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their reserves.[134] It is unclear from the evidence we received whether any of the landowners objected to the allocation of their reserves in the Native Land Court, but no change was made as a result of that very limited right of objection. Sections 3 and 4 in block V of the township, upon which Broughton had built a whare and erected fences, were not reserved in any way. The sites were offered for tender at a higher value than other sites, reflecting improvements Broughton had made to them.[135]

Section 6 of the Native Townships Act 1895 required the surveyor-general to reserve 'every building actually occupied by a Native' at the time that the site for the township was gazetted; in this instance, on 7 August 1902. It is not clear when Broughton began living at Hōkio. He and his family do not appear to have been there when Richardson surveyed the town in December 1901, but they clearly were by November 1902, when Craig undertook the valuation of the township. If they had arrived and settled in by the start of August, the surveyor-general was required to reserve their whare. Nothing in the evidence we received indicates whether the Crown investigated this, why the Broughton whare was not reserved, or what became of Broughton and his family. Nor is there any evidence as to what happened to the other objections of Māori owners – possibly because they objected to the township scheme itself rather than to the provision of native reserves, as was their limited statutory right.

(4) *A lack of Muaūpoko involvement in establishing the town*

The claimants submitted that the Crown secured land for the Hōkio native township without first obtaining the consent of most of its owners. In addition, while it failed to consult with most landowners, the Crown took advantage of an existing relationship with Warena Hunia in order to claim that it had obtained some level of consent. Crown counsel, however, argued that the Crown had been concerned to acquire the landowners' consent. They viewed the reservation of significant sites for Muaūpoko, and the involvement of Hunia in a visit with the surveyor to the township site, as evidence that consultation, at some level, did take place.

What, if any, consultation took place with Muaūpoko regarding the proposed native township at Hōkio? The mention of Warena Hunia and his desire for a surveyor to accompany him to the site of the proposed township is the only indication of Māori involvement in the plan to establish the township. As noted earlier, Hunia was not yet a legal owner in the land, not having succeeded (with others) to his father's interests. In their closing submissions, Crown counsel suggested that the inclusion of pā tuna (Tārere-Mangō and Pā Kōtuku) in the area reserved for the owners was evidence that Muaūpoko were probably consulted as they would likely have identified these sites.[136]

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134. Native Townships Act 1895, s 9
135. Luiten and Walker, 'Political Engagement' (doc A163), p 334; Armstrong, 'Hokio Native Township' (doc A154), p 6
136. Crown counsel, closing submissions: Native Townships and District Maori Land Boards (paper 3.3.34), pp 5–6

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Yet, David Armstrong, who identified the possible inclusion of these places, could find no evidence of such consultation. In fact, he only knew about those sites because they appeared in a map produced by local amateur ethnologist and archaeologist G Leslie Adkin in 1948.[137] When cross-examined by the Crown, Armstrong suggested that the influencing factor in the decision to reserve the area for the landowners was a Crown official's observation that there were fishing sites in that area. He did not think that these sites were reserved as a result of consultation with Muaūpoko.[138] We could find no mention of the inclusion of these sites in the documents covering the establishment of the township site.

The experience of Broughton and his family suggests that at least some owners – perhaps most – were unaware of the township scheme. Broughton was living on, and developing, land involved in the township scheme, but knew nothing of it until Craig visited the site to value township sections. That was almost a year after the survey had been completed and months after the site was proclaimed a native township. Once Broughton was aware of the planned township he was able to make his opposition known and could have pursued that opposition through the Native Land Court, but he obviously played no part in the planning or surveying of the town. We do not know whether he took his opposition further.

Crown counsel drew our attention to the comment by Sheridan, the head of the Native Land Purchase Department, that '[t]here are no difficulties in as far as the Natives are concerned in the way of carrying out this proposal'.[139] It does not appear to us that this was a sound conclusion. It was made in September 1901, before Hunia's trip to Hōkio, before the survey, and well before Broughton had voiced his opposition. It is possible that some consultation had taken place, perhaps with Hunia, but we saw no evidence of this. If no objections were made, this might reflect the owners' lack of knowledge rather than their approval.

In summary, the evidence suggests that, at best, one or two owners of the Horowhenua 11B42 block had some involvement in its establishment. It is striking that wider consultation was not required, or considered particularly important. Officials indicated that the consent of the owners of Horowhenua 11B42 was desirable, but it does not seem to have been sought or obtained. Legally, this did not matter; the Native Townships Act 1895 allowed the Crown to establish townships without the consent of affected landowners. On the evidence available to us, we are satisfied that the Crown relied on this Act to establish the Hōkio native township without significant consultation and without the consent of the owners.

137. Armstrong, 'Hokio Native Township' (doc A154), p 6; transcript 4.1.13, p 281. The map in question is on page 22 of G Leslie Adkin, Horowhenua: Its Maori Place-names and their Topographic and Historical Background (Wellington: Department of Internal Affairs, 1948).

138. Transcript 4.1.13, pp 281–282

139. Sheridan to acting surveyor-general, 16 September 1901 (Crown counsel, closing submissions: Native Townships and District Māori Land Boards (paper 3.3.34), pp 5–6)

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7.3.4 How was the Hōkio native township administered and what influence did Muaūpoko landowners have on decisions concerning their land?

(1) *1903–10: Administration through the commissioner of Crown lands*

For the first seven years of its existence, the Hōkio native township was administered by the Crown through the commissioner of Crown lands. The landowners played no role in decision-making regarding the town. Under the Native Townships Act 1895 the Crown took over the legal (as opposed to beneficial) ownership of the land, and the commissioner of Crown lands administered native townships as if they were Crown land. The Act also governed how the rental income from the leased sections could be used. In particular, the costs of establishing the town had to be paid from the rentals before the landowners could receive any income.

The total cost of establishing Hōkio native township was £51 10d. This included costs for the survey conducted by Richardson, the costs of preparing the township plan, advertising costs, and the cost of pegging out the sections which had been added to the plan in the survey office. By March 1904, some 24 allotments had been leased at a combined annual rental of £8 5s.[140] The establishment costs of the township would thus take a bit over six years to be repaid, assuming that there were no ongoing or additional costs. In the meantime, the owners of the Horowhenua 11B42 block received no income from the township scheme.[141]

Even once the costs were paid, it is doubtful that any owner would have benefited greatly from the township. Any income generated by the township had to be divided among all the owners of the land. When the town was established there were 81 owners of the block. The maximum projected income from leases of all the township sections was £28 10s per year in 1903.[142] This equates to about seven shillings per owner per year. By comparison, seven shillings was the average daily wage for a farm labourer in the Wellington region in 1903.[143] The actual rental income (£8 5s in total, as noted) was less than one-third of this estimate.

(2) *The Ikaroa District Maori Land Board administration and sales of township sections*

As mentioned earlier, the Native Townships Act 1910 transferred the legal ownership of land involved in native townships to the relevant district Māori land board. Significant sections of this new Act included:

- section 15, which allowed the boards to lease native allotments with the landowners' consent;
- section 13, which provided the board with authority to lease land under the Public Bodies Leases Act 1908, which included provision for perpetually

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140. Luiten and Walker, 'Political Engagement' (doc A163), p334; File note – 'Hokio Township', not dated (David Alexander, comp, papers in support of 'Application by Hokio A', various dates (doc A12(b)), p147)

141. Luiten and Walker, 'Political Engagement' (doc A163), p335; Armstrong, 'Hokio Native Township' (doc A154), p7

142. Armstrong, 'Hokio Native Township' (doc A154), p7

143. New Zealand Official Year Book, 1904, available at https://www3.stats.govt.nz/New_Zealand_Official_Yearbooks/1904/NZOYB_1904.html#idchapter_1_106709

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renewable leases, though the provision could only be applied to new (rather than existing) leases; and
- section 23, which allowed land boards to sell any land in a native township with the consent of the landowners.

The Ikaroa District Maori Land Board took control of the Hōkio native township. In 1912, some of the lessees approached the board about acquiring the freehold to their sections, arguing that security of tenure would encourage them to build good houses and improve their sections. The board did not act immediately, only organising a meeting of the Māori owners to consider the sale of township sections in September 1913. The meeting was held on 21 November 1913 and the brief minutes recorded the owners as agreeing that 'Hokio Native Township be sold . . . under the provisions of s23 of the Native Townships Act 1910'.[144] It is not clear how many owners took part in this meeting of owners. Despite this resolution the board took no immediate action to sell any sections. In 1916 some lessees again approached the land board to request the ability to buy their sections. The board met in March 1916 and confirmed the resolution of owners from November 1913 but, again, no sales took place.[145]

In 1924, the 21-year term of the initial township leases came up for renewal and sales of the township sections followed soon after. Armstrong found few details about these sales, noting that the records of the Ikaroa District Maori Land Board are 'incomplete and at times a little confusing'. What seems clear is that a flurry of sales followed the expiration of the 21-year leases. The board sold about 30 sections by the end of 1926. Ten further sales occurred between 1929 and 1934. Two more sections were sold in 1947. Almost all of these sections were sold at their 'unimproved' Government Valuation. Although new valuations were periodically obtained, there was no indication in the information we received as to whether the owners were satisfied to sell at those prices.[146]

The most striking feature of these sales is that they took place years after the board consulted owners about the sale of sections. The land board never sought the consent of owners to the proposed sale of township sections after the meeting of 1913. In 1944, the purchase of another section was proposed. At this point, the registrar (a member of the board) finally considered the possibility that the consent gained from owners 30 years previously was not sufficient authority for further sales. By this time there were approximately 500 owners in the remaining township sections, and the registrar noted that convening a meeting of owners would be difficult and expensive.[147] The matter was raised with the president of the land board, Judge Whitehead, who considered that in 'the special circumstances of this case I

144. 'Notice of Meeting of Owners', 5 November 1913, New Zealand Gazette, 1913, no 81, p 3391
145. Armstrong, 'Hokio Native Township' (doc A154), pp 8–9
146. Armstrong, 'Hokio Native Township' (doc A154), pp 10, 18–21; Armstrong, papers in support of 'Hokio Native Township' (doc A154(a)), pp 217, 232, 262, 283.
147. Registrar, Ikaroa District Maori Land Board, to president, Ikaroa District Maori Land Board, 21 February 1944 (Armstrong, papers in support of 'Hokio Native Township' (doc A154(a)), p 268)

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think the consent of the owners obtained in 1913 can reasonably be considered as current'.[148]

As Armstrong pointed out, it cannot even be assumed that the consent gained from owners in 1913 was valid 11 years later when the initial sales took place. We do not even know how many owners were at the 1913 meeting, but the quorum provisions of that time provided no safety that a representative number of owners was present. Even if the meeting was representative, the factors that led to the vote in favour of lands sales in 1913 may not have been current in 1924.[149] The fact that this same apparent consent was used again in 1929, 1934, and 1947 was remarkable, to say the least. The sales conducted in 1947 took place 34 years, or a generation, after consent was secured. By that time the number of owners had increased many times over as a new generation of owners succeeded to the interests of those consulted in 1913. Owners who had succeeded to interests after 1913, before the sales that took place in 1924, 1929, 1934, and 1947, were afforded no opportunity to support or reject the sale of their land.

We cannot be sure that, given the opportunity, the landowners would have rejected the option of selling township sections, but there is some evidence that this may have been the case. In 1920, some Levin residents suggested extending the township by securing a further 50 acres of Māori land bordering the township to the south – part of Horowhenua 11B42. Both the mayor of Levin and the local chamber of commerce supported the idea, believing that a recently completed road to Hōkio would increase the popularity of the township. But the plan was rejected because the Māori owners expressed a preference for leasing over the sale of land. According to Armstrong, these owners were the same as those who owned the township.[150] In 1923, the Horowhenua 11B42 block was partitioned into four new blocks. The land adjoining the Hōkio township to the south (Horowhenua 11B42A) was further partitioned into 13 lots a year later. Luiten and Walker suggested that the motivations for this partition included the desire of some owners to build their own homes at Hōkio, and a realisation that the lots might be of interest to others.[151]

The owners of Horowhenua 11B42 also turned down repeated offers of a local farmer, W Stewart Park, to buy their land. As we discuss further in the next section of this chapter, Park eventually requested that the Government compulsorily acquire the block, because the owners did not want to sell to him.[152]

What the above indicates is that, given an opportunity, the landowners may have rejected sales in favour of renewed leases or other options. The partition of Horowhenua 11B42A indicated some willingness amongst owners to consider the sale of sections and a desire amongst some to live on their land. But they were not given an opportunity to consider their options. The township sections had been

148. Judge Whitehead to registrar, 22 February 1944 (Armstrong, papers in support of 'Hokio Native Township' (doc A154(a)), p 269)

149. Armstrong, 'Hokio Native Township' (doc A154), pp 10, 18–21

150. Armstrong, 'Hokio Native Township' (doc A154), pp 9, 11

151. Luiten and Walker, 'Political Engagement' (doc A163), pp 336, 337

152. Under-Secretary Jones to Native Minister, 1 October 1926 (Luiten, papers in support of 'Political Engagement' (doc A163(a)), p 1921); Luiten and Walker, 'Political Engagement' (doc A163), pp 362–363

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vested in the Ikaroa District Maori Land Board, and it made the decision to sell land without any reference to the owners after 1913. The legislation which allowed this was clearly flawed. So, too, was a land title system which made it easier for the land to be sold than for the owners to be assembled and consulted.

Whether the Crown can be held responsible for the action of the Ikaroa District Maori Land Board was an issue of contention between the parties in our inquiry. The Crown submitted that Māori land boards (and the councils that preceded them) were not 'the Crown' or agents of the Crown. Drawing upon the findings of past Tribunal reports, the Crown argued that land boards were akin to the Public Trustee, Native Trustee, and Māori Trustee, bodies established to act on behalf of their beneficiaries – the owners of the land which the boards held in trust.[153] The Crown had no statutory power to alter or amend these trusts or direct the boards as to how they should exercise their functions.

The Crown accepted that, as it had established the legislative regime under which the boards operated, it had an ongoing duty to monitor the effectiveness of that regime and to promote change if necessary. Further, the Crown accepted that it could be held responsible for the actions that legislation obliged land boards to take. It argued, however, that the corollary of this was that the Crown could not be held responsible for the actions that the legislation merely provided boards with the discretion to take. Regarding the sale of township sections, the Crown noted that this was an action that boards were able but not obliged to take. Further, there was a lack of evidence indicating that the landowners opposed these sales. In the Crown's view, it could not be criticised for having failed to promote statutory change that may have halted land sales when there was no evidence that such change was desired.[154]

Counsel for the Wai 237 claimants did not dispute the view that land boards were akin to the Public Trustee or the Māori Trustee – they were not agents of the Crown and their actions were not actions of the Crown. They argued, however, that prior to transferring township lands to the board the Crown had itself held these lands in trust for the owners. As such it owed direct legal duties to the landowners in the form of fiduciary duties. When the Crown delegated its role as trustee to the board, the Crown remained responsible for monitoring outcomes regarding Muaūpoko land and for ensuring that the regime was working efficiently. A fiduciary would, they said, be in breach of its duties if it divested its obligations to another entity without ensuring that the obligations were being met.[155]

Drawing upon the findings of the Te Tau Ihu Tribunal, counsel also argued trustees (such as land boards) were effectively carrying out the obligations of the Crown. The Crown therefore had a duty to ensure that the trustees did not breach the principles of the Treaty in carrying out these responsibilities. Further, under article 2 of the Treaty, the Crown promised to ensure that Muaūpoko were able to

153. Crown counsel, closing submissions: Native Townships and District Māori Land Boards (paper 3.3.34), pp 11–14
154. Crown counsel, closing submissions: Native Townships and District Māori Land Boards (paper 3.3.34), pp 11–14
155. Claimant counsel (Naden, Upton, and Shankar), closing submission (paper 3.3.23), pp 254–255

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retain their land until they wished to divest themselves of ownership. In the claimants' view, the Crown breached the Treaty when it failed to ensure that Muaūpoko supported the sale of township sections.[156]

It can be seen that there was broad agreement between the parties on a number of points. The Ikaroa District Maori Land Board was not an agent of the Crown and its actions were not Crown actions. The Crown was, however, responsible for the legislative regime under which the board operated. It had an ongoing duty to monitor the effectiveness of that regime and to make changes when necessary. Where the parties fundamentally disagreed was the question of whether the Crown fulfilled that duty. The Crown argued that it could not be criticised for failing to promote legislative change to prevent land sales when there was no evidence that Muaūpoko protested these sales. The claimants argued that it was not enough for the Crown to wait for protests from Muaūpoko landowners before acting. The Crown had compulsorily assumed ownership and control of the land within the township scheme through the Native Townships Act and had then, without consulting the owners, transferred legal ownership and control of that land to the board. The Crown therefore had a duty to monitor the work of the land board and ensure that Muaūpoko supported any sale of their land.

On the role of the Crown in monitoring the work of Māori land boards, we are persuaded by the claimants' arguments. Through the Native Townships Act 1910, the Crown required land boards to take over the legal ownership and management of township lands, lands that had been taken by the Crown following no, or minimal, consultation with owners. In so transferring its responsibilities to manage the lands, the Crown also transferred the fiduciary duties it had held up to that point. The Crown had an obligation to ensure that the board did not breach the Treaty when it made decisions affecting the township lands.

We also note what was said when the Native Townships Bill was introduced to Parliament in 1910. Native Minister James Carroll said that the Bill contained safeguards to protect Māori interests in relation to the sale of township lands. The Whanganui Land Tribunal described this as a 'triple layer of safeguards'.[157] These were: (i) the owners' consent was required for sales; (ii) Māori land boards had to inquire into and approve every sale; and (iii) the Governor also had to consent to sales. According to Carroll, these safeguards added up to a pledge that every transaction would be closely scrutinised.[158] In other words, the Crown did have a role in ensuring that all sales were in the best interests of the landowners concerned.

What is clear from the sales of Hōkio township sections is that this first safeguard – the consent of owners – was dispensed with after 1913. No owners were asked to consent to sales which took place between 1924 and 1947. The land board avoided consulting owners after 1913, citing the difficulties in calling a meeting of multiple owners. Despite this, the Crown made no attempt to ensure that either the board or the Governor was inquiring into what, if any, mandate had been secured for each

156. Claimant counsel (Naden, Upton, and Shankar), closing submission (paper 3.3.23), pp 255–256
157. Waitangi Tribunal, He Whiritaunoka, vol 2, p 825
158. James Carroll, 11 October 1910, NZPD, vol 152, p 347; Waitangi Tribunal, He Whiritaunoka, vol 2, p 825

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sale, or to intercede in the actions of the land board with regard to any of the sales. The Crown failed to protect the interests of the Muaūpoko owners, as it had explicitly promised would be done when it passed the legislation.

(3) *Administration by the Māori Trustee*

(a) ***Transfer to the Māori Trustee:*** By 1950 there were 17 township sections still administered by the land board. These sections were transferred to the Māori Trustee to administer in 1952, following the abolition of the Māori land boards. There is no evidence to say whether any consultation was undertaken or consent acquired from the owners for this transfer of authority.[159] We find it difficult to believe that, if the owners' consent had been sought and obtained, this would not have been specifically recorded in the official record.

(b) ***The 'Native allotment':*** In 1956, the Māori Trustee discovered that several Pākehā were illicitly occupying the native allotment or reserve, some having erected huts and other structures on the block. The Māori Trustee believed those occupying the land should be paying rent but this would have required the block to be subdivided and the new sections put up for tender. The Muaūpoko landowners were reluctant to pursue the proposed subdivision, as they believed it could result in a loss of access to the reserve which they used seasonally for eeling and whitebaiting. The Māori Trustee decided that the best option was to re-vest the site in the owners, who could then either collect rent from those using it or use it for their own purposes. Application was made to the Maori Land Court to re-vest the site. As the area was small (just under 2½ acres) and there were by now over 400 owners, the court agreed to re-vest the site in a group of owners as trustees for the beneficial owners. Seven trustees were appointed under section 438 of the Maori Affairs Act 1953 on 13 May 1957.[160]

The re-vesting of the site in those owners was short lived. In 1960 they expressed a desire to subdivide the section into building allotments that could be leased for a 21-year term with a perpetual right of renewal. They were prevented from doing this, however, as section 235 of the Maori Affairs Act 1953 had a protective mechanism which (rightly) protected the owners against the virtual permanent alienation of their land. This section of the Act required that leases of Māori land be confined to a maximum period of 50 years, which included any period covered by a right of renewal. At Hōkio Beach, however, no prospective lessees were willing to take a lease restricted to a 50-year term without a right of renewal. The trustees inquired as to whether the site could be vested in the Māori Trustee to be leased with perpetual rights of renewal or, alternatively, whether the legislation could be amended to allow them to offer a perpetual lease.[161]

159. Armstrong, 'Hokio Native Township' (doc A154), pp 11–12; Armstrong, papers in support of 'Hokio Native Township' (doc A154(a)), pp 493–512

160. Armstrong, 'Hokio Native Township' (doc A154), p 12; extracts from Ōtaki Maori Land Court, minute book 66, 5 April 1957, 13 May 1957, fols 393, 460–461 (Armstrong, papers in support of 'Hokio Native Township' (doc A154(a)), p 135)

161. Armstrong, 'Hokio Native Township' (doc A154), p 12

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The site was re-vested in the Māori Trustee in 1963 to sell or lease. It was partitioned and sold off between 1967 and 1971 for a total of $2,236. Although the evidence suggests that the reserve's trustees were aware that the Māori Trustee was empowered to alienate the land, we have no information on whether the landowners' approval was sought by the trustees for the re-vesting, or indeed by the Māori Trustee for the subsequent sales. We suspect it was not.[162]

(c) ***The child welfare institution:*** The land which was vested in the Māori Trustee from 1952 included sections 1, 2, 3, and 4 of township block V, which had been leased by the Education Department since 1928. A child welfare institution was built on the land, housing children in State care. The department also approved the purchase at Government Valuation of section 4 block III of the township to build a school to service the welfare home. Part of that section was also utilised as road access by those leasing other township blocks. To avoid delays in completing the school, the land board agreed that the department could build the school before ownership had officially been transferred, while the issue of access across the block was resolved.[163]

In 1944 it was found that the issue had not been dealt with, the section was still vested in the land board, and the department had been using the land for free for 15 years. No action was taken to remedy this situation until 1947, when the land board advised the department that it could purchase the block (minus the area used as a road) for £50 plus 4 per cent interest on the purchase price from 1 January 1929. This proposal does not appear to have gone anywhere. Then, in 1949, that area used as a road was compulsorily acquired by the Horowhenua County Council under the Public Works Act, with the Maori Land Court awarding £30 as compensation. One year later, the remainder of the section was compulsorily acquired by the Crown for education purposes. The Maori Land Court awarded £70 as compensation.[164]

The department continued to lease sections 1, 2, 3, and 4 of block V until 1961, when these sections were also compulsorily acquired. David Armstrong found nothing that explained the rationale for this compulsory acquisition or why the department opted against continuing to lease the land.[165] The Maori Land Court was tasked with assessing the compensation due to the landowners, and the Public Works Department offered to supply a valuation. The local Maori Affairs district officer was able to persuade the Māori Trustee to seek an independent valuation of the sections, believing that compensation should be assessed on the 'potentialities' of the township rather than upon the 'usual conservative Government valuation'.[166] The private valuer employed by the Māori Trustee, Blackburn, assessed the total freehold value of the sections at £770. In doing so he noted the presence of the child

162. Armstrong, 'Hokio Native Township' (doc A154), pp 12–13; memorial schedule, 'Hokio MT Section 2 Block 1' (Crown Forestry Rental Trust, 'Maori Land Court Records Document Bank Project', vols 5–8 (doc A70(a)), vol 5, pp 441–442)

163. Armstrong, 'Hokio Native Township' (doc A154), p 13

164. Armstrong, 'Hokio Native Township' (doc A154), p 13

165. Armstrong, 'Hokio Native Township' (doc A154), p 13

166. District officer to head office, 28 April 1961 (Armstrong, 'Hokio Native Township' (doc A154), pp 13–14)

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welfare institution had a depressing effect on values in the area. The Maori Land Court assessed the compensation due to the owners at £600, payable to the Māori Trustee.[167]

In 1996, the section of the block on which the child welfare institute was located, section 4 block III of the Hōkio A block, was returned to the Hokio A Lands Trust. This section was one of those in blocks II–V taken under public works legislation, all of which the Crown at that time returned for a total token purchase price of 10 cents. The current owners have made a claim to the Tribunal about the return of the land that was taken for the child welfare institute, which Eugene Henare called the return of 'a lemon'.[168] They have alleged that the trust received 'dilapidated and dangerous buildings' and houses which were not habitable. In addition, Eugene Henare told us that the site lacked adequate sewerage facilities at the time of its return by the Crown. Vast sums would therefore, he said, have had to be spent on the building by the new owners from the time of handover, and in the meantime they 'continue to be rated for land that we cannot utilise effectively'.[169]

As set out in the introduction to this chapter, we are not dealing with public works issues in the present expedited inquiry; we will consider these issues for the inquiry district as a whole in our wider Porirua ki Manawatū report. We received insufficient evidence about this particular issue of the child welfare institution, especially in relation to its return to the Hokio A Lands Trust, to make a finding on this specific claim issue.

(d) ***The re-vesting of remaining sections in the Hokio A Lands Trust:*** In 1971, sections that had been leased in 1950 came up for renewal. Officials in the Maori Affairs Department recommended that the Māori Trustee convert the leases into 'prescribed' leases under section 27 of the Maori Reserved Land Act 1955, with a perpetual right of renewal. This advice was based on officials' view that it was unfair for lessees to receive no compensation for their improvements at the expiration of a lease. The Māori Trustee rejected this view. The lack of compensation for improvements was mitigated by the fact that the sections had been leased at very low rentals.[170] The Māori Trustee was also of the view that, after another round of leases, the land should be returned to the owners' control, thereby 'restoring to them the privilege of dealing with their lands as they choose'.[171] New leases were executed which covered a further 21-year period without any right of renewal.[172]

In 1973, the Hōkio township was considered by a commission of inquiry into Māori reserved land. By this time just 11 sections totalling a little over four acres remained in Māori ownership at Hōkio. The balance had been sold by the land

167. Armstrong, 'Hokio Native Township' (doc A154), pp 13–14. Armstrong did not note any reason for the discrepancy between Blackburn's valuation and the Maori Land Court's assessment.
168. Transcript 4.1.11, pp 531–532, 556, 559, 561, 569
169. Henare, brief of evidence (doc B6), pp 6–7
170. Armstrong, 'Hokio Native Township' (doc A154), pp 14–15
171. J H Dark to assistant Māori Trustee, 22 September 1971 (Armstrong, 'Hokio Native Township' (doc A154), pp 14–15)
172. Armstrong, 'Hokio Native Township' (doc A154), p 15

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board or the Māori Trustee to private landowners or compulsorily acquired by the Crown. The Māori Trustee administered the remaining land on behalf of 520 owners holding 345,000.28 shares. The largest shareholder received $27.72 per year while many small shareholders received nothing at all. The commission recommended that the Maori Land Court appoint an 'advisory trustee', selected by the owners, to work with the Māori Trustee to develop options for the future of the sections.[173] The commission's recommendation was not acted upon by the Māori Trustee.

In May 1975 a Maori Affairs district officer sought instructions on a proposed lease of a township section. The Māori Trustee requested that the Maori Affairs Department consult with the owners (or a representative group of owners) as to their wishes concerning the land. Only then would a decision on the lease be made. The district officer was opposed to a meeting of owners, noting cost in time and money of contacting such a large group but, in June 1975, Maori Affairs agreed to discuss the matter with some of the major owners. Whether this meeting actually took place is unclear.[174]

The following year the Māori Trustee decided that the best course was to return the remaining sections to the owners, viewing the administration of the sections as an onerous trust that brought the trustee no return.[175] One owner, Ada Tatana, stated at a meeting of owners that the Māori Trustee had by this time given up trying to distribute rentals to the landowners where their share amounted to 50 cents or less. This money was paid to the Maori Education Foundation instead.[176]

Returning the land to over 500 owners was not feasible and it was decided that the land should be returned to a trust set up under section 438 of the Maori Affairs Act 1953. The Hokio A Lands Trust had been established in 1963 to administer the Hōkio A block (905 acres) which was adjacent to the township. The Hōkio A block was made up of land from the former Horowhenua 11B42B, 11B42C, and 11B42A14 blocks. In August 1976, the Hōkio A trustees agreed to take on the remaining township sections but their application to do so was adjourned by the Maori Land Court to allow for the proposal to be discussed at a meeting of the landowners. This meeting was held in March 1977 and the owners considered both the vesting of the sections in the Hokio A Lands Trust and the possibility of creating a new trust. Armstrong noted that there was a general lack of unanimity and a lack of understanding of the implications of the options considered. Eventually, however, it was decided to vest the sections in the Hokio A Lands Trust. The Maori Land Court vested the sections on 27 April 1977.[177]

173. Armstrong, 'Hokio Native Township' (doc A154), p15
174. Armstrong, 'Hokio Native Township' (doc A154), p16
175. Armstrong, 'Hokio Native Township' (doc A154), p17
176. 'Minutes of meeting of Hokio Maori township', 21 March 1977 (Armstrong, papers in support of 'Hokio Native Township' (doc A154(a)), p188)
177. Armstrong, 'Hokio Native Township' (doc A154), pp17–18

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In his evidence to the Tribunal, Tama Ruru advised that this small remnant of the Hōkio township lands had 1,779 owners in 2015, and only three out of 13 baches 'are left standing today'.[178]

7.3.5 Findings on the Hōkio native township

(1) *The findings of the Whanganui Land Tribunal on native townships*

The Whanganui Land Tribunal is as yet the only Tribunal to make extensive findings on the legislation which established native townships, and on specific case studies within its inquiry district. That Tribunal found that the Native Townships Act 1895 was drawn up and introduced without meaningful consultation with Māori, in breach of the Treaty's guarantee of rangatiratanga, and the principles of active protection and partnership.[179] Although the Crown did take some Māori objections into account, there was no discussion of the details with Māori and very limited debate in Parliament.[180] The Tribunal therefore concluded that Māori did not and would not have consented to the legislation, since it 'shut them out of owning and managing their own land'.[181]

When the Crown introduced the legislation it justified the lack of consent by claiming that development of the towns on their land benefited Māori; however, the legislation not only included very little in the Māori interest, it failed to incorporate procedures for objection or avenues of recourse for Māori. The Crown made all decisions and the Native Land Court had the final say on the limited matters for which appeals were allowed.[182] We agree with the Whanganui Land Tribunal that the Crown's native townships legislation was deficient and in breach of the Treaty and its principles.

In respect of the acquisition of Māori land for native townships, the Tribunal found that such takings had to meet the same test as compulsory purchases under the public works legislation; that is, the compulsory acquisition of Māori land was only justified 'in exceptional circumstances as a last resort in the national interest'.[183] In the case of native townships, the Tribunal found that there was no national exigency which necessitated the legislation or the compulsory taking of land.[184] Nor were Māori owners compensated for any compulsory Crown takings within the townships.

The Whanganui Land Tribunal also found that the safeguards in the original native township legislation were not sufficient to protect against alienation, while the changes to the legislation in 1910 were made for the benefit of Pākehā tenants, rather than the Māori owners, and actually contributed to further land loss.[185] The Tribunal noted that the Crown could have provided for Māori involvement

178. Tama Ruru, brief of evidence, 24 November 2015 (doc c25), pp [12], [15]
179. Waitangi Tribunal, *He Whiritaunoka*, vol 2, pp 883–884
180. Waitangi Tribunal, *He Whiritaunoka*, vol 2, pp 817–821, 826
181. Waitangi Tribunal, *He Whiritaunoka*, vol 2, p 883
182. Waitangi Tribunal, *He Whiritaunoka*, vol 2, p 826
183. Waitangi Tribunal, *He Whiritaunoka*, vol 2, p 884
184. Waitangi Tribunal, *He Whiritaunoka*, vol 2, p 884
185. Waitangi Tribunal, *He Whiritaunoka*, vol 2, pp 824–826, 885

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in township administration in the legislation, since it knew that was what Māori preferred, but instead it denied Māori input at any stage of planning or administration of these townships.[186] The Crown's exclusion of Māori from such a role made it more responsible for ensuring the towns were administered to the owners' financial benefit. Rather than attempting to solve legislative problems as they emerged, the Crown 'contributed to the failure of the towns to provide a good rental income for owners'.[187]

(2) *Our findings on the Hōkio native township*

At this stage of our inquiry, we note the findings of the Whanganui Land Tribunal on the passage of the Native Townships Act 1895 (described above), but we make no findings on that or other general issues in advance of hearing all the native township claims in our inquiry district. Our findings are confined to matters specific to the Hōkio native township.

In respect of Hōkio, the Crown used the Native Townships Act 1895 to assume the legal ownership and control of about 40 acres of the Horowhenua 11B42 block, upon which it established the Hōkio native township. It did so, not 'for the purposes of promoting the settlement and opening-up of the interior of the North Island', as the Act intended, or to aid in the profitable development of Māori land. Rather, the township was established to satisfy the desire of some Levin residents for holiday homes by the beach. The compulsory vesting of land for that purpose did not meet the test of an exceptional circumstance, essential in the national interest. Also, there was never any prospect, according to Crown officials at the time, that the town would be of great benefit to the landowners.

The Treaty guaranteed to Māori the right to retain their land and exercise tino rangatiratanga over it. As the Central North Island Tribunal noted, these guarantees obliged the Crown to 'consult Maori on matters of importance to them, and to obtain their full, free, prior, and informed consent to anything which altered their possession of the land'.[188] The vesting in the Crown of control and legal ownership of the land in the Hōkio native township should have been viewed by the Crown as a matter of great importance to Muaūpoko. Yet it made little effort to consult with the owners. It did not seek, and therefore did not obtain, the consent of those Muaūpoko landowners affected by the scheme. The Crown therefore acted inconsistently with the Treaty guarantee of tino rangatiratanga, and breached the principles of partnership and active protection.

We note that the Crown omitted to use the more Treaty-compliant model available for the establishment of a native township at that time: for the owners to decide voluntarily to vest their land in a district Māori land council (on which Māori of their district were represented), and then to agree to the establishment of a township on that land, to be managed by the council.

186. Waitangi Tribunal, *He Whiritaunoka*, vol 2, pp 826, 884
187. Waitangi Tribunal, *He Whiritaunoka*, vol 2, p 883
188. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 173

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Further, the Crown took absolute ownership of 42.5 per cent of the township lands for roads and public reserves, without consent or compensation. This, equally, was not necessary in the national interest, nor was it an exceptional case requiring a compulsory taking. The compulsory taking of this land in these circumstances was a breach of the principles of partnership and active protection.

The Native Townships Act 1910 made changes to the 1895 regime without any consultation with or consent from Māori. The Crown transferred legal ownership of the Hōkio township lands to the Ikaroa District Maori Land Board. That board was empowered to both lease and sell the land it controlled. Sales of land were supposed to be regulated by 'a triple layer of safeguards' – obtaining the consent of owners, the land board, and the Governor.[189] In the case of Hōkio native township the first of these safeguards, obtaining the consent of the landowners, was absent from the sales of township sections completed from 1924 to 1947. Owners were asked only once by the land board to consent to sales of township sections. This occurred in 1913, nine years before any sales took place, and by which time the ownership of the land had changed markedly. Many more people had acquired interests in the land as new owners succeeded to the interests of former owners. But these new owners, who numbered 500 or more by the mid-1940s, were never asked to consent to a sale. In fact, by the mid-1940s the sheer number of owners was used by the land board as a reason not to consult them over continued sales of their land.

We agree with the Whanganui Land Tribunal that the Crown continued to be responsible for ensuring the board administered the Māori owners' lands in the beneficial owners' best interests. This necessitated the Crown taking action to ensure that its safeguards worked, and that the actions of the board did not further attenuate the owners' links with their ancestral lands, or further infringe their Treaty rights. The Crown therefore breached its Treaty guarantee of tino rangatiratanga by vesting legal ownership and control of the Hōkio township land in the land board without consent, and by not ensuring that there were sufficient safeguards against sales to which the owners had not explicitly agreed.

Though the Crown was not directly responsible for the actions of the Ikaroa District Maori Land Board, it had an obligation to ensure that Muaūpoko landowners were consulted and agreed to the sale of their lands, and that the empowering legislation ensured this happened. It was not enough for the Crown to wait for owners to complain about land sales before taking action. The Crown had a duty to actively protect the right of owners to retain their lands so long as they wished to do so. The Crown's failure to ensure that the Muaūpoko owners' consent was obtained to the sales of their land in the Hōkio native township further undermined their ability to maintain ownership and exercise rangatiratanga over their land, and was a breach of the principle of active protection.

In sum, Crown actions breached the Treaty because the Crown did not obtain the consent of the Muaūpoko owners to: the establishment of a township on their lands; the vesting of the legal ownership and control of their lands in the Crown;

189. Waitangi Tribunal, *He Whiritaunoka*, vol 2, p 825

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the revesting of the legal ownership and control of their lands in the land board and then the Māori Trustee; and the many powers which could be exercised without consent over their township lands. It is not sufficient to say that the law did not require the owners' consent for any of these things; the legislation was clearly not consistent with Treaty principles, and was discriminatory. Further, the Crown breached Treaty principles by its failure to ensure that the safeguards promised by Carroll in 1910 actually worked, with the result that the Muaūpoko owners' consent was not sought for any of the sales of individual sections which took place between the 1920s and the 1940s. These breaches of the principles of partnership and active protection have prejudiced the Muaūpoko owners, who lost control of (and any real benefit from) their lands for many decades, only to have most of it gradually sold off without their consent.

7.4 The Crown's Last Major Purchase of Land at Horowhenua

7.4.1 Introduction

In the previous section, we assessed claims about the Crown's acquisition of 40 acres from the coastal block for a native township. In this section, we examine the Crown's purchase of a further 1,088 acres of the coastal lands. This was the Crown's last major purchase of Horowhenua land in the twentieth century. It acquired the majority of the 11B42C block in the 1920s, leaving 776 acres for the non-sellers.[190] The land purchased by the Crown now makes up part of the Waitarere Forest, a production pine forest located on coastal land between the Hōkio Stream in the south and the Manawatū River in the north.

The Crown began purchasing individual interests in the block from 1926 after being approached by a neighbouring Pākehā landowner who was intent on securing the land. The owners of the block had already rejected his offer to purchase the land from them. The enforcement of a charging order for the cost of surveying the block saw the Crown secure more land in the block. The land secured by the Crown was declared Crown land in 1928 and became part of the Waitarere State Forest in 1960. In examining the circumstances of the Crown's acquisition of land from Horowhenua 11B42C we address the following questions:

- Why did the Crown decide to acquire land in Horowhenua 11B42C?
- How did the Crown go about acquiring land in Horowhenua 11B42C?

7.4.2 The parties' arguments

(1) *The claimants' case*

Counsel for the Wai 52 and Wai 2139 claimants submitted that the Crown misused its authority under the Native Land Amendment Act 1913 to acquire undivided individual interests in the block. Further, the Crown did so on behalf of a private individual who offered the Crown more money for the land than the Crown was prepared to pay the owners for it. The Crown also enforced a charging order for survey

190. Horowhenua 11B42C consisted of 1,871 acres. It was partitioned out of the 11B42 block in 1923.

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costs in order to secure more land from the owners. As a result, the 71 per cent of owners who did not sell their interests were left with considerably less than half the block.[191] Counsel for the Wai 493 and 1629 claimants submitted that the Crown's conduct regarding the Horowhenua 11B42C block deprived Muaūpoko of land they had declined to sell.[192] Charles Rudd, an unrepresented claimant at the time of our hearings, stated that the land must be returned to Muaūpoko.[193]

(2) *Te Hono ki Raukawa's case*

Counsel for Te Hono ki Raukawa (a Ngāti Raukawa claimant collective) made closing submissions about the Waitarere Forest. Counsel noted that Ngāti Raukawa supported the priority hearing of Muaūpoko claims in advance of completing the research of other iwi, and that Ngāti Raukawa (among others) were not allowed to cross-examine witnesses during the Muaūpoko priority hearings. In these claimants' view, however, it was necessary to make submissions about this one point: the Waitarere Forest is one of the issues covered by the Tribunal's decision that it 'will not be making findings on Crown acts or omissions affecting the relationships between, and the respective rights and interests of, Muaūpoko, Ngati Raukawa and Te Atiawa in the inquiry district'.[194] Counsel for Te Hono submitted:

> A particular concern for Te Hono is that both Muaūpoko and Ngāti Raukawa claimants have claims with respect to the Waitarere Forest. This forest is either entirely or predominantly outside the Horowhenua Block awarded to (mainly) Muaūpoko persons and on lands occupied by the Poroutawhao hapū of Ngāti Raukawa.[195]

Counsel for Te Hono also submitted that the Tribunal should 'caution the Crown on the basis that it would not be consistent with the Treaty of Waitangi for the Crown to dispose of the Waitarere Forest in any negotiated settlement until after the Ngāti Raukawa claims have been heard and the Tribunal has expressed its opinion'.[196]

(3) *The Crown's case*

Crown counsel argued that the purchase was 'apparently motivated by concern about sand drift'. The Crown noted evidence that the purchase took the form of acquiring individual interests, and involved the 'enforcement of a charging order for survey'.[197] Otherwise, the Crown's submissions focused on the Waitarere Forest, part of which is located on this block. Crown counsel noted two claimant memoranda (including from Te Hono ki Raukawa) asserting that other iwi have claims in

191. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 4 (paper 3.3.17(c)), pp 17–18
192. Claimant counsel (Lyall and Thornton), closing submissions, 15 February 2016 (paper 3.3.19), p 28
193. Charles Rudd, closing submissions, 9 February 2016 (paper 3.3.18), pp 18–19
194. Counsel for Te Hono ki Raukawa (Hall and Green), closing submissions, 12 February 2016 (paper 3.3.22), p 1
195. Counsel for Te Hono ki Raukawa (Hall and Green), closing submissions (paper 3.3.22), pp 1–2
196. Counsel for Te Hono ki Raukawa (Hall and Green), closing submissions (paper 3.3.22), p 2
197. Crown counsel, closing submissions (paper 3.3.24), p 88

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relation to the Waitarere Forest. It also noted that limited evidence was presented about the Waitarere Forest during the expedited hearings process. The Crown submitted that the interests asserted by other iwi in the forest and the lack of research relating to it meant that it would be premature for the Tribunal to make findings about Waitarere Forest. In the Crown's view, claims concerning the Waitarere Forest should considered as part of the wider district inquiry, as most of the forest is located outside the Horowhenua block.[198]

7.4.3 The Waitarere Forest

Before we begin our substantive analysis, we address the Crown's contention that we should only consider issues concerning the Waitarere Forest as part of our broader district inquiry. To be clear, our focus is upon the Crown's acquisition of land in Horowhenua 11B42C in the late 1920s. That the land concerned became part of the Waitarere State Forest when it was established in 1960 is of no relevance to our discussion at this point in our inquiry, other than to demonstrate the economic potential of the land which the Crown purchased. Issues directly related to the creation of the forest (and those groups who may or may not have interests in the land underlying the rest of the forest) may be dealt with later in our inquiry.

We also note Te Hono o Raukawa's submission on the Waitarere Forest. In this prioritised report on Muaūpoko claims, it is not appropriate to 'caution' the Crown about the disposal of the forest in Treaty settlements. Parties may be heard on that matter later in the inquiry if necessary.

7.4.4 Why did the Crown decide to acquire land in the Horowhenua 11B42C block?

In this section, we consider the Crown's reasons for acquiring land in the Horowhenua 11B42C block and the method by which it achieved this end.

From about 1910, Pākehā in the wider Horowhenua lobbied the Crown to purchase coastal land in order to take action to arrest sand drift.[199] At the same time, there was significant pressure on the Government to acquire Māori lands for 'closer settlement', that is, small family farms.[200] In 1911, the Native Department sent an official, William Pitt, to 'put Crown purchase to the land owners'.[201] Pitt met with about 30 Muaūpoko owners at Levin in July of that year. We have no information as to how many (if any) were owners of the coastal block (11B42), as the Crown was actually intent on acquiring the lands between that block and Levin (11B41) for settlers.[202] Pitt informed the meeting that the Levin Chamber of Commerce and the local member of Parliament (William Field) wanted the Crown to buy the 'large area of Native land lying waste and adjacent to Levin'.[203] The Crown, he said, was

198. Crown counsel, closing submissions (paper 3.3.24), pp 88–89
199. Luiten and Walker, 'Political Engagement' (doc A163), p 362
200. Luiten and Walker, 'Political Engagement' (doc A163), pp 354–357
201. Luiten and Walker, 'Political Engagement' (doc A163), p 357
202. Luiten and Walker, 'Political Engagement' (doc A163), p 357
203. William Pitt to under-secretary, Native Department, 10 July 1911 (Luiten and Walker, 'Political Engagement' (doc A163), p 357)

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willing to consider offers of sale. The Muaūpoko owners present were only willing to offer the land for lease, except for the sand hills block – 11B42 – which Pitt said they were unanimous in offering for sale.[204]

As noted, we have no information as to how many of the 30 people present were owners in 11B42C, or what proportion of shares they held. This could certainly not be considered a formal offer of sale by the owners, and no price was discussed – although Pitt advised at the meeting that the Crown would not offer less than Government valuation for purchases. On the strength of this 'offer', the Crown issued a proclamation in 1911 prohibiting any leasing or sales of land in the coastal block to private persons, but did not call a formal meeting of assembled owners or proceed to negotiate a sale.[205]

In 1916 some Levin residents again raised the matter of purchasing the coastal strip, but a Crown ranger advised against the purchase after inspecting the land.[206] He reported that it was 'valueless for grazing' and was made up predominantly of 'drifting sand dunes which will always be a source of nuisance' to the owners and to those owning land immediately to the east.[207] In 1923 the Horowhenua 11B42 block was partitioned into four new blocks including Horowhenua 11B42C, a block containing the bulk of the coastal sand dune country. This block was divided into Horowhenua 11B42C North (1,278 acres) and Horowhenua 11B42C South (598.5 acres).[208]

W Stewart Park, a Levin-based solicitor and farmer whose land adjoined the Horowhenua 11B42C (North) block, raised the issue of sand drift again in 1926. He wrote to the Minister of Lands twice in August of that year to request that the Crown compulsorily acquire a block he referred to as 'XIB42' – the Horowhenua 11B42C block that had been partitioned three years earlier. Park complained of sand drift from the block and also alleged that it was being put to no use, that no rates were being paid on it, and that it was a breeding place for 'noxious vermin'.[209]

Park's own efforts to purchase the land had been thwarted, he said, by the sheer number of owners, which had made it impossible to get the required resolution of assembled owners in favour of selling the land.[210] He was referring here to laws governing the alienation of Māori land at this time, specifically the 'Powers of Assembled Native Owners' set out in Part XVIII of the Native Land Act 1909. This Act reintroduced the ability for private individuals to purchase undivided shares in Māori land, through meetings of owners. Just five owners present or represented (regardless of the total number of owners) constituted a quorum, and resolutions

204. Luiten and Walker, 'Political Engagement' (doc A163), p 357
205. Luiten and Walker, 'Political Engagement' (doc A163), pp 357–358, 362
206. Luiten and Walker, 'Political Engagement' (doc A163), p 362; Armstrong, 'Hokio Native Township' (doc A154), p 9
207. Crown Lands Ranger Smith to commissioner of Crown lands, Wellington, 29 December 1916 (Luiten, papers in support of 'Political Engagement' (doc A163(a)), p 1945)
208. Luiten and Walker, 'Political Engagement' (doc A163), p 362
209. Luiten and Walker, 'Political Engagement' (doc A163), p 362
210. Park to Minister of Lands, 25 August 1926 (Luiten, papers in support of 'Political Engagement' (doc A163(a)), p 1938); see also Luiten and Walker, 'Political Engagement' (doc A163), pp 362–363.

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could be carried if those voting in favour owned a larger aggregate share of the land than those voting against.[211] The owners had rejected an offer from Park to buy the land for 10 shillings per acre. It is not clear whether this decision was made at a meeting of owners with a quorum under the 1909 Act.[212]

Park then asked the Government to use its powers of compulsory acquisition to secure the land. He promised to repay in cash the cost of acquiring the land at Government Valuation (which Park estimated to be about £400) plus an additional 10 per cent.[213] His persistence on this issue saw it referred to the Native Department. The under-secretary, RN Jones, who was also chief judge of the Native Land Court at that time, investigated the history of Horowhenua 11B42C, stating that it had been deemed valueless for grazing and was unlikely to be a means of support to its 147 owners. Jones' investigation indicated that, back in 1911, 'the owners seemed anxious to sell to the Crown' but 'no steps were taken to acquire it'. However, he noted that the owners had recently rejected Park's offer, and had become 'averse to selling'. Despite this point, he concluded that '[p]robably the Crown could acquire this Block'.[214] The under-secretary did not comment on the use of this land to Muaūpoko for fishing and other coastal resources, nor did he note its cultural value or its potential for afforestation (the latter was identified by the Crown soon after in the early 1930s).

Under-Secretary Jones' report was forwarded to the Minister of Lands by RF Bollard, the Acting Native Minister. Bollard suggested that the block might be purchased by the Native Land Purchase Board and then sold to Park by the Ikaroa District Maori Land Board under section 150 of the Land Act 1924.[215] That section enabled the board to sell any Crown land composed chiefly of sand dunes or land otherwise deemed 'practically worthless' to the owners of contiguous lands.[216] Officials at the Lands Department concluded that there was no power for the Crown to acquire the block compulsorily for the purpose of on-selling the land to a private citizen. Instead, they opted to inspect the block to see if it could be purchased for on-selling to Park under the Land Act, as suggested by Bollard.[217] Astonishingly, therefore, the Crown agreed to become essentially the agent of a private citizen to purchase individual interests in Māori land (which a private citizen could not do),

211. Native Land Act 1909, ss341(1), 342(3), 343, 348(1), and 349; see also Waitangi Tribunal, He Maunga Rongo, vol 2, pp685–686.

212. Under-Secretary Jones to Native Minister, 1 October 1926 (Luiten, papers in support of 'Political Engagement' (doc A163(a)), p1921)

213. Park to Minister of Lands, McLeod, 25 August 1926 (Luiten, papers in support of 'Political Engagement' (doc A163(a)), pp1938–1939)

214. Under-Secretary Jones to Native Minister, 1 October 1926 (Luiten, papers in support of 'Political Engagement' (doc A163(a)), p1921)

215. Luiten and Walker, 'Political Engagement' (doc A163), p363. The Native Land Purchase Board purchased a Māori-owned block on behalf of the Crown, upon which it became general Crown land. The district Māori land board thus became responsible for the block, including its administration or arrangements for its sale.

216. Land Act 1924, s150

217. Luiten and Walker, 'Political Engagement' (doc A163), p363; Young, 'Muaūpoko Land Alienation' (doc A161), p38

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to get around the resistance of the Māori owners who were known to be 'averse to selling'.

The deputy commissioner of Crown lands supported the acquisition of the block for on-sale to Park. He visited Park in February 1927 and reported the latter's intention to arrest sand drift through replanting. The following month the assistant under-secretary for lands advised the Native Department that he had no objection to the acquisition of the block, provided that Park paid in cash both the purchase price and any associated costs. In April 1927, Park was asked to confirm what he was willing to pay for Horowhenua 11B42C, whether he was willing to deposit one-third of that amount as a down payment, and to confirm what interests he held in lands adjoining the block. Park at this time held leasehold interests in Horowhenua 11B41. He confirmed this and signalled his willingness to buy 640 acres of Horowhenua 11B42C North at 6s 6d per acre.[218] This was less than he had offered the owners (who had rejected it), and worked out at £208 for the 640 acres he wished to acquire.

7.4.5 How did the Crown acquire land in Horowhenua 11B42C?

The Crown now attempted to purchase land in Horowhenua 11B42C. This job was taken on by the Native Land Purchase Board, established by the Native Land Act 1909. Consisting of the Native Minister, under-secretary for Crown lands, under-secretary for the Native Department, and the valuer-general, the purchase board oversaw all purchase negotiations.[219] The Native Land Purchase Board approved the purchase of the northern part of Horowhenua 11B42C on 5 July 1927. A Government Valuation of the block was received the following month – the block, which was 'described' as 1,388 acres,[220] was valued at £345. On 20 October 1927 a meeting of owners considered an offer from the Crown to purchase 640 acres of the block for £213 6s 8d – or 6s 8d per acre. Those in attendance voted unanimously to reject the Crown's offer.[221]

This decision should have ended Crown efforts to purchase land in Horowhenua 11B42C, as a similar decision had earlier stopped Park. Whatever appetite there may have been for selling the block back in 1911 had clearly gone. The Crown, however, did not give up on efforts to acquire the land. Instead, it attempted to bypass the collective resistance to sale through the acquisition of individual interests.

Section 109 of the Native Land Amendment Act 1913 empowered the Crown to purchase any undivided share in Māori land from an individual owner or trustee, and any owner to alienate their interest to the Crown. This meant that the Crown could purchase interests from individual owners without a meeting of owners being called, even if the owners collectively had refused to sell.[222] We agree with

218. Luiten and Walker, 'Political Engagement' (doc A163), pp 363–364; Young, 'Muaūpoko Land Alienation' (doc A161), pp 38–39

219. Native Land Act 1909, ss 361, 362

220. The correct acreage was 1,871 acres: see Luiten and Walker, 'Political Engagement' (doc A163), pp 337, 366; Young, 'Muaūpoko Land Alienation' (doc A161), pp 37, 239.

221. Luiten and Walker, 'Political Engagement' (doc A163), pp 364–365; Young, 'Muaūpoko Land Alienation' (doc A161), p 40

222. Native Land Amendment Act 1913, s 109

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the Central North Island Tribunal's assessment of section 109 as a return to the land purchasing policies of the late nineteenth century. It allowed the Crown to choose how it dealt with the owners of land it wished to purchase – either through a meeting of owners or on an individual basis, according to whichever approach would obtain the desired results.[223] As the Whanganui Land Tribunal pointed out, the Crown at times preferred to utilise a meeting of owners, as the meetings could enable a single purchase of an entire block often with a bare minimum of owners present. In fact, as long as sufficient owner representatives were present it is not clear that any owners had to be present at all. For the Crown, such an approach was often seen as preferable to tracking down and negotiating with a dispersed group of owners.[224] Alternatively, as in the case of Horowhenua 11B42C, the Act allowed the Crown to try both methods. It sought to purchase from owners individually after they had collectively rejected the Crown's purchase offer. In other words, the Crown did not have to accept the rejection of a purchase from the collective meeting of owners as final.

Officials saw that some difficulties might arise from any attempt to purchase the block. In particular, they realised that they may not be able to buy sufficient interests to cover the area that Park wished to acquire. To address this issue, they secured an undertaking from Park that he would buy any interests acquired by the Crown. Meanwhile, Park also sought authority to obtain the signatures of owners who were willing to sell their shares. He was confident that he could secure sufficient interests to enable him to obtain 'the necessary amount of foreshore which I require for the purpose of effectually dealing with the sand breaks on my own country'.[225] In response, officials advised Park to arrange a meeting of those owners who were willing to sell their interests (this was not a meeting of assembled owners under the Act). The Native Department would send an official to attend the meeting.[226]

The department also prepared a schedule of owners, listing some 272 ownership shares. Some individuals owned more than one share. An initial meeting of some owners who were willing to sell their individual interests was held on 23 December 1927. A Native Department official, Shepherd, attended and secured seven ownership interests. He secured a further eight at a subsequent meeting one week later. Four more ownership shares were purchased by April 1928, for a total of 19 shares purchased in a little over four months. Purchase efforts continued through to June 1928.[227] By a process of attrition, the Crown spent £169 13s 4d and acquired 55 ownership interests from 38 individuals amounting to 714.5 shares, or about 36.5 per

223. Waitangi Tribunal, He Maunga Rongo, vol 2, p 689
224. Waitangi Tribunal, He Whiritaunoka, vol 2, pp 710–711
225. Park to under-secretary for lands, 18 November 1927 (Luiten, papers in support of 'Political Engagement' (doc A163(a)), p 1866)
226. Luiten and Walker, 'Political Engagement' (doc A163), p 365
227. Luiten and Walker, 'Political Engagement' (doc A163), pp 365–366

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cent of all the shares in the block.[228] As discussed further below, the Native Land Court determined that the shares acquired by the Crown equated to almost 682.75 acres of the block.[229]

The Crown, through the targeting of individual owners, thus succeeded in securing enough ownership shares to more than satisfy Park's stated desire to secure 640 acres of the block. It achieved this while paying those owners £43 (or 20 per cent) less than it had offered at the meeting of assembled owners. The total purchase monies paid to owners who sold their interest equate to a price per acre of 5 shillings, less than Park was prepared to pay (6s 6d) and than the Crown had initially offered (6s 8d), and which the owners collectively had rejected. The Crown's method of purchase meant that the owners could not collectively determine (or bargain for) a price.

On 17 May 1928, a native land purchase officer, Thomson, advised the under-secretary for the Native Department that he had secured 'sufficient interest to cover the area which the Lands Department intend to sell to Mr W S Park'. He suggested that the Crown apply to the Native Land Court to cut out its interests.[230]

The Crown's efforts to secure land in Horowhenua 11B42C did not end there. It chose to secure even more land in the block through the enforcement of a charging order (or lien) for survey costs which had been registered on the title to the block. The lien for £126 4s had been obtained by the Crown in October 1924 and presumably related to the cost of the survey conducted when Horowhenua 11B42 was partitioned the previous year.[231] Thomson suggested that the Crown apply to the Native Land Court to award an area of the block to satisfy the lien and interest owing.[232] Four days later, on 21 May 1928, the Native Minister applied to the Native Land Court for both a vesting order for land to satisfy the survey lien (plus interest) and for the court to partition out the interests the Crown had purchased in the block.[233] In the meantime Crown officials continued to purchase additional ownership shares.

The court determined the Crown's total interest in the block on 11 August 1928. Some effort had been made by the owners to reduce the amount owing on the survey lien. Three payments made in 1928 reduced the lien to £72 18s 6d, but interest

228. Note on file, 'Application for partition dealt with by the Native Land Court at Levin', 11 August 1928 (Luiten, papers in support of 'Political Engagement' (doc A163(a)), p 1829); note on file, 'Horowhenua X142C: Schedule of sellers to the Crown', not dated (Luiten, papers in support of 'Political Engagement' (doc A163(a)), pp 1830–1831)

229. Luiten and Walker, 'Political Engagement' (doc A163), p 366; Young, 'Muaūpoko Land Alienation' (doc A161), pp 40–41

230. Native Land Purchase Officer to under-secretary, Native Department, 17 May 1928 (Luiten, papers in support of 'Political Engagement' (doc A163(a)), p 1853)

231. Luiten and Walker, 'Political Engagement' (doc A163), p 366

232. Native Land Purchase Officer to under-secretary, Native Department, 17 May 1928 (Luiten, papers in support of 'Political Engagement' (doc A163(a)), p 1853)

233. Native Minister, 'Application to the Native Land Court for vesting order', 21 May 1927 (Luiten, papers in support of 'Political Engagement' (doc A163(a)), p 1855); Native Minister, 'Application to the Native Land Court to partition interests', 21 May 1928 (Luiten, papers in support of 'Political Engagement' (doc A163(a)), p 1854)

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charges increased the total amount owed to £100 17s 5d.[234] In addition to the 682.75 acres that the Crown secured through the purchase of individual shares, the Crown was awarded 405.75 acres in satisfaction of the survey lien. The total area awarded to the Crown was 1,088.5 acres which became Horowhenua 11B42C1 and was taken from the northern portion of the former block.[235] Horowhenua 11B42C1 was proclaimed Crown land on 26 October 1928.[236]

A schedule of 'non sellers' reveals that 138 individuals chose not to sell their interests. Their collective shareholding was 1243.47 shares, or 63.5 per cent of the total shareholding in the block. After the area sold and the area taken for survey costs was deducted from the block, these owners were left with 783 acres,[237] or 41 per cent of the original block, which became Horowhenua 11B42C2.[238]

The Department of Lands and Survey did not take action to dispose of the land to Park for almost three years. At a meeting held on 26 August 1931, the Māori land board considered the proposal to transfer the whole of Horowhenua 11B42C1 to Park. Minutes of the meeting and notes added subsequently show that the total cost to the Crown of obtaining the block was £308 19s 4d. This included the purchase price and purchase expenses totalling £175 18s 4d, the £100 17s 5d of the survey lien, and additional survey costs of £31 4s 1d for defining the new block.[239] From the information presented to us it is unclear whether the non-sellers also bore part of the cost of this new survey, even though they had chosen not to sell their interests.

On 1 September 1931 the commissioner of Crown lands wrote to Park to advise that he could purchase the whole of Horowhenua 11B42C1 for £308 19s 4d; that is, the amount that it had cost the Crown (including survey costs and the interest paid by the owners on those costs). Park, however, was unable to meet the obligation he had made to purchase the land.[240] Blaming the downturn in the dairy industry, unpaid loans made to others, and his other financial commitments, he explained that he could not finance the purchase. The department approached Park about the purchase periodically over the next three years, warning him that his continued failure to act on the purchase would result in him losing his right to acquire the

234. Note on file, 'Lien ledger: Horowhenua x1B No 42 C Block', 18 February 1929 (Grant Young, comp, papers in support of 'Muaūpoko Land Alienation Report', various dates (doc A161(a)), p 263); Thomson to under-secretary, Native Department, 31 August 1928 (Luiten and Walker, papers in support of 'Political Engagement' (doc A163(a)), p 1828); Young, 'Muaūpoko Land Alienation' (doc A161), p 41

235. Young, 'Muaūpoko Land Alienation' (doc A161), pp 40–41

236. 'Proclaiming Native Land to have become Crown Land', 26 October 1928, New Zealand Gazette, 1928, no 84, p 3235

237. The land left to the non-sellers was later found to amount to 776 acres 3 roods 12 perches. See Young, 'Muaūpoko Land Alienation' (doc A161), p 239.

238. Luiten and Walker, 'Political Engagement' (doc A163), p 366; Young, 'Muaūpoko Land Alienation' (doc A161), p 41

239. Under-secretary, Native Department, to under-secretary, Lands, 16 November 1928 (Young, papers in support of 'Muaūpoko Land Alienation' (doc A161(a)), p 265); 'Land Board Minute', 26 August 1931 (Young, papers in support of 'Muaūpoko Land Alienation' (doc A161(a)), p 247); commissioner of Crown lands to W Stewart Park, 1 September 1931 (Young, papers in support of 'Muaūpoko Land Alienation' (doc A161(a)), p 245); Lands and Survey memorandum to chief surveyor, 15 July 1931 (Young, papers in support of 'Muaūpoko Land Alienation' (doc A161(a)), p 253)

240. Commissioner of Crown lands to W Stewart Park, 1 September 1931 (Young, papers in support of 'Muaūpoko Land Alienation' (doc A161(a)), p 245)

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land. Finally, in August 1934, Park was given one final chance to make good on his commitment to purchase the land. The Public Works Department had by this time expressed an interest in acquiring the block for afforestation purposes. Park was still unable to purchase the land and the block was transferred to the Public Works Department shortly thereafter.[241]

7.4.6 Our findings on the Crown's purchase of this coastal land (Horowhenua 11B42C1)

In our view, the Crown's last major purchase of land at Horowhenua involved a number of Treaty breaches, as we set out in this section.

The Native Land Amendment Act 1913 allowed the Crown to bypass the collective decision-making of the landowners through the purchase of undivided interests. The system of having proposed alienations considered by a meeting of owners had been introduced just four years previously through the Native Land Act 1909. This system was far from perfect – as we have already noted, a meeting of just five owners or their representatives constituted a quorum, no matter how large the number of owners, and decisions were carried based on the relative strength of ownership interest present at the meeting. In practice, this meant that blocks like Horowhenua 11B42C, which had more than 100 owners, could be alienated based upon a meeting of just a few individuals, at which just one owner with a relatively large share voted in favour of selling. Yet for all its obvious weaknesses, the requirement to take proposed purchases to a meeting of owners could prevent the alienation of land where enough owners wished to retain land. In the case of Horowhenua 11B42C, this requirement effectively stymied Park's efforts to purchase the block himself. It also saw the owners reject the Crown's initial attempt to secure 640 acres of the block.

One effect of the 1913 Act was to allow the Crown to undermine collective decision-making by owners if its purchase offer was rejected. While supporting and upholding resolutions to *sell* land, the Crown could actively subvert resolutions by owners to reject sales. Like the Whanganui Land Tribunal, we consider that this uneven treatment of the resolutions of Māori landowners was 'inconsistent and lacked integrity'.[242] The Crown's purchase of undivided interests in Horowhenua 11B42C occurred at a time when the owners of that block and others opposed land sales generally. The Crown knew the owners were averse to selling; RN Jones, the under-secretary for the Native Department, had said as much. Yet Jones was also a member of the Native Land Purchase Board which approved the purchase of the block, and pursued the purchase of individual interests after a meeting of owners rejected the Crown's initial purchase offer.

Another effect of the Act was to allow the Crown to negotiate with individual owners, which could have the effect of driving down the prices it paid for the land it acquired. In this case, the Crown was able to acquire more land than Park had sought, for a combined purchase price that was 20 per cent less than it had offered

241. Young, 'Muaūpoko Land Alienation' (doc A161), pp 41–42
242. Waitangi Tribunal, *He Whiritaunoka*, vol 2, p 730

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at the meeting of owners. This was because the Crown's method of purchasing from individuals denied the owners any ability to determine collectively (or bargain collectively for) a price. It was patently unfair and a breach of the principle of active protection.

We note here that, though the Crown made no submission on the purchase of Horowhenua 11B42C, it did concede that 'it failed to provide an effective form of corporate title until 1894, which undermined attempts by Muaūpoko to maintain tribal authority within the Horowhenua block and this was a breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles'.[243] In our view the effect of the 1913 Act also undermined the ability of Muaūpoko landowners to maintain their collective authority over their land. We find that the Crown breached the duty of active protection.

The specific circumstances surrounding the Crown's purchase of this block constitute a further breach. The Crown's representatives aggressively pursued the purchase in the full knowledge that the owners opposed the sale of this particular block, in order to help a private Pākehā citizen circumvent the owners' decision not to sell to him. Furthermore, the Crown achieved this end by using its power to buy individual interests, which private citizens like Park were not allowed to do, undermining the owners' collective authority. In doing so, the Crown betrayed the mutual good faith which comprises the basis of the relationship between the Treaty partners. We therefore find that the Crown breached the principle of partnership, which entails a duty to act in the utmost good faith towards its Treaty partner. We also find that the Crown breached the principle of equity, which required the Crown to act fairly as between Māori and non-Māori, and not to prioritise the interests of settlers to the disadvantage of Māori. The Muaūpoko owners of this piece of ancestral coastal land, which could have been a source of income through afforestation, were clearly prejudiced by these Treaty breaches.

7.5 Conclusion and Summary of Findings

In section 7.2 of this chapter, we analysed Muaūpoko land loss in Horowhenua 11, the tribal heartland, as well as the 'maintenance' lands in Horowhenua 3 and 6. Our focus was a statistical analysis, as we lacked the evidence to address major issues such as consolidation schemes (the Taueki consolidation scheme), protection mechanisms (as administered by land boards), and the process of serial partitioning. We did, however, have sufficient evidence to assess some particular grievances of the Muaūpoko claimants: the establishment of the Hōkio native township on their land (section 7.3); and the Crown's purchase of coastal land on the western edge of Horowhenua 11 (section 7.4). We now summarise our findings in respect of these matters.

243. Crown counsel, opening submissions and initial concessions, 1 October 2015 (paper 3.3.1), p 5

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7.5.1 Muaūpoko land loss in the twentieth century

By the time of our hearings in 2015, Muaupoko were virtually landless. Our analysis of land loss showed that they only retained 5,288 acres of the 52,460-acre Horowhenua block, 901 acres of which comprised the bed of Lake Horowhenua. Thus, only about 10 per cent of their original holdings remained as Māori freehold land. Crown counsel conceded that the Crown's 'failure to ensure that Muaūpoko retained sufficient land for their present and future needs was a breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles'. The Crown also conceded that the cumulative effect of its native land laws, and of its acts or omissions, was Muaūpoko landlessness.[244] We agree that these Crown acts and omissions breached the Treaty.

7.5.2 Hōkio native township

In our inquiry district, the legal ownership and control of the Hōkio native township was acquired compulsorily in 1902 so that Levin residents could have holiday homes by the sea. This was an abuse of the powers granted the Crown under the Native Townships Act 1895, which was intended to establish townships in the interior for the facilitation of settlement. Nor could such a compulsory taking be justified as essential in the national interest or as a last resort. By contrast, 1901 legislation allowed Māori owners to choose to vest their land in a Māori land council and to have (with their consent) a native township established on that land. In the case of Hōkio, the Crown also acquired absolute ownership of 42.5 per cent of the township lands for roads and public reserves, without consent or compensation. Further, according to the chief surveyor at the time, there was no prospect that the Hōkio township would ever be of real benefit to its Māori beneficial owners. The Crown's acquisition of the Hōkio township land in all these circumstances, and without the consent of its Muaūpoko owners, was a breach of the principles of partnership and active protection.

We agree with the Whanganui Land Tribunal that the Native townships regime established a system of management which denied the beneficial owners a meaningful role. In 1910, a new Native Townships Act transferred legal ownership and control of the Hōkio township from the Crown to the district Māori land board, without consulting or obtaining the consent of the Muaūpoko beneficial owners. This was a breach of the ownership and tino rangatiratanga guarantees in the Treaty. The 1910 legislation also allowed the board to sell township lands, but the Crown promised that there were safeguards to ensure that the beneficial owners' rights and interests were protected. The Crown did not in fact ensure that these safeguards were effective, and township lands were sold from the 1920s to the 1940s without the proper consent of the Muaūpoko beneficial owners. This was a breach of the article 2 guarantees and the principle of active protection. Finally, the Crown did not consult or obtain the agreement of the Muaūpoko owners to the vesting of legal

244. Crown counsel, closing submissions (paper 3.3.24), p24

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ownership and control of their township lands in the Māori Trustee (transferred from the land board). This was a breach of Treaty principles.

Muaūpoko were prejudiced by losing legal ownership and control of their lands for a number of decades, and the absolute loss of land sold in the interim. The owners did receive some lease income, but the amounts were very small.

7.5.3 The Crown's last major land purchase (Horowhenua 11B42C1)

The legislative framework governing Māori land at the time of the Horowhenua 11B42C1 purchase provided a system of meetings of assembled owners. The quorum requirements were very low, and Māori land could be sold on the vote of a majority of those present at a meeting (by share value). But this provision at least offered Māori owners the possibility of collective decision-making about Māori land (albeit one-off decisions only). In 1913, the Crown gave itself the power to circumvent meetings of owners and buy undivided, individual interests if a meeting resolved not to sell. These provisions of the native land legislation fell well short of providing for tino rangatiratanga in respect of land, and offered a relatively flawed means of group decision-making which the Crown could circumvent at will.

In this context, a private purchaser sought to obtain Horowhenua 11B42C but a meeting of assembled owners did not wish to sell. The Crown intervened at the request of this private citizen, but its purchase offer was also rejected by a meeting of owners. The Crown then used its powers to buy undivided, individual interests, a power not available to private citizens, in order to defeat the owners' collective decision not to sell, and to obtain their land for a local settler. This method of purchase enabled the Crown to pay a price that was 20 per cent lower than it had offered at the meeting, since its purchase of individual interests denied the owners any collective power to set or bargain over the price.

By its actions, the Crown betrayed the mutual trust which comprises the basis of the relationship between the Treaty partners, circumventing the collective will of the Māori owners in order to aid a private buyer, and lowering the price into the bargain. The Crown breached the principle of partnership, which entails a duty to act in the utmost good faith towards its Treaty partner. The Crown also breached the principle of equity, which required the Crown to act fairly as between Māori and non-Māori, and not to prioritise the interests of settlers to the disadvantage of Māori.

The Muaūpoko owners of this piece of ancestral coastal land, which could have been a source of income to them through afforestation, were clearly prejudiced by these Treaty breaches.

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CHAPTER 8

LAKE HOROWHENUA AND THE HŌKIO STREAM, 1897–1934

He tangi nā Te Rangihiwinui
Haere e Kui!
Koutou ko taokete, e!
Me te taheke te tangi
Ki muri ki to matua i

Iti ai au
E mini ai au
Ki a koe, i!
Ou ringaringa wherawhera

Kia mau ai
Te tatua, e!

I hoki mai taua
Ma aku whakamahinga
I Te Wi, i Ohau e!
I te taupa
Ki Whakamarama, i!
Kia ripoi mai e!

Katahi kae, e kui
Ka makere i a au e![1]

1. These waiata were composed by an ancestor famous throughout the country, Te Rangihiwinui or Major Kemp. His mother's name was Rere-o-maki, from Te Āti Haunui-ā-Paparangi and his father was Mahuera Paki Tanguru-o-te-Rangi, from Muaūpoko. Te Rangihiwinui was raised during the time of fighting between Muaūpoko, Ngāti Toarangatira, Ngāti Raukawa, and Te Ātiawa, at the beginning of the 1800s: Sian Montgomery-Neutze, 'He wānanga i ngā waiata me ngā kōrero whakapapa o Muaūpoko', not dated (doc A15(a)), pp [52]–[53]

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8.1 Introduction

8.1.1 What this chapter is about

Historical claims about Lake Horowhenua and the Hōkio Stream were of particular importance to the Muaūpoko claimants. The management and restoration of the lake has become one of the most pressing and divisive issues for the claimant community. Those tensions were evident during our hearings. But at the most fundamental level the Muaūpoko people agree that Lake Horowhenua is a taonga of enormous importance to the spiritual life, cultural identity, and economic survival of the tribe. It was highly prized for its fisheries, which formed the tribe's principal food source – right through to the 1940s and beyond. Yet Lake Horowhenua, as claimant Tama Ruru put it, has 'degenerated to a sewer that children cannot swim in and we cannot eat from'.[2]

The pollution and environmental degradation of Lake Horowhenua is mainly dealt with in chapters 10 and 11. In this chapter, we address the following claim issues:

- The alleged existence of an agreement in 1905 which resulted in the Horowhenua Lake Act of the same year. This Act, which made the lake a recreation reserve and established a domain board to manage it, was a source of major grievance to the Muaūpoko claimants. These issues are covered in section 8.2.
- The 'whittling away' of the Muaūpoko owners' rights to their lake, as found by a public committee of inquiry in 1934, which resulted from the 1905 Act and further legislation in the 1910s and 1920s. The drastic lowering of the lake by modification of the Hōkio Stream was one of the most controversial developments of this period. These matters are addressed in section 8.3.

The Crown conceded that it promoted legislation in 1905 (the Horowhenua Lake Act) which failed to adequately reflect the terms of the 1905 agreement, whereas the claimants argued that there was no agreement or only a very limited one. Despite making this concession, the Crown argued that any Muaūpoko grievances as a result of the 1905 Act were rectified in 1956 by the Reserves and Other Land Disposal (ROLD) Act of that year (discussed in chapter 9). The Crown also denied that it was responsible for (or complicit in) the pollution of the lake and stream, which the Crown ascribed to causes and local bodies outside its control.

8.1.2 The taonga: Lake Horowhenua and the Hōkio Stream

Lake Horowhenua is a shallow dune lake. It has a relatively contained catchment but receives a considerable amount of inflow – about half the annual intake of water – from groundwater.[3] Lake Horowhenua is a significant geological feature, and was once part of a system of dune lakes and lagoons in the west coast of the lower North Island.[4] Historian Paul Hamer, who prepared a report for the Tribunal, noted:

2. Tama Ruru, closing submissions, 10 February 2016 (paper 3.3.10), p [61]
3. Paul Hamer, '"A Tangled Skein": Lake Horowhenua, Muaūpoko, and the Crown, 1898–2000', June 2015 (doc A150), p 8
4. Hamer, '"A Tangled Skein"' (doc A150), p 8

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> Horowhenua geologist and local historian G L (Leslie) Adkin estimated that there were 72 such lagoons known to Māori between the Manawatū and Ōtaki rivers before Pākehā settlement, with a number lost since then to sand encroachment or drainage. The lakes and lagoons were formed – and continue to be shaped – by the movement of the sand, carried westward to the coast by rivers and pushed southward along the coast by the prevailing winds. Some are categorised as basin lakes and others as valley lakes, with Horowhenua being of the former variety. It is the largest of five dune lakes between the Manawatū and Ōtaki, the others being Papaitonga (or Waiwiri) and the three so-called 'Forest Lakes' of Waitawa, Kopureherehe, and Rotopotakataka. They all lie along the boundary between the dune belt that stretches north and south and the older geological formations to its east. Each lake has an 'impounding barrier . . . [of] blown sand.' The name 'Horowhenua' itself means 'the great landslide'.[5]

Dr Jonathan Procter told us that Lake Horowhenua 'is said to be the largest dune lake in the country' – it has a surface area of around 3.9 square kilometres – 'with the only outflow being down the Hokio Stream'.[6]

Before the arrival of Europeans, Lake Horowhenua was described as bountiful or teaming with birdlife and legendary fisheries, including eels, flounder, īnanga, shellfish, and other species.[7] Significant kāinga and pā were situated around its banks. As we discussed in chapter 2, the people of the lake built seven island pā on the lake itself.[8] The largest, Waikiekie, was '100 yards' long and '40 yards' across.[9] Large eel weirs were situated at the outlet of the lake and downstream along the Hōkio Stream. There were similar eel weirs at Lake Papaitonga at its upper reaches.[10]

As we noted in chapter 2, at the beginning of the nineteenth century, Muaūpoko claim they held a sphere of influence which extended south to the top of the South Island, north to Manawatū, and from the west coast across the Tararua Ranges to Wairarapa.[11] Parts of this large area they shared with Ngāti Apa, Rangitāne, Ngāi Tara, Ngāti Ira, Ngāti Hāmua, several hapū of Ngāti Kahungunu, and others.[12] In the space of one century, and due to those matters we have discussed in chapters 3 and 4, by the end of the nineteenth century, their influence was reduced to the Horowhenua block.[13] Nestled in that block was their treasured lake, Lake Horowhenua with its outlet to Hōkio Stream down to Hōkio Beach. The stream and beach they shared with Ngāti Raukawa.

Lake Horowhenua, Arawhata Stream, the Pātiki Stream, the Mangaroa Stream, the Hōkio Stream, the Hōkio Beach, Lake Papaitonga (or Waiwiri), and the Waiwiri

5. Hamer, '"A Tangled Skein"' (doc A150), p 8
6. Jonathan Procter, brief of evidence, 12 November 2015 (doc C22), p 4
7. Hamer, '"A Tangled Skein"' (doc A150), pp 9–10
8. Hamer, '"A Tangled Skein"' (doc A150), p 11
9. Hamer, '"A Tangled Skein"' (doc A150), p 11
10. Hamer, '"A Tangled Skein"' (doc A150), p 10
11. Bruce Stirling, 'Muaupoko Customary Interests', September 2015 (doc A182), p 5
12. Stirling, 'Muaupoko Customary Interests' (doc A182), pp 5, 6
13. Stirling, 'Muaupoko Customary Interests' (doc A182), p 5

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Stream with their surrounds are part of who Muaūpoko are as a people.[14] They continue to claim to be kaitiaki for them.[15] William (Bill) Taueki referred to Lake Horowhenua as the source of mauri for his whānau and iwi for generations.[16] These waterways, Muaūpoko believe, were interconnected.[17]

The waterways and their surrounds were a food basket and major source of raw materials.[18] In 1897, Muaūpoko rangatira Hoani Puihi told the Native Appellate Court that Lake Horowhenua was both 'our parent' and 'our butcher's shop':

> The people attached great value to the lake as a source of food-supply. It is our butcher's shop, and is our parent. Kemp [Te Keepa Te Rangihiwinui] and the people wished the door of the butcher's shop opened for the people. The people have always made use of the lake. We obtain food from it now.[19]

At least one witness in our inquiry referred to Lake Horowhenua as Te Pataka-nui o Muaūpoko.[20] Lake Horowhenua was once surrounded by forests that went right to the edge of the lake and streams.[21] Henry Williams, who was born in 1934, described the lake as 'absolutely beautiful' with 'crystal clear' waters.[22] It was, he told us, central to Muaūpoko's existence as a tribe.[23]

Flax was gathered for weaving from around the lake edge.[24] Birds, firewood and rongoā, karaka berries and pikopiko were obtained from the forests, and food was obtained from the lakes, the streams, and the sea.[25] Trees such as kawakawa, harakeke, and mamaku were all harvested.[26]

Lake Horowhenua was also the 'puna waiora' or place where the people 'went to be at peace and to rejuvenate'.[27] Bill Taueki remembers that his father saw the food from the lake and associated tikanga as a taonga tuku iho gifted by the ancestors.[28] Many claimants referred to the lake and the Hōkio Stream as taonga.[29]

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14. Moana Kupa, brief of evidence, 11 November 2015 (doc C7), p 4; Hingaparae Gardiner, brief of evidence, 11 November 2015 (doc C8), p 4
15. Gardiner, brief of evidence (doc C8), p 4; William Taueki, brief of evidence, 11 November 2015 (doc C10), p 49
16. William Taueki, brief of evidence (doc C10), p 29
17. William Taueki, brief of evidence (doc C10), p 30
18. William Taueki, brief of evidence (doc C10), p 31. For a description of the lake as a supermarket, see Kupa, brief of evidence (doc C7), p 3.
19. AJHR, 1898, G-2A, p 98
20. William Taueki, brief of evidence (doc C10), p 30
21. William Taueki, brief of evidence (doc C10), p 30
22. Henry Williams, brief of evidence, 11 November 2015 (doc C11), pp 3, 5
23. Williams, brief of evidence (doc C11), p 5
24. Bella Moore, brief of evidence, 11 November 2015 (doc C5), p 2
25. William Taueki, brief of evidence (doc C10), pp 31–32
26. Uruorangi Paki, brief of evidence, 11 November 2015 (doc C3), pp 4–5
27. Kupa, brief of evidence (doc C7), p 3
28. William Taueki, brief of evidence (doc C10), p 50
29. See, for example, Philip Taueki, brief of evidence, August 2015 (doc B1), para 41; Vivienne Taueki, brief of evidence, 29 August 2015 (doc B2), p 20; Moore, brief of evidence (doc C5), p 3; Gardiner, brief of evidence (doc C8), p 5; William Taueki, brief of evidence (doc C10), p 50; Procter, brief of evidence (doc C22), p 3.

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This world that Muaūpoko and their neighbours once knew was described by Paul Hamer as 'a landscape covered by thick bush interspersed with numerous watercourses ranging from rivers and lakes to swamps. As a people, they must have been as at home on land as on water.'[30] Mr Hamer noted that one historical writer referred to Muaūpoko as an 'amphibious tribe relying on sea, river, lagoon, and swamp for eels, inanga, kakahi, and a great range of bird life.'[31]

In our inquiry, the Crown acknowledged the 'importance to Muaūpoko of Lake Horowhenua and the Hokio Stream as part of their identity' and as 'fishing areas for cultural and physical sustainability'. The Crown also accepted that 'Muaūpoko value Lake Horowhenua and its resources as taonga', and it acknowledged 'the importance of the Lake as a source of physical and spiritual sustenance to Muaūpoko'.[32] These were important acknowledgements, in our view.

8.1.3 Exclusions from this chapter and from chapters 9–10

(1) *Ngāti Raukawa claims and the fishing rights of the Horowhenua 9 owners*

We do not deal with any Ngāti Raukawa claims in respect of Lake Horowhenua or the Hōkio Stream in this or the following chapters. As we explained in chapter 1, those claims will be addressed later in our inquiry.

As we set out in chapters 4 and 5, the Horowhenua block was awarded to Muaūpoko in 1873, and partitioned by that tribe in 1886. Prior to the partition, Donald McLean negotiated a deal with Ngāti Raukawa chiefs and Te Keepa Te Rangihiwinui in 1874, which included a gift of 1,300 acres to the descendants of Te Whatanui (see section 4.3.4). When the Horowhenua block was partitioned in 1886, the gifted land was set aside as Horowhenua 9, located south of the Hōkio Stream (see section 5.4.5). The beds of the Hōkio Stream and Lake Horowhenua were included in the adjacent Horowhenua 11, which was awarded to Te Keepa and Warena Hunia (in trust for the other Muaūpoko owners). There was a dispute about the correct persons to be placed on the title for block 9, which was eventually heard by the Horowhenua commission in 1896. Dr Robyn Anderson and Dr Keith Pickens have provided an account of the various Ngāti Raukawa issues and grievances addressed by the commission in 1896, the Horowhenua Block Act 1896, and by the Native Appellate Court in 1897–98.[33] Here, we are concerned with fishing rights. In its report, the Horowhenua commission recommended that the owners of Horowhenua 9 should 'have the right to fish and erect eel-weirs' in the Hōkio Stream.[34]

After the commission reported, the Horowhenua Block Act 1896 was passed, as we discussed in chapter 6. Section 9 of the Horowhenua Block Act 1896 Act made provision for the fishing rights of the Horowhenua 9 owners:

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30. Hamer, '"A Tangled Skein"' (doc A150), p 11
31. Hamer, '"A Tangled Skein"' (doc A150), p 11
32. Crown counsel, closing submissions, 31 March 2016 (paper 3.3.24), p 44
33. Robyn Anderson and Keith Pickens, *Wellington District: Port Nicholson, Hutt Valley, Porirua, Rangitikei, and Manawatu*, Waitangi Tribunal Rangahaua Whānui Series (Wellington: Waitangi Tribunal, 1996) (doc A165), pp 237–251
34. AJHR, 1896, G-2, p 11

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> Any certificate of title to be issued for part of Division Eleven aforesaid shall be subject to the right of the Native owners for the time being of Division Nine aforesaid to fish in such portions of the Hokio Stream and the Horowhenua Lake respectively as are included in the said certificate.

The Horowhenua Block Act 1896 was repealed in 1931 but these statutory fishing rights were preserved by section 18(6) of the ROLD Act 1956, which is still in force. Section 18(6) provided: 'Nothing herein contained shall in any way affect the fishing rights granted pursuant to section nine of the Horowhenua Block Act 1896'. There was a move in the 1980s to repeal this saving clause but it was not successful.[35]

Thus, when we refer to the fishing rights of the Muaūpoko owners of Lake Horowhenua in this and the following chapters, the effects of these two legislative provisions must be kept in mind.

Otherwise, as noted, we will report on any Ngāti Raukawa claims about Lake Horowhenua and the Hōkio Stream later in our inquiry.

(2) *Muaūpoko claims about the ownership of water*

The ownership of water was a significant issue for the Muaūpoko claimants who appeared before us. In brief, the argument between the parties is as to whether (a) no one owns water (the Crown's position) or (b) water is owned as an integral component of waterways which are taonga (the claimants' position). In 2012, this issue was considered nationally as part of urgent hearings on the Crown's proposal to sell shares in State-owned electricity companies. The Tribunal's report, *The Stage 1 Report on the National Freshwater and Geothermal Resources Claim*, made findings on the ownership of water as at 1840, and the Māori water rights protected by the Treaty.[36] At present, stage 2 of the inquiry is addressing current issues in respect of freshwater inquiry resources: whether present laws and Crown policies in respect of water are Treaty-compliant, and possible reforms to laws and policies. The ownership of water remains a live issue in that inquiry.

(a) ***The Crown's position:*** The Crown submitted that the question of water ownership is already before the national freshwater inquiry, and that it would be 'inappropriate' for us to 'make findings as to water ownership claims when the specific inquiry on precisely such issues is yet to report'.[37] The Crown's position is that

> there is no property in flowing water, though it is possible to have property rights to use water, and/or regulatory (statutory or administrative) rights to use water. Property owners may have rights relating to space occupied by flowing water, but not have property in the water itself.[38]

35. Hamer, '"A Tangled Skein"' (doc A150), pp 352–354
36. Waitangi Tribunal, *The Stage 1 Report on the National Freshwater and Geothermal Resources Claim* (Wellington: Legislation Direct, 2012)
37. Crown counsel, closing submissions (paper 3.3.24), p 51
38. Crown counsel, closing submissions (paper 3.3.24), p 51

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In the Crown's view, rights to use water in New Zealand 'are now almost entirely statutory and regulatory in nature, not proprietary'.[39] Crown counsel submitted, however, that if there are in fact 'extant customary property interests in the waters of the Lake, those interests (consistent with Crown policy) will not be extinguished by any Treaty settlement'.[40] If there are such interests, the Crown submitted, the appropriate form and extent of recognition is a contemporary issue, not an historical one for the present inquiry.[41]

(b) *The claimants' position:* The claimants did not accept the Crown's view that the ownership of water should be left to the national freshwater resources inquiry. In the claimants' view, this Tribunal can make findings on any issue before it, and it should not avoid 'making a finding on a specific matter that is more generically before another Tribunal'.[42] The claimants also submitted that the Crown's position in this inquiry simply ignores previous Tribunal findings, which the claimants argued were clear in respect of Māori ownership of fresh water. Also, the claimants submitted, the Crown's duty of active protection means that it should, 'for the time being, in all of its actions leave room for the possibility that the Lake waters are owned by Muaupoko'.[43]

In essence, the claimants' position is that Lake Horowhenua is an indivisible water body and a taonga.[44] The water of the lake 'cannot be divided and must also be considered a part of that taonga'. Because the claimants still have legal ownership of the lakebed and the chain strip, Muaūpoko 'have continued to retain the exclusive right to control access to and use of the water within Lake Horowhenua'. This continued, exclusive control of access, we were told, is 'analogous with ownership' of the waters of the lake.[45] The claimants relied, in particular, on the stage 1 water report and the Tribunal's *Te Kāhui Maunga* (National Park) report[46] in support of their position.[47]

(c) *The Tribunal's decision:* After considering the submissions and evidence on this question, we note that there is some evidence specific to Lake Horowhenua but the issue of ownership of water affects all the claimants in our inquiry district. On balance, this issue would best be dealt with after the completion of their research and

39. Crown counsel, closing submissions (paper 3.3.24), p 52

40. Crown counsel, closing submissions (paper 3.3.24), p 52

41. Crown counsel, closing submissions (paper 3.3.24), p 52

42. Claimant counsel (Bennion, Whiley, and Black), submissions by way of reply, 21 April 2016 (paper 3.3.33), p 4

43. Claimant counsel (Bennion, Whiley, and Black), submissions by way of reply (paper 3.3.33), p 5

44. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3: Lake Horowhenua issues, 19 February 2016 (paper 3.3.17(b)), pp 7–8; claimant counsel (Naden, Upton, and Shankar), closing submissions, 16 February 2016 (paper 3.3.23), pp 291–293

45. Claimant counsel (Naden, Upton, and Shankar), closing submissions (paper 3.3.23), p 292

46. Waitangi Tribunal, *Te Kāhui Maunga: The National Park District Inquiry Report*, 3 vols (Wellington: Legislation Direct, 2013)

47. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), pp 5–8; claimant counsel (Naden, Upton, and Shankar), closing submissions (paper 3.3.23), pp 291–293

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the hearing of all parties. At that point in our inquiry, we may also be assisted by further findings from the national freshwater resources inquiry.

We turn next to begin our substantive analysis of Muaūpoko claims by addressing the question of whether there was a Crown–Muaūpoko agreement about the lake in 1905, and whether the Horowhenua Lake Act 1905 faithfully reflected such an agreement.

8.2 Was there a Lake Agreement in 1905 and, If So, Did the 1905 Act Faithfully Reflect It?

8.2.1 The parties' arguments

In this section, we briefly summarise the parties' closing submissions in respect of the 1905 'agreement' and the Horowhenua Lake Act 1905. For many claimants, their grievances about the agreement and the Act were the crux of their claims about the lake.

(1) *The Crown's concession*

At an early stage of our inquiry, the Crown made an important concession of Treaty breach in respect of the 1905 Act and agreement, which was repeated in closing submissions:

> The Crown acknowledges that it promoted legislation in 1905 that failed to adequately reflect the terms of the Horowhenua Lake Agreement of 1905. The differences between the agreement and the Act prejudiced Māori with connections to the Lake, including by the Act not directly providing for protections against pollution of the Lake which contributed to damage of traditional food sources, and by impacting on the owners' fishing rights. The Crown concedes that the failure of the legislation to give adequate effect to the 1905 agreement breached Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.[48]

(2) *Why did the Crown decide to acquire Lake Horowhenua and its surrounds at the turn of the twentieth century?*

(a) ***The claimants' case:*** The claimants argued that the events from 1897 to 1905 were (i) crucial in determining why the Crown sought to negotiate an agreement with Muaūpoko, and (ii) demonstrate that the Crown was a party to the 1905 agreement. In their view, the settlers' interests in the lake – recreation and drainage to increase farmland – were not of a kind requiring the Crown's intervention. Yet the Crown sought to acquire the lake and its surrounds compulsorily, only compromising at the last minute to enter into a voluntary agreement with Muaūpoko instead. In

48. Crown counsel, closing submissions (paper 3.3.24), pp 43–44

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seeking an agreement in the way that it did, the Crown tried to bypass or subvert the trust which Muaūpoko had established to hold and control their lake.[49]

(b) *The Crown's case:* As a general submission, the Crown maintained that its duty in respect of natural resources and the environment was to strike a fair balance between interests in a resource such as Lake Horowhenua.[50] In respect of the period leading up to the agreement, the Crown submitted that 'many Pakeha politicians, and some Crown officials, considered lakes should be treated as public spaces that were not capable of being privately owned'.[51] This approach, however, was not taken regarding Lake Horowhenua because a title had already been issued in 1896–98. Rather, Muaūpoko agreed to a 'voluntary cession' of 'use rights'.[52]

(3) *Was there a lake agreement in 1905?*

(a) *The claimants' case:* There were a variety of submissions from claimants in respect of the 1905 'agreement'. Some claimants argued that there was no agreement at all, because there was no meeting of minds, there was no signed deed, and the owners with authority to make an agreement were not (or not known to have been) involved.[53] Others accept evidence from close to the time that Muaūpoko agreed to share the surface of their lake for boating in return for crucial guarantees from the Crown (including that pollution would be prevented from entering the lake). They deny, however, that the Crown's unsigned list of terms, prepared after the October 1905 meeting, is an accurate account of what Muaūpoko agreed to cede.[54] Those claimants who accepted that there *was* an agreement maintained that the Crown was a party to it and bound by the guarantees it gave.[55] The claimants also argued that the Crown's list of terms was no more than a 'shopping list' of poorly defined items, requiring further negotiation with the proper authorities – the lake trustees – to obtain a sound, formal agreement.[56]

(b) *The Crown's case:* The Crown submitted that there was a '"voluntary cession" by Muaūpoko of use rights in respect of the Lake and to the establishment of a board to manage and control the Lake's uses. Rights were not simply taken by legislation.'[57] The Crown relied on Paul Hamer's evidence that Muaūpoko com-

49. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), pp 8–11, 21–28; claimant counsel (Bennion, Whiley, and Black), submissions by way of reply (paper 3.3.33), pp 7–8

50. Crown counsel, closing submissions (paper 3.3.24), pp 36–37

51. Crown counsel, closing submissions (paper 3.3.24), p 48

52. Crown counsel, closing submissions (paper 3.3.24), pp 47, 52

53. Claimant counsel (Lyall and Thornton), closing submissions, 15 February 2016 (paper 3.3.19), pp 29–30; Philip Taueki, submissions by way of reply, April 2016 (paper 3.3.31), paras 104–119, 144–148

54. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), pp 28–34; claimant counsel (Naden, Upton, and Shankar), closing submissions (paper 3.3.23), pp 273–274, 277

55. Claimant counsel (Stone, Bagsic, and Hopkins), closing submissions, 10 February 2016 (paper 3.3.9), pp 6–9; claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 29

56. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), pp 29–32, 34, 44–45

57. Crown counsel, closing submissions (paper 3.3.24), p 52

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plaints after 1905 'were about the extent of rights given not whether they were or not'.[58] This was confirmed at the 1934 committee inquiry into the tribe's grievances, where Muaūpoko – with the benefit of legal advice – said that there had been a 'voluntary cession' in 1905. Nonetheless, the Crown admitted, there 'appears to have been some uncertainty about what was given up and retained' in the agreement. The record is unclear as to 'the nature or extent of use rights that owners regarded as having been granted (particularly in relation to fishing) and to the envisaged powers of the Board (particularly in relation to drainage)'.[59]

(4) *Did the 1905 Act faithfully reflect any Crown and Māori understandings of the 'agreement'?*

(a) ***The claimants' case:*** Some claimants maintained that there had been no agreement, and that the 1905 Act 'stole Lake Horowhenua', as unrepresented claimant Philip Taueki submitted.[60] Those who recognised the existence of a limited agreement submitted that the Crown should have consulted and obtained the formal agreement of the lake trustees to more fully developed terms before legislating. In the event, the Act failed to give effect to the agreement as Muaūpoko understood it, and even as the official account had understood it. First, argued the claimants, the Act dramatically extended the agreement beyond what had even been discussed, let alone agreed, including:

- turning Muaūpoko's privately owned lake into a public recreation reserve, and including the chain strip in that reserve;
- providing for a domain board with very extensive powers to control all activities except customary fishing, and only giving Muaūpoko a minority representation on that board; and
- subordinating Māori fishing and other rights to public recreational uses.[61]

Many claimants argued that some of their property rights (including development rights) and their authority over the lake were thereby confiscated without compensation or consent.[62]

In addition, the claimants argued that key guarantees made to Muaūpoko in the Crown's list of terms, including protecting the lake from pollution and preserving the native vegetation around the lake, were wrongly omitted from the Act.[63]

(b) ***The Crown's case:*** As quoted above, the Crown conceded that the 1905 Act failed to 'adequately reflect' the terms of the agreement, including failure to include the

58. Crown counsel, closing submissions (paper 3.3.24), p 52
59. Crown counsel, closing submissions (paper 3.3.24), p 52
60. Philip Taueki, closing submissions, 12 February 2016 (paper 3.3.15), p [3]
61. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), pp 34–45; claimant counsel (Stone, Bagsic, and Hopkins), closing submissions (paper 3.3.9), pp 8–9
62. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), pp 34–45; claimant counsel (Bennion, Whiley, and Black), submissions by way of reply (paper 3.3.33), pp 6–8; claimant counsel (Ertel and Zwaan), submissions by way of reply, 14 April 2016 (paper 3.3.25), p 11; claimant counsel (Watson), closing submissions, 15 February 2016 (paper 3.3.21), p 17; Philip Taueki, submissions by way of reply (paper 3.3.31), paras 120–122
63. Claimant counsel (Stone, Bagsic, and Hopkins), closing submissions (paper 3.3.9), pp 8–9

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pollution clause, and that this breached Treaty principles.[64] The Crown qualified this concession, however, by arguing that the pollution clause and other matters left out of the Act were to be provided for by the domain board, and that this duly happened.[65]

The Crown disagreed with the claimants that there was any element of confiscation or raupatu in the Act. First, the Crown noted that the Māori owners' property rights under the Land Transfer Act were not extinguished, as the Act did not (and was not intended to) vest the bed in the Crown.[66] Secondly, the Crown argued that the Act introduced a 'significant degree of regulation of the owners' property rights', but that this did not 'constitute an expropriation or raupatu'.[67] In the Crown's view, the claimants' concerns were more the outcome of domain board decisions, but the domain board was not an agent of the Crown.[68]

Thirdly, the Crown argued that the intention of the 1905 Act was to 'create public rights of access and recreation "without unduly interfering with the fishing and other rights of the Native owners"'.[69] In the Crown's view, the Act properly balanced public and Māori rights, and correctly reflected the agreement in respect of the balance of public uses and Māori fishing rights.[70] Muaūpoko and public interests were to 'coexist in relation to the Lake', and the domain board was 'to exercise a form of joint management'.[71]

We turn next to analyse the evidence in light of the parties' arguments, and to make our findings on these matters.

8.2.2 Why did the Crown decide to acquire Lake Horowhenua and its surrounds at the turn of the twentieth century?

In November 1897, the member for Manawatū, John Stevens, asked a question of the Minister of Lands in the House:

> If he will, so soon as the title thereto has been ascertained, acquire by purchase from the Native owners the whole of the Horowhenua Lake, together with a suitable area of land around its shores, for the purpose of a public park, reserving to the Native owners and their descendants the right to their eel and other fisheries, and dedicate the lake and land so to be acquired to the local body within whose boundaries they are situate?[72]

64. Crown counsel, closing submissions (paper 3.3.24), pp 43–44
65. Crown counsel, closing submissions (paper 3.3.24), p 53
66. Crown counsel, closing submissions (paper 3.3.24), p 48
67. Crown counsel, closing submissions (paper 3.3.24), p 48
68. Crown counsel, closing submissions (paper 3.3.24), pp 26, 54
69. Crown counsel, closing submissions (paper 3.3.24), p 48
70. Crown counsel, closing submissions (paper 3.3.24), p 48
71. Crown counsel, closing submissions (paper 3.3.24), p 49
72. NZPD, 1897, vol 100, pp 143–144 (Hamer, '"A Tangled Skein"' (doc A150), p 25)

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Stevens warned the Government that unless it took steps to acquire the lake soon, it could face the same situation as occurred with the Wairarapa lakes.[73] In the latter case, Premier Seddon had just ended a 20-year struggle to obtain ownership in 1896, acquiring the lakes by 'gift' from their Māori owners.[74]

The Minister, John (Jock) McKenzie, replied that the Crown had already been advised to acquire Lake Horowhenua and was 'favourably disposed to the idea'.[75] Levin residents followed up on this promising response by holding a public meeting in December 1897 and petitioning the Crown. The meeting passed a series of resolutions, including an urgent request that the Crown 'lose no time' in buying Lakes Horowhenua, Waiwera, and Papaitonga (Waiwiri) as 'pleasure resorts'.[76] A few days later, on Christmas Eve, McKenzie instructed the Native Lands Purchase Department to 'take action to secure that [the] Lakes be purchased and reserved'.[77] On 27 December 1897, Muaūpoko also responded by stopping picnickers from a planned boating expedition on the lake, demonstrating their strong disagreement by 'blockading the water'.[78]

It is essential to lay out some of the background to this decision by the Crown to purchase Lake Horowhenua, which led ultimately to the 1905 agreement.

First, Stevens – who made the initial request in Parliament – had represented the Hunia brothers in the Horowhenua commission the year before, and in the Native Appellate Court hearings of 1897. He was very aware of the long history of Muaūpoko's attempts to reserve the lake and three chains of land around it, starting in 1886 with Te Keepa's Taitoko township proposal, and concluding as recently as July 1897 in Te Keepa's impassioned speech to the appellate court (see chapters 4 and 6). In that speech, the rangatira had told the court of the tribe's plan to reserve the lake (and three chains of land around it), vesting control in an elected trustee.[79]

Secondly, the Minister who agreed to make the purchase was Jock McKenzie, long a political opponent of Te Keepa and the motive force behind the Horowhenua commission (see chapter 6). McKenzie was very aware that the commission had recommended the permanent reservation of the lake and the Hōkio Stream as fishing grounds for Muaūpoko and Ngāti Raukawa. Also, as we discussed in chapter 6, McKenzie's enmity towards Sir Walter Buller was no doubt a factor in his decision to purchase Lake Waiwiri.

The claimants were very critical of the Crown's decision to buy the lake, given both the Horowhenua commission's recommendation and the Government's knowledge of the importance of this taonga to Muaūpoko. Claimant counsel submitted

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73. Hamer, '"A Tangled Skein"' (doc A150), p 25
74. See Waitangi Tribunal, *The Wairarapa ki Tararua Report*, 3 vols (Wellington: Legislation Direct, 2010), vol 2, pp 649–676.
75. Hamer, '"A Tangled Skein"' (doc A150), p 25
76. Public meeting, Levin Town Hall, resolution, 21 December 1897 (Hamer, '"A Tangled Skein"' (doc A150), p 25)
77. J McKenzie, note on 21 December 1897 resolution, 24 December 1897 (Hamer, '"A Tangled Skein"' (doc A150), p 25)
78. *Evening Post*, 31 December 1897 (Hamer, '"A Tangled Skein"' (doc A150), p 26)
79. AJHR, 1898, G-2A, pp 146–147

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that there was a degree of 'callousness' in 'the Crown's assurances to Pākehā settlers in November and December 1897 that it would purchase the lake'.[80] Having undermined Muaūpoko's previous trusts by carrying out the State farm purchase and imposing individualised title, the Crown was now assuring settlers that it would negotiate to 'take the main remaining tribal asset and food resource of Muaupoko'.[81] The Crown's intention to thus deprive Muaūpoko of their taonga was 'compounded' by the tribe's plan to re-vest the lake in trustees. Referring to Horowhenua 11 and the events of the 1890s, the claimants argued that the Crown was 'effectively threatening, yet again, to circumvent a tribal trust'.[82]

In the face of the settler petition and the Minister's assurances in Parliament, Muaūpoko did not give up on their plan to reserve Lake Horowhenua and vest it in trustees. This process was finalised in 1898. The Native Appellate Court made orders declaring the lake, the stream, and a chain strip inalienable, vesting these taonga in 14 trustees. The description of the lake in the court order was 'the parcel of land covered with water and known as the Horowhenua lake together with the parcel of land around the said lake one chain wide'.[83] As set out in chapter 6, the court's orders were made under an 1893 provision allowing reservations in trust for 'purposes of public utility', such as schools and churches. The official purpose of the new trust was a fishing easement, although a full title in fee simple was issued under the Land Transfer Act.[84] The key point for the claimants is that the court's order was 'further confirmation for the Crown that the iwi intended to hold this important resource and taonga in a form of tribal management and trust'.[85]

In 1898, the Government had to wait for the court to finalise the lake's title, and may have been deterred when the court made Lake Horowhenua an inalienable reserve. In any case, as we discussed in chapter 6, pressure from Kotahitanga led the Crown to introduce legislation in 1899, banning itself from any new purchases of Māori land. This ban was introduced because Māori were deeply concerned at the speed and extent of Māori land loss. It was renewed in 1900 and remained in force until 1905, which meant that the Crown could not have attempted to buy the lake in that period without passing special legislation empowering it to do so.

In the meantime, Muaūpoko had already agreed to share their lake with settlers for the purpose of boating. Around 60 tribal members attended the first meeting of the Levin rowing club in December 1896. The following month, in January 1897, the tribe entered an 'informal' agreement that the lake could be used for boating.[86] A small amount of land would be leased for a jetty, slipway, and a boatshed. Te Rangimairehau seems to have signed a formal lease of this land for a small rental, although title to the lake and the chain strip was not actually decided until 1898.

80. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 14
81. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 14
82. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 14
83. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 17
84. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), pp 16–20
85. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), pp 20–21
86. Hamer, '"A Tangled Skein"' (doc A150), pp 23–24; claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), pp 10–11

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Other payments were made, including half the profits from a regatta held in 1901. But, as we have seen, Muaūpoko were not happy about the settlers' attempts to obtain greater rights to the lake and prevented access at the end of 1897.[87] This proved to be an aberration in an otherwise peaceful arrangement, in which settlers continued to pay what they considered in 1902 were 'exorbitant' amounts for boating.[88]

The peaceful arrangement was interrupted in 1902 by the Levin settlers' decision to construct a water race, bringing water to the town from the Ōhau River. The water race would discharge into Muaūpoko's privately owned lake, and – noted the Wellington sanitary commissioner – had the potential to pollute it. The water race 'comprised 50 miles of open channels and served 500 properties, eventually flowing into the lake through 13 separate outlets'.[89] Mr Hamer commented: 'It did not take the authorities long to realise that a high pressure pipeline system was needed to bring clean water instead, although the old races continued to serve as open drainage channels for many decades.'[90] The 'remnants of water race infrastructure' still form 'part of the drainage network for the sub-catchment', bringing water from the Ōhau catchment even though the water race system is no longer operated.[91]

Muaūpoko 'strenuously opposed' the scheme; they did not want water from the town entering the lake.[92] They were worried about pollution and the impact of raising the lake – which did in fact lead to the chain strip going under water. Rather than assisting Muaūpoko, the Crown acted as facilitator and partial funder of the water race scheme. Ministers wanted the State farm to be part of it, and provided £1,600 so that the water race could be constructed over the farm.[93] In the 1934 inquiry (discussed in chapter 9), Muaūpoko's lawyer called this 'the first interference with native rights without permission or compensation'.[94] Premier Seddon officially opened the scheme in February 1902, observing in his speech that it would be of great benefit to the district.[95]

Thus, by 1902, Muaūpoko retained legal ownership of their lake, had agreed to boating (for some recompense), and had experienced the first forcible interference with their lake – the water race. But some settlers were not satisfied with having to

87. Hamer, '"A Tangled Skein"' (doc A150), pp 24–26

88. Hamer, '"A Tangled Skein"' (doc A150), pp 24–26; *Manawatu Standard*, 13 February 1902 (Hamer, '"A Tangled Skein"' (doc A150), p 26)

89. Hamer, '"A Tangled Skein"' (doc A150), p 45

90. Hamer, '"A Tangled Skein"' (doc A150), p 45

91. Jon Roygard, 'Presentation: Integrated Stormwater Management Plan for the Arawhata Subcatchment of Lake Horowhenua', 11 February 2015, Horizons Regional Council, http://old.horizons.govt.nz/assets/Uploads/Events/Environment_Committee_Meeting/2015-02-11_090000/15-08-Presentation-Integrated-Stormwater-Management-Plan-Arawhata-Subcatchment-Lake-Horowhenua.pdf

92. Horowhenua Lake Domain: committee of inquiry, minutes, 11 July 1934 (Paul Hamer, comp, papers in support of '"A Tangled Skein": Lake Horowhenua, Muaūpoko, and the Crown, 1898–2000', various dates (doc A150(g)), p 1531)

93. Hamer, '"A Tangled Skein"' (doc A150), p 45; claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 9

94. Morison, Horowhenua Lake Domain: committee of inquiry, 11 July 1934 (claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 10)

95. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 9

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pay for the privilege of boating, and had not given up on their campaign to get the Crown to acquire the lake and its surrounds. In August 1903, the member for Ōtaki, William Field, asked a question in the House: when would the Government follow through on 'the promised nationalisation of the Horowhenua Lake and the dedication of the same as a public park'? Field noted that the Premier, during a recent visit, had promised that the lake would be made a national park.[96] The new Minister of Lands, Thomas Duncan, replied that legislation would be introduced empowering the Government to acquire places like Lake Horowhenua for scenery preservation. As Paul Hamer noted, the promised legislation – the Scenery Preservation Act – was passed in November 1903.[97] This Act empowered the Crown to acquire land compulsorily for scenic or historic reserves, if recommended to do so by a Scenery Preservation Commission.[98]

Once this new Act was passed, the focus shifted from buying the lake bed (which the Crown could not do in 1903 because it was Māori land) to taking it compulsorily as if for a public work. The Department of Tourist and Health Resorts had already sent James Cowan to investigate and report on the area before the Scenery Preservation Bill had made it through Parliament. Cowan recognised the lake's scenic qualities, and advised that Māori control of access to and use of the lake had caused friction with Pākehā for a number of years.[99] It was necessary, he recommended, that this 'unsatisfactory state of affairs' be 'terminated'.[100] Cowan also took the view that Muaūpoko were likely to interfere with the beauty of the lake's islands and the native flax and bush on its shores, recommending that these be reserved.[101] He blamed Māori use of flax for reducing vegetation and thus causing the islands to erode.[102] Cowan recommended circumventing any Māori opposition by simply taking the land under the forthcoming Scenery Preservation Act, *after* which the Crown could reassure Māori that their 'ancestral rights will not be interfered with beyond forbidding them to destroy the bush or other vegetation'.[103] That would include guaranteeing their 'present rights of fishing for eels, dredging with their rou-kakahi for the shellfish which abound on the bottom of the lake, and of snaring and shooting wild ducks, etc'.[104]

96. NZPD, 1903, vol 124, p 477 (Hamer, '"A Tangled Skein"' (doc A150), p 26)
97. Hamer, '"A Tangled Skein"' (doc A150), pp 26–27
98. For a discussion of the Act and its impact on Maori, see Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 2, pp 841–846; Waitangi Tribunal, *He Whiritaunoka: The Whanganui Land Report*, 3 vols (Wellington: Legislation Direct, 2015), vol 2, pp 756–782.
99. Anderson and Pickens, *Wellington District* (doc A165), p 271
100. Cowan, 'Report on Lake Horowhenua to Department of Tourist and Health Resorts', 1 September 1903, AJHR, 1908, H-2A, p 1 (Hamer, '"A Tangled Skein"' (doc A150), p 27)
101. Hamer, '"A Tangled Skein"' (doc A150), p 27
102. Anderson and Pickens, *Wellington District* (doc A165), pp 271–272
103. James Cowan, 'Report on Lake Horowhenua to Department of Tourist and Health Resorts', 1 September 1903, AJHR, 1908, H-2A, pp 1–2 (claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 22)
104. Cowan, 'Report on Lake Horowhenua', AJHR, 1908, H-2A, p 2 (Hamer, '"A Tangled Skein"' (doc A150), p 28)

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Muaūpoko were very concerned about the Crown's intentions, following the Minister's response to Field in August 1903. Cowan had spoken to Te Rangimairehau so they also knew about the purpose behind Cowan's visit.[105] Hoani Puihi headed a petition by 31 tribal members in late 1903, asking that their title to Lake Horowhenua not be disturbed.[106] Claimant counsel submitted that, 'just five years after obtaining title placing the lake in trust, the iwi felt sufficiently threatened by Crown statements of intention and new legislation that it publicly petitioned for its retention.'[107] A newspaper report about the petition noted that the 'produce of the lake has from time immemorial been the main food reserve of the tribe'. Te Keepa, as trustee from 1873 to 1897, had 'jealously conserved and guarded the lake and its produce exclusively for the use of the tribe'. The Muaūpoko petitioners had

> heard with profound alarm that the House will be asked to pass legislation which may result in interference with the title to this food reserve and the waters of the lake. The petitioners rely upon the good feeling of the House to the Maori race, and to its sense of common justice, to prevent the passage of legislation which would have the effect of interfering with the tribal food supply, a legacy to them from their ancestors confirmed by a certificate under the Land Transfer Act in trust for an expressed specific purpose. They therefore ask that the lake and its produce may remain undisturbed under the present title.[108]

While this petition was under consideration, the Government pursued Cowan's recommendation to take the islands and part of the lake shores. It could do nothing, however, without a formal recommendation from the Scenery Preservation Commission. The Minister wrote to the commission in May 1904, suggesting that it consider the islands and the bush on the eastern shore as a desirable reserve. As requested, the commission investigated and in July 1904 recommended that the Crown acquire the islands and 150 acres around the lake.[109]

This scenery preservation process did not include the lake itself, so Field now asked a second question in Parliament (almost a year since he had first raised the matter). The *Evening Post* suggested that Field had been 'interesting himself' on behalf of the Wellington Regatta Association.[110] His question was directed at the Premier, asking when the lake and its shores would be made a national park. Seddon had received advice from officials that the Crown had no power to acquire the lake at present because the title made it 'incapable of alienation in any manner whatsoever', and that this was not the kind of restriction on alienation that could simply be removed by the Governor. 'Nothing short of an Act of Parliament', he was

105. Anderson and Pickens, *Wellington District* (doc A165), p 272
106. Hamer, '"A Tangled Skein"' (doc A150), p 29
107. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 22
108. *Evening Post*, 18 November 1903 (Hamer, '"A Tangled Skein"' (doc A150), p 29)
109. Hamer, '"A Tangled Skein"' (doc A150), pp 29–30
110. Hamer, '"A Tangled Skein"' (doc A150), p 30

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told, 'can give effect to any proposal to Nationalize the Lake.'[111] The Premier therefore replied to Field that the Government had no power to take Māori land for the proposed purpose, and that he hoped legislation would soon be introduced granting the Crown such a power. Mr Hamer pointed out that the Scenery Preservation Act already appeared to give the Crown sufficient power,[112] but Seddon may have been thinking of a special Act like the Tongariro National Park Act 1894.[113]

The Native Affairs Committee considered Muaūpoko's petition in August 1904. The Native Land Purchase Department informed the committee that the lake was inalienable and could not be acquired by the Crown without special legislation.[114] The select committee made no recommendation to the Government on the petition. It seemed that no account would be taken of Muaūpoko's concerns, therefore, and in January 1905 Cabinet approved the scenery commission's recommendations. The Government began to survey the land next to the lake shores which it proposed to take, and in doing so more than doubled the amount of land to be taken.[115]

Muaūpoko were thus confronted with a compulsory taking of their islands and a great deal of land surrounding part of their lake, as well as a mooted nationalisation of their lake.

In the meantime, however, the Native Minister, James Carroll, had become involved. He went to Levin in December 1904 to meet with Muaūpoko to see if he could negotiate a voluntary agreement for free public access to the lake. Tribal leaders agreed that the 'local boating club would be allowed to use the lake and shores for its sports, free of charge, until some permanent arrangement between the Government and the natives has been made.'[116] Reporting on this meeting, the *Evening Post* stated that 'both the Premier and the Native Minister have promised to use their best efforts to induce the native owners to place the control of the lake in the hands of the Government on certain conditions.'[117] The importance of this Crown–Māori meeting cannot be overstated, because it began a process which culminated in the October 1905 meeting and final 'agreement'.

By early 1905 the Government had two initiatives underway: a process of negotiating free access and control with Muaūpoko, and a process to take land under the scenery legislation. Field did not relax the pressure on the Government in Parliament. He became vice-president of the Horowhenua Boating Club in February 1905.[118] In May of that year he addressed a meeting of his constituents, promising that he would try to arrange it that 'the lake would be taken over for the benefit of one and all, at the same time retaining to the Maoris the "mana" which

111. Written response to Field's question, 28 June 1904 (claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 24)
112. Hamer, '"A Tangled Skein"' (doc A150), pp 29–30
113. See Waitangi Tribunal, *Te Kāhui Maunga*, vol 2, pp 368, 373, 429, 431.
114. Hamer, '"A Tangled Skein"' (doc A150), p 29
115. Hamer, '"A Tangled Skein"' (doc A150), pp 29–31
116. *Evening Post*, 15 December 1904 (Hamer, '"A Tangled Skein"' (doc A150), p 30)
117. *Evening Post*, 15 December 1904 (Hamer, '"A Tangled Skein"' (doc A150), p 30)
118. Hamer, '"A Tangled Skein"' (doc A150), pp 32–33

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they set such great store by.'[119] This seemed to be a change of position on his part. In August 1905 he asked a third question in the House, this time as to whether

> the Government intend to fulfil, or whether they decline to fulfil, their oft-repeated promises to take steps to secure the Horowhenua Lake to the use of the public, subject to the preservation of the Native rights therein, and to save from destruction the fast-disappearing native bush on the shores of the lake?[120]

Carroll replied, saying that the owners' consent was required, and that a meeting would be held with them at the first favourable opportunity.[121]

It seems that Carroll's approach had prevailed within the Government. Field reported 'a universal feeling in Levin that the Native Minister stands in the way, and that I am not strong enough to fight the battle.'[122] According to Drs Anderson and Pickens, the Native Department sought to 'head off' the Tourist Department's more extreme plans.[123] Those plans continued slowly for the time being because scenic reserves were a low priority for the Lands and Survey Department.[124] But the proposal of nationalising the lake by statute had apparently been abandoned. Claimant counsel submitted: 'There is no evidence that the Crown reflected on the origins of the lake trust and its historic significance as the last piece of land in a form of tribal title.'[125] While that is correct, the Crown had abandoned its intention to acquire the lake, whether compulsorily or not, and its change of stance was an important and commendable one.

We turn next to discuss the events of September–October 1905, and what – if any – agreement was negotiated with Muaūpoko.

8.2.3 Was there a lake agreement in 1905?

(1) *The Crown seeks an agreement*

On 4 September 1905, Field wrote to the Premier, warning him that if 'nothing is done of a definite character about the Horowhenua Lake, as promised by you, it will go hard with the Government candidate in Levin at next election.'[126] Field arranged a meeting between Seddon and representatives of the Levin Chamber of Commerce, which took place on 11 September 1905. These representatives asked the Premier to 'secure for the pakeha rights of access to the shores and surface of Lake Horowhenua.'[127] They also wanted the Government to prevent any clearance of

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119. *Evening Post*, 16 May 1905 (Hamer, '"A Tangled Skein"' (doc A150), pp 30–31)
120. NZPD, 1905, vol 133, pp 551–552 (Hamer, '"A Tangled Skein"' (doc A150), p 32)
121. Hamer, '"A Tangled Skein"' (doc A150), p 32
122. Field to Seddon, 4 September 1905 (Hamer, '"A Tangled Skein"' (doc A150), p 32)
123. Anderson and Pickens, *Wellington District* (doc A165), p 274
124. Hamer, '"A Tangled Skein"' (doc A150), p 31
125. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 26
126. Field to Seddon, 4 September 1905 (Hamer, '"A Tangled Skein"' (doc A150), p 32)
127. *Evening Post*, 12 September 1905 (Hamer, '"A Tangled Skein"' (doc A150), p 33)

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native bush on the lake shores, while at the same time seeking 'drainage of the lake to free up cultivatable land'.[128]

The Crown argued in our inquiry that its responsibility was to balance interests in the management of the environment.[129] This meeting between the Premier and the Levin Chamber of Commerce showed what the settlers' interests were, at least as at 1905: access for sport, scenery preservation, and drainage for the benefit of farming. In the claimants' view, these settler 'interests' in their private property were not of a kind with which the Crown needed to concern itself.[130] Muaūpoko had already agreed to Pākehā access for boating, and there was plenty of farmable land around Levin without needing to lower the lake. Nonetheless, in the claimants' submission, the Crown became 'an initiator of efforts to minimise Maori interests in the lake and allow Pākehā settler interests to predominate, and at other times a very engaged facilitator in the efforts of local government to achieve that same result'.[131]

Seddon's response to the chamber of commerce shows how the Crown intended to protect settler interests, which led directly to the 'agreement' of 1905. First, he advised that the deputation should approach the Scenery Preservation Commission about the bush land around the lake, and added that he would 'give notice to them to inspect the place forthwith, and report on the advisableness of acquiring it'.[132] As the claimants note, Seddon did not mention that Cabinet had already approved compulsory acquisition of the islands and some of the land on the lake's shores for that purpose.[133] Secondly, and more importantly, the Premier 'reiterated a previously-expressed opinion that the lake should be made a national property. He believed an agreement could be arrived at if a korero between the natives and Mr Carroll and himself were arranged, as was done in the case of the Wairarapa Lake.'[134]

Seddon told the delegates that he would try to get Muaūpoko leaders to come to Wellington so that 'an agreement might be arrived at'. He was certain an agreement could be reached with the owners so long as the 'mana of the natives over the lake' was recognised by 'the Europeans'.[135] We take it from this that, for its success, Seddon thought local settlers would need to be involved in any agreement and would need to recognise Muaūpoko mana over the lake.

This probably explains why the eventual meeting to secure agreement was ostensibly between Muaūpoko and local settlers, but with the Crown present and represented by the Premier, the Native Minister, and the Liberal member for Ōtaki, William Field. This is underlined by a letter from Seddon to Field on 10 October 1905, stating: 'I am as you know endeavouring to obtain the Horowhenua Lake and negotiations are well advanced.'[136] This statement by Seddon referred to the crucial

128. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 27
129. Crown counsel, closing submissions (paper 3.3.24), p 40
130. Claimant counsel (Bennion), submissions by way of reply (paper 3.3.33), pp 7–8
131. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), pp 8–9
132. *Evening Post*, 12 September 1905 (Hamer, '"A Tangled Skein"' (doc A150), p 33)
133. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 27
134. *Evening Post*, 12 September 1905 (Hamer, '"A Tangled Skein"' (doc A150), p 33)
135. *Evening Post*, 12 September 1905 (Hamer, '"A Tangled Skein"' (doc A150), p 33)
136. Seddon to Field, 10 October 1905 (Hamer, '"A Tangled Skein"' (doc A150), p 34)

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meeting which occurred around this time, at which an agreement was purportedly negotiated between 'the Muaupokos and the Levin pakehas'.[137]

There is almost no information about this October 1905 meeting. We do not know its exact date nor who exactly from Muaūpoko was present. The meeting took place at the boatshed by the lake, and we know that Seddon and Carroll were involved, as were Wiki Keepa, Wirihana Hunia, and a young man named Wī Reihana. As far as the researchers in our inquiry could discover, there were no minutes, no newspaper accounts, and no signed or witnessed record of the agreement.[138]

There are two extant accounts of what was agreed. We discuss each in turn.

(2) *The Crown's record of the terms of agreement*

The first account of the 'agreement' is a document which Mr Hamer called an 'undated list of its terms'.[139] This list was prepared in English by officials at some point between the meeting and the introduction of a Bill a fortnight later. The document was entitled: '*Horowhenua Lake Agreement* Between the Muaupokos and the Levin pakehas' (emphasis in original).[140] This title was followed by a note that stated: 'The Maoris were represented by Wiki Kemp and others, and the Europeans by Mr Field, MHR.'[141] Next came nine itemised terms of the agreement:

> 1. All Native bush within Lake Reserve to be preserved.
>
> 2. 9 acres adjoining the Lake, – where the boat sheds are and a nice Titoki bush standing, – to be purchased as a public ground.
>
> 3. The mouth of the Lake to be opened when necessary, and a flood-gate constructed, in order to regulate the supply of water in the Lake.
>
> 4. All fishing rights to be conserved to the Native owners (Lake not suitable for trout).
>
> 5. No bottles, refuse, or pollutions to be thrown or caused to be discharged into the Lake.
>
> 6. No shooting to be allowed on the Lake. – The Lake to be made a sanctuary for birds.
>
> 7. Beyond the above reservations, the full use and enjoyment of the waters of the Lake for acquatic [*sic*] sports and other pleasure disportations, to be ceded absolutely to the public, free of charge.
>
> 8. In regard to the preceding paragraph, the control and management of the Lake to be vested in a Board to be appointed by the Governor – some Maori representation thereon to be recognised.
>
> 9. Subject to the foregoing, in all other respects, the Mana and rights of the Natives in association with the Lake to be assured to them.[142]

137. 'Horowhenua Lake Agreement', not dated (Hamer, '"A Tangled Skein"' (doc A150), p34)
138. Hamer, '"A Tangled Skein"' (doc A150), pp34–38; DA Armstrong, 'Lake Horowhenua and the Hokio Stream, 1905–c1990', May 2015 (doc A162), pp15–17; transcript 4.1.12, pp381–382; transcript 4.1.13, pp130–132
139. Hamer, '"A Tangled Skein"' (doc A150), p34
140. 'Horowhenua Lake Agreement', not dated (Hamer, '"A Tangled Skein"' (doc A150), p34)
141. 'Horowhenua Lake Agreement', not dated (Hamer, '"A Tangled Skein"' (doc A150), p34)
142. 'Horowhenua Lake Agreement', not dated (Hamer, '"A Tangled Skein"' (doc A150), pp34–35)

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Paul Hamer noted that these were essentially the terms of the 'agreement' which Attorney-General Pitt read out in Parliament on 28 October 1905,[143] except that Pitt stated item 9 as: 'Subject to the foregoing, in all other respects the mana and rights, *and ownership of the Natives to the Horowhenua Lake Reserve* to be assured to them' (emphasis added).[144]

The claimants were critical of most of these terms, and questioned whether Muaūpoko would have willingly or knowingly agreed to them.[145] Item 6, for example, banned the taking of birds, which was 'either an expropriation or a cession of an important right'.[146] Ceding the 'full use and enjoyment of the waters of the lake' for sporting purposes, free of charge, apparently gave up exclusive rights and a source of income for no compensation. Muaūpoko also appeared to agree to construction of a flood-gate to 'regulate the supply of water in the Lake', again conceding this point without payment or any stipulations as to control or limits. Control of public use of the lake for aquatic sports, however, was to be vested in a board – with 'some Maori representation thereon to be recognised' (item 8).

In return for a number of concessions without recompense, Muaūpoko received a number of guarantees. These included:

- the native bush around the lake would be preserved (item 1);
- their fishing rights would be 'conserved' (item 4);
- representation on the board which was to control public use for aquatic sports (item 8);
- no litter or pollution would be thrown or *discharged into* their lake (item 5); and,
- subject to the matters conceded, their mana and rights 'in association with the Lake' would be 'assured to them' (item 9).

In David Armstrong's evidence, the guarantees also included a guarantee of their ownership of the lake bed and the chain strip.[147] We agree, especially given the Attorney-General's explicit statement in Parliament that their 'ownership' of the 'Horowhenua Lake Reserve' was included in item 9 (cited above).

We also agree with the claimants that the Crown's list of terms 'reads as a kind of "agreement in principle"' or a 'shopping list of items that some Muaūpoko may have tentatively agreed to'.[148] This is made clear by item 1, for example, which simply stated: 'All Native bush within Lake Reserve to be preserved'. As the claimants submitted, 'it is left unclear who is promising that, and how it will be given effect'.[149]

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143. Hamer, '"A Tangled Skein"' (doc A150), p 35
144. NZPD, 1905, vol 135, p 1206 (Hamer, '"A Tangled Skein"' (doc A150), p 35)
145. Claimant counsel (Naden, Upton, and Shankar), closing submissions (paper 3.3.23), pp 273–274; claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), pp 33–34
146. Ben White, *Inland Waterways: Lakes*, Waitangi Tribunal Rangahaua Whānui Series (Wellington: Waitangi Tribunal, 1998) (doc A181), p 72 (claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 28)
147. Armstrong, 'Lake Horowhenua and the Hokio Stream' (doc A162), p 5
148. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), pp 29, 34
149. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 30

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Much remained vague and unsettled. For item 3, it was unspecified who would decide that it was necessary to open 'the mouth of the Lake', who would build and control the 'flood-gate', whether there would be compensation for putting a structure on Māori land, and who would decide the appropriate level of the lake. None of these matters were explicit or even implicit in item 3. In respect of item 2, the 'agreement' that nine acres adjoining the lake would be purchased 'as a public ground', it is not clear how such an agreement could be made without the specific consent of the Māori landowners concerned. Item 8, involving a board to control Pākehā recreational uses, 'recognised' that there would be 'some Maori representation' on the board. That was clearly an initial agreement in principle. It did not specify the proportion of Māori representatives, how they would be selected, or who would decide those matters.

When the list of terms was examined by the Native Land Purchase Department, its head (Sheridan) immediately identified a crucial flaw. The 'proposals' seemed feasible, he said, but could only be given effect by legislation because the lake was 'held by trustees . . . who are registered as proprietors under the Land Transfer Act'.[150] In other words, any formal or binding *agreement* about the matters covered in the list would need to be made with the trustees and the owners. Sheridan's proposal was to bypass or circumvent the trustees through legislation.

This raises the question: had the lake trustees been present at the October 1905 meeting, and had they already agreed to its tentative arrangements? The answer to this question reveals another set of flaws about the so-called agreement. There was no record of who attended the meeting. There was no signed document prepared at or approved by those who attended the meeting. There was, in fact, nothing formal or regular about this meeting whatsoever. All we know for certain is that two tribal leaders were present. One was a lake trustee, Wirihana Hunia, the elder son of Kāwana Hunia.[151] As will be recalled from chapter 6, Wirihana Hunia was in some disfavour with the tribe as a result of the events of the 1890s, and his appointment as trustee had been controversial in 1898.[152] Apart from Wirihana Hunia, we know that Wiki Keepa was present. The official record simply stated that 'the Maoris were represented by Wiki Kemp and others'.[153] As will be recalled from chapters 5–6, Wiki Keepa was the daughter and heir of Te Keepa Te Rangihiwinui, and a leader of Muaūpoko after her father's death in 1898. Wiki Keepa was not, however, a lake trustee and had no legal authority or responsibility to act for the lake's owners.[154]

In the absence of any signed deed or any formal involvement of the lake's owners, the list of terms was clearly a first step in the process of forging an agreement. It was the Crown which chose to immediately turn this initial 'shopping list' of tentative items into legislation, less than three weeks after the meeting. The claimants were

150. Patrick Sheridan, 'Horowhenua Lake', undated note re 'Horowhenua Lake Agreement' (Hamer, '"A Tangled Skein"' (doc A150), p 35)

151. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), pp 27, 32–34

152. Jane Luiten with Kesaia Walker, 'Muaupoko Land Alienation and Political Engagement Report', August 2015 (doc A163), p 310

153. 'Horowhenua Lake Agreement', not dated (Hamer, '"A Tangled Skein"' (doc A150), p 34)

154. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 32

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extremely critical that the Crown chose to subvert Muaūpoko's trustees and legal rights in this way, noting that an extremely important taonga was at stake, and the Liberals had a long history of subverting Muaūpoko's trustees.[155]

On the other hand, as Crown counsel pointed out, Muaūpoko never denied at the time that they had entered into some kind of agreement with the Crown.[156] We turn next to the Muaūpoko account of what was agreed.

(3) *The Muaūpoko account of what they agreed to 'cede'*

Muaūpoko's account of the meeting came from Wī Reihana, in evidence given to a 1934 inquiry about the lake. Reihana was the only person still alive who had been at the meeting. His firsthand testimony was recorded in the minutes as:

> I was present at the meeting in 1905 when Seddon and Carroll were present. Carroll spoke in Maori at that meeting and said that the power of the European was over the top of the water only, not to go below. It was agreed by the elders present at the meeting. I do not know what was said afterwards by Carroll – he told us afterwards what I have already said. I do not know anything about the land around the Lake.[157]

Muaūpoko's lawyer at the 1934 inquiry, David Morison, summarised Reihana's evidence as:

> He says there was much discussion and finally Mr Carroll translated to the Maoris the decision come to. Mr Carroll told the Maoris that they were agreeing to allow boating by the Europeans to continue but that the rights of the Europeans were not to extend beyond the edge of the water and the Maoris understand that that was the original protection at that time.[158]

In other words, the agreement 'never gave to anybody the right to the chain round the Lake'.[159] Claimant counsel noted: 'Morison characterised this as "a voluntary cession by the native owners to allow the Europeans to use the Lake for boating"'.[160] The 1934 committee of inquiry accepted Reihana's evidence as correct, and believed that it 'fits very closely into the 1905 Act'.[161]

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155. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), pp 32, 34, 35
156. Crown counsel, closing submissions (paper 3.3.24), p 52
157. Committee of inquiry, minutes, 11 July 1934 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(g)), p 1534)
158. Committee of inquiry, minutes, 11 July 1934 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(g)), p 1531)
159. Committee of inquiry, minutes, 11 July 1934 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(g)), p 1534)
160. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 33
161. Committee of inquiry, report to Minister of Lands, 10 October 1934 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(g)), p 1566)

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The claimants also point to evidence closer to 1905 that this was the limit of what Muaūpoko – for their part – agreed to cede.[162] The first domain board chair, Major George Burlinson, told the Minister of Internal Affairs in 1915:

> Wiki Kemp consented to give the town the use of all the water of the Lake, but said 'we will keep the fish to ourselves'. It was understood that the Natives gave them the Lake to use the surface of the water. It was merely for the purpose of a boating ground and nothing was to be touched below or above the water.[163]

According to David Armstrong, Major Burlinson had been present at the 1905 meeting.[164] Hanita Henare, a Muaūpoko domain board member at that time, confirmed that Burlinson's statement was correct.[165]

Paul Hamer cited other evidence close to 1905, including a 1907 letter from Eparaima Te Paki, who had not been present at the October 1905 meeting: 'the only word I was told by some of the members of the Tribe that for me and Hunia not to admit to [agree to] put the fish [trout] in the lake because they only allowed the European [to] have a boat Race on the lake, no more'.[166] Te Paki was a member of the domain board, voicing the Muaūpoko view on the introduction of trout and Pākehā sport fishing to the lake. At a 1907 meeting on this matter, Te Paki and the other Muaūpoko board members again stated that the agreement was limited to use of the lake for 'rowing, boating and sports generally – certainly not for fishing'.[167]

(4) *Was there an agreement in 1905 and, if so, between whom?*

The claimants in our inquiry expressed a range of views about the purported 'agreement' as recorded after the event by officials.

Some denied that there was any agreement at all.[168] Philip Taueki argued in his reply submissions:

> Crown Law and researchers commissioned by the Waitangi Tribunal have failed to produce any document that purports to be an 'agreement' between the Crown and the Natives. All they have come up with is a memo recorded by somebody that was read out in Parliament by the Attorney-General at the time. Even in the unlikely event there was an agreement, neither Hunia nor Kemp had the authority to speak on behalf of the Muaupoko owners had been resoundingly established in the highest courts of the land in *Kemp v Hunia*.[169]

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162. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 33
163. 'Notes of a Deputation', 9 April 1915 (Armstrong, 'Lake Horowhenua and the Hokio Stream' (doc A162), pp 16–17)
164. Armstrong, 'Lake Horowhenua and the Hokio Stream' (doc A162), p 16
165. Hamer, '"A Tangled Skein"' (doc A150), p 70
166. Eparaima Te Paki to B R Gardener, domain board chairman, 23 September 1907 (Hamer, '"A Tangled Skein"' (doc A150), p 36)
167. 'Notes on the question of allowing Europeans to fish in the Horowhenua Lake', not dated [1907] (Hamer, '"A Tangled Skein"' (doc A150), pp 36–37)
168. Claimant counsel (Lyall and Thornton), closing submissions (paper 3.3.19), p 29
169. Philip Taueki, submissions by way of reply (paper 3.3.31), paras 118–119

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. . . . .

For generations, the Maori owners had been led to believe there was an agreement between the Maori owners and the Crown before this law was passed. Due to their belief that such an agreement existed, the Maori owners respected this 'right' of public access, which led the public in turn to consider the lake and surround[ing] land to be a community asset owned by either central or local government. Despite references in the Crown's submission to the Horowhenua Lake Agreement of 1905, the Crown has been unable to produce any evidence of the existence of such an agreement, and without proof, the Crown cannot substantiate any claim that Parliament had obtained the approval of the owners before passing this law. Under the terms of the Treaty, the Maori owners of Lake Horowhenua were guaranteed 'full, exclusive and undisturbed' possession of their property. Public access granted by Parliament without the approval of the owners disturbs this right of owners to full and exclusive possession of land they own in fee simple estate.[170]

Other claimants accepted that there was an agreement, but limited to permission for Pākehā to use the surface of the lake for boating, with a board to control that activity, while safeguarding Māori rights (especially their fishing rights and their mana).[171]

There was significant debate about whether the Crown was a party to the agreement. Some claimants argued that the Crown was a party, since Field was an agent of the Crown, the terms committed the Crown to do certain things, and Seddon and Carroll were present (and clearly agreed).[172] Others argued that the question was irrelevant because the Crown 'sponsored the terms included [in] the Agreement through the 1905 Act'. In other words, the Crown chose to endorse the agreement and give it effect by legislation, which is the crucial action of the Crown.[173]

The Crown's position in our inquiry was in broad agreement with those claimants who argued that there *was* an agreement, that the 1934 Muaūpoko evidence of a 'voluntary cession' is to be relied upon, and that the critical issue was the Crown's translation of the agreement into legislation. Crown counsel made no submissions as to whether the Crown itself was a party to the agreement before it introduced legislation in October 1905.[174]

Thus, in the Crown's view, Muaūpoko's 'voluntary cession' consisted of 'use rights in respect of the Lake' and 'the establishment of a board to manage and control the Lake's uses'.[175] Crown counsel, however, did not go so far as to accept that Muaūpoko's 'cession' was restricted to boating alone. The 1905 Act, we were told, was 'intended to reflect an agreement, though there *appears to have been*

170. Philip Taueki, submissions by way of reply (paper 3.3.31), paras 144–147

171. Claimant counsel, closing submissions (Naden, Upton, and Shankar), closing submissions (paper 3.3.23), pp 274, 277; claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 33

172. Claimant counsel (Stone, Bagsic, and Hopkins), closing submissions (paper 3.3.9), pp 6–7

173. Claimant counsel (Naden, Upton, and Shankar), closing submissions (paper 3.3.23), p 274

174. Crown counsel, closing submissions (paper 3.3.24), pp 48, 52–53

175. Crown counsel, closing submissions (paper 3.3.24), p 52

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some uncertainty about what was given up and retained' (emphasis added).[176] The Crown submitted that the record is unclear as to 'the nature or extent of use rights that owners regarded as having been granted (particularly in relation to fishing) and to the envisaged powers of the Board (particularly in relation to drainage)'.[177] Nonetheless, the Crown pointed to Mr Hamer's evidence that Muaūpoko complaints after 1905 'were about the extent of rights given not whether they were or not'. During the 1934 inquiry, the iwi had the benefit of legal advice and 'confirmed that there had been "a voluntary cession"'.[178] For its own part, the Crown accepted that any commitments made *to* Muaūpoko, such as the item in respect of pollution, had to be faithfully translated into the legislation giving effect to the agreement.[179]

After examining all the evidence, Mr Hamer's conclusion was basically the same as that of Morison in 1934:

> It appears therefore that Muaūpoko essentially regarded (or came to regard, if they were not party to it at the time) the 1905 agreement as one by which they ceded the limited right to Pākehā to use the lake surface for boating, with a board tasked with controlling these activities and safeguarding Māori rights.[180]

The point that the board's role was confined to 'preserv[ing] their fishing and other rights and control[ling] the privileges conferred on Europeans under the Horowhenua Lake Act, 1905' had been made by Muaūpoko to the board in 1931.[181]

We note that Muaūpoko were not opposed to sharing the lake with Pākehā for boating, and had in fact been doing so since 1897. In December 1904 they had agreed with Carroll that this use could be free of charge for the time being, until a final agreement was negotiated. From the evidence available to us, Muaūpoko agreed in October 1905 to Pākehā use of the surface of the lake for aquatic sports, free of charge, with that use to be controlled by a board on which they would be represented. This is what the tribe maintained in the decades immediately after the 'agreement', and they remained committed to it until – as we discuss in section 8.3 – Muaūpoko rights were 'gradually . . . whittled away'.[182] The terms recorded in English by officials after the event, with no signatures or other proof of agreement to those terms, are at best *a record of what the Crown had committed to do*.

We accept the claimants' position that the Crown was a party to the agreement. As we discussed in section 8.2.2, the Crown had made commitments to settlers that it would nationalise the lake, and adopted Carroll's alternative strategy of obtaining Muaūpoko agreement to Pākehā access. The October 1905 meeting was a direct

176. Crown counsel, closing submissions (paper 3.3.24), p 52
177. Crown counsel, closing submissions (paper 3.3.24), p 52
178. Crown counsel, closing submissions (paper 3.3.24), p 52
179. Crown counsel, closing submissions (paper 3.3.24), pp 43–44, 48
180. Hamer, '"A Tangled Skein"' (A150), p 37
181. Hudson, domain board secretary, to under-secretary for lands, 26 June 1931 (Hamer, '"A Tangled Skein"' (doc A150), p 37)
182. This phrase was used by Morison in his submissions to the 1934 committee of inquiry. See committee of inquiry, minutes, 11 July 1934 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(g)), p 1534).

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sequel to and continuation of the preliminary agreement reached in December 1904. Further, the 1905 terms as recorded by officials committed the Crown in certain ways, including the purchase of nine acres for a boatshed and other amenities, and the appointment of a board by the Governor. With the Premier and Native Minister present, and the Native Minister as interpreter, this agreement could hardly have been made if they had not consented to it.

8.2.4 Did the 1905 Act faithfully reflect any Crown and Māori understandings of the 'agreement'?

(1) *The terms of the 1905 Act*

By 26 October 1905, about two weeks after the meeting, Carroll had a Bill ready for introduction to Parliament, which occurred on 28 October. Claimant counsel observed that 'This was a fast turnaround and confirms the priority the Crown placed on giving Pākehā access to the lake.'[183] We note, however, that the parliamentary session was about to end on 31 October 1905,[184] which meant that legislation would otherwise have had to wait until 1906. The Bill had a speedy passage through both Houses, becoming law on 30 October 1905. In his evidence for the Tribunal, Paul Hamer argued that the Act was 'a remarkably short piece of legislation for what became a complicated management and ownership regime, and its shortcomings and ambiguities were to provide ample scope for misinterpretation in the years to come'.[185] This was correct, although the Act was more substantial than it appeared because section 4 imported the provisions of the Public Domains Act 1881 and its amendments as they related to domain boards.

The long title of the Act was 'An Act to make the Horowhenua Lake available as a Place of Public Resort'. The short title was the Horowhenua Lake Act 1905 (section 1). The preamble stated: 'Whereas it is expedient that the Horowhenua Lake should be made available as a place of resort for His Majesty's subjects of both races, in as far as it is possible to do so without unduly interfering with the fishing and other rights of the Native owners thereof.' The remainder of the Act stated:

> **2.** The Horowhenua Lake, containing nine hundred and fifty-one acres, more or less, is hereby declared to be a public recreation reserve, to be under the control of a Board, one-third at least of the members of which shall be Maoris, to be appointed by the Governor, subject to the provisions following:—
>
> (a) The Native owners shall at all times have the free and unrestricted use of the lake and of their fishing rights over the lake, but so as not to interfere with the full and free use of the lake for aquatic sports and pleasures.
>
> (b) No person shall be allowed to shoot or destroy birds or game of any kind on the lake or within the area of the said lake reserve.

183. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 35
184. Hamer, '"A Tangled Skein"' (doc A150), p 40
185. Hamer, '"A Tangled Skein"' (doc A150), p 40

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3. The Governor may acquire from the Native owners any area not exceeding ten acres adjacent to the lake as a site for boat-sheds and other buildings necessary to more effectually carry out the provisions of this Act.

4. The Board shall have and may exercise all the powers and functions of a Domain Board under 'The Public Domains Act, 1881.'

Two key changes had been made to Carroll's Bill as it passed through Parliament. First, the second clause, which made the lake a public recreation reserve, had had a proviso stating: 'The Native owners shall at all times have the free and unrestricted use of the lake and of their fishing rights over the lake.' It was Premier Seddon who moved that this proviso be qualified by adding the words: 'but so as not to interfere with the full and free use of the lake for aquatic sports and pleasures'. As Mr Hamer noted, this appeared to be contradictory. The guarantee to Muaūpoko of 'the free and unrestricted use of the lake' was now to be 'qualified by the "full and free use" by the public'.[186] Secondly, the amount of land which the Crown could acquire for boat sheds and amenities was increased from nine to 10 acres. This change was moved by Field.[187] Otherwise, the Bill passed with few amendments.

(2) *Legal ownership is retained*

One positive aspect of the 1905 Act was that the Muaūpoko owners retained their legal ownership of the lakebed and chain strip.[188] As Crown counsel pointed out, this ran against the grain of official attitudes and policies at the time.[189] The findings of Ben White's Rangahaua Whānui report on lakes, and the Tribunal's reports on the central North Island, National Park, and Te Urewera districts, demonstrate the accuracy of that submission.[190] Also, neither the islands nor land around the lake were taken for scenery preservation. As will be recalled, a process to take the islands and some 300 acres of land was in train at the time (see section 8.2.2). According to Drs Anderson and Pickens, the Act seems to have caught the Tourist and Health Resorts Department 'by surprise', resulting in 'the abandonment of their own plans for the lake'.[191]

(3) *Acquisition of significant rights without consent or compensation*

There was no real criticism of the Horowhenua Lake Bill during its passage through Parliament but two members did point out that the Crown was acquiring significant rights without any payment of compensation. Thomas Kelly argued that Muaūpoko's generosity to the public should be compensated by a monetary

186. Hamer, '"A Tangled Skein"' (doc A150), pp 38, 39
187. Hamer, '"A Tangled Skein"' (doc A150), p 39
188. Crown counsel, closing submissions (paper 3.3.24), p 48
189. Crown counsel, closing submissions (paper 3.3.24), p 48
190. White, *Inland Waterways* (doc A181), p 86; Waitangi Tribunal, *He Maunga Rongo*, vol 4, pp 1320–1333; Waitangi Tribunal, *Te Kāhui Maunga*, vol 3, pp 1002–1009, 1037–1039; Waitangi Tribunal, *Te Urewera, Pre-publication*, *Part 5* (Wellington: Waitangi Tribunal, 2014)
191. Anderson and Pickens, *Wellington District* (doc A165), p 274

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payment or a gift of land. The Attorney-General agreed to raise this possibility with Carroll, but nothing came of it.[192] One member of the Legislative Council, John Rigg, suggested that the Act would virtually acquire ownership of the lake but without actually doing so or paying for it. This made a nonsense, he said, of any guarantee of the owners' mana:

> There was no consideration provided for the great advantage given to the Europeans, and it practically meant that the Natives of Muaupoko Tribe were making a splendid and generous gift to the people of this colony. When the value of the property was considered it was really surprising that something more had not been said in recognition of the generosity of the Natives in this matter. He should have preferred that the Government had purchased the lake outright from the Natives and make it a public reserve. The mana of the Natives – whatever that might mean – they were told, was preserved. What is that mana worth when this Bill is passed and the control of the lake handed over to a Board? Nothing. They have, of course, their fishing rights in the lake, and under the Treaty of Waitangi those could not be taken from them. He did not, of course, oppose the Bill, but he marvelled at the generosity of the Natives in making such an arrangement for the benefit of the people of this colony.[193]

The following year, the member for Southern Maori, Tame Parata, asked the Government to repeal the Act, arguing that it 'appropriates a valuable estate without the concurrence of the Native owners'.[194] There is certainly no evidence that Muaūpoko were consulted about the Horowhenua Lake Bill.[195] This was a crucial omission on the part of the Crown. The Government had not sought the formal agreement of the lake trustees to the initial terms negotiated in October 1905, nor had it sought to clarify or finalise those terms with the trustees. This meant that when the Bill was introduced and passed in just three days, Muaūpoko had been given no opportunity to influence its contents, let alone consent to them. In the event, the 1905 Act did not properly or faithfully reflect either (i) the Crown's list of terms or (ii) Muaūpoko's understanding of what had been agreed. We turn to that point next.

(4) *The Act's failure to give proper and faithful effect to Muaūpoko's cession or the Crown's guarantees*

As noted in section 8.2.1, the Crown conceded that the 1905 Act 'failed to adequately reflect the terms of the Horowhenua Lake Agreement of 1905'. The 'differences between the agreement and the Act prejudiced Māori with connections to the Lake, including by the Act not directly providing for protections against pollution of the Lake which contributed to damage of traditional food sources, and by impacting on the owners' fishing rights'. The Crown further conceded that 'the

192. Hamer, '"A Tangled Skein"' (doc A150), pp 39–40
193. NZPD, 1905, vol 135, p 1206 (Hamer, '"A Tangled Skein"' (doc A150), p 39)
194. NZPD, 1906, vol 137, p 508 (Hamer, '"A Tangled Skein"' (doc A150), p 41)
195. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 35

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failure of the legislation to give adequate effect to the 1905 agreement breached Te Tiriti o Waitangi/the Treaty of Waitangi and its principles'.[196]

There were crucial differences between what Muaūpoko understood that they had ceded (public use of the surface of the lake for aquatic sports, which would be managed by a part-Māori board), the tentative or incomplete arrangements recorded by officials as a list of terms, and the contents of the Act.

(a) ***Features which altered or went beyond what had been agreed:*** The 1905 Act had a number of features which had not been discussed or agreed, even on the Crown's own record of the agreement. Some such additions proved necessary because the list of terms had been so rudimentary or incomplete. Nonetheless, the Crown's additions 'extended the text of the alleged "arrangement" in several important respects'.[197] These additions included:

- the Act declaring the lake reserve to consist of 951 acres, thereby including the chain strip as well as the lake itself – this had never been one of the terms and later caused 'a considerable amount of confusion';[198]
- the Act empowering the Crown to obtain 10 acres instead of nine, a change which was made on the motion of Field (who had represented Levin settlers as well as the Crown at the meeting);[199]
- the Act declaring the lake reserve to be a public recreation reserve, and placing it under a domain board with all the powers and functions of such a board, which were extensive;[200] and
- the Act determining that Māori members would be a minority (one-third), appointed by the Crown and not by Muaūpoko, and not specifying that the Māori members had to be Muaūpoko.[201]

In 1905, domain boards had what the claimants called 'the widest possible powers to manage domain land'.[202] First, boards could build any structures or lay out the grounds of the domain in any way they wished, or set any part of the domain aside for a special recreation ground, garden, or similar purpose.[203] Secondly, boards could make or close roads, and stop up or alter watercourses, or do 'any other thing' required for the 'beneficial management and administration' of the domain.[204] Thirdly, boards had all the powers which a commissioner of Crown lands could exercise over Crown lands.[205] Fourthly, boards could make bylaws for the management of the domain, the control of all persons and modes of transport on the

196. Crown counsel, closing submissions (paper 3.3.24), pp 43–44
197. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 35
198. Hamer, '"A Tangled Skein"' (doc A150), p 38
199. Hamer, '"A Tangled Skein"' (doc A150), p 39
200. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), pp 36, 37–39
201. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 36; claimant counsel (Naden, Upton, and Shankar), closing submissions (paper 3.3.23), p 275
202. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 37
203. Public Domains Act 1881, s 4; Domain Boards Act 1904, s 8
204. Public Domains Act 1881, s 4; Domain Boards Act 1904, s 8
205. Public Domains Act 1881, s 6; Domain Boards Act 1904, s 8

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domain, the exclusion of any animals, and the prevention of any nuisance (which could have included forms of pollution).[206] In addition, the Public Domains Act 1881 made it an offence to light a fire, dig or cut the ground, take or damage any plants, and shoot any birds unless with the permission of the board.[207] This was a level of control far beyond what was envisaged at the October 1905 meeting. The Crown's record of the terms only gave the board power to control Pākehā use of the lake for aquatic sports (items 7 and 8).

The claimants were deeply concerned about the unauthorised extension of the agreement to include a domain board which would control all activities on the lake and chain strip, and about the effects of the Act on their mana, their control of the lake, their fishing rights, and ultimately their property rights and ownership of the lakebed and chain strip. Some called it the transformation of a 'sharing agreement' into 'pākehā local government control over this taonga'.[208] Others considered it an outright confiscation of the lake. Philip Taueki submitted that 'Title in fee simple, in effect became title in name only when Parliament passed the Horowhenua Lake Act in 1905, breaching the Treaty knowingly.'[209]

First, the claimants argued that the Act reversed the order of concessions and guarantees in the 1905 'agreement': rather than Muaūpoko conceding that settlers could use the lake for boating so long as this did not affect their fishing and other rights, the Act 'created a new priority of public use over Muaūpoko use of their food resource on their private lake'.[210] We agree with this submission. Section 2(a) explicitly said that Muaūpoko could not exercise their fishing rights in such a way as to interfere with the public use of the lake. This effectively negated or reversed what was *originally drafted as a proviso that public use would not interfere with that of Muaūpoko for fishing*. We also agree that the provisions granting the board the functions and powers of a domain board exacerbated the situation. The consequence of turning the lake into a public recreation reserve was that it basically prevented all non-recreational uses of the owners' property. In effect, the 1905 Act 'changed the default property ownership arrangements, from a default position of "use as required", to "use only where 1) an activity is not prohibited by the Board and 2) does not affect public use"'.[211] We agree that this represented a serious infringement of the owners' property rights, enacted in 1905 without consent or compensation.

Secondly, the claimants argued that this establishment of a public recreation right froze their development rights. Previously, they could have developed lakeside facilities and charged for uses of the lake as they chose, and also as new uses became possible – such as speedboat racing. They could have erected new structures as they pleased, including the possibility of constructing new islands, and they could have exploited the animal and bird life as they chose. They could have harvested plants (especially flax) from the lake and the chain strip. The lake owners could also

206. Public Domains Act 1881, s 10; Domain Boards Act 1904, s 8
207. Public Domains Act 1881, s 17; Domain Boards Act 1904, s 8
208. Claimant counsel (Lyall and Thornton), closing submissions (paper 3.3.19), p 29
209. Philip Taueki, submissions by way of reply (paper 3.3.31), para 122
210. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 39
211. Claimant counsel (Bennion, Whiley, and Black), submissions by way of reply (paper 3.3.33), p 8

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have raised or lowered the lake at will. This would have enabled them to reduce or increase the watered area as suited their needs and as technology allowed – at least until later regulatory legislation affecting all waterways was passed. The Muaūpoko owners could also have developed the fisheries as they chose, using new technology as it became available.[212]

In the claimants' view, the 1905 Act had the effect of removing all these options, requiring instead

> the Maori owners to ensure that the lake was thereafter maintained as a public recreation facility, with fishing rights retained so far as they did not interfere with that public recreation purpose. This essentially 'froze' the rights in their existing state. Any land or fishery development rights were gone. Their private lake was now a public lake with a residual ability to use it for fishing.[213]

Worse, in the claimants' view, was that all development rights now lay with the board, which could develop and regulate the domain for recreational purposes – including the previously mentioned example of allowing speedboating.[214]

In sum, the claimants argued that the Act interfered so extensively with their property and other rights that it amounted to a raupatu or confiscation of those rights, and of their authority over the lake.[215] Paul Hamer's evidence showed that there were key players at the time, such as Field and Native Minister Carroll himself, who did believe that the lake had effectively been nationalised.[216]

The Crown's position was that the Act simply introduced a regulatory regime, and that the real problem was not the statutory regime but the restrictive bylaws and other subsequent decisions of the domain board; the domain board, said Crown counsel, was not a Crown agent.[217] While the Act did provide for a 'significant degree of regulation of the owners' property rights', that did not 'constitute an expropriation or raupatu'.[218] Rather, Muaūpoko and public interests were to 'co-exist in relation to the Lake'; and the domain board was 'to exercise a form of joint management'.[219] If the Act did not work as Muaūpoko had expected, or if the board made decisions that 'failed to give proper weight and protection to Muaūpoko interests, that may constitute some form of wrong – but it is not confiscation or raupatu. Rights that are confiscated are gone for all time, in law and often in fact.' In other words, 'alleged bad decision making by the Domain Board' was to blame, and that did not constitute 'expropriation'.[220]

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212. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), pp 39–41
213. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 41
214. Claimant counsel (Bennion, Whiley, and Black), submissions by way of reply (paper 3.3.33), p 7
215. Claimant counsel (Watson), closing submissions (paper 3.3.21), p 17; claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), pp 8, 39–40
216. Hamer, '"A Tangled Skein"' (doc A150), p 41
217. Crown counsel, closing submissions (paper 3.3.24), pp 26, 48–51, 54
218. Crown counsel, closing submissions (paper 3.3.24), p 48
219. Crown counsel, closing submissions (paper 3.3.24), p 49
220. Crown counsel, closing submissions (paper 3.3.24), p 54

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Also, Crown counsel argued that the 1905 Act struck the right balance between public and Māori rights. It created 'public rights of access and recreation "without unduly interfering with the fishing and other rights of the Native owners"'.[221]

In their reply submissions, the claimants maintained that the 1905 Act 'clearly did directly extinguish *some* of the owners' property rights in the sense that they lost some of the key incidents of title, well before any decisions were made by the Board' (emphasis in original).[222] In legal terms, they said, the 1905 agreement was really only

> a licence to the public to carry out certain unspecified recreation activities on the surface of the water or parts of it, whether at all times, or for fixed times, or determinable at will is unclear. But on 30th of October 1905 when the Act came into force, all Muaūpoko property interests in the lake became subservient to its public reserve status. Their uses of their land and waters could never interfere with the 'full and free' use of the lake for 'aquatic sports and pleasures.' The phrase was not confined and was subsequently expanded by changing uses, for example, the use of speed boats. The Board was appointed to enforce a comprehensive scheme of public use, not to discover and mediate the extent to which Muaūpoko would allow limited public use. Killing birds and any game – ie the use of the lake for all animal food other than fish – was also illegal. Lighting fires and cutting flax (both activities undertaken by Muaupoko), had also become criminal acts, unless explicitly consented to by the Board, due to the operation of s 17 of the Public Domains Act 1881.[223]

As noted above, we agree with the Crown that legal ownership of the lakebed and chain strip was not confiscated by the Act. We also agree that there was potential for the domain board to have imposed less stringent rules or made better decisions, a matter that is discussed in the following section. We agree, too, that distinctions must be maintained between 'public authority regulating property, and the existence of property rights'.[224] That seems unexceptionable.

But we accept the claimants' position that in the instance of the Horowhenua Lake Act 1905, purportedly enacted to give effect to an agreement, some property rights, including the development rights inherent in those property rights, were negated or subordinated to public uses. This occurred without consent or compensation. No positive actions by the domain board could ever make up for the fact that the October 1905 'agreement' had been an initial, incomplete agreement to some general propositions, and that the further consent of the owners and their trustees to more fully developed proposals was required before legislation was introduced. The Crown's omission in that respect has already been noted above.

Specifically, our view is that the 1905 Act created a hierarchy of interests. Its wording subordinated the fishing and other rights of the Muaūpoko owners to public

221. Crown counsel, closing submissions (paper 3.3.24), p 48
222. Claimant counsel (Bennion, Whiley, and Black), submissions by way of reply (paper 3.3.33), p 7
223. Claimant counsel (Bennion, Whiley, and Black), submissions by way of reply (paper 3.3.33), p 7
224. Crown counsel, closing submissions (paper 3.3.24), p 54 n

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use of the lake and of the chain strip for recreation. Further, the Act turned the owners' private property into a public reserve under the control of a domain board. It gave the board extensive powers to manage this reserve (and to restrict all of the owners' activities other than customary fishing) for that exclusive purpose of recreation. This was the work of legislators who valued and prioritised aquatic sports over the customary fishing rights of Māori. The Muaūpoko owners consented to none of these things, nor were they compensated for them.

There was, however, a potential mitigating factor. Muaūpoko were to be represented on the board which controlled all activities in the reserve. The extent to which this was a mitigating factor will be examined in section 8.3.

(b) ***Omission of guarantees from the 1905 Act:*** Some of the guarantees or undertakings made at the October 1905 meeting were missing from the Act:

- there was 'no reference to the guarantee of Muaupoko's mana over the lake – undoubtedly the key term of the agreement for them' (item 9);[225]
- the Act failed to address the regulation of lake levels or the establishment of a control gate (item 3);
- the Act failed to prohibit the throwing of rubbish or the discharge of pollution into the lake (item 5);
- the Crown failed to insert a clause that the lake was not suitable for trout and would not be stocked with this introduced species (item 4); and
- the Act failed to provide for preserving the native bush and vegetation around the lake, which was a particular concern to the claimants because of their important flax resource (item 1).[226]

While the Crown conceded that it had failed to 'adequately reflect' the terms of the agreement in the Act, it qualified this concession by pointing out that some of these matters were omitted from the Act because the domain board could deal with them.[227] Crown counsel cited Paul Hamer's agreement under cross-examination, that 'some of the things that were in the [1905] agreement were seen as matters that could be dealt with just by the board in the creation of its bylaws. So they didn't actually need to be put into legislation.'[228]

Mr Hamer had also agreed in cross-examination that the clause about pollution (item 5) may have been omitted from the 1905 Act for that very reason.[229]

We accept this submission up to a point, and we also note that such matters as control of lake levels actually required more negotiation and agreement from Muaūpoko before they could or should have been included in legislation. But, in our view, the crucial guarantee that pollution would not be discharged into the lake required statutory direction to ensure that it was carried out, rather than leaving such matters to the discretion of the domain board. We return to that question

225. Hamer, '"A Tangled Skein"' (doc A150), p 39
226. Claimant counsel (Stone, Bagsic, and Hopkins), closing submissions (paper 3.3.9), pp 8–9
227. Crown counsel, closing submissions (paper 3.3.24), p 53
228. Transcript 4.1.12, p 396 (Crown counsel, closing submissions (paper 3.3.24), p 53)
229. Crown counsel, closing submissions (paper 3.3.24), p 53

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when we discuss the question of the Crown's duties in respect of pollution and environmental degradation (see chapter 10).

8.2.5 Findings

Our conclusion in section 8.2.3 is that there was a tentative agreement in principle on some inchoate terms in October 1905, to which some Muaūpoko 'elders' (as Reihana said), some Levin settlers, and the Premier had agreed, with the Native Minister interpreting. This was clearly not an adequate or complete agreement, let alone a formal or signed deed of agreement, although Muaūpoko in later decades confirmed that they had consented to public use of the surface of the lake for boating. In our view, the Crown was very clearly a party to this 'agreement'. The next step for the Crown was either to seek the formal agreement of the lake trustees to a contract or deed (and the endorsement of the court to any variance of the trust), or – as Sheridan recommended – legislation. The choice to legislate without first seeking formal agreement on more fully developed terms was clearly a breach of Treaty principles. It was not consistent with the principle of partnership, nor was it consistent with the plain meaning of article 2 of the Treaty.

The English version of article 2 guaranteed that Māori would retain their lands and all other properties for so long as they wished. The Māori version guaranteed their tino rangatiratanga over their taonga. The 1905 Act, however, took control of Lake Horowhenua from its Muaūpoko owners and vested it in a board, turning their private property into a public recreation reserve and subordinating their use of their private property (a taonga) to that of the public. This was done without adequate consent or any compensation, in clear breach of article 2. In our view, this was a serious Treaty breach which left Muaūpoko essentially powerless to exercise tino rangatiratanga over their taonga, which will be evident in the next section of this chapter.

The enactment of the 1905 Act was not the result of a true or fair balancing of interests, as Crown counsel maintained. If the public possessed a legitimate 'interest' in this privately owned lake, it amounted to a desire to use it for boating and recreation, for which privilege the public could negotiate arrangements with the owners (including for payment, as they had prior to 1905). This public 'interest' in the lake was hardly of a kind which justified imposing the 1905 Act and the provisions of the Public Domains Act on the Māori owners, without their consent or any payment of compensation. Even if the 1905 'agreement' had contained final and fully agreed terms, the application of the Public Domains Act to Lake Horowhenua had never been one of them. For Muaūpoko the prejudice was enormous. This included an economic prejudice – if they had been able to continue charging settlers for use of their private lake, they would have benefited in a substantial way from the settlement and colonisation brought about by the Treaty.

We do not accept the Crown's position that the 1905 Act simply regulated rather than expropriated private property rights. We agree with the Crown that legal ownership of the lakebed was not taken. But Muaūpoko owners lost the right to develop

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their lake, which was a right inherent in all properties under English law.[230] It was also a Treaty right, as the Waitangi Tribunal explained in its report *He Maunga Rongo*.[231] The 1905 Act transferred the development right in Lake Horowhenua to the public, which could then develop the lake as a pleasure resort, giving not only this right but also the exclusive control of all other private property rights to a public board. Our conclusions from this are as follows:

- First, under the 1905 Act, Muaūpoko fishing and other uses of their property were not to interfere in any way with public recreation and were therefore subordinated to it by statute.
- Secondly, under the Public Domains Act 1881, many of those uses were also prohibited in a public domain or required explicit domain board permission.
- Thirdly, the development right was transferred from the Muaūpoko owners to a public board.

In our view, this was as near to an expropriation as could occur without outright confiscation of the legal ownership. It was a breach of the Māori owners' article 2 rights, and of the principles of partnership and active protection.

We accept that the Māori owners were to be represented on the domain board, which potentially gave them a say in how their uses of their property were controlled and/or prohibited. But the Crown's omission to negotiate an appropriate level of representation and then guarantee it in the 1905 Act was a breach of the principle of partnership and the property guarantees in the Treaty.

There were further omissions in the 1905 Act. The Crown has conceded that it 'promoted legislation in 1905 that failed to adequately reflect the terms of the Horowhenua Lake Agreement of 1905'.[232] Crown counsel noted the failure to prohibit pollution from entering the lake, which was inconsistent with Treaty principles. This concession was qualified by reference to a bylaw which prohibited littering.[233] We find that the Crown's failure to include prohibitions against the discharge of pollution and the introduction of trout – which were recorded by the Crown in 1905 – was in breach of the principles of partnership and active protection. Similarly, the Crown failed to negotiate or include a mechanism by which the owners could agree on the control of lake levels. This was a breach of Treaty principles. These breaches were to have serious consequences, as we discuss in section 8.3.7 and also in later chapters.

By the end of 1905, the Muaūpoko owners of Lake Horowhenua faced an uncertain future. At the stroke of the legislative pen, they had lost the control and free use of their lake. Much would now depend on:

- the owners' level of representation on the domain board, which the Crown would decide (at least one-third of the members had to be Māori); and
- the question of whether Muaūpoko fishing and other lake uses interfered in practice with public uses of the lake, which took priority.

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230. Waitangi Tribunal, *He Maunga Rongo*, vol 3, pp 890–892
231. See Waitangi Tribunal, *He Maunga Rongo*, vol 3, chapter 13.
232. Crown counsel, closing submissions (paper 3.3.24), p 23
233. Crown counsel, closing submissions (paper 3.3.24), p 53

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Thirty years later, a public committee of inquiry was appointed to look into Muaūpoko's claim that their rights had been 'whittled away' in the interim. We turn to that issue next.

8.3 Were Muaūpoko Rights 'Whittled Away' between 1905 and 1934?

8.3.1 Morison's account of the 'whittling away' of Muaūpoko's rights

The 1905 Act was brief and its provisions were contradictory. It combined Māori ownership with a public recreation reserve. The Māori owners were to have 'at all times . . . the free and unrestricted use of the lake and of their fishing rights over the lake', but this was not to interfere with the 'full and free use of the lake for aquatic sports and pleasures'.[234] At the same time, the domain board was to have all the functions and powers of a domain board, which – as set out above – were extensive and potentially controlled virtually every activity on the lake and the chain strip. Māori membership of the board was presumably the way to resolve the conflicts and uncertainties that would arise from these overlapping rights and regimes. Crown counsel called the composition of the board 'a form of joint management'.[235]

As we shall see, the board was very confused about what it was and was not allowed to do vis-à-vis what the Māori owners were allowed to do, and the result was repeated requests to the Government for advice or answers. Several law changes followed, as did a succession of legal opinions from the Crown Law Office. Apart from the first one, each opinion read Māori rights down to the point where the final opinion in 1932 stated that the 1905 Act had taken ownership of the lakebed and chain strip, vesting them in the Crown.

In 1934, a public inquiry was held to determine the scope of Muaūpoko's rights, so that Levin authorities could start developing the lake reserve as a 'pleasure resort'. Muaūpoko were represented by D G B Morison. He told the committee of inquiry that Muaūpoko had been prejudiced and their rights had 'gradually been whittled away',[236] in particular by:

- construction of water races which discharged into the lake, without consent or compensation;
- violation of the 1905 agreement because 'the Europeans wanted to hold aquatic sports; now they want it [the lake reserve] for roading, scenery and other purposes';[237]
- inclusion of the Hōkio Stream and the chain strip in the domain by legislation, without consultation or consent, in violation of what was agreed with Seddon and Carroll in 1905;[238]

234. Horowhenua Lake Act 1905, s 2(a)
235. Crown counsel, closing submissions (paper 3.3.24), p 49
236. Committee of inquiry, minutes, 11 July 1934 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(g)), p 1534)
237. Committee of inquiry, minutes, 11 July 1934 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(g)), p 1531)
238. Committee of inquiry, minutes, 11 July 1934 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(g)), pp 1531–1532)

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- inclusion of 13 acres in the domain by legislation, when the 1905 Act had only authorised the Crown to acquire up to 10 acres; and
- modification of the Hōkio Stream for drainage, damage to eel weirs and the eel fishery, and significant lowering of the lake, all against the wishes of Muaūpoko, validated retrospectively by legislation – this was especially harmful because it left Muaūpoko with a reduced food supply during the Depression.[239]

In this section of our chapter, we address the question: were Muaūpoko rights 'whittled away' between 1905 and 1934, as Morison claimed? The parameters and findings of the 1934 inquiry itself will be addressed in the next chapter.

We begin by setting out the parties' arguments.

8.3.2 The parties' arguments

(1) *The claimants' case*

In the claimants' view, Morison's arguments were substantiated by the evidence in our inquiry, but there were additional matters which had not arisen in the 1934 inquiry. First, the claimants submitted that the Pākehā-style domain board was an inappropriate structure for managing the lake, and Muaūpoko representation was set too low for them to wield appropriate influence on the board's decisions.[240] This situation was made worse by the Crown's control of appointments, and its failure to specify a process by which the owners or the tribe would nominate the board members. In 1916, the Crown legislated so that Muaūpoko could not have more than one-third membership of the board.[241] Secondly, the claimants argued that exclusive Māori fishing rights under the 1905 Act were compromised by the introduction of trout into the lake, and by the application of the ordinary fishing regime to the lake (in which settlers could fish after buying a licence).[242]

Otherwise, the claimants focused on matters which were the subject of the 1934 inquiry. They argued that the Crown's interventions between 1905 and 1934 'adversely affected the iwi'[243]:

- The Minister of Internal Affairs, H D Bell, visited Levin in 1915, met with settlers, and agreed to promote legislation which favoured settlers' interests. In the claimants' view, the Minister paid little or no heed to Māori interests.[244]
- Bell's 1916 legislation included the chain strip in the lake domain. This, submitted claimant counsel, was 'simple confiscation' but was 'subsequently remedied to an extent following the 1934 inquiry'.[245] The 1916 legislation also gave the

239. Committee of inquiry, minutes, 11 July 1934 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(g)), pp 1532–1534)

240. Claimant counsel (Stone, Bagsic, and Hopkins), closing submissions (paper 3.3.9), pp 9–10; claimant counsel (Lyall and Thornton), closing submissions (paper 3.3.19), p 30

241. Claimant counsel (Naden, Upton, and Shankar), closing submissions (paper 3.3.23), pp 275–276

242. Claimant counsel (Stone, Bagsic, and Hopkins), closing submissions (paper 3.3.9), pp 10–13

243. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 45

244. Claimant counsel (Naden, Upton, and Shankar), closing submissions (paper 3.3.23), pp 275–276

245. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 45; claimant counsel (Naden, Upton, and Shankar), closing submissions (paper 3.3.23), p 276

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domain board drainage powers in respect of the lake and the Hōkio Stream, despite strong Muaūpoko opposition.[246]

- Muaūpoko were also strongly opposed to the establishment of a drainage board in 1925. In the claimants' view, the board's works went far beyond the activities specified by the 1925 commission. Further, their view is that the Crown promoted drainage in the interests of settler farmers and legislated to force it upon Muaūpoko, violating a 1926 agreement in doing so. The impact was serious damage to Muaūpoko's fishing rights, their eel fishery, the lake-shore shellfish beds, the lake's margins, and the flax growing near the lake. Also, settlers were able to graze their stock on the chain strip and the newly dewatered area, and neither the board nor the Crown rectified that matter or protected Muaūpoko rights to their lands. The claimants argued that the damage to Muaūpoko taonga was seriously prejudicial to the tribe.[247]

(2) *The Crown's case*

Crown counsel made few submissions about this period. In brief, the Crown's view of the domain board structure was that it provided Muaūpoko with a 'form of joint management' of the lake.[248] Otherwise, the Crown argued that, 'to the extent any prejudice might be said to flow from earlier legislation as to control and/or rights, that prejudice was remedied by the enactment of the 1956 Act'.[249] In other words, the Crown's view was that anything which went wrong between 1905 and 1956 was remedied by it in 1956.

The Crown did make more extensive submissions on one issue: drainage and control of the Hōkio Stream for that purpose. Crown counsel suggested that the Tribunal must ask whether:

- Māori had a variety of views and interests in respect of drainage (including as landowners who stood to benefit from it), and agreed on opposing a scheme;
- the opposition had merit;
- the Crown was aware of the opposition and took appropriate action in respect of valid concerns; and
- there were public interests which needed to be balanced against the Māori interest.[250]

In respect of the drainage activities of the 1920s, the Crown accepted that '[s]ome Muaūpoko members were involved in protests' about the drainage proposals, 'including the potential impact of altering the [Hokio] Stream on fishing rights'. Nonetheless, we were told, some Māori landowners 'appeared to support the drainage work that was proposed'.[251] In the case of the Hōkio Stream, the Crown had to balance economic development and private land interests against Māori fishing

246. Claimant counsel (Stone, Bagsic, and Hopkins), closing submissions (paper 3.3.9), pp 13–14

247. Claimant counsel (Stone, Bagsic, and Hopkins), closing submissions (paper 3.3.9), pp 14–15; claimant counsel (Naden, Upton, and Shankar), closing submissions (paper 3.3.23), pp 276–277, 282

248. Crown counsel, closing submissions (paper 3.3.24), p 49

249. Crown counsel, closing submissions (paper 3.3.24), p 57

250. Crown counsel, closing submissions (paper 3.3.24), p 94

251. Crown counsel, closing submissions (paper 3.3.24), p 83

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rights. In the Crown's view, a 1925 public inquiry resulted in resolutions which tried to strike that balance.[252] This was part of 'good faith efforts by all parties to address concerns about the stream.'[253]

Crown counsel suggested that the extent to which the Crown was

> responsible for subsequent actions by the [Hokio] Drainage Board is an issue for the Tribunal to consider further: including in relation to the agreement reached between representatives of 'the native interests' (including both Ngāti Raukawa and Muaūpoko) and the Hokio Drainage Board on 5 March 1926. That agreement included a clause that there was to be no further deepening of the Stream beyond the level of the present scheme without either: 'the consent of the Natives interested'; or if Māori consent was refused, the Minister of Internal Affairs authorising the work 'after he has investigated the point at issue and determined that further deepening should take place.'[254]

Crown counsel acknowledged that this 1926 agreement was not 'directly incorporate[d]' into section 53 of the Local Legislation Act 1926, which authorised the Hokio Drainage Board to undertake works in relation to the Hōkio Stream. Nonetheless, the legislation did 'record the need to protect Māori fishing rights and use of the Lake.'[255] The Crown accepted that Muaūpoko concerns about these drainage works persisted and contributed to the need for both the 1934 inquiry and the Reserves and Other Lands Disposal Act 1956.[256]

We turn next to discuss the various issues in light of the parties' arguments.

8.3.3 Acquisition of 'up to ten acres'

One point listed by Morison in 1934 was the Crown's acquisition of 13 rather than 10 acres for a boatshed and other domain buildings.[257] Levin settlers and the domain board wanted the Crown to obtain a much larger area, about 32 acres, possibly using the Scenery Preservation Act. Field pushed the Government to amend the 1905 Act so that a larger area could be acquired, but the Native Department under Carroll was not prepared to agree to it. One block sought by the board was the land leased by Te Rangimairehau for the boatshed, but the elderly rangatira was unwilling to sell and demanded £55 an acre. Faced with that, the Lands Department decided that the Public Works Act should be used to take his 13-acre block,[258] but Public Works officials were doubtful that their Act applied. The Solicitor-General confirmed that the construction of a boatshed was not a public work. Eventually, Te Rangimairehau agreed to sell for £21 5s an acre in August 1907. Three roods were also purchased from another Māori land block so that the domain board reserve would have access to Queen Street. Thus, the Crown purchased about three more

252. Crown counsel, closing submissions (paper 3.3.24), pp 83–84
253. Crown counsel, closing submissions (paper 3.3.24), p 84
254. Crown counsel, closing submissions (paper 3.3.24), p 84
255. Crown counsel, closing submissions (paper 3.3.24), p 84
256. Crown counsel, closing submissions (paper 3.3.24), p 85
257. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 45
258. Horowhenua 11B38

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acres than the Act allowed, but much less land than settlers and the board had requested.[259]

The claimants have not pursued any allegations about this purchase in their closing submissions, so we leave the matter without comment.

8.3.4 Exclusive Māori fishing rights

In 1907, the Wellington Acclimatisation Society introduced trout to Lake Horowhenua,[260] and continued to make further releases in subsequent years. In respect of the Muaūpoko owners' fishing rights, as guaranteed by the 1905 Act, four issues arose:

- the question of who had authority to decide whether trout should be introduced and the lake kept stocked;
- the impact of trout on native species (and therefore on Muaūpoko fishing rights);
- whether Muaūpoko's fishing rights included a right to fish for introduced species without buying a licence; and
- whether Muaūpoko's fishing rights were exclusive or Pākehā could fish in the lake.

The Crown made an appropriate concession about the fourth point, acknowledging that 'the extension of public rights to include a right to fish was contrary to the intent of the 1905 Agreement and prejudicial to the owners of the Lake bed', who 'maintained they had the exclusive right to fish the Lake'.[261]

Having introduced the trout, the acclimatisation society applied to the domain board for permission to fish for it. The board was unsure of the legal position, and whether Muaūpoko would have to pay for licences (because introduced species were possibly not covered by the 1905 Act's guarantee of their fishing rights). The board consulted its Muaūpoko members.[262] Their response was that trout predated on native species, and the tribe was dependent on the lake for their food supplies. They also pointed out that the 1905 agreement was to allow 'rowing, boating and sports generally – certainly not for fishing'. In Muaūpoko's view, settlers had no right to fish in the lake or to introduce trout.[263] In light of the strong response from Muaūpoko, the board declined the acclimatisation society's request. Field appealed to the Government, which resulted in a legal opinion from the Crown Law Office in January 1908.[264] Assistant Law Officer Leonard Reid advised that Pākehā could not fish in Lake Horowhenua without the consent of 'the Native owners', because the

259. Hamer, '"A Tangled Skein"' (doc A150), pp 44–52

260. Hamer, '"A Tangled Skein"' (doc A150), p 55; Armstrong, 'Lake Horowhenua and the Hokio Stream' (doc A162), pp 21–22

261. Crown counsel, closing submissions (paper 3.3.24), p 44

262. Armstrong, 'Lake Horowhenua and the Hokio Stream' (doc A162), p 22

263. 'Notes on the Question of Allowing Europeans to Fish in the Horowhenua Lake', 16 September [1907] (D A Armstrong, comp, papers in support of 'Lake Horowhenua and the Hokio Stream', various dates (doc A162(d)), pp 1953–1954)

264. Hamer, '"A Tangled Skein"' (doc A150), pp 56–57

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1905 Act 'reserves to such owners "the free and unrestricted use of the Lake, and of their fishing rights over the lake"'.[265]

The domain board accepted this advice, resolving that anglers could pay fees to Muaūpoko for a right to fish if they wished. Muaūpoko declined to allow Pākehā fishing – citing, as one newspaper put it, 'Te Treaty Waitangi' – and so there was some agitation on the part of anglers to get the Government to intervene on their behalf. Field pressed Carroll to introduce a law change. Nothing was done, however, until the Reform Government took an interest in the matter in 1914, in response to representations from Levin settlers. The Minister of Lands, HD Bell, asked the Crown Law Office for an opinion as to (i) whether Pākehā fishing for trout would really interfere with Muaūpoko's statutory fishing rights, and (ii) whether those fishing rights extended to introduced species.[266]

The legal opinion was delivered only a day after the request was made, and it was a remarkable (and remarkably incorrect) opinion from Assistant Law Officer HH Ostler. He maintained that the 1905 Act did not confer any rights 'on Natives; its purpose is to take away all rights previously held by the Native owners, except those expressly reserved'. Ostler then guessed incorrectly that the lake 'probably belonged to the owners of the adjoining land *ad medium filum*', some of whom were Pākehā, and that 'no Native owner of adjoining land could point to any defined portion of the Lake as owned or lawfully occupied by him'.[267] Ostler was clearly unaware that named Muaūpoko individuals had a land transfer title to the lakebed. Having reached this erroneous view, Ostler went on to say that the only right preserved to the owners by the Act was the free and unrestricted use of the lake and of fishing on it. Māori had no lawful right to fish for trout without a licence except on the basis that all landowners could do so from their own land (as provided for in the Fisheries Act 1908). Being unaware that the lakebed was Māori land, and arguing that 'no Native is in lawful occupation of any part of the bed of the Lake now', Ostler concluded: 'no Native can fish for trout in the lake without a licence'. In addition, Ostler argued that Lake Horowhenua was now a public recreation ground, not 'private waters', and therefore the Fisheries Act applied to it.[268]

Further, Ostler suggested that the 1905 Act preserved a right for the 'Native owners' to fish for eels, flounders, and the like, but not introduced salmon or trout. 'The fishing for trout there by Europeans will not interfere with that right', he said, and was not 'prohibited even impliedly by the Horowhenua Lake Act'.[269]

David Armstrong commented that a 'good deal of misunderstanding and confusion remained' in the wake of Ostler's opinion, and there were fears of a violent

265. Minister of Marine to Field, 24 January 1908 (Hamer, '"A Tangled Skein"' (doc A150), p 57)

266. Hamer, '"A Tangled Skein"' (doc A150), pp 57–58

267. HH Ostler, assistant law officer, to Minister of Internal Affairs, 15 January 1914 (Hamer, '"A Tangled Skein"' (doc A150), pp 58–59)

268. HH Ostler, assistant law officer, to Minister of Internal Affairs, 15 January 1914 (Hamer, '"A Tangled Skein"' (doc A150), p 59)

269. HH Ostler, assistant law officer, to Minister of Internal Affairs, 15 January 1914 (Hamer, '"A Tangled Skein"' (doc A150), p 59)

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confrontation between Muaūpoko and anglers.[270] In June 1914, Solicitor-General Salmond confirmed Ostler's opinion, and specifically rejected Reid's 1908 opinion. Salmond added another reason for the contrary opinion: section 2 of the 1905 Act provided for the lake to be 'available to the public fully and freely for aquatic sports and pleasures. Fishing must be taken to be one of the aquatic sports and pleasures so indicated.' The 'saving clause' for Māori owners did not 'confer upon the Natives the exclusive right of fishing for trout' or preventing the public from 'enjoying this particular "aquatic sport and pleasure"'.[271] Mr Armstrong suggested that 'This outcome was wholly inconsistent with the Muaupoko understanding of the 1905 agreement.'[272]

The Minister of Internal Affairs advised the domain board that Salmond's opinion 'must be taken as a guide by the local authorities and by the public'.[273] If Muaūpoko wanted to challenge it, they would have to do so in court.[274] That, of course, was beyond the resources of the tribe at that time, but they did continue to order anglers off their lake. They also continued to fish for trout without a licence.[275] The Minister visited Levin in April 1915 and promised a deputation of settlers that the 1905 Act would be amended to put the Pākehā right of fishing beyond any doubt.[276] This did not happen, however, and Muaūpoko continued to both fish for trout and tried to prevent Pākehā from angling. In 1917, the Wellington Acclimatisation Society asked the Government to intervene, and – again – the Crown reaffirmed Salmond's position but took no action. The domain board, however, actively continued to stock the lake in conjunction with the acclimatisation society. The board checked with the Marine Department whether perch would harm native fish or plants, and the department advised that it was safe to keep releasing trout and perch (which the board continued to do).[277]

In our inquiry, the claimants argued that the lake was stocked with imported fish without their agreement, that their fishing rights were harmed because the introduced fish predated on native species, and that their exclusive fishing rights were breached by allowing others to fish on the lake.[278] As noted above, the Crown has conceded the latter point. In our view, the legal opinions of Salmond and Ostler were based on the application of strict statutory interpretation rules and the Crown was wrong, in Treaty terms, to have relied on them as the guide for what public

270. Armstrong, 'Lake Horowhenua and the Hokio Stream' (doc A162), p 24
271. Solicitor-General to Minister of Internal Affairs, 4 June 1914 (Hamer, '"A Tangled Skein"' (doc A150), p 61)
272. Armstrong, 'Lake Horowhenua and the Hokio Stream' (doc A162), p 24
273. Minister of Internal Affairs to George Burlinson, 8 June 1914 (Hamer, '"A Tangled Skein"' (doc A150), p 61)
274. Hamer, '"A Tangled Skein"' (doc A150), p 61; Armstrong, 'Lake Horowhenua and the Hokio Stream' (doc A162), p 24
275. Armstrong, 'Lake Horowhenua and the Hokio Stream' (doc A162), p 25
276. Hamer, '"A Tangled Skein"' (doc A150), p 70
277. Armstrong, 'Lake Horowhenua and the Hokio Stream' (doc A162), p 25
278. Claimant counsel (Stone, Bagsic, and Hopkins), closing submissions (paper 3.3.9), pp 10–13

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authorities must permit. Also, as early as 1907, an impact was already evident in the reduction of kōkopu ('native trout') in the lake.[279]

The result was a significant whittling down of Muaūpoko fishing rights, including their rights to conserve and protect their fisheries, their rights to control fishing and exclude others as necessary, and their development right to fish for new species in their lake as opportunity allowed.

8.3.5 Clarifying acquisition of the chain strip

In 1907, Mayor Gardener, in his capacity as domain board chair, asked the Crown to clarify the status of the chain strip.[280] Muaūpoko were cutting and selling flax growing on the strip (making a significant income from flax around the lake), and the board wanted to know if it had the power to stop it.[281] The chief surveyor advised that the chain strip was included in the area of the public recreation reserve created by the 1905 Act, even though the Act did not mention the chain strip. 'The Act is defective', he said, 'in not specifying it.'[282] Paul Hamer, however, commented that the Act was 'defective in implicitly including the 50-acre chain strip'.[283] We agree, as we noted above in section 8.2.4(3). The Lands Department advised the board that it was 'pretty certain' that Muaūpoko had no power to sell or cut the flax on the chain strip.[284] Muaūpoko continued to do so, however, and the board – presumably not satisfied by the words 'pretty certain' – approached the department again in 1911. Among a number of other questions, the board asked for a ruling as to '[w]hether the chain reserve showed on the map has been dedicated to the Government'.[285]

In response, the Solicitor-General relied on the language of the Act, not the area of land which the Act had included in the reserve. His opinion was that the chain strip was not referred to specifically in the Act, and so was not subject to the Act or under the control of the domain board.[286] The Pākehā board members were concerned because this meant that anyone wishing to access the lake from their new 13-acre reserve would have to cross private land, not domain land. In April 1915, this was one of three principal issues that they presented to the Minister of Internal Affairs when he visited Levin. Mayor Gardener again asked the Minister to 'look into the matter as to who had control' of the strip, and also asked for it to be surveyed.[287] As noted above, Hanita Henare was present at this meeting and confirmed Burlinson's account of the 1905 agreement: Pākehā use was to be for boating, and

279. 'Notes on the Question of Allowing Europeans to Fish in the Horowhenua Lake', 16 September [1907] (Armstrong, papers in support of 'Lake Horowhenua and the Hokio Stream' (doc A162(d)), p 1953)
280. Hamer, '"A Tangled Skein"' (doc A150), p 66
281. Armstrong, 'Lake Horowhenua and the Hokio Stream' (doc A162), p 26
282. Chief surveyor to under-secretary for lands, 15 October 1907 (Hamer, '"A Tangled Skein"' (doc A150), p 66)
283. Hamer, '"A Tangled Skein"' (doc A150), p 66
284. Under-secretary for lands to Gardener, 18 October 1907 (Hamer, '"A Tangled Skein"' (doc A150), p 66)
285. Burlinson to under-secretary for lands, 28 June 1911 (Hamer, '"A Tangled Skein"' (doc A150), p 64)
286. Hamer, '"A Tangled Skein"' (doc A150), p 67
287. 'Notes of a deputation which waited upon the Hon H D Bell', 9 April 1915 (Hamer, '"A Tangled Skein"' (doc A150), pp 67–69)

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was limited to the surface of the lake. Henare also said that he left it to the Minister to settle matters – a trust that was misplaced, commented Paul Hamer.[288]

The Minister, HD Bell, promised a legislative solution to the concerns of the board and Levin settlers. He took absolutely no account of the 1905 agreement, and very little account of Māori interests, which he considered to be a non-exclusive right of fishing.[289]

As a result of the meeting, Mayor Gardener was asked to suggest the contents of a Bill. He recommended that any law change should include, if possible, board control of the chain strip. At the same time, the chief surveyor prepared a map to go with the legislation, including the 50-acre strip as part of the 951 acres of the reserve. The eventual result was a clause in the Reserves and Other Lands Disposal and Public Bodies Empowering Bill 1916, which (among other important matters) specified the chain strip was part of the reserve. Muaūpoko appealed to their member, Māui Pōmare, for assistance, and also petitioned Parliament that this clause not be passed. The Bill was passed despite Muaūpoko's opposition. Section 97, subsection 10, of the 1916 Act defined the boundaries of the reserve as including the strip. Prime Minister Massey noted that the Māori members had not objected to the proposed legislation, ignoring Muaūpoko's petition. In 1917, the tribe sent another petition, asking that section 97 be repealed – again, without any success.[290]

Muaūpoko continued to assert their authority over the chain strip. In 1929, Te Tuku Matakatea and other tribal members wrote to the Native Minister, Āpirana Ngata. Neighbouring farmers were burning off the flax and using the strip for grazing their stock. Muaūpoko had surveyed part of the boundary and wanted to fence it off, or make the landowners do so. Ngata's advice was that the strip was under the control of the board, and that they had no authority to build a fence or require farmers to build one.[291] Their recourse, he said, was for 'the Native members of the Board' to 'bring the matter before the Board'.[292] Paul Hamer pointed out that Ngata used the word 'mana' to explain the board's authority: the mana that Muaūpoko had been guaranteed in 1905.[293]

The tribe did seek the intervention of the domain board. They asked permission to fence the strip and plant flax, sow grass, and cultivate. This approach from Muaūpoko forced the board to face up to the fact that farmers were grazing stock on the borders of the lake, free of charge, and damaging the lakeside vegetation. It asked the Lands Department to clarify its authority: could it compel neighbouring owners to fence their land; could it allow them to graze the strip; and could it allow anyone (that is, Muaūpoko) to fence off the strip and use the chain (either for free or by lease)? The department responded that the purpose of the strip was to allow

288. Hamer, '"A Tangled Skein"' (doc A150), p 70
289. Hamer, '"A Tangled Skein"' (doc A150), pp 70–72
290. Hamer, '"A Tangled Skein"' (doc A150), pp 72–75
291. Hamer, '"A Tangled Skein"' (doc A150), pp 95–97
292. Ngata to Tuku Matakatea, 23 December 1929 (Hamer, '"A Tangled Skein"' (doc A150), pp 96–97)
293. Hamer, '"A Tangled Skein"' (doc A150), p 97

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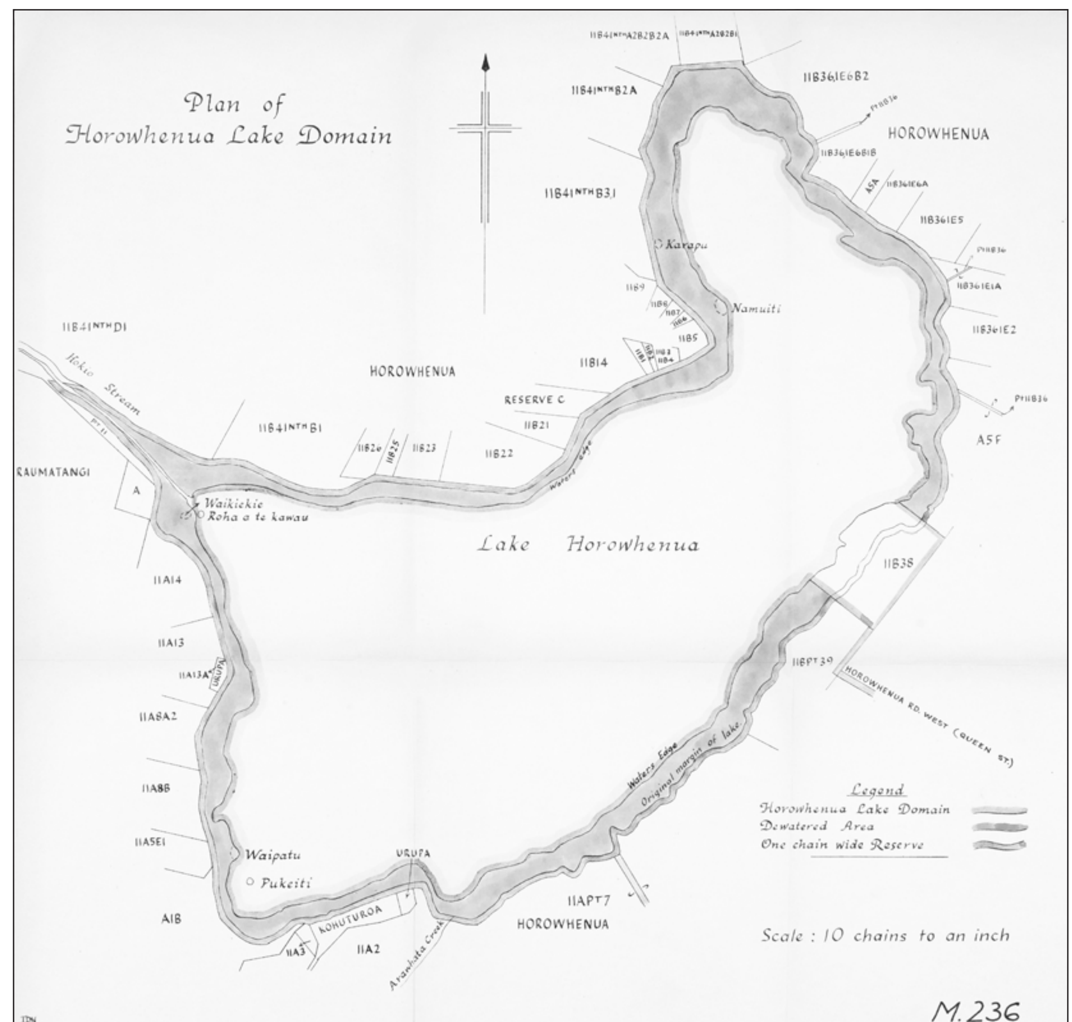

Lake Horowhenua, the chain strip, and the dewatered area

Department of Lands and Survey – Horowhenua Lake Domain Board (1960–63), R24338449

access to the lake at all times. The board had no authority to fence off the strip or allow it to be used by anyone, including Muaūpoko.[294]

Parawhenua Matakātea then appealed to the chief judge of the Native Land Court in 1930 and 1931. Chief Judge Jones, who was also under-secretary of the Native Department, replied that Muaūpoko should approach the board. Again, it was emphasised that they were represented on it. Ngata made the same response to the leader of the opposition, who inquired on behalf of Muaūpoko.[295] The tribe did indeed continue to press the board, which asked the Lands Department for help in 1931, as it was not sure where the exact boundary was and had no money to fence it in any case. The department sent the chief surveyor to investigate the situation. It seemed that at least some neighbouring farmers were prepared to fence their land if

294. Hamer, '"A Tangled Skein"' (doc A150), p 97
295. Hamer, '"A Tangled Skein"' (doc A150), pp 97–98

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Muaūpoko or the board paid half the cost. But the surveyor recommended against it. He advised that it would be 'tortuous' to try to identify and fence such an irregular, curving boundary, and suspected that Muaūpoko's wish to control and use this land would just be the start of their claims for compensation. The department accordingly told Muaūpoko that it would be too expensive to fence off the chain strip.[296]

In May 1931, Muaūpoko petitioned the Crown, objecting to the possibility of the domain board building a road on the chain strip. The board did want a road but had no immediate plans to construct one. It once again asked the Crown what it was allowed to do: could it impound stock found on the strip, were Māori allowed to cut flax, and did owners of land around the lake have riparian rights?[297] The department's response was:

- it was unwise to impound cattle if the board could not fence the strip;
- it was 'very doubtful' whether Māori had the right to cut or remove flax, although Muaūpoko had been doing so 'for very many years along the Lake' and no doubt saw it as 'one of their rights';[298] and
- the existence of the intervening chain strip meant that landowners had no riparian rights.[299]

The board remained concerned, however, because Muaūpoko believed that they owned the lake and the chain strip, and that 'all the board can do is to preserve their fishing and other rights and control the privileges conferred on Europeans under the Horowhenua Lake Act, 1905'.[300] The board therefore sent a new set of questions to the department, including whether the Horowhenua lake reserve was in fact still owned by 'certain Natives' or was the property of the Crown. If it still belonged to Muaūpoko, was the board's role restricted to the 'oversight of the privileges' conferred on the public by the Act?[301]

In response, the Lands Department finally – and for the first time – asked the Native Department if there was 'some record of the original agreement'.[302] Native Department officials could find nothing at all about the agreement, and it appears that no one thought to consult Muaūpoko or even to read the parliamentary debates (which had the Attorney-General's summary of the agreement). Equipped with no information whatsoever about the 1905 agreement, the Lands Department asked the Solicitor-General for a legal opinion.

The result was another in a series of opinions which read down Muaūpoko's rights. This time, the opinion came from Crown solicitor James Prendeville on 31 May 1932. Prendeville held that the legislation did not state in 'express words that the ownership of the land has been resumed by the Crown', but that was nonetheless the effect of it. Apart from the fishing rights reserved in section 2(a) of the 1905 Act, 'all other

296. Hamer, '"A Tangled Skein"' (doc A150), pp 98–99
297. Hamer, '"A Tangled Skein"' (doc A150), p 102
298. Under-secretary for lands to Hudson, 19 June 1931 (Hamer, '"A Tangled Skein"' (doc A150), p 102)
299. Hamer, '"A Tangled Skein"' (doc A150), p 102
300. Hudson to under-secretary for lands, 26 June 1931 (Hamer, '"A Tangled Skein"' (doc A150), p 103)
301. Hudson to under-secretary for lands, 26 June 1931 (Hamer, '"A Tangled Skein"' (doc A150), p 103)
302. Hamer, '"A Tangled Skein"' (doc A150), p 103)

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rights of ownership have by the Act been resumed by the Crown.'[303] Prendeville's opinion relied on the Public Domains Act 1881 and its successors. Those Acts held that a reserve which was not expressly vested in a local authority or trustees was vested in the Crown. Prendeville also relied in part on the 1914 opinions of Ostler and Salmond. As for the chain strip, he said, that had been reserved in 1916, and adjacent owners had no right to use it (or land uncovered by lowering the lake) for grazing.[304] Prendeville's answer to the domain board's questions was:

- the Crown owned the land inside the reserve, subject to the reservation of the *previous* Maori owners' 'fishing rights and the use of the lake';
- the board had all the powers of a domain board under the Public Reserves, Domains, and National Parks Act 1928 (subject to the reservation of the previous owners' fishing and use rights); and
- the board could take down any fences and compel adjoining landowners to erect fences on the boundary, but would have to pay half the cost.[305]

Muaūpoko had wanted confirmation of their right to use the chain strip for its flax and other resources, and to stop incompatible uses which might destroy the vegetation, such as grazing or construction of a road. The answer was that they had no rights other than what the board would allow, that their only power came from representation on that board, and that they did not even own their lake or the chain strip any more. This was a very serious grievance for Muaūpoko. In respect of the chain strip, their rights had certainly been 'whittled away' by the time of the Harvey–Mackintosh inquiry of 1934 (discussed in chapter 9).

One member of the committee of inquiry, HWC Mackintosh, noted in December 1934 that the committee had gone 'most exhaustively' into the question of the chain strip:

> The Maoris contend that it was never intended that the chain strip should be included in the Domain, that it was taken from them without their sanction, and that they want it back again.
>
> This contention of the Maoris is supported by myself and Judge Harvey.[306]

8.3.6 Was the board structure an effective structure for the exercise of Muaūpoko authority in respect of the lake?

As discussed in the previous section, the Government's response to Muaūpoko petitions and complaints was to refer them back to the domain board, pointing out that they were represented on it. The claimants in our inquiry, however, denied

303. Prendeville to under-secretary for lands, 31 May 1932 (Paul Hamer, comp, papers in support of '"A Tangled Skein": Lake Horowhenua, Muaūpoko, and the Crown, 1898–2000', various dates (doc A150(b)), p 281)

304. Prendeville to under-secretary for lands, 31 May 1932 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(b)), pp 281–282)

305. Prendeville to under-secretary for lands, 31 May 1932 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(b)), pp 281–283)

306. Mackintosh to under-secretary for lands, 6 December 1934 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(b)), p 306)

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that representation on this board was an effective means of exercising their kaitiakitanga and tino rangatiratanga. Muaūpoko at the time denied it too.

The Crown's list of terms for the 1905 agreement had referred to 'some' Māori representation on a board to govern public use of the lake for aquatic sports. Without further consultation or seeking agreement, the Crown had decided that the board would have a much wider remit (all the functions and powers of a domain board), and would govern all uses of the lake reserve – with the exception of Muaūpoko fishing. This made the degree of Muaūpoko representation on the board a crucial issue. Again, instead of consulting further or seeking agreement, the Crown made a decision which was given effect in the 1905 Act. Māori members would make up 'one-third at least' of the board. This was a minimum figure. Potentially, a majority of members could be Māori. That decision, too, was made by the Crown, which chose to appoint four Muaūpoko members in a 10-person board. The Crown's selection method was to call for nominations by the Native Minister (for Māori members) and the local member of Parliament (for Pākehā members). Although Muaūpoko were not consulted about the mode of selection, Carroll did consult them before recommending Wiki Keepa, Wirihana Hunia, Eparaima Te Paki, and Waata Muruahi. We have no way of knowing what process Carroll used to sound out Muaūpoko before selecting those persons.[307]

The structural deficiencies in Muaūpoko representation were thus brought about by Crown actions: the decision to limit Māori board members to a minority, and the decision to have parliamentarians nominate members without any guaranteed or set process for Muaūpoko involvement.

This situation was exacerbated by the frequent inability of the Muaūpoko members to attend meetings, and the board's difficulties in employing an interpreter.[308] Those were not Crown actions, of course, but they affected the degree to which Muaūpoko actually participated within the parameters set by the Crown.

The structural deficiencies were made significantly worse in the 1910s.

First, the Levin Borough Council lobbied the Government to take over the domain or at least the Pākehā membership of the board. The Pākehā members of the board were sympathetic to this because, as they found, the board had little influence with other local authorities and virtually no money of its own. The Minister of Internal Affairs, H D Bell, agreed in 1915 to only appoint borough councillors to the board, but this change was not institutionalised at that point. As noted above in respect of both fishing rights and the chain reserve, Bell made a crucial visit to Levin in April 1915. As a result of his meeting with Levin settlers and domain board representatives, Bell agreed to introduce legislation to change the composition of the board and have it financed by the borough council. As we mentioned earlier, Mayor Gardener proposed terms for the legislation. These included the provision of borough council finance for the domain alongside a domain board membership of six borough councillors and four Māori members.[309]

307. Hamer, '"A Tangled Skein"' (doc A150), pp 40–44
308. Hamer, '"A Tangled Skein"' (doc A150), pp 42–44
309. Hamer, '"A Tangled Skein"' (doc A150), pp 67–72

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Secondly, in introducing the 1916 legislation, the Crown decided to reduce Muaūpoko membership to three members of a nine-person board, all the other members to be nominated by the council. Thus, the 1905 requirement of a one-third minimum became a maximum in 1916. As will be recalled, Muaūpoko petitioned against this legislation, both before and after its enactment.[310] Hanita Henare pointed out in 1917: 'as there were only three Native members against six Europeans they were always out-voted'.[311]

Thirdly, the 1916 provisions did not specify how the Māori members of the board were to be chosen, so this opportunity to consult Muaupoko and put their representation on a sounder footing was ignored. At first, the local Pākehā member (Field) was to nominate the Māori members, but Bell decided that the local Māori member (Western Maori), Māui Pōmare, would nominate them instead. The Crown thus retained control of both setting the number of representatives and how they would be selected. In practice, Māui Pōmare seems to have consulted Muaūpoko about appointments, but not for reappointments.[312] In doing so, he did not act in his capacity as Cabinet minister, so this could not be considered direct Crown control of the selection process itself.[313]

While Muaūpoko influence on the board was diluted further by the 1916 legislation, Māori members also continued to be hampered by the lack of an interpreter.[314] They now faced a fairly united front in the representatives of the borough council. In 1924, following the mass poisoning of eels in the lake in 1923 (reportedly by a wool scouring works), Muaūpoko petitioned the Crown to get rid of the board and return control of the lake to its Māori owners.[315]

In our inquiry, the claimants argued that arrangements for the domain board

> established pākehā supremacy over the management of the lake, meetings being conducted in English, under a pākehā committee construct. Provisions for appointment of Maori members were never clearly established (by either pākehā decree or Maori self-determination) and this problem continues to plague the Domain Board today.[316]

Further, because of 'the way the Domain Board has been established (pākehā-style board with majority representing local government bodies), it has resulted in local government dominance and control of the lake'.[317] In particular, the claimants were critical of their limitation by statute to a minority representation.[318] Hence, 'Muaupoko authority was recognised in the Domain Board [but] it was limited and

310. Hamer, '"A Tangled Skein"' (doc A150), pp 72–75
311. *Horowhenua Chronicle*, 9 October 1917 (Armstrong, 'Lake Horowhenua and the Hokio Stream' (doc A162), p 33)
312. Hamer, '"A Tangled Skein"' (doc A150), pp 72–75, 79–80
313. Paul Hamer, summary of points of difference with David Armstrong's report (#A162), December 2015 (doc A150(n)), p 4
314. Hamer, '"A Tangled Skein"' (doc A150), p 77
315. Hamer, '"A Tangled Skein"' (doc A150), p 82
316. Claimant counsel (Lyall and Thornton), closing submissions (paper 3.3.19), p 30
317. Claimant counsel (Lyall and Thornton), closing submissions (paper 3.3.19), p 30
318. Claimant counsel (Stone, Bagsic, and Hopkins), closing submissions (paper 3.3.9), p 9

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Muaupoko were always the minority'.[319] Crown actions in establishing that minority, appointing Muaūpoko members itself, and failing to specify an appropriate selection process, meant that the Crown's structural arrangements for the board 'diminished Muaūpoko mana and rangatiratanga'.[320]

In the Crown's submission, the domain board was not a Crown agent, and its structure was designed to provide Muaūpoko with a 'form of joint management' of the lake reserve.[321] The Crown also acknowledged some uncertainties in what Muaūpoko agreed to in 1905, in respect of the board's role and authority. Crown counsel admitted that the ROLD Act 1956 'gave stronger representation rights and more clearly defined legal rights and status to Muaūpoko than was the case under the 1905 and 1916 statutes'.[322] Otherwise, the Crown made no submissions about the structure of the board between 1905 and 1956.

We agree with the claimants that the structural limitations on Muaūpoko's representation, in which they were always a minority and were eventually restricted to a maximum of one-third of members, was fatal to their ability to use their board membership as a means of exercising authority over the lake. It was simply a numbers game, and they did not have the numbers to make their membership count. Joint management, the purpose of the board in the Crown's submission, was not possible in those circumstances. Further, although there was *Māori* membership of the board, the members were selected by Māori members of Parliament, not the Muaūpoko tribe or the lake trustees. Although Ministers such as Carroll and Māui Pōmare did consult on appointments, it is not clear who they consulted or whether the appointees were selected in any meaningful way by Muaūpoko leaders or a Muaūpoko majority.

8.3.7 Lowering the lake and controlling its level

Settler and Māori interests came into direct and sustained conflict over drainage works.[323] Levin settlers wanted to lower the lake so as to drain adjacent lands, prevent flooding, and make more dry land available for farming. The lake was abutted by a 'considerable area of swampy and waterlogged ground' which could be rendered 'fit for cultivation'.[324] Some individual Māori landowners stood to benefit (if they had the capital to develop their lands). But the tribal interest was the fishery, especially the eel fishery, which was still the tribe's principal food source.[325] Any form of drainage work would necessarily involve interfering with the Hōkio Stream and its crucial eel weirs. Boating interests such as the rowing club also opposed drainage, pointing out that the lake had been reserved for aquatic sports, and that

319. Claimant counsel (Stone, Bagsic, and Hopkins), closing submissions (paper 3.3.9), p 10
320. Claimant counsel (Naden, Upton, and Shankar), closing submissions (paper 3.3.23), p 275
321. Crown counsel, closing submissions (paper 3.3.24), pp 49, 93
322. Crown counsel, closing submissions (paper 3.3.24), p 56
323. Armstrong, 'Lake Horowhenua and the Hokio Stream' (doc A162), pp 28–43
324. Armstrong, 'Lake Horowhenua and the Hokio Stream' (doc A162), p 28
325. Armstrong, 'Lake Horowhenua and the Hokio Stream' (doc A162), p 28; committee of inquiry, minutes, 11 July 1934 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(g)), pp 1532–1534)

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that should be the domain board's focus.[326] The Crown's submission to us was that its task was to strike a fair balance between these competing interests.[327]

In evaluating its actions, the Crown also suggested that we assess (i) the value of the affected resource to Māori, (ii) the degree to which Māori might benefit from a drainage scheme, and whether they agreed upon opposition to the drainage scheme, (iii) the merit of any opposition, (iv) whether the Crown was aware of that opposition, (v) how the Crown responded and whether it took steps to mitigate any harm; and (vi) what public interests in the drainage scheme had to be balanced against the Māori interest.[328] We have had regard to each of these points in the discussion that follows.

Throughout the period, Muaūpoko remained strongly opposed to drainage works on the Hōkio Stream, and to any lowering of the lake. As noted above, the primary tribal interest at stake was the eel fishery, but Muaūpoko also opposed lowering the lake because it would damage their flax and other resources in the chain strip, aquatic plants near the lake shore, and the kākahi (shellfish) beds.[329] If there were Muaūpoko landowners who favoured drainage to assist their farming efforts, it is not apparent in the record. An argument was advanced that some Ngāti Raukawa owners of Horowhenua 9 blocks (on the south side of the stream) had an interest in drainage, but that is not a matter which we consider at this stage of our inquiry.[330] Here, we note that the Muaūpoko tribe fought a successful battle against drainage for almost 20 years before the Crown broke through their resistance with a mix of persuasion and legislation in the mid-1920s.[331]

Drainage was 'first mooted' by the domain board in 1907.[332] The battle began in earnest in 1911, when a deputation from the Levin Chamber of Commerce asked the board to lower the lake. Pākehā board members were sympathetic, and long-term settler John McDonald pointed out that Muaūpoko used to regularly clear the lake outlet into the Hōkio Stream before the main eeling season. The Muaūpoko members, however, had consulted the tribe and brought back a resounding 'no' to lowering the lake.[333] The board asked the Minister if it had any power to lower the lake, whether it would be 'liable in any way' if it did so, and whether – if the board had the power and no liability – it would be 'advisable on the information that it has before it, to lower the lake'.[334] In this same letter, the board had asked whether the chain strip was included in the reserve (see above). The Solicitor-General's

326. Hamer, '"A Tangled Skein"' (doc A150), pp 66, 68–69; Armstrong, 'Lake Horowhenua and the Hokio Stream' (doc A162), p 30

327. Crown counsel, closing submissions (paper 3.3.24), pp 93–94

328. Crown counsel, closing submissions (paper 3.3.24), pp 93–94

329. Hamer, '"A Tangled Skein"' (doc A150), p 94

330. See Crown counsel, closing submissions (paper 3.3.24), pp 83–85; Hamer, '"A Tangled Skein"' (doc A150), pp 89–90.

331. Armstrong, 'Lake Horowhenua and the Hokio Stream' (doc A162), pp 28–43; Hamer, '"A Tangled Skein"' (doc A150), pp 62–66, 68–78, 83–94, 100–102

332. Armstrong, 'Lake Horowhenua and the Hokio Stream' (doc A162), p 28

333. Hamer, '"A Tangled Skein"' (doc A150), pp 62–64

334. Burlinson to under-secretary for lands, 28 June 1911 (Hamer, '"A Tangled Skein"' (doc A150), p 64)

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response was that the board had no power to lower the lake or enter onto adjoining lands to carry out work on the lake outlet.[335]

It seemed to the Pākehā board members that drainage might be possible anyway if the Māori owners would agree to it. The board arranged a meeting with Muaūpoko in 1912. The tribe once again refused to allow any interference with the lake outlet or the Hōkio Stream. The domain board chairman reported in 1913 that the interests of Levin required the Crown to buy the bed.[336]

Settler interests won a victory in 1915, however, when the Minister of Internal Affairs, H D Bell, visited Levin. As will be recalled, Bell had agreed at this 1915 meeting to the settlers' request for legislation to ensure Pākehā fishing rights, add Levin councillors to the domain board, and to obtain the chain strip for the reserve. He also heard from the farming and boating interests as to whether the lake should be lowered. The boating interest argued against and the farmers (of course) argued in favour. Mayor Gardener called for the domain board to have jurisdiction over the Hōkio Stream, and argued that its Māori owners should have no right to let the vegetation grow and 'swamp' their neighbours. As discussed earlier, Burlinson (supported by the one Muaūpoko person present, Hanita Henare) referred to the 1905 agreement as limited to the surface of the lake for boating.[337] Muaūpoko fishing rights were dismissed by Minister Bell, who simply stated that '[t]he Maoris had no interest in this subject' (lowering the lake). He was prepared to compensate the boating club for any losses if the lake receded, and promised legislation to empower the domain board to control the Hōkio Stream and drain the lake. His proviso was 'the preservation of a real Lake', which 'must not be diminished except by an insignificant area.'[338]

Having only consulted Levin settlers and not Muaūpoko, Bell duly introduced the promised legislation in 1916. As discussed earlier, Muaūpoko petitioned against Bell's provisions becoming law, and petitioned again in 1917 for them to be repealed. Section 97 of the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1916 declared the domain board to be a public authority under the Land Drainage Act 1908 with respect to its reserve, the Hōkio Stream, and a chain strip on both sides of the stream. Control of the Hōkio Stream had never been part of the 1905 agreement, nor did Muaūpoko agree to it in 1916. In fact, the tribe opposed it, but the legislation gave the domain board control of the stream for drainage purposes.[339]

It was not, however, smooth sailing for the domain board's exercise of its new drainage powers. As a compromise, Muaūpoko board members agreed in 1916 that iwi members would clear the eel weirs of any obstructions for a small payment, and remove some of the debris, which would allow the water to flow more freely out of the lake. This reduced the risk of flooding but did not make more dry land available

335. Hamer, '"A Tangled Skein"' (doc A150), p 65
336. Armstrong, 'Lake Horowhenua and the Hokio Stream' (doc A162), pp 29–30
337. Hamer, '"A Tangled Skein"' (doc A150), pp 68–71
338. 'Notes of a Deputation which waited upon the Hon H D Bell, Minister of Internal Affairs, at Levin on the 9th April, 1915, with reference to the Horowhenua Lake' (Hamer, '"A Tangled Skein"' (doc A150), pp 70–71)
339. Hamer, '"A Tangled Skein"' (doc A150), pp 72–75

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A Chronology of Legislation relating to Drainage Powers

For the assistance of readers, we provide a brief chronological overview here:

1908
The Land Drainage Act 1908 was passed as a consolidating measure, pulling together previous Acts in a single piece of legislation. Part I of the Act provided for the Governor to constitute drainage districts (managed by an elected drainage board) on the petition of a majority of the ratepayers in a district. Part III of the Act provided for other local authorities to exercise the powers of a drainage board in areas where a formal drainage district had not been constituted. In part III, section 64 empowered the Governor to issue a proclamation, which would direct that any watercourse and drainage works (past or future) should be under the control and management of a local authority. Section 65 empowered the Governor to appoint a commission to determine (among other things) whether drainage works or a watercourse should be placed under the control of a local authority.

1916
Section 97 of the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1916 was enacted. Section 97(7) constituted the lake domain board as a local authority under part III of the Land Drainage Act 1908, with respect to the domain, the Hōkio Stream, and a chain strip on each side of the stream. The domain board was authorised to exercise all the drainage powers conferred on a local authority by part III of the 1908 Act.

1924
Dissatisfied at the perceived inaction of the domain board, ratepayers petitioned for the establishment of a Hokio Drainage District and board under Part I of the Land Drainage Act 1908.

1925
The Department of Internal Affairs appointed a commission to hear any objections to the establishment of a Hokio Drainage District. The commission held a hearing in March 1925 and reported in April 1925. In June 1925, a proclamation was gazetted establishing a Hokio Drainage District under the 1908 Act. A Hokio Drainage Board was duly elected. But a legislative change was necessary before the Hōkio Stream could be included in this district, so the drainage board, the lake domain board, and the county council all requested the appointment of a second commission under section 65 of the Land Drainage Act 1908. At this commission's hearing in November 1925, a controversial agreement was

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purportedly reached between the drainage board, the domain board, and local Māori that the Hokio Drainage Board could conduct works on the Hōkio Stream with certain conditions.

