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Enduring Traditions and Contested Authority: Collaborative Environmental Governance in Aotearoa-New Zealand.

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Dion Charles Pue Luke

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Abstract of a Dissertation submitted in partial fulfilment of the requirements for the Degree of Master of Planning.

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The importance of natural resources to societal well being is revealed in the intense debate, contestation and conflict inherent in environmental management. Collaborative regimes are proferred as a means of integrating diverse environmental values and interests of local communities with state and non-state actors - often excluding indigenous peoples. In Aotearoa-New Zealand, Treaty of Waitangi settlements and environmental legislation reform provide an increased opportunity for indigenous values to contribute to resource management decision making. Concurrently, central government industriously attempts to accommodate the requirements of multiple international agreements.

This study attempts to identify factors that influence collaborative environmental arrangements in Aotearoa-New Zealand. Analysis of key domestic and international policy documents was undertaken, complemented by semi structured interviews conducted with recognised stakeholders for the case study area of Whakaraupō-Lyttelton Harbour. It is envisaged the study will clarify the roles policy diffusion, institutional capability and legal traditions play in environmental resource management for Aotearoa-New Zealand.

Keywords: Indigenous peoples, collaborative environmental governance, treaty settlement, mahinga kai, reconciliation, Whakaraupō, international agreements, biodiversity, indigenous knowledge, consociation, colonisation, Waitangi Tribunal, sustainable development.

Acknowledgements

Abbreviations

BD	Biological Diversity/Biodiversity
BINGO	Big International Non-Governmental Organisation
CANZUS	Canada, Australia, New Zealand and the United States
CBD	Convention on Biological Diversity
CCC	Christchurch City Council
CER	Canterbury Earthquake Recovery Act 2011
DOC	New Zealand Department of Conservation
ECAN	Environment Canterbury (also called the Canterbury Regional Council)
IEA	International Environmental Agreement
ILO	International Labour Organisation
IMP	Iwi Management Plan
INGO	International Non-Governmental Organisation
IO	International Organisation
IK	Indigenous Knowledge
IP	Indigenous Peoples
LGA	Local Government Act 2002
LPC	Lyttelton Port Company Limited
LPRP	Lyttelton Port Recovery Plan
MEA	Multilateral Environmental Agreement
MDG's	Millennium Development Goals
NTCSA	Ngāi Tahu Claims Settlement Act 1998
NGO	Non-Governmental Organisation
NPSFW	National Policy Statement for Freshwater
OECD	Organisation for Economic Cooperation and Development
PTSGE	Post Treaty Settlement Governance Entity
RMA	Resource Management Act 1991
SD	Sustainable Development
SDG's	Sustainable Development Goals
TOW	Treaty of Waitangi
TRONT	Te Rūnanga o Ngāi Tahu
WTO	World Trade Organisation

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Glossary

Adaptive management is variably defined as 'structured decision making', 'experimental management' or 'learning by doing' to reduce situations of unpredictability and incomplete or imperfect knowledge (Hasselman, 2017). Incomplete knowledge can be reduced by integrating multiple perspectives in participatory processes. Imperfect knowledge may be reduced by scientific analysis and research, but unpredictability is irreducible due to the complex systems inherent in changeable government policy objectives and community preferences. Instead, building capacity to respond to unforeseen events is preferred.

Adaptive governance has been promoted as a holistic approach to manage complex environmental issues (Sharma-Wallace, Velarde, & Wreford, 2018). It is characterised by public-private partnerships, decentralisation and an increased contribution from epistemic communities and NGO's. 'Bottom up' self-organisation of social actors can build institutional diversity, capability and resilience to manage change and uncertainty. Conversely, institutional diversity may lack co-ordination and promote complexity and conflict resulting in higher transaction costs and an inefficient use of resources.

Biopiracy is where Indigenous or local knowledge is appropriated by intellectual property rights to gain exclusive rights to use resources without providing benefits to developing nations and indigenous populations (Mackey & Liang, 2012).

Governance is concerned with the distribution of political power and the ways governmental and non-governmental organisations work together (Faludi, 2012). Osterblom & Folke (2013) allude to four key features of governance, namely; actors, organisations, social networks and institutions. Political actors at the local level transform institutional structures of government with partnerships and coalitions involving non-state actors from the private and volunteer sectors.

Governmentality links analysis of power at the individual and population level by illustrating the co-construction of modern society and the modern state. Formulated by late philosopher and ideas historian Michel Foucault, the theory posits that individuals are compelled to govern themselves by internalising certain political rationalities aligning with a state interest in welfare. (Häkli, 2009).

Iwi[1] can be translated as bone(s), people, nation, race, strength or tribe.

Kaitiaki means manager, trustee, caretaker or guard.

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[1] Definitions for Māori terms are taken from The Raupō Dictionary of Modern Māori (Ryan, 2012).

Kāwanatanga is government.

Liberal Environmentalism dominates global environmental governance and seeks to integrate norms of economic efficiency and market based environmental solutions including privatisation, deregulation, market-based governance and unencumbered markets (Zelli, Gupta, & van Asselt, 2013). This approach is characterised by the sustainable development mantra which seeks to make solutions to environmental issues compatible with economic growth, utilising the technological and scientific strengths of capitalist markets and states (Dempsey, 2016).

Mahaanui Kurataiao Ltd was established to represent the six Ngāi Tahu papatipu rūnanga between the Hakatere-Ashburton and Hurunui Rivers 2007. As an environmental management advisory company, it works to promote and uphold tāngata whenua values within this area. It also provides cultural and environmental planning advice to local authorities.

Mahinga kai (also Mahika kai) means cultivation or vegetable garden. Additional definitions and Ngāi Tahu context are presented in the Case study chapter.

Mana Whenua is defined as trusteeship of land or the authority of local indigenous people derived from occupation and/or ancestry.

Mātaitai are areas of customary fishing as defined under the Fisheries Act 1996.

Mauri can mean the Moon on the 28th night of the month, a talisman or special character and is generally used to signify the principle or force of life.

Nation is regularly used to refer to a country, a people, a state, or citizens of a state and because of its vagueness is useful as an ideological tool to serve political agendas and assist changes to government policy (Penrose, 2009). The nation forms both a category of global power and a source of personal identity used by individuals to make sense of the world order and locate their place in it. Rather than defining membership of the nation by cultural similarity and exclusivity, the modern nation is focused on common political principles and civic responsibility. National territory is determined by the geographical borders of the state which is delineated according to the symbolic control of material resources.

Ngāi Tahu Whānui is defined as the collective of individuals who descend from the primary hapū of Waitaha, Ngāti Mamoe, and Ngāi Tahu, namely Kāti Kurī, Kāti Irakehu, Kāti Huirapa, Ngāi Tuahuriri, and Kai Te Ruahikihiki in section 9 (1) of the Ngāi Tahu Claims Settlement Act 1998 (NTCSA). The term is generally interchangeable with Ngāi Tahu.

Papatipu Rūnanga is a governing body representing the respective area of each of the eighteen sub-units of Ngāi Tahu.

Pātaka Komiti have been used inconstantly by Iwi/Hapū and DOC as a forum to discuss access to medicinal plants, cultural materials and flora on public conservation lands.

Rāpaki is an abbreviation of Te Rāpaki o Te Rakiwhakaputa. Ngāi Tahu ancestor, Te Rakiwhakaputa, laid down his waist mat on the beach at the current location of Rāpaki. The Ngāti Wheke people of Rāpaki are descendants of his son, Wheke.

Rangatiratanga has the meanings of ownership, realm, kingdom, the power of chieftainship, sovereignty or evidence of greatness.

Section 81 report. This is a report presented to the New Zealand House of Representatives each year by the Minister for Māori Development as required under section 81 of the Treaty of Waitangi Act 1975. The report outlines the Crown's progress on implementing recommendations made by the Waitangi Tribunal.

Sovereignty refers to the exclusive, transcendent and independent right of a person, political body or entity to effect absolute legal-political authority over an attendant population in an undivided geographical area (Coleman, 2009). Similarly, it can also refer to the unrestricted and effective authority over all the places contained in a unified and discrete territory and the peoples within by an authoritarian, theocratic, democratic, monarchical or aristocratic state absent of interference from external forces or interests.

State can be defined as a succession of multiple processes which are particular to social and spatial development in a specified geographical and historical context (Jones, 2009). A state is characterised by institutions which establish and maintain political legitimacy and territorial integrity. Coercive and symbolic power are exercised within a clearly defined core territory via collectively binding political decisions upon a fixable population (Bieler, Higgott & Underhill, 1999).

Takiwā is an area, zone, time, interval of time or region.

Tangata Tiaki are appointed under customary fishing legislation to manage the fishery resources of Taiāpure or Mātaitai fishing reserves.

Te Hapū o Ngāti Wheke are Mana Whenua of Whakaraupō Lyttelton Harbour and represented by Te Papatipu Rūnanga o Rāpaki.

Te Wai Pounamu refers to the South Island of Aotearoa New Zealand. The South Island is also known to Ngāti Wheke as Te Waka o Aoraki.

Tōpuni are areas of land under administration by the Reserves Act 1977, Conservation Act 1987 or the National Parks Act 1980 that Ngāi Tahu has a cultural, spiritual, historic and traditional association with. The Crown and Ngāi Tahu may agree on specific principles directed to the Minister for Conservation regarding the diminishing of or harm to Ngāi Tahu values in relation to these sites under section 240 (1) of the NTCSA.

Tupuna are ancestors or grandparents with Tūpuna being plural.

Urupā is a cemetery or tomb.

Whakaora in this document refers to the Whakaora Healthy Harbour Catchment Management Plan.

Whakapapa means genealogy, family tree, cultural identity or the recitation of genealogy.

Whakaraupō literally means the bulrush harbour and is the original name of Lyttelton Harbour which was created by Tūterakiwhānoa. The harbour was named by famed explorer Tamatea-Pōkai-Whenua.

Whānau is extended family, genus or to give birth.

Chapter 1

Introduction

Partnerships have become a purposeful goal of international governance organisations for sustainable development (SD), climate change adaptation and biological diversity (BD) conservation. Partnerships are also an important aspect of ongoing redress for historical breaches of the Treaty of Waitangi (TOW) in New Zealand. This chapter provides a background to the subject of this dissertation, collaborative indigenous environmental management in New Zealand. An overview of collaborative regimes is provided along with examples of indigenous collaborative arrangements. The chapter concludes with the aims and objectives of the research and an outline of the dissertation.

Collaboration has become a dominant practice in environmental governance where concepts of ecosystems and catchments require a holistic and integrated approach based on regional[2] participation and cross-boundary issues (Margerum & Robinson, 2016). The role of elected government in collaboration may be limited where stakeholder groups and non-governmental organisations are heavily invested in the outcome. While government indicates an interest in the formal structures and institutions of the state, governance is a broader concept concerned with the distribution of political power and the ways governmental and non-governmental organisations work together (Faludi, 2012). Collaborative governance is defined by Ansell & Gash (2008, 544) as:

"A governing arrangement where one or more public agencies directly engage non-state stakeholders in a collective decision-making process that is formal, consensus-oriented, and deliberative and aims to make or implement public policy or manage public programs or assets."

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[2] Regional can be used in an international context to be an area not necessarily demarcated by national borders such as a watershed or river catchment. In the New Zealand context regional is often used to describe a province or grouping of districts particularly in local government.

The influence formal and informal institutions have in steering people's behaviour is important when analysing the collaborative management of local level common pool resources (Boyd & Folke, 2011). Alternative environmental governance institutions and collaborative management processes are directed at resolving development and conservation issues while addressing political conflict over resources. Indigenous Peoples (IP) values are increasingly seen as part of the answer to systemic problems which they played no part in creating. The current UN Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz, has appealed to the self-interest of corporations and states to take heed of IP before it is too late (Taylor, 2017).

Collaboration is not limited to Indigenous relationships with state management agencies and includes other interests which are seen as critical to reflecting community values in environmental management practices. Collaboration limitations include historical regional enmities in developing countries or a reliance on democratic convention in former European colonies with indigenous populations. Further strengths and weaknesses are listed in table 1.1.

Table 1.1 Characteristics of Collaborative Environmental Management Methods from Glasbergen, 1998.

Advantages	Disadvantages
Consensus building & interests transformation	Inefficiency
Flexibility	Favours resourced organisations
Increase pluralist inputs	Open to capture by power
Policy outcome stability and legitimacy	Needs a homogenous society
Context for scientific/technical assessment	Undermines elected authority
Increased environmental learning	Who is defined as a 'stakeholder'
Increased risk management	Depoliticization

Co-management is criticised for being a means to control conflict instead of developing solutions to underlying issues (Castro & Nielsen, 2001). Once co-management relationships mature, they may become useful adaptive management processes to apply knowledge sharing in a joint problem-solving capacity. Ostrom (2005) suggests that polycentric governance systems may address breakdowns that occur due to a lack of coordination and discord over the best use of common pool resources.

Economic globalisation is celebrated as a force for good, capable of levelling out existing inequalities and bringing markets closer together. While spaciotemporal convergence may be enhanced by globalisation, ethnic partitions persist and are commonly marshalled to resist its perceived negative effects (Nally, 2009). Opponents claim the unevenness of its effects further entrench social and economic inequality. Studies on globalisation have tended to ignore IP or contain them within the discursive concepts of the periphery, developing nations or the fourth world (Fenelon & Murguía, 2008). Indigenous acts of resistance or attempts at language and culture revitalisation have occurred over several centuries.

More recently resistance is centred around opposing the dominant neoliberal economic axioms of monetary policy, natural resource extraction and development. Neoliberal economics and the US led "war on terror" are examples of contemporary colonisation as accumulation by dispossession (Nally, 2009). The Lucas paradox[3] refutes claims that globalisation leads to a convergence of incomes across the world and is beneficial for developing countries (Luca et al., 2019). In 2005 the United Nations Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples arrived in New Zealand. Rodolfo Stavenhagen's visit was in response to the Governments dismissal of the United Nations Committee on the Elimination of Racial Discrimination report of March 2005.

His report noted, inter alia, the inadequacy of New Zealand's legislation in protecting tino rangatiratanga as set out in Article 2 of the Treaty (Stavenhagen, 2006). In 2007, the UN General Assembly adopted the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP) by a majority of 144 states in favour. The Governments of Australia, United States, New Zealand and Canada (CANZUS) strongly opposed the declaration. The UN's 2009 State of the Worlds Indigenous Peoples report noted that while these countries scored well overall on the Human Development Index, there was a huge disparity between their general and indigenous populations (UN Department of Economic and Social Affairs, 2009).

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[3] In 2012, $1.3 trillion of aid and investment was distributed to developing countries. The value flowing from these developing countries to developing ones in the same year was $3.3 trillion (Luca et al., 2019).

For Fenelon and Hall, indigenous resistances to the destructive forces of neoliberalism and globalisation involve four common themes (Fenelon & Hall, 2008).

- Redistributive socially based economies
- Collective land tenure patterns
- Consensus driven leadership and decision making
- Inclusive communities with a strong local focus

These patterns are shared by indigenous groups in a wide array of countries including India, Canada, the US, Bolivia, Aotearoa/New Zealand and Mexico. As IP become increasingly connected through international fora and social networks, they find a vector through which their common concerns are disseminated. In New Zealand, Treaty settlements in the last twenty-five years have implemented management regimes that extend beyond the RMA (Jacobson, Matunga, Ross, & Carter, 2016). Environmental management in New Zealand is underpinned by the Resource Management Act (RMA) 1991 which contains various provisions relating to the principles of the Treaty of Waitangi. Central government provides national policy statements and environmental standards to promote integrated and consistent performance of local government planning and regulatory functions (Figure 1.1).
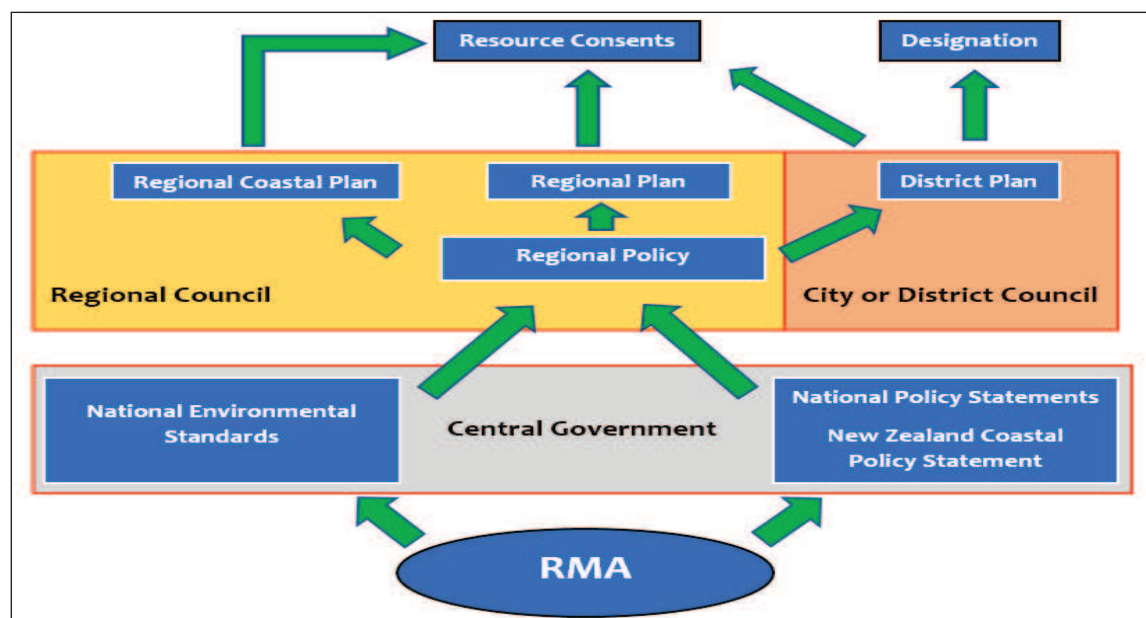
Figure 1.1 New Zealand's Environmental Planning Framework. Adapted from Ministry for the Environment, n.d.

The RMA, like many other domestic statutes includes provisions relating to the principles of the Treaty of Waitangi. The Court of Appeal formulated seven principles during *New Zealand Māori Council v Attorney General* [1987] NZ CA 54/87. These are:

1. The acquisition of sovereignty in exchange for the protection of rangatiratanga

2. The Treaty established a partnership, and imposes on the partners the duty to act reasonably and in good faith

3. The freedom of the Crown to govern

4. The Crown's duty of active protection

5. Crown duty to remedy past breaches

6. Maori to retain rangatiratanga over their resources and taonga and to have all the rights and privileges of citizenship

7. Duty to consult

The principles of the Treaty have since developed by virtue of numerous court cases related to Crown inconsistency and reports from the Waitangi Tribunal.

Canada has firmly established the rights of IP participation in decision making which affects their territories (Bowie, 2013). The Whitefeather Forest Initiative was established in 1996 by the Pikangikum First Nation in an area covered by a historic treaty. Its objective was to develop resource-based tribal enterprises while establishing a land use strategy combining Indigenous Knowledge (IK) practices of *Beekahncheekahmeenpaymateeseewahch*[4] with the best of modern science (ibid). Collaborative relationships were established with other First Nations, academic institutions and non-governmental environmental organisations to support Pikangikum's governance aspirations.

Pikangikum successfully developed its land use strategy in 2008 complementing their customary land relationship with a precautionary decision-making approach. In 2012 the Pikangikum Whitefeather Forest Management Plan was approved formally with the support of its collaborative partners and the Ontario provincial government. Relations with conservation organisations however had deteriorated due to their opposition to community-based planning approaches which they considered fragmentary. Despite this the

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[4] In Pikangikum language this means "the living ones, yesterday, today and tomorrow".

First Nation successfully integrated scientific knowledge to complement their own knowledge and assert the goals of the community.

Natural resource management systems have developed over the course of several centuries in the unique landscapes of New Zealand's Te Waipounamu, reflecting the culture, values, language and kinship structures of Ngāi Tahu (Anderson, 1996; Beattie, 1990; Williams, 2010). The settlement of the historical TOW claim between Ngāi Tahu and the Crown contained provisions for co-management of the significant and highly contested Te Waihora-Lake Ellesmere. This would involve the Minister of Conservation recognising the Iwi as a statutory advisor on lands administered by the Department of Conservation (DOC) and require a joint management plan to be developed by Ngāi Tahu, the Banks Peninsula and Selwyn District Councils, and Ecan. These provisions were met with obstinate disapproval from local users of the lake and local government agencies.

A 1998 study found that the biggest contributor to resistance to lake co-management was the polarising national debate on the use of the conservation estate in treaty settlements (Prystupa, 1998). National interest groups played a significant role in opposing Māori co-management of any conservation lands, citing an assured decrease in conservation values and public access. Interestingly, the study identified that these groups had in effect captured DOC through their large membership and close ties to the government department. Ngāi Tahu devised a series of strategies to counteract this barrier including establishing their environmental rights through the courts, creating synergy via partnerships with other co-management supporters and building capacity to negotiate with the Crown. The study found that an Iwi disposition towards managerial and financial responsibility for a degraded resource and an appeal to the public interest could further the possibility of co-management.

1.1   Research Aims and Objectives

This research focuses specifically on collaborative environmental regimes between Māori and local government bodies in the New Zealand context to identify any divergence or convergence in state obligations regarding commitments to international agreements and treaty partnership. It is envisaged that the research will contribute to local and regional level planning and policy processes by highlighting potential opportunities and barriers to

successful environmental collaboration. The research aim is to locate the influence of national values, treaty developments and international agreements in New Zealand's environmental policy and governance structures. The key research question asks:

"What factors enable or constrain the creation and implementation of environmental co-governance and co-management arrangements in Aotearoa/New Zealand"?

The following sub-questions have been advanced to address this objective:

- To what extent do global values contribute to the development of New Zealand's environmental policy and co-governance regimes?
- How might local practices and attitudes influence co-governance regimes?
- Are state obligations under the TOW and International agreements divergent or convergent?

1.2   Dissertation Outline

This dissertation is presented in seven chapters. In chapter two, a wide range of literature is reviewed focused on international law, risk management, colonisation and New Zealand treaty settlements to provide the political and theoretical context to the study. Chapter three introduces the data collection and analysis methods used while the historical, geographical and cultural context of the case study area is discussed in chapter four. The results of data collection are presented in chapter five with analysis and interpretation provided in chapter six. Chapter seven presents the main findings of the research, options for further research and recommendations regarding collaborative governance in Aotearoa New Zealand.

Chapter 2

Theoretical and Political Context

This chapter provides a background to the study and seeks to identify some of the historical dynamics that contribute to contemporary issues around collaboration. Section one offers an overview of consistent issues for society, how solutions are determined and by whom. Section two describes the significance of identity and legitimacy in situations of conflict over natural resources. Section three looks at structural settings for macro level environmental governance and the role norms and values have in generating order, rights and justice. Section four looks at how TOW settlements have addressed social and environmental concerns in Aotearoa New Zealand so far.

2.1 Threat Assessment and Protection of Interests

Joseph Tainter (as cited in, Bardi, Falsini, & Perissi, 2018) suggests that the decline and collapse of civilisations can be attributed to a single cause of diminishing returns. A standard concept in economics, diminishing returns identifies that as a society grows its control structures become more complex in order to maintain social cohesion and address developing problems. This growing complexity leads to a cascading effect of decreasing efficiency as the cost of supporting control structures becomes greater than the benefits they provide. A society at this point will decline as it is now incapable of dealing with any challenges that emerge. Others attribute societal collapse to several independent causes occurring at the same time. E H Cline (2015) argues that foreign invasions, climate change and earthquakes were responsible for the collapse of Late Bronze age Mediterranean civilisation. Bury's study of the Roman Empire suggests that it's collapse was the result of multiple events within a short period of time (Bury, 2012).

Early risk assessment processes see risk as a matter of probability and effects, consequences and agents, dose and response models (Van Asselt & Renn, 2011). Economic, decisionistic and technocratic models of risk management and assessment are based on these dominant framings. The agent-consequence model assumes that the cause is well known, uncertainty and ambiguity of interpretation are low, and that the potential negative consequences are

obvious. The dose-response model presupposes that simple cause risks can be easily captured as they may be recurring, such as seasonal flooding or car accidents, and are unaffected by ongoing or expected change. Statistics can be gathered and applied to assess risk in meaningful terms via a linear function of probability and effects.

2.1.1 Legal Origins and Consociation

An extensive study by La Porta, Lopez-De-Silanes & Shleifer (2008) examined the role divergent French and English legal systems play in economic performance and the allocation of national resources. The authors show that common law represents support for private market outcomes via a social control strategy (dispute resolving) while civil law attempts to control allocations according to state outcome preferences (policy implementing). Analysis of national commercial laws for forty-nine countries reveals that a common law tradition correlates to securer contract enforcement and better confidence in property rights but also more judicial independence and less formalised judicial procedures. Their findings suggest that the presence of legal investor protection bears a strong correlation to financial development.

