This chapter looks to define public participation. In doing so it shall consider the benefits as well as the potential pitfalls commonly associated with public participation processes.

I. What is Public Participation?

Public participation in simple terms means to involve those who are affected by a decision in the decision making process. It is founded on the fundamental understanding that public participation can help make better decisions that reflect the interests and concerns of affected or interested people and entities. The concept of public participation is constructed of three pillar principles: the right to information, the right to participate in decision-making process and the right to justice.[53] Effective participation is only possible if these three pillars are firmly in place:

I. The Right to Information; the public must have easy access to all the relevant information they require so that they may participate in a meaningful way. This responsibility falls with the decision making authority.
II. The Right to Participate in Decision Making Processes; public participation is only possible if the appropriate mechanisms are in place to achieve this. The mere provision of information is insufficient in itself. The public must be informed at an early stage of their right to participate and the processes including the timeframe in which this is to occur.
III. The Right to Justice; this principle provides that the public shall have a right of recourse to administrative or judicial procedures to dispute or discuss matters affecting them. This includes access to the appropriate courts of law or tribunals. Such

[53] Sumudu A. Atapattu *Emerging Principles of International Environmental Law* (Transnational Publishers Inc, New York, US, 2006), at 353-378; Stephen Stec and Susan Casey-Lefkowitz *The Aarhus Convention – An Implementation Guide* ECE/CEP/72 (2002).

a guarantee is important so those who are affected by a decision have a means of enforcing their rights.

The International Association for Public Participation (IAP2) is the "preeminent international organisation advancing the practice of public participation."[54] According to the IAP2, underpinning this concept of public participation is a number of core values.[55] These are that public participation:

- is based on the belief that those who are affected by a decision have a right to be involved in the decision making process.
- includes the promise that the public's contribution will influence the decision.
- promotes sustainable decisions by recognising and communicating the needs and interests of all participants, including decision makers.
- seeks out and facilitates the involvement of those potentially affected by or interested in a decision.
- seeks input from participants in designing how they participate.
- provides participants with the information they need to participate in a meaningful way.
- communicates to participants how their input affected the decision.

II. Breadth of Public Participation

Good public participation will be contextualised to the problem at hand and the scope of the issue and decision to be made.[56] Not all decisions need or deserve the same level of public engagement, and it is up to the decision maker to assess the situation at hand and decide upon the appropriate level of public impact on that particular decision. According to the IAP2, the level of public participation a decision receives will depend on three factors: the goal of the public engagement, the promise made to the public, and the techniques employed to achieve public participation. The IAP2 has identified a spectrum of public participation according to those three elements.[57]

[54] International Association for Public Participation <www.IAP2.org> [IAP2]. It does this through member based training courses and professional development activities.
[55] Ibid, "IAP2 Core Values of Public Participation" (2007).
[56] Mark S. Reed "Stakeholder participation for environmental management: A literature review" (2008) 141(10) Biological Conservation 2417, at 2420.
[57] IAP2, above n 54, "IAP2 Spectrum of Public Participation" (2007).

At the weaker end of the scale, public participation may be used to *inform* the public. The goal of this level of public involvement is to provide the public with balanced and objective information to assist them in understanding the problem, alternatives, opportunities and/or solutions. The decision maker is promising the public they will be kept informed by utilising techniques such as fact sheets and websites.

Second along the spectrum is public participation for the purposes of *consultation*. The goal of this level public participation is to obtain public feedback on analysis, alternatives and/or decisions. The promise by the decision maker is to keep the public informed as well as acknowledge and listen to their concerns and aspirations, and provide feedback on how the public input influenced the decision. To achieve this level of public engagement, methods such as focus groups, surveys and public meetings are utilised. National case law is clear that consultation in the context of a statutory duty, does not equate to negotiation.[58]

Public participation that employs a goal to *involve* the public in the decision is third along the spectrum. The decision maker aims to work directly with the public throughout the process. The promise is to ensure that the concerns and aspirations of the public are reflected in the alternatives developed and provide feedback on how the public input influenced the decision. This is often achieved through community workshops and deliberative polling.

The next level aims to *collaborate* with the public. The goal is to partner with the public throughout the decision making process, to develop alternatives and identify the preferred outcomes. This level of public involvement promises that the decision maker will look to the public for advice and innovative thought in formulating solutions. The decision maker promises to incorporate such advice and recommendations into the decision as much as possible. Common participatory methods employed include citizen advisory committees, consensus building and participatory decision making.

The strongest level of public participation aims to *empower*. To this end it seeks to place the final decision in the hands of the public. The promise by the decision maker is that the

[58] *Wellington International Airport Ltd v Air New Zealand* [1993] 1 NZLR 671 is New Zealand's leading case that affirms the statutory duty to consult does not equate to negotiation. So long as the decision maker held meeting with those they were required to consult with, provided the relevant information, entered the meeting with an open mind, took due notice of what was said and waited until they had had their say before making the decision: then the decision can properly be said to have been made after consultation.

decision will implement what the public decides. This level of public impact requires techniques such as citizen juries, ballots and delegated decision.

III. Benefits of Public Participation

Public participation is recognised for delivering substantial benefits to not only a decision making process but also the final decision. Substantively, public participation can help improve the quality and durability of a decision.[59] It is also recognised for what it can offer procedurally. Public participation does a lot for local democracy. The benefits derived in any given situation will depend largely on the nature of the matter itself, and the participatory processes engaged by the decision making authority.

The situation facing the CCC is one of plan development. This chapter shall therefore focus on those benefits the Council could hope to achieve in seeking effective public participation throughout the development of the CBD recovery plan.

a) Substantive Benefits

As mentioned earlier, public participation in decision making is founded on the underlying assumption that it produces better decisions. This is achieved through a number of means.

i. Information gathering tool

Foremost, public participation exists as an information gathering tool. Public participatory processes can make available a far more expansive information base than a decision maker may first have access to. It allows for the decision maker to tap into and utilise local knowledge, experience and expertise in making their decision. This can increase not only the pool of knowledge, but the quality of knowledge feeding into the decision. Furthermore, by sourcing local information, the decision maker has access to complex and dynamic socio-ecological systems and social processes of the local community.[60] This allows for the decision to be tailored to the local climate. A key element of public participation as an information gathering tool is its ability to ascertain public values and preferences on the

[59] Reed, above n 56, at 2420.
[60] Ibid, at 2417.

matter of concern.[61] The very nature of decisions means they often involve a value trade off or some form of cost-benefit analysis.[62] For a decision to best meet the needs of the local community, it must take account of the values and preferences of the community. Failing to do so can prevent a decisions success.

ii. Durability

Decisions that are made through processes involving public participation have proven to last longer.[63] Tailoring a decision to the local environment, according to community values and preferences, will produce a decision that better meets the needs of the community, in turn increasing the decision's durability. Furthermore, including the public in the decision making process can often result in the public gaining a sense of ownership over the decision.[64] They will be more willing to accept a decision if they perceived themselves to have had a hand in its creation. Finally, by engaging with the public early in the process, the decision maker may gain valuable insight into any potential issues that may arise.[65] The decision maker earns the opportunity to address these issues early minimising the risk that they escalate into more serious issues further down the track. The greater the consensus achieved earlier on in the process, the more durable the final decision will be.

iii. *Legitimacy*

Finally, public participation processes help to legitimise a final decision. As mentioned earlier, the multidimensional nature of decision making typically results in there being winners and losers. It is important therefore to establish a decision making process that the public can accept as fair. The merits of the decision become less of an issue if the decision is publicly viewed as having been reached via fair process.[66] Members of the public will be more willing to accept a decision if they feel they were given a reasonable opportunity to influence it. It is often enough that the decision maker demonstrated that they were open to public input, and considered all options and alternatives before reaching their final decision. The final decision achieves further legitimacy by the fact that individuals that participate in

[61] Thomas C. Berlie "Public Participation in Environmental Decisions: An Evaluation Framework Using Social Goals" (Discussion Paper 99-06, Resources for the Future,1998) at 9.
[62] Reed, above n 56, at 2425; Thomas Dietz and Paul C. Stern *Public Participation in Environmental Assessment and Decision Making* (The National Academies Press, Washing D.C, 2001) at 57.
[63] Reed, above n 56, at 2420.
[64] Ibid, 2421.
[65] Yvonne Rydin "Public Participation and Local Environmental Planning: The collective action problem and the potential of social capital" (2000) 5(2) Local environment 153, at 155.
[66]Reed, above n 56, at 2420.

the process are exposed to the different perspectives and the multitude of opinions that have gone into it.[67] Interested parties are able to witness firsthand the wide range of factors and ideas that have influenced the decision. Transparency in the process provides for avenues of accountability which will improve the uptake of the decision and strengthen its legitimacy.

b) Procedural

In addition to the substantive benefits described above, public participation offers significant procedural benefits. Public participation is often considered intrinsic in democratic governance. It helps to realise principles of fairness and equity, while fostering better social relationships and increasing chances for social learning.

i. Fairness and equity

Public participation provides for democracy; it empowers individuals with the opportunity to influence the decision when they would otherwise have had none. It demonstrates to the public that the decision maker has entered the decision with an open mind. It also suggests equality of opinions. Processes for public participation that are conducted in a fair and transparent manner, highlight for the public that the differing points of views that exist within the community are all valued and equally important to the decision maker.[68] It avoids prioritising any one group over and above another. A key aim of consultation is to reduce the power of capture that key stakeholder groups tend to have due to their powerful networks or rights as landowners. Good consultation recognises this and attempts to find ways to accommodate them without over elevating their weight. This also minimises the risk of people and smaller community groups being marginalised. Good public participation should theoretically provide equal opportunity for all citizens to participate.

ii. Improves relationships

Public participation has been recognised for its ability to improve relations between the public and administration by helping to foster an element of trust between them. Participation processes are an indication by the decision maker that they value the views and ideas of the public. The public comes to trust that the decision maker is not only capable of making the right decision, but in the fiduciary sense that they are willing to make the right decision.