1926

After Muaūpoko obstruction of these works and a second controversial agreement in March 1926, section 53 of the Local Legislation Act 1926 was passed in September 1926.

Section 53 stated that it was proposed to issue a proclamation under section 64 of the Land Drainage Act 1908, empowering the Hokio Drainage Board to carry out works on the Hōkio Stream. Because it was necessary that Māori fishing rights and 'certain rights of user' as a recreation reserve should be 'reasonably safeguarded and preserved', section 53 required that conditions should be placed in any such proclamation. Otherwise, the proclamation could empower the Hokio Drainage Board to regulate the widening or deepening of the Hōkio Stream, regulate the removal and replacement of eel weirs, and regulate or restrict the carrying out of works to lower Lake Horowhenua. Section 53 also amended section 97(7) of the ROLD Act 1916 by taking away the powers of the domain board to act as a local authority for drainage works (while retaining the area specified in the 1916 Act as 'the district of the Board' for part III of the 1908 Act). Thus, rather than including the Hōkio Stream in the Hokio Drainage District, the 1926 legislation treated the stream and Lake Horowhenua as remaining under part III, with a local authority (now the drainage board instead of the domain board) empowered to carry out works by a proclamation under section 64 of the 1908 Act.

In December 1926, a proclamation was issued, conferring power on the Hokio Drainage Board to carry out works on the stream and at the lake outlet.

for farming, so settlers continued to press the domain board for more action.[340] Any plans for more extensive work, including deepening the stream or altering its course, provoked threats of legal action from Muaūpoko (which, as Morison later told the 1934 inquiry, the tribe could not really afford to take).[341] Muaūpoko board members continued to argue against such works but they were outnumbered on the board, as Hanita Henare pointed out in 1917.[342] They explained that anything

340. Armstrong, 'Lake Horowhenua and the Hokio Stream' (doc A162), pp 31–33
341. Hamer, '"A Tangled Skein"' (doc A150), pp 76–77, 111
342. Armstrong, 'Lake Horowhenua and the Hokio Stream' (doc A162), p 33; Hamer, '"A Tangled Skein"' (doc A150), pp 76–77

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which prevented the eels from migrating would damage the fishery and cause the tribe significant harm.[343]

Threats of legal action caused the board some concern, as it was not sure that it actually had the power to undertake proposed works on the Hōkio Stream. In 1919, the board approached Bell, now Attorney-General, about the matter.[344] Bell agreed with the Pākehā delegation that he did not see how 'Native fishing rights would suffer at all by lowering the level of the lake'.[345] By this time, the Government had still not consulted Muaūpoko on this or any other point – having also refused their petition to repeal the 1916 legislation.

A stalemate ensued for several years, with Muaūpoko undertaking work to clear the outlet each year. According to David Armstrong, this work was enough to prevent flooding but not to create additional dry farmland.[346] No other action was taken, despite mounting settler pressure, until 1924. A ratepayers' petition called for the establishment of a separate Hōkio drainage board under the 1908 Act, because the domain board had utterly failed to take any effective action.[347] The Horowhenua county clerk told the Internal Affairs Department that the county council had

> for many years recommended the settlers interested to petition for a Drainage Board as the position is a somewhat difficult one for the Council to handle in view of the lake being a reserve under the control of the Horowhenua Lake Domain Board. It is felt that if a Drainage District were formed the [Drainage] Board could deal exclusively with the needs of the ratepayers interested and remove a certain amount of complication which at present exists.[348]

The Internal Affairs Department set up a commission to hear objectors. The commissioners were the Public Works Department's district engineer, the district valuer, and a private sector civil engineer. There were no Māori members. Muaūpoko were unaware of the commission's hearing, which was held in March 1925.[349]

A Ngāti Raukawa objector, Rere Nicholson, was heard by the commission and pointed out that eels were the main food source of the local Māori people, and that they 'feel very sore at the thought of their rights to the creek being taken away'. On the other hand, if there was no interference with eel weirs, Nicholson suggested that Māori opposition would be mollified.[350] Aware of the absence of Muaūpoko, the commissioners called Hema Henare to appear. Henare agreed with Nicholson's

343. Hamer, '"A Tangled Skein"' (doc A150), p 77
344. Hamer, '"A Tangled Skein"' (doc A150), pp 76–78
345. *Evening Post*, 9 May 1919 (Hamer, '"A Tangled Skein"' (doc A150), p 78)
346. Armstrong, 'Lake Horowhenua and the Hokio Stream' (doc A162), pp 31, 35
347. Armstrong, 'Lake Horowhenua and the Hokio Stream' (doc A162), p 35
348. Horowhenua county clerk to assistant under-secretary, Department of Internal Affairs, 15 July 1924 (Armstrong, papers in support of 'Lake Horowhenua and the Hokio Stream' (doc A162(b)), p 1138)
349. Hamer, '"A Tangled Skein"' (doc A150), pp 83–85
350. Minutes of the commission of inquiry, Levin, 26 March 1925 (Hamer, '"A Tangled Skein"' (doc A150), p 83)

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statement, adding that Māori would not object to 'clearing of the creek' so long as it was not deepened and the banks were not damaged.[351]

The commissioners recommended that a drainage district should be established. Muaūpoko and Ngāti Raukawa responded by petitioning the Native Minister, Gordon Coates, in July 1925:

> This is a great calamity which has fallen on us. From the days of our ancestors down to our parents they derived sustenance from this lake and the stream, and our eel weirs in consequence of such recommendation would be made to disappear . . .
>
> We do not want our stream to suffer a similar fate to the Rangitaiki and Piako and as you are the guardian of the Maori race we humbly pray to you not to permit the recommendations of this report to become operative . . . We are poor people and hence we strongly urge you to grant us relief.[352]

Coates pointed out that the new drainage board had already been created but it would have no authority over the Hōkio Stream unless the law was changed (given the 1916 provision for the domain board to control the stream). He also noted that the Lands Department was opposed to making such a change.[353]

Apparently the Lands Department's objection was that it wanted to be sure all local authorities were on board with the proposal, so a second commission was held in late 1925.[354] This time, the commission 'brokered a deal whereby the drainage board would clear the stream but not alter the stream banks'.[355] Hema Henare had explained to the previous commission: 'We build our eel-weirs from bank to bank, and by digging away the banks you will certainly affect them.'[356] It was now agreed that the drainage board would remove eel weirs until the work was done, and then their Māori owners would be paid to replace them. The agreement not to alter the stream banks was said to be 'irrevocable', in the best interests of local Māori. The commissioner also recommended that, considering Māori interests, it would not be wise to vest exclusive control of the stream in any local authority.[357]

It seemed that an amicable settlement had been reached, which Muaūpoko supported. But, as Mr Hamer summarised for us,

351. Hamer, '"A Tangled Skein"' (doc A150), p 84

352. Muaupoko petition to Gordon Coates, 9 July 1925 (Armstrong, 'Lake Horowhenua and the Hokio Stream' (doc A162), p 37; Armstrong, papers in support of 'Lake Horowhenua and the Hokio Stream' (doc A162(b)), pp 1179–1180)

353. Coates to Rere Nicholson, 15 July 1925 (Paul Hamer, comp, papers in support of '"A Tangled Skein": Lake Horowhenua, Muaūpoko, and the Crown, 1898–2000", various dates (doc A150(f)), p 1493). See also assistant under-secretary for internal affairs to Horowhenua County Council, 8 July 1925 (Armstrong, papers in support of 'Lake Horowhenua and the Hokio Stream' (doc A162(b)), p 1174).

354. Hamer, '"A Tangled Skein"' (doc A150), pp 86–87

355. Paul Hamer, summary of '"A Tangled Skein": Lake Horowhenua, Muaūpoko, and the Crown, 1898–2000', October 2015 (doc A150(k)), p 4

356. Minutes of the commission of inquiry, Levin, 26 March 1925 (Hamer, '"A Tangled Skein"' (doc A150), p 84)

357. Hamer, '"A Tangled Skein"' (doc A150), p 87

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> the drainage work then carried out in February 1926 went much further than this, and two Muaūpoko men were arrested for obstructing the works. Another agreement was brokered [in March 1926], this time by the Native Minister's private secretary [Henare Balneavis], under which no further widening or deepening would happen without Māori agreement or Ministerial arbitration. But when the empowering legislation so long wanted by the advocates of drainage was finally passed in September 1926, this gave the drainage board the power to widen and deepen the stream so long as it 'reasonably' safeguarded Māori fishing rights. The two negotiated agreements of late 1925 and early 1926 were forgotten. Muaūpoko believed, moreover, that the damage had already been done.
>
> The work on the Hōkio Stream lowered the lake by four feet, destroying lake edge habitat for eels and kakahi. The new channel at the upper reaches of the stream also made the use of eel weirs extremely difficult. Farmers rushed to make use of what they saw as their reclaimed land surrounding the lake, fencing to the water's new edge and burning or allowing their stock to destroy lakeside vegetation. Muaūpoko complained to both the domain board and the Native Minister without success, although the Marine Department did confirm that eel numbers had been reduced and raised the possibility of paying Muaūpoko compensation.[358]

The Crown's approach to Muaūpoko interests at this time was certainly more protective under Gordon Coates than it had been when the 1916 legislation was passed. Muaūpoko resistance to drainage also won them some apparent concessions, in the form of the agreements of late 1925 and early 1926. But, after Henare Balneavis had sponsored the March 1926 agreement, the Lands Department advocated the widening and deepening of the outlet and stream, so long as the domain board agreed. Internal Affairs accepted the Lands Department's position and prepared legislation, which became section 53 of the Local Legislation Act 1926 (see also the sidebar above).[359]

The preamble to this section stated that drainage operations were necessary, 'while "reasonably" safeguarding and preserving Māori fishing rights and rights of user of Lake Horowhenua, as conferred by the Horowhenua Block Act 1896 and the Horowhenua Lake Act 1905'.[360] Section 53 of the 1926 Act allowed the widening and deepening of the Hōkio Stream, the 'removal or replacement of eel weirs, the regulating of the lake level, and so on, provided provisions were made "to protect any existing Native fishing rights as aforesaid, and to secure to the public the use of Horowhenua Lake as a recreation reserve without undue interference with existing rights of user"'.[361] Thus, the Crown set aside the provisions of the March 1926 agreement, which had required Māori consent to any deepening of the stream (or, if consent was withheld, an investigation and decision by the Minister of Internal

358. Hamer, summary of '"A Tangled Skein"' (doc A150(k)), p 4
359. Hamer, '"A Tangled Skein"' (doc A150), p 92
360. Hamer, '"A Tangled Skein"' (doc A150), p 92
361. Hamer, '"A Tangled Skein"' (doc A150), p 92

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Affairs).[362] By proclamation on 16 December 1926, the Crown gave the drainage board authority to alter the lake outlet as well as the stream.[363] It remained to be seen how much real protection the requirement to 'reasonably' protect Māori fishing rights would provide, and how the Crown would respond if the board failed to take reasonable account of those rights.

The effect of the drainage board's work was described by Muaūpoko's lawyer in 1934. The board cut a channel that was narrow and deep, with 'perpendicular sides' and a rapid water flow. The result was that 11 of 13 eel weirs could no longer be used: 'Part of the trouble is that originally the creek was wide with weirs on either side now these are high and dry and they cannot have weirs on each side of the channel as it is too narrow.' The board had 'ridden rough shod over the rights of the natives to benefit adjoining farmers'.[364] The stream near the outlet was made unsuitable for eel weirs, and the level of the lake was (as noted above) dropped by about four feet. Shellfish beds were destroyed and the overall numbers of shellfish reduced. Aquatic and lakeside plants, including flax, were damaged.[365] And, as Mr Hamer noted, farmers rushed in to fence the new lakeside and start using the dewatered land as well as the old chain strip.[366] This led to the 1929 complaints to Ngata that Pākehā were draining the water and burning off the flax on the chain strip and dewatered land, discussed earlier in section 8.3.5.

On 14 October 1930, a Muaūpoko deputation met with the Minister of Internal Affairs, Philip de la Perrelle. They had engaged a lawyer, D G B Morison, who was present to represent them. The former Prime Minister, Gordon Coates, attended with Henare Balneavis, who had signed the 1926 agreement. At the meeting, Muaūpoko claimed that their signatory to the agreement, Hurunui, had been misled into signing it, and that their fisheries had disappeared, their eel weirs had been left high and dry, and their flax had been destroyed by Pākehā. Their mana was greatly reduced when they could not take eels to the tangi for Sir Māui Pōmare. The Minister accepted that they should not have been deprived of their food supplies simply to clear a little ground, and acknowledged that an injustice had occurred.[367] This is very important, in our view, as it shows that a quite different balancing of interests was both possible and fairer than that which had taken place in 1926. Settler farming interests had been placed above Māori interests unjustly with devastating results. This was all for the recovery of 'not . . . much ground',[368] as the Minister had put it.

A G Harper of Internal Affairs, accompanied by the chief surveyor, was sent to investigate. In early 1931, the chief surveyor reported that the lake had receded by two chains, and that the fishery had been damaged. But *his* principal concern was

362. Hamer, '"A Tangled Skein"' (doc A150), pp 89–91
363. Hamer, '"A Tangled Skein"' (doc A150), p 93
364. Committee of inquiry, minutes, 11 July 1934 (Hamer, '"A Tangled Skein"' (doc A150), p 94)
365. Hamer, '"A Tangled Skein"' (doc A150), p 94
366. Hamer, summary of '"A Tangled Skein"' (doc A150(k)), p 4
367. Hamer, '"A Tangled Skein"' (doc A150), pp 98–99
368. 'Hokio Stream', minutes of a deputation to the Minister of Internal Affairs, 21 October 1930 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(f)), p 1522)

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the chain strip and the notion that if the Government admitted that Muaūpoko had incurred any loss, the tribe would want compensation. Harper's report was that the tribe wanted the original lake levels restored so that the eel habitat could recover, but the drainage board adamantly refused to install a control floodgate for that purpose.[369] Morison explained: 'The Drainage Board said the farmers wanted the land drained and consequently the Lake had to be lowered and that was the end of it.'[370]

Muaūpoko continued to raise their grievance with the Government, so Internal Affairs asked the Marine Department to investigate whether the eels in the lake had been depleted, and whether they could still migrate down the Hōkio Stream and be caught in the eel weirs.[371] In February 1931, the Marine Department's investigators confirmed that the lake had dropped by about four feet, and that the eel supply had been reduced. In addition to the lowering of the lake and siltation as a result of drains, the departmental investigators thought that acclimatised perch might also have contributed to the problem. The decline in shellfish could also be attributed to 'any or all' of those factors. There was an issue, however, as to how far the alteration of the stream itself had been responsible. A more detailed investigation would be required, it was held, before any compensation could be calculated.[372] As far as we know, this subsequent investigation never occurred. Certainly, compensation was not paid, and no action was taken to assist Muaūpoko.

After the Internal Affairs and Marine Department investigations of 1931 produced no action, Morison advised Muaūpoko to take their case to the Supreme Court. But this the tribe simply could not afford to do, especially during the Depression – after all, their poverty was part of the reason they were so dependent on their fisheries for survival.[373] They took full advantage of the 1934 inquiry to detail their grievances on this matter.

The 1934 committee of inquiry reported Muaūpoko's account of how their eel and shellfish supplies had been ruined, and the lakeside depleted of other resources such as flax on which they relied. But the committee was not tasked with dealing with drainage board matters, so it simply stated that the 'damages caused by these operations are possibly assessable and an action for recovery may lie'.[374] Muaūpoko, however, had no money with which to pursue such an action, as Morison had already told the committee.[375]

On the basis of the evidence available to us, we accept that Muaūpoko's fishing rights, as well as their authority over the lake outlet and the Hōkio Stream, were prejudiced by the establishment of a drainage board against their wishes (and on

369. Hamer, '"A Tangled Skein"' (doc A150), pp 99–100
370. Committee of inquiry, minutes, 11 July 1934 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(g)), p 1533)
371. Hamer, '"A Tangled Skein"' (doc A150), p 100
372. Hamer, '"A Tangled Skein"' (doc A150), pp 100–101
373. Committee of inquiry, minutes, 11 July 1934 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(g)), p 1534)
374. Committee of inquiry, report, 10 October 1934 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(g)), p 1568)
375. Committee of inquiry, minutes, 11 July 1934 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(g)), p 1534)

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which they were not represented), the 1926 legislation (which set aside the 1926 agreement), the consequent reduction of their lake's waters and fisheries, and the Crown's failure to protect their rights or provide recompense in the face of proven grievances.

8.3.8 Findings

Muaūpoko property rights, authority, and tino rangatiratanga were 'whittled away' between 1905 and 1934 by the following Crown acts or omissions, in breach of the Treaty principles of partnership and active protection, and of the property guarantees in article 2 of the Treaty:

- The Crown recognised Pākehā as having the right to fish in Lake Horowhenua, ending Muaūpoko's exclusive fishing rights without consent or compensation, after trout and other predatory species were introduced by acclimatisation societies and the domain board (also without the agreement of the Muaūpoko owners).
- Legislation placed the chain strip unequivocally under the control of the domain board in 1916. Muaūpoko then had no rights to cut flax, use the strip, or fence it off, yet the board could not actually stop farmers from burning off vegetation and grazing their stock on the chain strip at will. Muaūpoko did not agree to domain board control of the chain strip, and their protests were ignored.
- Levin borough councillors were given control of the domain board by legislation in 1916, while the minimum one-third representation for Muaūpoko was turned into a one-third maximum, sealing their minority status and relative powerlessness on the board. Again, Muaūpoko protests against the 1916 legislation proved futile. The Crown's failure to consult Muaūpoko, to obtain their agreement to a proportionate representation on the board, to set an appropriate proportion of members for joint management, and to establish a sound appointments procedure, was inconsistent with Treaty principles.
- Control of the Hōkio Stream and one chain on either side was given to the domain board by legislation in 1916, against the protests of the Muaūpoko owners of the bed and the chain strip on the northern bank. Legislation in 1926, in violation of the 1925 and March 1926 agreements, gave the Hokio Drainage Board exclusive power to control and deepen the Hōkio Stream. The resultant drainage works lowered the lake by four feet and caused significant damage to the eel fishery, shellfish beds, and the lakeside vegetation. Vital eel weirs were removed and could not be replaced. Muaūpoko protests were investigated by the Crown in 1931 but no remedy eventuated.

Contrary to the Crown counsel's submission, the Crown did not balance interests in an appropriate or Treaty-compliant manner during this period. It prioritised even minor settler interests over those of Muaūpoko in all of the instances bulleted above. This was a breach of the principle of equity, which required the Crown to act fairly as between settler and Māori interests.

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Muaūpoko were virtually landless. They were heavily dependent on the resources of the lake and the Hōkio Stream, and even the flax and other resources of the chain strip. In theory, recreational interests ought not to have been incompatible with exclusive Muaūpoko fishing rights or the tribe's use of resources on the chain strip. As noted earlier, Muaūpoko's understanding of the 1905 agreement was that settlers could access the lake for boating and aquatic sports, not that the owners would give up control of the lakeside strip or allow others to fish in their lake. At the very least, their consent should have been obtained to these infringements of their rights, or appropriate compensation offered. In respect of drainage, the Minister of Internal Affairs admitted in 1931 that Muaūpoko had suffered injustice for the sake of reclaiming an inconsiderable amount of land. That was patently unfair.

Thus, as demonstrated by our analysis in sections 8.3.4–8.3.7, there had been no fair or appropriate balancing of interests. Rather, the Crown prioritised even minor settler interests over those of Muaūpoko. Muaūpoko were only consulted in 1926 after they took the law into their own hands in protesting the drainage works. Otherwise, they were barely consulted and their interests almost always disregarded or minimised. This was not consistent with the Treaty principles of partnership, active protection, or equity (which required the Crown to act fairly as between Māori and settlers).

Nor was it consistent with the 1905 agreement. By the 1930s, however, officials could not locate the most basic of information about the agreement. Faced with that situation and an Act purporting to give effect to it, officials did not ask Muaūpoko for information about the agreement (nor even check the parliamentary debates about the 1905 Act). Muaūpoko rights were instead read down by the Crown Law Office, and this was translated into public policy. No fresh agreement was sought.

Muaūpoko were prejudiced by these Crown acts and omissions. The evidence shows that their property rights were compromised, their mana reduced, and their tino rangatiratanga violated. Their fisheries were harmed, their lake lowered four feet (damaging the lake shore habitat), and their ability to sustain themselves from their lake and stream was significantly reduced. The impact of Crown acts or omissions was especially severe during the Depression.

We turn in the next chapter to the parameters and findings of the 1934 committee of inquiry, and the long period of negotiations before arriving at a 'settlement' in the form of section 18 of the Reserves and Other Lands Disposal Act 1856.

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PART III

WAI: LAKE HOROWHENUA AND THE HŌKIO STREAM

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CHAPTER 9

THE ROLD ACT 1956: ITS ORIGINS AND EFFECTS, 1934–89

9.1 Introduction

In the previous chapter, we addressed claims about the 1905 'agreement' between Muaupoko, the 'Levin pakehas',[1] and the Crown, and the legislation which followed it at the end of October 1905. The Horowhenua Lake Act 1905 put in place a hierarchy of interests, in which free public access to the lake for aquatic sports was at the top. The Muaūpoko owners' interests were subordinated to the public interest, and controlled by a lake domain board under the terms of the Public Domains Act 1881. There were further legislative enactments in the 1910s, bringing the chain strip and the Hōkio Stream under the domain board, and giving Levin borough councillors a two-thirds majority on the board. There was a further 'whittling away' of the Muaūpoko owners' rights in the 1920s, when the stream and its banks were made subject to the control of the Hokio Drainage Board, and the lake was drastically lowered by four feet. In 1932, the Crown Law Office gave a legal opinion that the Crown owned the lakebed and chain strip as an outcome of the 1905 Act. As we discuss below, the Crown did not recognise Muaūpoko ownership of the lakebed and the chain strip until the 1950s.

We noted in section 8.3 that a committee of inquiry considered these matters in 1934, and we begin this chapter with the parameters of the committee's inquiry and its findings (section 9.2.3). We then explore the reasons why it took almost 19 years for the Crown to negotiate a new settlement with the lake owners, as well as the content of the agreement of 1953 (section 9.2.4).

The 1953 agreement was eventually given legislative form in section 18 of the Reserves and Other Lands Disposal (ROLD) Act 1956. In section 9.3, our discussion is structured around two key questions. The first of these questions is: did the 1956 legislation remedy Muaūpoko's grievances in respect of past legislation and Crown acts or omissions? The parties disagreed about the answer to this question.

1. '*Horowhenua Lake Agreement* Between the Muaupokos and the Levin pakehas', not dated [1905] (Paul Hamer, '"A Tangled Skein": Lake Horowhenua, Muaūpoko, and the Crown, 1898–2000', June 2015 (doc A150), pp 34–35)

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The Crown submitted that, 'to the extent any prejudice might be said to flow from earlier legislation as to control and/or rights, that prejudice was remedied by the enactment of the 1956 Act'.[2] The claimants, on the other hand, argued that the 1956 Act did not provide compensation or other redress for past grievances.

The second key question is: did the 1956 legislation provide a suitable platform for (a) future management of the lake and stream, and (b) protection of the Māori owners' rights and interests? The parties also disagreed about the answer to this question. In the claimants' view, the 1956 reforms to the management regime were inadequate and did not protect or give effect to their tino rangatiratanga. The Crown's view was that the Act established a co-management regime which may not have always functioned as intended, but that the legislation and regime itself are consistent with Treaty principles.

We begin our discussion with the 1934 committee of inquiry and the question as to why it took almost 19 years for the Crown and the Muaūpoko owners to negotiate a new agreement.

9.2 Why Did it Take So Long to Negotiate a New Agreement?

9.2.1 Introduction

In 1934, the Lands Department appointed a committee to inquire into the borough council's plan to develop Lake Horowhenua as a pleasure resort. The committee was also tasked with investigating the nature of the Māori owners' rights and how those rights might be affected by the council's plan or by any other matters connected to the domain. This proved to be an important opportunity for Muaūpoko, with the aid of legal representation, to air their longstanding grievances about the lake and the Hōkio Stream.

In this section of our chapter, we examine the evidence presented to the committee, as well as its findings and recommendations. We also assess subsequent efforts by the Crown and the Māori owners to negotiate a new agreement about how the lake was to be managed and the owners' rights protected. In the event, it took almost 19 years to reach an agreement (in 1953) and 22 years to give that agreement effect (in 1956). The claimants were highly critical of this long delay, during which, they argued, their rights were left in limbo and their interests unprotected. The Crown, on the other hand, argued that a fair settlement was reached in 1953, and that no Treaty breach arose from the length of time necessary to arrive at that fair settlement.

Having described the negotiations, we also examine the content of the agreement reached between the Crown and the Māori owners in 1953. The 1956 legislation, which gave effect to the agreement, is dealt with in section 9.3.

We begin by summarising the parties' arguments about the 1934 inquiry and the long delay in reaching a new agreement.

2. Crown counsel, closing submissions, 31 March 2016 (paper 3.3.24), p 57

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9.2.2 The parties' arguments

(1) *The claimants' case*

Broadly speaking,[3] the claimants accepted that the 1934 inquiry was a positive step on the part of the Crown, and demonstrated some care of their interests.[4] The inquiry also had a 'somewhat positive' outcome because the commission found that Muaūpoko had not alienated their title to the lake, or any other rights.[5] Furthermore, the inquiry found that if Muaūpoko *had* lost their ownership of the lakebed and chain strip as a result of legislation, this had been done without the owners' consent.[6] But the claimants also argued that the inquiry's outcome was unfairly constrained by parameters set for it by the Crown.[7] The main premise was that 'the Domain *must* be developed as a pleasure resort in so far as such development does not conflict with the lawful rights of the Natives' (emphasis added).[8] The Crown, we were told, 'did not allow itself the option of not developing a pleasure resort, and did not consult the owners about the Crown imperative to develop one. The issue was how far their rights might be retained alongside a pleasure resort.'[9] As a result, the claimants said, Muaūpoko's rights were treated as secondary to those of the public, and the committee of inquiry recommended a compromise rather than the definition and protection of Muaūpoko's rights at law.[10]

Nonetheless, the claimants' view is that the 1934 inquiry made the Crown aware in no uncertain terms of how it had harmed Muaūpoko and denigrated their mana and rangatiratanga.[11] 'Rather than make amends immediately,' they said, 'the Crown took the position that it would attempt to negotiate with Muaupoko to reach a compromise that would accord with Pakeha interests in the use of the Lake.'[12] Muaūpoko firmly resisted the Crown's unreasonable demands for almost 20 years, including its persistent attempts to buy part of the chain strip for the domain. This delay ultimately proved unnecessary because the Crown decided in 1953 that it did not need the additional land after all. Thus, in the claimants' view, the Crown caused an unfair and unnecessary delay before a settlement was finally reached in 1953–56.[13] Claimant counsel submitted: 'This represents two decades of Crown knowledge

3. Not all claimants made submissions about the 1934 inquiry or the long period in which it took to negotiate a settlement in response to the inquiry's report.
4. Claimant counsel (Stone, Bagsic, and Hopkins), closing submissions, 10 February 2016 (paper 3.3.9), p 15; claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3: Lake Horowhenua issues, 19 February 2016 (paper 3.3.17(b)), p 46
5. Claimant counsel (Stone, Bagsic, and Hopkins), closing submissions (paper 3.3.9), pp 15–16
6. Claimant counsel (Naden, Upton, and Shankar), closing submissions, 16 February 2016 (paper 3.3.23), p 277
7. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 46
8. Under-secretary for lands to Minister of Lands, 15 November 1933 (Hamer, '"A Tangled Skein"' (doc A150), p 108 (claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 46))
9. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 46
10. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 46; claimant counsel (Stone, Bagsic, and Hopkins), closing submissions (paper 3.3.9), p 16
11. Claimant counsel (Naden, Upton, and Shankar), closing submissions (paper 3.3.23), p 277
12. Claimant counsel (Naden, Upton, and Shankar), closing submissions (paper 3.3.23), p 277
13. Claimant counsel (Stone, Bagsic, and Hopkins), closing submissions (paper 3.3.9), pp 16–18

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that it had unjustly acquired Muaūpoko rights without any recompense. This was a breach of the Crown's duty of good faith and its duty of active protection.'[14]

(2) *The Crown's case*

The Crown did not make any submissions about the parameters of the 1934 inquiry. In respect of the lengthy delay before a settlement was reached, the Crown accepted that 'ownership and other issues could have been resolved more quickly, particularly in light of the Report of the 1934 Commission of Inquiry. However, the Crown does not accept the length or course of the negotiations amounted to a breach of Treaty principles.'[15] In particular, the Crown argued that its insistence on trying to buy part of the chain strip was in line with the 1934 inquiry's recommendations, and was therefore 'reasonable in the circumstances'.[16]

The Crown also submitted as relevant points:

- Muaūpoko appear to have had the benefit of legal advice throughout the negotiation process;[17]
- the Depression and the Second World War would have contributed to the delay; and
- the need to also reach agreement with the local authorities and the domain board contributed to the length of the negotiations.[18]

9.2.3 What were the parameters and outcomes of the 1934 inquiry?

The longer-term origins of the 1934 inquiry are set out in section 8.3. As we saw, the domain board made frequent queries to the Government as to its rights and powers vis-à-vis those of the Māori owners, and the Crown Law Office opinions became increasingly restrictive in terms of the owners' rights. Indeed, by 1932, the official advice was that the 1905 Act had established Crown ownership of the lakebed and chain strip. Nonetheless, there was another approach from the domain board in 1933, which resulted in the Harvey–Mackintosh inquiry a year later.

The borough council and the board wanted to develop the lake, especially its foreshore, as a pleasure resort.[19] The board was hesitant, recalling the petition and furore in 1931 when Muaūpoko believed a road was about to be constructed on the chain strip (see section 8.3.5).[20] While the legislation seemed to give the board wide powers to do so, it remained unsure how much (and what) it could develop in face of the '"fishing and other rights" of the Native[s,] and until these rights are defined and the Native interests in the lake [are] cleared up the Board are reluctant to proceed upon any enterprise which is likely to provoke the resentment of the Natives'.[21] The Lands Department favoured the proposed development, and advised

14. Claimant counsel (Naden, Upton, and Shankar), closing submissions (paper 3.3.23), p 278
15. Crown counsel, closing submissions (paper 3.3.24), p 56
16. Crown counsel, closing submissions (paper 3.3.24), p 56
17. Crown counsel, closing submissions (paper 3.3.24), p 56
18. Crown counsel, closing submissions (paper 3.3.24), p 56 n
19. Hamer, '"A Tangled Skein"' (doc A150), p 108
20. Hamer, '"A Tangled Skein"' (doc A150), p 109
21. Hudson to under-secretary for lands, 6 November 1933 (Hamer, '"A Tangled Skein"' (doc A150), p 108)

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its Minister that 'the Domain must be developed as a pleasure resort in so far as such development does not conflict with the lawful rights of the Natives'.[22]

As the claimants argued, this was the premise upon which the Crown instituted a committee of inquiry in 1934.[23] The terms of reference, which were prepared by the Native Department and Lands Department, focused on the proposed development:

- to hear and consider the representations of the domain board and the borough council 'with respect to the possible development of the Horowhenua Lake Domain as a public pleasure resort';
- to hear and consider the representations of 'the Natives with respect to the rights they possess' under the 1905 Act (as amended in 1916 and 1917), and to 'consider the question as to whether such rights would be adversely affected by the carrying out of any proposed schemes of development';
- to consider 'any other matters *connected with the administration of the Domain* in relation to the legal or equitable rights of the Natives' (emphasis added); and
- to report to the Minister of Lands.[24]

Thus, although the committee members heard evidence about the drainage board and the damage to Muaūpoko fisheries in 1925–26, they could not report on it.[25] The inquiry was not supposed to be a comprehensive inquiry into Muaūpoko's grievances, although the tribe's lawyer (Morison) treated it as such.

The committee members were Judge Harvey of the Native Land Court and a commissioner of Crown lands, HWC Mackintosh. In defining Māori rights, the committee's report noted that in 1898 the court vested the lakebed and chain strip in trustees.[26] Up to that point, 'the rights of the Natives appear clear'.[27] Next came the 1905 meeting with Seddon and Carroll, who sought a means to allow the local residents to use the lake for aquatic sports. The committee accepted Wī Reihana's evidence that the 1905 agreement was for 'the power of the European . . . to be over the top of the water only – not to go below'. It amounted to a 'grant of user of the water surface by the Natives with fishing specially reserved', and was not 'an alienation of the land with a free right of fishing common to both European and Maori'.[28]

This 'solution' to the situation in 1905 'fits very closely into the 1905 Act'. The Act, the committee found, gave the public rights with the intention of not 'unduly

22. Under-secretary for lands to Minister of Lands, 15 November 1933 (Hamer, '"A Tangled Skein"' (doc A150), p 108)

23. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 46

24. Committee of inquiry, report to Minister of Lands, 10 October 1934 (Paul Hamer, comp, papers in support of '"A Tangled Skein": Lake Horowhenua, Muaūpoko, and the Crown, 1898–2000', various dates (doc A150(g)), p 1562)

25. Committee of inquiry, report to Minister of Lands, 10 October 1934 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(g)), pp 1568, 1570)

26. Committee of inquiry, report to Minister of Lands, 10 October 1934 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(g)), pp 1563–1565)

27. Committee of inquiry, report to Minister of Lands, 10 October 1934 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(g)), p 1566)

28. Committee of inquiry, report to Minister of Lands, 10 October 1934 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(g)), p 1566)

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interfering with the fishing and *other rights* of the Native *owners*' (emphasis in original). Those 'other rights' were all the rights of a holder of a land transfer title. The committee therefore disagreed with the Crown Law Office opinion that ownership had passed to the Crown as a result of the 1905 Act. If it *had* passed to the Crown, the Māori owners were entitled to have had notice so they could object and seek compensation.[29] The committee also reported that Māori ownership was not taken away by the 1916 or 1917 legislation, unless it had been done in 'a subtle manner mystifying alike to Domain Board and Natives'.[30]

The committee then considered how these ownership rights might be affected by the proposed development of the reserve. The board's plan was to join Queen Street and Makomako Road with a drive on the lake's edge, and in future to put a road all the way around the lake. The board also wanted to develop a lakeside swimming pool, jetties, and a boat harbour. The committee agreed, however, that it was doubtful whether the board had the requisite powers to do so. Even when the board tried to develop its recreation ground (the 13 acres purchased from Te Rangimairehau and others), Muaūpoko had objected to any development on the chain strip in front of that land. The situation was further complicated by the lowering of the lake, which had created a dewatered area between the chain strip and the lake shore.[31]

The domain board's position in the inquiry was not summarised, but the committee did summarise Muaūpoko's position:

- the rights 'given to the Crown' and 'expressed by the 1905 Act' were 'rights over the surface of the water only', and the tribe had no objection to boating, yachting, and swimming;
- the owners had never 'handed over or agreed to handing over' the chain strip, and their freehold title meant that they should be able to cultivate the dewatered land and the chain strip, fencing it off against neighbouring farmers; and
- 'they consider every move since 1905 has been in the nature of a whittling away of their rights without reference to them or their problem[s]'.[32]

After considering the evidence, the committee said that the best solution was not actually to define the respective rights of the Māori owners and the domain board but to come up with a compromise between them. Both sides, it was held, wanted a fair solution and there was 'not as much between them as at first sight appears'. The committee therefore proposed a future definition of the owners' and board's respective rights (if the parties agreed), to be given effect by legislation.[33]

29. Committee of inquiry, report to Minister of Lands, 10 October 1934 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(g)), p 1566)

30. Committee of inquiry, report to Minister of Lands, 10 October 1934 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(g)), p 1567)

31. Committee of inquiry, report to Minister of Lands, 10 October 1934 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(g)), pp 1567–1568)

32. Committee of inquiry, report to Minister of Lands, 10 October 1934 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(g)), p 1569)

33. Committee of inquiry, report to Minister of Lands, 10 October 1934 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(g)), p 1569)

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The committee recommended that the board have 'absolute control' of the surface but 'so as not to interfere with natives who are on fishing pursuits'. The board was also to be 'given' extra land for its development proposals: the area of dewatered land and chain strip between Makomako Road and the north-east corner of the reserve.[34] This amounted to an area of 83.5 chains.[35] The Māori owners would retain ownership of the lakebed.[36] They would also retain the remainder of the dewatered land and chain strip, which would not be controlled by the board. The lake trustees would administer it to ensure Māori access to the lake for fishing, and for any other purposes 'decreed for the benefit of the tribe'.[37] Thus, apart from the piece of land 'given' to the board, the recreation reserve would be limited to the surface of the lake.

This was a compromise which gave both sides some of what they wanted, although it left drainage matters and control of the Hōkio Stream unresolved. There was no mention of compensation for (i) previous infringements of the owners' rights, (ii) the damage to their lake shore and fisheries by drainage works, or (iii) for the piece of their land to be 'given' to the board.

Was this a fair or appropriate basis for defining the respective rights of the domain board and the Māori owners? In our view, the committee's report was a very positive step for the Māori owners because it endorsed their understanding of the 1905 agreement, and it clarified that they were still the legal owners of the lakebed, the dewatered land, and the chain strip. Prendeville accepted in November 1934 that his earlier opinion had been wrong, and that title remained with Māori.[38] But, as the claimants pointed out, the committee did not actually tackle the task of defining the parties' rights under the legislation then in force. The committee of inquiry did not seem overly concerned with the pleasure resort proposal. The more likely explanation is that a reconciliation of the public reserves legislation and the 1905 Act was not possible, hence the recommendations for a clearer separation of authorities: Muaūpoko to control the dewatered area and chain strip; the board to control the lake surface (but not to interfere with fishing); the board to have an area of land in its ownership for a pleasure resort's facilities; and all to be given effect by new legislation.

Ultimately, the question of whether this was a fair and appropriate basis for a future settlement was up to the three parties involved: the Māori owners, the Crown, and the domain board. We turn next to consider how the report was received by the parties, and the long, drawn-out process of negotiating a new agreement about the lake's ownership and management.

34. Committee of inquiry, report to Minister of Lands, 10 October 1934 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(g)), p 1569)

35. Paul Hamer, summary of '"A Tangled Skein": Lake Horowhenua, Muaūpoko, and the Crown, 1898–2000', October 2015 (doc A150(k)), p 5

36. Committee of inquiry, report to Minister of Lands, 10 October 1934 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(g)), pp 1569–1570)

37. Committee of inquiry, report to Minister of Lands, 10 October 1934 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(g)), p 1570)

38. Hamer, '"A Tangled Skein"' (doc A150), p 115

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9.2.4 What caused the long delay in reaching a settlement?

When Harvey and Mackintosh made their recommendations in October 1934, they could hardly have expected it would take 22 years to reach a settlement (the ROLD Act 1956). Historian Paul Hamer argued that the settlement was 'unnecessarily delayed'. This was because of the Crown, he said, which 'held out for two decades to extract a concession from Muaūpoko [the 83.5 chains] that it then abruptly decided was not needed'.[39] The claimants supported this view.[40] Crown counsel, on the other hand, argued that it was reasonable for the Crown to have sought the 83.5 chains because it had been recommended by a public inquiry. The Crown also submitted that the Depression, the Second World War, and the need to obtain local authority support all hindered progress.[41]

(1) *Stalemate, 1934–51*

The Government's initial response to the report in 1934 was to see if the main recommendation favourable to Muaūpoko could be done away with; that is, the recommendation that they should control the chain strip and dewatered area. The Lands Department hoped to limit any recognition of their rights to ownership (but not control). Harvey and Mackintosh argued strongly against this, and Cabinet eventually approved a meeting to seek agreement of the domain board and Muaūpoko to the report's original proposals.[42]

This meeting took place in Levin on 23 March 1935. The newspapers reported a 'large attendance of Natives', while the Crown was represented by the under-secretary for lands. In brief, the under-secretary put forward the Harvey–Mackintosh proposals and asked the people to make a gift of the 83.5 chains, reassuring them that there would be 'no further whittling of their privileges' once the matter was 'amicably settled'. In reality, Muaūpoko saw this request for a free cession of land as further 'whittling down of their rights'. As an alternative, however, they were prepared to offer a smaller area: 'the piece from Queen Street to the other end of the reserve'.[43] The under-secretary responded that this was only half the area requested, and not the best part for bathing and sports. He refused to accept Muaūpoko's counter-offer.[44]

Mrs Hurunui made clear what was at stake for Muaūpoko, telling the Government party that

> An injustice has been suffered by us by the draining of the lake and we have been deprived of our food. During the lifetime of my forebears we have had an ample supply of eels, flounders and whitebait. Today, they are all gone. I was one of a deputation to the Ministers to request that my stream and lake be restored to the condition which God made it. Since the lake receded the farmers had the benefit and their dairy herds

39. Hamer, summary of '"A Tangled Skein"' (doc A150(k)), p 6
40. Claimant counsel (Stone, Bagsic, and Hopkins), closing submissions (paper 3.3.9), p 17
41. Crown counsel, closing submissions (paper 3.3.24), p 56
42. Hamer, '"A Tangled Skein"' (doc A150), pp 115–117
43. *Chronicle*, 26 March 1935 (Hamer, '"A Tangled Skein"' (doc A150), pp 117–118)
44. *Chronicle*, 26 March 1935 (Hamer, '"A Tangled Skein"' (doc A150), p 119)

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> consumed my flax. When the flax was on the lake I took £600 in three years. Today most of my people are on relief work. When my forefathers gave over the right to use the surface of the water that is all they gave. Today, I hear the Board has authority over the reserve. I resent this. Another injustice is that the farmers have fenced off their farms, fenced the chain strip and constructed drains. I have observed these actions and I specially ask that the activities of the Board be confined solely to that portion we are prepared to concede. Let the chain strip be restored to the 14 trustees appointed by Judge Mackay. Most of these are dead, but some remain and I can suggest others to take their place. Let the mana of the lake be returned to them.[45]

The Government rejected the Muaūpoko counter-offer. After the meeting, the under-secretary offered a sweetener: the Government would survey the chain strip and dewatered area for free if Muaūpoko would make the requested 'gift'.[46] There was no response to this suggestion so the Government decided to 'leave matters in abeyance for the present'.[47] When the Native Department asked about progress, the Lands Department replied: 'We are not doing anything & don't intend to. I have made offers to the Natives & it is now for them to move. I don't intend to take any action.'[48]

Muaūpoko rejected the Crown's offer to survey the chain strip in return for the free gift of what amounted to about 24 acres of land. They secured a meeting with Labour Prime Minister (and Native Minister) Joseph Savage in May 1936. Savage promised that justice would be done but said that compensation was not possible for 'the sins of previous Governments'. Muaūpoko pointed out that they had received no compensation, but also said that the tribe wanted their lake back 'the same as God had given it'.[49]

The outcome was that Savage urged the tribe to meet with officials without lawyers present and make a settlement. This meeting duly occurred on 9 December 1936 but it turned out that the Crown's position had not changed. Muaūpoko wanted the Crown to amend the 1916 legislation to exclude the whole chain strip and dewatered area from the recreation reserve. Officials, however, considered this unreasonable and persisted in the offer to survey the chain strip in return for the free gift of 83.5 chains.[50] When Muaūpoko refused this offer, officials said that they would 'report to the Prime Minister that you are not prepared to negotiate', and that nothing more would be done until the tribe returned with 'concrete proposals'.[51]

45. *Chronicle*, 26 March 1935 (Hamer, '"A Tangled Skein"' (doc A150), p 119)
46. Hamer, '"A Tangled Skein"' (doc A150), p 119
47. Under-secretary for lands to under-secretary, Native Department, 15 August 1935 (Hamer, '"A Tangled Skein"' (doc A150), p 119)
48. Minute on under-secretary, Native Department, to under-secretary for lands, 10 July 1935 (Hamer, '"A Tangled Skein"' (doc A150), p 121)
49. Notes on meeting between Muaūpoko deputation and the Prime Minister, 29 May 1936 (Hamer, '"A Tangled Skein"' (doc A150), pp 122–123)
50. Hamer, '"A Tangled Skein"' (doc A150), pp 123–124
51. Judge Harvey, minutes of 9 December 1936 meeting (Hamer, '"A Tangled Skein"' (doc A150), p 124)

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Judge Harvey, who had chaired the meeting, now suggested that the Crown should revest the chain strip in Muaūpoko and then take the piece it wanted under the Public Works Act. The Government was not willing to take the land compulsorily, however, but nor was it prepared to settle for the smaller piece offered by Muaūpoko.[52]

In 1937, Toko Rātana (member for Western Maori) asked Savage to consider Lake Horowhenua at the same time as settling other Māori grievances.[53] The Prime Minister's response was:

> the only matters that can now be discussed and considered are those concerning which some lawful tribunal has actually recommended an amount to be paid as compensation, and that consideration of claims, which have not yet been recommended by some tribunal, must necessarily be deferred for the present until some tribunal is set up to inquire into their merits and a recommendation is made.[54]

We consider this to have been a very important response. Other claims were being dealt with after full commissions of inquiry, whereas the Government clearly did not see the departmental inquiry of Harvey and Mackintosh as having the same status and effect. It would not have been unreasonable, therefore, for the Crown to have set aside the departmental inquiry's recommendations in favour of a full commission of inquiry or proper negotiations with the Muaūpoko people. Yet no such tribunal was established to hear Muaūpoko's claims, nor did negotiations resume.

By the beginning of the 1940s, Muaūpoko had withdrawn from membership of the domain board. The Native Department reported: 'Until the dispute is settled regarding the ownership of the lake and the chain strip, the Maoris will not be likely to accept representation on the Domain Bd.'[55] It must be recalled that, while Harvey and Mackintosh had recommended that the Crown recognise Māori ownership of the lakebed as well as the chain strip, this had still not happened.

Further encroachments on the chain strip by farmers led Muaūpoko to send another deputation to Wellington in 1943, this time to meet with the new Native Minister, Rex Mason. Morison told the Minister that Muaūpoko were not asking for money but restoration of their land. The matter had dragged on, he said, feelings were high between Māori and the townspeople, and Muaūpoko felt a 'deep sense of injustice'.[56] Chief Judge Shepherd reported on the issue, advising that '[t]he Maoris throughout appear to have been quite reasonable in their reactions to the Public's use of the Lake'.[57] In his view, the domain board ought to be compelled

52. Hamer, '"A Tangled Skein"' (doc A150), p 124
53. Hamer, '"A Tangled Skein"' (doc A150), p 126
54. Frank Langstone to Rātana, 26 November 1937 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(g)), p 1594)
55. Minute, 4 December 1940, on registrar to under-secretary, Native Department, 28 November 1940 (Hamer, '"A Tangled Skein"' (doc A150), p 126)
56. Record of meeting, 8 June 1943 (Hamer, '"A Tangled Skein"' (doc A150), p 127)
57. Shepherd to under-secretary for lands, 21 October 1943 (Hamer, '"A Tangled Skein"' (doc A150), p 127)

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to fence the chain strip off from farmers, but otherwise he reiterated the Harvey–Mackintosh report as the solution to the problem.[58]

In November 1943, therefore, Mason replied formally to Morison, seeking to 'remove the sense of injustice under which the Natives are labouring'. His offer was similar to that made in 1935: the chain strip and dewatered area could be 'made available for the full use of the Natives', subject to the 'retention of an area comprising the chain strip and dry land for a distance of 83½ chains northward from the Makomako Road'.[59] In other words, the Crown was no longer offering to recognise Muaūpoko ownership of the chain strip and return it to their control, subject to a gift of land. It now offered to allow them the 'full use' of the chain strip and dewatered area, except for the piece it planned to retain.

Muaūpoko rejected this offer. In April 1944, Morison replied that the people were disappointed that it was essentially the same as that rejected nine years earlier in 1935.[60] Why should Muaūpoko have to 'pay a price for having restored to them the control and use of their land which has been taken from them without their consent, and unjustly'?[61] That was the nub of the matter. It is clear that the nine-year delay had not occurred because of the Second World War or any reason other than the Crown's continued insistence on an unjust settlement. If the Crown wanted that land for the recreation reserve, it needed to negotiate and pay for it. The Crown's stance was patently unfair. Also, we agree with claimant counsel that it was unreasonable for the Crown to insist on acquiring more Muaūpoko land when the tribe had already lost so much.[62]

The Crown's refusal to arrive at a fair settlement left all parties in limbo for the next eight years. Muaūpoko claimed the chain strip but could not prevent farmers from using it for grazing. At the same time, they tried to stop the public from crossing the dewatered land to access the lake or from using speedboats on the lake.[63] In 1947, they set out a plan to beautify the lake and lease the chain strip to raise an income, but could make no progress while their rights were not recognised by anyone.[64] On the other hand, the domain board could not develop facilities at the lake because the question of its rights vis-à-vis the Māori owners had still not been resolved. As will be recalled, the board had asked for clarification in 1934 but had not received it. Muaūpoko continued to boycott the domain board, which seems to have gone out of existence. By 1946 the Government was not appointing Pākehā members either.[65]

In 1943, the Levin Borough Council asked the Government to transfer control of the lake to the council so that it could 'develop the Domain and the lake for

58. Hamer, '"A Tangled Skein"' (doc A150), p127
59. Mason to Morison, 17 November 1943 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(g)), p1602)
60. Hamer, '"A Tangled Skein"' (doc A150), p128
61. Morison to Mason, 17 April 1944 (Hamer, '"A Tangled Skein"' (doc A150), p128)
62. Claimant counsel (Ertel and Zwaan), submissions by way of reply, 14 April 2016 (paper 3.3.25), p13
63. Hamer, '"A Tangled Skein"' (doc A150), pp130–133
64. D A Armstrong, 'Lake Horowhenua and the Hokio Stream, 1905–c1990', May 2015 (doc A162), p55
65. Hamer, '"A Tangled Skein"' (doc A150), pp130–133

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recreational purposes, especially power boat racing'.[66] The Government refused because the 1905 Act required Muaūpoko representation, and the issue of Māori ownership rights was still under discussion.[67] In 1946, therefore, the council changed tack and asked the Government to revive the domain board, again without success. It made another approach in 1951, arguing that the Crown needed to *buy* the necessary land for the domain and re-establish the board. In particular, the council wanted to obtain the land separating its 13-acre park from the lakeshore. The mayor and the local member of Parliament met with the Minister of Lands and Maori Affairs, Ernest Corbett, in May 1951 and February 1952. This local initiative revived Crown interest in the situation.[68] The Government agreed to arrange a meeting with 'representative Maoris in the District' and try to settle the dispute, and to acquire the land which the council wanted for the domain.[69]

(2) *The Crown's new offer and Muaūpoko's refusal, 1952*

Corbett's officials considered that the Crown owned the lakebed and chain strip as a result of the 1905 Act, with compensation owed to the former Māori owners. Further research, however, revealed that the Crown's title was 'doubtful', as the owners' rights had been recognised by the Attorney-General in the 1905 *Hansard* at the time the Horowhenua Lake Act was passed. They reported to Corbett that the main problem was the 'predominantly European' domain board, which ignored the Māori owners and had even asked for the Māori representatives to be removed from the board. Also, Māori had a 'definite grievance', especially over the chain strip. They recommended that the Crown buy the whole recreation reserve, a 'solution' which they had already discussed with Muaūpoko's lawyer.[70] Thus, Muaūpoko having consistently rejected the Crown's proposal that they give up 83.5 chains, the Crown's new proposal was to purchase the entire lakebed and chain strip. As Paul Hamer commented, 'their proposed solution was likely to be profoundly unacceptable to Muaūpoko'.[71]

The first meeting between officials and Muaūpoko took place on 13 June 1952. E McKenzie, the assistant commissioner of Crown lands, advised Muaūpoko that he would recommend the Minister to recognise Māori ownership of the lakebed and chain strip. He also conceded that their past representation on the domain board might not have worked well. The Government, he said, was willing to hear proposals for a better arrangement to control the lake. McKenzie's proposal, however, was that they transfer ownership of the lake to the Crown for 'compensation', after which *the Crown* would administer it for the people of Levin.[72]

66. Armstrong, 'Lake Horowhenua and the Hokio Stream' (doc A162), p 55
67. Armstrong, 'Lake Horowhenua and the Hokio Stream' (doc A162), p 55
68. Hamer, '"A Tangled Skein"' (doc A150), pp 130–131
69. Director-general of lands to town clerk, 25 March 1952 (Hamer, '"A Tangled Skein"' (doc A150), p 131)
70. E McKenzie, JA Mills, and JM McEwen, 'Horowhenua Lake Domain: Brief History and Recommendation', not dated (Hamer, '"A Tangled Skein"' (doc A150), pp 133–135)
71. Hamer, '"A Tangled Skein"' (doc A150), p 135
72. Minutes of meeting held at Kawiu Hall, Levin, 13 June 1952 (Hamer, '"A Tangled Skein"' (doc A150), p 136)

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A number of Muaūpoko people responded, including Mr Hurunui, who was '[p]leased to hear you say the title to the lake [was] in the Maoris'. Pākehā, he said, had destroyed the bush and flax near the lake and had claimed the dewatered area. But Muaūpoko would not sell their lake, their food supply and '[o]nly source of food in slump'. Clearly, the memory of hardship during the Depression was strong. He called for a 6:3 Māori majority on a new domain board.[73]

The meeting was adjourned so Muaūpoko could discuss the Crown's proposals privately with their lawyer, Neville Simpson. Their final response to McKenzie was that they would never sell their heritage, the lake, under any circumstances. They were, however, willing to consider any reasonable request for the Crown to acquire 'further rights' so that the local people could 'use the lake in the way it should be used'. McKenzie responded that the Crown would wait to see if they changed their minds; Wiki Rikihana said that they would 'not agree to sell to the Pakeha'.[74]

Dan Rikihana wrote to Corbett a few days later on behalf of his wife (Wiki). He reminded the Minister of Muaūpoko's grievances about the 1916 Act and the draining of the lake. These injustices occurred, he argued, because Muaūpoko were a powerless minority on the domain board.[75] Nonetheless, it was clear from Rikihana's letter and the June 1952 meeting that Muaūpoko were concerned about the board's demise. There was no authority whatsoever in charge of the lake. They wanted the domain board re-established but this time under their own control with a Māori majority.

After the Crown's purchase offer was so firmly rejected, officials reconsidered their position. They accepted that the borough council's two-thirds majority on the board placed Muaūpoko in an 'impossible position'.[76] They also considered a possible compromise: the Crown could restrict its purchase to the chain strip, recognising Muaūpoko ownership of the lakebed. After all, the Māori owners would want a 'large sum' for the lake, especially if 'claims were sustained for compensation for damage allegedly suffered and infringement of their rights in the past'.[77]

Astonishingly, officials reverted to the position taken in 1935: control of the surface of the lake and acquisition of 83.5 chains, but this time by purchase rather than by 'gift'. They recommended to Corbett that the Crown buy the 83.5 chains, while confirming Māori ownership of the lakebed and the remainder of the chain strip by statute. Māori owners would have to agree that the lake's surface was subject to the Public Reserves, Domains and National Parks Act 1928, while retaining 'any reasonable rights of user'. The domain board would consist of one representative each from the borough council, the county council, and sporting groups, while

73. Minutes of meeting at Kawiu Hall, Levin, 13 June 1952 (Hamer, '"A Tangled Skein"' (doc A150), p 137). For the dependence of Muaūpoko on the lake during the Depression, see also Ada Tatana to F Hill, 5 November 2015, attachment 'D' to Fredrick Piripi Kingi Hill, attachments to brief of evidence, various dates (doc C21(a)), p [118].

74. Minutes of meeting at Kawiu Hall, Levin, 13 June 1952 (Hamer, '"A Tangled Skein"' (doc A150), pp 137–138)

75. Hamer, '"A Tangled Skein"' (doc A150), pp 137–138

76. Commissioner of Crown lands to director-general of lands, 20 June 1952 (Hamer, '"A Tangled Skein"' (doc A150), p 140)

77. 'Head Office Committee, Lake Horowhenua Case No 6621', not dated (Hamer, '"A Tangled Skein"' (doc A150), p 142)

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three Māori members would be chosen by the Native Department after consulting Muaūpoko elders. The 3:3 board would have an independent Pākehā chair.[78]

Nonetheless, officials also advised Corbett that purchasing the whole reserve (including the lake) was still the simplest answer. They worried that conflicting Māori and public interests would make it difficult for the board to control the lake under the 1928 Act if Māori owners retained rights of user. But the likely cost of buying the lake (£20,000) was prohibitive.[79] We note that officials did not recommend a process for hearing and compensating the claims which they had identified (for damage and past infringements of rights). Muaūpoko grievances in that respect were simply ignored.

Corbett agreed that Cabinet was unlikely to approve purchase of the lake at £20,000. He therefore approved the other recommendations on 29 October 1952. His view was that Māori were entitled to the lakebed under the Treaty of Waitangi, and that there was no point trying to challenge their ownership.[80] This was a significant turn-around for the Government, which had been resisting Māori lake claims politically and in the courts since the 1910s.[81] In Corbett's view, the best solution for Horowhenua was to purchase the part of the chain strip that was needed for the recreation reserve, and re-establish the board on a better footing. The Minister put this solution to a meeting of local authorities in November 1952, adding that drainage activities would have to be made part of the new arrangements.[82] He did not, however, share any particulars about the proposed new structure of the domain board (see section 9.2.4(4)).

In the meantime, Muaūpoko had asked Simpson to meet with Morison, now chief judge, to seek his advice. Morison facilitated a meeting between Simpson and officials in December 1952. At that meeting, Simpson accepted the Crown's position as reasonable so long as the new domain board would have veto power over drainage work on the Hōkio Stream.[83]

(3) *The 1953 agreement*

The lake trustees became involved in mid-1953. New trustees had not been appointed since 1898, but the court finally approved a new set of 14 trustees in 1951. As a result of an attempt by the mayor to join the negotiations, Tau Ranginui (chair of the lake trustees) approached McKenzie in June 1953. The trustees' position was that negotiations must be between the Crown and the Muaūpoko people. Ranginui asked for a Muaūpoko majority on the board (4:3). The commissioner of Crown lands could then act as chair with a casting vote. Also, Ranginui advised that the trustees were not prepared to sell the 83.5 chains. They were willing to consider a lease in

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78. Hamer, '"A Tangled Skein"' (doc A150), pp 140–142
79. Hamer, '"A Tangled Skein"' (doc A150), p 143
80. Hamer, '"A Tangled Skein"' (doc A150), pp 143, 144
81. Waitangi Tribunal, *Te Urewera, Pre-publication, Part V* (Wellington: Waitangi Tribunal, 2014), pp 49–126
82. Hamer, '"A Tangled Skein"' (doc A150), pp 143–144
83. Hamer, '"A Tangled Skein"' (doc A150), p 145

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perpetuity but pointed out that the land was swampy and of little use to the Crown, which should be satisfied with the 13 acres it had already obtained from the tribe.[84]

In July 1953, McKenzie and other officials finally inspected the 83.5 chains which the Crown had wanted to acquire since 1934. They discovered that it was, as Tau Ranginui had suggested, boggy and unsuitable for the recreation reserve. The 22 chains fronting the current parkland (the 13 acres) would in fact suffice for public access to the lake. That area was actually less than what Muaūpoko had been willing to part with in their counter-offer back in 1935.[85] Paul Hamer commented: 'This shows that settlement could have been achieved the best part of two decades earlier.'[86] The claimants were very critical of this belated recognition on the part of the Crown that it did not need the 83.5 chains, since the Crown's insistence on obtaining it had prevented any settlement before 1953.[87]

As we noted above, Muaūpoko wanted a settlement. They sought an end to the situation in which there was no authority which could enforce its control over the lake and the chain strip. It was not in anyone's interests for that to continue. They also wanted to prevent any recurrence of drainage works which might cause further harm to the lake, the stream, and the fisheries. They had asked the Crown to establish a new domain board under their control. The Crown's change of position in 1953 – from purchasing the entire lake and chain strip to purchasing 22 chains – proved decisive in winning agreement, alongside an offer of greater control over both drainage and the domain board.

This was demonstrated at a meeting on 5 July 1953, immediately after the inspection of the 83.5 chains. Muaūpoko's response to the Crown's new offer was:

- They would not sell but would grant a lease in perpetuity for the 22 chains.
- They agreed to have four members on the domain board, and asked for the commissioner of Crown lands to chair the board. Their goal was to have an independent person in whom they had confidence, and who did not live in Levin. They also 'felt that if the Chairmanship was handled by a Crown Official there would be fairness on all sides.'
- They would be 'quite satisfied' in respect of control of the Hōkio Stream if the Manawatu Catchment Board could do nothing to the stream without the agreement of the reconstituted domain board.
- The agreement should be specified in legislation.[88]

The commissioner reported that this agreement would give the Crown ownership of the 'waters of the Lake' as well as its ownership of its 13-acre reserve.[89] But

84. Hamer, '"A Tangled Skein"' (doc A150), pp 128–129, 146–147
85. Hamer, '"A Tangled Skein"' (doc A150), pp 147–148
86. Hamer, '"A Tangled Skein"' (doc A150), p 148
87. Claimant counsel (Stone, Bagsic, and Hopkins), closing submissions (paper 3.3.9), p 17
88. Assistant commissioner of Crown lands, 'Note for file: Horowhenua Lake', 6 July 1953 (Paul Hamer, comp, papers in support of '"A Tangled Skein": Lake Horowhenua, Muaūpoko, and the Crown, 1898–2000', various dates (doc A150(c)), pp 400–401)
89. Assistant commissioner of Crown lands, 'Note for file: Horowhenua Lake', 6 July 1953 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(c)), p 401)

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Crown ownership of water was not how Simpson recorded Muaūpoko's agreement in a letter of 9 July 1953, listing eight specific terms:

- for the 22-chain frontage of the 13-acre reserve, the public would have free access to the lake across the chain strip and dewatered land, and the board would control that area;
- the 'balance of the Chain strip', the dewatered land, the lakebed, the Hōkio Stream, and the one chain strip on the north bank of the stream, would be confirmed in Māori ownership, their title to be 'validated by legislation';
- the surface waters of the lake would be subject to the 1928 Act and controlled by the domain board;
- the reconstructed board would have four 'Maori representatives and three Pakeha representatives' from the borough council, the county council, and 'Sports Bodies', with the commissioner of Crown lands as 'independent Chairman' – the mode of selecting members was not specified;
- the Manawatu Catchment Board would control the Hōkio Stream, but legislation would specify that no works could be carried out without the consent of the domain board;
- the lake would 'remain a sanctuary' and no speedboats would be allowed on it;
- in 'the event that the waters might further recede', the lake would be controlled at its current level, either by the Crown or the catchment board, and the owners would agree to a 'spillway or weir' so long as it did not interfere with their fishing rights; and
- Māori fishing rights would be confirmed.[90]

Corbett approved these eight terms of the agreement on 12 August 1953.[91]

It thus took almost 19 years to obtain an agreement; it was only at this point that obtaining the agreement of the local authorities became a pressing issue. We turn to that question next.

(4) *Persuading the local authorities, 1953–55*

Obtaining the agreement of the drainage board, catchment board, and county council proved straightforward. A meeting was held on 1 December 1953, at which the drainage board agreed to hand over responsibility to the catchment board. Muaūpoko and the catchment board agreed to the lake being maintained at '30 feet above low water spring tides at Foxton Beach – that is, the level obtained after the drainage work of 1926'.[92] The catchment board also agreed that domain board consent would be necessary for any works on the Hōkio Stream. Muaūpoko wanted the mechanism which controlled the lake level to include facilities for eels and other species to be able to enter and exit the lake. The catchment board agreed to that stipulation.[93]

90. NF Simpson to commissioner of Crown lands, 9 July 1953 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(c)), pp 402–403)
91. Hamer, '"A Tangled Skein"' (doc A150), p 149
92. Hamer, '"A Tangled Skein"' (doc A150), p 149
93. Hamer, '"A Tangled Skein"' (doc A150), p 149

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The borough council, however, put up stiff resistance to the 1953 agreement. In 1951, the Crown had agreed to buy the part of the chain strip and dewatered land that the council wanted. Since then, however, the Government had excluded the mayor from the negotiations. Officials met with council representatives before the June 1952 meeting with Muaūpoko, but were not much impressed with the council's position. The mayor, A W Parton, asked for the domain board to be re-established immediately (without waiting for an agreement with Muaūpoko). He also argued that power boats had been on the lake from early in the century. Parton maintained that the lake had risen back to its original, pre-drainage level. Officials disagreed on all three points, especially after inspecting the level of the lake.[94]

As noted above, the Crown changed its negotiating position after the June 1952 meeting with Muaūpoko. The Government did not reveal its new negotiating stance to the council. In particular, officials were worried about how the council would take the proposal that its representation on the board (a two-thirds majority) would drop to a single member. The Minister met with local body representatives in November 1952 and rebuked the mayor for not dealing with Māori over the lake and for allowing distrust between Māori and the council to fester. He also told them that the lakebed belonged to Māori under the Treaty, and their rights to it could not be contested. He announced that he would refuse to sponsor legislation taking the lakebed from the tribe. One of the local body representatives argued in reply that it was absurd that Pākehā had a statutory right to use the lake for aquatic sports but were not allowed to cross the dewatered land to get to it. Corbett pointed out that it was the local authorities who had 'exposed the lake bed' and thus created the dewatered strip.[95]

The council was deliberately excluded from the Crown's negotiations with Muaūpoko in 1953, hence the mayor's attempt to negotiate directly with the tribe which (as described above) led the lake trustees to approach the Government.[96] After the July 1953 meeting at which agreement was reached between the Crown and Muaūpoko, the borough council would not agree to accept one seat on the domain board instead of its previous six. Nor would it agree to a Māori majority on the board, especially if it had to provide the bulk of the finance for administering the lake reserve. The council asked for a nine-member board with four Māori members, four Pākehā members, and an independent chair. The Government refused to change its agreement with Muaūpoko, threatening to abandon the issue altogether and leave management of the lake unresolved if the council would not agree. This led to a two-year standoff between the Crown and the borough council.[97]

Eventually, a compromise was worked out near the end of 1955. By April 1956, the Crown and council had agreed that the borough would have two seats on the domain board instead of one (sacrificing the sporting representative), and that the

94. Hamer, '"A Tangled Skein"' (doc A150), pp 136, 140
95. Hamer, '"A Tangled Skein"' (doc A150), pp 143–144
96. Hamer, '"A Tangled Skein"' (doc A150), pp 145–147
97. Hamer, '"A Tangled Skein"' (doc A150), pp 148–151

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question of speedboats would be left to the domain board to decide rather than these being banned by statute.[98]

Muaūpoko were not involved in those discussions but they presumably agreed to the changes when presented with the draft legislation in September 1956. We consider that issue and the enactment of section 18 of the ROLD Act 1956 in the next section of our chapter, where we also assess the adequacy of the 1953 agreement in Treaty terms, the degree to which it was reflected in the ROLD Act 1956, and the extent to which the legislation provided a fair and durable settlement of Muaūpoko's rights and grievances.

Here, we note that a very different balancing of interests occurred in 1952–56. Local interests in drainage (represented by the drainage board) and development of the lake for recreation (represented by the borough council) had not been prioritised over those of Muaūpoko. This was a significant departure from how Muaūpoko interests had been treated in the past.

9.2.5 Findings

The Harvey–Mackintosh report was a significant advance for Muaūpoko in that it recognised their ownership of the lakebed and chain strip, and recommended the return of most of the chain strip and dewatered area to their control. It failed, however, to define the respective rights of the domain board and the Māori owners under the two legislative regimes (the 1905 Act and amending Acts, and the Public Reserves, Domains and National Parks Act 1928). Its recommendations were partly favourable to Muaūpoko, but it also recommended that the domain board be 'given' 83.5 chains for its resort plans. For the next 19 years, the Crown insisted on the latter point, with a brief blip in 1952 when it tried to buy the whole lake and chain strip as well. Finally, in 1953, the Crown agreed to the free use (not purchase) of a much smaller area, and a more comprehensive settlement was then negotiated with Muaūpoko.

Why did it take so long to reach a settlement? The Crown argued that it was reasonable for it to follow the recommendation of the Harvey–Mackintosh report (to acquire the 83.5 chains), and that delays were also caused by the Depression, the Second World War, and the resistance of local authorities. The claimants, on the other hand, maintained that it was not reasonable for the Crown to insist on an alienation of yet more Muaūpoko land when the tribe had already lost so much. They also argued that the Crown did not really need the 83.5 chains in any case, and so the delay was not only unfair to Muaūpoko but entirely unnecessary.

Article 2 of the Treaty stipulated that Māori would retain their land for so long as they wished, but could alienate it if they chose. Treaty principles required that any alienation had to be made by the free and informed choice of the Māori owners. Under the Treaty, the Crown had no right to insist that Muaūpoko give it 83.5 chains for no consideration, or even for a payment, unless there was no other alternative and a pressing need in the national interest. Further, as demonstrated very clearly

98. Hamer, '"A Tangled Skein"' (doc A150), pp 151–152

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in 1953, a more timely site inspection would have shown that the Crown did not even need the land it insisted on acquiring free of charge.

The delay between 1935 and 1952 was entirely attributable to the Crown's refusal to deal with Muaūpoko on any other terms. We do not see how the Depression or the Second World War played any role in the delay. Negotiations were resumed in 1943–44 without regard to the war. The real stumbling block was the unfairness of the Crown's insistence that Muaūpoko give up 83.5 chains of their land. As Muaūpoko's lawyer asked at the time, why should Muaūpoko have to 'pay a price for having restored to them the control and use of their land which has been taken from them without their consent, and unjustly'? Nor did the local authorities play a role in delaying a Crown–Māori agreement – the Levin Borough Council delayed settlement from 1954–56, *after* the Crown and Muaūpoko had reached agreement.

We find that the Crown breached the Treaty principles of partnership and active protection, and the plain meaning of article 2 of the Treaty, when it refused to settle with Muaūpoko for 17 years unless they met its unreasonable demand for a free 'gift' of land. Muaūpoko were prejudiced because all of their rights (including to the lakebed and chain strip) remained uncertain during that time, and none of their grievances were rectified. Their mana and tino rangatiratanga were compromised. They could not prevent use of the chain strip or damage to its resources by neighbouring farmers.

In 1952 to 1953, however, the Crown compromised, negotiated with Muaūpoko in good faith, and obtained a voluntary agreement in July–August 1953. We accept that a delay from late 1953 to late 1955 was caused by a local authority, and was not the fault of the Crown. We consider the merits of the agreement and the legislation which followed it in the next section of our chapter. We also assess whether the agreement and legislation removed the prejudice. Here, we note that there was at least a fairer balancing of interests in 1953–56 than had occurred previously, and that a free and informed agreement was reached between Māori and the Crown in 1953.

9.3 Were Muaūpoko Grievances Rectified by the 1956 Legislation?

9.3.1 Introduction

In this section of our chapter, we address the passage of section 18 of the Reserves and Other Lands Disposal (rold) Act 1956. We assess the extent to which the legislation faithfully reflected the 1953 agreement, and we compare crucial provisions with those of the 1905 and 1916 legislation. In the Crown's view, the 1956 Act provided a fair settlement of past grievances, and an appropriate co-management regime for the lake. Crown counsel did not accept that any features of the 1956 Act were in breach of the Treaty, and submitted that the Act's regime is still Treaty-compliant today. The claimants, on the other hand, were critical of the 1956 Act, arguing that it failed to empower Muaūpoko on the domain board and it still retained some of the defects of the 1905 legislation. We examine the extent to which

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the ROLD Act 1956 could be said to have settled past grievances and provided a remedy to past Treaty breaches.

After examining the legislation itself, we then assess how it has worked in practice between 1956 and 1988. We focus on Muaūpoko's representation on the domain board, to assess whether the new management regime empowered the Māori owners in the management and control of their lake. We also assess how the reformed domain board dealt with Māori fishing and birding rights, catchment board works on the Hōkio Stream, and the vexed issues about boating (especially speedboats). Finally, we analyse Muaūpoko calls for radical reform of the Act in the 1980s, including their demand that the domain board be abolished, control of the lake be transferred to the lake trustees, and a veto over catchment works also be transferred to the trustees.

Our analysis in this section is structured around two key questions:

- Did the 1956 legislation remedy Muaūpoko's grievances in respect of past legislation and Crown acts or omissions?
- Did the 1956 legislation provide a suitable platform for (a) future management of the lake and stream, and (b) protection of the Māori owners' rights and interests?

We turn next to summarise the parties' arguments about the enactment of section 18, and the arrangements which it set in place for the following 60 years.

9.3.2 The parties' arguments

(1) *The claimants' case*

Claimant counsel noted that the Crown made concessions about the 1905 Act but not about the 1956 legislation, despite – in the claimants' view – the inconsistency of the ROLD Act 1956 with Treaty principles.[99]

Some claimants took an extremely negative view of the 1956 Act and its effects. Philip Taueki submitted:

> Following further and ongoing protests from Mua-Upoko, a few meaningless and worthless changes to the legislation surrounding the Lake were included in the 1956 ROLD Act. The effect is that now the Crown and the public have total control of our land and buildings at the lake.[100]

Other claimants, however, considered that the ROLD Act did deliver some benefits to Muaūpoko. Counsel for Wai 1491 and Wai 1621 argued that the Act 'did contain important recognition of the legal ownership by Muaupoko of some aspects of the lake, and the inalienability of fishing rights'.[101] Nonetheless, the claimants as a whole agreed that the benefits of the 1956 reform were far outweighed by its defects.

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99. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 46
100. Philip Taueki, closing submissions, 12 February 2016 (paper 3.3.15), p [2]
101. Claimant counsel (Watson), closing submissions, 15 February 2015 (paper 3.3.21), p 17; see also claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 46; claimant counsel (Naden, Upton, and Shankar), closing submissions (paper 3.3.23), p 278

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The legislation 'failed miserably to address the prejudice which had arisen from previous regimes. In many cases, the situation was compounded by the new Act.'[102] In particular, the claimants argued that the 1956 Act continued to prioritise public recreation over Muaūpoko rights and interests.[103] It also failed to deal with pollution at the very time the lake was being 'polluted by Levin's effluent'. 'Despite having an opportunity to correct the mistakes of the past,' we were told, 'the Crown failed to do so and the 1956 Act continued to minimise Muaupoko's position as tangata whenua and as the Crown's Treaty partner.'[104] No compensation was paid (or settlement made) for past breaches, and so the Act did no more than 'calm Muaupoko concerns for a short period'.[105]

In respect of the functioning of the Act's management regime, the claimants argued that Muaūpoko were unable to exercise their kaitiakitanga over the lake. This crucial failing enabled the environmental degradation of the lake to take place under domain board management.[106] In particular, the claimants argued that the Crown's poor chairmanship of the board was responsible for this outcome. Muaūpoko had expected the Crown chairman to be their

> guarantee that the balance of Muaūpoko and public rights might be properly reached. Consequently, Crown actions after 1956, including the Health Department push to temporarily dump sewage in the lake, and the failure to provide resources and strong leadership on this issue to the board, at any time since 1956 and right through to the present day, have to be measured against the Muaūpoko understanding in 1956 that the Crown would remain guarantor of their interests over any local authority failures or backsliding.[107]

In the claimants' view, conflict arose between Muaūpoko and local Pākehā interests (and within Muaūpoko over board membership) but the Crown failed to investigate or help mediate these problems.[108]

In 1958, the claimants submitted, the Crown supposedly endorsed the tribe's blueprint for development of the lake and its surrounds. Instead of acting in partnership, however, the Crown then 'began to actively undermine the basis of the 1953 and 1958 agreements, and even tried to resile from the rold Act itself'.[109] By 1982, the Muaūpoko walk-out from the domain board showed the extent of the tribe's disillusionment with the 1956 Act. The tribe wanted to abolish the board and control the lake directly. Claimant counsel submitted that the Crown's failure in the

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102. Claimant counsel (Watson), closing submissions (paper 3.3.21), p 17
103. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 47; claimant counsel (Naden, Upton, and Shankar), closing submissions (paper 3.3.23), p 280
104. Claimant counsel (Stone, Bagsic, and Hopkins), closing submissions (paper 3.3.9), p 18
105. Claimant counsel (Bennion, Whiley, and Black), submissions by way of reply, 21 April 2016 (paper 3.3.33), p 11
106. Claimant counsel (Watson), closing submissions (paper 3.3.21), p 17
107. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 47
108. Claimant counsel (Naden, Upton, and Shankar), closing submissions (paper 3.3.23), pp 278–279
109. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 48

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1980s to enact promised reforms (in response to the tribe's wishes) was 'a breach of the Crown's duty to provide for the expression of Muaūpoko rangatiratanga'.[110]

(2) *The Crown's case*

In the Crown's view, the ROLD Act 1956 was entirely consistent with Treaty principles. It reflected an informed agreement with Muaūpoko owners, which 'gave stronger representation rights and more clearly defined legal rights and status to Muaūpoko than was the case under the 1905 and 1916 statutes'.[111] The 1956 Act strikes

> a reasonable balance between relevant interests, including both owner and broader iwi interests, in the Lake. Since 1956, the Lake has been subject to a co-management regime instituted in accordance with [the] owners' wishes at the time. As noted, that regime preserved the owners' fishing rights and ownership of the Lake Bed.[112]

The Crown accepted, however, that the management regime established by the Act 'has not always operated effectively in the past. Current and future discussions may offer real opportunities to reform the existing legislation to better reflect Crown-Māori best practice in the modern era, and in doing so give better effect to Treaty principles.'[113]

This admission did not constitute an admission of Treaty breach.[114] The Crown's view was that its role as chair of a 4:4 board was only a 'limited role' in which its casting vote had never had to be used.[115] Crown counsel acknowledged that 'there have been periods where the management regime has not functioned as intended'. Nonetheless, 'the Crown does not accept that it is directly responsible for these periods, which reflect a complex interplay of customary interests and competing personal and local aspirations and attitudes'. In the Crown's submission, it could not have compelled iwi representatives to attend board meetings if they chose not to do so, nor could it interfere directly in internal board and iwi matters.[116]

The Crown also acknowledged that Muaūpoko's 1958 plan for development did not proceed, but argued that this was because of 'prohibitive costs' and over-ambition despite some Government funding.[117]

Crown counsel did not make any specific submissions about the proposed legislative reforms of the 1980s.

110. Claimant counsel (Naden, Upton, and Shankar), closing submissions (paper 3.3.23), pp 279–280
111. Crown counsel, closing submissions (paper 3.3.24), p 56
112. Crown counsel, closing submissions (paper 3.3.24), p 54
113. Crown counsel, closing submissions (paper 3.3.24), p 51
114. Crown counsel, closing submissions (paper 3.3.24), p 59
115. Crown counsel, closing submissions (paper 3.3.24), p 56
116. Crown counsel, closing submissions (paper 3.3.24), p 59
117. Crown counsel, closing submissions (paper 3.3.24), p 59

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9.3.3 Did the 1956 legislation remedy Muaūpoko's grievances in respect of past legislation and Crown acts or omissions?

(1) *The terms of section 18 of the ROLD Act 1956*

Because of its importance to this chapter of our report, we reproduce here the preamble and relevant subsections of section 18 of the Reserves and Other Lands Disposal Act 1956:

> **18. Special provisions relating to Lake Horowhenua**—Whereas under the authority of the Horowhenua Block Act 1896, the Maori Appellate Court on the twentieth day of September, eighteen hundred and ninety-eight, made an Order determining the owners and relative shares to an area of thirteen thousand one hundred and forty acres and one rood, being part of the Horowhenua XI Block: And whereas the said area includes the Horowhenua Lake (as shown on the plan lodged in the office of the Chief Surveyor at Wellington under Number 15699), a one chain strip around the lake, the Hokio Stream from the outlet of the lake to the sea, and surrounding land: And whereas certificate of title, Volume 121, folio 121, Wellington Registry, was issued in pursuance of the said Order: And whereas by Maori Land Court Partition Order dated the nineteenth day of October, eighteen hundred and ninety-eight, the lake was vested in trustees for the purposes of a fishing easement for all members of the Muaupoko Tribe who might then or thereafter own any part of the Horowhenua XI Block (in this section referred to as the 'Maori owners'): And whereas the minutes of the Maori Land Court relating to the said Partition Order recorded that it was also intended to similarly vest the one chain strip around the lake, the Hokio Stream from the outlet of the lake to the sea, and a one chain strip along a portion of the north bank of the said stream, but this was not formally done: And whereas the Horowhenua Lake Act 1905 declared the lake to be a public recreation reserve under the control of a Domain Board (in this section referred to as the 'Board') but preserved fishing and other rights of the Maori owners over the lake and the Hokio Stream: And whereas by section ninety-seven of the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1916 the said one chain strip around the lake was made subject to the Horowhenua Lake Act 1905, and control was vested in the Board: And whereas subsequent legislation declared certain land adjoining the said one chain strip, and more particularly firstly described in subsection thirteen of this section, to form part of the recreation reserve and to be under the control of the Board: And whereas as a result of drainage operations undertaken some years ago on the said Hokio Stream the level of the lake was lowered, and a dewatered area was left between the margin of the lake after lowering and the original one chain strip around the original margin of the lake: And whereas this lowering of the lake level created certain difficulties in respect of the Board's administration and control of the lake, and in view of the previous legislation enacted relating to the lake, doubts were raised as to the actual ownership and rights over the lake and the one chain strip and the dewatered area: And whereas a Committee of Inquiry was appointed in 1934 to investigate these problems: And whereas the Committee recommended that the title to the land covered by the waters

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of the lake together with the one chain strip and the said dewatered area be confirmed by legislation in ownership of the trustees appointed in trust for the Maori owners: And whereas certain other recommendations made were unacceptable to the Maori owners, and confirmation of ownership and further appointment of a Domain Board lapsed pending final settlement of the problems affecting the lake: And whereas by Maori Land Court Order dated the eighth day of August, nineteen hundred and fifty-one, new trustees were appointed for the part of Horowhenua XI Block in the place of the original trustees, then all deceased, appointed under the said Maori Land Court Order dated the nineteenth day of October, eighteen hundred and ninety-eight: And whereas agreement has now been reached between the Maori owners and other interested bodies in respect of the ownership and control of the existing lake, the said one chain strip, the said dewatered area, the said Hokio Stream and the chain strip on a portion of the north bank of that stream, and certain ancillary matters, and it is desirable and expedient that provision be made to give effect to the various matters agreed upon: Be it therefore enacted as follows:

(1) For the purposes of the following subsections:

'Lake' means that area of water known as Lake Horowhenua enclosed within a margin fixed by a surface level of 30 feet above mean low water spring tides at Foxton Heads:

'Dewatered area' means that area of land between the original margin of the lake shown on the plan numbered SO 15699 (lodged in the office of the Chief Surveyor, at Wellington) and the margin of the lake as defined aforesaid:

'Hokio Stream' means that stream flowing from the outlet of the lake adjacent to a point marked as Waikiekie on plan numbered SO 23584 (lodged in the office of the Chief Surveyor, at Wellington) to the sea.

(2) Notwithstanding anything to the contrary in any Act or rule of law, the bed of the lake, the islands therein, the dewatered area, and the strip of land one chain in width around the original margin of the lake (as more particularly secondly described in subsection thirteen of this section) are hereby declared to be and to have always been owned by the Maori owners, and the said lake, islands, dewatered area, and strip of land are hereby vested in the trustees appointed by Order of the Maori Land Court dated the eighth day of August, nineteen hundred and fifty-one, in trust for the said Maori owners.

(3) Notwithstanding anything to the contrary in any Act or rule of law, the bed of the Hokio Stream and the strip of land one chain in width along a portion of the north bank of the said stream (being the land more particularly thirdly described in subsection thirteen of this section), excepting thereout such parts of the said bed of the stream as may have at any time been legally alienated or disposed of by the Maori owners or any of them, are hereby declared to be and to have always been owned by the Maori owners, and the said bed of the stream and the said strip of land are hereby vested in the trustees appointed by Order of the Maori Land Court dated the eighth day of August, nineteen hundred and fifty-one, in trust for the said Maori owners.

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(4) Notwithstanding the declaration of any land as being in Maori ownership under this section, there is hereby reserved to the public at all times and from time to time the free right of access over and the use and enjoyment of the land fourthly described in subsection thirteen of this section.

(5) Notwithstanding anything to the contrary in any Act or rule of law, the surface waters of the lake together with the land firstly and fourthly described in subsection thirteen of this section, are hereby declared to be a public domain subject to the provisions of Part III of the Reserves and Domains Act 1953:

Provided that such declaration shall not affect the Maori title to the bed of the lake or the land fourthly described in subsection thirteen of this section:

Provided further that the Maori owners shall at all times and from time to time have the free and unrestricted use of the lake and the land fourthly described in subsection thirteen of this section and of their fishing rights over the lake and the Hokio Stream, but so as not to interfere with the reasonable rights of the public, as may be determined by the Domain Board constituted under this section, to use as a public domain the lake and the said land fourthly described.

(6) Nothing herein contained shall in any way affect the fishing rights granted pursuant to section nine of the Horowhenua Block Act 1896.

(7) Subject to the provisions of this section, the Minister of Lands shall appoint in accordance with the Reserves and Domains Act 1953 a Domain Board to control the said domain.

(8) Notwithstanding anything to the contrary in the Reserves and Domains Act 1953, the Board shall consist of—

(a) Four persons appointed by the Minister on the recommendation of the Muaupoko Maori Tribe:

(b) One person appointed by the Minister on the recommendation of the Horowhenua County Council:

(c) Two persons appointed by the Minister on the recommendation of the Levin Borough Council:

(d) The Commissioner of Crown Lands for the Land District of Wellington, *ex officio*, who shall be Chairman.

(9) Notwithstanding anything in the Land Drainage Act 1908, the Soil Conservation and Rivers Control Act 1941, or in any other Act or rule of law, the Hokio Drainage Board constituted pursuant to the said Land Drainage Act 1908 is hereby abolished, and all assets and liabilities of the said Board and all other rights and obligations of the said Board existing at the commencement of this Act shall vest in and be assumed by the Manawatu Catchment Board, and until the said Catchment Board shall have completed pursuant to the Soil Conservation and Rivers Control Act 1941 a classification of the lands previously rated by the said Drainage Board, the said Catchment Board may continue to levy and collect rates in the same manner as they have hitherto been levied and collected by the said Drainage Board.

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(10) The Manawatu Catchment Board shall control and improve the Hokio Stream and maintain the lake level under normal conditions at thirty feet above mean low water spring tides at Foxton Heads:

Provided that before any works affecting the lake or the Hokio Stream are undertaken by the said Catchment Board, the prior consent of the Domain Board constituted under this section shall be obtained:

Provided further that the said Catchment Board shall at all times and from time to time have the right of access along the banks of the Hokio Stream and to the lake for the purpose of undertaking any improvement or maintenance work on the said stream and lake.

(11) [*Authorises the District Land Registrar to register the documents and plans necessary to give effect to section 18*]

(12) [*Repeals the Horowhenua Lake Act 1905 and subsequent amending legislation*]

(13) [*Describes the land to which section 18 applies*]

Section 18 of the 1956 Act still governs the ownership and management of Lake Horowhenua today, although statutes such as the RMA 1991 have altered the obligations and powers of various bodies which administer the lake and Hōkio Stream.

(2) *What changes had been made to the 1953 agreement?*

In essence, the 1956 legislation reflected seven of the eight key points agreed between the Crown and Muaūpoko in 1953 (the points of agreement are listed in section 9.2.4(3)). The missing item was that the lake would remain a 'sanctuary', and that speedboats would not be permitted on it. After discussions with the borough council, the Crown agreed to leave the issue of speedboats for the domain board to resolve through its bylaws.[118]

In respect of a wildlife 'sanctuary', the Reserves and Domains Act 1953 would apply to the lake once the 1956 Act was passed. This Act would make it an offence to shoot any bird without the board's permission.[119] In addition, the board passed a bylaw in 1963, stating:

> No person shall within the limits of the Domain shoot, snare, destroy, or interfere with any bird, animal or fish, or destroy the nests or eggs of any birds, except with the written permission of the Board.
>
> Provided that in the case of any bird or animal covered by the Wildlife Act 1953 no such permission shall be granted unless and until the provisions of that Act have been complied with.[120]

In mid-1956, the Government sent the draft legislation to Muaūpoko's lawyers to obtain the tribe's agreement to its terms. The Government also sought the

118. Hamer, '"A Tangled Skein"' (doc A150), p 152
119. Hamer, '"A Tangled Skein"' (doc A150), p 178
120. Commissioner of Crown lands to director-general of lands, 6 April 1973 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(c)), p 571)

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agreement of the Levin Borough Council, the catchment board, and the Hokio Drainage Board. On 11 September 1956, the commissioner of Crown lands reported that the tribe's lawyers, Morison, Spratt, and Taylor, were 'in agreement' to the draft clause of the rold Bill. We have no information as to what process the lawyers followed to confirm the agreement of the Māori owners or of the tribe more generally. But Neville Simpson reported agreement to the Crown, which proceeded with the legislation accordingly.[121] In our hearings, Dr Procter argued that 'there was no approval from Muaūpoko unless you can tell me that there was a letter from the whole iwi saying, "Yes we accept this."'[122]

When the rold Bill was introduced, Corbett argued that it 'meets fully the wishes of the Maori owners' and settled a 'subject of controversy for the last fifty years'. This was not disputed by the local Māori member, Eruera Tirikatene. Rather, he responded that Muaūpoko had been very generous in recognising the need for public recreation, and asked for a formal assurance that there would be 'no further encroachment on the rights of the Maoris to the bed of the lake and over the waters of the lake'. Tirikatene pointed to the matter of speedboats, which had been left out of the legislation: 'The Maori owners have felt that motor boat racing on the lake is detrimental to the waterfowl and other birdlife there, and that the lake should be retained as a bird sanctuary'. Tirikatene accepted, however, that the reconstituted domain board was a 'fairly genuine attempt to give the Maori a say in matters concerning the lake and the property around it'.[123]

On balance, we are satisfied that there was genuine, free, and informed consent on the part of the Muaūpoko owners to the 1956 legislation. They had the benefit of legal advice from Neville Simpson, who told the Crown in 1956 that his clients agreed to the draft legislation (see above). Further, Crown counsel pointed to Muaūpoko's clear and public support for the Act at a major hui in 1958.[124] Held at Kawiu Pa, this hui marked the tribe's ceremonial agreement to the 1956 legislation, and also the tribe's requirement that the Crown in return assist plans for economic development.[125]

The chair of the lake trustees, Tau Ranginui, proclaimed the hui 'a great day of gladness, humility and deep satisfaction. Our long-outstanding grievance has been settled – our lands restored to us – and we can now take an honoured place in the community.'[126] The hui was attended by Prime Minister Walter Nash, Mrs Iriaka Rātana (member for Western Maori), the chief judge of the Maori Land Court, local dignitaries, and a 'large number of Muaupoko' and neighbouring tribes.[127] Muaūpoko presented a development plan for the lake, which will be discussed in

121. Commissioner of Crown lands to director-general of lands, 11 September 1956 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(c)), p 433); Hamer, '"A Tangled Skein"' (doc A150), pp 152–153

122. Transcript 4.1.12, p 898

123. NZPD, 1956, vol 310, pp 2712–2714 (Hamer, '"A Tangled Skein"' (doc A150), pp 154–155)

124. Crown counsel, closing submissions (paper 3.3.24), p 58

125. Armstrong, 'Lake Horowhenua and the Hokio Stream' (doc A162), pp 72–74

126. Unidentified newspaper clipping, 1958 (Armstrong, 'Lake Horowhenua and the Hokio Stream' (doc A162), p 73)

127. Armstrong, 'Lake Horowhenua and the Hokio Stream' (doc A162), p 72

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more detail later. Most important for our purposes here was a 'Declaration', which was part of the development plan, and which the trustees produced to be signed by the Prime Minister and other attendees. David Armstrong explained:

> The 'Declaration' acknowledged the terms of the 1956 ROLD Act, which for Muaupoko represented the restoration and confirmation of their 'lands, rights, privileges and prestige'. It further stated that the tribe was determined to work with its 'Pakeha brethren' to enhance, beautify and develop the lake and its resources for the benefit of all. According to the *Levin Chronicle* this event was 'reminiscent of the signing of the Treaty of Waitangi'. Mr Ranginui stated that this was indeed a symbolic document: 'it will be sacred to the tribe when signatures are on it'. The 'Declaration' was duly signed by Prime Minister Nash, local body politicians, Domain Board members and tribal representatives, including Mr Ranginui.[128]

Mr Hamer provided us with a copy of the 'Declaration' in his supporting papers (see sidebar).

We therefore accept the Crown's submission to us that the 1956 legislation was 'clearly in accordance with owners' wishes and followed extensive negotiation'.[129] The question remains, however, as to what extent the legislation provided an effective remedy for Muaūpoko grievances. We turn to that question next.

(3) *Did the legislation provide an effective remedy for past legislation and Crown acts or omissions?*

(a) ***The dispute as to whether the 1956 Act remedied grievances:*** In our inquiry, the Crown argued that, 'to the extent any prejudice might be said to flow from earlier legislation as to control and/or rights, that prejudice was remedied by the enactment of the 1956 Act'.[130] The Crown intended the Act to recognise Muaūpoko rights and in so doing to recalibrate the 'balancing of rights and interests' as implemented by earlier legislation. The new Act, Crown counsel submitted, would 'better reflect Muaūpoko interests and rights than the previous regime. The agreement referred to in the Act, and the legislation itself, were good faith attempts to resolve Muaūpoko grievances regarding the Lake.'[131] The Crown also submitted that the Act 'gave stronger representation rights and more clearly defined legal rights and status to Muaūpoko than was the case under the 1905 and 1916 statutes'.[132]

In the claimants' view, however, the ROLD Act 1956

> did contain important recognition of the legal ownership by Muaupoko of some aspects of the lake, and the inalienability of fishing rights, but the legislation failed

128. Armstrong, 'Lake Horowhenua and the Hokio Stream' (doc A162), p 73
129. Crown counsel, closing submissions (paper 3.3.24), p 56
130. Crown counsel, closing submissions (paper 3.3.24), p 57
131. Crown counsel, closing submissions (paper 3.3.24), p 57
132. Crown counsel, closing submissions (paper 3.3.24), p 56

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Declaration

The Trustees and members of the Muaupoko tribe gladly acknowledge the recent legislation whereby:
The bed of Lake Horowhenua
The islands in the Lake
The dewatered area
The chain strip around the Lake
The bed of the Hokio Stream, and
The chain strip on the northern bank of the Hokio Stream,
are granted in ownership to its people.
In gratitude of the confirmation of its lands rights and privileges and the restoration of its prestige, the tribe is determined to work with its Pakeha Brethren on the Horowhenua Lake Domain Board to beautify and provide the amenities as illustrated in this document.[1]

1. Pāūl Hāmēr, cōmp, sūppōrtīng pāpērs fōr '"Ā Tānglēd Skēīn"', vārīōūs dātēs (dōc A150(c)), p 449

> miserably to address the prejudice which had arisen from previous regimes. In many cases, the situation was compounded by the new Act.[133]

The claimants highlighted what they saw as the continued prioritisation of public recreation rights over the fishing and other rights of the Māori owners. Claimant counsel quoted section 18(5) of the Act that the Māori owners' fishing and other rights were 'not to interfere with the reasonable rights of the public, as may be determined by the Domain Board'.[134] Hence, in the claimants' view, the 1956 Act

> continued the substantial and unnecessary interference by the Crown in the owners' property rights. It cannot be consistent with the Treaty of Waitangi. In effect, ROLD56 largely continued the Treaty breach first brought about by the 1905 Act. It cannot be assessed on its own terms for compliance with Treaty principles, as it makes sense only in the context of the breach of 1905, and exists only for the purpose of continuing that breach.[135]

Claimant counsel accepted that the 1956 Act made public rights

133. Claimant counsel (Watson), closing submissions (paper 3.3.21), p 17
134. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 47; claimant counsel (Naden, Upton, and Shankar), closing submissions (paper 3.3.23), p 280
135. Claimant counsel (Bennion, Whiley, and Black), submissions by way of reply (paper 3.3.33), p 9

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subject to a caveat of being 'reasonable', which allows some space for argument that the public recreation priority is not intended to be as comprehensive as in the 1905 Act, but the effective 'freezing' of Muaūpoko's development rights continues while public rights and uses under the Reserves Act 1977 are left free to develop in new ways.[136]

(b) ***Key omissions from the 1956 Act:*** We note first that there were a number of omissions in the legislation.

First, it provided no compensation for past acts or omissions of the Crown, which were described in the previous chapter. This included:

- no compensation for past use of the lake and chain strip in the domain, especially uses to which Muaūpoko had not agreed in 1905;
- no compensation for vesting control of their private property, the chain strip, in the domain board in 1916 against Muaūpoko's wishes;
- no compensation for interference with Muaūpoko fishing rights by stocking the lake with new species (without consent) and by the grant of permission for non-Māori to fish in the lake; and
- no compensation for the damage done to their private property (the lake and stream beds), their fisheries, and their ability to exercise their fishing rights, by the activities of the Hokio Drainage Board in the 1920s.

The claimants pointed out that the 1956 legislation did not in fact 'purport to settle all historic issues relating to the lake'.[137] We agree, and note too that no compensation was provided for past infringements of Muaūpoko rights.

Nor did the legislation include provisions controlling pollution or the entry of water-borne pollutants into the lake. The domain board was given no powers in this respect, yet pollution was known to be a problem before the 1956 Act was passed. This was a crucial omission for the claimants in our inquiry.[138] We return to this issue in chapter 10.

Other omissions included the failure to grant an annuity or rental or some such payment to the Māori owners for the future, ongoing use of their lake by the public. Muaūpoko's ambitious plan to develop the lake as a resort in partnership with the local council in 1958 could not proceed without Crown assistance, which ended after an initial grant of £2,000.[139] Other iwi were paid annual sums for the use of their lakes, although that took the form of alienations (see, for example, the Rotorua lakes, Lake Taupō, and Lake Waikaremoana).[140]

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136. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), p 47

137. Claimant counsel (Bennion, Whiley, and Black), submissions by way of reply (paper 3.3.33), p 11

138. Transcript 4.1.12, pp 898–899; claimant counsel (Watson), closing submissions (paper 3.3.21), p 17; claimant counsel (Stone, Bagsic, and Hopkins), closing submissions (paper 3.3.9), p 18

139. Hamer, '"A Tangled Skein"' (doc A150), p 163

140. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One, revised ed, 4 vols (Wellington: Legislation Direct, 2009)*, vol 4, pp 1262, 1317–1320; Waitangi Tribunal, *Te Urewera, Pre-publication, Part V*, pp 215–228, 268–271

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In addition, the 1956 Act made no provision for how members of the domain board should be selected. This proved to be a source of great trouble and confusion in the future.[141]

Despite these important omissions, however, the ROLD Act 1956 was a credit to the Crown in certain respects because it provided a remedy or potential remedy for some key grievances of Muaūpoko. We outline those next.

(c) ***Remedies or potential remedies of Muaūpoko grievances:*** First, section 18 of the ROLD Act 1956 formally recognised Muaūpoko ownership of the lake bed, the chain strip, the Hōkio Stream bed, and the chain strip along the north bank of the stream. To the extent that Muaūpoko ownership had been placed in doubt – which was certainly the case from the 1920s to the early 1950s – the 1956 legislation provided a remedy. It also specified that the Māori owners' title to the lakebed was not affected by the inclusion of the surface waters in a public domain, an issue which had previously called their ownership into question.

We note, however, that the intervention of Lands Department officials prevented the recognition of Māori ownership of the whole Hōkio Stream bed. In the mistaken belief that the *ad medium filum aquae* presumption applied, officials argued that some parts of the stream bed would have been sold with the sale of adjoining land on the southern banks.[142] The *ad medium filum* doctrine is a presumption that the adjoining landowner's property goes to the centre of the stream bed, but it can be rebutted by evidence to the contrary. In this case, the orders of the Native Appellate Court in 1898 specifically awarded ownership of the stream bed to the present and future owners of Horowhenua 11 as an inalienable reserve.[143] Ownership of the *south* bank (which lay with the owners of Horowhenua 9) had not been a factor in the award of the whole stream bed to the owners of Horowhenua 11, and clearly the court was not acting on the *ad medium filum* presumption as the bed itself was specifically vested.

Secondly, section 18 restored control of the chain strip and dewatered land to Muaūpoko, reversing the effects of the 1916 legislation.

Thirdly, the constitution of the domain board was reformed. This rectified the imbalance created by legislation in 1905 and 1916, which restricted Muaūpoko to a one-third minority membership. The 1916 Act had also given the Levin Borough Council control of the board with a two-thirds majority. The new legislation remedied this situation by giving Muaūpoko a majority on the domain board. The borough council was restricted to two seats, with a third seat for the county council. The removal of representation for sporting interests meant that the new domain board would consist of four Māori representatives on one side, three local body representatives on the other, and a neutral Crown chair to provide a casting vote in the event of a tie. Muaūpoko thus had a 4:3 majority. As Ada Tatana explained it for

141. Hamer, '"A Tangled Skein"' (doc A150), pp 273–278, 300–303; claimant counsel (Lyall and Thornton), closing submissions (paper 3.3.19), p 30

142. Hamer, '"A Tangled Skein"' (doc A150), p 152

143. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 3 (paper 3.3.17(b)), pp 17–18

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the Minister in 1986, the 'Chairman was confirmed by the owners but to have no voting powers except in a 50/50 situation. The seven members of the Board was also confirmed because the owners wish[ed] to retain the majority.'[144]

Some claimants have queried whether a '4/4 board' did in fact give Muaūpoko a majority,[145] but Paul Hamer explained in his evidence that it did so.[146] Mr Hamer argued that the Pākehā members no longer controlled the board under the 1956 Act because the chairman only exercised a casting vote and not a deliberative vote:

> McKenzie's note of the 6 July 1953 meeting was that Muaūpoko wanted an 'independent Chairman'. He explained that 'By adopting this representation it is felt that the quality of representation would be equalised and that an official as chairman will have the casting vote should dispute arise and being a responsible official he would lean in whatever direction he felt was right and proper' . . . As to how this worked in practice, the observation of Judge Smith in 1982 is instructive. As he put it: 'theoretically the Muaupoko tribe can control the policy of the Domain Board, the practice of the Commissioner of Crown Lands apparently being to exercise only a casting vote, if necessary'.[147]

It was, however, a very narrow majority. Only one Muaūpoko member had to be absent or to disagree with the others for it to disappear. As James Broughton put it in 1982, 'We feel as if we haven't had enough say. If one of our (tribal) members goes against the wishes of the rest, we've lost our control.'[148]

Fourthly, local drainage bodies lost the power to carry out works on the Hōkio Stream without the consent of the domain board. This was designed to prevent a recurrence of the events of 1925–26. If the Muaūpoko majority could control the board's veto, the new legislation would give significant protection to Muaūpoko's rights and interests in the stream and its fisheries.

Included in this statutory provision was a requirement that the lake be held at '30 feet above mean low water spring tides at Foxton Heads'.[149] This proved controversial later, when the relatively shallow waters in summer were too warm for some species of fish life.[150]

Fifthly, Muaūpoko fishing rights (and those of the owners of Horowhenua 9) were given statutory recognition and protection. Muaūpoko witnesses in our

144. Ada Tatana to Koro Wetere, Minister of Lands, 16 February 1986 (Paul Hamer, comp, papers in support of '"A Tangled Skein": Lake Horowhenua, Muaūpoko, and the Crown, 1898–2000', various dates (doc A150(e)), p 1063)

145. Claimant counsel (Bennion, Whiley, and Black), closing submissions (paper 3.3.17(b)), p 47

146. Transcript 4.1.12, p 481

147. Paul Hamer, summary of points of difference with David Armstrong's report (#A162), December 2015 (doc A150(n)), p 8

148. Hamer, '"A Tangled Skein"' (doc A150), pp 333, 360; 'Lake Trustees to Get Together with Owners', undated and unsourced newspaper clipping [ca November 1982] (Paul Hamer, comp, papers in support of '"A Tangled Skein": Lake Horowhenua, Muaūpoko, and the Crown, 1898–2000', various dates (doc A150(d)), p 747)

149. Reserves and Other Lands Disposal Act 1956, s 18(1)

150. Hamer, '"A Tangled Skein"' (doc A150), pp 308–309

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hearings pointed out that the legislation accorded a strong and unique form of protection which extended as far as the Hōkio beach.[151] As Eugene Henare put it:

> Now, as you have been made aware, Muaūpoko have a very special unique legislative right and [it] is unrestricted fishing rights. No other people have this in the country. No other people. It's only the people who are here today that have the special unique legislative right.[152]

Robert Warrington told us: 'I'd love to see the rold Act sort of changed, but every time I've mentioned that there are some people [who] are saying, "Don't you get rid of our customary fishing rights," so . . .'[153]

Here, too, the question of the Muaūpoko majority on the domain board was crucial. As will be recalled from chapter 8, the 1905 Act and amending legislation had created a hierarchy of rights, giving priority to Pākehā recreational users over the fishing and all other rights of the Māori owners. The 1956 legislation recreated this hierarchy, to the extent that the 'unrestricted' rights of the Māori owners were not to interfere with the 'reasonable rights of the public' to use the lake as a domain. But this time the 'reasonable' use rights of the public were to be defined by the domain board.[154] This was certainly the view of the Lands Department's solicitor in 1973, who gave as his opinion:

> It can be seen that the Maori owners are given the free and unrestricted use of the lake and of their fishing rights over the lake, but this use and these rights may be subordinated by the Domain Board if it determines that the exercise of this 'free and unrestricted use' interferes with the reasonable rights of the public to use the lake as a domain.[155]

So long as Muaūpoko did indeed have an effective majority on that board, the relative rights of the public and the Māori owners would be subject to a significant degree of Māori control.

Thus, many of the remedies provided by the 1956 Act depended on the very narrow majority on the domain board being an effective one, and with the cooperation of the Crown official who served as independent chair and tie-breaker. We turn next to the question of how the Act has worked since 1956, and whether or not its remedies were effective in practice.

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151. Transcript 4.1.11, pp 563–565
152. Transcript 4.1.11, p 536
153. Transcript 4.1.11, p 765
154. Reserves and Other Lands Disposal Act 1956, s 18(5)
155. R J McIntosh, district solicitor, legal opinion, 3 April 1973 (Paul Hamer, comp, papers in support of '"A Tangled Skein": Lake Horowhenua, Muaūpoko, and the Crown, 1898–2000', various dates (doc A150(c)), p 575)

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9.3.4 Did the 1956 legislation provide a suitable platform for (a) future management of the lake and stream, and (b) protection of the Māori owners' rights and interests?

(1) *Introduction*

According to the Crown, the 1956 Act created a 'co-management regime' for the lake, which correctly balanced Māori and non-Māori interests. Crown counsel submitted that the legislation was consistent with Treaty principles and is still so today.[156] Nonetheless, the Crown accepted that the regime established by the Act 'has not always operated effectively in the past. Current and future discussions may offer real opportunities to reform the existing legislation to better reflect Crown-Māori best practice in the modern era, and in doing so give better effect to Treaty principles.'[157]

The claimants, on the other hand, argued that the regime created by the ROLD Act was 'deficient' because it subordinated the owners' rights and interests to those of the general public.[158] Philip Taueki argued that the Act in fact gave the Crown and the public total control of the domain.[159] The claimants did not accept that the regime established by the 1956 Act was consistent with Treaty principles, or that it was an effective co-management regime which protected the rights and interests of the Māori owners.

(2) *'Co-management': owners' rights vis-à-vis public rights*

(a) *Māori attendance rates and their impact on the numerical majority:* As discussed above, the recognition of Māori owners' rights under the 1956 Act often depended on the reformed domain board and Muaūpoko's ability to use their 4:3 majority to control it. The crucial problem in this respect was the failure of Muaūpoko board members to attend consistently and in sufficient numbers to make the most of their majority. Paul Hamer's analysis showed an 'overall attendance rate of 72.3 per cent' in the late 1950s. He commented: 'One can see how the nominal majority Muaūpoko enjoyed could be undone through absences.'[160]

From 1962 to 1965 there was a long-running dispute about whether the lake trustees or the Muaupoko Maori Committee should nominate members. The lake trustees represented the owners but the Muaupoko Maori Committee, elected under the Maori Welfare Act 1962,[161] claimed to represent the whole tribe. This dispute between the trustees and the committee delayed new appointments. After that, Muaūpoko members' attendance rate in the mid to late 1960s was only 50 per cent. At five out of 15 meetings, only one Māori member was present.[162] The Lands Department, which was responsible for secretarial services and the chair, asked the

156. Crown counsel, closing submissions (paper 3.3.24), pp 54–55
157. Crown counsel, closing submissions (paper 3.3.24), p 51
158. Claimant counsel (Naden, Upton, and Shankar), closing submissions (paper 3.3.23), p 280
159. Philip Taueki, closing submissions (paper 3.3.15), p [3]
160. Hamer, '"A Tangled Skein"' (doc A150), p 164
161. In 1979, this Act was retrospectively renamed the Maori Community Development Act 1962.
162. Hamer, '"A Tangled Skein"' (doc A150), pp 273–277

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lake trustees to 'try and revive the interest' of three non-attending members.[163] Paul Hamer suggested that a pattern was emerging of members alienated by 'the style of a Pākehā-oriented board', which 'in later years . . . was how some members of Muaūpoko explained the tribe's failure ever really to capitalise on its nominal board majority'.[164]

By contrast, the Māori members' attendance between 1970 and 1975 was consistently high.[165] Disagreements between the lake trustees and the Muaupoko Maori Committee, and within the tribe more generally, made the appointments process difficult. The 1956 Act stated that the Minister would appoint the Māori members 'on the recommendation of the Muaupoko Maori Tribe'.[166] This was disappointingly vague, and the Crown did not take steps to clarify the matter or negotiate an appointment process with either the lake owners or the wider tribe. For the most part, the Crown relied on the Muaupoko Maori Committee or the holding of a tribal hui, preferring not to restrict representation to the lake trustees. The lack of agreed representation rights generated significant conflict from time to time, exacerbating the level of non-attendance by Muaūpoko board members (because vacancies were sometimes of long duration).[167] As we discuss below, the Muaūpoko members and lake trustees decided to boycott the board altogether from 1982 to 1987.

