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OBSTACLES TO PUBLIC PARTICIPATION
UNDER
THE RESOURCE MANAGEMENT ACT 1991

*Report presented in partial fulfillment of the requirements for
the degree of Masters of Science in Resource Management*

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Chapter 1

Introduction

1.0 Background

At global, national and local levels, there is widespread recognition of the scale and complexity of the environmental problems the world faces. One of the global community's key responses has been the development and promotion of concepts such as sustainability and sustainable development. These concepts share a concern for future generations and for the state of the environment. Some suggest that human survival could depend on the success of elevating such concepts to the status of global ethics (WCED, 1987: 308). In New Zealand, "sustainable management" has become central to the management of our natural and physical resources through the introduction of the Resource Management Act 1991 (RMA or the Act). Sustainable management is the sole purpose of the RMA. The concepts of sustainability, sustainable development and sustainable management each have a slightly different focus. However, to varying degrees, each recognises the importance of public participation in environmental decision making.

The scale of environmental problems demands a collective response (Hayward, 1994: 1). Simplistically speaking collective responses can be either democratic or authoritarian. Many commentators advocate direct or participatory democracy, which emphasises direct public participation in decision making, as a good model for sound environmental decision making (For examples see: Dryzek, 1992; Hayward, 1994; PCE, 1996; Pye-Smith et al., 1994; WCED, 1987; and Young, 1992.). Others, however, argue that a collective response will require a more authoritarian approach (For examples see: Hardin, 1969, 1977; Heilbroner, 1980; and Ophuls and Boyan, 1992.). This project does not consider these arguments in any detail; instead, it favours democratic approaches and considers public participation as an element within such a framework. In taking this approach a number of assumptions have been made. First, it is assumed that the resolution of environmental problems is likely to be more promising within a political and economic context which is more rather than less democratic (Paehlke, 1990). Effective environmental decision making, from an environmentalist viewpoint makes use of both expert views and the views of those who are most affected by the decisions at hand (ibid.). And second, it is assumed that public participation is highly appropriate in a liberal democracy.

The World Commission on Environment and Development (WCED) argues that “*the pursuit of sustainable development requires ... a political system that secures effective citizen participation in decision making*” (WCED, 1987: 65). Agenda 21¹ emphasises the need for community participation in resource management and environmental strategies. It states that “*One of the fundamental prerequisites for the achievement of sustainable development is broad public participation*” (UNCED, 1992: 94). Clearly within the international community there is at least some commitment to developing participatory practices in order to promote sustainable environmental outcomes. In New Zealand, too, there is an appreciation of the value of public participation in environmental and resource management decision making. The issue of public involvement in environmental decision making was one of the foci of the Resource Management Law Reform process which resulted in the RMA. The RMA provides many more opportunities for the public to participate in resource management decision making than previous resource management legislation.

There is however a feeling in some quarters that the provisions for public participation in the RMA are tokenistic, and merely legitimate developments and policies favoured by development interests, local authorities and central government (For examples see: Clark, 1996; Penny, 1994; and Tugendhaft, 1996 all in Grundy 1996). The media has featured numerous articles² suggesting that procedures for public participation under the Act are problematic, with one of the key issues being the imbalance in funding bases between tangata whenua, environmental and other interest groups on the one hand and business and government interests on the other. In response to some of these concerns, the Parliamentary Commissioner for the Environment (PCE) published a discussion paper (1996) looking at public participation in environmental decision making. The PCE’s primary interest is in the performance of public authorities in this area and the efficiency and effectiveness of systems for managing the environment.

¹ Agenda 21 was one of the outcomes of the 1992 “Earth Summit” at Rio de Janeiro and is perhaps the most comprehensive international statement to date on development and environmental strategies. It is a document and programme which aims to translate the theory and rhetoric of sustainable development into practice.

² For example headlines such as: “Clean, green and expensive: the high cost of New Zealand’s dollar-driven law”; “High cost of natural justice worries community groups”; “RMA - Rich Man’s Act” and “Costs erode Resource Management Act”; all referred to in MfE, 1996: 3.

1.1 Problem statement

Picking up on comments from the media, academia, business, the PCE and the wider community this report considers the practice of public participation under the RMA. In particular it examines the obstacles for using the, assumedly meaningful, opportunities for public participation under the RMA and considers ways of overcoming them. Although it is recognised there may be some overlap between this report and that of the PCE, this report aims to make a valuable contribute to research by focusing specifically on obstacles to public participation under the RMA. The methodology used for the report is set out in Appendix 1.

The report is written with a particular audience in mind: resource managers³ who want to encourage effective public participation. Its primary aim is to promote prioritised and strategic research into ways of removing some of the obstacles to effective public participation under the RMA. This is the nature of the research agenda.

1.2 Chapter outlines

The first substantive chapter of the project looks at public participation. The literature on public participation is huge. The chapter reviews and synthesizes some of the major themes from this literature and links them to participatory practices under the RMA. It concludes by identifying the likely characteristics of effective public participation in New Zealand and by creating a framework through which to identify the potential obstacles to effective public participation under the RMA.

Chapter 3 provides an overview of the RMA and the participatory provisions which sit within it. An understanding of the Act and its provision for public participation was necessary before the obstacles to effective participation under the RMA could be considered. The practical obstacles to effective public participation under the RMA are looked at in Chapter 4. They are considered under the headings of: legislation; institutional arrangements; resources; and lack of evaluation which reflects the framework created in Chapter 2.

³ The term “resource managers” can cover a wide range of people including central and local government employees, tangata whenua, people who work with the land and community groups.

The project finishes with the research agenda, and recommendations and conclusions developed from the identification of obstacles to effective public participation. The overall conclusion of the research is that the RMA public participation provisions enable effective participatory processes to operate. However, in practice there are many obstacles to the achievement of effective public participation. The research agenda recommends a research strategy which, if followed should suggest practical ways of overcoming obstacles to effective public participation under the RMA.

Chapter 2

Public participation.

2.0 Introduction

No definitive definition or theory of public participation exists. In its broadest sense, however, public participation means the involvement of people in the making of public decisions that affect their lives (MoW, 1978: 1). The shape public participation takes will depend on the political, social, cultural, economic and ecological environment of the time. This in large part explains why a more precise definition of public participation is not possible since the backdrop for participation and hence the techniques used, will always be different.

This chapter creates a theoretical context for the rest of the report. The literature on public participation is vast and divergent. By reviewing and synthesizing some of the major themes and linking them to participatory practices under the RMA, the chapter tries to bring some meaning to the term public participation. Public participation is firstly considered in terms of: the possible rationales by which it can be underpinned; and the possible levels of participation. This is followed by discussion of the likely characteristics of effective participation in New Zealand and the potential obstacles to such participation.

2.1 Possible rationales which can underpin public participation

Public involvement in decision making can be pursued for many different, complex and often overlapping reasons. This section outlines some of the more important reasons for the promotion of public participation as identified from the literature.

1. People affected by decisions have a right to participate in those decisions

Decision making should occur at the level where costs and benefits accrue. In other words, decisions should be informed by those most affected and most responsive to changing local needs and conditions (Grundy, 1996: 62). In the Brundtland Report, it is argued that "*effective participation in decision making processes by local communities can help them articulate and effectively enforce their common interest*" (WCED, 1987: 65).

2. Public participation as a way of expanding the knowledge base

The public has considerable expertise which should be used to improve the knowledge base for environmental decision making (Chociolko, 1995: 19). People who have a close association with their immediate environment might not be “expert” in an academic or scientific sense, but they often have relevant practical experience (Chapple, 1993: 11).

Many people argue that environmental problems cannot be successfully addressed by taking a purely scientific or technical approach (Memon, 1993: 13); public input into decision making processes may help address this and may ensure that public values as well as rational planning criteria are recognised and considered in decision making (Iacofano, 1990: 12). Often it is argued that bureaucrats will make “bad” decisions, which are out of step with public values (Bühns and Bartlett, 1993), when they decide for people instead of with them (Wengert, 1976: 23).

3. Participation as a way of relieving feelings of alienation and powerlessness

Some believe participatory processes allow participants to become more personally identified with decision making processes and hence supportive of their outcomes, leading to greater feelings of empowerment. Public involvement may reduce social alienation by giving people an opportunity to make decisions within socially recognised and legitimized institutions (Iacofano, 1990: 12)

4. Participation as “education”

In relation to environmental problems, Dryzek argues by participating in environmental decision making citizens will become better educated about environmental problems and may be “transformed” from “self regarding” citizens to “other regarding” citizens with an appreciation of their common environmental interests (Dryzek in Hayward, 1994: 6). Held on the other hand cautions against the idea that through public participation per se people will become dedicated to principles of the common good (in Hayward, 1994: 13). Although public participation is unlikely to transform all citizens into concerned environmentalists, alongside education and wide-spread debate, public participation may well help change attitudes and perhaps promote sustainability as a global ethic.

Such an “education” programme is also likely to better socialize people for the practice of democracy (Sanchez et al, 1988: 2). In this sense public participation can be a facilitator of interpersonal, group and institutional adjustment and therefore it may create the necessary conditions for better public involvement in planning (ibid).

5. Participation as a way of moving towards participatory democracy.

Public participation can be seen as part of a process of social change to help society move towards participatory democracy, where every person within a nominated group has a full and equal opportunity to participate in all decisions (Dahl, 1970: 67).

In line with this approach Arnstein argues that public participation promotes a “*redistribution of power that enables the have-not citizens, presently excluded from the political and economic processes, to be deliberately included in the future.*” (Arnstein, 1969: 216). It is debatable¹ to what extent such a redistribution of power through participation is feasible in representative democracies such as New Zealand’s, where the role of representatives is important. However, some level of participation is undoubtedly important to representative democracies. It has been suggested two themes underlie representative democracy: transparency and representativeness (the Royal Commission on Social Policy, in The Press, 7/5/88). Public participation helps to achieve both of these.

6. Public participation as conflict resolution.

Public participation can be used as a way of resolving conflict (Wengert, 1976: 27). By bringing people’s views, fears and ideas into the open and incorporating concerns into decisions or providing reassurance, public participation can remove misunderstandings between decision makers and the public (Thorn, 1984: 12). Underlying this are assumptions that sharing points of view increases understanding and tolerance and that the process will weaken tendencies towards dogmatic assertions and reduce personal bias and mistrust.

