



Submission Form Annual Plan 2017/18 Consultation

Submission date: 14/03/2017 7:12 AM

Receipt number: 16

| Question | Response |
|--|---|
| Notes for Submitters | |
| Contact Details | |
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| Preferred method of communication: | Email |
| Hearing of Submissions | |
| Do you wish to present your comments to Council in person at a hearing?: | Yes |
| Sign language interpretation required? | No |
| Would you prefer to speak on: | Thursday, 4 May 2017 |
| Would you prefer to present your submission in the: | Evening |
| Topic 1: Shared Pathways | |
| Options for Shared Pathways: | Option 3: Allocate \$250,000 to shared pathways for 2017/18 |

| Question | Response |
|---|--|
| Reasons why this is your preferred option for Shared Pathways: | Our cycling infrastructure is sadly lacking and we need to put focus into this. It makes it easier for school children to bike to school and also makes cycling more accessible for elderly. |
| Topic 2: Heritage Incentive Funding | |
| Options for Heritage Incentive Funding: | Option 3: Allocate \$100,000 per annum |
| Reasons why this is your preferred option for Heritage Incentive Funding: | Our heritage is an important aspect of the region and the more we can do to maintain and enhance this the better. This benefits locals and tourists alike. |
| Topic 3: Significance and Engagement Policy | |
| Options for the Significance and Engagement Policy: | Option 3: Update the draft Significance and Engagement Policy following feedback from the community and adopt it |
| Reasons why this is your preferred option for the Significance and Engagement Policy: | |
| Additional Comments | |
| Comments: | |
| Submission Attachments | |
| What other projects or ideas should Council be considering for 2018/19 and beyond? | |
| Do you agree with what we have identified? What else could we look into? | <p>1. The district is growing which continues to put demand on core infrastructure. Climate change is expected to bring more frequent extreme weather to the region and we are seeing more frequent extreme rain events. The council need to be thinking about longer term strategies for managing the demand on water provision, waste water, and storm water.</p> <p>Ideas such as water tanks on properties to capture rain water has merit. This reduces the demand on the water supply system and reduces pressure on the storm water system during heavy rain. In turn this has the potential for the infrastructure to service more people and deal with increased peaks.</p> <p>2. Solar panels on council occupied buildings. Solar technology continues to become cheaper and workplaces that are occupied during the day to use the energy as it is produced are best placed to gain maximum value. In many cases the Return on Investment is around 7 years. Solar is an opportunity for the council to reduce future power expenses which in turn saves</p> |

| Question | Response |
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| | the rate payer money. It is also an opportunity for the council to reduce the carbon footprint associated with council activities by a noticeable percentage. |
| Privacy Act 1993 | |
| Submission Processing | \$0.00 |
| Office Use Only | |
| Date Received: | |
| RM8 Number: | |
| Submission No: | |



Submission Form Annual Plan

2017/18 Consultation

Submission date: 11/03/2017 13:10 PM

Receipt number: 15

| Question | Response |
|--|---|
| Notes for Submitters | |
| Contact Details | |
| Title: | Miss |
| Full Name: | Katie de Roo |
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| Preferred method of communication: | Email |
| Hearing of Submissions | |
| Do you wish to present your comments to Council in person at a hearing?: | No |
| Sign language interpretation required? | |
| Would you prefer to speak on: | |
| Would you prefer to present your submission in the: | |
| Topic 1: Shared Pathways | |
| Options for Shared Pathways: | Option 3: Allocate \$250,000 to shared pathways for 2017/18 |

| Question | Response |
|---|--|
| Reasons why this is your preferred option for Shared Pathways: | <p>Currently, residents in their 20s and 30s make up only 19% of Horowhenua's population. As a 29 year old who has recently purchased property in Levin, I believe it is essential for the Horowhenua District Council to invest in shared pathways. In doing so, I believe the Horowhenua region will increasingly be seen by young professionals as a lifestyle destination where they can safely and easily enjoy Horowhenua's beautiful environment, while being able to commute to Wellington/Palmerston North, or work from home.</p> <p>Utilising pilots to increase community engagement with the shared pathways project will promote continued work and engagement into the future. I am excited at the prospect of being able to safely cycle between our Horowhenua communities, and to Horowhenua's major ecological attractions.</p> |
| Topic 2: Heritage Incentive Funding | |
| Options for Heritage Incentive Funding: | Option 3: Allocate \$100,000 per annum |
| Reasons why this is your preferred option for Heritage Incentive Funding: | <p>A year ago I was speaking with a nurse in her mid-20s who was a long-term resident of Manakau. She was upset at heritage buildings being torn down to make way for carparks and other short-sighted development. I agree this is short-sighted.</p> <p>An essential element of a community's identity and culture comes from its history and heritage buildings. Melbourne is a useful example - different suburbs in Melbourne have completely different character and cultures. The core elements holding these community identities together are their people, history and architecture.</p> <p>In my mind, the \$50,000 preferred by the Council is not adequate. Council should allocate its full capacity - \$100,000 - as a stick in the ground to say to the community and future developers, "our heritage buildings are a priority".</p> <p>In the long-term, \$100,000 is a small amount to try to preserve Horowhenua's heritage buildings.</p> |
| Topic 3: Significance and Engagement Policy | |
| Options for the Significance and Engagement Policy: | Option 3: Update the draft Significance and Engagement Policy following feedback from the community and adopt it |
| Reasons why this is your preferred option for the Significance and Engagement Policy: | I have no problems in these two documents being combined. It makes sense to reduce overlap and printing costs etc. Giving the community a chance to review the draft Policy prior to finalisation kicks things off on the right foot for future engagement. |
| Additional Comments | |
| Comments: | |
| Submission Attachments | |
| What other projects or ideas should Council be considering for 2018/19 and beyond? | |
| Do you agree with what we | Having read many Horowhenua Chronicle letters to the editor, and having been to the first Horowhenua Residents and Ratepayers Association meeting for this year, I get the distinct |