The premise for English common law is the desire of merchants and landed aristocracy to limit Crown interference in the market by ensuring the robust protection of contract and property rights. Jurisprudence is the basis of statutory law in common law countries with statutes following or reflecting judicial rulings. Although legislation may precede judicial law making, it reproduces or reflects existing common law rules and is interpreted and applied by the courts. Central to common law is the independence of the judiciary from the legislature and the executive. Common law is used in many countries including South Africa, India, Australia, New Zealand and Canada. Civil law was adopted by the Catholic church in the middle ages and is based on Roman law (ibid). French civil law is much older than common law and was developed to prevent judicial interference in the state's ability to alter property rights.

Legal tradition is also a predictor of government ownership and regulation within civil law countries in the areas of military conscription, the burden of market entry regulations, ownership of banks, labour market regulation and ownership of the media. Government

ownership and regulation is thought to have negative effects on markets and create higher unemployment, a larger unofficial economy and greater corruption. Although other legal traditions such as Scandinavian, German and Socialist exist, it is the common and civil traditions that dominate approaches to regulation and law. The transfer of law and legal systems from Europe is connected to diffusion but as La Porta et al (2008) argue legal traditions are largely exogenous globally as diffusion is introduced by conquest and colonisation.

Consociation describes political systems in which power is shared by parallel, autonomous communities and was originally theorised by 16th century Protestant German philosopher Johannes Althusius. Consociation requires a proportional allocation of resources and representation in government posts; cross community executive power sharing and community self-government (Kuper & Kuper, 2004). Consociation is encouraged as a way to manage or prevent conflict between communities where religion, language, race, nationality or ethnicity is divisive. Preferential policy, proportional representation and affirmative action quotas are examples of consociation initiatives. Various consociation practices and institutions have been applied in Switzerland, Lebanon, Belgium, Canada, Bosnia-Herzegovina and Northern Ireland (ibid).

Consociation supporters argue that collective identities based on ethnicity, language and religion are durable once formed. Such identities are often mobilised by antagonistic politics in the absence of dedicated representation. A consociation approach, they argue, allows negotiation of agreed arrangements between representative politicians rather than the imposition of one community's values over another - especially in majoritarian democracies. Opponents of consociation see it is a 'loser takes all' approach, elitist and undemocratic, maintaining that cultural differences should be dismissed as irrelevant and can be transcended or dissolved as long as there is political integration with common citizenship.

2.2 Colonisation and Conflict

Colonialism is defined by Nally (2009, 621) as "*the exercise of one country's sovereignty – however provisional or incomplete – over another people, their resources and territory*". Imposing religious, linguistic and sociocultural structures on conquered populations allows

empires to procure submission of foreign territories they are trying to absorb. Karl Marx referred to 15th century European expansionism as primitive accumulation, arguing that the result of the 'Age of Exploration' was the slaughter and enslavement of many IP and expropriation of their resources (ibid). Accompanied by the vast expropriation of IP resources, coloniser feelings of superiority create a perception of inadequacy in the colonised psyche to mutually construct ethnic identities of 'us' and 'them'. The contestation of these identities and otherness stimulates and strengthens the solidarity and collective ethnic consciousness of colonised and colonising peoples.

Colonialism and imperialism utilise ethnic differentiation to create coloniser and colonised subjects and to then justify the civilising mission. Sovereignty can then be extended over other territories, resources and populations based on the ethnocentric maxim that coloniser values and morals are inherently superior. Such ethnic nationalism is not limited to the processes of imperialism and colonialism but is constant in the formation of ethnicity occurring between an indigenous resistance and colonial imposition binary. Identity refers to an idiosyncratic sense of continuous being or of oneself within a collective, social framework in the psychology discipline (Kuper & Kuper, 2004). A social perspective interrogates how such identities are shared and by whom based on categories of difference developed in anthropology. Identities may be shared and define a person as a point in a group although they may also have several roles in a given context. The notion of self also contains associations with 'what' one is and continuity (Setten & Brown, 2009).

Modern day use of ethnicity differentiates one group of people from another based on cultural, linguistic or common religious characteristics (Nally, 2009). The term arose in the social sciences following WWII as an alternative to the race concept and its associations with Nazi policies. Ethnic was used in ancient times with exclusionary connotations to distinguish Gentile, Jew and Christian from their pagan neighbours. Race and ethnicity are often used synonymously although race tends to refer to biological aspects and natural attributes while ethnicity denotes a cultural basis of difference. Ethnic conflicts and controversies centre on the conception of territory as a geographic demarcation of languages or the importance of sacred spaces, holy sites or chosen lands to religious beliefs (ibid).

Suitably defined territory is needed to assure future stability and sovereign independence for the nation-state ideology which often demands ethnic homogeneity. The location and allocation of resources is a regular source of ethnic conflict which can be exploited to benefit powerful interests in wider geopolitical strategies. Conflict may also ensue where a group's legitimacy and authority are dependent on the construction and proliferation of identities. The role of power and identity is now more easily differentiated in situations of ethnonational conflict (Rouhana, 2004). Conflict settlement and resolution processes have progressed to a more reconciliatory approach. The former processes were based on formal agreements, maintaining extant power relations and ignoring historical responsibility.

Reconciliation pursues a course of confronting and acknowledging historical responsibility to establish good relations between parties which may include major social and political restructuring. This focus on justice occurs when democratic nations attempt to investigate their past complicity in war crimes, slavery or genocides of native inhabitants. Reconciliation provides security by granting mutual legitimacy in a transparent and socially based forum aimed at transforming the nature of societal relationships.

2.2.1 Religious Supremacy

The dispossession and enslavement of non-Christian peoples by Christian Princes and Popes was asserted as a universal right during Renaissance Europe's Age of Discovery (R. A. Williams, Jr., 1990). Conquest could be justified under natural law and the mission to impose the Christian variety of civilisation on others. Natural law formed from Eurocentric norms based on Pope Innocent IV's theories and legal commentary on the duties and rights of pagan nations in the mid thirteenth century. Questions of legality arose during the medieval Crusades that challenged the circumstances under which Christians might legitimately dispossess pagans of their property and dominion. Although Innocent acknowledged that non-Christians could possess the same rights in natural law as Christians, by virtue of their creation they belong to Christs flock. Non-believers might deny the Pope's authority but he reserved the right to intervene, and punish them if necessary, as he was still responsible for their spiritual wellbeing.

This notion of Christian obligation to insist pagans conform to a normative notion of natural law established a medieval European legal discourse to justify conquest and would become significant in shaping legal thought for future colonisation. The requerimiento[5] provided a legal tool to justify conquest based on the legal traditions established by Pope Innocent and was read aloud to natives the Spanish encountered in their colonisation of South America. It required natives to submit to the Crown and was a legal requirement for Spanish military expeditions to the Americas (Nayar, 2015).

Failure to comply with the provisions allowed the Spaniards to declare war on them. Besides the obvious difficulty in communicating the contents and intent of the document in a language that was not understood by the natives, the document was read faithfully by the Spaniards as per Crown instructions (ibid). It was often exclaimed from ships decks in sight of land, read to deserted villages and trees or shouted at natives fleeing into the mountains.

2.2.2 Indigenous Affairs

The term indigenous was used by Europeans to describe the inhabitants of non-European domains (Howitt et al., 2009). Indigenous has become a term claimed by first nations peoples as a galvanising classification, uniting them in a single category within the frame of globalisation. The racist ideologies which accompanied colonisation were founded on a racial hierarchy where European elites occupied the top position with lesser classes occupying the middle and the dark races and IP populating the bottom level. That notion of Eurocentric supremacy still pervades and perpetuates views of indigenous institutions and practices as inferior and subservient to non-indigenous objectives and processes.

Johnson (1991) believes that attitude is more influential in nature-human relationships than sets of principles and rules, suggesting that the Western/Christian tradition is offended by nature holding an intrinsic value. For instance, defining a tree as an object makes it devoid of interests. For most IP, equating nature and other beings with a community of interest is still valid. Humans are part of the community that makes up the natural world from the Native American perspective. The source of vitality and moral value flows to all members of

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[5] Written in 1513, this document emerged as a Crown response to the Catholic church's increasing condemnation of the ill treatment of 'Indians'.

the community from Wakan Tanka (The Great Spirit). In due course this energy will return to the source and maintain the regenerative cycle. This worldview typifies the perception of the natural world many IP have (Grim, 2001; Richmond et al., 2013).

Personifying species to understand them not as objects but members of the community allows the continuation of the natural world and the wise use of resources. The concept of respect is the central and guiding principle among IP worldviews. The Iroquois refer to respect as the wish to be appreciated or the first principle of existence (Whitt, 2009). Respect is based on the mutual obligations and responsibilities which are inherent in genealogy and acknowledges reciprocity in both human-human and human-nonhuman relationships. The perspective offered by IP contrasts with western values of laissez faire and individual freedom. The sovereign status of many IP remains, despite attempts by colonial nation states to subsume this inherent right (Richmond et al., 2013).

IK is often reduced to supporting information for non-indigenous management agendas and research needs. This tends to be more acute if non-Indigenous managers dismiss important Indigenous concerns for spirituality and culture as inconsequential for modern day environmental matters. Mackay & Liang (2012) reason that global governance structures that cannot or will not decrease the gap between development interests and indigenous communities should be reappraised as to their usefulness and competence. In order to realise short term economic benefits, many developed countries have depleted their BD assets so that now the only remaining reserves of BD exist in those countries of the global south.

International soft laws are failing to address BD loss (Wallace, 2015). A lack of political will, poor cross sector integration, legal and jurisdictional restrictions, poor stakeholder collaboration, economic development prioritisation and climate change challenges are all suggested as possible reasons for failure. The so called 'Third World' is literally a result of European colonial looting which established the massive wealth still evident in the capitals of Europe (Nally, 2009). Political aspirations and natural history have been strongly connected despite assertions that natural history is politically neutral (Sioh, 2009). SD is a concept transferred from developed countries as a means to maintain a universalised conceptualisation of nature.

Natural history is a discipline that emerged during the search for the garden of Eden in tropical island European colonies and served as the origins of modern conservation movements. Traditional Aboriginal Australian observers of their environment were not surprised by long dry spells or sudden heavy rains (Grigg, Hale & Lunney, 1995). These first nations peoples had no equivalent of the English concepts of 'work', 'please' or 'thank you' and their decline followed the systematic dispossession of their lands, resources and access to native wildlife. George Bennet travelled to 1830's Australia with the intention of studying the birth processes of monotremes[6] (ibid). His native helpers informed him that the objects of his study laid eggs, but Bennet ignored them, relying on assumptions of scientific rationality and enlightenment thinking that they must give birth to live young.

Bennet spent thirty years searching for embryos before returning to England without proof but still convinced of his hypothesis. In 1883 prominent zoologist W.H. Caldwell conducted a large-scale study which enlisted the help of 150 local aboriginals to capture and dissect 1300 echidnas after which he announced that monotremes lay eggs. Truganinny, one of the last Tasmanian Aboriginal women of 19th century Australia, was terrified that she would suffer the same fate as her late husband of being stuffed, mounted and put on display (Whitt, 2009). Her dying wish was that upon her death she be buried at sea or in the outback. Consequently, she was subjected to the same indignity as her husband and put on display for eighty years following her death.

Global conservation groups extol a moral mandate for the protection of wildlife focusing particularly on iconic mammalian fauna (Dowie, 2009). The Nature Conservancy, Worldwide Fund for Nature and Conservation International are referred to by Indigenous advocacy groups as BINGO's (Big International Non-Governmental Organisations). These conservancy groups originally relied on philanthropic funding to promote the creation of protected areas. BINGO's have more recently partnered with international banks and transnational extractive corporations. Hostile IP attitudes towards European and US based conservation organisations is growing given the convenient endorsement these groups provide to logging, mining, oil, pharmaceutical and gas interests (ibid).

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[6] Monotremes are platypus and echidnas (Grigg et al., 1995).

India accounted for 23% of the world's economy at the dawn of the 18th century (Tharoor, 2016). As a major industrial and manufacturing hub, India's textiles, pottery, ceramics and porcelains were prized throughout the civilised world. Its engineering and architectural accomplishments were evident in its fine metal works and position as the world's greatest ship building nation. A royal charter from Queen Elizabeth I would grant the East India Company the right to trade in Indian commodities. The charter also empowered the company to defend any trade and premises it established with private armies and in 1765 it would come to control revenue collection over the Orissa, Bihar and Bengal provinces.

By the start of the 19th century, the company would control most of India with the backing of the British Parliament, of which many members were coincidentally company shareholders. Upon gaining independence in 1947, India's share of the world's economy was 3%. The rise of the company was financed by loans from the Bank of England and supported by British foreign policy and legislation. British naval and military forces were also influential in quelling local resistance and controlling Dutch and French competitors. The economic imperative of the East India Company systematically destroyed India's textile, manufacturing and export industries. The British industrial revolution would be built on the deindustrialisation of India[7].

2.2.3 Realistic Group Conflict Theory

Classical conflict theory takes a perspective that conflict is inevitable due to a desire for wealth or power. Powerful individuals or social groups will attempt to control and coerce the weak who will resist in any way possible (O'Leary, 2007). Realistic Group Conflict Theory (RGCT) posits that when group goals are in conflict, intergroup hostility may be reduced if mutually beneficial goals requiring intergroup cooperation exist (Jackson, 1993). The seminal case for RGCT was conducted in the Robbers Cave Experiment which involved transporting a group of twenty boys to a state park and observing them over three weeks (Sherif, Harvey, Hood, Sherif, & White, 1988). The boys were separated into two groups and

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[7] Between 1765 and 1815, £18,000,000 was extracted annually by the British. India became an exporter of raw materials to Britain which were then manufactured into inferior goods and imported back to India (Tharoor, 2016).

eventually came into conflict which they overcame thanks to controlled researcher interventions focused on achieving superordinate goals which neither group had the resources to achieve alone (Fine, 2004).

Echebarria-Echabe & Guede (2003) extend this concept to intergroup status and outcomes in institutional settings, finding prejudice and social conflict stem from competition and negative interdependence. Fetzer (2018) applied an RGCT analysis of public attitudes towards indigenous rights to poll results in the Aboriginal Treaty Negotiations referendum of British Columbia in 2002. The referendum posed numerous questions regarding First Nations including whether voters thought private property should be excluded from treaty settlements and whether central and provincial government should delegate powers to provide for Aboriginal self-government.

Findings suggest that opposition to indigenous rights is greater among rural populations living close to or on Crown owned lands while support is more likely in urban populations living on privately owned land. Interestingly individual income and employment status do not appear to influence views on indigenous rights. Instead, group status between indigenous, ethnic European majority and other racial minorities seems to play a part in negative attitudes towards the indigenous populations of British Columbia.

2.3 International Law

Formal treaties between states represent the strongest form of legal commitment as the cost of violating promises makes successful cooperation more likely. Less understood is soft law where exchanging promises results in a non-binding agreement that sits on a scale between a political position and a hard law treaty (Guzman and Meyer, 2010). Soft law is a popular alternative to hard law where the cost of non-compliance is deleterious to both the violating and violated state. Relative bargaining power determines gains from the transaction via the price terms as states negotiate environmental standards to a level where State A is willing to pay more than State B is demanding until they reach an agreement where joint welfare is maximised. International human rights norms may be established by international organisations through covenants and declarations or may emerge as customary international law via shared practice endorsed by national and international courts (Deutscher & Lafont, 2017). Norm contextualisation occurs through democratic

iterations in which rights claims are invoked, contested and positioned via an exchange of meanings by civil society, political and legal institutions. Robert Post, (2010, as cited in, ibid, 35) illustrates the dilemma of international norm interpretation:

"To submit a political controversy to legal resolution is to remove it from the political domain; to submit a legal controversy to political resolution is to undermine the law. Yet they are interdependent in the sense that law requires politics to produce the shared norms that law enforces, whereas politics requires law to stabilize and entrench the shared values the politics strives to achieve".

2.3.1 International Relations

Norms in international relations (IR) form the discourse which gives meaning to social and physical actualities. Constraining or regulative norms are progressed via shaming or coercive processes while constitutive norms are achieved via persuasion and the internalisation of new values (Pettenger, 2007). The prevalence of state-centric views in international affairs was a result of successive world wars whereby northern hemisphere states achieved a monopoly on the deployment of military force and violence to compete for regional and global power[8]. In this environment Classic IR sought to address state security and prevent potential war and conflict by focusing on isolated events and estimating actions which might occur based on an ideal rationality. It also identifies which values would need to be activated to lead to the most preferred or ideal action (Stullerova, 2016).

Early IR scholarship was criticised for its positivist tendencies and lack of an ethical dimension. This led to some IR proponents attempting to ground theory in philosophy as a meta knowledge which might legitimise knowledge claims (Devetak, 2017). Opponents such as Geuss (2008) argue that any political theory should be concerned with an understanding of history and the study of the changing institutional contexts of human interactions. Consequently, current values, institutions and ideas can be appreciated in relation to power and judgement dynamics which the abstract, normative methods of philosophy arguably ignore. The impact and complexity of globalisation has required IR to re-evaluate the roles

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[8] As a subdiscipline of political science, IR originated during the transformation of international affairs in the nineteenth and early twentieth centuries with the interaction of states and other emerging global actors as its subject of analysis (Kuper & Kuper, 2004).

of state and non-state actors where the opposing ideologies of internationalists and globalists compete for ascendency (Bieler et al., 1999).

Internationalists contend that states remain the principal actors in international politics and economics. Internationalisation involves the movement of capital, services and goods across borders. Globalists see the state's role as supplying the public goods and infrastructure required by business in what is termed the hollowing out of the state. Critical IR focuses on the role of knowledge in moulding the interests and beliefs of IR subjects (Allan, 2017). An object centred view looks at the formation of governance objects, viewing knowledge as crucial to the construction of meta-narratives such as economy and climate that form the framework of international politics. The focus on governance in IR then shifts to issues which have previously been unapproachable within a traditional IR framework (Kuper & Kuper, 2004). Among those issues are delegating state sovereignty to higher authority and the conduct of domestic governments.

The Concert of Europe remains influential as a major example of a successful security regime and in the understanding and development of international organisations. It was the institutional forerunner to the League of Nations and the United Nations (Lindley, 2003). The 1648 Peace of Westphalia[9] is considered by many IR scholars as the central element of international society's evolution and structure (Kayaoglu, 2010). Those who give prominence to the Peace Treaty argue that it established the principles of secularism and sovereignty, transforming Europe into a society of religiously and politically tolerant states. The Westphalian narrative elevates European state-nations sovereignty as decisive in the history of international relations and the secular modern state-nation system (Moita, 2012).

Critics such as Moita (2012), reject the view that the treaties of Westphalia normalised state-nations within Europe and suggest that it delayed the emergence of many states for two centuries[10]. Attributing the birth of the state-nation system to Westphalia is seen cynically as a selective 19th century reinterpretation of the transformations caused by the French and American revolutions. Likewise, Osiander (2001) contends that narratives of

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[9] The Peace of Westphalia ended the destructive Thirty Years War between the Holy Roman-German Empire and rebellious Princes for dynastic supremacy of Europe from 1618-1648 (Moita, 2012).
[10] Italy and Germany would not become unified states until the mid-19th century (Moita, 2012, 28).

Westphalia as a pillar of the sovereignty based international system are largely imaginary. Kayaoglu (2010) supports this stating that the persuasive and persistent reliance on the Westphalian narrative is an attempt to perpetuate Eurocentric bias in IR discourse.

A normative bias allows European states to be portrayed as having resolved the challenges of anarchy with the Peace of Westphalia to form the archetypical international society to which non-European states could aspire to join.

2.3.2 International Governance and International Environmental Governance

Studies of international governance include development (Marangos, 2009), foreign aid (Cohen, 2013; Lebovic & Voeten, 2009), gender inequality (Bose, 2012) and climate change (Allan, 2016; Chander, 2018; Ciplet, 2015; Pettenger, 2007). Since its inception in 1945, the United Nations (UN) has encouraged co-operation in world health, human rights, education, international security, economic development and climate change action (M. C. Williams, 2013). Cooperation between states often fails because of fears potential policy adjustments will require continued co-operation and increased dependency (Urpelainen, 2012). International institutions are influential in diffusing and enforcing norms as governments lack the ability to effectively punish norms violators bilaterally. The Organisation for Economic Co-operation and Development (OECD), International Labour Organisation (ILO) and World Trade Organisation (WTO) are some of the organisations used by states to generate soft law indirectly.

Study of international environmental governance focuses on law as a social institution. It acknowledges a broad range of actors take part in political and legal processes beyond the traditional, positivist concept of the Westphalia inter-state system (Lindley, 2003). Individuals, regional and universal international organisations, states and NGO's are considered the principal actors in international environmental governance. The global environmental regime emerged in the 1970's, influenced by non-state actors[11] in Intergovernmental organisations and civil society groups (Yamagata, Yang, & Galaskiewicz, 2017). In the cold war environment, a bipolar world order was maintained by East/West

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[11] Yamagata et al (2017) suggest the regime coalesced from epistemic communities, rationalistic culture and the emergence of big science.

tensions. Intergovernmental organisations and global welfare treaties proliferated under this stable but edgy world order.

Soviet and US power blocks vied for the attention of nonaligned states producing a consensus type balance in the environmental arena and were influential in motivating other nations to ratify environmental treaties prior to 1991. Yamagata et al (2017) suggest that clustered policy making through learning and emulation may be important for middle and weaker countries and the diffusion of policy internationally, particularly in climate change negotiations. Large groupings such as China, the Umbrella group (Australia, Belarus, Canada, Iceland, Japan, New Zealand, Kazakhstan, Norway, the Russian Federation, Ukraine and the United States), the EU and the Group of 77 (developing countries) also have sub-groups such as LDC's (Least Developed Countries), SIDS (Small Island Developing States) or OPEC (Organisation of Petroleum Exporting Countries). The US was instrumental in endorsing international treaties such as the Convention on International Trade in Endangered Species 1973 (CITES) and the Montreal Protocol on Ozone Depleting Substances in 1987 (Kelemen, 2010).

However, since the 1990's the US has vacated its leadership role in international environmental politics[12]. The EU has stepped in to fill that role, committing itself to high environmental standards and policies. Jacoby and Meunier (2010) posit that EU leadership in international environmental politics is essential to manage the effects of globalisation. Global environmental governance came to prominence following the 1992 Rio Earth Summit (McGraw, 2002). Also known as the United Nations Conference on Environment and Development (UNCED), this summit saw the establishment of the UN Convention on Biological Diversity (CBD)[13]. The momentum and motivation for the CBD was provided by negotiations for the United Nations Framework Convention on Climate Change (UNFCCC).

Developing countries felt the negotiating process for the UNFCCC was dominated by developed countries interests and the CBD was seen as a way to counteract climate change

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[12] The US withdrew from the environmental regime shortly after the Soviet Union's collapse and is now considered a rogue nation, also refusing to ratify Kyoto, the Law of the Sea, the Basel Convention and the CBD while many of its peers did (Yamagata et al., 2017).

[13] Sister conventions on desertification and climate change entered into force with the CBD in 1993 (McGraw, 2002).

negotiation shortfalls. Powerful interest groups and developed states were unable to initiate a CBD that focused purely on BD conservation. The CBD then can address the issue of who benefits from the use of genetic resources beyond the simplistic view of environmental preservation[14]. The convention was viewed as ground-breaking in securing sovereign rights for the global South over their biological resources. When it is realised that 80% of global BD is within these nations territories, the significance of those rights is clear (ibid). International awareness of IP was also increased by the CBD, recognising that traditional IP ecological knowledge could be useful in protecting BD (ibid). It was also noted that the IP criteria for defining species protection and importance may conflict with both local community interests and western scientific paradigms.

2.3.3 The Diffusion of Policy across the Local and Global

Attempts to estimate the value of ecological functions were made in 1997 claiming that the decisions of society will be reflected in the market if people's willingness to pay for those functions is measured (Costanza et al., 1997). The authors admit that willingness to pay methods are not reflective of informational or financial inequality. In 2014 the same authors published an article to address the misconceptions emerging from the 1997 study (Costanza et al., 2014). They argued that while the goods derived from ecosystems become private goods, the ecosystems themselves should not be privatised as they are common assets. They considered expressing ecosystem services in monetary terms useful to indicate their benefit to society. Natural capital stocks and ecosystem services flows are suggested as a means to measure human interdependence on the environment and how human made capital is utilised for human welfare.

The research has contributed to mainstreaming the ecosystems discourse and ecosystem services have been transformed from a foundation for learning and awareness to potential commodities (Gómez-Baggethun, de Groot, Lomas, & Montes, 2010). Payments for Ecosystem Services (PES) schemes, particularly in Meso and South America, and Monetised Ecosystem Services (MES) thinking has embedded ecosystems into policy approaches such

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[14] These resources provide revenue for transnational corporate pharmaceutical, biotechnology and industrial agriculture sector interests that profit from the control and ownership of species genetic material (McGraw, 2002).

as the Millennium Ecosystem Assessment (Hrabanski, 2017). The ecosystem services paradigm has been embraced by neoliberal proponents who see an opportunity to commodify, financialise and monetise nature (Silvertown, 2015).