Although there is not universal agreement that public participation necessarily promotes better environmental decision making; the assumption here is that it usually does. Empirical

¹ For a good discussion of these issues see Bronwyn Hayward’s paper, *The Greening of Direct Democracy: A Reconsideration of Theories of Public Participation*, prepared for the XVIth World Congress of the International Political Science Association, 21-25 August, 1994, Berlin.

evidence on the effects of public participation is inconclusive (Iacofano, 1990: 5). In this report it is accepted that public participation is not a panacea for good decision making, but it is believed that the advantages of public participation outweigh the disadvantages, and that careful program design should overcome many of the perceived disadvantages of participatory processes. In order to provide some balance to the discussion here in brief² are some of the potential problems with public participation highlighted by commentators:

- Public participation can be more costly and less efficient than other forms of decision making (Arnstein, 1969: 224).
- Public participation is incompatible with merit systems and professionalism (ibid).
- Public participation is too demanding and people are just not that interested (Hayward, 1994: 5). The extent of the public's interest sets the outer limits of participation (Sears and Crothers, 1979: 56).
- The increasingly self-interested focus of public life (Mansbridge, 1983: 302) may mean those participating do not consider wider community interests and self interested and minority interests are able to dominate participatory processes. Those who chose to become involved may merely promote the interests of a minority (CE and MoW, 1979: 6).
- Public involvement may merely identify the diversity of community interests and make the establishment of the "public interest" more difficult (CE, MoW, 1979: 5) and potentially escalate conflict (Wengert, 1976: 27).
- Public participation may be at the expense of environmental outcomes.
- Public participation may simply advantage the already disadvantaged in that it will tend to produce a reflection of the conventional face of society (Debnam, 1979: 37). Some even argue that participation may actually exacerbate the division between those who can exploit the political culture and those who cannot, thereby increasing the alienation and frustration that the whole participatory idea is designed to eliminate (Sewell and O'Riordan in Utton et al, 1976: 17-19).

² For a good discussion of the advantages and disadvantages of public participation, see MfE, 1988a and MoW, 1978.

Clearly there are many possible motivations for, and possible advantages to be gained from the initiation of participatory processes. It is not surprising that the practice of public participation comes in so many forms and manifests different degrees of meaningfulness. The next section considers different possible levels of participation.

2.2 Levels of participation

Discussions about levels of participation tend to revolve around the amount of power passed over to the public. Public participation in agency decision making implies a sharing of power (Pateman, 1970). It is argued that power is the most fundamental dimension of participation (Windle and Cibulka, 1981 in MfE, 1988a: 10 and Arnstein, 1969). In Arnstein's words *"There is a critical difference between going through the empty ritual of participation and having real power to affect the outcome of a process"* (Arnstein, 1969: 216). Arnstein depicted citizen power in participatory processes on a "ladder of citizen participation" (see figure 1). The eight rung ladder ranges from manipulation, a rung which really represents "non-participation", and is a substitute for genuine participation; through to citizen power where citizens obtain the majority of decision-making seats or full managerial power (ibid). In between are placation, consultation and informing, levels Arnstein describes as "degrees of tokenism". Citizens will be informed and listened to, but have no assurance that their views will be heeded (ibid). Like all models, Arnstein's ladder is a simplification, but it helps to illustrate that there are significant gradations of participation with corresponding levels of power. The model has been criticised but it remains influential.

Citizen control Delegated power Partnership	Degrees of citizen power
Placation Consultation Information	Degrees of tokenism
Therapy	Non-participation Manipulation

Figure 1 Arnstein's ladder of citizen participation.

The symbol of a ladder suggests the top rung, citizen control, is the optimal situation. However, this may not always be the case. The rung of citizen control seems to fit with what Dahl (1970: 52) describes as “committee democracy” where within a particular group of people every person has the opportunity to equally participate in all decisions. Although this is a high minded ideal, the logistics of putting committee democracy into practice in anything but a very small community make it impractical in many situations (ibid). Representative democracy although flawed has developed because of some of the problems with this “ideal” form of democracy. This criticism does not take away the validity of Arnstein’s model, it simply queries whether citizen control will always be desirable or possible. In this sense then the critique is a critique of participation as a process.

A further problem with Arnstein’s typology is that it does not recognise the role of expertise in decision making. Iacofano contends the goal of citizen control “*is unrealistic and perhaps dangerous in practice since it implies that citizens would replace knowledgeable professionals in making final decisions about highly complex, technical problems*” (Iacofano, 1990: 34). He therefore proposes a model of participation based on 2 distinctions: (i) degree of political decentralization or shared power; and (ii) the degree of desired participant interaction. In his model there are four possible political strategies for interactive decision making: pseudo participation, consultation, partial participation and full participation (Iacofano, 1990: 34-35). In fact, this model bears a remarkable resemblance to Arnstein’s. It is not clear how the decision is made as to what would be the “desired degree of participant interaction”.

Levels of participation are influenced by the rationale(s) of the initiators of any programme. The context within which participation occurs also has an enormous impact on the type of participation which takes place. The nature of the New Zealand context and the shape of effective participation within it are discussed next. This section and the discussion which follows in 2.4, relating to obstacles to effective public participation, take a more practical look at public participation.

2.3 Effective public participation in the New Zealand context

New Zealand is a market led, representative democracy; a description typical of many Western nations. The past 15 years have been a period of dramatic change, in that the economy has moved from being one of the most protected in the world, to being one of the most open. Key changes for environmental administration and planning were the restructuring of local and regional government, and the decentralization of much decision making power. Traditionally there has been a reliance on government to make decisions on behalf of citizens (Memon, 1993); public participation in decision making is only slowly becoming part of our culture.

New Zealand is a bicultural society and this has definite implications for decision making in general, participatory processes and environmental management. The Treaty of Waitangi, signed in 1840 by the Crown and Maori, is a starting point for understanding Maori/Pakeha relations. The exact nature of the bargain made remains unclear, in large part because two different treaties were signed (a Maori version and an English version). In an effort to try and give some practical meaning to the Treaty, the "Principles of the Treaty" are now often referred to rather than the Treaty itself. Maori and Pakeha have different approaches to the environment and its management and at the very least the Treaty has ensured Maori voices must be listened to. Recent legislation has given greater recognition to the importance of the Treaty in Maori/Pakeha relations. For many Maori recent gains are not enough and the legality of Pakeha institutions are not always recognised, for these people the Treaty remains the *kaupapa*³ (pers. comm. Matunga and Pavelka).

It is within this context that public participation in New Zealand takes place. As already noted, the shape public participation takes is always context specific and depends on the rationale and level of participation. However it is possible to identify some common characteristics of effective public participation. In New Zealand effective participatory processes are likely to:

1. Meet the obligations and commitments created by the Treaty of Waitangi.

³ Translated *kaupapa* means "rule, basic idea or foundation" (Ryan, 1989).

2. Allow all interested parties to equally and effectively participate (Iacofano, 1990: 13).
3. Ensure timely, relevant and accessible⁴ information is available to all parties at all stages of the process to enable all to contribute intelligently and usefully.
4. Encourage and assist meaningful two, or multi way communication. This includes: actively listening to what others have to say and considering responses; keeping an open mind; allowing sufficient time; and holding meetings in venues which allow all parties to participate freely.
5. Proceed on the basis that all parties have an understanding of, and commitment to the purpose, structure and limits of the particular participatory process.
6. Be responsive to public concerns to at least some degree (Iacofano, 1990: 13) and allow room for different value systems and types of “knowledge”.
7. Be perceived by the participants and the wider community as “fair”. Perhaps this can be understood in reference to the principles of natural justice, which although difficult to pin down can generally be described as “*What a reasonable man (sic) would regard as fair procedure in particular circumstances*”⁵. Participants should not feel that the process has not been biased against them.
8. Be run by people skilled in group processes and people management.
9. Conclude with an evaluation of the process.

Effective participation as described here is possible and does at times occur. However there are many potential obstacles in the transition from the theory of public participation to its practice; practice some of these are discussed in the next section.

⁴ By accessible I mean information which is physically available and is presented in a way which lay members of the community can understand.

⁵ *Ridge v Baldwin* (1964) AC 40 at 64.

2.4 Potential obstacles to effective participation

This section highlights in a generic way potential obstacles to effective participatory processes, and thereby creates a structure for assessing obstacles to effective participatory processes under the RMA. The potential obstacles are organised into four categories: legislation, institutional arrangements, resources, and evaluation. In many ways the boundaries between these categories are spurious as there are many links and overlaps between them. The importance of the links and overlaps between the “categories” should not be overlooked. Recognising and taking into account the interconnections can mean the difference between processes which work and processes which do not. The discussion begins with a look at possible legislative obstacles to effective participatory processes.

2.4.1 Legislation

Legislation is the “*process of subjecting official decisions to predetermined rules*” (Jowell, 1973 in Ham and Hill, 1993:165). It creates many of the frameworks within which societies operate, establishes government agencies and directs their operations. Laws may give agencies broad discretionary powers or may clearly and strictly prescribe the course of action to be followed (Randle, 1995: 39). The amount of discretion statutes pass to administrators is an important issue. Administrative lawyers caution against legislation which gives government agencies unfettered discretionary powers (Ham and Hill, 1993: 151). At one extreme the granting of discretion can be a conscious ingredient in the design of legislation, or at the other end of the scale it may be a grudging acceptance of organisational realities (ibid: 158). The amount of discretion granted through legislation is something of a trade off between supposed certainty of outcomes, which may create a rigid and quickly outdated environment; and flexibility and responsiveness, which may mean that the desired outcomes are not achieved. There are no guarantees that either approach will result in the imagined outcome.

In relation to public participation, legislation plays a key role in that it can: *require* government agencies (or others) to include participatory processes as part of their decision making; *provide for* participatory opportunities to be established at the discretion of the agency; or it can give *no direction* on the matter. Lack of direction does not usually prevent the initiation of participatory processes but will make their establishment significantly more

difficult⁶. The extent to which legislation prescribes *how* participatory processes are run is also important as it may determine: who participates; the level of participation; the participatory techniques used; the availability of information; time frames for participation; and how seriously decision makers must consider views from the public to name a few of the issues potentially covered by statute. Clearly the effectiveness of any programme will be affected by how these issues are dealt with.