In 1982, Kingi Hurinui argued that the Muaūpoko board members had simply 'not used their power': 'It's our own fault. It's not that the pakehas have taken over.' Joe Tukapua, on the other hand, told Minister Jonathan Elworthy:

> the board did not provide for the owners to exercise control. The Māori members of the board had been 'under pressure' and it was 'no good for us because of the local authorities' representation'. This was perhaps an attempt to answer the obvious question of just why the Muaūpoko representatives would walk out on a board that they would in theory control when the Muaūpoko vacancy was filled. What Tukapua seemed to be saying was that the Muaūpoko representatives could not match the local body members in that forum – that they did not assert themselves or set the agenda. Possibly, Tukapua was also explaining why the Muaūpoko majority on the board had never been properly exploited, and why the attendance of Muaūpoko board members had often been so poor.[168]

The claimants argued that the 'newly constituted Board did not live up to early promise'.[169] They blamed the Crown, which did not investigate the causes of non-attendance or help to mediate the conflict which arose between the Māori mem-

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163. Director-general of lands to Minister of Lands, 12 July 1968 (Hamer, '"A Tangled Skein"' (doc A150), p 277)

164. Hamer, '"A Tangled Skein"' (doc A150), p 278

165. Hamer, '"A Tangled Skein"' (doc A150), p 300

166. Reserves and Other Lands Disposal Act 1956, s 18(8)(a)

167. Hamer, '"A Tangled Skein"' (doc A150), pp 273–278, 300–303

168. Paul Hamer, answers to post-hearing questions from Tribunal members, December 2015 (doc A150(o)), p 7

169. Claimant counsel (Naden, Upton, and Shankar), closing submissions (paper 3.3.23), p 278

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bers and the local authority representatives. Muaūpoko, they told us, were often silenced or out-manoeuvred in a local politics milieu in which they were not used to operating.[170] On the other hand, the claimants accepted that disagreements within Muaūpoko were sometimes to blame, and that the lake trustees or the Māori representatives on the domain board did not always properly represent the wishes of the tribe.[171]

Crown counsel acknowledged that since 1956, 'there have been periods where the management regime has not functioned as intended'. The Crown, however, did not accept that it was 'directly responsible for these periods, which reflect a complex interplay of customary interests and competing personal and local aspirations and attitudes'. The Crown, we were told, could not have compelled board members to attend, nor could it interfere directly in internal board and iwi matters.[172]

We agree that the Crown was not responsible for the low attendance of Muaūpoko board members. We also accept that tensions with local authorities and other issues made it difficult for the Muaūpoko members to operate effectively in a local politics milieu. But the tribe must bear its share of responsibility for the non-attendance of its board members.

From time to time, the chair of the board and other officials tried hard to ensure that there was at least a full complement of Muaūpoko representatives, despite difficulties and disagreements within the tribe about appointments. But the chairman (and the Government more generally) took no steps to consult Muaūpoko or arrange a permanent fix for the representation problems. One crucial necessity was a properly constituted and agreed process for appointments. This must have been obvious to successive governments from at least the early 1960s. The Crown's failure to consult Muaūpoko about a new appointments process or negotiate a solution contributed to the tribe's inability to make full use of its 'nominal majority'.

The Crown, therefore, contributed to Muaūpoko's under-representation in the board's decision-making. We will next explore the extent to which the under-representation affected the balance between owners' rights and public rights.

(b) ***Birding rights:*** In 1953, the Crown and Muaūpoko agreed that the lake would be a wildlife 'sanctuary', although this was not included as a specific term of the ROLD Act 1956. The default position of the other controlling statute, the Reserves and Domains Act 1953, was that no hunting or shooting could take place without the permission of a domain board.[173] Despite this ban, there was some illegal shooting from the late 1950s on, and notices were erected 'explaining the ban on shooting'.[174] The Māori domain board members remained staunch in their opposition to any shooting, and the board attempted to get the lake (and an area extending 100 yards

170. Claimant counsel (Naden, Upton, and Shankar), closing submissions (paper 3.3.23), pp 278–279

171. Claimant counsel (Naden, Upton, and Shankar), closing submissions (paper 3.3.23), p 279

172. Crown counsel, closing submissions (paper 3.3.24), p 59

173. Hamer, '"A Tangled Skein"' (doc A150), pp 290–291. This was a reference to section 84 of the Reserves and Domains Act 1953.

174. Commissioner of Crown lands to director-general of lands, 6 April 1973 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(c)), p 571)

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from the shore) made a wildlife refuge. In 1960, the board presented a petition signed by some of the Māori owners, asking the Internal Affairs Department to create a formal wildlife refuge. This petition was rejected because it was not supported by all the owners, and the department considered that the Reserves and Domains Act provided enough protection.[175]

In 1962, the lake trustees decided to open the lake for duck shooting. This was partly to reduce the excessive numbers of mallard ducks, which had become a nuisance to farmers. The domain board held a public consultation process in 1963 to decide whether to grant permission for duck shooting, but there were a number of objections.[176] In any case, the lake trustees reversed their decision in 1963, stating that they 'do not now wish the Lake to be opened'.[177] The domain board reached the view that duck shooting would 'interfere with the reasonable rights of the public' to use the lake as a public domain.[178] As noted above, the board adopted a bylaw in 1963 which prohibited shooting in the domain without its written permission. There had been some disagreement within Muaūpoko on the matter, and the Māori members of the board were firmly in support of maintaining the lake as a sanctuary.[179] Indeed, the board's resolution that no shooting be allowed was moved by a Muaūpoko member and passed unanimously.[180]

Those of the Māori owners who wished to shoot seem to have accepted the ruling of the lake trustees and the board, as there was little further activity on this issue for a decade after the respective decisions of the lake trustees and the board in 1963.[181] In March 1973, however, Hohepa Te Pae Taueki, chair of the lake trust, advertised in the local newspaper that Muaūpoko would be shooting on the lake during the forthcoming duck shooting season.[182] The claimants described this as 'an assertion of iwi mana and rangatiratanga over the Lake'.[183] Hohepa Taueki explained to the *Evening Post*: 'A lot of Maoris have been fined for shooting there, but I can't see where it is illegal if you hold the title.' The trustees therefore advertised their intention to 'find out who objects and why'.[184]

The debate then became squarely centred on the hierarchy of rights referred to above in section 9.3.3(3). The Māori owners had the 'free and unrestricted' use of their property, the lake, *unless* this interfered with the reasonable rights of the public to use the lake and Muaupoko Park as a recreation reserve. The chair of the

175. Commissioner of Crown lands to director-general of lands, 6 April 1973 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(c)), pp 571–572)
176. Hamer, '"A Tangled Skein"' (doc A150), pp 179–180
177. Domain board secretary to secretary for internal affairs, 19 March 1963 (Hamer, '"A Tangled Skein"' (doc A150), p 180)
178. Commissioner of Crown lands to director-general of lands, 6 April 1973 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(c)), p 570)
179. Hamer, '"A Tangled Skein"' (doc A150), pp 178–181, 289–290
180. Commissioner of Crown lands to director-general of lands, 6 April 1973 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(c)), p 573)
181. Commissioner of Crown lands to director-general of lands, 6 April 1973 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(c)), p 573)
182. Hamer, '"A Tangled Skein"' (doc A150), pp 289–290
183. Claimant counsel (Naden, Upton, and Shankar), closing submissions (paper 3.3.23), p 272
184. *Evening Post*, 30 March 1973 (Hamer, '"A Tangled Skein"' (doc A150), p 289)

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domain board, W A Harwood, obtained a legal opinion on this matter.[185] The Lands Department's district solicitor advised:

> It can be seen that the Maori owners are given the free and unrestricted use of the lake and of their fishing rights over the lake, but this use and these rights may be subordinated by the Domain Board if it determines that the exercise of this 'free and unrestricted use' interferes with the reasonable rights of the public to use the lake as a domain. In other words the Domain Board may determine as a matter of policy that duck shooting will interfere with the public's rights ('rights' in the broadest sense) to use the lake as a domain (in the broadest sense once again).[186]

In any case, the domain bylaws required the board's permission to carry a firearm, erect a structure (including 'mai mais'), and shoot any bird. Also, 'dogs (eg retrievers) must be on a chain at all times whilst in the domain'. All of these requirements prevented duck shooting.[187]

Thus, the district solicitor considered (and the commissioner of Crown lands agreed) that shooting by the owners would interfere with the reasonable rights of the public. This invoked section 18(5) of the ROLD Act 1956. Harwood and his superior, Commissioner J S MacLean, proposed to prosecute anyone who defied the board's bylaw against shooting.[188] The Lands Department agreed that the board's 1963 decision to prohibit hunting had defined the 'reasonable rights of the public', with which Māori rights were not allowed to interfere. It was also noted that there had been no challenge to the board's 1963 decision, which was 'not surprising as 50% of the Board members represent the Maori owners'.[189] The Māori members of the domain board, apparently in response to a tribal hui on the matter, argued that the no-shooting rule should remain in place. The Minister of Maori Affairs, Matiu Rata, then intervened and persuaded the lake trustees to comply with the board's decision.[190] Thus, the 1956 Act allowed the board to use public rights 'in the broadest sense' to stop the owners from exercising a right like duck shooting. But there was still strong Māori support for a ban on shooting at this time, and it is not possible to say that the board imposed a ban against the tribe's wishes.

The matter was raised again in 1980, when the lake trustees asked the board's permission for shooting on the lake, exclusively for those who had fishing rights (that is, the Māori owners). The Māori board members were divided this time, with some

185. Commissioner of Crown lands to director-general of lands, 6 April 1973 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(c)), p 573); Hamer, '"A Tangled Skein"' (doc A150), pp 289–290

186. Opinion of R J McIntosh, district solicitor, Lands Department, 3 April 1973 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(c)), p 575)

187. District solicitor, 'Lake Horowhenua: Game Shooting', 3 April 1973 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(c)), pp 575–576)

188. Hamer, '"A Tangled Skein"' (doc A150), p 290; commissioner of Crown lands to director-general of lands, 6 April 1973 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(c)), pp 570–574). Assistant Commissioner Harwood, who was chairman of the domain board, signed this letter on the commissioner's behalf.

189. Opinion of R J McIntosh, district solicitor, Lands Department, 3 April 1973 (Hamer, '"A Tangled Skein"' (doc A150), p 290)

190. Hamer, '"A Tangled Skein"' (doc A150), p 291

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still opposed to any shooting. The board eventually passed a compromise resolution, refusing Muaūpoko's application for 'exclusive' shooting rights but authorising duck shooting in general. The proviso, however, was that firearms could not be carried in or across Muaupoko Park. This was deliberately framed so that only Muaūpoko owners would in fact be allowed to shoot unless the lake trustees granted access to others.[191]

As the commissioner of Crown lands explained, the lake was not a 'statutory sanctuary' and the acclimatisation society agreed that the mallard population should be 'cropped'. But the decision did not restrict shooting to Māori only because 'fishing right holders' might have 'Pakeha spouses':

> Given the special nature of its power over the lake waters the Board decided that it should not refuse to allow shooting by the Maori owners but considers that all members of the public should have the same right. There will be no firearms or shooting permitted in the environs of Muaupoko Park. As this is the only public access to the lake the Board's decision in effect means that only those who can obtain the permission of the Maori owners will be able to shoot. This could include Pakeha spouses of the fishing right holders.[192]

Also, as the mayor of Levin noted, keen Pākehā duck shooters 'complete with their dinghies, dogs and guns' could be 'air-dropped on to the Lake' by helicopter if refused access across Māori land. This was, however, 'unlikely to happen, because of cost'.[193]

Permission for access was indeed refused – Hohepa Taueki once again placed an advertisement that Muaūpoko would be shooting during duck-hunting season, and 'Non Tribal members and Europeans caught shooting on the lake or trespassing over Maori Land surrounding the lake will be prosecuted'.[194] This led to protests from Pākehā domain board members, amid accusations of racial privilege, but the Māori owners insisted on exercising their exclusive property rights in 1980 and 1981.[195]

In 1982, as discussed below, the Muaūpoko domain board members walked out of the board and demanded its dissolution, and the transfer of its authority over the lake to the trustees. Paul Hamer was not able to research the issue of shooting beyond 1981, noting that '[i]t is not clear whether the matter of duck shooting arose again during the 1980s'.[196] In any case, as part of his proposed reforms in 1983, the Minister of Lands, Jonathan Elworthy, offered to amend the 1956 Act so that no domain board bylaw would be approved by the Minister unless it had been first

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191. Hamer, '"A Tangled Skein"' (doc A150), pp 291–293
192. Commissioner of Crown lands to director-general of lands, 14 March 1980 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(c)), p 597)
193. Mayor of Levin to district commissioner of lands, 14 April 1980 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(c)), p 610)
194. *Chronicle*, 12 April 1980 (Hamer, '"A Tangled Skein"' (doc A150), p 293)
195. Hamer, '"A Tangled Skein"' (doc A150), pp 292–295
196. Hamer, '"A Tangled Skein"' (doc A150), p 295

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approved by the lake trustees. Elworthy hoped that this would empower the Māori owners and 'ensure there could be no further misunderstanding over such matters as power-boating, duck-shooting and fishing rights'.[197] In the mid-1980s, Koro Wetere also undertook to make this amendment but failed to do so (as we discuss below in sections 9.3.4(4)–(5)).

Between 1963 and 1980, therefore, the balance of public and Māori owners' rights shifted in favour of the owners on this issue, despite a very 'broad' definition of the public's rights in the first instance. Essentially, once the weight of Māori opinion shifted to support opening the lake for the owners to shoot, the board accepted this position. Promised reforms in the mid-1980s to ensure that the lake trustees would approve bylaws, and thus give them a veto over any domain board restrictions on shooting, did not eventuate.

(c) *Fishing rights:* In respect of fishing rights, the new domain board was much more aware of the need to give effect to Māori fishing rights than its predecessor had been. Two challenges arose in the late 1950s: the desire to introduce a new fish species that would prey on lake flies or their eggs, and public pressure to develop the lake for sport fishing. On the former matter, the Marine Department advised that tench should be introduced, and that the only permission necessary was that of the department and the local acclimatisation society. The board, however, resolved to obtain the 'consent of the Muaupoko Tribe'.[198] The Māori board members consulted the tribe and voted in favour of releasing tench (which failed to become established despite multiple releases).[199] At the same time, local newspapers pressed for the release of bass, which predate on eel and other native species. Locals also wanted the 'fish in the lake . . . thrown open to all'.[200] But the new board with its Māori majority decided that the Māori owners' rights must remain exclusive. In 1958, the board protested to the Wellington Acclimatisation Society that its fishing licences included a right to fish in Lake Horowhenua. The society's response was that it would not dispute 'the contention that the waters of the lake could be fished only by the Maori' because this particular lake had no worthwhile sport fishing. In 1959, the society agreed to remove Lake Horowhenua from its licences.[201]

The domain board, however, had no jurisdiction over the Hōkio Stream. In the late 1950s, disputes arose between Muaūpoko and local Pākehā over rights to fish in the stream, especially for whitebait.[202] In 1957, the Muaupoko Tribal Committee[203] 'decided to invoke the Treaty of Waitangi and close the Hokio Stream to all European

197. Minister of Lands to RJ Barrie, 8 April 1983 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(d)), p 779)

198. Domain board, minutes, 13 November 1958 (Hamer, '"A Tangled Skein"' (doc A150), p 167)

199. Hamer, '"A Tangled Skein"' (doc A150), pp 167–169

200. *Levin Weekly News*, 4 December 1958 (Hamer, '"A Tangled Skein"' (doc A150), p 168)

201. Hamer, '"A Tangled Skein"' (doc A150), pp 169–170

202. Hamer, '"A Tangled Skein"' (doc A150), pp 191–193

203. The Muaupoko Tribal Committee was the predecessor of the Muaupoko Maori Committee, operating under the earlier Maori Social and Economic Advancement Act 1945.

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fishermen.'[204] In 1959, a Levin fisheries officer reported: 'The Maoris maintain their rights extend to low water mark and other ridiculous claims and, on account of this claim, throw European nets out, block the stream and cause endless trouble.'[205] In both instances, the Government's response was that Māori had no exclusive fishing rights in the stream, and that all whitebaiters had to obey the fishing regulations. In 1961, the police became involved but the district inspector of fisheries could not clarify for the police whether Muaūpoko had exclusive fishing rights in the stream. In 1966, local fishermen again complained that they had been prevented from whitebaiting. The Government was accused of turning a blind eye to Māori violations of the Whitebait Regulations.[206] Ultimately, there was a test case prosecution in 1976, which we discuss below.

By the 1970s, the challenge to Māori fishing rights came not from public use rights in the lake, as covered by section 18(5) of the rold Act, but rather by attempts to apply New Zealand's general fishing laws and regulations to the lake and the Hōkio Stream. The result was two important prosecutions.

In 1975, Joe Tukapua, a lake trustee at that time, was tried for assaulting a fisheries officer and preventing the officer from measuring his fishing net. The charges were laid under the Fisheries Act 1908 and the Fisheries (General) Regulations 1950. The Magistrate's Court found in favour of Tukapua, essentially under the grounds that he was fishing in private waters (under section 88(d) and (e) of the Fisheries Act). The Crown appealed the decision, which was heard by Justice Cooke (later Lord Cooke) in May 1975.[207]

In an unreported decision, the Supreme Court found that the rold Act 1956 provided for the Māori owners to have 'at all times' the 'free and unrestricted' exercise of fishing rights. Subject to the rights preserved for the owners of Horowhenua 9, the Māori owners' rights were exclusive – 'the general public have no right to fish there'. The fishing rights arose because of Māori ownership of the lakebed, and had not been shared with the general public when the right was given to use the lake as a public domain.[208] The court held that these free and unrestricted fishing rights, as guaranteed by the 1956 Act, were 'special statutory rights' reserved to the Māori owners 'because of the special history of this area', and 'may be unique'.[209] Therefore, the requirements of the Fishing Act and Regulations as to 'permissible equipment, close seasons, licences and so forth' did not apply to the 'special rights of the Maori owners to fish in Lake Horowhenua and the Hokio Stream'.[210] In addition, the court

204. Hokio Progressive Association to inspector of fisheries, 18 June 1957 (Hamer, '"A Tangled Skein"' (doc A150), p 193)

205. H F Webb to secretary for marine, 20 May 1959 (Hamer, '"A Tangled Skein"' (doc A150), p 193)

206. Hamer, '"A Tangled Skein"' (doc A150), pp 193–195

207. Hamer, '"A Tangled Skein"' (doc A150), p 296

208. *Regional Fisheries Officer v Tukapua* Supreme Court Palmerston North M33/75, 13 June 1975, pp 4, 7 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(c)), pp 618, 621)

209. *Regional Fisheries Officer v Tukapua* Supreme Court Palmerston North M33/75, 13 June 1975, p 8 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(c)), p 622)

210. *Regional Fisheries Officer v Tukapua* Supreme Court Palmerston North M33/75, 13 June 1975, p 8 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(c)), p 622)

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found that 'the same result can be reached by another route', in that the lake and stream were private waters under the Fisheries Act.[211]

The second case involved another Muaūpoko fisherman, Ike Williams, who was charged in 1976 with whitebaiting in the Hōkio Stream during a closed season. This case was heard on appeal by Justice O'Regan in October 1978. The Supreme Court held that the 1956 Act did not create or grant fishing rights but rather preserved them, and section 18 of the ROLD Act 1956 preserved those rights 'without express limitation to the metes and bounds' of the land comprised in the title. The fishing rights were unique and 'might well have existed prior to the coming of the Pakeha', and had been asserted over generations until given statutory recognition. The definition of the Hōkio Stream in the statute was the 'stream flowing from the outlet of the lake . . . to the sea', and the Act provided that the Māori owners '"shall at all times . . . have their fishing rights over such stream" – that is from the outlet of the lake to the sea'. The Crown's rights to the foreshore at the outlet of the Hōkio Stream were therefore subject to the fishing rights of the Māori owners in 'that part of the stream, and where it forks, to those parts of the stream, which cross the foreshore to the sea'.[212] The sequel to this case was attempts in the 1980s to close the Hōkio Stream to whitebaiting by anyone other than the owners or those fishing by the owners' permission.[213]

It seems, therefore, that enhanced representation on the domain board and the statutory recognition afforded Māori fishing rights in 1956 served Muaūpoko well from the 1950s to the 1980s. The claimants who appeared in our inquiry were staunch defenders of their 'unique' statutory rights. But the tribe's fishing rights were strongly impacted by a critical aspect of post-1956 administration: the Manawatu Catchment Board's efforts to maintain the lake at the level of '30 feet above mean low water spring tides at Foxton Heads'. We turn to that question next.

(d) *Veto power over drainage works:* As noted earlier, section 18(10) of the ROLD Act 1956 required that 'before any works affecting the lake or the Hokio Stream are undertaken by the said [Manawatu] Catchment Board, the prior consent of the Domain Board constituted under this section shall be obtained'. This made the Māori majority on the board crucial for protecting the tribe's fishing rights and their taonga, the lake and the Hōkio Stream.

As soon as it came into existence, the new domain board faced pressure to allow further works on the Hōkio Stream to prevent flooding and hold the lake at the statutorily mandated level. The catchment board and some Hōkio residents had been waiting for a political settlement and the revival of the board. The Māori domain board members supported stabilisation of the lake at 30 feet, but insisted that Māori eel weirs must be protected and the stream kept viable for eeling.[214] It

211. *Regional Fisheries Officer v Tukapua* Supreme Court Palmerston North M33/75, 13 June 1975, pp 8–11 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(c)), pp 622–625)

212. *Regional Fisheries Officer v Williams* Supreme Court Palmerston North M116/78, 12 December 1978 (Hamer, '"A Tangled Skein"' (doc A150), pp 298–300)

213. Hamer, '"A Tangled Skein"' (doc A150), p 300

214. Hamer, '"A Tangled Skein"' (doc A150), pp 181–185

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had been one of the terms of the 1953 agreement that the Māori owners would be 'willing to agree to the construction of a suitable spillway or weir so that there will be no interference with the fishing either in the stream or in the lake'.[215]

It is clear from the claimants' evidence in our inquiry that the eel fishery had gradually recovered after the drastic impacts of works in the 1920s. Moana Kupa, who spoke of life with her Horowhenua whanaunga between 1949 and 1952, described the abundant food taken from the lake and the Hōkio Stream.[216] One of her

> favourite memories was camping with my Nannies out near the Lake. We would go camping in a tent for about three weeks when the eels were running and we used two hinaki to catch eels during the run. The hinaki was made out of wire but some of the older people made them from harakeke. In the morning we would wake up and pawhera the eels.[217]

Kaumātua Henry Williams, who grew up at the lake in the 1940s, remembered that eels were so plentiful they could be speared around the edge of the lake, and were caught by their hundreds during the eel runs.[218] Henry Williams' older sister, Carol Murray, told us that

> When the eels ran in March there were so many eels you could literally hear them. There were thousands of eels. They would leap out of the water. Today you don't see anything like that.
>
> We would catch the eels using two hinaki. They were about a meter long a meter wide and a meter deep. One would be in the water and when it filled up we would pull it out of the water and drop the other one in.
>
> The run would last for around four weeks. At the end of the run there was a second run called the tunaheke where big eels would come down the stream. The big eels would get stranded on the beach and you could gather them from there.
>
> After we caught the eels we would pawhara them. This is a process of drying the eels. Our kuia taught us how to do that too. After they were ready we would send the eels everywhere in New Zealand. We always made sure our family in Paki Paki received their share.[219]

As well as eels there were pātiki (flounders), mullet, kōura (freshwater crayfish), and kākahi (freshwater mussels).[220] The shellfish beds had been significantly damaged when the lake was drastically lowered in the 1920s. It is not clear how far the shellfish had recovered by the 1950s. Carol Murray, who grew up at the lake in the 1930s and 1940s, recalled:

215. NF Simpson to commissioner of Crown lands, 9 July 1953 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(c)), pp 402–403)
216. Moana Kupa, brief of evidence, 11 November 2015 (doc C7), pp 2–4; transcript 4.1.12, pp 696–702
217. Kupa, brief of evidence (doc C7), p 4
218. Henry Williams, brief of evidence, 11 November 2015 (doc C11), pp 4–5
219. Carol Murray, brief of evidence, 11 November 2015 (doc C4), p 2; transcript 4.1.6, p 34
220. William James Taueki, brief of evidence, 11 November 2015 (doc C10), p 31

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> I used to love eating kakahi soup. We would gather the kakahi, pick some watercress and put it in a pot with milk, it was my favourite.
>
> As Muaupoko we were brought up on eels, toheroa and the kakahi but now we can't eat them because of paruparu in the lake and restrictions of the toheroa at the beach.[221]

A crucial aspect of some fish species in the lake, however, was that they were 'diadromus and have an essential part of their life cycle in the sea'.[222] These species included flounder, grey mullet, smelt, and whitebait. Their ability to travel up the Hōkio Stream to the lake was drastically interrupted in 1966 when the Manawatu Catchment Board constructed a concrete weir to control the level of the lake. This was one of the most crucial and damaging actions in respect of the Māori owners' fisheries.[223] A National Institute of Water and Atmospheric Research (NIWA) study concluded in May 2011 that 'After water quality, the single most important factor affecting the fishery in Lake Horowhenua is the weir on the Hokio Stream.'[224]

Before constructing the weir, the catchment board had to obtain the agreement of the domain board. As part of initial discussions in the late 1950s, the catchment board advised that a 'fish ladder' would be included on the weir to assist migrating fish.[225] It would also be necessary to remove some eel weirs, which the owners approved on the condition that the catchment board would replace them with modern, concrete weirs. The board submitted its plans for these weirs and the outlet weir to the Marine Department for inspection, noting that its experience with fish ladders was 'nil'.[226] The department advised that the design of the weir itself should have no 'projecting lip on the downstream side',[227] and should 'allow for only a small amount of water to flow over the weir at any time'. Elvers could climb a damp wall but not a 'rapid stream of water'.[228]

It seemed that a fish pass for elvers would not be necessary if the department's design suggestions were followed, but the final decision (according to the Fish Pass Regulations 1947) rested with the Minister of Marine.[229] Regulation 6 stated that 'any person desiring to construct a dam or weir should forward duplicate plans of

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221. Murray, brief of evidence (doc C4), p 3

222. National Institute of Water and Atmospheric Research (NIWA), 'Lake Horowhenua Review: Assessment of Opportunities to Address Water Quality Issues in Lake Horowhenua', June 2011, p 60 (Jonathan Procter, comp, papers in support of brief of evidence, various dates (doc C22(b)(iii)))

223. NIWA, 'Lake Horowhenua Review: Assessment of Opportunities to Address Water Quality Issues in Lake Horowhenua', June 2011, pp 59–60; NIWA, 'Lake Horowhenua Review: Assessment of Opportunities to Address Water Quality Issues in Lake Horowhenua, Prepared for Horizons Regional Council', May 2011, p 10 (Procter, papers in support of brief of evidence (doc C22(b)(iii))); Hamer, '"A Tangled Skein"' (doc A150), p 189

224. NIWA, 'Lake Horowhenua Review', May 2011, p 10 (Procter, papers in support of brief of evidence (doc C22(b)(iii)))

225. Hamer, '"A Tangled Skein"' (doc A150), pp 185–186

226. Chief engineer, Manawatu Catchment Board, to secretary, Marine Department, 2 December 1958 (Hamer, '"A Tangled Skein"' (doc A150), pp 186–187)

227. Secretary, Marine Department, to chief engineer, Manawatu Catchment Board, 9 December 1958 (Hamer, '"A Tangled Skein"' (doc A150), p 187)

228. Hamer, '"A Tangled Skein"' (doc A150), p 187

229. Hamer, '"A Tangled Skein"' (doc A150), p 187

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the proposed weir to enable the Minister of Marine to determine whether a fish pass is required.'[230]

The lake trustees were not happy with the design of the proposed weir. Joe Tukapua, the trustees' secretary, wrote to the board in February 1966 that 'the flood gates of Hokio Stream must be built, to preserve fish life. Fish won't be able to come back up stream over the flood gates back into the lake. The type of fish we have in the lake are Eels, Carp, flounder, whitebait, fresh water Crayfish.'[231] The catchment board replied that it was 'aware of the necessity to preserve fishlife in the Hokio Stream and Lake Horowhenua.'[232] But the board was unsure of what to do. It appealed to the Marine Department, advising that the lake trustees were 'concerned that the weir would not allow the full range of fish species to pass'. It asked the department if it would need to make any changes to its design.[233]

We underline this point because the decision was essentially that of the Crown, under the Fish Pass Regulations cited above. The catchment board made the department fully aware of the existence of the Māori interest:

> The question has, however, been raised by the Horowhenua Lake Trustees that the weir be such as will preserve fish life and enable fish to come upstream over the weir and back into the Lake. The types of fish are stated to be eels, carp, flounder, whitebait and fresh water crayfish. The Board has asked me to obtain your assurance that the proposed weir will be satisfactory and if there are any suggested modifications or the necessity to install a fish ladder would you please let me know as soon as possible.[234]

As far as we can tell from the record, the Marine Department made no inquiries of the Maori Affairs Department or of the lake trustees as to the significance of the fishing interests or the nature of any Māori fishing rights.[235] Rather, the secretary for marine reminded the catchment board that the only species previously mentioned had been eels, on the basis of which the department's earlier advice had been given. The design of the weir did indeed present 'an insurmountable obstacle' for all of the species identified by the lake trustees except for elvers.[236] The secretary's response is worth quoting in full:

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230. Secretary for marine to chief engineer, Manawatu Catchment Board, 23 February 1959 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(g)), p 1669)

231. Joe Tukapua to secretary, Manawatu Catchment Board, 2 February 1966 (Hamer, '"A Tangled Skein"' (doc A150), p 189)

232. Secretary, Manawatu Catchment Board, to secretary, Horowhenua Lake Trustees, 18 February 1966 (Hamer, '"A Tangled Skein"' (doc A150), p 189)

233. Hamer, '"A Tangled Skein"' (doc A150), p 190

234. Secretary, Manawatu Catchment Board, to secretary for marine, 18 February 1966 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(g)), p 1670)

235. Secretary for marine to chief engineer, Manawatu Catchment Board, 23 February 1959; secretary, Manawatu Catchment Board, to secretary for marine, 18 February 1966; secretary for marine to secretary, Manawatu Catchment Board, 8 May 1966 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(g)), pp 1669–1670, 1673)

236. Hamer, '"A Tangled Skein"' (doc A150), p 190

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> I note that in the earlier correspondence the only species of fish mentioned was eels or elvers.
>
> It is considered that the Weir at Lake Horowhenua would effectively block ingress to the lake for all the species of fish listed in the letter except elvers. Although a fish pass could be constructed it is doubtful whether flounders would or could use it and the same would apply to whitebait as to whether they could get over the pass itself would depend on current flow and height of steps. The stocks of carp and freshwater crayfish are probably self supporting within the Lake itself and there would be no need to worry about ingress of these species.[237]

Crucially, therefore, the Marine Department did not withhold its consent to the proposed design or insist on the construction of a fish pass. Nor did it institute any inquiries or conduct any research as to how flounders and other species might be enabled to continue migrating to and from the lake.

Having received the department's response, the catchment board decided to proceed as planned. No action, it resolved, would be taken 'to allow other fish to pass up the stream until the effects are full[y] known'.[238] As Paul Hamer commented, it does not appear that action ever followed to 'address the barrier to the ingress of certain native fish species into the lake'.[239] Evidence from NIWA suggested that flounders, grey mullet, whitebait, and other important species were significantly affected.[240] William Taueki told us: 'Our people also fished for mullet and patiki. I have not seen or been able to catch a mullet in the Lake or in any of the rivers in my time. I once caught a patiki in the Lake but this was only once.'[241] The Crown thus approved a concrete weir in 1966 which the Marine Department knew would have a harmful effect on Muaūpoko fishing rights. The domain board had already given its consent back in 1958, agreeing to the catchment board's proposal *on the basis that a fish pass would be included*, and the affected Māori owners' consent acquired to the removal and rebuilding of their eel weirs. In 1992, the regional council was reminded that 'a fish ladder had been a condition of the weir's original construction, and "if one was not present now, then it should be provided"'. The regional council's view was that it 'was not responsible for the provision of fish ladders'.[242] Mr Hamer commented: 'This response rather overlooked the fact that the Manawatu Catchment Board had assumed responsibility for the construction of a fish ladder in the 1960s.'[243]

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237. Secretary for marine to secretary, Manawatu Catchment Board, 8 March 1966 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(g)), p 1673)

238. Manawatu Catchment Board, Works and Machinery Committee, extract of report confirmed at board meeting on 19 April 1966 (Hamer, '"A Tangled Skein"' (doc A150), p 190)

239. Hamer, '"A Tangled Skein"' (doc A150), p 190

240. Jonathan Procter, brief of evidence, 12 November 2015 (doc C22), p 18; NIWA, 'Lake Horowhenua Review: Assessment of Opportunities to Address Water Quality Issues in Lake Horowhenua', June 2011, pp 59–60 (Procter, papers in support of brief of evidence (doc C22(b)(iii)))

241. William Taueki, brief of evidence (doc C10), p 48

242. Minutes of Lake Domain Board meeting, 16 November 1992 (Hamer, '"A Tangled Skein"' (doc A150), p 392)

243. Hamer, '"A Tangled Skein"' (doc A150), p 392

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By 1968, another effect of the construction of the weir had become apparent. The low lake level was making the lake much warmer than usual in summer, and this resulted in 'many of the fish dying through not being able to cope with these extreme conditions'.[244] The domain board asked the catchment board if the lake could be raised regularly during summer, to keep it cooler and also to help stop the spread of weed.[245] The problem was exacerbated because the weir acted as a 'sediment trap' as well as a 'fish barrier'.[246] The claimants explained that 'the Lake used to be able to cleanse itself through its natural inlets and outlets. The weir installed by the Hokio Stream means that Lake water cannot properly flow through its natural outlets, and so it is basically stagnant.'[247]

By 1981, the control weir and parts of the Hōkio Stream were in need of clearance, but the catchment board once again had to obtain the consent of the domain board before carrying out any works. The catchment board's chair considered it 'B . . . ridiculous' that it had to get the agreement of a domain board.[248] The lake trustees, for their part, were concerned about the catchment board's plans and sought an injunction in the High Court to prevent the work from proceeding.[249] By 1982, the lake trustees were demanding significant reform of the 1956 Act, including a law change to 'make the Manawatu Catchment Board's right of access to the lake and Hokio stream subject to obtaining our approval first'.[250]

We address this demand for reform in section 9.3.4(4). Here, we note that the domain board's veto power under section 18(10) had not sufficed to prevent the most significant and damaging action of the catchment board: the construction of a concrete weir which blocked the migration of prized fish species.

The Crown was directly involved in the catchment board's action by its approval of the weir's design, despite its knowledge that the weir would block the migration of fish species (which had been raised by the Māori owners). We accept the Crown's submission that the Manawatu Catchment Board was not 'the Crown' or a Crown agent, but we do not accept that the Crown's only responsibility, therefore, was the legislative scheme under which the board operated.[251] The Marine Department had a direct and crucial role under the Fish Pass Regulations, which it failed to discharge in a manner consistent with the active protection of Māori fishing rights – a point to which we return when we make our findings below. Māori were clearly prejudiced by the control weir's impact on their fisheries. Further, the weir played a significant part in the environmental degradation of the lake, which we discuss in the next chapter.

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244. Secretary, Horowhenua Lake Domain Board, to secretary, Manawatu Catchment Board, 23 May 1968 (Hamer, '"A Tangled Skein"' (doc A150), pp 304–305)
245. Hamer, '"A Tangled Skein"' (doc A150), pp 304–305
246. Procter, brief of evidence (doc C22), p 8
247. Claimant counsel (Naden, Upton, and Shankar), closing submissions (paper 3.3.23), p 283
248. Chairman to chief executive officer, Manawatu Catchment Board, 9 September 1981 (Hamer, '"A Tangled Skein"' (doc A150), p 316)
249. Hamer, '"A Tangled Skein"' (doc A150), pp 317–318
250. Horowhenua Lake Trustees to Minister of Lands, 16 February 1982 (Hamer, '"A Tangled Skein"' (doc A150), p 318)
251. Crown counsel, closing submissions (paper 3.3.24), pp 79–82

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(e) ***Non-motorised boating and the boating club lease:*** According to Paul Hamer, Muaūpoko were 'generally very accommodating towards Pākehā groups wanting to use the lake for (non-motorised) boating'.[252] The tribe and the domain board had agreed to a development plan for the lake by 1958, which was presented to Prime Minister Nash for his support at Kawiu Pā (as discussed above). The plan included proposed facilities for both yachting and rowing.[253] In 1959, the domain board and the boating club had reached agreement that it would lease part of the domain for boatsheds and launching boats. The catchment board's plan to lower the lake to 30 feet, however, would require the boating club to use part of the lakebed itself. In 1960, the commissioner of Crown lands (who chaired the board) proposed that the Crown would lease the required area from the Māori owners, to which the director-general agreed.[254]

The Crown negotiated a lease with the lake trustees in 1961. At that time, new trustees had just been appointed by the Maori Land Court – without the beneficial owners' knowledge, as it later turned out – and the trustees agreed to a lease in perpetuity for a token rent of £1 per annum. The lease covered an area of 32 perches of lakebed, dewatered area, and chain strip. It was duly approved by the Minister of Lands and Board of Maori Affairs.[255]

In the 1980s, the lake trustees were very critical of this lease. Apart from irregularities with the appointment of the trustees who agreed to it, the Maori Affairs Act in force at the time did not actually allow perpetual leases of Māori land. Further, the lease had been for the specific purpose of building a boatshed over the lake, whereas the building had been constructed 'well away from the lake'.[256]

In our hearings, claimant Philip Taueki was especially critical of this arrangement. He was critical that no conditions were attached by the domain board to the club's use of the land, and argued that the rent had never been paid. Further, Mr Taueki argued that the lease (licence) had expired in 2003 and the club had been in illegal occupation of Māori land.[257] We note that the lease to the Crown was in perpetuity, but that the domain board (which controls that piece of leased land) issued an occupation licence to the boating club which expired in 2003.[258]

The Treaty of Waitangi Act 1975 (section 7) states, among other things, that the Tribunal may in its discretion decide not to inquire into (or further inquire into) a claim if, in the Tribunal's opinion, there is an adequate remedy or right of appeal which it would be reasonable for the person alleged to be aggrieved to exercise. The question of the licence, the expiry, and the current status of the leased land has been before the Maori Land Court and is a matter for which there are legal

252. Hamer, '"A Tangled Skein"' (doc A150), p 172
253. Hamer, '"A Tangled Skein"' (doc A150), pp 159–162
254. Hamer, '"A Tangled Skein"' (doc A150), pp 173–174
255. Hamer, '"A Tangled Skein"' (doc A150), pp 173–175
256. Hamer, '"A Tangled Skein"' (doc A150), pp 174–176
257. Transcript 4.1.11, pp 181–182
258. Māori Land Court, oral judgment of Judge LR Harvey, 18 December 2012, paras 11(7)–11(8) (Philip Taueki, papers in support of brief of evidence (doc B1(b)), p [7])

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remedies available.[259] For that reason, we do not consider the current situation of the boating club building as a Treaty issue. For our inquiry, what matters is whether the original negotiation of a lease with the Crown in 1961 was consistent with the principles of the Treaty of Waitangi.

The 1958 development plan had intended to allocate the rowing club part of the northern end of the domain (Muaupoko Park) for its facilities.[260] Although there had been a rowing club in earlier decades, it seems to have gone out of existence – a Levin rowing club was not formed until 1964, some time after which it obtained land for its use on the lake shore.[261] It appears that the rowing club's building was erected soon after. According to the evidence of Philip and Vivienne Taueki, the rowing club building was constructed on Māori land and not the Crown's domain land (Muaupoko Park), and the domain board issued a licence which expired in 2007.[262] Unfortunately, Paul Hamer was not able to research 'the arrangements made with the rowing club for its lease and construction of its clubhouse'.[263] Mr Hamer referred to some files which had not been researched, but was not able to provide further assistance.[264] In the absence of evidence, we are not able to discuss the historical arrangements for the rowing club building any further. The matter of whether there is an historical Treaty breach cannot be dealt with at this stage of our inquiry. Again, the current situation with this land and building has been before the courts, and there are legal remedies available.

The Tribunal is, however, able to deal with the 1961 lease to the Crown (involving the boating club building), and whether this lease was entered into in a manner consistent with Treaty principles.

The available evidence suggests that the lake trustees operated on a good faith understanding that the Crown would act in partnership with them and the domain board to carry out the 1958 development plan. As well as facilities for boating and rowing, the plan involved the construction of other facilities at Muaupoko Park and the lake to develop a pleasure resort for locals and tourists. The late 1950s and early 1960s was a period of some optimism for Muaūpoko, having achieved significant results with the 1956 Act and – it was believed – Crown commitment to the development plan. It was in those circumstances that the lake trustees agreed to a lease in perpetuity of Māori land for boating purposes as part of giving effect to the plan. It soon transpired, however, that the Crown had no intention of devoting significant funds after an initial payment of £2,000. Further, the Government attempted to extricate itself from any involvement in the domain, as we discuss in section 9.3.4(3). By the 1980s, the Māori owners were faced with multiple challenges to their authority and their kaitiakitanga of their taonga, the lake and its fisheries. There

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259. See, for example, Māori Land Court, oral judgment of Judge LR Harvey, 18 December 2012 (Philip Taueki, papers in support of brief of evidence (doc B1(b))).

260. Hamer, '"A Tangled Skein"' (doc A150), p173

261. Hamer, '"A Tangled Skein"' (doc A150), p176

262. Transcript 4.1.11, pp182, 185 (Philip Taueki), 268 (Vivienne Taueki)

263. Paul Hamer, answers to questions of clarification, September 2015 (doc A150(j)), p3

264. Hamer, answers to questions of clarification (doc A150(j)), p3

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was growing discontent with what seemed by then to have been a sham, which left the lake trustees bound by a perpetual lease for a token rent.

This was a situation which the Maori Affairs Act 1953 was supposed to have prevented. Under section 235 of that Act, no lease of Māori land could be for a period longer than 50 years, *unless 'expressly provided in any [other] Act'* (emphasis added). Section 18 of the ROLD Act 1956 certainly did not alter this protective measure by authorising perpetual leases for peppercorn rents. The Crown leased the land, however, under section 15 of the Reserves and Domains Act 1953.[265] This section related to any private land (or right of way over private land) which the Minister considered should be acquired for a public reserve or the 'improvement or extension' of an existing reserve. The definition of 'private land' included Māori land.[266] Section 15(1)(a) empowered the Minister to acquire any such land by purchase or lease, entering into 'any contract he thinks fit'. The Minister could also take land under the Public Works Act for this purpose, but the consent of the Minister of Maori Affairs was required before any Māori land could be taken (section 15(1)(b)).

The Government also deliberately avoided the step of obtaining Maori Land Court confirmation of the lease, again bypassing a protective measure in the Maori Affairs Act 1953. Instead, the Government got the lease approved by the Board of Maori Affairs and registered directly by the district registrar without going through the court.[267] The chief surveyor reported:

> Part Horowhenua 11 Block is held in trust for the Muaupoko Tribe by 14 trustees. As some of the original trustees are deceased it was first necessary to arrange a new trustee order. This has now been completed. It is desired to arrange the lease so that it may be signed by all the trustees and registered with the District Land Registrar without a further approach to the Maori Land Court. This will permit a lease in perpetuity in terms of the Maori Affairs Act 1953, which the District Land Registrar has agreed to register.
>
> The negotiations have been based on a peppercorn rental of say £1 per annum being paid which the Domain Board has guaranteed to meet.[268]

The Board of Maori Affairs, which was made up of the Minister, five heads of Government departments, and three people appointed by the Governor,[269] approved the offer of a lease in perpetuity and peppercorn rental in April 1961.[270] The Maori Affairs Department also agreed to Lands and Survey dealing directly with the

265. Commissioner of Crown lands to director-general of lands, 12 May 1960 (Hamer, supporting papers to '"A Tangled Skein"' (doc A150(c)), p 475)
266. Reserves and Domains Act 1953, s 2
267. B Briffault for chief surveyor to director-general of lands, 9 February 1961 (Hamer, supporting papers to '"A Tangled Skein"' (doc A150(c)), p 478)
268. B Briffault for chief surveyor to director-general of lands, 9 February 1961 (Hamer, supporting papers to '"A Tangled Skein"' (doc A150(c)), p 478)
269. Maori Affairs Act 1953, s 6
270. Secretary for Maori Affairs to director-general of lands, 24 April 1961 (Hamer, supporting papers to '"A Tangled Skein"' (doc A150(c)), p 480)

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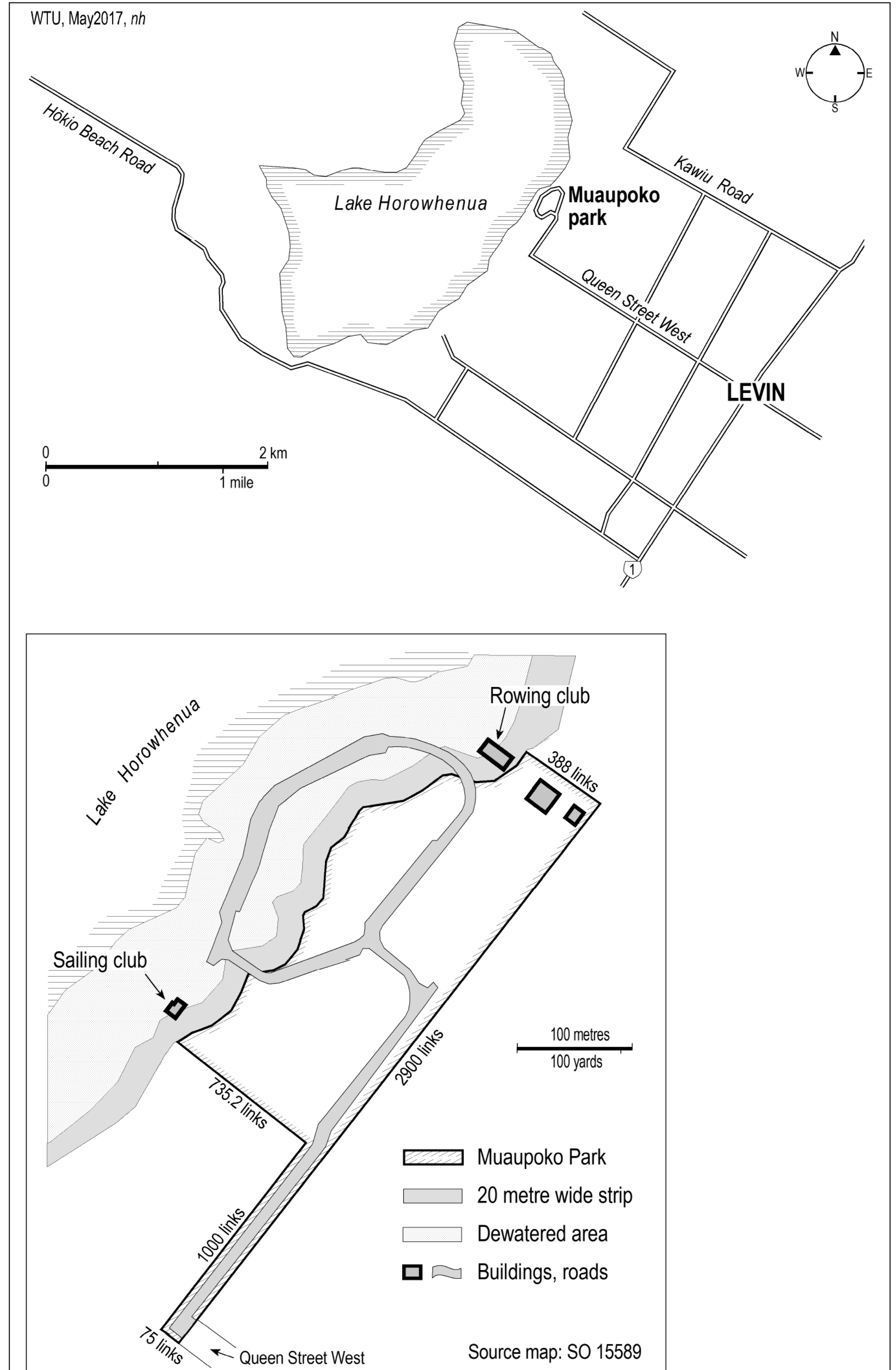

Map 9.1: Location of Muaupoko Park and of the boating and rowing club buildings

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14 trustees. By 9 June 1961, B Briffault of the Lands and Survey Department had arranged 'a lease for 999 years at a rental of £1 p.a.', to be 'signed by all 14 owners'.[271]

Paul Hamer described the sequel to these events in response to questions from unrepresented claimant Philip Taueki:

> In the mid-1980s, . . . Crown officials accepted that a perpetual lease had been permitted by neither the Trustee Act 1956 nor the Maori Affairs Act 1953. Nor had the lease ever been registered against the land's title, and the specific purpose of the lease had been contradicted by the position in which the clubhouse was actually built.
>
> In other words, the authority for the construction of the boating club building came from various quarters, including Muaūpoko and the Crown. However, the irregularities in the lease and building's position meant that the entire arrangement was flawed.[272]

These flaws became clear in the 1980s, after the Muaūpoko walk-out from the domain board (discussed below), when the lake trustees sought redress of a number of grievances from the Crown. Included in these grievances was the perpetual lease.[273] The complaint was that the lease had been signed by the lake trustees 'in ignorance'. The boating club had not 'built over the lakebed as proposed but instead on the dewatered area, and "the lease of maori [*sic*] land was a safety measure for the organisation to walk on the lake bed"'. The lake trustees argued that, since the land had not been used for the intended purpose, 'the Crown has a duty to return the land to the owners'.[274] For the next few years, officials considered that a lease of the whole lakebed would solve this problem as well as others, but it never eventuated.[275]

(f) *Speedboats:* The issue of speedboats proved to be extremely divisive. As will be recalled, an absolute ban on speedboats had been part of the Crown–Māori agreement of 1953. After discussions with the borough council, however, the Crown had agreed to leave the issue to the new domain board to decide. The board adopted bylaws in 1957 which included a blanket prohibition of speedboats. Regattas, other sporting events, and the use of other kinds of motor boats could be approved by the board on a case-by-case basis. The bylaws were notified for public submissions and no objections were received.[276] At the time, Muaūpoko opposition to speedboats was based on the effects which the boats might have on eels. As Wiki Hanita told the *Chronicle* in 1957, 'we still depend on the lake for eels, our natural food'.[277]

The tribe was united in opposition to speedboats in the late 1950s.[278] The local council and some sporting interests exerted minor pressure in the 1960s and 1970s,

271. Minute, 9 June 1961, on secretary for Maori Affairs to director-general of lands, 24 April 1961 (Hamer, supporting papers to '"A Tangled Skein"' (doc A150(c)), p 480)
272. Hamer, answers to questions of clarification (doc A150(j)), p 3
273. Hamer, '"A Tangled Skein"' (doc A150), pp 345–350
274. Ada Tatana to Minister of Lands, 19 December 1985 (Hamer, '"A Tangled Skein"' (doc A150), p 346)
275. Hamer, '"A Tangled Skein"' (doc A150), pp 346–350
276. Hamer, '"A Tangled Skein"' (doc A150), pp 170–172
277. *Chronicle*, 29 January 1957 (Hamer, '"A Tangled Skein"' (doc A150), p 171)
278. Hamer, '"A Tangled Skein"' (doc A150), pp 170–172

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but the Muaūpoko majority on the domain board prevented any change of policy.[279] By 1980, however, the lake trustees had changed their mind, so long as any speedboat racing did not interfere with eel migration. In August 1980, the New Zealand Power Boat Association applied to the domain board to hold a regatta, and the Māori members agreed so long as the lake trustees approved. The trustees asked for speedboat trials to test the impact on eels. The outcome was 'apparently positive' and the trustees gave permission in writing in March 1981.[280] This decision split the Muaūpoko tribe. When the domain board notified its intention to change the bylaws, the Muaupoko Maori Committee objected. The board heard submissions in August 1981.[281] Joe Tukapua, now a board member, reminded his colleagues that the lake was sacred, and that 'each move to widen the use of the lake was pushing the Maori people further out of their heritage'.[282]

The Māori board members were now divided so the board's neutral chair, Wayne Devine, met with the lake trustees to try to resolve the matter. The trustees confirmed their support in writing. The board then dismissed the formal objections and unanimously approved the amended bylaw on the basis that the trustees would have a veto power over every application to race speedboats on the lake.[283] Bylaws had to be confirmed by the Minister of Lands, Venn Young. He had not yet approved the amendment when a petition was received from 184 members of Muaūpoko. The petitioners disagreed with the trustees' decision, and were concerned about the impact on their fishing rights. They were also worried that the veto process might put undue pressure on the lake trustees to make compromises.[284] 'We believe', they said,

> that the continuing goodwill of the Muaupoko Tribe toward the Levin Community has been demonstrated in our past gifts. We do not believe the Levin Community would expect a gift which would jeopardise our ancestral rights and our ancestral fishing grounds.[285]

The Minister's response was not to meet with the tribe but rather with the member for Horowhenua (Geoff Thompson), the mayor of Levin, Levin's town clerk, and the domain board chair. As a result of that meeting in October 1981, the Minister approved the amendment on the proviso that speedboats could not be used more than eight days a year, and each occasion required the specific consent of the lake trustees.[286] As Paul Hamer pointed out, this decision was made on the advice of 'a

279. Hamer, '"A Tangled Skein"' (doc A150), pp 309–310
280. Hamer, '"A Tangled Skein"' (doc A150), p 310
281. Hamer, '"A Tangled Skein"' (doc A150), pp 310–316
282. *Chronicle*, 21 August 1981 (Hamer, '"A Tangled Skein"' (doc A150), p 311)
283. Hamer, '"A Tangled Skein"' (doc A150), pp 311–312; director-general of lands to Minister of Lands, undated [ca 13 October 1981] (Paul Hamer, comp, papers in support of '"A Tangled Skein": Lake Horowhenua, Muaūpoko, and the Crown, 1898–2000', various dates (doc A150(d)), p 645)
284. Hamer, '"A Tangled Skein"' (doc A150), pp 312–313
285. Petition, not dated [ca October 1981] (Hamer, '"A Tangled Skein"' (doc A150), p 313)
286. Hamer, '"A Tangled Skein"' (doc A150), pp 314–315

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group of vested local interests representing one side of the argument only', and no advice was sought from Maori Affairs or Muaūpoko themselves.[287]

The first speedboat regatta was duly held in January 1982. Hapeta Taueki warned the *Chronicle* that there would be resistance.[288] In his diary, made available to the Tribunal by his whānau, Hapeta Taueki recorded that speedboats must not be allowed to disturb the tranquility of Muaūpoko's sacred lake. He appealed to the protection promised in the Treaty of Waitangi, and viewed speedboating as desecration of an ancestral taonga.[289] As foreshadowed, the regatta was marked by protests. The protestors – seven young Muaūpoko people – were arrested. Joe Tukapua led a silent protest outside the court when their case was heard on 13 January 1982. There was a growing view, he explained, that Muaūpoko would have to 'take over the domain board if necessary' to protect their lake.[290] The degree of control that could be 'delivered by a simple majority of board members' was no longer enough.[291]

The ability of Muaūpoko to use their 4:3 majority on the board depended on (a) unanimity among all four Māori members on crucial issues (b) the regular attendance of all four Māori members so that they could vote en bloc, and (c) the development of experience in local body politics and political forums. Problems on all three fronts had significantly reduced the effectiveness of the 1956 'co-management' regime for Muaūpoko. The independence of the chair was supposed to be a further mechanism to ensure that the local bodies did not take control. By the beginning of the 1980s, however, Muaūpoko were seriously concerned that the 1956 arrangements did not serve their interests or enable them to protect their lake and stream. We have already seen that the Manawatu Catchment Board's proposed new works in 1981 and the domain board's agreement to speedboats had caused grave concerns within the tribe. Underlying those concerns was the growing realisation that their lake was becoming seriously polluted and its fisheries were compromised (see chapter 10). The result was a significant movement among Muaūpoko to reform the 1956 arrangements or get rid of them altogether.

(3) *Demands for significant reform or an end to the 1956 arrangements: the Crown and local bodies*

The first attempt to undo the 1953 agreement and the 1956 Act came from the Crown and local bodies. The ink was barely dry on the 1958 declaration and development plan before the Lands Department was trying to extricate itself from the domain board. In 1966, senior officials went so far as to propose that the borough council should take over the domain, 'with of course the consent of the County and the Maori people'.[292] The assistant director-general noted: 'I said that there might be something in the legislation hindering the department from getting out but this

287. Hamer, '"A Tangled Skein"' (doc A150), p 315
288. Hamer, '"A Tangled Skein"' (doc A150), p 315
289. Jack Hapeta Taueki, diary, 1981 (doc C24), pp 7–10
290. *Chronicle*, 14 January 1982 (Hamer, '"A Tangled Skein"' (doc A150), p 316)
291. Hamer, '"A Tangled Skein"' (doc A150), pp 315–316
292. Assistant director-general of lands, file note, 6 May 1966 (Hamer, '"A Tangled Skein"' (doc A150), p 279)

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would be looked at.'[293] The director-general instructed the commissioner of Crown lands, ex officio chair of the board, to 'sell the idea' of 'control by the local body' to 'all concerned'.[294] In the Government's view, management of the domain required local funds and local control. The upkeep of Muaupoko Park was a particular concern. In 1967, the Government developed a proposed solution: the borough and county councils could lease the domain from the Māori owners, while the domain board remained in titular control. In 1968, the two councils accepted this proposal but on terms which would never be acceptable to Muaūpoko. They wanted to assume most of the authority of the board, they wanted agreement to speedboats and dredging, and they sought a Crown grant for capital works.[295] Officials rightly observed that 'the local bodies are obviously trying to obtain the powers of the Domain Board without the Maori's participation'.[296] Nonetheless, the head of the Lands Department asked his Minister to agree to legislation authorising the lease. The legislation would provide for the councils to lease the domain, carry out day-to-day administration, and fund its development and maintenance. The Lands Department actually preferred to transfer the whole of the domain board's powers to the local bodies but knew that this would never be approved by Muaūpoko.[297]

The Minister agreed to the proposed legislation and lease, subject to the tribe's consent. The issue was referred to the domain board in October 1968. The Māori members doubted that the tribe would agree to the proposed lease, especially in light of their fishing rights and the proposals for speedboats and dredging. It was recorded that all the board members themselves were happy with the proposals and would take them back to the people for discussion. It later emerged that the Māori domain board members were not pleased at all.[298] Paul Hamer suggested that this was one of several instances where Muaūpoko participation in the board was hampered because the Māori members 'did not feel sufficiently comfortable to assert themselves forcefully in that environment'.[299] In any case, Muaūpoko opposition to the proposals found a powerful ally in Whetū Tirikatene-Sullivan, their member of Parliament. Mrs Tirikatene-Sullivan attended the large hui in November 1968 to discuss the lease proposal. She wrote to the Minister, Duncan MacIntyre, that the tribe was unanimously opposed (including its four domain board members) to the entirety of the proposals. She also pointed out that Muaūpoko had given up the opportunity to develop their property, the lake, as a commercial resort. Their contribution to the partnership was thus enormous, and no contributions to administration

293. Assistant director-general of lands, file note, 6 May 1966 (Hamer, '"A Tangled Skein"' (doc A150), p 279)
294. Director-general of lands to the commissioner of Crown lands, 11 May 1966 (Hamer, '"A Tangled Skein"' (doc A150), p 280)
295. Hamer, '"A Tangled Skein"' (doc A150), pp 280–282
296. Johnston, reserves, to assistant director, National Parks and Reserves, 2 May 1968 (Hamer, '"A Tangled Skein"' (doc A150), p 282)
297. Hamer, '"A Tangled Skein"' (doc A150), pp 282–283
298. Hamer, '"A Tangled Skein"' (doc A150), pp 282–285
299. Hamer, '"A Tangled Skein"' (doc A150), p 285

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or upkeep by the councils could match it. The tribe was also anxious to protect their fishing rights, and feared the effects of dredging on their fisheries.[300]

In March 1969, the Māori members of the domain board confirmed that the tribe remained opposed to dredging or special legislation authorising a lease. By 1970 the Crown had given up on extricating itself from the board, at least for the time being, and the two local councils made an informal arrangement with the board to take responsibility for essential maintenance of the domain.[301]

During the attempts from 1967 to 1969 to transfer control to the local councils, Muaūpoko strongly defended the 1956 arrangements, the role of the domain board, and their rights as owners (including their fishing rights). The Crown backed off, partly as a result of Mrs Tirikatene-Sullivan's interventions. By 1980, the domain had officially been reclassified as a recreation reserve under the Reserves Act 1977, and the Crown was attempting to get rid of individual reserve boards in favour of regional bodies.[302] The Government was aware, however, that this would be difficult in the case of the Horowhenua domain board, because of its separate legislation and the statutory representation for Muaūpoko. Even so, domain board memberships were reduced to three years in the hope of getting rid of the board within that time frame.[303] Most unexpectedly, however, Muaūpoko themselves now united to demand the abolition of the board and the transfer of full control of the lake to its Māori owners. We turn to that development next.

(4) *Demands for significant reform or an end to the 1956 arrangements: Muaūpoko in the 1980s*

(a) ***Muaūpoko walk out of the domain board in 1982:*** Simmering Muaūpoko discontent with the domain board and arrangements about the lake came to a head in 1982. Particular triggers included the speedboat issue, catchment board works, and the ongoing pollution of the lake by Levin's sewerage scheme. The issue of sewerage and pollution will be addressed in chapter 10, but we note its importance here as a reason for Muaūpoko dissatisfaction with the domain board and borough council.

In February 1982, the lake trustees wrote to Jonathan Elworthy, Minister of Lands, asking him to dissolve the domain board and transfer its authority and property to the trustees. They also asked for the trustees to have a right of veto over catchment board access to the lake and the Hōkio Stream. The trustees' letter was supported by the Kawiu Marae trustees, the Pāriri Marae trustees, the Muaupoko Maori Committee, the Muaupoko Maori Women's Welfare League, and the Muaupoko Kokiri Management Committee.[304] On 24 April 1982, a hui of about 100 Muaūpoko

300. Hamer, '"A Tangled Skein"' (doc A150), pp 284–285
301. Hamer, '"A Tangled Skein"' (doc A150), pp 286–289
302. Hamer, '"A Tangled Skein"' (doc A150), pp 302–303
303. Hamer, '"A Tangled Skein"' (doc A150), pp 302–303
304. Hamer, '"A Tangled Skein"' (doc A150), pp 318–320. The lake trustees' letter was signed by Hohepa Taueki, Tau Ranginui, Joe Tukapua, Mario Hori-Te-Pa, Tamati Hetariki, R Simeon, James Broughton, S Wakefield, and J W Kerehi.

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tribal members supported the trustees' call for 'complete Muaūpoko control of the lake'.[305] It seemed that the whole tribe had united behind this demand.

The trustees pointed out to the Minister that Muaūpoko's grievances went right back to the 1905 agreement and Act: the domain board, they said, was 'born out of a vile threat to Muaupoko in 1905'. The result of the board's incompetent administration was polluted waters and polluted, ruined shellfish beds and flax. Further, the board's failure to deal with pollution was due to the Levin Borough Council's 'vested interest' in 'putting its Borough Council sewerage into the lake' while 'giving its approval as a member of the Domain Board [and] ignoring the protests of the tribe'.[306]

In April 1982, Joe Tukapua read out the trustees' letter at the domain board meeting and then led a Muaūpoko 'walk out'.[307] For the next six years, Muaūpoko boycotted the board, refusing to attend its meetings. Matt McMillan, as 'tribal spokesman', explained that the tribe sought nothing less than 'self-determination', the 'right of anyone to run their own affairs'. The dispute, he said, could be 'worse than Bastion Point' because there was no doubt that Māori were the owners of Lake Horowhenua.[308]

(b) ***The Minister offers the lake trustees control of the lake and stream:*** The Lands Department was keen to get out of any responsibility for this 'regional' matter.[309] This made it 'much easier' for the department to contemplate a transfer of control to the trustees.[310] But officials immediately identified the local authorities as a bar to such a transfer. After all, the administration of Muaupoko Park was dependent on financial support from the two councils.[311] The Minister, on the other hand, 'realise[d] local authorities would not be happy' but considered that Muaūpoko had a case.[312]

On 28 May 1982, Elworthy met with the trustees at Pāriri Marae. The trustees repeated their request for abolition of the board, trustee control of the lake and stream, and a right of veto over the catchment board's right of entry (for the purpose of carrying out works). On the other hand, the trustees were happy to guarantee public access and any existing licences or leases.[313] The trustees blamed the presence of local authorities on the board for 'just why the Muaūpoko representatives would walk out on a board that they would in theory control'.[314] According to Paul Hamer, local authority representation was used to explain 'why the Muaūpoko

305. Hamer, '"A Tangled Skein"' (doc A150), p 324
306. Horowhenua Lake Trustees to Minister of Lands, 16 February 1982 (Hamer, '"A Tangled Skein"' (doc A150), p 319)
307. Hamer, '"A Tangled Skein"' (doc A150), pp 321–322
308. *Manawatu Evening Standard*, 21 April 1982 (Hamer, '"A Tangled Skein"' (doc A150), p 322)
309. Hamer, '"A Tangled Skein"' (doc A150), pp 320, 350
310. Hamer, '"A Tangled Skein"' (doc A150), p 326
311. Hamer, '"A Tangled Skein"' (doc A150), pp 320, 326
312. Director-general of lands, file note, 1 June 1982 (Hamer, '"A Tangled Skein"' (doc A150), p 326)
313. Hamer, '"A Tangled Skein"' (doc A150), p 324
314. Hamer, '"A Tangled Skein"' (doc A150), p 325

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majority on the board had never been properly exploited, and why the attendance of Muaūpoko board members had often been so poor.'[315]

In June 1982, the Minister responded formally to the trustees. He told them that he was prepared to abolish the board and 'return . . . Lake Horowhenua and the Hokio Stream to the Maori owners'.[316] First, however, he would need the trustees to guarantee public access and to put forward some proposals for how they would manage the lake. But Elworthy preferred Muaupoko Park to be controlled by the local authorities, not the trustees. The question of catchment board access was referred to the Minister of Works. Paul Hamer commented that this was a 'mixed bag', as the trustees would no longer have to deal with the council representatives over such issues as speedboats, but they would lose all financial support as well as any role in the control of Muaupoko Park.[317] Legislation was planned for the 1982 session of Parliament.[318]

As predicted, the local authorities were not happy when Elworthy's decision was announced.[319] The local newspaper headline was: 'Minister ready to bow to trustees' demands'.[320] The trustees responded on 25 June 1982. They accepted the Minister's offer but suggested that they should administer Muaupoko Park as well 'so that there could be one body controlling lake, stream, and park'.[321]

It was at this point, however, that tribal divisions took centre stage. Back in April 1982, Hapeta Taueki had threatened to take the trustees to court over alleged wrongdoings. The local member of Parliament, Geoff Thompson, emphasised disagreements within Muaūpoko and problems with the trustees, but these had not prevented the Minister from making his offer.[322] Hapeta Taueki's allegations against trustees Joe Tukapua and Hohepa Taueki were used in the press to justify local authority concern about handing over control of the lake. In October, some within the tribe suggested that the domain board should continue to operate, but that its tribal representatives should be appointed by the trustees (not the Muaupoko Maori Committee).[323] The public dispute within the tribe also led 'officials [to join] the chorus suggesting that the Minister retract his offer to the trustees'.[324] The possibility of legislative amendments in 1982 became a 'dead duck'.[325] Paul Hamer suggested that the Maori Land Court's investigation into Hapeta Taueki's allegations provided the Minister with a rationale to withdraw his June 1982 offer.[326]

Officials began to consider an alternative basis for a settlement. One issue that had emerged clearly from the trustees' meeting with the Minister was that

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315. Hamer, '"A Tangled Skein"' (doc A150), p 325
316. Minister of Lands to Robin Barrie, 10 June 1982 (Hamer, '"A Tangled Skein"' (doc A150), p 327)
317. Hamer, '"A Tangled Skein"' (doc A150), pp 327–328
318. Hamer, '"A Tangled Skein"' (doc A150), p 331
319. Hamer, '"A Tangled Skein"' (doc A150), pp 328–331
320. *Chronicle*, 17 June 1982 (Hamer, '"A Tangled Skein"' (doc A150), p 328)
321. Hamer, '"A Tangled Skein"' (doc A150), p 329
322. Hamer, '"A Tangled Skein"' (doc A150), pp 324–332
323. Hamer, '"A Tangled Skein"' (doc A150), pp 331–333
324. Hamer, '"A Tangled Skein"' (doc A150), p 332
325. Director-general of lands, file note, 25 August 1982 (Hamer, '"A Tangled Skein"' (doc A150), p 331 n)
326. Hamer, '"A Tangled Skein"' (doc A150), p 332

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Muaūpoko members did not feel that they had an effective majority on the board. James Broughton also made this point in the Maori Land Court inquiry, which was reported in the press (and forwarded to the Minister), stating: 'We feel as if we haven't had enough say. If one of our (tribal) members goes against the wishes of the rest, we've lost our control.'[327] The commissioner of Crown lands suggested that Muaūpoko representation be increased to five seats, which would give them a stronger, more secure majority. Thompson was opposed but the Maori Land Court's recommendations in December 1982 underlined the need for a change. Judge Smith observed

> that, in theory, the four to three board majority (that is, with the chairman having only a casting vote) gave Muaūpoko control of the board. However, he noted the evidence that the nomination of board members by the Muaupoko Maori Committee rather than by the trustees had led to 'dissension among the Maori members of the Board appointed following such recommendations, with the result that such Maori members do not effectively control Board policy'.[328]

The court recommended that 'the trustees continue consultations with the Crown and local authorities with the object of promoting amending legislation which would confer upon the trustees complete control of the Lake, chain strip and dewatered area'.[329] As a result, officials returned to the idea of giving Muaūpoko an extra seat on the domain board, aware that '"the question of control" would return "to the forefront"' because of the court's recommendation.[330] But officials also stressed tribal disunity, evident in the court hearings, and the court's finding that there were some significant problems with the trustees' administration. The Minister agreed to reconsider his June 1982 offer to the trustees.[331]

(c) ***Elworthy's scaled-back offer to the trustees in April 1983:*** A combination of official and local authority opposition, and evident disunity within Muaūpoko, led Jonathan Elworthy to retract his offer of full control. In April 1983, he offered the trustees:

- the right to nominate the four domain board members (but the number of Muaūpoko board members would not be increased);
- the right of approval for catchment board works and any bylaws; and

327. 'Lake Trustees to Get Together with Owners', unidentifed newspaper clipping, not dated (Hamer, '"A Tangled Skein"' (doc A150), p 333)
328. Hamer, '"A Tangled Skein"' (doc A150), pp 333–334
329. Extract from Ōtaki Māori Land Court minute book 84, 'Lake Horowhenua: Application by Hapeta Taueki for an order to enforce the obligations of their trust against the trustees of Lake Horowhenua and for an order under section 68 of the Trustee Act 1956: Findings and Recommendations', 10 December 1982 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(d)), p 746)
330. Hamer, '"A Tangled Skein"' (doc A150), p 335
331. Hamer, '"A Tangled Skein"' (doc A150), pp 332–336

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- legislative reform to remove the contradictions in the 1956 Act (between Muaūpoko and public rights, as identified by the Maori Land Court in December 1982 (see section 9.3.4(5)).[332]

Elworthy hoped that giving the lake's legal owners control of nominations would overcome disagreements within the tribe. The Maori Affairs Department, however, advised against introducing any legislation for at least another year, so as to give Muaūpoko time to resolve disageements and make a decision.[333] On 23 May 1983, the trustees met and agreed to accept the Minister's new offer in principle, asking him to 'draft proposals for perusal and comment'.[334] It is not clear why the outgoing trustees agreed so readily to give up their earlier proposal for abolition of the board and complete control of the lake. The court had recommended that the owners appoint a new, smaller group of trustees, and there was something of a cloud over Joe Tukapua as a result of his informal sub-leasing of trust land. But a lengthy delay ensued before new trustees were appointed, and it was not at all clear that the owners would accept Elworthy's scaled-back offer.[335] New trustees had still not been appointed by July 1984, when Prime Minister Rob Muldoon called a snap election and the National Government lost office.[336]

(d) ***A new Government, new trustees, and new proposals to resolve the impasse:*** In 1982, Jonathan Elworthy suggested that the domain board go into recess for the time being, but the local government body representatives refused to do so. The board continued to meet and make decisions in the absence of the Muaūpoko members, which put some pressure on both the Government and the lake trustees to resolve the impasse.[337] Seven trustees (three reappointed and four new) were eventually appointed in November 1984.[338] They were chosen by the court from the 16 trustees nominated by the owners. For the next few years, the trustees' interaction with the Government was dominated by their secretary, Ada Tatana, and the new Minister, Koro Wetere.[339]

In December 1984, the commissioner of Crown lands advised his head of department that it was necessary to introduce legislation 'to improve the representative structure and future management of the lake'.[340] In May 1985, the trustees came up with their own alternative proposal: the Crown could enter into a perpetual lease for the lakebed, chain strip, and dewatered area in exchange for the transfer of 429 acres of local Crown land to the lake trust. The lessee (the Crown) would be

332. Hamer, '"A Tangled Skein"' (doc A150), p 336
333. Hamer, '"A Tangled Skein"' (doc A150), pp 337–338
334. Barrie to Minister of Lands, 1 July 1983 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(d)), p 795)
335. Hamer, '"A Tangled Skein"' (doc A150), pp 332–339
336. Hamer, '"A Tangled Skein"' (doc A150), p 339
337. Hamer, '"A Tangled Skein"' (doc A150), pp 331, 353
338. The seven trustees were James Broughton, Hohepa Kerehi, Alex Maremare, Rangipō Metekīngi, Kawaurukuroa Hanita-Paki, Rita Ranginui, and Ada Tatana: Hamer, '"A Tangled Skein"' (doc A150), p 340.
339. Hamer, '"A Tangled Skein"' (doc A150), pp 340–350
340. Commissioner of Crown lands to director-general, 10 December 1984 (Hamer, '"A Tangled Skein"' (doc A150), p 341)

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responsible for beautifying and developing the reserve. The assistant commissioner of Crown lands advised strongly against this proposal, noting that the Crown land to be transferred was highly valuable, and the costs of developing and administering the enlarged domain would also be high. In fact, the proposal represented the opposite of the Crown's wish to leave such local reserves to local administration.[341]

Koro Wetere's response to the trustees in June 1985 was very much in keeping with Crown priorities: the Lake Horowhenua domain was not 'reserve land . . . of national importance', and improvements to it would only be of local benefit.[342] Hence, a significant Government outlay could not be justified. The trustees reminded the Minister that any member of the public who stepped on the lakebed was trespassing if the Government chose not to lease it from them. Further, the lake was polluted and the tribal fisheries had been damaged, while local bodies lacked the resources to compensate for the tribe's lost 'asset'. Again, a lease and exchange of land was considered appropriate.[343] There was also conflict over the lease to the boating club – if no peaceful solution could be found, the trustees would 'have to exercise our rights'.[344] In November 1985, the trustees went ahead and told the rowing club that there would be an annual fee for any users who walked on the lakebed.[345]

There was no meeting of minds in 1985–86. Mrs Tatana, on behalf of the trustees, continued to remind the Crown of Muaūpoko's grievances about the 1905 Act, which they saw as forcibly taking control of their lake, and other past injustices. The trustees saw a lease as both a means of developing the lake reserve and obtaining compensation from the Crown. The Government, on the other hand, considered that these grievances were not really relevant, and that the matter was essentially a local one. The trustees replied that if the Crown would not deal with their issues, they would take a claim to the Waitangi Tribunal.[346] Minister Wetere told them: 'I hope it will not come to this.'[347]

Nonetheless, the trustees' attempt to charge fees brought about a temporary shift in the Government's approach. Koro Wetere believed that the 1956 Act allowed boaters to walk on the lakebed when launching their craft, but his department's office solicitor took a different view. With legal advice that the trustees were 'quite within their rights to charge a fee for lake users to walk over the lakebed', officials decided that it would be essential for the Crown to lease the lakebed.[348]

How was this to be justified, given the Crown's approach that the reserve was a local matter? Essentially, officials took the view that a lease of the bed (as opposed to the surrounding land) was 'a matter for the Crown because of its involvement in the past with the arrangements for recreational use of the surface waters of

341. Hamer, '"A Tangled Skein"' (doc A150), p 343
342. Minister of Lands to Ada Tatana, 26 June 1985 (Hamer, '"A Tangled Skein"' (doc A150), p 344)
343. Hamer, '"A Tangled Skein"' (doc A150), p 344
344. Tatana to Minister of Lands, 22 July 1985 (Hamer, '"A Tangled Skein"' (doc A150), p 345)
345. Hamer, '"A Tangled Skein"' (doc A150), p 345
346. Hamer, '"A Tangled Skein"' (doc A150), pp 344–351
347. Minister of Lands to Ada Tatana, 23 January 1986 (Hamer, '"A Tangled Skein"' (doc A150), p 346)
348. Hamer, '"A Tangled Skein"' (doc A150), pp 345–346

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the lake'.[349] This was a part of the 'Crown's obligation to preserve the rights of the existing lessees & the public'.[350] In the department's view, the Māori owners had agreed to public access in 1905, having asked the Crown to protect their fishery against uncontrolled boating, and there were 'grounds to contest the claim of coercion by the Crown'.[351] The Minister wrote to the trustees: 'As far as we know today, this agreement [in 1905] was freely entered into and was intended to open the lake to legal public use subject to some safeguards which the owners specified.'[352]

But the Government was not prepared to agree to the transfer of valuable Crown land in exchange for a lease. At first, officials contemplated an offer to make Muaupoko Park a Māori reservation (under the Maori Affairs Act 1953). Eventually they decided on a lease of 'a sufficient area' of the chain strip, dewatered land, and lakebed in front of Muaupoko Park to enable the launching of boats. Local authorities would be expected to pay most of the rent. In May 1986, the lake trustees rejected this offer completely. They were now prepared to accept a monetary rental, but insisted that the Crown must lease the whole lakebed and not just the small area required to safeguard its very specific goal of free public access.[353]

The lease proposal now fell over entirely:

- in November 1986, the commissioner of Crown lands suggested a lump sum payment of $100,000 for a 25-year lease of the lakebed, but senior officials now decided (once again) that this was a purely local matter, despite the Crown's involvement in the past, and that any such offer would be 'unmerited generosity';[354]
- the Lands and Survey Department ceased to have any responsibility for the matter in 1987, after the creation of the Department of Conservation (DOC), and the new department decided not to 'follow up this Lands and Survey idea' unless the Māori owners proposed it again;[355]
- DOC officials did contemplate the desirability of a lease in 1988 but the idea was ultimately 'abandoned by both sides' at that time.[356]

Paul Hamer concluded that the lease negotiations 'seemed like a lost opportunity to making some headway on the interminable problems affecting the lake'.[357] We agree.

At first, it seemed as if the Crown's approach – that this was a purely local matter – would facilitate its acceptance of the proposal to abolish the board and transfer its functions to the Muaūpoko lake trustees. Ultimately, however, the Crown's

349. Minister of Lands to Ada Tatana, 23 January 1986 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(e)), p 1061)
350. Notes of meeting, 12 March 1986 (Hamer, '"A Tangled Skein"' (doc A150), p 348)
351. Devine for director-general of lands to commissioner of Crown lands, 27 March 1986 (Hamer, '"A Tangled Skein"' (doc A150), p 348)
352. Minister of Lands to Ada Tatana, 23 January 1986 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(e)), p 1061)
353. Hamer, '"A Tangled Skein"' (doc A150), pp 347–349
354. Hamer, '"A Tangled Skein"' (doc A150), pp 349–350
355. Hamer, '"A Tangled Skein"' (doc A150), p 350
356. Hamer, '"A Tangled Skein"' (doc A150), p 350
357. Hamer, '"A Tangled Skein"' (doc A150), pp 350–351

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obligation was seen as protecting free public access and defending the arrangements of 1905 and 1956 which guaranteed it. Astonishingly, neither Ministers nor officials considered that the Crown also had obligations of active protection towards Māori and their lands and waters. The result was that the Crown did nothing at all to assist the lake trustees or resolve Muaūpoko grievances. After Elworthy's initial offer was retracted in 1983, the Crown considered a number of options, including

- increasing Muaūpoko representation on the domain board;
- leasing the lakebed for a rental;
- making Muaupoko Park a Māori reservation; and
- giving the lake trustees the right to approve catchment board works and domain bylaws.

Any or all of these options would have assisted, especially according Muaūpoko an extra seat on the board. Yet the Crown did nothing at all.

(e) *Muaūpoko rejoin the domain board:* By 1988, Muaūpoko representatives had been absent from the domain board for six years. After the appointment of new trustees in November 1984, the trustees sought to attend the board meetings but they were not the legally appointed Muaūpoko representatives.[358] On 12 March 1985, Koro Wetere promised to amend the legislation so that the trustees (instead of the 'Muaupoko Maori Tribe') would nominate board members. It proved difficult to get any kind of priority for this kind of legislation in 1985–87, which increasingly frustrated the trustees. There was a further delay in 1987 when DOC took responsibility for the board. Eventually, the trustees nominated new domain board members in 1988, endorsed by a hui of Muaūpoko tribal members, without any law change at all. DOC took the view that this was consistent with the wording of the 1956 Act, and the Crown simply appointed these members.[359] It is important, however, that the legislative amendments promised by Elworthy and Wetere had also provided for the lake trustees to approve all catchment board works and domain bylaws.[360] We discuss the failure to enact this promised legislation in the next section. Here, we simply note that, after six years of negotiations, the only change was that the lake trustees would henceforth select the board members instead of the Muaupoko Maori Committee. The 'boycott' had accomplished virtually nothing, and left Muaūpoko further aggrieved.

(5) *The Crown's failure to amend the 1956 Act in the 1980s*

In 1982, the Maori Land Court investigated the lake trust and made a number of findings and recommendations. Included in these was the court's investigation of the wording of the 1956 legislation in respect of Māori and public rights. As will be recalled from chapter 8, the Horowhenua Lake Bill 1905 had a clause which stated: 'The Native owners shall at all times have the free and unrestricted use of the lake and of their fishing rights over the lake'. The House then adopted an amendment

358. Hamer, '"A Tangled Skein"' (doc A150), p 341
359. Hamer, '"A Tangled Skein"' (doc A150), pp 351–354
360. Hamer, '"A Tangled Skein"' (doc A150), pp 336, 352

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on the motion of Premier Seddon, to add the words: 'but so as not to interfere with the full and free use of the lake for aquatic sports and pleasures'. In section 8.2.4, we found that this wording created a hierarchy of rights, in which priority was given to the full and free use of the lake for aquatic sports. This part of the 1905 Act – that the 'free and unrestricted rights' of the Māori owners were not to conflict with the 'full and free use' of the lake by the public – was largely replicated in the ROLD Act 1956. As we explained in section 9.3.3, section 18(5) of the Act stated:

> Provided further that the Maori owners shall at all times and from time to time have the free and unrestricted use of the lake and the land fourthly described in subsection thirteen of this section and of their fishing rights over the lake and the Hokio Stream, but so as not to interfere with the reasonable rights of the public, as may be determined by the Domain Board constituted under this section, to use as a public domain the lake and the said land fourthly described.

In comparing these two sections in the Horowhenua Lake Act 1905 and the ROLD Act 1956, the court stated:

> Neither s 2(a) of the 1905 Act nor the proviso in the 1956 Act can be described as models of law drafting. Both contain contradictions in terms, for how can persons be said to have free and unrestricted use at all times if their use is to be restricted by some other persons' use? There is no doubt that these ambiguous provisions of the statutes have added to the trustees' difficulties in carrying out their functions.[361]

In April 1983, the Minister of Lands, Jonathan Elworthy, wrote to the trustees that – if there was Māori and local authority support – he would 'promote suitable provisions in the Reserves and Other Lands Disposal Bill' to:

> (a) Provide for the Lake Trustees to nominate the Muaupoko representatives on the Reserve [Domain] Board.
>
> (b) Provide that the Minister will not approve any Reserve Board bylaw affecting the use of the surface waters of the Lake or the dewatered area or one chain strip fronting the Park without the consent of the Lake Trustees. This would ensure there could be no further misunderstanding over such matters as power-boating, duck-shooting and fishing rights.
>
> (c) In response to Judge Smith's expression of concern, revise and improve the wording of the 1956 Act about fishing and public use rights.

361. Extract from Ōtaki Māori Land Court minute book 84, 'Lake Horowhenua: Application by Hapeta Taueki for an order to enforce the obligations of their trust against the trustees of Lake Horowhenua and for an order under section 68 of the Trustee Act 1956: Findings and Recommendations', 10 December 1982 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(d)), p 742)

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(d) Give to the Lake Trustees (instead of the Board) the power to consent to any works affecting the Lake or the Hokio Stream undertaken by the Manawatu Catchment Board in accordance with the 1956 Act.[362]

Both the catchment board and the borough council objected to these proposals. To satisfy the catchment board, the Minister amended his proposal so that, if the trustees and the board disagreed over proposed works, the Minister would make the final decision. He was not prepared to back down, however, in the face of borough council opposition, reminding the mayor that the bylaws were to apply to Māori land.[363]

Elworthy was not able to introduce legislation before the National Government lost office in 1984. The new Minister, Koro Wetere, discussed Elworthy's law change proposals with the lake trustees at a meeting on 12 March 1985. These proposals were the original ones, and did not include Elworthy's modification (the Minister to have the final say on catchment board works). Wetere and the trustees agreed on points (b)–(d) as set out above, but it was acknowledged the change in appointing board members would be controversial. Wetere agreed to have the legislation drafted and sent to the trustees, the Muaupoko Maori Committee, and the local authorities for consultation.[364]

At this point, therefore, the Government and the lake trustees agreed that the 1956 Act should be amended on these four specific points. The trustees preferred that the legislation should provide for all seven lake trustees to become domain board members, with only four attending at any one time[365] – in our view, this would doubtless have helped facilitate full attendance, which Muaūpoko representatives had struggled with in the past. But it proved to be a stumbling block with parliamentary counsel: 'Are notices of meeting to be sent to all trustees, and the first four through the door are the trust members for that meeting?' he inquired.[366] There was also a debate about whether the legislation should go further, including arrangements such as commercial fishing. This and other questions could have been resolved but the more serious stumbling block was that the legislation simply was not a priority for the Government.

In January 1986, Wetere apologised to the trustees for the delay, which he ascribed to Parliament's heavy legislative programme. By mid-1986, draft legislation was with the Parliamentary counsel to implement points (a)–(d) set out above, but it had still not progressed by March 1987. The Minister told the trustees that he was disappointed by the delay but that the rold Bill was on the legislative programme

362. Minister of Lands to Robin Barrie, 8 April 1983 (Hamer, papers in support of '"A Tangled Skein"' (doc a150(d)), p 779)

363. Hamer, '"A Tangled Skein"' (doc a150), pp 337–338

364. Deputy director-general of lands, notes of meeting, 13 March 1985 (Hamer, papers in support of '"A Tangled Skein"' (doc a150(d)), pp 822–824)

365. Hamer, '"A Tangled Skein"' (doc a150), pp 352–353

366. Parliamentary counsel to doc, 27 April 1987 (Hamer, papers in support of '"A Tangled Skein"' (doc a150(e)), p 1111)

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for 1986/87.[367] This proved to be overly optimistic. By April 1987, DOC had assumed responsibility for the legislative change but the Bill was not on 'the list of Bills essential or desirable for introduction this session'. It was unlikely that there would be any draft legislation before the election in late 1987.[368] In the end, the legislation 'failed to materialise' at all. We have no way of knowing how it might have addressed the hierarchy of owner and public rights, but none of the legislative changes held out to the trustees in the 1980s were made. Paul Hamer suggested that the matter was simply a low priority for the Government and so it never happened.[369]

There were obvious advantages for the Māori owners in empowering their trustees to approve all bylaws and catchment board works. It was also important to address the question of the owners' 'unrestricted' rights vis-à-vis those of the public. The Minister and the trustees had agreed to make these changes. The Crown's failure in this respect was an important omission to amend the 1956 legislation.

We turn next to make our findings for this section of the chapter.

9.3.5 Findings

In this section, we structured our analysis around two key questions:

- Did the 1956 legislation remedy Muaūpoko's grievances in respect of past legislation and Crown acts or omissions?
- Did the 1956 legislation provide a suitable platform for (a) future management of the lake and stream, and (b) protection of the Māori owners' rights and interests?

We make our findings under these two headings. We then address the question of the 1961 lease.

(1) *Did the 1956 legislation remedy Muaūpoko's grievances in respect of past legislation and Crown acts or omissions?*

In section 9.3.3(2), we found that there was genuine, free, and informed consent on the part of the Muaūpoko owners to the 1956 legislation. They had the benefit of independent legal advice, and gave their clear and public support for the Act at a major hui with the Prime Minister in 1958. This support was evident because the 1956 legislation did provide some remedies or potential remedies for past Crown acts and omissions:

- The ROLD Act 1956 formally recognised Māori ownership of the lakebed, chain strip, the bed of the Hōkio Stream, and one chain on the north bank of the stream. Māori ownership of these taonga had been placed in doubt from the 1920s to the 1950s.
- The ROLD Act 1956 returned control of the chain strip and dewatered land to its Muaūpoko owners, providing a remedy for the effects of the 1916 Act.

367. Hamer, '"A Tangled Skein"' (doc A150), pp 351–353
368. Parliamentary counsel to DOC, 27 April 1987 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(e)), p 1111)
369. Hamer, '"A Tangled Skein"' (doc A150), p 354

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- These two features of the 1956 legislation provided a remedy and were consistent with the Crown's Treaty obligations.
- The ROLD Act 1956 reformed the membership of the Horowhenua Lake Domain Board. The Levin Borough Council lost its two-thirds majority (being reduced to two members of an eight-member board). The Māori members were increased to four, which – so long as the Crown chairman did not vote – gave them a narrow majority. If this proved to be a sufficiently secure or effective majority, the reform of the domain board had the potential to remedy the severe imbalance in the past, which had placed the board very firmly under borough council control. But the Crown did not go so far as to reverse that situation and give the Māori members a two-thirds majority on the reformed domain board.
- Drainage works could not be carried out on the Hōkio Stream without the agreement of the reformed domain board. Again, so long as the Muaūpoko board members had a secure and effective majority, this provided a potential remedy against a repeat of past grievances. In the 1980s, the Muaūpoko owners sought to have this right of veto transferred to the lake trustees.
- These two features of the 1956 Act provided a *potential* remedy for the Muaūpoko owners, but, before we can decide whether these features were consistent with Treaty principles, we must examine the question of whether the remedy was effective in practice (which was analysed above in section 9.3.4(2)).

In terms of the hierarchy of interests established by the 1905 Act, in which the fishing and other property rights of the Maori owners were subordinated to public uses (see section 8.2.4), the 1956 Act provided a potential remedy. We note first that the Act maintained the priority of public uses over the property rights of the Muaūpoko owners. But in 1905 this had been an unqualified priority, whereas the 1956 Act specified that the 'free and unrestricted' rights of the Māori owners were not to interfere with the '*reasonable* rights of the public . . . to use as a public domain the lake' (emphasis added).[370] The questions of whether the public rights were reasonable or not, and of which rights should prevail, fell in practical terms to the reformed domain board to decide. Again, this gave the Muaūpoko owners a potential remedy. We note of course that any legal argument concerning the term 'reasonable' would be subject to any court review.

We do not, however, accept the Crown's submission that, 'to the extent any prejudice might be said to flow from earlier legislation as to control and/or rights, that prejudice was remedied by the enactment of the 1956 Act'.[371] Rather, we agree with the claimants that the 1956 legislation did not 'purport to settle all historic issues relating to the lake',[372] and nor in fact did it do so. We find that the 1956 legislation breached the principles of active protection and partnership when it:

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370. Reserves and Other Lands Disposal Act 1956, s18(5)
371. Crown counsel, closing submissions (paper 3.3.24), p57
372. Claimant counsel (Bennion, Whiley, and Black), submissions by way of reply (paper 3.3.33), p11

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- failed to provide compensation for past acts and omissions (including the imposition of the 1905 arrangements on the Muaūpoko owners without consent, infringements of their property and Treaty rights, the omission to pay for or provide any return for public use of the lake, the harm to their lake, stream, and fisheries when the stream was modified to lower the lake, and the reduction of their fisheries by the introduction of trout and the granting to non-owners of the right to fish);
- failed to prohibit pollution (which will be dealt with in the next chapter);
- failed to grant an annuity or rental or some such payment for the future, ongoing use of the lake as a public recreation reserve; and
- failed to provide an appropriate, agreed mechanism for selecting Māori board members.

These omissions were a breach of the Treaty principles of partnership, active protection, and redress (the principle that the Crown must provide a proper remedy for acknowledged grievances). The prejudice to Muaūpoko continued (and still continues today).

(2) *Did the 1956 legislation provide a suitable platform for (a) future management of the lake and stream, and (b) protection of the Māori owners' rights and interests?*

As we have just noted, the 1956 legislation had the potential to provide a greater say to (and protection of) the Muaūpoko owners of Lake Horowhenua. Much depended on whether the Acts' arrangements really gave Muaūpoko a secure or effective majority on the domain board. As we explained in detail in section 9.3.4, it did not.

First, the Crown did not act as a genuinely neutral chair, nor did it – as the Muaūpoko owners had hoped in 1953 – provide sufficient support to the Muaūpoko members in the face of local body interests. In any case, we doubt that having the Crown as chair of the board (rather than Muaūpoko) was a Treaty-compliant arrangement in the circumstances of the Lake Horowhenua reserve.

Secondly, even though the Crown's continued refusal to vote gave Muaūpoko a one-person majority, this was not a safe or secure majority. Nor did it enable the Muaūpoko owners to exercise their full authority over their taonga, as guaranteed them in the Treaty. The Muaūpoko members felt disenfranchised on the reformed board and struggled to have all four present at meetings, and they were also divided at times. By the 1980s, Muaūpoko clearly identified the need for a more secure majority on the board, and in 1982 they sought to abolish the board altogether. The Minister of Lands at that time accepted in principle that the board could be dissolved and control of the lake handed back to its Muaūpoko owners, but this did not happen. No satisfactory reason was given.

We find that the 1956 reforms to the domain board were insufficient to provide a suitable platform for (a) future management of the lake and stream, and (b) protection of the Māori owners' rights and interests. We also find that the Crown failed to

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take speedy (or any) action to rectify this situation as soon as it became apparent. In particular, the Crown omitted to amend the Act in the 1980s, even though Ministers responded favourably at first to the lake trustees' requests and accepted that amendment was required. We find, therefore, that the Crown has not actively protected the tino rangatiratanga of the Muaūpoko owners over their taonga, Lake Horowhenua and the Hōkio Stream.

The domain board provisions of the ROLD Act 1956 are in breach of the principles of partnership and active protection. The Crown has not provided Muaūpoko with timely redress despite acknowledging the need for reform back in the 1980s. Muaūpoko have been and continued to be prejudiced by this Treaty breach.

Other Treaty breaches have occurred as a result of the 1956 Act's failure to empower the Muaūpoko owners. By the 1980s, the lake trustees sought a law change so that the catchment board would require permission from them, not the domain board, before any works could be carried out. Although two Ministers of the Crown agreed to carry out this request, it has not been done. This was not consistent with the Crown's obligation to act as a fair and honourable Treaty partner. The most serious breach in terms of catchment board works, however, occurred in 1966. The Crown approved the catchment board's construction of a control weir without insisting on a fish pass, despite certain knowledge that the Muaūpoko owners objected and that customary fisheries would be harmed. This was a breach of the principles of partnership and active protection. NIWA has found that, apart from the poor water quality, the 1966 control weir has had the biggest effect in harming aquatic life in Lake Horowhenua.[373] The prejudice to the Muaūpoko owners continues today.

We note, however, that there were some improvements during the period of operation of the ROLD Act 1956. In section 9.3.4(2), we found that the balance of interests between public users and the Māori owners has shifted in favour of the owners in respect of birding and fishing rights. The Muaūpoko owners were able to use their trespass rights over the chain strip and dewatered area to prevent non-owners from shooting ducks on Lake Horowhenua (after the board agreed to open the lake for duck shooting). Also, the domain board protected the exclusivity of the owners' fishing rights during this period, refusing to allow new releases into the lake without the owners' consent, and refusing to agree that fishing licences gave the public a right to fish in Lake Horowhenua. In the 1970s, the courts also enforced the Māori owners' exclusive fishing rights in the Hōkio Stream. The downside, of course, was the effects of pollution and the control weir on the quality and quantity of the fishery.

The issue of speedboats divided the Muaūpoko people and their representatives on the domain board. Here, the breach in not providing an agreed, appropriate mechanism for selecting the Māori board members had an important consequence.

373. NIWA, 'Lake Horowhenua Review: Assessment of Opportunities to Address Water Quality Issues in Lake Horowhenua, Prepared for Horizons Regional Council', May 2011, p10 (Procter, papers in support of brief of evidence (doc C22(b)(iii)))

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Thus, although the ROLD Act 1956 has provided some improvements, we find it to be inconsistent with Treaty principles. The failure to reform it in the 1980s was a breach of the principle of redress, and has meant that the prejudice for Muaūpoko continues today.

(3) *The 1961 lease to the Crown for the boating club*

We find that the Crown avoided the protection mechanisms in the Maori Affairs Act 1953, which required that no lease of Māori land (including renewals) could be for a longer term than 50 years, and which also required the Maori Land Court to investigate the merits and fairness of such transactions before confirming them.[374] The Crown evaded these safeguards by leasing land for the boat club under the Reserves and Domains Act 1953, thereby arranging a lease in perpetuity for a peppercorn rental, which was not put to the Maori Land Court for confirmation. These protective mechanisms in the Maori Affairs Act 1953 had resulted from a long history of unfair dealings, and the Crown's failure to abide by that Act's requirements for leases was in breach of the principle of active protection. We accept that the lake trustees agreed to the lease, but it was later claimed that they did so 'in ignorance'.[375] Because there was little documentation at the time and no court inquiry and confirmation, we have no way of knowing for sure if that was so.

The Māori owners of Lake Horowhenua were prejudiced by the alienation of this land on unfair terms, which was adjacent to Muaupoko Park and could have been the subject of a more beneficial arrangement, fairer to both parties.

We turn next to the issue of pollution and environmental degradation, which became an extremely pressing issue for Muaūpoko from the 1950s onwards.

374. For the 1953 Act's protection mechanisms in respect of leases, see Waitangi Tribunal, *Te Urewera, Prepublication*, *Part V*, pp 255–256.

375. Ada Tatana to Minister of Lands, 19 December 1985 (Hamer, '"A Tangled Skein"' (doc A150), p 346)

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CHAPTER 10

POLLUTION AND ENVIRONMENTAL DEGRADATION

10.1 Introduction

In this chapter, we address Muaūpoko's claims about the pollution and environmental degradation of Lake Horowhenua. This was perhaps the strongest grievance of the Muaūpoko claimants who appeared before us. As kaitiaki of their taonga, the Muaūpoko tribe suffers from the lake's near-destruction as a viable water resource. Feelings ran high at our hearings and much anger was expressed.

The Crown accepted early in our inquiry that its failure to include provisions against pollution in the Horowhenua Lake Act 1905 was a breach of Treaty principles (see chapter 8). Crown counsel also accepted that the lake is in an 'ecologically compromised state'.[1] Legal arguments quickly focused on the degree of Crown responsibility for the causes of pollution, and the question of how far – if at all – local government bodies are agents of the Crown in this respect. Our analysis in this chapter is therefore structured around the key question: what was the Crown's responsibility in respect of pollution and environmental degradation?

Tangata whenua evidence focused on the degree of harm to their taonga: Lake Horowhenua, the Hōkio Stream, and the fisheries of these connected waterways. Again, the Crown accepted early in our inquiry that Muaūpoko had been prejudiced by the damage caused by pollution to their traditional food sources and their fishing rights.[2]

But the Crown's position was complex. In its closing submissions, it argued that there had in fact been no prejudicial effects from its 1905 Treaty breach, and that no other Crown act or omission in respect of pollution was a Treaty breach. The claimants, on the other hand, mostly blamed the Crown for the serious pollution and degradation of their taonga. Both sides made detailed submissions on this crucial issue, which we describe at some length in the next section.

In essence, the lake became seriously polluted as a result of a process which began in the 1950s, when Levin's sewage effluent began entering the lake. This occurred

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1. Crown counsel, opening submissions, 1 October 2015 (paper 3.3.1), p 8
2. Crown counsel, opening submissions (paper 3.3.1), p 8

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despite an alleged undertaking from the Minister at the time, Ernest Corbett, during the process for negotiating the ROLD Act 1956 (discussed in the previous chapter). Levin's effluent continued to enter the lake from the nearby sewerage plant until 1987, when the borough council finally established a land-based system of disposal. In this chapter, we focus on the period in which the Levin sewerage system was the primary source of pollution. The question of how far the lake has recovered since 1987, and of other sources of pollution, is addressed in the following chapter.

