

11 March 2021

[REDACTED]

[REDACTED]

**Response - Official Information Request**

I refer to your request for information received on 06/03/2021. Your request has been considered under the Local Government Official Information and Meetings Act 1987 (LGOIMA) and I provide the following information.

**Obtaining a copy of the decision in associating with the granted consent/s to the construction work being undertaken by Horizons Regional Council**

Please find this information attached, as requested.

The information includes the final decision and conditions for the Weed Harvest Activities, which includes the construction, operation and maintenance of two boat ramps in the bed for Lake Horowhenua, to provide access to Lake Horowhenua for a weed harvester and associated unloading facilities.

If you have any queries regarding this information please contact David McCorkindale, Group Manager Customer & Strategy on 06 366 0999 or [davidbm@horowhenua.govt.nz](mailto:davidbm@horowhenua.govt.nz)

Horowhenua District Council publishes responses to Local Government Official Information and Meetings Act 1987 (LGOIMA) requests that we consider to be of wider public interest, or which relate to a subject that has been widely requested. To protect your privacy, we will not generally publish personal information about you, or information that identifies you. We will publish the LGOIMA response along with a summary of the request on our website. Requests and responses may be paraphrased.

Yours sincerely,



Lisa Slade  
**Executive Sponsor - LGOIMA**

**MANAWATU-WANGANUI REGIONAL COUNCIL**

**GRANTED TO MANAWATU-WANGANUI REGIONAL COUNCIL  
(TRADING AS HORIZONS REGIONAL COUNCIL)**

**Date Granted:**

**Location**

**Address for activity:** Arawhata Boat Ramp, Hokio Beach Road, Levin  
Lake Domain Boat Ramp, off Queen Street, Levin

**Legal description:** Being the bed of the Horowhenua Lake and the Islands therein and the dewatered area in the strip one chain in width around the original margin of the lake shown on SO23584 and part bed of Hokio Stream and part strip of land one chain in width along portion of the north bank of the said stream.

**Map Reference:** Arawhata Boat Ramp BN33.802-012  
Lake Domain Boat Ramp BN33:895-023

**LAND USE CONSENT ATH-2015200304.00**

To construct, operate and maintain two boat ramps in the bed of Lake Horowhenua, to provide access to Lake Horowhenua for a weed harvester and associated unloading facilities.

**Expiry: 35 years**

**LAND USE CONSENT ATH-2015200305.00**

To undertake vegetation clearance associated with boat ramp construction near the Arawhata Stream outlet.

**Expiry: 35 years**

**LAND USE CONSENT ATH-2015200346.00**

Reclamation of part of the bed of Lake Horowhenua in order to construct, operate and maintain two boat ramps that will enable weed harvesting of Lake Horowhenua.

**Expiry: Unlimited**

**LAND USE CONSENT ATH-2015200347.00**

To undertake harvesting and removal of vegetation from the bed of a Lake Horowhenua associated with weed harvesting.

**Expiry: 35 years**

**Conditions Applying To All Consents.**

1. Except as otherwise required by any other condition of this consent, the proposed activity shall be carried out generally in accordance with the plans and all information

submitted with the applications, and information subsequently provided in response to section 92 requests for further information and additional information provided at the hearing.

2. Where there are inconsistencies between the application and the further information provided by the applicant, the most recent information applies.

**Advice Note:** Any variance from the location, design concepts and parameters, implementation and/or operation may require a new resource consent or change of consent conditions pursuant to section 127 of the Resource Management Act 1991.

### **Lapse**

3. These resource consents lapse on the expiry of five years after the date of commencement of these consents unless the consents are given effect to or other criteria contained within Section 125 of the Resource Management Act 1991 are met.

### **Review**

4. The Manawatu-Wanganui Regional Council may, under section 128 of the Act, initiate a review of all conditions of these consents in July 2018 and every two years thereafter. The review shall be for the purpose of reviewing the effectiveness of the conditions in avoiding, remedying or mitigating any adverse effects on the environment, which may arise as a result of the exercise of these consents.

The review may be necessary to:

- a) delete or change any conditions of these resource consents to ensure adverse effects are appropriately mitigated; or
- b) add new conditions as necessary, to avoid, remedy or mitigate any unforeseen adverse effects on the environment; or
- c) if necessary and appropriate, adopt the best practicable option to avoid, remedy or mitigate any adverse effects on the environment.

### **Additional Conditions for Consent ATH-2015200304.00**

5. The Consent Holder shall be responsible for all contracted operations related to the exercise of this resource consent, and shall ensure contractors are made aware of the conditions of this resource consent and ensure compliance with those conditions.
6. A copy of this consent shall be kept onsite at all times that physical works authorised by this resource consent are being undertaken and shall be produced without unreasonable delay upon request from a servant or agent of the Manawatu-Wanganui Regional Council.

### **Erosion Sediment Control Conditions**

7. Construction of the boat ramps shall be undertaken in accordance with the Boat Ramps Lake Horowhenua Erosion and Sediment Control Plan October 2015 (ESCP).
8. The Consent Holder may submit amendments to the ESCP for certification by the Regulatory Manager Manawatu-Wanganui Regional Council. Any amendments to the erosion and sediment control provisions shall as a minimum be based on the Greater Wellington Regional Council document entitled "Erosion and Sediment

Control – Guidelines for the Wellington Region dated September 2002 & Reprint 2006”.

9. The Consent Holder shall provide a completed ‘As Built’ Certification form for any sediment retention device and associated dirty water diversion and clean water diversion drains to the Manawatu-Wanganui Regional Council’s Regulatory Manager within 10 working days of its completion.

### **Construction Conditions**

10. No less than 20 working days prior to the commencement of construction activities the Consent Holder shall provide the Manawatu-Wanganui Regional Council’s Regulatory Manager with a Wharf Construction and Long Term Maintenance Plan (WCLTMP) prepared by a suitably qualified and experienced person(s). The WCLTMP shall be prepared and certified as follows:
  - a) The objective of the WCLTMP shall be to address how the wharf construction and long term maintenance activities will be controlled to ensure effects on the environment are remedied, mitigated or avoided.
  - b) The WCLTMP shall as a minimum include:
    - i details of how the wharf superstructure constituents and maintenance avoid adverse effects of Cooper Chromium Arsenic leaching on kākahi;
    - ii a starting point of using untreated hardwood or alternatively;
    - iii develop a defined evaluative process for selecting the materials used in the wharf; and
    - iv contingency measures for remedying or mitigating any more than minor adverse effects arising from contaminants derived from wharf construction (for example concrete wash) that may enter Lake Horowhenua.
  - c) The Consent Holder shall not commence works authorised by this consent until the WCLTMP has been certified in writing by Manawatu-Wanganui Regional Council acting in a technical certification capacity.
  - d) The Consent Holder may commence construction in accordance with the WCLTMP unless Manawatu-Wanganui Regional Council advises the Consent Holder in writing within 10 working days of receipt of the WCLTMP that it will not certify the plan on grounds it does not meet the requirements of this condition.
  - e) Should Manawatu-Wanganui Regional Council refuse to certify the WCLTMP the Consent Holder shall submit a revised WCLTMP to Manawatu-Wanganui Regional Council for certification. The certification process shall follow the same procedure as outlined in this condition.
  - f) The Consent Holder shall provide a completed ‘As Built’ Certification form for the wharf to the Manawatu-Wanganui Regional Council’s Regulatory Manager within 10 working days of its completion.
  - g) The consent holder must comply with the WCLTMP in undertaking the construction and maintenance of the wharf.

11. The Consent Holder must install bunding around work areas where wet cement will be used to ensure that no cement wash enters Lake Horowhenua.
12. The Consent Holder must ensure that no concrete wash-water is disposed of onsite, and that trucks delivering concrete to site wash out chutes at their yards.
13. The Consent Holder must not store fuel or undertake refuelling of vehicles and machinery within 20 metres of Lake Horowhenua. Fuel shall be stored securely and removed from site overnight.

### **Ecological Conditions**

14. Immediately prior to commencement of construction at the Arawhata Boat Ramp a suitably qualified and experienced person shall search for nesting Dabchicks along the lake edge/water interface within a 100m area surrounding the boat ramp location. If any nests are identified in the 100m area then no construction works shall be undertaken during the Dabchick nesting season (June to December inclusive).
15. Immediately prior to commencement of construction of either boat ramp, a suitably qualified and experienced person shall search for kākahi (freshwater mussels) around each boat ramp location, and any kākahi found must be relocated away from the boat ramp works area.

### **Archaeology and Cultural**

16. The Consent Holder shall comply with the Accidental Discovery Protocol dated 12 November 2015 attached to this consent.
17. The Consent Holder shall appoint a Tangata Tiaki in consultation with the Horowhenua 11 (Lake) Part Reservation Trust. The Tangata Tiaki shall be present on site during all construction earthworks.

**Advice Note:** *The consent holder are reminded to comply with the provisions of the HNZPTA in relation to archaeology, including the requirements of Authority No 2015/724 – to construct a sediment trap and restore the wetland environment of Arawhata Swamp at Hokio Beach Road, Levin.*

## **Additional Conditions for Consent ATH-2015200305.00**

### **Ecological Conditions**

18. Immediately prior to commencement of vegetation removal at the proposed Arawhata Boat Ramp a suitably qualified and experienced person shall search for nesting Dabchicks along the lake edge/water interface within a 100m area surrounding the boat ramp location. If any nests are identified in the 100m area then no construction works shall be undertaken during the Dabchick nesting season (June to December inclusive).
19. No less than 60 working days prior to the commencement of construction of the Arawhata Boat Ramp, a suitably qualified and experienced person shall search for rare and threatened plant species within a 10 metre corridor either side of the proposed boat ramp. This shall include the area identified as zone A2.1 on Plan 1 attached. The location of any rare and threatened plants shall be recorded. The

results of the search shall be provided to the Manawatu-Wanganui Regional Council's Regulatory Manager within 5 working days of the search being undertaken.

20. No less than 20 working days prior to the commencement of construction land disturbance activities at the proposed Arawhata Boat Ramp, the Consent Holder shall provide the Manawatu-Wanganui Regional Council's Regulatory Manager with a Arawhata Boat Ramp Planting Strategy for the relevant site prepared by a suitably qualified and experienced person(s).
21. The objective of the Planting Strategy is to address visual effects of the boat ramp and to control weeds to ensure effects on the environment are remedied, mitigated or avoided. If the results of the search undertaken in accordance with Condition 20 identify the presence of plants that are classified as rare and threatened plants, then the Arawhata Boat Ramp Planting Strategy shall include measures to address how the vegetation clearance activities will be controlled to ensure effects on the rare and threatened plants are remedied, mitigated or avoided.
22. If effects on rare and threatened plants cannot be avoided, then offset mitigation measures shall be included in the Planting Strategy and be based on the following:
  - a) A week prior to the planned construction event, any rare plants within the works envelope shall be carefully dug up and immediately potted, using the in-situ peaty substrate (i.e. natural earth around the plants, not potting mix) to fill the pots. Potted plants shall be moved to a purpose built facility where they can be maintained.
  - b) The minimum size of the area set aside for restoring appropriate habitat for any rare or threatened plant shall be the greater of 20 square metres, or the size of the disturbed area of the habitat for that plant. The size of the disturbed area is to be defined as the area of habitat which contains the rare or threatened plant that is within the works envelope of the Arawhata Boat Ramp.
  - c) The habitat species composition shall be described and shall mimic the species composition (including relative proportions) of the affected habitat, except where an alternate habitat composition is deemed to be more beneficial for the rare or threatened plant to be conserved.
  - d) The justification for choosing any alternate habitat composition shall be explained in terms of the habitat of the species to be conserved.
  - e) The location and extent of the conservation area shall be portrayed on a map, and should replace non-indigenous habitats. The location should be in the vicinity of the Arawhata Boat Ramp with preference for being locating in the area identified as zone A5.2 on Plan 1 attached.
  - f) The timeframes for habitat construction and subsequent repatriation or establishment of rare or threatened plants shall have regard to:
    - i. The population status of remaining swamp nettle in the area identified as zone A2.1 on the Plan 1 attached. This shall be assessed during April or May of the year following construction and shall be reported. If monitoring of zone A2.1 concludes that the status of the population is decreasing, the strategy shall detail how the cause(s) of decline will be identified, and/or identify potential solutions to halt decline.
    - ii. The timing and duration of the period proposed for restoring the habitat.

- iii. The timing and duration for moving translocated plants into the restored habitat.
- iv. A schedule (dates) detailing the monitoring of the success of translocations (which shall be as a minimum based on three, six, and twelve month checks post-planting).
- v. A schedule (dates) detailing the monitoring of the restored habitat for self-establishment of swamp nettle or other identified rare or threatened plant (which shall be as a minimum based on an annual species count in the restored area, and be undertaken annually for five years).
- vi. A follow up monitoring programme to assess the population status of the remaining swamp nettle or other identified rare or threatened plant in the area identified as zone A2.1 on Plan 1 attached. As a minimum, this will include site assessment two years after construction of the Arawhata Boat Ramp.
- vii. A follow up species-led recovery plan, should swamp nettle population in zone A2.1 decline and plants planted into zone A5.2 fail. The purpose of this plan is to offset the direct effect of the loss of individual species as a consequence of the earth works.
- viii. A review period for this part of the Planting Strategy.

23. In addition the Planting Strategy must also identify and address the following:

- a) The like-for-like replacement of any native habitats or native plants on the margin of Lake Horowhenua at Muaupoko Domain that may be disturbed while establishing the ramp at that location.
- b) The remedy of biodiversity effects as a result of the loss of indigenous habitats arising from the construction of the Arawhata Boat Ramp.
- c) Any planted native plants affected by the construction of the Arawhata Boat Ramp will be replaced on a 1:5 ratio.
- d) The intended vegetation composition for inter-planting with reference to each of the habitat zones.
- e) How weeds (plants not fitting the designed and intended vegetation composition) will be managed.
- f) For Arawhata Boat Ramp zones A0 and A4 (as shown on Plan1 attached) the identification of the number and species of native tree specimens in Zones A0 and A4 that are affected by the Arawhata Boat Ramp construction, and measures to demonstrate that inter-planting of these zones will lead to a 1:5 replacement of plants affected. Planting shall be designed to increase the structural diversity of these Zones and may include *Pittosporum tenifolium* (kohuhu), *Hoheria sextylosa* (lacebark), *Cordyline australis* (cabbage tree), *Laurelia novae-zealandiae* (Pukatea), and *Dacrycarpus dacrydioides* (kahikatea). Where other native species are proposed to be used, the reasons why shall be provided.
- g) For Arawhata Boat Ramp Zone A2.0, the timing of and method(s) for the inter-planting of grassy areas with *Cyperus ustulatus*, native *Carex* species, and other native propagules sourced from the parts of Zones A2.0 and A1 that are affected

by the construction of the Arawhata Boat Ramp. At least 890 square metres of Zone A2.0 is to be remediated in this way.