| Question | Response |
|---|---|
| have identified? What else could we look into? | impression that residents over 50 years old dominate the community discourse with the Council. Moving into the future, I think it will be very important to attract and retain residents in their 20s and 30s to strengthen Horowhenua's economy. Therefore, a focus for Council should be on engaging with younger residents in the community through targeted workshops etc, to ensure the future direction of the Horowhenua has an appropriate level of forward-thinking from its residents under 40 years old. |
| Privacy Act 1993 | |
| Submission Processing | \$0.00 |
| Office Use Only | |
| Date Received: | |
| RM8 Number: | |
| Submission No: | |



Submission Form Annual Plan

2017/18 Consultation

Submission date: 15/03/2017 10:32 AM

Receipt number: 18

| Question | Response |
|---|--|
| Notes for Submitters | |
| Contact Details | |
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| Preferred method of communication: | Email |
| Hearing of Submissions | |
| Do you wish to present your comments to Council in person at a hearing?: | No |
| Sign language interpretation required? | |
| Would you prefer to speak on: | |
| Would you prefer to present your submission in the: | |
| Topic 1: Shared Pathways | |
| Options for Shared Pathways: | Option 3: Allocate \$250,000 to shared pathways for 2017/18 |
| Reasons why this is your preferred option for Shared Pathways: | Horowhenua needs to increase the budget so more of our population can enjoy our wonderful scenery. |
| Topic 2: Heritage Incentive Funding | |
| Options for Heritage Incentive Funding: | Option 2: Allocate \$50,000 per annum |
| Reasons why this is your preferred option for Heritage Incentive Funding: | |
| Topic 3: Significance and Engagement Policy | |
| Options for the Significance and Engagement Policy: | Option 3: Update the draft Significance and Engagement Policy following feedback from the community and adopt it |
| Reasons why this is your preferred option for the Significance and Engagement Policy: | |
| Additional Comments | |
| Comments: | |
| Submission Attachments | |
| What other projects or ideas should Council be considering for 2018/19 and beyond? | |

SUBMISSION FORM

ANNUAL PLAN 2017/18 CONSULTATION

Submissions can be:

- ① Delivered to:
Horowhenua District Council,
126 Oxford Street, Levin
- ② Emailed to:
annualplan@horowhenua.govt.nz
- ③ Posted to:
Horowhenua District Council,
Private Bag 4002, Levin 5540
- ④ Completed online at:
www.horowhenua.govt.nz/consultationdoc
- ⑤ Faxed to:
(06) 366 0983

Submissions must be provided to Council by no later than 5:00pm on Monday, 10 April 2017

Contact Details (You must provide your contact details for your submission to be considered)

Title (e.g. Mr/Mrs/Miss/Dr): *D*

Full Name: *ANNE HUNT*

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annehunt@inspire.net.nz

Hearing of Submissions (please indicate your preference)

Do you wish to present your submission to Council at a Hearing? Yes No

Sign language interpretation required? Yes No

If YES then would you prefer to speak on – Wednesday 3 May OR Thursday 4 May

Would you prefer to present your submission in the – Daytime OR Evening

Note: It is not guaranteed that every submitter will get their preferred time to present.

25 signed pages attached!

You feature images of Lake Horowhenua in your consultation document.

People are shocked when they discover that the Horowhenua District Council continues to discharge Levin's stormwater into this privately-owned lake!

Why should Phil Taueki continue to waste his time preparing submissions and affidavits while councillors waste money on lawyers so that they can continue to pollute this lake?



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E-Mail: philtaueki@gmail.com

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Chief Executive Officer
Horowhenua District Council
Private Bag 4002
Levin 5540



Submission: Horowhenua District Council Draft Annual Plan

Dated: 5 May 2011

The summary document for your draft Annual Plan, refers to the proposed culture and community centre which still goes under the name of Te Takeretanga o Kura-hau-po.

I will not repeat the comments I made about this proposal during a previous hearing, except to state that they remain valid.

This facility which is purported to be a dispersal of knowledge continues to cause affront to Muaupoko by displaying a large map prepared by the Otaki Historical Society containing information about our heritage that is not only erroneous according to Maori Land Court historical records but also an offence to Muaupoko.