Statutory design can promote or obstruct the effectiveness of participatory processes. The institutional arrangements through which laws are administered also play a big part in the effectiveness of participatory processes.

2.4.2 Institutional arrangements

Definitions of “institution” extend from an institution as an organisation, through to an institution being a set of rules, cultural norms, or political traditions and customs (March and Olsen, 1984 and Ostrom, Feeny and Picht, 1988; all in Bührs and Bartlett, 1993: 8). Bührs and Bartlett (1993: 8) point out that the common element in these uses is that “institution” seems to refer to the contextual elements that guide decisions and policy making. Thus from an institutional analysis perspective a decision is more than the preferences of a particular decision making. It will also

reflect the influence of things by which a decision is guided, such as cultural preferences (values), symbols and procedures, formal and informal rules (norms’ decision-rules), the mandate of decision makers or agencies, the distribution of power and responsibilities, and the role the State is allowed or expected to play (ibid).

There is a strong symbiotic and mutually supportive relationship between institutions and the societies within which they sit. Society shapes, changes and reflects institutions, but in turn institutions also shape, change and reflect society. Institutions are enduring because they are built on premises which ensure their continued existence, typically the dominant social paradigm. Douglas describes this as “*the stabilizing principle*” and it is argued that it results

⁶ Initiation of participatory processes by government agencies where there is no direction from government to do so, may lead to questions about appropriate use of resources and even questions as to whether an agency is acting *ultra vires* (beyond its powers).

in institutions legitimizing the dominant values and belief systems of societies (Douglas, 1987).

In a concrete sense institutions manifest themselves in decision making processes, formal and informal rules, organisations, mandates and powers (Bühns, unpublished, 1995: 8). Clearly public participation is strongly influenced by institutions thus defined, since institutional arrangements create the setting in which public participation takes place. A comprehensive analysis of the institutional obstacles to participation under the RMA would be huge and is well beyond the scope of this report. In considering the institutional obstacles to effective public participation I have therefore narrowed my focus to the impacts of: institutional culture⁷; institutional practice and procedure; and the accessibility of institutions.

The ability of institutions to function effectively is in part determined by levels of resourcing. Resourcing issues as obstacles to public participation are considered next.

2.4.3 Resources

In this report “resources” refers to money, skills and information. Lack of resources is seen as an obstacle to participation.

Dahl addresses the impact of resourcing on people’s ability to make effective choices and argues that “*to the extent that resources needed to influence people are unequally distributed, the capacity to make personal choices effective is unequally distributed*”(Dahl, 1970: 89). Differences in resources tend to subvert political equality and great differences tend to subvert it completely (ibid). For participatory processes to ^{be} perceived as fair, participants need to feel they have relatively similar power bases. Where participants have very different levels of resourcing, there are likely to be large discrepancies in power, meaning that processes will probably be skewed in favour of the party with the most resources. In this situation a fair process will be difficult to achieve. Effective public participation is reliant on all parties being adequately resourced.

⁷ By “institutional culture” I mean the combination of history, structure, experiences and people which create the dynamics of an organisation and make it unique.

In order to assess whether participatory processes are functioning as intended there needs to be an evaluation of the process. Lack of any evaluation can in itself be an obstacle to effective participation.

2.4.4 Lack of evaluation

Evaluation is the process of determining the merit, worth and value of things and without such a process there is no way of distinguishing between the worthwhile and the worthless (Scriven, 1991: 1). Evaluation normally involves identifying criteria for determining merit, examining factors on the basis of this criteria and analysing and synthesising the results to compile an overall evaluation (Randle, 1995: 32) Evaluations can work as feedback loops for those involved in participatory processes by providing valuable information on what has worked and what has not. This gives direction as to how processes can be improved.

Evaluations can occur either while a process is running or once a process is completed; both forms of evaluation are useful and can be performed “in-house” or by an external agent. Someone from outside of an organisation is likely to produce a more objective evaluation of a process. Evaluations rely on both quantitative and qualitative information. Lack of an evaluation process does not necessarily doom participatory processes to failure, but it does mean their success is more likely to be dependent on good luck rather than good management.

Without an evaluation process it will be difficult to assess: whether legislation creates the right sorts of opportunities for public participation; whether institutions are performing as anticipated; and whether parties are adequately resourced to play their part in participatory processes. The combination of inadequate legislative and institutional arrangements, problems with resourcing and a lack of evaluation of processes have the potential to sabotage any participatory process. Any of these elements on its own could make effective participation difficult, but it is likely to be more useful to consider them in combination. For example resourcing may be the reason why no evaluation programme is in place.

Chapter 4 uses the classification of potential obstacles created in this section as a structure within which to consider the obstacles to effective public participation under the RMA.

2.5 Conclusion

This chapter has reviewed and synthesized some of the major themes from the literature on public participation. The range of views and different approaches to public participation make it a difficult concept to come to terms with. Likely characteristics of effective public participation in New Zealand have been identified in order to create a meaningful context in which to consider the obstacles to effective public participation under the RMA. It is believed that effective participation (as described here) can occur at any level, but participation will be more meaningful in the sense of giving communities real influence over decisions the higher up it appears on Arnstein's ladder. A classification of possible obstacles to public participation has been created and will be used later to assess obstacles to effective public participation under the RMA. Before considering the obstacles to effective participation under the RMA, it is necessary to have some understanding of the Act and its provision for public participation, this is the purpose of Chapter 3.

Chapter 3

Opportunities for participation under the Resource Management Act 1991: A descriptive overview.

3.0 Introduction

The issue of public involvement in environmental decision making was one of the foci of the Resource Management Law Reform (RMLR) process and numerous papers discussing elements of participation¹ were issued by the Public Participation Task Group (PPTG). The PPTG defined public participation as:

...a process for making wise decisions on resources with respect to clearly expressed societal goals. This would involve better channels for communicating individual and collective values (MfE, 1988b: 6).

Clearly there was some expectation that public participation in resource management decision making processes would lead to decisions more likely to promote the purpose of the new legislation: sustainable management.

The RMA offers a multitude of opportunities for the public to participate in resource management decision making processes. The purpose of this chapter is to familiarize the reader with the general nature of the formal opportunities for participation created by the Act in order to provide a context for: Chapter 4 which considers the obstacles to participation under the RMA; and the research agenda in Chapter 5. The chapter begins with a brief overview of the RMA and then gives a general description of the types of opportunities for public participation available under the Act. The detail of the opportunities for participation are set out in table form.

3.1 Overview of the Resource Management Act 1991

The RMA sets up a framework within which most resource management decisions in New Zealand are made, although policy decisions with resource management implications

¹ See in particular working papers 12, 17, 18 and 19.

continue to be made outside this framework, for example, transport, economic, energy and tourism policy formulation.

The sole purpose of the RMA is to “promote the sustainable management of natural and physical resources” (section 5, RMA). Although sustainable management has a statutory definition, there is little certainty about what it means. Sustainable management and its implications must however always be considered by those acting under the provisions of the Act. This includes people involved in RMA participatory processes. The Act created a three tier hierarchy of agencies (national, regional and local) and a hierarchical regime of environmental standards, policy statements and plans. These are the institutions² which give sustainable management a practical face. Part III of the Act sets out duties and restrictions under the Act, but policy statements, plans and agencies with RMA responsibilities refine these duties and restrictions further. For the public to have meaningful input into environmental decision making and to help define sustainable management, they need to be able to influence the decision making processes under these institutions.

There are some significant practical and philosophical differences between the resource management framework created by the RMA and the previous regime. Some of these are:

- The devolution of decision making powers from national to local levels. Most resource management decision making power now rests with regional and district councils and ultimately the Environmental Court³.
- A resource management framework designed to be both technically comprehensive and democratic (Ritchie, 1996: 223).
- A softening or modification of the adversarial system (Powell, 1995: 12).
- The permissive rather than prescriptive nature of the RMA. Within wide limits, people can do what they like, so long as they do not cause any significant adverse effect on the environment (Memon, 1991: 4). Resource consents must be obtained before people undertake activities contrary to the provisions of a regional, district or coastal plan.

² The term institutions is taken to encompass decision making processes, formal and informal rules, organisations, mandates and powers (in Bührs, unpublished, 1995).

³ The Planning Tribunal was renamed the Environmental Court and given the powers of a District Court under Resource Management Amendment Act, 1996.

- The discarding of virtually all environmental standards and guidelines from earlier legislation; the only minimum standards provided are for water classification and these are only guidelines. Decision makers are no longer expected to make tradeoffs or adopt a multiple use approach in promoting wise or beneficial use of resources (Memon, 1991: 3-4).
- The concentration on regulating the effects of human activities on the environment rather than regulating the activities *per se*.
- Greater recognition of the role of tangata whenua in New Zealand and in particular, in the management of the environment.

3.2 Rationale for the RMA participatory processes

Chapter Two identified a wide range of possible rationales for public participation. At the outset of the RMLR process, as might be expected, people were pushing for new public participation provisions for a range of reasons. The PPTG developed a set of criteria and principles to help guide decide between options for public participation⁴. These criteria and principles were the result of discussions amongst the task group as to what kind of participatory approach was appropriate for the new legislation. Three distinct perspectives had emerged in the task force's deliberations: the Treaty of Waitangi perspective; the market/property rights perspective; and the citizens' rights/democratic perspective (MfE, 1988b). The primary objective of the Treaty perspective was to "*provide effective ways and means for sharing power which meet the Maori-Crown partnership commitments made under the Treaty*" (ibid: 11). Proponents of the market/property rights perspective argued that "*ownership confers a right to decide how resources will or will not be used*" (ibid: 12) and that the organisation of participation should be left to local authorities and communities. They conceded that some broad guidelines on participation may be useful but thought they should be permissive rather than directive and need not necessarily be set by central government (ibid). The key to the citizens' rights perspective was the need for all interested parties to have equal and effective access to the decision making processes.