- h) For Arawhata Boat Ramp Zone A5.3 the provision of an area for habitat off-set planting for the loss of Zone A2.1 habitat if required by Condition 22. If Condition 22 is not triggered, the off-set planting of Zone A5.3 shall at least consist of a community of *Carex* species, *Coprosma propinqua* (mingimingi), and *Myrsine australis* (mapou). Where other native species are considered appropriate, the reasons why are to be stated.
  - i) The Planting Strategies shall identify those areas that are to be planted first to remedy the effects on visual amenity. Planting of these areas will be undertaken during the planting season following the completion of works at each boat ramp.
  - j) The Planting Strategies shall identify the planting layout and show how planting is appropriately matched to soil conditions and mimics natural patterns to avoid “plantation” style planting.
  - k) Native plant species shall be sourced from within the Foxton Ecological District.
  - l) The Planting Strategies shall specify that, where gaps within native plantings are created as result of weed control, these will be filled by eco sourced native species.
  - m) A review period shall be specified.
- 24. The Consent Holder shall not commence the implementation of the Planting Strategy until the relevant Planting Strategy has been certified by the Manawatu-Wanganui Regional Council in a technical certification capacity.
  - 25. The Consent Holder may commence planting in accordance with the relevant Planting Strategy unless Manawatu-Wanganui Regional Council advises the Consent Holder in writing within 10 working days of receipt of the Planting Strategy that it will not certify the plan on grounds it does not met the requirements of conditions 21-24 above.
  - 26. Should Manawatu-Wanganui Regional Council refuse to certify the Planting Strategy the Consent Holder shall submit a revised Planting Strategy to Manawatu-Wanganui Regional Council for certification. The certification process shall follow the same procedure as outlined in conditions 21 to 25 above.
  - 27. The Consent Holder shall comply with the relevant certified Planting Strategy when undertaking planting on the sites.



## **Additional Conditions for Consent ATH-2015200346.00**

### **Survey of Reclamation**

28. Within 6 months after the completion of the reclamation, the consent holder shall, in accordance with Section 245 of the Resource Management Act 1991, submit to the Manawatu-Wanganui Regional Council a plan of survey for approval. The plan of survey shall be prepared in accordance with regulations made under the Cadastral Survey Act 2002 relating to survey plans within the meaning of those regulations, and the plan shall show and define the area reclaimed, including its location and the position of all new boundaries.

## **Additional Conditions for Consent ATH-2015200347.00**

29. During the period 1 June to 30 December of any given year, lake weed harvesting must avoid harvesting with the "Weed Harvesting Buffer Zones" identified on Plan 2 attached to this consent, unless a suitably qualified and experienced person(s) confirms that nesting Dabchicks are absent.
30. In each year that this consent is exercised, no less than 40 working days prior to the commencement of annual weed harvesting activities authorised by this consent, the Consent Holder shall provide the Manawatu-Wanganui Regional Council's Regulatory Manager with a Weed Harvesting Management Plan (WHMP) prepared by a suitably qualified and experienced person(s).
31. The objective of the WHMP shall be to address how the weed harvesting activities will be controlled to ensure effects on the lake ecology are remedied, mitigated or avoided.
32. The WHMP shall detail the objectives, protocols and monitoring of the weed harvesting operation. This shall incorporate relevant sections of the document "Weed Harvesting Strategy for Lake Horowhenua – June 2015 contained in Appendix B of the *Lake Horowhenua Weed Harvesting Activities Application dated June 2015*.

The WHMP shall also set out:

- a) A Monitoring Programme including specific monitoring parameters for water clarity monitoring, water quality response to area of weed harvested, assessment of macrophyte survival after cutting and/or if the weed collapses in summer and levels of regrowth, assessment of response of native macrophyte and fish monitoring;
- b) Adaptive response programmes for when monitoring parameters are exceeded;
- c) An operational biosecurity strategy for the use of the harvester to address weed fragments entering other waterbodies, where these weed species are not already present;
- d) For the 2016/17 year the WHMP shall include a controlled trial of harvesting of up to two 5ha by 5ha blocks of the lake to leave approximately 300mm of weed and any further harvesting shall leave approximately 500 mm of weed including up to two 5ha by 5ha blocks for comparative purposes;
- e) Harvesting shall be permitted to 300 mm for all blocks in subsequent years if weed stem density measures from the 2016/2017 trial show 50% or greater survival rate post harvesting in the 300mm trial area and if there is no more than 30% increase in baseline turbidity levels (excluding data periods

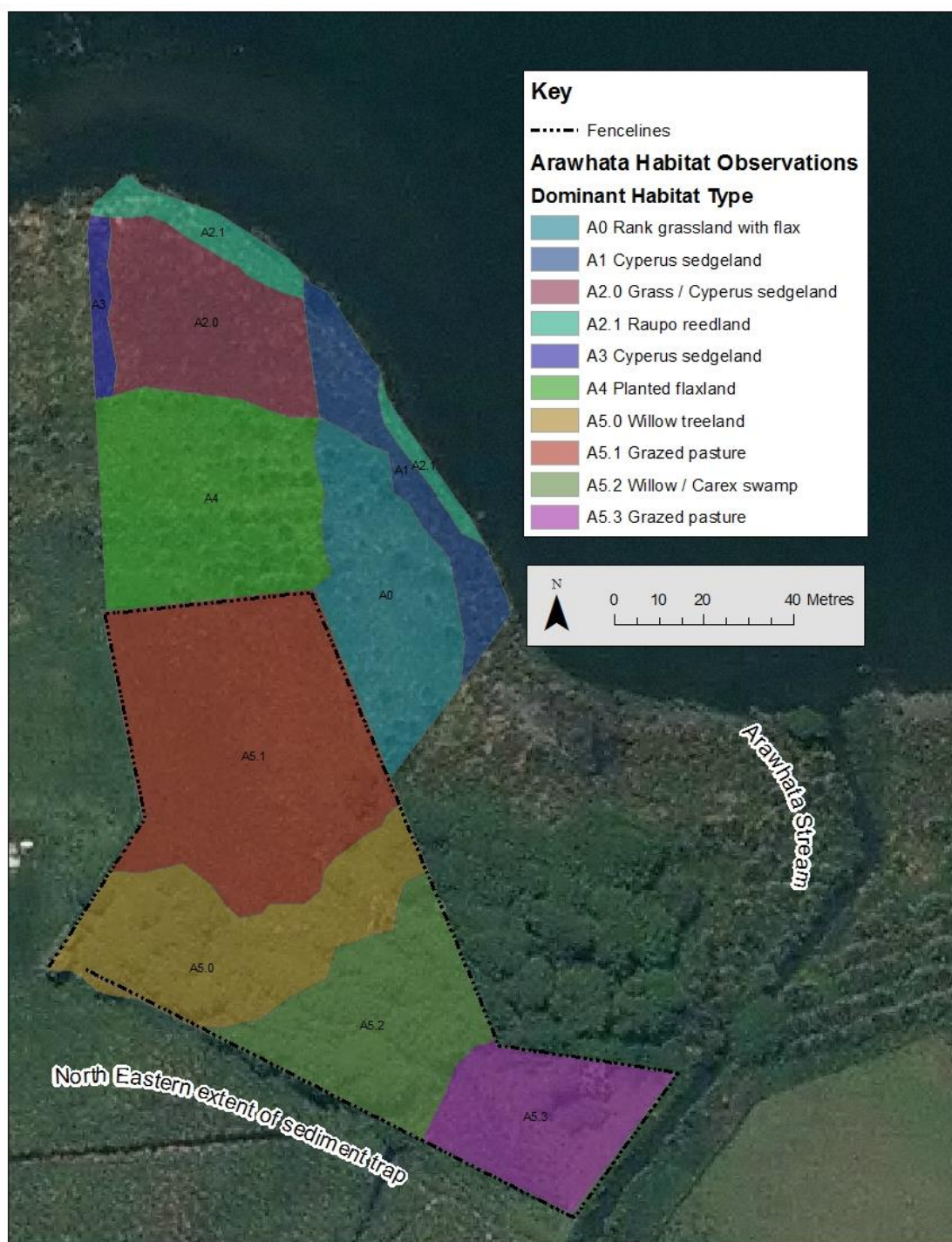
influenced by algal blooms, larger storm events, or high stream inflows, or El Nino southern oscillation patterns) for the months of September, October and November. If turbidity increases exceed 30% then an assessment of whether this is limiting macrophyte survival shall be undertaken and reported to the Manawatu-Wanganui Regional Council Regulatory Manager. Proposed weed cut height shall be specified in each WHMP produced after the 2016/17 year and shall take into account proposed adaptive response programmes;

- f) A strategy for the disposal or end use of the harvested weed; and
  - g) Reporting procedures.
33. The Consent Holder shall not commence works authorised by this consent until the WHMP has been certified in writing by Manawatu-Wanganui Regional Council acting in a technical certification capacity.
34. The Consent Holder may commence weed harvesting in accordance with the WHMP unless Manawatu-Wanganui Regional Council advises the Consent Holder in writing within 10 working days of receipt of the WHMP that it will not certify the plan on grounds it does not meet the requirements of conditions 31 and 32 above.
35. Should Manawatu-Wanganui Regional Council refuse to certify the WHMP the consent holder shall submit a revised WHMP to Manawatu-Wanganui Regional Council for certification. The certification process shall follow the same procedure as outlined in conditions 29 to 34 above.
36. The Consent Holder shall comply with the certified WHMP at all times.
37. The Consent Holder shall submit the results of the monitoring programme, adaptive response programmes and reporting procedures for the previous annual weed harvesting activities to the Manawatu-Wanganui Regional Council Regulatory Manager by 1 July of any year for the duration of the consent.

### **Archaeology and Cultural**

38. The Consent Holder shall comply with the Accidental Discovery Protocol dated 12 November 2015 attached to this consent.
39. The Consent Holder shall appoint a Tangata Tiaki in consultation with the Horowhenua 11 (Lake) Part Reservation Trust. The Tangata Tiaki shall be present on site during all construction earthworks.

**Advice Note:** *The consent holder is reminded to comply with the provisions of the HNZPTA in relation to archaeology, including the requirements of Authority No 2015/747 – to construct a fish pass at Hokio Stream.*



**Plan 1: Arawhata Vegetation Zones**





Plan 2: Weed Harvesting Buffer Zones

Decision Report  
Lake Horowhenua Restoration

Horizon Regional Council's  
Resource Consent Applications

to

Manawatu Wanganui Regional Council

and

Horowhenua District Council

11 December 2015

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## 1 Appointments

Manawatu Wanganui Regional Council (MWRC) and Horowhenua District Council (HDC), both acting under section 34A of the Resource Management Act 1991 (RMA), appointed the following independent hearing commissioners to conduct a hearing into Horizon Regional Council's (HRC or Applicant) applications to MWRC and HDC for resource consents for the Arawhata Stream Sediment Trap, a Fish Pass at the Lake Horowhenua outlet weir, and for Lake Horowhenua Weed Harvesting:

- Rob van Voorthuysen<sup>1</sup> (Chair);
- Dr Ian Boothroyd;<sup>2</sup> and
- Reginald Proffit.<sup>3</sup>

## 2 Description of the Proposal and Approvals Sought

The nature of HRC's proposal was well described in the following application documents:

- Lake Horowhenua Weed Harvesting Activities, An application to Horizons Regional Council, June 2015;
- Lake Horowhenua Weed Harvesting Activities, An application to Horowhenua District Council, June 2015;
- Fish Pass at Lake Horowhenua Outlet Weir, An application to Horizons Regional Council, June 2015;
- Fish Pass at Lake Horowhenua Outlet Weir, An application to Horowhenua District Council, June 2015; and
- Arawhata Stream Sediment Trap Lake Horowhenua, An application to Horizons Regional Council, June 2015.

The proposal was also summarised in the three Section 42A Reports.<sup>4</sup> As stated in the Applicant's opening submissions, the proposal seeks to address the health of Lake Horowhenua through weed harvesting (reducing the effects of ammonia toxicity and toxic algal blooms), reducing sediment and nutrient inputs from rural and urban sources, and improving habitat and access to the Lake for native fish.<sup>5</sup>

By way of high level overview, we note that the proposal comprises the following key elements:<sup>6</sup>

### Arawhata Stream Sediment Trap

- Sediment trap of four cells at different levels. Overflow of the sediment trap during storm events would be from Cell D;
- Box culvert with wing walls placed in the Arawhata Stream to divert high flows to the sediment trap;

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<sup>1</sup> Commissioner van Voorthuysen is an experienced independent commissioner, having sat on over 240 hearings throughout New Zealand since 1998. He has qualifications in natural resources engineering and public policy and is a full member of the New Zealand Planning Institute (NZPI).

<sup>2</sup> Commissioner Boothroyd is an independent commissioner and has sat on resource consent hearings since 2004. He has qualifications in natural resource sciences, is a Certified Environmental Practitioner and is President of the NZ Chapter of the Environmental Institute of Australia and New Zealand.

<sup>3</sup> Commissioner Proffit is an independent commissioner and has held Commissioner certification since 2007. He has qualifications in Resource and Environmental Planning, is Chair of Papa Pounamu within the New Zealand Planning Institute and is one of the presenters delivering the Ministry for the Environment Making Good Decisions course.

<sup>4</sup> Section 42A Report of Mark St Clair, Planning Consultant for Manawatu Wanganui Regional Council (Regulatory Team), 2 October 2015 [MWRC s42A Report]; Section 42A Report – Sue Graham (fish pass), Section 42A Report – Sue Graham (weed harvesting) [HDC s42A Reports].

<sup>5</sup> Opening Legal Submissions on Behalf of the Applicant, 27 October 2015, paragraph 2.2.

<sup>6</sup> Taken, in an abridged and revised form, from the MWRC Section 42A Report, Section F, pages 7 and 8.