The term local-global is often used in social science to validate claims of knowledge universality or contextuality in scientific accounts and is regarded as a dynamic interplay between political-economic forces and socio-cultural responses (Haldrup, 2009). Claims of universal knowledge in the positivist tradition are strongly opposed by constructivist sociology where knowledge of the social world is intrinsically contextual and at best partial. The critical feminist perspective in particular argues that knowledge production in the geographical discipline has been a gendered ideological construct which dominates the key concepts of place, mobility, space and nature (ibid). Alternatively, the use of local or situated knowledge in the locality approach stresses the importance of contextuality and particularity in the study of socio-spatial phenomena. When seen as the interface between economic, social, cultural and political structures, locality allows for a more contextual approach to the study of transformations at regional and local levels.

Policy diffusion occurs when policy choices in one country affect policy makers decisions in one or several other countries (Arbolino, Carlucci, De Simone, Ioppolo, & Yigitcanlar, 2018; Maggetti & Gilardi, 2014). Influences identified in international policy diffusion include coercion, learning, emulation and competition (Simmons, Dobbin, & Garrett, 2008). Policy choice may be motivated by appeasing powerful states or protecting current or future material interests in the case of coercion (Yamagata et al., 2017). For competition, a country can improve its competitive position by adopting a policy which offers trade partners the same incentives as others. Policy diffusion study has developed from diffusion of innovation (DOI) theory which seeks to explain why and how new ideas and technologies spread amongst members of social systems. Formative theory was initiated in the 1950's by Everett M. Rogers after observing agricultural innovation adoption behaviour in Carroll, Iowa (Rogers, 1995).

Farmers would often delay adopting new innovations despite a seemingly obvious profit incentive suggesting that behaviour was motivated by factors other than economic rationality. For Rogers diffusion is a mode of communication to express a new idea.

For a potential adopter, new ideas inherently contain a low degree of structure and predictability so information becomes crucial to reducing any uncertainty or risks. A key aspect of policy diffusion is that it can be horizontal or vertical. Horizontal diffusion can occur across sub-national units, international organisations or countries. Vertical diffusion may occur between subnational, national or supranational levels. Policy in groups of countries becomes similar over time but can also lead to differentiated models for individual country's as new policy is mixed with existing. Globalisation plays a major role as an external inducement for policy diffusion due to an integrated international political economy[15].

2.4 Aotearoa New Zealand

A treaty-based process was preferred by London humanitarians for British settlement and colonisation during the 1830's and 1840's (Havemann, 1995). British treaty making was a prolific activity throughout the eighteenth and nineteenth centuries after identifying that attaining agreement using native languages was necessary to reduce barriers to successful trade and exploitation (Mutu, 2010). Agreement was gained from various groups exercising occupation and control over their lands including Malaysian and Arabian potentates with multiple treaties established with African tribes (Palmer, 2008). Most of these documents have faded into historical obscurity but the TOW has for some reason remained a central focus for Māori to contest state power and authority.

Hobson proclaimed British sovereignty over the North Island on 21 May 1840 by cession (Adams, 1977). This was justified by what he perceived as the universal adherence of Māori chiefs to the TOW but also motivated by the threat of the New Zealand Company establishing a republic in the Wellington District. Sovereignty over the South and Stewart Island's was proclaimed by discovery based on a dubious assertion that chiefs in the South Island were too 'uncivilised' to adhere to a Treaty. Hobson had sent Major Bunbury and Captain Nias to the southern islands to claim sovereignty, preferably by cession but by the right of discovery if necessary. On 5 June 1840 they claimed sovereignty over Stewart Island

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[15] For example, domestic capital market and taxation policies are increasingly convergent as nations modify their political stratagem to accommodate international soft rules and maintain the competitiveness of domestic economic systems (Arbolino et al., 2018).

by the right of discovery but would later acquire the signature of principle chief of the area, Tuhawaiki.

On 17 June they would proclaim sovereignty over the South Island by the right of cession, with several foreign vessel crew members assembled to bear witness. Hobson's proclamations[16] would be published in the London Gazette in October 1840 to formalise British sovereignty over New Zealand[17]. Humanitarian concerns in London were reflected in Hobson's original instructions to make it clear to Māori chiefs that British intervention in New Zealand was to protect them from lawless Europeans. Subsequent instructions from James Stephen of the Colonial office were that British intervention was primarily to save and civilise the Māori but also to protect European settlers. Hobson appears to have performed his duty admirably but was perhaps unaware that the British Government's intentions extended to protecting the economic interests of British settlers and the systematic colonisation in New Zealand.

Tribal ownership of land guaranteed in the Treaty was a barrier for the colonial government and settlers wishing to purchase land (Butterworth, 1991). In order for settlement to occur Māori title would need to be extinguished and the situation was further complicated by the Crown's right of pre-emption to purchase land. The 1862 Native Lands Act paved the way for courts to be established and determine Māori rights to their lands and abolish Crown pre-emption. These courts were initially to include chiefs and could issue titles to a community, tribe or individuals. Chief Judge F.D. Fenton instigated the Acts repeal with the 1865 Native Lands Act which articulated settler determination to bring the communism of the natives to an end and remove their reluctance to accept civilisation.

The importance of land to Māori was not only as the means of production but also in what Firth (1973) describes as the emotional associations of living on it and the tribal traditions which are embedded in it. Land was considered worth dying for and one expected to bid farewell to their homeland. It was not uncommon for a doomed enemy to be taken to view

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[16] The authority to establish the Crown colony of New Zealand had already been included in amendments to the New South Wales Act on 7 August but needed Hobson's proclamations of sovereignty to come into effect (Adams, 1977).

[17] Hobson would make another proclamation, once he had received the letters patent and his instructions as governor, on 3 May 1841 that New Zealand was now a Crown colony of the British Empire (ibid).

their territory and sing their lament before being despatched. Outstanding landscape features often formed a special link for a tribe such as lakes, rivers or mountains. The Māori population in 1820 was 150,000 which had declined to around 46,000 by 1896 (Durie, 2000). Traditional methods of harvesting resources were regulated by the institutions of rahui, tapu and tohunga with enforcement being presented in the form of muru[18] if these failed (Grigg et al., 1995).

Early settlers to Aotearoa New Zealand were unable to identify the institutions which they held to indicate a society because they considered the customs and laws of IP as barbaric and inferior to English law (Hazlehurst, 1995). Imposing that law was also necessary to civilise Māori and create a new political and legal system. The TOW would fade from public view and relevance after the decision of Chief Justice Prendergast in the Wi Parata case[19] that the treaty was 'a simple nullity' (Havemann, 1995). The TOW Act 1975 followed the active revival of Māori concerns at their treatment in a society which continued to dispossess and marginalise them. The 1975 Land March served as a catalyst for the legislation as the rights guaranteed to Māori under the Treaty were virtually non-existent. The Act saw the establishment of the Waitangi Tribunal with powers to inquire and make recommendations to the Crown on historic breaches of the treaty although only after 1975 (Knox, 2011). Amendment of the Act by the 1985 Labour Government saw the Tribunal's brief extended to the signing of the Treaty in 1840 (Hamer, 2004).

2.4.1 Treaty Settlement as Conflict Settlement

The Tribunal investigates claims through a process of hearings and reports its findings and recommendations to the Government/Crown which they may ignore or adopt when offering settlements. Havemann (1995) suggests that legislative reforms in Aotearoa New Zealand also correlate to similar processes in Canada. In 1982, section 35 of the Canadian Constitution Act constitutionalised Aboriginal rights despite the existence of multiple treaties. Walker (1990) asserts that the empowerment of the Waitangi Tribunal secured Māori faith in the grievance resolution process and encouraged the suspension of activist activities in favour on pursuing legal redress. The Tribunal offered a better avenue for legal

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[18] Muru involves the confiscation of resources from individuals or whānau groups (Grigg et al., 1995).

[19] Wi Parata v Bishop of Wellington [1877] NZ PCC 387.

recourse than the court system which tended to maintain historic injustice with its dependency on English common law, convention and jurisprudence.

The gains achieved in legal recognition of Treaty principles and settling historical grievances are a testament to Māori patience and perseverance but have also been due to Pākehā supporters in the bureaucratic system and responsive governments. The New Zealand Māori Council has also been highly influential in advocating for justice and maintaining treaty rights (Mead, 1997; Walker, 1990). Increasing New Zealand independence from the UK in the latter part of 20th century has seen Māori culture and symbolic resources adopted by the mainstream to communicate a cultural identity to visitors and new arrivals to Aotearoa-New Zealand (Bennett & Liu, 2018). The partnership between Pākehā and Māori people is embraced as a symbolic foundation in New Zealand's national identity narrative. Bennet & Liu (2018) consider this narrative a 20th century construct, occurring after the fact of land alienation, warfare, industrialisation and 19th century legislative suppression of Māori customary practices.

Possibly the most significant of these legislative mechanisms was the Tohunga Suppression Act 1907. Whilst supported by prominent Māori of the time such as Maui Pomare, the attempt to replace traditional healing practices with European medicine was disliked by many Māori and the act continues to be seen as an unequivocal assault on Māori methodologies and knowledge (Bennett & Liu, 2018; Durie, 2000). The role of the tohunga in traditional Māori society is well established. Tohunga have been classified as 'experts' according to their relative branch of knowledge including agriculture (Firth, 1973) and religion (Buck, 1949, 1950; Servant, 1973). Marsden (1975) offers 'appointed' or 'chosen one' as a more appropriate definition of tohunga. Their function was to mediate between the gods and the tribe for the welfare of the tribe and others. Tohunga were central to the health of pre-European Māori (Léo-Paul & Waata, 2011).

Pomare was motivated by the poor health of Māori to support the 1907 Tohunga Suppression Act which was also useful in silencing critics of government assimilationist policies such as Tūhoe leader Rua Kenana. The Act made it an offence to foretell Māori futures, giving government forces 'just' cause to arrest the Te Urewera prophet in 1916. Pomare was convinced that better health outcomes could be achieved by accelerating the

individualisation of Māori land titles, perceiving communal values and land titles to be the major cause of the ill-health and poverty of the time (Durie, 2000). He conflated communal existence with communism, idleness and non-employment. Conversely, Sir Apirana Ngata believed collective ownership should be retained and land titles amalgamated (ibid).

Debate over what Māori interests are and who decides them is often heated especially concerning the conservation estate. Crown agents and non-Māori academics regularly attempt to reduce Māori concepts to measurable quantities and elements (Ballantyne, 2011; Binney, 1987, 2010; Heaton, 2016). The ability of Māori to define and speak for themselves is often assumed by the Crown and its proxies to systematically fashion environmental policy (Richmond et al., 2013). The allocation of rights to what are still the means of production in land (Knox, 2011), forestry, the coastal marine area (Bess, 2011) and water resources (Salmond, 2014; Strang, 2014) are then maintained within continued state control.

Mead (1997) believes that any spirit of biculturalism must necessarily reflect both forms of knowledge and any concept of 'one people' is false if it perpetuates the assimilationist policies of yesteryear. The use of the multicultural society narrative is also viewed by Māori as a politically motivated agenda, relegating them to one of many ethnic groups policy must consider rather than treaty partners. For Aotearoa-New Zealand the Crown is a central feature of political discourse constituting both the ultimate legal authority and source of government legitimacy (Shore, 2018). The Crown acts as the predominant organising principle of political and legal arrangements for constitutional monarchies in Australia, Canada and New Zealand. Crown and the state are used interchangeably to symbolise the will of the people or the public interest, reflecting our English origins of political thought.

The embodiment of the state in the symbolic Monarch is a social construct which represents itself as a ubiquitous entity detached from but dependant on society for its continued relevance and legitimacy. The Queen in right of the United Kingdom is a separate constitutional and legal entity from the Queen in right of New Zealand (Brookfield, 2006). The Crown has three disparate and often contradictory meanings in common law. It is an entity that stands between citizens and government institutions and is able to exercise its own will. It can be seen as an unelected representative of the community and government

institutions. The Crown also forms part of the government's executive branch although situated somewhat above the government of the day. These forms and functions occur simultaneously including the mediation of relations between Māori and the government.

The Crown's role in Waitangi Tribunal hearings is multifarious. Most significantly, it is the Crown who has made the tribunal's existence possible via assent to the 1975 TOW Act. The Crown is the defendant in tribunal hearings as either the usurper or guarantor of native title. Crown divisibility allows it to fulfil the functions required at the time permitting the government of the day to insulate itself from the actions of the state or previous governments. The bicultural ideology of New Zealand reduces society to binary identities of Pākehā-Māori and Crown-Māori in which the Crown is a fundamental Pākehā institution inaccessible to Māori. The Crown paradoxically represents all New Zealanders but is also the Treaty partner (although not specifically mentioned in the treaty).

2.4.2 Treaty Settlements as Rebalance

State recognition of historical grievances and TOW references in legislation are important to address the racism and persistent inequality which Māori have struggled against. Corporate models with pro market policies have been imposed by the treaty settlement process to cultivate tribal economic development (Rashbrooke, 2013). Iwi environmental planning has proliferated with Iwi management plans numbering around 160 as of 2016 (Jacobson, Matunga, Ross, & Carter, 2016). The Waitangi Tribunal report WAI 2358 looks specifically at the consistency of resource management law with treaty principles during its freshwater and geothermal resources claims inquiry (Waitangi Tribunal, 2019).

The claim was lodged in 2012 by the New Zealand Māori Council and 11 other Māori groups concerned about Crown freshwater reforms proceeding without acknowledging Māori rights and interests in water. An additional concern was the Crown's willingness for reforms to proceed without representation from any claimant groups – instead selecting the Iwi Leaders Group (ILG) as its preferred representative of Māori interests. In a review of Māori submissions to the Ministry of the Environment regarding reform of the National Policy Statement for Freshwater 2014 (NPSFW), the Tribunal noted that some groups called for new provisions in the policy statement requiring councils and Māori to participate as treaty

partners at a governance level in the management of freshwater. The subsequent contents of the NPSFW were, in the opinion of the tribunal, based on freshwater management in regional policy statements and plans better reflecting Māori values. The issues of Māori Treaty rights, governance and decision making in freshwater management were not addressed by the reforms.

2.5 Summary

International legal and sovereignty structures are arguably new variations of long-established moral paradigms and frameworks. Colonisation has distributed these normative systems along with coloniser/colonised identities. Global framing of issues determines state centric solutions by legitimate organisational actors in international affairs with rules determined by those states able to express technical and legal expertise. Conflict is inherent in the contest for national identity and presents risks for security and control of national resources. Settlement is still the preferred method of dealing with conflict which maintains stability for poorly defined state power structures.

Chapter 3

Methodology

In order to address the key research question, a mixed methods approach focuses on an analysis of primary data from case study interviews and secondary data sources from document analysis. The first section of this chapter provides an overview of the case study approach and the case study selection. In the second section the documents for analysis are identified and the process for analysing data is described. An analytical framework used to interpret the data is provided in section three and in section four limitations and possible challenges are discussed.

3.1   Case Studies

Frequently used as a teaching method, the case study is well-known throughout the literature relating to law, management, academia, business and medicine (Tight, 2010). Hardwick (2009) identifies several types of case study commonly discussed in social science and geography literature. These are:

- Explanatory case studies are used to make contributions to predictive models and enable analysis in causal investigations.

- Descriptive case studies involve an overall interpretive or descriptive theory to be advanced prior to the commencement of the study.

- In an intrinsic case study, the researcher takes a subjective observer role as an insider where they may have a professional or personal interest in the case at hand.

- Exploratory case studies collect and collate foundational data which will be utilised for a more expansive project with broader questions as the basis of analysis.

- Collective case studies study a group of interrelated case studies via a comparative analysis method. Individual researchers or research teams work collaboratively to synthesise results.

Criticism of the case study approach centres around two recurring themes. Firstly, it is argued that case study findings cannot be replicated and are therefore unscientific. Hardwick suggests that this limitation may be overcome by triangulating a set of mixed

methods for data collection and analysis and then backing it up with a chain of evidence to argue a case. The second criticism is that findings are overgeneralised when attempting to scale up or apply case study results to different cases. This may be mitigated by using the findings to address and contribute to larger questions, issues and theories (ibid).

As a research method, case studies are useful where the goal is to develop as full an understanding as possible and to give an in-depth description of multifarious social phenomena (Punch 2005; Yin, 2014). This allows the researcher to maintain a real-world perspective by focusing on a "case", whether it be neighbourhood change, small group behaviour, managerial and organisational processes or international relations. Verschuren (2003) believes there is general agreement among authors on the object of a case study being physically, socially and temporally limited in size, complex in nature and unique[20]. Given the interactive role the researcher plays, and the personality linked methods of a case study, questions arise as to the independence of research results.

Most opponents of case study research and its results hail from the quantitative, reductionist standpoint which favours generalisability and breaking down research into units which are converted to analysis variables to produce descriptive knowledge. A reductionist approach tends to risk developing 'tunnel vision syndrome' which views an object as separate from its political, physical and social context while limiting observation to one single point in time. Yin (2014) limits case study types to three instances which are common to all research methods and defines these as exploratory, explanatory or descriptive studies. The type of case study used will be determined by the degree of control the researcher has over existential phenomena, the sort of research question presented, and whether the focus is on historical or contemporary events.

A descriptive/interpretive approach is used for this case study as it will involve both historical and contemporary events over which I will have no control and is based on a theoretical framework developed for data analysis. Whakaraupō/Lyttelton Harbour was chosen as an appropriate case study with a particular emphasis on the collaborative catchment harbour management plan released in 2018. The plan clearly defines the main

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[20] Yin (2014) argues that the limits of the object, the boundaries of a phenomenon and its context are not a fixed quantity and advocates the use of multiple cases to increase the generalisability of findings.

actors involved in its creation as well as the scope of its geographical context. The Hauraki Gulf was considered as a possible case study. The gulf's marine environment has seen a decline in resource abundance, environmental quality and mauri in recent years.

In 2013 the Sea Change Tai Timu Tai Pari Project was established to address this decline (Seachange, 2017). This culminated in the Sea Change Marine Spatial Plan of 2017. The plan is the result of a governance group representing recognised Mana Whenua, local and central government agencies with a mandate to manage the nationally significant area as required in the Hauraki Gulf Marine Park Act 2000. The overall goal of the plan is to turn around the degraded quality and depleted quantity of marine resources in the gulf by enhancing the mauri of the park in support of prosperous and healthy communities[21].

Ultimately it was decided that the intricate interconnections of multiple overlapping treaty settlements within the area and the numerous local and central government agencies would require more time and resources than were at my disposal. Management and governance of Te Waihora/Lake Ellesmere was one of the first attempts at joint environmental management undertaken in the South Island. Previous studies have focused on the barriers to establishing a co-governance regime for the lake (Prystupa, 1998), possible options for the lake's management (Hughey & Taylor, 2008) the sustainability of management approaches regarding the lake (Jenkins, 2016), and how co-governance and management processes are affected by the complexity of multiple interest groups values (Lomax, 2016). This literature provides an excellent opportunity to evaluate and compare with the Whakaraupō Lyttelton harbour case study.

3.1.1 Semi-Structured Interviews

Nine semi structured interviews were conducted to gather primary data for the case study. Participants were selected primarily based on their involvement in the development of the harbour catchment management plan (Table 3.1). Representatives of local community groups were included to give a broader perspective of the case study setting. The purpose of interviewing is to make meaning of phenomena by analysing people's experiences and the functioning models they use to understand the world (Josselson, 2013). In documenting

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[21] The bilingual layout of the plan is complemented by the inclusion of the distinctive mainstream and Mana Whenua worldviews respectively which has been included in Appendix B.

such conversations, the researcher's goal is to better understand how participants interact with the world and what processes or constructions contribute to their experience.

Most studies using an interview based qualitative research approach fall in the continuum between realist and relativistic understandings of knowledge. Realist assumptions see reality as a social construction and results are based on the way we are taught to frame questions or how we investigate, analyse and interpret the collected data. The relativistic approach recognises individual agency to create social reality, and that the process of the interview is an opportunity to identify our bias and learn something beyond our own preconceptions and reality. Interview questions were developed to elicit participant perspectives in relation to the research questions presented in the introduction[22].

3.1.2 Participants

Table 3.1 Case Study Interview Participants.

Interviewee	Organisation
Karen Banwell	Programme Manager, Whakaora Healthy Harbour Plan
Courtney Bennett	Te Rūnanga o Rāpaki – Te Hapū o Ngāti Wheke
Yvette Couch-Lewis	Chair of Whakaora Healthy Harbour Governance Committee
Wendy Everingham	Project Lyttelton & Lyttelton Reserves Management Committee
Graeme Fraser	Diamond Harbour Reserve Management Committee
Dyanna Jolly	Planning and Impact Assessment Consultant
Kim Kelleher	Lyttelton Port Company
Christina Robb	Environmental Management Consultant
Brendan Wright	Principal Lyttelton School

3.2 Document Selection

Documents used for the study are listed in Table 3.2. International agreements or conventions have been selected based on their prevalence in the international arena and impact on state affairs and IP. Legislation and policy documents for New Zealand have been selected based on an environmental decision-making criterion. Treaty settlement related

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[22] Interview questions can be found in Appendix A along with a more detailed description of interview participants' backgrounds and experience.

documents have been selected based on the progression of treaty settlements processes from the early Ngāi Tahu and Waikato-Tainui claims through to the recent Te Urewera and Whanganui River claims[23].

Table 3.2 Documents Selected for Analysis.

International Agreements	New Zealand Policy & Legislation	Claim Report & Settlement Legislation
Agenda 21 - United Nations Conference on Environment and Development 1992.	Environment Act 1986.	Ngāi Tahu Settlement Act 1998.
Convention on Biological Diversity (CBD) 1992.	Conservation Act 1987.	Waikato-Tainui Claims Settlement (Waikato River) Act 2010.
Millennium Development Goals (MDG) 2000.	Resource Management Act 1991.	Te Urewera Act 2014.
United Nations Declaration on the Rights of IP (UNDRIP) 2007.	Local Government Act 2002.	Te Awa Tupua (Whanganui River Claims Settlement) Act 2017.
Nagoya Protocol 2010.	National Policy Statement for Freshwater 2014 (Amended 2017).	WAI 262 TOW Tribunal report concerning Māori Taonga 2011.
The 2030 Agenda for SD, 2015.	Proposed National Environmental Standard for Freshwater.	

3.2.1 Data Analysis

Coding makes it easier to understand dense text data and allows the researcher to make sense of different data in relation to their research questions (Elliott, 2018). First level coding assigns symbolic meaning to descriptive or inferential information and is used to assist later higher order coding. Second level coding focuses on pattern or meta codes as

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[23] A detailed summary of the documents analysed can be found in Appendix C.

categories which are more inferential and bring together the less abstract, more descriptive codes. A priori codes are necessary to test theory against empirical data and are not limiting of the research process. They may be opened up to the view of the participants or new codes may emerge. Coding and analysis were completed using Nvivo pro 12 software. An example of the coding style used is provided in Table 3.3.

Table 3.3 Coding Category Examples.

Source	Text	Coding Categories
Interview transcript Yvette Couch-Lewis	The catchment plan came about because of the hearing panel's decision. Rāpaki and members of the community were all saying that the Port company was contributing to the degradation of Whakaraupō which prevented us from being able to continue our cultural practices of harvesting.	Community and Mana Whenua Partnership/Liberal Environmentalism
International agreement: CBD (Article 10 (c))	Protect and encourage the customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements.	Global Values/Tokenism/Liberal Environmentalism
Domestic document: NPSFW (Preamble)	Addressing tāngata whenua values and interests across all of the well-beings and including the involvement of iwi and hapū in the overall management of fresh water, are key to giving effect to the TOW.	Local Practices/Tokenism/Co-Management
Treaty related document: Te Urewera Act 2014 (S 3(9))	Tūhoe and the Crown share the view that Te Urewera should have legal recognition in its own right. To this end, Tūhoe and the Crown have together taken a unique approach, as set out in this Act, to protecting Te Urewera in a way that reflects New Zealand's culture and values.	Co-Governance/Treaty Partnership/New Zealand Values

Coding can be done on single words, sentences or paragraphs and does not have to be exhaustive but what is coded should refer to the research question (Saldaña, 2016). How interview transcriptions or discourse analyses are perceived and interpreted is a highly subjective process. For research, coding captures the essential elements and quintessence which allow connections to be analysed after categories are established by grouping regular

and similar codes together. There is no standard amount of codes which should be used although categories should be kept to a minimum (ibid). Transcription and analysis of the interviews takes place as part of the conceptualising and analysing process to capture the use of words and their meanings as intended by the speaker (Josselson, 2013). It is important to note any emerging understandings or themes which are connected to the question being asked when conducting data analysis. This includes interpreting what is absent from the narrative.

3.3 Theoretical and Analytical Framework

Using a descriptive approach, the study starts with initial assumptions based on co-governance and group collaboration literature to provide some direction and rationale. It is expected that these assumptions may later be contradicted or supported by interview data. A combination of three main theories is necessary given the broad scale of environmental governance from international, Aotearoa New Zealand and indigenous perspectives. The following theories have been used as an analytical framework.