[67] Reed, above n 56, at 2040.
[68] This issue of achieving a fair process is discussed later in the chapter as a potential pitfall of public participation.

Conversely, the decision maker can trust that the final decision will enjoy are relatively smooth uptake, given the ability of participation processes to subdue conflict.[69] Participation processes provide a mechanism by which any disagreement can be worked out in a regulated and controlled manner, subduing any conflict. The benefits of establishing a trusting relationship have the potential to carry into the future dealings between the parties.[70]

iii. Promotes social learning

Public participation in decision making processes promotes social learning.[71] Just as the decision maker benefits from the information they receive from public participation,[72] the public can benefit from the reverse flow of information that must occur. For the public to actively participate, they must first be educated on the matter.[73] Participation processes provide the decision maker with the means to educate the public on certain matters, before seeking their input on that matter. The better the flow of information is between the decision making authority and the public, the better the process and the better the decision.

IV. Potential Negatives of Public Participation

Public participation is widely accepted for delivering a large number of benefits particularly for matters relating to local government. The CCC in establishing their consultation scheme will have sought to capitalise on these benefits as much as possible. However, public participation does come at a cost. It is often labour and resource intensive and attracts a number of potential pitfalls. A decision maker's failure to make allowances for these can be detrimental to a decision both procedurally and substantially.

a) Pragmatic Payoffs

Conducting public participation in decision making has proven to be a fairly onerous task. It requires a significant investment of resources that could be allocated elsewhere in the

[69] Rydin, above n 65, at 155. Decision making processes are often fraught by a multitude of conflicting opinions and ideas, both between the decision maker and the public, but also within the public itself. The submission of conflict during the decision making process improves the future stability of the decision.
[70] Ibid. Developing a trusting relationship on one occasion has the potential to develop a lasting relationship based on open, ongoing consultation, between the decision maker and that particular audience.
[71] Berlie *Public Participation in Environmental Decisions*, above n 61, at 8.
[72] As discussed above, public participation can be a highly effective information gathering tool. This benefits the decision maker greatly by gaining them access to information they were without access to, prior to the process.
[73] A pillar principle of public participation is the public's right to access of relevant information.

decision making process.[74] Decision makers must be careful to engage public participation that is worthwhile otherwise they run the risk that the costs outweigh any benefits they may have derived from it. From the perspective of the decision maker, public participation is worthwhile if it delivers quality information. Conversely it is only worthwhile to the public if their input actually influences the decision. Decision makers must look to strike a balance between processes that achieve effective public participation, but are justified in their allocation of resources. This is a difficult task. The New Zealand King Salmon Proposal before the Environmental Protection Authority is an example where the ultimate cost of achieving public participation arguably outweighed the benefits it derived.[75]

b) Decision Quality

An argument exists which asserts that involving the public in decision making processes merely produces ambiguity, delaying decisive action. There is the risk that public participation opens the process up to become merely talking shops that fail to produce any substantive decisions. Furthermore, particularly wide participatory processes can create rather than solve conflict. This is due to the inherent selfishness that motivates people to participate. Individual's responses that give little thought to the issue as a whole can generate futile conflict frustrating the decision making process. Furthermore, public input in a decision can lead to purely trivial and undesirable results. Decision makers open themselves up to a flood of information,[76] all of varying quality. The argument is often made that:[77]

[74] Good public participation processes are time consuming, expensive to establish and maintain, and involve a significant allocation of staffing.

[75] King Salmon New Zealand were requesting two changes to the Marlborough Sounds Resource Management Plan and nine resource consents to establish nine more salmon farms throughout the Marlborough Sounds. On recommendation by the EPA, the Minister of Conservation directed the matter be heard by a Board of Inquiry pursuant to s 149J of the RMA. In accordance with s 149O of that Act the proposal was publicly notified. By the close of submissions just over a month later, the EPA has received approximately 1200 submissions, with another 45 being received after the close of submissions. Of these submitters, almost 50 per cent wished to be heard at a public hearing. The extent of the public interest in this case resulted in significant delays in deciding the matter. It was originally estimated a decision would be due mid-late 2012 however delays concerning the close of submissions, the holding the hearing, and the length of time these extensive hearings were likely to take given the level of public interest, pushed the estimated decision date back to the end of December 2012.

[76] Rydin, above n 65, at 159. Decision makers may seek to ascertain the values and preferences of the local community, but there is no way of controlling the quality of information they receive.

[77] Thomas Dietz and Paul C. Stern *Public Participation in Environmental Assessment and Decision Making*, above n 62, at 54.

> the views of the public should not be given much weight in [environmental] policy because the average citizen does a very poor job of handling probabilities and contingencies yet these are central to the decision.

This may be through a lack of foresight, or the difficulties general members of the public have in conceptualising the whole decision in their mind.[78] This risk is compounded by the threat of public input that is based on a misunderstanding or misinterpretations. Such errors threaten to infiltrate not only the process but the final decision. Decision makers can manage these risks by ensuring they maintain a highly informed public participation scheme. The public must be adequately informed of all relevant information, so to avoid any misunderstandings. The final risk concerning decision quality is the fact that decisions made through a process of consultation tend to the middle. They rarely succeed at producing bold changes as there is too much concern for proper process and due consideration. Decision makers must be aware of this possibility when considering public participation for their process.

c) Fairness

A benefit of public participation recognised earlier was its ability to provide for local democracy by ensuring everyone has equal opportunity to participate. However, establishing a fair process can be difficult to achieve. Given the often onerous nature of participating, an individual participant may be disadvantaged by the limited resources they have access to, compared to organised interest groups.[79] Costly participating processes have the ability to reinforce pre-established social privileges and group dynamics, to the further disadvantage of minorities. This threatens dysfunction consensus which if the decision maker is not aware of, has the potential to skew the final decision.

Achieving a fair process is further problematised when an issue involves specific stakeholders. 'Public' typically refers to a general collective of unorganised individuals who may have an interest, but are not necessarily a direct interest in the final decision. They very

[78] For example, a fundamental principle of environmental management is intergenerational equity. This principle recognises the need for present generations to safeguard the environment for future generations. This requires long-term thinking of how to best manage resources sustainably so they will still be available for future generations. This can be a difficult concept for members of the public to appreciate when they are faced with a proposal that seeks to limit their immediate interest or rights to use said resources.

[79] Larger interest groups typically have access to a larger pool of resources enabling them to participate more intensively and for a longer period of time. Hence their ability to influence the decision is that much more than an individual, working along from their own pocket.

rarely bear the cost of the decision. ‘Stakeholders’ on the other hand will be directly affected by the decision. Certain allowances may need to be made for their participation in the process. This however must be balanced against the risk of empowering them too much. A decision maker must be explicit as to the goals of the exercise and the level of influence individuals and stakeholders can be expected to achieve respectively. This must be effectively communicated to all involved so that no one group is made to feel disenfranchised or disadvantaged during the process.

d) Consultation Fatigue

Finally, extended public participation runs the risk of creating consultation fatigue amongst the public. This can occur if participants perceive little gain in return for their efforts. The public are often misguided into believing consultation means consensus which is not often the case. Overlooking this misunderstanding can lead to feelings of dissatisfaction for those that have chosen to partake. Given the costs associated with participation it can be frustrating for the public if they see no influence or change resulting from your input. Once again, it is important that the decision maker is clear about the goals of the public engagement for the outset. This prevents the public from misinterpreting their role in the process, or overestimating their influence.

To complete this understanding of public participation Chapter Four considers how public participation has developed throughout New Zealand’s national law.

CHAPTER FOUR: Public Participation through National Law

Public participation is an extremely important aspect of New Zealand's present environmental law. It has found particular resonance in planning law and environmental management due to the unique nature of environmental problems. The status of public participation in New Zealand environmental law has however fluctuated dramatically over the years, often in response to the changing social and political environment. This chapter shall trace the concept of public participation through the changing landscape of environmental law. The purpose of this is to gain a complete theoretical understanding of this concept of public participation so that this may be used to assess the action of the CCC.