- Bunds around the cells will be created for the purpose of access to the cells for the removal of sediment that has built up over time;
- A planting strategy for amenity reasons and for the control of weeds;
- Construction of the sediment trap is proposed in two stages, the first being the construction of the trap itself and the second the culvert and wing walls.

#### Fish Pass at Lake Horowhenua Outlet Weir

- A 3 metre wide semi-circular concrete structure with rough concrete and rock grouting and 300mm of exposed rock, situated adjacent to the existing outlet weir, to allow fish to pass upstream from the Hokio Stream to Lake Horowhenua;
- Planting of the margins of the fish pass with locally sourced native species;
- The existing access track is to be upgraded (scraping and filling) to provide for access for machinery for construction of the fish pass.

#### Weed Harvesting Activities

- Weed harvesting using a specifically constructed boat of approximately 122 ha of Lake Horowhenua to finished cut weed height of approximately 300mm to 500mm above the Lake bed, during the spring and early summer period;
- The harvester will return to shore approximately once per day to unload weed onto hardstand for drying and then removal by truck to landfill (other end uses for the weed continue to be explored);
- The harvester will use existing wash-down facility at Lake Domain when operating from that ramp;
- An adaptive management approach to the weed harvesting strategy is proposed;
- Construction and use of access road for the Arawhata Boat Ramp includes vegetation clearance and earthworks;
- Construction and operation of boat ramp and unloading dock at Arawhata Stream involves a precast concrete ramp, vegetation clearance on the bed of the lake and an approximate 21m<sup>2</sup> reclamation;
- Construction and operation of boat ramp and unloading dock at Lake Domain also includes a precast concrete ramp, vegetation clearance on the bed of the Lake and an approximate 21m<sup>2</sup> reclamation.

We note the three Erosion and Sediment Control Plans (ESCPs), attached to this decision report in Appendix 3, each provide a more fulsome description of the proposed activities, including aerial photographs, plans and cross-sectional drawings. Readers should refer to the ESCP documents if they desire greater detail regarding the proposed activities.

The resource consents sought from the MWRC are as follows:<sup>7</sup>

**ATH-2015200297.00 Arawhata Stream Sediment Trap** - To undertake land disturbance associated with the construction, maintenance and operation of a sediment trap and associated access on the west side of the Arawhata Stream, north of Hokio Beach Road on the south side of Lake Horowhenua.

**ATH-2015200345.00 Arawhata Stream Sediment Trap** – diversion of water - To divert water from the Arawhata Stream through a sediment trap on the west side of the Arawhata Stream, north of Hokio Beach Road on the south side of Lake Horowhenua.

**ATH – 2015200301.00 Fish Pass at Lake Horowhenua outlet Weir** - diversion of water - To divert water through a fish pass structure located at the outlet weir where water passes over the weir from Lake Horowhenua to the Hokio Stream, on the

<sup>7</sup> MWRC Section 42A Report, Section D, page 4.

north bank of the Hokio Stream adjacent to the existing weir and connecting to Lake Horowhenua at the outlet of the Lake to the Stream.

**ATH – 2015200302.00 Fish Pass at Lake Horowhenua Outlet Weir** - lake bed drainage - To drain the lake bed of Lake Horowhenua through a fish pass structure located at the outlet weir where water from Lake Horowhenua passes over the weir to Hokio Stream, on the north bank of the Hokio Stream adjacent to the existing weir and connecting to Lake Horowhenua at the outlet of the Lake to the Stream.

**ATH – 2015200303.00 Fish Pass at Lake Horowhenua Outlet Weir** - vegetation clearance and land disturbance - To undertake land disturbance and vegetation clearance associated with the construction of a fish pass structure located at the outlet weir, where water passes over the weir from Lake Horowhenua to the Hokio Stream, on the north bank of the Hokio Stream adjacent to the existing weir.

**ATH – 2015200304.00 Lake Horowhenua Weed Harvesting** - boat ramp construction - To construct, operate and maintain two boat ramps in the bed of Lake Horowhenua, to provide access to Lake Horowhenua for a weed harvester and associated unloading facilities, on the west side of the Arawhata Stream, north of Hokio Beach Road on the south side of Lake Horowhenua and at the Horowhenua Lake Domain located on the eastern side of Lake Horowhenua.

**ATH – 2015200346.00 Lake Horowhenua Weed Harvesting** – reclamation of part of the bed of a lake for boat ramp construction - To reclaim part of the bed of Lake Horowhenua in order to construct, operate and maintain two boat ramps in the bed of Lake Horowhenua Lake, to provide access to Lake Horowhenua for a weed harvester and associated unloading facilities, on the west side of the Arawhata Stream, north of Hokio Beach Road on the south side of Lake Horowhenua and at the Horowhenua Lake Domain located on the eastern side of Lake Horowhenua.

**ATH – 2015200305.00 Lake Horowhenua Weed Harvesting** - vegetation clearance - To undertake vegetation clearance associated with boat ramp construction near the Arawhata Stream outlet, on the west side of the Arawhata Stream, north of Hokio Beach Road on the south side of Lake Horowhenua.

**ATH – 2015200347.00 Lake Horowhenua Weed Harvesting** – removal of plant from the bed of a lake - To undertake the harvesting and removal of weed from Lake Horowhenua on a seasonal basis.

The land use resource consents sought from the HDC are as follows:<sup>8</sup>

**501/2015/3639** - to construct, maintain and operate a fish pass structure at the outlet weir where water passes over the weir from Lake Horowhenua to the Hokio Stream.

**501/2015/3638** - a weed harvesting activity on the surface of Lake Horowhenua and the construction, operation and maintenance of two boat ramps which would involve earthworks within an Outstanding Natural Landscape, also the construction and use of a vehicle entranceway within separation distance requirements.

We are satisfied that all of the activities proposed, including monitoring and mitigation, are provided for under the above listed applications.

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<sup>8</sup> HDC s42A reports. Cover pages.

### 3 Notification, Submissions and Written Approvals

The applications were publicly notified at the request of the Applicant and they were directly served on 57 potentially affected parties. Twenty seven submissions were received within the prescribed timeframe. Two late submissions were received and we have waived compliance with the submission timeframes for those submissions. They have been accepted as valid submissions.<sup>9</sup> Fifteen submissions were in support, twelve were in opposition, one was in partial opposition and one was neutral. The submissions were summarised in the MWRC and HDC section 42A reports.<sup>10</sup> We adopt those summaries, but we do not repeat them here for the sake of brevity.

We note that the Department of Conservation and the Horowhenua Lake Domain Board lodged submissions in support and also provided their written approval for the applications. Subsequently both submissions were withdrawn, but the written approvals remain.<sup>11</sup> One other submitter, the Horowhenua 11 Part Reservation (Lake) Trust, also provided its written approval. We understand that the Lake Trust wishes to be treated as a submitter and not as a party under section 95E(3)(a) of the RMA.

### 4 Process Issues

#### 4.1 Section 113 of the RMA

Section 113(3) of the Resource Management Act (RMA) states:

- A decision prepared under subsection (1) may, -
- (a) instead of repeating material, cross-refer to all or a part of -
    - (i) the assessment of environmental effects provided by the applicant concerned;
    - (ii) any report prepared under section 41C, 42A, or 92; or
  - (b) adopt all or a part of the assessment or report, and cross-refer to the material accordingly.

In this case the Applicant's AEE and expert evidence were of a high level of comprehensiveness and quality. The same can be said of the section 42A reports and associated expert evidence. We were also greatly assisted by the preparation of Joint Witness Statements (JWS) by the Applicant's experts and the section 42A experts.<sup>12</sup> We received JWS from the ecologists,<sup>13</sup> erosion and sediment control experts,<sup>14</sup> lake ecology and water quality experts,<sup>15</sup> fishery experts<sup>16</sup> and the planners.<sup>17</sup> The lay evidence presented by the submitters who chose to appear at the hearing was also helpful and in some cases quite detailed. Accordingly, in the interests of brevity and economy, we intend to make use of section 113 of the RMA and we will not dwell on matters that were not in contention. That is not to say we have glossed over or ignored any such matters. We have carefully reviewed the documentation relating to those matters and have satisfied ourselves that any outcomes agreed between the Applicant, reporting officers or submitters are appropriate. We discuss some of the agreed matters in Section 7 of this decision report.

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<sup>9</sup> Fish and Game New Zealand lodged a late written submission on 20 August 2015. Peter Heremaia lodged a late verbal submission during the course of the hearing. Mr Heremaia's request to lodge a late submission was not opposed by the Applicant or the reporting officers and so we somewhat reluctantly (given its extreme lateness) allowed it.

<sup>10</sup> MWRC Section 42A Report, Appendix 2; HDC Section 42A Reports, Section 10.

<sup>11</sup> The withdrawal of the Domain Board's submission was confirmed by Chris Lester (Board Chairman at the time) on 23 October 2015. The withdrawal of the Department's submission is recorded at paragraph 37 of the MWRC Section 42A Report.

<sup>12</sup> None of the submitters called any expert witnesses, although various scientific reports and other documents were tabled by some submitters.

<sup>13</sup> Frances Forsyth and James Lambie.

<sup>14</sup> Graeme Ridley, Jon Bell and Gregor McLean.

<sup>15</sup> Dr David Kelly, Dr Max Gibbs and Dr Jon Roygard. Two JWS were received from these experts, one prior to the hearing dated 15 October 2015 and one after the hearing dated 9 November 2015. The latter JWS helpfully addressed queries we posed regarding recommended Condition 12 (planner's JWS version) of Consent ATH-2015200347.00.

<sup>16</sup> Dr David Kelly and Logan Brown.

<sup>17</sup> Mark St Clair and Paul Thomas.

## **4.2 Consultation**

Under section 36A of the RMA there was no obligation on the Applicant to undertake consultation regarding the resource consent applications. Notwithstanding that, the Applicant nevertheless completed what in our view was a very comprehensive consultation process with the Lake Accord partners, being the Horowhenua 11 Part Reservation (Lake) Trust representing the beneficial owners of the Lake, the Horowhenua Lake Domain Board, the Horowhenua District Council and the Department of Conservation. Consultation was also undertaken with the Muaupoko Tribal Authority as the mandated iwi authority,<sup>18</sup> the Kohuturoa Marae Committee, the Ngatokowaru Marae Committee, Ngati Pareraukawa,<sup>19</sup> Heritage NZ, the Lake Horowhenua and Hokio Stream Working Party, the Rowing Club, the Sailing Club, the Sea Scouts, and several individuals including Vivienne Taueki and Charles Rudd.<sup>20</sup>

We note and agree with the Applicant's Reply submissions<sup>21</sup> which stated that consultation is not an end in itself<sup>22</sup> and that contrary to the views of some submitters, consultation does not require agreement, and it does not necessarily involve negotiation towards agreement between the parties.

We are satisfied that, in light of the consultation process undertaken by the Applicant and the range and nature of submissions lodged, all relevant issues are squarely on the table before us. In saying that, we acknowledge that some submitters,<sup>23</sup> particularly some individual tangata whenua submitters, were disappointed with the Applicant's consultation efforts. However, the ability of those submitters to be involved in this hearing process, and the due consideration we will give to their very clearly enunciated views in deliberating and reaching our decisions, may ameliorate any perceived imbalance or failures in the consultation process to date.

## **4.3 Conflict of interest**

Several submitters<sup>24</sup> expressed concern regarding a perceived conflict of interest insofar as the hearing panel chairperson previously worked for the same consultancy as the Applicant's planner, Mr Thomas. The chairperson resigned from that consultancy in July 2008, over seven years ago. At no time has the chairperson discussed the applications with Mr Thomas. The chairperson raised this matter with both appointing councils and offered to step down from the hearing panel if the councils were concerned that an actual conflict existed. The response of the councils is attached in Appendix 2 in the form of a Memorandum from Nic Peet, the Group Manager Strategy and Regulation Horizons Regional Council. The Memorandum states that both councils are satisfied that there is no conflict of interest or actual or perceived bias. Having discussed this matter amongst themselves, the commissioners agreed that there was no conflict of interest with the chairperson's appointment and so the chairperson remained on the panel.

#### **4.4 Postponement of the hearing**

The hearing was originally scheduled to commence on 5 October 2015. One submitter<sup>25</sup> raised a concern that the original hearing date coincided with the Waitangi Tribunal hearings for the Muaupoko Tribal Authority Treaty of Waitangi claims involving Lake Horowhenua. This resulted in the hearing being rescheduled to commence on 27 October 2015, as outlined in Direction #2 from the panel included in Appendix 2 to this decision report.

Subsequently another submitter<sup>26</sup> sought a further postponement of the hearing until after the conclusion of the Lake Horowhenua Waitangi Tribunal hearings, which had been set down for early October and late November 2015. After seeking the views of the Applicant we declined the requested further postponement. The reasons for our decision are set out in Direction #5 from the panel included in Appendix 2 to this decision report.

#### **4.5 Pre-hearing meeting**

Several submitters<sup>27</sup> were concerned about the absence of a pre-hearing meeting. Our response to that concern is set out in Direction #6 from the panel included in Appendix 2 to this decision report. In short, we advised that pre-hearing meetings are discretionary at the behest of the consent authority (section 99(1) of the RMA) and we play no role in that process. We also concluded that our timetabling Directions did not, in our view, preclude a pre-hearing meeting from occurring.

#### **4.6 Alternative venue**

The hearing was originally to be held in the Horowhenua District Council's council chambers. However, it was brought to our attention that one of the submitters<sup>28</sup> had been issued with a trespass notice that would preclude him from entering the council building and attending the hearing. Consequently, the hearing was relocated to the Levin public library, at some inconvenience,<sup>29</sup> solely to enable that single submitter to attend the hearing.

#### **4.6 Other legal proceedings**

A number of submitters<sup>30</sup> raised numerous past or concurrent legal proceedings that they considered relevant to Lake Horowhenua when they spoke to their submissions. Those legal proceedings included cases before the Waitangi Tribunal, Maori Land Court, High Court and Supreme Court, together with the past arrests of submitter Philip Taueki for objecting to various activities at the Lake. While those cases interestingly provide some context to the grievances forcefully expressed to us by some submitters, we find that they are not directly relevant to the matter before us, which is to decide (subject to the requirements specified in section 104 of the RMA) whether or not to grant the applications sought by the HRC and if we do grant them, to decide what conditions to impose.