Furthermore Muaupoko's most prized taonga is Lake Horowhenua.

Yet the Horowhenua District Council continues to desecrate this taonga and has allocated no funding in this year's draft annual plan to divert Levin's stormwater away from Lake Horowhenua.

During the second day of the Hikoi A Te Taha Moana, I was able to take a look at the Horowhenua District Council's asset management plan dated August 2009. It stated that a plan for the upgrade of Levin Stormwater Mains was produced in 2001. The summary cost was in the order of \$10,400,000 to improve the Levin network. This was not adopted because of the significant cost implications.

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As stated:

It is likely that improvements will need to be made to the stormwater discharges into Lake Horowhenua. Because of the historical value of the site there is limited land available for land treatment of the Queen Street drain which is the major source of stormwater entering the lake.

Mechanical devices will be required. It is expected that such devices will be developed over the next five years. A figure of \$700,000 for year 7 and beyond is suggested. This allows two further reviews of the LTCCP to refine the concept. There is land available to at the end of the Mako Mako road drain. Allow \$400,000 in year 3 and beyond for land treatment.

It is likely that treatment of the Muaupoko park drain could take place on land within the Lake Domain either on existing planted areas or in new plantings. Allow \$200,000 in year 5.

The Paitiki Stream (Kawiu Road) drains the north western part of Levin. There is land available at the end of this drain. Allow \$400,000 for land acquisition and planting. Funding has not been allocated within the first 10 years (the 2009-19 LTCCP) for this item.

It was heartening to read this information because it suggested that Horowhenua District Council was finally taking seriously its responsibility to protect Lake Horowhenua from pollutants entering Lake Horowhenua which is a recreation reserve gazetted under the Reserves Act 1977.

The seriousness of this situation is highlighted in these comments recorded in the Asset Management Plan.

The quality of natural receiving waters (streams, rivers, lakes, beaches) can be adversely affected by discharges from stormwater drains. The sources, plant and animals to vehicles, commercial, industrial, farming and construction activity (including solvents, paints, cleaners, oil, litter, pesticides, fertilisers and faecal matter).

Analysis of sediments in stormwater drains and near stormwater outlets in big cities indicates high levels of lead, mercury and zinc can occur. The quality of stormwater in the first flush of a storm will typically exceed the levels considered safe for contact recreation.

But then I read further.

There may be legislative requirements to develop drainage systems that both treat and reduce the quantity of stormwater entering drainage systems. The draft Regional Plan published in 2007 (known as the One Plan) indicated that all



stormwater consents draining urban areas of more than 2 hectares would have to be consented. Since council cannot effectively control what flows into these systems, it is problematic as whether can control what comes out. Council has submitted in opposition to this requirement

The reason Horowhenua District Council opposed this requirement becomes self-evident the further I read.

Under the Draft One Plan consents will be needed for all of council's discharges. Note there is an additional \$2,400,000 in year 4 in the table for obtaining consents that are required as signalled by the draft One Plan. Council's submission opposing that requirement has not been heard at the time of writing this AMP.

Since Council has limited control on what goes into the drains, we have similarly limited control on what is discharged from them. A very full consultation process will be required so that we meet the requirements of the Local Government act. The total cost of obtaining consents across the district as a whole is \$2.4 million dollars with annual monitoring and reporting costs of \$550,000. (If our submission bears fruit none of the above will be required, but some of it we may still wish to undertake.)

I continue to underline the points which disturb me, not only as tangata whenua but also as an owner of Lake Horowhenua who is entitled to expect our local council to treat Muaupoko taonga with some degree of respect.

But that is clearly not the case.

On the one hand, the Horowhenua District Council has introduced the Proposed Plan Change 22 for the Horowhenua District Plan, identifying Lake Horowhenua as an "Outstanding Natural Feature" and on the other hand, the Horowhenua District has opposed a requirement in the Horizons One Plan that would protect this 'Outstanding Natural Feature'.

This, to me reeks of double standards.

My sister Vivienne Taueki attended the recent meeting of submitters to the Plan Change 22 held in Horowhenua District Council's Chambers and informed me afterwards that she felt threatened by the attitude of farmers upset about the conditions they must meet to comply with the new standards.

Yet the Horowhenua District Council has brazenly opposed provisions in the Horizons One Plan which would protect one of the Horowhenua District's five outstanding natural features, namely Lake Horowhenua.



This approach obviously does not have the support of the Lake Horowhenua Trustees.

The Asset Management Plan records consultation carried out during the 2006 LTCCP:

Submission Number 178 received from the Lake Trustees suggested that all stormwater discharging into the lake be properly filtered or diverted. Council was of the view that the issue of treatment of storm water does need to be resolved but that discussion other treatment options while the Kowhai Park project is in limbo would possibly be a waste of resources. It was decided that Council review the need for treatment of storm water being discharged to Lake Horowhenua in three years time, or upon the conclusion of the Kowhai Park project – whichever occurs first.