10.2 The Parties' Arguments

10.2.1 The claimants' case

In our hearings, the claimants were angry and distressed at the degraded state of their taonga, Lake Horowhenua and the Hōkio Stream, for which they are responsible as kaitiaki. Their sense of outrage was evident in Philip Taueki's closing submissions:

> The present polluted and poisonous state of Mua-Upoko's most precious taonga, Lake Horowhenua and the Hokio Stream, controlled by the Crown and used as the town of Levin's toilet, epitomises the Crown's appalling and disgusting treatment of Mua-Upoko ever since the day Tauheke signed the Treaty of Waitangi out at Hokio beach on the 26th of May 1840.[3]

For Muaūpoko, there is a very clear and direct connection between the degraded condition of their taonga and the Crown's Treaty promise to protect taonga. The Crown, we were told, has 'failed to actively protect this precious Taonga, and is now attempting to defer responsibility for this to other bodies'.[4] In addition to the Crown's Treaty responsibilities, the claimants argued that the Crown had a very specific obligation in respect of Lake Horowhenua.[5] This arose from its crucial act of omission in 1905, when the Crown failed to give proper effect to the 1905 agreement, and the Horowhenua Lake Act 1905 'failed to ban any form of pollution from entering the Lake'.[6]

In the claimants' view, the Crown may not have been responsible for all the *causes* of pollution, but it was *complicit* in the pollution:

> The Crown was complicit in the environmental degradation the Lake has endured. The Crown's complicity derives from both its positive actions and its failure to take action to prevent damage to the Lake once it became aware of the pollution issues

3. Philip Taueki, closing submissions, 12 February 2016 (paper 3.3.15), p [3]
4. Claimant counsel (Ertel and Zwaan), closing submissions, 12 February 2016 (paper 3.3.13), p 39
5. Claimant counsel (Stone, Bagsic, and Hopkins), closing submissions, 10 February 2016 (paper 3.3.9), pp 3–5, 8
6. Claimant counsel (Stone, Bagsic, and Hopkins), closing submissions (paper 3.3.9), p 8

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through the protestations of the Muaūpoko people. The Crown's failure in this respect was a further breach of te Tiriti.[7]

Muaūpoko did their part by bringing the issue of the lake's pollution to the Crown's attention but the Crown did 'nothing to address the causes of pollution for many years'. As a result, 'the Lake was in an extremely vulnerable state for many years and continues to be'.[8] The claimants cited the Tribunal's *Hauraki Report*, in which the Tribunal found it was a Treaty breach for the Crown to ignore 'Māori concerns about environmental degradation' (when brought to its attention).[9]

In our inquiry, the claimants argued that the Crown has tried to avoid its responsibilities by blaming local government, urban development, and land use in the wider catchment.[10] Claimant counsel relied on the Tribunal's *Whanganui River Report*, which stated that the Crown 'cannot avoid its duty of active protection by delegating responsibilities to others, thus any delegation must be on terms that ensure that the duty of protection is fulfilled'.[11] Thus, in the claimants' submission, if the Crown's statutory frameworks allowed Levin local authorities to 'undertake activities that would otherwise fail for lack of Treaty compliance', the Crown 'must be held responsible – especially when the Crown is made plainly aware of the effects and consequences of such activities and does nothing for 18 years as the Crown did here'.[12] Also, in the claimants' submission, the Crown cannot distance itself from the actions of local government in this particular case because it was actively involved throughout the whole period through its position on the domain board. 'Muaupoko', we were told, have 'always tried to keep the Crown involved in matters relating to the Lake.'[13]

The claimants also denied that the Crown has carried out a Treaty-compliant balancing of interests in respect of the pollution of Lake Horowhenua. Any such balancing, we were told, needs to be 'weighed against the Crown's positive duties and obligations owed to Muaupoko under the Treaty'. If the Crown elects a course of action which will breach the Treaty in order to balance interests, it must refrain from doing so unless the circumstances are *exceptional*. Inconvenience to the Crown or 'impracticalities' do not meet the high bar set by the Treaty or justify departing from the Crown's Treaty duties and obligations. In sum, the claimants argued that a 'balancing act' did not excuse the Crown from taking necessary action in fulfilment of its Treaty duties.[14] Claimant counsel submitted that 'In respect of

7. Claimant counsel (Naden, Upton, and Shankar), closing submissions, 16 February 2016 (paper 3.3.23), p 269

8. Claimant counsel (Stone, Bagsic, and Hopkins), closing submissions (paper 3.3.9), p 28

9. Claimant counsel (Naden, Upton, and Shankar), closing submissions (paper 3.3.23), p 286

10. Claimant counsel (Stone, Bagsic, and Hopkins), closing submissions (paper 3.3.9), pp 28–29; claimant counsel (Naden, Upton, and Shankar), submissions by way of reply, 15 April 2016 (paper 3.3.29), p 10

11. Waitangi Tribunal, *The Whanganui River Report* (Wellington: Legislation Direct, 1999), p 265 (claimant counsel (Stone, Bagsic, and Hopkins), closing submissions (paper 3.3.9), p 29)

12. Claimant counsel (Stone, Bagsic, and Hopkins), closing submissions (paper 3.3.9), p 29

13. Claimant counsel (Stone, Bagsic, and Hopkins), closing submissions (paper 3.3.9), p 29

14. Claimant counsel (Stone and Bagsic), submissions by way of reply, 20 April 2016 (paper 3.3.32), p 4

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Lake Horowhenua, for many years, the Crown simply did nothing. Any "balancing act" argument in respect of Lake Horowhenua must be rejected by the Tribunal.'[15]

The claimants summarised the Crown's omissions as follows:

- Failing to ensure that local government actions in respect of the Lake were Treaty compliant.
- Failing to remedy the causes of pollution.
- Taking an unreasonable amount of time to respond to the causes of pollution entering the Lake.
- Failing to enact legislation that prevented or remedied the causes of pollution from entering the Lake.
- Failing to enact legislation that gave effect to and safe guarded Muaupoko's mana, kaitiakitanga and tangata whenua status over the Lake.
- Omitting to include provisions in legislation that would have protected Muaupoko's mana, kaitiakitanga and tangata whenua status over the Lake.[16]

In addition to these alleged omissions, the claimants argued that central government officials positively authorised the discharge of effluent into the lake from time to time.[17] They also pointed to a 1952 promise by the Minister of Lands, Ernest Corbett, that 'the Lake is not to be used as a dumping ground for sewer effluent'.[18] This promise, they said, was breached by the Crown.[19]

Claimant counsel submitted that 'The actions and omissions of the Crown in respect of the Lake must be viewed as the actions of a dishonourable Treaty partner, because they most certainly cannot be called the actions of an honourable one.'[20]

10.2.2 The Crown's case

In closing submissions, the Crown accepted that it has 'ongoing Treaty obligations to take steps to protect Muaūpoko taonga'. Nonetheless, the Crown submitted that it

> does not accept the present state of the Lake and Stream is attributable directly and solely to any identifiable Treaty breach by the Crown. This does not absolve the Crown of Treaty obligations regarding the Lake, but it is relevant to the Tribunal's findings and to the extent to which the Tribunal accepts the claimant tendency to attribute causality and responsibility to central government regardless of the legal, social and physical contexts in which the Lake has been damaged.[21]

15. Claimant counsel (Stone and Bagsic), submissions by way of reply (paper 3.3.32), p 4
16. Claimant counsel (Stone, Bagsic, and Hopkins), closing submissions (paper 3.3.9), pp 30–31
17. Claimant counsel (Stone, Bagsic, and Hopkins), closing submissions (paper 3.3.9), pp 18–20; claimant counsel (Naden, Upton, and Shankar), closing submissions (paper 3.3.23), pp 284–286
18. Claimant counsel (Stone, Bagsic, and Hopkins), closing submissions (paper 3.3.9), p 18
19. Claimant counsel (Naden, Upton, and Shankar), closing submissions (paper 3.3.23), p 284
20. Claimant counsel (Stone, Bagsic, and Hopkins), closing submissions (paper 3.3.9), p 31
21. Crown counsel, closing submissions, 31 March 2016 (paper 3.3.24), p 60

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In support of this submission, the Crown made a number of arguments:

- Damage to the lake occurred as a 'by-product of urban development (primarily Levin) and land use in the wider catchment area'. Environmental concerns per se were often not at the forefront of those planning urban development and land use before the 1970s. Even so, the geography and topography of the lake, which is naturally shallow, meant that population density and intensified agriculture would have an effect, no matter who the users were or how they were regulated. But land use and development were of benefit to the whole community, including Māori.[22]
- The Crown does not have an obligation, 'Treaty or otherwise', to 'prevent all environmental effects that may be perceived by some as adverse', especially where such effects are an 'inevitable consequence of human development and progress'.[23] Nor can the Crown guarantee what outcomes might result from attempts to 'prevent or mitigate environmental degradation'.[24]
- Causation is sometimes difficult to establish, including the causes of degradation. While the Crown has responsibility to implement 'overarching environmental legislative and policy settings, it does not have the ability to control or influence all of those factors'. The Crown is not necessarily *able* to prevent degradation or reverse its effects in every instance.[25] One such instance was the 'growth of a significant urban centre in close proximity to the Lake and the failure of the sewerage and stormwater infrastructure to cope, particularly it appears in times of extremely high rainfall', which was 'not a matter within Crown control'.[26] There is also little evidence about some important factors, such as the impact of deforestation on siltification in the inquiry district, which is a matter for consideration later in the inquiry.[27]
- In some cases the claimants do not identify particular Crown actions as *causes* of environmental degradation – in the Crown's view, they have focused on outcomes rather than the 'factors, or actors, that may have caused those outcomes'. This lack of specificity, we were told, 'limits the Tribunal's ability to identify the Crown's responsibilities and distinguish between environmental impacts caused by Crown actions or omissions and those that have been the result of broader social, economic, and environmental changes beyond the Crown's control'.[28] Also, the Crown's view was that some alleged Crown actions were actually the responsibility of local government.[29]
- The Crown submitted that there is a wide range of interests in the environment, which it must consider and provide for, as well as Māori interests. The Crown must 'strike a balance . . . that integrates Māori interests with the

22. Crown counsel, closing submissions (paper 3.3.24), pp 42–43
23. Crown counsel, closing submissions (paper 3.3.24), p 34
24. Crown counsel, closing submissions (paper 3.3.24), p 34
25. Crown counsel, closing submissions (paper 3.3.24), p 35
26. Crown counsel, closing submissions (paper 3.3.24), p 60
27. Crown counsel, closing submissions (paper 3.3.24), pp 64, 85–88
28. Crown counsel, closing submissions (paper 3.3.24), p 34
29. Crown counsel, closing submissions (paper 3.3.24), p 35

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interests of other New Zealanders'. This is not easy as interests are sometimes in conflict. Inevitably, 'some interests may be outweighed by others'. In undertaking this balancing, the Crown argued that it takes a 'principled approach to environmental management'.[30] No one viewpoint can be 'determinative' when balancing interests. There is instead a range of views as to how the environment should be managed, and what kinds of compromises in terms of a 'level of degradation' may be tolerated to obtain a particular benefit. Agriculture is a clear example of impacts which are tolerated because of the benefits it brings.[31]

- Care must be taken not to 'ascribe today's standards of environmental management and reasonable expectations to the Crown actions and actors of the past; historical context and prevailing circumstances are fundamental, as is the question of what was reasonably foreseeable'.[32]

Further, the Crown responded to the claimants' argument that it 'should have taken more direct state action to alleviate Lake issues to the extent those issues became identifiable from the late 1960s'. In the Crown's view, this assumed that 'the Crown could and should have simply intervened in local decision making around the Lake so as to somehow fix the problem, ideally, it seems, through the provision of direct state funding for upgrading the sewerage system and other Lake works'.[33]

Crown counsel submitted that this was an unreasonable assumption. First, there was no clear and simple fix for the issues affecting the lake – even the upgrade in 1987 did not suffice to prevent effluent entering the lake as a result of weather events. Also, effluent discharge was only one of the causes of pollution – there was no obvious 'magic bullet' or fix for the Crown to have applied to the interacting effects of agriculture, horticulture, market gardening, and dairy farming. Secondly, the Crown only had limited resources and funds, and 'cannot be expected to be responsible for (or pay for) local government decisions (including infrastructure decisions, for example sewerage works) in the way the claimants suppose'.[34]

The Crown accepted, however, that Muaūpoko kept it informed of their 'longstanding grievances' in respect of Lake Horowhenua and the Hōkio Stream, 'expressed through petitions to the Government, through Domain Board meetings, through litigation and in Tribunal claims'.[35] In response, the Crown submitted that it did take 'reasonable steps (in the context of the time) to assist in resolving particular issues impacting the lake, including through the provision of state funding'.[36] These included extensive funding to the borough council in 1962 and 1964 to upgrade the sewerage system; a grant to the borough council of $1.339 million in 1985 for another upgrade, together with a Health Department subsidy of $44,370;

30. Crown counsel, closing submissions (paper 3.3.24), p 36
31. Crown counsel, closing submissions (paper 3.3.24), p 37
32. Crown counsel, closing submissions (paper 3.3.24), p 38
33. Crown counsel, closing submissions (paper 3.3.24), p 61
34. Crown counsel, closing submissions (paper 3.3.24), p 62
35. Crown counsel, closing submissions (paper 3.3.24), p 44
36. Crown counsel, closing submissions (paper 3.3.24), p 62

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and DOC technical expertise provided for the replanting/restoration efforts in the early 1990s.[37]

Finally, the Crown denied allegations that Government departments or officials contributed directly to the deterioration of the lake. In the Crown's submission, these officials made good-faith decisions in the interests of public health, according to the state of scientific knowledge at the time.[38] Allegations of bad faith have also been made in respect of a ministerial 'promise' in 1952 that 'the Lake would never receive sewage discharge while at (broadly) the same time a sewerage system and treatment plant were constructed which processed raw sewage before discharging it into the Lake'. In the Crown's submission, the Minister made a 'statement of the Crown's present expectations rather than a guarantee of future conduct'.[39] Also, the statement was consistent with the situation in 1952 – no one was aware, including the Minister, of the 'diffuse intrusion' of effluent by way of seepage into the lake.[40]

10.3 What Was the Crown's Responsibility in respect of Pollution and Environmental Degradation?

10.3.1 The 1905 Treaty breach

As we set out in chapter 8, the Crown conceded

> that it promoted legislation in 1905 that failed to adequately reflect the terms of the Horowhenua Lake Agreement of 1905. The differences between the agreement and the Act prejudiced Māori with connections to the lake, including by the Act not directly providing for protections against pollution of the lake which contributed to damage of traditional food sources, and by impacting on the owners' fishing rights. The Crown concedes that the failure of the legislation to give adequate effect to the 1905 agreement breached Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.[41]

In respect of pollution, however, the Crown qualified its concession quite significantly in its closing submissions. Crown counsel argued that item 5 of the 1905 agreement – 'No bottles, refuse, or pollutions to be thrown or caused to be discharged into the Lake' – was in fact provided for by the domain board's power to make bylaws. The Crown relied on Mr Hamer's evidence under cross-examination that some parts of the 1905 agreement 'were seen as matters that could be dealt with just by the board in the creation of its bylaws. So they didn't actually need to be put into legislation.'[42] Mr Hamer also agreed in cross-examination that the clause on pollution may have been omitted from the Horowhenua Lake Act 1905 Act for that very reason.[43] In the Crown's submission, the 1905 Act established a board with

37. Crown counsel, closing submissions (paper 3.3.24), pp 62–63
38. Crown counsel, closing submissions (paper 3.3.24), pp 61, 64–68
39. Crown counsel, closing submissions (paper 3.3.24), p 66
40. Crown counsel, closing submissions (paper 3.3.24), pp 66–67
41. Crown counsel, opening submissions (paper 3.3.1), p 5
42. Crown counsel, closing submissions (paper 3.3.24), p 53
43. Transcript 4.1.12, pp 477–478

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all the powers and functions of a domain board and left matters like pollution to it. The 1906 bylaws, we were told, closely reflected the text of the previous year's agreement: 'No person shall leave bottles, glass, crockery, paper, remnants of food, or other litter within the limits of the domain.'[44] The Crown submitted that the terms of the 1905 agreement were thus 'sufficiently provided for by the 1905 Act's provision for these relevant bylaws, though it accepts this was not done directly, and says the promulgation of the bylaw is relevant to any assessment of the extent of prejudice caused by the breach.'[45]

In our view, the crucial issue here is the water race constructed in 1902, against which Muaūpoko protested because of its potential to pollute the lake as a result of livestock contamination. Before it was built, the sanitary commissioner pondered an obvious question: '[H]ow are several miles of open water course to be protected from the droppings of cows, sheep, etc?'[46] It is very clear from the evidence recited in chapter 8 that water-borne pollution was a key factor in the 1905 agreement, and not merely the disposal of litter on the lake's shores (see section 8.2.2). Item 5 clearly referred to discharge of pollutants into the lake. Thus, we do not accept the Crown's argument that the 1905 agreement in respect of pollution was satisfied by a bylaw about rubbish disposal. Rather, the Crown's failure to include protections against pollution in the 1905 Act – which it had agreed to do – was a serious Treaty breach. Its prejudicial effects cannot be under-estimated. If the Crown had kept its 1905 promises to Muaūpoko, there would have been statutory obligations requiring the Crown to act as soon as pollution or potential pollution of the lake became an issue. In our view, the argument rehearsed in our inquiry about the Crown's responsibility for local government decisions is beside the point. In 1905, the Crown entered into a solemn agreement with Muaūpoko and, although the Crown's written terms did not properly reflect what Muaūpoko had agreed to, they were nonetheless binding on the Crown as a statement of what it had undertaken to do (see section 8.2).

10.3.2 The principal cause of pollution in the twentieth century: the construction of Levin's sewerage system

Studies of lake pollution in the 1970s established that 85 per cent of the phosphorus entering the lake at that time came from Levin's sewerage system.[47] In this section, we discuss how that system was first established and whether the Crown was aware of Muaūpoko's grave concerns about it. We also consider the Crown's response to those concerns in light of the 1905 agreement and the Crown's failure to establish the promised protections against pollution.

For decades after Levin's establishment, its citizens relied at first on long drop toilets and night soil collection for the disposal of human waste, and later on septic

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44. Crown counsel, closing submissions (paper 3.3.24), p 53

45. Crown counsel, closing submissions (paper 3.3.24), p 53

46. Dr Kington Fyffe, sanitary commissioner, quotation arising from a visit in July 1900, before the scheme was constructed, not dated: A J Dreaver, *Horowhenua County and its People: A Centennial History* (The Dunmore Press: Levin, 1984), p 209

47. Paul Hamer, '"A Tangled Skein": Lake Horowhenua, Muaūpoko, and the Crown, 1898–2000', June 2015 (doc A150), p 235

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Map 10.1: Location of Levin Waste Water Treatment Plant

tanks. Large towns and cities developed sewerage systems by the early twentieth century, but by 1933 Levin was the only town of its size without such a system. From 1933 to 1943, the Health Department put increasing pressure on the borough council to install 'modern drainage facilities'.[48] The council was reluctant, partly because of the expense for ratepayers (which is a prominent theme in this section of our chapter). The council was also concerned, however, because the Health Department expected it to use the nearest practicable body of water for the discharge of effluent. This was obviously Lake Horowhenua, which the council wanted to develop as a pleasure resort (discussed in chapter 9, section 9.2.3). But to do nothing was not feasible; seepage from septic tanks was already beginning to pollute the lake by the early 1940s.[49]

In 1943, the Health Department warned the local council that it would take formal action under the Health Act if a sewerage system was not constructed. The council employed an engineer to design a scheme, which immediately aroused opposition from Muaūpoko. The tribe appealed to the Native Minister in 1944. Native Department officials told the Health Department that Muaūpoko objected to 'sewerage being drained into the lake, first, because it is their property, and secondly, because an important source of food supply will be polluted'. The tribe, they

48. Secretary, Board of Health, to town clerk, 7 August 1936, 17 August 1937 (Hamer, '"A Tangled Skein"' (doc A150), p 198)

49. Hamer, '"A Tangled Skein"' (doc A150), pp 197–199

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said, relied heavily on eels, flounder, tikihemi, īnanga, whitebait, carp, and freshwater shellfish.[50]

But the borough council already had the Health Department's approval to discharge treated effluent into the lake and had decided to do so. From 1945 to 1950, the council maintained that this effluent would be sufficiently purified to ensure a minimal impact on the lake's waters.[51] The Public Works Department supported the council, arguing that the lake had 'not been developed for recreational purposes and apparently is little frequented by local inhabitants'. The district engineer noted that if this situation changed and the lake did become a popular resort, 'the presence of effluent in the waters may present a serious obstacle to the popularising of the Lake generally'.[52] As Paul Hamer commented, the presence and concerns of Muaūpoko seemed to be invisible to Public Works officials.

The council shared the concern that the presence of effluent in the lake might be bad for future tourism. It therefore considered some alternatives to direct discharge into the lake. Those included disposing of effluent into the Hōkio Stream or 'out on to the sand hills'.[53] But engineers advised against these in 1948 because disposal to the lake was the easiest, cheapest option, and they thought objections to effluent were purely 'psychological'.[54]

Both the Health Department and the Native Department relayed Muaūpoko's concerns to the council.[55] In 1951 the tribe warned the council directly that the construction of a 'sewer drain through the chain strip for the purpose of emptying sewer effluent into the lake' would infringe their 'fishing and other rights in connection with the lake'.[56] In the meantime, however, the engineers had responded to council concerns by developing a new proposal for land-based disposal. Deep trenches called soak pits or sludge beds would be dug near the sewerage plant. These would allow the effluent to 'percolate away into the ground'.[57] In 1951–1952, the treatment plant and soak pits were constructed very close to Lake Horowhenua.

It thus took 18 years for the town to build a sewerage system after the Health Department first raised concerns in 1933. Although the idea of direct discharge into the lake had been abandoned in 1951, it soon turned out that effluent flowed constantly into the lake from the sludge pits – via the groundwater in summer and above ground in winter. Paul Hamer commented that this 'diffuse intrusion into the lake was [likely] neither understood nor, at the time, observed'.[58] But it had been established categorically by 1956, when the Public Works Department inspected

50. Native Department under-secretary to director-general of health, 15 December 1944 (Hamer, '"A Tangled Skein"' (doc A150), pp 199–200)

51. Hamer, '"A Tangled Skein"' (doc A150), pp 200, 204–205

52. District engineer to permanent head, Public Works Department, 11 June 1946 (Hamer, '"A Tangled Skein"' (doc A150), p 204)

53. *Chronicle*, 2 March 1948 (Hamer, '"A Tangled Skein"' (doc A150), pp 204–205)

54. *Chronicle*, 2 March 1948 (Hamer, '"A Tangled Skein"' (doc A150), p 205)

55. Hamer, '"A Tangled Skein"' (doc A150), pp 200–205

56. Herbert Taylor (Morison, Spratt, and Taylor) to town clerk, 11 June 1951 (Hamer, '"A Tangled Skein"' (doc A150), p 205)

57. Hamer, '"A Tangled Skein"' (doc A150), p 205

58. Hamer, '"A Tangled Skein"' (doc A150), p 207

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the treatment plant. RH Thomas, who carried out the inspection, concluded that 'The treated sewage is thus carried down towards Lake Horowhenua by the underground water in summer and above ground in winter.'[59]

From the very beginning, therefore, land-based disposal to the sand hills was technically feasible but rejected as a more difficult, expensive option than discharge into the lake. But Māori protest and the council's own concerns about developing the lake as a pleasure resort resulted in an alternative form of land-based disposal. This method of 'percolation' via sludge pits was established very close to the lake. As the Crown has pointed out, there was no direct discharge of treated effluent into Lake Horowhenua until a new plant was constructed in the 1960s.[60] Nonetheless, the Government was aware that effluent was entering the lake by 1956. In the meantime, the Minister of Lands and of Maori Affairs, Ernest Corbett, had promised Muaūpoko that this would not happen. We turn next to the question of Corbett's promise, and whether the 1905 omission was rectified by the 1956 legislation.

10.3.3 Was the 1905 omission rectified by the 1956 legislation?

We discussed the 1953 agreement and the resultant legislation (section 18 of the ROLD Act 1956) in chapter 9. In November 1952, as part of the discussions leading up to the 1953 agreement and 1956 Act, Ernest Corbett met with local body representatives about the need to settle lake issues with Muaūpoko. This meeting included representatives of the borough council, county council, catchment board, and the Hokio Drainage Board. As part of those discussions, one 'point on which the Minister was most emphatic is that Horowhenua Lake is not to be used as a dumping place for sewer [e]ffluent'.[61] Later that year, Muaūpoko's lawyer (Simpson) met with Maori Affairs Department and Lands Department officials, as discussed in section 9.2.4(2). This meeting was held on 22 December 1952. The commissioner of Crown lands confirmed the ministerial assurances made to Muaūpoko, which included:

> The Maori owners can be assured that the Crown is opposed to speed boats being on the Lake and would like the original intention of wild life sanctuary adhered to as much as possible. Again, the Lake is not to be used as a dumping ground for sewer effluent. The Hon Minister of Lands and Maori Affairs has already made these two points clear.[62]

As Mr Hamer noted, these assurances were given to Muaūpoko after the council had already built a sewerage system in which effluent would not be discharged

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59. RH Thomas, report, 1956 (Hamer, '"A Tangled Skein"' (doc A150), p 205)
60. Crown counsel, closing submissions (paper 3.3.24), p 66
61. Director-general of lands to commissioner of Crown lands, 12 November 1952 (Hamer, '"A Tangled Skein"' (doc A150), p 144)
62. Commissioner of Crown lands to Simpson, 22 December 1952 (Hamer, '"A Tangled Skein"' (doc A150), p 145)

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directly into the lake. Yet 'the consensus among secondary sources appears to be that treated sewage first entered Lake Horowhenua in 1952'.[63]

But we note here that the Minister's assurance was not supposed to stand alone or be a transitory one; it was supposed to have been part of the 1953 agreement. This is a crucial point. It is all the more remarkable since the Waters Pollution Act of that year made the 'discharge of any matter from a sewer or a sewage disposal works under the control of a local authority' an exception to the general prohibition of pollution.[64]

In the early 1950s, Muaūpoko were not aware that effluent had started to seep into the lake. As noted above, Moana Kupa and other witnesses recalled the beauty and health of the lake and its fisheries at this time. When Assistant Commissioner of Crown Lands McKenzie met with Muaūpoko in June 1952 to discuss the Crown's proposal to acquire the lake, he listed the 'rights enjoyed by Maoris and Pakeha to this lake'. Based on the 1905 agreement, these included 'that the lake be not polluted'.[65] Himiona Warena responded: 'Regarding pollution – Maoris do not want it.' Warena complained about the effects of a wool scourer.[66] In his report to the director-general, the commissioner of Crown lands again mentioned item five of the Crown's list of terms for the 1905 agreement, and noted the concerns about the wool scourer.[67]

McKenzie's letter to Simpson in December 1952, cited above, included the Crown's proposed terms for a new agreement. This included a prohibition on speedboats and the Minister's assurance that no sewage effluent would enter the lake.[68] In other words, this was to be one of the terms of the 1953 agreement. This was confirmed in April 1953, when Muaūpoko's lawyers told H D Bennett that '[n]o speed boats to be allowed and no sewage waste' was to be a term of the agreement.[69] On 3 August 1953, Lands Department officials wrote a memorandum for their Minister recording the outcome of the 1953 meeting with Muaūpoko at which agreement was finalised. Again, 'No speed boats to be allowed on the lake nor is it to be used as a dumping ground for sewer effluent' was one of the terms proposed by the Crown.[70] Yet, crucially, Simpson's formal record of what was agreed at the meeting only mentioned

63. Hamer, '"A Tangled Skein"' (doc A150), p 206

64. Waters Pollution Act 1953, s 15(3)(a)

65. 'Horowhenua Lake: Minutes of meeting held at Kawiu Hall, Levin, 13th June, 1952' (Paul Hamer, comp, papers in support of '"A Tangled Skein": Lake Horowhenua, Muaūpoko, and the Crown, 1898–2000', various dates (doc A150(c)), p 370)

66. 'Horowhenua Lake: Minutes of meeting held at Kawiu Hall, Levin, 13th June, 1952' (Hamer, papers in support of '"A Tangled Skein"' (doc A150(c)), p 371)

67. Commissioner of Crown lands to director-general of lands, 20 June 1952 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(c)), p 376)

68. Commissioner of Crown lands to Simpson, 22 December 1952 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(c)), p 391)

69. H D Bennett to Tau Ranginui, chair of the lake trustees, 14 April 1953 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(c)), p 395). H D Bennett of Te Arawa had been engaged by the Levin Borough Council to assist it in the discussions: see Hamer, '"A Tangled Skein"' (doc A150), p 146.

70. Director-general to Minister of Lands, 3 August 1953 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(c)), p 404)

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speedboats and not effluent.[71] In our view, Simpson's failure to include this point was clearly an oversight. We are confirmed in this view by the intervention of the Maori Affairs Department when a clause in respect of pollution was left out of section 18 of the draft ROLD Bill in 1956.

The June 1952 meeting with Muaūpoko (at which prevention of pollution was described by the Crown as one of the Māori owners' rights) was chaired by T T Rōpiha, the secretary for Maori Affairs. Rōpiha was aware that the prohibition of pollution was supposed to be included in the Bill. When the draft clause for the ROLD Bill was under consideration in 1956, Rōpiha asked the Lands Department that 'section 84(1)(m) Reserves and Domains Act, 1953, might be examined to determine whether the provisions are wide enough to prevent pollution of the Lake'.[72] The Lands Department examined this section, which made it an offence for anyone to throw or deposit 'any substance or article of a dangerous or offensive nature' onto a reserve.[73] Officials concluded: 'It is thought that there are sufficient powers here.'[74] In response to the secretary of Maori Affairs' initiative, therefore, no provision was included in the 1956 Act to (as he said) 'prevent pollution of the Lake'. This was a crucial omission, which would have given statutory force to the Minister's assurance to the Māori owners that 'the Lake is not to be used as a dumping ground for sewer effluent'.

In our inquiry, the Crown argued that Corbett's promise was actually a 'statement of the Crown's present expectations rather than a guarantee of future conduct'.[75] The Crown also pointed out that Corbett's statement was factually correct as at 1952. The sewerage system at that time did not involve 'systematic or deliberate discharge into [the] Lake, but rather disposal through percolation in sludge pits, the oxidation pond system not being employed until 1967'. Hence the Minister, unaware that 'diffuse intrusion' would occur, honestly believed that effluent was not going to enter the lake. Further, in the Crown's submission, Muaūpoko do not appear to have relied on the Minister's statement in any way in the negotiations leading to the ROLD Act 1956.[76] As we have explained, there is very clear evidence that a clause on preventing pollution by effluent was in fact intended to be part of the 1953 agreement. The Minister's statements about effluent (made to local bodies as well as Muaūpoko) were not simply intended to reflect the current state of the sewerage system but to be a term of the agreement.

The claimants considered it axiomatic that the Minister's assurance would be for the future and not just the present, otherwise the assurance was worthless – as, indeed, it proved. In the claimants' submission, the 'risk to the Lake of sewerage

71. Simpson to commissioner of Crown lands, 9 July 1953 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(c)), p 402)

72. Commissioner of Crown lands to director-general of lands, 11 September 1956 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(c)), p 434)

73. Hamer, '"A Tangled Skein"' (doc A150), p 153

74. Commissioner of Crown lands to director-general of lands, 11 September 1956 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(c)), p 434)

75. Crown counsel, closing submissions (paper 3.3.24), p 66

76. Crown counsel, closing submissions (paper 3.3.24), p 67

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pollution was clearly a foreseeable one, and the Minister's actions were reckless in that regard'.[77]

We note that the Maori Affairs Department had received protests from Muaūpoko in the 1940s about the possible pollution of the lake as a result of Levin's proposed sewerage system. The department was represented at the December 1952 meeting at which Corbett's assurance was conveyed to the Māori owners, and at which it was specified as one of the intended items for agreement with Muaūpoko. The department was also represented at the June 1952 meeting in which prevention of pollution to the lake was listed as one of the Māori owners' rights. It is not surprising, therefore, that the department wished to satisfy itself that the powers conferred by the Reserves and Domains Act were 'wide enough to prevent pollution of the Lake', since the draft clause for the ROLD Bill contained no such powers. Rōpiha's query of the Lands Department has to be understood in the context of the Minister's assurance in 1952, McKenzie's statements to the June 1952 meeting, and the Crown's intention to make the Minister's assurance part of the 1953 agreement. The Lands Department's response (that the powers conferred by the Reserves and Domains Act were sufficient) also has to be understood in that context, and was woefully inadequate.

We conclude, therefore, that a crucial opportunity to give statutory effect to the Minister's promise was lost. Clearly, the power to prevent throwing or disposal of a substance or article was not likely to cover water discharges (whether treated effluent or storm water). The domain board never tried to use this section of the Reserves and Domains Act to prevent discharges of effluent into Lake Horowhenua. As to the Crown's argument that the Minister's promise was not referred to again in the lead up to the 1956 Act, we expect that the Māori owners simply relied on the promise as given. It was clearly not forgotten by Maori Affairs or Lands Department officials at that time, as it was supposed to have been a term of the 1953 agreement.

Yet it was in 1956 that the Public Works Department reported: 'treated sewage is . . . carried down towards Lake Horowhenua by the underground water in summer and above ground in winter'.[78] Corbett was still Minister of Lands and Maori Affairs at the time. The Government was in the midst of finalising agreement with local bodies (having reached agreement with Muaūpoko in 1953) and enacting section 18 of the ROLD Act. But 'officials said nothing about the disposal of the effluent after Corbett had been so adamant on the matter in 1952'.[79] Mr Hamer suggested that 'By the time the entry of effluent into the lake was identified, it may well be that the Minister's promise was quietly shelved.'[80]

77. Claimant counsel (Naden, Upton, and Shankar), submissions by way of reply (paper 3.3.29), p 12
78. RH Thomas, report, 1956 (Hamer, '"A Tangled Skein"' (doc A150), p 205)
79. Hamer, '"A Tangled Skein"' (doc A150), p 207
80. Hamer, '"A Tangled Skein"' (doc A150), p 207

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Photograph of the concrete control weir at the outlet of Lake Horowhenua, 1977

Horowhenua Historical Society Inc; see http://horowhenua.kete.net.nz/site/images/show/6500-concrete-control-weir-across-hokio-stream-1977

10.3.4 Seepage of effluent and discharges of raw sewage, 1957–69

In 1957, Muaūpoko became aware that effluent was entering the water which they used as a principal source of food.[81] For the next 30 years, sewage effluent continued to enter the lake. The claimants' evidence to us was that they could not take food from the lake during that period for three interrelated reasons:

- it was culturally prohibited to take food from water contaminated by human waste;
- there were health concerns about eating food taken from the lake, even if rinsed; and
- environmental degradation of the lake, including pollution and the effects of the 1966 control weir, significantly harmed or reduced fish populations.

During that period, Crown officials often focused on the second point, arguing over whether there was a health risk involved in eating food from Lake Horowhenua. Other concerns were either not perceived or frequently ignored.

In response to the situation in 1957, the tribe placed a warning in the *Chronicle* that eels and other fish should not be taken from the lake 'till further notice, owing to human waste being seen down the drain of lake and foreshore'.[82] They also protested to the domain board about it, and a 10-year battle ensued. The board asked the Health Department to investigate, resulting in advice that the lake was too high; lowering the ground water level would help, but wet weather also caused seepage

81. Hamer, '"A Tangled Skein"' (doc A150), pp 207–208
82. 'Public Notices', *Chronicle*, 5 December 1957 (Hamer, '"A Tangled Skein"' (doc A150), pp 208–209)

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into the lake.[83] A second investigation in 1957 by a pollution biologist, A Hirsch, suggested that the 'undiluted effluent' entering the lake was of a 'satisfactory' nature for the survival of eels and fish.[84]

Mrs R Paki, a member of the tribal committee at Kawiu Pa, argued in response that the people had seen eels dying for 'several months', and that it was no longer possible for them to take freshwater shellfish or watercress from the lake. Crucially, Mrs Paki pointed out to the inspectors that tikanga prohibited the taking of food from polluted waters:

> Mrs Paki's strongest objection was that damage to fisheries or public health considerations aside, it was against tribal custom to eat fish from an area where human wastes were discharged. For this reason, more than any other, she was of the very decided opinion that the discharge of effluent to the lake was harmful to Maori interests and should be stopped. She said she would again recommend this to the tribal committee when they met in January, although she did not question the validity of our findings and would place these before the committee as well.[85]

The claimants pointed out that this kind of objection was the subject of the Wai 4 Kaituna River inquiry, one of the earliest claims upheld by the Waitangi Tribunal (1984).[86]

In 1958, the domain board accepted Hirsch's report and concluded that it 'completely exonerated the Levin Borough Council, and there was no doubt whatsoever that pollution was not entering the Lake'.[87] But wet weather conditions in 1962 and 1964 overwhelmed the sewerage system, and raw, untreated sewage entered the lake. It was diverted there to prevent a public health crisis in the town itself. These diversions were authorised by the Health Department.[88]

The lake trustees and the Muaūpoko tribal committee responded in 1962 by having a tapu placed on the lake, and by applying to the Supreme Court for an injunction to stop the council from discharging untreated sewage into Lake Horowhenua. The court refused the injunction because the alternative was the contamination of family homes in Levin, which 'might be of more importance in the long run than fishing rights in the lake'.[89] The lake trustee taking the case, Hemi Warena Kerehi, accepted the adjournment for that reason. The court rebuked the council for not acting fast enough to solve the crisis: 'the Maoris were entitled to insist on . . . immediate attention to the trouble'. The borough council assured the court that

83. Hamer, '"A Tangled Skein"' (doc A150), p 209

84. Director, Division of Public Hygiene, to medical officer of health, Palmerston North, 30 December 1957 (Hamer, '"A Tangled Skein"' (doc A150), p 209)

85. Director, Division of Public Hygiene, to medical officer of health, Palmerston North, 30 December 1957 (Hamer, '"A Tangled Skein"' (doc A150), p 209)

86. Claimant counsel (Lyall and Thornton), submissions by way of reply, 14 April 2016 (paper 3.3.27), p 19

87. Horowhenua Lake Domain Board, minutes, 13 February 1958 (Hamer, '"A Tangled Skein"' (doc A150), p 209)

88. Hamer, '"A Tangled Skein"' (doc A150), pp 210–214

89. *Evening Post*, 5 September 1962 (Hamer, '"A Tangled Skein"' (doc A150), pp 210–211)

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experts would investigate the situation, which would be 'rectified at the earliest possible date'.[90]

The Government's experts carried out this investigation in late 1962. Public Works officials again blamed the high level of the lake and advocated drainage works on the Hōkio Stream, noting that Māori opposition would be likely. The Health Department, however, decided that the whole sewerage system and treatment plant needed to be upgraded or expanded. Otherwise, further discharges of raw sewage into the lake were inevitable. The medical officer of health recommended an urgent loan to the council so that work could begin immediately. He also suggested that the Pollution Advisory Council classify the lake's waters so that any new scheme would give a sufficient treatment of the effluent to enable recreational use of the lake. Muaūpoko fishing rights and other interests were not considered.[91]

In the event, nothing had been achieved by August 1964 when wet weather caused a further crisis. The council had obtained a Government loan of £35,000 in 1962 but it proved insufficient to undertake the necessary work. Joe Tukapua and J F Moses took reporters from a local newspaper to show them the sewage flowing into the lake. At first the mayor denied that it was happening, but the newspapers reported thousands of gallons discharging daily into the lake.[92] 'Lake Horowhenua', it was said, 'is fast becoming a massive oxidation pond for raw sewage.'[93]

The town was growing too quickly for its 1952 sewerage system to cope. The Health Department, however, was unconcerned about discharging raw sewage into the lake when necessary. Health officials argued that it was simply inevitable until the council upgraded its system. In the meantime, the wet weather was diluting the sewage, which entered the lake 'well away' from any houses or the domain's public park. Nor, said the health officer, were sporting interests affected since the lake was no longer used for boating. Māori interests were at least noted this time, but with total disregard to obtaining even the slightest information about how they were being affected: 'As to what effect the sewage would have on the eel life or its habits I do not know. . . . Also no-one seems to know to what extent the Maoris rely on the eels and how often they catch them.'[94]

Muaūpoko, on the other hand, knew very well the extent to which they relied on their fisheries, and once again applied to the Supreme Court for an injunction. This time the case was brought by Joe Tukapua on behalf of the lake trustees. As in 1962, Muaūpoko were trumped by the point that the only other recourse was to flood the town with sewage.[95] The mayor did agree that 'what the council did probably caused considerable distress among the Maori people'.[96] He was, he said, 'aware the lake

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90. *Evening Post*, 5 September 1962 (Hamer, '"A Tangled Skein"' (doc A150), p 211)
91. Hamer, '"A Tangled Skein"' (doc A150), pp 211–212
92. Hamer, '"A Tangled Skein"' (doc A150), pp 212–213
93. *Manawatu Evening Standard*, 27 August 1964 (Hamer, '"A Tangled Skein"' (doc A150), p 213)
94. Medical officer of health to director-general of health, 8 September 1964 (Hamer, '"A Tangled Skein"' (doc A150), p 213)
95. Hamer, '"A Tangled Skein"' (doc A150), pp 214–215
96. *Manawatu Evening Standard*, 13 October 1964 (Hamer, '"A Tangled Skein"' (doc A150), p 214)

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had special significance to them'.[97] This was an important admission. The Health Department's witness conceded that it was 'possibly unwise' to fish near the sewerage outlet into the lake but fishing was otherwise permissible. Summing up, counsel for the lake trustees argued that there had been an 'invasion of the plaintiff's private right to use and enjoy and take', and that 'the relief of private persons was not subservient to public welfare'.[98] The council, in reply, pointed out that the sewage had stopped entering the lake (for the time being), and did not accept that Māori fishing rights had been affected by it.[99]

In a replay of the events of 1962, the judge criticised the council for the length of time it was taking to fix the sewerage problems. There was a fear among both local and central government officials that a third application for an injunction (practically inevitable) might be granted by the courts. The council asked for another urgent loan to upgrade the system. Health officials cautioned that Māori fishing rights required a guaranteed level of treatment of the effluent from now on.[100] The council must ensure that there would be 'no noticeable solid matter, and the oxygen demand to be of a level that it would support fish life'.[101] The department also tried to progress a second loan to the council, which had applied for an extra £123,000.[102]

Three years later, in 1967, the upgrade was stalled due to insufficient funds. Treated effluent was still flowing into the lake above and below ground, but there had been no further extreme weather events and thus no discharge of raw sewage. It was not until 1969 that the council finally completed its upgrade to the treatment plant, which remained in the same location (and therefore dangerously close to the lake). The new system involved the use of oxidation ponds to treat the effluent before discharge into the lake. Despite Muaūpoko's known opposition, 'percolation' in sludge pits was to be replaced by direct discharge into the lake. This was highly problematic for the claimants, and it soon became apparent that even treated effluent was accelerating the eutrophication of the lake.[103]

10.3.5 A crucial turning point in knowledge and approach, 1969–71

In 1969, the Internal Affairs Department tested the quality of the water as a result of Muaūpoko opposition to a proposed deepening of the lake for boating.[104] Muaūpoko remained very concerned about their freshwater shellfish and fish in the lake, and the tests showed that 'fairly heavy pollution' was occurring as a result of *treated* effluent.[105] The head of the Internal Affairs Department wrote to the Health Department advising: '*With the increase of Nutrients entering the water it is obvious*

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97. *Manawatu Evening Standard*, 13 October 1964 (Hamer, '"A Tangled Skein"' (doc A150), p 214)
98. *Manawatu Evening Standard*, 13 October 1964 (Hamer, '"A Tangled Skein"' (doc A150), p 214)
99. *Manawatu Evening Standard*, 13 October 1964 (Hamer, '"A Tangled Skein"' (doc A150), p 214)
100. Hamer, '"A Tangled Skein"' (doc A150), p 215
101. Acting medical officer of health to director-general of health, 18 November 1964 (Hamer, '"A Tangled Skein"' (doc A150), p 215)
102. Hamer, '"A Tangled Skein"' (doc A150), p 215
103. Hamer, '"A Tangled Skein"' (doc A150), pp 216–217, 219, 235
104. Hamer, '"A Tangled Skein"' (doc A150), p 216
105. Secretary for Internal Affairs to district officer of health, 15 April 1969 (Hamer, '"A Tangled Skein"' (doc A150), p 216)

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Eutrophication

Eutrophication is caused by high nutrient levels, and it results in the 'excessive growth of algae and weeds and an accompanying depletion of oxygen in the water, which in turn causes the death of other organisms, including fish'. Eutrophication also causes increased sediment, which has the effect of gradually raising the bed of a lake. If it remains unchecked 'eutrophication . . . would eventually result in it [a lake] becoming a swamp, and ultimately dry land'.[1]

1. David Armstrong, 'Lake Horowhenua and the Hokio Stream, 1905–c1990', May 2015 (doc A162), p 89

that if the Lake is to be retained for recreational purposes some method of bypassing the Lake with this effluent will have to be found (emphasis added).'[106] Māori fishing rights were also at stake. The secretary for Internal Affairs noted that 'this matter requires serious investigation as the health risk to the Maoris who are known to take fish life from the lake for food is need for concern.'[107] The director of public hygiene agreed that 'Perhaps consideration should be given to removal of the Levin Borough Council's effluent from the Lake.'[108]

The claimants put great weight on the admissions of these senior officials in 1969, noting that effluent did not in fact cease entering the lake until 1987, almost 20 years later.[109]

The Health Department tested water quality in 1969 and found that there was also pollution from Levin's stormwater system and farm effluent, in addition to the town's sewage effluent. But the seriousness of the pollution depended on the standards against which it was measured. Health officials debated whether the lake had recreational uses and therefore needed to meet bathing standards, and admitted that there was no official standard against which to measure pollution for freshwater shellfish. Although this was necessary, since Muaūpoko owned the bed and took shellfish from it, officials though it might be 'impractical' to insist on a water quality standard fit for shellfish consumption.[110] In 1970, as noted above, the director of public hygiene suggested that Levin's effluent might need to be removed from the lake altogether. Water quality did improve slightly in 1971 after the introduction

106. Secretary for Internal Affairs to district officer of health, 15 April 1969 (Hamer, '"A Tangled Skein"' (doc A150), p 217)
107. Secretary for Internal Affairs to district officer of health, 15 April 1969 (Hamer, '"A Tangled Skein"' (doc A150), p 217)
108. Director, Division of Public Health, to medical officer of health, 10 June 1970 (Hamer, '"A Tangled Skein"' (doc A150), p 217)
109. Claimant counsel (Naden, Upton, and Shankar), closing submissions (paper 3.3.23), p 285; claimant counsel (Stone, Bagsic, and Hopkins), closing submissions (paper 3.3.9), p 20
110. Medical officer of health to director-general of health, 9 October 1969 (Hamer, '"A Tangled Skein"' (doc A150), p 217)

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of the new treatment system, but large quantities of effluent were now being discharged directly into the lake.[111]

What did the domain board do? In the claimants' submission, the 1956 arrangement was made with the Crown, not the local authorities, and Muaūpoko looked to the Crown to assist them. They repeatedly made the situation known to the Crown in expectation of a remedy. Further, Muaūpoko reluctantly agreed in 1956 to a '4/4' board (that is, a reformed domain board with four Muaūpoko representatives, three local body representatives, and a Crown chair – see chapter 9). Muaūpoko agreed to this, they said, on the basis that the Crown would chair and would be 'an active protector on their behalf. Patently the Crown has not fulfilled that role in relation to contamination of the lake through sewage and from surrounding farmland.'[112]

In 1969, the domain board asked the Pollution Advisory Council for assistance but received the response that the council had not yet classified the waters of Lake Horowhenua. This would be done 'in due course.'[113] As will be recalled, the Health Department had suggested this back in 1963 but it had not been done.[114] In fact, it had still not been done by 1972, when the domain board was advised that the task of classifying waters had been transferred to the Water Resources Council. In the meantime, the Health Department had warned the board that 'it would be undesirable from the health point of view for the Lake to be used for swimming or the taking of shell-fish'. The board 'continued to press for action' from the Water Resources Council without success, but took no action itself until 1975, when it set up a technical advisory committee (discussed below). Thus, the domain board took no action at all until 1969, and then of only a minimal kind.[115] As we explained in chapter 9, Crown counsel submitted that the 1956 arrangements provided a 'co-management regime' for the lake,[116] but the unreliable protection afforded Muaūpoko was clearly evident here.

The Nature Conservation Council warned the domain board in 1971 that action was necessary to 'prevent further eutrophication of Lake Horowhenua'.[117] In the same year, the catchment board's chief engineer, A G Leenards, investigated the situation. He reported that the concrete weir was aggravating siltation, and that the lake could not be flushed as a result of it. The once-gravel bed was now made up of silt and sludge, which stored nutrients and exacerbated the effects of the effluent on the water. Leenards also noted that storm water and surrounding farmland were having an effect in terms of pollution. Most of the nutrients in the lake, how-

111. Hamer, '"A Tangled Skein"' (doc A150), pp 217–218

112. Claimant counsel (Bennion, Whiley, and Black), closing submissions, 19 February 2016 (paper 3.3.17(b)), p 50

113. A N McGowan for commissioner of Crown lands to director-general of lands, 'Report on Background to Horowhenua Lake Reserve', 8 April 1982 (Paul Hamer, comp, papers in support of '"A Tangled Skein": Lake Horowhenua, Muaūpoko, and the Crown, 1898–2000', various dates (doc A150(d)), p 643)

114. Hamer, '"A Tangled Skein"' (doc A150), pp 211–212

115. A N McGowan for commissioner of Crown lands to director-general of lands, 'Report on Background to Horowhenua Lake Reserve', 8 April 1982 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(d)), p 643)

116. Crown counsel, closing submissions (paper 3.3.24), p 54

117. Secretary, Nature Conservation Council, to secretary, Horowhenua Lake Domain Board, 30 November 1971 (Hamer, '"A Tangled Skein"' (doc A150), p 219)

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ever, came from sewage effluent. The lake was further discoloured and deprived of oxygen by algae, caused by a combination of the silt and nutrients. Aspects of the lake's life cycle had been 'destroyed or distorted'.[118] The Hōkio Stream, too, was in trouble.[119]

The solution, advised Leenards, was to move the concrete weir and remove the silt from both the stream and lakebed, inhibiting the algae and allowing the lake to be flushed. Leenards also recommended a 10-year project to clean up the lake. This included removing the silt and diverting all streams and drains which entered the lake into oxidation ponds before entry, so as to prevent the deposit of silt and farm effluent into Lake Horowhenua. The likely cost was $404,000. The catchment board, however, had no money to carry out Leenards' proposals: the money had to come from the Crown or local rates.[120]

The claimants were very critical of the Crown's failure to act in 1971. In their view, the Crown rejected a crucial opportunity to 'remediate the Lake' at a point when less damage had been done, and rectification was both cheaper and much more practicable than it is today. The Crown cannot, they told us, complain that the cost is much higher today, when earlier action could and should have been taken.[121] The claimants asked the Tribunal to recommend that 'any settlement should specially factor suitable funds for the repair of pollution caused by Treaty breaches'.[122]

The Crown, on the other hand, denied that its state of knowledge was such as to justify the expense and difficulty of carrying out Leenards' plans. In the Crown's view, Department of Scientific and Industrial Research (DSIR) tests in 1971 showed an improvement since the new sewerage system had begun to operate in 1969. Also, Leenards' report argued that the lake was not only polluted by effluent, but also by storm water and streams discharging into the lake from 'surrounding farmland'. Also evident from his report was that solutions would be neither simple nor inexpensive. The Crown submitted that it was not reasonable to expect the Crown to have simply intervened and 'done (and paid for) whatever was required'.[123]

In our view, it was clear that Crown officials had recognised by 1971 that it was crucial to stop Levin's effluent from entering the lake, yet the council's upgrade of the treatment plant was based precisely on discharge into the lake. Central and local government officials agreed that Lake Horowhenua was polluted. Only the Crown could really afford to pay for and undertake a project of the scope suggested by Leenards to clean up the lake. It did not choose to do so, however, and thus no action was taken to prevent the situation from getting worse. As Leenards himself

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118. A G Leenards to chairman, Manawatu Catchment Board, 'Preliminary Report on the Conditions of Lake Horowhenua', 1 October 1971 (Hamer, '"A Tangled Skein"' (doc A150), p 219)

119. Hamer, '"A Tangled Skein"' (doc A150), pp 219–220

120. Hamer, '"A Tangled Skein"' (doc A150), pp 220–221

121. Claimant counsel (Bennion, Whiley, and Black), submissions by way of reply, 21 April 2016 (paper 3.3.33), p 13

122. Claimant counsel (Bennion, Whiley, and Black), submissions by way of reply (paper 3.3.33), p 13

123. Crown counsel, closing submissions (paper 3.3.24), pp 68–70

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noted, the Crown might have been prepared to subsidise ratepayer efforts but pollution was seen as a local problem for local bodies to resolve.[124]

Another way of looking at this issue was: who had the power to stop the pollution from occurring? While it is correct to say that other sources of pollution were important, including the stormwater drains, the overwhelming source of phosphorus and nutrients in the lake at the time was the sewage effluent. As early as 1948, engineers had said that it was possible to discharge treated effluent to land in the sandhills, a considerable distance from the lake. Quite apart from Leenards' plan for remediation, the solution also depended on immediately halting the discharge of sewage effluent. This meant persuading or compelling the borough council to discharge to land instead. A significant subsidy from the Government would have been required, as in fact occurred in the 1980s. The key point the claimants made is that halting the discharge of sewage effluent could and should have happened earlier, and we agree that senior Government officials were aware of the necessity by 1969.

The key question then becomes: who had the authority to make the council stop discharging into Lake Horowhenua? In terms of central government authority, the answer is simple: what was needed was a classification of the lake's waters by the Pollution Advisory Council or the Water Resources Council. If the classification was high enough, the borough would not be able to discharge even treated effluent into Lake Horowhenua. Ironically, however, Government departments now decided that the better alternative was to discharge the effluent into the Hōkio Stream. Further, they decided that it would be necessary to take away any authority of the Māori owners before it could be done, or before nutrient-rich sediment could be removed from the bed of the lake. We turn to those developments next.

10.3.6 Persuading or compelling the council to stop discharging effluent: a long and tortuous process, 1969–87

As noted above, the domain board had done nothing very active since being alerted to the seriousness of the problem in 1969. It pressed for a classification of the lake's waters, which would bring the powers of the Water and Soil Conservation Act 1967 into play. But this had not happened by 1975 when, amid concerns that raw sewage was once again reaching the lake, the domain board asked the Commission for the Environment for help. The Māori members of the board also appealed to the New Zealand Maori Council to assist. As Paul Hamer noted, the whole board was by then 'concerned about the worsening state of the lake'.[125] The Health Department was also concerned, issuing warnings against eating fish from Lake Horowhenua. Despite the prohibition in tikanga and the health warnings, however, some Māori continued to take food from the lake – in their economic circumstances, they may have had little choice.[126]

A number of bodies got involved in 1975:

124. Hamer, '"A Tangled Skein"' (doc A150), p 221
125. Hamer, '"A Tangled Skein"' (doc A150), pp 222–223
126. Hamer, '"A Tangled Skein"' (doc A150), pp 222, 224

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- Commission for the Environment: an official from the commission, Alasdair Hutchison, argued that Māori ownership and fishing rights were an obstacle which must first be circumvented before the lake could be cleaned up. Works on the Hōkio Stream might interfere with fishing rights, and the Māori owners' permission would be needed before the silt and sludge on the lakebed could be removed. Further, neither the borough council nor the county council were willing to spend money on the lake 'until the Maoris relinquish some of their exclusive rights to it'. While accepting that Māori were 'unhappy' about the pollution of their lake and its effects on their food supply, Hutchison argued that they would have to lease their lakebed to the Crown before anything could be done about it.[127] The secretary of the domain board agreed that the bed, chain strip, and dewatered area as well as the surface would need to be brought under the board's control.[128]
- The Nature Conservation Council took the same view. Once control had been taken from Māori, the council thought that sewage and farm effluent could be diverted to the Hōkio Stream, and the beds of the stream and lake dredged. Any interference with Māori fishing rights would not matter as 'the water is now so polluted that nothing should be taken for food' anyway.[129]
- The DSIR also investigated the situation, finding that the lake was 'eutrophic and thus susceptible to toxic algal blooms, high sedimentation, "unsightly and unsavoury waters", and so on'.[130] A realistic aim was to restore the water to a point where aquatic animals could grow, algal blooms were rare, and it was fit for swimming. The DSIR advised the commissioner for the environment that stock must be kept out of all waterways in the catchment, swamps should be retained for 'coarser solids to settle in', control of fertilisers was imperative, and it was important to divert all effluent away from the lake. Helen Hughes of the DSIR pointed out that Horowhenua exceeded the pollution rates of other 'notoriously polluted lakes'. The borough council, however, seemed oblivious of any need to act on Lake Horowhenua. On advice from DSIR, the commissioner for the environment told the Public Works Department that any future expansion of Levin must be conditional upon stripping its water of nutrients or stopping all discharges into the lake.[131]
- The catchment board formulated a plan for hydrological, chemical, and biological testing of the lake's water quality, but DSIR argued against the need for it: the most important thing was simply to 'get the Effluent from Levin Borough out of the lake pronto'.[132] DSIR and the commissioner for the environment considered the use of central government authority via the water classification

127. A Hutchison, file note, 30 May 1975 (Hamer, '"A Tangled Skein"' (doc A150), pp 222–223)
128. Hamer, '"A Tangled Skein"' (doc A150), p 223
129. Paper for Nature Conservation Council meeting of 17 September 1975 (Hamer, '"A Tangled Skein"' (doc A150), pp 223–224)
130. RHS McColl, DSIR Soil Bureau, to H Hughes, DSIR head office, 4 August 1975 (Hamer, '"A Tangled Skein"' (doc A150), pp 224–225)
131. Hamer, '"A Tangled Skein"' (doc A150), pp 224–225
132. A Hutchison, file note, 1 December 1975 (Hamer, '"A Tangled Skein"' (doc A150), p 226)

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system. If the lake could be classified as 'x' by the National Water and Soil Conservation Authority, the borough council would have to stop discharging effluent into it.[133]

In 1976, the domain board and Government departments worked on the three key strategies identified in 1975: (i) getting the lakebed and stream bed out of Māori control; (ii) getting the lake water classified 'x'; and (as a result) (iii) getting the borough council to develop an alternative method for disposing of its effluent. These strategies had an unintended effect; they contributed significantly to Muaūpoko's disillusionment with the domain board and the 1956 'co-management regime' by 1980.

In respect of point (i), Lands Department officials tried to get agreement from the lake trustees to give up control of the bed but were quietly ignored. The domain board also tried and was also ignored. The possibility was considered of bringing in the Minister of Maori Affairs and the local Māori member of Parliament to support the board's quest for control of the bed but the idea was eventually abandoned.[134]

On point (iii), the domain board established a technical committee which asked the borough engineer to come up with alternatives. He identified three: stripping all nutrients from the water before it entered the lake (too expensive and likely ineffective); spray irrigation of the effluent to land; and piping the effluent around or across the lake to the Hōkio Stream. But the council would not be prepared to do any of these things without financial support. Further DSIR research in 1976 identified that the great bulk of phosphorus in the lake came from sewage effluent (more than 85 per cent). The department strongly supported the option of discharge into the Hōkio Stream.[135] As Hamer noted, 'Again, the assumption was that the stream could simply receive the effluent instead [of the lake].'[136]

On 12 August 1976, the regional water board held a meeting in Levin with representatives from the catchment board, the borough and county councils, the domain board, and the lake trustees. It was now generally accepted that the lake was polluted, and that a (if not the) principal cause was discharge of the town's effluent into the lake. The mayor's response was that the problems could never be solved while there were three bodies controlling the lake, and also that the council would not commit itself to spending significant amounts of money unless all the groups cooperated.[137] Muaūpoko representatives explained that 'The Maoris were hurt because of what is being done to the lake.' Their fishing rights were 'gone because pollution is poisoning the fish'. In response to the idea that they would give up yet more authority over the lake, the trustees' view was that 'if the lake title was tampered with it would create a war'.[138]

Three resolutions were passed: to ask the national body, the Water Resources Council, the cost of removing all pollutants from the lake (as the regional board's

133. Hamer, '"A Tangled Skein"' (doc A150), p 226
134. Hamer, '"A Tangled Skein"' (doc A150), pp 227–228
135. Hamer, '"A Tangled Skein"' (doc A150), pp 227–229, 235
136. Hamer, '"A Tangled Skein"' (doc A150), p 228
137. Hamer, '"A Tangled Skein"' (doc A150), p 229
138. Minutes of 12 August 1976 meeting (Hamer, '"A Tangled Skein"' (doc A150), p 229)

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expert recommended); to form a steering committee representing all the bodies at the meeting to examine the way forward; and to ask the Minister of Works (who chaired the national authority) to get legislation transferring authority over 'aspects of the waters of the lake' from the domain board to the catchment board (but ensuring that the Māori owners were protected in doing so).[139]

Mr Hamer commented that the tribe was not necessarily in support of these resolutions.[140] It seemed that the water board had agreed to work in concert with Muaūpoko but the lake trustees believed they should have the final say on what happened to their lake. Joe Tukapua was reported in the *Dominion* as saying that Pākehā-dominated authorities had controlled the lake for too long. The borough council was responsible for its 'putrid state', polluted and choked with weeds, yet did not even 'consider that they have ruined what has been an important source of food to us for many years.'[141]

The trustees called a meeting of the owners to discuss the future of the lake. The Muaūpoko owners resolved that effluent must stop entering the lake, and offered a practical solution: they would be prepared to give a piece of land in the Hōkio area for land disposal of the borough's effluent.[142] This offer was conveyed to the steering committee in December 1976. The borough council's representative was worried about the cost of this solution – it would only be possible if the Government helped fund it.[143] In March 1977, the commissioner of Crown lands (chair of the domain board) thanked Tau Ranginui for the 'willingness of your self and your co-owners to make the Hokio A Block available for land disposal of the Levin Borough's effluent from the sewerage plant.'[144]

What was the Government's reaction? Ministry of Works officials debated whether this was the best solution. The superintendent of wastewater treatment agreed that the sewage effluent had created a 'heavy phosphorus load' in the lake but was unconvinced that land disposal was the best option. It would require a large area of land, and be expensive to pump the effluent to the distant point of disposal. It would be cheaper and easier to divert the effluent to the Hōkio Stream, since the stream was receiving it anyway (though diluted by passage through the lake). Nor was the Health Department at all sympathetic to the Māori owners' wish that the effluent be discharged on land and not to water. The Lands Department, on the other hand, saw no reason to change the law (as requested) since the domain board's authority was no hindrance to the water board's responsibility to improve water quality.[145]

In the meantime, the steering committee still pursued the strategy of getting an 'x' classification for the lake's waters. In March 1978, the technical committee

139. Minutes of 12 August 1976 meeting (Hamer, '"A Tangled Skein"' (doc A150), p 229)
140. Hamer, '"A Tangled Skein"' (doc A150), p 229
141. *Dominion*, 25 August 1976 (Hamer, '"A Tangled Skein"' (doc A150), p 230)
142. Hamer, '"A Tangled Skein"' (doc A150), pp 230–231
143. Hamer, '"A Tangled Skein"' (doc A150), p 231
144. Commissioner of Crown lands to Tau Ranginui, 29 March 1977 (Hamer, '"A Tangled Skein"' (doc A150), p 231)
145. Hamer, '"A Tangled Skein"' (doc A150), pp 231–232

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reported that the lake was 'very eutrophic as characterised by frequent blooms of blue-green algae, high nutrient concentrations, large fluctuations in dissolved oxygen concentrations (including severe oxygen depletion in the bottom waters), extensive macrophytic growth, etc.'[146] The great majority of nutrients in the lake was again measured as coming from sewage (9,140 of 10,600 kilograms of phosphorus), with the rest coming from cowshed effluent and rural and urban run-off. The committee rejected land-based disposal as too expensive and difficult, recommending discharge into the Hōkio Stream. But the committee was not sure what an 'x' classification would require so simply presented a plan for disposal in the stream.[147]

In June 1979, the Water Resources Council reclassified Lake Horowhenua as 'CX' on a preliminary basis and called for any objections.[148] A 'C' classification meant that the water needed to be suitable for 'primary contact recreation', including bathing and skiing. For effluent discharge, this required a '[h]igh standard complete biological treatment plus bacterial removal'. An 'x' classification meant that waters were 'sensitive to enrichment' and required a higher standard of effluent treatment, including nutrient removal.[149]

The borough council objected, as did the Hokio Progressive Association (HPA). The latter objected to the proposal to divert sewage into the Hōkio Stream rather than the reclassification per se, arguing that the water quality of both lake and stream should be treated as a single problem. The Nature Conservation Council refused to support the HPA, since it considered cleaning up the lake to be the more important goal.[150] The HPA also made an objection to the catchment board, pointing out that a direct discharge of effluent would make up nearly half the Hōkio Stream's flow during summer, which would pollute the river and the 'eel pas used by local people for food'. Direct discharge would make a bad situation worse.[151]

A Water Resources Council sub-committee heard the objections. The mayor of Levin explained how the 1952 treatment plant had been overwhelmed by population growth, with the result that raw sewage had been entering the lake. He accepted that the result – gross pollution – had distressed Māori. Eventually, a modern plant was built which *almost* completely purified the effluent before discharge. But the impact of nutrients entering the lake had been overlooked in the new system. The council was prepared to help restore the lake by diverting effluent to the Hōkio Stream but could only do so if subsidised by the Government. Hence, the council had made a *pro forma* objection to the 'CX' classification in order to put its case for assistance to the Water Resources Council and the Government. The HPA opposed reclassification because of what it would mean for the Hōkio Stream. Joe Tukapua

146. Lake Horowhenua Technical Committee, report, March 1978 (Hamer, '"A Tangled Skein"' (doc A150), p 233)

147. Hamer, '"A Tangled Skein"' (doc A150), pp 233–234

148. Hamer, '"A Tangled Skein"' (doc A150), p 234

149. Michael Roche, *Land and Water: Water and Soil Conservation and Central Government in New Zealand 1941–1988* (Wellington: Historical Branch, Department of Internal Affairs, 1994), p 127

150. Hamer, '"A Tangled Skein"' (doc A150), pp 234–235

151. Secretary/treasurer, HPA, to secretary, Manawatu Catchment Board, 27 September 1979 (Hamer, '"A Tangled Skein"' (doc A150), p 235)

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appeared on behalf of the Māori owners, supporting immediate 'CX' reclassification because it was urgent to save the lake, even if this meant danger to the Hōkio Stream, but also advocating for land disposal instead of to the stream.[152]

For reasons unknown, the sub-committee did not make a report to the Water Resources Council. This may be because Ministry of Works' staff had intervened in opposition to it. Helen Hughes, who was a member of the sub-committee, was 'deeply concerned' about the staff's intervention and asked the Water Resources Council to reclassify Lake Horowhenua immediately.[153] It was, she said, the 'most eutrophic water body in New Zealand'.[154] In April 1980, she argued that failure to give the lake an 'X' classification would undermine public confidence in the whole water and soil conservation organisation and its aims, destroy the present cooperation of the borough, county, regional water board, and Māori trustees, would be inconsistent with the council's policy, and would not result in restoration of the lake to a state fit for recreational use. Further delay would greatly increase the eventual costs of restoring the lake. By this time, Ngāti Raukawa were also involved, supporting reclassification of the lake but appealing to the Water Resources Council and the Commission for the Environment that Levin's sewage not be diverted to the Hōkio Stream. Ngāti Pareraukawa, in particular, were opposed to discharge of effluent into the stream.[155]

In May 1980, the Water Resources Council reclassified the lake as 'CX'. From the point at which the domain board had first approached the Pollution Advisory Council in 1969, it had taken 11 years to achieve this result. The reclassification meant that the borough council would have to apply to the regional water board for a water right to discharge effluent. The Commission for the Environment noted that the Hōkio Stream was classified 'D', suitable for wildlife, fishing, and agriculture, and also noted that Māori had offered land near Hōkio for a land disposal scheme. It would cost $750,000 to build a pipeline for land disposal.[156]

On 15 June 1980, local Māori groups (Muaūpoko and Ngāti Raukawa) held a hui which formed the Muaupoko-Pareraukawa Action Committee to Preserve Lake Horowhenua and the Hokio Stream. This action committee was supported by the HPA and others. It is not clear who exactly from Muaūpoko attended the meeting. The action committee's stance was that the lake must be reclassified but not at the cost of the Hōkio Stream. The two water bodies were parts of a single water and food system (including for eels). The tribes expressed a particular concern that their waters not be polluted by human waste.[157]

In 1981, the borough council applied for a temporary water right to discharge into the lake for another five years. In response, the Muaūpoko-Pareraukawa action committee again pointed out that the lake and stream were part of a single water

152. Hamer, '"A Tangled Skein"' (doc A150), pp 235–236
153. Hamer, '"A Tangled Skein"' (doc A150), p 237
154. 'Lake Horowhenua Reclassification', statement by Helen Hughes, April 1980 (Hamer, '"A Tangled Skein"' (doc A150), p 237)
155. Hamer, '"A Tangled Skein"' (doc A150), pp 237–238
156. Hamer, '"A Tangled Skein"' (doc A150), pp 238–239
157. Hamer, '"A Tangled Skein"' (doc A150), p 239

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ecosystem, and that neither the local Māori people nor environmentalists wanted to see effluent discharged in the lake, the stream, or across the Hōkio beach to the ocean. Māori fishing rights and wishes were diametrically opposed to discharge of human waste into their treasured waters. The Ministry of Works responded to the action committee that the final decision would have to be based on cost effectiveness alone, which meant discharge into the stream. The ministry rejected the proposal to dispose of the effluent by land as too costly.[158] Thus, a solution which had been posited as early as 1948 remained out of reach. Lake Horowhenua and the Hōkio Stream continued to pay a price in environmental degradation as a result of the ministry's decision. Although it ultimately ended up having to pay a subsidy for land-based disposal, the Government resisted it strenuously. In doing so, it took little or no account of Māori interests. Nor did it take account of the commitments made to Muaūpoko by the Crown in 1905 and 1952–53, that there would be no discharge of pollution (or, in 1952–53, sewer effluent) into Lake Horowhenua.

In May 1981, a sub-committee of the regional water board heard objections to the borough council's application to continue discharging effluent into Lake Horowhenua for five years. The HPA, the action committee, the lake trustees, and the Muaupoko Maori Committee all objected. Ultimately, all of the objectors agreed that the council's application should be granted for five years with very strict conditions. The Water Resources Council approved the regional board's decision and the nine conditions, which included a guarantee that the council would develop an alternative disposal system within five years. At the expiry of the permit, all discharge into Lake Horowhenua had to cease.[159]

By mid-1982, works officials supported a council plan to discharge into the Hōkio Stream. They considered it to be the best available option, and recommended that the Government should provide both a loan and subsidy for it. The council applied for a water right to discharge into the stream, and also to discharge some effluent 'by rapid infiltration to the tip site on Hokio Beach Road'. This drew protests from the lake trustees, the action committee, and Ngāti Raukawa.[160] The lake trustees passed a resolution, which they sent to the steering committee: 'We unanimously object to any form of disposal of treated effluent into Lake Horowhenua or into the adjoining Hokio Stream.'[161]

A special tribunal was appointed to hear objections. The Ministry of Agriculture and Fisheries (MAF) objected, arguing in favour of preserving indigenous fisheries and their habitat.[162] The Māori owners also strongly objected:

> For many years Levin has discharged its sewage effluent into Horowhenua Lake despite continued objections from the owners of the Lake, and despite the obvious

158. Hamer, '"A Tangled Skein"' (doc A150), pp 239–242
159. Hamer, '"A Tangled Skein"' (doc A150), pp 241–242
160. Hamer, '"A Tangled Skein"' (doc A150), p 243
161. Lake trustees secretary to steering committee, 3 May 1982 (Hamer, '"A Tangled Skein"' (doc A150), p 243)
162. Senior fisheries management officer, Ministry of Agriculture and Fisheries, statement of evidence regarding application for water rights, not dated (D A Armstrong, comp, papers in support of 'Lake Horowhenua and the Hokio Stream, 1905–c1990', various dates (doc A162(e)), pp 2560–2561)

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damage caused by such action. This . . . disposal option is no longer acceptable, and we submit that long term, environmentally and socially acceptable disposal . . . must be undertaken. Discharge of effluent into the Hokio Stream does not meet these criteria.

We submit that it is immoral for anybody, including a local authority, to discharge effluent onto somebody else's property when the owners of that property object. In this case, we contend that the Hokio Stream bed is largely privately owned, and the water in the stream is subject to private, exclusive, and unrestricted fishing rights, and the owners of these properties and rights object to the proposed effluent discharge . . .

The Hokio Stream is also an extremely important symbolic source of well-being for our tribes and is a source of Mana for both our people [Muaupoko and Raukawa]. Thus the reputation and standing of our tribes will be lowered if our rights in Hokio Stream are prejudiced . . . the abuse of such an important and historically significant waterway . . . is totally unacceptable to us.

Throughout New Zealand our area is famous . . . for the eels of Lake Horowhenua which are usually caught during their migration down the Hokio stream when they are of a superior size and condition in readiness for spawning. Eel delicacies such as tuna raureka are expected by people who visit our marae as guests, and our mana and standing is dependant on our ability to obtain, prepare, and serve these foods. This at least partially explains the importance of eels, fishing rights, eel weirs, and traditional food resources to us, and all these things are liable to be jeopardised if an effluent discharge right is granted.[163]

Counsel for the borough council argued that the Health Department simply required the most economic and effective scheme, that Māori ownership of the bed of the Hōkio Stream was irrelevant, and that the 1967 Act did not provide for cultural and spiritual values to be considered in such decisions. While the Treaty guaranteed full, exclusive, and undisturbed possession of fisheries, that was a matter for the Waitangi Tribunal and the Crown, not the present process. Put bluntly, he said, the difference was a cost of $1 million or $3 million, and the council could not justify spending an extra $2 million 'to safeguard Maori interests only'.[164] On the other hand, if the Crown accepted a Treaty claim in respect of fishing rights, then it could pay the $2 million and the council would be happy to take the more expensive option. The most the council was willing to do was consider discharge into the Waiwiri Stream instead, believing that there were no Māori interests in that stream.[165]

In March 1983, the deadlock was finally broken. The special tribunal granted the water rights sought by the council but with 'fairly stringent' conditions. The tribunal had accepted that the stream was an important fishing area for local people,

163. 'Objections to Water Right Application 82/52' (D A Armstrong, 'Lake Horowhenua and the Hokio Stream, 1905–c1990' (doc A162), pp 120–121)

164. Counsel for Levin Borough Council, outline of final submissions, 15 October 1982, pp 14–15 (Armstrong, papers in support of 'Lake Horowhenua and the Hokio Stream' (doc A162(e)), pp 2534–2535)

165. Hamer, '"A Tangled Skein"' (doc A150), pp 243–244

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and that 'the local Maori people place considerable importance on it'.[166] As David Armstrong explained:

> In summary, the Tribunal found that tertiary treated effluent could be pumped along a pipeline to a 'balancing pond' near the rubbish tip site on Hokio Beach Road, and from there could be pumped on to sand dunes on Council-owned land above the rubbish tip site. Effluent might also be discharged into the Hokio stream, but only for a maximum of 26 weeks per year during the period between autumn and spring when it was at its maximum flow. The Tribunal further noted that sewage effluent was not the only source of pollution and nutrients, and it urged the Borough to take remedial action in respect of piggeries and other 'animal contamination', and effluent from the Hokio Township and the Hokio school.[167]

Given a maximum limit of 26 weeks a year, the council had little choice but to find an alternative disposal system. As will be recalled, Muaūpoko had offered land in the Hōkio district for spray irrigation of effluent. The council now identified 'the Pot', a 'natural depression in the sandhills and surrounding lands', as a suitable site.[168] Charles Rudd explained to us that it was called 'the Lucky Pot' because it was always possible to bag a deer there.[169] The lake trustees accepted that Māori land would have to be used to avoid further pollution of their taonga, the lake and stream, but the owners of Hōkio A asked for an audit to ensure that spray irrigation at the Pot was truly the best solution. In the meantime, the council sought subsidies from the National Water and Soil Conservation Authority and the Health Department. Health officials were adamant that there was no health issue justifying a subsidy, although – recognising that the situation was 'sensitive'[170] and it was necessary to stop the discharge – they supported a 1:1 subsidy of $1.5 million from the authority, which would cover half the projected cost.[171]

Finally, in February 1985, the council applied to the Local Authorities Loans Board for a $1.5 million loan. The deadline of 15 September 1986 was only 18 months away. The council also applied formally to the Health Department, relying on the arguments of the Waitangi Tribunal in various reports. Food gathered from Lake Horowhenua included eels, watercress, and kōura. The Tribunal in the Kaituna River claim found that mixing waters that had been contaminated by human wastes with waters used for food gathering was deeply offensive to Māori on a spiritual level.[172] The council added that the taking of food from Lake Horowhenua would

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166. Commissioner of works to district commissioner, 23 March 1983 (Hamer, '"A Tangled Skein"' (doc A150), p 245)

167. Armstrong, 'Lake Horowhenua and the Hokio Stream' (doc A162), p 121

168. Hamer, '"A Tangled Skein"' (doc A150), p 245

169. Transcript 4.1.12, p 594

170. Acting medical officer of health to director-general of health, 23 April 1985 (Hamer, '"A Tangled Skein"' (doc A150), p 247)

171. Hamer, '"A Tangled Skein"' (doc A150), pp 246–247

172. See Waitangi Tribunal, *Report of the Waitangi Tribunal on the Kaituna River Claim*, 2nd ed (Wellington: Government Printing Office, 1989), pp 30–32.

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be 'foolish'[173] in any case because of the health risk.[174] The Ministry of Works and Development commented that health risks were minimal so long as 'fish and food are rinsed prior to consumption'.[175] The Health Department eventually agreed to a subsidy of $44,370.[176]

The council did, however, obtain a 1:1 subsidy from the National Water and Soil Conservation Authority. Cabinet approved the subsidy in December 1985, partly on the grounds that it would benefit the Māori community, their mana, and their cultural and spiritual values.[177] The director of water and soil conservation reported to the authority: 'It is offensive to their cultural and spiritual values that sewage effluent although treated, is discharged into these waters' (the idea that food should just be rinsed seems to have been forgotten).[178]

The director also recognised the importance of the lake and stream to the Muaūpoko owners and to Ngāti Pareraukawa, and that they had objected to the discharge for many years:

> The lake and the stream are of particular significance to the Maori people of the Horowhenua area, especially the Ngati Pareraukawa and the Muaupoko. The waters have always been a source of food (eels, inanga, whitebait, koura, carp, flounders, kakahi, watercress, and other foods), a place for the preparation of traditional foods (such as kaanga, pirau, and karaka), a place for the storage of live eels, a source of washing and drinking water, and a place for recreation. It is offensive to their cultural and spiritual values that sewage effluent although treated, is discharged into these waters, and they have been objecting to the discharge for many years. An indication of the importance of the lake and stream to the Muaūpoko is that the lake-bed has been retained in their ownership.[179]

In May 1986, the Levin Borough Council finally started work on its new disposal system. In June 1986, knowing that it had run out of time to meet the looming deadline, the council applied for an extension to its water right. The lake trustees filed an objection in September 1986.[180] By now the writing was on the wall and we need not discuss the resultant litigation in detail. The lake trustees, now represented by Ada Tatana, argued that the borough council was trespassing on Māori land by

173. Levin Borough Council, 'Levin Effluent Disposal: Addendum to Design Report', 8 May 1985 (Hamer, '"A Tangled Skein"' (doc A150), p 249)
174. Hamer, '"A Tangled Skein"' (doc A150), pp 248–249
175. E G Fox, file note, 4 June 1985 (Hamer, '"A Tangled Skein"' (doc A150), p 249)
176. Hamer, '"A Tangled Skein"' (doc A150), pp 250–251
177. Hamer, '"A Tangled Skein"' (doc A150), p 251
178. P F Prendergast for director of water and soil conservation, 'Manawatu Catchment Board: Levin Borough Council, Horowhenua "CX" Classification, Effluent Disposal Scheme', not dated (Paul Hamer, comp, papers in support of '"A Tangled Skein": Lake Horowhenua, Muaūpoko, and the Crown, 1905–c1990', various dates (doc A150(f)), p 1453)
179. P F Prendergast for director of water and soil conservation, 'Manawatu Catchment Board: Levin Borough Council, Horowhenua "CX" Classification, Effluent Disposal Scheme', not dated (Hamer, papers in support of '"A Tangled Skein"' (doc A150(f)), p 1453)
180. Hamer, '"A Tangled Skein"' (doc A150), pp 251–252

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discharging effluent on to it (through a pipe running over it). The result was the defiling of their taonga. In particular, the trustees complained of:

> the build-up of sediment in the lake; the damage to water and aquatic life; the lack of an easement for the discharge; the discharge constituting a trespass; the grant of the earlier [water] right having been on the basis that the discharge would be finished by now; and the need for the grant of any further right to be conditional on the council removing the sediment from the lake.[181]

In her evidence to a special tribunal of the regional water board, Mrs Tatana explained that the people could no longer regard the lake as their major source of food because the fisheries were so diminished, and that a part of their mana and heritage had been lost. She also explained how the lake was a sacred treasure of great spiritual and cultural value to Muaūpoko. Some, such as Ron Taueki, refused to participate in the belief that the result was a foregone conclusion. That proved to be the case as there was nowhere else for the effluent to go except the town itself. The tribunal granted an extension to 30 June 1987.[182]

The new sewerage system was finally completed in 1987, and the borough council ceased discharging effluent into the lake. In the meantime, as all authorities from 1969 on recognised, Lake Horowhenua had become very seriously polluted.

10.3.7 The role of storm water in the pollution of the lake

In our inquiry, the claimants were especially concerned about the role of stormwater drains in polluting Lake Horowhenua (both before and after 1987). Philip Taueki showed us video evidence of the drains.[183] The Crown denied that it had any responsibility for stormwater drains, which were the province of local government, and also argued that insufficient evidence was available in any case.[184] Technical evidence from Mr Hamer pointed out that the National Water and Soil Conservation Authority granted a 'dispensation to the borough to discharge its stormwater' in 1969, on the proviso that the water did not contain pollutants.[185] In the same year, the domain board (the Crown's mechanism for co-management) complained to the town clerk about the effects of siltation on the lake as a result of storm water, and asked for a process to remove the silt before the water entered the lake. As will be recalled, Leenards also suggested in 1969 that the stormwater drains discharge into oxidation ponds before entry to the lake.[186]

The mayor considered it impracticable to remove the silt from storm water but found it necessary to conciliate Muaūpoko because the whole system needed upgrading – including fresh access across Māori land. The lake trustees signed an agreement in December 1971, allowing the council to lay pipes across the chain

181. Hamer, '"A Tangled Skein"' (doc A150), p 253
182. Hamer, '"A Tangled Skein"' (doc A150), pp 253–257
183. Transcript 4.1.11, pp 185–195
184. Crown counsel, closing submissions (paper 3.3.24), pp 97–98, 105
185. Hamer, '"A Tangled Skein"' (doc A150), p 260
186. Hamer, '"A Tangled Skein"' (doc A150), pp 221, 260–262

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strip and dewatered area in return for an assurance that no industrial waste would be discharged. A new mayor even told the trustees that he hoped to establish a system of preventing rubbish entering the lake through the stormwater drains. '[W]e will do all in our power', he said, 'to ensure noxious material does not enter the lake'.[187] There were issues about this agreement, and the failure to follow through with an effective filtering system, but we agree that these were not matters between the Crown and Muaūpoko.[188] We examine the more recent issues about storm water, which became possibly the largest source of pollution after sewage effluent ceased to be discharged, in the next chapter.

The crucial issue here is the Crown's failure to provide statutory protections against pollution in the 1905 and 1956 legislation, despite its agreements with Muaūpoko. Had such protections been in place, the National Water and Soil Conservation Authority's proviso in 1969 would have been much more powerful, and the borough council could have been compelled to establish an effective system to prevent rubbish, silt, and nutrients from entering the lake. Before 1987, storm water did not account for a great deal of the phosphorus in the lake, as compared to sewage effluent, but it did contribute to the sediment once the 1966 control weir prevented the natural flushing of the lake.

10.3.8 Findings

The claimants did not all agree as to whether the Crown was responsible for the *causes* of pollution, but there was common ground in their argument that the Crown was complicit in it.[189] The causes of pollution included agricultural run-off, the build-up of nutrient-rich sediment, and other factors related to farming and nearby urban development, but the key cause between 1952 and 1987 was the discharge of effluent into the lake (indirectly from 1952 to 1969, and directly from 1969 to 1987). We have therefore concentrated on that causal factor in this chapter. We return to some of the other causes of pollution, particularly in the post-1987 era, in chapter 11.

The Crown was complicit in the discharge of effluent from at least 1957, when Muaūpoko first objected and the Crown was aware that effluent was seeping into the lake. At first, Government departments were focused on physical health and 'safe' levels of treated effluent, but the alternative cultural perspective was presented by Mrs Paki in no uncertain terms in 1957. The correct solution, discharge to land distant from the lake, was known from at least 1948. Over the years from 1957, Muaūpoko objected to the cultural offence of contaminating waters used for food with human waste. They protested about the health risks of eating such food, and also about the harm which degradation of their lake had caused to their fisheries. They pleaded against the desecration of their taonga. The Crown was fully aware of their protests, as Crown counsel conceded, 'expressed through petitions

187. *Chronicle*, 7 December 1971 (Hamer, '"A Tangled Skein"' (doc A150), p 265)

188. Hamer, '"A Tangled Skein"' (doc A150), pp 258–271

189. See, for example, claimant counsel (Naden, Upton, and Shankar), closing submissions (paper 3.3.23), p 269.

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to the Government, through Domain Board meetings [a Crown official chaired it], through litigation and in Tribunal claims.'[190]

We find that the Crown had an obligation under the Treaty to actively protect Muaūpoko's taonga: Lake Horowhenua, the Hōkio Stream, and the prized fisheries. We also find that questions about whether local government bodies were Crown agents, and whether the Crown was responsible for local government decisions, are not really relevant in this particular case. That is because in 1905, the Crown promised Muaūpoko to honour an agreement to prevent the pollution of Lake Horowhenua. As Crown counsel has rightly conceded, the Crown failed to give effect to this promise by legislating for it in the Horowhenua Lake Act 1905. We do not accept the Crown's argument that a 1906 bylaw about the disposal of rubbish was an adequate substitute for this statutory protection.

We also find that the Crown failed to include protection from pollution in section 18 of the ROLD Act 1956, even though:

- McKenzie told the people in June 1952 that it was one of their rights as owners (arising from the 1905 agreement);
- the Minister gave the Māori owners an assurance in December 1952, conveyed to the tribe's lawyer by his officials, that Levin's effluent would not enter the lake;
- the Crown intended that the prevention of sewage effluent entering the lake would be a term of the 1953 agreement; and,
- when the prevention of pollution was left out of the 1956 Bill, the Maori Affairs Department asked the Lands Department to ensure that the powers under the Reserves and Domains Act 1953 were wide enough to 'prevent pollution of the Lake' – to which the Lands Department wrongly responded in the affirmative.

The Crown thus failed to provide the necessary statutory protection in 1905 or 1956. The Crown accepted that its 1905 omission was a Treaty breach which prejudiced Muaūpoko. In our view, the second omission in 1956 is equally a Treaty breach and has prejudiced Muaūpoko.

It follows, then, that the Crown had a particular obligation to intervene from at least 1969, when its officials established that treated effluent was polluting Lake Horowhenua. We agree with the claimants that there was a significant opportunity to have done so in 1971, before the pollution of the lake assumed the very serious character it has today, and while the process of remediation was (relatively) less expensive. In the meantime, the nation had benefited from Muaūpoko's agreement to make the surface of the lake available for public use, free of charge. In our view, that is the crucial context in which Crown payment for a land-based disposal system must be evaluated.

We find that the Crown's failure to protect Muaūpoko and their taonga from 1969 to 1987, despite full knowledge of the situation, was a breach of its Treaty duty of active protection. We accept that the Crown did eventually provide subsidies for land-based disposal in the mid-1980s, but this belated assistance to the

190. Crown counsel, closing submissions (paper 3.3.24), p 44

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borough council did not remedy the effects of 30 years of effluent disposal in Lake Horowhenua. We explore further in chapter 11 the current state of the lake and the reasons why it remained so polluted after the sewage effluent discharge was halted in 1987.

The prejudice from the Crown's Treaty breaches is significant. It is clear to us from the evidence of the tangata whenua that Muaūpoko consider the mauri or life force of their lake has been damaged, and they as kaitiaki have been harmed. Their mana has been infringed: they can no longer (safely) serve traditional foods to manuhiri or take foods for which they were once renowned to tangi and other important occasions. Their taonga has become – as one claimant expressed it – a 'toilet bowl'.[191] They are no longer able to sustain themselves culturally or physically by their fisheries, once an integral part of the life and survival of the tribe. Muaūpoko have also lost ancestral knowledge because food can no longer be gathered from the lake – at least not safely, in terms of either spiritual or biological health. This means that the tikanga associated with the lake, its fish species, and the arts of fishing is no longer transmitted, or is transmitted only in part. We accept that some still fish and take food from the lake, but many do not, and the harm for both is significant.

The evidence is less certain as to how particular species in the lake have been affected by the pollution. We explore this issue further in chapter 11, where we examine the findings of a recent fish survey in 2013. There seems to be general agreement among tangata whenua and technical evidence that the 1966 control weir has materially harmed the species which migrate to and from the sea. We have already addressed that point in chapter 9. We are assisted here by the Crown, which accepted that pollution has been a 'source of distress and grievance to Muaūpoko', that 'damage to fishing and other resource gathering places has been a source of distress and grievance', and that pollution 'in combination with other factors, has affected the fishery resource of the Lake'.[192]

191. Transcript 4.1.12, pp 541, 569
192. Crown counsel, closing submissions (paper 3.3.24), pp 44–45

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CHAPTER 11

LAKE HOROWHENUA CATCHMENT – THE HISTORIC LEGACY, 1990–2015

He Waiata nā Torino

Kōrero mai, e Hiwi, kia rongo atu au
Ko wai te hikanga a Poataniwha
Ko wai tōna putanga e ai?
I rongo ai au ko Tiki-mata
I whaoa iho i runga i te rangi nui e tū iho nei
Ka kite i te hikanga a Tāne-nui-ā-Rangi
I hopito ai a Punaweko
Ka tipu te huruhuru
I tū ki whea? I tū ki tō rae nā
Ehara tēnā; he rerenga werawera mai ki waho
I tū ki whea? I tū ki tō taringa
Ehara tēnā; he rerenga taturi mai ki waho
I tū ki whea? I tū ki tō kanohi
Ehara tēnā; he rerenga roimata mai ki waho
I tū ki whea? I tū ki tō ihu
Ehara tēnā; he rerenga hupe mai ki waho
I tū ki whea? I tū ki tō waha
Ehara tēnā; he rerenga huare mai ki waho
I tū ki whea? I tū ki tō kaki
Ehara tēnā; he rerenga tōtā mai ki waho
I tū ki whea? I tū ki tō pito nā
Ehara tēnā; he rerenga tōtā mai ki waho
I tū ki whea? I tū ki tō kumu
Ehara tēnā; he rerenga tūtae mai ki waho
I tū ki whea? I tū ki tō puta nā
A kōia tēnā! He rerenga tangata mai ki waho, e.
Ka takutaku a Tiki i tōna ure
Ko Tikimura, ko Tiki-hanana

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Ko Tiki-auaha-ki-roto
Ka whakaringaringa, ka whakawaewae
Ka whakatangata mai ai kia puta i tō kōrua reka
Te whānau a Ngei-Ariki, ko Hine-kau-ataata
Aroha tauroto tāwhia e Tiki hei wāhine māna
Hikaia atu puta ki waho ko Hine-haro-rangi
Aroha tauroto tāwhia e Tiki hei wāhine māna
Hikaia atu puta ki waho ko Hine-haro-nuku
Aroha tauroto tāwhia e Tiki hei wāhine māna
Hikaia atu ka puta ki waho ko Toi-te-Huatahi
Ko Manuwaeroroa ka ngāhaehae te takapu o Te Huiarei
Hikaia atu ka puta ki waho me Te Rongoueroa
Ka noho i a Ruārangi
Inā te putanga o te tanga i puta ki te ao nei.[1]

11.1 Introduction

11.1.1 The context for this chapter

In previous chapters we considered twentieth-century issues concerning Lake Horowhenua. We discussed Levin's impact on the lake and other developments from 1900 to 1990. In terms of negative environmental effects on the lake we found the key cause between 1952 and 1987 was the discharge of effluent into the lake (indirectly from 1952 to 1969, and directly from 1969 to 1987). We also found that the Crown was complicit in the discharge of effluent from at least 1957, when Muaūpoko first objected and the Crown was aware that effluent was seeping into the lake. The environmentally preferable solution, being discharge to land, was known from at least 1948 and the Crown was aware of Muaūpoko concerns from 1957. It failed to protect the lake, a taonga, in breach of its duty of active protection. What assistance that was provided from the Crown, in terms of the subsidies provided for land-based disposal in the mid-1980s, did not remedy the effects of over 25 years of effluent disposal. Finally, we found the prejudice for Muaūpoko from the breaches of the duty of active protection is significant.

In this chapter we explore the current state of the lake and the reasons why it remained so polluted after the discharge of sewage effluent was halted in 1987. We note that during the post-1987 period, the context for environmental decision-making was transformed by the Conservation Act 1987 and the Resource Management Act 1991 (and their amendments). The Conservation Act established the Department of Conservation (DOC), the head of which replaced the commissioner of Crown lands as chair of the lake domain board. Recreation reserves such as the Lake Horowhenua domain now came under DOC instead of the Lands and

1. 'This song is a beautifully composed oriori about Tāne and the creation of Hineahuone. It appears to be very old and although the composer is not known, it is most certainly a Kurahaupō waiata, as this is evident in the whakapapa recited within.': Sian Montgomery-Neutze, 'He wānanga i ngā waiata me ngā kōrero whakapapa o Muaūpoko', not dated (doc A15(a)), pp [35]–[36]

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Survey Department. DOC's legislation, the Conservation Act 1987, obliged DOC to give effect to Treaty principles. The Resource Management Act 1991 (RMA 1991) instituted a new legislative framework for local and central government decisions affecting the environment. As has been well established in previous Tribunal reports, the Act created a hierarchy of factors which decision makers had to recognise and provide for, have particular regard to, or take into account. Previous Tribunal reports have found that, in reality, Māori values and Treaty principles came at the lower end of that hierarchy.[2] But the legislative context had changed profoundly from the pre-1987 period, when decision makers (both central and local) routinely took no account of the Treaty.

11.1.2 Approach to the issues

The scope of this priority inquiry was defined as including any historical acts or omissions of the Crown regarding the respective rights and interests internal to Muaūpoko hapū, their lands, the lake, and any other specific matters relating to Muaūpoko.[3]

In this chapter we review what has occurred after 1990 to Lake Horowhenua and its catchment in order to analyse the claimants' case that the Crown has failed to address the ongoing historical issues that continue to plague Lake Horowhenua and the Hōkio Stream, the associated fisheries, and the Muaūpoko people. We do so to ascertain the extent to which governance and mitigation efforts have been successful in dealing with the historical environmental effects of the Crown's acts and omissions prior to 1990.

11.2 The Parties' Arguments

11.2.1 The claimants' case

The general position adopted by the claimants was that the Crown is responsible for the legislative and regulatory regime that has been the basis for the management of the environment and natural resources. They submit the Crown has consistently failed to adequately protect Muaūpoko's taonga and the environment. As a result, they claim the Crown has failed to provide for their rangatiratanga or to adequately protect Lake Horowhenua and the Hōkio Stream and fisheries. For those reasons, they submit significant prejudice has resulted to Muaūpoko.

Several claimants also highlighted events that have impacted on Lake Horowhenua since 1991. These included sedimentation issues and sewage overflows from the Levin Waste Water Treatment Plant in 1991, 1998, and 2008.[4] Others, particularly Mr Taueki, also referred to the number of drains discharging storm water into the lake.[5] Mr Rudd identified 13 drains (not including farm drains).[6] Mr Procter

2. See, for example, Waitangi Tribunal, *The Report on the Management of the Petroleum Resource* (Wellington: Legislation Direct, 2011), pp 54–56.
3. Waitangi Tribunal, memorandum-directions, 25 September 2015 (paper 2.5.121), p 2
4. Claimant counsel (Stone, Bagsic, and Hopkins), closing submissions, 10 February 2016 (paper 3.3.9), p 21
5. Philip Taueki, closing submissions, 12 February 2016 (paper 3.3.15), p [4]
6. Charles Rudd, closing submissions, 9 February 2016 (paper 3.3.18), pp 13–14

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raised important issues concerning the management of the fisheries of the lake and the Hōkio Stream, particularly eels.[7] Others were concerned about the impact of pollution on other species in the lake and the downstream impacts at the township of Hōkio.[8] Submissions were also made regarding the new landfill at Levin. At Hōkio, it was further alleged that the old landfill and the 'Pot' were leaching pollutants into the sand dunes and the ground water with resulting impacts on the Hōkio and Waiwiri Streams, the sea environment, and marine fisheries. The claimants alleged that the accumulation of pollution in the lake and its environs has affected their economy, tikanga, ancestral knowledge, wairua, mana, kaitiakitanga, and fisheries.[9]

They argued the Crown is culpable as by its actions and omissions it: (a) failed to ensure local government actions in respect of the lake were Treaty compliant, (b) failed to remedy the causes of pollution, (c) took an unreasonable amount of time to respond to the causes of pollution, (d) failed to enact legislation that prevented or remedied the causes of pollution, (e) failed to enact legislation that gave effect to and safeguarded Muaūpoko's mana, kaitiakitanga, and tangata whenua status over the lake, and (f) omitted to include provisions in legislation that would have protected Muaūpoko's mana, kaitiakitanga, and tangata whenua status over the lake.[10]

The claimants noted that while the Crown has accepted 'responsibility for the various legislative frameworks that have governed use of and access to the Lake and the overall environmental legislative framework', it will not accept responsibility for the decisions that have been made by local authorities, or that the legislation authorising particular powers and functions is a breach of the Treaty and its principles.[11] It was submitted the Crown is 'wholly responsible for the statutory framework [that] allow local authorities to undertake activities that would otherwise fail for lack of Treaty compliance'.[12]

It was further noted that the Crown continues to be involved in the Horowhenua Lake Domain Board through the Department of Conservation.[13] In fact, the director-general of conservation has been the chair of the board since 1987.

The claimants submitted that by all the above actions, the Crown has breached the principles of rangatiratanga, active protection, and various other principles of the Treaty of Waitangi leading to Muaūpoko suffering prejudice.

11.2.2 The Crown's case

The Crown's starting position was that the management of the environment was, and is, a legitimate governance and regulatory function of the Crown. The Crown's right of kāwanatanga entitles it to develop regimes for the protection and management of the environment and natural resources. The Crown submitted that the

7. Jonathan Procter, brief of evidence, 12 November 2015 (doc C22), pp 18–19
8. Rudd, closing submissions (paper 3.3.18), p 13
9. Claimant counsel (Stone, Bagsic, and Hopkins), closing submissions (paper 3.3.9), pp 24–27
10. Claimant counsel (Stone, Bagsic, and Hopkins), closing submissions (paper 3.3.9), pp 28–31
11. Claimant counsel (Stone, Bagsic, and Hopkins), closing submissions (paper 3.3.9), pp 28–29
12. Claimant counsel (Stone, Bagsic, and Hopkins), closing submissions (paper 3.3.9), p 29
13. Claimant counsel (Stone, Bagsic, and Hopkins), closing submissions (paper 3.3.9), p 29

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rights and interests that others may have in the environment, including Māori, are subject to that overriding authority.[14] In addition, the Crown submitted it 'does not have a general obligation, Treaty or otherwise, to prevent all environmental effects that may be perceived by some as adverse' as such effects are 'an inevitable consequence of human development and progress, and some environmental degradation will always occur'. Further, the Crown submitted it cannot guarantee outcomes, prevent or mitigate environmental degradation, or meet all expectations of all members of the community.[15]

In terms of the matters before us, the Crown submitted that some environmental claims lacked specificity, or they arose from matters that are the responsibility of local authorities.[16] It submitted, given the variables that constantly impact on and cause change and the vastness of the environment, there are many interrelated factors (both national and international) that impact on the health of the environment.[17] Further, while the Crown has responsibility for implementing overarching environmental legislative and policy settings, it does not have the ability to control or influence all those factors, or to meet every environmental challenge, for example, climate change.[18]

The Crown submitted it is important to recognise there is a wide range of views and interests in the environment, including those held by Māori and their conception of the environment, which requires balancing of those views and interests.[19] Equally, the wide range of economic benefits derived by Māori and other New Zealanders from certain forms of land use should be recognised and that use will lead to some environmental degradation, which 'must' be tolerated.[20]

It was further contended that the Tribunal should not ascribe today's standards of environmental management and reasonable expectations to Crown actions and actors of the past. Rather, it should consider inter alia historical context, prevailing circumstances such as resources available and Crown priorities at the time, the state of scientific knowledge, the ability of the Crown to respond, prevailing attitudes in society, the range of interests to be balanced, and the fact that the effects of measures to protect the environment may not be seen for a number of years.[21]

The Crown responded to the specific claimant submissions concerning Lake Horowhenua and the Hōkio Stream by acknowledging that the history of Lake Horowhenua in the twentieth century is a distressing one. The Crown's caveat on that was the picture is complex and involved a variety of parties and causal factors which were not all within the Crown's control.[22]

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14. Crown counsel, closing submissions, 31 March 2016 (paper 3.3.24), p 33
15. Crown counsel, closing submissions (paper 3.3.24), p 34
16. Crown counsel, closing submissions (paper 3.3.24), pp 34–35
17. Crown counsel, closing submissions (paper 3.3.24), p 35
18. Crown counsel, closing submissions (paper 3.3.24), pp 35–36
19. Crown counsel, closing submissions (paper 3.3.24), pp 36–37
20. Crown counsel, closing submissions (paper 3.3.24), p 37
21. Crown counsel, closing submissions (paper 3.3.24), pp 38–39
22. Crown counsel, closing submissions (paper 3.3.24), p 42

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The Crown submitted the damage to the lake can be seen as a 'by-product of urban development (primarily Levin) and land use in the wider catchment area' and that 'environmental concerns were often not at the forefront' of urban planning and land use.[23] The Crown further contended 'the Tribunal has no evidence before it from the current Councils, nor any expert evidence that properly contextualises the administrative and statutory context of planning law in various historical periods'.[24]

The Crown also contended that any consideration of fault or responsibility for damage to the lake and stream (whether the fault of the Crown or other parties) must take into account the following:

- the location, geography, and topography of the lake (in particular, the fact that it is naturally shallow and is in close proximity to Levin), as these factors generate flooding risk and contribute to drainage patterns;
- land use and development was to benefit the wider community;
- there is 'no single magic bullet solution' to address the damage to the lake;
- the Crown has contributed funding/assistance; and
- addressing the full range of lake issues is 'potentially extremely expensive'.[25]

The Crown made a number of concessions in terms of the lake, and these were that:

- 'The available evidence indicates pollution, in combination with other factors, has affected the fishery resource of the lake. The Crown says it is not responsible for all of the acts and omissions that caused the environmental damage to the lake.'[26]
- The Crown 'holds responsibility for the various legislative frameworks that have governed use of and access to the lake and the overall environmental legislative framework'.[27] However, the Crown's caveat on that was 'the complexity of land and environmental management and the difficulties involved with identifying causative factors and cumulative impacts'. It also contended that there are 'a number of entities that are legally distinct from the Crown who have had various roles and impacts in relation to Lake Horowhenua and the Hokio Stream'. Further, it claimed that environmental damage was due to 'a number of causes, and a number of actors, not all of which were part of the Crown or able to be controlled by the Crown'.[28]
- Finally, the Crown acknowledged it 'has ongoing Treaty of Waitangi obligations to take steps to protect Muaūpoko taonga'. However, the Crown did not accept 'the present state of the lake and stream can be attributed directly and solely to any identifiable Treaty breach by the Crown'.[29]

The Crown then made five general points in relation to environmental issues and the lake:

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23. Crown counsel, closing submissions (paper 3.3.24), p 42
24. Crown counsel, closing submissions (paper 3.3.24), p 42
25. Crown counsel, closing submissions (paper 3.3.24), pp 42–43
26. Crown counsel, closing submissions (paper 3.3.24), p 44
27. Crown counsel, closing submissions (paper 3.3.24), p 45
28. Crown counsel, closing submissions (paper 3.3.24), p 45
29. Crown counsel, closing submissions (paper 3.3.24), p 60

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- Consideration should be given to 'the more general question' of how the lake could have 'survived in a less impacted state in such close proximity to a major urban development (and agricultural land use).' The Tribunal should consider the actions of the parties through that lens and also the actions of all parties in relation to the lake, not just the Crown.
- Many actions taken in relation to the lake were not undertaken by, or on behalf of, the Crown as there were other parties directly involved in the day-to-day decision-making concerning the lake. Although the Crown understands the claimants do not allege all actions 'taken by local authorities, catchment boards and/or or the domain boards in relation to the lake and its environs over the past 100 years are acts or omissions of the Crown itself', they do contend the Crown should have taken more direct action to alleviate lake issues. Where specific allegations of direct Crown actions are made, the Crown made specific submissions on those.
- There are a number of causes that have contributed to the health of the lake, including urban development in close proximity to the lake and associated issues such as storm water, sewage discharges, land use (for example, dairying), and siltification.
- The Crown could not easily intervene in local decision-making because (1) natural phenomena led to the sewage discharge, and effluent discharge was just one of many land-use issues afflicting the lake, and (2) the Crown only has limited resources and funds and cannot be responsible for (or pay for) local government decisions (including infrastructure decisions) in the way the claimants suppose.
- In fact, it was submitted, the Crown did take reasonable steps to assist (in the context of the time), including through the provision of State funding, providing for a major sewerage upgrade in 1985, and technical expertise from the Department of Conservation for replanting around the lake in the 1990s.[30]

After warning the Tribunal that there are limits to the evidence before the Tribunal, and that we should not review the impact of the Resource Management Act 1991 (RMA) in any detail, the Crown then dealt with the specific issues raised by the claimants, and these are analysed below.

11.2.3 Case for the claimants in reply

The claimants broadly refuted the position taken by the Crown in relation to the role of other actors, particularly local government, and the impact of their actions on Lake Horowhenua and its catchment.[31] They claimed the Crown was, and is, in a

30. Crown counsel, closing submissions (paper 3.3.24), pp 60–63

31. See, for example, claimant counsel (Zwaan), submissions in reply, 14 April 2016 (paper 3.3.25), pp 6–7; claimant counsel (Lyall and Thornton), submissions in reply, 14 April 2016 (paper 3.3.27), pp 8–12; claimant counsel (Naden, Upton, and Shankar), submissions in reply, 15 April 2016 (paper 3.3.29), pp 7–10; claimant counsel (Stone and Bagsic), submissions in reply, 20 April 2016 (paper 3.3.32), pp 5–6.

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position to intervene in the operations of such entities and they considered that the Tribunal can and should make findings on their claims accordingly.[32]

While they accepted there are a number of factors that impact on the environment and cause environmental degradation, they contended that does not negate the impact of Crown actions on the environment. They claimed the Crown has promoted policies such as urban development, agriculture, and horticulture and it has allowed continual run-off into the lake.[33] Ultimately, they submitted it is for the Crown to promote legislation that protects the environment.[34]

In terms of the argument that there must be a balancing of interests, the claimants contended that the Crown has a higher obligation to Māori.[35] Any balancing of interests, they argued, must be weighed against the Crown's duties and obligations owed to Muaūpoko under the Treaty of Waitangi and the gravity of any prejudice to them.[36]

In terms of differing Māori conceptions of the environment, it was contended that there has been no evidence led by the Crown on that issue.[37] In response to the point that Māori enjoy the benefits of industry and consequential environmental effects, this was denied.[38]

In terms of Lake Horowhenua and the Hōkio Stream, the claimants' view was that the Crown is responsible for specific actions and omissions that require rectification and remedial action.[39] While it is not responsible for all matters that have impacted on the lake and its catchment, it did contribute to its current state.[40] The claimants did not consider it necessary for the Tribunal to have heard from local authorities before making any findings on issues related to the RMA and the lake. They also contended that there is sufficient evidence to make findings on specific Crown actions.[41]

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32. See, for example, claimant counsel (Zwaan), submissions in reply (paper 3.3.25), pp 6–7; claimant counsel (Lyall and Thornton), submissions in reply (paper 3.3.27), pp 8–12; claimant counsel (Naden, Upton, and Shankar), submissions in reply (paper 3.3.29), pp 7–10; claimant counsel (Stone and Bagsic), submissions in reply (paper 3.3.32), pp 5–6.

33. See, for example, claimant counsel (Zwaan), submissions in reply (paper 3.3.25), p 8; claimant counsel (Lyall and Thornton), submissions in reply (paper 3.3.27), p 19.

34. See, for example, claimant counsel (Zwaan), submissions in reply (paper 3.3.25), p 8.

35. See, for example, claimant counsel (Zwaan), submissions in reply (paper 3.3.25), p 9.

36. Claimant counsel (Stone and Bagsic), submissions in reply (paper 3.3.32), p 4

37. See, for example, claimant counsel (Zwaan), submissions in reply (paper 3.3.25), p 9.

38. See, for example, claimant counsel (Zwaan), submissions in reply (paper 3.3.25), p 9; claimant counsel (Lyall and Thornton), submissions in reply (paper 3.3.27), p 19; claimant counsel (Naden, Upton, and Shankar), submissions in reply (paper 3.3.29), p 11.

39. See, for example, claimant counsel (Zwaan), submissions in reply (paper 3.3.25), pp 10–11; claimant counsel (Lyall and Thornton), submissions in reply (paper 3.3.27), pp 18–19; claimant counsel (Naden, Upton, and Shankar), submissions in reply (paper 3.3.29), pp 11–12; claimant counsel (Stone and Bagsic), submissions in reply (paper 3.3.32), p 7.

40. See, for example, claimant counsel (Zwaan), submissions in reply (paper 3.3.25), p 10; claimant counsel (Naden, Upton, and Shankar), submissions in reply (paper 3.3.29), pp 11–12; claimant counsel (Stone and Bagsic), submissions in reply (paper 3.3.32), p 7.

41. See, for example, claimant counsel (Bennion, Whiley, and Black), submissions in reply, 21 April 2016 (paper 3.3.33), pp 12–13.

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11.3 Muaūpoko Responses to the Pollution of the Waterways

The degraded state of the lake is one of the key reasons why there is so much tension within the Muaūpoko community. This is perhaps best epitomised by a statement given by Philip Taueki, who considered the lake is now so polluted that swimming and fishing 'in the waters of their own Lake' is 'a clear and present health risk'.[42] He told us:

> The present polluted and poisonous state of Mua-Upoko's most precious taonga, Lake Horowhenua and the Hokio stream, controlled by the Crown and used as the town of Levin's toilet, epitomizes the Crown's appalling and disgusting treatment of Mua-Upoko . . .
>
> Today the entire Hokio area is being used as the town of Levin's (and Kapiti) rubbish dumping ground. The landfill and the 'Pot' are within a [kilometre] of the township and have leached poisonous toxins over the years that have poisoned the groundwater. The land and houses that the Hokio Trust owns are severely affected by the proximity of these sites to the township.[43]

These views are clearly shared with others from Muaūpoko, people like Charles Rudd who, during his teenage years, spent a lot of time wandering around the lake and Hōkio Stream hunting, fishing, collecting, gathering resources, and riding waka. He made several allegations concerning the lake, and the Hōkio Stream:

> **Lake Horowhenua and the Hokio Stream**
>
> Today the hurts and humiliations being impacted on the Muaupoko people, because of the sixty odd years of degrading leaching, contamination, and pollution of these areas. There is no real remedy and purposeful solutions in sight, by the territorial authorities in the catchment restoration.
>
> The above is a breach of the Treaty, in regards to Muaupoko fishing, food and resource gathering rights in these areas. . . .
>
> The Crown, through its agents, has polluted and continually contaminates Lake Horowhenua, the Hokio Stream, Hokio Beach and the waters that feed into them. . . .
>
> Way back in the early 1950's, it was a threat, health risk and a disaster for the Levin Borough Council to place their Sewerage Treatment Plant to where it is today, on a downward slope towards Lake Horowhenua.
>
> I remember when the condoms, women's pads, tutae and refuse were floating on top of the Lake's water.
>
> I remember when spearing for Carp, and seeing the thick hupe jelly like substance all over the fish, attached to its fish scales.
>
> I remember, if we walked into the contaminated Lake waters, one could end up with doongas, hakihaki, Lake Sores or scabs on to your feet or legs, if you didn't wear protection. So everyone used to keep out. So much for our fishing rights.

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42. Philip Taueki, closing submissions (paper 3.3.15), pp [2], [3]
43. Philip Taueki, closing submissions (paper 3.3.15), pp [3], [4]

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> I remember the fury of our people at the time . . .[44]

Hingaparae Gardiner spoke of the paru (pollution) damaging the waterways of Muaūpoko, making them 'impure, not fit for sea life or humans'.[45] She talked about the lake smelling 'absolutely revolting' on certain days, and that the 'smell makes it unpleasant to be near the lake'.[46] Her evidence concerning smell was affirmed by other witnesses, including William (Bill) Taueki.[47] She believed that pollution from meat works, farming, sewerage, and other activities have all contributed to the state of the lake.[48] She stated:

> Because we are tangata whenua we are the kaitiaki over the lake. Our mana is directly connected to our waterways and our ability to carry out our role as kaitiaki. As tangata whenua and as kaitiaki we are responsible for ensuring the health of these waterways. We feel as though we have not only let down the environment but ourselves as the mana whenua and the kaitiaki. We also feel that we have let down our tipuna, our Nannies and Koroua.[49]

Peter Huria wrote that, as a result of the current state of the lake: 'Our wairua has been damaged by the Crown. We are in the main a proud but destitute people of Muaupoko.'[50] This strength of feeling is consistent and Muaūpoko considered the mauri or life force of the lake has been damaged and that they as kaitiaki have been harmed.

11.4 The Historical Legacy of Crown and Local Government Management

11.4.1 The decline in water quality

By the year 1977 the once-prized taonga or treasure of the Muaūpoko people was described as

> very eutrophic as characterised by frequent blooms of blue-green algae, high nutrient concentrations, large fluctuations in dissolved oxygen concentrations (including severe oxygen depletion in the bottom waters), extensive macrophytic growth, etc.[51]

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44. Rudd, closing submission (paper 3.3.18), pp 12, 13, 15
45. Hingaparae Gardiner, brief of evidence, 11 November 2015 (doc C8), p 3
46. Gardiner, brief of evidence (doc C8), p 3
47. William James Taueki, brief of evidence, 11 November 2015 (doc C10), p 34
48. Gardiner, brief of evidence (doc C8), p 4
49. Gardiner, brief of evidence (doc C8), p 4
50. Peter Huria, brief of evidence, not dated (doc B11), p 2
51. Lake Horowhenua Technical Committee, *Lake Horowhenua: Current Condition, Nutrient Budget and Future Management* (Palmerston North: Manawatu Catchment Board and Regional Water Board, 1978), p 3 (Paul Hamer, '"A Tangled Skein": Lake Horowhenua, Muaūpoko, and the Crown, 1898–2000', June 2015 (doc A150), p 233)

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The impacts of the effluent on the fishing rights and the cultural and traditional values of Muaūpoko were well known in Crown circles over the period 1940 to 1990. However, it took some time before the Crown would acknowledge these issues. Changes in attitude did start to prevail during the 1980s. By then the district commissioner of works commented that:

> We . . . know that Maoris have strong cultural and traditional objections to mixing waters that have been contaminated by human waste with waters from which food is gathered. The continued discharge of the treated effluent to the lake is therefore putting the local Maori community (which is significant and owns the lake bottom) under some stress (clearly a public health matter) as they either have to forgo a traditional food source or go against cultural and traditional values.[52]

Following the opening of the new sewerage system in 1987, all were hopeful that the use of the lake for effluent disposal would cease and for a while there were indications that the lake could recover. Unfortunately challenges remained, as a DOC official reported in a discussion paper for the Horowhenua Lake Domain Board prepared in 1991. He advised the lake had

> suffered considerably from human impacts. This has resulted in substantial diminution of the cultural and natural resource. It could be said that the health of the lake water and surrounding wetland is degrading to the point beyond recovery.[53]

The historical environmental effects adversely impacting the lake included high levels of sediment loading, agricultural and horticultural run-off, ongoing wetland drainage, high oxidation levels affecting the natural predation of lake flies, a decrease in the water level, lack of lake level fluctuation (which exacerbated sedimentation and pollution), damage to marginal vegetation, and the entry of stock into the lake.[54]

By 1997, while the lake's water quality had improved, the lake remained in an advanced state of 'eutrophication', with 'massive algal growths and [a] strong green colour to the water'.[55] There had also been no progress made on removing the sediment from the lake or rectifying the impacts of the concrete flood control weir constructed in 1966 at the outlet to the lake.[56] Eutrophication denotes that the lake was enriched with nutrients (particularly nitrogen and phosphorus) causing plant growth and possible algae blooms.

By 2000–2008, the water quality had declined steadily again and the lake remained in a parlous state.