## **5 Hearing and Appearances**

The hearing was held in Levin from Tuesday 27 October 2015 to Thursday 29 October 2015. We undertook a site visit on the Tuesday afternoon accompanied by Anna Regtien.<sup>31</sup>

A list of the parties who appeared at the hearing is provided in Appendix 1 of this decision report. Consistent with section 103B of the RMA we pre-read the expert evidence that was circulated to us before the hearing commenced. We also pre-read two pre-circulated briefs of evidence from lay submitters.<sup>32</sup> We have not attempted to summarise the written and verbal submissions, statements and evidence received before and during the course of the hearing as that would result in an unnecessarily lengthy decision. Copies of that written material, including material tabled during the hearing, are held by the MWRC and the HDC. We took our own notes of the verbal statements and evidence presented to us and any answers to our questions. We have however referred to, summarised or quoted from relevant elements of some of the submissions, statements and evidence in the balance of this decision report.

The Applicant provided a written Reply on Friday 13 November 2015. Having considered that Reply we closed the hearing on Tuesday 17 November 2015, having satisfied ourselves that we did not require any further information from any of the parties.

## **6 Statutory Instruments**

### **6.1 Policy statements and plans**

The planning instruments that provide the planning and policy framework for our consideration of the applications are as follows:

- National Policy Statement for Freshwater Management 2014 (NPSFM);
- Operative One Plan (OOP);<sup>33</sup>
- Operative Horowhenua District Plan (HDP).

We find that the Applicant's proposals are consistent with and give positive effect to Objectives A1, A2, B1 and B4 of the NPSFM 2014. We say that as Lake Horowhenua is an acknowledged outstanding freshwater body whose water quality has been degraded by human activities and, as advised by Jon Roygard, the Freshwater & Science Manager at the MWRC and a witness for the Applicant:

“The restoration of Lake Horowhenua will take time and these consent applications are one part of the on-going efforts of a range of groups and agencies to restore Lake Horowhenua”<sup>34</sup>

and the Applicant's proposals:

“...primarily seek to address the key issues of toxic algal blooms including via lake weed harvesting, reducing sediment and nutrient inputs to the Lake from rural and urban sources and improving habitat and access to the Lake for native fish.”<sup>35</sup>

With regard to the regional instruments, under section 67(3)(c) of the RMA the operative regional plans must give effect to the RPS and we have assumed that to be the case. We have therefore focused primarily on the provisions of the regional plans. In saying that we

find that, importantly, the applications will give positive effect to the relevant parts of Objective 5.2 in Part I (the regional policy statement) of the OPP which reads:

**Objective 5-2: Water<sup>^</sup> quality**

- (a) Surface water<sup>^</sup> quality is managed to ensure that:
  - (ii) water<sup>^</sup> quality is enhanced in those rivers<sup>^</sup> and lakes<sup>^</sup> where the existing water<sup>^</sup> quality is not at a level sufficient to support the Values in Schedule B
  - (iii) accelerated eutrophication and sedimentation of lakes<sup>^</sup> in the Region is prevented or minimised

We also note that Mr St Clair advised that he was unable to reach a conclusion regarding Objective 2-1(a) and Policy 2-2(d) of Chapter 2 of the OOP, which also reside in Part I of the OOP.<sup>36</sup> Those provisions read:

**Objective 2-1: Resource management Whāinga**

- (a) To have regard to the mauri\* of natural and physical resources<sup>^</sup> to enable hapū\* and iwi\* to provide for their social, economic and cultural wellbeing.

**Policy 2-2: Wāhi tapu\*, wāhi tūpuna\* and other sites\* of significance**

- (d) The Regional Council must ensure that resource users and contractors have clear procedures in the event wāhi tapu\* or wāhi tūpuna\* are discovered.

This was responded to in the evidence of Paul Thomas, a planner appearing for the Applicant. Mr Thomas advised that the Horowhenua 11 Part Reservation (Lake) Trust (representing the beneficial owners of the lake) and the Muaupoko Tribal Authority (representing tangata whenua), both supported the proposals. In addition, Ngati Pareraukawa had expressed support for the proposed activities. Mr Thomas went on to advise that the fundamental initiative of the proposals to improve the health of the lake could be expected to have benefits for the mauri of the lake and beneficial effects for the social, economic and cultural wellbeing of hapu and iwi. He reminded us that the applications include proposed Accidental Discovery Protocols for each consent which would ensure that the earthworks were closely monitored and agreed measures would be put in place in the event of any accidental discovery. A Tangata Tiaki would also be present during any proposed works.<sup>37</sup> At the conclusion of the hearing Mr St Clair advised that he was now satisfied that the proposal was not inconsistent with those specific provisions of the OOP.

We are satisfied on the evidence that the proposals are consistent with Objective 2-1(a) and Policy 2-2(d) of Chapter 2 of the OOP. We make that finding notwithstanding the fact that some individual iwi submitters were opposed to the applications on cultural grounds. We discuss that further in section 8.4 of this decision report.

Turning now to the regional plans, the applications were comprehensively evaluated against the regional plan provisions in the application documents.<sup>38</sup> The MWRC Section 42A Report concurred with and adopted those assessments.<sup>39</sup> We too have read the assessments in the application documents and we also concur with them. We endorse the opinion of Mr St Clair who concluded:



“ ... the suite of applications is unique in that the activities proposed; in my view, either promote or are consistent with all the relevant objectives and policies in the Plan.”<sup>40</sup>

Regarding the HDP, the proposed activities all occur in the Rural Zone. The relevant provisions were assessed in the application documents<sup>41</sup> and the HDC Section 42A Reports.<sup>42</sup> The application documents concluded that the resource consent applications supported and sought to achieve many relevant objectives and policies in the HDP. Ms Graham also concluded that the proposal was consistent with the relevant objectives and policies of the HDP.<sup>43</sup> We agree with those conclusions.

In that regard we note, for example, Policy CL.2 and CL.7 of the HDP which read:

**POLICY CL.2**

Protect the natural character of the coastal lakes landscape, including wetlands, lakes, rivers and their margins, by avoiding inappropriate subdivision and land development.

**POLICY CL.7**

Protect the landscape, natural, ecological, historic heritage and cultural values of the Coastal Lakes landscape, particularly Waipunahau (Lake Horowhenua) and Waiwiri (Lake Papaitonga) and their surrounding areas, from inappropriate subdivision and land development.

We find, on the evidence, that the Applicant's proposals will not only provide protection of the Lake's natural character and natural (water quality), ecological and cultural values, but will positively enhance those values. The Applicant's proposals do not, in our view, constitute inappropriate development. Indeed, we find the proposals to be highly appropriate given the acknowledged degraded state of Lake Horowhenua.

Although we have referred explicitly to some particularly relevant policy provisions above, we record that we have reviewed all of the relevant provisions of the NPSFM 2014, the OOP and the HDP ourselves and having done so we concur with the advice of Mr Thomas, Mr St Clair and Ms Graham.

We received no other qualified planning evidence from any party.

In conclusion, we record that we have had regard to all of the relevant statutory instruments and have considered their relevant objectives and policies which we must have regard to under section 104(1)(b) of the RMA when evaluating the applications and the matters raised in the submissions. We find that the Applicant's proposal is not contrary to the objectives and policies of the relevant national and regional policy statements and regional and district plans and where they may not be fully consistent with those provisions, the adverse effects giving rise to any inconsistency can be avoided, remedied or mitigated by appropriate conditions of consent imposed under section 108 of the RMA.

We discuss those conditions of consent further in sections 7, 8 and 10 of this decision report.

## **6.2 Sections 105 and 107 of the RMA**

We queried whether or not we should have regard to sections 105 and 107 of the RMA, the latter section being only relevant to those discharges that are directly to water or are to land in circumstances which may result in contaminants entering water.



In response, both Mr Thomas and Mr St Clair advised that those sections of the RMA only apply to discharge permits and the activities forming the suite of applications were a mixture of land use consents and water permits and no discharge permits had been sought or were required.<sup>44</sup> Ms Johnston, counsel for the Applicant, supported the planner's opinions.

Mr Thomas also noted that the land disturbance activities relating to the sediment trap were authorised under Rule 13-7 of the OOP which in turn cross-refers to Rule 13-2 of the OOP. Rule 13-2(b) authorises the ancillary discharge of sediment into water pursuant to s15(1) RMA resulting from land disturbance activities. We understand the point that Mr Thomas was making was that under the OOP, any discharges associated with the land disturbance activities were authorised as ancillary activities to the primary consents sought.

We received no planning or legal advice to the contrary and consequently we are prepared to accept that sections 105 and 107 are not relevant here.

### **6.3 Consent category**

It was common ground between the Applicant and the council reporting officers that the applications to the MWRC were to be assessed as follows:

- a) Fish Pass – a non-complying activity;
- b) Arawhata Stream Sediment Trap - a discretionary activity; and
- c) Weed Harvesting Activities – a non-complying activity.

Similarly, the applications to the HDC were to be assessed as follows:

- a) Fish Pass – a restricted discretionary activity;
- b) Arawhata Stream Sediment Trap - a permitted activity; and
- c) Weed Harvesting Activities – a non-complying activity.

In terms of the non-complying activities and section 104D(1)(b) of the RMA, we have already found that the proposals are not contrary to the objectives and policies of the relevant plans. We are therefore not barred from assessing the applications on their merits and deciding whether, subject to section 104 of the RMA, the applications should be granted.

## **7 Matters not in Contention**

Some matters that were initially of concern to the reporting officers or the submitters were resolved prior to, or during, the hearing. Other matters that we commissioners were initially concerned about (as a result of our reading of the application documents, evidence, submissions and Section 42A Reports) were similarly addressed. For the sake of completeness, we list below the substantive technical matters where we understand there is no longer contention, at least as between the Applicant and the reporting officers.

### **7.1 Erosion and sediment control**

- As set out in the JWS prepared by the erosion and sediment control experts, compliance with the revised set of Erosion and Sediment Control Plans (ESCPs) attached to the evidence of Gregor McLean (noting that each ESCP now incorporates an Erosion and Sediment Control Monitoring Plan) for the Hokio Stream fish pass, boat ramps and Arawhata sediment trap (including its access road) will ensure that actual and potential adverse effects associated with stormwater and sediment runoff will be avoided as far as is practical;

- The erosion and sediment control experts also agreed that there was no need for specific restrictions on the area of exposed earthworks provided that any area being worked could be fully stabilised within a 12 hour (1 working day) period;
- As recorded in the lake ecology and water quality JWS, the experts agreed that a no more than 30% change in water clarity standard for the receiving water was sufficient to manage any potential water quality effects arising from the sediment settling ponds.

## 7.2 Terrestrial ecology

- As set out in the ecologist's JWS, in relation to as yet undiscovered rare or threatened plants in the proposed earthworks areas, those areas (including a 10m buffer around each area) should be assessed by a qualified and experienced ecologist and if rare or threatened plants are discovered then a Rare and Threatened Plant Management Plan (RTPMP) should be prepared. In addition, the position of the Arawhata boat ramp construction corridor should be driven by the need to avoid rare or threatened plants in the first instance.

## 7.3 Arawhata sediment trap

- As set out in the evidence of Jon Bell, the design of the Arawhata sediment trap has been revised from that originally proposed. When water is diverted into the sediment trap it will flow from cell A to cell D. When water levels recede and the new Arawhata Stream culvert ceases diverting water into the sediment trap, water will now flow back from Cells C and B into cell A and from there back into the Arawhata Stream. Water remaining in Cell D will flow directly into the Arawhata Stream. This means that there will be no standing water in any of the cells and so the potential adverse effects of that standing water on Lake water quality are no longer relevant;
- The sediment trap will be cleared of accumulated sediment at least once every two years, but only when a fine weather window of at least 48 hours is forecast. Mr Bell advised that that it would take a maximum of two working days to clear accumulated sediment from any one of the sediment trap's cells;
- Cell A will now not contain watercress;
- As set out in the ecologist's JWS, a Planting Strategy will specify which non-native species will be used in and around the sediment trap. The option of incorporating a combination of *Carex secta*, *C. geminata*, *C. virgata*, and *Austroderia species* (toetoe) sourced from the Foxton Ecological District, rather than only *Carex secta*, will be explored. An adaptive approach will be explored for Cell C with options for mixed planting that includes native and non-native species, such as having non-native pasture grasses on the sediment trap base and on other areas that would be disturbed by sediment trap maintenance activity, and eco sourced native planting on undisturbed baffles and edges. Weed control will be undertaken within the cells and where, as a result of weed control, gaps arise within areas planted with natives, those gaps will be filled by eco sourced native species;
- As set out in the erosion and sediment control expert's JWS, with regard to the possible flooding of the Arawhata sediment trap during its construction, the proposed level of the stream bank will protect the site from floodwaters up to and including the 1 in 50 year return period storm. The risk of a larger event flooding the sediment trap during its construction is low because of the short duration of the works, the proposed construction monitoring, and the ability to stabilise the site within a 12 hour period;
- The fishery expert's JWS confirms the need for a Fish Monitoring Programme to assess the level of fish entrainment and stranding in the sediment trap. The experts agreed that the focus should be on eel monitoring in the first two years. The experts also agreed that

a suitable trigger for an eel recovery plan would be if ten or more adult eels were stranded in any single flood event;

- In relation to the proposed access road for the Arawhata sediment trap and boat ramp, in her concluding advice to us Ms Graham advised that a resolution had been reached between Mr Foxall (an Area Engineer with the MWRC appearing for the Applicant) and the HDC development engineer, Mr Meyer. It was agreed that the approach of the entrance must be level with the existing carriageway (Hokio Beach Road) for at least 20m, not the 40m originally recommended by Ms Graham.<sup>45</sup>

#### **7.4 Boat ramps**

- As recorded in the ecologist's JWS, in relation to the use of cooper chrome arsenic (CCA ) treated timber for the proposed Lake Domain boat ramp wharf, a Wharf Construction and Long Term Maintenance Plan will be prepared by the Applicant that identifies that in the first instance that untreated hardwood will be used. Otherwise, the Applicant will apply a defined evaluative process to ensure alternative materials avoid eco-toxic effects on kakahi;
- The ecologist's JWS also confirms that a search, to be undertaken by boat, for nesting NZ Dabchicks should be undertaken prior to commencing boat ramp construction. The experts agreed that the search area should be along the Lake edge 100m either side of each boat ramp location. If any nests are discovered within that area then works would be avoided during the June to December NZ dabchick nesting season.