3.3.1 Cultural Hegemony

Antonio Gramsci's theory of cultural hegemony contends that power in capitalist society's is maintained by the state and ruling capitalist class using institutions (Levy & Newell, 2005). Rather than using economic force or violence, these cultural institutions or superstructures propagate norms and values so that these become the common-sense values of society (Figure 3.1). Institutions function to maintain and legitimise the capitalist state ideology and work well with egalitarian values. Buckel & Fischer-Lescano (2009) apply Gramsci's philosophy to law and highlight the theory's ability to transform perceptions of ideology as an ideational logic to habits of lived social practice embedded in reality. Viewed with this lens, law replaces religion as modernity's unifying ideological institution in capitalist societies. Hegemony is a process which establishes societal leadership by promulgating a world view which encompasses completely the moral, intellectual and political realities of daily life.
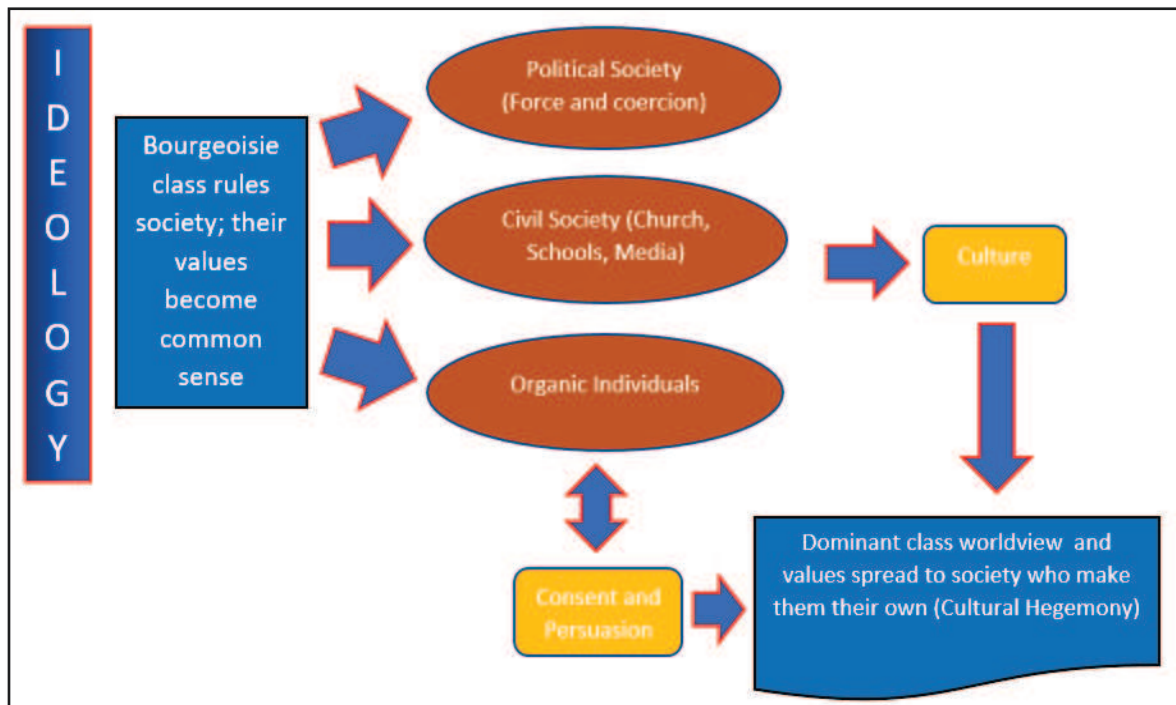
Figure 3.1 Gramsci's Cultural Hegemony. Based on Kokturk's model, 2012.

3.3.2 Corporate Solutions

Corporate problem solving often requires avoiding the quandary a lack of knowledge creates by analysing the situation according to a set of protocols. Restructuring reality in this way allows for solutions to become apparent and justifiable through what is termed 'constructing consultant authority' (Giridharadas, 2018). A situation is broken down into related categories based on assumptions of logic. Educated guesses are then used to construct a reasoned and compelling answer. This constant atomising of problems into subcategories allows clarity of a specific issue but requires the whole being ignored. Such categories may be defined or constructed in a way that may, or may not, reflect reality or identify the actual problem but suit the analyst and are legible in their language. That language becomes inaccessible to local or traditional knowledge which might offer a more realistic perspective of the problem.

Corporate problem solving has been adapted to solving social problems in which win-win market approaches are the focus. For solving societal problems, the private sector mantra is that creating long term prosperity for families and communities simply requires them to have access to markets, capital and relevant information. Instances of poverty and inequality are not considered a result of reversible decisions made by society. This 'trying to

solve the problem with the tools that created it' protocol is often seen as an extension of imperial arrogance and colonialism of the rich, who benevolently mobilise science and technology to solve 'problems'. The approach marginalises solutions which focus on sharing resources and power while elevating those who are adept at connecting markets, information and capital as problem solvers.

3.3.3 World Risk Society

Systemic risks require the identification, assessment and management of hazards using a more integrated approach. These risks may be part of society's processes and beyond the scope of an agent-consequence model. Complexity may be a result of antagonistic or synergistic agent interactions (Renn, 2005). Systemic risks often have multiple causes and are characterised by both ambiguity and uncertainty making identification and measurement of causes extremely difficult. Beck (1999) tentatively attempted to categorise these risk reconfigurations as first modernity and second modernity. First modernity is typified by controllability and progress, full employment, the exploitation of nature and collective patterns of life based on the territorial significance of communities, social relations and networks of nation-state societies.

Beck considers these aspects of first modernity have been emasculated by the intermingled processes of global risk, individualisation, underemployment, globalisation and the gender revolution. The challenge of second modernity is how it reacts to these developments in which new forms of global order, economy, personal life and capitalism work to reinvent society. Beck stresses that second modernity is not postmodernity. In a world risk society, Western and non-Western societies share the same challenges in space and time and respond according to their different cultural perceptions. Rather than being cast in the previous premodern or traditional categories, non-Western societies contribute to alternative pathways for developing modernity's in diverse areas of the world.

3.4   Limitations & Subjectivity

The interview sample size is small due to the focus on persons involved in the development and implementation of the Whakaora Harbour Catchment Management Plan. Despite multiple requests to interview representatives from DOC, Ecan, CCC and TRONT, I was either

redirected to the Programme Manager for the Whakaora plan or in the case of DOC eventually ignored. Limiting the number of documents reviewed is necessitated by the short time frame for the dissertation.

Kumar (2005) makes the distinction between subjectivity and bias. He considers bias to be the premeditated attempt to either accentuate or conceal something. Subjectivity is considered a primary component of an individual's way of thinking and a result of experience, discipline, skills, philosophy and background. This requires consideration of researcher positionality where the meaning of events is influenced by the researcher's perspective or position (Piantanida, 2009). Knowledge claims in interpretivist epistemology assume researcher dependency and are relevant given particular contexts.

My genealogical background forms my ontological outlook and should be acknowledged as both a source of bias and a footing for my distinct perspective. As a child of a Pākehā mother and Māori father, my worldview has been fashioned by contradictions, dualities and binary symbols, conflict and compromise. The effects of a bicultural lineage lead to an almost detached existence as a New Zealander at times. I am both the oppressed and the oppressor, the uncivilised savage and the moral bankrupt, the coloniser and the colonised. This shaping of how I see the world affects how and why I undertake the research and I have attempted to maintain a check on my biases throughout the study.

3.5   Summary

The study is focused on environmental governance from both a macro and micro perspective. A mixed methods approach to data collection allows for evaluation and comparison of the aspirational contents of agreements, conventions and legislation against both the practiced, lived reality of interview participants and the critiques of peer reviewed literature. By triangulating data analysis, it is envisaged that similarities and differences will be identified as well as key concepts and contentious issues in the environmental governance discourse. A theoretical framework forms a basis for organising concepts and acknowledges that theories are useful to provide an abstract representation and interpretation of reality. The theoretical framework is broad to capture the nuances of globalisation, domestic strategy and indigenous issues which are embedded in the key concepts of global and local environmental governance.

Chapter 4

Case Study

This chapter firstly looks at the physical characteristics of Whakaraupō-Lyttelton harbour catchment then in section two describes the relationship of land use to mahinga kai and catchment management. Section three identifies the impact of the treaty settlement process and highlights the cultural and economic significance of the harbour. The final section describes the earthquake recovery processes, providing context to the development of the Whakaora Healthy Harbour Plan.
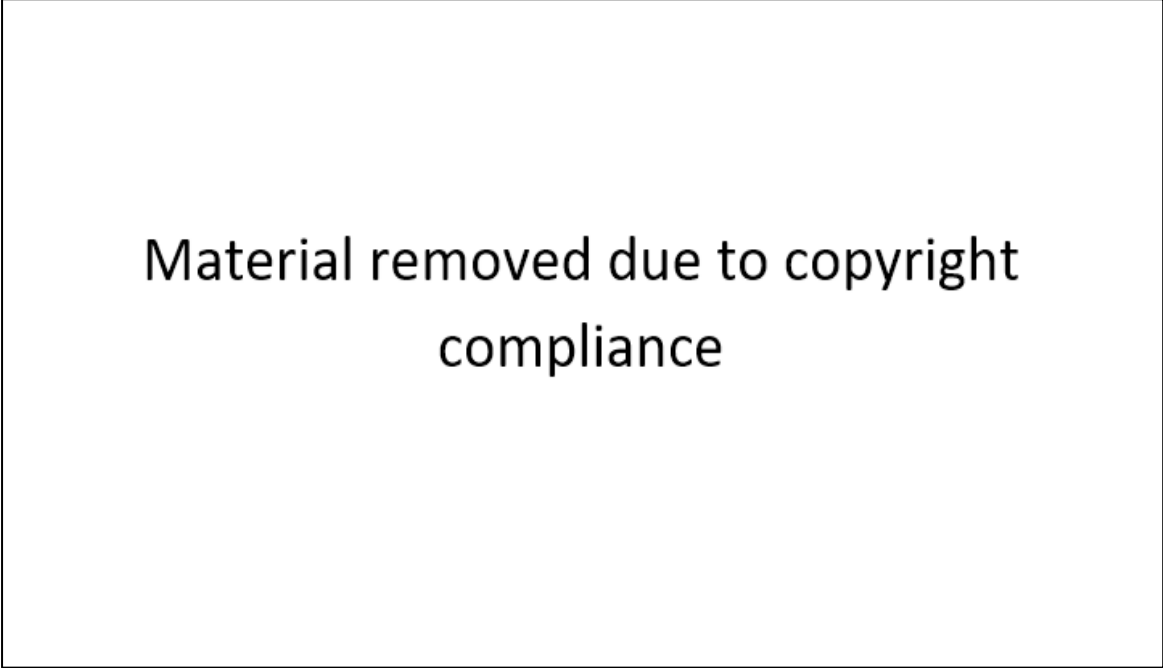
4.1 Harbour Catchment Description

Figure 4.1 The Case Study Area of Whakaraupō-Lyttelton Harbour (Te Hapū o Ngāti Wheke, Canterbury Regional Council (Environment Canterbury), Lyttelton Port Company Limited, Christchurch City Council, & Te Rūnanga o Ngāi Tahu, 2018).

The extent of the Whakaraupō-Lyttelton Harbour catchment is defined by the catchment boundary in Figure 4.1. Two Miocene composite volcano cones form the wider area of Banks Peninsula (Hart, 2013). The erosion and collapse of these cone centres and subsequent sea flooding has formed the two inlets of the Akaroa and Whakaraupō-Lyttelton Harbours. Glacial outwash gravels from the Canterbury Plains form the lower parts of the

peninsula and surrounding continental shelf. Erosion prone loess deposits mantle the underlying volcanic rocks, at times up to twenty metres thick. Loess deposits have been blown across from the Canterbury Plains during the Pleistocene period of around 2.6 million to 11 thousand years ago and are readily transported to the sea.

Figure 4.2 Banks Peninsula Deforestation. Image from Boffa Miskell, 2007, as cited in Hart, 2013.

4.1.1 Harbour Health

Seasonal Māori occupation and resource use since 800 AD had negligible impact on catchment erosion and sedimentation of Whakaraupō-Lyttelton Harbour (Goff, 2005, as cited in Hart, 2013). Introduced European farming practices led to comprehensive forest clearance by either burning or timber extraction with ninety percent of Tussock grasslands and mixed podocarp forests removed from Banks Peninsula in the period 1860 – 1900 (Figure 4.2). Largescale land use changes increased sediment runoff into streams and intensified soil erosion in the catchment. An interim management plan was produced in 2008 to address contaminated sediment in the inner harbour (Davies, 2008). This plan was intended to be a short-term measure until a long-term plan could be implemented in 2018.

Investigations revealed elevated levels of organics, tributyl tin (TBT) and several other metals in the seabed around a dry dock in operation since 1880 (ibid). Amphipod mortality

rates of one hundred percent were found at the drydock with toxicity concentration extending outward 60 to 80 metres offshore to a depth of 0.5 to 0.7m below the seabed level. A potential pathway to unacceptable exposure is by the uptake of benthic biota, including bottom feeding fish, and the consequential degradation of those communities. Contaminated sediments may also be transferred to the outer harbour and potentially deposited into recreational waters.

As part of the interim plan, a cultural impact assessment was completed by Te Hapū o Ngāti Wheke ki Rāpaki which acknowledged that ongoing liaison with tāngata whenua will be required due to the significant impact contaminated sediment management will have on long term cultural strategies. Discharge consent monitoring undertaken by Ecan was to be complemented by additional monitoring in locations outside the contaminated area to confirm whether mixing or dispersion processes were changing the extent of contamination. A harbour monitoring report in 2011 suggested that increased sampling of springs and creeks, wastewater outfalls and harbour water be coordinated to increase the accuracy of the monitoring regime (Bolton-Ritchie, 2011). The Living Springs Creek and Rāpaki Stream were found to have higher levels of total nitrogen and total phosphorus respectively than any of the other streams monitored in the catchment. The report recommended an investigation into the source of these elevated nutrients.

4.2   Land Tenure and Transformations

In 1848 the New Zealand Company had decided that a new settlement called Canterbury would be established but its exact location was yet to be determined (Evison, 2006). The company's new principle agent, William Fox, suggested to Governor Grey that Banks Peninsula be included in the Kemp purchase as the deed's provisions did not explicitly exclude it. This would provide a suitable location for the highly anticipated Canterbury settlement. Fox also proposed that the entire South Island be declared waste lands of the Crown. Greys solution was to deem Port Levy and Port Cooper reserves made on behalf of the natives which would be disposed of to the government for the use of incoming settlers. The name Port Cooper was the first English name given to Whakaraupō by Captain William Wiseman who traded with natives of Banks Peninsula and worked for the Australian

merchants Levy and Cooper (Carter, 2014). 'Port Cooper Māori' was used to refer broadly to Māori occupying the Canterbury Plains as well as those at Port Cooper (Evison, 2006).

Henry Kemp was born in New Zealand and appointed to the role of Native Secretary and interpreter for the Southern Districts by Governor Fitzroy in 1845 and went on to become the Native Secretary for New Munster (Te Wai Pounamu or the South Island). The Kemp purchase was purported to have acquired lands in the Westland, Otago and Canterbury areas for £ 2,000 in 1848 (The Waitangi Tribunal, 1991c). The block would eventually come to include almost a third of New Zealand's land area with poor negotiation and expedient demarcation contributing to a contentious 20-million-acre purchase. Discord centres on Kemp's failure to identify and survey the lands which were to be excluded from sale. These lands consisted of natural food resources, gardens, villages and homes which were to be reserved to Ngāi Tahu in perpetuity. Ngāi Tahu consent to the purchase was partially motivated by fears that Governor Grey would repeat the actions of the Wairau purchase where Ngāti Toa chiefs were paid for the areas of Kaikōura and Kaiapoi.

Kemp was selected to arrange purchase by Lieutenant Governor of New Munster, Edward Eyre on the instruction of Governor Grey. Kemps purchase was a collaborative effort by the New Zealand Company and the settler government enabled by an Act of British Parliament in which the company acquired a 3-year monopoly to buy Māori land in the Southern District[24] (Evison, 2006). This partnership involved the settler government serving as the purchasing agent while funding was provided by the British government. A broken promise by Governor Grey to pay or return Kaiapoi territory motivated many Ngāi Tahu to reject Kemp while others were concerned that Grey would just pay Ngāti Toa for the lands concerned anyway. Tikao demanded £ 5 million for Banks Peninsula but Kemp replied that the maximum on offer was £ 2000 (ibid).

This was met with a reply from Tiramorehu that with a price that small, Ngāi Tahu would need to retain all kāinga nohoanga, mahinga kai and sufficient lands to meet the demands of future generations. After a heated debate Kemp agreed to those demands and asked Ngāi Tahu to provide their agreement in two days' time. No copy of the deed or plan for

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[24] The Southern District comprises all of New Zealand south of Taranaki (Evison, 2006).

reserves was given to Ngāi Tahu at the signing but Kemp promised to return to mark out the promised reserves. In Wellington, Kemp would report the Ngāi Tahu purchase as covering 20 million acres and state that all of Ngāi Tahu had agreed to the purchase. The Māori text of the deed stated that Ngāi Tahu would retain their kāinga nohoanga and mahinga kai within the territory described and that further reserves necessary for future generations would be allocated once the lands were surveyed.

The English 'true' translation by Kemp stated that Ngāi Tahu will receive their cultivations and sites of residence only, while it would be at the governor's discretion if any further reserves are allocated. This mistranslation, or at least poor translation, is unfortunately not an isolated incident in contractual dealings for public/private partnerships in colonial New Zealand. Further uncertainty over the purchase is due to the large number of pre treaty deeds claimed by the colonisation schemes of the New Zealand Company. This often led to settlers arriving with company titles to land which was still owned and occupied by Māori. While Kemp had negotiated a deed which was unclear, unagreed and did not define the areas to be set aside for Ngāi Tahu, he made a number of promises regarding these. Impatience and professional self-interest would see Edward Eyre admonish Kemp for acknowledging Ngāi Tahu title to lands that had *"probably never been seen and certainly never been made use of by them"* (The Waitangi Tribunal, 1991b, 71).

The implementation of the deed would be left to Walter Mantell, another Crown commissioner who was not present at the negotiations. Mantell was instructed by Governor Grey to dictate the terms of any reserves or payments and that there would be no negotiation. Nohomutu visited Mantell on his arrival to Whakaraupō in 1849 and told him that he may have Port Cooper for £ 2 million and provision of large reserves. Maintaining adherence to his instructions from Governor Grey, Mantell made a 'take it or leave it' offer of £160 with one reserve at Purau and another at Rāpaki. The offer was politely rejected. Despite this, surveying began for the Lyttelton township which signified seizure to local Māori. Surveying also began at Purau several days later and on the 3rd of August Octavius Carrington was sent to survey a reserve at Rāpaki. To support the 30 persons Mantell estimated to reside at Rāpaki, 856 acres were set aside of which around 55 acres were arable.

On 10 August 1849, the Port Cooper deed was signed by 18 persons including Maru, Nohomutu, Hape and Matiu Hurihia who received a share of the now increased offer of £200. Their understanding was that those who refused to sign would be without claim on the reserves. Apart from the two reserves, all lands were transferred to the Queen. The rest of Banks Peninsula would be granted to the Canterbury Association two months later despite chiefs at Akaroa rejecting Mantell's award. The Crown would claim outright control of and access to natural resources, kāinga nohoanga and mahinga kai by 1864 (The Waitangi Tribunal, 1991a). Although Southern Māori had adopted some European horticulture practices, access to traditional sites of food gathering remained an important source of food for their mixed economy.

The Ngāi Tahu Deeds were insufficient to prevent them from accessing these traditional sources. This occurred as settler owner/occupiers became opposed to Māori accessing the private property allocated to them in Crown grants and leases. Settlers also brought with them different dietary preferences which resulted in the conversion of inland waterways, swamps and wetlands to arable pasture for wheat, mutton and beef production. Among the grievances contained in the Ngāi Tahu claim to the Waitangi Tribunal was that in 1849 Walter Mantell, acting on behalf of the Crown, asserted wrongly that Banks Peninsula was hitherto property of the Crown and was instructed to 'carry matters with a high hand' when dealing with Ngāi Tahu.

Also referred for the Tribunal's consideration was the Crown's use of the Canterbury Association Lands Settlement Act 1850 and the Canterbury Lands Settlement Amendment Act 1851 which allocated the entirety of Banks Peninsula to the Canterbury Association even though it was not part of the Kemp purchase (The Waitangi Tribunal, 1991a). This resulted in European settlers moving onto Ngāi Tahu lands. Over the course of ten years the association on sold 2.5 million acres and almost all of Banks Peninsula. The Akaroa block was never sold to the Crown while the Port Levy and Port Cooper blocks were obtained under dubious circumstances. Where reserves had been requested, Mantell had wrongly refused them and where reserves had been allocated, they were insufficient for Ngāi Tahu needs.

4.2.1 Mahinga Kai & The Waitangi Tribunal Report

Williams (2010) describes mahinga kai or mahika kai as including sea, swamps, streams, lagoons and water-based sources. Natanahira Waruwarutu (as cited in, Williams, 2010, 151) elaborates on the concept further: *"Mahinga kai is not confined to the land cultivated but it refers to places from which we obtain the natural products of the soil without cultivating, you know, the plants that grow without being cultivated by man"*. Other descriptions locate mahinga kai as an expression of a Māori worldview and tied to the central concept of whakapapa (Phillips, Jackson, & Hakopa, 2016). In order to reach a finding on the impact of inadequate protection and provision of mahinga kai, the Waitangi Tribunal found it necessary to look at land, sea and freshwater resources (The Waitangi Tribunal, 1991c).

Before European settlement Ngāi Tahu were highly mobile with an intricate knowledge of resource locations and availability over a large territory. Tūpuna would travel to food sources in late spring to autumn then return to more semi-permanent settlements during winter and early spring. Ngāi Tahu grievances over mahinga kai are related to both breeches of Article 2 of the TOW and the terms of the Kemp Deed and can be summarised as:

- Crown failure to protect Ngāi Tahu resources resulting in their depletion and/or destruction.

- The Crown also failed to provide for the reserves of the Kemp Deed and to preserve and protect Ngāi Tahu mahinga kai.

- The effects of landlessness upon Ngāi Tahu were exacerbated by denial of access to mahinga kai.

- The value of mahinga kai had been reduced or destroyed by the introduction of acclimatised species and agricultural land uses.

- Effective participation by Ngāi Tahu in the management and conservation of resources has been denied.

The investigation and hearings revealed a truly depressing picture of what happened to Ngāi Tahu food sources because of settlement which should be of concern for all New Zealanders. Mahinga kai was an integral part of the Ngāi Tahu economy before the arrival of European settlers but land purchases slowly began to destroy or enclose access and availability of mahinga kai. Hearing witnesses asserted that Ngāi Tahu agreement to sell the

land was based on the understanding that their mahinga kai were to be reserved for their utilisation. While depletion and pollution were distressing, for Ngāi Tahu land dispossession was accompanied by denial of their rangatiratanga and mana. The Waitangi Tribunal found that of the numerous deeds produced by Crown representatives, only Kemp's mentioned mahinga kai. In addressing the effects of land settlement on mahinga kai resources the Tribunal also found that the Canterbury Association Lands Settlement Act 1850[25] was influential stating:

"As a result of the act, land was leased or even sold by the association and the Crown before it had been lawfully acquired from Ngai Tahu" (The Waitangi Tribunal, 1991a, 564)*.*

The Crown argued in its submissions that mahinga kai should be defined as cultivations and tried to have it established that Ngāi Tahu had voluntarily abandoned their mahinga kai. The Tribunal identified that any resolution will require compromise to restore the rangatiratanga and mana of Ngāi Tahu and the honour of the Crown as well as a compromise between people and nature for the good of all New Zealanders.

4.2.2 Treaty Settlement

Anderson (1996) suggests that land tenure in Te Waipounamu was complex and the history of Crown alienation shows that ownership was manifested at the Iwi level while tenure was inherited and expressed at the level of Hapū. A significant factor regarding pre-European land tenure and resource use in Te Waipounamu is strong northern South Island loyalty to major sub-units of Ngāi Tahu versus prominent southern allegiances to Ngāti Mamoe and Waitaha. Crown assumptions during the treaty negotiation process were challenged including its insistence on associating Ngāi Tahu resource utilisation with North Island Māori and even using studies of tropical islands as a comparison. Attempts to undermine the importance of mahinga kai and portray land use as a universal was seen as a Crown strategy to minimise the effects of questionable land sales. The Waitangi Tribunal published its report on the Ngāi Tahu claims in 1991 and that year the Crown entered into negotiations with the Iwi, settling the claim in 1998 (O'Regan, 2001).

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[25] Both the settlement and subsequent amendment act were enactments of the UK Parliament (The Waitangi Tribunal, 1991a).