Although debate on these three perspectives was never clearly resolved, elements of each perspective can be seen in the processes set up under the RMA. It was universally agreed that

⁴ See Appendix Two for details.

any options developed needed to be sensitive to bi-cultural needs and the Treaty (ibid: 5). This is reflected in section 8 of the Act which requires the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) to be taken into account by anyone exercising functions and powers under the RMA. The citizen's rights perspective is represented to some degree in that all RMA participatory processes are at some stage open to any member of the public. According to some commentators (Memon, 1993 and Hayward, 1994) the market/property rights perspective became the dominant perspective. This is not surprising given that market ideology was the driving force in reforms of the New Zealand economy and public service in the 1980s. Memon argues that the RMA may have led to a marginal increase in favour of public rights over rights of individuals, but that environmental planning is being essentially market-led where collective decisions are taken only to cope with private decisions (Memon, 1993: 105).

3.3 Levels of participation under the RMA

As envisaged in the RMLR process opportunities for participation under the RMA occur at national and local levels and during at least four stages of decision making described as: making policy; setting rules (for example making plans); applying rules (for example granting resource consents); and checking for compliance (for example satisfying any conditions set as part of a consent) (MfE, 1988c: 6). The existence of formal opportunities for participation does not preclude informal⁵ public participation initiatives in decision making processes. This project however focuses on the formal opportunities although it is acknowledged that the informal processes are likely to be as, if not potentially more, important.

A summary of the formal opportunities for participation under the RMA can be found in Table One. The rest of this chapter considers the nature of these opportunities.

3.3.1 Participation in policy and rule making - policy statements and plans

The public is invited to participate in policy and rule making processes. In the main this involves a consultation process. Although the RMA sometimes directs who must be

⁵ By informal opportunities for participation, I mean those opportunities which can be initiated by authorities, but are not mandatory. An example is the Landcare programmes run by Environment Waikato.

consulted early on the consultation process, the general public will probably be consulted at some stage. The first schedule lays down guidelines for consultation which apply to, amongst other things, the development of regional policy statements and regional and district plans. The guidelines are not however comprehensive and leave plenty of room for authorities and communities to develop their own consultation processes to meet local conditions. There are no universal requirements as to the form consultation must take.

Lack of clarity over the definition of consultation has resulted in numerous court cases initiated by people concerned that they have not been properly consulted. The most commonly cited New Zealand definition of consultation comes from Justice McGechan⁶ who said that consultation can be summarised as including, but not limited to all or any of the following:

- the statement of a proposal not yet finally decided upon;
- listening to what others have to say and considering responses;
- allowing sufficient time and making genuine effort;
- making enough information available to enable those being consulted to be adequately informed to be able to make intelligent and useful responses;
- the party consulting keeping an open mind and being prepared to change or even start afresh although it is entitled to have a working plan in mind;
- recognition that it is an intermediate situation involving meaningful discussion;
- an obligation on the party consulting to hold meetings, provide relevant information and further information on request, and an obligation to wait until those being consulted have had a say before making a decision.

The tangata whenua have been particularly active in trying to ensure adequate consultation takes place. Case law is continuing to develop and is in effect creating guidelines as to what sort of consultation is acceptable⁷.

⁶ In *Wellington International Airport v Air NZ* (1991)1NZLR 671 (Court of Appeal).

⁷ Refer to *Case law on consultation*, 1995; a booklet published by the Ministry for the Environment for a detailed summary of the relevant case law.

TABLE ONE: PARTICIPATORY PROCESSES UNDER THE RMA

Opportunity	Sections	Process	Who may participate?	Time frame	Grounds for appeal
Creation of national environmental standards.	43 - 44	The Minister for the Environment (the Minister) recommends to the Governor General (GG) to make regulations. Public consultation.	Any person.	The public must be given adequate time to comment on proposed regulations	No appeal.
Creation of national policy statements (NPS).	45 - 58	The Minister is responsible for the creation of NPS's. <ul style="list-style-type: none"> Minister notifies intention to prepare proposed NPS. Minister publicly notifies NPS. Minister appoints board of inquiry to inquire into and report on proposed NPS. Submissions process - submissions publicly available. Board must "have regard to" the submissions. Board makes a recommendation to the Minister on proposed NPS. Minister makes final decision on content of NPS. 	Any person	Once the proposed NPS has been notified by the Board, the public shall have at least has 20 working days to lodge submissions. No other statutory time frames.	No appeal.
Regional policy statements. Regional plans. District plans.	59 - 62 63 - 70 72 - 77	All regional policy statements, and regional and district plans are to be prepared in accordance with RMA 1st schedule. <ul style="list-style-type: none"> Councils prepare a proposed policy statement or plan and either before or during this process <u>must</u> consult all relevant Ministers, affected local authorities and affected tangata whenua. Others may be consulted. Proposed policy statement or plan is notified. Submissions and further submissions made. Council makes a decision. 	Any person.	<ul style="list-style-type: none"> 40 working days to lodge submissions once a proposed plan or policy statement is notified. Time limits may be extended under section 37.	The content of a plan or policy statement may be appealed to the Environmental Court by a person who made a submission on the point appealed.
Transfer of powers.	33	A local authority may transfer most of its functions, powers or duties under the RMA to a public authority, which includes an iwi authority. <ul style="list-style-type: none"> Local Government Act 1974 consultation procedure. The Minister is notified. 	Public authorities, including iwi authorities. Local government consultation procedures.	Not specified.	No appeal.
Delegation of authority.	34	Local authorities may delegate to any community board most of their functions, powers or duties under RMA. Delegations are made on such terms and conditions as the local authority thinks fit.	Community boards.	Not specified.	No appeal.
Resource consent process.	87 - 150	<ul style="list-style-type: none"> Applicants apply to council for a resource consent. Applications to be accompanied by an assessment of environmental effect (AEE) prepared in accordance with the RMA 4th schedule. Consultation process for AEEs. Councils may request further information. Council decides whether to notify application. If application notified, process is open to public submissions. Submissions on notified applications. Council may call a prehearing meeting. Hearing (provided submissions have been made). Council decision. 	Any person for notified applications.	<ul style="list-style-type: none"> 10 working days to publicly notify the application. 20 working days to receive submissions. 25 working days after the closing of submissions to hold a hearing. At least 10 working days notice must be given of the hearing. If no hearing is held, 20 working days to make and notify decision. If a hearing is held, 15 working days after the hearing to make and notify the decision. All these time frames can be extended under section 37.	<ul style="list-style-type: none"> No appeal on the Council's decision on whether to notify an application. The applicant or any submitter may appeal the Council's decision to the Environmental Court on the whole or any part of the Council's decision.
Designation and heritage orders.	166 - 198	The process for obtaining a designation or a heritage order is essentially the same. The applicant applies to the Council, and the application is publicly notified. With a few modifications, the same process of submissions and hearings applies as for resource consent applications, including the public participation provisions.	Any person.	As for resource consents.	The applicant decides whether to accept the Council's decision. The Council and any submitter may appeal the applicant's decision to the Environmental Court..
Water conservation orders	199 - 217	<ul style="list-style-type: none"> Any person may apply to the Minister who may reject the application, giving reasons, or appoint a special tribunal to hear and report on the application. If a tribunal is established, it is required to publicly notify the application, hear submissions and report to the Minister. On the advice of the special tribunal or the Environment Court, the Minister recommends to the Governor-General to make a water conservation order. 	Any person may make a submission to the tribunal.	<ul style="list-style-type: none"> Submissions must be made to the special tribunal by the 20th working day after notification of the application.. Submissions to the Environmental Court must be made within 15 working days of the special tribunal's decision. 	An applicant or submitter may lodge a submission with the Environmental Court requiring the Court to conduct a public inquiry into the special tribunal's report. The Environmental Court reports to the Minister.

On Arnstein's ladder, consultation is regarded as tokenism as real power is not passed over to the community. Given that consultation is a much used form of public participation under the RMA, the changes to the participatory processes may not be as radical as is argued by Geoffrey Palmer (1995). However given the flexibility of the processes there is significant potential for councils to initiate consultation programmes which go beyond tokenism.

Once the consultation process is complete the consent authority puts together a proposed plan or policy statement and the general public are then able to make written and oral submissions to a consent authority committee. The final decision as to what is included in a policy or plan is up to the consent authority but their decision may be appealed to the Environmental Court. This part of the process is similar to the process for resource consent hearings.

3.3.2 Participation in applying rules - the resource consent process

Resource consents are needed for any activity which breaches rules in a district or regional plan. The process of applying for, and being granted a resource consent can be convoluted. Some details of the process are set out on Table One. The public have a number of opportunities to be involved in the decision making process for resource consents. People affected by an applicant's proposal must be consulted by the applicant in the preparation of assessments of environmental effects which is part of information requirements for an application. Once the application has been received by the appropriate authority a decision is made as to whether the application is to be notified⁸. For notified applications the general public is able to make written and oral submissions on the proposal to the consent authority committee. Informal prehearing meetings can be arranged between the applicant and submitters prior to formal hearings to try and resolve issues before formal hearing. Any decision made by a hearing committee is appealable to the Environmental Court.

The resource consent process sits most easily in the "informing" rung of Arnstein's ladder. The public is given the opportunity "*to hear and to be heard*" (Arnstein, 1969: 217) but have no power to make a decision on the issue. Arnstein again considers this as tokenistic (ibid).

⁸ The decision as to whether an application is notified or not is the consent authority's. Non-notified applications are decided "in-house" with no public input.

3.3.3 Delegated power

There are opportunities under the RMA for local authorities to delegate some of their powers certain groups in the community including iwi authorities and community boards (see Table A). Delegation of power is very near the top of Arnstein's ladder of citizen power (ibid).

3.3.4 Checking for compliance

The RMA provides a number of mechanisms which can be used to enforce its provisions. Declarations can be used to obtain a definitive statement from the Environmental Court as to the existence or extent of functions, duties or rights under the Act or policies, plans and consents issued under the Act, or to resolve inconsistencies created by the Act (Grundy, 1996:66). Any person may apply for a declaration.

Enforcement orders can be used to order a person to stop, or prohibit them from commencing an activity which is likely to contravene the Act, or any policy, plan or consent issued under the Act, or to remedy any environmental damage that has already occurred. Any person may apply to the Environmental Court for an enforcement order. As with the resource consent process the public's involvement in enforcement proceedings seem to fit the description of "informing", the public "hears or is heard" and has no say in decisions made.