#### **7.5 Fish pass**

- The ecologist's JWS records that in relation to disposal of the bed material (raupo and sediment) to be removed from behind the Hokio Stream weir,<sup>46</sup> adverse effects on restoration plantings can be avoided by incorporating a number of dedicated disposal areas within the planting design to allow space for disposal of that bed material and the machine operator will place the bed material so that it does not run back into the Hokio Stream or the Lake. Further, with appropriate weed control, the raupo disposal sites are likely to be naturally colonised by native plants;
- In relation to pest fish, the fishery expert's JWS records agreement that the MWRC's proposed pest fish survey in 2018 will enable an assessment to be made as to whether or not a pest fish management strategy should be developed for the Lake. The experts have agreed that a trigger value of 50kg/ha for koi carp and hybrids is appropriate for that purpose;
- The fishery expert's JWS also records agreement that monitoring of the fish pass (such as video monitoring) may be required to ascertain if pest fish are traversing the fish pass. If that is the case the fish pass could be modified to exclude pest species or divert them into cages. The agreed conditions produced by the planning witnesses indicate that the need for any such monitoring would be determined following the 2018 pest fish survey.

#### **7.6 Weed harvesting**

- As recorded in the lake ecology and water quality expert's JWS, it was agreed that cutting and removing the top of the weed by harvesting aims to reduce the level of photosynthesis and reduce the pH effect of photosynthesis so that the pH stays below 8.7. That in turn results in reduced ammonia toxicity and reduced suppression of nitrification. Overall there would be a beneficial reduction in the concentration of ammonium in the water;

- The fishery expert's JWS records agreement that the Weed Harvesting Management Plan should include provision for monitoring the by-catch of fish species in the harvested weed;
- The ecologist's JWS records that potential adverse effects on nesting NZ Dabchicks can be avoided by ensuring that during the period 1 June to 30 December of any given year, the weed harvesting activity will avoid the "Weed Harvesting Buffer Zones" identified in the evidence of James Lambie,<sup>47</sup> unless a suitably qualified and experienced person confirms that nesting Dabchicks are absent from those areas. The experts agreed that potential adverse effects on other waterfowl are insignificant;
- As recorded in the lake ecology and water quality expert's JWS, it was agreed that an operational biosecurity strategy for using the weed harvester boat (including dealing with harvested plant fragments not getting into other waterways) was appropriate.

We are satisfied that the above 'agreed' matters have been adequately resolved. In forming that view we have given careful consideration to any views expressed on those matters by the lay submitters who appeared before us at the hearing. We consider that all of the above 'agreed' matters are adequately covered in the final suite of recommended consent conditions that were attached to the Applicant's Reply submissions.

## **8 Matters of Contention**

By the conclusion of the hearing there were no matters of contention as between the Applicant and the MWRC and HDC reporting officers. However, there were numerous matters of contention as between some submitters and the Applicant, or between submitters.<sup>48</sup> In this section of our decision report we discuss those matters.

### **8.1 Lake ownership and access**

A number of submitters<sup>49</sup> asserted that Lake Trust could not purport to represent the owners of the Lake, or that the Lake Trust had not consulted with the true owners of the Lake, being the iwi and whanau of Muaupoko. We are not persuaded by those submissions. The simple fact is that Lake Horowhenua is administered on behalf of its beneficial owners by the Horowhenua 11 (Lake) Part Reservation Trust. As noted in the Applicant's opening legal submissions, the recent High Court decision in *Paki v Maori Land Court & Others*<sup>50</sup> held that the terms of trust under which the Lake Trust operates were validly imposed by the Maori Land Court so as to provide effective management and administration by the Trust over the land.<sup>51</sup>

Even if we are wrong about that, we note and agree with the legal advice provided to the MWRC prior to the hearing that there is no requirement for a decision-maker to have regard to or consider the ownership of the land under section 104 of the RMA, and there is no provision to prevent the grant of resource consent to person(s) who do not own the land on which activities are proposed.<sup>52</sup>

We acknowledge that some individual beneficial owners, and indeed some of the Lake Trust trustees, do not agree with the stance the Lake Trust has taken towards the applications. We heard from some of these individuals at the Hearing. Where those submitters raised

matters concerning the actual and potential adverse effects of the applications we have had regard to those matters in making our decisions on the applications.

However, we record that it is not our role to adjudicate between contested whakapapa, to adjudicate on who did or did not sign the Treaty of Waitangi on behalf of Muaupoko or the Lake bed beneficial owners, to delve into historical Lake bed ownership matters, or to address dissension between the hapu of Muaupoko. Those are matters for Muaupoko to resolve. In that regard we acknowledge the opinion of Deanna Rudd who stated in her written evidence:

“Muaupoko need to reach a state of kotahitanga. We need to find a way to bridge the gap between our people. We need to listen to one another and act in mana enhancing ways towards one another in order that we can form a single view that gives expression to how we as Muaupoko wish to see our lake restored.”

Some submitters queried the right of the Applicant to access the Lake for the proposed activities. We note from the Applicant's opening legal submissions that resolutions authorising access for the purpose of carrying out the works associated with the proposal have been passed by both the Lake Trust and Lake Domain Board.<sup>53</sup> We also note and accept the submission that:

“Contrary to the (mistaken) views of a number of submitters, there is no requirement for the Applicant to demonstrate a right to use the land, including land administered by the Lake Trust, in bringing these applications before the Panel.”<sup>54</sup>

We therefore do not consider the matters relating to Lake ownership and access to the Lake any further.

## **8.2 Wider catchment management activities**

Some submitters<sup>55</sup> expressed the view that the management and control of activities within the wider catchment and the prevention of sediments and contaminants entering the Lake was preferable to the Applicant's proposals. The prevailing view amongst those submitters was that despite the Applicant's proposal, improvements to the Lake will only occur following the cessation of all contaminant inputs to the Lake.

In response, we record that in his evidence Dr Roygard<sup>56</sup> outlined a number of actions and mechanisms that have been put in place under the OOP, in particular the Clean-up Fund that embodies an integrated approach to reducing contaminants entering Lake Horowhenua. Dr Roygard went on to explain how some of the ideas raised in the submissions have already been carried over into drainage and erosion plans for individual farms in the catchment, with some '*quick wins*' already established.

We are satisfied that a broad range of wider catchment management initiatives are either underway or are planned and consider the Applicant's proposal as being a component of a broad suite of actions aimed at improving the water quality and ecosystem of Lake Horowhenua. We therefore do not consider the matters relating to the broader catchment activities any further.

### **8.2.1 Queen Street drain**

Some submitters suggested that the Queen Street drain, which conveys the stormwater from a large area of urban Levin, should not be allowed to enter Lake Horowhenua or that its flow should be treated prior to entering the Lake. In response we note that stormwater treatment upgrades to Queen Street drain are also part of the Clean-Up Fund project discussed by Dr Roygard.<sup>57</sup> We also note that the Applicant has not proposed any activities on the Queen Street drain as part of the suite of applications before us. We therefore have no scope to consider what should or should not occur in relation to that drain.

### **8.2.2 Levin WWTP**

Some submitters<sup>58</sup> were of the view that the Levin wastewater treatment plant (WWTP), which is located adjacent to the south-eastern end of the Lake, should be relocated. The reason for that was that there was some history of the WWTP overflowing into the Lake, particularly at times when the WWTP was subjected to extreme wet weather inflows. We acknowledge that concern, but note that the location of the Levin WWTP is not a matter before us and it is not relevant to the Applicant's proposal upon which we must make decisions.

## **8.3 Alternatives**

A number of submitters<sup>59</sup> postulated that there were alternative or better options for the restoration of Lake Horowhenua and therefore the Applicant's proposals should be declined to enable these options to be explored and implemented. The alternatives suggested included spraying the Lake weeds, dredging or pumping out the Lake sediments, constructing a wetland at the Arawhata site instead of a sediment trap, and treating the outflows from the Patiki Stream and Queen Street drain.

In response we note that section 88 and clause 6(1)(a) of Schedule 4 to the RMA only require an assessment of possible alternatives if the proposal for which consent is sought is likely to result in a significant adverse effect on the environment. On the evidence, we do not find that to be the case here. However, we note that notwithstanding there being no legal requirement to do so, the alternatives suggested by submitters were helpfully assessed by the experts for both the Applicant and the MWRC and those alternatives were all discounted on their merits, as recorded in the application documents and the Joint Witness Statements prepared by the experts. We accept those expert assessments.

We also note and agree with the Applicant's Reply submissions regarding the alternatives postulated by some submitters:

"For the avoidance of doubt, the current proposals do not prevent Muaupoko from undertaking the above, or any other, activities as efforts in restoring the Lake. In fact the Accord specifically contemplates that there will be further work in terms of new initiatives, including research of other restoration options (see for example, Task 24 of the Action Plan regarding discussions between the Accord partners as to lake levels)."<sup>60</sup>

Finally on this matter, we record that it is our role to assess the applications before us and decide, on the merits, whether or not to grant them. It is not our role to direct the Applicant to undertake alternative or additional activities. Any such decisions would fall under the executive functions of Horizons Regional Council. Nor is it our role to assess the relative merits of alternative activities for which the Applicant has not sought consent.

Accordingly, we do not discuss these alternatives further.

#### **8.4 Iwi cultural effects**

It is long-established and accepted practice that the relationship iwi have with their land, water, sites, waahi tapu and taonga, and the actual and potential adverse effects of activities on those matters, can only be expressed by the tangata whenua themselves. In this case we have heard directly and authoritatively from the representative iwi bodies, namely the Horowhenua 11 Part Reservation (Lake) Trust (representing the beneficial owners of the Lake) and the Muaupoko Tribal Authority (being the mandated iwi authority), both of whom submitted in support of the applications. Indeed, we heard from Mathew Sword, the Chairman of the Lake Trust, how the Trust considered itself to be the driving force behind the applications and how the Trust was firmly of the view that the applications should be granted and the proposed works should proceed.

In our view, the clear and strongly voiced support of the Horowhenua 11 Part Reservation (Lake) Trust and the Muaupoko Tribal Authority for the proposal would reasonably allow us to conclude that our obligations to have regard to sections 6(e), 7(a) and 8 of the RMA have been met.

However, there is clearly a small group of Muaupoko who do not agree with the consent applications. While the concerns of those individuals were more directed at process matters, rather than the actual and potential effects of the applications, there are some matters of contention raised by those individual iwi submitters that we find it necessary to address. We do so now.

##### **8.4.1 Section 18 of the ROLD Act**

Section 18 of the Reserves and Other Lands Disposal (ROLD) Act 1956 was raised by submitters<sup>61</sup>. Section 18 of the ROLD Act addresses the legal status of the Lake being owned by “*the Maori owners*” and vested the area defined “*in trust for the said Maori owners*”<sup>62</sup>. An assertion was made by Eugene Henare that the ROLD Act held primacy over the RMA in its application. The issue of the ownership of the Lake has already been addressed in this decision report and we are not persuaded that Mr Henare’s assertion is either correct or relevant to our assessment of the applications before us.

##### **8.4.2 Is the entire Lake a waahi tapu?**

The status of the entire Lake as a waahi tapu was raised in submissions and lay evidence. Some submitters<sup>63</sup> suggested that the Lake in its entirety should be considered a waahi tapu. Those submitters made direct reference to battles and other past events that occurred on and around the Lake. Their accounts included reference to koiwi being interred in the bed of the Lake, however these accounts were specific to areas on and around the islands within the Lake. Whilst these submitters clearly have a strongly held relationship with the Lake, we find that the evidence they presented to us does not substantiate waahi tapu status being applied to the entire Lake.

Importantly in our view, the Lake Trust held that the Lake in its entirety should not be considered a waahi tapu, as evidenced by the lack of customary protocols and tikanga that would occur if the entire Lake was a waahi tapu. Further to this, we consider that the use of the Lake and its historical recognition as a food basket for tangata whenua supports the Lake Trust’s position.

Submitters<sup>64</sup> also raised concerns regarding significant sites not referenced in records and known only to discrete whanau groups. However, we consider that public notification of the Applicant's proposal, including the location of the proposed activities, provided an opportunity for whanau to bring any such matters to our attention. In that regard we note that only a few submitters spoke to the specific values they associate with Lake Horowhenua<sup>65</sup> and when they did, they did not provide any evidence or suggestion that the Applicant's proposals could not be designed or carried out in such a way that any adverse effects could not be mitigated. We also find that the use of a suitably experienced Tangata Tiaki is an appropriate measure to further assist with remedying, mitigating or avoiding potential adverse effects on any such discrete sites that may exist in proximity to the Applicant's proposed activities.

#### **8.4.3 The lack of a 'CIA'**

The Applicant put forward a CIA as part of the application which was in the form of correspondence from the Lake Trust to the Applicant. When he gave evidence to the hearing, Mr Sword (the Lake Trust chairperson) made it clear that this correspondence was not intended as a CIA and it was in fact intended to convey the position of the Lake Trust, as taken from the minutes of a Lake Trust meeting, to the Applicant. However, while not qualifying as CIA, Mr Sword felt the information presented in the correspondence would be informative as to the cultural effects of the proposed activity. We agree.

Submitters [REDACTED] [REDACTED] [REDACTED] [REDACTED] both referred to the document *He Ritenga Whakatikatika* developed through a joint initiative by members of Muaupoko and Ngati Pareraukawa in terms of it being a CIA. This document provides an alternate strategy and options for the restoration of the Lake, however it does not relate specifically to the cultural effects of the proposed activities before us for which the HRC has sought consent. As such, we are not persuaded that *He Ritenga Whakatikatika* should be considered as a CIA for the applications before us.

#### **8.4.4 Cultural indicators monitoring programme**

Cultural monitoring through the presence of a Tangata Tiaki during the physical works associated with the construction of the boat ramp, fish pass and the sediment trap was proposed by the Applicant and supported by the Lake Trust.

Mr Sword and Dr Proctor (both trustees) advised that the Lake Trust is currently developing a cultural indicators monitoring programme, but that it was not at a stage where it could be considered as part of the applications before us. The Applicant was supportive of the development of such a programme and indicated a willingness to work with the Lake Trust on its development and implementation.

As the cultural monitoring programme is still in development and was not examined as part of the hearing process, it cannot be considered as part of this decision. No other cultural indicators were proposed through the hearing process. Therefore, we conclude that imposing of a condition that a Tangata Tiaki with relevant knowledge and experience as appointed by the Lake Trust and MTA, and who is present during all construction works, is an appropriate means to provide the necessary input and guidance as and when needed.