Therefore I question whether the Horowhenua District Council has reviewed the need for treatment of stormwater being discharged to Lake Horowhenua because the time period of three years elapsed two years ago.

The Horowhenua District Council may be of the opinion that it has escaped the considerable resource consent costs and capital expenditure upgrading the stormwater systems draining into Lake Horowhenua.

But you may not be aware of the provisions of s94 of the Reserves Act 1977 which makes it an offence to introduce substances injurious to plant life on any reserve or in any way damage the recreational features or flora or fauna therein.

You may also not be aware of the outcome of my urgent Wai claim to the Waitangi Tribunal. Deputy Chief Judge Fox suggests that I should take heart from the fact that the Waitangi Tribunal in the Porirua ki Manawatu Inquiry can inquire into the issues raised by my application in relation to the Arawhata Stream.

As the Presiding Officer for our claim, she has noted that: "many of the claims in that inquiry indicate that waterways and the impact of the Crown's local government legislation and the RMA 1991 may be features of that process".

So if the Horowhenua District Council thinks it is off the hook in terms of stormwater discharges into our lake, then it should think again.

Lake Horowhenua has far more cultural, social and economic significance than Te Takere will ever achieve.

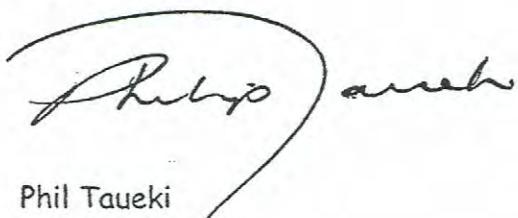


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As a direct descendent of Taueki, the Ariki and Rangatira who signed the Treaty of Waitangi as paramount chief of Muaupoko, I would venture to suggest that the days of desecrating Muaupoko taonga are rapidly nearing an end, and the Horowhenua District Council should bear in mind the need to set aside funding for the considerable expense diverting all stormwater away from Lake Horowhenua in the very near future.

I would like to be offered the opportunity to speak to this submission.

Yours sincerely



Phil Taueki

Chief Executive



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groundwater and stormwater intrusion into this system. We note however, that the funding for Levin wastewater reticulation renewals has been reduced from the amount set in the LTCCP. We encourage you to maintain a high level of commitment to this work.

Horizons looks forward to continuing to work with Council, to progress unresolved resource consent applications for wastewater discharges. There have been to date some significant delays with the Shannon and Waitarere wastewater treatment plants. We are particularly concerned with progress on the Shannon resource consent because the matter is still before the courts. Accordingly we urge Council to give this consent application the priority it deserves. In relation to Foxton communities sewage discharges we remind the District Council that it obtained a short-term consent with key milestones to be met. This consent will expire in the short term and requires the Council to have completed a significant assessment exercise to more effectively manage its discharges. Horizons is committed to working with the District Council to look at options.

Solid waste

It is pleasing to report that the closed landfill has been recapped in accordance with the reviewed consent conditions and a management plan for its care is in place.

Stormwater

We note that on page 32 there is a comment that provision for resource consents to discharge stormwater has been deleted (repeating the same comment in the 2010-11 Annual Plan). We take this opportunity to point out that discharges of stormwater from urban centres and some other areas may still require resource consent in future.

Environmental Protection

Horizons has a policy of charging for the actual and reasonable costs of compliance monitoring, where these costs exceed the charges invoiced annually in February under s36 RMA. The policy is for all resource consents which of course includes Horowhenua District Council consents. We bring this to your attention so that you are able to plan for these costs.

Horizons wishes to be heard in relation to its submission. We would prefer to attend the hearings on 2 June 2011.

Please contact Richard Munneke, Policy and Consents Manager, on freephone 0508 800 800 if you wish to follow up any of the matters presented in the submission.

Yours sincerely



Bruce Gordon
CHAIRMAN

**IN THE HIGH COURT OF NEW ZEALAND
PALMERSTON NORTH REGISTRY**

CIV 2013-454-441

Between : Phil Taueki
(First Plaintiff)

And: Horowhenua District Council
(defendant)

**Memorandum of the Plaintiff
23rd June 2015**

Philip Dean Tauki
c/ 17 Nash Parade
Foxton Beach 4815
Ph: 06 363 7750
nnehunt@inspire.net.nz



MAY IT PLEASE THE COURT

1. The Plaintiff welcomes this significant concession from the Respondent accepting that, if the 1973 agreement was not a valid agreement (which the Respondent says it is), the 2013 resolution would not be effective to validate the agreement retrospectively. The Respondent therefore states that there will be no need for evidence or argument about the 2013 resolution.
2. However, now that the substantive issue has been settled, there has been no attempt on the part of the Respondent to address the relief sought in the application dated 4 October 2013.
3. The relief sought is as follows:
 - a. The agreement or document of ratification made by or authorised by or evidenced in writing by the Horowhenua District Council on 2 October 2013 as to ratify the 1973 Agreement between the Lake Horowhenua Trustees and the Levin Borough Council is invalid, unlawful, unenforceable and of no legal effect.
 - b. The draft 1973 Agreement in its formation and/or its performance is invalid, unlawful and of no legal effect
 - c. The draft 1973 Agreement is in any event unenforceable in law
 - d. Such further or other Declarations or relief as may be just
 - e. Costs.