I. The Beginning

History has shown that environmental law has a distinct pattern of development different from traditional schools of law. According to Bodansky the pattern generally follows that "a problem is discovered with alarm often as a result of a major event, public interest surges, leading to a flurry of new initiatives."[80] New Zealand's earliest environmental law certainly developed in this manner. It first emerged on a case-by-case basis, adjudicating and legislating direct threats to the environment. The legislation was characteristically very narrow in focus and incremental in its approach. The Noxious Weeds Act of 1908 is a prime example of this.[81] The need for a cohesive regulatory scheme to manage the environment had not yet been recognised. This approach to environmental law was very much reflective of the general worldly disregard for the environment. There was a common lack of appreciation for the fragile state of the environment and the environmental threats the world was facing. A small number of international treaties were beginning to emerge as part of an international conservation movement developing very much in tune with the pattern identified earlier. Consider the North Pacific Fur Seal Convention 1911.[82] This was one of the earliest international treaties addressing wildlife preservation issues with all the typical characteristics

[80] Daniel Bodansky *The Art and Craft of International Environmental Law* (Harvard University Press, Cambridge (Mass), 2010), at 20.

[81] The Noxious Weeds Act 1908 was enacted in response to the growing threat of certain invasive species of weeds becoming prevalent throughout New Zealand. The Act was classically anthropocentric and extremely narrow in focus; its only concern was the effect such noxious weeds were having on human enjoyment and utilisation of the environment. The nature of this legislation meant there was minimal risk of impeding on individual rights. Hence there was no apparent reason for including public participation throughout the scheme.

[82] *Convention between the United States, Great Britain, Russia and Japan for the Preservation and Protection of Fur Seals*, 564: 37 Statutes at Large, 1542 (signed 7 July 1911, entered into force 15 December 1911).

of environmental law at that time; it was extremely narrow in focus, practical in its approach, and purely anthropocentric in nature.[83]

By the 1950s planning law, which was preeminent to environmental law, was well established in New Zealand. Early planning law concerned the regulation of public health, land use and activity controls. The Town and Country Planning Act 1953 (TCPA) sought to provide a guided, district planning scheme by coordinating the relationship between regional and territorial authorities;[84] an element of which was the regulation of activities on, and the use of, land. The Act functioned by a prescriptive approach in that it set down all the things an individual could do with their land on the justification it was 'for the public good.' This flies in the face of the traditional maxim that 'a man's house is his castle' and that he should be free from state interference. In order to legitimatise this regulatory scheme over private property rights, the Legislature recognised the importance of the public being seen to be involved in the administration of this scheme. To achieve this, the TCPA establishes a public participatory scheme based on a limited submissions/hearing process. The most prominent avenue for public participation in this Act was action by means of objection or appeal. Part 2 of the Act provided for the creation of a district planning scheme for the development of the area.[85] An individual's right to partake in that process rested on their ability to satisfy the requirement, "owner or occupier of property affected by any proposed district scheme."

[83] Thomas A. Bailey "The North Pacific Sealing Convention of 1911" (1935) 4 Pacific Historical Review 1. Highly destructive hunting practices such as pelagic sealing had reduced the numbers of North Pacific fur seal amongst the American herd on the Pribilof Islands from approximately 4,000,000 in 1876 to a rapidly dwindling 100,000 by 1911. This rapid rate of decline caused serious international concern for the states that engaged in the seal trade, namely the United States, Russia, Japan and Great Britain. After much debate and significant compromise these four parties agreed upon the Convention prohibiting pelagic sealing by citizens or subjects of the signatory nations. The focus was purely on the North Pacific fur seal within the Pribilof Islands. The Convention sought to address the issue by prohibiting certain hunting techniques. The concern was not for the seals themselves but for the future of the seal trade.

[84] The Town-Planning Act 1926 was the first piece of planning legislation in New Zealand. Its goal was to provide a coordinated management scheme between districts on planning matters such as roads and basic services. While not wildly effective, it is recognised as igniting planning law. The Town and Country Planning Act 1953 [TCPA] was the culmination of a major law reform to address the issues that existed with the earlier Act.

[85] TCPA, pt 2. To summarise the process, the local council upon preparing the proposed district scheme was required to publicly notify the proposal so that it was open to public inspection. Section 23 then provided that every owner and every occupier of property affected by any proposed district scheme which has been prepared, was to have the right to object to the scheme before it became operative, and was entitled to give written notice of their objection. This was to be followed up by a public hearing of those objections. The Council, only once having considered all those objections, was called to make a decision on them. This decision opened the door for further appeal rights to original objectors. The Council could only approve the scheme if all objections, appeals and arbitrations had been disposed of.

Without this, an individual lacked legal capacity to participate. No provision was made for general rights of participation for the public at large. Case law provides that the meaning of "affected" relates to an economic interest above and beyond simply that of the general public.[86]

II. The Environmental Revolution of the 1960s

The middle of the 20th century spelt a significant shift in the ideology behind environmental law. Internationally, an environmental revolution had begun.[87] What began as a conservationist movement led by a small number of enthusiasts, developed into the mass movement environmental revolution of the 1960s. Bodansky recognises this phase of environmental development as the pollutant phase, characterised by a focus to thwart increasing pollution concerns.[88] Finally the importance of action in the face of impending environmental degradation was being recognised.[89] Environmental degradation was making its way to the forefront of social and therefore political concern. It is at this point in time that public participation really began to solidify its relevancy in environmental law. The United Nations Conference on the Human Environment 1972 was a turning point for both international and national environmental management. This conference represented a coming together of the international community for the purpose of developing a common outlook for the world that would "inspire and guide the peoples of the world in the preservation and enhancement of the human environment."[90] While the convention itself resulted in very little substantive action,[91] it had a significant impact on national environmental development worldwide.[92] This changing international atmosphere resulted in the emergence of a number of fundamental substantive principles that would shape the future of international

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[86] *Blencraft Manufacturing Co Ltd v Fletcher Development Co ltd and Another* [1974] 1 NZLR 295.

[87] See generally Rachel Carson *Silent Spring* (Riverside Press. Cambridge (Mass), 1962). The publication of this book drew particular attention to the threat of chemicals in the natural environment. This is one example of an event that drew public wide attention to the human word's delicate and interconnected relationship with the environment.

[88] Bodansky, above n 80, at 26.

[89] This realisation was supported by the ever growing attention the environment was receiving from the scientific community. The scientific world was beginning to identify the increasingly complex and often expansive environmental issues that until this time had gone unnoticed.

[90] *Declaration of the United Nations Conference on the Human Environment*, UN Doc. A/Conf.48/14/Rev.1 (1973). [Stockholm Declaration]

[91] Bodansky, above n 80, at 29. The Stockholm Convention has been criticised as having "little concrete bite"

[92] Ibid. In 1972 at the time of the Convention, only 11 countries had national environmental agencies, by 1908 this had increased to 102. This in turn meant a sharp increase in national environmental assessment laws.

environmental law and subsequently our national environmental law. The main substantive principle to emerge at this time was the concept of sustainable development.[93] Sustainable development represents development that meets the needs of the present without compromising the ability of future generations to meet their own needs. The two themes underpinning this principle are the ideas of integration and long-term planning. That is, environmental issues should be the concern of all governmental departments not just environmental agencies and secondly, the focus should be on intergenerational equity; protecting the environment for future generations to come.[94] To achieve this, environmental management needed to ascribe to a principle of precaution in the face of scientific uncertainty. In recognising the need for intergeneration equity there was a call from developing countries to recognise the need for intra-generational equity also. Intra-generational equity recognised that the utilisation and enjoyment of resources should be shared fairly among all persons and groups both domestically and internationally, as should the "enduring cost of degradation, disposal and rehabilitation of resources."[95] Sustainable development was a very complex and multifaceted concept. It required a commitment by the international community to the substantive principles aforementioned. It was in pursuit of sustainable development that public participation truly began to etch itself as a necessary concept of environmental management. The Brundtland Report 1987 by the World Commission on Environment and Development in seeking to raise international awareness of this need for sustainable development recognised that "the pursuit of sustainable development requires: a political system that secures effective citizen participation in decision making."[96] Public participation had become a prerequisite for attaining sustainable development. Hence, the world's commitment to sustainable development meant a commitment to public participation in environmental management.

It is from within this international setting that the majority of our present environmental legislation developed. New Zealand's own environmental policy makers were present at many of the international discussions. They were able to take these big environmental ideas

[93] *Report of the World Commission on Environment and Development: Our Common Future*, Annex to A/Res/42/427 (1987) ([Brundtland Report]
[94] Stockholm Declaration, above n 90, at Principles One: "[man] bears a solemn responsibility to protect and improve the environment for present and future generations."
[95] G.F. Maggio *Inter/intra-generational Equity: Current Applications under International Law for Promoting the Sustainable Development of Natural Resources* (1996) 4. Buff. Envtil. L. J 161 at 193.
[96] Brundtland Report, above n 93, at 57.

emerging on the international stage and implement them into our national law, often faster than their accession in international environmental law.