In seeking to atone for past injustices the Crown hoped to begin a process of healing and embark on a new, cooperative era with Ngāi Tahu[26]. While a material unity has seemed historically elusive for Ngāi Tahu, Hana O'Regan (2001) believes the long claim and settlement process has served to unify Ngāi Tahu in asserting their own history and values. The extensive Ngāi Tahu Claims Settlement Act 1998 (NTCSA) contains several important provisions for Ngāi Tahu in relation to resource management and apportions consultation and management rights over lakes, rivers and wetlands. The Crown apology highlights the tribe's contribution to the nation and acknowledges the work of Ngāi Tahu ancestors.

Material removed due to copyright compliance

Figure 4.3 Ngāi Tahu Claims Settlement Provisions from Jolly, 2013a.

Te Tai o Mahaanui (Selwyn-Banks Peninsula Coastal Marine Area) is a coastal statutory acknowledgement area where Ngāi Tahu statements of cultural, spiritual, traditional and historical association are recognised and acknowledged by the Crown (Figure 4.3). Within the coastal area, mauri is considered a fundamental component of the continued physical and spiritual relationship between people and the natural environment. Mauri upholds and generates all life forms and binds them to one another. Section 220 of NTCSA requires all

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[26] A summary of the NTCSA is included in APPENDIX C.

local authorities within the Ngāi Tahu takiwā to attach information recording statutory acknowledgements to all regional policy statements, district and regional plans where statutory areas are wholly or partially affected by including a reference to this section of the Act or a full statutory acknowledgement in the planning or policy documents.

4.3   Treaty Settlement impacts for Whakaraupō

The NTCSA also defines tōpuni areas and the values associated with them. When considering or approving national park and conservation management plans, strategies or general policy in respect of a tōpuni, the New Zealand Conservation Authority and Conservation Boards must consult with Ngāi Tahu accordingly. The Act also requires the Minister for Conservation to consult and advise Ngāi Tahu of any policy, conservation management strategy reviews or decisions concerning the protection, control or conservation of taonga species under the Wildlife Act 1953. Rīpapa Island is designated as a tōpuni in Schedule 88 of NTCSA (Department of Internal Affairs, 1999). Rīpapa is a small island near the eastern entrance of the harbour which is a significant urupā site for Canterbury and Banks Peninsula Papatipu Rūnanga. Such sites serve as repositories of traditions, memories, defeats and victories of local tūpuna.

During the 1820's, Rīpapa[27] became a fortress of leading Ngāi Tahu warrior Taununu who came to settle there with his people after previously residing at Kaikōura and Kaiapoi (Beattie, 1990; Evison, 1993). The island was fortified to withstand possible attacks from musket wielding tribes. Taununu attacked a village at Te Taumutu after becoming involved in the intertribal war called the Kaihuanga[28]. The people of Te Taumutu called on their close affiliation to a Southland Ngāi Tahu hapū who formed an alliance with Otago and Kaiapoi relatives to attack Rīpapa from sea and land. On hearing of their approach, Taununu managed to escape to the other side of the harbour but was later killed at Wairewa. Peace would be made with the marriage of Hana Haaka's daughter, Makei Te Kura, into a family of Rāpaki Ngāi Tahu. Under the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 legislation was introduced to allow for the making of customary food gathering regulations.

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[27] A summary of the history of Rīpapa is included in Appendix B.
[28] The Kaihuanga would prevent Ngāi Tahu from forming a meaningful alliance to oppose Te Rauparaha (Beattie, 1990; Evison, 1993). Eventual establishment of tribal unity to attack Te Rauparaha was scuttled by the introduction of measles.

Accordingly, Fisheries (Kaimoana Customary Fisheries) Regulations 1998 provide for applications to establish mātaitai reserves, the appointment of Tangata Tiaki and the powers for them to make bylaws in the management of a mātaitai reserve. Clause 16 of the regulations also allows for Tangata Kaitiaki/ Tiaki to prepare a management plan or strategy for the area over which they have authority. Any prepared plan may be treated as a planning document recognised by an Iwi Authority for the purposes of the RMA if it meets the requirements of that act.

Management plans must also be taken into account by the Minister for the purposes of section 10 (b) of the TOW (Fisheries Claims) Settlement Act 1992 which relates to tāngata whenua consultation and policy development in the use, exercise and management practices of non-commercial fishing rights. Rāpaki Bay was declared New Zealand's first mātaitai reserve on December 18, 1998. The aim is, with the help of the community, to restore the bay to its former healthy state. The application to create a mātaitai was made by Wiremu Gilles on behalf of Te Hapū o Ngāti Wheke Rūnanga ki Rāpaki on the 12th of May that year (Department of Internal Affairs, 2000; Ministry of Fisheries, 2002).

Tāngata Tiaki for the Rāpaki Bay Mātaitai Reserve are appointed under regulation 21 of the Fisheries (South Island Customary Fishing) Regulations 1999 and they administer the reserve, making bylaws to manage fish stocks and authorise fishing in the reserve. The Lyttelton Harbour/Whakaraupō mātaitai reserve covering 30km² of the harbour was established under the Fisheries (Lyttelton Harbour/Whakaraupō Mātaitai Reserve) Notice 2017.

The 2013 Mahaanui Iwi Management Plan (IMP) provides local authorities, businesses and communities with a codified document which identifies the significant issues for six papatipu rūnanga of the Canterbury area. Issues of significance for Whakaraupō are identified as the cultural health and landscape values of the harbour, the protection of soils, water sources and water ways, the enhancement and restoration of indigenous BD, avoiding too many structures in the coastal marine area, and incorporating Ngāi Tahu values into the management of public open spaces (Jolly, 2013b). The plan acknowledges that collaboration with LPC is important to protect the harbours' cultural health.

4.3.1 The Lyttelton Port

Lyttelton port forms an integral part of the New Zealand's economic infrastructure. Table 4.1 shows a brief history of the port of Lyttelton.

Table 4.1 Summary of Lyttelton Port History (Lyttelton Port Company, 2019c)

1877	The Lyttelton Harbour Board established with responsibility for managing recreational and commercial facilities of the harbour. Thirteen members of the Board elected in local body elections.
1988	Lyttelton Port Company created under the Port Companies Act 1988.
1996	Following a decision by the Hurunui and Selwyn District Councils to sell their shares in the Company, LPC lists on the New Zealand Stock Exchange with a 19 per cent public listing.
1997	The level of public shareholding rises to 30 % after other regional and territorial authorities sell their shares. The single largest shareholder with a 65 % shareholding becomes CCC.
2014	100% of the shares are acquired by Christchurch City Holdings Limited (the commercial arm of the CCC) and LPC is delisted from the New Zealand Stock Exchange.
2017	Resource consents to deepen the Harbour's shipping channel for larger vessels and extend the port facilities are granted.

With 99% of New Zealand's exports and imports and 15% of domestic trade conveyed by sea, Lyttelton's port forms an important part of the country's economic infrastructure (Lyttelton Port Company, 2014). The Port of Lyttelton is the country's third largest deep-water port, exporting 17% of New Zealand's dairy products and facilitating $4.67 billion of exports and $4.84 billion of imports a year. With Canterbury freight volumes forecast to double in the next 15 years, Canterbury depends on an efficient and effective port to maintain competitiveness and access for its tourism, manufacturing and primary industry sectors as one of New Zealand's strongest regional economies. The Lyttelton Port Company (LPC) is Lyttelton's largest employer with over 500 staff (Lyttelton Port Company, 2019b).

4.4 Earthquake Recovery and Restoration

A 6.3 magnitude earthquake struck Christchurch and Lyttelton on 22 February 2011 (Ministry for Culture and Heritage, 2019). One hundred and eighty-five deaths and thousands of injuries resulted while buildings and infrastructure damages were severe. A 2014 directive from the then Minister for Canterbury Earthquake Recovery compelled Ecan and the LPC to develop a Lyttelton Port Recovery Plan (LPRP) as per section 16 of the Canterbury Earthquake Recovery Act (CER) 2011. Once approved, port recovery actions would be facilitated under this plan.

The provisions of the plan were to be consistent with the Land Use Recovery Plan and the Christchurch Central Recovery Plan (Department of Internal Affairs, 2014). Plan consultation was to be undertaken with interested persons and relevant communities including TRONT (Lyttelton Port Company, 2019a) [29]. A recovery plan would also be assessed against the RMA, New Zealand Coastal Policy Statement 2010, and other statutory and non-statutory planning documents. The Port Recovery Plan requires the Ecan and the CCC to give effect to the plan by amending its RMA planning documents (Canterbury Earthquake Recovery Authority, 2015a). Amendments were made to the following planning documents to facilitate recovery plans implementation;

- The Proposed Canterbury Air Regional Plan

- Proposed Canterbury Land and Water Regional Plan

- Proposed Christchurch Replacement District Plan

- Regional Coastal Environmental Plan for the Canterbury Region

- Canterbury Regional Policy Statement

An inadequate understanding of how the reclamation at Te Awaparahi Bay might affect mahinga kai and sedimentation in the upper harbour was identified in a Cultural Impact Assessment (CIA) commissioned to assess the potential effects a draft port recovery plan may have on Ngāi Tahu interests and values (Jolly, 2014). The opportunity to address key

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[29] Normally the Resource Management Act (RMA) 1991 and Regional Coastal Environment plan would form the planning framework for a planning to address port activities.

issues with a catchment wide management plan was of significant interest to Mana Whenua who felt that a healthy harbour is capable of supporting both a working port and a mahinga kai. A hearing panel review of the draft recovery plan recommended the Minister direct Ecan under s49 of the CER act to establish a working group of interested parties to instigate a Harbour Catchment Management Plan as per clause 30 of Schedule 7 of the LGA (Pankhurst, Atkinson, & Vial, 2015). Figure 4.4 summarises the process leading to the Whakaora plan's development[30].
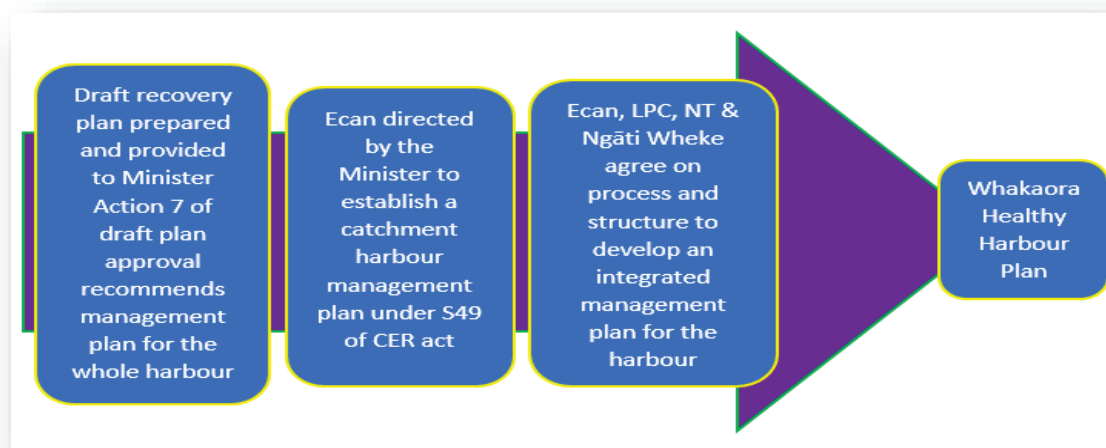
Figure 4.4 The LPRP Approval Process Leading to the Development of the Whakaora Plan.

4.4.1 The Whakaora Healthy Harbour Plan

The non-statutory Whakaora Plan is a culmination of the collective work of the LPC, CCC, Te Hapū o Ngāti Wheke, Ecan, and TRONT with Tangata Tiaki (collectively known hereafter as 'The Partners'). A commitment by the partners to work together to develop the plan is underpinned by the philosophy of ki uta ki tai (from the mountains to the sea). The plan stresses the importance of the harbour to Mana Whenua, all harbour bay residents, tourists, business owners and LPC employees. Research and monitoring will play a crucial role for plan implementation with actions involving education initiatives, practical projects, research projects and possible regulation changes[31]. For Mana Whenua, mahinga kai is all activities, relationships and places related to customary harvesting practices – inclusive of the actions of those who call Whakaraupō-Lyttelton Harbour home.

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[30] Appendix B shows the process leading to the Whakaora Plan in more detail.
[31] Plan monitoring and review timelines are presented in Appendix B.

Community feedback, a science advisory group and Tangata Tiaki consultation have identified terrestrial and marine BD, pollution, erosion and sedimentation as key focus areas. Six major zones or ecological bands outline the current state of the harbour and a preferred future state towards which the community can advance in collaborative partnership. Issues impeding the desired future state are identified and for each band a touchstone species guides restoration of the harbour's cultural and ecological health. A further goal of the plan is to create strong relationships between the various groups of the harbour community including LPC, Councils and Mana Whenua. The Governance group facilitates funding coordination and implementation efforts by The Partners (Table 4.2).

Table 4.2   Whakaora Governance Group Membership and Responsibilities.

Governance Group Members	Governance Group Responsibilities
Environment Canterbury Councillor	• Approval of annual project plans and budgets
Christchurch City Council Councillor	• Support and ensure collaboration
Lyttelton Port Company Chief Executive	• Alignment of work programmes to coordinate parties' contributions
Te Hapū o Ngāti Wheke Senior Representative	• Establish a Partner's Working Group to deliver work programmes
TRONT Senior Representative	• Consider options for future funding streams

4.5   Summary

The Whakaora Healthy Harbour Catchment Management Plan was released in 2018 with a holistic vision of restoring Whakaraupō-Lyttelton Harbour as a mahinga kai and a working port. Strong relationships between Mana Whenua, the LPC, Councils and the community are seen as crucial to achieving this vision within a philosophy of ki uta ki tai. Contemporary and traditional values are revealed in the continuing associations with the harbour's rich history. Restoration is an important aspect of the harbour's management and the Ngāi Tahu settlement of historical TOW claims. The harbour's port is a critical economic conduit for not only local and regional industry but also the South Island and New Zealand.

Chapter 5

Results

This chapter presents the results of data collection in four parts. Part one presents the results of document analysis from selected international conventions and declarations. Part two describes the contents of New Zealand environmental management legislation. An overview of Treaty settlement documents is presented in part three. The final part presents an overview of case study interview data and concludes by identifying some of the issues, challenges and opportunities for collaborative environmental regimes in Aotearoa New Zealand.

5.1 International Agreements Overview

The focus of UN documents is on reaffirming the rights of states, vulnerable groups and human rights based on the foundational UN Charter document. 'We the peoples' are the opening words of the Charter and that concept is repeated in the Agenda for SD as the beginning of the journey towards 2030. Organisations are considered the appropriate actors to implement strategies designed to address global issues. Customary laws, community protocols and procedures of IP are to be considered under the CBD in accordance with domestic law. First emerging in the Rio agreement, SD has remained as the preeminent tool to deal with global problems. The failure of the MDG's to provide consistent and replicable outcomes in reducing poverty and hunger have been the focus of the 2030 document.

The 17 SDG's are much more detailed and directed than the 8 MDG's and complemented by measurable targets to evaluate progress in real time. The Global Partnership is identified as the main tool for alleviating many of the issues the documents are created to address. For the CBD cooperation between these groups and amongst states is encouraged. Governments and the private sector are seen as the best actors to develop methods for the sustainable use of biological resources. Conserving BD and the sustainable use of biological resources is reaffirmed as the responsibility of states which are obliged to develop national strategies, policies or programmes to that effect. Those mechanisms are to be aligned with the identification and monitoring criteria of Annex 1 to the convention which is based on

ecosystems and habitats, species and community status, genome status and their beneficial anthropocentric uses.

Documents focus on different categories of global issues but use consistent concepts and narratives such as ecosystems, SD, democracy and global partnership, with the state forming the legitimate unit of political and legal expression [32]. Terms used to define state obligations towards IP are implicit in nature even if stated explicitly. Phrases such as 'as appropriate', 'in accordance with domestic law' and 'when relevant to conservation and sustainable use' reaffirm state sovereignty. Earlier documents such as Agenda 21 encourage informing and consulting IP on regional and international cooperation initiatives. Incorporating IP views into national decision making is by way of the democratic institutions of individual countries. Sovereign state rights to exploit their own resources are reiterated as being in accordance with the UN Charter and the principles of International law.

5.2   New Zealand Environmental Management Legislation Overview

The environment is managed under multiple statutes, of which there are many more than those analysed here. Consistent national direction and standards guide local government with policy statements and national environmental standards. Māori language, values and concepts are incorporated into legislation to varying degrees without central government guidance. The Conservation Act encourages DOC to promote the benefits of international cooperation on matters relating to conservation. Membership of the national strategy body, the Conservation Authority, is set by the act and includes several NGO's and a dedicated position for a representative of Ngāi Tahu as established by section 6 of Te Runanga o Ngai Tahu Act 1996. The Conservation Act is required to be so interpreted and administered as to give effect to the principles of the TOW.

In the RMA, the principles of the TOW are to be taken into account by persons exercising powers and functions under the act in relation to the management, use, development and protection of natural and physical resources. Part 2 of the RMA prioritises matters of national importance which must be recognised and provided for. Numerous other matters

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[32] Detailed descriptions of all documents analysed are in Appendix C.

and the principles of the TOW are deferential. Local community and tāngata whenua participation in decision making is provided for in various degrees through the LGA and RMA. RMA amendments have incorporated provisions for Iwi or Hapū to build relationships with local authorities via sections 58 (M) – 58 (U).

Māori participation in local authority decision making processes is provided for in LGA principles and requirements in order to recognise and respect Crown responsibility to take appropriate account of the principles of the TOW. The purpose of local government is to facilitate market-based solutions which provide good quality, cost effective infrastructure for current and future diverse local communities. Social, environmental and economic objectives are prioritised in the RMA, LGA and NPSFW. The Environment Act, which guides the Ministry for the Environment is based on balancing intrinsic ecosystem values, environmental quality, the values of groups and individuals, sustainability of natural and physical resources, the needs of future generations and the principles of the TOW.

5.3 New Zealand Treaty Settlements Legislation and Policy Overview

The settlement acts analysed in this research span nearly twenty years of settlements. The early Ngāi Tahu settlement shows a focus on statutory provisions which must be included in local authority policy and planning documents. The redress process includes replacing names of specific sites and areas on official maps with dual place names to reflect the history and traditions of Ngāi Tahu. The importance of mahinga kai to Ngāi Tahu was evident in their claim's settlement process. Settlement act provisions enhance Iwi participation in environmental decision making, requiring local government to give greater weight to Iwi values and views in their policy and planning processes. The recognition of ancestral and contemporary connection to the environment is a common element of the analysed settlement documents.

These connections are integral to the mana, wellbeing and identity of Iwi reciprocatively with their environment. The Te Urewera act, in particular, revokes the status of Te Urewera as a national park and initiates its own system of permitting for certain activities within Te Urewera. The governance arrangements created by settlement acts are variable but provide for shared and inclusive decision making with local authorities, government agencies and

communities of interest. Te Awa Tupua is perhaps the most complex governance arrangement but displays a preference for Crown and Iwi partnership with advisory and strategy groups performing roles in a devolved and distributed manner (Figure 5.1).

Figure 5.1 A Representation of the Governance Structure for Te Awa Tupua.
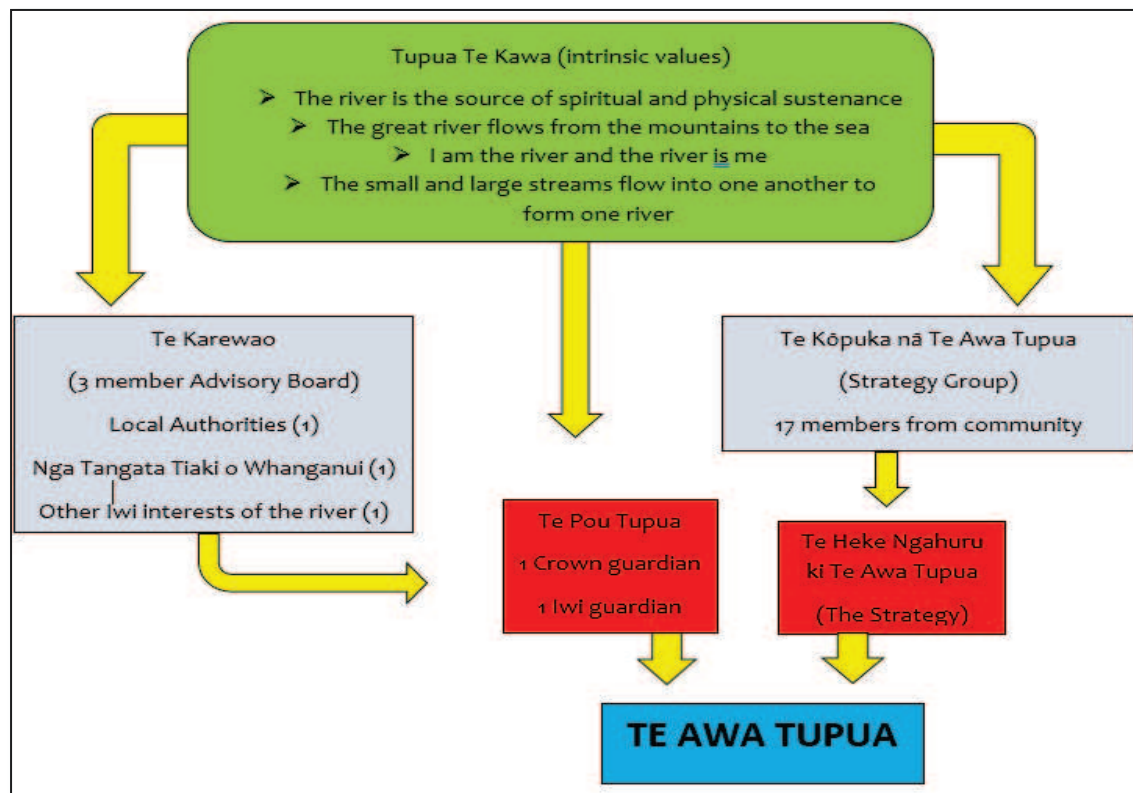
The name Te Awa Tupua is protected under Section 60 of the settlement act so that only Te Pou Tupua may grant authority for its use. The membership of Te Pou Tupua, with one Crown and one Iwi nominated representative, reflects a partnership stance.

The outstanding WAI 262 claim concerning Māori taonga relates to the issue of Māori Intellectual and cultural property in the environment and particularly in the conservation estate. Ownership was not addressed in the Waitangi Tribunal's report on this claim as it felt perfecting treaty partnership should be the goal. The report recommends a graduated level of Māori input into decision making that concerns their taonga and guarantees protection of treaty principles. Those levels are full decision-making power, partnership with the Crown and influence via consultation.

The process of settling historical grievances establishes three common themes. Firstly, historical injustice is recognised, acknowledging the suffering and pain of past generations through redress. Secondly, claim documentation establishes the dual histories of New Zealand in perpetuity for future generations. Lastly, claims settlements allow for potential Crown and Māori partnership to work together for a future which is based on shared responsibility and mutual benefit. The claims settlements process goes some way to institutionalising the exercise of rangatiratanga by establishing frameworks for Iwi participation in environmental decision making.

5.4 Case Study Interviews Overview

Whakaora Plan Development

There was general consensus that the plan would not have been developed in the absence of the earthquakes.

"the judge hearing it I think was a bit frustrated, so he gave this directive to the parties and said 'look, work together for the whole Harbour' not just the port stuff. Without the judge writing it down saying, 'you will do it and you will report to the minister that you are doing it', I'm not sure it would have got off the ground" – CR.

"Ngāti Wheke and the port you know they've had a strong relationship for many generations mostly because a lot of whānau from here end up working at the port. But philosophically opposite ends of the spectrum" – CB.

While others thought that it would have eventually been developed given the commitment of Te Hapū o Ngāti Wheke and their long-term relationship with LPC.

"I think it would have happened differently but I would like to think that we ultimately would have gotten to a co-management framework for Whakaraupō. I think the earthquakes became an opportunity to formalise it through the recovery plan process because of the recovery plan process but I wouldn't have precluded the likelihood of it happening" – KK.

Some participants felt the recovery plan was not about recovery but an opportunity to expand the port's activities and strengthen their business model. Participants were also asked if there were any points of contention that arose during the development of the

Whakaora plan. Most interviewee's thought that attempting to incorporate Māori values into Western science was one of the main issues, stating that some of the people involved with developing the plan from the start had struggled with the value of the Māori worldview and how to approach it. A common response to a question which asked whether mainstream conservation values and mahinga kai objectives were compatible was that mahinga kai is still not very well understood by most of the community. But in the short term the two values would be compatible as the focus was on preventing species decline and restoring populations.

"one of the interesting discussions we had just before I finished was public information on the health status of shellfish. The tāngata tiaki view was that sort of information shouldn't be published because if you tell people there is a really healthy cockle bed then people go there. So, it's the tension between information and understanding. I think you can report on the health of the cockle beds but just not saying where they are because that in itself could be detrimental to the species" – CR.

Interview participants were asked whether the RMA and LGA provided adequate guidance to local authorities regarding treaty principles of tribal self-determination and partnership. While some felt that given the diversity of Iwi aspirations and expectations, strict guidance would probably cause more problems than benefits, one interviewee believed that councils can tend to pay lip service to treaty principles and maybe acts could be more encouraging. There was some concern amongst participants that with a return to normality following the quakes, the commitment of the Partners is waning.