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52. District commissioner of works to commissioner of works, 10 June 1985 (Hamer, '"A Tangled Skein"' (doc A150), p 250)
53. Department of Conservation, 'Horowhenua: A Conservation Strategy', not dated (Hamer, '"A Tangled Skein"' (doc A150), p 382)
54. Hamer, '"A Tangled Skein"' (doc A150), p 382
55. *Evening Standard*, 20 June 1997, p 3 (Hamer, '"A Tangled Skein"' (doc A150), p 391)
56. Hamer, '"A Tangled Skein"' (doc A150), pp 391–392

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By 2011, Max Gibbs, a limnologist (person who studies inland waters) and environmental chemist, released a report commissioned by the regional council stating 'the water quality . . . is currently very poor and is declining due to increasing nutrient and sediment loads from the catchment'.[57] The lake, he reported, had become 'hypertrophic'.[58] That term denotes that the lake was at this time enriched with nutrients, characterised by poor water clarity and subjected to devastating algae blooms. He also stated the fisheries were greatly diminished.[59] Also disturbing was that the Arawhata Stream, with the largest inflow of surface water into the lake, may be anoxic at night which could aggravate oxygen depletion in the lake.[60] Anoxic denotes that the stream was completely devoid of oxygen.

His findings remain the basis for restoration work planned for the lake. The *Lake Horowhenua Accord Action Plan 2014–2016* (which is consistent with his findings) described the lake in this manner:

> Water quality of lakes monitored in New Zealand is classified by trophic level. The level is based on a combination of four key variables; nitrogen, phosphorus, chlorophyll and water clarity. Lake Horowhenua is highly degraded and classified as hypertrophic (Trophic Level Index 6.7) which means that it has high chlorophyll, phosphorus and nitrogen levels and low water clarity. Based on the trophic level, Lake Horowhenua was ranked the 7th worst out of 112 monitored lakes in New Zealand in 2010.[61]

The five foundation partners to the He Hokioi Rerenga Tahi/The Lake Horowhenua Accord are the Lake Horowhenua Trust, the Horowhenua Lake Domain Board, Horowhenua District Council, Horizons Regional Council (the trading name for the Manawatu-Wanganui Regional Council), and the Department of Conservation.[62] The Lake Horowhenua accord signals an attempt by the parties to work collaboratively to pursue common objectives and goals for the lake. It sets out the shared vision as follows:

57. Max Gibbs, *Lake Horowhenua Review: Assessment of Opportunities to Address Water Quality Issues in Lake Horowhenua* (Palmerston North: Horizons Regional Council, 2011), pp 9–11 (Hamer, '"A Tangled Skein"' (doc A150), p 402)

58. Lake Horowhenua & Hōkio Stream Working Party, 'He Ritenga Whakatikatika: Lake Horowhenua & Hokio Stream, Te Pātaka o Muaūpoko rāua ko Ngāti Pareraukawa', June 2013, p 11 (Paul Hamer, comp, indexed bundle of cross-examination documents regarding '"A Tangled Skein: Lake Horowhenua, Muaūpoko and the Crown, 1898–2000', various dates (doc A150(l)), p 76)

59. Lake Horowhenua & Hōkio Stream Working Party, 'He Ritenga Whakatikatika', p 11 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 76)

60. Lake Horowhenua & Hōkio Stream Working Party, 'He Ritenga Whakatikatika', p 11 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 76)

61. Horizons Regional Council, *He Hokioi Rerenga Tahi/Lake Horowhenua Accord Action Plan, 2014–2016* (Palmerston North: Horizons Regional Council, 2014), p 8 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 35)

62. Horizons Regional Council, *Lake Horowhenua Accord Action Plan*, p 4 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 31)

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> Lake Horowhenua; he taonga tuku iho; he taonga mo te katoa (A treasure handed down from our ancestors for the enjoyment of all). *The whakataukī* (*proverb*): He Hokioi Rerenga Tahi (An eagle's flight is seen but once) . . . The whakatauki best describes the overarching purpose of coming together to collaborate, progress and resolve, once and for all, the condition of Lake Horowhenua.[63]

The 'Lake Horowhenua Accord', signed in August 2013, was a source of contention between certain claimants. We discuss this further below.

11.4.2 The sources and impacts of pollution and the decline in water quality

(1) *Introduction*

The historical role of the Crown and local government in the management of the Lake Horowhenua catchment and the Hōkio Stream has been an important feature of the claims before this Tribunal. The history of their management of the lake has been reviewed in previous chapters.

We turn now to examine how the environmental changes which occurred during the Crown's 1900–1990 management still affect the lake and what challenges the Crown, with Muaūpoko, have had to confront in the quest to find solutions to improving the state of the lake and the Hōkio Stream. We also consider what the Crown has done to ameliorate these adverse environmental effects, in order to ascertain whether, during the period 1990–2015, it acted in accordance with its rights and obligations under the Treaty of Waitangi.

We are not in a position to be able to make findings with respect to all the allegations made. What we do note is that resource management issues, land use planning, and consenting for water and land discharges and takes within the catchment are important and go to the issue of whether the current governance regime adequately addresses the guarantees of the Treaty for Muaūpoko.

In any consideration of responsibility for the environmental damage to the lake and Hōkio Stream the Crown contended, and we agree, that we must consider the geography and location of the lake – its proximity to Levin, and the general topography. We consider that such features required management of any flooding risk posed by them and associated drainage patterns.

Thus we begin by noting the surface catchment area feeding Lake Horowhenua is now defined as approximately 43.6 square kilometres. Dr Jonathan Procter, a senior lecturer at Massey University specialising in volcanology and involved in a wide range of research projects encompassing geology, hazards, ecology, and agricultural practices, informed us that

> Lake Horowhenua is often described simply as a shallow dune lake, but it is more complex than that. With a surface area of around 3.9 km^2, it is too large to be a simple dune lake. It is said to be the largest dune lake in the country.

63. 'He Hokioi Rerenga Tahi/The Lake Horowhenua Accord', August 2013, p 4 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 4)

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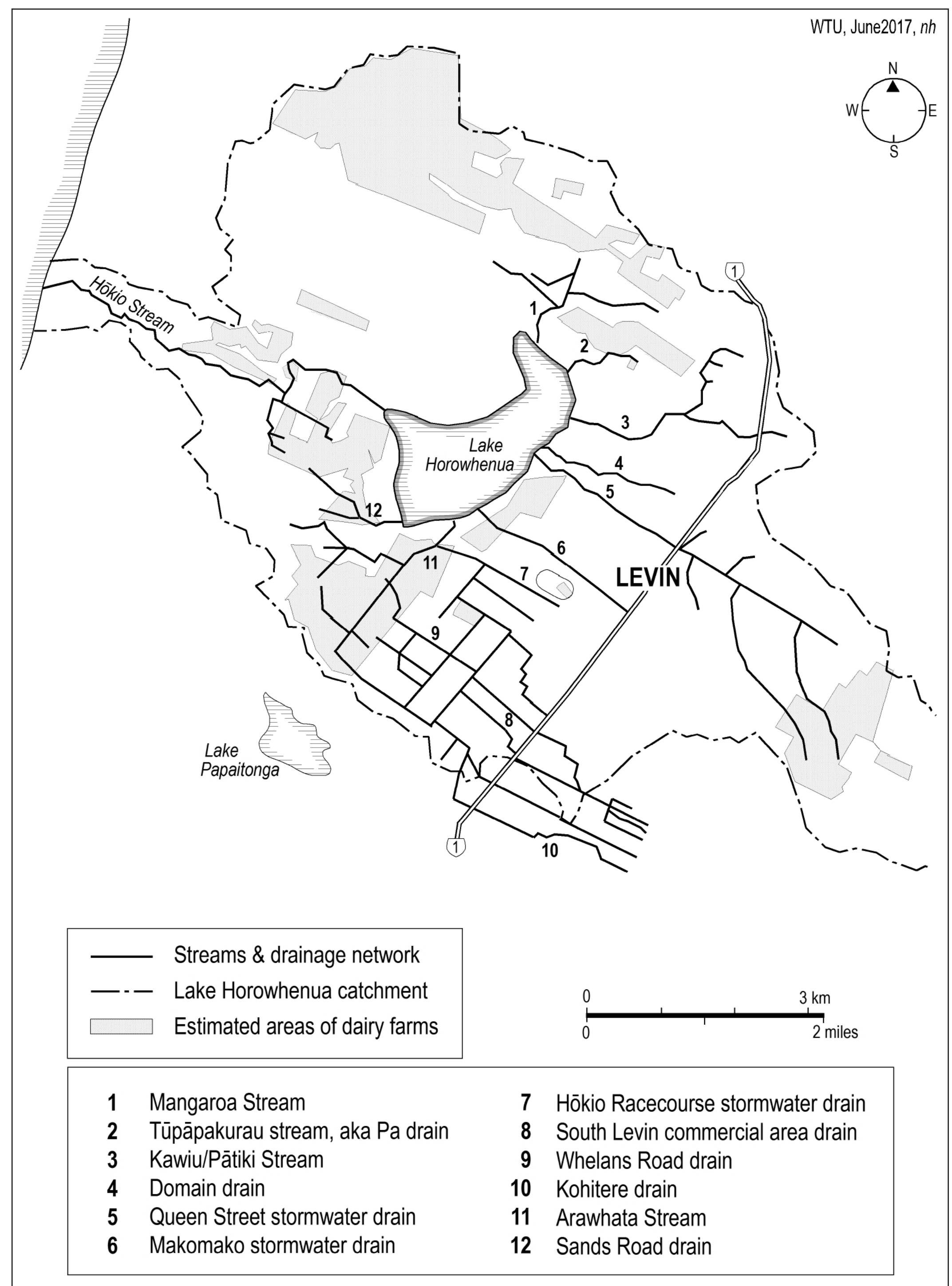

Map 11.1: Lake Horowhenua catchment

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> Water flowing within the catchment feeds about 40% of the lake through surface streams, but 60% of the lake is believed to be fed by groundwater from a very large underground network sourced from the Tararua Ranges. Underneath the western shore of the lake is a well-defined fault line. This is one of the controls on the hydrology of the catchment, giving the lake its size, and inflow with the only outflow being down the Hokio stream . . .
>
> The catchment area for surface runoff to the lake is 43.6 square kilometres (p5 Lake Horowhenua Strategy).[64] It is important to point out that the source areas for the Horowhenua catchment have been heavily modified through damming and diversion of water from the east to the west to feed the Mangahou Hydroelectric power generation plant.[65]

As can be seen, the groundwater of the lake catchment (which may be much larger in area than the surface catchment) accounts for much of the water that enters the lake. It enters mainly via a number of submerged springs along the eastern shore.[66] Groundwater is also a significant source of the Arawhata Stream (which is the lake's largest surface water supply), and several other small streams.[67] Inland aquifers fed by the Tararua Ranges also feed these features.[68] We understand from Jonathan Procter that the flow of groundwater into the lake is 'not well determined therefore the sustainability of groundwater use is difficult to determine'.[69]

Surface flows of water also account for a large percentage of the water intake into Lake Horowhenua.[70] Arawhata Stream supplies approximately 70 per cent of the surface inflow into the lake.[71] A further 15 per cent of the surface water to the lake is via the Queen Street drain.[72] The average annual rainfall is 1,095 millimetres. Half of the run-off caused by rainfall occurs in winter from June to August.[73]

The surface catchment topography is 'generally flat' and 'includes a mix of very flat, low-lying areas of peaty soils (formerly swamps), higher "sandstone uplands",

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64. See also Manawatu-Wanganui Regional Council, *Lake Horowhenua and Hokio Stream Catchment Management Strategy* (Palmerston North: Manawatu-Wanganui Regional Council, 1998), p 5 (Jonathan Procter, comp, appendices to brief of evidence, various dates (doc C22(a)), p 2014)

65. Procter, brief of evidence (doc C22), pp 4–5

66. See also Lake Horowhenua & Hōkio Stream Working Party, 'He Ritenga Whakatikatika', p 10 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 75).

67. Lake Horowhenua & Hōkio Stream Working Party, 'He Ritenga Whakatikatika', p 10 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 75)

68. Lake Horowhenua & Hōkio Stream Working Party, 'He Ritenga Whakatikatika', p 10 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 75)

69. Procter, brief of evidence (doc C22), p 9

70. Lake Horowhenua & Hōkio Stream Working Party, 'He Ritenga Whakatikatika', p 10 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 75)

71. Lake Horowhenua & Hōkio Stream Working Party, 'He Ritenga Whakatikatika', p 10 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 75)

72. Lake Horowhenua & Hōkio Stream Working Party, 'He Ritenga Whakatikatika', p 10 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 75)

73. Lake Horowhenua & Hōkio Stream Working Party, 'He Ritenga Whakatikatika', p 10 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 75)

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and gravel plains'.[74] Thus the lake will not avoid environmental impacts from any excessive nutrient, phosphorus, and sediment loadings in the ground and surface water of the catchment.

It is common ground that public (including the domain board) and local authorities were responsible for managing this catchment during the period 1900 to 1990, either through various legislative regimes for which the Crown has accepted responsibility, or through direct cooperation with the Crown.[75]

We heard from witnesses for the claimants about the following issues, which we have augmented with some further background to ascertain the answer to the question of whether the Crown's actions or omissions or the current legislative regime for the management of the lake and Hōkio Stream have mitigated the breaches of the Treaty identified in previous chapters.

(2) *Sewage / effluent*

One of the most important aspects of the historical legacy of past management is the pollution of Lake Horowhenua and the Hōkio Stream by sewage effluent. We have previously described the respective roles of the Crown and the Levin Borough Council. Although there was some pollution from effluent before the 1950s, the crucial period was from 1952 to 1986, when Levin's sewage treatment plant caused effluent to enter the lake in significant quantities. From 1952 to 1969, treated effluent flowed above ground from the soakage pits into the lake during the winter months, and seeped into the groundwater (and into the lake) for the rest of the year. The Crown was aware of this by at least 1957. There were also flood events where raw sewage entered Lake Horowhenua. From 1969 to 1987, treated effluent was discharged directly into the lake. Pollution from this source was by far the largest cause of eutrophication in the period leading up to 1987, when ground-based disposal was finally introduced to replace the old sewerage system.[76]

As we discussed previously, the Crown made undertakings in 1952–53 that sewage effluent would not enter the lake, but failed to include the appropriate provision in the ROLD Act 1956 (relying instead on an ineffective legislative provision about rubbish and littering). From then on, the Crown was at the very least complicit in the pollution and degradation of the lake and stream as a result of sewage effluent, until ground-based disposal was finally instituted in 1987 (many decades after it had been technically feasible).

In 1981 the waters of Lake Horowhenua were reclassified by the Water Resources Council to a 'CX' level (see section 10.3.6). This grading meant the lake was '"sensitive" to enrichment from phosphates and nitrates found in sewage'.[77] As a result, the Levin Borough Council was required to apply to the Manawatu Catchment and

74. Lake Horowhenua & Hōkio Stream Working Party, 'He Ritenga Whakatikatika', p 11 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 76)

75. Crown counsel, closing submissions (paper 3.3.24), pp 26, 45

76. See D A Armstrong, 'Lake Horowhenua and the Hokio Stream, 1905–c1990', May 2015 (doc A162), pp 6, 80, 88–89, 115–132.

77. D Armstrong, 'Muaupoko Special Factors: Lake Horowhenua and the Hokio Stream, 1905–c1980', not dated (doc A156), p 41

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Regional Water Board for a water right to continue to discharge into the lake.[78] The following year, the Levin Borough Council was given a limited five-year water right to continue discharging into the lake.[79]

The Crown then provided State funding to assist with a major sewerage upgrade in 1985, and in 1987 the Levin Borough Council opened its new land-based effluent system. The plant now pumps effluent 7.3 kilometres to the 'Pot' for land-based disposal.[80] The 'Pot' is situated in sand country near Hōkio Beach.[81] We discuss the impacts concerning the 'Pot' below.

The legacy of discharging raw sewage into the lake has been profound. As David Armstrong explained, '[b]y the end of the 1980s the lake bed was covered with a thick layer of sewage-infused sludge which continued to release nutrients, especially during summer months.'[82]

The aspiration when the upgraded treatment plant opened was that the lake would be free of sewage. However, several heavy rainfall events over the years have demonstrated that there are still major challenges for the Horowhenua District Council. In August 1991, groundwater infiltrated the sewerage system. The treatment plant and the pumping station could not cope, and treated effluent was discharged into the lake.[83]

In July, August, and October 1998, groundwater again infiltrated the sewerage system and the oxidation ponds. Due to the higher than normal water table, the system did not cope, resulting in the discharge of treated effluent directly into the lake on three separate occasions. A total of 207,000 cubic metres was released during these events in 1998.[84] In addition, some seepage appears to have been occurring to groundwater, feeding to Lake Horowhenua.[85] The impact of these discharges on the people of the lake was captured so well by the words of Vivienne Taueki when she recalled the events of 1998:

> This was a shocking and horrible event in so many ways, but to those of us Muaūpoko from the Lake, this was a terrible spiritual and cultural event. It is hard to describe how it feels, but it is terrible. We never wanted that to happen at all, let alone be repeated.[86]

Following the latter event, the council adopted a wastewater management strategy that included removal of the sewage plant from beside the lake.[87] Dr Procter

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78. Armstrong, 'Muaupoko Special Factors' (doc A156), p 41
79. Armstrong, 'Muaupoko Special Factors' (doc A156), p 41
80. Armstrong, 'Lake Horowhenua and the Hokio Stream' (doc A162), p 122
81. Hamer, '"A Tangled Skein"' (doc A150), p 245
82. David Armstrong, summary of reports, November 2015 (doc A153(b)), p 10
83. Hamer, '"A Tangled Skein"' (doc A150), p 392
84. Hamer, '"A Tangled Skein"' (doc A150), p 394
85. Manawatu-Wanganui Regional Council, *Lake Horowhenua and Hokio Stream Catchment Management Strategy*, p 12 (Procter, appendices to brief of evidence (doc C22(a)), p 2021)
86. Vivienne Taueki, brief of evidence, 29 August 2015 (doc B2), p 26
87. Procter, brief of evidence (doc C22), p 10; Horowhenua District Council, 'The Strategic Plan for the Upgrade of the Levin Sewerage System: Implementation Plan', 2002 (Procter, appendices to brief of evidence (doc C22(a)), pp 4000–4006)

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Aerial view of the wastewater treatment plant in the mid-1980s

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Overflow of effluent from the treatment plant, August 2008

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produced a letter from the Horowhenua District Council dated 27 January 2003 outlining the strategy, and the lake trustees were assured that 'the problems of the past associated with the proximity of the plant to the Lake should be resolved in a relatively short period of time'.[88] He advised that some further work was to be done, and in December 2007 the council applied to renew consents for the sewage plant in its current location.[89]

Unfortunately, in 2008 the pumping station failed again and another overflow occurred into the surrounding paddocks.[90] Subsequent tests revealed it had leached into the lake.

While overflows of the kind discussed above mean that effluent has continued to enter the lake from time to time, one of the most important aspects of the historical legacy is that nutrients from the pre-1987 discharge of effluent continue to affect water quality. The 2014 Horizons Regional Council accord action plan states:

88. Procter, brief of evidence (doc c22), p 10; chief executive, Horowhenua District Council, to chairperson, Lake Horowhenua Trustees, 23 January 2003 (Procter, appendices to brief of evidence (doc c22(a)), p 4007)

89. Procter, brief of evidence (doc c22), p 10

90. Hamer, '"A Tangled Skein"' (doc a150), pp 403–404

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> *Nutrients from 25 years of sewage inputs accumulated in the sediment* and new inputs of nutrient and sediment are key contributing causes of Lake Horowhenua's current poor water quality state. [Emphasis added.][91]

The local authorities were not, however, able to progress the resource consents applied for in 2007 to address matters further.[92] Dr Procter advised that by the date of our hearings in 2015, the issues relating to sewage affecting the lake were as follows:

> Over the last 10 years, a lot of research has been undertaken to assess the condition of the lake and assess the best way forward. This means that we know quite a lot about the lake and the contaminants that are flowing into it. Some key parts of those reports are attached.
>
> Briefly, the conclusions have been that:
>
> a) Seepage from the sewage plant has largely been removed – cutting down e coli bacteria counts;
> b) But the ability of the sewage plant to cope with known 'return event' storms remains an issue;
> c) Also, whether the sewage plant can cope with population growth is not certain;
> d) A big part of the issue is that there is an ongoing problem with large volumes of stormwater from streets and houses getting into the pipes for the sewage system during storm events, which results in very high volumes of diluted sewage that the plant struggles to cope with. Repairing the stormwater and sewage pipes and strictly enforcing rules to prevent people allowing stormwater to drain into sewage pipes is important.[93]

Dr Procter filed a further letter dated 10 February 2012 indicating that the local authorities were prioritising the progression of the proposed Shannon and Foxton waste water treatment plants and other large infrastructure applications over the Levin waste water strategy.[94]

The Crown's position on the allegations made in the claims before us was that Parliament has authorised local authorities to exercise powers and functions in respect of waste water (which includes stormwater drainage). As we have previously found, the Crown was complicit in the discharge of effluent from at least 1957, when Muaūpoko first objected and the Crown was aware that effluent was seeping into the lake. This was a breach of the Crown's duty of active protection and the guarantee of Muaūpoko's rangatiratanga.

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91. Horizons Regional Council, *Lake Horowhenua Accord Action Plan*, p 8 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 35)
92. Procter, brief of evidence (doc C22), p 10
93. Procter, brief of evidence (doc C22), pp 6–7
94. Procter, brief of evidence (doc C22), p 10; senior consents planner, Horizons Regional Council, to [obscured], 10 February 2012 (Procter, appendices to brief of evidence (doc C22(a)), p 4008)

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Post-1990, the Crown argued that wastewater management continues as a responsibility of local authorities under the Local Government Act 2002.[95] It argued that wastewater management is a core service of local government under that legislation. As we consider this to be a general proposition affecting all claims complaining about local authority actions we deal with this argument below, but we note the ongoing issues concerning the Levin Waste Water Treatment Plant may now be dealt with as part of the plant upgrade.[96]

(3) *Ground, surface, and storm water*

The lake's mean depth today is 1.3 metres, with a maximum depth of about 1.8 metres – a great reduction of the lake's water volume of a century ago.[97] These changes were occurring prior to 1952 due to sediment loading, local irrigation schemes, and drainage works (which resulted in the lowering of the lake level by four feet). After 1952, the decline in water quality of Lake Horowhenua can be directly attributed to over 25 years of sewage input, and historical nutrient and sediment loading from ground, surface, and stormwater outlets into the lake.[98] By far the greatest source of pollution before 1987 was sewage effluent. Studies in the 1970s showed that 85 per cent of the phosphorus entering the lake at that time came from Levin's sewerage system.[99] Since then, the stormwater system has become the main source of pollution.

A number of claimants addressed these matters with the Tribunal, including Philip Taueki, William (Bill) Taueki, and Charles Rudd. Mr Rudd and Mr Philip Taueki identified the following drains and streams that carry surface and storm water into Lake Horowhenua, the Hōkio Stream, and on to Hōkio Beach (see map 11.1):

- Mangaroa Stream, now monitored by the regional council, is a moderately small stream which enters the northern part of the lake. The development of the Pakau Hōkio, Kopuapangopango, and Kaihuka swamps for farming resulted in the construction of a number of drains that have impacted the stream.[100] Oero Creek feeds into the Mangaroa Stream.
- Pātiki Stream (or Kawiu Drain),[101] entering the northern end of the lake, now monitored by the regional council and passes through farmland.
- Pa Drain is a small stream, with similar features to Pātiki Stream.[102]

95. Crown counsel, closing submissions (paper 3.3.24), p 98
96. Horowhenua District Council, 'Community Connection', May and November 2016
97. Hamer, '"A Tangled Skein"' (doc A150), p 13
98. Horizons Regional Council, *Lake Horowhenua Accord Action Plan*, p 8 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 35)
99. Hamer, '"A Tangled Skein"' (doc A150), p 235
100. Manawatu-Wanganui Regional Council, *Lake Horowhenua and Hokio Stream Catchment Management Strategy*, p 8 (Procter, appendices to brief of evidence (doc C22(a)), p 2017)
101. Lake Horowhenua & Hōkio Stream Working Party, 'He Ritenga Whakatikatika', p 9 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 74); Henry Williams, brief of evidence, 11 November 2015 (doc C11), pp 8–9
102. Manawatu-Wanganui Regional Council, *Lake Horowhenua and Hokio Stream Catchment Management Strategy*, p 8 (Procter, appendices to brief of evidence (doc C22(a)), p 2017)

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- Tūpāpakurau Stream is a small stream, with similar features to Pātiki Stream.[103]
- Domain drain – now monitored by the regional council. This drain 'flows from flat rural land and the lakeshore domain on part of the gravel plain west of Levin'. This drain is impacted by the development of progressive residential subdivision.[104]
- Queen Street stormwater drain – the drain is a major source of phosphorus loading into the lake,[105] now monitored by the regional council. According to Mr Philip Taueki, it discharges all of Levin's storm water into Lake Horowhenua.[106]
- Makomako stormwater drain, now monitored by the regional council. The Levin Waste Water Treatment Plant is situated within the vicinity of this drain.
- Arawhata Stream, now monitored by the regional council. Mr Philip Taueki told us that the Arawhata Stream collects most of the run-off from the market gardens and discharges directly into Lake Horowhenua.[107] This stream is spring-fed but its water quality is affected by nitrate that has leached into the groundwater from surrounding farmlands.[108] It is the largest surface input to the lake.[109]
- Hōkio drain.
- South Levin commercial area drain.
- Whelans Road drain.
- Kohitere drain.
- Hokio Sand Road drain, now monitored by the regional council.
- Other man-made drains, in times of heavy rain.[110]

As can be seen, the monitoring sites of the regional council do not cover all the inflows into the lake. That noted, the evidence was that surface water and storm water have been key sources of nutrients and sediment entering the lake since 1990. The *Horowhenua Lake Accord Action Plan 2014–2016*, for example, refers to the issue, noting that nutrients and sediment from the surrounding catchment have continued to be a key factor in driving the decline in water quality.[111] In its own commissioned report, Horizons Regional Council recently published results which demonstrate that in terms of *E. coli*, human health, and recreational values, 'All of the inflows [into the lake] are worse than the national bottom line (band D) for 95th percentile *E coli* concentrations; the Makomako Road Drain and Sand Road Drains

103. Manawatu-Wanganui Regional Council, *Lake Horowhenua and Hokio Stream Catchment Management Strategy*, p 8 (Procter, appendices to brief of evidence (doc C22(a)), p 2017)
104. Manawatu-Wanganui Regional Council, *Lake Horowhenua and Hokio Stream Catchment Management Strategy*, p 8 (Procter, appendices to brief of evidence (doc C22(a)), p 2017)
105. Procter, brief of evidence (doc C22), p 8
106. Transcript 4.1.11, p 187
107. Transcript 4.1.11, p 192
108. Manawatu-Wanganui Regional Council, *Lake Horowhenua and Hokio Stream Catchment Management Strategy*, p 7 (Procter, appendices to brief of evidence (doc C22(a)), p 2016)
109. Procter, brief of evidence (doc C22), p 8
110. Rudd, closing submissions (paper 3.3.18), pp 13–14
111. Horizons Regional Council, *Lake Horowhenua Accord Action Plan*, p 8 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 35)

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are also below the national bottom line for median *E coli* concentrations.'[112] Data for the lake was unable to be utilised for assessment but, strangely, a table was prepared indicating *E. coli* was not an issue within the lake.[113]

(a) *Nitrogen:* Of particular concern is the amount of nitrogen entering the lake in this manner:

> Nitrogen levels within the Lake Horowhenua catchment are high with the highest concentration coming from the Arawhata Stream. The Arawhata Stream has previously been ranked as having the second highest median nitrogen concentration in the country and the Patiki Stream, valued for its population of rare native fish (the giant kokopu), was also ranked poorly, as having the fourth highest nitrogen concentration in the country.[114]

The inflowing total nitrogen at Horizon's monitored sites including the Hōkio Stream in 2015 indicates that the 'inflowing total nitrogen exceeded what was being exported down the Hokio Stream on all sampling occasions and the Arawhata Stream was the dominant source.'[115] However, the Mangaroa Stream was discharging higher levels of ammoniacal nitrogen into the lake.[116] At elevated levels this latter form of nitrogen can be toxic to many species, particularly fish and invertebrates. In the summer months it occurs in higher concentrations.[117]

Nitrogen can also enter the lake through groundwater.[118] It is thought that groundwater can enter the lake from 'almost anywhere in the catchment within one to two years.'[119] This means that, due to leaching and runoff, excess nutrients can reach the lake 'over relatively short time frames.'[120] Thus nitrogen from land-use adjoining the lake and streams is entering the lake, and that in turn is encouraging weed growth, leading to eutrophication.

The nitrogen is integrated into a process that leads to oxygen depletion in the lake and cyanobacteria (blue-green algae) blooms. These are smelly events which

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112. Horizons Regional Council, *Water Quality of Lake Horowhenua and Tributaries* (Palmerston North: Horizons Regional Council, 2015), pp 25–26 (Procter, appendices to brief of evidence (doc C22(a)), pp 3129–3130)
113. Horizons Regional Council, *Water Quality of Lake Horowhenua and Tributaries*, p 25 (Procter, appendices to brief of evidence (doc C22(a)), p 3129)
114. Horizons Regional Council, *Lake Horowhenua Accord Action Plan*, p 9 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 36)
115. Horizons Regional Council, *Water Quality of Lake Horowhenua and Tributaries*, p [4] (Procter, appendices to brief of evidence (doc C22(a)), p 3108)
116. Horizons Regional Council, *Water Quality of Lake Horowhenua and Tributaries*, p [4] (Procter, appendices to brief of evidence (doc C22(a)), p 3108)
117. Horizons Regional Council, *Water Quality of Lake Horowhenua and Tributaries*, p 13 (Procter, appendices to brief of evidence (doc C22(a)), p 3117)
118. Horizons Regional Council, *Lake Horowhenua Accord Action Plan*, p 9 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 36)
119. Horizons Regional Council, *Lake Horowhenua Accord Action Plan*, pp 8–9 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), pp 35–36)
120. Horizons Regional Council, *Lake Horowhenua Accord Action Plan*, pp 8–9 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), pp 35–36)

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release toxins that can cause skin irritation and health issues.[121] As noted by the working party, the toxins can be lethal to dogs and in extreme conditions can be lethal to small children.[122] Such blooms regularly cause the lake to be closed to recreational users over the summer.[123] The blooms occur when there are low levels of oxygen, caused 'when weed beds collapse and decompose in late summer'.[124] The decomposing material 'forms a barrier to oxygen reaching lake bed sediments, resulting in a large release of phosphorus'. It is the release of phosphorus through this process that fuels the cyanobacteria blooms.

Lake weed is now present in Lake Horowhenua on a massive scale. It is a key issue for the partners to the *Lake Horowhenua Accord Action Plan 2014–2016* due to its impact on sediment and its part in 'driving cyanobacteria blooms'.[125] A comprehensive weed survey was completed in 2014 which found that *Elodea canadensis* is the most prolific weed, but there are other varieties as well.[126] The former covers 50 hectares of the approximately 300 hectares that is the lake. All the varieties of weed in the lake can contribute to slowing water movement, allowing more sediment to settle on the bed of the lake.[127] These weed varieties are easily spread by recreational boating either entering or exiting the lake.

On very hot, still days these plants may release ammonia, which is toxic to all fish life. As noted by Dr Procter,

> Low oxygen from eutrophication and the possible release of ammonia are regarded as the number one threats to the lake at the moment, and is the reason for a proposal to cut weed from the lake just before it seeds. The aim of that project is to cut back the exotic species so that they will not re-seed and allow native water plants currently being smothered to re-establish themselves.
>
> The experts tell us that we should expect to see results from this in 3–5 years.
>
> The introduction of any further exotic water plant species would be devastating, and strict boat washing is required. A boat washing facility has been installed.[128]

(b) *Phosphorus:* In addition to nitrogen, phosphorus levels have a crucial impact on the lake. As discussed above, a study in 1976 showed that 85 per cent of the phosphorus entering the lake at that time came from sewage effluent. Of the remainder,

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121. Horizons Regional Council, *Lake Horowhenua Accord Action Plan*, p 10 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 37)
122. Horizons Regional Council, *Lake Horowhenua Accord Action Plan*, p 10 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 37)
123. Horizons Regional Council, *Lake Horowhenua Accord Action Plan*, p 10 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 37)
124. Horizons Regional Council, *Lake Horowhenua Accord Action Plan*, p 10 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 37)
125. Horizons Regional Council, *Lake Horowhenua Accord Action Plan*, p 10 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 37)
126. Horizons Regional Council, *Lake Horowhenua Accord Action Plan*, p 10 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 37)
127. Horizons Regional Council, *Lake Horowhenua Accord Action Plan*, p 10 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 37)
128. Procter, brief of evidence (doc C22), p 9

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40 per cent came from storm water and 60 per cent from 'the catchment board's north drain, the Kawiu drain, and the Arawhata Stream'.[129] When the council ceased discharging effluent into the lake in 1987, storm water from the Queen Street drain became by far the largest source of phosphorus. In 1988–89, 80 per cent of the phosphorus entering the lake came via the Queen Street drain.[130] However, data from Horizons Regional Council in 2013–14 indicates that 'the Queen Street drain is no longer the highest contributor of phosphorus to the lake'. High levels are also entering from other streams and drains within the catchment.[131] Some phosphorus is also exiting the lake, and high levels are being transferred via the Hōkio Stream.[132]

In their report from their 2015 monitoring sites, Horizons Regional Council stated that 'the load of total phosphorus was generally higher in the Hokio Stream' than the combination of the other tributaries. Of the inflowing tributaries to the lake, the Arawhata Stream remained, more often than not, the dominant source.[133]

Several claimants gave evidence on other possible sources. Mr Rudd, for example, alleged that leaching was occurring into Lake Horowhenua, the Hōkio and Waiwiri Streams, and Hōkio Beach at the following locations:

- Tararua Road;
- Arapaepae Road, just south of Queen Street;
- Bartholomew Road;
- The Avenue;
- Kawiu Road, near the Pātiki Stream;
- Tirotiro Road, just south of Queen Street;
- Hokio Beach Road, near Hamaria Road;
- Main South Road, south of Hokio Beach Road; and
- Levin Landfill, Hokio Beach Road.[134]

Mr Bill Taueki noted that in recent times the Horowhenua District Council attempted to create a wetland to filter and divert the outflow at the Queen Street drain. His whānau, including his sister Vivienne and his cousin Peter Heremaia, protested as the area was a significant site for Muaūpoko. Artefacts, so he advised, were found on the land, which demonstrated that the area may have been a site of significance. He stated '[o]n this basis the council accepted that the site was important' and stopped digging, but alleged this work has since recommenced.[135]

(c) *Sediment:* As we discussed in previous chapters, in 1966 a weir was installed at the outlet of the lake at the Hōkio Stream. Peter Huria claimed this weir was

129. Hamer, '"A Tangled Skein"' (doc A150), p 258
130. Hamer, '"A Tangled Skein"' (doc A150), p 269
131. Horizons Regional Council, *Lake Horowhenua Accord Action Plan*, p 9 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 36)
132. Horizons Regional Council, *Lake Horowhenua Accord Action Plan*, p 9 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 36)
133. Horizons Regional Council, *Water Quality of Lake Horowhenua and Tributaries*, p [4] (Procter, appendices to brief of evidence (doc C22(a)), p 3108)
134. Rudd, closing submissions (paper 3.3.18), p 14
135. William Taueki, brief of evidence (doc C10), p 41

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holding in all the sludge in the lake.[136] David Armstrong stated that 'The weir hindered the lake's natural flushing and cleansing process, and helped turn it into a sediment trap.'[137] The weir is still used to maintain the lake at the ROLD Act 1956 level of 30 feet above mean low water spring tides at Foxton Heads.[138] The use of the weir to hold the lake at a constant level has turned it into 'a very large settling pond with about half of its original volume filled with sediment'.[139]

Sediment loading continues to be a major issue as identified in the *Lake Horowhenua Accord Action Plan 2014–2016*, where the authors repeated Max Gibbs' findings in his 2011 report. Those findings were that large sediment loads entered Lake Horowhenua, 'causing the lake to infill at a rate of 3.3 millimetres per year and up to 10 centimetres per year in the centre'. He argued that the weir installed in 1966 'played a part in reducing the lake's natural flushing ability'.[140] By 2015, Horizons was reporting the Arawhata Stream contributed significantly larger portions of sediment to the lake as it was the dominant source.[141]

We note that 'no comprehensive programme to trap sediment and remove nutrients from the storm water entering the lake was established' over the period 1952–87 and little effective action by the Crown and local government was taken to deal with the problem.[142] Since then the lake trustees, the domain board, and local authorities with DOC have attempted various remedial programmes, a matter we discuss below.

In terms of post-1990, we know that stormwater drains are a discharge point for pollutants going into the lake, aggravating its current hypertrophic state. Furthermore, contaminants are still leaching or discharging into the lake through ground water.

Counsel for the Crown submitted these are matters for the local authorities. Under the Local Government Act 2002 they are required to assess the actual and potential consequences of stormwater discharges in their district,[143] the inference being that if they do not they are in breach of their obligations under the Act. Furthermore, local authorities, the Crown submitted, are not part of the Crown and nor do they act on behalf of the Crown.[144] Therefore, decisions they make cannot be attributed to the Crown. We consider this be a general proposition affecting all claims in respect of local authority actions.

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136. Huria, brief of evidence (doc B11), p 2

137. Armstrong, 'Lake Horowhenua and the Hokio Stream' (doc A162), pp 85, 92

138. Horizons Regional Council, *Lake Horowhenua Accord Action Plan*, p 12 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 39)

139. Gibbs, *Lake Horowhenua Review*, p 10 (doc C22(b)(iii)), p [75]

140. Horizons Regional Council, *Lake Horowhenua Accord Action Plan*, p 12 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 39)

141. Horizons Regional Council, *Water Quality of Lake Horowhenua and Tributaries*, p [4] (Procter, appendices to brief of evidence (doc C22(a)), p 3108)

142. Hamer, '"A Tangled Skein"' (doc A150), p 269

143. Local Government Act 2002, ss 125, 126(e)

144. Crown counsel, closing submissions (paper 3.3.24), p 98

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(4) *Land use*

As we have previously described, during the late nineteenth century the Horowhenua landscape was transformed by colonial settlement. The once-thick bush was cleared at a rapid pace and drainage activities followed, including on the Hōkio Stream. These works resulted in lowering the level of the lake in the 1920s, which left a dewatered area between the lake's edge and the original chain strip.

The previous traditional life of Muaūpoko gave way to a new order where agriculture and horticulture became the fuel for the new economy. Lake Horowhenua and its catchment reduced in size as the system of dune lakes and swamps were drained. It now has a surface catchment limited to 43.6 square kilometres in area, and nearly 14 per cent of that is occupied by the Levin township. As the working party noted, 'Land use in the remainder of the catchment is rural, and includes pastoral, dairying, pig and poultry raising, and horticultural activities.'[145]

As Dr Procter stated,

> Levin has grown to about 20,000 people and is reasonably prosperous. The industrial and urban development has flourished as a result of the ability to remove stormwater and wastewater efficiently and economically directly into the Lake. Large market gardens lie to the south and west of Levin. They keep Wellington and the Lower North Island in fresh vegetables.
>
> All of that development has been dependent on the water and drainage basin resource that Muaupoko have mostly retained, but is now in a terribly degraded state.
>
> Ironically, at the same time, Muaupoko land blocks do not have access to water and are of course subject to strict rules about water takes.[146]

Since 1990, intensive dairying, further agriculture, and horticulture have contributed additional nutrients and sediment loads into the lake.[147] As we discussed above, the nitrogen feeds weed growth and contributes with phosphorus to toxic blooms. Land use around the lake is contributing to the ongoing management issues for the lake and the Hōkio Stream. It is now the primary source of nutrient and phosphorus loading entering the lake and the stream. The Lake Horowhenua and Hōkio Stream working party noted in 2013 that 'Although there were signs that the water quality of the Lake improved following 1987, farming and market gardening activities intensified. A rise in the external nutrient and sediment loads on the Lake coincide with this increase in activity.'[148]

Several witnesses raised issues regarding the Alliance Freezing Works located near the lake. Mr Philip Taueki told us they opposed the resource consent for the

145. Lake Horowhenua & Hōkio Stream Working Party, 'He Ritenga Whakatikatika', p 10 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 75); Procter, brief of evidence (doc C22), p 5

146. Procter, brief of evidence (doc C22), p 14

147. Lake Horowhenua & Hōkio Stream Working Party, 'He Ritenga Whakatikatika', p 11 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 76)

148. Lake Horowhenua & Hokio Stream Working Party, 'He Ritenga Whakatikatika' (doc B2(o)), p 11)

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water consent to take for the freezing works. He highlighted how the pure water drawn for this operation reduces the amount of pure water feeding the lake.[149]

It was claimed that the freezing works runs a bore directly into the ground some 75 metres deep extracting 40,000 litres of water a minute.[150] The allegation is that the Horowhenua District Council has allowed this land use without consultation with the domain board or the lake trustees.

We deal with the broader argument regarding decisions that local authorities make (and whether they may be attributed to the Crown) below. However, we note here that consenting for water takes within the catchment is important and goes to the issue of whether the current governance regime adequately addresses the guarantees of the Treaty for Muaūpoko.

11.4.3 Hōkio Stream and Beach

The Crown acknowledged the importance to Muaūpoko of the Hōkio Stream as a part of their identity.[151] The Hōkio Stream, like the lake, was heavily impacted during the years 1950–90.[152] In 1978, the Hokio Progressive Association wrote to the Health Department to inform it that the stream had been almost stagnant for a number of years.[153] In the same year, the Manawatu Catchment Board water resources officer acknowledged faecal coliform levels exceeded maximum levels on every occasion that tests had been performed.[154] Thus there were real concerns over the health of the stream. Those concerns have continued. Fortunately, however, the borough council's proposal to discharge sewage effluent directly into the Hōkio Stream instead of Lake Horowhenua was rejected in the 1980s (see chapter 10). Nonetheless, Peter Huria alleged that pollution was being discharged directly into the Hōkio Stream,[155] and one direct source of effluent was the Department of Social Welfare's Hokio Beach School.[156]

Other than noting the discharges of raw sewage into the lake after storm events in 1991, 1998, and 2008, we have insufficient evidence to make any findings in relation to the allegations made by Mr Huria.

(1) *The continuing effects of the 1966 concrete weir*

The control weir at the lake outlet is an important legacy of past management and statutory powers to conduct drainage works. In 1916, the Crown brought in legislation which gave the lake domain board authority to conduct drainage works on the lake and the Hōkio Stream. Muaūpoko protested in vain against this legislation, but the domain board took little action in any case. From the 1920s, however, the power

149. Transcript 4.1.11, pp 191–192
150. William Taueki, brief of evidence (doc C10), pp 39–40
151. Crown counsel, closing submissions (paper 3.3.24), p 99
152. Armstrong, 'Lake Horowhenua and the Hokio Stream' (doc A162), pp 109–110; Hamer, '"A Tangled Skein"' (doc A150), pp 206–258
153. Armstrong, 'Lake Horowhenua and the Hokio Stream' (doc A162), p 109
154. Armstrong, 'Lake Horowhenua and the Hokio Stream' (doc A162), p 109
155. Huria, brief of evidence (doc B11), p 2
156. Huria, brief of evidence (doc B11), p 12

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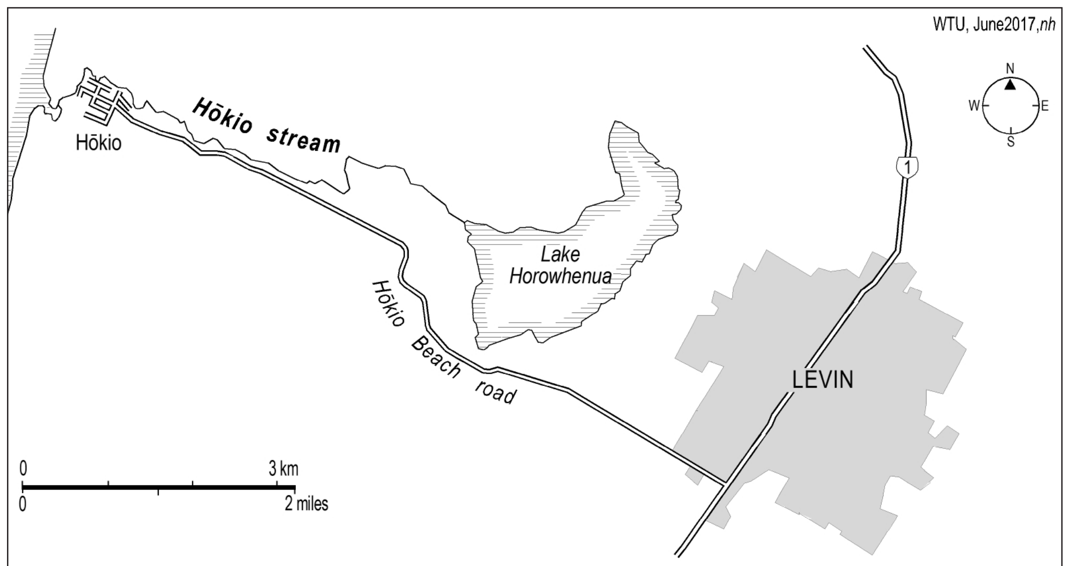

Map 11.2: Hōkio Stream

to conduct drainage works was exercised by the Hokio Drainage Board. This board carried out significant modifications to the bed of the Hōkio Stream, narrowing and deepening it, destroying eel weirs in the process. These works were mainly for the purpose of draining lands for farming, and resulted in the lowering of Lake Horowhenua by four feet. These drainage works were a major source of grievance for the Muaūpoko people. The question of who would control and authorise such works became a point of contention between the Crown and Muaūpoko (see chapters 8 and 9).

In the 1950s, a settlement was reached whereby the Hokio Drainage Board would be disestablished, and the Manawatu Catchment Board would assume responsibility for drainage works – but any such works now required the consent of the reformed lake domain board. The parties also agreed in 1953 that the lake level should be set at 30 feet above mean low water spring tides at Foxton Heads (see section 9.3.3). This settlement was given legislative effect by the ROLD Act 1956. In theory, representatives of the Muaūpoko owners had a majority on the reformed domain board, but, as we explained in chapter 9, the majority was too narrow and the basis for board appointments was too uncertain and contested. The result was that drainage works could be carried out despite the strong disagreement of the lake trustees. In particular, the trustees strongly objected in 1966 to the construction of a concrete control weir without a fish pass to allow fish migration.

The catchment board wanted to install a control weir in order to maintain the lake at its statutory level, and to resolve complaints from people concerned about flooding and inundation at Hokio Beach Road. The weir was constructed at a height of 29 feet 9 inches, and it was installed at the outlet of the lake at Hōkio Stream. As

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a result the lake rarely fluctuated in level unless the wooden boards were slotted on the control weir to raise the lake for recreational boating.[157]

In section 11.4.2(3)(c) above, we have discussed the impact of the weir on the amount of sediment trapped in the lake. In addition, it may inhibit the ability to flush phosphorus from the lake as a result.[158]

The weir also had the effect of lowering the Hōkio Stream levels during summer by anything up to 25 per cent. In the 1980s there were reports that this resulted in the death of fish during droughts, and encouraged stock to wander the margins of the lake and damage the banks of the stream.[159] Also, at our hearings in 2015, Vivienne Taueki claimed willow trees were removed along the stream, reducing the riparian strip with resulting impacts on water temperature and eels.[160]

(2) *The realignment of the Hōkio Stream mouth*

The Manawatu Catchment Board's control of works on the Hōkio Stream continued until 1989 when it was abolished and its functions were transferred under the local government legislation amendments of 1989. During the last few years of its existence, discussions were held to make a cut into the Hōkio Stream to shorten the distance to the sea. This occurred because the prevailing wind direction resulted in the mouth of the stream moving to the south.

Peter Huria gave evidence that he and his brothers have been acting as kaitiaki for the sand dunes at Hōkio Beach, renowned for their shape, form, and the location of ancient and sacred sites.[161] Those dunes, he believed, are being impacted by environmental issues at Hōkio Beach.

He also raised the issue of the cut to the sea. It seems as the years went by the Hōkio Stream was causing inundation issues during major weather events at Hōkio Beach.[162] Minor realignment of the mouth was made by the local authority in 1982 and 1983.[163] This was followed by an application for a water right in 1990 to cut a new path for the stream to the sea. The application was made by the Manawatu-Wanganui Regional Council and the Horowhenua District Council to cut a diversionary path between the Hōkio Stream and the sea. The application was made because, it was claimed,

> the mouth of the stream has progressively migrated to the south, and the increased stream distance, together with high groundwater levels resulting from recent heavy rainfall, have combined to effect an elevated hydraulic gradient of the stream. The direct impact of this situation is that residential properties, particularly those bordering the

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157. Hamer, '"A Tangled Skein"' (doc A150), pp 185–187, 189, 304; Armstrong, 'Lake Horowhenua and the Hokio Stream' (doc A162), pp 85–86
158. Lake Horowhenua & Hōkio Stream Working Party, 'He Ritenga Whakatikatika', p 12 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 77)
159. Armstrong, 'Lake Horowhenua and the Hokio Stream' (doc A162), p 86
160. Vivienne Taueki, brief of evidence (doc B2), pp 24–25
161. Huria, brief of evidence (doc B11), p 3
162. Hamer, '"A Tangled Skein"' (doc A150), p 399
163. Hamer, '"A Tangled Skein"' (doc A150), p 398

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stream, are experiencing some inundation, with detriment to safe operation of septic tank disposal systems.[164]

No objections were received to the application for a water right and it was granted.[165] The lake trustees, through Mrs Tatana, consented to the realignment.[166] The domain board also approved it.[167] The trustees of Hōkio A block, at that time, were in favour of the cut, mainly because they were attempting to stabilise the dunes to the south of Hōkio township and thereby protect their land.[168]

The matter subsequently became controversial when the implications for fisheries such as whitebait and eels that migrate from the lake to the sea were further understood.[169] Other lake trustees objected. In a split decision, the chairman of the domain board used his casting vote to make an interim objection to the application so as to enable the board to consult further with the lake trustees.[170]

This cut was never made but the mouth of the Hōkio Stream was realigned in 2014 when the local authorities used the emergency provision under section 330 of the RMA to cut a new course for the stream to the sea.

Mr Philip Taueki alleged that the impact of the stream diversion has prevented access to the beach, and has impacted on fisheries, birdlife, and native plants.[171] He stated:

> Despite the Crown and council knowing we owned the land in question, the Hokio Trust, they went out there and dug a 200 metre long, five metre wide, three metre deep trench on our land and they had the support of the MTA and the Lake Trustees. Mr Sword appeared in the . . . newspaper alongside the Horizon's members saying what a great project this was and that they supported it, despite having no authority over the land in question. Now this lot happens continually Your Honour, despite us being the trust and I'm being the chair of the trust, despite that fact the council completely ignored us and went through the MTA and the Lake Trustees to get this cut put in. The police threatened to – we went down there to try to stop it. We parked our truck on the bridge which is on our land. The police threatened to arrest us if we didn't move it. No resource consents, no nothing. They used the emergency powers of the RMA to get this work done. . . .
>
> So that Hokio cut and now we've got two resource – we've got two hearings due that we're now going to have to go through, find resources to argue in the Courts against what the council done. And they tried to say that the reason was because the toilets in

164. Director, operations, Horowhenua District Council, to director, planning and environment, Manawatu-Wanganui Regional Council, 5 September 1990 (Hamer, '"A Tangled Skein"' (doc A150), p399)
165. Hamer, '"A Tangled Skein"' (doc A150), p399
166. Hamer, '"A Tangled Skein"' (doc A150), p399
167. Hamer, '"A Tangled Skein"' (doc A150), p400
168. Hamer, '"A Tangled Skein"' (doc A150), p400
169. Hamer, '"A Tangled Skein"' (doc A150), p400
170. Hamer, '"A Tangled Skein"' (doc A150), p400
171. Philip Taueki, amended statement of claim, 6 August 2015 (Wai 2306 ROI, statement of claim 1.1.1(b)), p113

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> the township were backing up. So why should the council be able to dig a 200 metre long trench on our land because a couple of the toilets in the township were being blocked up? And they don't have – yes, now they've done the work it hasn't alleviated the problem. They did no reports to prove it. They had no reports from the health department that people were complaining at the beach that their toilets were becoming unsanitary. It was all just a rushed bulldozed job, intimidated job, threatened us, had the newspapers support their little story with the Crown working genuinely to fix the problems of Muaūpoko.[172]

Philip Taueki claimed the stream is now 'meandering out of control[,] is cutting through sand-dunes where pingao had been established [and] causing a hazard for children due to collapsing sand dunes'.[173] Mr Eugene Henare made similar allegations and claimed that tonnes of sand were removed from the beach without permission, and that the realignment of the mouth affects Muaūpoko's fisheries.[174]

Philip Taueki also raised issues concerning the digging of drains on Hokio Trust lands to lay communication cables:

> When the . . . cable was put through the beach without talking to us Donna Hall and Felix . . . took the case for us to the Māori Land Court arguing that they hadn't consulted us. The research taken, undertaken to support that case revealed that the . . . cable had come up property belonging to the trust and that a certain amount of accretion had occurred to that land. So now what they're going through Your Honour is they've applied to the High Court to get the title to that bay area created and then they have to go to the Māori Land Court to get the people who are entitled to be on that title put on it. Despite the Crown and council's lawyers all being part of those hearings with . . . knowing that that was private land looked after by the Hokio Trust they went ahead and dug this drain and used the MTA and Mr Sword in particular as their authority to do so.[175]

The Crown's response was that Parliament has authorised regional councils to exercise powers and functions in respect of water under the RMA. This includes granting local authorities 'the control of the taking, use, damming, and diversion of water' under section 30(1)(e) of that Act. Crown counsel submitted that 'local authorities are not part of the Crown, nor do they act on behalf of the Crown'.[176] The Crown also stated that rights claimed by Muaūpoko in relation to the foreshore and seabed are now covered by the Marine and Coastal Area (Takutai Moana) Act 2011.[177] We consider the generic aspect of these submissions further below. We note here that there is nothing in the Marine and Coastal Area (Takutai Moana) Act 2011

172. Transcript 4.1.11, pp 195–196
173. Philip Taueki, amended statement of claim (Wai 2306 RO1, statement of claim 1.1.1(b)), p 113
174. Eugene Henare, brief of evidence, 25 September 2015 (doc B6), p 5
175. Transcript 4.1.11, p 198
176. Crown counsel, closing submissions (paper 3.3.24), p 100
177. Crown counsel, closing submissions (paper 3.3.24), pp 91–92

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that prevents us making generic findings relating to the legislative regime concerning the management of the marine environment and natural resources.

(3) *Landfills*

Two statements of claim referred to landfills.[178] They claimed that discharges were being made to the Hōkio Stream in breach of RMA consents. Limited information was provided by the claimants on these landfills. However, by reviewing a recent decision made concerning the landfills we were able to piece together some background.

Independent commissioners recently observed the Levin Landfill is located on Hokio Beach Road four kilometres west of Levin. We refer to this decision merely for background. According to the commissioners, a small landfill existed on the site from the 1950s, which served Levin and its immediate surrounds.[179] This original landfill reached capacity around 1975.[180] A second landfill was operated adjacent to the then-existing landfill when the original landfill was closed.[181] The commissioners stated that

> In 1994 HDC [the Horowhenua District Council] made resource consent applications to Horizons for the second or new landfill. These resource consent applications attracted a high level of submitter interest and consequently a protracted resource consenting hearing process meant that a Council level decision was not available until 1997. That Council decision being a regional Council decision was appealed to the Environment Court and resolved by mediation with a resulting consent order issued in 2002. The consent order provided the following consents:
>
> i) discharge of solid waste to land (discharge permit 6009)
> ii) discharge of leachate to land (discharge permit 6010)
> iii) discharge of contaminants to air (discharge permit 6011)
> iv) divert stormwater run-off from land filling operations (water permit 6012)
> v) discharge liquid waste to land (discharge permit 7289)
>
> To be complete a further consent namely discharge permit 102259 enabling discharge of stormwater to land that may enter groundwater was granted to HDC in May 2002 on a non-notified basis and consequently was not subject to any environment court appeal process.
>
> Over time the landfill activities appear to have expanded in that refuse and waste has been accepted not only from Levin but from further afield from the likes of Kapiti District. As we understood it based on what we were told the decision to accept

178. Claimant counsel (Watson), first amended statement of claim, 12 August 2015 (Wai 1491 ROI, statement of claim 1.1.1(a)), pp 11, 13; Philip Taueki, amended statement of claim (Wai 2306 ROI, statement of claim 1.1.1(b)), pp 113–115, 133

179. 'Commissioners Decision on a Review of Resource Consent Conditions and an Application for Change of Resource Consent Conditions Both Relating to the Levin Landfill Operated by the Horowhenua District Council', 18 November 2016, PGR-124154–2–85-V1 paras 3.2, 4.2. The decision can be downloaded from the Horizons Regional council website.

180. Ibid, para 4.2

181. Ibid, para 4.2

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waste from outside of the HDC area was a decision made by HDC following a Local Government decision process. We understood there are no conditions of consent that prevent HDC from accepting waste from beyond the HDC District. Submitters we heard from certainly were dissatisfied with this circumstance.

So a key fact arising from this short history is the landfill activities are consented activities. This fact is particularly relevant to the scope and nature of the effects we can take into account when considering and determining the Review and the Application.

The next step in the landfill history was that the PCE [Parliamentary Commissioner for the Environment] initiated an investigation into the management and effects of the landfill. That investigation commenced in 2004 and resulted because complaints were made relating to the operation of the landfill. PCE produced a report in 2008. That report contained a number of recommendations for both HDC and Horizons.

Horizons acting in part on the PCE report publicly notified a review of conditions of all of the consents relating to the landfill in late 2008. Many prehearing meetings took place and an agreed outcome of all parties involved in that process resulted in an amended condition as contained in a decision report dated 31 May 2010.[182]

Mr Rudd before us claimed that the site is leaching heavy metal leachate into the Hōkio Stream via certain drains, and that the relevant local authorities are acting in breach of their resource consent.[183] Peter Huria was concerned that there were adverse effects from leachate seeping from the landfill occurring at Hōkio Beach. He expressed his view that the landfill was leaching arsenic into underground aquifers.[184]

Mr Philip Taueki claimed that

The council operates the landfill on Hokio, further along on the Hokio Beach Road. They capture leachate from the methane or something that gets discharged, 30,000 litres or something a day. They then pump the leachate from the landfill, which is just further towards the beach than this stream, back to the Levin Wastewater Treatment Plant located next to the Lake. Then they pump it from the wastewater treatment plant located next to the Lake out to the Pot which is located out at Hokio Beach. So it goes from the landfill in Hokio Beach Road, back to the Lake, then back to the site out at the beach which is probably a kilometre south of the landfill. So they take it from the landfill, extract it at enormous cost, pipe it to the waste water treatment plant, then they pipe it out to the Pot where it's just emptied in to the sand dunes. So they've moved it from the landfill located on Hokio Beach Road to the Pot some one kilometre south of the landfill via the Levin Wastewater Treatment Plant. And apparently, although we haven't been able to get any information from the council to confirm this, but the leachate disturbs the treatment process that the plant was originally designed for. It wasn't designed to handle leachate. But all of these matters can be outlined hopefully by engineers when we finally come to solving these problems. You won't have to take

182. Ibid, paras 4.3–4.8
183. Charles Rudd, brief of evidence, 16 November 2015 (doc C23), p 21
184. Huria, brief of evidence (doc B11), p 2

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> my word for it . . . So we've gone from the Lake around to the Arawhata Stream which is Hokio Beach Road which is just south of the Lake. Then if you go further out to the beach about another half a kilometre you come across the landfill, the Levin Landfill, the Levin Dump, the Levin Refuse Centre.[185]

In reply the Crown stated waste management is a basic health and utility function which falls within the 'traditional functions' of local authorities. Waste collection and disposal is affirmed as a 'core service' of local government under the Local Government Act 2002.[186] The Crown submitted the Act gives clear powers to local government to manage waste, and local authorities have responsibility for the Hokio Beach Road landfill.[187] The Crown submitted again that these agencies are not part of the Crown and do not act on its behalf.[188] Nor is the Crown responsible for the day-to-day operations 'of the statutory framework within which local authorities operate', and the 'various decisions' they make, including where to situate a landfill.[189]

At the time of the hearing, the claimants had an alternative legal process within which to pursue the issues as to water quality. The more generic submissions made by the Crown we consider below.

(4) *The 'Pot'*

The Levin Waste Water Treatment Plant discharges to the 'Pot'. It includes land under lease from the Muaupoko Lands Trust, an ahu whenua trust administered under Te Ture Whenua Māori Act 1993.

Paul Hamer described the 'Pot' as a natural depression in sandhills at the end of Hokio Sand Road.[190] On 1 June 1986, a 30-year lease agreement was signed with the then-Levin Borough Council.[191] All the money owed for the first 30 years of the lease was paid out at commencement of the lease at $62,700.[192] At the time of our hearings, the owners were considering whether that lease would be renewed. A review of the Māori Land Court records indicates the lease was renewed on 29 October 2016 in favour of the Horowhenua District Council for 40 years from 1 June 2016, expiring in 2056.

The 'Pot', as part of the land-based sewage disposal area for the Levin Waste Water Treatment Plant and located at the beach, is now, Mr Rudd claimed, at capacity and is draining into the Waiwiri Stream and then over the beach.[193] He produced

185. Transcript 4.1.11, pp 192–193
186. Crown counsel, closing submissions (paper 3.3.24), p 102
187. Crown counsel, closing submissions (paper 3.3.24), p 102
188. Crown counsel, closing submissions (paper 3.3.24), p 102
189. Crown counsel, closing submissions (paper 3.3.24), p 102
190. Hamer, '"A Tangled Skein"' (doc A150), p 245
191. Horowhenua 11B41 South N1 and X1B41 South P, title notice 17348, deed of renewal of lease, 29 October 2016, Maori Land Information System
192. Procter, brief of evidence (doc C22), p 10
193. Huria, brief of evidence (doc B11), pp 2–3

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a photograph of one of at least two drain outlets discharging in this manner.[194] Ms Vivienne Taueki also produced a photograph of one of those drains. Mr Rudd claimed the run-off was contaminating both the Waiwiri Stream and the nearby coastal marine habitat of the tohemanga: *Longimactra elongata*.[195]

As discussed above, various claimants alleged that the 'Pot' is overflowing and discharging into the Waiwiri Stream during peak rainfall events.[196] The general view was that the effluent from the 'Pot' sprayed on trees in the area is also being absorbed into the groundwater and leaching into the sea.[197]

Counsel for the Crown argued that any objections from the claimants as to the use of this land were directed at the local council's actions, for which the Crown is not responsible.[198] The Crown contended that there is no evidence that the lease was entered into contrary to the agreement of the owners,[199] the inference being that if they were not happy with the terms of the lease, there would have been evidence of that from 1984.

The Crown referred to the Environment Court and its jurisdiction to enforce environmental standards, and that this Tribunal should refrain from usurping its role.[200] It repeated its submission that Parliament has authorised local authorities to exercise powers and functions in respect of waste water (a core service), which includes the disposal of sewage.[201] Further, the Crown argued that 'it is not responsible for the day-to-day operation of the statutory framework within which local authorities operate and the various decisions made under the legislation'.[202] Only the local authorities are responsible, it was claimed.[203] The Crown also noted the absence of evidence from local authorities in relation to the management of the 'Pot', and it claimed no evidence on the topic has been requested. We consider these submissions further below.

11.4.4 Fisheries

(1) *The historical legacy of Muaūpoko fishing rights*

In 'pre-European times, Lake Horowhenua was a clean water supply with an abundance of native fish that were a hugely valued fishery for the Muaūpoko iwi'.[204] As we found in chapters 2 and 8–9, Muaūpoko have had rights to fish Lake Horowhenua and the Hōkio Stream since their settlement of the region.

194. *Weekend Chronicle*, 2 December 2000 (Peter Huria, comp, papers in support of brief of evidence, various dates (doc B11(a)), p [6])
195. Rudd, closing submissions (paper 3.3.18), p 20
196. Transcript 4.1.11, pp 202, 273
197. Transcript 4.1.11, pp 202, 273
198. Crown counsel, closing submissions (paper 3.3.24), p 104
199. Crown counsel, closing submissions (paper 3.3.24), p 104
200. Crown counsel, closing submissions (paper 3.3.24), p 104
201. Crown counsel, closing submissions (paper 3.3.24), pp 104–105. The Local Government Act 2002 (section 124) defines wastewater services as meaning sewerage, treatment and disposal of sewage, and stormwater drainage.
202. Crown counsel, closing submissions (paper 3.3.24), p 105
203. Crown counsel, closing submissions (paper 3.3.24), p 105
204. Horizons Regional Council, *Lake Horowhenua Accord Action Plan*, p 13 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 40)

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During the period 1900–56, fishing activity carried on at the lake and on the Hōkio Stream. Moana Kupa, for example, was taught the tikanga involved with the lake, namely those associated with food gathering, harvesting flax, burying the dead in their urupā, and respecting the mauri and wairua of the lake.[205]

Uruorangi Paki, born at Hōkio Beach in 1933, grew up on the Whakarongotai Reserve on the Hōkio A block across the Hōkio Stream from the native township.[206] She, like Moana, grew up with the knowledge of rongoā or Māori medicine and gathering kaimoana.[207] She stated that

> Lake Punahau and Hokio were our food baskets. My job was to collect Tohemanga and pipi. Pingao tohemanga is the proper name as tohemanga (toheroa) cannot exist without pingao. We would collect the kai moana by horse and dray. The men would catch freshwater crayfish and tūna.[208]

This memory she shares with Carol Murray, whose kuia used a cart to go and gather flax and eels.[209] Ngapera or Bella Moore recalled that her kuia fished for whitebait at the Hōkio Stream.[210] Other species were in the stream as well.[211]

Mrs Paki remembered the tuna heke and puhi runs in February and March each year, when she accompanied the men of her family.[212] She remembers big tuna from that time, 'not like what you get today. It has really gotten bad in the last 30 years.'[213]

Tuna were caught through the use of pā tuna or hīnaki.[214] This was normally done in the streams, including the Hōkio Stream, and spears were used as well, especially in the lake.[215]

Carol Murray told us about being on Lake Horowhenua in a canoe named *Hamaria*, filled with eels.[216] That same canoe was used by Moana Kupa who at 82 had clear memories of the years prior to the 1960s.[217] Carol also went eeling with her kuia on the Hōkio Stream.[218] She remembered the tuna runs in the month of March and she stated:

> When the eels ran in March there were so many eels you could literally hear them. There were thousands of eels. They would leap out of the water. Today you don't see anything like that.

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205. Moana Kupa, brief of evidence, 11 November 2015 (doc c7), p 3
206. Uruorangi Paki, brief of evidence, 11 November 2015 (doc c3), pp 1, 3
207. Paki, brief of evidence (doc c3), pp 4–5
208. Paki, brief of evidence (doc c3), p 5
209. Carol Murray, brief of evidence, 11 November 2015 (doc c4), p 1
210. Bella Moore, brief of evidence, 11 November 2015 (doc c5), p 2
211. Kupa, brief of evidence (doc c7), p 3
212. Paki, brief of evidence (doc c3), p 5
213. Paki, brief of evidence (doc c3), p 5
214. William Taueki, brief of evidence (doc c10), p 33
215. William Taueki, brief of evidence (doc c10), p 33
216. Murray, brief of evidence (doc c4), p 1
217. Kupa, brief of evidence (doc c7), p 3
218. Murray, brief of evidence (doc c4), pp 1–2

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> We would catch the eels using two hinaki. They were about a meter long a meter wide and a meter deep. One would be in the water and when it filled up we would pull it out of the water and drop the other one in.
>
> The run would last for around four weeks. At the end of the run there was a second run called the tunaheke where big eels would come down the stream. The big eels would get stranded on the beach and you could gather them from there.[219]

Ngapera or Bella Moore said that she would stay with her nannies at the Hōkio Stream during the runs.[220] They would fill boxes with eels and they would be taken to tangi and other gatherings.[221] Moana Kupa said they stayed in tents for weeks at the lake during the eel runs.[222] Henry James Williams remembered spearing eels around the edge of the lake, even when there was no eel run.[223]

The eels and other kaimoana would be dried for use by the families and their relations that lived afar.[224] The sharing of kai was a way of maintaining connections or relationships.[225] Included in the lake and streams available for harvest were delicacies such as kākahi, tohemanga or toheroa, freshwater flounder, whitebait, freshwater crayfish, pipi, cockabullies, mullet, shags, ducks, and duck eggs.[226] The evidence was that these species were an important feature of the way of life of the Muaūpoko people.[227] Ngapera remembered these species being present but, she stated, 'It isn't like that now.'[228] She noted the changes to the lake and the stream and how dirty these water bodies are.[229] In particular, she considered that the Hōkio Stream is unrecognisable and that it does not look like a stream any more.[230]

(2) *The nature and extent of Muaūpoko fishing rights*

Muaūpoko rights were preserved by their title to the lake bed ordered under the Horowhenua Block Act 1896. They were expressly recognised and provided for in the Horowhenua Lake Act 1905 and section 18 of the Reserves and Other Lands Disposal Act 1956 (the ROLD Act). Although hotly disputed during the early part of the twentieth century as to their interpretation, and the metes and bounds of Muaūpoko fishing rights therein recorded, the tribe was able to continue to fish relatively uninhibited until the mid-1920s. As they were virtually landless, they

219. Murray, brief of evidence (doc C4), p 2
220. Moore, brief of evidence (doc C5), p 2
221. Moore, brief of evidence (doc C5), p 2
222. Kupa, brief of evidence (doc C7), p 4
223. Williams, brief of evidence (doc C11), p 5
224. Paki, brief of evidence (doc C3), p 5; Murray, brief of evidence (doc C4), p 2
225. Kupa, brief of evidence (doc C7), p 1
226. Kupa, brief of evidence (doc C7), p 1; Paki, brief of evidence (doc C3), p 5; Murray, brief of evidence (doc C4), p 3; Moore, brief of evidence (doc C5), p 2; William Taueki, brief of evidence (doc C10), p 31
227. See, for example, Jillian Munro's evidence on the collection of toheroa and use of species from the sea for family gatherings: Jillian Munro, brief of evidence, 11 November 2015 (doc C12), p 2.
228. Moore, brief of evidence (doc C5), p 2
229. Moore, brief of evidence (doc C5), p 3
230. Moore, brief of evidence (doc C5), p 3

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became heavily dependent on the resources of the lake and the Hōkio Stream, the birds and the fish and the flax on the banks of these water bodies.

As we found in previous chapters, their fishing rights were gradually undermined over the period 1905–34. First, trout were introduced into the lake by the Wellington Acclimatisation Society in 1907, contrary to the wishes of Muaūpoko. The trout predated on native species, and people other than Muaūpoko were permitted to fish in the lake. This was a breach of those fishing rights guaranteed to the tribe under the above legislation. Numerous other breaches of the Treaty followed, impacting on Muaūpoko's fisheries, including the introduction of perch and the drainage works of the early twentieth century. Whilst the Crown recognised Pākehā as having a right to fish in Lake Horowhenua, ending Muaūpoko's exclusive fishing rights without consent or compensation, the Crown's treatment of Muaūpoko was less than fair and nor did it undertake any appropriate balancing of interests between settlers and Muaūpoko. That position was ameliorated somewhat by the findings and recommendations of the committee of inquiry headed by Judge Harvey of the Native Land Court and H W C Mackintosh, the commissioner of Crown lands, which was held in 1934. That commission recognised the exclusive rights of Muaūpoko to fish.

However, it took until 1953 to achieve a settlement because of the various demands made by the Crown for the free gifting of land by the tribe (see chapter 9). It exerted that pressure before it would confirm their fishing rights. Although the ROLD Act 1956 attempted to record that agreement, and the tribe agreed to its terms, it did not address historical issues, annuities, or rentals, nor is it compensation for any previous interference with Muaūpoko fishing rights. It also set the limit for maintaining the lake at '30 feet above mean low water spring tides at Foxton Heads'. As explained in chapter 9, it did lead to Muaūpoko having the numerical majority on the domain board.

The management of the fisheries of Lake Horowhenua and the Hōkio Stream has been a mixed bag since then. The domain board's powers were limited as it could not control the environmental effects impacting on the lake, stream, and fisheries so as to ensure the tribe's fishing rights remained viable. Muaūpoko and the domain board were not fully and transparently consulted about drainage works and the installation of the concrete weir on the outlet from the lake to the Hōkio Stream (see section 9.3.4(2)). This work was undertaken by the Manawatu Catchment Board and approved by the Marine Department in 1966. While the domain board gave consent, it was on the basis that a 'fish pass' be part of the development. As we discussed, the weir blocked, rather than facilitated, the ingress of native species into the lake and no fish pass was installed. The development of the weir would lead to water temperatures in the lake reaching high levels in the summer months and trapped sediment and sludge in the lake preventing natural flushing. This in turn impacted on the fisheries. We note, however, that the *Lake Horowhenua Accord Action Plan* records that the parties agreed in 2014 that a fish pass should finally be constructed, a matter we discuss further below.[231]

231. Horizons Regional Council, *Lake Horowhenua Accord Action Plan*, p 13 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 40)

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The domain board had some control over fishing activity (but not the fish species themselves) in terms of the lake. It was considered that it had no authority in terms of the Hōkio Stream until the issue was clarified by the courts. We merely note that the Crown has always assumed unto itself the right to monitor the fishery in both the lake and the stream.[232] This was made clear in two prosecution cases brought under regulations promulgated under the Fisheries Act 1908, which went on appeal to the Supreme Court (now the High Court).[233] We have discussed those cases previously (see section 9.3.4(2)).

In 1992, however, the certainty they had in terms of the nature and extent of their rights was tested when the Crown and certain Māori negotiators settled all Māori claims to commercial fishing rights and altered the nature of how customary fishing rights could be enforced. In exchange, Māori received $150 million for the purchase of Sealord Products Ltd and 20 per cent of all new fish species quota. The Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 gives effect to this settlement. The 1992 Act also amended the Treaty of Waitangi Act 1975, removing the Tribunal's jurisdiction for claims in respect of commercial fishing (but not customary fishing).[234]

As a result of further litigation pursued in 1997 by Te Rūnanga ki Muaūpoko, the nature of Muaūpoko fishing rights were arguably limited. That is because in *Te Runanga ki Muaupoko v The Treaty of Waitangi Fisheries Commission* (1997), Justice Ellis in the High Court ruled that Muaūpoko's fishing rights as defined in the ROLD Act 1956 did not extend beyond the mouth of the Hōkio Stream at Hōkio Beach.[235]

Muaūpoko argued before us their rights are subject only to the ROLD Act. They also want to control commercial and recreational fishing on the lake and the Hōkio Stream. However, commercial and recreational fishing on the lake is regulated by the fisheries legislation. The Fisheries (Central Area) Commercial Fishing Regulations 1986 (regulation 15) once protected the eel fishery from commercial use. But in 2006 those regulations were revoked. According to Jonathan Procter, the Crown 'made this decision unilaterally' and 'with no consultation with Muaūpoko'.[236]

There is now an eel quota covering the region and eels are managed as large stocks (although there is no quota specific to the lake itself managed by the Ministry of Primary Industries). An eel factory is situated in Levin which Aotearoa Fisheries Limited and Ngāti Raukawa have had or continue to have interests in. According to Dr Procter, since 2006 Muaūpoko were advised by the Crown 'that the only way to manage commercial fishing on the lake is to trespass anyone who accesses the land for fishing who is not Muaupoko'. Dr Procter alleged that the Ministry of Primary Industries does not recognise Muaūpoko fishing rights in current legislation and that they are 'still forced to navigate through a range of permitting procedures'. The Ministry, he advised, also does not 'recognise any special customary areas and will

232. Hamer, '"A Tangled Skein"' (doc A150), pp 191, 193, 296–297
233. Hamer, '"A Tangled Skein"' (doc A150), p 296
234. Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, preamble (l), ss 9–10, 40
235. *Runanga ki Muaupoko v The Treaty of Waitangi Fisheries Commission & Attorney-General* CP 162/97, High Court Wellington, 17 November 1997 Ellis J
236. Procter, brief of evidence (doc C22), pp 18–19

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not support Muaūpoko to establish those already recognised areas under its current regime primarily for fear of the response of migrant iwi'.[237]

Since the Sealord settlement, the Ministry for Primary Industries has managed the quota fisheries, DOC has responsibility for the management of freshwater fish populations, and regional councils have responsibility to manage water quality. The lake trustees may control access, but individual Muaūpoko people can still take fish for customary purposes, reasonably uninhibited save for the current state of the fisheries. The issue of whether they can take fish within the marine environment of the Hōkio Stream without compliance with the new customary fisheries regime under the Treaty of Waitangi (Fisheries Claims) Act 1992 and the Māori Customary Fisheries Regulations is a live one for future clarification by the courts.

(3) *Impact of pollution on fisheries*

There has been a spate of events where certain fish populations in the lake appear to have wholly or partly collapsed, or individual fish kills were reported, but the scale of such events was never scientifically tracked or recorded. These events included eels in 1923,[238] shellfish after the introduction of effluent into the lake,[239] and fish in 1966[240] and 1987.[241] Due to the lack of monitoring and therefore minimal amounts of scientific data for this period, it is not possible to attribute those events or kills to pollution, effluent, or nutrient loading. What we can note is that Muaūpoko placed rāhui over the lake and stream in December 1957 and August 1962, and the Health Department periodically issued warnings against eating freshwater mussels (kākahi) from 1960 through the 1970s.[242] The feelings of Muaūpoko about the nature of their fisheries are perhaps summed up by Mrs Tatana who stated that

> Compensation must be paid to the Muaupoko Owners for the damage and destruction of their rights to fish the lake undisturbed. The shell fish beds are covered with sewer sludge and not safe to eat. My brother Joseph thought it was safe, because he knew areas of the lake not covered with sludge – it wasn't too long after, he contracted hepatitis the serious one, and nearly lost his life.[243]

Moana Kupa lamented that the state of the lake and the Hōkio Stream meant what she learnt as a young person in terms of the tikanga involved with the lake, namely those associated with food gathering, harvesting flax, burying the dead in their urupā, and respecting the mauri and wairua of the lake, could not be passed on to her grandchildren.[244] She said 'We used to get so much kai from those places, but now even if you could get any you wouldn't touch it because of the pollution.

237. Procter, brief of evidence (doc C22), pp 18–19
238. Hamer, '"A Tangled Skein"' (doc A150), pp 80–83
239. Hamer, '"A Tangled Skein"' (doc A150), pp 206–209
240. Hamer, '"A Tangled Skein"' (doc A150), p 308
241. Hamer, '"A Tangled Skein"' (doc A150), p 309
242. Hamer, '"A Tangled Skein"' (doc A150), pp 208–211, 224
243. Ada Tatana, closing submissions, 12 February 2016 (paper 3.3.14), p 20
244. Kupa, brief of evidence (doc C7), p 3

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We all know, if you want to get sick, swim in the lake. If you want to get really sick, eat something from it. It was never like that before.'[245]

Jillian Munro also expressed her concern about the ability of Muaūpoko to teach tikanga and kaitiakitanga to the next generation due to the state of the lake and streams.[246] All they can do is reminisce, as William (Bill) Taueki does when he passes on the knowledge of the tuna heke to Muaūpoko children, whilst noting the eel runs have ceased and that they cannot catch tuna suitable for food.[247] That is because most of the eels in the lake are too small. He stated:

> The main tuna that we would catch would be the silver belly eels. During the tuna heke we would get huge ones. We would also catch koura in the Patiki Stream. We would catch kakahi from the Lake, put them in the Patiki Stream to let them spit for a week before you took them out, so you got rid of that dirt taste. . . . We used to eat tuna about a couple of times a week but now it's like once or twice a year. We can't even put tuna on the table at hakari.[248]

He stated the lake does not 'support aquatic life to the level it used to' and he advised that both 'fish and eel depletion is extreme'.[249] Much of this decline, he noted, has occurred during his lifetime.[250] He has noticed that a decline in water quality has impacted on obtaining aquatic plants and food such as kōura, eels, kākahi, pātiki, and mullet.[251] He considered that Muaūpoko's traditional kaitiakitanga role had been usurped by the Crown delegating powers over the lake and its environs to local authorities.[252]

Henry Williams and Bill Taueki gave evidence that Muaūpoko people could still take some species from the lake, but that they were unclean. Kākahi, for example, were taken and cleaned through a filtering process in containers filled with fresh water. This was a means of expelling the pollution or paru that may have affected the ability to eat the shellfish.[253] Mr Williams told us that when he was young such a process was not needed and that you could take shellfish straight from the lake.[254]

The Pātiki Stream, we were told, was no longer filled with flounder and freshwater kōura.[255] The Hōkio Stream no longer sustains the same numbers of whitebait and eels.[256] At the beach there are restrictions on the taking of toheroa which did not apply to Muaūpoko when Henry Williams was young.[257] Even if these species were

245. Kupa, brief of evidence (doc C7), p 4
246. Munro, brief of evidence (doc C12), p 6
247. William Taueki, brief of evidence (doc C10), p 33
248. William Taueki, brief of evidence (doc C10), p 33
249. William Taueki, brief of evidence (doc C10), p 34
250. William Taueki, brief of evidence (doc C10), pp 34, 45
251. William Taueki, brief of evidence (doc C10), pp 46–48
252. William Taueki, brief of evidence (doc C10), p 49
253. Williams, brief of evidence (doc C11), p 6
254. Williams, brief of evidence (doc C11), p 6
255. Williams, brief of evidence (doc C11), pp 8–9
256. Williams, brief of evidence (doc C11), pp 9–10
257. Williams, brief of evidence (doc C11), p 10

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freely available, shellfish on the Horowhenua coast from Hōkio to Ōtaki appear to regularly have concentrations of '*Escherichia coli* bacteria indicative of widespread faecal contamination'.[258] Tuatua and pipi were particularly affected.[259]

It seems that the hypertrophic state of the lake is not preventing the random presence of certain native species of fish. Further research is needed, but a fish survey undertaken by the Horizons Regional Council in 2013 indicated that six native species were in the lake: common smelt, common bully, inanga, grey mullet, and short- and long-fin eels.[260]

However, black flounder and mullet were absent, and while there was an abundance of eel/tuna in the lake, eels greater than one kilogram were 'nearly absent'.[261] It was noted that these findings may be a sign of overfishing of tuna, but further research at that time was needed.[262] Pātiki or flounder, eels, and inanga ingress into the lake from the Hōkio Stream has not been possible since the concrete weir was installed at the top of the Hōkio Stream in 1966.[263] While eels and inanga are still to be found, they are entering from alternative points. There are pest fish in the lake, namely perch, koi carp, and goldfish.[264] However, the populations of pest fish had not reached densities such as to pose a threat to the lake.[265] By this time, trout were not mentioned as present in any great numbers in the lake.

However, pest fish are an issue for lake management. According to Dr Procter:

> [t]he fish in the lake at the moment are undersized due to overfishing and low recruitment. There is a general lack of native fish recruitment due to barriers on the Hokio Stream such as the weir and toxic conditions at certain times of the year. Pest fish numbers are not critical but they are growing.[266]

Nearly all the claimant tangata whenua witnesses who live in Horowhenua were concerned for the state of the fisheries. Without exception, they described the distasteful appearance and smell associated with taking fish from the lake. At least one witness from Muaūpoko soaked kākahi in fresh water for days in order to remove impurities. Others say they cannot eat fish from the lake because of the pollution.

258. Manaaki Taha Moana Research Team, *Faecal Contamination of Shellfish on the Horowhenua Coast* (Palmerston North: Manaaki Taha Moana Research Team, 2014) (doc B11(b)), p 6. See the report generally.
259. Manaaki Taha Moana Research Team, *Faecal Contamination of Shellfish* (doc B11(b)), p 13
260. Horizons Regional Council, *Lake Horowhenua Accord Action Plan*, p 13 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 40)
261. Horizons Regional Council, *Lake Horowhenua Accord Action Plan*, p 13 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 40)
262. Horizons Regional Council, *Lake Horowhenua Accord Action Plan*, p 13 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 40)
263. Hamer, '"A Tangled Skein"' (doc A150), pp 190–191, 196
264. Horizons Regional Council, *Lake Horowhenua Accord Action Plan*, p 14 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 41)
265. Horizons Regional Council, *Lake Horowhenua Accord Action Plan*, p 14 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 41)
266. Procter, brief of evidence (doc C22), p 9

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11.5 Restoration Efforts

11.5.1 Introduction

During the period of the restoration work until 2000 and over the next decade, attempts to restore the lake were hampered by lack of finance. Prior to 1990, the Lake Horowhenua lake trustees and some of the owners' regularly expressed preference for restoration was the removal of sediment and sludge from the lake at an estimated cost of $22 million.[267] Other owners opposed this view, for example, Vivienne Taueki, due to fears that this action would have significant effects on the fisheries of the lake.[268] Other measures that have created some controversy include removing weed from the lake before it seeds to cut back the exotic species and allow native plants to re-establish themselves.[269] According to Mr Bill Taueki, the Horowhenua District Council believed that this would help to fix the toxicity of the lake. He expressed concern that the combine harvester would catch eels or destroy habitats while it was carrying out this work.[270] Other suggestions have included spraying Roundup to kill certain species of weed. Again, Mr Bill Taueki and his whānau objected to this process although the work did proceed.[271] The process favoured by him was to flush the lake with fresh water by extracting the clean water from underground and using this to replace the polluted and toxic water that was in the lake.[272]

In part, the story behind restoration attempts and ideas is laced with the aspirations of a new generation of Muaūpoko. Some believe that they have priority rights because of their ancestry and others seek a more egalitarian approach to the leadership of the tribe. This tension between the two groups, who are also clearly aligned by whakapapa, whānau, and hapū affiliations, is reflected in the nature of the governance arrangements in place concerning the lake. Everywhere there is dissent, even among the lake trustees and the beneficial owners of the lake.[273] Local authorities and DOC have no way of knowing for sure whose view should prevail given that they are also obliged to consult with tangata whenua who are kaitiaki of the area and provide for and protect the relationship of all Muaūpoko with their ancestral lands and waters (as provided for in sections 6, 7, and 8 of the RMA 1991). In addition, as we discussed in chapter 9, the domain board and the representation of Muaūpoko is an issue. Consulting with the Muaūpoko Tribal Authority or with the Muaūpoko representatives on the domain board is not enough either, as neither group has a statutory mandate to manage all matters concerning the lake. What is clear is that no one, including DOC, the relevant local authorities, or Muaūpoko, has the magic bullet to answer the issues that need to be addressed concerning the lake. In this section we review whether this governance framework has hindered mitigation and restoration efforts for the lake to ascertain what more, if anything, can be done in Treaty terms.

267. Hamer, '"A Tangled Skein"' (doc A150), pp 391–392
268. V Taueki, brief of evidence (doc B2), p 25
269. Procter, brief of evidence (doc C22), p 9
270. William Taueki, brief of evidence (doc C10), p 46
271. William Taueki, brief of evidence (doc C10), p 45
272. William Taueki, brief of evidence (doc C10), p 51
273. See, generally, *Taueki v McMillan & Ors* (2014) 324 Aotea MB 144–182 (doc B2(j)).

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11.5.2 Restoration efforts in the 1990s

In 1991, the lake trustees authorised an environmental and economic study of the lake using money obtained through an academic grants programme.[274] The ensuing report, entitled 'Revitalising Lake Horowhenua – An Environmental Assessment and Management Strategy', proposed 'discing or harrowing the bed of the lake to break up the sediment' which would allow it to be flushed out of the lake.[275] A trial that went ahead without notification to DOC was halted at the latter's behest pending further studies.[276]

DOC preferred a focus on improving water quality by working closely with local, regional, and central government.[277] This strategy commenced in the 1990s when it was considered that a combination of measures could assist in restoration of the lake.[278] It was also recommended that a technical working group be established to develop the conservation management strategy. This group would have representatives from the Horowhenua District Council, Manawatu-Wanganui Regional Council, the lake trustees, DOC, and Federated Farmers.[279]

A scientific report commissioned by DOC, entitled 'Lake Horowhenua and its Restoration', was prepared in 1991. Dr Hamer stated that it

> concluded that the lake was releasing more phosphorus from the sediment than it was receiving from inflows, and so was 'cleansing itself naturally'. They calculated it might take another 30 years before 'a new equilibrium' was achieved in this way, and considered several options for enhancing the restoration process. These included flushing the lake with water diverted from the Ōhau River, which would involve a 'substantial cost', as well as diverting groundwater or stripping the lakewater of phosphorus in a special plant, which were discounted as 'inappropriate and inadequate respectively'. The phosphorus load entering the lake from Levin (presumably through the stormwater) appeared 'to be very substantial' and in need of further investigation. Other methods of reducing the nutrient load in the lake included 'inactivation' of the phosphorus in the lake sediment or even the sediment's removal, although the latter would be 'a very costly operation'. If cost were no barrier they recommended inactivation of the lake sediment through chemical treatment and reduction of phosphorus entering the lake from Levin, and if little could be spent then they recommended supplementing the 'natural cleansing' through reducing the phosphorus load from the town and seasonally flushing the lake by varying its level.[280]

An advisory group was then established with landowners around the lake in September 1991. Arising from this development, the domain board released its conservation management proposal, entitled 'Revitalising Horowhenua: Conserving

274. Hamer, '"A Tangled Skein"' (doc A150), p383
275. Hamer, '"A Tangled Skein"' (doc A150), p383
276. Hamer, '"A Tangled Skein"' (doc A150), p383
277. Hamer, '"A Tangled Skein"' (doc A150), p382
278. Hamer, '"A Tangled Skein"' (doc A150), p382
279. Hamer, '"A Tangled Skein"' (doc A150), p382
280. Hamer, '"A Tangled Skein"' (doc A150), p384

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the Lake Horowhenua and Hokio Stream Wetlands'. The proposal included destocking and planting round the entire lake and the length of the Hōkio Stream.[281]

Work then started on prioritising the restoration work. We were told that, without consulting Muaūpoko as a tribe, DOC decided to prioritise destocking and revegetating the lake surrounds over removing the sludge or weeds from the lake and the outlet weir. Within months there were allegations that the tribe (as opposed to the Muaūpoko representatives on the domain board) was not being consulted on the restoration work. It appears that those of the tribe who complained wanted more priority given to investigating removing the sludge on the lakebed.[282] They requested DOC convene a meeting with the tribe.

This resort to the tribe and then to the hapū, if the domain board's views conflict with the opinions of certain members of the tribe, is best illustrated by reference to the following evidence given by Mr Bill Taueki:

> Originally, members of the Domain Board were elected. Elections used to take place along with the local body elections. The process was then changed. Muaūpoko decided amongst themselves who would be the Domain Board members for Muaūpoko. I became a member of the Domain Board in 1992 through this process. I was on the Board for one term, which was three years. While I was on the Board I was always a whanau, hapu and iwi representative. I never acted without first discussing any of my proposed actions with those I represented.
>
> I was not re-appointed to the Board after this first term. This was because of internal politics. The Domain Board members that held the position prior to my term of service had decided to have the Mayor replace the DOC representative as the chair of the Domain Board. But when I was elected we asked that this resolution be reversed. We didn't want the transfer of the chairmanship to the Mayor of the Council. We actually wanted the chairmanship to go to Māori. Specifically we wanted Muaūpoko to be the chair of the Board. Given the importance of the Lake and its surroundings to our people, we thought that this was a fair request. . . .
>
> The Board has 4 Māori members, all Muaūpoko. It has 3 Pākehā Council members. It was chaired by the Crown representative who was a member of the Department of Conservation. The chair has the casting vote for all decisions. This is why we argued that the chair should be Muaūpoko. We thought that Muaūpoko should have the casting vote for all contentious decisions. The way the Domain Board is set up now there is still a Pākehā majority that can override the Muaūpoko representatives. This is because the casting vote equals two votes in effect.
>
> During my time on the Board, we were not paid to attend Board meetings. The Board was heavily underfunded. It was so underfunded that it was not able to properly manage and complete the Lake restoration. I believe that it should have been turned into an iwi Board. It should have operated in that manner. If this had been done, Muaūpoko would have been able to control and lead the Lake's restoration. Because of how much the Lake means to us, we would have made sure that the restoration was

281. Hamer, '"A Tangled Skein"' (doc A150), pp 384–385
282. Hamer, '"A Tangled Skein"' (doc A150), p 386

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completed properly and our relationship with the Levin community would have been strong. If it had worked, the community would have come over to us.

Muaūpoko was supposed to have the majority on the Domain Board. In this way we were supposed to have been able to express our mana over the Lake. The Domain Board process was supposed to have allowed Muaūpoko to make the important decisions about the use of the Lake. But the Domain Board is still dominated by the Council representatives. The Secretary of the Domain Board is one of the Council members. This means that they set the agenda of the meetings. They control the issues that are put to the Domain Board for voting. The Muaūpoko Domain Board members don't always get a proper say. We do not agree that the Domain Board in its current form allows Muaūpoko to properly express our mana over the Lake.

We know that business interests and people talk to the Council about how they would like to access and use the Lake before they talk to the Lake Trustees or even the Domain Board. These groups put their proposals to the Council regarding the Lake before they talk to Muaūpoko. In most cases the agreements for the use of the Lake are made through those private interactions. The Council comes to arrangements with these people in the first place and then puts it on the Domain Board agenda for the consideration of the Muaūpoko Domain Board members. This is how I have seen the process working. . . .

There is no legal right that I am aware of that requires the Domain Board to obtain the Lake Trustees' consent before it makes decisions regarding the use of the Lake and the surrounding areas. Considering that we are the Lake owners, you would think that the Domain Board would have to obtain our consent before it makes decisions. Especially when it comes to really hard decisions or decisions where there is the chance that the Lake will be further polluted. I am not aware of any legal requirement made by the Crown in the legislation that created the Domain Board that requires it to consult with the Lake Trustees before it makes its decisions. I do understand that there is other law which means that the Domain Board may have this duty to the Lake Trustees but I think that the Crown should have made it clear that the Domain Board owed this responsibility to the Lake Trustees. All of the legislation that relates to the Domain Board should make it clear that it has a strict requirement to meet regularly with the Lake Trustees and discuss any decisions with us before it makes those decisions. I also think that the Crown should monitor the Board to make sure that it properly consults with the Lake Trustees before making decisions regarding the use of the Lake and the other domain areas.

In general I think that the Domain Board is run very badly. The way in which the Domain Board is run on a monthly basis has never been an answer. The issues that the Domain Board deals with occur on a daily basis. You can't just deal with them all once a month.

They should have set up the Domain Board to have 2 members from the Council, and 2 from Muaupoko. But any Council member on the Domain Board is conflicted because the Council is illegally discharging waste into the Lake. Because of this kind of issue, I just can't see the Accord working. How will the Accord (which I will talk

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more on later) work when the Regional Council won't make the local Council comply with their rules or even comply with those rules itself? They are basically treating the Lake like a pond because the weir means there is no flow going out. It's stagnant.[283]

As we discussed in chapter 9, legislative reforms proposed in the 1980s would have transferred control of the lake from the domain board to the trustees, or increased Muaūpoko representation on the board, or required the lake trustees' agreement to any domain bylaws, but no reforms were enacted. We found the Crown's failure to reform the ROLD Act arrangements in the 1980s to have been a breach of Treaty principles (see section 9.3.5(2)). Here, we note that in response to the allegations of no consultation with the tribe, DOC Regional Conservator McKerchar advised the primary objective was to consult with land trusts around the lake before moving forward to consult the iwi or tribe as a whole.[284] He also warned that he would redirect staff to other work unless there was a 'clear indication of support from the lake owners and trustees'.[285] Finally, he expressed disappointment at the lack of cohesion within the iwi, the owners, and the trustees which had contributed to an 'impasse'.[286]

Mr McKerchar also advised his Minister that he was not prepared to arrange any further meetings with Muaūpoko as he did not want his staff to be 'subjected to the abuse and offensive behaviour which has been the norm for recent meetings with Muaupoko'.[287] He stated there were some Muaūpoko kaumātua working with DOC and the Levin District Council who approved of their restoration priorities.[288] He advised his Minister of the planning for the restoration project in the following terms:

> Over the last eighteen months departmental staff have held frequent meetings with Muaupoko and the Levin District Council with a view to reaching agreement on a restoration and enhancement programme for the dewatered area, the one chain strip and some private land surrounding the lake. The objective is to establish artificial wetland and revegetate the pasture land surrounding the lake with a view to improving water quality. At the present time storm water run-off from the Levin Borough and agricultural run-off from the surrounding land is fed directly into the lake by man made drains. The department has offered technical expertise and supervision of the programme, and the local authority has offered to provide its plant nursery and a substantial amount of finance for the scheme. Despite this generous gesture, factions within the iwi are strongly opposed to this. Dialogue culminated in a meeting on Saturday 21 March where two departmental staff who supported the Council, were

283. William Taueki, brief of evidence (doc C10), pp 58–61
284. Hamer, '"A Tangled Skein"' (doc A150), p 386
285. D McKerchar to KH Paki, chair, Lake Horowhenua Trustees, 3 April 1992 (Hamer, '"A Tangled Skein"' (doc A150), p 387)
286. D McKerchar to KH Paki, chair, Lake Horowhenua Trustees, 3 April 1992 (Hamer, '"A Tangled Skein"' (doc A150), p 387)
287. D McKerchar to director-general of conservation, 9 April 1992 (Hamer, '"A Tangled Skein"' (doc A150), p 387)
288. Hamer, '"A Tangled Skein"' (doc A150), p 387

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> subjected to what I consider to be totally unacceptable abuse and criticism. The dialogue over the last eighteen months has been carried out with people we consider to be the senior Kaumatua of Muaupoko. There is no clearly accepted rangatira for the iwi, and we have been dealing with various factions who enjoy Kaumatua status. There is however a young radical element within the iwi who no longer accept the status of the Kaumatua and seem to oppose everything the Kaumatua either suggest or agree to. . . . To accede to their request for a wider iwi meeting would be to give this element a status which they do not and should not enjoy.
>
> While accepting the department's obligations under the Treaty of Waitangi, I think there is a limit to the situations one can reasonably expect public servants to be subjected to, and further abuse and insults from some elements within Muaupoko goes beyond the limit as far as I am concerned. . . . [T]here will certainly be ongoing dialogue but it will be with senior Kaumatua of the iwi. Should they wish to call a meeting of the whole iwi, then I would be quite relaxed, but it is certainly not something that I intend to initiate.[289]

The Minister turned down the request to meet.[290] All was not lost, however, as the appointment of new lake trustees in October 1992 and Muaūpoko representatives for the domain board in March 1993 marked a turning point. A large number of Muaūpoko became involved the restoration project.[291] The project was officially launched by the Minister of Tourism in April 1993.[292]

However, the ceremony was marked by the protesting of two of the lake trustees, Charles Rudd and Bill Taueki. Mr Taueki (who was replaced on the domain board) complained to the director-general of conservation that DOC should be fulfilling its duties under the RMA 1991 and Conservation Act 1987 by consulting with hapū, namely Ngāti Tama-i-Rangi.[293]

Mr Bill Taueki said of this time that:

> DOC had its own plans more to do with establishing more wetlands in the area. DOC took complete control over the restoration. I am not criticising DOC for trying to get involved. I support the Crown taking steps to try and restore the Lake and the Horowhenua region to its previous, pre-settler state. However, by getting involved, DOC removed our direct involvement in any of the planning. From then on DOC had a plan, they initiated the plan and took all of the steps with respect to their plan. They brought in other people to do the work, liaison officers and people from other iwi and hapū. We were pushed to the side and had to watch as DOC, other iwi and other hapū controlled and made all of the decisions regarding the restoration of our Lake. . . .
>
> I made it clear to DOC that I was unhappy about the way that they carried the restoration out. I did tell them that the steps that they were taking were beneficial to the

289. D McKerchar to director-general of conservation, 9 April 1992 (Hamer, '"A Tangled Skein"' (doc A150), p387)
290. Hamer, '"A Tangled Skein"' (doc A150), p388
291. Hamer, '"A Tangled Skein"' (doc A150), p389
292. Hamer, '"A Tangled Skein"' (doc A150), p389
293. Hamer, '"A Tangled Skein"' (doc A150), p390

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> Lake, especially the aspect of the plans that involved planting around the Lake. But I was unhappy about the lack of proper consultation with the right people. There was no consultation with my whānau and my hapū. My whānau and hapū has a very special relationship with the Lake as I have described above. It was my tupuna Taueki who ensured that Muaūpoko kept its ahi kaa on the Horowhenua lands and the Lake.[294]

Mr Rudd and Mr Bill Taueki's concerns did not stop the planting programme and the restoration project from continuing. The scale of the planting is impressive, and was described by one participant as 'the biggest replanting project being undertaken in the country'.[295]

Essentially, the shoreline was divided into seven separate ecosystems and 75 individual segments of around one hectare each, with every segment having its own planting plan.[296] It was conducted in stages to allow less hardy species to be planted behind natural windbreaks such as flax.[297] The lake trustees received funding and other support for the project from a variety of agencies, including the Lottery Grants Board, and local and central government agencies.[298] By the end of the year 2000, 122,000 flax plants and 2,000 trees had been planted. The project appears to have been a great success and the lake trustees were presented with a conservation award at Parliament in recognition of their work on the project.[299]

This planting programme was augmented by an agreement reached between DOC, the district and regional councils, and the lake trustees who agreed to a five-year conservation management strategy.[300] As Paul Hamer stated, under this agreement, the lake trustees 'would continue their planting programme, the district council would reduce the nutrient load entering the lake from its stormwater, and the regional council would monitor water quality'.[301]

With the restructuring of the local authorities in the 1980s and the introduction of the RMA 1991, the new Manawatu-Wanganui Regional Council, later Horizons, took over the management of the water in the lake and the stream. It worked with the lake trustees, DOC, and the Horowhenua District Council to eventually produce the *Lake Horowhenua and Hokio Stream Catchment Management Strategy* (1998) which contained their long-term goal to achieve within 20 years.[302] The ambitious kaupapa or vision of the strategy was that the

> water quality [would be] improved to enhance tangata whenua and amenity values and the life supporting capacity of the water and its ecosystem; [that] the lake surrounds

294. William Taueki, brief of evidence (doc C10), pp 52–53
295. D Lucas, 'Ancient Lake to Live Again', *Forest & Bird*, no 288, May 1998, pp 20–21 (Hamer, '"A Tangled Skein"' (doc A150), pp 289–390)
296. Hamer, '"A Tangled Skein"' (doc A150), p 390
297. Hamer, '"A Tangled Skein"' (doc A150), p 390
298. Hamer, '"A Tangled Skein"' (doc A150), p 390
299. Hamer, '"A Tangled Skein"' (doc A150), p 390
300. Hamer, '"A Tangled Skein"' (doc A150), p 391
301. Hamer, '"A Tangled Skein"' (doc A150), p 391
302. Manawatu-Wanganui Regional Council, *Lake Horowhenua and Hokio Stream Catchment Management Strategy*, p i (Procter, appendices to brief of evidence (doc C22(a)), p 2002)

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> [would be] returned to their heavily vegetated state; [that the] streams draining the catchment [would] have riparian margins; and [that] people living in the catchment [would be] aware and focused on the protection of the lake and the stream.[303]

The problem was that the water quality in the lake continued to decline due to nitrogen, phosphorus, and sediment loading, and measures taken to this point had to be augmented by further work. The One Plan discussed below is now the latest regional plan under the RMA 1991 affecting the lake and the Hōkio Stream. We turn now to consider what impact that document has had on the governance of these taonga.

11.5.3 Horizons – the 'One Plan'

Under the Resource Management Act 1991, the Manawatu-Wanganui Regional Council has produced a regional plan, the 'One Plan', which describes the lake with 'targeted Water Management Sub-zones'. The Lake Horowhenua (Hoki_1a) zone covers the whole lake catchment above the outlet into the Hōkio Stream, while Hōkio (Hoki_1b) covers Hōkio Stream downstream of the outlet.[304]

In August 2012, the Environment Court rejected arguments made by the regional council against including Lake Horowhenua within the control regime of the One Plan. These arguments were made on the basis that there had been limited monitoring occurring prior to 2012 such that the cause of the state of the lake was not properly understood. In response the court stated:

> That the problems of these lakes, with Lake Horowhenua as the worst case, are complex and remedies may extend beyond limitations of non-point source discharges, is absolutely not a reason to say . . . *it's too hard* . . . and do nothing about something that unquestionably must be contributing to the problem. [Emphasis in original.][305]

The Environment Court noted in relation to Lake Horowhenua (Hoki_1a and Hoki_1a) that all parties, including the Department of Conservation and the regional council, agreed that the current state of the lake was hypertrophic and required management action.[306] The court found that the case for bringing Lake Horowhenua and a number of other lakes and management zones 'into a management regime so that their situation can be improved (even if not completely cured) [was] overwhelming'.[307] It concluded that 'Lake Horowhenua, the coastal lakes, and their related subzones should all be brought within the rules regime' of the One Plan.[308]

303. Manawatu-Wanganui Regional Council, *Lake Horowhenua and Hokio Stream Catchment Management Strategy*, p 2 (Procter, appendices to brief of evidence (doc C22(a)), p 2011)
304. Procter, brief of evidence (doc C22), pp 10–11
305. *Andrew Day & Ors v Manawatu-Wanganui Regional Council* [2012] NZEnvC 182, para 5–60
306. *Day & Ors v Manawatu-Whanganui Regional Council* [2012] NZEnvC 182, para 5–61
307. *Day & Ors v Manawatu-Whanganui Regional Council* [2012] NZEnvC 182, para 5–62
308. *Day & Ors v Manawatu-Whanganui Regional Council* [2012] NZEnvC 182, para 5–217

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The plan sets out, in a series of dense tables, the values that are to be aimed for in these catchments. The Horowhenua catchments are to be managed for their:

> a) Life-supporting Capacity: The water body and its bed support healthy aquatic life/ecosystems.
> b) Aesthetics: The aesthetic values of the water body and its bed are maintained or enhanced.
> c) Contact Recreation: The water body and its bed are suitable for contact recreation (including swimming).
> d) Mauri: The mauri of the water body and its bed is maintained or enhanced.
> e) Industrial Abstraction: The water is suitable as a water source for industrial abstraction or use, including for hydroelectricity generation.
> f) Irrigation: The water is suitable as a water source for irrigation.
> g) Stockwater: The water is suitable as a supply of drinking water for livestock.
> h) Existing Infrastructure: The integrity of existing infrastructure is not compromised.
> i) Capacity to Assimilate Pollution: The capacity of a water body and its bed to assimilate pollution is not exceeded.[309]

Intensive farming in the catchment – both dairying and intensive vegetable growing – is subject to the nitrogen controls under the One Plan. According to Dr Procter:

> [o]ne of the most important changes with the One Plan is that it requires all new and existing intensive agricultural land uses in the Hokio catchments to prepare nutrient management plans covering their 'non-point source' emissions of nitrogen and provide them annually to the regional council and seek a non-notified resource consent which sets out monitoring and review conditions. These management plans must show how the farmer/horticulturalist intends to keep within nitrogen leaching limits or otherwise obtain consents to exceed them. The nitrogen leaching limits vary depending on the land use capability classes and seek improvements generally over a 20 year period.[310]

Mr Bill Taueki remarked that the One Plan became operative on 1 July 2015 and iwi groups were supportive of it because it appeared to place strict regulations on discharges into the lake and the Hōkio Stream.[311] That, in his view, has not occurred because of rules 14–1, 14–2, and 14–4 in the One Plan, which describe consents for the release of agrichemicals as restricted discretionary consents.[312] Mr Taueki claimed these provisions are a breach of the Treaty.

309. Procter, brief of evidence (doc c22), p 11
310. Procter, brief of evidence (doc c22), p 12
311. William Taueki, brief of evidence (doc c10), pp 35–36
312. The One Plan describes this as 'Policy 14–1'. Mr Taueki said 'Rule 14–1'. The summary of rules table classifies 14–1 as 'controlled' and 14–2 as 'restricted discretionary'. See One Plan (available online), pp 11–4, 14–1, 14–2.

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He referred the Tribunal to a Radio New Zealand article which detailed instances since the One Plan came into effect where the council has granted restricted discretionary consents. According to that article, even before the One Plan came into effect, in July 2014 the Manawatu-Wanganui Regional Council 'agreed to remove certain data tables from the discretionary consents' that were issued to Dairy NZ.[313] He then noted:

> As recent as October 2015, the Manawatu-Whanganui Regional Council has said that the tighter controls on nitrate leaching under the One Plan are too hard to reach, and it is giving farmers more discretionary consents to allow them to pollute more. Of 61 consents that have been issued under the operative One Plan, only nine have met the standards.[314]

The issue for us is that this evidence relates to the entire Manawatū-Whanganui region and it is difficult to know how many of these discretionary consents were issued within the Lake Horowhenua catchment. What we do know is that in 1997 there was only one water consent to discharge dairy-shed waste into the lake. There were 11 land consents to discharge to land within the Lake Horowhenua area and 19 within the Hōkio Stream area.[315] We also know there were 22 consents for the abstraction of groundwater within the Lake Horowhenua and Hōkio Stream catchment.[316] We have no similar data concerning the nature of consents granted since the One Plan became operative, but a recent decision of the Environment Court stated that no applications for consents under Rules 14–2 and 14–4 had been declined by the regional council.[317] As the parties have not had a chance to comment on this decision, we merely note it as a point of interest.

Dr Procter also believed that under the One Plan regime 'there is insufficient weight given to cleaning up the lake and stream'. He referred to the fact that the 'Regional Council had told the Environment Court that it did not want the Lake to be in a "targeted Water Management Sub-zone" with the controls that the Environment Court ultimately imposed'.[318] The inference was that the regional council was not prioritising the lake and the stream.