Consider the Environment Act 1986. A headlining piece of environmental legislation, this Act established the Ministry for the Environment. The Ministry, in conjunction with the Parliamentary Commissioner for the Environment also a product of this statute, were to act as the major checks on New Zealand's system of environmental management. The Act makes an explicit commitment to ensuring public participation in New Zealand environmental management. Part 2, s 31 of the Act outlines as part of its advisory role, the Ministry is to advise the Minister on aspects of environmental management including ways of ensuring that effective provision is made for public participation in environmental planning and policy formulation processes in order to assist decision making. Moreover s 31(e) states the Ministry is to provide and disseminate information and services to promote environmental policies, including environmental education and mechanisms for promoting effective public participation in environmental planning. The purpose of this legislation was to lead the development of a robust and comprehensive national environmental management scheme. In making this early commitment to public participation, the legislature is ensuring this principle will disseminate throughout subsequent legislation. Another prominent piece of environmental legislation enacted at this time was the Conservation Act 1987. Part 3A of the Act provides for management planning; the preparation and approval of general policy and conservation strategies and plans. The statutory procedure for which encourages public participation by way of public notification inviting submissions.[97] Unlike earlier environmental law that recognised participation rights based on property interests,[98] this process provides for full public participation by inviting "any member of the public or organisation" to make a submission on the proposal.[99]

The Environment Act 1986 and the Conservation Act 1987 demonstrate a clear commitment to public participation in their regulatory schemes. However both Acts remain vague as to what it so to be done once such information is received. The Environment Act 1986 simply recognised the need for it in environmental planning without providing further detail. The Conservation Act 1987, developed under the ambit of the Environment Act 1986, provides for public participation but offers little guidance as to what must be done with the

[97] Conservation Act 1987, Part 3A, s 17A – N.
[98] Compare the TCPA. That Act provided participatory rights based on a property interest.
[99] Conservation Act, s17F(c).

information received. Section17F (i) provides "after considering such submissions and public opinion, the Director-General shall revise the draft," before sending it to the Conservation Board for consideration. The issue becomes, what obligations does the duty to 'consider' attract? "Consider" means "to think carefully about (something), typically before making a decision."[100] The purpose of this provision therefore is to ensure the Director-General is informed of the public opinion on the matter so that it may influence the decision. The Act doesn't purport to hold the Director-General to that opinion. The Act entitled the public to partake in the decision making process to the point of having their views considered. [101]

III. The Resource Management Act 1991 (RMA).

The enactment of the Resource Management Act 1991 spelt another dramatic shift in our environmental law landscape.[102] It was with the enactment of this Act, that public participation can truly be said to have cemented its place as a fundamental principle in national environmental management. The RMA represents a first attempt by Parliament to consolidate a large proportion of national environmental management law into one overarching, holistic statute. As a cornerstone of New Zealand's environmental legislation, this Act is responsible for detailing how New Zealand's environment is to be managed.[103] It is clear throughout the provisions of this Act that the legislature has maintained its commitment to this idea of public participation in environmental management. The RMA maintained the shift identified in the Conservation Act 1987 that recognised public wide participative rights in certain contexts.[104] To highlight how public participation is utilised within the RMA, this discussion shall consider the statutory processes for plan development,

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[100] *The Oxford English Dictionary* (2nd ed, Oxford Press, New York, 1989).

[101] To contextualise this participation within the IAP2 spectrum of public participation, the processes employed by the legislation at this point of time are very much on the lower end of the spectrum. The processes provide for consultation between the public and the decision maker. The Act promises to keep the public informed as well as acknowledging and listening to the concerns and aspirations of the public. It however does not extend to promising collaboration on the matter, nor does it empower them with the decision.

[102]This section is considering the RMA in its original form, at the time of enactment in 1991. Numerous amendments have been made to this Act since. The most significant of which, the 2009 amendments, are discussed later in the chapter.

[103] This includes the management of land-use as well as planning throughout New Zealand. "Environment" is defined in s 2 of the RMA to include: (a) ecosystems and their constituent parts, including people and communities, and (b) natural and physical resources; and (c) amenity values; and (d) the social, economic, aesthetic and cultural conditions affected the matters stated in paragraphs (a) to (c).

[104] Compare again the TCPA; early New Zealand planning law recognised participatory rights based property interests.

and applications for resource consents. Both provided for strong public participatory rights in their original forms.

i. Plans and Policies

Schedule 1, pt 1 of the RMA concerned the preparation, change and review of policy statements and plans by local authorities, laying down the minimum requirements for public participation in the process. Clause 3 provides for a number of specific interest groups that the local authority were to consult during the preparation of a proposed plan.[105] In addition to these specified interest groups, the local authority "may consult anyone else during the preparation of a proposed policy statement or plan."[106] The process they employ to do so however was left to the discretion of the local authority.[107] Active public participation under this legislative scheme follows the classic notification/submission methodology.[108] While notification was again extended to the public at large, the provision makes special mention of the need to notify owners or occupiers affected or likely to be affected by the proposal,[109] recognising their elevated position as stakeholders. Following notification, the provisions adhered to the classic process of submissions followed by a public hearing.[110] Finally, cl 14 provided that 'any person who made a submission on a proposed policy statement or plan may refer certain matters to the then Planning Tribunal.'[111] Hence, the moment an individual becomes a submitter on a matter they are afforded significant participatory rights for the remainder of the process. Privately initiated plan changes under sch 1, pt 2 of this Act followed the same route.

ii. Resource Consent Applications

[105] RMA, sch 1, pt 1, cl 3(1) provided "during the preparation of a proposed policy statement or plan, the local authority concerned shall consult: (a) the Minister for the Environment; and (b) those other Ministers of the Crown who may be affected by the policy statement or plan; and (c) local authorities who may be so affected; and the tangata whenua of the area who may be so affected, through iwi authorities and tribal runanga."
[106] Ibid, cl 3(2).
[107] The LGA 2002 was not in force at this time hence local authorities were not under the duty to observe consultation principles as that Act requires.
[108] Ibid, cl 5.
[109] Ibid, cl 5(1).
[110] Ibid, cl 8. It is noted for the purposes of later discussion that s 212 of the Resource Management Amendment Act 1993 repealed this clause, substituting in a further round of submissions into the process. This further round of submissions invited any person to make a further submission to the relevant local authority, but only in support of or in opposition to those submissions received in the first round.
[111] Ibid, cl 14.

An important element of the regulatory scheme of the RMA is the provisions it makes for the regulation of land use. The RMA reversed the traditional prescriptive approach of New Zealand planning law, instead empowering the public to use land as they wished unless explicitly told otherwise, and so long as the activity did not create unacceptable adverse effects on the environment.[112] If an individual sought to use their land in a manner that was restricted under the Act,[113] s 88 entitled individuals to apply for a resource consent from their local authority. Certain applications for resource consents attracted public participation again, by way of public notification. The Act recognised a statutory presumption in favour of notification. Section 93 provided full public notification for all resource consent applications subject to s 94.[114] These provisions for wide notification, in turn recognises wide standing to make submissions.[115] Public notification of an application invites any person to make a submission to a consent authority regarding that application.[116] Submitters were once again afforded the right to be heard at a public hearing in support of the submission.[117] Elias J in the Court of Appeal states that:[118]

> The evident policy of the Act is that decisions about resources are best made by allowing public participation in a process in which applications are publicly

[112] RMA, s 17. All land use in New Zealand was subject to the s 17 duty that provided "every person has a duty to avoid, remedy, or mitigate any adverse effect on the environment arising from an activity carried on by or on behalf of that person, whether or not the activity is in accordance with a rule in a plan, a resource consent, s 10 (certain existing uses protected) or s 20 (certain existing lawful activities allowed).

[113] A restricted activity includes controlled, discretionary or non-complying activity within the meaning of this Act. Section 88(2) provides no application shall be made for a resource consent for a prohibited activity.

[114] The limited instances in which s 94 excused public notification referred to applications for resource consents that related to controlled activity where written approval had been obtained from all persons who may be adversely affected by the granting of the resource consent. Similarly an application for a resource consent need not be notified if the application related to a discretionary activity or a non-complying activity, and the local authority is satisfied that the adverse effects on the environment of the activity for which the consent is sought, will be minor, and written approval has been obtained from every person whom the local authority is satisfied may be adversely affected by the granting of the consent.

[115]According to Elias J in *Murray v Whakatane District Council* [1991] 3 NZLR 276 at 281; "the requirements for wide notification conform with the wide standing to make submissions under the Act. Unlike the Town and Country Planning Act 1977 which permitted objections only be persons 'affected', s 96 of the RMA permits 'any person' to make a submission on a resource consent notified in accordance with s 93."

[116] RMA, s 96(1).

[117] Ibid, s 96(2).

[118] *Murray v Whakatane District Council*, above n 115, at 281. See also Blanchard J's comments in *Bayley v Manukau City Council* [1991] 1 NZLR 568 at 576.

> contested. In this the Act contains and extends the policy of the Town and County Planning Act which precedes it.

This clear statutory presumption in favour of notification provided for significant public participative rights in resource consent applications.