"I don't see any investment in keeping the relationships together. I see a danger of the concept that together the five agencies could do more than individually being lost. Rāpaki and the Port are the two organisations that they're always going be there and have an agenda and things to talk about. It's the councils that have to keep focused on it and to keep at the table" – CR.

The aftermath of the earthquake generated many issues for the harbour. It was felt that the Lyttelton township was often elevated by the CCC when dealing with the harbour communities.

5.4.1 Issues, Challenges and Opportunities

Development and environmental protection are the two sides of the sustainability narrative under UN documents. The authority and legitimacy of domestic governments is encouraged to work with representative organisations and the private sector for effective environmental governance. While the UNDRIP document promotes the rights and interests of IP, it is the domain of domestic governments to protect and endorse those rights. The purposes of New Zealand's legislation are categorical and define the powers of government ministry's or departments. The powers of PTSGE's and collaborative boards in treaty settlements are also defined. Overall responsibility and authority are held by Ministers of the Crown with considerable discretion to modify processes.

While interview participants involved in the Whakaora plan's development did not explicitly use the Mahaanui IMP as a reference, its importance is evident in the familiarity and high regard non-Iwi planners and managers hold it in. Many of the values and concepts it contains have become familiar to Canterbury organisations as a first stop for assessing matters of cultural importance. The Ngāi Tahu treaty settlement was a huge claim and had many complexities not reflected in the historical claims of North Island Iwi. Breaches of the Treaty exacerbated the injustice evident in the unsatisfied promises made during the creation of multiple deeds, the extortionary processes of awards and the making of reserves.

5.5 Summary

The results chapter provides an overview of interviews conducted with professionals involved in the development of the Whakaora Healthy Harbour Plan and community representatives. It is accompanied by an overview of the analysis undertaken of international agreements and New Zealand environmental and treaty settlement legislation. Sustainability and ecosystem paradigms have been identified in the state centred international discourse. New Zealand's legislative environment is both dynamic and progressive and is both shaping and being shaped by treaty settlements and a dialectic of scientific views. The next chapter discusses possible barriers and opportunities for collaborative environmental governance in Aotearoa New Zealand based on these results.

Chapter 6

Discussion

In this chapter the main themes that have emerged from case study interviews and document analysis are interpreted and presented in three parts. The analytical framework described in the methodology is briefly restated in the first section and a summary of the themes from document analysis is provided. In the second section, themes and issues from the case study interviews are presented. The third section identifies the main constraints and enablers of collaborative environmental regimes in Aotearoa-New Zealand.

6.1   Analytical Lens and Document Themes

To interpret the results, an analytical framework comprises three main theories focusing on managing risk, hegemonic systems and corporate problem solving. Giridharadas (2018) believes that the win-win market approach of corporate solutions is commonly applied to social issues. Reducing issues to categories and components focuses on alleviating perceived symptoms of problems but not the cause. In Ulrich Beck's World Risk Society (1999), modernity under globalisation forces societies to adapt their assessment of risk due to increased uncertainty and systems complexity. Gramsci's theory of Cultural Hegemony contends that institutions promulgate common sense values via societal norms to legitimise a capitalist state ideology (Levy & Newell, 2005; Buckel & Fischer-Lescano, 2009). Connections to literature review concepts and theories are also identified in the analysis.

6.1.1   International Agreements' Themes

Narratives and concepts of SD, ecosystems, democracy and the global partnership dominate international agreements. The UN Charter and International law provide legitimacy to sovereign states to exploit the resources within their territory and as the default unit of political and legal expression. The use of logical, common sense conceptions in international governance institutions is consistent with Gramsci's cultural hegemony and elements of corporate problem solving. The development-conservation dialectic is fortified by an international focus on the global partnership integrating state, private sector and NGO

interests to sustainably use components of BD. While most international agreements analysed have a strong development and environmental focus, UNDRIP and the Nagoya Protocol have more of a human rights premise.

An initial reluctance from CANZUS nations to become parties to UNDRIP may be explained by clustered policy making. A shared common law tradition could also explain the lack of political will to protect IP rights in domestic legislation. Concessions for IP under the CBD's Nagoya Protocol will dramatically affect the property rights of multinational corporations currently exploiting biological resources around the world. The CBD also encourages respect, protection and maintenance of IP knowledge, practices and innovations – albeit where they are relevant to the conservation and sustainable use of BD. The collective rights deemed important to IP in UNDRIP are not reflected in any of the other international documents.

Where they are included it is in the category 'vulnerable groups' whose rights are balanced with state and individual rights within the democratic maxim. Combative rhetoric identifies poverty and inequality as issues which developed countries should wage war upon to increase progress and development in poorer nations. Yet as the Lucas paradox shows, international development assistance results in financial capital and natural resources flowing away from developing countries - not toward them (Luca et al, 2019).

6.1.2 Domestic Legislation and Policy Themes

The RMA, LGA and NPSFW recognise economic, social and environmental values must be balanced in decision making for the sustainable use of natural and physical resources. Treaty principles provisions are consistent in the acts and policy statement but are to be utilised to achieve the purpose of the acts, except for the 1986 Environment Act (Table 6.1). This is consistent with the approach taken to IP in the CBD and Agenda 21 agreements where states are encouraged to incorporate the views, knowledge and values of IP into resource management, policy and programmes.

Recent additions to the RMA such as Mana Whakahono a Rohe agreements provide Iwi/Hapū with a path to negotiate relationships with their local authorities, although the effectiveness of this provision has not yet been evaluated. The Conservation Act appears to

align with the international partnership principle with dedicated representation on the Conservation Authority for three NGO's. TRONT has the only Iwi mandated representation on the authority.

Table 6.1 Treaty of Waitangi Provisions in Domestic Legislation.

Environment Act 1986	Ensure that, in the management of natural and physical resources, full and balanced account is taken of— (i) the intrinsic values of ecosystems; and (ii) all values which are placed by individuals and groups on the quality of the environment; and (iii) the principles of the TOW; and (iv) the sustainability of natural and physical resources; and (v) the needs of future generations.
Conservation Act 1987	This Act shall so be interpreted and administered as to give effect to the principles of the TOW (S 4).
Resource Management Act 1991	Shall recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga (S 6(e)). Shall have particular regard to kaitiakitanga (S 7(a)). Shall take into account the principles of the TOW (Te Tiriti o Waitangi) (S 8).
Local Government Act 2002	Recognise and respect the Crown's responsibility to take appropriate account of the principles of the TOW and to maintain and improve opportunities for Māori to contribute to local government decision-making processes (S 4).

6.1.3 Treaty Settlement Documents' Themes

New Zealand's legal basis in common law and convention favours an adversarial approach to environmental issues. Acknowledging tribal rights, values and histories in statute gives the judiciary greater certainty in deliberating on matters in which dominant western values

are often enshrined in norms and convention rather than explicitly evident in legislation. The treaty settlements process is predicated on the Crown acknowledging its historical failures to adequately protect the rights guaranteed to Māori under article two of the Waitangi treaties in line with Rouhana's (2004) conflict reconciliation approach. Effective Māori participation in environmental decision making has not been enabled by domestic legislation. Twenty years after their settlement, Ngāi Tahu are moving towards economic autonomy and a greater role in environmental management by utilising the 'hooks' contained in the NTCSA.

Even seemingly insignificant inclusions such as the dual place name provision can have transformational effects. Now it is passé to use the names Lyttelton Harbour or Lake Ellesmere without their te reo parallel. Dual placenames alter historical perspectives and narratives to allow for a shared understanding of the significance and past of these places. Provisions in the NTCSA have included Ngāi Tahu in some decision-making capacity under the Conservation Act and in local government planning but this is as an interested party and restricted to joint management and governance arrangements such as Te Waihora – Lake Ellesmere. The granting of mutual legitimacy and the social and political restructuring necessary for good relations has generally not eventuated as part of the early settlements process.

Among the findings of the Waitangi Tribunal in the WAI 2358 Freshwater Report is that Iwi and Hapū have routinely felt side-lined by RMA consent and plan making processes. The main contributors to this situation are seen as weak statutory directions regarding treaty principles and Māori interests being commingled with multiple competing interests under the sustainable management concept (Waitangi Tribunal, 2019). As Durie (1998) comments, Māori would prefer to be either involved as equals in the planning process or not at all. Further tribunal research found that during resource management law reforms that shaped the RMA, the Crown's objective was to ensure that practical effect would be given to the treaty principles and reflected as an essential element in all resource management processes and statutes. The treaty clause endorsed by Ministers in 1989 was:

'in achieving the purpose of this Act all persons who exercise powers and functions under this Act have a duty to balance kāwanatanga and tino rangatiratanga as referred to in the TOW'

The court of appeals enforcement of the treaty clause in the State-Owned Enterprises Act 1986 during the lands case[33] motivated Treasury to ask for this version to be toned down fearing that a strong treaty clause would lead to endless litigation. The incoming 1990 National Government amended the treaty clause again to place the treaty at the bottom of the hierarchy of matters decision makers must consider under the RMA. Tribunal recommendations in WAI 2358 include DOC developing a bioprospecting system for the conservation estate which establishes joint decision making with pātaka komiti in regional conservation. With the historical treaty claims all but finished, multiple kaupapa claims will be the focus of the Waitangi Tribunal including freshwater, intellectual and cultural property rights and mana wāhine.

The provisions of recent treaty settlements acts have altered the roles of local government, central government agencies and NGO's in the management of natural resources significant to Iwi. It would seem these Iwi have considered the representation and consultation processes of the LGA and RMA insufficient. Settlement legislation is used to transform local environmental governance and management arrangements to reflect their tribal values and partnership. These statutory approaches establish co-governance as a fundamental condition for developing policy and strategy concerning important environmental resources. Collaborative arrangements incorporate NGO's, hydro generators, community voices, government agencies and local government in a decision-making capacity, integrating New Zealand and international concepts of partnership.

Notable amongst the many provisions of the Waikato-Tainui Claims Settlement (Waikato River) Act 2010 are the ability of Waikato-Tainui to continue traditional funeral ceremonies on the river including constructing temporary structures to convey the bodies of their deceased. Previously these activities had to comply with regional and district plan rules and sections 9 – 17 of the RMA. Only approval from the Waikato River Clean Up Trust is now required for these activities. The vision and strategy developed by the Waikato River Authority is deemed to be part of the Waikato Regional Policy Statement and prevails over it during any period of inconsistency. Regional and District plans must give effect to the vision and strategy. For Waikato-Tainui full and final settlement is not the end goal but goes some

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[33] *New Zealand Māori Council v Attorney General* [1987] NZ CA 54/87

way to restoring Crown and Iwi mana. Enhancing and realising mana comes from the relationship building that occurs in the continued collaborative management of the river.

For the Te Urewera governance board, six members are appointed by the Tūhoe PTSGE and three by the Minister. The board can make bylaws, issue activity permits and undertake works within Te Urewera without a consent under RMA section 9 (3). Such works must not have a significant adverse environmental effect outside Te Urewera and still be consistent with the RMA. Tūhoe aspirations as part of their settlement extend to replacing government ministry social service providers with their own.

The Awa Tupua act applies a different interpretation of sustainable management. Te Kōpuka collaborative group established by Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 is responsible for developing and approving the strategy to advance the health and wellbeing of the Whanganui River. The act requires the Manawatu-Whanganui Regional Council to appoint this collaborative group to any planning or policy statement process regarding freshwater within the Whanganui River catchment. Te Kōpuka is also a permanent joint committee established outside of section 7 of the LGA. As suggested by Ruckstahl (2017) the relationships created through settlements overcomes the polarising issue of land and water resource ownership and assigns sovereignty to nature itself. The fee simple estate of Crown owned parts of the Whanganui riverbed vested in Te Awa Tupua must not be alienated and the following do not apply:

- Part 4A of the Conservation Act 1987:
- the Public Works Act 1981, except as provided for by section 55(2)(b):
- sections 24 and 25 of the Reserves Act 1977:
- Te Ture Whenua Maori Act 1993, except as expressly provided for in this Act.

6.1.4 Document Analysis Summary

A collaborative approach incorporating multiple interests is favoured in International environmental governance norms with partnerships centred on public/private and organisational relationships. Partnership within the New Zealand context is focused on a treaty relationship, although public/private and organisational partnerships are also relevant. The relationship between the Nagoya Protocol and UNDRIP is one that many

governments will find hard to ignore and for New Zealand it is complicated by the WAI 262 claim. Treaty provisions in domestic legislation are intended to help in achieving the purposes of the acts. Treaty settlements acts do show a Crown willingness to adapt current systems of environmental management, perhaps to reduce institutional exposure to risk, uncertainty and diminishing returns.

6.2 Case Study

Interview themes have been separated into three main groups based on participants occupation and/or organisational representation.

6.2.1 Planner Themes

While it was felt strict central government guidance regarding treaty principles would probably cause more problems than benefits, it was acknowledged that the discretion councils have can lead to an organisational culture of indifference. The diversity of Iwi aspirations and expectations would require councils and Iwi to work together. Good partnership would then be something that is demonstrated and stimulated rather than imposed by central government. Christina Robb expanded further on possible issues for councils.

"the government should have more of a role helping councils know what their expectations are of them. Because that's an easy out sometimes. So maybe the acts say something like you need to do this with Iwi as a treaty partner and it does mean some sharing of power" – CR.

The lack of policy guidance generally for the RMA was a point that stood out. Instead of councils being involved in implementing policy they were perceived as regulatory agencies performing only the back-end functions of their role.

"as someone who reviewed the RMA for the NSW cabinet office, we thought it was a fantastic piece of legislation in 1991 because it was catchment based. But the policy guidance we assumed would follow never eventuated. The environment court has set the policy direction and because of that it's become this paralegal, process orientated legislation which is very regulatory" – KB.

The development of the Whakaora plan was characterised by familiar bureaucratic issues but also opportunities for changing the narratives around planning and governance. In the Whakaora Programme Managers' experience with catchment management plans she noted that they have traditionally been driven by engineers resulting in technical, wordy documents that were not user friendly and focused mainly on flood management and protection. The cultural narrative of the Whakaora plan was both popular and refreshing to all interview participants. The issue of integrating Mātauranga and western science was identified early on by these participants and they could appreciate the value of both perspectives brought to the project. The reliance of the council and LPC on scientific expertise was a barrier for progress in the plan's development with the Māori worldview requiring a different set of skills and values.

"It was being run very much along a western science paradigm. They were quite good at describing the state and what was happening but not what to do. The scientists with mātauranga expertise had stopped attending. So, this whole time I saw this tension playing out between this western science approach and this more holistic approach" – CR.

Finding a way to ensure that the partnership and collaborative interaction continues would make plan implementation more efficacious. This also includes involving others in the implementation. DOC was suggested as an important actor in this respect as they are a significant landowner in the harbour.

6.2.2 Mana Whenua Themes

Attempting to reduce IK to supporting information for research needs and management agendas is one of the main issues faced by IP (Richmond et al., 2013) and is also a characteristic of corporate problem solving. As was shown with the Whitefeather Forest Initiative, western scientific knowledge can be used to complement IK and express the aspirations of the community (Bowie, 2013). The Whakaora plan writer felt that organisations are eager to incorporate Māori terms but are guilty of not defining them authentically and omitting the important context that is required for a full understanding. She considered the RMA influential in this approach and many of the terms used in it are incorrect, comparing the definition of Māori concepts without context to barstardisation of

te reo. In discussing the possible incommensurability of mainstream conservation and mahinga kai values, she had this to say concerning DOC:

"Section four of the conservation act says it must be interpreted and administered as to give effect to the principles of the TOW - but if DOC had a schedule for nature reserves for example, then they believed that superseded section four. That came to a head because Ngai Tai in Tāmaki (Auckland) had applied for a concession in the Hauraki Gulf and DOC said sorry we can't give you any preferences as Mana Whenua - we have to see you as any other concessionaire on an even playing field with other applicants. Ngai Tai asked about section four and engagement, saying this is our whenua and our Moana. At Ngāi Tahu we had the exact same problem with our tourism company and landing on one of the glaciers in Fiordland, so we jumped on this with Ngai Tai. We went to court and we won so now DOC is having to relook at how they interpret the whole act. That's why a whole bunch of the National Park management plan reviews have been on pause for 6 months. They are trying to figure out what their new obligations are because they now realise that they don't actually know what their obligations are" – CB.

As the Chair of the Whakaora Healthy Harbour Governance Committee and tireless advocate for her community, Yvette Couch-Lewis was identified by all other interview participants as the central figure for the plan's development. I was fortunate to have the opportunity to gain her perspective on the past and present context of the harbour and its people, which underpins her great determination that a restored harbour becomes a source of pride, sustenance and wellbeing for all.

Problems integrating western scientific processes and Mana Whenua environmental management approaches were illustrated quite bluntly by Yvette:

"The harbour is the most significant feature for the takiwā of Rāpaki. Western science needs a baseline to determine the harbours' health and wellbeing. People at Rāpaki know what it is like – its buggered. Mana for the tribe came from being able to house, clothe and feed your people. We can't gather so we know our baseline, but you have got to get that understanding in there in a way that they understand it. In all the years of working in this

harbour with different ethnic groups I have found that we all want the same thing. We want to be able to go down to the water with our children to gather or swim" – YCL.

Those connected to the marae considered kaitiaki a modern phenomenon and the term stewardship that is often used to describe kaitiaki or kaitiakitanga fails to capture its nuances and meaning. The true kaitiaki, it was felt, were originally the bird and fish species of the harbour and they indicated the health of the people and environment. If you didn't look after the resources in your environment, then the wellbeing of the people suffered. Tupuna were the guardians of the kaitiaki, the birds, fish and other species of the harbour. It was felt that talking about kaitiakitanga in this way often offended some people who had a concrete perception of the now institutionalised kaitiaki concept and the planning norms that have grown around it.

The Whakaora plan was able to express a cultural narrative that communicates a sense of species as indicators. After being asked if mahinga kai in the Whakaora plan was adequately defined, Yvette reflected:

"I still don't think we have fully got it but it's the beginning process. Mātauranga is something western science struggles with yet it is based on observation and the two are not really that far apart. A prime example is when LPC could not agree to use the species as indicators as it held different connotations for their science, so we had to use the term 'touchstone species' – even though they are basically the same thing. Their focus is aligning with the broader science-based systems. The ground foundation of science for us is listening, the smell, the observations, the touch. You put all those together to determine and answer your question. The trouble is – it's a question where we look at the whole environment without reducing and separating it into compartments" – YCL.

The ki uta, ki tai concept is useful in portraying this perspective. However, in appraising the progress of the regional council, Yvette was able to confidently attest:

"Ecan has come a long way in understanding mahinga kai it really has. They now have people that can work within their organisation to be able to start bringing in the mahinga kai component" – YCL.

The obligations placed on whānau members are considerable and many find it hard to say no, ending up on committees without adequate knowledge and support. This type of situation was seen as the opposite of rangatiratanga, designed purely to meet the 'box ticking' expectations of external groups. A lack of human and financial resources may see Ngāti Wheke prioritising requests for Mana Whenua input to make the best use of limited resources. They would prefer to be the ones going to organisations to tell them they need Mana Whenua representation instead of reacting to requests.

While others would probably look at the harbour from a project perspective, Yvette believed partnership and the understanding of partnership was the number one priority for the harbour moving forward. From spending most of her life working with diverse communities she has and continues to believe in the benefits of collaboration and that the positive changes it creates far outweigh any negative aspects or costs.

6.2.3 Community Themes

Lyttelton was able to cope so well following the earthquakes because they were already a well organised community and able to access CCC community funding before other groups. Lyttelton has dropped out of the official civil defence response process and chosen instead to have a community response system. This means that the community decides what it will do in an emergency but can still call on civil defence if needed. There was a perception that elected representatives work hard to advocate for the Lyttelton community, but bureaucracy and council obligations could create barriers to progress.

"the port company seems to be a lot more sympathetic with the town. It's been a love-hate relationship but they're getting a new CEO and a whole lot of new people in there and it feels like they are becoming a lot more community focused which is really good" – WE.

One of the implementation issues identified was the large number of groups around the harbour all operating autonomously. Reserve Management Committees are a unique aspect of the harbour and a remnant of the former Banks Peninsula District Council. They operate under a community board process and staff from the CCC struggle to understand and manage the personalities that drive them. Chair of the Lyttelton Reserves Management

Committee, Wendy Everingham was able to clarify some of the concerns these committees have.

"I think what would make it work better for us is a terms of reference stating that the community is in charge of the reserves and council staff are there to support them. That would make all the difference. The current terms of reference are not clear" – WE.

Wendy was also able to articulate what is a common problem for many community groups wanting to engage with Mana Whenua. With Te Rūnanga o Ngāi Tahu, Mahaanui Kurataiao Ltd and the papatipu rūnanga all operating in a similar arena, it is unclear to the community exactly what the roles of these organisations are and which one should be approached in the first instance. Communicating this information might be difficult for already stretched Iwi and Hapū resources but could facilitate increased understanding and confidence of well-intentioned community organisations. Other communities felt the Lyttelton township was often elevated by the CCC when dealing with harbour communities.

"Locals here often have the feeling that they are last in line for upgraded services just because of the half hour drive from town. One notable loss to the Diamond Harbour community was the post-earthquake demolition of Godley House which was a social centre and an important tourist attraction. CCC has yet to decide how to replace this building despite several consultation processes" – GF.

Te Kura Tuatahi o Hinehou – Lyttelton Primary School Principal Brendan Wright saw an opportunity to take on an aspect of the Whakaora plan. The school has developed a BD improvement project utilising scientific processes to monitor and record pests in Lyttelton. With the assistance of experts and local residents, baseline data was used to work out trap lines for a pest management project. Children at the school also take part in planting on the Port Saddle area and are involved with the Natures Agents Programme focusing on water quality. Principal Wright enthused about the Whakaora plan:

"We have actually brought the Whakaora plan out a couple of times around our curriculum planning. We have revamped our curriculum to look at place-based context in terms of cultural responsiveness and sustainability. In our first two terms we looked at navigators – Tamatea Pokai Whenua, Rakaihautu and have now moved into (learning about) Rāpaki for

terms three and four. Next year mahinga kai is one of our focuses and connecting learning into Parihaka. The mahinga kai one is a big connection into Whakaora with the touchstone species and health of the harbour so obviously that's quite exciting" – BW.

6.2.4 Case Study Summary

The development of the plan was characterised by the strong leadership shown by the governance committee chair. While not explicitly elected or appointed to the role, the chair came into the plan development process at a time where progress and collaboration were stagnant and unproductive. The chair's prerogative to take control of the governance committee was not challenged by others and seen by some as the catalyst needed to move things along. The plan writer was seen as a crucial part of the process and able to understand she was responding to a partnership. She was also respectful of the knowledge and Mātauranga contained in the cultural narratives, making it easier to negotiate through the plan's development.

The plan provided a much more aspirational outlook because it was driven by Ngāti Wheke and was ultimately designed to meet the needs of the harbour community. The importance and centrality of mahinga kai has provided an aspirational goal which Ngāti Wheke can work towards with the wider community. After the acknowledgments and redress of historical treaty grievances, Ngāti Wheke are still compelled to advocate for mahinga kai values in planning processes. This could be attributed to the port recovery plan process occurring under the CER legislation instead of normal RMA processes. However, the LPRP approval process provided the initial push to instigate the Whakaora plan supported by Ministerial direction.

6.3   Issues and Opportunities

The key research question asked – *what factors enable or constrain the creation and implementation of environmental co-governance and co-management arrangements in Aotearoa New Zealand?* The analysis of primary and secondary data has been synthesised to identify potential barriers and enablers for collaborative relationships. The main elements considered influential in this regard are summarised in Figure 6.1.