3.4 Conclusion

There is no doubt the RMA has extended the range of opportunities for the public to participate in decision making processes. It is interesting to note there is no mechanism built into the RMA to provide for evaluation or monitoring of how the public participation provisions are working. The questions of how meaningful the opportunities for participation are in practice, and whether they are all being picked up create some interesting debates which are addressed in Chapters 4 and 5.

Chapter 4

Obstacles to effective participation

4.0 Introduction

Geoffrey Palmer (in Milne, 1992: 5) argues that protecting the environment is about participating in environmental decisions, and that New Zealand now has a legal framework which allows this to occur. According to Simon Upton, the devolution of environmental decision making powers to local authority level has resulted in the delivery of RMA environmental policy into the hands of truly grass-roots democracy (Upton, 23 April 1996). Are these assertions from two politicians who both have a large personal investment in the RMA, an accurate reflection of how processes under the Act operate?

The effectiveness of public participation ultimately relies on the public taking the time to become involved. However, there are a number of reasons why the public may not take the opportunity to participate. This chapter discusses the obstacles to effective public participation under the RMA as identified through my research. The chapter is divided into four main sections: legislation; institutional arrangements; resources and evaluation. These divisions reflect the obstacles to public participation identified in Chapter 2. As was pointed out in Chapter 2 these categories are somewhat arbitrary given the overlaps and interconnections between them. The size of sections in this chapter differs, to a large degree this is a reflection of where the problems appear to lie, this is not however true for the evaluation section. This chapter in no way claims to be a comprehensive¹ and definitive review of the obstacles to effective participation under the RMA. Rather it attempts to provide a general indication of the obstacles to participation and offer some insight into how they may be overcome.

The RMA provides the boundaries within which this report examines public participation, legislation is therefore the first possible obstacle to effective public participation considered.

¹ As was noted in the introduction to the project the obstacles focused on in this chapter in the main relate to the difficulties of participating in the resource consent process.

4.1 Legislation

As outlined in the previous chapter the RMA makes extensive provision for public participation. Here it is argued that its provisions go a significant way towards meeting the criteria established for effective public participation in Chapter 2. The RMA:

- Requires anyone exercising powers under it to take into account the Principles of the Treaty of Waitangi. Although the Act does not recognise the Treaty itself, recognition of the Treaty Principles is significant. Consultation is a recognised principle of the Treaty (MfE, 1995: 3).
- Removes many of the requirements for legal standing, thereby enabling anyone to be involved in participatory processes.
- Attempts to make participatory processes more accessible by making them less formal and moving away from adversarial approaches to conflict resolution.

Although the RMA requires agencies to involve the public in many of their decision making processes, implementing agencies have considerable discretion as to how participatory processes operate. The Act does not for example prescribe or even give guidelines as to what effective consultation might be; or provide incentives for agencies to delegate or devolve powers. Thus while the Act is directive in that it requires participatory processes to be in place, it does not set any standards which participatory processes must meet. This “hands off” approach is typical of much of the legislation passed during the late 1980’s and reflects the free market mindset of government. There is a reliance on the market, in this case local government and communities, to make the participatory provisions work. Potentially this is problematic, particularly as the Act does not create a quality control or formal evaluation system to assess whether participatory processes are working well. On the other hand, as intended, authorities and communities are able to develop processes which fit their local context. In the past Maori for example, have often been alienated from decision making processes. If they are involved in the design of participatory processes as is possible under the RMA, culturally appropriate processes may be established.

It has been commented (Bühns, in MfE, 1989: 64) that the RMA provisions create “reactive” rather than proactive opportunities for public participation. Queenstown Community

Advocate, Bill Nagle made a similar point in commenting that public participation should not simply be about responding to consent applications although this is the way many of the RMA participatory processes are framed. There are examples of proactive participatory processes in resource management field² but they fall outside of the formal RMA processes.

The RMA participatory provisions are enabling, they create the possibility of effective public participation. Whether the provisions are operated in ways which encourage effective public participation depends on the institutions implementing them.

4.2 Institutional arrangements

The institutional arrangements supporting the RMA are complex, it is therefore not surprising they present some obstacles to those wishing to participate in resource management decision making. This section considers institutional obstacles to effective participation in three subsections: institutional culture; institutional practice and procedure; and accessibility of institutions.

4.2.1 Institutional culture

Local authorities have gone through dramatic change during the last ten years. As a result of the Local Government Amendment Act 1988 thirteen regions, seventy-four local districts, and seven special purpose boards were created to replace 625 existing units of local government (Bühns and Bartlett, 1993: 120). The changes are in line with the New Right principles that guided central government reform and brought with them a greater emphasis on *“objective-based planning and performance measurement, transparency of accounting practices, and limitation of the size and function of government”* (ibid). In 1991 through the RMA these new agencies took on key environmental management functions as environmental policy was largely delegated from national to local level. The full impact of these reforms is not yet clear and will unfold as plans and policy statements become fully operational.

Councils are still coming to grips with the new regime and their new relationship with the public. Staff have been through enormous upheavals both in terms of the organisations they

² Landcare programmes for example can enable people to take proactive approaches (Ritchie, 1996).

work for, and the approach they are required to take to their work. Closely involving the public in decision making has not been the practice of local government. For the last 150 years the majority of the population have held utilitarian values; a strong belief in the rights of private property owners and a virtually unquestioned faith in the ability of the government to make good decisions (Memon, 1993: 18). There is still an attitude amongst some authorities that *"We know what's best. Just trust us."* (pers. comm.). The combination of these beliefs has not created a natural environment for public participation to flourish. These attitudes are not easily changed and are an obstacle to public participation which need to be confronted by those interested in promoting participatory processes.

Pakeha institutional culture has often been less than accommodating of Maori needs. A long history of misunderstanding has created a considerable obstacle to Maori being willing to participate in decision making within Pakeha institutions. Council structural changes (for example to committee membership) and the appointment of Iwi Liaison officers show willingness by some to change this. However according to Margaret Mutu *"It is rare...even today, that decision makers in local authorities... know and understand anything outside their own Pakeha cultural values."* (1994: 138). Maori may decide that their interests are best served by creating their own resource management processes independently of Pakeha institutions (pers. comm. Matunga and Pavelka).

Implementation of the RMA has demanded a change in mindset. According to Simon Upton the Act should be a liberating one (April 1996). He argues that it should be encouraging new and innovative approaches; in the field of public participation there is plenty of room for this attitude. New approaches will only come about if institutions are able to *"leapfrog over attitudes that remain in the past"* (ibid). The practice and procedures adopted by authorities will to a large extent create or limit obstacles to effective public participation.

4.2.2 Institutional practice and procedure

Within organisations there are usually particular ways of doing things and written and unwritten rules employees are expected to follow. For example, a council might have a policy to notify all resource consent applications. This is the type of institutional practice and procedure discussed in this section. Most of this section looks at obstacles within the

resource consent process, however it begins by considering some timing and time frame issues and the use of the RMA delegation provisions.

4.2.2.1 Timing and time frames

Commentators suggest that to be most effective public participation should occur at all stages of decision making processes (IUCN, 1980; MfE, 1988a). This does not happen with many RMA participatory processes and is problematic. For example in the resource consent process although applicants are required to consult with “affected parties” when compiling assessments of environmental effects, consultation often does not take place until after the completion of application plans. By this stage applicants may have spent thousands of dollars and be heavily committed to the proposed plan. This may well set the scene for an adversarial relationship between applicants and potential submitters right from the outset (pers. comm. Nagle). Early public participation in resource consent applications and the development of policies and plans can prevent obstacles arising later in the process.

Many of the time frames set by the RMA are reasonably tight. There is provision for these to be extended, but reportedly authorities are reluctant to extend deadlines (Henderson, 1994: 6). Runanga and community groups often only meet once a month (pers. comm.) which can make meeting statutory deadlines difficult.

4.2.2.2 Delegation of functions and powers etc. by local authorities

The RMA empowers local authorities to delegate some of their functions to amongst others, iwi authorities and community boards. These are opportunities for communities to have a real say in decision making. It is very interesting that these powers are not widely used. There are no reported examples of powers being delegated to iwi authorities. Delegation of powers does not seem to be a procedure authorities are comfortable with.

4.2.2.3 The resource consent process

One of the issues raised in the PCE’s report on public participation was that many people believe public participation is wasted or negated by decision makers. Despite the fact that due process is usually followed the views of interested parties are allegedly not heeded (PCE, 1996: 3). The existence of this view and the strength with which it is held, particularly in

relation to the resource consent process, have been confirmed by my research. Obstacles to effective public participation in the resource consent process are discussed below.

Non notification or poor notification of resource consent applications

Non-notification of resource consent applications means the public is excluded from decision making processes. Non-notification is a highly effective obstacle to participation! Policies on whether to notify applications or not vary considerably amongst councils, however, a 1992 MfE survey revealed that territorial councils notified fewer than 10% of applications and regional councils less than half (in Dormer, 1994: 31). Planning consultants and developers (Dormer, 1994 and Henderson, 1994) would like to see this number reduced further, whereas community representatives believe notification levels are already too low (pers. comm. Clark, Nagle and Thompson; Grundy, 1996).

Even if consents are notified, the form of notification may be ineffective. Consent applications are usually notified in newspapers. There are reports of applications being notified in papers with small circulations rather than in the main dailies and the notices being framed in ways which make them difficult to understand (pers. comm.). Ineffective notification may mean people are not aware they are able to participate.

Applications need not be notified if written approval for the application has been received from every "affected person". This has resulted in ~~the~~ "consents compensation markets" in some parts of the country. Applicants pay affected parties to give their written consent to applications. This raises equity issues and seems to signal the commodification of the resource consent (Grundy, 1996: 70 and pers. comm.). There are reports of potential submitters being offered sums as large as \$50,000 (pers. comm.). In the eyes of business, the consent market is a legitimate way of easing the path of development applications (Dormer, 1994: 33).

The public is able to make submissions on notified applications. In order to make useful and intelligent submissions, the public need access to all relevant information.