## **8.5 Weed Harvesting**

### **8.5.1 Adequacy of weed harvesting to improve water quality**

Several submitters<sup>66</sup> opposed the weed harvesting in Lake Horowhenua on the grounds that they did not accept that the strategy would achieve a clean-up of the Lake. The technical evidence provided in the Applicant's proposal, and the expert evidence of Dr Gibbs (for the Applicant), went into some detail about how the proposed weed harvesting would break the cycle of cyanobacterial blooms and benefit the water quality of the lake. In response to our questions, Dr Gibbs was clear in his opinion that the improvements in water quality resulting from the weed harvesting would be apparent almost immediately. We note that in his evidence, Dr Kelly (for the MWRC as regulator) expressed his opinion that the weed harvesting investigations yielded a clever solution for controlling cyanobacteria blooms in the lake.<sup>67</sup> We find the evidence of Dr Gibbs to be compelling and we are satisfied that the proposed weed harvesting strategy will result in marked improvements to the water quality of the Lake.

### **8.5.2 Lake bed sediment resuspension**

There were some differences in opinion between Dr Gibbs and Dr Kelly regarding the potential for resuspension of sediments following weed harvesting and the potential for macrophyte die back following harvesting.<sup>68</sup> A condition of consent was agreed that has specific requirements around experimental weed cutting during the first year of harvesting to two different depths and having specific monitoring requirements to assess water quality and macrophyte responses.<sup>69</sup> We are satisfied that this will provide sufficient information to enable the weed harvesting programme to be managed on an adaptive basis so as to avoid the resuspension of sediments.

### **8.5.3 Weed disposal, including odour**

Concern regarding the disposal of the harvested weed and the potential for obnoxious odours was expressed by a number of submitters. The difficulty of sanitising weed when removed from the water was raised by one submitter in particular.<sup>70</sup> In their Weed Harvesting Strategy, the Applicant has given some considerable thought to options for the disposal of the weed when removed from the Lake.<sup>71</sup> Whilst various options are to be further explored for the end use of weed (including composting or for use as stockfeed) the Strategy states that it is likely the weed will be either landfilled or used as compost. A condition of consent requires the development of a Weed Harvesting Management Plan that will include the disposal and end use of the harvested weed.<sup>72</sup> We are satisfied that consideration has been given to the end use of the weed and the disposal of the harvested weed will not result in objectionable odours or other issues of sanitation in the vicinity of Lake Horowhenua.

### **8.5.4 Wash down facility**

A public wash down facility has been provided on Queen Street to prevent the introduction of further weed species into the Lake and to prevent the transfer of weed species from Lake Horowhenua to other locations. In his evidence, Dr Gibbs was clear in his view that the greatest risk of transfer of new aquatic weed species into Lake Horowhenua was from fragments retained on recreational boat trailers and fyke nets used for catching freshwater tuna in other locations regionally.<sup>73</sup> Dr Gibbs further emphasised that the existing boat wash

down facility was the first proactive step in the protection and restoration of Lake Horowhenua, but he considered that educating people to use it was the next most important step.<sup>74</sup> We were satisfied that a boat wash down facility is available to the recreational users of the Lake, but more importantly we note from the evidence of Dr Roygard that biosecurity management will be undertaken through the use of strict protocols for the wash-down of the weed harvester if it is moved between lakes. This will include removing key parts of the harvester for full clean-down, as well as a stand down period for the equipment to dry prior to use in other lakes.<sup>75</sup> We are satisfied that this provides a further control measure for preventing the transfer of weed species from Lake Horowhenua to other locations. We also note that a recommended condition of consent requires that the weed harvester operational biosecurity strategy referred to by Dr Roygard to be prepared and implemented.<sup>76</sup>

#### **8.5.5 By catch**

Some submitters<sup>77</sup> raised the issue of loss of fish and other organisms as by-catch in the harvested weed. The Applicant's proposal is clear that such negative effects from the harvester operations are expected and are unavoidable. We accept the evidence of Dr Kelly<sup>78</sup> who indicated that any such losses would be minor in the context of the conservation status of the fish species considered.

#### **8.5.6 Costs**

Some submitters<sup>79</sup> expressed concern regarding the likely affordability of the Applicant's proposal and how the costs of the proposal would be recovered from ratepayers. In response we note that the manner in which the proposal is to be funded is a matter relevant to the decision making role of Horizons Regional Council under the provisions of the Local Government Act 2002. In that regard the *Omokoroa* Environment Court decision is relevant and it stated:

"A decision that the cost of a public work is appropriate is one to be made by the elected members of the Council, for which they are responsible to the electorate. Such a decision is not a decision under the Resource Management Act .... affordability of a .... project was for the District Council, as the proponent and an elected rating authority, to judge ..."<sup>80</sup>

We find that the issue of affordability of the proposal and associated impacts on rates is a matter that we should give little weight.

#### **8.5.7 Consent duration**

One submitter<sup>81</sup> opposed the 35 year duration for the proposed weed harvesting activity sought by the Applicant and recommended to us by Mr St Clair and sought a shorter duration. When pressed by us, Mr Smith advised that he had no way of knowing how long the weed harvesting programme would take to implement but he nevertheless suggested that a ten year consent duration would suffice. We are not persuaded by that suggestion. We understand that the weed harvesting operation will be a long-term activity. We are satisfied that it will not have any adverse effects on the environment that are more than minor. We find there is no valid reason for imposing a duration shorter than that applied for.

## **8.6 Arawhata sediment trap**

### **8.6.1 Other contaminants**

Several submitters<sup>82</sup> were concerned about the potential for other contaminants carried by the Arawhata Stream to enter Lake Horowhenua and that the proposed sediment trap would not capture those contaminants. The source of these additional contaminants would be the land use activities occurring in the wider Arawhata Stream catchment. We note that a number of contaminant reduction initiatives are already underway in the wider catchment, as was discussed in section 8.2 of this decision report. The Applicant's proposal and the evidence of Mr Bell<sup>83</sup> show that a significant proportion of sediment (and phosphorus) will be removed by the Arawhata sediment trap. Dr Kelly expressed his opinion that the (modelled) sediment capture by the sediment trap represents a significant proportion of the sediment and phosphorus load to the Lake.<sup>84</sup> We are satisfied that the proposed sediment trap is a desirable mitigation measure that will assist with enhancing the water quality of Lake Horowhenua.

### **8.6.2 Fish stranding**

Some submitters were concerned that the sediment trap could entrain and strand native fish. In his evidence, Dr Kelly also raised concerns that the sediment trap could result in fish entrapment and stranding. In response, and as we discussed in section 7.3 of this decision report, in his evidence Mr Bell confirmed that the design of the Arawhata sediment trap had been revised so that when water is diverted into the sediment trap it will flow from cell A to cell D; and when water levels recede and the new Arawhata Stream culvert ceases diverting water into the sediment trap, water will now flow back from Cells C and B into cell A and from there back into the Arawhata Stream. We understand that the intention of the redesign is to reduce the risk of fish stranding. The fishery experts JWS<sup>85</sup> recorded that Dr Kelly and Mr Brown agreed that the design improvements were beneficial in that regard and that a focus on eel monitoring (the potential stranding of adult eels) within the sediment trap was accordingly appropriate. Having reviewed the evidence we agree.

### **8.6.3 Arawhata Stream flooding**

Some submitters, including [REDACTED], submitted that the risk of flooding to their property was significant and therefore the sediment trap should not be constructed at this time. The submitters were generally concerned with the capacity of the existing culvert under Hokio Beach Road and the risk of the proposed new culvert associated with the sediment trap further rising water levels. This matter was comprehensively addressed in the evidence of Mr Bell.<sup>86</sup>

Mr Bell advised that the proposed Arawhata Stream sediment trap culvert had been sized to ensure that typical low flows in the Arawhata Stream will continue to flow unimpeded to Lake Horowhenua. His hydraulic modelling showed that during small floods (those less than three cubic metres per second) the water level upstream of Hokio Beach Road would be slightly lowered following the construction of the sediment trap because the sediment trap allowed the water to spread out over a larger area. He advised that the lowered water level in the Arawhata Stream would be beneficial in terms of allowing the upstream tributaries to freely flow into the Arawhata Stream. Mr Bell's modelling also considered larger floods with a return period greater than one year. He advised that during those events the existing Hokio Beach Road culvert acted as a throttle and effectively controlled the upstream water

level. This meant that proposed Arawhata Stream sediment trap culvert would have no effect on the ability of the Arawhata Stream or its tributaries to convey flood waters.

Mr Bell's view was shared by Mr Ridley<sup>87</sup> and further reinforced in the evidence of Dr Roygard. We received no other qualified technical evidence on this matter. We are consequently satisfied on the evidence that the proposed new culvert associated with the sediment trap will not exacerbate any existing upstream flooding problems.

We note that the capacity of the existing Hokio Beach Road culvert may be addressed by HRC as part of a separate programme of works, however we accept the Applicant's view that this is an issue unrelated to our consideration of the consent sought for the Arawhata Stream sediment trap.

## **8.7 Boat ramps**

A submitter, Water and Environmental Care Association Inc., questioned the need for the construction and operation of two boat ramps as part of the proposal and suggested that if granted, the consents should be limited to one boat ramp only.

We note that the Applicant intends to construct and use the Arawhata and Lake Domain boat ramps as a means to access the Lake and to provide facilities to remove harvested weed from the weed harvester. The evidence of Dr Roygard explained how the second, or Lake Domain, boat ramp would enable a greater level of efficiency for the weed harvesting operation, as well as providing advantages to the Applicant in terms of logistics, cost, and health and safety matters.<sup>88</sup> We accept that evidence and we also accept that there will be amenity benefits for both Muaupoko and the community associated with a new boat ramp located in the Domain.<sup>89</sup>

The caucusing between technical experts resulted in agreement on the measures to mitigate the adverse effects associated with the construction and operation of both proposed boat ramps. Consequently, we conclude that the effects of constructing and operating both boat ramps will be appropriately managed and we do not consider that there is any relevant resource management reason for restricting the number of boat ramps applied for to one.

## **8.8 Fish pass**

### **8.8.1 Fault line**

Some submitters<sup>90</sup> were concerned that the proposed fish pass was located in proximity to an earthquake fault line. This was addressed in the evidence of Mr Foxall.<sup>91</sup> He advised that there had been no impact on the height of the weir from past seismic activity, as verified by the survey of two benchmarks, one close to the weir and one around six kilometres away. We infer from that uncontested evidence that the prospect of the level of the proposed fish pass being impacted by seismic activity is remote.

### **8.8.2 Pest fish**

In his evidence, Dr Kelly<sup>92</sup> addressed the potential adverse effects of the Hokio Stream fish pass on Lake Horowhenua. In particular, he expressed a concern<sup>93</sup> that the greater opportunity for pest fish, and especially Koi carp, to move freely in and out of Lake

Horowhenua could potentially enhance the populations of those pest fish by improving access to lower-river habitats for spawning and feeding. In his evidence Mr Brown<sup>94</sup> indicated his view that a fish monitoring plan was not necessary. As we discussed in section 7.5 of this decision report, both Mr Brown and Dr Kelly agreed on a more adaptive programme whereby if a trigger limit of 50 kg/ha of Koi carp and hybrids in the Lake was exceeded then a pest fish management strategy would need to be developed.<sup>95</sup> Both Mr Brown and Dr Kelly confirmed during questioning on this matter that they were satisfied with this outcome.

A submitter, Mr Charles Rudd, raised the issue of provision for other (native) species using the fish pass and their respective spawning cycles and timing.<sup>96</sup> The Applicant's evidence (including the additional information contained in the section 92 response) advised that the fish pass will be designed to provide for native fish of 'poor' climbing ability to enter into Lake Horowhenua; and this was confirmed in the evidence of Mr Brown. We are satisfied that the fish pass will provide for the movement of native fish in and out of Lake Horowhenua and that appropriate controls have been included in the resource consent conditions to allow for management responses should pest fish increase in quantity in the Lake.

## **8.9 Lake levels and weir height**

Some submitters<sup>97</sup> queried the current Lake level and the height of the existing Hokio Stream weir. The general theme was that the Lake level was lower than it should be and the height of the weir was lower than required by the Reserves and Other Lands Disposal (ROLD) Act 1956 which set the weir height at 30 feet above low water spring tide at a nominal stream flow of 40 cusecs.

This matter was addressed in the evidence of Mr Foxall.<sup>98</sup> He advised that the weir height had been confirmed as being correct by surveys undertaken by HRC in 2013 and 2015. However, Mr Foxall went on to advise that as a result of considering the issue raised by the submitters, he had concluded that the fish pass would effectively add three metres of width to the weir and that would result in a lowering of the Lake level by 9mm. To avoid that occurring HRC intended to 'clip' a structure to the top of the weir crest to effectively counter the additional length of weir resulting from the fish pass. That would ensure the retention of the Lake level set by the ROLD Act.

Mr Paul Thomas advised us that the 'clipping' on of this structure was permitted under Rule 17-5 of the OOP and that the weir was designated in the Horowhenua District Plan.<sup>99</sup> Consequently, no additional consents were required. Mr St Clair endorsed Mr Thomas' advice.<sup>100</sup> We heard no planning evidence to the contrary and so we accept that advice.

We thank the submitters for bringing this matter to the attention of the Applicant, thereby allowing the potential inadvertent lowering of the Lake level to be avoided by the solution identified by Mr Foxall.

### 8.10 Effects on Hokio Beach residents

Some submitters<sup>101</sup> were concerned about potential impacts of the Applicant's proposal on the Hokio Stream and thereafter on the Hokio Beach township. For example, the evidence of the Hokio Environment and Kaitiaki Alliance (HEKA) stated:

"The grossly polluted Lake Horowhenua empties into the Hokio Stream which runs past the Levin landfill where leachate is allowed to enter it so it can empty its toxic burden into the sea" and

"At the end of all this pollution is Hokio Township and Ocean".<sup>102</sup>

In response to this concern we note that the Applicant is not proposing to add any contaminants to Lake Horowhenua. Indeed, the Applicant's intent is to reduce the amount of sediment entering the Lake by way of the Arawhata sediment trap and to reduce the amount of toxic cyanobacteria algae produced by the annual cycle of weed growth and decay by way of the weed harvesting programme. Consequently, the Applicant's proposal will, if anything, improve the quality of water in the Hokio Stream. When questioned on this matter, Dr Gibbs was clear in his opinion that the Applicant's proposals would lead to an improvement of the water quality downstream of Lake Horowhenua. The applications therefore represent an improvement to the existing situation described by HEKA. That being the case, there are no potential adverse effects that we need to address in relation to the issue raised by HEKA.