Global

Institution
- State Sovereignty Norms
- Narrow UN Mandate
- Limited Legitimacy of UN (Veto Power)

Institution
- Pre-existing IP Rights
- UNDRIP
- UN Rapporteur on IP Rights

Behaviour
- Eurocentric Conception of IR
- Universalised Western Paradigms & Norms
- Transnational Resource Rights & International Finance
- Liberal Environmentalism

- Indigenous Networks/Knowledge Sharing
- Corporate Social Responsibility
- Increased Public Awareness of IP Issues

Constraining → **Collaboration** ← Enabling

Behaviour

- Token Use of Treaty Principles
- Privileging of Western science over Mātauranga
- Variable Iwi access to human and financial resources
- Decontextualisation and reinterpretation of Māori concepts and worldview

- Innovative Responses to Increasing Costs & Diminishing Returns for Local Govt
- Collective Goal Setting
- Institutional/Iwi/Community Relationships
- Iwi Dissemination of Treaty Settlement Learnings
- Long Term, Inclusive Planning

Institution
- Non-Binding Status of IMP's
- Non-Binding Status of WT Recommendations
- Environmental Policy Ultimately Determined by Treasury and the Courts

Local

Institution
- Non-RMA Planning
- Treaty Settlement Acts
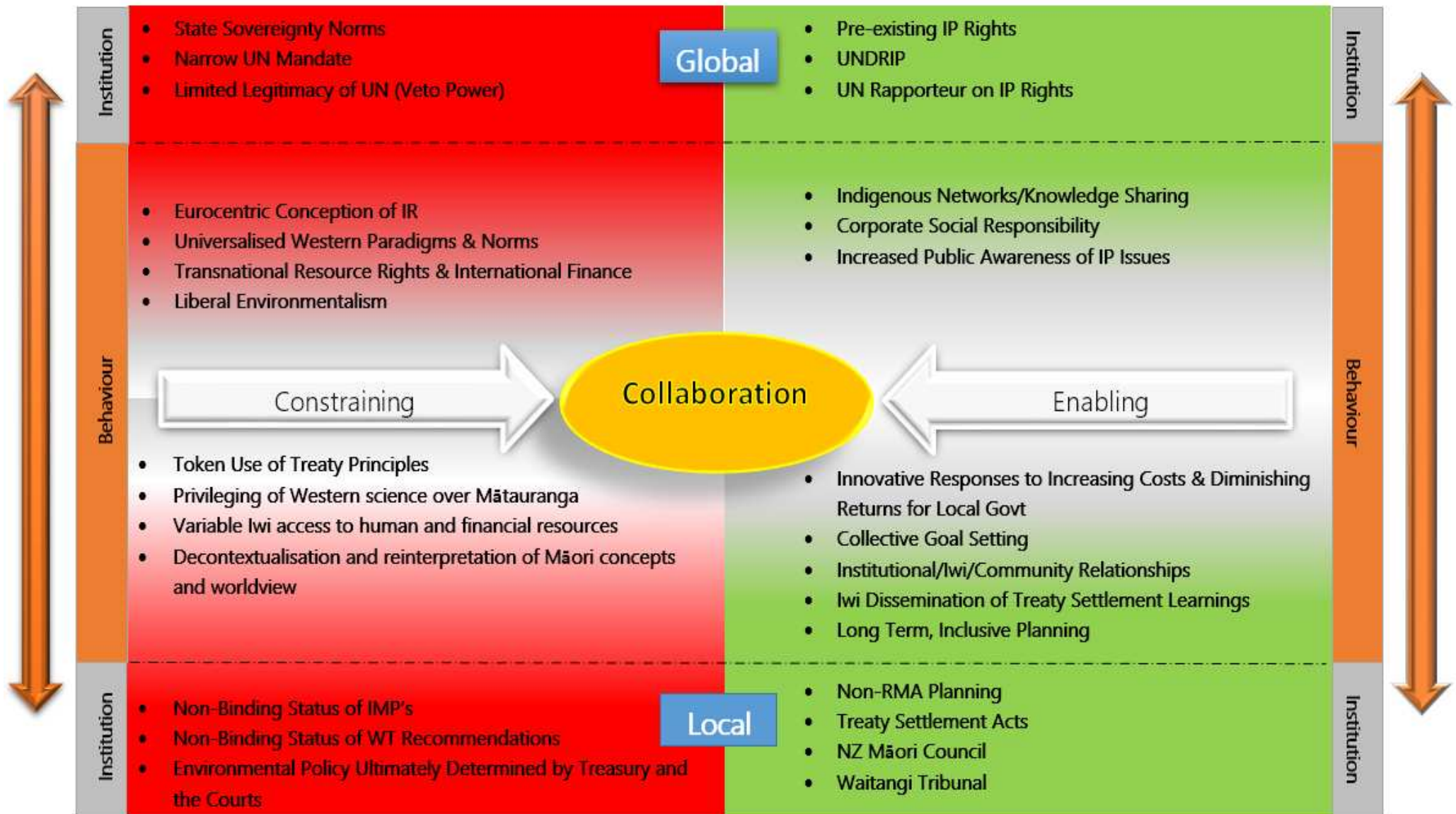- NZ Māori Council
- Waitangi Tribunal

Figure 6. 1 Main Constraining or Enabling Factors for Collaborative Indigenous Environmental Arrangements Identified in the Research.

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6.4 Summary

The most common theme that has become evident is the conflict between a western mainstream conservation ethic and indigenous environmental management practices. From an international and national perspective, the control, use and conservation of biological resources is the domain of the sovereign state. IP rights regarding BD are at the discretion of state governments. The access and benefit sharing component of the CBD has not yet been ratified by many countries. IP rights are comprehended within the human rights discourse and separated from environmental governance or resource rights. Establishing and protecting resource rights and decision-making authority favours organisations and individuals with the capacity to access legal and political systems.

New Zealand's environmental policy is disputably set by the Treasury Department and Environment Court, reflecting the dispute resolving tenets of common law identified by La Porta et al (2008). New Zealand's environmental legislation does not include treaty principles in the purposes of the acts analysed. Decontextualised concepts and values are included in various acts which is consistent with the international norm of integrating non-political IP knowledge and processes. Treaty settlements are Iwi centric, in effect redefining the traditional power of Hapū and whakapapa-based structures of mana and authority. But they are also redefining the roles of other actors in the control and use of resources.

At a local level the significance of biological resources to Māori has been well documented through the treaty settlements process and is exemplified by the extremely high value Ngāi Tahu place on mahinga kai. Ngāti Wheke endeavours for institutional capability are inhibited by human and financial resource limitations which are matched by local government Mātauranga deficits. Each also require succession planning to ensure progress in building relationships is reinforced and maintained long term. Mahinga kai creates a superordinate goal which neither Ngāti Wheke, the community or LPC can implement separately and displays the characteristics of realistic group conflict theory (Sherif et al., 1988).

Chapter 7

Conclusion

The focus of this research has been to identify enabling or constraining factors for collaborative environmental regimes in Aotearoa-New Zealand. Several sub questions were utilised to elucidate how global values, state obligations and local practices and attitudes might contribute to those factors. This has required a 'zoom in - zoom out' approach to assess environmental governance aspects at the macro and micro scale. The small sample size and unique context of the case study limits the generalisability of findings. Interpretation of the results and the analytical lens selected reflects my personal worldview as a subjective being. Interview participants also reflected their subjectivity throughout the process either in terms of organisational representation or their lived experience and personal worldview.

7.1   Main Findings of The Research

It can be inferred the default norms of international relations, law and governance are historical European constructs which marginalise alternative views and values through international institutions. Declarations and conventions produced by these organisations are reminiscent of the proclamations used during colonisation as expressions of authority and legitimacy. Poorly defined meta-concepts such as economy, sustainability, ecosystems and democracy maintain the status quo as the measure of human progress. Compartmentalising human rights and environmental governance in international law arguably creates the development-conservation dilemma. Clustered policy making and selective ratification of UN agreements exhibits the features of imperialism rather than the actions of sovereign states. The simultaneous maintenance of sovereign state ideology and ascent of non-state corporate power suggests that common and civil law traditions are mutually preserving.

The research suggests that domestic environmental legislation has had limited usefulness in providing the mutual legitimacy needed for conflict reconciliation and establishing lasting security. New Zealand's obligations in effecting IP participation in environmental decision making under the TOW generally conflict with international norms. Local government bodies are bound by their statutory obligations under the LGA and RMA to achieve the SD,

efficiency and environmental protection purposes of the acts. The non-statutory status of Iwi planning and local and central government treaty ambivalence restricts effective collaboration. Within the research, local environmental collaboration can occur through treaty settlements and earthquake recovery legislation.

Negotiations in both the case study and treaty settlements are based on trade-offs between local interests and maintaining the effective operation of the market structure. Building Iwi/Hapū and local government collaborative capability is ongoing and centred on integrating knowledge claims and establishing long term relationships. Personnel changes and funding commitments are perceived to have a significant impact on continued and effective collaboration. Weberian notions of state permanency appear to have been applied to Māori authority structures through the treaty settlement process and imposition of PTSGE's as the legitimate unit of political expression. For Te Hapū o Ngāti Wheke, the non-statutory Whakaora plan provides an opportunity to integrate western scientific knowledge and active community support to restore their environment and manage mātaitai reserves.

7.2   Further Research and Recommendations

How the upcoming Mahaanui IMP review accounts for the collaborative Whakaora plan should be considered carefully especially regarding the definition of taonga species within the harbour. The management of New Zealand ports is an area that should be investigated further. Port commercial operations are currently conducted under the Port Companies Act 1988 with the principle function of operating as a successful business. The CCC appears to be open and receptive to the concerns of Ngāti Wheke and the harbour community but it is unclear whether its 100% shareholding in LPC restricts its ability to conduct its affairs transparently. The mandate, responsibilities and powers of the Crown are poorly defined, making its role in judicial, legislative and constitutional matters one of default rather than purpose. Is there a conflict of interest in advocating for all New Zealanders and the role of Treaty Partner?

The Waitangi Tribunal's role and powers see it evaluating national legislation and policy for treaty compliance in ex post assessments. Self-evaluation is conducted by the Crown regarding implementation of tribunal recommendations with section 81 reports. It would be interesting to conduct a cost/benefit analysis to identify the merit of assessing Crown actions

ex ante. Comparison of short and long-term benefits and costs would need to account for the Environment Court and Treasury not being required to make determinations on treaty issues if there was clear and unambiguous policy already in place.

The current practice, both in Aotearoa New Zealand and internationally, of incorporating IP values and interests into state policy and decision making is ineffective. IP themselves have to be incorporated into strategic and policy level processes with dedicated representation of their choosing. Iwi aspirations are not limited to shared environmental decision making as they become more financially autonomous. Governance arrangements in treaty settlements are in effect placing them in competition with longstanding government ministries, departments and local government organisations. Treaty settlements have actively bypassed DOC's influence due to long term differences in goals and methods. This would suggest that the conservation act also needs to be reformed for what is a valuable institution for all New Zealanders.

Cost is prohibitive and a significant barrier for collaboration between Iwi/Hapū and councils. RMA reforms are currently in progress and will need to address multiple issues, including Māori proprietary rights in freshwater. Settling contemporary treaty claims may be more expensive than historical grievances if this fundamental issue is not addressed. Partnership implies sharing in the use and care of resources and changes the debilitating colonial narrative of property rights to one where the rights of the environment can also be recognised and protected by mutually legitimate partners. This creates conflict for state power and authority which operate under assumptions of institutional tenure. To avoid the potential duplication of management level functions, a minimum platform of Māori *co-government* is required. As treaty partners, Māori are not one of many interest groups to be accounted for in the arrangements of *co-governance*. This will require political representation from Māori and the Crown clearly defining and agreeing on Aotearoa New Zealand's version of partnership as trustees of the past, present and future.

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Appendix A Interview Questions and Participants

A.1 Interview questions for persons involved in the development and implementation of the Whakaora Plan.

1) Could you explain your role and background experience please?

2) Is there any example that was followed to produce the plan?

   (Sub question) Were there any contentious points in the plan's development?

3) Do you think the plan would have been developed in the absence of the earthquakes?

4) How important are urban growth, BD protection and climate change adaptation to your organisation's strategic goals?

5) Does your organisation monitor the gender of employees and what is the gender balance of employees at your organisation as a percentage?

6) Do you think the mahinga kai indicators/objectives are compatible with mainstream conservation values?

7) What would you consider the number one priority for the harbour currently?

8) Does current legislation such as the RMA and LGA provide adequate guidance regarding the treaty principles of partnership and tribal self-regulation?

9) How much influence has the Te Mahaanui Iwi Management Plan had in your organisations strategic planning and specifically the development of the harbour catchment management plan?

10) Could you tell me more about Tangata Tiaki, for instance how are they appointed and what is their role?

11) Do you foresee any issues to the plan's implementation?

A.2 Amended interview questions for community group participants.

1) Could you explain your role and background experience please?

2) Have you heard of the Whakaraupō-Lyttelton Harbour Catchment Management Plan?

3) How would you describe your community's recovery from the earthquakes i.e. any positive or negative changes, loss of community facilities or new community developments?

4) Are you concerned about urban growth/development, BD protection and climate change adaptation impact on your community?

5) Does your organisation monitor the gender of employees and what is the gender balance of employees at your organisation as a percentage?

6) What do you understand by the terms Mahinga kai; Mana Whenua and Hāpori?

7) What would you consider the number one priority for your community currently?

8) Does your community group have formal or informal relationships with other local or district groups or organisations?

9) How would you rate the Christchurch City Council in terms of community engagement and participation?

10) What would increase your organisations ability to achieve its goals?

11) Finally, what is your ideal vision for the harbour and its community in the year 2100?

A.3 Interviewees

Interviewee	Organisation	Background and experience
Karen Banwell	Programme Manager, Whakaora Healthy Harbour Plan	Former Project Lead, for the Christchurch City Urban Development Strategy. 14 years working for NSW public service for the EPA, Sydney Olympic Games Environmental Health Programmes and Comprehensive Coastal Assessment.
Courtney Bennett	Te Rūnanga o Rāpaki – Te Hapū o Ngāti Wheke	Lead Planner for TRONT and responsible for the style, structure and theming content of the Whakaraupō plan. Bachelor of Planning with Honours from Auckland University 2014. Previous experience as Junior Planner on National Park Management Plans for the Paparoa National Park and Aoraki National Park.
Yvette Couch-Lewis	Chair of Whakaora Healthy Harbour Governance Committee	Background in Adult Education. Lifelong environmental advocate and member of Te Hapū o Ngāti Wheke. Environmental Commissioner.
Wendy Everingham	Project Lyttelton & Lyttelton Reserves Management Committee	Member of Project Lyttelton. Member of the Lyttelton Reserves Management Committee for six years with the last three years as Chair.
Graeme Fraser	Diamond Harbour Reserve Management Committee	Chair of the Diamond Harbour Reserve Management Committee. Former member of the Scottish Green Party. Sits on the Whakaora Community Advisory Group.

Dyanna Jolly	Planning and Impact Assessment Consultant	Member of Whitebear First Nations, Saskatchewan, Canada. Has worked extensively with Iwi and Hapū preparing Iwi Management Plans and Cultural Impact Assessments. Advises Regional and District Councils on engagement with tāngata whenua.
Kim Kelleher	Lyttelton Port Company	Environment and Planning Manager. Coastal environmental science background in the Australian port industry. Leads LPC's RMA planning functions. Oversight of consent submissions and relationships with Ecan, DOC and CCC. One of four LPC representatives on the Mana Whenua advisory group meeting regularly with Te Hapū o Ngāti Wheke on matters of mutual interest.
Christina Robb	Environmental Management Consultant	Engineering and Resource Management experience. Ministry for the Environment, Lincoln Ventures. Eight Years at Environment Canterbury as programme manager for the Canterbury Water Management Strategy. Ecan Project Manager in a consultant capacity for the development of the Whakaraupō plan.
Brendan Wright	Principal Lyttelton School	Principal of Te Kura o Hinehou (Lyttelton Primary School) since 2017. Currently building a working relationship with Rāpaki Marae.

Appendix B Miscellaneous Planning and Historical Background

B.1 The Hauraki Gulf Marine Park Area as seen from a Mana Whenua perspective (left) and mainstream/western perspective on the right (Seachange, 2017).

Material removed due to copyright compliance

B.2 Monitoring and Review Process for the Whakaora Plan.

Whakaora Healthy Harbour Plan Timeline, Actions and Review	
2018 Plan launch, annual work programme published	
2019 Annual work plan	• Annual progress reports produced by The Partners on actions in Whakaora Healthy Harbour and coordinated with monitoring and State of the Takiwā reporting
2021 Three yearly action review	
2024 Three yearly action review	
2027 Catchment Management Plan review	
2030 Three yearly action review	
2033 Three yearly action review	• Triennial review process of plan actions integrates community feedback sourced by The Partners
2036 Three yearly action review	
2040 Projected plan expiry – new plan draft to advance the next regeneration phase of Whakaraupō – Lyttelton Harbour	

B.3 Rīpapa History with Literature Sources.

1820's	Musket pā for Taununu during the kaihuanga (Bowring, 2011; Evison, 1993).
1832	Te Whakarukeruke leaves Rīpapa to defend Kaiapoi against Te Rauparaha (Department of Conservation, n.d.-a).
1860	Opening of the Lyttelton gaol. Most of the roads and stone walls of Lyttelton were built by the gaols prisoners. They were also responsible for the construction of Fort Jervois and the Quail Island quarantine station (Lyttelton Port Company, 2019c).
1872	Fredrick Stout documents the remnants of the pā and begins design for the quarantine station (Bowring, 2011).
1877	Rīpapa was used to quarantine married people and single female passengers amongst the 320 on board the Cardigan Castle which arrived on January 6 (Lyttelton Times, 1877). Single males were quarantined on Quail Island. The twelve deaths that had occurred during the passage from London were attributed to diphtheria, enteric fever, apoplexy, inanition and softening of the brain.
1880	27 July – Twenty-six prisoners arrive in Lyttelton from Taranaki aboard the Hinemoa showing no signs of hostility and appearing content and resigned (Lyttelton Times, 1880). Rīpapa was used as a temporary prison to house some of the 150 followers of Te Whiti who had been transported from Taranaki (Department of Conservation, n.d.-b).
1886	Walled Fort Jervois constructed - complete with four large disappearing guns in response to the imminent war between Britain and Russia (Bowring, 2011; Department of Conservation, n.d.-b).
1889	Fort Jervois visited by General Edwards, sent by the Imperial government to inspect and report on the colonial forces and defences ("General Edwards," 1889). Also visited the 7-inch guns on the Lyttelton side of the harbour.
1913	Rīpapa used to incarcerate conscientious objectors (Bowring, 2011; Stapylton-Smith & Friends of Diamond Harbour Library, 2009).
1947	Harbour Board assumes control of the island and it is made open to the public for picnics and visits. 100,000 – 150,000 visitors from 1946 – 1955 (Stapylton-Smith & Friends of Diamond Harbour Library, 2009).
1984	Department of Lands and Survey takes over the islands management (Stapylton-Smith & Friends of Diamond Harbour Library, 2009).
1986	Rīpapa declared a Historic Reserve (Stapylton-Smith & Friends of Diamond Harbour Library, 2009).
1990	Department of Conservation takes over management of the island (Stapylton-Smith & Friends of Diamond Harbour Library, 2009).
1999	Rīpapa designated a tōpuni site as per section 238 of the Ngāi Tahu Claims Settlement Act 1998 (Department of Internal Affairs, 1999).

B.4 Events Leading to the Whakaora Plan under Earthquake Recovery Legislation

18 June 2014 Minister for Canterbury Earthquake Recovery, directs the development of a Lyttelton Port Recovery Plan

→

LPC to provide all necessary information to the ECan to enable the preparation of a preliminary draft Plan.

↓

Consultation by LPC with relevant communities and interested persons to obtain feedback on recovery proposals, including Te Rūnanga o Ngāi Tahu.

←

Following consultation with the CCC, Selwyn and Waimakariri District Councils, Te Rūnanga o Ngāi Tahu, the NZTA, DOC and CERA, a preliminary draft Plan is prepared by ECan

↓

Public notification of the draft Plan and the receipt of written comments from the public before the Minister decides whether to approve and promulgate the Plan.

→

Appointment of a hearing Panel to conduct public hearings on the preliminary draft Plan and provide non-binding recommendations to ECan for its consideration.

↓

The draft Plan is provided to the Minister by ECan

←

ACTION 7 OF THE DRAFT PLAN

Environment Canterbury, LPC, Te Hapū o Ngāti Wheke and Te Rūnanga o Ngāi Tahu will agree on a governance structure and process for developing an integrated management plan for Whakaraupō /Lyttelton Harbour.

↓

Environment Canterbury is directed, pursuant to s49 of the CER Act, to exercise its power to establish a Whakaraupō / Lyttelton Harbour Management Plan Committee under clause 30 of schedule 7 to the Local Government Act 2002.

→

The Committee shall include ECan, LPC, Te Hapū o Ngāti Wheke, Te Rūnanga o Ngāi Tahu and CCC, with Tangata Tiaki representation, and will consult with other stakeholders to agree on a governance structure, and process, for developing and implementing a catchment management plan for Whakaraupō / Lyttelton Harbour by December 2015

Appendix C Detailed Document Descriptions

C.1   International Documents.

Document	Summary Description of Content
Chapter 26 of Agenda 21 - United Nations Conference on Environment and Development 1992.	Agenda 21 was adopted by 178 governments in 1992. Chapter 26 of the document identifies IP (IP) as one of several important cohorts in the effort to implement environmentally sound and SD (SD). The ability of IP to participate fully in SD is limited due to what are described as social, economic and historical factors. The agenda promotes, where appropriate, arrangements to strengthen the active participation of IP and their communities in the national formulation of policies, laws and programmes relating to resource management. The document also refers to the Statement of Principles for the Sustainable Management of Forests which was adopted at the same time. The International Labour Organisations Convention No. 169 on the rights of IP and the draft United Nations Declaration of the Rights of IP (UNDRIP) are also mentioned. It is suggested that governments could take measures such as ratifying conventions such as UNDRIP which are relevant to IP and should adopt policies that protect the intellectual and cultural property of IP. Colonisation is not mentioned nor is the role that IP will play other than utilising their knowledge. The chapter is consistent with the overall themes of the document which are promoting global partnership with multiple state and non-state actors, reaffirming state sovereignty and accelerating SD in developing countries.
Convention on BD (CBD) 1992.	The Secretariat for this convention is based in Montreal, Canada. The convention establishes the Conference of the Parties (COP) with 193 parties signing. Only a contracting party may become a party to a protocol under the convention. A contracting party can include a state or a regional economic integration organisation. The COP reviews scientific, technical and technological advice from a subsidiary body comprising government representatives competent in relevant fields of expertise. Consensus decision making is promoted in the event it is not achieved, a two thirds majority is sufficient. The Annexes are an integral part of the convention and are restricted to scientific, procedural, technical or administrative matters. An ecosystems approach is associated with the precautionary principle in which measures to minimise threats to BD should not be prevented by the presence of scientific uncertainty. There are three main objectives for

	the CBD which are 1-the conservation of BD, 2-the sustainable use of BD (BD) and 3- the fair and equitable sharing of the benefits arising from the use of genetic resources. BD is considered to have intrinsic values as well as ecological, genetic, social, economic, scientific, educational, cultural, aesthetic and recreational values. The CBD seeks to encourage co-operation between government authorities and the private sector to develop methods to enhance and complement existing international arrangements for the conservation and sustainable use of BD for present and future generations. Access to relevant technologies and financial resources is expected to make a substantial difference to addressing BD loss especially for developing countries. The document alludes to the UN Charter and the principles of international law to reaffirm state rights and responsibilities. A key aim of the CBD is the eradication of alien species which threaten ecosystem habitats or indigenous species. The CBD is consistent with the United Nations Convention of the Law of the Sea and emerged at the same time as the Earth Summit/Agenda 21 and the Convention on Desertification. It calls for the knowledge, innovations and practices of IP's to be respected, preserved and maintained where they are compatible with conservation and sustainable use requirements. IP and developing countries could be expected to utilise this document to access and protect their intellectual property rights.
Millennium Development Goals (MDG) 2000.	Established after the Millennium Summit of the United Nations in 2000, the Millennium Development Goals (MDGs) committed 22 international organisations and 189 UN member states to 8 main goals by 2015. These goals were: • Eradication of extreme poverty and hunger • Achieving universal primary education • Promote gender equality and empowerment of women • Reduce child mortality • Improve maternal health • Combat HIV/AIDS, malaria and other diseases • Ensure environmental sustainability • Develop a global partnership for development The MDG's set out to establish a just and lasting peace across the world. It supports all efforts to uphold all states sovereign equality, territorial integrity and political independence while maintaining conformity with justice principles and international law. Concurrently, it also supports the right to self-determination of peoples which remain under colonial domination and foreign occupation. The main issue identified in the document is how globalisation can be utilised as a positive force for all peoples of the world. It recognises that at this

	point in time the benefits it provides are not shared equitably while the costs it generates are distributed unevenly. It is believed that globalisation can be made fully inclusive and equitable through sustained efforts to create a shared future grounded in our common humanity in all its diversity. The values of freedom, shared responsibility, solidarity, equality, tolerance and respect for nature are considered essential to international relations in the twenty first century. These values are used to develop seven key objectives; - Development and poverty eradication - Protecting the vulnerable - Peace, security and disarmament - Protecting our common environment - Human rights, democracy and good governance - Meeting the special needs of Africa - Strengthening the United Nations In terms of strengthening itself the UN will attempt to ensure better cooperation and policy coherence with the World Trade Organisation (WTO), the Bretton Woods institutions and other multilateral organisations in order to address peace and development in a coordinated manner.
United Nations Declaration on the Rights of IP (UNDRIP) 2007.	The General Assembly adopted UNDRIP on September 13, 2007. The declaration affirms that IP should be free from discrimination in the exercise of their rights and that they have suffered from historical injustices through colonisation. All peoples, including IP, have the rights to consider themselves as different, to be different and to be respected. Similarly, all peoples have the right to self-determination and to freely determine their social, cultural, and economic development as well as their political status. States are encouraged to respect and promote the rights of IP which are based on their political, social and economic structures, histories, spiritual traditions, cultures and philosophies in particular their rights concerning lands, territories and resources. IP have the right to participate fully, if they choose, in the normal affairs of the state while exercising their right to strengthen and maintain their own legal, social, economic, cultural and political institutions. The declaration considers the relationship that treaties represent as a foundation for increased partnership between states and IP. Article 4 states that IP have the right to self-government or autonomy in matters that affect their internal and local affairs including the means for financing their autonomous functions in exercising their right to self-determination. The ability of IP to develop in light of their own interests and needs has been prevented by dispossession of their resources, territories and lands under

	colonisation. IP have the right to participate in decision making in matters where their rights are affected with representation from persons chosen by themselves according to their own procedures and they may also develop and maintain their own decision-making institutions. IP possess the right to revitalise their customs and cultural traditions including maintaining and developing past, present and future manifestations of their cultures. But, nothing in this declaration can be used to inhibit the right to self-determination for all peoples when exercised in conformity with international law. State obligations under the declaration include providing the means to prevent or redress for any form of propaganda which is designed to promote ethnic discrimination against IP including forcibly removing indigenous children to another group. IP shall not be forcibly removed from their lands without free, prior and informed consent (FPIC) while intellectual, religious, cultural and spiritual property taken without FPIC shall be subject to redress or restitution for which the state shall provide effective mechanisms to facilitate. Education and public policy should adequately reflect IP histories, cultures, traditions and aspirations. IP have the right to maintain their traditional health practices and medicines. This includes the conservation of their vital medicinal animals, minerals and plants.
The Nagoya Protocol on Access to Genetic Resources and The Fair and Equitable Sharing of Benefits Arising From their Utilisation to the Convention on BD 2010.	The protocol is designed to implement the access and benefit sharing provisions of the CBD. Despite entering into force in 1993, the access and benefit sharing objectives of the CBD have proven to be a contentious point for many states. The World Summit on SD in Johannesburg 2002 called for an international regime to implement the objective. An Adhoc Open Ended Working Group was mandated at the seventh meeting of the COP in 2004 to negotiate a regime and implement Article 15 on access to genetic resources and Article 12 relating to traditional knowledge associated with genetic resources. The protocol was adopted at the 10th meeting of the COP in 2004. It was opened for signature in 2011 and entered into force in 2014. Fulfilling intentions to require free, prior and informed consent (FPIC) for benefit sharing will need statute provisions in domestic law. New Zealand's status for ratifying the CBD is 'in progress'. This is because New Zealand is one of many countries not yet a party to the Nagoya Protocol.
Transforming our world – The 2030 Agenda for SD 2015.	Progress towards and achievement of the MDG's by countries was uneven. This document is the outcome of the UN Summit for the adoption of the post 2015 development agenda and calls for all countries and stakeholders to implement its contents in a collaborative partnership which leaves no one behind. The seventeen development goals and 169 targets it sets are considered a new universal agenda.