The 2013 resolution

4. The Respondent accepts the 1973 agreement was not a valid agreement (which the Respondent says it is), the 2013 resolution would not be effective to validate the agreement retrospectively.
5. However the Respondent has not offered any form of relief by way of revoking the resolution passed on 2 October 2013 in accordance with the usual procedures stipulated by Standing Orders.
6. The First Plaintiff therefore seeks an order from this Court enforcing the revocation of the 2 October 2013 resolution by the Horowhenua District Council at its next scheduled meeting.

The draft 1973 agreement

7. The Horowhenua District Council is therefore relying on the 1973 purported agreement to continue discharging Levin's stormwater across a dewatered area and chain strip into Lake Horowhenua. The dewatered area, chain strip and bed of the Lake Horowhenua is Maori Freehold Land. CT 121/121 was issued on 19 March 1899.
8. The First Plaintiff is a beneficial owner of this property.
9. The map shows the area that is Maori Freehold Land. **EXHIBIT A**
10. Levin's stormwater converges on the Queen Street Drain where it is piped across the dewatered area and chain strip into the Lake.
11. The map prepared in 1932 by G L Adkins (1884-1964) confirms that the Queen Street Drain is not a natural waterway. **EXHIBIT B**
12. The map produced by the Horowhenua District Council shows the path of the pipeway. **EXHIBIT C.**



13. The Memorial Schedule for Horowhenua 11B (Lake) records no

'easement' allowing a pipe to traverse this land. **EXHIBIT D**

14. According to the Respondent's report dated 2 October 2013, the

Levin Borough Council had passed a resolution on 17 May 1971 indicating Council's intent to execute an agreement with the then Lake Trustees authorising the former Levin Borough Council to drain stormwater across the one-chain strip/dewatered area to discharge into the Lake.

3.8 Council's Solicitors seek to produce this agreement to the Maori Land Court hearing. Obviously it is evidence that the then Trustees consented to the Queen Street Drain traversing their land.

3.9 To be admissible the document requires a certificate of confirmation from the Maori Land Court and to be confirmed the documents needs (sic) to be executed by both parties – not just the Lake Trustees.

3.10 It is believed the best that can be done is to have the current Council ratify the agreement so that the annexed document suitably endorse by Council can be filed in the Maori Land Court.

15. On 2 October 2013, the Horowhenua District Council passed the following resolutions:

- a) That Report 13/851 on Lake Horowhenua – Queen Street Drain Agreement be received



- b) That this matter or decision be recognised as not significant in terms of s76 of the Local Government Act 2002. All Council is doing is ratifying the execution of an agreement that should have been executed 40 years ago.
- c) That Council ratifies the 1973 agreement signed by all the then Horowhenua Lake Trustees authorising the former Levin Borough Council to drain stormwater across the one-chain strip/dewatered area from the Queen Street drain to discharge into the Lake
- d) That the Mayor, Deputy Mayor and Chief Executive be authorised to endorse the said 1973 agreement.

16. The application for a declaratory judgement was filed by sixteen plaintiffs during October 2013. It was supported by an affidavit from Anne Hunt who was a Horowhenua District Councillor.
17. On 9 December 2013, the Respondent proposed that

- a) A declaration be made by consent to the effect that:

The execution of the 1973 Agreement by the Horowhenua District Council on 2 October 2013 did not retrospectively ratify the agreement, in that the execution of the Agreement by the Council is not evidence of the Trustees' agreement, permission, or consent to the construction, maintenance and operation of the Drain in 1973 and continuing thereafter.
- b) The remainder of the Application (namely the application for the declarations sought in paragraphs (28 (b) and (c)) be stayed pending the outcome of the Maori Land Court hearings.

18. The Respondent is now proposing to rely on the 1973 purported agreement in order to be able to continue draining Levin's stormwater across the one-chain strip/dewatered area from the Queen Street drain to discharge into the Lake.
19. To support this argument, the Respondent now cites section 3(4) of the Public Bodies Act 1959:

Notwithstanding anything in the foregoing provisions of this section, no contract made by or on behalf of local body shall be invalid by reason only that it was not made in the manner provided by this section, if it was made pursuant to a resolution of the public body or to give effect to a resolution of the public body in relation to contracts generally or in relation to that particular contract.

20. The Respondent therefore relies on the resolution recorded in the minutes of the Levin Borough Council meeting held on 17 May 1971. According to these minutes, the Trustees agreed that the Council's proposals were in order subject to certain safeguards in respect of trade wastes etc which may pollute the Lake (emphasis added). **EXHIBIT E**

The Committee gave the Trustees an assurance that it would not permit any water passing through the stormwater drain to be polluted in this manner and the Trustees than indicated that they would be prepared to sign the agreement prepared by the Council provided it included these safeguards.