The National Policy Statement for Fresh Water Management 2014 may or may not assist. Promulgated under the RMA 1991, the National Policy Statement sets out the objectives and policies for freshwater management under that Act. All regional plans and policies must comply with the National Policy Statement. As Dr Procter

313. Radio New Zealand, 'Questions Asked over Dairy Pollution Documents', 8 October 2015, http://www.radionz.co.nz/news/regional/286412/questions-asked-over-dairy-pollution-documents

314. William Taueki, brief of evidence (doc C10), p 36

315. Manawatu-Wanganui Regional Council, *Lake Horowhenua and Hokio Stream Catchment Management Strategy*, p 6 (Procter, appendices to brief of evidence (doc C22(a)), p 2015)

316. Manawatu-Wanganui Regional Council, *Lake Horowhenua and Hokio Stream Catchment Management Strategy*, p 9 (Procter, appendices to brief of evidence (doc C22(a)), p 2018)

317. *Wellington Fish and Game Council v Manawatu-Wanganui Regional Council* [2017] NZEnvC 37 (21 March 2017)

318. Procter, brief of evidence (doc C22), p 13

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stated, those standards may be lower than what is required under the One Plan.[319] Conversely, there has been Environment Court authority[320] to suggest that such plans and policy statements and the issuing of consents may need to be read or approved subject to the purpose of the Statement, which states:

> This national policy statement is about recognising the national significance of fresh water for all New Zealanders and Te Mana o te Wai.
>
> A range of community and tāngata whenua values, including those identified as appropriate from Appendix 1, may collectively recognise the national significance of fresh water and Te Mana o te Wai as a whole. The aggregation of community and tāngata whenua values and the ability of fresh water to provide for them over time recognises the national significance of fresh water and Te Mana o te Wai.[321]

The definition of Te Mana o Te Wai rests upon the values including tikanga of the tangata whenua who are the kaitiaki of the area. In this case, when coupled with the requirement in the National Policy Statement under objective D1 '[t]o provide for the involvement of iwi and hapū, and to ensure that tāngata whenua values and interests are identified and reflected in the management of fresh water including associated ecosystems, and decision-making regarding freshwater planning, including on how all other objectives of this national policy statement are given effect to',[322] there is some basis to argue for incorporating Muaūpoko more fully into the planning process and in decisions regarding discretionary activities. However, what has happened instead is the adoption of the following initiatives which have no legal force and which have caused further division among the iwi.

11.5.4 The Horowhenua lake accord and action plan, 2014–16

The fact that the One Plan takes an entire-district approach to the issues that concern the lake trustees, rather than specifically focusing on Lake Horowhenua, seems to have been the reason why the trustees have pursued 'He Hokioi Rerenga Tahi/The Lake Horowhenua Accord' and the *Lake Horowhenua Accord Action Plan 2014–2016*.[323] These initiatives, according to Mathew Sword, are

> a collaborative exercise led by the Lake Trust calling all five parties with statutory connection to the Lake to take active responsibility and leadership for the current condition of the Lake. Its focus is on Lake restoration efforts. This is not a legally binding agreement nor does it affect the legal rights and interests of the Trust or beneficial owners. . . . progress is made through a collaborative effort that recognises the status of the Lake Trust as the proprietor of the Lake acting on behalf of all beneficial owners. This framework also recognises the need to pool resources in order to achieve

319. Procter, brief of evidence (doc C22), p 13
320. *Sustainable Matata Inc v Bay of Plenty Regional Council Anor* [2015] NZEnvC 115
321. National Policy Statement for Freshwater Management 2014, p 6. Also see preamble.
322. National Policy Statement for Freshwater Management 2014, p 18
323. Mathew Sword, brief of evidence, 16 November 2015 (doc C17), p 5

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> the vision of the Lake Accord. In this regard the document itself is relatively innocuous. However this observation belies the real power of the Accord as a framework for active collaboration and leadership. We have made significant strides forward in the last 2 years on behalf of beneficial owners and Muaūpoko, however it is important to note that the Accord, and the Accord Action Plan, is merely a start on a long term journey for a 100 year impact.[324]

As chair of He Hokioi Rerenga Tahi/The Lake Horowhenua Accord and before the High Court, Mr Sword in previous litigation said that the accord

> is not a legally binding agreement nor does it affect the legal rights and interests of beneficial owners. If future elected trustees wish to they can withdraw from it. In this regard the document itself is relatively innocuous. However this observation belies the real power of the Accord through collaboration, and the potentially significant value the Accord offers to owners, Muaupoko Iwi and the wider community.
>
> Since signing the Lake Accord in 2013, the Accord partners have secured $1.27 million in funding to support Lake clean-up activities. We have also developed a Lake Accord Action Plan to back up the words of the Lake Accord with real action in order to deliver tangible results over the next 12 months.[325]

Under the 'Lake Horowhenua Accord' (2013), the objectives of the parties are (1) returning Lake Horowhenua as a source of pride for people of Horowhenua, (2) enhancing the social, recreational, cultural, and environmental aspects of the lake but in a fiscally responsible manner acceptable to the community of Horowhenua, (3) pursuing the rehabilitation and protection of the health of the lake for future generations, and (4) considering how to respond to key issues, management goals, and the 15 guiding action points agreed to by the parties.[326] The key issues identified include poor water quality, sources of nutrients and contamination and other causes of adverse effects, cyanobacteria blooms, excessive lake weed, high turbidity and sediment inputs, declining fishery, pest fish, and confusing and overlapping responsibilities.[327] The parties are seeking to address these issues through seven key management goals, namely:

- To maintain or enhance the fishery in the Lake and its subsidiaries;
- To reduce or eliminate the occurrence of nuisance Cyanobacteria;
- To limit and manage nutrient input into the Lake from all sources;
- To improve the water quality of the Lake, for example from hypertrophic to super trophic or eutrophic;

324. Sword, brief of evidence (doc C17), pp 1–2
325. Mathew Sword, memorandum for the court on behalf of Horowhenua 11 Part Reservation Trust (Lake Horowhenua Trust), 11 May 2015 (doc C17(a)), p 4
326. 'He Hokioi Rerenga Tahi/The Lake Horowhenua Accord', p 8 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 8)
327. 'He Hokioi Rerenga Tahi/The Lake Horowhenua Accord', p 10 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 10)

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- To reduce abundance of aquatic macrophytes in the Lake;
- To consider more efficient and effective management/decision making processes around the Lake and to empower beneficial owners and Muaūpoko to more effectively participate in the management of the Lake; and
- To regularly communicate to beneficial owners the state of the Lake.[328]

The management actions they intended to take in 2013 included:

- enhancement of monitoring;
- public education, including lake report cards;
- development of farm environmental plans;
- boat treatment and weed containment;
- storm water diversion (treatment) – spill drain;
- removal of sediment inputs;
- riparian enhancement of the lake;
- riparian enhancement of streams;
- lake weed harvesting;
- pest fish management, including enhanced predation;
- work on a fish pass at the weir;
- lake level management;
- building the capacity of the Lake Horowhenua Trust to more effectively contribute to the management of the lake;
- developing a cultural monitoring programme based on Muaūpoko values and indicators; and
- building the capacity of beneficial owners and Muaūpoko to participate and engage in the management of the Lake.[329]

The accord and the right of the lake trustees and domain board to negotiate this arrangement are heavily contested by many of the claimants before the Tribunal. However, the substantive aims and goals of the parties are worth repeating to highlight the desire to reach common ground on lake issues.

The action plan identifies a number of measures that the partners may take to reduce nitrogen, phosphorus, and sediment contributions to the lake. These include:

- Riparian fencing and planting – acknowledging that much of this work had been undertaken including in excess of 250,000 plants being established in a fenced riparian buffer. Further planting of in-lake vegetation was to be undertaken, along with riparian buffers along streams.[330]
- Treating the storm water before release into the Queen Street drain.[331]

328. 'He Hokioi Rerenga Tahi/The Lake Horowhenua Accord', p 12 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 12)

329. 'He Hokioi Rerenga Tahi/The Lake Horowhenua Accord', p 14 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 14)

330. Horizons Regional Council, *Lake Horowhenua Accord Action Plan*, p 9 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 36)

331. Horizons Regional Council, *Lake Horowhenua Accord Action Plan*, p 9 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 36)

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- Collaboration with farmers and horticulturalists to complete farm plans to manage sediment and nutrient run-off to streams and the lake.[332]
- Harvesting of the weed as one option for the removal of nutrients from the lake and reducing cyanobacteria bloom events.[333]
- Creating a sediment trap and treatment wetland before the Arawhata Stream enters the lake.[334]

In addition, the action plan identifies measures that the partners may take in respect of native fisheries:

- Installing a fish pass at the concrete weir at the outlet of the lake on the Hōkio Stream.[335]
- Monitoring of native fish stocks and further research.[336]
- Monitoring introduced pest species to ensure that their populations do not reach densities likely to have an impact on the lake.[337]
- Monitoring to assess whether pest species that pose a threat to native species have reached the lake or if pest fish already in the lake are impacting on native fish populations.[338]

While the lake trustees have participated in the lake accord, there are some trustees and others of Muaūpoko who are very critical of it. Vivienne Taueki, for example, claimed the 'tangata whenua' were never consulted or invited to participate. Clearly, that is not correct as the trustees are tangata whenua, and they did initiate the accord. She pointed to the alternative strategy, 'He Ritenga Whakatikatika' (2013), that she has been involved in with Ngāti Raukawa.[339] She also claimed the terms of the accord were 'inadequate and lacked efficacy' and did not 'represent Maori concerns'.[340] Equally clearly, other Muaūpoko considered that it does. Wherever the numbers lie as to who in Muaūpoko agrees with these initiatives or not, the fact is that the accord and action plan and 'He Ritenga Whakatikatika' are pragmatic attempts to deal with real and significant environmental issues within an environmental law and management framework that does not adequately prioritise

332. Horizons Regional Council, *Lake Horowhenua Accord Action Plan*, p 9 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 36)
333. Horizons Regional Council, *Lake Horowhenua Accord Action Plan*, p 10 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 37)
334. Horizons Regional Council, *Lake Horowhenua Accord Action Plan*, p 12 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 39)
335. Horizons Regional Council, *Lake Horowhenua Accord Action Plan*, p 13 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 40)
336. Horizons Regional Council, *Lake Horowhenua Accord Action Plan*, p 8 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 40)
337. Horizons Regional Council, *Lake Horowhenua Accord Action Plan*, p 14 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 41)
338. Horizons Regional Council, *Lake Horowhenua Accord Action Plan*, p 14 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 41)
339. Lake Horowhenua & Hōkio Stream Working Party, 'He Ritenga Whakatikatika' (doc B2(o))
340. Vivienne Taueki, brief of evidence (doc B2), pp 31–32

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the need for focusing on Muaūpoko, Lake Horowhenua, and the Hōkio Stream given the importance of these as taonga – a matter we return to below.

In June 2015, a majority of the lake trustees resolved to grant to Horizons Regional Council the permissions it sought to build a fish pass and a sediment trap and to undertake weed harvesting activities.[341] Four trustees opposed these permissions being granted.[342] The construction of the boat-washing facility approximately 600 metres from the lake and opposite the Queen Street drain has also caused controversy, with Mr Philip Taueki noting that there was no way to monitor whether boaters, including rowers, were complying.[343] Thus some work has been completed in terms of the accord and action plan, but equally that has not been without significant opposition within the tribe.

Whilst arguing that the arrangements entered into were the best possible given the current legal framework for governance, the problem, as Mr Sword has noted, is that the accord and the action plan are not legally binding:

> There needs to be a change in legislation so that Muaūpoko has a strong say in management of the entire catchment. This requires law changes to resolve overlapping lake governance issues and provide for a vision that restores and reconciles Muaūpoko's relationship with the Lake. Muaūpoko must have a statutorily recognised role in catchment vision development and all regulatory decision-making for the catchment; and Muaūpoko values must be incorporated into any framework or decision making regime.
>
> The Waikato Tainui River Settlement allows the iwi to formulate an overarching vision that must be given effect to, and something equivalent is required here in order to make management of the Lake effective. This also means that the water sources in the Tararua Ranges are maintained and reserved and beach resources are protected. We would like Waiwiri and Horowhenua to be in the same title.
>
> It is important that a holistic approach is achieved, which incorporates Muaūpoko's cultural values derived through our ancient connections from the 'Mountains to the Sea', Rere te toto me te mauri mai ta matou tupuna, te koroheke maunga ko Tararua, tae noa ki te manawa Ko Punahau, tae atu ki te takutai moana kei Hokio.[344]

11.6 Findings

The Crown argued that in making our findings we should give consideration to the more general question of how the lake and its environs could have survived in a less impacted state in such close proximity to a major urban development and agricultural land use. We have attempted to look at the issues through that lens.

341. M Sword, chair, Lake Horowhenua Trust, to Dr Jon Roygard, Horizons Regional Council, 15 June 2015 (Procter, appendices to brief of evidence (doc C22(a)), p 3021)
342. Sword to Roygard, 15 June 2015 (Procter, appendices to brief of evidence (doc C22(a)), p 3021)
343. Transcript 4.1.11, pp 188–189
344. Sword, brief of evidence (doc C17), pp 1–2, 6–7

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As we found previously, Lake Horowhenua is a taonga of immeasurable value to the people of Muaūpoko. As a taonga, the Crown was under a Treaty duty to actively protect the lake and the Hōkio Stream. We consider the evidence was clear that there were options open to the Crown to avoid the environmental degradation and damage to the lake prior to 1990. Through direct action or omission the Crown also became complicit in promoting its degradation, including by the Levin Waste Water Treatment Plant. In the case of the latter it fully understood the effluent disposal issues that the community of this region and Muaūpoko would face.

In this chapter we reviewed what has occurred after 1990 to Lake Horowhenua and its catchment in order to analyse the claimants' case that the Crown has failed to address the ongoing historical issues that continue to plague Lake Horowhenua and the Hōkio Stream, the associated fisheries, and the Muaūpoko people. We did so to ascertain the extent to which governance and mitigation efforts have been successful in dealing with the historical environmental effects of the Crown's acts and omissions prior to 1990.

We consider these issues are part of a continuum which cannot be severed from the manner in which the lake and the Hōkio Stream were controlled and managed prior to 1990. We also reviewed what was, and is, being done to ameliorate those impacts to ascertain whether more is needed in Treaty terms to discharge the obligations of the Crown, if any, under the Treaty of Waitangi.

In terms of the period 1990–2015 we consider the evidence is clear that the historical legacy of those environmental effects continues to impact the lake and the Hōkio Stream. Half of the original volume of the lake still remains filled with polluted sediment. Those impacts have been aggravated further by the continued loading of nutrients, phosphorus, and more sediment discharging into the lake due to urban and industrial development, intensive farming, and horticultural land use.

We also find that the Crown is responsible for the resource management and local government regime under which the bulk of decision-making concerning the lake has been and is being made.

The Crown was responsible for the primary cause of the lake's environmental degradation – namely effluent disposal into the lake. In breach of Treaty principles, the Crown failed to keep undertakings given to Muaūpoko in 1905 and 1952–53 that pollution and sewage effluent would not enter the lake. The omission of those undertakings from the Lake Horowhenua Act 1905 and the ROLD Act 1956 has significantly prejudiced Muaūpoko and the health of their taonga, the lake. We also accept that the Crown did not accommodate and provide for Muaūpoko mana whakahaere (control and management) to restore, control, and manage the lake as much as possible to a reasonable state of health, along with their relationship to their taonga.

The Crown, through the Ministry for Primary Industries, DOC, and local authorities, remains in charge of the management of the water in the lake, fisheries, and land use around the lake. The Crown, through DOC, chairs the Horowhenua Lake

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Domain Board. The director-general has a casting vote, which has been exercised.[345] This casting vote acts as a reminder to members that should they disagree, DOC can influence the outcome. We find that this is not a system of governance that is consistent with the guarantee of rangatiratanga under the Treaty, given the new environmental and resource management legal framework.

The complaints raised surrounding land use, the issues at Hōkio Beach, the realignment of the Hōkio Stream, the allegations concerning the landfills and the 'Pot', and the issues concerning storm water demonstrate that the iwi are divided when unity for the purposes of resource planning, use, and development within the Lake Horowhenua and Hōkio Stream catchment is needed. Some in the iwi feel marginalised, others do not, and there are clear divisions. These divisions are exacerbated because no sound contemporary governance structure that represents all views within the tribe (as opposed to whānau and hapū views) exists. Muaūpoko need a legislative solution to the conundrum of the current regime. More meaningful management rights over the Lake Horowhenua and Hōkio Stream catchment need to be devolved to them through a contemporary governance structure that can meet their needs within the current legislative resource management framework.

The Crown has argued that within its contemporary legislative framework there is 'substantial potential for the views and concerns of Māori to be considered in decision-making processes regarding the environment, including under the Resource Management Act 1991, the Local Government Act 2002 and the Conservation Act 1987'.[346] The Crown submitted that 'in authorising other bodies to exercise functions and responsibilities today', the Crown considered that 'Parliament seeks to do so consistently with Treaty principles'.[347] It pointed to statutory provisions in the Local Government Act 2002 and the establishment of the Environment Court as important. It noted the prolific litigation that Muaūpoko has engaged in under its contemporary legislative framework to hold local authorities to account.[348] The Crown argued that the fact that the 'legislative regime allows for this is further evidence of the Treaty compliant nature of the regime'.[349] We consider that all it shows is that the system has cultivated dissent because it is unclear who has the right to represent Muaūpoko in terms of the Lake Horowhenua and the Hōkio Stream, and by default and omission the Crown has failed to rectify that issue.

We also reject the Crown's approach regarding its responsibility for the day-to-day affairs of local authorities on the same basis that it was rejected in *Ko Aotearoa Tēnei* (the Wai 262 report). That report found that the environmental management regime on its own without reform was not sufficient in Treaty terms. The Wai 262 Tribunal stated that the Crown has an obligation to protect the kaitiaki relationship of Māori with their environment and that it cannot absolve itself of this obligation by statutory devolution of its environmental management powers and functions to

345. Hamer, '"A Tangled Skein"' (doc A150), p 400
346. Crown counsel, closing submissions (paper 3.3.24), p 28
347. Crown counsel, closing submissions (paper 3.3.24), p 28
348. Crown counsel, closing submissions (paper 3.3.24), pp 28–29
349. Crown counsel, closing submissions (paper 3.3.24), p 29

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local government.[350] Thus the Crown's Treaty duties remain and must be fulfilled and it must make statutory delegates accountable for fulfilling them too. The same duty to guarantee rangatiratanga, and to respect the other principles of the Treaty thus remains as an obligation on the Crown and it is not enough for the Crown to wash its hands of the matter and say that the day-to-day decision-making process is in the hands of local authorities.

We note further the Waitangi Tribunal has previously held in various reports that the RMA 1991 is not fully compliant with Treaty principles.[351] In the Wai 262 report, the Tribunal stated

> the RMA has not delivered appropriate levels of control, partnership, and influence for kaitiaki in relation to taonga in the environment. Indeed, the only mechanisms through which control and partnership appear to have been achieved are historical Treaty and customary rights settlements . . .[352]

In context of the claims before us, we consider another important issue raised by the RMA 1991 is that it is not remedial in its purpose or effect as outlined in section 5. That provision merely provides that the purpose of the legislation is to 'promote the sustainable management of natural and physical resources'. Thus the RMA is not a statute that can be used to address or remedy the environmental degradation of Lake Horowhenua prior to 1990. Nor do the planning and mechanism reforms recommended in the Wai 262 report assist to progress the particular issues before us. Really, we consider the only way forward is a statutory settlement.

While the 'He Hokioi Rerenga Tahi/The Lake Horowhenua Accord' (2013) has created opportunities to work in partnership with local bodies, and that is to be applauded, under the RMA 1991 and the local government legislation Muaūpoko have no lawful rights to control or to enforce the commitments made in that accord. In other words, Muaūpoko mana whakahaere (control and management) over their taonga is not fully provided for under the current legislative regime.

Such a situation can be compared to the rights that the Waikato-Tainui river tribes have in terms of the Waikato River under the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010. The 2010 legislation states that the 'RMA 1991 gave regional and local authorities substantial functions and powers over natural resources, including the power to grant resource consents for river use'.[353] It is further recorded that the RMA does not provide for the protection of the mana of

350. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, *Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 1, pp 269–270

351. Waitangi Tribunal, *Ngawha Geothermal Resource Report 1993* (Wellington: Brooker and Friend Ltd, 1993), p 143; Waitangi Tribunal, *Preliminary Report on the Te Arawa Representative Geothermal Resource Claims* (Wellington: Brooker and Friend Ltd, 1993), pp 27–28, 34; Waitangi Tribunal, *The Whanganui River Report* (Wellington: Legislation Direct, 1999), pp 329–330; Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 4, pp 1589–1590

352. Waitangi Tribunal, *Ko Aotearoa Tēnei, Te Taumata Tuarua*, vol 1, pp 273, 280

353. Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, preamble

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the river or the mana whakahaere (ability to exercise control, access to, and management of the river) of Waikato.[354] It notes the number of resource consent proceedings that the tribe had been involved in, and then the Crown acknowledges, among other things, that it 'failed to respect, provide for, and protect the special relationship of Waikato-Tainui' with the river.[355]

This discussion on mana whakahaere indicates that not enough has been done between 1990 and 2015 in Treaty terms to provide for Muaūpoko tino rangatiratanga. It is not a sufficient response to refer to the ROLD Act and the work of the Horowhenua Lake Domain Board, as the latter has no authority to intervene in matters lawfully determined by DOC, the Ministry for Primary Industries, Horizons Regional Council, or the Horowhenua District Council. The lake trustees can only deal with issues concerning the bed of the lake and have no jurisdiction over the water. In 2016, before closing submissions were finalised, the lake trustees and the domain board signed a memorandum of partnership setting out an agreed position and a set of shared values and aspirations each party has for the lake.[356] The document endorses the lake accord. However, the essential point made by Mr Sword remains. At any stage Horizons Regional Council and the Horowhenua District Council could withdraw their support for the Lake Horowhenua accord or they could reprioritise their activities. The domain board could choose to do the same. In other words, they are not legally obliged to complete the undertakings therein recorded.[357]

That said, these initiatives do signal a new round of collaborative effort, following various other previous collaborative efforts, and are to be applauded. However, there are serious questions as to whether this form of collaboration can be sustained, as it is clear that Muaūpoko are having difficulty finalising their preferred options for restoration, given the dissent groups within the tribe. Add to that the point that the lake trustees have had to seek consent before implementing plans for cleaning up the lake.[358]

Without addressing the primary issue of who should manage Muaūpoko affairs concerning the lake and the Hōkio Stream, it is unlikely that the accord will last beyond the activities outlined in the action plan. All the evidence in relation to the lake and the stream demonstrates that there will always be opposing views and what is needed is a management regime that cannot be challenged for lack of mandate. We note the partners to the accord have expressly addressed the conundrum and the need for 'including best governance and management practice that may draw from recent experiences (for example the Waikato-Tainui River Settlement 2008 and the Manawatu Accord)'.[359]

354. Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, preamble
355. Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, preamble
356. Crown counsel, closing submissions (paper 3.3.24), p72
357. Sword, brief of evidence (doc C17), p1
358. Sword, brief of evidence (doc C17), p5
359. 'He Hokioi Rerenga Tahi/The Lake Horowhenua Accord', p7 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p7)

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We further note that the Crown has said that it is open to promoting legislative reform in order to address governance and other issues regarding the lake.[360] However, it stated that it required the engagement of a range of stakeholders including other affected iwi and local authorities.[361] The Crown also welcomed any views we may have regarding how Muaūpoko may draw a consensus around remediation work.[362] In our view, the answer lies in the model offered by the Waikato-Tainui river settlement.

As the RMA 1991 is not remedial legislation and cannot be invoked in litigation to require restoration work be completed by local government, some further effort will be needed to fund a programme that reasonably mitigates the major issue concerning the lake – the impact of over 25 years of effluent in the sludge on the bed of the lake and the continued discharge of pollutants through storm water.

There are a number of entities that have had various roles in relation to Lake Horowhenua and the Hōkio Stream since 1990 and who are responsible for its control and management under the ROLD Act 1956, the RMA 1991, and the Local Government Act 2002. Alternatively, they have responsibility for its fisheries under the Conservation Act 1987 and under the Fisheries Act and associated regulations. It is the Crown that is responsible for the legislative regime under which all these agencies act. That same authority can be used to produce an outcome similar to that achieved for Waikato-Tainui. We note that this should not unsettle Muaūpoko's ownership of the bed of the lake and the stream.

Granted, there may be difficulties in determining who represents Muaūpoko or in obtaining a consensus, but efforts should be made to cement their plans once a proper governance body is in place which has the mandate of the Muaūpoko people behind it. The lake trustees will have to continue as the legal owners of the lake bed so that the beneficial owners' property rights remain intact. They should be represented on the mandated body.

A new legislative regime coupled with technical and financial assistance should move all parties to the desired result, namely the restoration of Lake Horowhenua and the Hōkio Stream, and of the mana and tino rangatiratanga of Muaūpoko.

We note here that Ngāti Raukawa claims in respect of the Hōkio Stream and Lake Horowhenua have not yet been heard, but the Waikato-Tainui river settlement model allows for the representation of other iwi.

11.7 Conclusion

We consider that, as the Crown was and remains responsible for the legislative regime under which local government operates, it is time for it to recognise that the multi-layered management regime that exists under the RMA 1991 and the Local Government Act 2002 and the role played by Muaūpoko on the Horowhenua Lake Domain Board are not sufficient in Treaty terms. The present regime does

360. Crown counsel, closing submissions (paper 3.3.24), p71
361. Crown counsel, closing submissions (paper 3.3.24), p71
362. Crown counsel, closing submissions (paper 3.3.24), p71

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not ensure that Muaūpoko rangatiratanga and kaitiakitanga in terms of Lake Horowhenua and the Hōkio Stream are sufficiently provided for.

It is also time for the Crown to recognise that, having acknowledged it breached the Treaty when it omitted a provision to prevent pollution at the very beginning in the 1905 Act, it must take a lead in putting the situation right. Only the Crown has the resources to work with its Treaty partner to solve these problems. It has a Treaty duty to do so. As the Privy Council has noted, the Crown should not avoid or deny its Treaty obligation of active protection of a vulnerable taonga when it is responsible for the taonga's parlous state and when it has the resources.[363] That is what the parties to the Treaty are entitled to expect from an honourable Crown.

363. *New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 513 (PC), 517

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PART IV

WHAKAMUTUNGA: CONCLUSION

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CHAPTER 12

CONCLUSION

Hei aha te heihei

Heihei! Hei aha te heihei?
Heihei! Hei aha te heihei?
Te kaiwhakaohorere i te atapo
te ngata, te puku ki te awhiawhi
aue, aue, te hiahia!
aue, aue, te hiahia!
nekenekehia, nekenekehia![1]

12.1 Introduction

In this chapter, we summarise the conclusions and findings made in previous chapters, and make recommendations for the removal of the significant prejudice suffered by Muaūpoko.

12.1.1 Why were the Muaūpoko claims prioritised for early hearings?

In September 2013, the Crown recognised the mandate of the Muaūpoko Tribal Authority (MTA) to negotiate a settlement of Muaūpoko's Treaty claims. As described in chapter 1, this precipitated an urgent claim to the Waitangi Tribunal. The urgency application was heard in March 2014. This revealed significant disagreement among Muaūpoko as to the MTA's definition of the iwi, the rights of particular hapū and the primacy of certain leaders, and the MTA's decision to settle without having the claims first heard and reported upon by the Tribunal. As the negotiations were at a very early stage, the Tribunal hearing the application for urgency considered that there was still time to afford those claimants who wished it a hearing, so long as the research and hearing of their claims could be prioritised. The Tribunal also considered that more research would assist the claimant

1. 'This waiata is a "harihari kai" that came about during the passive resistance movement also, during the time that Muaūpoko would travel to Parihaka in support of the people there. This waiata contains symbolism and metaphors relating to the kinds of activities Pākehā were engaging in at that time and the oppression of Māori throughout the motu. This song is a waiata-ā-iwi and is sung throughout Taranaki, Whanganui right through to Horowhenua.': Sian Montgomery-Neutze, 'He wānanga i ngā waiata me ngā kōrero whakapapa o Muaūpoko', not dated (doc A15(a)), p [56].

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community to understand the historical roots of their current disagreements. In June 2014, therefore, the Tribunal referred the matter to the Porirua ki Manawatū Tribunal for consideration.

Accordingly, we consulted the Crown and claimants in this inquiry to determine whether Muaūpoko claims should be prioritised. There were no objections from other parties, and eventually the MTA (and the claimants it represents) also decided to participate in our hearings.

In 2015, the Tribunal and Crown Forestry Rental Trust research was completed. In addition to our hearing of Muaūpoko oral evidence at the Nga Kōrero Tuku Iho hui in February 2014, three hearings were held in October–December 2015. The filing of closing and reply submissions was completed in May 2016, and we decided to write a pre-publication version of our report for the early assistance of the parties.

12.1.2 Exclusions from this prioritised report: Ngāti Raukawa and Te Ātiawa/Ngāti Awa

Before hearings began, we advised parties that we would be making findings on Muaūpoko claims about the Horowhenua block and Lake Horowhenua, but we would not make findings on:

- Any historical acts or omissions of the Crown in respect of the relationships between Muaūpoko and Ngāti Raukawa, and between Muaūpoko and Te Ati Awa/Ngāti Awa ki Kapiti; and
- Any historical acts or omissions of the Crown relating to the respective rights and interests of Muaūpoko, Ngāti Raukawa, and Te Ati Awa/Ngāti Awa ki Kapiti.[2]

This has left a number of issues important to Muaūpoko which could not be reported on fully at this stage of our inquiry (see, for example, chapter 3). At the same time, it was not possible to assess Muaūpoko's historical claims without any reference at all to Ngāti Raukawa in particular, but we have attempted to concentrate our attention and findings on Crown acts or omissions in respect of Muaūpoko. We have not, for example, discussed the Native Land Court hearing of the Manawatū-Kukutauaki claims except to consider Muaūpoko's attempted boycott at the beginning of the 1872 hearing (see chapter 4). Matters of importance to the Ngāti Raukawa claims, such as the 1874 agreement with McLean (chapter 4), the partition of Horowhenua 9 (chapter 5), the Horowhenua commission (chapter 6), the Horowhenua block more generally (chapters 4–7) and Lake Horowhenua and the Hōkio Stream (chapters 8–10) will all be addressed later in our inquiry.

In addition, we have not made findings where the evidence was insufficient at this point or the issues were general (rather than specific to Muaūpoko), such as the origins and establishment of the Native Land Court (chapter 4), and twentieth-century land alienation processes (chapter 7).

2. Waitangi Tribunal, memorandum-directions, 25 September 2015 (paper 2.5.121), p [1]

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Nonetheless, the evidence was sufficient to establish that the Muaūpoko claims are well-founded in terms of the particular issues summarised below.

12.1.3 Treaty principles

In chapter 1, we set out the text of the Treaty in Māori and English, and described the Treaty principles which apply in this case. The principles are more fully explained in section 1.6, and we only provide a brief summary here:

- *Partnership:* 'the Treaty signifies a partnership between the Crown and the Māori people, and the compact between them rests on the premise that each partner will act reasonably and in the utmost good faith towards the other'.[3]
- *Active protection:* the Treaty requires the Crown to actively protect the rights and interests of the Māori Treaty partner, their lands and waters and other taonga, and their tino rangatiratanga, to the fullest extent practicable in the circumstances.
- *Options:* the principle of options arises from the Treaty bargain, in which Māori were to have free choice as to how they would benefit from the colonisation facilitated by the Treaty; whether to develop along customary lines, assimilate to a new way, or walk in both worlds.
- *Right of development:* the Treaty development right includes the inherent right of property owners to develop their properties (including resources in which they have a proprietary interest under Māori custom), the right to retain a sufficient resource base for development, and the right to develop as a people.
- *Equity:* the principle of equity requires the Crown to act fairly as between Māori and settlers, and not to unfairly prioritise the interests and welfare of settlers to the disadvantage of Māori.
- *Redress:* when Māori have suffered prejudice as a result of Treaty breaches, the Crown is required to provide redress. Where Crown actions have contributed to the precarious state of a taonga, there is an even greater obligation for the Crown to provide 'generous redress as circumstances permit'.[4]

12.1.4 Judging what is 'reasonable in the circumstances'

As discussed in section 1.6.4, Crown counsel submitted that the Tribunal needs to take into account historical context and the standards of the time (not the standards of the present) when applying Treaty principles. The Crown suggested a number of criteria for judging what was reasonable in the circumstances, including consideration of what was practicable, foreseeable, and reasonable at the time. The claimants, on the other hand, argued that the 'danger of presentism is more than matched by the danger of extreme and inappropriate caution in drawing conclusions as to the Crown's reasonable obligations to Māori in the context of te Tiriti'.[5]

3. Waitangi Tribunal, *Whaia Te Mana Motuhake, In Pursuit of Mana Motuhake: Report on the Māori Community Development Act Claim* (Wellington: Legislation Direct, 2014), p 28

4. Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui: Report on Northern South Island Claims*, 3 vols (Wellington: Legislation Direct, 2008), vol 1, p 6

5. Claimant counsel (Naden, Upton, and Shankar), submissions by way of reply, 15 April 2016 (paper 3.3.29), p 7

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In their view, the historical aspirations and wishes of Māori were also standards of the time, and the standards of the settler majority should not be used to excuse unfair Crown actions.

Having considered the parties' arguments, we agreed with the claimants that the Treaty standards, and historical evidence as to what Māori leaders said to (and sought from) the Crown, are relevant 'standards of the time'. We also agreed that the nineteenth-century standards of the settler majority are relevant but that they do not excuse the Crown from actions that were unfair or dishonourable. But we accepted the Crown's submission that (a) the choices which were known to be available to Ministers or officials, (b) the state of the Crown's knowledge and finances at the time, and (c) the reasonably foreseeable consequences are all relevant factors for us to consider in evaluating Crown actions against the Treaty principles. We do not believe that a consideration of context prevents us from assessing whether Crown acts or omissions were consistent with Treaty principles.

12.2 Muaūpoko Identity and Histories

12.2.1 The histories and identity of Muaūpoko

In chapter 2, we provided an overview of Muaūpoko's story as told by them, their history as a people within their traditional rohe, up to the signing of the Treaty of Waitangi. From the oral histories and perspectives of today's Muaūpoko claimants, the recorded kōrero of their nineteenth-century tīpuna, and the commentary of commissioned technical researchers, we set out some of the relevant Muaūpoko narratives of their ancient history and the more recent 'musket wars' of the nineteenth century. We do not attempt to summarise or truncate those narratives in this chapter; it is essential for all parties to read the full account in chapter 2.

In presenting Muaūpoko histories as told to us, we were mindful that the additional research conducted for the hearings may assist Muaūpoko with their internal disagreements.

12.2.2 The histories of other iwi

The histories of Ngāti Raukawa and affiliated groups, and of Te Ātiawa/Ngāti Awa, will be presented later in our inquiry. Each iwi has their own narrative of events, and their distinct interpretations of their relationships and customary rights. Inevitably, those narratives and interpretations conflict at certain points. It is not the Tribunal's task to choose between narratives or decide that one group's version is right and another group's version is wrong. Rather, our task is to examine the acts of the Crown to determine whether, by action or inaction, the Crown has breached the principles of the Treaty of Waitangi. In order to do so, it is necessary for us to set out each tribe's view of their relationships and customary interests in the contested lands of our inquiry district. At this stage of our inquiry, it is only possible to do this for Muaūpoko. For the detail of that, we refer readers to chapter 2. For the other iwi, it will be done later in our inquiry.

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12.3 Nineteenth-century Land Issues: Crown Purchasing outside Horowhenua

12.3.1 The Muaūpoko claim about pre-emption purchasing

In 1840, article 2 of the Treaty conferred a right of pre-emption on the Crown. At the time, this was explained as a protective measure. The Crown assumed the sole power to purchase Māori land until this right of pre-emption was abolished by the Native Lands Acts of 1862 and 1865. In our inquiry district, the pre-1865 Crown pre-emption system continued to operate after the Native Land Court system was introduced. This was because the 1862 and 1865 Acts exempted the 'Manawatū block' (see map 3.2) from the court's operations.

In chapter 3, we addressed the Crown's pre-emption purchasing outside the Horowhenua block, which was a significant issue for the Muaūpoko claimants. They argued that the Crown did recognise Muaūpoko rights in some of its pre-emption purchases, thus confirming that their rights had survived the migrations and wars of the 1820s and 1830s. Nonetheless, in the claimants' view, the Crown failed to properly investigate customary rights before purchasing. As a result, the claimants argued, the Crown did not give full recognition to Muaūpoko rights in various purchases or make any reserves for Muaūpoko. The claimants also argued that they were confined to the Horowhenua lands by the 1870s, as a result of the Crown's pre-emption purchasing.

12.3.2 The Tribunal's decision to consider pre-emption purchases as context

Due to the limits of our priority inquiry (explained in section 12.1.2), we decided to make no findings about these claimant allegations. Our discussion of Crown purchases in chapter 3 was contextual because the transactions involved the interests and claims of other iwi in a substantial way, and their claims have not yet been fully researched or heard. Also, the research casebook had not been completed, and we did not have the evidence necessary to deal fully with the history of blocks outside of Horowhenua. We therefore provided a brief overview of what is currently known about Muaūpoko involvement in the pre-emption purchasing, as context for Horowhenua claims and for the assistance of any negotiations. We made no findings about alleged Crown acts or omissions.

12.3.3 The Tribunal's limited conclusions about pre-emption purchasing

Our limited conclusions are summarised as follows:

- *Te Awahou (37,000 acres, 1858–59):* Muaūpoko were involved in the purchase and payments because their rights were recognised by the Ngāti Raukawa vendors, but non-sellers accused some of those vendors of including 'non-owners' to strengthen the selling party.[6]
- *Te Ahuaturanga (250,000 acres, 1858–64):* There was no direct evidence of Muaūpoko involvement in this sale, which was said to have been conducted by Rangitāne on behalf of a number of iwi. The claimants pointed to the

6. T J Hearn, summary of 'One Past, Many Histories: Tribal Land and Politics in the Nineteenth Century', September 2015 (doc A152(b)), p 9

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recognition of Muaūpoko in the sale of the adjacent Rangitīkei-Manawatū block, and the inclusion of Muaūpoko individuals in the ownership of the Aorangi reserve, as proof of their rights in Te Ahuaturanga.

- *Muhunoa (1,300 acres, 1860–64), located immediately to the south of the Horowhenua block:* The Crown attempted to purchase Muhunoa from Ngāti Raukawa in the early 1860s, but the purchase was successfully contested at that time by Muaūpoko leaders. Ultimately, however, the lands were not awarded to Muaūpoko by the Native Land Court and Muaūpoko were not involved in the post-court sales. The Crown did a deal with Te Keepa and Ngāti Raukawa about Horowhenua in 1874, which Te Keepa believed would secure the return of some land in the Muhunoa block (see chapter 4).
- *Rangitīkei-Manawatū (250,000 acres, 1865–68):* The Crown recognised and dealt with Muaūpoko in the Rangitīkei-Manawatū purchase, but Superintendent Featherston classified them as 'secondary', not 'primary', right-holders. Muaūpoko signed the purchase deed but they were not paid the full amount owed to them, and they did not receive any reserves in this vast block. The claimants noted the court's Himatangi decision of 1868, which found the 'original occupiers of the soil' to have been 'joint owners' with Ngāti Raukawa, as validating the Crown's decision to deal with them (but not, they said, as 'secondary' owners).
- *Wainui (30,000 acres, 1858–59):* The Crown did not deal directly with Muaūpoko, but a number of Muaūpoko rangatira did sign the Wainui deed, admitted by the Ngāti Toa vendors. Some (but not all) of the Muaūpoko signatories had been held as 'captives' at Waikanae before being 'fetched' back to Horowhenua (see section 2.4.3(6) for the practice of 'fetching' people home in the 1830s). Research into the title and fate of reserves from the Wainui purchase had not been completed at the time of our 2015 hearings.

Thus, what we can say at this stage of our inquiry is that Muaūpoko were involved in and affected by the Te Awahou, Muhunoa, Rangitīkei-Manawatū, and Wainui purchases. To the extent that any of these purchases are later found to have been in breach of Treaty principles, Muaūpoko were likely to have been prejudiced thereby. For the vast Te Ahuaturanga purchase, Muaūpoko involvement has not been demonstrated conclusively.

It also seems clear from the evidence so far that Muaūpoko were left with virtually no stake in any of the reserves that were made during the alienation of more than half a million acres of land. As a result, Muaūpoko either had to live with closely related iwi by the 1870s or became confined to their Horowhenua lands. This is vital context for the internal Muaūpoko struggles over entitlements at Horowhenua, which took place in the 1890s, discussed below (and which still contribute to divisions within Muaūpoko today).

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12.3.4 Blocks in the Native Land Court era

After the exemption from the court's jurisdiction had been lifted, the Crown made advance payments to Muaūpoko for the Aorangi, Tuwhakatupua, and 'Taonui'[7] blocks before title was investigated by the court. The court, however, awarded title of these blocks to other iwi, although two Muaūpoko owners were included in the title for Aorangi 3. More could not be said at this stage of our inquiry.

The claimants also raised issues about the Tararua block, which is located in the Wairarapa ki Tararua inquiry district,[8] and so cannot be the subject of inquiry by this Tribunal. We simply noted that both the Crown and the Native Land Court recognised Muaūpoko customary rights in the Tararua block. Some claimants raised concerns about the Hapuakorari Reserve, which was supposed to have been set aside from the Tararua purchase. The Crown submitted that it would offer an alternative piece of land, in recompense for its failure to create the Hapuakorari Reserve, as part of its negotiations to settle Wairarapa ki Tararua claims. We were unable to take the issue of the Hapuakorari reserve any further but we do accept the Muaūpoko belief that the spiritual lake, Hapuakorari, is located on the western side of the Tararua Ranges, on the Horowhenua block 12.

12.4 Nineteenth-century Land Issues: the Horowhenua Block

12.4.1 The Crown's concessions in our inquiry

Through the course of our inquiry, the Crown made some important concessions:

- The native land laws failed to provide a form of effective corporate title before 1894, which undermined Muaūpoko tribal authority in the Horowhenua block, in breach of Treaty principles.
- The individualisation of Māori land tenure provided for by the native land laws made Muaūpoko lands more susceptible to fragmentation and alienation, and contributed to undermining Muaūpoko tribal structures, which was in breach of the Treaty. The cumulative effect of Crown acts and omissions, including Crown purchasing and the native land laws, resulted in landlessness. The failure to ensure that Muaūpoko retained sufficient land for their present and future needs was a breach of Treaty principles.
- The Crown acquired part of Horowhenua 11 (known as the State farm block) and most of Horowhenua 12 (20 per cent of the Horowhenua block[9]) in circumstances which meant that the Crown 'failed to actively protect the interests of Muaūpoko in these lands', breaching Treaty principles.[10]

We have been mindful of these helpful concessions throughout the chapters of our report dealing with the Horowhenua block.

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7. The Taonui block was not actually created and may have become part of the Aorangi block.

8. According to a Crown mapping exercise, 5 per cent of the Tararua block may fall inside our inquiry district: 'Original Tararua Block', attachment 4 (Crown counsel, comp, papers in support of closing submissions, various dates (paper 3.3.24(a)), p vii).

9. The entirety of the block was alienated as a result of the commission's recommendation, which amounted to 25 per cent of the Horowhenua block.

10. Crown counsel, closing submissions, 31 March 2016 (paper 3.3.24), p 24

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12.4.2 Was the Native Land Court and tenure conversion imposed on Muaūpoko?
In the 1840s, approximately half of the Muaūpoko population lived outside of the Horowhenua heartland. By 1870, however, Crown purchasing and the lack of reserves for Muaūpoko had confined the whole tribe to Horowhenua. It was at this point that conflict over leasing resulted in Native Land Court hearings in 1872–73, sitting under the Native Lands Acts of 1865 and 1867. The court awarded the Horowhenua block to Muaūpoko (in the form of a list of 143 individuals), under section 17 of the 1867 Act.

The first question which this raised (addressed in chapter 4) was whether the Native Land Court and tenure conversion was imposed on Muaūpoko. More general questions about the native land laws and the establishment of the court will be addressed in future hearings. This question required us to consider events involving both Muaūpoko and Ngāti Raukawa. We focused as far as possible on Crown actions in respect of Muaūpoko; Crown actions in respect of Ngāti Raukawa will of course be addressed later in the inquiry.

As discussed in section 4.2, Muaūpoko largely co-existed peacefully with their Ngāti Raukawa neighbours from the 1840s to around 1869, when the death of Te Whatanui Tutaki precipitated conflict over leasing and boundaries. Muaūpoko's chosen way of settling this conflict was through tribal rūnanga – at first convened by the iwi themselves, and then by way of a joint Government–Māori arbitration. But the Crown failed to arrange the promised rūnanga, instead pressing for the matter to be resolved by the court – which would individualise titles and facilitate alienations. From 1869 to 1872, Muaūpoko for the most part resisted Crown pressure to obtain surveys and a court hearing, right up to the final moment, when they tried to stop the court from sitting in 1872 to determine and individualise titles. Muaūpoko's opposition was in vain, largely because the native land laws allowed the court to proceed on a single application, putting any iwi who refused to participate at risk of losing everything if the court went ahead in their absence.

In section 4.2.5, we made the following findings of Treaty breach:

- Despite the strong preference and wish of Muaūpoko (and of many Māori nationally) to resolve land disputes through alternative mechanisms such as rūnanga, the Crown failed to legislate for such mechanisms. The Native Councils Bills of 1872 and 1873 showed that the Crown could have provided for such mechanisms but failed to do so. This was a breach of Treaty principles. In the particular circumstances of Horowhenua, the Crown failed to arrange the promised mediation by rūnanga, without a convincing reason for its failure other than the Crown's preference for the Native Land Court, individualised titles, and the land sales which followed in their wake. The Crown's omissions were in breach of its Treaty obligation to act fairly and in partnership with Muaūpoko.
- The native land laws made it virtually impossible for Te Keepa, Muaūpoko, and the allied iwi to stop the court from sitting in 1872, because the court was empowered to proceed so long as just one of the claimant groups appeared and

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prosecuted its claim. This deficiency in the native land laws was a breach of the Crown's obligation to actively protect Muaūpoko, their tino rangatiratanga, and their lands.

- Finally, the Crown applied undue pressure on Muaūpoko to agree to a survey, applications, and the sitting of the court. We accept the Crown's argument that Ministers and officials wanted a peaceful resolution of the dispute, but, if that had been their only or principal motive, they would have been more diligent in providing the requested Crown–Māori arbitration. The acquisition of Māori land was the Crown's principal motivation. It was this which led Ministers and officials to manipulate inter- and intra-tribal divisions, and to apply undue pressure, so as to get the lands surveyed and into court. While drawing short of the use of force, the Government would not accept 'no' for an answer. This was a breach of the Crown's duty to act in the utmost good faith towards its Treaty partner. It was also a breach of the principle of options.

Muaūpoko were prejudiced by these Treaty breaches. Their customary interests were determined by the Native Land Court and transformed into a Crown-derived title, ultimately to their detriment. This detriment was twofold: the loss of a more fluid, inclusive, and appropriate land tenure for their cultural and social needs, and the eventual loss of ownership of a great deal of their lands.

12.4.3 Did section 17 of the Native Lands Act 1867 provide an appropriate form of title and allow for communal control and management of the Horowhenua lands?

(1) *The form of title under which the block was awarded in 1873*

As we discussed in section 4.3.3, title to the Horowhenua block was awarded to 143 individuals. Under section 17 of the Native Lands Act 1867, their names were registered in the court (to go on the back of the certificate of title). The name of one person, Te Keepa Te Rangihiwinui, was placed on the front of the Native Land Court certificate of title.

The 1867 reform was introduced because the Native Lands Act 1865 had provided for only 10 persons to go on the certificate of title (the '10-owner rule'), completely dispossessing all other customary right-holders. The Crown contemplated introducing a trust mechanism in 1867 but eventually decided instead on the section 17 title, which the Crown intended as a stop-gap until large blocks could be partitioned. The names of all owners would now be recorded, with up to 10 placed on the front of the certificate. The owners on the front of the certificate had power to lease the land for up to 21 years; the land was otherwise inalienable. Muaūpoko chose Te Keepa as the sole owner to go on the front of the section 17 certificate, seeing him as their trustee and their guarantee that land would not be sold.

The Native Land Act 1873, however, repealed the 1867 Act. The new legislation made some crucial changes to the alienability of land held under section 17. From the point at which the 1873 Act took effect (1 January 1874), Te Keepa lost his sole authority to lease the land. No alienations could *take effect* until the land was

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partitioned. The only exception was that land could be leased for up to 21 years with the agreement of *all* owners. The 1873 Act, however, did not make pre-partition dealings illegal. Rather, it made them 'void' until confirmed in court at the time of partitioning. Thus, despite the supposed protection of a section 17 title, the following pre-partition dealings occurred without the consent of the community of owners.

(2) *The pre-partition dealings*

As discussed in chapters 4 and 5, a number of pre-partition dealings took place:

- *Donald McLean's deal with Te Keepa and Ngāti Raukawa in 1874:* Without any payment to Muaūpoko, the Crown arranged for Te Keepa to gift 1,200 acres to Ngāti Raukawa. The other 142 owners were not consulted and did not consent (prior to the partition 12 years later). The Crown argued that it was entitled to rely solely on Te Keepa's agreement as rangatira, but that ignored the legal protections which the court title was supposed to have bestowed upon the other owners. In all fairness, the Crown ought to have sought the agreement of the body of owners.
- *The Crown's advances to individuals for purchase of their shares, and its proclamation in 1878 excluding private purchasers or lessees from the block because it was under purchase by the Crown:* Based on the payment of £20 to one individual, and a number of other 'charges' against the block, the Crown issued a proclamation in 1878 that it was in negotiation to purchase the supposedly inalienable Horowhenua block. This proclamation laid bare the Crown's motive of securing the Horowhenua block, or as much of it as possible, for settlement regardless of Māori wishes to retain it. The proclamation prevented the owners from entering into new leases (which they could do under the 1867 and 1873 Acts), thus depriving them of any other income than the sale of their individual interests piecemeal to the Crown. Nonetheless, the Crown did not very actively try to buy, mostly because of its deal with the Wellington and Manawatu Railway Company (see below), and it did not succeed in purchasing any shares.
- *The efforts of Te Keepa's lawyer and agent, Sievwright, to obtain land at Horowhenua in settlement of debts:* The prejudicial effects of the Crown's failure to provide for or assist Te Keepa's Whanganui land trust (as found by the Whanganui Land Tribunal) included consequences for our inquiry district. By mid-1886, Te Keepa had agreed to transfer 800 acres of the Horowhenua block to Sievwright if the Crown provided no assistance.
- *Te Keepa's and the Crown's deals with a private railway company for land running through the Horowhenua block:* In order to establish a township and secure economic development for his people, Te Keepa gifted the land for the railway line to the company. The Crown made a deal with the company that any land purchased in the district prior to 1887 would become the property of the company.

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- *Te Keepa's deal with the Crown for a sale of land to establish a township:* Perhaps the most important of the pre-partition deals, Te Keepa (and company agent Alexander McDonald) advised Muaūpoko in 1886 that the Crown had agreed to the purchase of land for a township, on terms sought by Te Keepa. The Crown dealt solely with Te Keepa and, on the basis of its implied agreement to his terms, succeeded in getting Te Keepa to apply for a partition. Those terms included naming the town 'Taitoko', reserving every tenth section for Muaūpoko, reserving lakes and streams for Muaūpoko (with a chain strip around the lakes), and arbitration if the Crown and Te Keepa could not agree on a price (each side to name an arbitrator).

(3) *Findings*

Our findings on the pre-partition dealings are summarised later, when we deal with their outcomes at the 1886 partition hearing (see section 12.4.4(3)).

Our findings on the section 17 title and the 1878 proclamation were made in section 4.3.5, as follows:

- *The section 17 title:* The Crown conceded that the native land laws did not provide a mechanism for community control of tribal lands, and that the individualisation of title made those tribal lands susceptible to alienation, in breach of Treaty principles. Both concessions apply to the section 17 title, which was not consistent with Treaty principles. We agreed with the Hauraki Tribunal that section 17 was no substitute for the 'effective granting of a form of tribal title . . . since that instead required the creation of a truly corporate title, with tribal leaders installed as trustees'.[11] An effective trust mechanism, with accountability to the community of owners, would have made any pre-partition dealings more Treaty-compliant.
- *The 1878 monopoly proclamation:* The Crown breached the Treaty by failing to consult with or obtain the agreement of the Muaūpoko owners to the imposition of a Crown purchase monopoly on their lands. As far as the evidence shows, the only possible justification was a £20 advance to a single owner. These were not the good faith actions of an honourable Treaty partner towards the Muaūpoko Treaty partner, and significant prejudice followed during the partitioning of Horowhenua and the completion of the township deal (discussed below).

12.4.4 The partition of Horowhenua in 1886 and the completion of pre-partition dealings

(1) *Did Muaūpoko owners agree to the 1886 partitions?*

Under the Native Land Division Act 1882, all owners had to apply for a general partition, or Te Keepa could do so (as the person named on the front of the certificate). Crown officials and the Wellington and Manawatu Railway Company tried

11. Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, 2 vols (Wellington: Legislation Direct, 2006), vol 2, p 447; Waitangi Tribunal, *The Hauraki Report*, 3 vols (Wellington: Legislation Direct, 2006), vol 2, p 699; see also claimant counsel (Naden, Upton, and Shankar), closing submissions, 16 February 2016 (paper 3.3.23), p 126.

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to persuade Te Keepa to apply for partition. There was also some internal pressure from Ngāti Pāriri, as well as frequent requests from Ngāti Raukawa (who wanted the 1874 deed to be given effect). What finally led Te Keepa to apply in 1886, however, was his belief that the Taitoko township deal and the railway would bring settlers and prosperity to his people – and also the pressure of his debt to Sievwright (see section 4.3.4).

As discussed in chapter 5, the partition proceedings demonstrated a significant degree of unanimity among Muaūpoko (as, indeed, had the 1873 proceedings). In particular, the township deal won support for other, less palatable pre-partition deals – that is, the 1874 deal with McLean, the deal to repay the debt to Sievwright with land at Horowhenua, and the gift of land (with no payment to the tribe) for the railway). But there is strong evidence that Muaūpoko themselves decided the partitions out of court (which the court largely rubber stamped). There was significant disagreement about the addition of Warena Hunia's name alongside Te Keepa's in the title for Horowhenua 11 but this, too, was resolved out of court (see section 5.6). Thus, the chiefs and their people exercised tino rangatiratanga over the division of their lands amongst themselves (see section 5.3). The native land laws' provision for the court to rubber stamp voluntary arrangements facilitated rangatiratanga in this respect.

The result of Muaūpoko's arrangements was the partition of Horowhenua into 14 blocks (see table 12.1).

(2) *The form of title provided by the native land laws in 1886*

The Native Land Court used the voluntary arrangement provisions in the Native Land Court Act 1880 as the foundation for its orders. The form of title, however, was not that used in the 1880 Act (a certificate of title under the provisions of the 1873 and 1880 legislation), but rather the form of title specified for partitions in the Native Land Division Act 1882.

The Crown has conceded that it did not provide an effective form of corporate title at that time. It has also conceded that the native land laws' individualisation of tenure made land more susceptible to fragmentation and alienation, and undermined Muaūpoko tribal structures, in breach of the Treaty. These concessions were particularly apposite for the form of title provided by the native land laws in 1886. The Native Land Division Act 1882 stated that the court's partition orders, once signed and sealed, with a survey plan attached, would 'vest such land according to the terms of the order in such person and for such estate, and subject to such restrictions, if any, as shall be expressed therein.'[12] The Act also specified that 'the new instruments of title shall be Crown grants, or certificates under the Land Transfer Acts.'[13] In theory, once the new grantees obtained land transfer certificates, they had an indefeasible freehold title to all the blocks which Muaūpoko had intended would be held in trust.

12. Native Land Division Act 1882, s 4(2)
13. Native Land Division Act 1882, s 10

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Block	Acres	Original purpose of partition
1	76	Strip of land for the Wellington-Manawatu railway line
2	4,000	Township block (Taitoko, later Levin), awarded to Te Keepa
3	11,130	106 Muaupoko to have shares of 105 acres each, for leasing
4	510	In the Tararua Ranges, for 30 Ngati Hamua individuals
5	4	In the Tararua Ranges, for two Rangitane individuals
6	4,620	44 rerewaho (left out in 1873) to have 105 acres each for leasing, awarded to Te Keepa to transfer to them
7	311	In the Tararua Ranges, for three Rangitane individuals
8	264	In the Tararua Ranges, for three individuals
9	1,200	At Raumatangi, for the descendants of Te Whatanui, awarded to Te Keepa to transfer to them (giving effect to the 1874 deed with Native Minister Donald McLean)
10	800	Next to Horowhenua 2, for Sievwright (to satisfy legal debts)
11	14,975	The tribal block west of the railway (with Lake Horowhenua), awarded to Te Keepa and Warena Hunia
12	13,000	The Tararua Ranges, awarded to Ihaia Taueki
13	0	One square foot in the Tararua Ranges, awarded to an individual whose name was supposedly duplicated in the 1873 list
14	1,200	East of the railway line, near Ohau, awarded to Te Keepa

Table 12.1: Partitions of the Horowhenua block, 1886

As noted, the failure to provide proper trust mechanisms or a form of corporate title was a breach of the Treaty. The deficiencies in the form of title provided by the native land laws in 1886 affected the following blocks:

- Horowhenua 3 was vested in 106 individuals for the purpose of leasing their individual shares, but the native land laws did not provide an effective (or any) form of community control, making this land extremely vulnerable to piecemeal alienation for no long-term benefits. That was a Treaty breach, which will be considered in more detail below (section 12.4.5(1)).
- Horowhenua 11 and 12, the tribal heartland and maunga, were to have been held in trust for Muaūpoko by Te Keepa and Warena Hunia (Horowhenua 11) and Ihaia Taueki (Horowhenua 12) as permanent reserves. This intention was defeated by the refusal of successive governments to include appropriate trust mechanisms or other similar corporate models in successive native land statutes. The intentions of the applicants and the tribe were not recorded, and the Crown's native land laws did not in fact empower the court to make, recognise, or enforce such trusts in any case. The court could only make the orders it was empowered to make under the 1882 Act. This meant that the great majority of Muaūpoko owners unknowingly divested themselves of their legal rights in Horowhenua 11 and 12, even though the abolition of the 10-owner rule was supposed to have made it impossible for one or a few rangatira to obtain sole legal ownership of the tribal estate.

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- As claimant counsel pointed out, trust mechanisms had long been commonplace in English law and should have been made available in the native land laws as an arrangement which fitted better than many others in respect of tikanga and enabling tribal communities to exercise their tino rangatiratanga. The result of this deliberate omission in the native land laws was prejudicial to Muaūpoko, as explained further below.
- Horowhenua 6 was meant to have been vested in Te Keepa in trust to convey to the rerewaho, those who had been wrongly left out in 1873, of whom a provisional list of 44 was compiled. The law did not enable the direct vesting of this land in the new owners at the partition hearing, hence Te Keepa faced the prospect of further expensive legal work to complete this arrangement. In the event, it was delayed by other litigation and had not been undertaken by the time of the Horowhenua commission, 10 years later. In this case, the land was eventually returned to the rerewaho in the late 1890s after statutory intervention.

(3) *The pre-partition dealings*

Our findings about the pre-partition dealings were made in section 5.8 as follows:

- *The railway corridor – there was no Treaty breach in respect of this arrangement:* The land for the railway line was vested in the railway company on partition in 1886. Te Keepa received 15 shares in the company but Muaūpoko received nothing for the loss of this land, although they would still have benefited significantly if their retained lands had prospered as a result of the railway. We accept the Crown's submission that this was a private deal in which it was not involved, and for which it bears no responsibility in Treaty terms.
- *The township deal – the Crown's actions breached Treaty principles:* Horowhenua 2 was vested in Te Keepa to sell to the Crown for a township settlement, on terms already offered to the Crown by Te Keepa (and agreed to by the people as the basis of any sale). The Native Department under-secretary told the court that the terms were so far agreed that he and his Minister could affirm the deal would be in the best interests of all the owners. In order, however, to avoid having to give the land to the railway company, the Crown delayed completing the purchase until mid-1887, too late to save Horowhenua 10 from Sievwright. The Crown also refused all of Muaūpoko's terms for the sale, and insisted on a monopoly price that was well below market prices. Te Keepa had little choice but to sell on those terms, and his disenfranchised fellow owners had no say in the matter. The purchase money was supposed to pay for the internal surveys but instead was all spent on litigation, mostly over Horowhenua 11. Thus, Muaūpoko obtained nothing for the sale of this 4,000-acre block.

  The Crown's actions in respect of the township purchase were in breach of the Treaty. The Crown obtained the block from a chief whose debts meant, as a Crown official noted, that he 'could not help himself'. This was not consistent with the Treaty partnership or the principle of active protection. The Crown

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abused its monopoly powers to pay a price that was too low, and to reject all of the provisions which might have provided long-term benefit for the tribe. At the very least, Ministers and officials implied in June 1886 that those terms would be accepted, hence the necessity for a clause in the final agreement cancelling any earlier agreements. Muaūpoko had agreed to sell on the original terms but were disempowered in the final sale because the law did not provide for proper trust arrangements. In all these ways, the Crown acted inconsistently with the principles of partnership and active protection. Muaūpoko were significantly prejudiced by these breaches.

- *Donald McLean's 1874 deal with Te Keepa to gift 1,300 acres to the descendants of Te Whatanui – no Treaty breach:* Horowhenua 9 (1,200 acres) was awarded to Te Keepa to transfer to Ngāti Raukawa, in satisfaction of the 1874 deed, which had been entered into at the request of Native Minister Donald McLean. Muaūpoko were not consulted and did not consent at the time, nor did they receive any payment, but they seem to have agreed unanimously in 1886 that the gift should be given effect. Many saw it as honouring the arrangement between Taueki and Te Whatanui. Some claimants argued that Muaūpoko might have repudiated the gift in 1886 if they had had access to proper, independent advice, but we do not think that was likely in light of the evidence. On balance, we did not think that a Treaty breach occurred (in respect of Muaūpoko) for the gift that became Horowhenua 9. Ngāti Raukawa's claims will be heard later in our inquiry.
- *The Sievwright debt block – no Treaty breach:* Horowhenua 10 (800 acres) was lost to Sievwright to satisfy legal debts, mostly for work done on the Whanganui trust, an arrangement to which Muaūpoko agreed in order to save their rangatira from prison. Despite recognising in principle that the land of other owners should not be taken to pay this debt, the Crown did nothing to assist Te Keepa and so the land was lost. Ultimately, however, Muaūpoko decided to rescue their chief, and did not resile from that choice a decade later in the Horowhenua commission (1896). That was their choice, and it was made on an informed basis. On balance, we did not find that the Treaty was breached.

(4) *Voluntary arrangements*

The Native Land Court Act 1880 provided for the court to give effect to voluntary arrangements made by the owners out of court. While this potentially allowed space for the exercise of rangatiratanga in the Native Land Court system, deficiencies in the provisions for voluntary arrangements at that time proved disastrous for Muaūpoko. A law change in 1890 required the details of voluntary arrangements to be recorded in writing. This much-needed reform came too late for Muaūpoko, who spent much of the 1890s in litigation trying to prove what their intentions had been – especially the question of whether they had intended to vest Horowhenua 11 and Horowhenua 14 in trust.

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The native land laws were thus in breach of the Treaty principle of active protection because there was no provision for the details of voluntary arrangements to be recorded. Additionally, the provisions for voluntary arrangements did not require the court to ascertain whether restrictions on alienation should be placed on blocks the subject of voluntary arrangements. This was also a breach of the principle of active protection. Muaūpoko suffered significant prejudice as a result of these Treaty breaches.

12.4.5 The consequences of the 1886 form of title – litigation and alienation

In chapter 6, we discussed the history of the Horowhenua block from 1886 to 1900. This period showed the harmful effects of the Crown's native land legislation, in combination with the Crown's unfair tactics for the purchase of land. The deficiencies of the 1886 partition – the lack of a provision for recording the details of the voluntary arrangement, the lack of trust mechanisms despite the purported vesting of lands in trustees, and the individualisation of title – resulted in extensive litigation and excessive land loss. By the end of 1900, Muaūpoko only retained about one-third of the Horowhenua block. In our view, many of the Crown's acts or omissions failed to meet Treaty standards during this period.

(1) *Horowhenua 3*

The Crown conceded that the individualisation of title made land more vulnerable to alienation, and harmed the tribal structures of Muaūpoko, but argued that no specific findings could be made about the alienation of individual interests in Horowhenua 3 after its further partition in 1890. Having reviewed the evidence relating to those alienations in the nineteenth century (see section 6.3), we were satisfied that a finding of Treaty breach should be made.

At the time, the Crown's protection mechanism against excessive land loss (leading to landlessness) was to place alienation restrictions on titles. The tribe agreed at the partition hearing in 1890 that almost all Horowhenua 3 sections should be restricted from alienation (other than for leasing), but the restrictions were too easily removed and proved a worthless form of protection. Three-fifths of the block had been sold piecemeal by 1900. It is important to note that some of these alienations took place after the Crown had reimposed pre-emption, and that the Crown itself purchased 835 acres in 1900, after it had imposed a nationwide ban on Crown purchases in the face of mass Māori opposition to excessive loss of land.

In section 6.11.1, we found that the protection mechanism provided by the Crown was flawed and ineffective, and that the significant loss of land in Horowhenua 3 by 1900 was due in large part to the form of title available under the Crown's native land laws. These Crown acts and omissions were in breach of the principles of partnership and active protection. Muaūpoko were significantly prejudiced by the resultant loss of land in Horowhenua 3.

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(2) *The Crown's failure to provide an early remedy for the trust issues in Horowhenua 6, Horowhenua 11, and Horowhenua 12: 1890–95*

As we discussed in section 6.4.1, the pressures of debt led Warena Hunia to apply for a partition of Horowhenua 11 in 1890. After the 1886 partition hearing, Hunia and Te Keepa had obtained a certificate of title under the Land Transfer Act, as provided for in the Native Land Division Act 1882 (see above). This appeared to make Warena Hunia and Te Keepa the absolute owners of Horowhenua 11, and the Native Land Court divided the block between them as their personal property – a decision confirmed upon rehearing in 1891. This partition hearing was the first time that a strong divide appeared in the record between Ngāti Pāriri (who supported Warena Hunia) and the other hapū of Muaūpoko. For the first time also there was a contested narrative about who stayed in Horowhenua in the 1820s and who fled, and disagreement about their respective rights. The unity of 1873 and 1886 was beginning to fracture under the pressure of a significant threat to the remaining land base. Worse was to come as litigation increasingly divided the tribe throughout the 1890s.

Judge Wilson, who presided over the Horowhenua partition in 1886, confirmed for the Crown that Horowhenua 11 was supposed to have been held by Te Keepa and Warena Hunia for the rest of the tribe. T W Lewis, under-secretary of the Native Department, had also been present at the 1886 partition hearing. He knew that Horowhenua 6 and 12 were supposed to have been held in trust as well, and advised Ministers accordingly. The Government's first attempt to restore the disenfranchised owners to these titles, the Horowhenua Subdivision Lands Bill 1891, would have provided an early remedy for the Muaūpoko owners of Horowhenua 11, 12, and 6. From as early as 1891, therefore, the Crown could have rectified the situation and prevented the lengthy, ruinously costly litigation that followed. But the 1891 Bill was not introduced to the House.

Te Keepa, Ihaia Taueki, and other Muaūpoko leaders and tribal members made appeals to the Crown annually for a remedy between 1890 and 1896. In sections 6.4 and 6.5.1–6.5.2, we outlined the detail of the many petitions, draft Bills, Native Affairs Committee reports, and other opportunities for the Crown to have provided redress during that period. Having analysed that material in depth, we agreed with the claimants that each of their attempts to obtain redress was 'a separate occasion where the Crown could have taken steps to properly protect Muaūpoko and their interests'.[14] In the claimants' view, the Crown's 'refusal to take action to settle the trust issue at an early instance was a breach of active protection and good faith'.[15] We agreed with this submission. The Crown repeatedly failed to institute remedies known to and contemplated by it during this period, in breach of the principles of active protection and partnership.

Muaūpoko were significantly prejudiced by this breach of Treaty principles. At the time, both Muaūpoko and officials observed that prolonged litigation would

14. Claimant counsel (Naden, Upton, and Shankar), submissions by way of reply (paper 3.3.29), pp 43–44
15. Claimant counsel (Naden, Upton, and Shankar), submissions by way of reply (paper 3.3.29), p 42

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be expensive and damaging to the tribe, yet this was the inevitable outcome of the Crown's failures to provide an early remedy.

One reason for these repeated failures was the Crown's determination to protect its 1893 State farm purchase, which is discussed in the next section.

(3) *The State farm purchase*

In chapter 6, we outlined the circumstances under which the Minister of Lands, John (Jock) McKenzie, agreed in 1893 to purchase 1,500 acres from Warena Hunia for a State farm. Although the Crown was aware that the partition titles for Horowhenua 11A and 11B had not been completed (caveats had been placed on the title), and that Hunia had no legal right to sell, it nonetheless agreed in principle to go ahead with the purchase in June 1893.

In our hearings, the Crown conceded that 'it purchased land in Horowhenua No. 11 from a single individual knowing that title to the block was disputed, and despite giving an assurance that the interests of the wider beneficiaries would be protected'.[16] This was an apt concession. In August 1893, Wī Parata asked the Minister in the House whether the Government would obtain the agreement of the beneficial owners of Horowhenua 11, since Te Keepa and Hunia were clearly trustees (see section 6.4.6). McKenzie's response was an assurance 'that if the Government did negotiate for the purchase of that block, they would take very good care, before a purchase was made, or before any money was paid over, that the interests of the beneficiaries should be protected, and that they should get the proper value for this land'.[17]

The Minister's undertaking was comprehensively broken in 1893–96. In the end, the purchase had to be imposed on Muaūpoko by legislation (the Horowhenua Block Act 1896), and all right-holders in Horowhenua 11 were deprived of the purchase money except for the Hunia whānau. In addition, the Crown took advantage of Warena Hunia's desperate, indebted state to pay a price that was significantly lower than market value – and, indeed, lower than the valuer and the surveyor-general had recommended.

The Crown conceded that it passed legislation in 1896 to permit the sale after Muaūpoko had 'successfully challenged the purchase in the Supreme Court'.[18] Crown counsel also conceded that the cumulative effect of the Crown's actions meant that the Crown had failed to actively protect the interests of Muaūpoko in Horowhenua 11, in breach of Treaty principles.

In section 6.11.3, we found that the State farm purchase was a breach of the Treaty guarantees, and of the principles of partnership and active protection.

Muaūpoko were prejudiced by the loss of this land, which was – to all intents and purposes – taken from them by legislation. The prejudice was exacerbated by the fact that the land was considered some of the best arable land in the Horowhenua 11

16. Crown counsel, closing submissions (paper 3.3.24), p 178
17. NZPD, 1893, vol 80, p 461
18. Crown counsel, closing submissions (paper 3.3.24), p 178

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block (which contained a lot of poor land), and that the Crown acquired far more land than was necessary for its State farm.

Further, the State farm purchase in 1893 had the effect of making the Crown a staunch defender of Warena Hunia's land transfer title, prolonging the expensive contest over Horowhenua 11. It also resulted in a feud between the Minister of Lands, Jock McKenzie, and Sir Walter Buller (and also Te Keepa). This, too, prolonged the expensive contest and had serious consequences for Muaūpoko in respect of Horowhenua 14 (discussed below in section 12.4.5(9)).

(4) *The Crown's nullification of legal remedies*

Expensive litigation was forced on Muaūpoko as a result of the Crown's failure to provide an early remedy in respect of the trust over Horowhenua 11. Yet, in 1895–96, the Crown intervened to nullify the outcomes of Muaūpoko's legal contest over Horowhenua 11 in the Supreme Court and Court of Appeal.

We described the case of *Warena Hunia v Meiha Keepa* in section 6.4.9, outlining how Te Keepa won his argument in the Supreme Court in 1894 that Horowhenua 11 was held in trust. Warena Hunia lost his appeal the following year. The Court of Appeal confirmed the Supreme Court's direction that the Native Land Court should determine the beneficial owners by way of a case stated under the Native Land Court Act 1894. The order for Hunia to account for the proceeds of the sale of the State farm block was also confirmed, and no more payments were to be made. This was a loss for the Crown as well as for Warena Hunia and his supporters. First, the Government intervened in 1895, bringing in legislation to stay the proceedings (the Horowhenua Block Act 1895). Secondly, after the Horowhenua commission (discussed below), all court proceedings were declared to be 'void and of no effect' by section 14 of the Horowhenua Block Act 1896.

This statutory interference in the tribe's legal remedies was criticised in Parliament at the time. In section 6.11.4, we accepted the point that the courts had only provided partial redress in respect of the State farm purchase, and that the courts' remedy only provided for Horowhenua 11 and not the other trust blocks (Horowhenua 6 and Horowhenua 12). Nonetheless, the Crown's intervention was motivated by its efforts to protect its State farm purchase and its recognition of (and payment to) Warena Hunia as vendor. In other words, the court had found the sale of the state farm block to have been made by a person who claimed 'falsely and fraudulently' to own the land,[19] and so the Crown intervened to protect its interest in this purchase.

We found that the Crown deprived Muaūpoko of their right to enjoy the benefits of court orders in their favour, which was not consistent with their article 3 rights as citizens. We agreed with the claimants that this 'unwarranted interference in Muaūpoko's constitutional rights was yet a further breach of Treaty principles of good faith and active protection.'[20]

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19. *Warena Hunia v Meiha Keepa* (1894) 14 NZLR 71, 94 (SC and CA)
20. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 2: Horowhenua Issues 1873 to 1898, 15 February 2016 (paper 3.3.17(a)), p 51

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(5) *The establishment of the Horowhenua commission*

The Horowhenua commission was one of the most contentious issues in our inquiry. The claimants argued that the commission was a very expensive waste of time, as the appropriate remedies were already known. The commission, in their view, was established to harass Muaūpoko and defend the State farm purchase; accordingly, Crown control of the appointment of members and terms of reference produced the desired result. The Crown, on the other hand, argued that the commission was completely independent and made findings against the Crown. It also argued that the commission was entirely necessary, as the outcome of litigation had been too uncertain, and the commission's brief necessarily extended beyond Horowhenua 11 (see section 6.2.3).

The Horowhenua commission held an intensive inquiry in 1896, after its establishment by legislation in 1895. The decision to have a commission of inquiry was a last-minute change. Originally, the Crown had intended to empower the Native Land Court to inquire into, and provide remedies at the same time for, the question of trusts (see section 6.4.10). The commission, on the other hand, could only make recommendations. One clearly punitive aspect of the legislation was that the costs of the commission were to be charged against whichever division of Horowhenua the commissioners chose. That had not been a part of the original plan for a Native Land Court remedy.

Because the issues about the commission were so contentious, we discussed them in significant detail in section 6.5 of chapter 6. Our findings were made in section 6.11.5.

We agreed with the claimants that the Horowhenua commission was not really necessary to identify appropriate remedies for Horowhenua 11, Horowhenua 6, and Horowhenua 12. As we set out in sections 6.5.1 and 6.5.2, remedies had already been identified for all three blocks, and the courts were in the process of providing a remedy for Horowhenua 11. Where Muaūpoko perhaps stood to benefit from a commission of inquiry, however, was in respect of Horowhenua 2, the township sale, about which unresolved grievances existed. In particular, some Muaūpoko were concerned that they had never received the proposed tenths, and had made representations about it.

Crown counsel accepted that Muaūpoko were not consulted about the establishment of the commission or the charge of the commission's costs against their lands (a crucial point). But the Crown did not accept that the commission and its establishment was a breach of the Treaty, or that its members were biased. We agreed that there was no evidence of conscious bias or political interference with the commission. But Muaūpoko were not consulted about the terms of reference; that decision was made by the Crown unilaterally. Settler interests clearly did influence the Crown-appointed Pākehā commissioners, unchecked by the presence of any Māori members or Māori expertise. In our view, the lack of balance on the commission affected its findings and recommendations.

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In Treaty terms, the principle of partnership required the Crown to consult Muaūpoko as to whether a commission of inquiry was an appropriate means of determining remedies. A good Treaty partner would also have consulted about the scope and powers of the commission, and ensured that Māori expertise was represented on the commission. As noted above, the decision to establish a commission (instead of empowering the Native Land Court to investigate the trusts and readmit owners to the titles) was only a very last-minute substitution. Muaūpoko may well have preferred the more immediate remedy offered by the Horowhenua Block Bill 1895 in its original form. The manner in which the Crown established the commission was in breach of the principle of partnership.

Muaūpoko were prejudiced because a ready remedy was denied to them, and additional – costly and ultimately futile – litigation was forced upon them in the form of the commission's inquiry.

(6) *Failure to consult Muaūpoko about the commissioners' recommendations*

The Horowhenua commission recommended (among other things):

- Horowhenua 2: no remedies were identified for the serious failings in the Crown's township purchase.
- Horowhenua 6: should be returned to a list of 48 owners (the rerewaho) and then purchased by the Crown.
- Horowhenua 11: should be formally reserved for 140 owners by vesting it as a native reserve in the Public Trustee. The State farm purchase should be completed with the payment of all the purchase money to the Hunia whānau. An additional 1,500 acres of the trust estate should be acquired by the Crown for settlement.
- Horowhenua 12: should be vested in 142 owners and purchased by the Crown, and should bear the costs of the commission.
- Horowhenua 14: a 'grievous wrong' had been committed against Muaūpoko, and court action was necessary to provide remedies.

After comparing these recommendations to the remedies already identified prior to the commission, our view was that the commission's recommendations only really offered an opportunity for Muaūpoko to improve their circumstances (as opposed to previously identified remedies) if the commission was correct that Horowhenua 14 was held in trust.

The Horowhenua commission made its recommendations without hearing Muaūpoko on which lands they wished to retain. The Crown then decided unilaterally which of the commission's recommendations should be adopted, and inserted them in a Bill. The Crown's approach was extremely draconian, involving the compulsory purchase of Horowhenua 12 (to pay the costs) and 14, the compulsory purchase of the State farm block, and the compulsory vesting of Horowhenua 11 in the Public Trustee as a native reserve. Most of the commission's recommendations were eventually jettisoned, however, because the Government knew it could not get the Bill through the Legislative Council. In its final form, the Horowhenua Block Act

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1896 still provided for the compulsory acquisition of Horowhenua 12 and the State farm block, but otherwise required the question of trusts and entitlements to be decided all over again in the Native Appellate Court.

Muaūpoko were not consulted about this outcome either, even though they would have to bear the costs of the resultant fresh litigation. Much of the Horowhenua commission's inquiry would now have to be repeated (just as it had covered ground already traversed in part by the superior courts and the Native Affairs Committee). As a result, the 1896 inquiry had been almost entirely futile as far as Muaūpoko were concerned. Also, no form of trust or collective management mechanism was provided for in the final version of the Horowhenua Block Act 1896.

The Crown's failure to consult Muaūpoko or provide more effectively for their interests (by the inclusion of trust and reserve mechanisms in the 1896 Act) was in breach of the partnership principle and the Crown's duty to actively protect Muaūpoko and their lands.

(7) *The Crown's acquisition of Horowhenua 12*

In our inquiry, the Crown conceded that it acquired 20 per cent of the Horowhenua block to pay for a commission about which Muaūpoko were not consulted (including no consultation as to whether they should bear its costs).[21] Crown counsel stated: 'The Crown has conceded that the manner in which it acquired Horowhenua No 12 to pay for the royal commission was a breach of the Treaty and its principles.'[22] We noted in section 6.6 that the Crown actually acquired the whole of Horowhenua 12 (25 per cent of the Horowhenua block) compulsorily, without consultation or consent, even though Muaūpoko may have been paid for a small portion of it.

Not only did the Horowhenua Block Act 1896 confiscate Horowhenua 12, the Crown set the price per acre unfairly low – the Crown had offered almost twice as much when it tried to buy the block in 1892 – and so the proportion of the purchase money retained by the Crown was maximised. We are not sure what happened to the survey lien or whether Muaūpoko were paid the small amount left over after the cost of the commission was deducted.

The Crown has conceded that its compulsory acquisition of Horowhenua 12 was in breach of Treaty principles, and we agreed that this concession was appropriate.

Muaūpoko were prejudiced by the loss of their mountain block, which was very important to their tribal identity, contained the spiritual lake Hapuakorari, and provided forest resources important to their physical and cultural survival.

(8) *The Crown's acquisition of Horowhenua 6 from the rerewaho*

On the Horowhenua commission's recommendation, the Crown purchased individual interests in Horowhenua 6, acquiring almost the whole block within two years. Crown counsel conceded that the cumulative effect of the Crown's actions, including its purchasing and the impact of its native land laws, has left Muaūpoko virtually landless. On the other hand, the Crown argued that there was insufficient

21. Crown counsel, closing submissions (paper 3.3.24), p 183
22. Crown counsel, closing submissions (paper 3.3.24), p 179

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evidence about the alienation of Horowhenua 6 for the Tribunal to make any specific findings about that block.[23]

Our findings about the alienation of Horowhenua 6 were set out in section 6.11.8. In our view, it was clear that the Crown's laws stacked the deck against the individual owners of Horowhenua 6, who had been denied the right to obtain any benefit from their lands for 24 years (since they were first left out of the title back in 1873):

- The Native Land Court Act 1894 imposed a Crown monopoly, which meant that the owners could not lease it to settlers for an income (the purpose for which it was set aside in 1886). In other words, having finally obtained their land after a long delay, they could not obtain the intended benefit from it. The owners' only chance to raise money was to sell to the Crown.
- The Crown monopoly also meant that the Crown could dictate the price it paid, excluding any opportunity for a market price for the owners of Horowhenua 6.
- The Crown purchased individual interests piecemeal, and the owners of Horowhenua 6 had no legal mechanism enabling them to bargain collectively with the Crown to establish the terms of sale or a price for their lands.

Further, we noted that the Crown completed this purchase in 1899, just as it was about to suspend Crown purchasing nationwide in the face of mass Māori opposition to the extent of land loss.

The Crown's purchase of Horowhenua 6 in all these circumstances was in breach of the principles of partnership and active protection. The rerewaho were significantly prejudiced by these Crown acts or omissions, as a result of which many of them lost their last connection with their tribal homeland.

(9) *The loss of Horowhenua 14*

The issue of Horowhenua 14 was politically fraught. The Minister of Lands, John McKenzie, claimed at the time that he was acting to protect Muaūpoko from themselves and from Te Keepa and his creditor, Sir Walter Buller. In the litigation of the late 1890s, Muaūpoko maintained that they had given Horowhenua 14 to Te Keepa at the 1886 partition as his own personal property. It is impossible today to uncover the truth about whether or not this land was originally intended to be held by Te Keepa in trust.

We discussed the fate of Horowhenua 14 in section 6.7, and made our findings in section 6.11.9. What was clear to us was that the litigation pursued by the Crown in 1896–97, following the Horowhenua commission, was politically motivated. The Public Trustee stated as much in 1897.

We accepted that Muaūpoko never consented in 1886 to the inclusion of Lake Waiwiri in Horowhenua 14. Also, Te Keepa admitted in the 1890s that other tribal members were interested in the land. Muaūpoko retained access to Waiwiri during his tenure. Ultimately, however, the block had to be sold to pay the costs of tribal litigation – litigation which would have been avoided entirely if the Crown had

23. Crown counsel, closing submissions (paper 3.3.24), p 169

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provided an appropriate remedy for Horowhenua 11 earlier. The Crown's 'sacred duty' to protect Muaūpoko interests in this block, as it was put by the Crown at the time, did not extend to buying it in 1899 for the purpose of returning it to the tribe.

On balance, the actions of Buller and Te Keepa contributed to the loss of this block for Muaūpoko, but the primary responsibility rested with the Crown because of:

- the faults in its native land laws which failed to provide proper trust mechanisms;
- its failure to provide an early remedy for the disputed trusts despite repeated appeals from Muaūpoko; and
- its pursuit of costly, pointless litigation over Horowhenua 14 *after* Muaūpoko's almost unanimous declaration in 1896 that they had intended it for Te Keepa alone.

The Crown's actions breached the principles of partnership and active protection. Muaūpoko were prejudiced in particular by the loss of their taonga, Waiwiri, which became known as 'Buller's lake' after it passed out of their control.

(10) *The individualisation of title in Horowhenua 11 and the divisive effects of the native land laws*

In 1897, the Native Appellate Court confirmed the existence of a trust in respect of Horowhenua 11 – a point which had been known to the Crown since 1890. The Horowhenua commission's list of persons entitled in Horowhenua 11 was set aside and the question was reinvestigated by the court (although the court did have regard to the evidence produced in the commission).

In 1873 and 1886, Muaūpoko exercised their rangatiratanga to settle their own entitlements in the Horowhenua block out of court. On both occasions, they took an inclusive rather than exclusive approach. The rerewaho, for example, had been mistakenly omitted in 1873 and were provided for in 1886 by the allocation of Horowhenua 6. Any disputes about hapū or individual entitlements were resolved by the tribe before presenting their decisions to the court. But the success of this approach was undermined by the form of title that had been obtained. In particular, the dispute between Te Keepa and the Hunia brothers in the 1890s was cast as a dispute between Ngāti Pāriri and other hapū. The petitions and litigation of the 1890s, starting with the partition hearings of 1890, saw the emergence of conflicting hapū narratives as to ancestral rights – narratives which had not figured in the consensus decisions of 1873 and 1886. By the time the title to Horowhenua 11 was fully individualised in 1897, with the court's selection of 81 owners, the divisions were very pronounced.

Even so, after the Native Appellate Court confirmed the existence of a trust over Horowhenua 11, almost the whole tribe (including Ngāti Pāriri) came together to agree on a basis for entitlement. They agreed out of court that the ownership of Horowhenua 11 would be for those persons named on the 1873 list of owners who were still alive at the original partition in 1886, and who resided permanently on

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the land. This consensus was challenged in court by Hereora's children and others who felt this definition of 'ahi kaa' was unfairly narrow and had insufficient regard to ancestral rights. The outcome was very divisive, and remains so today. In particular, narratives about 'strong men' were advocated in the court and accepted as the basis for greater entitlements by the judge.

We accept that there was some Muaūpoko agency in these matters, but ultimately the responsibility lies with the Crown's native land laws, for failing to provide an effective trust mechanism or corporate form of title which – in the circumstances – would have assisted Muaūpoko with both resolving disputed entitlements and the retention and development of the land. A form of trust was by this time available for sites of significance, which Muaūpoko were able to take advantage of for Lake Horowhenua. But there was no broader trust mechanism, the mechanism which Muaūpoko collectively had favoured since 1873. Such a mechanism should have been included in the Horowhenua Block Act 1896. Alternatively, some way of reserving Horowhenua 11 for the tribe ought to have been inserted in that Act, as the Horowhenua commission recommended – but without any element of compulsion. Instead, full individualisation of title occurred in 1897.

The native land laws, in particular the Horowhenua Block Act 1896, were not consistent with Treaty principles. Muaūpoko were significantly prejudiced thereby.

12.4.6 Summary of Treaty findings

For nineteenth-century land issues in respect of the Horowhenua block, we summarise our Treaty findings as follows:

- The Crown's native land laws were inconsistent with Treaty principles because they provided no alternative to the Native Land Court for deciding customary entitlements. In particular, the Crown failed to provide the promised Crown–Māori arbitration by rūnanga for Horowhenua. Instead, in breach of Treaty principles, the Crown imposed the Native Land Court and tenure conversion on Muaūpoko despite sustained resistance from the majority of the tribe. The Crown's native land laws also allowed the court to sit so long as one group appeared and prosecuted a claim. This made it too risky for Muaūpoko and their allies to continue refusing to participate in the 1872 hearing. This aspect of the Crown's native land laws was also inconsistent with Treaty principles.
- The Crown conceded that the native land laws failed to provide for an effective means of corporate title, and that the individualisation of title made tribal lands susceptible to fragmentation and alienation, in breach of the Treaty. We agree. In our view, this included the failure to provide trust mechanisms, which proved particularly serious for Muaūpoko and the Horowhenua block from the 1870s to the 1890s. The section 17 title in 1873 (under the 1867 Act) did not provide a trust mechanism or a fair mode of conducting pre-partition dealings, in breach of Treaty principles. The form of title in 1886 (a certificate of title under the Land Transfer Acts) carried the individualisation further

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and had serious consequences for Muaūpoko in respect of Horowhenua 3, Horowhenua 6, Horowhenua 11, Horowhenua 12, and Horowhenua 14.

- The Crown breached the Treaty by failing to consult with or obtain the agreement of the Muaūpoko owners to the imposition of a Crown purchase monopoly on their lands in 1878, which had a crucial impact after the partition in 1886.
- The Crown's purchase of the township block (Horowhenua 2) breached the principles of partnership and active protection in the following manner. It obtained this block from a chief whose debts meant, as a Crown official noted, that he 'could not help himself'. The Crown also abused its monopoly powers to pay a price that was too low, and to reject all of the provisions which might have provided long-term benefit for the tribe. At the very least, Ministers and officials implied in June 1886 that Te Keepa's township terms would be accepted, hence the necessity for a clause in the 1887 agreement cancelling any earlier agreements. Muaūpoko had agreed to sell on the original terms but were disempowered in the final sale because the law did not provide for proper trust arrangements.
- The Crown's native land laws breached the Treaty principle of active protection because the Native Land Court Act 1889 did not require the details of voluntary arrangements to be recorded. Additionally, the provisions for voluntary arrangements did not require the court to ascertain whether restrictions on alienation should be placed on blocks the subject of voluntary arrangements.
- Horowhenua 3: the protection mechanism provided by the Crown (restrictions on alienation) was flawed and ineffective, and the loss of three-fifths of Horowhenua 3 by 1900 was due in large part to the form of title available under the Crown's native land laws. These Crown acts and omissions were in breach of the principles of partnership and active protection.
- The Crown failed to provide an early remedy for the intended trusts in respect of Horowhenua 6, 11, and 12, which resulted in ruinously expensive litigation and significant land loss. From as early as 1891, the Crown had the knowledge and means to rectify the situation. The Crown's failure to provide an early remedy breached the principle of active protection.
- The Crown conceded that it purchased the State farm block in breach of Treaty principles, including passing legislation to permit the sale after it had been challenged successfully in litigation, and that it failed to actively protect the interests of Muaūpoko. We agreed, and found that the State farm purchase was a breach of the Treaty guarantees, and of the principles of partnership and active protection.
- In respect of *Warena Hunia v Meiha Keepa*, the Crown deprived Muaūpoko of their right to enjoy the benefits of court orders in their favour, which was not consistent with their article 3 rights as citizens. We agreed with the claimants

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that this 'unwarranted interference in Muaūpoko's constitutional rights was yet a further breach of Treaty principles of good faith and active protection.'[24]

- The Crown established the Horowhenua commission in a manner inconsistent with Treaty principles. It failed to consult the tribe about its decision to abandon a Native Land Court remedy, the necessity for a commission, or its terms of reference. The Crown also failed to provide for any Māori members or expertise, which skewed the commission's results.
- The commission's inquiry proved to be an expensive waste of time, and further expensive litigation proved necessary to provide a remedy. The Crown failed to consult Muaūpoko about the commission's recommendations or about its Horowhenua Block Act 1896. The Act imposed the compulsory acquisition of Horowhenua 12 and the State farm block, but otherwise required the question of trusts and entitlements to be decided all over again in the Native Appellate Court. The Crown's failure to consult Muaūpoko or provide more effectively for their interests (by the inclusion of trust and reserve mechanisms in the 1896 Act) was in breach of the partnership principle and the Crown's duty to actively protect Muaūpoko and their lands.
- The Horowhenua Block Act 1896 confiscated Horowhenua 12 (one-quarter of the Horowhenua block) to pay the costs of the commission – with a little money left over which may or may not have been paid to Muaūpoko. This was in breach of the plain meaning of the Treaty and of its principles. The Crown conceded that its acquisition of Horowhenua 12 was inconsistent with the Treaty.
- The commission recommended that the Crown acquire Horowhenua 6 from the rerewaho, who had been denied any benefit from their lands since 1873. The Crown's native land laws stacked the deck against the rerewaho, by imposing a monopoly which deprived them of any way to raise money on their lands except by selling to the Crown, precluded them from obtaining a market price, and prevented them from negotiating the price collectively. The Crown's purchase of Horowhenua 6 in these circumstances was in breach of the principles of partnership and active protection.
- Muaūpoko also lost their remaining interest in Horowhenua 14, which (under Te Keepa's ownership) still included access to Lake Waiwiri, largely because of the expensive litigation forced upon them by Crown actions in breach of the Treaty.
- Title was fully individualised in Horowhenua 11 as a result of the Horowhenua Block Act 1896, and Muaūpoko were forced into a divisive contest over their entitlements which still divides the tribe today. The Horowhenua Block Act 1896 was in breach of Treaty principles for this reason too. The commission had recommended a reserve held in trust but this did not eventuate.

Muaūpoko were significantly prejudiced by these Treaty breaches, as explained above and in chapters 4–6.

24. Claimant counsel (Bennion, Whiley, and Black), closing submissions, part 2 (paper 3.3.17(a)), p 51

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12.5 Twentieth-century Land Issues

In chapter 7, we addressed Muaūpoko's claims about twentieth-century land loss.

As elsewhere in the report, we focused on matters that were distinct to Muaūpoko. The chapter examined the extent of land loss in those parts of the Horowhenua block in which Muaūpoko retained ownership interests after 1900, along with two of Muaūpoko's specific grievances: the creation and administration of a native township at Hōkio on 40 acres of Horowhenua 11B42; and the Crown's last major land purchase at Horowhenua, of 1,088 acres of coastal land in 1928 (Horowhenua 11B42C1).

We lacked sufficient evidence to assess broader twentieth-century land issues, such as the process of partition; the role of Māori land boards and land councils; leasing; support for Māori farming; public works takings; rating; and consolidation schemes. For that reason, we have left these issues and modes of alienation to be considered later in our inquiry, when we examine twentieth-century land issues more generally.

12.5.1 Muaūpoko land loss in the twentieth century

By the end of 1900, Muaūpoko tribal members only retained about one-third of the original Horowhenua block, held in individual interests. At the time of our hearings in 2015, Muaūpoko owners held some of their lands in trust but the sum total of Māori freehold land was only about 10 per cent of the original block.

The Crown in its closing submissions conceded 'the cumulative effect of its actions and omissions, including Crown purchasing, public works takings and the operation and impact of the native land laws, has left Muaūpoko virtually landless', and that its 'failure to ensure that Muaūpoko retained sufficient land for their present and future needs was a breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles'.[25]

In section 7.2, we set out the statistical basis for our analysis of Muaūpoko's twentieth-century land loss. At the end of 1900, Muaūpoko retained interests in three partitions of the Horowhenua block: Horowhenua 3, 6, and 11. Of the land lost by Muaūpoko in these blocks during the twentieth century, by far the vast majority, over 88 per cent, was a result of private purchases. A further 10 per cent was lost through Crown purchasing, almost all of it in a single transaction, the Crown's purchase of 1,088 acres of coastal land in 1928 (see section 12.5.3).

Muaūpoko also lost many smaller parcels of land or land interests through public works takings, vesting for non-payment of rates, and the process of conversion of 'uneconomic interests'. In addition, their twentieth-century landholdings were subjected to processes that changed the status of the land but did not always lead to land loss. These included the vesting of land in Māori land councils and Māori land boards, 'Europeanisation' of Māori land titles, and the establishment of a native township at Hōkio (see section 12.5.2 for the latter).

25. Crown counsel, closing submissions (paper 3.3.24), p 24

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By the time of our hearings in 2015, Muaūpoko were virtually landless. In our estimation, tribal members retained only 5,288 acres, or roughly 10 per cent of the 52,460-acre Horowhenua block as Māori freehold land. Individual Muaūpoko may also have retained ownership of land that was 'Europeanised' (converted from Māori freehold to general land).

As we have noted, the Crown has conceded that it failed to ensure Muaūpoko retained sufficient land for their present and future needs, and that its actions and omissions have left Muaūpoko virtually landless, in breach of the Treaty and its principles. Based on our analysis of Muaūpoko's twentieth-century land loss, we agree that these Crown acts and omissions breached the Treaty.

12.5.2 Hōkio native township

In section 7.3, we found that the Crown compulsorily acquired legal ownership and control of the Hōkio native township in 1902 on 40 acres of prized coastal land so that Levin residents could have holiday homes by the sea. This was an abuse of the powers granted the Crown under the Native Townships Act 1895, which was intended to establish townships in the interior for the facilitation of settlement. Nor could such a compulsory taking be justified as essential in the national interest or as a last resort. By contrast, 1901 legislation allowed Māori owners to choose to vest their land in a Māori land council and to have (with their consent) a native township established on that land. In the case of Hōkio, the Crown also acquired absolute ownership of 42.5 per cent of the township lands for roads and public reserves, without consent or compensation. Further, according to the chief surveyor at the time, there was no prospect that the Hōkio township would ever be of real benefit to its Māori beneficial owners. The Crown's acquisition of the Hōkio township land in all these circumstances, and without the consent of its Muaūpoko owners, was a breach of the Treaty principles of partnership and active protection.

We agreed with the Whanganui Land Tribunal that the native townships regime established a system of management which denied the beneficial owners a meaningful role. In 1910, a new Native Townships Act transferred legal ownership and control of the Hōkio township from the Crown to the district Māori land board, without consulting or obtaining the consent of the Muaūpoko beneficial owners. This was a breach of the ownership and tino rangatiratanga guarantees in the Treaty. The 1910 legislation also allowed the board to sell township lands, but the Crown promised that there were safeguards to ensure that the beneficial owners' rights and interests were protected. The Crown did not in fact ensure that these safeguards were effective, and township lands were sold from the 1920s to the 1940s without the proper consent of the Muaūpoko beneficial owners. This was a breach of the article 2 guarantees and the principle of active protection. Finally, we found that the Crown did not consult or obtain the agreement of the Muaūpoko owners to the vesting of legal ownership and control of their township lands in the Māori Trustee (transferred from the land board). This was a breach of Treaty principles.

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In respect of prejudice, we found that Muaūpoko were prejudiced by losing legal ownership and control of their Hōkio township lands for a number of decades, and the absolute loss of land sold in the interim. The owners did receive some lease income, but the amounts were very small.

12.5.3 The Crown's last major land purchase

In section 7.4, we found that the Crown used its powers under Māori land legislation to circumvent the requirement for meetings of assembled owners, enabling it to buy undivided, individual interests in 1,088 acres of Muaūpoko's highly prized coastal land in 1928, in order to defeat the owners' collective decision not to sell and obtain their land for a local settler.

The legislative framework governing Māori land at the time of the Horowhenua 11B42C1 purchase provided a system of meetings of assembled owners. The quorum requirements were very low, and Māori land could be sold on the vote of a majority of those present at a meeting (by share value). But this provision at least offered Māori owners the possibility of collective decision-making about Māori land (albeit one-off decisions only). In 1913, the Crown gave itself the power to circumvent meetings of owners and buy undivided, individual interests if a meeting resolved not to sell. These provisions of the native land legislation fell well short of providing for tino rangatiratanga in respect of land, and offered a relatively flawed means of group decision-making which the Crown could circumvent at will.

In this context, a private purchaser sought to obtain Horowhenua 11B42C but a meeting of assembled owners did not wish to sell. The Crown intervened at the request of this private citizen, but its purchase offer was also rejected by a meeting of owners. The Crown then used its powers to buy undivided, individual interests, a power not available to private citizens, in order to defeat the owners' collective decision not to sell, and to obtain their land for a local settler. This method of purchase enabled the Crown to pay a price that was 20 per cent lower than it had offered at the meeting, since its purchase of individual interests denied the owners any collective power to set or bargain over the price.

We found that the Crown, by its actions, betrayed the mutual trust which comprises the basis of the relationship between the Treaty partners, circumventing the collective will of the Māori owners in order to aid a private buyer, and lowering the price into the bargain. The Crown breached the principle of partnership, which entails a duty to act in the utmost good faith towards its Treaty partner. The Crown also breached the principle of equity, which required the Crown to act fairly as between Māori and non-Māori, and not to prioritise the interests of settlers to the disadvantage of Māori.

As to prejudice, we found that the Muaūpoko owners of this piece of ancestral coastal land, which could have been a source of income to them through afforestation, were clearly prejudiced by these Treaty breaches.

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12.6 Lake Horowhenua and the Hōkio Stream

12.6.1 Lake Horowhenua and the Hōkio Stream are taonga

As discussed in chapter 8, Lake Horowhenua and the Hōkio Stream are taonga for Muaūpoko. Many of the Muaūpoko witnesses who appeared before us described the great importance of Lake Horowhenua to their tribal identity. The lake and stream were (and are) highly valued for spiritual reasons, and also as sources of food and other materials. In our inquiry, the Crown acknowledged the 'importance to Muaūpoko of Lake Horowhenua and the Hōkio Stream as part of their identity' and as 'fishing areas for cultural and physical sustainability'. The Crown also accepted that 'Muaūpoko value Lake Horowhenua and its resources as taonga', and it acknowledged 'the importance of the Lake as a source of physical and spiritual sustenance to Muaūpoko'.[26] These were important acknowledgements, in our view.

12.6.2 The 1905 'agreement' and Act

In the late 1890s, the growing Levin settlement was interested in the lake for boating and aquatic sports, and also as a prized scenic attraction. Settler groups lobbied the Crown to acquire the lake and its surrounds for the public. As set out in section 8.2.2, the Levin community negotiated access to the lake for picnics and other activities, paying Muaūpoko for access as necessary, while the Crown set in train a process to take the islands in the lake and surrounding lands under the Scenic Reserves Act 1903. There was also talk of nationalising the lake itself by Act of Parliament. Native Minister Carroll intervened and negotiated an interim agreement for public access in 1904, with a view to arranging a more permanent agreement in the near future. Carroll's process trumped the scenic reserve taking, and – in the Crown's view – an agreement was negotiated in 1905, which was given effect soon after by the Horowhenua Lake Act 1905.

The parties in our inquiry differed significantly over the 1905 'agreement'. According to the claimants, there was either no agreement at all, or there was a limited agreement to a set of high-level principles which needed to be further negotiated and formally agreed with the lake trustees. From the evidence at the time, Muaūpoko understood themselves as having agreed to free public access for aquatic sports. The Crown, however, understood the agreement to be the items recorded subsequently by a Crown official, as follows:

1. All Native bush within Lake Reserve to be preserved.
2. 9 acres adjoining the Lake, – where the boat sheds are and a nice Titoki bush standing, – to be purchased as a public ground.
3. The mouth of the Lake to be opened when necessary, and a flood-gate constructed, in order to regulate the supply of water in the Lake.
4. All fishing rights to be conserved to the Native owners (Lake not suitable for trout).
5. No bottles, refuse, or pollutions to be thrown or caused to be discharged into the Lake.

26. Crown counsel, closing submissions (paper 3.3.24), p 44

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6. No shooting to be allowed on the Lake. – The Lake to be made a sanctuary for birds.
7. Beyond the above reservations, the full use and enjoyment of the waters of the Lake for acquatic [*sic*] sports and other pleasure disportations, to be ceded absolutely to the public, free of charge.
8. In regard to the preceding paragraph, the control and management of the Lake to be vested in a Board to be appointed by the Governor – some Māori representation thereon to be recognised.
9. Subject to the foregoing, in all other respects, the Mana and rights of the Natives in association with the Lake to be assured to them.[27]

The list of 'items' thus included points which the Crown recorded Muaūpoko as agreeing to, and items which must be understood as Crown assurances or undertakings. This list of terms was not signed by the Muaūpoko people present at the meeting, which included one lake trustee, and nor was it further negotiated before the Crown introduced the Lake Horowhenua Bill 1905 to Parliament a fortnight or so later. Nor were the Muaūpoko owners consulted about the Bill, which was enacted at the end of October 1905.

Our conclusion in section 8.2.3 was that there was a tentative agreement in principle on some inchoate terms in October 1905, to which some Muaūpoko 'elders' (as Wī Reihana said in 1934), some Levin settlers, and Premier Seddon had agreed, with the Native Minister interpreting. This was clearly not an adequate or complete agreement, let alone a formal or signed deed of agreement, although Muaūpoko in later decades confirmed that they had consented to public use of the surface of the lake for boating. In our view, the Crown was very clearly a party to this 'agreement'. The next step for the Crown was either to seek the formal agreement of the lake trustees to a contract or deed (and the endorsement of the court to any variance of the trust), or – as Sheridan recommended – legislation. The choice to legislate without first seeking formal agreement on more fully developed terms was clearly a breach of Treaty principles. It was not consistent with the principle of partnership, nor was it consistent with the plain meaning of article 2 of the Treaty.

The Horowhenua Lake Act 1905 declared the lake to be a 'public recreation reserve', and brought it under the Public Domains Act 1881. It established a domain board to control all activities on the lake, of which at least one-third of the members were to be Māori. And the Act specified that the Māori owners' use of the lake was not to interfere with the use of the public. This put in place an administrative regime, which – apart from the proportion of Māori board members – has controlled the lake ever since.

The English version of article 2 of the Treaty guaranteed that Māori would retain their lands and all other properties for so long as they wished. The Māori version guaranteed their tino rangatiratanga over their taonga. The 1905 Act, however, took control of Lake Horowhenua from its Muaūpoko owners and vested it in a board,

27. 'Horowhenua Lake Agreement', not dated [1905] (Paul Hamer, '"A Tangled Skein": Lake Horowhenua, Muaūpoko, and the Crown, 1898–2000', June 2015 (doc A150), pp 34–35)

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turning their private property into a public recreation reserve and subordinating their use of their private property (a taonga) to that of the public. This was done without adequate consent or any compensation, in clear breach of article 2. In our view, this was a serious Treaty breach which left Muaūpoko essentially powerless to exercise tino rangatiratanga over their taonga, which will be evident in the next section of this chapter.

The enactment of the 1905 Act was not the result of a true or fair balancing of interests, as Crown counsel argued in submissions (see section 8.2). If the public possessed a legitimate 'interest' in this privately owned lake, it amounted at that time to a desire to use it for boating and recreation, for which privilege the public could negotiate arrangements with the owners (including for payment, as they had prior to 1905). This public 'interest' in the lake was hardly of a kind which justified imposing the 1905 Act and the provisions of the Public Domains Act on the Māori owners, without their consent or any payment of compensation. Even if the 1905 'agreement' had contained final and fully agreed terms, the application of the Public Domains Act to Lake Horowhenua had never been one of them. For Muaūpoko the prejudice was enormous. This included an economic prejudice – if they had been able to continue charging settlers for use of their private lake, they would have benefited in a substantial way from the settlement and colonisation brought about by the Treaty.

Crown counsel argued that the 1905 Act simply regulated rather than expropriated private property rights. As set out in our findings in section 8.2.5, we did not accept that position. We did agree with the Crown that legal ownership of the lakebed was not taken by the Horowhenua Lake Act 1905. But Muaūpoko owners lost the right to develop their lake, which was a right inherent in all properties under English law. It was also a Treaty right, as the Waitangi Tribunal explained in its report *He Maunga Rongo*.[28] The 1905 Act transferred the development right in Lake Horowhenua to the public, which could then develop the lake as a pleasure resort, giving not only this right but also the exclusive control of all other private property rights to a public board. Our conclusions from this were as follows:

- First, under the 1905 Act, Muaūpoko fishing and other uses of their property were not to interfere in any way with public recreation and were therefore subordinated to it by statute.
- Secondly, under the Public Domains Act 1881, many of those uses were also prohibited in a public domain or required explicit domain board permission.
- Thirdly, the development right was transferred from the Muaūpoko owners to a public board.

In our view, this was as near to an expropriation as could occur without outright confiscation of the legal ownership. It was a breach of the Māori owners' article 2 rights, and of the principles of partnership and active protection.

The 1905 Act provided for the Māori owners to be represented on the domain board, which potentially gave them a say in how their uses of their property were

28. See Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 3, chapter 13

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controlled and/or prohibited in the future. But the Crown's omission to negotiate an appropriate level of representation and then guarantee it in the 1905 Act was a breach of the principle of partnership and the property guarantees in the Treaty.

There were further omissions in the 1905 Act. Crown counsel made an important concession: the Crown 'promoted legislation in 1905 that failed to adequately reflect the terms of the Horowhenua Lake Agreement of 1905'.[29] Crown counsel noted the failure to prohibit pollution from entering the lake (item 5 of the Crown's record of the agreement), which was inconsistent with Treaty principles. The Crown qualified this concession, however, by reference to a domain board bylaw which prohibited littering. Crown counsel argued that items like pollution were left out of the legislation because they could be made the subject of bylaws.

In section 8.2.5, we found that the Crown's failure to include prohibitions against the discharge of pollution and the introduction of trout – which were recorded by the Crown in 1905 – was in breach of the principles of partnership and active protection. Similarly, the Crown failed to negotiate or include a mechanism by which the owners could agree on the control of lake levels (item 3). This was a breach of Treaty principles. These breaches were to have serious consequences, as we set out in chapters 8 and 9.

12.6.3 The 'whittling away' of Muaūpoko rights, 1905–34

Under the Horowhenua Lake Act 1905 and subsequent legislation, there was a 'whittling away' of the Muaūpoko owners' property rights, authority, and tino rangatiratanga – as the tribe explained to a committee of inquiry in 1934. In section 8.3, we explained that significant inroads were made on the owners' rights, to the extent that a Crown Law Office opinion concluded in 1932 that the 1905 Act had transferred legal ownership of the lakebed and the chain strip of land around the lake from the Māori owners to the Crown.