### 8.11 Management Plans

The Applicant proposes to prepare management plans as follows:

- Erosion and Sediment Control Plans;
- Planting Strategy(s);
- Pest Fish Monitoring Programme;
- Wharf Construction and Long Term Monitoring Plan;
- Rare and Threatened Plant Management Plan; and
- Weed Harvesting Management Plan.

The preparation of management plans as part of a consenting process is fairly routine for infrastructure projects such as this. In our view management plans are an appropriate mechanism to ensure that conditions of consent are complied with and they avoid the necessity for excessive detail in the conditions themselves, particularly with regard to the detail of how, when and where certain works, activities, mitigation actions and monitoring will occur. However, consent conditions relating to management plans must meet certain standards and we found the conditions initially recommended to us to be inconsistent in that regard.

Each suite of management plan conditions should specify the purpose or objective of the plan, possibly which conditions it is designed to assist with implementing, the minimum contents of the plan (generally without cross-referring to the contents of expert evidence or expert witness JWS's), how and by whom it is to be prepared, and who should be involved in that process. The conditions also specify that each management plan is to be submitted to MWRC and thereafter certified. A process should be set out for reviewing or amending the plans. If there is conflict between the management plan and the conditions, then it must be clear that the conditions prevail. We asked the reporting officers and the Applicant to address these matters in any final conditions recommended to us.

In the event the final agreed (as between Mr St Clair and Mr Paul Thomas) conditions recommended to us as part of the Reply specified that for each management plan:

- there is a requirement to prepare it;
- it is to be prepared by a suitably qualified person;
- the plan must have an objective, a stated scope together and performance management requirements that have been distilled from the evidence, joint witness statements and related material;
- a process for certification is specified;
- a process for amending the plan is specified; and
- there is a requirement to comply with the management plan once certified.

We find that these amended conditions satisfy our concerns and we thank Mr St Clair and Mr Paul Thomas for attending to those matters.

## **9 Part 2 matters**

### **9.1 Positive effects**

In sections 7 and 8 of this decision report we discussed some of the potential adverse effects of the proposal. However, the proposal will also yield a number of positive effects which are relevant to our Part 2 assessment. The Applicant's opening legal submissions stated:

“As described in the applications and supported through evidence, the positive effects of the applications will be real and extensive. If consent is granted, the proposals will provide a wide and significant benefit to people, iwi and the community by improving the ecological and cultural health and biodiversity of the Lake, bringing with it improved amenity, fisheries and recreational benefits.”<sup>103</sup>

We agree with those submissions. We also note that a number of positive effects of the proposed activities, particularly with regard to the ongoing recreational use of the Lake, were outlined in the submissions and evidence of a number of parties including the Levin-Waitarerere Surf Life Saving Club, the Horowhenua Sailing Club, the Horowhenua Rowing Club, the Royal Forest and Bird Protection Society and Victoria Kaye-Simmons.

We find that the positive effects of the proposal weigh heavily in favour of the applications being granted, particularly as the actual and potential effects of the activities are either less than minor,<sup>104</sup> or can be avoided, remedied or mitigated by way of imposed consent conditions.

### **9.2 Part 2**

Part 2 of the RMA sets out the purpose and principles of general application in giving effect to the Act. We understand that the RMA has a single purpose, which calls for an overall broad judgement of potentially conflicting considerations, the scale or degree of them, in terms of their relative significance or proportion in promoting the sustainable management of natural and physical resources.<sup>105</sup> The enabling elements of section 5 are not absolute or necessarily predominant and they must be able to co-exist with the purposes in paragraphs (a) to (c) of section 5.<sup>106</sup>

Section 6 of the RMA identifies matters of national importance that we are required to recognise and provide for.

Section 6(a) provides for the the preservation of the natural character wetlands, lakes and their margins and the protection of them from inappropriate use and development. Firstly, in relation to all parts of section 6 of the RMA, we find that the proposed activities are not a form of inappropriate use and development. In fact, we find the proposed activities to be highly appropriate as they are designed to enhance and restore the water quality and ecology of the Lake. In terms of natural character, we find that the proposed activities will not only preserve the Lake's natural character, but potentially enhance it. In making that finding we acknowledge that the proposed boat ramps are new structures, but we consider that they are not out of character for a Lake that serves as a popular recreational resource for the Levin and wide community.

Section 6(b) provides for the protection of outstanding natural features and landscapes from inappropriate use and development. We have already concluded that the proposed activities are not a form of inappropriate use and development.

Section 6(c) provides for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna. We are satisfied that the agreements reached between the experts for the Applicant and the MWRC, and the resulting recommended conditions of consent, will ensure that rare and threatened plant species will be protected as far as is practicable. In addition, the habitats of nesting NZ Dabchicks will be protected;

Section 6(d) provides for the maintenance and enhancement of public access to and along lakes. We find that the proposed boat ramps will improve access to the Lake and the proposed Lake weed harvesting will improve access on the Lake for recreational and other users.

Sections 6(e) and 6(g) relate to the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga, and to protection of protected customary rights. We note that the Applicant consulted with local Maori, and both the Horowhenua 11 Part Reservation (Lake) Trust and the Muaupoko Tribal Authority supported the proposal. We addressed these matters in more detail in section 8.4 of this decision report.

Section 6(f) provides for the protection of historic heritage from inappropriate use and development. We have already concluded that the proposed activities are not a form of inappropriate use and development. Further, we note that authorities to destroy, damage, or modify an archaeological site from Heritage New Zealand were granted on 25 February 2015.<sup>107</sup> The authorities relate to the proposed Domain boat ramp and the Arawhata sediment trap. Heritage New Zealand advised the Applicant by way of a letter dated 14 April 2015 that no authority was required for the proposed Arawhata boat ramp.<sup>108</sup> We also note that an Accidental Discovery Protocol has been formulated between the Lake Trust, the Muaupoko Tribal Authority and the Applicant. This includes a requirement for the Applicant to invite representatives of the Lake Trust and Muaupoko Tribal Authority to observe any earthmoving activity. We are satisfied that historic heritage will be adequately protected.

Section 6(g) relating to customary rights is not relevant in this case.



Section 7 directs that in achieving the purpose of the RMA, we must have particular regard to some eleven listed matters. We consider that the applicable matters in this case include sections 7(a), 7(c), 7(d), 7(f) and 7(g).

Section 7(a) addresses kaitiakitanga. We find that the support for the proposal by the Lake Trust and the Muaupoko Tribal Authority indicates that kaitiakitanga is adequately provided for.

Section 7(c) relates to the maintenance and enhancement of amenity values and section 7(d) relates to intrinsic values. We have already found that the proposed structures are not out of character for the Lake. The proposed sediment trap, fish pass and weed harvesting activities are designed to enhance the water quality, ecology and consequently the recreational use of the Lake and so we find that amenity values and intrinsic values are adequately provided for.

Section 7(f) relates to the maintenance and enhancement of the quality of the environment. The proposed activities are entirely consistent with this as they will be undertaken in a manner that maintains existing ecological values (such as the NZ dabchick and rare and threatened plant species) and they are explicitly designed to enhance the water quality and ecology of the Lake.

Section 7(g) relates to any finite characteristics of natural and physical resources. The Lake is a finite natural resource and we find that the purpose of the proposal to enhance the water quality and ecological values of the Lake is an appropriate recognition of that finite resource.

Section 8 directs us to take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). We have done so to the extent that those principles are consistent with the scheme of the RMA. We note that the Treaty of Waitangi is a partnership between the Crown and Maori, however in our view the Applicant has been respectful of the Treaty principles and has sought to reflect these principles in their consultation with tangata whenua, in the development of the overall proposal and in agreeing to prepare and adhere to an Accidental Discovery Protocol.

We have sought to give effect to Part 2 of the RMA in making our decisions on the applications in light of the submissions received. In that regard, we find that the proposal will sustain the potential of Lake Horowhenua to meet the reasonably foreseeable needs of future generations (section 5(2)(a)). The proposed sediment trap, fish pass and weed harvesting activities, together with consent conditions imposed on those activities, will safeguard the life-supporting capacity of the Lake and its ecosystems (section 5(2)(b)). We are also satisfied that the comprehensive suite of consent conditions set out in Appendix 3 to this decision report will ensure that potential adverse effects on the Lake environment (including its margins and the Hokio Stream outlet) will be avoided, remedied or mitigated (section 5(2)(c)).

In overall terms we are satisfied that granting the applications is consistent with Part 2 of the Act and that in so doing the purpose of the RMA will be achieved.

## **10 Conditions**

The Applicant suggested conditions for the consents as part of its application documentation. The Applicant's proposed conditions were reviewed by the reporting officers and some amendments were recommended in the Section 42A Reports.

Regarding the conditions that would pertain to the MWRC consents, the planners (Mr St Clair and Mr Thomas) caucused on the conditions and a further set of amended conditions

was attached to the planner's JWS. We posed a number of questions regarding the recommended JWS version of the conditions during the hearing. We received further recommended conditions on 13 November 2015 as part of the Applicant's Reply. We understand that those Reply conditions resulted from further caucusing between Mr St Clair and Mr Thomas that occurred at our request.

The Reply submissions outlined the revisions made to the recommended JWS suite of conditions. Many of the revisions were undertaken in response to our queries or suggestions. We have therefore quoted (in an abridged form) the revisions as explained out in the Reply:

"The consents have been rationalised into bundles associated with the three separate projects. In each of the bundles there are general conditions applying to all the consents related to the particular project and then specific additional conditions applying to individual consents. The result is a much simplified set of conditions.

The conditions provide that a condition (and associated management plans) overrides any inconsistencies between the consents.

The conditions reflect that the Erosion and Sediment Control Plans (ESCPs) are incorporated into the consents at this time in the final form agreed between the experts .... In the event that a contractor wishes to amend the construction and erosion and sediment control methodologies, then a condition provides for certification of amendment to the plans as long as they are a minimum based on the Greater Wellington Regional Council guidelines.

Each of the conditions requiring preparation of a management plan includes:

- (a) a requirement to prepare a management plan;
- (b) a requirement that it is prepared by a suitably qualified person;
- (c) an objective;
- (d) stated scope and performance management requirements distilled from evidence, joint witness statements and related material;
- (e) a process for certification;
- (f) a process for amendment; and
- (g) a requirement to comply with the management plan once certified.

The planting strategy proposed for the boat ramps and weed harvesting activities is to be combined with the previously proposed Rare and Threatened Species Management Plan. A planting strategy is intended for each site so as to respond to individual circumstances.

The ecological conditions are now tied to the commencement of construction.

The Weed Harvesting Management Plan (WHMP) is to include relevant sections of the Weed Harvesting Strategy, as well as provide for a monitoring programme which is to include a number of specific monitoring parameters for the matters identified in the recent expert caucusing statement for Dr Gibbs, Dr Roygard and Dr Kelly. Further, the experts have agreed that following the trial period, harvesting at a depth of 300mm across the entire lake can occur so long as weed stem density measures show 50% or greater survival rate post harvesting in the 300mm trial and if there is no more than 30% increase in baseline turbidity levels for the months of September through December.

Biosecurity protection is to be included in the WHMP.

The [Accidental Discovery Protocols] ADPs have been signed by the relevant parties, the Lake Trust, MTA and in respect of the sediment trap, Kohuturoa Marae. Signed versions of the ADPs are [provided] ... Compliance with the final ADPs is now required by condition of consent.

The need for a Tangata Tiaki during on-site works is now expressly required as part of the consent conditions.”<sup>109</sup>

We have carefully reviewed the final suite of recommended conditions and find them to be generally appropriate. We have however made some amendments to them to correct minor formatting, grammatical and cross-reference errors and to ensure a consistency of wording. We did not make any substantive amendments to the Reply version of the conditions.

Regarding the conditions that would pertain to the HDC consents, we note that the Applicant initially supported the conditions recommended to us by Ms Graham, as amended by her in her Supplementary Notes. However, in the Reply the Applicant advised that the MWRC consent conditions covered the planting strategy in sufficient detail and so there was no need for the HDC consents to replicate the requirements for planting. The Applicant consequently sought that the planting conditions referred to in Ms Graham’s supplementary notes be deleted.<sup>110</sup> We agree with that suggestion for the reasons outlined and so as to avoid duplication and overlap as between the subsequent implementation of the consents.

We have aligned the wording of the conditions relating to the Accidental Discovery Protocol and the Tangata Tiaki in the MWRC and HDC consents, favouring the final wording recommended for the MWRC consents. We have also omitted Ms Graham’s recommended condition regarding a Biosecurity Management Plan for consent 501/2015/3638 as that matter is now adequately dealt with in more detail in the MWRC boat ramp and weed harvesting consent conditions.

The final conditions imposed are set out in Appendix 3 of this decision report.

We are satisfied that the resource consent conditions that we intend to impose, both singularly and in total, are necessary and appropriate to avoid, remedy or mitigate potential the adverse effects identified by the technical reports and investigations, the peer reviews, the expert evidence and the submitters. We are also satisfied that the monitoring and reporting conditions will enable the ongoing effects of the Applicant’s proposal to be assessed over time, thereby informing whether or not future reviews of conditions under section 128 of the RMA are necessary.

## **11 Determination**

Pursuant to the powers delegated to us by the Manawatu Wanganui Regional Council and the Horowhenua District Council under section 34A of the Resource Management Act 1991, we record that having read the application documents and the Applicant’s legal submissions and expert evidence, the section 42A officer’s reports and technical evidence, the expert’s Joint Witness Statements, the evidence presented by the submitters at the hearing, and having considered the various requirements of the RMA, we are satisfied that:

- i. The Applicant has undertaken a thorough assessment of the potential adverse effects that might arise from the Arawhata Stream Sediment Trap, the Fish Pass at the Lake Horowhenua outlet weir to the Hokio Stream, and the Lake Horowhenua Weed Harvesting (the proposal);
- ii. The potential adverse effects of the proposal are either no more than minor or can be adequately avoided, remedied or mitigated by the imposition of conditions of consent under section 108 of the RMA;
- iii. The effects of the proposal, when managed in accordance with those conditions, will not be inconsistent with or contrary to the relevant statutory instruments and plans;

- iv That overall, the effect of allowing the proposal will be of benefit to Lake Horowhenua (in terms of Lake water quality and ecology), iwi and the community; and
- iv. Allowing the proposal to proceed will be consistent with the Purpose and Principles of the RMA.