21. These minutes confirm this agreement was subject to safeguards.

22. Accordingly a letter was sent from the Levin Borough's Town Clerk to Park Cullinane & Turnbull on 20 May 1971. **EXHIBIT F**
- The Council's intention is that this agreement cover the installation of a public drain through this land and not by way of an easement or any (ot)her form and it is desired that the agreement be prepared and signed by the parties as a matter of considerable agreement.
23. Therefore it is reasonable to presume there is no easement on the title nor is there any record of such an easement on the Maori Land Court's Memorial Schedule for Horowhenua 11B (Lake).
24. If the Respondent wishes to rely solely on the resolution passed by the Levin Borough Council on 17 May 1973, the then Trustees agreed that the Council's proposals were in order subject to certain safeguards in respect of trade wastes etc which may pollute the Lake; the 'etc' being a catch-all condition.
25. The report prepared by Dr Chris Tanner, Principal Scientist from NIWA for the Horowhenua District Council on 10 December 2014 is sufficient to suggest there are "significant potential health effects from these drain flows" without even considering "potential toxicity issues with other contaminants such as metals or organics in the discharge from this drain". **EXHIBIT G**.
26. If the Respondent is relying on this resolution as a contract, then the Respondent has defaulted on the grounds that this agreement was subject to certain safeguards. A Dominion Post article warns that lake water toxicity could be deadly to children. **EXHIBIT H**.

Prevailing laws and circumstances

27. The Plaintiffs contend that the Horowhenua District Council has therefore defaulted on any contract based on the resolution passed by the Levin Borough Council on 17 May 1973.
28. The Plaintiffs do not depart from their original supposition that the ratification of the 1973 purported agreement did not take place in accordance with the prevailing laws and circumstances. The Horowhenua District Council could not have, as a matter of law on 2 October 2013 itself entered into the identical 1973 draft Agreement that it purported to ratify.
29. The ratification inequitably prejudices the rights of third parties namely Muaupoko and other people.
30. It is an illegal and unlawful agreement contrary to and/or inconsistent with the objects, purposes and rights granted or affirmed to Muaupoko (and the trustees) by s18 of the Reserves and Other Lands Disposal Act 1956, namely in permitting, allowing and causing material degradation, pollution, destruction, impairment and/or danger to the waters, soil, ecology and fisheries (including eeling) or Lake Horowhenua and its streams, and/or to Muaupoko and other people.
31. It is an illegal and unlawful agreement contract to and/or inconsistent with the objects, purposes and rights in favour of Muaupoko (and the trustees) by the Town and Country Planning Act 1953 and/or the Soil Conservation and Rivers Control Act 1941, namely in permitting, allowing and causing material

degradation, pollution, destruction, impairment and/or danger to the waters, soil, ecology and fisheries (including eeling) of Lake Horowhenua and its stream) and/or to Muaupoko and other people.

32. It is an illegal or unlawful agreement to perform a tort, namely to commit public and/or private nuisance of Lake Horowhenua and/or contravenes or is inconsistent with or violative of the statutory objects of:

- i) S191(a) and (b) Local Government Act 2002
- ii) Te Ture Whenua Maori Act 1993
- iii) Resource Management Act 1993
- iv) Common law and equity of New Zealand.

Te Ture Whenua Maori Act 1993

33. The Te Ture Whenua Maori Act 1993 makes provision under section 19(1) for the Maori Land Court to issue an order by way of injunction:

- a) Against any person in respect of any actual or threatened trespass or other injury to any Maori freehold land, Maori reservation of wahi tapu

34. The Plaintiff understands that there is no easement to install pipes on the dewatered area/chain strip that is Maori Freehold Land.

35. The Respondent has defaulted on safeguards preventing pollution.

36. The Plaintiff accepts that this legislation comes under the jurisdiction of the Maori Land Court, but is cited merely to demonstrate the unlawfulness of the Respondent's resolution.

Resource Management Act 1993

37. The Resource Management Act 1991, pursuant to section 13 (1) (d) places a restriction on certain uses of beds of lakes and rivers.

No person may, in relation to the bed of any lake or river deposit any substance in, on, or under the bed unless expressly allowed by a national environmental standard, a rule in the regional plan as well as a rule in a proposed regional plan for the same region (if there is one) or a resource consent.

38. The Respondent has failed to produce a resource consent that allows the Horowhenua District Council to deposit contaminants on the bed of the Lake.

39. The Plaintiff accepts that this legislation comes under the jurisdiction of the Environment Court, but is cited merely to demonstrate the unlawfulness of the Respondent's resolution.

Local Government Act 2002

40. However s191 of the Local Government Act 2002 states that powers under Subpart 8(3) in relation to private property do not entitle a local authority -

- a. To create a nuisance; or
- b. To deprive the Crown or any person of any right or remedy the Crown or the person would otherwise have against the local authority or any other person in respect of any nuisance.