It was evident following the enactment of the RMA, that the Legislature maintained a policy that recognised public participation in environmental law resulted in better substantive decision making. This policy was very much mirrored within the international community. Agenda 21, a product of the UN Conference on Environment and Development,[119] sought to provide a voluntarily implemented action plan to promote sustainable development. It encouraged the "broadest public participation and the active involvement of the non-governmental organisations and other groups" in achieving sustainable development.[120] This call for broad public participation was explicated by the Rio Declaration, another by-product of the conference.[121] Principle 10 of the Rio Declaration provides, "environmental issues are best handled with the participation of all concerned citizens, at the relevant levels...States shall facilitate and encourage public awareness and participation..." The incorporation of public participation so explicitly in an international declaration signified a committal by states to its principles. Further crystallising this principle was a number of international conventions that followed the Rio Conference. The Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters 1998 (the Aarhus Convention) is one such example.[122] The Aarhus Convention was a declaration between countries of the European Union to a commitment to public participation in environmental management. To this end the convention recognises the three pillars of public participation: access to information, participatory processes in decision making, and access to justice, shall be upheld within the national environmental law of all signatory

[119]Agenda 21, United Nations Conference on Environment and Development, UN Doc. A/Conf.151/26 (1992) at Preamble.
[120]United Nations Conference on Environment and Development, Rio De Janeiro, Brazil, 3-14 June 1992.
[121] *Report of the United Nations Conference on Environment and Development*, A/Conf.151/26/Rev.1 (1992).
[122] *Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* (adopted on 25 June 1998, entered into force 30 October 2001). See generally Svitlana Kravchencko "Is Access to Environmental Information a Fundamental Human Right?" (2009) 11 Oregon Review of International Law 227, at 234. According to Kravchecnko the Aarhus Convention is the most impressive elaboration of Principle 10 of the Rio Declaration.

states.[123] The rights based approach of the convention established minimum standards to be achieved in providing for public participation. What began as a principle to further the overarching concept of sustainable development has consequently developed into a bedrock principle of international environmental law in its own right.

IV. The Local Government Act 2002

Turning back to national law, the Local Government Act 2002 is another important piece of social and environmental legislation.[124] The purpose of this Act was to provide for democratic and effective local governance that recognises the diversity of New Zealand communities.[125] To that end, the Act recognises the importance of public participation in local decision making. Part 6 of the Act regulates local government decision making,[126] including a local authority's obligations as to consultation with affected and interested persons, and the public at large. Section 78 recognises that a local authority must, in the course of its decision-making process in relation to a matter, give consideration to the views and preferences of persons likely to be affected by, or to have an interest in the matter.[127] Moreover, section 82 provides for principles of consultation a local authority must observe when purporting to conduct consultation in relation to any decision or matter.[128] Subject to subs 4 and 5,[129] s 82 empowers a local authority to conduct said consultation in such as

[123] *The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* 2161 UNTS 447 (signed 25 June 1998, entered into force 30 October 2001), art 1.

[124] See generally the Hazardous Substances and New Organisms Act 1996. This is another crucial statute in New Zealand's environmental legislative scheme. This Act employs a similar public participation scheme by the way of public notification of applications made pursuant to this Act, according to s 53. Notification invites any person to make a written submission on the application including the obligation to host a hearing similar to that found in the RMA. The Fisheries Act 1996 also provides for public participation.

[125] LGA, s3.

[126] Any decision made by a local authority must be made in accordance with the provisions of Part 6 of the Act.

[127] LGA, s 78. Note however that subs 3 provides that a local authority is not required by this section alone to undertake any consultation process or procedure. Section 78 is subject to s 79 which provides compliance requirements for a local authority purporting to use its discretion in determining how to observe ss 77 and 78.

[128] These principles of consultation very much reflect the pillar principles of public participation including providing for the dissemination of all relevant information to the public and access to decision making processes.

[129] LGA, s 82(4). In exercising this discretion, the local authority is to have regards to the requirement of s 78 (community views), and the extent to which the current views and preferences of persons who will or may be affected by, or have an interest in the matter are known to the local authority; and the nature and significance of the decision or matter, including its likely impact on persons who will or

manner as the local authority considers in its discretion, to be appropriate. Section 83 however provides for a special consultative procedure that must be adopted by a local authority in respect of certain matters. These certain matters include the adoption of long-term plans, annual plans and the making, amending or revoking of bylaws,[130] all matters that significantly affect the public at large. The Act deliberately provides for more extensive public participation in relation to these particular matters given their special nature, than it ascribes to general local government decision making. This special process is reflective of the typical notification/submission process but imposes greater expectations on the local authority in terms of communicating with and keeping the public well informed.[131] Part 6 is a clear demonstration that Government has recognised the place of public participation in local governance.

V. The Resource Management (Simplifying and Streamlining) Amendment Act 2009

The level of saturation this principle of public participation has achieved over the past sixty years within New Zealand legislation is evidence that Parliament has come to appreciate the value of public participation. This supports the contention that it has become a fundamental principle within New Zealand environmental management and local governance. Recently however, there has been a slight retraction of the typically wide participatory schemes much of New Zealand's legislation provides for. Highlighting this shift are the 2009 amendments to the RMA. The Resource Management (Simplifying and Streamlining) Amendment Act 2009 sought to simplify and streamline resource management processes. The Government had over recent years become increasingly concerned about the growing criticism surrounding the Act's ability to effectively manage complex environmental issues.[132] According to the Minister for the Environment,[133] the Hon Dr Nick Smith, "over the nearly 18 years since the

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may be affected by, or have an interest in the matter; and the costs and benefits of any consultation process or procedure.

[130] LGA, ss 84, 85 and 86.

[131] The local authority is required to prepare a statement of proposal and a summary of said information, and make this available for public inspection. They must then give public notice of the proposal and the consultation being undertaken, including information as to how persons interested in the proposal may obtain a summary of the proposal and inspect the proposal in full. The local authority shall specify the period in which submissions on the proposal may be made, and ensure that any person who makes a submission is sent written notice acknowledging receipt of their submissions and is given a reasonable opportunity to be heard by the local authority.

[132] Minister for the Environment *Report of the Minister for the Environment's Technical Advisory Group; The Resource Management (Simplifying and Streamlining Amendment Bill)* (Ministry for the Environment, February 2009).

[133] Resource Management (Simplifying and Streamlining) Amendment Bill (18-2) (explanatory note).

RMA became law, there has been growing criticism across all sectors about the slow and costly plan preparation and consenting processes."[134] Hence, the Act was to provide for more efficient decision-making on infrastructure, a reduction in the costs and delays of getting resource consents and a streamlining of planning processes. The Minister acknowledged that the Act made changes to the level of public involvement under the RMA but insisted these changes were necessary to achieve any real improvement in its operations. The Minister believed "that the Bill [struck] a better balance between the public's right to be involved and the need for sensible and timely decisions."[135] By considering the amendments made to plan development processes and application processes for resource consents, it is possible to consider the extent to which these changes indicate a shifting attitude on behalf of Parliament to public participation.

i. Plans and Policies

A number of minor amendments made to the planning processes, have impacted on public participation within the scheme. The Act maintained the original public notification/submissions methodology, but retracted somewhat on an earlier 1993 amendment that had expanded the submission process to include a further round of submissions that entitled any person to offer support or objection to a submission raised in round one.[136] The present amendments sought to limit this further round of submissions to only persons who are representing a relevant aspect of the public interest, or individuals who has an interest in the proposal policy statement or plan greater than the interest the general public has, and the local authority itself.[137] The amendments also sought to accelerate the process by restricting the timeframe for lodging further submissions from 20 working days to 10.[138] The amendments also sought to tighten up appeals by preventing submitters utilising appeal routes to seek the withdrawal of a proposed policy statement or plan as a whole.[139] Overall however the fundamental provisions guaranteeing public participation have remained. Despite their desire to streamline the process, Parliament recognised the importance of public participation in plan development.

ii. Resource Consent Applications

[134] (19 February 2009) 652 NZHD 1485.
[135] Ibid.
[136] See the discussion, above n 114.
[137] RMA, sch 1, pt 1, cl 8.
[138] Ibid, cl 7(c).
[139] Ibid, cl 14(2)(b).

Government had reached the view that the application process for resource consents were complex, costly and time constrained. The 2009 amendments sought to do away with some of the unnecessary, burdensome requirements in order to address these issues. In particular a number of seemingly minor changes were made to the notification processes that have had significant effects on public participation throughout the process. Most noticeably, the amendments sought to do away with the original statutory presumption favouring notification. Section 95A now provides "a consent authority may, in its discretion, decide whether to publicly notify an application for resource consent for an activity." Notification is however required if the local authority considers that the activity will have, or is reasonably likely to have adverse effects on the environment that are more than minor, the application requests it or a rule or national environmental standard requires it.[140] The consenting authority is required to give effect to s 95D in considering whether any adverse effects on the environment are more than minor. The overall discretionary nature of s 95A empowers the consenting authority to dictate the breadth of public participation within an application. Moreover, in deciding not to notify, the consenting authority must decide if there are any affected persons in relation to the proposed activity.[141] The consent authority is required to give limited notification to any affected persons they identify,[142] unless a rule or national environmental standard precludes it.[143] Limited notification provides narrow participatory rights, afforded to only those identified as affected persons. There are no public wide participation rights in that instance. These amendments indicate a shift in the Government's attitude toward public participation in respect of resource consents. The justification for these changes, were pragmatic. Parliament sought to simplify consenting processes by reducing the time and costs associated with them. In doing so the Legislature has made a direct trade off of public participation for efficiency. Notification was the one avenue by which members of the public were invited to participate in such matters. By limiting this, the legislature is suggesting the pay off for ensuring such wide public participation has become too great. Commitment to public participation in resource consents as an element of environmental management is waning.