We therefore **grant** the resource consent applications sought by Horizons Regional Council for the proposal as listed in section 2 of this decision report subject to the imposition of the conditions set out in Appendix 3 for the reasons listed above and as further discussed in the body of this decision report.

Signed by the commissioners:



Rob van Voorthuysen (Chair)



Dr Ian Boothroyd

Reginald Proffit

Dated: 11 December 2015

## **Appendix 1   Appearances**

### **Hearings Committee**

Rob Van Voorthuysen (Chair)  
Dr Ian Boothroyd  
Reginald Proffit

### **Applicant<sup>111</sup>**

Shannon Johnston (Counsel)  
Dr Max Gibbs (Water Quality Scientist)  
Mr Jon Bell (Senior Design Engineer at Horizons)  
Mr John Foxall (Area Engineer for Horizons)  
Mr Gregor McLean (Erosion and Sediment Control)  
Mr James Lambie (Senior Environmental Scientist)  
Mr Logan Brown (Senior Environmental Scientist)  
Mr Paul Thomas (Planner).

### **Council officers and advisors**

Mark St Clair, MWRC consultant planner  
Graeme Ridley, MWRC consultant sediment and erosion control expert  
Frances Forsyth, MWRC consultant ecologist  
Dr David Kelly, MWRC consultant freshwater scientist  
Sue Graham, HDC senior planner  
Yvette Stewart, MWRC consents administrator  
Jasmine Mitchell, MWRC senior consents planner

### **Submitters**

[REDACTED]

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<sup>111</sup> We had no questions for Mr Neil Thomas (a hydrogeologist for the Applicant) and so he was excused from attending the Hearing.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## Appendix 2 Directions and Memoranda



### MEMORANDUM

**FILE:** APP-2015200296.00  
**DATE:** 28 September 2015  
**TO:** Rob van Voorthuysen, Ian Boothroyd, and Reginald Proffit  
**FROM:** Nic Peet  
**SUBJECT:** PERCEIVED CONFLICT OF INTEREST – HEARING PANEL FOR LAKE HOROWHENUA APPLICATION NO. APP-2015200296.00 – CONSENT HEARING

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1. Horizons Regional Council and Horowhenua District Council have both considered whether any conflict of interest or bias arises, as suggested by some submitters, for Mr van Voorthuysen acting as an independent commissioner and chair for hearing consent applications in relation to the restoration of Lake Horowhenua. Both councils are satisfied that there is no conflict of interest or actual or perceived bias.
2. For the record Mr van Voorthuysen was a Director of Environmental Management Services Ltd until June 2008. At that point Mr van Voorthuysen left that role and ceased his interest in Environmental Management Services Ltd. He has since run his own independent company. He has not discussed the application documents with Paul Thomas the author who now works for Environmental Management Services Ltd.
3. Horizons Regional Council and Horowhenua District Council have also been asked if the hearing of several applications for consents during the same hearing is appropriate. The councils confirm that it is and is being done in the interests of efficiency and to avoid the duplication of evidence. The panel has confirmed that each application will be heard on its own merits.

Nic Peet  
Group Manager Strategy and Regulation Horizons Regional Council

**Directions/Minute of the Chairperson #2**  
**APP – 2015200296.00 – Manawatu-Wanganui Regional Council**  
**501/2015/3638 and 501/2015/3639- Horowhenua District Council**

Since issuing the initial Directions dated 12 August 2015, it has come to my attention that the hearing date for the suite of applications made under the Resource Management Act 1991 (RMA), currently scheduled for 5 – 9 October 2015, coincides with the Waitangi Tribunal hearing for the Muaupoko Tribal Authority Treaty of Waitangi claims, involving Lake Horowhenua. I understand that a number of parties involved in the Waitangi Tribunal hearing wish to participate in the hearing under the RMA.

The Manawatu-Wanganui Regional Council as applicant has responsibly requested a change to the scheduled 5 – 9 October 2015 hearing dates in order that all parties can participate in the RMA hearing. I accept that request. Consequently, the RMA hearing is re-scheduled to commence at 10.00am Tuesday 27 October 2015. At this stage the hearing is scheduled for four days and will commence at 9.30am on the following days unless otherwise directed by the Chair. On Tuesday 27 October 2015, following opening by the applicant, the Panel will undertake a site visit commencing at approximately 1pm. Following the site visit, the hearing will recommence at 9.30am on Wednesday 28 October 2015.

The Chair notes that section 103B, requires that a consent authority must provide the section 42A reports to the applicant and submitters who wish to be heard, at least 15 working days prior to the hearing. In addition, section 103B requires the applicant to provide the consent authority with briefs of evidence 10 working days before the hearing, and for submitters calling expert evidence to similarly provide that evidence five working days before the hearing. The Chair further notes that the consent authority must give written or electronic notice to the parties, that the applicant's evidence and any submitter expert evidence is available at the consent authority's offices.

Accordingly:

1. Pursuant to section 103B(2) of the RMA, the Chair directs that the MWRC and HDC section 42A reports be provided to the parties, by way of email, directing the parties to the MWRC website no later than 4pm on Friday 2 October 2015.
2. Pursuant to section 103B(3) of the RMA, the Chair directs that MWRC (the Applicant) is to provide written briefs of all their evidence to Mrs Yvette Stewart Regulatory Administrator at MWRC no later than 4pm on Friday 9 October 2015.
3. The Chair requests that as soon as practicable following receipt of any such evidence received pursuant to Direction 2, MWRC and HDC provides a copy to all other parties to these proceedings by way of email, directing the parties to the MWRC website and advising that hard copies are available at MWRC and HDC offices.
4. Pursuant to section 103B(4) of the RMA, the Chair directs that if any person who has made a submission intends to present expert evidence at the hearing, including expert planning evidence, then that party is to provide a written brief of that expert evidence to Mrs Yvette Stewart Hearings' Administrator at MWRC no later than 4pm on Friday 16 October 2015.
5. The Chair requests that as soon as practicable following receipt of any such evidence received pursuant to Direction 4, MWRC and HDC provides a copy to all other parties to these proceedings by way of email, directing the parties to the MWRC website and advising that hard copies are available at MWRC and HDC offices.
6. In terms of Directions 1, 3 and 5 the reports and evidence should be provided to MWRC electronically by email or be made available for downloading from the MWRC website [www.horizons.govt.nz](http://www.horizons.govt.nz). Hard copies of the evidence should only be provided on request.



7. Pursuant to s41C(1) of the RMA, the Chair directs that in respect of expert evidence pre-circulated in accordance with these Directions, the hearing will be conducted in the following manner:
  - The section 42A report(s) will be taken as read;
  - The applicant or submitter that have provided the pre-circulated evidence is to call the witness in person;
  - The witness should be introduced and asked to confirm his or her qualifications and experience;
  - The witness should be asked to confirm the matters of fact and opinion contained in the brief of evidence;
  - The witness will then be given an opportunity to draw to the attention of the Panel the key points in the brief. No new evidence shall be introduced, unless it is specifically in response to matters raised in other pre-circulated briefs of evidence supplied by another party – in such cases the new evidence shall be presented in written form as an Addendum to the primary brief of evidence and it may be verbally presented by the witness. If there is any variation between what the witness says and what is in the brief of evidence, the Panel will assume that the written brief is the evidence unless the content of the brief is specifically amended by the witness;
  - The witness may then be questioned by the Panel.
8. Non-expert evidence (including submitter lay evidence) and legal submissions may be tabled and read aloud on the day that the relevant party appears at the hearing.
9. The Chair also requests that all parties (the MWRC and HDC reporting officers, MWRC as the applicant, and submitters) calling expert witnesses liaise amongst themselves in order to facilitate their respective experts conferencing on matters relevant to their specific areas of expertise prior to the preparation of their reports or evidence (including any applicable conditions of consent). The aim of the conferencing should be to identify areas of agreement and disagreement which can then be noted in the reports and evidence. The Panel will attempt to focus on the issues of contention during the hearing and in deliberations thereafter and so the assistance of the parties to clearly identify areas of expert agreement and disagreement in this manner will be greatly appreciated.
10. These directions supersede our initial directions dated 12 August 2015.
11. Any correspondence to the Chair and Panel should be directed through Mrs Yvette Stewart, Hearings' Administrator at MWRC.



Rob van Voorthuysen  
**Independent Commissioner - Chair**

**20 August 2015**

**Minute of the Chairperson #5**  
**APP – 2015200296.00 – Manawatu-Wanganui Regional Council**  
**501/2015/3638 and 501/2015/3639- Horowhenua District Council**

On 9 September 2015 we issued a Minute regarding matters raised by submitters [REDACTED], on behalf of the Muaupoko Co-operative Society Ltd, and [REDACTED] on behalf of himself.

In response to the matter raised by [REDACTED], we advise that the consent authority has organised an alternative hearing venue for [REDACTED] being the Levin public library. An appearance time is yet to be confirmed, but is likely to be late afternoon on Wednesday 28 October 2015 or alternatively late afternoon on Thursday 29 October 2015.

[REDACTED] requested that the hearing be rescheduled after the conclusion of the Waitangi Tribunal hearings of the Muaupoko Wai claims.

The applicant responded by way of a Memorandum of Counsel dated 9 September 2015. The applicant advised that they had given serious consideration to [REDACTED] request. However, having revisited the proposed schedule for the Waitangi Tribunal proceedings, the applicant considered that the RMA hearing currently scheduled mid-way between the two Tribunal hearing weeks of 5 October and 23 November 2015 was reasonable. The applicant also noted that [REDACTED] was the only submitter seeking a further delay and that delaying the RMA hearing further would raise issues with respect to compliance with the statutory timeframes under the RMA, the obligation under section 21 of that Act to avoid unreasonable delay, and potential problems with witness and submitter availability for an undetermined new date late in the calendar year.

The RMA hearing is currently scheduled for 27 to 30 October 2015. The Waitangi Tribunal hearing is currently scheduled for 5 to 9 October 2015 (week 1) and 27 to 30 November 2015 (week 2). It appears to us that material for week 1 of the Waitangi Tribunal hearing must be filed by 23 September 2015 and material for week 2 of the Waitangi Tribunal hearing must be filed by 11 November 2015.<sup>112</sup> In light of those dates we consider that a reasonable amount of time is available for submitters to the RMA hearing, who are also participants in the Waitangi Tribunal, to prepare for the RMA hearing.

Having considered the matters raised by [REDACTED] and the applicant's response, we have concluded that the current scheduling of the RMA hearing is not unreasonable and we decline to consider a further rescheduling of the RMA hearing.



Rob van Voorthuysen  
**Independent Commissioner - Chair**

**11 September 2015**

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<sup>112</sup> Memorandum-Directions (No. 93) Of Deputy Chief Judge C L Fox, Presiding Officer, Sir Tamati Reedy (Emeritus Professor), The Honourable Sir Douglas Kidd, Dr Grant Phillipson And Tania Simpson, dated 3 July 2015.

**Minute of the Chairperson #6**  
**APP – 2015200296.00 – Manawatu-Wanganui Regional Council**  
**501/2015/3638 and 501/2015/3639- Horowhenua District Council**

We, the independent hearing commissioners, have received correspondence dated 8 October 2015 from submitter [REDACTED] on behalf of the Muaupoko Co-operative Society Ltd. We would not normally enter into correspondence with submitters prior to a hearing, but this hearing is proving to be somewhat unusual in that regard.

Accordingly, we have issued this further Minute.

[REDACTED] raises a number of issues which I have distilled as follows:

- a) responsibilities of kaitiaki, whanau and hapu to identify adverse effects of a proposal and whether an applicant is able to provide mechanisms, agreed to by whanau and/or hapu, that will avoid, remedy or mitigate adverse effects;
- b) the Applicant's engagement with and consultation with tangata whenua, whanau and hapu;
- c) the absence of a pre-hearing meeting;
- d) the relationship between our timetabling Directions and pre-hearing meetings;
- e) reaching possible agreements prior to the hearing;
- f) matters raised by myself in relation to another consent application lodged by the Horowhenua District Council for the 'Hokio Cut' works on the Hokio Stream;
- g) the adequacy of the Applicant's AEE in addressing the adverse effects of concern to the Muaupoko Co-operative Society Ltd.

We thank [REDACTED] for bringing these matters to our attention.

Our response on each of the matters is as follows:

- a) We respect and acknowledge all tangata whenua submitters and the various kaitiakitanga responsibilities they exercise. We encourage all submitters to continue to liaise with the Applicant prior to the hearing (and expect the Applicant to respond reasonably to requests for such dialogue) so that parties can continue to explore means by which adverse effects of concern can be avoided, remedied or mitigated;
- b) We acknowledge that some submitters may be disappointed with the Applicant's consultation efforts. We find that is nearly always the case in matters such as this. However, we expect submitters to convey their concerns to us at the hearing, together with means by which those concerns might be addressed, so that we have that information before us when we come to make our decisions on the applications. The ability of tangata whenua submitters to be involved in this hearing process, and the due consideration we will give to their views in deliberating and reaching our decisions, may well go quite some way to curing any perceived imbalance or failures in the consultation process to date;
- c) Pre-hearings are discretionary at the behest of the consent authority (section 99(1) of the RMA). We play no role in that process;
- d) Our timetabling Directions #1, first issued on 13 August 2015, required the S42A reports to be filed on 10 September 2015. That allowed ample time for a pre-hearing meeting to occur. In the event the hearing was delayed in response to requests from submitters and our timetabling Directions #2 extended the S42A filing date to 2 October 2015, providing further time for a pre-hearing meeting to occur. Consequently, our timetabling Directions did not, in our view, preclude a pre-hearing meeting from occurring;
- e) As noted under (a) above, we encourage ongoing liaison and dialogue in order to arrive at mutually agreeable outcomes if at all possible;
- f) The Directions I have issued for the Hoiko Cut hearing are specific to that process, which relates to emergency works undertaken under section 330 of the RMA;

- g) We acknowledge that some submitters may be disappointed with the Applicant's AEE. Again, we find that is nearly always the case in matters such as this. However, as noted under (b) above, we expect submitters to assist us by providing information to us at the hearing regarding both their concerns and the means by which those concerns might be addressed.

A handwritten signature in dark ink, appearing to read 'Rob van Voorthuysen', with a long horizontal stroke extending to the right.

Rob van Voorthuysen  
**Independent Commissioner - Chair**

**19 October 2015**

## **Appendix 3 – Consent Conditions**