41. The Plaintiff contends that the Horowhenua District Council creates a nuisance each and every time Levin's stormwater is flushed from the man-made Queen Street drain into the pipes traversing without any easement the one chain strip/dewatered area that is Maori Freehold Land to discharge into Lake Horowhenua, contaminating the waters.
42. The Plaintiff contends that this is not a problem only recently brought to the attention of the Horowhenua District Council.

Lake Accord

43. On 5 May 2011, the First Plaintiff presented a written submission to the Horowhenua District Council's Draft Annual Plan advising the Horowhenua District Council to bear in mind the need to set aside funding for the considerable expense diverting all stormwater away from Lake Horowhenua in the very near future. **EXHIBIT I.**
44. The Respondent claims that the improvement of the water quality of Lake Horowhenua is a priority for HDC. In a sworn affidavit dated April 2014, Chief Executive David Clapperton states that:

In August 2013, HDC signed the Lake Horowhenua Accord, along with the Lake Horowhenua Trustees, Horizons Regional Council, the Department of Conservation and the Lake Horowhenua Domain Board. The signatories to the Accord have agreed to work together in a cohesive manner, to ensure progress towards a range of goals which seek to improve the environmental, cultural, social and recreational aspects of Lake Horowhenua.

45. With due respect, the Plaintiff contends that this Lake Accord places a greater – not lesser - obligation upon the parties to eliminate any practice that places the Lake at risk of pollution or contamination.

Property Law Act 2007

46. The Property Law Act 2007 pursuant to section 296 (4) states that:

Despite the Limitation Act 2010, a claim may be made at any time and relief may be granted in respect of a claim made at any time for the possession of land free of an easement if the purposed easement was used or enjoyed in circumstances amounting to trespass.

47. The Plaintiff contends that the Levin Borough Council chose to cover the installation of a public drain through this land not by easement but by way of agreement.

48. The Respondent has defaulted upon the conditions of that agreement.

49. The Plaintiff contends that a party may have an initially lawful purpose to be on the property and it may change to become an unlawful one. Consequently, a party may become a trespasser despite his initial lawful authority to be on the property. A person may become a trespasser by exceeding the scope of his invitation or overstaying his welcome by threatening to contravene, or convening, the terms and conditions of the invitation: *R v Keating*¹. A statutory invitee therefore may, by his unreasonable conduct, become a trespasser.

¹ (1992) 76 CCC (3d) 570 (NS:CA)

Recovery of Costs

50. The Plaintiff is seeking full reimbursement of the costs of bringing this application.

51. The Horowhenua District Council report dated 2 October 2013 states:

- a) There are no legal considerations
- b) Under consultation, Council will be kept informed of the progress on the Maori Land Court hearing.

52. The Plaintiff contends that Applicant's legal costs would not have been incurred if the Respondent had sought legal advice before producing this report and had carried out consultation with Maori as required by s 81 of the Local Government Act 2002.

53. Therefore the Plaintiff seeks an order for the full recovery of costs incurred by Dr Gerard McCoy QC, Mr Tom Bennion and the Plaintiff.

Such further or other Declarations or relief as may be just

54. Finally the Plaintiff is seeking such further or other Declarations or relief as may be just.

55. The Plaintiff therefore seeks a Declaration that: The 2013 resolution has no effect to validate the 1973 purported agreement retrospectively.

56. The Plaintiff also seeks a Declaration that: If the Horowhenua District is relying on the Levin Borough Council resolution minuted on 17 May 1971 as a contract under the Public Bodies Act 1959, the Trustees agreed that the Council's proposals were subject to certain safeguards in respect of trade wastes etc which may pollute the Lake.

57. The Plaintiffs seek a Declaration that: The Trustees were given an assurance by the Works Committee that the Levin Borough Council would not permit any water passing through the stormwater drain to be polluted by trade wastes etc and that the Trustees were prepared to sign an agreement prepared by the Council provided it included these safeguards.

58. The Plaintiffs seek a Declaration that: If the Horowhenua District Council is relying on this resolution passed by the Levin Borough Council on 17 May 1971 as a contract under the Public Bodies Act 1959, the Council has defaulted on the safeguards "in respect of trade wastes etc which may pollute the Lake".

59. The Plaintiff is seeking the following relief:

- a) An Order of the High Court prohibiting the Horowhenua District Council from contravening Section 191 of the Local Government Act 2002 and creating a nuisance by discharging Levin's stormwater across Maori Freehold Land into the Lake.
- b) An Order of the High Court requiring the Horowhenua District Council to block the pipeline and/or remove the pipes installed without an easement on the dewatered area/chain strip of Horowhenua 11B (Lake) in order to ensure compliance.
- c) An Order of the High Court requiring the Horowhenua District Council to reimburse the beneficial owners of Horowhenua 11B (Lake) for any actual and reasonable costs and expenses incurred to remove the contamination deposited on the bed of the Lake.
- d) An Order of the High Court setting a timetable for compliance.