[140] RMA, s 95A.
[141] Ibid, s 95B includes any affected protected customary rights group or affected customary marine title group in relation to the activity.
[142] Ibid, s 95E.
[143] Ibid, s 95B(2).

Over the past sixty years public participation has come to solidify itself as a bedrock principle of both environmental and local governance law.[144] This support for public participation is largely founded on the benefits it is recognised for delivering, both procedurally and democratically. The recognition for public participation peaked with the enactment of the RMA. However recently the practicalities of maintaining the wide participative rights it promised, have proven too great for Government who approved significant reform to the Act in 2009. The Minister for the Environment acknowledged that some of the amendments would mean changes to the level of public participation within certain schemes. In respect of plan development processes these changes were minor. The changes made to the application processes for resource consents were significant. By reversing the statutory presumption favouring notification, Parliament had deliberately traded public participation rights for efficiency of process. It is asserted however that this is only one aspect of an entire national environmental management scheme, and the reality remains however that of all resource consent applications that are initiated, approximately 95 per cent proceed on a non-notified basis. Overall public participation remains a fundamental principle within New Zealand's environmental and local government legislation.

[144] The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 has just recently been passed by Parliament. This Act also provides for public participation in certain matters by way of public notification inviting submissions. For example, applications for marine consents must be publicly notified inviting public inspection. Any person may then make a submission to the Environmental Protection Authority about that application.

CHAPTER FIVE: Christchurch City Council acting on the Mandate

Chapters Three and Four established the theoretical underpinnings of the concept of public participation. It is with this understanding that this chapter shall explore how the CCC went about developing their Central City Plan (CCP) using public participation, according to the legislative framework discussed in Chapter Two.[145]

I. Constructing a Process

Faced with the enormity of the task, the CCC was quick to realise that public input throughout the planning process would be vital to the success of the plan. The plan needed to reflect the ideas and values of local communities so that it would meet the needs of both the present and future local residents.[146] The only way of ascertaining what these were was to actively engaging with the public. Christchurch Mayor Bob Parker publicly recognised that public engagement would be a "major aspect" of developing the plan.[147] The Council was faced with a number of difficulties in doing so however, foremost, the extremely tight time frame. Furthermore, they were asking members of the community to partake in plan development at a time when the majority were still struggling to cope with daily realities. Finally, there was an initial sense of cynicism in the genuineness of the Council's consultation promise. In constructing their process, the Council had to create one that could address these concerns yet provide for the benefits of public participation the Council sought. The Council's key objective driving their participatory scheme was to engender an ongoing dialogue between themselves and the public.[148]

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[145] See generally Chapter Two. It was asserted in that chapter that the provisions of the governing CER Act provided very little guidance for the CCC as to how they were to engage public participation in the development of their Recovery Plan. It was noted however that despite this gap within the CER Act, the Council remained obligated by the provisions of the LGA. Hence any consultation they decided to engage must be accountable to the provisions of the duties of the LGA. See also Chapter Four; it provides a summary of the duties a local authority is under when engaging public consultation in a decision or a matter.

[146] Christchurch City Council *draft Central City Plan, August 2011 – Volume One* (Christchurch City Plan, August), at 20.

[147] Christchurch City Council "Mayor says residents will have their say in earthquake recovery plans" (Media Release, 29 March 2011). Mayor Bob Parker stated; "we will work with our community on a draft concept plan, and once the draft plan is developed we will again consult extensively with our residents and make further adjustments to it based on the feedback received."

[148] Christchurch City Council *Christchurch Central City Plan; Project objectives and the Public Participation Process* (IAP2 Core Values Awards Entry, 2012). [CCC, IAP2 Awards Entry] This application for the IAP2 Core Values Awards, prepared by the Council, outlines a number of key objectives that the used to guide their plan development. In addition to their desire to maintain an ongoing conversation with the public, the Council sought to invite and encourage community and key

The Council decided upon a two stage approach to public participation in the development of the CCP. The initial phase was to act as the ideas gathering phase.[149] Branded 'Share an Idea' this phase was designed to generate maximum community input in the city's redevelopment by establishing a constant dialogue between the public and themselves. The ideas received during 'Share an Idea' were to be fed into the development of the initial draft Recovery Plan. Once that was created, phase two of the public participation scheme was to provide formal consultation on that draft plan. Comments received during this phase would then be used to finalise the draft CCP which was to be passed onto the Minister for approval.[150] The aim was to establish a process that easy, accessible, and rewarding experience for all those involved. After all, "communities that take charge of their recovery have better recovery outcomes."[151]

To provide structure to the public engagement, the Council developed a framework for comment according to four overriding themes relating to the rebuild: "move, market, space and life." The Council was careful to put as few barriers on the public as possible. However it was imperative to set a few key parameters from the outset to coordinate the public response and avoid a complete scattering of ideas, a common pitfall of public participation.[152] The Council laid also down the five non-negotiables of the plan; these being the few elements of the existing city the Council were unable or unwilling to change.[153] By setting this structure early on in the process, the public were well informed as to the level of influence they could expect to achieve avoiding the risk of consultation fatigue, another common pitfall of public

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stakeholder involvement in the creation of the CCP, through ideas-gathering and then formal comment. They sought to capture the public's suggestions and knowledge and help inform the content and spirit of the pan. Their processes were to give the public a genuine opportunity to influence the future of their city, and to keep the community and stakeholders well informed throughout the process and beyond.

[149] See generally Chapter Three. It recognised that a major benefit of public participation processes were their ability to act as an information gathering tool. The Council sought to construct a process they could capitalise on this benefit with the aim of producing a better plan as a result of it.

[150] CER Act, s 21.

[151] Christchurch City Council *Central City Plan; Draft Central City Recovery Plan for Ministerial Approval* (Christchurch City Council, December 2011), quoting Doug Ahlers, Harvard University, August 2011.

[152] See generally Chapter Three. Too much ambiguity in a process can be detrimental to the process by delaying decisive action. An ill-informed public can generate futile conflict.

[153] These included the location and grip of the central city, the form and function of Hagley Park, and the course of the Avon River. Furthermore approximately 50% of the buildings in the red zone had survived the earthquakes and were to stay in their current form. This number changed dramatically over time as further assessments were conducted but the concept remained; structurally sound buildings of the CBD would remain.

participation that eventuates when the public are ill-informed as to the level of influence they can expect to achieve.[154]

II. Phase One: Ideas Gathering

Share an Idea

Within 10 weeks of the February earthquake, the Council had launched their 'Share an Idea' campaign.[155] This initial phase of plan development was designed to invite Christchurch residents to share their ideas for the future direction of their city. The goal of this phase was to engage with the community at large so to achieve a level of public penetration and response that would enable the Council to develop a better quality plan.[156] The Council recognised that for the plan to succeed it needed to reflect the values and preference of local communities so that it may meet their needs, and the needs of future generations. The Council utilised a variety of participation methods to achieve community wide engagement. The methods the Council used are explored below.

A website – shareanidea.org.nz - was set up to initiate the 'Share and Idea' campaign. It was to act as an online forum where local residents could share their thoughts whenever was convenient for them.[157] Council could pose questions directly to the public sparking debates on specific issues or ideas. The creation and introduction of self-help kits was another major innovation of the Council. These captured group discussions within the community that could then be forwarded to the Council. By opening up novel channels of participation such as these, the Council succeeded in making participating in the plan's development something that was easy for all local residents. In achieving this, the Council subdued the risk of participation bias inherent in typical public participation processes that engage onerous participation methods. Participative methods that are resource intensive often attracted only the most interested parties who have the biggest stake in the decision. This can create a false sense of public opinion.

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[154] See Chapter Three.

[155] Christchurch City Council *Central City Plan; Draft Central City Recovery Plan for Ministerial Approval* (Christchurch City Council, December 2011), Technical Appendix A. [CCC Technical Appendix A] Share an Idea' generated more than 106,000 ideas during its six weeks in operation.

[156] See Chapter Two.

[157] CCC Technical Appendix A, above n 155.The website appealed to the large population of Christchurch residents that had access to the internet. The convenient nature of the website made it a popular choice for residents to share their ideas. Within the first six weeks of operating, the website generated more than 58,000 visits.

Another major innovation of the Council was their mobile approach to public engagement. The Council recognised that a large number of families were displaced as a result of the earthquakes hence old contact lists and traditional consultation delivery techniques would be unreliable. The combat this the Council held a two day 'Share an Idea' Community Expo. Attendees were encouraged to share their ideas by a multitude of activities.[158] The Council sought to make participating something fun and interactive. Rather than holding the public to traditionally rigid participation methods such as submissions, members of the public were encouraged to participate however best suited them. Furthermore, the Council sought to cater for the diversity within communities hence the material at the Expo was translated in a number of languages.[159] A number of public hearings followed, allowing attendees to discuss matters directly with the planners and councillors. By utilising such a large number of engagement tools the Council avoided privileging any one form of communication over another. Moreover, the variety of tools catered for all social groups avoiding incidentally marginalising individuals based on age, class, culture or education.