	The progress of SD is threatened by issues such as global health, increasing natural disasters, terrorism, violent extremism and humanitarian crises. It builds on the MDG's and seeks to achieve the realisation of human rights for all and the empowerment of women and girls. As with Agenda 21 and the MDG's, the 2030 Agenda recognises the three dimensions of SD as social, economic and environmental. Poverty and security are identified as matters to be resolved to provide for safe human habitats which are resilient, sustainable and where people have access to reliable, affordable and sustainable energy. The documents creators envisage a world which provides physical, social and mental well-being and all life can thrive. The dignity of the human person is fundamental to this and the agenda is guided by the principles and purpose of the UN Charter and full respect for international law. It is also grounded in the UN Declaration of Human Rights and the Millennium Declaration while being informed by the Declaration of the Right to Development. An overarching theme is the revitalisation of the Global Partnership for SD. A belief that peace can only be achieved via SD is reaffirmed as is the right of states to the free exercise of full and permanent sovereignty over their wealth, economic activity and natural resources. Consultation was undertaken by the Open Working Group of the General Assembly on SDG's over two years to develop the goals and targets. Consultation took place with civil society and other stakeholders and paid particular attention to the poorest and most vulnerable. Groups identified as vulnerable are youth, children, disabled persons, people living with HIV/AIDS, the elderly, refugees, migrants, internally displaced persons and IP. Win-win cooperation is seen as a worthy goal in which SD can bring huge gains to all countries and parts of the world. Structural transformation is considered a method to strengthen production capacity in least developed countries. Global interconnectedness provides opportunities to accelerate human progress and develop knowledge societies with scientific/technological innovation and communications technology.

C.2 New Zealand Legislation and Policy Documents.

Document	Summary Description of Content
Environment Act 1986.	Provides for the appointment of a Parliamentary Commissioner for the Environment, on the recommendation of the House of Representatives, by the Governor General. The functions of the Commissioner are to periodically review the processes and agencies established by the Government for managing the allocation, use and preservation of physical and natural resources. The results of such reviews will be reported to the House of Representatives or other persons or bodies the Commissioner considers relevant. Matters to which the Commissioner shall have regard to in performing this function include whether any proposals or policies are likely to result in an increase in pollution or the depletion of natural or physical resources at a rate that prevents renewal by natural processes (s 17 (e)). Where the Commissioner considers it appropriate, they may also have regard for land, water, sites, fishing grounds, or physical or cultural resources, or interests associated with such areas, which are part of the heritage of the tāngata whenua and which contribute to their well-being. Part 2 of the act also establishes the Ministry for the Environment under the control of the Minister. The function of the Ministry is to advise the Minister on policies relating to the management of natural and physical resources and ecosystems to achieve the objectives of the act and to advise on the effective provision for public participation in environmental policy and planning formulation processes. Further objectives of the act are to ensure that, in the management of natural and physical resources, full and balanced account is taken of— - the intrinsic values of ecosystems; and - all values which are placed by individuals and groups on the quality of the environment; and - the principles of the TOW; and - the sustainability of natural and physical resources; and - the needs of future generations
Conservation Act 1987.	This act Establishes the Department of Conservation under the control of the Minister of Conservation (s5). The functions of the Department are to administer this Act and the enactments specified in Schedule 1, and, subject to this Act and those enactments and to the directions (if any) of the Minister, to manage for conservation purposes, all land, and all other natural and historic resources, for the time being held under the act. All

other land, natural and historic resources whose owner agrees with the Minister that they should be managed by the Department by preserving so far as is practicable all indigenous freshwater fisheries and protecting recreational freshwater fisheries and freshwater fish habitats. The Department advocates the conservation of natural and historic resources generally to promote the benefits to present and future generations of the conservation of natural and historic resources of New Zealand in particular. This includes the sub-Antarctic islands and should be applied consistently with all relevant international agreements. The benefits of international co-operation on matters relating to conservation are also to be promoted by the preparation, provision, dissemination, promotion and publication of educational and promotional material relating to conservation. Section 6A Establishes the New Zealand Conservation Authority whose function is to advise the Minister on statements of general policy prepared under the Wildlife Act 1953, the Marine Reserves Act 1971, the Reserves Act 1977, the Wild Animal Control Act 1977, the Marine Mammals Protection Act 1978, and this Act. The Authority can also approve conservation management strategies and conservation management plans and review and amend such strategies and plans, as required under the Wildlife Act 1953, the Marine Reserves Act 1971, the Reserves Act 1977, the Wild Animal Control Act 1977, the Marine Mammals Protection Act 1978, the National Parks Act 1980, and this act. Members of the Authority are appointed by the Minister as follows:

No. of members	
2	Appointed after consultation with the Minister of Maori Affairs.
2	Appointed after consultation with the Minister of Tourism.
1	Appointed after consultation with the Minister of Local Government.
1	Nominated by TRONT (as established by section 6 of Te Runanga o Ngai Tahu Act 1996)
1	Appointed on the recommendation of the Royal Society of New Zealand.
1	Appointed on the recommendation of the Royal Forest and Bird Protection Society of New Zealand Incorporated.

	4	Appointed following public notice given in accordance with subsection (2).
	1	Appointed on the recommendation of the Federated Mountain Clubs of New Zealand Incorporated.
	Section 4 of the act states that it shall so be administered and interpreted as to give effect to the principles of the TOW.	
Resource Management Act 1991.	The main legislation regulating the use of natural resources for New Zealand. The purpose of the act is outlined in part 2 which provides for the sustainable management of natural and physical resources in section 5. To achieve the purposes of the act, matters of national importance which must be recognised and provided for by persons exercising powers under the act are listed in section 6 while the subsections of section 7 define other matters to which those persons must have particular regard for. The principles of the TOW (Te Tiriti o Waitangi) shall be taken into account by persons exercising powers under the act to achieve its purposes in section 8. Part 5 deals with the preparation and approval of plans, policy statements and standards while Part 4 defines the functions, powers and duties of central government, local government and Ministers. Section 58 M provides for a Manawhakahono a Rohe agreement/arrangement which records how Iwi authorities will participate in resource management and decision-making processes under the act for their respective areas. It also provides assistance for local authorities in implementing of sections 6 (a), 7 (e) and 8 of the act. The guiding principles are outlined in section 58N and encourage groups to work together in good faith and in a spirit of co-operation: • to communicate with each other in an open, transparent, and honest manner, • to achieve the purpose of the Mana Whakahono a Rohe in an enduring manner, • to promote the use of integrated processes: to enhance the opportunities for collaboration amongst the participating authorities, • to recognise that a Mana Whakahono a Rohe under this subpart does not limit the requirements of any relevant iwi participation legislation or the agreements associated with that legislation.	

Local Government Act 2002.	The LGA's purpose is to provide for democratic and effective local government which recognises the diversity of local communities in New Zealand. It provides a framework and powers for local authorities to decide which activities they undertake and the manner in which they will undertake them; and provides for local authorities to play a broad role in meeting the current and future needs of their communities for good-quality local infrastructure, local public services, and performance of regulatory functions. Section 4 of this act refers to the requirements for local authorities that are aimed to enable Māori participation in decision making at the local authority level by taking appropriate account of the principles of the TOW in order to recognise and respect the Crowns responsibilities. Section 81 stipulates that local authorities must provide Māori relevant information indicating: the processes they have established to provide Māori with opportunities, and how they have considered fostering the development of Māori capacity to, contribute to local authority decision making. The purpose of local government in section 10 is to meet the needs for good quality infrastructure, local public services and performance of regulatory functions of current and future communities in a manner which cost effective for the market (households and businesses). Decision making and actions at the local government level should be democratic and by and on behalf of communities.
National Policy Statement for Freshwater 20174 (Amended 2017).	The NPSFW identifies freshwater as a matter of national significance and provides a framework for its management. This framework requires regional council plans and policy statements to consider and recognise Te Mana o te Wai as the connection between water and the broader environment. Limits and objectives set for freshwater must be informed by values identified in discussion and engagement with the community, including tāngata whenua. The NPSFW develops a suite of objectives and policies around water quantity, quality and integrated management. It creates a national objectives framework which is consistent at a national level while recognising regional and local circumstances. Compulsory national values are created for freshwater management regarding ecosystem health and human health for recreation within a National Objectives Framework (NOF). Other national values are considered including irrigation, cultivation and food production, hydro-electric power generation and mahinga kai. The NOF requires regional councils to develop monitoring plans which identifies monitoring sites and the methods for which the

	regions freshwater values are being monitored. Objective D 1 requests local authorities take reasonable steps to identify tāngata whenua interests and values in freshwater and regional freshwater ecosystems and involve them in freshwater management.
Proposed National Environmental Standard for Freshwater	In its current manifestation, the NESF will define vegetation destruction, general earth disturbance, earth disturbance of drainage and water take actions as either prohibited, discretionary or non-complying activities if associated to wetlands. The freshwater standard will require all farms to have a Freshwater Farm Plan by December 31, 2025.

C.3   TOW Related Documents.

Document	Summary Description of Content
Ngāi Tahu Settlement Act 1998	• Crown acknowledgement of repeated Treaty breaches and in expressing its profound regret and unreserved apology acknowledges the work of Ngāi Tahu ancestors, paying tribute to the tribes contribution to the nation. The Crown seeks to atone for past injustices and to begin the process of healing with a new age of co-operation with Ngāi Tahu. • Defines the claim area and Ngāi Tahu and Ngāi Tahu Whānui each means the collective of individuals who descend from the primary hapū of Waitaha, Ngāti Mamoe, and Ngāi Tahu, namely Kāti Kurī, Kāti Irakehu, Kāti Huirapa, Ngāi Tuahuriri, and Kai Te Ruahikihiki. • The Governor General Vests the fee simple estate of Aoraki Mount Cook in TRONT by Order in Council on the recommendation of the Prime Minister (Section 15). TRONT gifts the fee simple estate vested in it by section 15 to the Crown on behalf of the people of New Zealand (Section 16). • Provides a legislative mechanism to enable the Crown to obtain or lease, within certain limits, settlement properties to be transferred to TRONT and for the conditions on which properties identified in schedule 4 are to be transferred as part of the settlement. • Part 6 provides for parts of the Fiordland National Park to be vested in Landcorp Farming Limited for subsequent transfer to TRONT. • Enables legislation to enable the transfer of Crown forest lands to TRONT. • Allows for the transfer of commercial property title or leases to give effect to the deed of settlement.

| | - Requires the Crown to advise TRONT if it is considering the disposal of relevant land within the takiwā and sets out conditions that TRONT may follow to signal its interest in purchasing the property. Provides for a public valuer to be appointed jointly by the Crown and TRONT.
- Provides for the leaseback and gift areas identified in the area plan attached to the deed of settlement. Lands for transfer and leaseback are set out in section 10 of the deed of settlement.
- Part 11 transfers several reserve areas to TRONT which are identified in part A of schedule 7. It allows TRONT to purchase other areas in which the transfer value is equated as the purchase price. Reserves are held and administered by TRONT.
- The name of Mt Cook National Park is changed to Aoraki-Mount Cook National Park.
- The fee simple estate in the bed of Te Waihora is vested in TRONT and is no longer a conservation area but still subject to encumbrances detailed in schedule 10. Joint management is provided for in section 177 over areas held, managed or administered under the Conservation Act 1987 or areas owned by TRONT or others. The beds of Muriwai (Coopers Lagoon) and Lake Mahināpua are also vested in TRONT.
- The Crown acknowledges Ngāi Tahu cultural, spiritual, historical and traditional association with taonga species in Section 288 and requires the Minister for Conservation to consult and advise Ngāi Tahu of any policy, conservation management strategy reviews or decisions concerning the protection, management or conservation of taonga species including control under the Wildlife Act 1953. Section 313 acknowledges the statements made by TRONT of the cultural, spiritual, historical and traditional association of Ngāi Tahu to the coastal management subject areas set out in schedules 100 – 104. Local authorities, the Environment Court and Heritage New Zealand must have regard to the statutory acknowledgement areas, effectively placing TRONT in the position of being a person with an interest in the proceedings of a resource consent application.
- Section 220 requires all local authorities within the Ngāi Tahu takiwā to and attach information recording statutory acknowledgements to all regional policy statements, district and regional plans where statutory areas are wholly or partially affected by including a reference to this section or including the full statutory acknowledgement in the planning or policy documents.
- Under Section 238 the declaration of tōpuni areas and the values associated with those sites are set out in schedules 80-93 of the settlement act. A tōpuni is an area of land under administration by the |

	Reserves Act 1977, Conservation Act 1987 or the National Parks Act 1980 and has Ngāi Tahu values – cultural, spiritual, historic and traditional association with the tōpuni. • Provisions for creating and granting nohoanga entitlements are set out in section 256. There are two tōpuni in Canterbury – Kura Tāwhiti and Rīpapa. Section 269 (1) changes the names of places identified in schedule 9 on official maps. For example, dual place names are provided for various locations i.e. Lyttelton Harbour/Whakaraupō, Avon River/ Otākaro, Heathcote Estuary/ Ihutai, Mount Cook/Aoraki. • Part 13 provides obligations for the management of reserves including the establishment of a committee for Whenua Hou/Codfish Island comprising 4 members from the Southland Conservation Board and 1 member each from the four Southland Papatipu Rūnanga. The fee simple estate of the Crown Tītī islands is vested in TRONT which ceases to be a conservation area but the Crown shall still manage the islands as if they were a conservation area. The Minister shall appoint an administering body selected by TRONT and the Rakiura Tītī Committee which maintains the customary rights of Rakiura Māori to sustainably harvest Tītī. • Part 14 forms the Ancillary Claims Trust which negotiates on behalf of beneficiaries the outcome of delayed or future claims and vesting of property in TRONT.
Waikato-Tainui Claims Settlement (Waikato River) Act 2010.	Schedule 1 of the act sets out the principles of the Kīngitanga accord which declares that the Waikato River is a tupuna with mana that represents the mana and mauri of the tribe as a single, indivisible entity. Mana whakahaere is the authority that Waikato-Tainui and other Waikato River Iwi have established and express as the control, access to and management of the Waikato River in accordance with tikanga. Mana whakahaere has historically and will continue to be exercised under the mana of the Kīngitanga. The river and its contribution to New Zealand's cultural, social, environmental and economic wellbeing are recognised as of national importance. The Waikato River Authority is established under this act as a statutory body. Its purpose is to set the primary direction through the vision and strategy to achieve the restoration and protection of the Waikato River for future generations. The Authority also funds the rehabilitation initiatives for the river in its role as trustee for the Waikato River Clean up Trust. The vision and strategy is called Te Ture Whaimana o Te Awa o Waikato and it applies to the Waikato River and activities within its catchment. The Waikato River Clean up Trust is established to restore and protect the health and wellbeing of the river for future generations. The Trust must prepare and approve an integrated management plan together with the relevant local authorities, relevant government departments and any appropriate agencies. An integrated river

	management plan has a conservation component, a fisheries component and a regional council component. Plans made under the Conservation Act 1987 and the RMA must include an explicit statement on how they have given effect to the vision and strategy. Sections 11 and 15 of the RMA have effect to the extent to which the content of the vision and strategy relates to matters covered by the RMA. The Waikato Regional Policy Statement is to be consistent with the vision and strategy while Regional and District plans must give effect to it. Resource consent applications relating to the river must be notified to the Trust. Local authorities must provide the Trust with information on applications for a resource consent regarding defined activities that affect the river as if the Trust was an affected person as per section 95B of the RMA.
Te Urewera Act 2014.	The purpose of this act is to strengthen and maintain Tūhoe connection to Te Urewera and provide for Te Urewera as a place for recreation, spiritual reflection, public use and enjoyment but also to provide inspiration for all. One of the main principles for implementing the act is the extermination of introduced animals and plants and the preservation of BD and indigenous ecological systems. Te Urewera has its own mana and mauri and is a place of spiritual value which gives meaning to Tūhoe culture, language, customs and identity. In section 11 Te Urewera is declared to be a legal identity with all the powers, duties, rights and liabilities of a legal person. These are to be exercised and performed on behalf of Te Urewera by the Te Urewera Board. Conservation areas, Crown land and national parks within Te Urewera cease to be and any reserve status is revoked. The fee simple estate of these areas is vested in Te Urewera and held under and in accordance with this act. Also in accordance with the act, the Te Urewera Board is established to act in the name of and on behalf of Te Urewera and to provide governance for Te Urewera. The Boards functions include the preparation and approval of the Te Urewera Management Plan and advising persons managing Te Urewera on the plan's implementation. Further functions include monitoring implementation, the making of bylaws and advocating for the interests of Te Urewera in any statutory process or public forum. The board may give expression to and consider Tūhoetanga and Tūhoe concepts of rāhui, tapu me noa, mana me mauri and tohu in performing its functions. For the three years following the acts introduction, the Board consisted of 8 members with 4 being appointed by Tūhoe Te Uru Taumata and 4 appointed jointly by the Minister and the Minister for Treaty negotiations. After three years the board is made up of 9 members with 6 appointed by the trustees of Tūhoe Te Uru Taumata and the Minister appointing the remaining 3. Board decisions must be unanimous when recommending the addition to or removal of land from Te Urewera, approval of bylaws, the appointment of the Chair or Deputy Chair and the approval or

	amendment of the management plan. Consensus decisions may be made on matters referred to in section 33 (1). Work undertaken by the Board within Te Urewera does not require a resource consent under section 9 (3) of the RMA if the works are to manage Te Urewera, are consistent with the act and the work does not have a significant adverse effect on the environment beyond the boundary of Te Urewera. Sections 10 & 11 of the RMA do not apply to leases granted by the Board in Te Urewera. The Te Urewera Board's purpose is to identify and set policies and objectives for Te Urewera's Management and achieve the purpose of the act. For a draft Management Plan the Board must give notice publicly and nationally of the drafts preparation and state the priorities and where it may be viewed. The Board must also invite written comment by a specified date and comments must be considered by the Board. The Management Plan must be reviewed not later than 10 years of the approval of the previous plan although the Board may undertake a review at any time it considers necessary. Activity permits, issued by the Board, are required for hunting, trapping, taking, disturbing, destroying or killing any plant or animal whether indigenous or exotic other than sport fish or to enter specially protected areas or making/altering a road or recreational hunting. The Board may grant an activity permit to possess, for cultural purposes, dead protected wildlife found and lawfully taken in Te Urewera. Such a permit granted by the Board does not require a further permit under the Wildlife Act 1953 for that activity. An independent review of governance and management must be undertaken 5 years after settlement.
Te Awa Tupua (Whanganui River Claims Settlement) Act 2017.	Te Awa Tupua is defined as an indivisible living whole comprising the Whanganui River from the mountains to the sea including its tributaries, physical and metaphysical elements. Section 14 assigns Te Awa Tupua the status of a legal person with the duties, rights, powers and liabilities that are entailed with such status. The Settlement act is driven by the values set out in section 13. Te Pā Auroa Nā Te Awa Tupua is the framework for the Whanganui river and provides for the legal recognition of Te Awa Tupua. The framework also provides for: - The legal recognition and effect of Tupua te Kawa - The establishment of Te Pou Tupua – its membership reflecting the partnership under TOW/TTOW - The establishment of Te Kōpuka nā te Awa Tupua - The development and effect of Te Heke Ngahuru ki te Awa Tupua - The vesting of Crown owned parts of the bed of the Whanganui river and other lands in Te Awa Tupua - The establishment of Te Korotete of Te Awa Tupua

Te Korotete o te Awa Tupua is a fund established to support the health and wellbeing of Te Awa Tupua and includes a contribution from the Crown. The fund is administered by Te Pou Tupua on behalf of Te Awa Tupua and receives advice and recommendations from Te Karewao. Te Pou Tupua also performs landowner functions on lands vested in Te Awa Tupua on behalf of Te Awa Tupua and reports to interested Iwi & Hapū on matter relating to Te Awa Tupua.

Te Pou Tupua may also engage with relevant agencies and participate in any statutory processes affecting Te Awa Tupua.

Te Heke Ngahuru ki te Awa Tupua is the strategy which provides for the collaboration of persons with an interest in Te Awa Tupua in order to address and advance Te Awa Tupua health and wellbeing. The strategy must identify relevant issues to the health and wellbeing of Te Awa Tupua and recommend actions to deal with those issues. Persons exercising functions, powers or duties under the RMA and other acts must have particular regard to Te Heke Ngahuru. Te Kōpuka nā te Awa Tupua is the group charged with developing and approving Te Heke Ngahuru. This group also monitors the implementation of Te Heke Ngahuru and provides a forum for discussion on issues relating to the health of Te Awa Tupua. A maximum 17 members of Te Kōpuka nā te Awa Tupua are appointed by:

No. of members	Appointed by
1	The trustees
5	Interested Whanganui River Iwi
4	Relevant local authorities
1	Director General of Conservation
1	New Zealand Fish and Game Council or successor
1	Genesis Energy Ltd or its successor
1	Environmental and conservation interests
1	Tourism interests
1	Recreational interests
1	Primary industries sector
Appointments in green are made by the Manawatu-Whanganui Regional Council.	

Despite section 7 of the LGA, Te Kōpuka is a permanent joint committee and is the group that the Manawatu-Whanganui Council is required to appoint to any collaborative policy statement or planning process for freshwater in the Whanganui catchment.

TOW Tribunal report concerning Māori Taonga 1991 (WAI 262)	In 1991, the Wai 262 claim was brought before the tribunal concerning Māori taonga. The claim relates to: ■ Intellectual property ■ The Conservation estate ■ Māori knowledge systems ■ Māori language ■ Genetic resources ■ Biological resources ■ The environment ■ Māori medicines In its report the Tribunals findings were not focused on historical details but on the value of the Treaty for the future of partnership between the country's two foundation peoples. The issue of Māori cultural property ownership was not addressed by the Tribunal as it felt that perfecting the treaty partnership should be the goal. The report recommended a graduated level of Māori input into decision making that concerns their taonga and guarantees protection of treaty principles. Those levels are full decision-making power, partnership with the Crown and influence via consultation. The claimant's submissions broadly challenged the nations lack of constitutional clarity and the authority of the state to make decisions that concern the taonga above. The report, Ko Aotearoa Tēnei, was released in 2011. As of yet there has been no reply to the report, but the findings were used by the Crown in the 2012 to repudiate a Māori claim for proprietary rights over freshwater. New Zealand is not a party to the Nagoya Protocol which includes guidance on access to and sharing benefits arising from the use of genetic resources.