Reasonableness

60. The Plaintiff contends that the Declarations and Relief sought is reasonable on the following grounds:

- a) On 5 May 2011, the First Plaintiff presented a submission to the Horowhenua District Council's Draft Annual Plan advising that the Council should bear in mind the need to set aside funding for the considerable expense diverting all stormwater away from Lake Horowhenua in the near future.
- b) During the same Annual Plan consultation process for 2011, Horizons Chairman Bruce Gordon noting that provision for resource consents to discharge stormwater had been deleted, and pointing out that discharges of stormwater from urban centres may require resource consent in the future. **EXHIBIT J**
- c) The Restoration Plan for Lake Horowhenua released by NIWA Scientist Dr Max Gibbs during January 2012 advises that the Queen Street storm water drain which in 1989 was estimated to contribute more than 80% of the external P load to the lake in particulate form. "It is that seasonal release of P from the lake sediments which results in cyanobacteria blooms in summer". **EXHIBIT K**
- d) On 5 June 2013, the Horowhenua District Council endorsed the Lake Horowhenua Accord. A management goal was to reduce or eliminate the occurrence of nuisance Cyanobacteria. An action was storm-water diversion (treatment). **EXHIBIT L**

- e) According to the Horowhenua District Council report, the parties agreed to “take steps to assist beneficial owners as priority stakeholders to fully engage and participate in the restoration and ongoing maintenance and enhancement of the health of the Lake and to exercise their role as Kaitiaki”.
- f) On 2 October 2013, at the very same meeting that the Horowhenua District Council tried to ratify the 1973 purported agreement, the Horowhenua District Council approved Plan Change 22: Outstanding Natural Features and Landscapes. Lake Horowhenua is identified as an Outstanding Natural Feature and Landscape. “In order to continue the use and enjoyment of the natural environment, a commitment must be made towards sustainably managing it. As part of this commitment the role of tangata whenua will be welcomed in an effort to sustain the spiritual attachment and cultural diversity of the environment.” **EXHIBIT M**
- g) The Horowhenua District Council’s Long Term Plan for 2012 - 2022, reports that the “Queen Street Drain has a budget allocation to improve the performance and appearance of the western extremity of the drain”. **EXHIBIT N**
- h) A report commissioned by the Waitangi Tribunal on Lake Horowhenua records the long litany of broken promises by the both the Crown and Local Government. This report prepared by Dr Paul Hamer was released during June 2015.**EXHIBIT O**

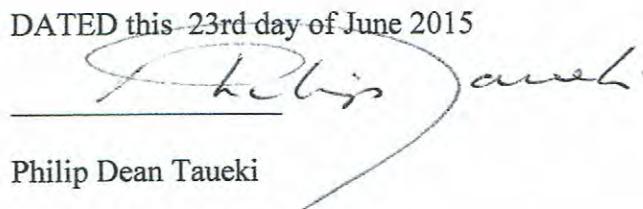
- i) Dr Hamer states: "In the early 1970's the borough council obtained the lake trustees' agreement to lay stormwater pipes across their land in exchange for what two borough councillors called the 'solemn promise' that the council would take steps to ensure its stormwater did not harm the lake. This promise was not kept".
- j) The letter that the Levin Borough Council's Town Clerk sent to Park Cullinane and Turnbull on 20 May 1971 suggests that any agreement would not be by way of easement.
- k) The submission from Horizons Regional Council for the Horowhenua District Council's 2011 Draft Annual Plan suggests that the Horowhenua District Council did not have a resource consent for the stormwater discharge, nor did the Horowhenua District Council allocate any budget to obtain such a resource consent.
- l) There is no commitment in the Horowhenua District Council's current Long Term Plan to divert Levin's stormwater from the Lake, despite endorsement of the Lake Accord.
- m) The Horowhenua District Council has produced no easement for a pipeline across the dewatered area/chain strip nor resource consent to discharge contaminated stormwater into the Lake.
- n) A Napier property developer was criticised by the Environment Court for procrastinating over the removal of a huge pile of rubble dumped without a resource consent and spilling onto a neighbour's property and burial site. **EXHIBIT P**

- o) The Horowhenua District Council has land available, the resources and finances for urgent stormwater diversion.
- p) The Plaintiff brought this matter to the attention of the Horowhenua District Council during consultation for the Council's 2011 Draft Annual Plan.
- q) Despite signing up to the Lake Accord and approving Plan Change 22, the Horowhenua District Council has made no commitment to divert Levin's stormwater away from the Lake.
- r) Instead, the Horowhenua District Council tried to condone its ongoing pollution of this privately-owned lake by passing a resolution in an attempt to ratify the 1973 purported agreement.

Conclusion

- 61. For the reasons already stated, the First Plaintiff contends that the Declarations and Relief sought is both reasonable and just.
- 62. The First Plaintiff is prepared to consider a timetable for compliance that is reasonable and enforceable.
- 63. The research report on Lake Horowhenua commissioned by the Waitangi Tribunal documents a litany of broken promises over the past century, and therefore establishes the necessity for enforcement measures to ensure compliance within a timetable.

DATED this 23rd day of June 2015


Philip Dean Taueki
(First Plaintiff)