Information sharing

There are numerous reports (pers. comm.) of potential submitters being supplied with incomplete and outdated sets of information relating to applications. This is in part due to poor practice on the part of councils, and in part to inadequate applications being filed. Reportedly (pers. comm.) it is common practice for applicants to include as little information as possible with their initial applications and to introduce new material at hearings. Withholding of information prevents effective participation by making it difficult for submitters to put in relevant submissions and by creating an atmosphere of mistrust.

Prehearing meetings are one forum where information issues can be discussed in a nonadversarial manner.

Prehearing meetings

Well run prehearing meetings have the potential to greatly enhance public participation (Henderson, 1994 and pers. comm. Clark). To be effective however, they need to be run by people skilled in mediation and negotiation techniques; often this is not the case (ibid). Prehearing meetings should not be obstacles to effective public participation, however, if run inappropriately they may escalate existing animosities (Henderson, 1994) and finish up as mini-hearings. The presence of lawyers and other professionals seems to be a contributing factor to the down fall of many prehearing meetings (Henderson, 1994). If issues remain unresolved after prehearing meetings, the application proceeds to a council hearing.

Council hearings

There seems to be almost universal disgruntlement, on the part of submitters, at the conduct of hearings. The general flavour of people's comments is that the hearings processes have been "captured" by the legal fraternity which has given them a distinctly legal and adversarial flavour (pers. comm. and Grundy, 1996). This is despite the fact the RMA requires council hearings to be run "*without unnecessary formality*" (section 39). In addition it is claimed they are often conducted in ways which favour applicants and breach any concept of fairness (see Appendix 3 for further details).

Many of the problems with hearings seem to stem from the fact they are run by councillors who: are not necessarily trained or experienced in running such processes; may not have an understanding of procedural fairness and the rules of natural justice; do not always have a grasp of technical issues and have political agendas. There is provision in the RMA for hearings to be run by independent commissioners. This seems to result in fairer processes (pers. comm.). Independent commissioners are chosen because of their experience in resource-management issues and their skills in conducting these types of processes.

The biggest frustration people voiced over hearings processes was that there is no redress for breaches of natural justice (pers. comm.). Appeals to the Environmental Court are on substantive matters only. Thus other than via the ballot box, councillors can not be made accountable for the conduct of hearings. Given that taking a case to the Environmental Court is a big commitment for lay members of the community this is problematic and does nothing to encourage community participation.

Grundy (1996: 71) argues:

that unless citizens and communities can be sure their voices are being heard, and their efforts are contributing to decisions being made on their account, they will lose confidence in the procedures established by the RMA and no amount of rhetoric extolling the virtues of public participation will convince them otherwise.

My limited research confirms this conclusion. People are not asking for proceedings to be more formal, but the perceived lack of equity is an obstacle to effective participation.

4.2.3 Accessibility of institutions

As noted above, unhappy experiences in participatory processes make people reluctant to participate. At times council hearings and processes can be intimidating, adversarial and culturally inappropriate; this makes them inaccessible for many people and hinders effective participation. Interviewees suggested consent authorities are not aware of just how intimidating hearing processes are for many people (pers. comm. Clark and Nagle).

Lack of knowledge about processes also makes them seem inaccessible. Numerous people have suggested a nation-wide programme of education is needed to explain the RMA (Ballantyne and Milne 1995; PCE 1996; and pers. comm. Clark and Nagle).

The expense (in time and money) of taking part in processes also makes institutions inaccessible. The question of resourcing raises numerous potential obstacles to public participation.

4.3 Resourcing

Chapter Two identified resources as money, skills and information. This section reflects this breakdown and is made up of three subsections: money, skills and information. Lack of adequate resourcing of some or all parties to participatory proceedings is seen as obstacles to effective public participation.

4.3.1 Money

Taking part in resource consent processes is often an expensive business. As identified in the previous section procedures have become more legalistic and lawyers are expensive. Money buys skills and information, and there is a view among some companies that you can buy councils, not with backhanders, but with enough information to swamp them (Chapple, 1995: 18). Interviews confirmed that it was possible for councils and the Environmental Court to become servants of organisations that had funds (pers. comm. Borricks, Clark, Nagle, Thompson and Woudberg).

The high cost of professional services, either of a legal nature or for specialist expert witnesses, is often beyond the means of individual or group submitters. This seriously marginalises their ability to participate on an equal footing with applicants (Grundy, 1994: 66). In cases where community groups have legal advice, it has almost always been provided on a voluntary basis (ibid). During the RMLR process there was an expectation that some form of legal aid would be available to participants in the new processes³; amendments to the legal services legislation were proposed but never came to fruition (MfE, 1988c; MfE, 1988f:

³ Even those pushing the property rights perspective agreed that: "*Non-governmental organisations which to protect or conserve a resource in the public interest, but without the financial means to be active in the market, should (where appropriate) receive financial support from local and central government.*" (MfE, 1988b).

56). In resource management proceedings legal aid is currently only available for individuals and is rigorously means tested. It is also not available until a matter reaches the formal judicial stage of the process, that is at the Environmental Court level.

The threat of costs being awarded against public interest groups is a further financial obstacle to full participation⁴. In the last eighteen months there have been a number of large orders for costs made against public interest groups and there is some evidence that this has deterred other groups from appealing decisions to the Environmental Court⁵. When this occurs, the Tribunal loses the benefit it might have had from the interest group's case (Tiller, 1995: 4). Although the awarding of costs does serve a purpose in deterring vexatious litigation, this needs to be balanced against the rights of individuals and public interest groups to participate in resource management processes. Currently there are also attempts by applicants to require community groups appearing at the Environmental Court to provide security for costs at the outset of hearings (pers. comm. Borrick). A decision on this is pending.

Communities have responded to discrepancies in financial resourcing in a number of ways. For example, in Christchurch, the Community Law Centre has a specialist resource management unit but it is the only one of its kind in the country. In Queenstown, the District Council has allocated funding to a community trust to employ an advocate who is able to assist groups participating in resource management processes. However with a new council funding has been dropped from \$30,000 per annum to \$15,000 (pers. comm. Nagle).

Many iwi have funding problems similar to those of community groups. For Maori there is the added grievance that consent authorities by law need their input but are often not prepared to pay for it, or if they do it is at rates far below those for other consultants (Mutu, 1994: 139). The PCE (1992) issued a statement clarifying RMA consultation with Maori. She stated that where consultation with Maori by local authorities and consent authorities is required by legislation then that authority must pay for that advice. Where it is required by an applicant for a resource consent, then the applicant must pay, as they must pay

⁴ It is only once a matter reaches the Environmental Court that awards for costs can be made.

⁵ For example the Royal Forest and Bird Society withdrew an appeal against the granting of consent for the Globe-Progress mine near Reefton (Grundy, 1996: 68).

for any advice (ibid: 140). This statement does not however have the status of law and is often not followed (pers. comm. Matunga).

Some local authorities also suffer from under funding. Rating bases may not be adequate to provide for the employment of skilled people and the provision of effective service (Ballantyne and Milne 1995: 3). High levels of skill are important to effective public participation.

4.3.2 Skills

As has been highlighted above professional skills (legal and technical) have become almost essential for full and effective participation in RMA participatory processes. Many community groups do not have the skills bases of business organisations and cannot afford to buy them (pers. comm. Clark, Nagle, Thompson and Woods). This can prevent groups from participating fully and effectively.

As managers of many of the RMA participatory processes it is important skills bases in councils at officer and councillor level are good. Although there is a growing appreciation of the need for public participation in councils, often the good will^{is} not followed by knowledge or skills behind it to deliver (pers. comm.). Councils need people skilled in group processes and people management; and people able to interpret and produce technical information relating to resource management issues.

4.3.3 Information

Information is vital to any decision making process and raises a multitude of issues including questions of: cost and who pays; the quantity and quality of information needed; the legitimacy of information; when information is required and by whom. For participants to effectively participate in resource management processes they need access to all relevant information, and information to be in an accessible form⁶.

There are many examples of participatory processes stumbling over disagreements information issues. In a hearing setting disputes often develop over whose information is

⁶ Details of information needs are identified in Appendix 4.

accurate (pers. comm. Pavelka). By involving parties early in consultation processes and developing common information bases it may be possible to avoid this kind of dispute (pers. comm. Pavelka and Nagle).

Information on processes is also important in assessing whether they are operating as intended.

4.4 Lack of evaluation

Evaluation of participatory processes under the RMA happens on an ad hoc basis only. Partial “evaluations” of participatory processes have been performed by the courts, the PCE⁷ and by some local authorities⁸. Currently the primary focus of monitoring and evaluation programmes has been on the requirement of actually running consultation and other participatory processes rather than on how well they have been performed (Randle, 1995). Given the range of problems which seem to exist with current participatory practices, lack of evaluation, and hence lack of accurate identification of problems in itself seems to be an obstacle to effective public participation.

4.5 Conclusion

The RMA creates a wide range of opportunities for public participation and most, but not all, of these are being used. Whether they are being used effectively is another question and one which cannot be answered without a full evaluation of RMA participatory processes. However it seems premature to claim (as does Simon Upton, 23 April 1996) that the decentralisation of environmental decision making in combination with the RMA has delivered “*truly grass roots democracy*”. The obstacles to effective participation in the RMA processes identified in this chapter give an indication of the areas which participants in the RMA participatory believe are problematic. The next chapter introduces a research agenda for resource managers wishing to promote effective public participation under the RMA. If followed it should go some way to identifying ways of removing obstacles to effective public participation.

⁷ For example in the PCE’s report *Assessment of environmental effects: Administration by three territorial authorities* (1995).

⁸ For example Waimakiriri District Council.

Chapter 5

Research agenda, recommendations and conclusion

5.0 Introduction

This final chapter brings the report to a close. It is divided into three sections: a research agenda; recommendations; and a conclusion.

The primary aim of the report was to produce a research agenda for resource managers which stimulated thinking and prioritised research into ways of removing obstacles to effective RMA public participation. Some resource managers will be in a position to implement the recommendations made in the research agenda; others will not. They will however be able to lobby for research. Lobbying tends to be more effective if it is focused by concrete and considered proposals.