The Council looked to engage the public using 'real language' and seemingly simply approaches that would resonate with all audiences.[160] To promote 'Share an Idea,' the Council utilised all forms of media including social media such as YouTube, Twitter and Facebook. In doing so the Council succeeded in reaching a wider audience than traditional participatory methods achieved. Typically inactive demographic social groups such as teenagers and children were actively involved. By appealing to all members of the community, the Council could ensure a more thorough assessment of the values and preferences within it. Therefore any inherent trade off or value assessment necessary in the development of the plan would be better informed of the local conditions meaning a greater tailoring of the decision. This also provided for a greater monopolisation of local knowledge and expertise in developing the plan.

[158] Ibid. The Expo attracted more than 10,000 local residents. Attendees were encouraged to share their ideas via the variety of sharing tools that were offered. Activities included posting ideas on post-it notes, submitting their ideas to the 'Share an Idea' website via laptops provided. Younger visitors were encouraged to participate by building their future city out of Lego while a large graffiti wall sought to capture attendants' leaving thoughts.

[159] CCC, IAP2 Awards Entry, above n 148. The material was translated into Chinese, Korean, Arabic and Samoan. Interpreters were also made available as was a Sign Language Specialist.

[160] Ibid. This included print, television, radio and the internet. Approximately 160,000 households across Canterbury received the 'Share an Idea' tabloid while a further 7000 individuals were signed up to receive the weekly e-newsletter.

The Council also sought consultation with key stakeholders during this initial phase. In addition to ECan, Ngāi Tahu and CERA,[161] more than 130 groups were identified as having a direct interest in the redevelopment of the central city, typically businesses and property owners within the central district. To involve them, more than 100 meetings were held during the plan's development, including one off meetings with individual organisations, weekly discussions with sector representatives and mixed group discussions to formulate ideas. Consulting with specific stakeholders raises an the issue touched upon in Chapter Two; if done inappropriately, stakeholder meetings can have the effect of unintentionally empowering the already powerful. The Council had to be explicit that the goal of these stakeholder meetings was to keep them well informed and provide them with an opportunity to share their ideas but their ideas remained subject to the overall participation scheme.

On the conclusion of 'Share an Idea' a team of specialist data analysis set about coding each idea received using software programming designed to categorise qualitative information. Of the 100,000 plus ideas received, 130 overarching topics were identified within the four main themes of move, market, space and life.[162] The programme went on to identify any connections or conflicts that existed between topics and summarised these also.[163] By using computer software to consolidate the ideas, the Council prevented the process being overwhelmed by seemingly random submissions. Furthermore, futile conflicts can frustrate public participation processes by delaying decision making. The use of such a specialist software programme allowed for the Council to identify the major sources of conflicts while subduing any minor issues. The ideas sourced from 'Share an Idea' were fed into the development of the first draft CCP.[164]

III. Phase Two: Formal Consultation

[161] The Council has a statutory duty pursuant to s 17(2) of the CER Act to ensure ECan, Ngai Tahu and CERA were given the opportunity to provide an input into the development of the Recovery Plan.
[162] CCC Technical Appendix A, above n 155, at 3. By the end of the analysis process, 105,991 ideas had been coded from a number of sources.
[163] Ibid, at 5. In order to link the themes together, the planners also identified a number of important principles that had emerged during 'Share and Idea.' These were utilised as 'linking statements' that would connect main themes. Public involvement was one of these recognised key principles. The planners recognised that "people must be placed at the centre of the redevelopment of the Central City." This principle along with others, were developed to weave across all components of centre city planning providing for a cohesive and consistent plan.
[164] The draft plan was structured according to the main themes that emerged during 'Share an Idea'; green city, market city, distinctive city, city life and transport choices.

The second phase of public participation provided for formal consultation on the draft CCP. Pursuant to their statutory requirements for public participation under the CER Act, the Council was required to hold at least one public hearing at which members of the public may be heard.[165] It was recognised however that in opting for a round of formal consultation, the Council remained subject to the consultation duties prescribed by the LGA.[166] Pursuant to s 82(3), the Council was empowered to conduct a consultation process in such a manner that they considered in their discretion, to be most appropriate given the particular situation, to observe the principles outlined in subs 2 of that section. In exercising their discretion, the Council was to have regard to those factors mentioned in subs 4.[167] The Council recognised the significance of this particular Recovery Plan; the central city was emotionally and symbolically something that all local residents could identify. Furthermore, the Council had already invested significant resources in educating themselves on the public opinion within the communities on this matter so these were fairly well informed going into the consultation phase. Finally, the issue of cost was set aside for the time being, given the urgent nature of the matter.[168] In light of the legislative regime, and having considered these factors the Council used its discretion to develop 'Tell Us What You Think', the second phase of their public engagement campaign.

Tell Us What You Think

Pursuant to their s 20 obligation, the CCC released their first draft CCP for public inspection. Local residents were invited to inspect the draft plan, and in accordance with their s 20(3)(b) participative right, make written comment on it.[169] Public notification of the draft CCP was followed up by a full 10 days of public hearings.[170] Similar to the first phase, planners identified common themes within the submission received during formal consultation. These

[165] CER Act, s 17(5).
[166] See generally Chapter Two.
[167] The local authority must have regard to: the community views on the matter, the extent to which these views and preferences are known to the local authority, the nature and significance of the decision including its likely impact from the perspective of the persons who are likely to be affected or have an interest in the matter, and the costs and benefits of any consultation process or procedure.
[168] Given the time constraints, and the iterative nature of the project the CCC did no preoccupy itself with costs but rather let it run.
[169] See Chapter Two. It explored the implications of the use of the term 'comment' as opposed to 'submission' in respect of public notification.
[170]Christchurch City Council *Summary of Key Changes by Chapter since August Issue of Draft Central City Plan* (Christchurch City Council, November 2011). The Council received 4707 submissions on the draft CCP from some 2900 submitters. Of these, 427 wished to be heard in support of their submissions. Given the extent of public interest on the matter, the legislative minimum of one public hearing would not be sufficient to enable everyone to appear who wished to be heard.

were considered, deliberated on, and the appropriate changes made. [171] The final CCP was signed off by the Council in mid-December,[172] to await ministerial approval.

As discussed in Chapter Two, the extent of the legislative mandate imposed on the CCC was relatively weak. The CER Act imposed very light consultation requirements mandating only one public hearing. Parliament was content to leave the process to the discretion of the CCC. This discretion was however subject to the Council's statutory duties under the LGA. Having considered the Council's statutory duties under the LGA in respect of consultation, both the principles to be observed and the considerations to be had in constructing a process; the Council opted for intensive public participation in the development of their Recovery Plan. It is asserted the Council went beyond the legislative framework of the CER Act and the LGA, and achieved a level of public participation far beyond what was expected of them. The Council recognised the importance of the CCP, not only to local residents but to the future of Christchurch. Their process sought to capitalise on the potential benefits public participation could provides for their Recovery Plan, while subduing the risks associated with achieving it.

[171] A contextual summary of the public comments the Council received during this second phase of public consultation was published in a report by the Council. See CCC Technical Appendix A, above n 155.

[172] The Council has been careful to document the entire public consultation project from 'Share an Idea' through to the completion of the final CCP, made possible due to the highly technical computer programme facilitating the process. This makes it possible to trace a single idea through the entire process; starting from the inception of an idea as it emerged during the initial phase of public engagement, to its inclusion in the initial draft plan, through the second phase of formal consultation until its final manifestation in the final CCP. By conducting such an exercise it is possible to identify in a broad sense, the level of influence the public had on the plan. Previous discussion has already acknowledged that the main themes to emerge during 'Share an Idea' were fed directly into the plan to provide its structure. For a more specific example consider the idea of 'good urban design.' The planners identified that the people of Christchurch wanted "high quality, attractive building designs," and sought greater regulations and guidelines to coordinate redevelopment in the central city to achieve this. The Council in developing their first draft of the plan looked to transform this general view of the public into set legal rules. The plan outlined a number of measures the Council was prepared to take in order to achieve it. The plan was to provide a regulatory framework and supporting design guidelines for development in the central city. Comments received during the second phase of public engagement sought clarification as to how the Council was to achieve this, and the extent of the commitment the Council was making to it. In response to these comments the Council in the final plan explicitly outlined its commitment; the Council was to provide urban design advice for developers by way of an Urban Design Panel that was to operate free of charge for five years to support the recovery. By tracing one ideas accession into the final draft CCP, it demonstrates how that idea was moulded and transformed during the consultation processes. It must be noted that the matter of 'influence' within public participation is a whole other issue in its own right. This analysis has been conducted at length, based on fairly vague findings: the devil will be in the detail. It is however sufficient for the purposes of this paper. It proves that the public of Christchurch were actively encouraged to partake in the plan development process, and that in doing so, the Council was committed to incorporating that public input in to the final CCP. The issue of influence is surpassed by later developments.

The real success of the Council's consultation scheme was the extent of public participation they achieved.[173] Through the use of novel engagement tools, modern technology and simple and accessible processes, the Council maintained a constant conversation with the public throughout the plan's development.[174] The breadth of public engagement they achieved was unprecedented. They took the clear legal rules of the CER Act and the LGA and went further. The action of the CCC accords with the breadth of theoretical support that exists for public participation as a fundamental principle of environmental management.

IV. *For Ministerial Approval*

The development of the Recovery Plan for the CBD however did not end with the publication of the Council's final CCP in December 2011. As outlined in Chapter Two, s 21 of the CER Act provided for ministerial approval of the Council's draft Recovery Plan before it could become active. In considering it for approval, the Minister was to have regard to the impact, effect and funding implications of the Recovery Plan.[175]

Upon receiving the draft the Minister was quick to acknowledge the work done by Council in developing the plan.[176] However, having conducted his review the Minister was of the opinion that the plan could not be approved without amendment. The Minister was particularly concerned with the lack of information the plan provided regarding its implementation.[177] To address these concerns the Minister established a unit within CERA to lead and facilitate the finalisation and implementation of the Recovery Plan. The Christchurch Central Development Unit (CCDU) was a consortium of design, planning and

[173] The success of the CCC's public participation process has been recognised by both international and national awards. Most recently the Christchurch City Council was awarded the New Zealand Award for Project of the Year by the IAP2 Australasia for their project "Central City Plan." The award was designed to recognise projects that are at the forefront of community engagement and consultation across New Zealand and Australia. The CCC is now in contention to win the Australasian Project of the Year up against the Australian state winners. IAP2 Australasia "Christchurch City Council Wins the IAP2 Australasia New Zealand Core Values Project of the Year Award" (Media Release, 25 September 2012).

[174] CCC, IAP2 Awards Entry, above n 148. Public satisfaction following the Council's consultation scheme was high. There was evidence within the community that the residents of Christchurch felt a real sense of partnership between them and the Council over the development of the CCP. Evidence of this has been sourced from responses by individuals within the community that have been shared via social media and letters to the Council.

[175] CER Act, s 21(2).

[176] Hon Gerry Brownlee, Minister for Earthquake Recover "Launch of the Central Christchurch Development Unit" (Christchurch, 18 April 2012). "He deserves great credit for so swiftly engaging in such an extensive and democratic exercise, which has produced a very good result."

[177] Ibid.

implementation companies bought together for the purpose of preparing a redevelopment blueprint for the central city within 100 days.[178] The blueprint was to 'keep the vision' of the Council's CCP but would be amended in a way that created a workable, investable proposition.[179] The position of the CCDU, as an internal unit of CERA, imparted on the CCDU the extensive statutory powers and freedoms the CER Act imparted on CERA. Therefore in developing the blueprint, the CCDU was uninhibited by consultation requirements.

As eluded to in Chapter Two, s 21 had the potential to undermine any public participation processes the Council initiated in developing their CCP. This issue became active the moment the Minister opted against approving the draft CCP. The extent to which this action has impacted on the public participation conducted by the Council is addressed in the following chapter.

[178] The CCDU was to continue to work closely with the CCC, Ngāi Tahu and other key strategic partners in developing their blueprint however they were under no statutory obligations or otherwise, to consult with anyone outside of their unit.

[179] Hon Gerry Brownlee "Launch of the Central Christchurch Development Unit", above n 176. The blueprint was to identify a number of anchor projects that were to lead the rebuild, locate these anchor projects considering the relationship between them, and provide plan guidelines for areas surrounding these projects. The aim was to initiate these anchor projects so that they may stimulate demand, increasing investor confidence in the rebuild. They were to act as a catalyst for development in the surrounding areas. These were to then be incorporated into the revised Recovery Plan that would eventually be given effect according to the provisions of the CER Act.

CHAPTER SIX: Conclusion

Chapter Five highlighted the extensive level of public participation the CCC achieved during the development of their CCP. To do so the Council took the apparent lacuna of the CER Act, and guided by the LGA principles of the LGA, developed a process that achieved intensive public participation. From the base of solid legal rules provided by the CER Act and the LGA, the Council utilised innovative engagement tools to provide for public participation on an unprecedented level. The success of the Council in establishing and maintaining a continual conversation with the community throughout the plan's development phases lends some interesting lessons that may be applied to public participation processes in the future.[180] Despite this, the Minister, pursuant to his s 21(2) power, decided against approving the Council developed CCP. Instead, the Minister established the CCDU that was to take the CCP and from it, create a Blueprint Plan that would provide a spatial framework for the central city outlining a number of anchor projects to stimulate the redevelopment.

By purporting to 'keep the vision' of the CCP, the Minister was ostensibly staying connected to the extensive public consultation the Council engaged in developing their CCP.[181] It is asserted however that this is a fallacy. The attempt to legitimise the revised plan by pointing to Council conducted public participation is fundamentally flawed, and has in reality, undermined the public participation the Council achieved. By utilising the ministerial veto power, the process can no longer be said to ascribe to the fundamental pillars of public participation, nor does it uphold the core values of this principle. While it may be fair to say this revised plan reflects certain aspects of the earlier public input, this does not equate to

[180] The Council recognised the shortfalls of traditional participation processes and sought to combat these through novel engagement activities. Their aim was to make participating in the plan's development something simply, accessible and rewarding for the Christchurch residents. Rather than holding the public to typical participation methods which are burdened by procedural constraints and costs, the techniques the Council employed were interactive, creative and fun. The Council empowered the public to choose how and when to participate rather than dictating a set procedure and expecting them to adhere to it. The level of response the Council received is evidence that this flexible approach to public participation was successful in procuring public engagement.

[181] There are obvious overlays in the Council's CCP and the CCDU Blueprint. The principle of strong urban design in the central city's redevelopment for example was represented in the blueprint. The final plan incorporated a version urban design rules similar to those the Council developed in their plan. In saying that, there are also significant differences between the two plans. The two are extremely different in operation; the Council plan sought to outline the vast number of projects that were to occur throughout the redevelopment whereas the CCDU amendments to the plan provide for redevelopment according to the anchor project model mentioned above. Moreover an entire chapter of the Council's plan was circumvented by the CCDU blueprint. The Minister did away with all transport aspects of the CCP 'for the time being.' The Minister was of the opinion this required further consideration and a detailed assessment before any such decisions could be made.

public participation. The effect of engaging s 21 meant the public lost all right to be involved in the decision making process from there on out, their opportunity to influence the plan was effectively reneged and the CCDU was empowered to finalise the plan on their own accord. As was the issue in *Pigeon Bay Aquaculture,*[182] this is a situation where the Minister has encouraged the public through the Council public participation processes only to at the end, substitute the initial public influenced decision with another. This process is fundamental unfair to the public.[183] Furthermore, the fact that the public have no right of appeal against any decision of the Minister, including his decision to invoke s 21, further curtails any public participatory rights.

This issue has highlighted a fundamental flaw in the Government's commitment to public participation not only in this particular situation but for the principle as a whole. From the beginning of this recovery process, Parliament maintained an outward commitment to public participation in Christchurch's redevelopment. It however stopped short of ascribing a particular public consultation process within the CER Act, on the 'expectation the CCC would develop a consultation plan to engage the many views from within the Christchurch communities.'[184] Such a statement suggested Parliament had recognised the benefits public participation could offer to this situation but had further acknowledged that the CCC was in the best position to recognise what would be needed in that situation. Moreover it accorded to their historical commitment to the principle in national environmental law.[185] It is asserted however, that the effect of s 21 brings into question the sincerity of this supposed commitment to public participation. By providing for ministerial approval of the Council developed Recovery Plan, Parliament has established a process that places one party, the Minister, in a no-lose situation. Parliament could advocate public participation in the plan's development, confident that the Minister maintained the power to override it if need be, which in effect, they have done.

Public participation processes are undermined where ministerial veto powers such as this exist within legislation. This goes against sixty years of legal development that has come to recognise public participation as a fundamental principle of environmental and local governance. If central government is not committed to public participation, this may in turn threaten local government commitment for it. One can imagine a local authority asking

[182] *Pigeon Bay Aquaculture v Canterbury Regional Council*, above n 50.
[183] Ibid, at [45].
[184] CER Bill, above n 19.
[185] See Chapter Four.

themselves, why go the extent of conducting meaningful public participation, which requires a significantly greater investment of resources, when the alternative is to do as Parliament just did; ostensibly provide for it for the sole purpose of using it as a legitimising tool.[186] This risks detracting from the numerous benefits that public participation is now recognised for. Such an attitude would encourage local authorities to do the bare minimum to satisfy their statutory requirements of consultation, but nothing more. Furthermore this qualified commitment to public participation threatens public trust in it. If the public loses the sense that their input is having any real impact on decision-making, they too will lose motivation to participate when it is offered. As Jackson J suggested in *Pigeon Bay Aquaculture*, it is possible to imagine the public asking 'why bother?'

The purpose of this paper was to highlight the apparent flaw in Parliament's commitment to public participation. The Christchurch rebuild provided a prime example where public participation had so much to offer a situation, yet despite the efforts by local government to achieve intensive public participation, Parliament in the end substituted that decision, for one developed according to their own processes. Statutory powers such as these threaten the future of public participation as a fundamental principle of New Zealand's environmental and local governance legislative scheme. It is asserted that Government either needs to fully commit to this notion of public participation as a bedrock environmental and local governance principle, or they risk losing public and local authority faith in it.

[186] The Council went to extreme lengths to provide good, meaningful public participation that avoided all the potential pitfalls associated with it, yet still managed to capitalise on the many benefits it is recognised as providing, only for Government to come along and bring them all back into play when they handed the final decision over to the Minister.

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