5.1 Research agenda

In New Zealand over the past twenty years a considerable body of work has been produced on public participation in environmental decision making; some of it has been referred to in this report¹. To be most strategic any new research should build on and complement earlier work rather than repeat what has already been done. It is also important that research complements current work being done to promote effective RMA participation²; and recognises and uses the experience and knowledge of public participation within institutions and the wider community. Without this kind of approach any research is unlikely to be accepted as legitimate by practitioners. It would also be somewhat hypocritical to make recommendations about public participation without taking a participatory and inclusive research approach.

The nature of public participation will always be context specific, but this report has argued it is possible to identify some common characteristics of effective public participation within

¹ The following works have been particularly useful: *Public involvement in environmental planning symposium issues paper*, 1979; *Public participation: issues from the literature*, 1988a; *Public participation*, 1988b; *Public participation: options for legislation*, 1988c; *Public participation in environmental decision making*, 1996; and *Obstacles to public participation evaluation*, 1995. Complete citations can be found in the reference list.

² Although I have tried to come to grips with the work being done on public participation in "the real world" there are bound to be useful initiatives that I have missed. The research agenda and recommendations should be read in this light.

the RMA New Zealand context. Some of the recommendations for research suggested are generic and the results will be relevant to any aspect of public participation. Others relate to specific participatory practices. In the body of the report obstacles to public participation were discussed in four categories: legislation; institutional arrangements; resources; and lack of evaluation. As has been emphasised throughout the report the links and overlaps between these categories are important. Recognising and taking into account the interconnections can mean the difference between processes which work and processes which do not. The research agenda advocates a research strategy which tries to take into account the connections between the interconnections between the four “categories”.

The proposed research agenda is by no means complete, in that there will always be room for research into improvements to processes. However if followed the research agenda may go some way towards developing ways of overcoming the obstacles to effective public participation under the RMA.

5.1.2 Sustainable management and public participation

Research is needed to establish whether there is a substantive link between public participation and sustainable management/sustainability. Sustainable management raises issues which are fundamentally important to the interests of future generations and to the state of the environment. Processes for the promotion of sustainable management should not be left to chance. Although there is normative evidence that public participation promotes better decision making (Pye-Smith et al, 1994 and WCED, 1987), empirical evidence that public participation leads to more sustainable outcomes would greatly strengthen arguments in favour of public participation.

If an empirical link was established between sustainable management and public participation, it may help overcome antagonistic and cynical attitudes within institutions and the wider community towards public participation. This would result in more effective public participation.

Research of this nature is likely to be academic and would probably constitute a PhD. Conceivably field work for such a project could be combined with evaluative work on participatory processes perhaps undertaken by the PCE or MfE (see 5.1.2).

5.1.3 Evaluation

Research is needed into how RMA participatory processes can be monitored and evaluated in a systematic, independent, ongoing and cost effective way. Without the information which would flow from an evaluative process any changes to participatory processes will be somewhat arbitrary. Setting up an evaluation system would require identification of criteria for determining the merit of participatory processes. This report has suggested some criteria for effective public participation as did the PPTG. Perhaps these could be used as starting points in identifying criteria for evaluation. Although the criteria used in this report are generic to all forms of public participation under the RMA, it is also recognised that context specific criteria will need to be developed.

The MfE is responsible for administering and monitoring the RMA. MfE staff also had a large role in the PPTG meaning there is a good institutional knowledge of participatory issues. Staff from MfE are the logical people to perform (or perhaps co-ordinate) research into evaluation of RMA participatory processes.

Further recommendations for research would be driven by evaluation. Assuming an evaluative process identified similar problems to those identified in this report the following research could also be considered.

5.1.4 Delegation of powers and functions

Local authorities are able to delegate and transfer some of their functions, powers and duties. However such delegations rarely occur. **Research is needed into what is preventing the use of the delegation provisions.** Clearly legislators thought the delegation of powers from local authorities to the community was a good idea or the opportunities provided by sections 33 and 34 would not have appeared in the RMA.

Research should investigate the sorts of powers or functions which would be appropriately delegated to community boards or iwi authorities. It could also usefully identify ways of increasing the likelihood that any delegation would be successful. Unsuccessful delegations would make further delegations unlikely. Given the seeming reticence of local authorities to transfer or delegate any of their powers or functions, it is recommended that research should recommend time frames within which appropriate delegations occur. MfE would probably be the most appropriate agent to co-ordinate research into these issues. Input would be required from local authorities, community boards and iwi authorities.

The RMA does not create many opportunities for communities to have the degree of control over decision making processes possible through the delegation or transfer of powers. It would be a shame to waste such a meaningful opportunity for public participation.

5.1.5 Resource consent practice and procedure

Research is needed into how the participatory processes within the resource consent application process can be improved. Currently obstacles to effective public participation have been identified with: notification, information sharing, prehearing meetings and council hearings. These problems are closely interconnected and it is recommended that research on these matters be done together. It is imagined that the outcome of the research would be something like a good practice manual.

A common element with all these obstacles is the involvement of lawyers and the use of technical legal devices in the resource consent process. The resource consent provisions were designed to create informal, nonadversarial approaches to decision making. In practice they are often adversarial and intimidating for many people. Questions of bias and the absence of natural justice in processes have also been raised. Pseudo-legal processes without the benefit of the rules of natural justice is an unfortunate combination. Research should consider how the resource consent processes can be best organised to promote processes which are a satisfactory mix of being: fair, informal, accessible, and culturally appropriate.

Overseas models of dispute resolution or community based decision making may provide useful models which could be adapted to the New Zealand context. Evaluations of our own

processes are also provide likely to be insightful, since it is clear from my limited research that some local authorities manage the resource consent process better than others.

It is important that the resource consent process functions effectively or society will lose the valuable input into decision making processes of concerned individuals and groups and outcomes may not reflect the values of the wider community.

Again, as the administering agency MfE is the likely candidate for taking on this kind of research. However, the Local Government Authority would also have a very strong interest in this research and with their contacts in local government would be in a good position to take on the co-ordinating role.

5.1.6 Resourcing

As identified in Chapter 4 inadequate financial resourcing is a serious obstacle to effective public participation. Money can buy skills and information, both of which are important in RMA participatory processes. There are significant discrepancies in resourcing levels between community groups and individuals and business organisations. It is believed that the discrepancies are large enough to create real barriers to effective participatory processes. **Research needs to be undertaken to consider ways of redressing the imbalances in funding between participants in RMA participatory processes.**

During the RMLR process there was an expectation that some form of legal aid would be available to community groups, this could be considered as an option. However there are other options for redressing the balance in funding which research may identify as potentially more appropriate. Legal skills are not the only professional skills useful in the RMA participatory processes. The availability of legal aid may simply make processes even more legalistic than they already are. On the other hand a scheme which gave community groups access to the skills of other “experts” such as planners, ecologists and architects, to name a few, may promote more effective participation and better decision making. This could be achieved in a number of ways. For example by making a pool of money to be available which groups which met certain criteria could use as they choose. Alternatively the resourcing needs of community groups may best be met by the formation of an agency or a network of

people which serviced the technical needs of community groups. The Queenstown Lakes community advocate model could provide some direction on this.

The question of resourcing will always be a difficult one, given that money used for a scheme which supported community groups in resource management processes would be money that was not going elsewhere. Government would be the likely funder of any arrangement to financially support community groups, and a government agency would therefore be likely to carry out the research. Research into what would be the most appropriate and cost effective form of aid would need to extensively involve community groups, who would be the likely beneficiaries of any such scheme.

5.1.7 Threat of costs

The threat of costs being awarded against community groups if a resource consent application reaches the Environmental Court is already deterring some groups from appealing arguable cases. If the Environmental Court required security for potential costs from community groups at the outset of a trial, numerous groups would be prevented from initiating appeals. **Research is needed into how to balance on the one^{hand} the right of individuals and community groups to take part in these processes, and on the other hand the right of developers to not be subjected to vexatious litigation.**

5.2 Recommendations

It is recommended that:

- Where possible research tries to address obstacles to public participation within the current legislative framework. Staying within the current framework means that changes can be made more quickly and are more likely to be implemented.
- Authorities increase their efforts to acknowledge and account for the special role of tangata whenua through the available participatory processes. Current initiatives to promote public participation are strongly supported.

- There be widespread education programmes in schools and communities about the RMA and its participatory provisions.
- There be widespread staff (including for councillors) training programmes on the RMA and its participatory provisions in agencies involved in implementing the RMA.
- Public participation is encouraged at all stages of decision making including at the development stage of a proposal.
- Attempts are made to improve information sharing at all levels of the participatory processes. If possible joint information bases should be developed across communities of interest in order to avoid conflict over the veracity of information.
- Good practice manuals are created, updated and shared by agencies and groups involved in RMA participatory processes.
- Central government provides more directive support on the implementation of the RMA participatory provisions.

5.3 Conclusion

This report has considered the practice of public participation under the RMA and in particular the obstacles to effective RMA participatory processes. In order to assess the obstacles to effective public participation it was necessary to identify some generic characteristics of effective participation. A framework within which to consider the potential obstacles was also developed. This was used to consider the obstacles to public participation identified through my research.

The opportunities for public participation under the RMA span a wide range of decision making processes and in terms of Arnstein's citizen participation ladder (1969) occur at different levels. Higher levels of participation (in terms of Arnstein's model) are more empowering to communities than lower levels, but it is probably unrealistic to aspire to high levels of participation in all circumstances. The provisions of the RMA relating to public

participation are enabling, there is scope within them for effective public participation processes to operate. However aside from the provisions relating to delegation of authority, most of the opportunities would be described by Arnstein as tokenism.

For effective public participation to take place within the RMA framework, institutions need to be strongly supportive of public participation and have the appropriate skills to put this support into practice. The one real gap in the RMA participatory provisions is the lack of any requirement for evaluation of participatory processes. Without the knowledge which comes from systematic evaluations of processes it is difficult to know what improvements could be made. The development of evaluation processes was one of the key recommendations of the research agenda. The research agenda has identified possible ways of developing ways of overcoming the obstacles to effective public participation under the RMA.

While acknowledging that public participation is not a panacea for good decision making, an assumption of this report has been that in general public participation promotes better decision making. Currently public participation is seen as an important element in the promotion, implementation and development of concepts such as sustainable management and sustainability (Pye-Smith et al, 1994 and WCED, 1987). Although the link between public participation and sustainability has not been empirically proven there is strong anecdotal evidence that it does exist (ibid). Public participation is important. However it can also be expensive and time consuming, and we need to ensure that our efforts are integrated to effect positive participatory reform.

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Appendix 1

Methodology

Choice of topic

My interest in the subject of obstacles to participation under the RMA originally stemmed from a belief that the participatory provisions of the Act were not being used as effectively as they might be. After reading around the topic it seemed that a major obstacle to effective participation was the lack of funding available for community groups. I proposed to look at ways of addressing this problem. However after discussions with my supervisor (Ton Buhrs) and others it was suggested that this was a rather narrow approach and other obstacles to participation could usefully be identified. A research agenda which addressed a wider range of issues was likely to be more effective in addressing the core obstacles to effective public participation than a narrow approach looking at funding of community groups. As a result of these discussions I decided to widen my focus and consider the whole range of obstacles to effective public participation under the RMA.

Research approach

The aim of this report is to identify obstacles to effective public participation under the RMA, and to conclude with a research agenda which if followed should go some way towards developing ways of overcoming the obstacles identified. The report is more in the nature of a scoping exercise than a thesis or a dissertation.

As with any research the outcome of this report is affected by the study method taken. The report takes an inter-disciplinary approach to the topic. To varying degrees, it considers the potential socio-cultural, economic, financial, legal, political, practical and institutional obstacles to effective public participation under the RMA. Material was gathered through a literature search and personal interviews.

Literature search

The available literature on public participation is vast, I began this project with no real understanding of the scope of public participation literature. My reading was originally focused by a paper entitled "*Public Participation: Issues From The Literature.*" (MfE,

1988a) prepared for the RMLR process. This seemed appropriate given that this report considers the obstacles to public participation under the RMA, the statute which resulted from the RMLR process. The MfE report highlighted the important theoretical issues from the literature and contained a useful bibliography. The MfE paper and my own reading indicated that most of the substantive literature on public participation was written in the 1960s and 1970s, and since then most of the work has been reflective, analysing earlier work. Most of this work comes from overseas. Once I had an understanding of the main theoretical issues I focused on the available New Zealand literature. The final stage of the literature search was considering the literature from the RMLR process. The literature search did not encompass the extensive literature on practical techniques for public participation and community development.

Throughout the project a careful eye has also been cast over media sources.

Interviews

In order to develop a sense of the obstacles that exist to effective public participation under the RMA, it was essential to interview a range of people involved in the RMA participatory process. Given the time constraints and the nature of this report an extensive interviewing process was not possible or appropriate. Interviews were therefore conducted with people who because of their roles in the participatory process, were able to offer different perspectives. The following range of people were interviewed: Gay Pavelka, Environmental Mediator; Bill Nagle, Community Advocate, Queenstown Lakes District Community Society; Lesley Woudberg, Planner, Waimakariri District Council; Suky Thompson, representative of Akaroa National Treasure Network; Walter Clark, community activist and Emeritus Professor; Tony Borrick, Lawyer; and Kirsty Woods, a representative of the Office of the Parliamentary Commissioner for the Environment. The information gleaned from interviews was treated as indicative of how participatory processes are operating.

Interview times and arrangements were made over the phone and a number of the interviews were in fact conducted over the phone. The actual interviews were semi-structured in that preset questions were developed, but the interviews often strayed beyond these questions.

Before interviewing people, questions were sent out to allow the interviewees time to consider their responses. The basic formula of questions was as follows:

- What is your involvement in participatory processes under the RMA?
- What in your view is effective public participation?
- What do you see as the most effective way for the public to participate in resource management decisions under the RMA?
- What motivates people to participate?
- Do the following issues constrain people's ability to participate?: access to information; expense and the threat of costs; time frames; non-notification of resource consent applications; and possible lack of technical skills in the community and/or councils?
- Are there other factors which may constrain participation?

Interview times ranged from half an hour to one hour.

Treatment of interview information

Detailed notes were taken during each interview. These notes were reworked soon after, in order to classify the information in terms of the obstacles identified in Chapter 2. The transcripts of the interviews are not attached to the report. In order to protect interviewees there are times when names are not put beside quotes.

Limitations and biases

The choice of interviewees also affected the final report. In hind sight it would have been appropriate to interview a Councillor and a representative of business. Interviews were not held with iwi, in part due to time constraints (mine and theirs); and in part because there is such diversity amongst iwi that it seemed misleading to report on the basis of an interview with one iwi representative. Although the same could be said of other groups it was my belief that the degree of diversity amongst iwi was greater. In the case of iwi I therefore chose to rely on written material put together by people with a wide range of experience and rich understanding of Maori concerns with RMA and Maori expectations of environmental management.

In writing this report my own biases and experiences have inevitably influenced the final product. I am a middle class, Pakeha New Zealand woman currently studying for a MSc in resource management. I have a legal background and have previously worked for central government.

Appendix 2

Criteria and principles for public participation identified by PPTG (MfE, 1988c)

Criteria

There should be public participation processes which:

- (a) provide effective ways and means for sharing power which meets Maori-Crown commitments.
 - (b) ensure that all interested parties have equal and effective access to decision making processes, including ensuring that participation is not dependent on income or wealth, class, culture or gender.
 - (c) provide for the existence of a range of points of view.
 - (d) contribute to effective decision making by being:
 - easily understood
 - fair
 - positively encouraging of participation, as informal as practicable
 - meaningful
 - applicable at all stages, including pre-application/initial scoping
 - flexible, ie. appropriate for scale/impact of proposal.
 - (e) ensure that adequate information is available to the various parties and decision makers at all stages.
- recognise the role of key people in scrutinising the decision making process in fostering reform.

APPENDIX 2

Phase 1 Principles

Principles which also focus on *ends* provide a clearer specification of the objectives, as well as being a reference point against which later sections of this report can be assessed. The appropriate principles from RMLR Working Paper No. 12 are:

(a) A Bi-Cultural Approach

- Drawing on financial and administrative resources, Maori processes of decision making, monitoring resource management need to be developed by Maori people.
- Statements on *standing* and *public interest* should acknowledge, and provide for the fact that the *tangata whenua* have a spiritual relationship with the land, and the rest of the biosphere which reflects different values than those of pakeha culture.

(b) Legal Standing

- The right to take part in decision making should be as unconstrained as possible, with standing given to any interested person as well as to those with a particular interest (eg a landowner, *tangata whenua*).

(c) Public Interest

- The participation process should recognise the intrinsic tension between individual interests and collective interests, with the latter, as the collective welfare of the individuals and groups, establishing the 'public interest'.
- It should be possible for the diversity of perspectives held within the community - reflecting people's culture, values, expectations and aspirations - to be accepted as part of the record, without prejudice to any further assessment of their merits.

(d) Purpose of Public Participation

- The intended outcome of the public participation process (or processes) should be clearly stated so that people can have realistic and unambiguous expectations.

(e) Statutory and Non-Statutory Procedures

- The procedures to enable public participation in resource management decision making should provide for informal (eg mediatory), as well as formal (ie statutory), ways and means.
- All reasonable attempts should be made to prescribe a public participation process (or processes), equal opportunities⁸ to encourage the public-at-large to take

advantage of the opportunities offered (refer also to Principle (b) (i)).

(f) Rights of Access to Information

- All information pertinent to the issue being assessed should be made available unless it is commercially sensitive or there is a statutory impediment (eg the Official Information Act 1982)

(g) Independent Reviews

- Where it would be helpful to people's understanding of an issue for there to be a formal independent review or assessment prepared and publicly available, the procedure should enable this to be prepared and included in the decision making process.
- Where an independent review or assessment is to be undertaken a public scoping exercise should precede it to ascertain the relevant significant issues, with the resulting issues publicly available.

Appendix 3

Examples of problems with council hearing processes

- Council staff, councillors and applicants are often on a first name basis and submitters, lacking this kind of familiarity are treated as outsiders (pers. comm.). There are suggestions that submitters are bullied by both applicants and councils (pers. comm.). As an indication of the regard in which submitters are held, it is interesting to note that submitters are often referred to as “obstructors” (pers. comm.).
- Harris talks about council staff believing that the groups that most annoy them or who don’t speak “technogese” (often submitters in opposition to a proposal) are biased, whereas the people they are familiar with, the developers and agents are not (Harris, 1995: 5).
- Several interviewees made the point that there seemed to be little rational method behind much council decision making. Where proposed developments contravened plans, in several instances plans were changed to enable developments, despite that fact that these particular provisions had been developed in community workshop settings (pers. comm.). Alternatively plan provisions were simply overruled or technical legal arguments were constructed to overcome the provisions. One interviewee suggested to their local council that the council consider developing a checklist in the form of a table for decisions which would be filled out by the council, the applicant and submitters and the information be available to everyone. The experience of this interviewee was that decisions were either the result of bias or poor quality work. (pers. comm.).
- Local consent authorities often do not keep submitters informed about developments relating to forthcoming hearings. For example when a consent authority seeks further information from the applicant it is unusual for submitters to be informed (pers. comm.).
- Reports of applicants being allowed to introduce new and relevant information at hearings without submitters being given the opportunity to amend or review their submissions.

Appendix 4

Identification of information needs

These comments on information were put together by Nick Taylor (in MfE, 1988a: 21) and set out criteria for useful information used in participatory processes.

Access: information plays a crucial role in participation procedures, but mere freedom of access to information is not sufficient for deliberative exercises in participation.

Content of information: information should be:

- relevant and comprehensive, so that the project or proposal can be fully understood and placed in context;
- verifiable, with adequate references being provided;
- identifiable as fact or opinion, as well as being clearly identified, distinguished and sourced;
- inadequacies in the data: areas of doubt, or where further research is needed should be noted;
- updated, expert assessment and audit, should be possible at any time;
- full disclosure of the reasoning behind any recommendations or conclusions should be included.

Balance: the publications designed for participation should not appear to pre-judge the issues. Bias should be eliminated.

Communicability: the manner of presentation of information is just as important as is being concise, in plain language, and comprehensive. If different publications are prepared, they must be consistent. The quality of presentation can be a determining factor in attracting interest. The use of a variety of media can reach different audiences.