In section 8.3.8, we found that the following Crown acts or omissions had breached the Treaty principles of partnership and active protection, and the property guarantees in article 2 of the Treaty:

- The Crown recognised Pākehā as having the right to fish in Lake Horowhenua, ending Muaūpoko's exclusive fishing rights without consent or compensation, after trout and other predatory species were introduced by acclimatisation societies and the domain board (also without the agreement of the Muaūpoko owners). Crown counsel acknowledged that 'the extension of public rights to include a right to fish was contrary to the intent of the 1905 Agreement and prejudicial to the owners of the Lake bed', who 'maintained they had the exclusive right to fish the Lake'.[30]
- Legislation placed the chain strip unequivocally under the control of the domain board in 1916. Muaūpoko then had no rights to cut flax, use the strip, or fence it off, yet the board could not actually stop farmers from burning off vegetation and grazing their stock on the chain strip at will. Muaūpoko did

29. Crown counsel, closing submissions (paper 3.3.24), p 23
30. Crown counsel, closing submissions (paper 3.3.24), p 44

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not agree to domain board control of the chain strip, and their protests were ignored.

- Levin borough councillors were given control of the domain board by legislation in 1916, while the minimum one-third representation for Muaūpoko was turned into a one-third maximum, sealing their minority status and relative powerlessness on the board. Again, Muaūpoko protests against the 1916 legislation proved futile. The Crown's failure to consult Muaūpoko, to obtain their agreement to a proportionate representation on the board, to set an appropriate proportion of members for joint management, and to establish a sound appointments procedure was inconsistent with Treaty principles.

In addition to these Treaty breaches, significant inroads were made for the first time on the rights of the Muaūpoko owners of the Hōkio Stream. Local farmers wanted to control the stream and lower the level of the lake, so as to create more dry land for farming (see section 8.3.7). As a result, legislation in 1916 vested control of the stream (and one chain on either side) in the lake domain board, which was also placed under the control of Levin borough councillors with a two-thirds majority. As noted above, the Muaūpoko owners protested against the 1916 legislation without success. Nonetheless, the domain board proved unable to carry out any significant works on the stream, and there was agitation for it to be placed under a drainage board.

In 1925, a Government commission 'brokered a deal whereby the [Hōkio] drainage board would clear the stream but not alter the stream banks'.[31] Historian Paul Hamer summarised the outcome. It seemed that an amicable settlement had been reached, which Muaūpoko supported, but, as Mr Hamer pointed out,

> the drainage work then carried out in February 1926 went much further than this, and two Muaūpoko men were arrested for obstructing the works. Another agreement was brokered [in March 1926], this time by the Native Minister's private secretary [Henare Balneavis], under which no further widening or deepening would happen without Māori agreement or Ministerial arbitration. But when the empowering legislation so long wanted by the advocates of drainage was finally passed in September 1926, this gave the drainage board the power to widen and deepen the stream so long as it 'reasonably' safeguarded Māori fishing rights. The two negotiated agreements of late 1925 and early 1926 were forgotten. Muaūpoko believed, moreover, that the damage had already been done.
>
> The work on the Hōkio Stream lowered the lake by four feet, destroying lake edge habitat for eels and kakahi. The new channel at the upper reaches of the stream also made the use of eel weirs extremely difficult. Farmers rushed to make use of what they saw as their reclaimed land surrounding the lake, fencing to the water's new edge and burning or allowing their stock to destroy lakeside vegetation. Muaūpoko complained to both the domain board and the Native Minister without success, although

31. Paul Hamer, summary of '"A Tangled Skein": Lake Horowhenua, Muaūpoko, and the Crown, 1898–2000', October 2015 (doc A150(k)), p 4

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the Marine Department did confirm that eel numbers had been reduced and raised the possibility of paying Muaūpoko compensation.[32]

Our finding in section 8.3.8 was that legislation in 1926, in breach of Treaty principles and in violation of the 1925 and March 1926 agreements, gave the Hokio Drainage Board exclusive power to control and deepen the Hōkio Stream. The resultant drainage works lowered the lake by four feet and caused significant damage to the eel fishery, shellfish beds, and the lakeside vegetation. Vital eel weirs were removed and could not be replaced. Muaūpoko protests were investigated by the Crown in 1931 but no remedy eventuated.

Contrary to the Crown counsel's submission, the Crown did not balance interests in an appropriate or Treaty-compliant manner during this period. It prioritised even minor settler interests over those of Muaūpoko in all of the instances noted above. This was a breach of the principle of equity, which required the Crown to act fairly as between settler and Māori interests.

Muaūpoko were heavily dependent on the resources of the lake and the Hōkio Stream, and even the flax and other resources of the chain strip. In theory, the recreational interests provided for in the 1905 Act ought not to have been incompatible with exclusive Muaūpoko fishing rights or the tribe's use of resources on the chain strip. As noted earlier, Muaūpoko's understanding of the 1905 agreement was that settlers could access the lake for boating and aquatic sports, not that the owners would give up control of the lakeside strip or allow others to fish in their lake. At the very least, their consent should have been obtained to these infringements of their rights, or appropriate compensation offered. In respect of drainage, the Minister of Internal Affairs admitted in 1931 that Muaūpoko had suffered injustice for the sake of reclaiming an inconsiderable amount of land. That was patently unfair.

Thus, as demonstrated by our analysis in sections 8.3.4–8.3.7, there had been no fair or appropriate balancing of interests. Rather, the Crown prioritised even minor settler interests over those of Muaūpoko. Muaūpoko were only consulted in 1926 after they took the law into their own hands in protesting the drainage works. Otherwise, they were barely consulted and their interests almost always disregarded or minimised. This was not consistent with the Treaty principles of partnership, active protection, or equity (which required the Crown to act fairly as between Māori and settlers).

Nor was it consistent with the 1905 agreement. By the 1930s, however, officials could not locate the most basic of information about the agreement. Faced with that situation and an Act purporting to give effect to it, officials did not ask Muaūpoko for information about the agreement (nor even check the parliamentary debates about the 1905 Act). Muaūpoko rights were instead read down by the Crown Law Office, and this was translated into public policy. No fresh agreement was sought.

Muaūpoko were prejudiced by these Crown acts and omissions. The evidence showed that their property rights were compromised, their mana reduced, and

32. Hamer, summary of '"A Tangled Skein"' (doc A150(k)), p 4

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their tino rangatiratanga violated. Their fisheries were harmed, their lake lowered four feet (damaging the lake shore habitat), and their ability to sustain themselves from their lake and stream was significantly reduced. The impact of Crown acts or omissions was especially severe during the Depression.

12.6.4 The 1934 committee of inquiry and the negotiation of a new agreement, 1934–53

In 1933, the Levin Borough Council wanted to develop the lake as a pleasure resort but sought clarification of the '"fishing and other rights" of the Native[s]' before trying to do so.[33] As discussed in section 9.2.3, the Government favoured the council's plans. It appointed Judge Harvey (of the Native Land Court) and H W C Mackintosh (commissioner of Crown lands) to hold a public inquiry. The committee's inquiry found that the 1905 agreement was intended to be a 'grant of user of the water surface by the Natives with fishing specially reserved', and was not 'an alienation of the land with a free right of fishing common to both European and Māori'.[34]

The Harvey–Mackintosh report was a significant advance for Muaūpoko in that it recognised their ownership of the lakebed and chain strip, and recommended the return of most of the chain strip and dewatered area to their control. It failed, however, to define the respective rights of the domain board and the Māori owners under the two legislative regimes (the 1905 Act and amending Acts, and the Public Reserves, Domains and National Parks Act 1928). Nor could the committee make recommendations about drainage works, which were outside its terms of reference, even though the Muaūpoko evidence had showed burning grievances on that matter.

The committee's recommendations were partly favourable to Muaūpoko, but it also recommended that the domain board be 'given' 83.5 chains for its resort plans. For the next 19 years, the Crown insisted on the latter point, with a brief blip in 1952 when it tried to buy the whole lake and chain strip as well. Finally, in 1953, the Crown agreed to the free use (not purchase) of a much smaller area of 22 chains, fronting the 13-acre reserve (later called Muaupoko Park). Once agreement was reached on this point, a more comprehensive settlement was negotiated with Muaūpoko (see below).

Why did it take so long to reach a settlement? The Crown argued that it was reasonable for it to follow the recommendation of the Harvey–Mackintosh report (to acquire the 83.5 chains), and that delays were also caused by the Depression, the Second World War, and the resistance of local authorities. The claimants, on the other hand, maintained that it was not reasonable for the Crown to insist on an alienation of yet more Muaūpoko land when the tribe had already lost so much.

33. Hudson to under-secretary for lands, 6 November 1933 (Hamer, '"A Tangled Skein"' (doc A150), p 108)
34. Committee of inquiry, report to Minister of Lands, 10 October 1934 (Paul Hamer, comp, papers in support of '"A Tangled Skein": Lake Horowhenua, Muaūpoko, and the Crown, 1898–2000', various dates (doc A150(g)), p 1566)

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They also argued that the Crown did not really need the 83.5 chains in any case, and so the delay was not only unfair to Muaūpoko but entirely unnecessary.

Article 2 of the Treaty stipulated that Māori would retain their land for so long as they wished, but could alienate it if they chose. Treaty principles required that any alienation had to be made by the free and informed choice of the Māori owners. Under the Treaty, the Crown had no right to insist that Muaūpoko give it 83.5 chains for no consideration, or even for a payment, unless there was no other alternative and a pressing need in the national interest. That was clearly not the case in this instance. Further, as demonstrated in 1953 by the first-ever site inspection, the land was boggy and unsuitable for inclusion in the recreation reserve. The Crown did not even need the land that it had insisted so long on acquiring free of charge. A more timely inspection would have revealed that fact earlier.

We found in section 9.2.5 that the delay between 1935 and 1952 was entirely attributable to the Crown's refusal to deal with Muaūpoko on any other terms. Neither the Depression nor the Second World War played any role in the delay. Negotiations were resumed in 1943–44 without regard to the war. The real stumbling block was the unfairness of the Crown's insistence that Muaūpoko give up 83.5 chains of their land. As Muaūpoko's lawyer asked at the time: why should Muaūpoko have to 'pay a price for having restored to them the control and use of their land which has been taken from them without their consent, and unjustly'? Nor did the local authorities play a role in delaying a Crown–Māori agreement – the Levin Borough Council delayed settlement from 1954 to 1956, *after* the Crown and Muaūpoko had reached agreement.

The Crown breached the Treaty principles of partnership and active protection, and the plain meaning of article 2 of the Treaty, when it refused to settle with Muaūpoko for 17 years unless they met its unreasonable demand for a free 'gift' of land. Muaūpoko were prejudiced because all of their rights (including to the lakebed and chain strip) remained uncertain during that time, and none of their grievances were rectified. Their mana and tino rangatiratanga were compromised. They could not prevent use of the chain strip or damage to its resources by neighbouring farmers.

In 1952 to 1953, however, the Crown compromised, negotiated with Muaūpoko in good faith, and obtained a voluntary agreement in July–August 1953. Legislation to give effect to the agreement was delayed from late 1953 to late 1955, but this was caused by the Levin Borough Council and was not the fault of the Crown. In reaching the agreement of 1953, the Crown balanced interests more fairly than had occurred previously, and the evidence shows that a free and informed agreement was reached between Māori and the Crown in 1953.

12.6.5 The 1953 agreement and the ROLD Act 1956

The issue of pollution entering the lake is dealt with later in this chapter. Otherwise, Muaūpoko and the Crown reached agreement on eight key points in 1953:

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- For the 22-chain frontage of the 13-acre reserve, the public would have free access to the lake across the chain strip and dewatered land, and the lake domain board would control that area;
- The 'balance of the Chain strip', the dewatered land, the lakebed, the Hōkio Stream, and the one-chain strip on the north bank of the stream, would be confirmed in Māori ownership, their title to be 'validated by legislation';
- The surface waters of the lake would be subject to the Public Reserves, Domains and National Parks Act 1928 Act and controlled by the lake domain board;
- The domain board would be reconstituted along the lines requested by the lake trustees, with four 'Māori representatives and three Pākehā representatives' from the borough council, the county council, and 'Sports Bodies', and the commissioner of Crown lands as 'independent Chairman' – the mode of selecting members was not specified;
- The Manawatu Catchment Board would control the Hōkio Stream, but legislation would specify that no works could be carried out without the consent of the reformed domain board;
- The lake would 'remain a sanctuary' and no speedboats would be allowed on it;
- The lake would be controlled at its current level, either by the Crown or the catchment board, and the owners would agree to a 'spillway or weir' so long as it did not interfere with their fishing rights; and
- Māori fishing rights would be confirmed.[35]

As we discussed in section 9.2.4(4), the catchment board, county council, and Hokio Drainage Board agreed to a settlement on these terms, but the Levin Borough Council's opposition caused a delay in legislation until 1956. In order to meet the council's concerns, the item about the lake remaining a sanctuary (and banning speedboats) was omitted from the 1956 Act. These issues were left for the board to decide and deal with by way of bylaws. Also, the borough council was given two representatives instead of one on the reformed domain board (the sporting interests' representative was dropped). Otherwise, section 18 of the Reserves and Other Land Disposal Act 1956 ('the ROLD Act') faithfully reflected the points agreed in 1953 (listed above). The draft clause of the ROLD Bill was sent to Muaūpoko's lawyers, Morison, Spratt and Taylor, to obtain the tribe's agreement to its terms. On 11 September 1956, the commissioner of Crown lands reported that the tribe's lawyers had agreed to the draft legislation. There was no evidence as to what process the lawyers followed to confirm the agreement of the Māori owners or of the tribe more generally. Nonetheless, their agreement was confirmed by Muaūpoko in 1958 at a large hui with the Prime Minister, Walter Nash, at Kawiu Marae. The chairman of the lake trustees, Tau Ranginui, proclaimed the hui 'a great day of gladness,

35. NF Simpson to commissioner of Crown lands, 9 July 1953 (Paul Hamer, comp, papers in support of '"A Tangled Skein": Lake Horowhenua, Muaūpoko, and the Crown, 1898–2000', various dates (doc A150(c)), pp 402–403)

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humility and deep satisfaction. Our long-outstanding grievance has been settled – our lands restored to us – and we can now take an honoured place in the community.'[36]

On balance, we were satisfied that there was genuine, free, and informed consent on the part of the Muaūpoko owners to the 1956 legislation (see section 9.3.3(2)). Muaūpoko had the benefit of independent legal advice, their lawyers advised the Crown that they had agreed, and the tribe gave clear and public support at the 1958 hui. The question remained, however, as to what extent the legislation provided an effective remedy for Muaūpoko grievances, or a fair, Treaty-compliant basis for both the future management of the lake and the protection of the Māori owners' rights and interests.

12.6.6 Did the 1956 legislation remedy Muaūpoko's grievances in respect of past legislation and Crown acts or omissions?

In section 9.3.3(2), we found that there was genuine, free, and informed consent on the part of the Muaūpoko owners to the 1956 legislation. They had the benefit of independent legal advice, and gave their clear and public support for the Act at a major hui with the Prime Minister in 1958. This support was evident because the 1956 legislation did provide some remedies or potential remedies for past Crown acts and omissions. As we explained in chapter 9, there were two remedies:

- The ROLD Act 1956 formally recognised Māori ownership of the lakebed, chain strip, the bed of the Hōkio Stream, and one chain on the north bank of the stream. Māori ownership of these taonga had been placed in doubt from the 1920s to the 1950s (as explained in chapter 8).
- The ROLD Act 1956 returned control of the chain strip and dewatered land to its Muaūpoko owners, providing a remedy for the effects of the ROLD Act 1916.

These two features of the 1956 legislation provided a remedy and were consistent with the Crown's Treaty obligations.

There were also at least two potential remedies:

- The ROLD Act 1956 reformed the membership of the lake domain board. The Levin Borough Council lost its two-thirds majority (being reduced to two members of an eight-member board). The Māori members were increased to four, which – so long as the Crown chairman did not vote – gave them a narrow majority. The composition of a 4:3 board, with a Crown official to mediate disagreements as a neutral chair, had been proposed by Muaūpoko in 1953. If this new arrangement proved to be a sufficiently secure or effective majority, the reform of the domain board had the potential to remedy the severe imbalance in the past, which had placed the board very firmly under borough council control. But the Crown did not go so far as to reverse that situation and give the Māori members a two-thirds majority on the reformed domain board. There were official proposals in the 1980s to give Muaūpoko an extra seat or seats (and a larger majority) but these were not actioned (see section 9.3.4(4)).

36. Unidentified newspaper clipping, 1958 (D A Armstrong, 'Lake Horowhenua and the Hokio Stream, 1905–c1990', May 2015 (doc A162), p 73)

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- The ROLD Act 1956 provided that drainage works could not be carried out on the Hōkio Stream without the agreement of the reformed domain board. Again, so long as the Muaūpoko board members had a secure and effective majority, this provided a potential remedy against a repeat of past grievances. In the 1980s, the Muaūpoko owners sought to have this right of veto transferred to the lake trustees.

We found in chapter 9 that these two features of the 1956 Act provided a *potential* remedy for the Muaūpoko owners. In order to decide whether these features were consistent with Treaty principles, we examined the question of whether the remedies were effective in practice (which was analysed above in section 9.3.4(2)). Our findings were made in section 9.3.5.

In terms of the hierarchy of interests established by the 1905 Act, in which the fishing and other property rights of the Māori owners were subordinated to public uses (see section 8.2.4), the 1956 Act provided a potential remedy. First, the Act maintained the priority of public uses over the property rights of the Muaūpoko owners. But in 1905 this had been an unqualified priority, whereas the 1956 Act specified that the 'free and unrestricted' rights of the Māori owners were not to interfere with the '*reasonable* rights of the public . . . to use as a public domain the lake' (emphasis added).[37] The questions of whether the public rights were reasonable or not, and of which rights should prevail, fell in practical terms to the reformed domain board to decide. Again, this gave the Muaūpoko owners a potential remedy. Any legal argument concerning the term 'reasonable' would, of course, be subject to any court review.

We did not, however, accept the Crown's submission that, 'to the extent any prejudice might be said to flow from earlier legislation as to control and/or rights, that prejudice was remedied by the enactment of the 1956 Act'.[38] Rather, we agreed with the claimants that the 1956 legislation did not 'purport to settle all historic issues relating to the lake',[39] and nor in fact did it do so. The 1956 legislation breached the principles of active protection and partnership when it:

- failed to provide compensation for past acts and omissions (including the imposition of the 1905 arrangements on the Muaūpoko owners without consent, infringements of their property and Treaty rights, the omission to pay for or provide any return for public use of the lake, the harm to their lake, stream, and fisheries when the stream was modified to lower the lake, and the reduction of their fisheries by the introduction of trout and the granting to non-owners of the right to fish);
- failed to prohibit pollution (discussed further below);
- failed to grant an annuity or rental or some such payment for the future, ongoing use of the lake as a public recreation reserve; and

37. ROLD Act 1956, s18(5)
38. Crown counsel, closing submissions (paper 3.3.24), p57
39. Claimant counsel (Bennion, Whiley, and Black), submissions by way of reply, 21 April 2016 (paper 3.3.33), p11

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- failed to provide an appropriate, agreed mechanism for selecting Māori board members.

These omissions were a breach of the Treaty principles of partnership, active protection, and redress (the principle that the Crown must provide a proper remedy for acknowledged grievances). The prejudice to Muaūpoko continued (and still continues today).

12.6.7 Did the 1956 legislation provide a suitable platform for (a) future management of the lake and stream, and (b) protection of the Māori owners' rights and interests?

As we have just noted, the 1956 legislation had the potential to provide a greater say to (and protection of) the Muaūpoko owners of Lake Horowhenua. Much depended on whether the Acts' arrangements really gave Muaūpoko a secure or effective majority on the domain board. As we explained in detail in section 9.3.4, it did not.

First, the Crown did not act as a genuinely neutral chair, nor did it – as the Muaūpoko owners had hoped in 1953 – provide sufficient support to the Muaūpoko members in the face of local body interests. In any case, we doubt that having the Crown as chair of the board (rather than Muaūpoko) was a Treaty-compliant arrangement in the circumstances of the Lake Horowhenua reserve. We made a further finding on this matter in chapter 11 (see section 12.6.10(1)).

Secondly, even though the Crown's continued refusal to vote gave Muaūpoko a one-person majority, this was not a safe or secure majority. Nor did it enable the Muaūpoko owners to exercise their full authority over their taonga, as guaranteed them in the Treaty. The Muaūpoko members felt disenfranchised on the reformed board and struggled to have all four present at meetings, and they were also divided at times. By the 1980s, Muaūpoko clearly identified the need for a more secure majority on the board, and in 1982 they sought to abolish the board altogether. The Minister of Lands at that time accepted in principle that the board could be dissolved and control of the lake handed back to its Muaūpoko owners, but this did not happen. No satisfactory reason was given (see section 9.3.4(4)–(5)).

The 1956 reforms to the domain board were insufficient to provide a suitable platform for (a) future management of the lake and stream, and (b) protection of the Māori owners' rights and interests. Further, the Crown failed to take speedy (or any) action to rectify this situation as soon as it became apparent. In particular, the Crown omitted to amend the Act in the 1980s, even though Ministers responded favourably at first to the lake trustees' requests and accepted that amendment was required. The Crown, therefore, has not actively protected the tino rangatiratanga of the Muaūpoko owners over their taonga, Lake Horowhenua and the Hōkio Stream.

The domain board provisions of the ROLD Act 1956 are in breach of the principles of partnership and active protection. The Crown has not provided Muaūpoko with timely redress despite acknowledging the need for reform back in the 1980s. Muaūpoko have been and continue to be prejudiced by this Treaty breach.

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Other Treaty breaches have occurred as a result of the 1956 Act's failure to empower the Muaūpoko owners. By the 1980s, the lake trustees sought a law change so that the catchment board would require permission from them, rather than from the domain board, before any works could be carried out. Although two Ministers of the Crown agreed to carry out this request, it has not been done. This was not consistent with the Crown's obligation to act as a fair and honourable Treaty partner.

The most serious breach in terms of catchment board works occurred in 1966. The Crown approved the catchment board's construction of a control weir without insisting on a fish pass or a design that would allow fish migration, despite certain knowledge that the Muaūpoko owners objected and that customary fisheries would be harmed. This was a breach of the Treaty principles of partnership and active protection. The National Institute of Water and Atmospheric Research (NIWA) has found that, apart from the poor water quality, the 1966 control weir has had the biggest effect in harming aquatic life in Lake Horowhenua.[40] The prejudice to the Muaūpoko owners continues today.

In our discussion in chapter 9, we noted that there were some improvements during the period of operation of the ROLD Act 1956. The balance of interests between public users and the Māori owners has shifted in favour of the owners in respect of birding and fishing rights. The Muaūpoko owners were able to use their trespass rights over the chain strip and dewatered area to prevent non-owners from shooting ducks on Lake Horowhenua (after the board agreed to open the lake for duck shooting). Also, the domain board protected the exclusivity of the owners' fishing rights during this period, refusing to allow new releases into the lake without the owners' consent, and refusing to agree that fishing licences gave the public a right to fish in Lake Horowhenua. These were important improvements.

In the 1970s, the courts also enforced the Māori owners' exclusive fishing rights in the Hōkio Stream. In section 9.3.4(2), we explained that by the 1970s, the challenge to Māori fishing rights came not from public use rights in the lake, as covered by section 18(5) of the ROLD Act, but rather by attempts to apply New Zealand's general fishing laws and regulations to the lake and the Hōkio Stream. The result was two important prosecutions. The first was *Regional Fisheries Officer v Tukapua*, a prosecution of lake trustee Joe Tukapua in 1975.[41] In brief, the Supreme Court held that the free and unrestricted fishing rights referred to in the ROLD Act were special statutory rights, which meant that restrictions under the fisheries laws (such as seasons and licences) did not apply to the lake's owners. The second case involved Muaūpoko fisherman Ike Williams, who was whitebaiting in the Hōkio Stream during a closed season.[42] In this 1976 case, the Supreme Court held that the ROLD Act

40. National Institute of Water and Atmospheric Research (NIWA), 'Lake Horowhenua Review: Assessment of Opportunities to Address Water Quality Issues in Lake Horowhenua', June 2011, p 10 (Jonathan Procter, comp, papers in support of brief of evidence, various dates (doc C22(b)(iii)))

41. *Regional Fisheries Officer v Tukapua* SC Palmerston North M33/75, 13 June 1975, pp 4, 7 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(c)), pp 618–622)

42. *Regional Fisheries Officer v Williams* SC Palmerston North M116/78, 12 December 1978 (Hamer, '"A Tangled Skein"' (doc A150), pp 298–300)

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defined the stream as flowing from the lake to the sea, and that the owners could exercise their unique statutory fishing rights 'at all times' along the entire length of the stream.

The fishing rights protected by the 1956 Act, however, were not protected from the effects of pollution and the control weir on the quality and quantity of the fishery.

The issue of speedboats divided the Muaūpoko people and their representatives on the domain board. Here, the breach in not providing an agreed, appropriate mechanism for selecting the Māori board members had an important consequence.

Thus, although the ROLD Act 1956 has provided some improvements, we found it to be inconsistent with Treaty principles. The failure to reform it in the 1980s, when Muaūpoko withdrew from the domain board and successive governments promised reforms, was a breach of the principle of redress, and has meant that the prejudice for Muaūpoko continues today.

12.6.8 The 1961 lease to the Crown for the boating club

The land on which the boating club erected its building was the subject of a Treaty breach. As we discussed in sections 9.3.4(2) and 9.3.5, the Crown deliberately avoided the protection mechanisms in the Maori Affairs Act 1953 when entering into a lease of this land in 1961. The Maori Affairs Act at that time prevented any lease of Māori land (including renewals) for a longer term than 50 years. The Act also required the Maori Land Court to investigate the merits and fairness of leases before confirming them.[43] The Crown evaded these safeguards by leasing land for the boat club under the Reserves and Domains Act 1953, thereby arranging a lease in perpetuity for a peppercorn rental, which was not put to the Maori Land Court for confirmation. These protective mechanisms in the Maori Affairs Act 1953 had resulted from a long history of unfair dealings, and the Crown's failure to abide by that Act's requirements for leases was in breach of the Treaty principle of active protection.

The lake trustees agreed to the lease in 1961, but it was later claimed that they did so 'in ignorance'.[44] Because there was little documentation at the time and no court inquiry and confirmation, we have no way of knowing for sure if that was so.

The Māori owners of Lake Horowhenua were prejudiced by the alienation of this land on unfair terms, which was adjacent to Muaupoko Park and could have been the subject of a more beneficial arrangement, fairer to both parties.

12.6.9 Pollution and environmental degradation

In chapter 10, we addressed Muaūpoko claims about the pollution and environmental degradation of their taonga, Lake Horowhenua and the Hōkio Stream. This was one of their most strongly felt grievances, and a great deal of anger and concern was expressed at our hearings.

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43. For the 1953 Act's protection mechanisms in respect of leases, see Waitangi Tribunal, *Te Urewera, Pre-publication, Part V* (Wellington: Waitangi Tribunal, 2014), pp 255–256.

44. Ada Tatana to Minister of Lands, 19 December 1985 (Hamer, '"A Tangled Skein"' (doc A150), p 346)

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Historically, the issue first arose in the early twentieth century. A water race system was constructed in 1902, which could pollute the lake as a result of livestock contamination, and Muaūpoko objected to this scheme. Their objections influenced the 1905 agreement (discussed in chapter 8). Item 5 of the Crown's record of the agreement stated: 'No bottles, refuse, or pollutions to be thrown or caused to be discharged into the Lake.' We found in chapters 8 and 10 that the Crown entered into a solemn agreement with Muaūpoko in 1905. Although the Crown's written terms did not properly reflect what Muaūpoko had agreed to, they were nonetheless binding on the Crown as a statement of what it had undertaken to do. In our inquiry, the Crown conceded that its failure to properly reflect the agreement in the terms of the Horowhenua Lake Act 1905 was a Treaty breach. In respect of pollution, however, the Crown argued that the domain board's bylaw in respect of littering, and the settlement given effect in the ROLD Act 1956, removed any prejudice. We did not agree (see section 10.3.1). If the Crown had kept its 1905 promises to Muaūpoko, there would have been statutory obligations requiring the Crown to act as soon as pollution or potential pollution of the lake became an issue – which it did in the 1940s and 1950s.

In chapter 10, we focused on the period from the 1950s to the late 1980s, when Levin's sewage effluent was by far the most significant cause of pollution. Although there had already been some pollution, as a result of the water race system and livestock on the lake's margins, the most significant threat to the lake and the Hōkio Stream at that time was the possible discharge of sewage. In the 1940s, Muaūpoko objected to the proposal for Levin's new sewerage scheme to discharge effluent into the lake. A plan to dispose of treated effluent in the sandhills instead was rejected by the Government in 1948 as too expensive. The borough council then chose what was believed to be an alternative form of disposal to land: its new plant (built 1951–52) discharged effluent into soakage pits near the lake. By 1956, however, Government officials confirmed that sewage effluent entered the lake from these pits – above ground in the winter months and by seepage through groundwater for the rest of the year. In the early 1960s, extreme weather events also resulted in the discharge of raw sewage into Lake Horowhenua.

There was an opportunity to have prevented this, however, or to have insisted on an alternative form of disposal as soon as the effect of the soakage pits became known. This was the negotiation of the Crown–Muaūpoko agreement in 1952–53 and section 18 of the ROLD Act in 1956 (discussed in chapter 9). From the evidence available to us, it was very clear that the 1905 stipulation against the discharge of pollution into the lake was intended to have been a term of the 1953 agreement (and of the ROLD Act). The evidence for this was described in section 10.3.3:

- June 1952: at the beginning of the negotiations, the commissioner of Crown lands met with Muaūpoko and recited the 'rights enjoyed by Maoris and Pakehas to this lake' under the 1905 agreement, including 'that the lake be not polluted'. In his report to senior officials, the commissioner again stressed this point.

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- November 1952: The Minister of Lands and Maori Affairs, Ernest Corbett, discussed the negotiations with local bodies and told them that he was 'most emphatic . . . that Horowhenua Lake is not to be used as a dumping place for sewer [e]ffluent'.[45]
- December 1952: As part of the negotiations, senior Lands and Māori Affairs officials met with Muaūpoko's lawyer and gave Muaūpoko (through him) the Minister's assurance that 'the Lake is not to be used as a dumping ground for sewer effluent', noting that the Minister had already made this point clear.
- December 1952: following the meeting between Muaūpoko's lawyer and senior officials, the commissioner of Crown lands proposed the terms of the 1953 agreement to Muaūpoko in writing – these terms included the Minister's assurance that the lake would not be the 'dumping ground' for sewage effluent.
- April 1953: the chairman of the lake trustees, Tau Ranginui, advised a representative of the borough council that 'no sewage waste' was to be a term of the agreement.
- July 1953: Muaūpoko's lawyer wrote to the Crown to confirm the agreement reached at the final negotiation meeting that month, but did not mention sewage effluent. In our view, this was an oversight.
- August 1953: Lands Department officials advised their Minister of the outcome of the meeting with Muaūpoko in July 1953, noting that the exclusion of sewage effluent from the lake was one of the Crown's proposed terms.
- Finally, in 1956 the draft ROLD Bill did not contain a provision relating to the pollution, and the secretary of Maori Affairs asked the Lands Department whether existing powers under the Reserves and Domains Act 1953 were 'wide enough to prevent pollution of the Lake'.[46] The Lands Department responded in the affirmative (which was incorrect, in our view).

The failure to include a provision against pollution in the 1956 Act was a crucial omission, which would have given statutory force to the Minister's assurance to the Māori owners that 'the Lake is not to be used as a dumping ground for sewer effluent', and would have given proper effect to the 1953 agreement. In section 10.3.8, we found that the Crown had an obligation under the Treaty to actively protect Muaūpoko's taonga: Lake Horowhenua, the Hōkio Stream, and the prized fisheries. The Crown failed to provide the necessary statutory protection in both 1905 and 1956. Crown counsel accepted that the Crown's 1905 omission was a Treaty breach which prejudiced Muaūpoko. In our view, the Crown's second omission in 1956 was equally a Treaty breach and has prejudiced Muaūpoko. It followed from the Crown's act of omission that the Crown had a particular obligation to intervene, once its officials established that treated effluent was polluting Lake Horowhenua. In respect of the historical claims, this Crown obligation makes it irrelevant (in this particular case) whether pollution was the responsibility of local government

45. Director-general of lands to commissioner of Crown lands, 12 November 1952 (Hamer, '"A Tangled Skein"' (doc A150), p 144)

46. Commissioner of Crown lands to director-general of lands, 11 September 1956 (Hamer, papers in support of '"A Tangled Skein"' (doc A150(c)), p 434)

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bodies or the Crown; the Crown had given assurances in 1905 and in 1952–53, but failed to provide statutory protections.

The Crown was thus complicit in the pollution of Lake Horowhenua from at least 1957, when both Muaūpoko and officials became aware that effluent was seeping from the soakage pits into the lake. By that time, Government departments were focused on physical health and 'safe' levels of treated effluent, but the alternative cultural perspective was presented by Mrs R Paki in no uncertain terms in 1957 (see section 10.3.4). The correct solution, discharge to land distant from the lake, was known from at least 1948. Over the years from 1957, Muaūpoko objected to the cultural offence of contaminating waters used for food with human waste. They protested about the health risks of eating such food, and also about the harm which degradation of their lake had caused to their fisheries. They pleaded against the desecration of their taonga. The Crown was fully aware of their protests, as Crown counsel conceded, 'expressed through petitions to the Government, through Domain Board meetings [a Crown official chaired it], through litigation and in Tribunal claims'.[47]

In 1967–69, upgrades to the Levin sewage plant resulted in the direct opposite of Muaūpoko's wishes: the council began to discharge effluent directly into the lake and continued to do so until 1987. In 1969, water quality tests led senior officials to accept that the lake was heavily polluted as a result of treated effluent, and the head of the Internal Affairs Department advised that 'some method of bypassing the Lake with this effluent will have to be found'.[48] We agreed with the claimants that there was a significant opportunity to have done so in 1971, as proposed by a scientist at that time, before the pollution of the lake assumed the very serious character it has today, and while the process of remediation was (relatively) less expensive. In the meantime, the nation had benefited from Muaūpoko's agreement to make the surface of the lake available for public use, free of charge. In our view, that is the crucial context in which Crown payment for a land-based disposal system must be evaluated. In the event, the Crown did not provide funding for such a system until the mid-1980s, and even preferred discharge into the Hōkio Stream until opposition from Muaūpoko, Ngāti Raukawa, and a local action committee won support from a special tribunal in 1986.

The Crown's failure to protect Muaūpoko and their taonga from 1969 to 1987, despite full knowledge of the situation, was a breach of its Treaty duty of active protection. We accept that the Crown did eventually provide subsidies for land-based disposal in the mid-1980s, but this belated assistance to the borough council did not remedy the prejudicial effects of 30 years' of effluent disposal in Lake Horowhenua.

The prejudice from the Crown's Treaty breaches is significant. It is clear to us from the evidence of the tangata whenua that Muaūpoko consider the mauri or life force of their lake has been damaged, and they as kaitiaki have been harmed. Their mana has been infringed: they can no longer (safely) serve traditional foods to manuhiri

47. Crown counsel, closing submissions (paper 3.3.24), p 44
48. Secretary for internal affairs to district officer of health, 15 April 1969 (Hamer, '"A Tangled Skein"' (doc A150), p 217)

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or take foods for which they were once renowned to tangi and other important occasions. Their taonga has become – as one claimant expressed it – a 'toilet bowl'.[49] They are no longer able to sustain themselves culturally or physically by their fisheries, once an integral part of the life and survival of the tribe. Muaūpoko have also lost ancestral knowledge because food can no longer be gathered from the lake – at least not safely, in terms of either spiritual or biological health. This means that the tikanga associated with the lake, its fish species, and the arts of fishing is no longer transmitted, or is transmitted only in part. We accept that some still fish and take food from the lake, but many do not, and the harm for both is significant.

The evidence is less certain as to how particular species in the lake have been affected by the pollution. There seems to be general agreement among tangata whenua and technical evidence that the 1966 control weir has materially harmed the species which migrate to and from the sea. We were assisted here by the Crown, which accepted that pollution has been a 'source of distress and grievance to Muaūpoko', that 'damage to fishing and other resource gathering places has been a source of distress and grievance', and that pollution 'in combination with other factors, has affected the fishery resource of the Lake'.[50]

12.6.10 The historical legacy of past management, 1990–2015

In chapter 11, we discussed how the legacy of past management impacted on the lake and the Hōkio Stream in the post-1990 period. Four key features were of special importance, which we address in turn below.

(1) *Governance and management regimes*

The Crown failed to reform the ROLD Act 1956 in the 1980s, so the same deficiencies plagued the domain board and its control of the lake from 1990 to the time of our hearings in 2015. The Resource Management Act 1991 (RMA) and the Conservation Act 1987 significantly altered the regime for decision-making about the environment. Nonetheless, Muaūpoko continued to have an insecure majority on the lake domain board, the Crown continued to provide the chair (and for the first time exercised its casting vote), and Muaūpoko remained largely excluded from the decision-making of other local bodies until the negotiation of the Horowhenua Lake accord and action plan (see section 11.5.4). Even then, the accord and action plan are not legally binding.

The powerlessness that Muaūpoko people feel in the resource management regime was evident in their claims about pollution leaching into the Hōkio Stream from landfills, alleged overflows from the Pot, and the realignment of the Hōkio Stream mouth. Although we were not in a position to make findings about those claims due to insufficient evidence, we noted that land-use planning and consenting for discharges within the catchment are important and go to the issue of whether the current governance regime adequately addresses the guarantees of the Treaty for Muaūpoko.

49. Transcript 4.1.12, pp 541, 569
50. Crown counsel, closing submissions (paper 3.3.24), pp 44–45

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We found that the RMA 1991, the local government regime, and the 1956 ROLD Act regime do not provide sufficiently for the tino rangatiratanga of Muaūpoko in respect of their lake and the Hōkio Stream. This Treaty breach required immediate remedy as a necessary precondition to the restoration of the lake and stream. Our view as to the appropriate way forward is summarised below.

In our finding on the ROLD Act, we relied on earlier findings about Crown acts and omissions (in chapters 8–10, summarised above), as well as the Crown's failure in 1990–2015 to promote the necessary reforms to the lake's management regime.

In coming to our finding in respect of the RMA, we agreed with the Wai 262 Tribunal that the Crown cannot absolve itself of its Treaty obligations in day-to-day decisions by devolving management functions to local government. The Crown must make its statutory delegates responsible for fulfilling its Treaty duties. Nor has the RMA delivered appropriate levels of control and partnership to Māori, and – crucially in this case – it is not remedial legislation which provides for restoring damaged taonga.

(2) *Pollution: nutrients and sediment*

The discharge of Levin's sewage effluent into the lake for 35 years (indirectly from 1952 to 1969, and directly from 1969 to 1987) has continued to have serious effects on the lake. Half of the original volume of the lake still remains filled with polluted sediment. In part, this is because the 1966 control weir inhibits the natural flushing of the lake, and scientists have disagreed as to the correct solution to this problem posed by the weir. Since 1990, intensive dairying, further agriculture, and horticulture have contributed additional nutrients and sediment loads into the lake. The majority of this sediment and nutrients enters the lake through the stormwater drains and the Arawhata Stream, and some nitrogen through groundwater.

Thus, neither Lake Horowhenua nor the Hōkio Stream has recovered after the commencement of land-based disposal of sewage effluent in 1987. Indeed, the lake is now classified as hypertrophic and was ranked '7th worst out of 112 monitored lakes in New Zealand in 2010'.[51] We also noted that 'recent data suggests that the Arawhata Stream may become anoxic at night' which means that the flow into the lake at night has no oxygen.[52] That acts to lessen the lake's already deeply compromised ability to recover from its hypertrophic state. The devastating state of their taonga has angered and distressed its kaitiaki, who are significantly prejudiced by the degradation of Lake Horowhenua.

(3) *Fishing rights*

Muaūpoko fishing rights have continued to be affected in the 1990–2015 period. As we discussed in section 11.4.4, the Muaūpoko people once relied heavily on their

51. Horizons Regional Council, *He Hokioi Rerenga Tahi/Lake Horowhenua Accord Action Plan, 2014–2016* (Palmerston North: Horizons Regional Council, 2014), p 8 (Paul Hamer, comp, indexed bundle of cross-examination documents, various dates (doc A150(l)), p 35)

52. Lake Horowhenua & Hōkio Stream Working Party, 'He Ritenga Whakatikatika: Lake Horowhenua & Hokio Stream, Te Pātaka o Muaūpoko rāua ko Ngāti Pareraukawa', June 2013, p 11 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 76)

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customary fisheries for their survival (both physical and cultural), but are now limited in their ability to take their traditional foods from the lake and the Hōkio Stream. Although we heard evidence of some who ate well-rinsed eels, most tribal members no longer consume their traditional foods for health reasons (among others). Further, the 1966 control weir – which was established without a fish pass despite the opposition of the lake trustees, on the authority of the Minister – has significantly reduced populations of native fish which migrate up and down the Hōkio Stream. More research is required to establish exactly which species still survive in the lake and at what densities, to ascertain the detailed effect of both the control weir and the lake's hypertrophic state on customary fisheries. In addition, we noted that the unique fishing rights guaranteed by the ROLD Act 1956 may have been affected by recent legislation – at least in the marine environment of the Hōkio Stream, a point which awaits clarification by the courts.

(4) *Representation*

Muaūpoko emerged significantly divided from the pre-1990 period of external conflict (with the Crown, the domain board, and the borough council) and internal conflict (especially over who should appoint the Muaūpoko members of the domain board). In addition, as we explained in chapter 6, some of the division has its historical roots in the nineteenth century, and the battle over entitlements to Horowhenua 11 forced upon the iwi in the 1890s. Questions as to who has the authority to represent Muaūpoko regarding issues about Lake Horowhenua and the Hōkio Stream remain unresolved, and this is a very real difficulty for both government agencies and Muaūpoko.

We turn next to the question of restoration and our view of a way forward.

(5) *Restoration and our view of the way forward*

What is being done to put these matters right? We discussed the restoration efforts of the 1990s and 2000s, including riparian planting, in section 11.5. We also described the actions which the parties to the Horowhenua lake accord planned to take to remedy the dire situation of the lake and stream. These included constructing a fish pass, preventing sediment and nutrients entering the lake through the stormwater system, and other notable goals. The development of the accord was not without controversy, however, and again we noted the difficulty faced by Muaūpoko and agencies because Muaūpoko have no statutory body to represent the whole tribe on matters regarding the lake and the Hōkio Stream. The lake trustees must look after the property rights of the beneficial owners of the bed, but have no jurisdiction over the water.

Because the RMA is not remedial, and because the accord is not legally enforceable, a statutory settlement is the only way forward. Also, in respect of Muaūpoko, there will always be opposing views but what we consider necessary is a management regime that cannot be challenged for lack of mandate. In section 11.6, we agreed with the claimants that the Waikato-Tainui Raupatu Claims (Waikato River)

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Settlement Act 2010 provides a relevant model, the equivalent of which should be available to Muaūpoko in respect of Lake Horowhenua and the Hōkio Stream. Any such legislation would need to provide for a Muaūpoko governance body for the lake and stream which has the mandate of the Muaūpoko people, and the lake trustees would necessarily be represented on it. Significant assistance will also be required from the Crown to fund a programme that reasonably mitigates the major issue concerning the lake – the impact of 35 years of effluent in the sludge on the bed of the lake and the continued discharge of pollutants through storm water and stream flows. We also noted that Ngāti Raukawa claims in respect of the Hōkio Stream and Lake Horowhenua have not yet been heard, but the Waikato-Tainui river settlement model allows for the representation of other iwi.

A new legislative regime coupled with technical and financial assistance should move all parties to the desired result, namely the restoration of Lake Horowhenua and the Hōkio Stream, and of the mana and tino rangatiratanga of Muaūpoko.

12.6.11 Summary of Treaty findings

In this inquiry, we were struck by the extent to which the Crown's legislative interventions, funding decisions, and other actions have dominated the management of (and outcomes for) Lake Horowhenua since 1905. However relevant the issue of the Crown vis-a-vis local government may be in other claims, the succession of direct Crown acts in respect of this lake put it in another category altogether. Our analysis in chapters 8–11 demonstrated this point. Many of those Crown acts or omissions have been in breach of Treaty principles. In respect of Lake Horowhenua and the Hōkio Stream, we would summarise our Treaty findings as follows:

- In 1905, Muaūpoko only agreed to free public access to the lake for boating. The Crown's choice to legislate without first seeking formal agreement on more fully developed terms was a breach of Treaty principles. It was not consistent with the principle of partnership, nor was it consistent with the plain meaning of article 2 of the Treaty.
- The Horowhenua Lake Act 1905 took control of the lake from its Muaūpoko owners and vested it in a board, turning their private property into a public recreation reserve and subordinating their use of their private property (a taonga) to that of the public. This was done without adequate consent or any compensation, in clear breach of article 2. In particular, Muaūpoko fishing and other rights were subordinated to public recreation, the exercise of many of their rights was prohibited in a public domain, and the development right in the lake was transferred to a public board, all in breach of Muaūpoko's article 2 rights and Treaty principles. The Crown's failure to negotiate an appropriate level of Muaūpoko representation on the board and guarantee it in the 1905 Act also breached the Treaty. The Crown's failure to include all its 1905 promises (such as a prohibition of pollution) in the Act was a further Treaty breach.
- Between 1905 and 1934, the Crown breached Treaty principles by granting Pākehā a right to fish in the lake, legislating to place the chain strip under the

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control of the domain board, legislating to give the borough council a two-thirds majority on the board, and breaking agreements in respect of drainage works (resulting in the lowering of lake levels by four feet). Muaūpoko consent was not sought, and indeed the tribe opposed this 'whittling away' of their rights without success. Settler interests were unfairly prioritised, in breach of the principle of equity.

- The delay in reaching a new settlement after the Harvey–Mackintosh inquiry (1934–53) was caused primarily by the Crown's insistence on acquiring a free gift of land from Muaūpoko for the domain – land which was not even useful because it was too waterlogged. The Crown's refusal to settle with Muaūpoko for 17 years unless they met its unreasonable demand for land was a breach of the principles of partnership and active protection.
- The ROLD Act 1956 was inconsistent with the principles of partnership, active protection, and redress because it omitted to: (a) provide compensation for past acts and omissions; (b) prohibit pollution; (c) institute an annuity or rental for use of the lake as a public recreation reserve; and (d) establish an agreed mechanism for selecting Muaūpoko board members.
- The domain board provisions of the ROLD Act 1986 are inconsistent with the principle of partnership because they provided Muaūpoko an insecure majority which proved ineffective in practice, and because the Crown was made chair of the board with a casting vote.
- The ROLD Act 1956 continued to subordinate Muaūpoko rights and interests to public recreation, although Muaūpoko fishing and birding rights obtained greater protection under the 1956 regime.
- The establishment of the 1966 control weir, with the Minister of Marine granting permission to dispense with a fish pass despite the opposition of Muaūpoko, was in breach of Treaty principles. This weir has proved harmful to migratory native fish species and has inhibited the natural flushing of the lake.
- The failure to reform the ROLD Act 1956 in the 1980s, when Muaūpoko withdrew from the domain board and successive governments promised reforms, was a breach of the principle of redress. The continued failure to reform the board membership and other aspects of the 1956 regime from 1990–2015 is a breach of Treaty principles.
- The Crown's lease in perpetuity of land for the boat club in 1961 (for a peppercorn rental) avoided statutory protections for Māori land and was in breach of Treaty principles.
- The Crown failed to include a prohibition of sewage effluent in the ROLD Act 1956, in breach of both the 1953 agreement and the Crown's Treaty obligation to actively protect taonga. It follows from this omission that the Crown breached the Treaty when it failed to intervene once it was known that sewage effluent was entering Lake Horowhenua. In particular, the Crown's failure to protect Muaūpoko and their taonga from 1969 to 1987, despite full knowledge that the lake had become heavily polluted as a result of effluent, was a breach of its

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Treaty duty of active protection. We accept that the Crown did eventually provide subsidies for land-based disposal in the mid-1980s, but this belated assistance to the borough council did not remedy the prejudicial effects of 30 years of effluent disposal in Lake Horowhenua.

- The current regime for environmental decision-making, embodied in the RMA 1991, is in breach of Treaty principles. The Crown must make its statutory delegates responsible for fulfilling its Treaty duties. Nor has the RMA delivered appropriate levels of control and partnership to Māori, and – crucially in this case – it is not remedial legislation which provides for restoring damaged taonga.

Muaūpoko were (and continue to be) prejudiced by these acts and omissions of the Crown, in the manner specified in chapters 8–11. Restoring Lake Horowhenua and the Hōkio Stream requires a statutory settlement. In our view, that settlement should be equivalent to what is provided in the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010. It would need to provide for a Muaūpoko governance body for the lake and stream which has the mandate of the Muaūpoko people, and the lake trustees would necessarily be represented on it. Significant assistance will also be required from the Crown to fund a programme that reasonably mitigates the major issue concerning the lake – the impact of 35 years of effluent in the sludge on the bed of the lake and the continued discharge of pollutants through storm water and stream flows.

We turn next to make our recommendations.

12.7 Recommendations

12.7.1 Land claims

As a result of our numerous findings of breaches of the principles of the Treaty with respect to the native land legislation of the nineteenth century, the imposition of that legislation and the Native Land Court on Muaūpoko, the Crown's land purchasing policies of that period, the Horowhenua partitions, the Horowhenua commission process, the Horowhenua Block Act 1896, and the twentieth-century land issues which are detailed above, we recommend:

- that the Crown negotiates with Muaūpoko a Treaty settlement that will address the prejudice suffered by the iwi due to the breaches of the Treaty identified; and
- that the settlement includes a contemporary Muaūpoko governance structure with responsibility for the administration of the settlement.

12.7.2 Lake Horowhenua and the Hōkio Stream

As a result of our numerous findings of breaches of the principles of the Treaty with respect to Lake Horowhenua and the Hōkio Stream, which are detailed above, we recommend:

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- That the Crown legislates as soon as possible for a contemporary Muaūpoko governance structure to act as kaitiaki for the lake, the Hōkio Stream, and associated waters and fisheries following negotiations with the Lake Horowhenua Trustees, the lake bed owners, and all of Muaūpoko as to the detail. The legislation should at least be similar to the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 but may also extend to something similar to that used for the Whanganui River. This would necessarily mean dismantling the current Horowhenua Lake Domain Board. Any recommendations in respect of Ngāti Raukawa are reserved until that iwi and affiliated groups have been heard, but we note that the Waikato-Tainui river settlement model allows for the representation of other iwi.
- That the Crown provide to the new Lake Horowhenua Muaūpoko governance structure annual appropriations to assist it meet its kaitiaki obligations in accordance with its legislative obligations.

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Dated at *Wellington* this *28th* day of *June* 2017

Deputy Chief Judge Caren Fox, presiding officer

The Honourable Sir Douglas Lorimer Kidd KNZM, member

Dr Grant Phillipson, member

Emeritus Professor Sir Tamati Muturangi Reedy, KNZM, PhD, member

Tania Te Rangingangana Simpson, member

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Appendix I

Muaūpoko Claims, Named Claimants, and Counsel

The Muaūpoko Claimants and their Claims

A total of 30 claims were considered to be part of the Muaūpoko priority inquiry. Twenty-six of them came under the Muaūpoko Claimant Cluster (MCC), two registered claims were represented by the Muaūpoko Tribal Authority (MTA), and three other claims were not affiliated with either the MCC or the MTA. Named claimants of the Wai 52 claim were represented by both the MCC and the MTA.

The following claims were included under the MCC:

Wai 52, Wai 108, Wai 237, Wai 493, Wai 770, Wai 1490, Wai 1491, Wai 1621, Wai 1622, Wai 1629, Wai 1631, Wai 2045, Wai 2046, Wai 2048, Wai 2050, Wai 2051, Wai 2052, Wai 2053, Wai 2054, Wai 2056, Wai 2093, Wai 2140, Wai 2173, Wai 2175, Wai 2306, and Wai 2326.

Three claims included under the MCC were not represented by legal counsel. In these instances the named claimants represented themselves. They were Tama-i-uia (Tama) Ruru for Wai 108, Charles Rudd for Wai 1631, and Philip Taueki for Wai 2306.

Legal counsel for the rest of the claims included under the MCC were Kathy Ertel, Robyn Zwaan, Linda Thornton, Bryce Lyall, Darrell Naden, Creon Upton, Anmol Shankar, Leo Watson, Chelsea Terei, David Stone, Augencio Bagsic, and Keith Hopkins. By the time of hearings in 2015, the MCC was no longer a functioning collective.

In the early stages of the inquiry, the Muaūpoko Tribal Authority (MTA) was represented by Tuia Legal counsel Toko Kapea and Matthew Sword.[1] From mid-2015 the MTA was represented by Tom Bennion and Emma Whiley of Bennion Law. On 10 July 2015, the MTA advised that the claimants it represented wished to participate in the prioritised hearings.[2] The two claims under the MTA were Wai 2139 and Wai 52.

Claims that were not involved in either the MCC or the MTA included Wai 623, Wai 624, and later, Wai 1490. These claims were not represented by counsel but

1. Claimant counsel (Kapea/Sword), memorandum, 11 March 2011 (paper 3.1.196)
2. Claimant counsel (Bennion), memorandum, 10 July 2015 (paper 3.1.710)

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were presented by Fredrick Hill at hearing. Hapeta Taueki's claim, which had been mistakenly filed under Wai 52, was assigned the Wai number Wai 2284.[3] Hapeta Taueki's claim was represented at hearings by Philip Taueki.[4]

The Crown

The Crown was represented by Jacki Cole, Rachael Ennor, Ellen Chapple, and Damen Ward of the Crown Law Office. James Hardy represented the Department of Conservation in the second week of Muaūpoko hearings.[5] The Crown's final closing submissions, on native townships and Māori land boards, were made on 29 April 2016 by Jacki Cole.[6]

	Wai No	Claim name	Named claimant(s)	Representation (at time of hearing)
1	52	Muaūpoko Land claim	Tamihana Tukapua (now deceased), Jean Budd, Katie Lynch, Danny Hancock, Miller Waho (now deceased), Matthew Matamua, Marokopa Wiremu-Matakatea, James Broughton (now deceased), Beau Wiremu-Matakatea, Trevor Wilson, Kay Kahumaori Pene (now deceased), George Tukapua, James Tukapua (now deceased), Teresa Moses (now deceased), Timothy Tukapua On behalf of the whole of Muaūpoko	Kathy Ertel & Co: Kathy Ertel, Robyn Zwaan Bennion Law: Tom Bennion, Emma Whiley, Lisa Black
2	108	Muaūpoko Lands and Fisheries claim	Tama-i-uia Ruru On behalf of himself and Muaūpoko	Tama-i-uia Ruru represented claim in hearing
3	237	Horowhenua Block claim	William Taueki and Ron Taueki (deceased) On behalf of Muaūpoko ki Horowhenua by the descendants of Taueki and the Ngāti Tamarangi hapu	Tamaki Legal: Darrell Naden, Creon Upton, Anmol Shankar
4	493	Hokio Māori Native Township, Hokio Boys School and Waitarere Forest claim	Tom Waho (deceased) On behalf of the descendants of the original 81 owners (Hokio)	Lyall & Thornton: Bryce Lyall, Linda Thornton
5	623	Mua Te Tangata and Muaūpoko claim	John Hanita Paki, Ada Tatana, Perry Warren, and Mario Hori Te Pa On behalf of themselves and all the descendants of the Muaūpoko Tribe	Fredrick Hill (claims manager) represented claim in hearing

3. The original named claimant of the Wai 52 claim was Tamihana Tukapua. He filed the claim on behalf of himself and all of Muaūpoko in December 1988. According to the Registrar, Hapeta Taueki also filed a claim on behalf of Muaūpoko on 29 August 1989. At that time the claim was added to the Wai 52 Record of Inquiry, and recorded as an amended statement of claim. It has since been discovered that this should not have happened and that the claim that Hapeta Taueki filed should have been given its own claim number instead of being made an amendment to that which was filed originally by Tamihana Tukapua. See Waitangi Tribunal, memorandum-directions, 3 July 2015 (paper 2.5.107), pp 2–3.
4. Philip Taueki, memorandum, 17 February 2014 (paper 3.1.555)
5. Crown counsel, memorandum, 30 September 2015 (paper 3.1.787), p 1
6. Crown counsel, closing submissions: Native Townships and District Māori Land Boards, 29 April 2016 (paper 3.3.34)

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	Wai No	Claim name	Named claimant(s)	Representation (at time of hearing)
6	624	Kemp Hunia Trust claim	John Hanita Paki, Ada Tatana, Mario Hori Te Pa, Brian Rose, Peter Huria, Perry Warren, Hinemoa Wright, Alfred MacDonald, and Lauren Menel (Trustees of the Kemp Hunia Trust) On behalf of Muaūpoko (Iwi) and Ngāti Ao, Pariri, Ngarue, and Whano ki Rangi (hapū)	Fredrick Hill (claims manager) represented claim in hearing
7	770	The Karaitiana Te Korou Whanau claim	Edward Francis Karaitiana and the Karaitiana Te Korou Whanau On behalf of Ngāi Tara of Muaūpoko	Afeaki Chambers: Tavake Afeaki, Winston McCarthy, Rebekah Jordan
8	1490	Ngāti Whanokirangi hapū lands and resources claim	Mario Hori Te Pa, Tanua Helen Rose, and Maria Rakapa Tukapua-Lomax On behalf of the descendants of Whanokirangi	Fredrick Hill (claims manager) represented claim in hearing
9	1491	Hokio A Land Block claim	Eugene Henare On behalf of Muaūpoko and the beneficial owners of Hokio A	Leo Watson
10	1621	Lake Horowhenua Trust claim	Mark Stevens On behalf of Muaūpoko ki Horowhenua and the Lake Horowhenua trust	Leo Watson
11	1622	Ngāti Toa and Muaūpoko (Taueki) claim	Mervyn Taueki-Ransom On behalf of themselves and the whole of Muaūpoko	Did not present at hearing
12	1629	Muaūpoko (the descendants of Taueki) claim	Vivienne Taueki On behalf of herself, and the descendants of Taueki, and of Muaūpoko ki Horowhenua	Lyall & Thornton: Bryce Lyall, Linda Thornton
13	1631	Lake Horowhenua, Hokio Stream and Hokio Beach claim	Charles Rudd On behalf of himself and the beneficial owners of the lake, stream and beach	Charles Rudd represented claim in hearing
14	2045	Muaūpoko (Pene) Lands claim	Kahumaori Kay Pene (now deceased) On behalf of Muaūpoko	Kathy Ertel & Co: Kathy Ertel, Robyn Zwaan
15	2046	Ngāti Mihiroa, Ngāti Ngarengare, and Muaūpoko (Kenrick) Lands claim	John Kenrick, Roimata Kenrick, and Jillian Munro On behalf of Ngāti Mihiroa, Ngāti Ngarengare and Muaūpoko	Te Mata a Maui Law: David Stone, Augencio Bagsic, Keith Hopkins
16	2048	Muaūpoko Lands (Te Rautangata Kenrick) claim	Te Rautangata Kenrick On behalf of her children and her mokopuna who are of Muaūpoko descent and Tamarangi hapū	Did not present at hearing
17	2050	Muaūpoko Economic Development (Williams) claim	Mariana Williams On behalf of Te Kapa Trust, the tupuna Ihaia Taueki and all the hapū of the Iwi Muaūpoko	Te Mata a Maui Law: David Stone, Augencio Bagsic, Keith Hopkins
18	2051	Kenrick Whānau claim	Whetu Kenrick On behalf of her whānau and her deceased brother Derek Kenrick	Did not present at hearing
19	2052	Muaūpoko Lands and Waters (Kenrick) claim	James Kenrick On behalf of Muaūpoko	Did not present at hearing
20	2053	Muaūpoko Health (Kupa and Ferris) claim	Mona Kupa and Hera Ferris On behalf of Muaūpoko	Te Mata a Maui Law: David Stone, Augencio Bagsic, Keith Hopkins

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	Wai No	Claim name	Named claimant(s)	Representation (at time of hearing)
21	2054	Muaūpoko Ratings Policy (Moore) claim	Bella Moore On behalf of herself and on behalf of the hapū of Muaūpoko	Te Mata a Maui Law: David Stone, Augencio Bagsic, Keith Hopkins
22	2056	Muaūpoko Knowledge and Education (Williams) claim	Henry Williams On behalf of Muaūpoko	Te Mata a Maui Law: David Stone, Augencio Bagsic, Keith Hopkins
23	2093	Muaūpoko Lands (Brownie) claim	Jean Brownie On behalf of Muaūpoko	Did not present at hearing
24	2139	Muaūpoko Lands and Resources (Greenland) claim	Dennis Greenland On behalf of Muaūpoko and the Muaūpoko Tribal Authority	Bennion Law: Tom Bennion, Emma Whiley, Lisa Black
25	2140	Muaūpoko (Gardiner) claim	Hingaparae Gardiner On behalf of Wāhine Māori of Muaūpoko	Te Mata a Maui Law: David Stone, Keith Hopkins
26	2173	Muaūpoko Health (Murray) claim	Carol Murray On behalf of Muaūpoko	Te Mata a Maui Law: David Stone, Augencio Bagsic, Keith Hopkins
27	2175	Muaūpoko Natural Resources (Brown) claim	Francis Brown On behalf of Muaūpoko	Did not present at hearing
28	2284	Muaūpoko Lands and Waterways (Taueki) claim	Hapeta Taueki On behalf of the Muaūpoko Tribe	Philip Taueki represented claim in hearing
29	2306	Arawhata Stream and Lake Horowhenua Urgency claim (Urgency)	Philip Taueki On behalf of himself and Muaūpoko	Philip Taueki represented claim in hearing
30	2326	Muaūpoko and Descendants of Hopa Heremaia Lands and Resources (Gamble) claim	Peggy Gamble (nee Heremaia) On behalf of herself, Loretta Mere and Muaūpoko	Kathy Ertel & Co: Kathy Ertel, Robyn Zwaan

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APPENDIX II

THE 81 OWNERS OF HOROWHENUA 11

Persons entitled to Horowhenua 11[1]	Court Order (No)	Court Order (name)	Area allotted (acres) Already allotted	In No 11	Total area
Keepa Te Rangihiwinui & daughter	1	Keepa Te Rangihiwinui	1303	100	1403
Kawana Hunia family	2	Kawana Hunia Te Hakeke	2321	600	2921
Ihaia Taueki family	3	Ihaia Taueki	512	1050	1562
Rewiri Te Whiumairangi	4	Rewiri Te Whiumarangi	104	25	129
Te Rangirurupuni	5	Te Rangirurupuni	104	25	129
Noa Te Whata family			515	400	915
	6	Raniera Te Whata		225	
	7	Ngahuia Heta		225	
Motai Taueki	8	Motai Taueki	104	100	204
Wirihana Tarewa family	9	Te Wirihana Tarewa	610	500	1110
Inia Tamaraki	10	Inia Tamaraki	104	25	129
Te Paki	11	Te Paki (Te Hunga)	308	100	408
Hoani Puihi family			412	400	812
	12	Hoani Puihi		200	
	13	Ripeka Winara		100	
	14	Kingi Puihi		100	
Kerehi Te Mitiwaha family			404	500	904
	15	Kerehi Te Mitiwaha		250	
	16	Norenore Te Kerehi		125	
	17	Warena Te Kerehi		125	
Tamati Maunu family			819	500	1319
	18	Hariata Tinotahi		150	

1. Luiten, 'Political Engagement' (doc A163), pp Otaki MB 40, pp 291–293

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Persons entitled to Horowhenua 11[1]	Court Order (No)	Court Order (name)	Area allotted (acres) Already allotted	In No 11	Total area
	19	Ruka Hanuhanu		100	
	20	Hema Henare		100	
	21	Hanita Henare		100	
Ihaka Te Rangihouhia	22	Ihaka Te Rangihouhia	102	100	202
Matene Pakauwera	23	Matene Pakauwera	105	25	130
Tikara family			413	100	513
	24	Peene Tikara		50	
	25	Pero Tikara		25	
	26	Hana Rata		25	
Hopa Te Piki family			415	100	515
	27	Hopa Te Piki		50	
	28	Hone Tupou		50	
Himiona Taiweherua	29	Himiona Taiweherua	104	100	204
Karaitiana Tarawahi	30	Karaitiana Tarawahi	105	150	255
Winara Te Raorao family			315	150 + 50	515
	31	Ngariki Te Raorao		100	
	32	Anikanara Te Whata		100	
Ruta Kiri family			615	600	1215
	33	Ruta Kiri		600	
Matenga Tinotahi	34	Matenga Tinotahi	104	25	129
Waata Muruahi	35	Waata Muruahi	524	50	574
Hereora family			924	1050	1974
	36	Noa Tawhati		142	
	37	Unaiki Tawhati		142	
	38	Taare Matai		142	
	39	Taare Hereora		142	
	40	Te Kiri Hopa		142	
	41	Kahukore Hurinui		142	
	42	Te Ahuru Porotene		50	
	43	Te Raraku Hunia		148	
Ani Patene	44	Ani Patene	100	25	125
Rihipeti Tamaki and family	45	*Rihipeti Tamaki	829	50	879
Hopa Heremaia	46	Hopa Heremaia	104	50 + 50	204
Himiona Kowhai and sister	47	Himiona Kowhai	208	300	508

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Persons entitled to Horowhenua 11[1]	Court Order (No)	Court Order (name)	Area allotted (acres)		
			Already allotted	In No 11	Total area
Manihera Te Rau	48	Manihera Te Rau	104	25	129
Waata Tamatea and sisters	49	Waata Tamatea	155	25	180
Hori Te Pa and brother	50	Hori Te Pa	210	50	260
Makere Te Rou family			1082	600	1682
	51	Makere Te Rou		100	
	52	Hera Tupou		84	
	53	Mohi Rakuraku		84	
	54	Kaiwhare Rakuraku		83	
	55	Wiremu Te Pae		83	
	56	Tapita Himiona		83	
	57	Parahi Reihana		83	
Merehira Te Marika family			515	500	1015
	58	Mereana Matao		150	
	59	Rawinia Ihaia		200	
	60	Rawinia Matao		100	
	61	Hetariki Matao		100	
Wiki Pua family			200	200	400
	62	Wiki Pua		100	
	63	Hoani Nahona		100	
Amorangi Rihara family			200	50	250
	64	Amorangi Rihara		25	
	65	Nati Amorangi		25	
Te Hapimana Tohu	66	Te Hapimana Tohu	105	50	155
Teoti Te Hou	67	Te Oti Te Hou	104	50	154
Mananui Tawhai and Maata Te Whango			525	50	575
	68	Te Mananui Tawhai		25	
	69	Maata Te Whango		25	
Te Rangimairehau	70	Te Rangimairehau	157	100	257
Te Peeti Te Aweawe	71	Te Peti Te Aweawe	104	25	129
Hiria Amorangi	72	Hiria Te Amorangi	104	50	154
Maata Huikurangi	73	Maata Huikirangi	105	100	205
Rahira Wirihana	74	Rahira Wirihana	117	100	
Pirihira Te Rau	75	Pirihira Te Rau	104	100	
Iritana	76	Iritana Hanita	104	100	

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Persons entitled to Horowhenua 11[1]	Court Order (No)	Court Order (name)	Area allotted (acres)		
			Already allotted	In No 11	Total area
Ria Te Raikokiritia	77	*Ria Te Raikokiritia	105	25	130
Paranihia Riwai	78	Paranihia Riwai	104	100	204
Peti Te Uku	79	Peti Te Uku	104	50	154
Pirihira Te Hau	80	Pirihira Te Hau	105	50	155
Rora Korako and children	81	Rora Korako	311	100	411

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GLOSSARY

ahi kā burning fire; continuous occupation; rights to land by occupation
Aotearoa New Zealand
atua the gods, spirit, supernatural being
aukati border, boundary marking a prohibited area, roadblock, discrimination (justice)
awa river or stream
hakihaki skin disease
hapū clan, section of a tribe
harakeke New Zealand flax (*Phormium tenax* and *P. cookianum*)
hīnaki eel trap
hui meeting, gathering, assembly
hūpē mucus, snot
inanga/īnanga whitebait
ingoa name
iwi tribe, people
kānga corn
kai food
kaimoana seafood
kāinga home, village, settlement
kaitiaki guardian, protector; older usage referred to kaitiaki as a powerful protective force of being
kaitiakitanga the obligation to nurture and care for the mauri of a taonga; ethic of guardianship, protection
kākahi freshwater mussel, shellfish
kāpata cupboard
karaka a coastal tree cultivated by Māori for its orange berries, which contain seeds that are poisonous unless roasted (*Corynocarpus laevigatus*)
karakia prayer, ritual chant, incantation
karengo a red-coloured seaweed (*Porphyra*)
kauae raro lower jaw
kauae runga upper jaw
kaupapa matter for discussion, subject, topic, agenda
kawa marae protocol
kāwanatanga government, governorship
koha present, gift
kōhatu stone, rock
kōiwi human bone, human remains; person, self, spirit; descendants, line of issue
kokopu native trout
kōrero discussion, speech, to speak
koroua male elder
kōura freshwater crayfish (*Paranephrops planifrons* and *P. zealandicus*)
kuia female elder
mahinga kai food gathering places
mana prestige, authority, reputation, spiritual power [a form of power]
mana whenua customary rights and prestige and authority over land
manuhiri visitor, guest
marae courtyard before meeting house and associated buildings
maunga mountain

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mauri the life principle or living essence contained in all things, animate and inanimate
moana ocean, sea
mokai slave
mokopuna, moko grandchild, child of a son, daughter, nephew, niece etc
ngāhere bush, forest
nga kōrero tuku iho knowledge/stories/histories that have been passed down
ngāore immature whitebait
oriori chant, lullaby, song composed on the birth of a chiefly child about his/her ancestry and tribal history
pā fortified village, or more recently, any village
Pākehā New Zealander of European (mainly British) descent
papakāinga original home, home base, village, communal Māori land
Papatūānuku Earth, Earth mother and wife of Ranginui
pataka storehouse
patakanui giant store house
pā tuna weir for catching eels
patere chant
pāwhara/pāwhera dried fish
pepeha tribal saying
pingao golden sand sedge, traditionally used for weaving and rope-making (*Desmoschoenus spiralis*)
pirau to be extinguished, beaten or defeated; to be festering or infected
piupiu traditional flax skirt made from strips of prepared and dyed harakeke, now used mainly for kapa haka performances
pounamu greenstone
puna spring, well, or pool
rāhui temporary ban, closed season, or ritual prohibition placed on an area, body of water, or resource
rangatira chief, tribal leader
rangatiratanga authority of a chief, chieftainship, the right to exercise authority, self-determination
raupatu conquest, confiscation
rerewaho Muaūpoko used this term in the nineteenth century to refer to those tribal members who had been incorrectly left out of the title to the Horowhenua block in 1873
rohe territory, boundary, district, area, region
rongoā medicine, medicinal purposes
roto inside, lake, wetlands/swamp
rou kakahi to dredge for freshwater mussels
taiaha long club fighting staff
taina/teina junior relatives, of a junior line, younger brothers (of a male), younger sisters (of a female), cousins (same gender)
Tangaroa atua of the sea and fish
tangata whenua people of the land
tangi cry, weep, grieve (also the abbreviated form of tangihanga: funeral)
taniwha water monster, guardian spirits
taonga a treasured possession, including property, resources, and abstract concepts such as language, cultural knowledge, and relationships
tapu sacred, sacredness, separateness, forbidden, off limits
Tāwhirimātea atua of the weather
Te Ika a Māui North Island of New Zealand
Te Ture the Law
tikanga custom, method, rule, law, traditional rules for conducting life
tikihemi half-grown smelt. Freshwater fish that spawn in rivers and wash to the sea. Some return with whitebait, while others return as adults (*Retropinna retropinna*).
tino rangatiratanga the greatest or highest chieftainship; self-determination, autonomy; control, full authority to make decisions
tipuna/tupuna ancestor, forebear

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tīpuna/tūpuna ancestors, forebears
tohu sign, portent
tohunga priest, specialist, expert
tuakana elder brother (of a male), elder sister (of a female), cousin (of the same gender from a more senior branch of the family)
tuna eels
tuna heke migrating eels
tuna puhi type of eels caught in large numbers during tuna heke
tūpāpaku bodies of the dead
tutae faeces, excrement
tūturu real, genuine, proper
urupā burial grounds, burial site, cemetery, tomb
wahine woman
wāhi tapu sacred place, place of historical and cultural significance
waiora health, soundness
wairua soul, spirit, life force
waka canoe
wānanga tertiary institution; traditional school of higher learning
whakanoa to remove tapu, to free things have the extensions of tapu, but it does not affect intrinsic tapu; also used in reference to extinguishing land titles
whakapapa ancestry, lineage, family connections, genealogy; to layer
whakatauki proverb
whānau family, extended family
whanaunga kin, family member
whare house, building
wharenui meeting house
whenua land, ground, placenta, afterbirth

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APPENDICES B

Reprint as at 1 April 1987

Reserves and Other Lands Disposal Act 1956

Public Act 1956 No 53
Date of assent 25 October 1956
Commencement 25 October 1956

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

This Act is administered by Land Information New Zealand.

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An Act to provide for the sale, reservation, and other disposition of certain reserves, Crown lands, endowments, and other lands, to validate certain transactions, and to make provision in respect of certain other matters

2

1 Short Title

This Act may be cited as the Reserves and Other Lands Disposal Act 1956.

2 Authorising the change of purpose of certain land in the Town of Manaia

Whereas the land described in subsection (3) is vested in the Chairman, Councillors, and Citizens of the Town District of Manaia (in this section referred to as the **Corporation**) in trust as an endowment for town purposes:

And whereas the said land is not required for those purposes and the Corporation wishes to use it as a site for a library:

And whereas the existing Athenaeum Reserve in the Town of Manaia is unsuitable as a library site and is held under lease:

And whereas it is desirable and expedient that the purpose of the said land be changed from an endowment for town purposes to a reserve for library purposes subject to the Reserves and Domains Act 1953:

Be it therefore enacted as follows:

(1) The land described in subsection (3) is hereby declared to be no longer vested in the Corporation as an endowment for town purposes, and is hereby declared to be vested in the Corporation in trust as a site for library purposes subject to the provisions of the Reserves and Domains Act 1953, freed and

discharged from all other trusts, reservations, and restrictions heretofore affecting the same.

(2) The District Land Registrar for the Land Registration District of Taranaki is hereby authorised and directed to make such entries in the register books, to register such instruments, and to do all such other things as may be necessary to give effect to the provisions of this section.

(3) The land to which this section relates is particularly described as follows:

All that area in the Taranaki Land District, Manaia Town District, being Section 7, Block XIX, Town of Manaia, containing 1 rood, more or less, and being all the land comprised and described in certificate of title, Volume 204, folio 96, Taranaki Registry.

3 Amending section 168 of the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1924

Whereas section 168 of the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1924, as amended by subsection (3) of section 25 of the Reserves and Other Lands Disposal Act 1950, authorised the granting of building leases over that portion of the Lake Ellesmere (now Springston South) Domain described in subsection (5) of the said section 168:

And whereas certain of the dwellings erected in pursuance of that authority encroach on portion of a former closed road area which was added to the said domain by Proclamation published in the *Gazette* of 7 March 1935 at page 580:

And whereas it is desirable that this additional land (being the land to which subsection (2) relates) be made subject to the provisions of the said section 168: Be it therefore enacted as follows:

(1) The provisions of the said section 168 shall be deemed to apply and to have always applied to that portion of the Springston
South Domain described in subsection (2) since 1 March 1935.

(2) The land to which this section relates is particularly described as follows:

All that area in the Canterbury Land District containing 10 perches and eight-tenths of a perch, more or less, being Reserve 4349, Block XII, Leeston Survey District: as shown on the plan marked L and S 1/456A, deposited in the Head Office, Department of Lands and Survey, at Wellington, and thereon coloured red (SO Plan 6745).

4 Declaring portion of the Havelock Commonage to be Crown land subject to the Land Act 1948 and adding certain other Crown land to the commonage

Whereas the land firstly described in subsection (4) is, together with other land, set apart as a commonage for the

inhabitants of the Town of Havelock and the management thereof is vested in the Town of Havelock Commonage Trustees:

4

And whereas the said land has not been used as and is not required for commonage purposes, and it is desirable that it be declared Crown land subject to the Land Act 1948:

And whereas the land secondly described in the said subsection (4) adjoins the commonage and was formerly held on renewable lease, but was never occupied by the registered lessee and has been occupied as part of the commonage, and it is desirable that it be declared part of the said Havelock Commonage subject to the Havelock Commonage Act 1905: Be it therefore enacted as follows:

(1) The land firstly described in subsection (4) is hereby declared to be no longer subject to the provisions of the Havelock Commonage Act 1905, and the said land is hereby declared to be Crown land subject to the Land Act 1948.

(2) The land secondly described in subsection (4), being formerly portion of the land comprised in renewable lease numbered RL o/303, registered in Volume 290, folio 172, Otago Registry, is hereby declared to be part of the Havelock Commonage subject to the Havelock Commonage Act 1905.

(3) The District Land Registrar for the Land Registration District of Otago is hereby authorised and directed to deposit such plans, to accept such documents for registration, to make such entries in the register books, and to do all such other things as may be necessary to give effect to the provisions of this section.

(4) The land to which this section relates is particularly described as follows:

All those areas in the Otago Land District being—

Firstly, parts of Section 44, Block X, Waitahuna East Survey District, containing together 5 acres 10 perches and one-tenth of a perch, more or less:

6

Secondly, part of Section 9, Block X, Waitahuna East Survey District, containing 5 perches and seven-tenths of a perch, more or less:

As shown on the plan marked L and S 1/356, deposited in the Head Office, Department of Lands and Survey, at Wellington, and thereon edged red and yellow respectively (SO Plan 11726).

5

5 Special provisions relating to the Taieri River Trust

Whereas section 19 of the Taieri River Improvement Act 1920 vested in the Taieri River Trust (in this section referred to as the **Trust**) the beds of Lakes Waihola, Waipori, and Tatawai as an endowment:

And whereas subsection (3) of the said section 19 provides that the revenue from the said endowment shall be applied towards interest and other charges on any loan or loans raised for the improvement to the Waipori River waterway and extension of the contour channel and channels through the said lakes:

And whereas section 21 of the Reserves and Other Lands Disposal Act 1931 authorised the vesting of certain other lands in the Trust as an endowment and the application of the revenue therefrom for the purposes aforesaid and any other works pertaining to these lands or the beds of Lakes Waipori and Tatawai:

And whereas a special rate was levied to repay a loan raised for the purposes referred to in subsection (3) of the said section 19, and the revenue from the endowments is not now expended in the manner provided by the said subsection:

And whereas the Trust, without proper authority, has established an account known as the Pumping Station Renewal Reserve Account for the purpose of renewing the Trust’s pumping station at Henley:

And whereas the sum of 150 pounds per annum is required to be paid into this Account:

And whereas the Trust wishes to set aside out of the revenue raised from its endowments as referred to in subsection (2) the said annual sum of 150 pounds, and to apply at its discretion any surplus over and above the said sum firstly, towards any work or works carried out on the said endowments and secondly, towards the general maintenance and improvement of works within the Taieri River Trust District:

And whereas there are situated in Lake Waihola certain small islands which are more particularly described in subsection (6), and it is desired that the said islands be vested in the Trust as an endowment subject to the Taieri River Improvement Act 1920:

5

And whereas it is desirable and expedient that provision be made to validate the establishment of the said Pumping Station Renewal Reserve Account and for the payment into that Account of the annual sum referred to herein and for disbursement of proceeds in the said Account and various ancillary matters dealing with the Trust's operations: Be it therefore enacted as follows:

(1) Notwithstanding anything to the contrary in the Taieri River Improvement Act 1920 or any other Act or rule of law, the establishment by the Trust of a Pumping Station Renewal Reserve Account is hereby confirmed and validated and declared to have been lawfully done, and the payments heretofore made by the Trust into the said Account are hereby declared to have been lawfully made and the Trust shall hereafter pay to the Pumping Station Renewal Reserve Account an annual sum of 150 pounds as provided in subsection (2), and all moneys paid into that Account shall be administered, and when necessary expended, for such purposes and on such conditions as the Minister of Works may approve.

(2) The Trust is hereby authorised to set aside out of the revenue received from its endowments created by section 19 of the Taieri River Improvement Act 1920, section 21 of the Reserves and Other Lands Disposal Act 1931, and subsection

(4) an annual sum of not less than 150 pounds for payment to the said Pumping Station Renewal Reserve Account.

(3) Any surplus revenue over and above the said annual sum of 150 pounds shall be applied by the Trust at its discretion firstly, towards any work or works carried out on the said endowments referred to in subsection (2) and secondly, towards the general maintenance and improvement of works within the Taieri River Trust District.

(4) The islands described in subsection (6) are hereby declared to be vested in the Trust as an endowment subject to the Taieri River Improvement Act 1920, and the Trust shall be, in respect of the said islands, a leasing authority within the meaning of the Public Bodies' Leases Act 1908.

(5) The District Land Registrar for the Land Registration District of Otago is hereby authorised and directed to deposit such

plans, register such documents, make such entries in the register books, and to do all such other things as may be necessary to give effect to the provisions of this section.

(6) The land to which subsection (4) relates is particularly described as follows:

All those areas in the Otago Land District, being islands in Lake Waihola adjoining Blocks XXI, XXII, and XXIII, Waihola Survey District, containing together 92 acres, more or less: as shown on the plan marked L and S 15/102C, deposited in the Head Office, Department of Lands and Survey, at Wellington, and thereon edged red (SO Plans 78 and 8343).

6 Vesting certain land in the Corporation of the Borough of Masterton subject to the Municipal Corporations Act 1954

Whereas the land described in subsection (3) is vested in the Mayor, Councillors, and Citizens of the Borough of Masterton (in this section referred to as the **Corporation**) for the

purposes of an open space within the meaning of section 298 of the Municipal Corporations Act 1920:

And whereas the Corporation has adequate open spaces and recreation areas in the locality and the said land is no longer required for the purposes of an open space:

And whereas the Corporation wishes to use the said land for housing, and it is desirable and expedient that the land be vested in it subject to the provisions of the Municipal Corporations Act 1954:

Be it therefore enacted as follows:

(1) Notwithstanding anything to the contrary in any Act or rule of law, the vesting in the Corporation for the purposes of an open space of the land described in subsection (3) is hereby cancelled, and the land is hereby declared to be vested in the Corporation for an estate in fee simple subject to the provisions of the Municipal Corporations Act 1954, but otherwise freed and discharged from all trusts, reservations, and restrictions heretofore affecting the said land.

(2) The District Land Registrar for the Land Registration District of Wellington is hereby authorised and directed to deposit such

plans, to accept such documents for registration, to make such entries in the register books, and to do all such other things as may be necessary to give effect to the provisions of this section.

(3) The land to which this section relates is particularly described as follows:

All that area in the Wellington Land District, being Lots 28 and 29, DP 8150, being part of Section 43, Manaia Block, situated in Block IV, Tiffin Survey District, containing 1 acre 1 rood 12 perches and eight-tenths of a perch, more or less, and being all the land comprised and described in certificate of title, Volume 350, folio 108, Wellington Registry.

7 Removing certain land from the provisions of section

39 of the Maori Land Claims Adjustment and Laws Amendment Act 1907 and vesting that land in the Corporation of the City of Wellington for recreation purposes

Whereas the land described in subsection (4) is part of a sports ground known as the Alex Moore Recreation Ground, and is vested in the Mayor, Councillors, and Citizens of the City of Wellington for an estate in fee simple in trust for the purposes of pleasure grounds and recreation grounds:

And whereas the said land was originally acquired by the Johnsonville Town Board under the Public Works Act 1905, and payment of compensation was provided for in section 39 of the Maori Land Claims Adjustment and Laws Amendment Act 1907:

And whereas the said section 39 conferred on the Johnsonville Town Board a power of sale in respect of the said land:

And whereas the said land is being developed by the Wellington City Council as the main sports ground for Johnsonville, and the said Council considers that the power of sale conferred as aforesaid is now no longer required, and desires that the said power of sale be cancelled and the said land vested in it as a recreation reserve subject to the Reserves and Domains Act 1953:

Be it therefore enacted as follows:

the

8

(1) Section 39 of Maori Land Claims Adjustment and Laws Amendment Act 1907 is hereby repealed.

(2) The vesting of the land described in subsection (4) is hereby cancelled, and the land is hereby declared to be vested in the Mayor, Councillors, and Citizens of the City of Wellington in trust as a recreation reserve subject to the Reserves and Domains Act 1953, but otherwise freed and discharged from all trusts, reservations, and restrictions heretofore affecting the same.

(3) The District Land Registrar for the Land Registration District of Wellington is hereby authorised and directed to accept such documents for registration, to make such entries in the register books, and to do all such other things as may be necessary to give effect to the provisions of this section.

(4) The land to which this section relates is particularly described as follows:

All that area in the Wellington Land District, City of Wellington, being Lots 1, 2, 5 to 17, 19 to 30, and part of Lots 31 and 32, Deposited Plan No 2107, and Lots 33 and 35 to 40, Deposited Plan No 2200, being part of Section 8, Porirua District, situated in Block XI, Belmont Survey District, containing 11 acres 12 perches and twenty-nine hundredths of a perch, more or less, and being all the land comprised and described in certificate of title, Volume 600, folio 20, Wellington Registry.

8 Repealing section 6 of the Water Supply Amendment Act 1913

Whereas section 6 of the Water Supply Amendment Act 1913 (in this section referred to as the **said section**) provides that any company formed for the purpose of undertaking land irrigation in the County of Vincent may contract to acquire land from the Crown for development by the company and eventual disposal to purchasers:

12

the

And whereas the Alexandra Development Party Limited and the Cromwell Development Company Limited contracted to purchase lands from the Crown in terms of the said section:

9

And whereas ventures were not a success and difficulties were experienced by the said companies in disposing of the said land in the manner provided by the said section:

And whereas certain certificates of title issued to purchasers for land disposed of by the said companies in terms of the said section were made subject to the area restrictions imposed by subparagraph (v) of paragraph (a) thereof:

And whereas all the land so acquired by the said companies has now been disposed of, and the Alexandra Development Party Limited has been wound up and the Cromwell Development Company Limited is in the process of being wound up:

And whereas it is desirable that the said section be repealed and that the area restrictions imposed by subparagraph (v) of paragraph (a) thereof be removed from the relative certificates of title:

Be it therefore enacted as follows:

(1) Section 6 of the Water Supply Amendment Act 1913 is hereby repealed.

(2) Nothing in this section shall be deemed to affect any mining privilege or other right acquired by the Cromwell Development Company Limited in terms of the said section, nor be deemed to derogate from or alter in any manner (other than as expressly provided in subsection (3)) any title to land issued pursuant to the said section 6.

(3) As from the date of the commencement of this Act, any land which is subject to the restrictions imposed by subparagraph (v) of paragraph (a) of the said section shall cease to be so subject.

the

9 Declaring certain land vested in the Inangahua Agricultural and Pastoral Association to be Crown land Whereas the land described in subsection (3) is vested in trust in the Inangahua Agricultural and Pastoral Association (in this section referred to as the **Association**) for an agricultural and pastoral showground:

And whereas the said land has never been used for that purpose:

10

And whereas Association is no longer active and has now ceased to function:

And whereas for the better management and control of the said land it is desirable that the vesting in the Association be cancelled and the said land declared Crown land subject to the Land Act 1948:

Be it therefore enacted as follows:

(1) Notwithstanding anything to the contrary in the Agricultural and Pastoral Societies Act 1908 or in any other Act or rule of law, the vesting of the land described in subsection (3) in the Association is hereby cancelled, and the said land is hereby declared to be Crown land subject to the Land Act 1948.

(2) The District Land Registrar for the Land Registration District of Nelson is hereby authorised and directed to cancel without fee the certificate of title for the land described in subsection (3), and to do all such other things as may be necessary to give effect to the provisions of this section.

(3) The land to which this section relates is particularly described as follows:

All that area in the Nelson Land District, being Sections 71 and 80, Square 131, situated in Block X, Reefton Survey District, containing 98 acres 2 roods and 30 perches, more or less, and being all the land comprised and described in certificate of title, Volume 35, folio 17, Nelson Registry.

14

the

10 Vesting certain land in the Corporation of the County of Westland and validating certain leases

Whereas section 4 of the Local Legislation Act 1939 authorised the Corporation of the County of Westland (in this section referred to as the **Corporation**) to grant leases over the land described in subsection (4) thereof, which was stated to be vested in the Corporation for a road reserve: And whereas it has been discovered that the said land, which is more particularly described in subsection (5), is and has always been vested in Her Majesty as public road: And whereas it is desirable to vest the land in the Corporation for an estate in fee simple subject to the Counties Act 1920, to validate any leases granted pursuant to the said section 4, and

to enable registration of existing and future leases and dealings therewith:

Be it therefore enacted as follows:

(1) The portion of public road described in subsection (5) is hereby declared to be closed and to be vested in the Corporation for an estate in fee simple subject to the Counties Act 1920 freed and discharged from all rights of the public thereover as a public highway.

(2) Any lease heretofore granted by the Corporation pursuant to section 4 of the Local Legislation Act 1939 is hereby declared to be and to have always been valid and binding in all respects and of full force and effect according to its tenor.

(3) The District Land Registrar for the Land Registration District of Westland is hereby authorised and directed to make such entries in the register books and to do all such other things as may be necessary to give effect to the provisions of this section.

(4) The Westland County Council Enabling Act 1894 is hereby repealed.

(5) The land to which this section relates is particularly described as follows:

All that area in the Westland Land District situated in Block XI, Kaniere Survey District, containing 3 roods and 13 perches, more or less, bounded as follows:

Commencing at a point 102.2 links bearing 69°21′ from the south-eastern corner of part of Lot 2, Deposited Plan 173, thence proceeding in a northerly direction by lines bearing 345°40′ for 192.5 links, 352°44′ for 478.0 links, 341°10′ for 572.1 links to the southernmost corner of part Reserve 913; thence northerly along the eastern boundary of the said part Reserve 913 for a distance of 70 links; thence easterly by a line bearing 110° for 140 links to the left bank of the Kaniere River; thence southerly along the said bank to a point due east of the point of commencement; thence on a bearing of 270° for 40.0 links to the point of commencement: as shown on the plan marked L and S 16/2239, deposited in the Head Office,

Department of Lands and Survey, at Wellington, and thereon edged red.

11

11 Setting apart certain land for the purposes of Part 3 of the Coal Mines Act 1925

Whereas pursuant to the provisions of the State Coal Mines Act 1901, the Coal Mines Act 1905, and the Coal Mines Act 1908 respectively, a total area of 6 504 acres 2 roods and 38 perches of Crown land in the Nelson Land District was set apart for the purposes of the said Acts:

And whereas the said land has been known and is still known as the Seddonville State Coal Reserve (in this section referred to as the **reserve**):

And whereas from time to time certain areas of the reserve have by notice been exempted from the provisions of the said Acts and ceased to be subject thereto:

And whereas defects in the notices promulgated in the past dealing with the reserve have been discovered and doubts have arisen as to the correct description and boundaries of the land which now comprises the residue of the reserve: And whereas it is desirable that these doubts be resolved, and that the land described in subsection (3) be set apart for the purposes of Part 3 of the Coal Mines Act 1925: Be it therefore enacted as follows:

(1) Notwithstanding anything to the contrary in the Coal Mines Act 1925 or in any other Act or rule of law, all notices affecting the reserve are hereby cancelled: provided that the cancellation of the said notices shall not in any way affect any coal lease or any other rights granted by the Crown under the Coal Mines Act 1925 over any part of the reserve.

(2) The land described in subsection (3) is hereby declared to be set apart under and subject to the provisions of Part 3 of the Coal Mines Act 1925.

(3) The land to which subsection (2) relates is particularly described as follows:

All that area in the Nelson Land District situated in Block XV, Mokihinui Survey District, containing 20 acres 2 roods 6

perches and five-tenths of a perch, more or less, and bounded as follows:

12

Commencing at the easternmost corner of Section 70, Block XV, Mokihinui Survey District; thence towards the south-east by Halcyon Road, bearing 227°06′ for 812.1 links; thence towards the west by a right line bearing 347°34′ for 3 317.6 links; thence towards the north generally by the Mokihinui Road, bearing 97°41′ for 169.01 links and bearing 83°53′ for 242.9 links; thence towards the north-east by railway land, bearing 137°06′ for 591.4 links; thence towards the east by Halcyon Road, bearing 167°34′ for 2 311.2 links, to the point of commencement: as the same is more particularly shown on the plan marked L and S 22/5107, deposited in the Head Office, Department of Lands and Survey, at Wellington, and thereon edged red.

12 Special provisions relating to the St James Parish Hall at Mangere

Whereas by section 12 of the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1922, the Manukau County Council (in this section referred to as the **Council**) was empowered to lease to the Mangere Board of Trustees (in this section referred to as the **Board**) part of Section 48, Village of Mangere (in this section referred to as the **said land**) as a site for a parish hall:

And whereas, pursuant to the said section 12, the Council leased the said land to the Board on certain terms and under the authority of the said lease the Board erected on the said land the St James Parish Hall:

And whereas, by section 5 of the Reserves and Other Lands Disposal Act 1952, the said lease was declared to be terminated and extinguished and the said land and all buildings and other improvements thereon were declared to be vested in the Chairman, Councillors, and Inhabitants of the County of Manukau and the Secretary of the said Board was empowered to transfer and deliver to the Council any

furnishings, chattels, and effects belonging to the Board upon such terms as may be mutually agreed upon:

And whereas, pursuant to the said section 5, the St James Parish Hall erected on the said land became vested in the

Council and the Board transferred to the Council the furnishings in the hall and certain money held by the Board:

And whereas the Board desires the said parish hall and the furnishings therein to be disposed of to it for removal purposes and has requested that all money held by the Council in its St James Hall Account be paid to the Board:

And whereas the Council is agreeable to this being done and it is desirable for provision to be made accordingly: Be it therefore enacted as follows:

(1) Notwithstanding anything to the contrary in section 5 of the Reserves and Other Lands Disposal Act 1952 or any other Act or rule of law, the Council is hereby authorised and empowered:

(a) to dispose of to the Board for removal purposes the St James Parish Hall erected on the said land together with the furnishings therein on such terms and conditions as may be mutually agreed upon by the Council and the Board:

(b) to transfer to the Board all money standing to the credit of the St James Hall Account in the books of the Council after deducting therefrom all charges and expenses incurred in the disposal of the said Parish Hall to the Board, and the receipt of the Board shall be a good and sufficient discharge to the Council.

(2) On the disposal of the Parish Hall and the furnishings therein to the Board in accordance with this section, the hall and furnishings shall be deemed to be the property of the Board.

13 Declaring lands subject to the Forests Act 1949 to be Crown land subject to the Land Act 1948

Whereas the lands described in subsection (2) are set apart as permanent State forest under the Forests Act 1949:

And whereas it is desirable that they should be declared Crown land subject to the Land Act 1948: Be it therefore enacted as follows:

(1) The setting apart of the lands described in subsection (2) as permanent State forest is hereby revoked and the said lands

are hereby declared to be Crown land subject to the Land Act 1948.

(2) The lands to which this section relates are particularly described as follows:

Firstly, all those areas in the North Auckland Land District, being parts of Allotment 45, Kaitara Parish, situated in Blocks VII and XI, Purua Survey District, containing together 35 acres 3 roods 12 perches and nine-tenths of a perch, more or less: as shown on the plan marked L and S 58320C, deposited in the Head Office, Department of Lands and Survey, at Wellington, and thereon edged red (SO Plan 38963).

Secondly, all that area in the North Auckland Land District, being part of the land set apart as permanent State forest by Proclamation dated 21 September 1938, and published in the *Gazette* of the 29th day of that month at page 2144, and being also the land now known as Section 13, Block VII, Mangonui Survey District, containing 10 acres and 25 perches, more or less: as shown on the plan marked L and S X/91/60, deposited in the Head Office, Department of Lands and Survey, at Wellington, and thereon edged red (SO Plan 26157). Thirdly, all that area in the Taranaki Land District, being part of Lot 9, DP 393, and being part of Pohokura Block, situated in Block XI, Ngatimaru Survey District, containing 101 acres 2 roods and 25 perches, more or less: as shown on the plan marked L and S 22/4119, deposited in the Head Office, Department of Lands and Survey, at Wellington, and thereon edged red (SO Plan 8788).

Fourthly, all that area in the Hawke's Bay Land District, being Section 3 (formerly parts of Blocks 56, 73, 74, 75, and 76,

Wakarara Crown Grant District), Block XI, Wakarara Survey District, containing 512 acres and 2 roods, more or less, being part of the land comprised and described in certificate of title, Volume 62, folio 216, Hawke's Bay Registry: as shown on the plan marked L and S X/93/9, deposited in the Head Office, Department of Lands and Survey, at Wellington, and thereon edged red (SO Plan 2854).

Fifthly, all those areas in the Nelson Land District, being parts of Section 1 and part of Section 11, Block X, Motupiko Survey

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District, containing together 336 acres and 30 perches, more or less: as shown on the plan marked L and S X/97/12, deposited in the Head Office, Department of Lands and Survey, at Wellington, and thereon edged red (SO Plan 9934).

Sixthly, all those areas in the Nelson Land District, being Section 76, Square 4, and Sections 4, 5, 13, and 14, Block XV, Wai-iti Survey District, and Sections 2 and 22 to 27, Block XIV, Wai-iti Survey District, containing together 1 161 acres 2 roods and 33 perches, more or less: as shown on the plan marked L and S X/97/12A, deposited in the Head Office, Department of Lands and Survey, at Wellington, and thereon edged red (SO Plans 2973, 3188, 3189, 3560, 5081).

Seventhly, all that area in the Otago Land District, being part of Section 15, Block II, Naseby Survey District, containing 66 acres and 3 roods, more or less: as shown on the plan marked L and S 8/9/123, deposited in the Head Office, Department of Lands and Survey, at Wellington, and thereon edged red (SO Plan 12038L).

Eighthly, all that area in the Otago Land District, being Lot 1, DP 8691, and being Sections 1 and 2, and part of Section 11, Block XV, Town of Tapanui, containing 2 roods 32 perches and fourteen one-hundredths of a perch, more or less, and being part of the land comprised and described in certificate of title, Volume 215, folio 256, Otago Registry: as shown on the plan marked L and S 6/1/67, deposited in the Head Office,

Department of Lands and Survey, at Wellington, and thereon edged green.

Ninthly, all that area in the Southland Land District, being Section 206 (formerly part of Section 7), Block XII, Waiau Survey District, containing 54 acres 1 rood and 25 perches, more or less, and being part of the land comprised and described in certificate of title, Volume 135, folio 105, Southland Registry: as shown on the plan marked L and S X/101/35A, deposited in the Head Office, Department of Lands and Survey, at Wellington, and thereon edged red (SO Plan 6299).

Tenthly, all that area in the Southland Land District, being Section 203 (formerly part of State forest Number 10) Block XI, Waiau Survey District, containing 501 acres 2 roods and 20 perches, more or less: as shown on the plan marked L and S

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32/272, deposited in the Head Office, Department of Lands and Survey, at Wellington, and thereon edged red (SO Plan 6300).

Eleventhly, all that area in the Southland Land District, being part of State forest Number 10 and part of Sections 4 and 41, Block XXI, Jacobs River Hundred, containing 675 acres, more or less: as shown on the plan marked L and S 22/2053, deposited in the Head Office, Department of Lands and Survey, at Wellington, and thereon edged red (SO Plan 6335).

14 Validating a loan by the Strath Taieri Soldiers' Memorial Board and authorising the registration of a certain mortgage in favour of the Board

Whereas the Strath Taieri Soldiers' Memorial Board (in this section referred to as the **Board**) was appointed under the Reserves and Domains Act 1953 to have control of certain land in the Township of Middlemarch, Otago Land District, subject to the provisions of the said Act, as a site for a war memorial: And whereas the Board has lent the sum of 800 pounds, and there has been executed in its favour a

memorandum of mortgage dated 27 February 1956, from Robert Knowles, of Dunedin, company manager, over part Sections 49 and 50, Block XXIV, Town of Dunedin, together with right of way created by conveyance Number 103423, and being the whole of the land comprised and described in certificate of title, Volume 293, folio 98, Otago Registry (limited as to parcels), to secure the repayment of such sum:

And whereas the Board has no power to lend money and is not a body corporate:

And whereas there is thus no authority to register the said mortgage:

And whereas it is desirable and expedient that the Board's action be validated, and that provision be made for the registration of the said memorandum of mortgage and for any variations, exercise of power of sale, or discharge thereof: Be it therefore enacted as follows:

(1) The action of the Board in lending the said sum of 800 pounds and in taking as security for the repayment thereof a memo-

randum of mortgage in its favour is hereby confirmed and validated and declared to have been lawfully done, and the said mortgage is hereby declared to be of full force and effect according to its tenor.

(2) The Board may by resolution vary the terms of the said memorandum of mortgage, or grant any discharge or partial discharge thereof.

(3) For the purpose of giving effect to any variations, or of granting any discharge or partial discharge as aforesaid, or of exercising any power of sale under the mortgage, any documents which may require to be executed by the Board for such purpose may be lawfully executed if signed on behalf of the Board by the Chairman and any 2 other members thereof pursuant to a resolution of the said Board.

(4) The District Land Registrar for the Land Registration District of Otago is hereby authorised and directed to accept for registration the said memorandum of mortgage, or any variation or discharge thereof, or any transfer of the land in

the mortgage in exercise of the power of sale contained or implied therein, executed on behalf of the Board as aforesaid, and to make such entries in the register books and to do all such other things as may be necessary to give effect to the provisions of this section.

15 Altering the trusts under which certain land is vested in the Corporation of the City of Invercargill

Whereas the land firstly described in subsection (4) is vested in the Mayor, Councillors, and Citizens of the City of Invercargill (in this section referred to as the **Corporation**) for an estate in fee simple for the purpose of a public cemetery:

And whereas the said land adjoins the Invercargill Eastern Cemetery, but in view of the city's expansion in that direction and the fact that it is situated on the main access routes from the city the Corporation does not wish to retain the said land for cemetery purposes:

And whereas the land secondly described in subsection (4) forms portion of land vested in the Corporation in trust as an endowment in aid of city funds:

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And whereas the said land secondly described is suitable for cemetery purposes, and the Corporation has requested that it be set aside for such purposes, and that the said land firstly described be freed from all existing trusts and reservations:

And whereas it is desirable and expedient to give effect to the wishes of the Corporation: Be it therefore enacted as follows:

(1) The land firstly described in subsection (4) is hereby declared to be vested in the Corporation subject to the Municipal Corporations Act 1954, but otherwise freed and discharged from all trusts, reservations, and restrictions heretofore affecting the same.

(2) The land secondly described is hereby declared to be vested in the Corporation in trust for the purposes of a public cemetery subject to the Municipal Corporations Act 1954, but

otherwise freed and discharged from all trusts, reservations, and restrictions heretofore affecting the same.

(3) The District Land Registrar for the Land Registration District of Southland is hereby authorised and directed to make such entries in the register books, to register such instruments, and to do all such other things as may be necessary to give effect to the provisions of this section.

(4) The land to which this section relates is particularly described as follows:

Firstly, all that area in the Southland Land District, being part of Section 42, Block II, Invercargill Hundred, containing 48 acres and 4 perches, more or less, and being all the land comprised and described in certificate of title, Volume 127, folio 66, Southland Registry: as shown on the plan marked L and S 2/645, deposited in the Head Office, Department of Lands and Survey, at Wellington, and thereon edged red.

Secondly, all that area in the Southland Land District, being part of Section 1, Block XXII, Invercargill Hundred, and being part of the land comprised and described in certificate of title, Volume 158, folio 25, Southland Registry, containing 28 acres more or less, subject to survey, and bounded as follows:

On the north by Mason Road for a distance of 900 links; on the east by other part of Section 1 for a distance of 3 112.7 links;

on the south by Lardner Road for a distance of 900 links; and on the west by Lot 1, DP 2991, for a distance of 3 112.7 links: as shown on the plan marked L and S 2/645A, deposited in the Head Office, Department of Lands and Survey, at Wellington, and thereon edged blue.

16 Vesting certain land in the Corporation of the Borough of Onehunga as a recreation reserve

Whereas section 92 of the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1910 vested in the Mayor, Councillors, and Citizens of the Borough of

Onehunga (in this section referred to as the **Corporation**) all that area of tidal land known as the Basin, Onehunga (as more particularly described in subsection (4)) to be held by the Corporation subject to the Public Reserves and Domains Act 1908 and to certain special provisions:

And whereas the said section provided, *inter alia*, that if the whole or any portions of the said land were at any time required for public purposes then such land could be resumed by the Crown under certain conditions:

And whereas the certificate of title issued to the Corporation for the land is subject to this special provision: And whereas the Corporation is developing the land for recreation purposes and wishes the said provision to be removed from its title:

And whereas the said provision is no longer required: Be it therefore enacted as follows:

(1) Notwithstanding the provisions of section 92 of the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1910, the land described in subsection (4) is hereby declared to be vested in the Corporation in trust for recreation purposes subject to the Reserves and Domains Act 1953, but otherwise freed and discharged from all trusts, reservations, and restrictions heretofore affecting the same.

(2) The District Land Registrar for the Auckland Land Registration District is hereby authorised and directed to make such entries in the register books and to do all such other things as

may be necessary to give effect to the provisions of this section.

(3) Section 92 of the Reserves and other Lands Disposal and Public Bodies Empowering Act 1910 is hereby repealed.

(4) The land to which this section relates is particularly described as follows:

All that area in the North Auckland Land District, being Section 50 (the Basin), Town of Onehunga, situated in Block V, Otahuhu Survey District, containing 16 acres and 2 roods,

more or less, and being all the land comprised and described in certificate of title, Volume 241, folio 137, Auckland Registry: as shown on the plan marked L and S 22/3818, deposited in the Head Office, Department of Lands and Survey, at Wellington, and thereon edged red.

17 Effecting exchanges of certain land in the Town of Opotiki

Whereas the land firstly and secondly described in subsection (6) is vested in the Mayor, Councillors, and Citizens of the Borough of Opotiki (in this section referred to as the **Corporation**) as an endowment in aid of borough funds: And whereas the land firstly described is subject to an unregistered lease in favour of Peter Richard Warren, of Opotiki, pilot: And whereas the Corporation desires to exchange the land firstly described for land owned in fee simple by the said Peter Richard Warren (being more particularly thirdly described in subsection (6)), who has given his consent thereto:

And whereas the Pakohai Tribal Committee desires to acquire the land secondly described as a marae site for the tribe, and has agreed with the Corporation to exchange therefor the land fourthly described in subsection (6), which is held by certain persons as trustees for the said Pakohai Tribal Committee:

And whereas it is desirable and expedient to give effect to the exchanges:

Be it therefore enacted as follows:

(1) The vesting of the land firstly described in subsection (6) in the Corporation is hereby cancelled, and the said land is hereby declared to be vested in Peter Richard Warren, of Opotiki, pilot,

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for an estate in fee simple freed and discharged from all trusts, reservations, and restrictions heretofore affecting the same.

(2) The vesting of the land secondly described in subsection (6) in the Corporation is hereby cancelled, and the said land is hereby declared to be vested in Kauri Mathews, of Opotiki, retired farmer, and Wairata Walker, wife of Isaac Walker, of Opotiki, farmer, for an estate in fee simple in trust for the

Pakohai Tribal Committee, but otherwise freed and discharged from all trusts, reservations, and restrictions heretofore affecting the same.

(3) The vesting of the land thirdly described in subsection (6) in Peter Richard Warren, of Opotiki, pilot, for an estate in fee simple is hereby cancelled, and the said land is hereby declared to be vested in the Corporation for an estate in fee simple as an endowment in aid of borough funds.

(4) The vesting of the land fourthly described in subsection (6) in Kauri Mathews, of Opotiki, retired farmer, and Wairata Walker, wife of Isaac Walker, of Opotiki, farmer, for an estate in fee simple is hereby cancelled, and the said land is hereby declared to be vested in the Corporation for an estate in fee simple as an endowment in aid of borough funds, but otherwise freed and discharged from all trusts, reservations, and restrictions heretofore affecting the same.

(5) The District Land Registrar for the Land Registration District of Gisborne is hereby authorised and directed to make such entries in the register books and to do all such other things as may be necessary to give effect to the provisions of this section.

(6) The lands to which this section relates are particularly described as follows:

All those areas in the Gisborne Land District being—

Firstly, Allotment 222 of Section 1, Town of Opotiki, containing 1 rood, more or less, and being part of the land comprised and described in certificate of title, Volume 67, folio 132, Gisborne Registry.

Secondly, Allotments 220 and 221 of Section 1, Town of Opotiki, containing 2 roods, more or less, and being part of the land comprised and described in certificate of title, Volume 67, folio 132, Gisborne Registry.

Thirdly, Lot 6, DP 4047, being part of Allotment 357 of Section 2, Town of Opotiki, containing 34 perches and two-tenths of a perch, more or less, and being all the land comprised and described in certificate of title, Volume 111, folio 188, Gisborne Registry.

Fourthly, Lots 12 and 13, DP 9115 (AK), being part of Allotment 151 of Section 2, Town of Opotiki, containing 1 rood 24 perches and twenty-four one-hundredths of a perch, more or less, and being all the land comprised and described in certificate of title, Volume 97, folio 219, Gisborne Registry.

18 Special provisions relating to Lake Horowhenua Whereas under the authority of the Horowhenua Block Act 1896, the Maori Appellate Court on 12 September 1898 made an Order determining the owners and relative shares to an area of 13 140 acres and 1 rood, being part of the Horowhenua XI Block:

And whereas the said area includes the Horowhenua Lake (as shown on the plan lodged in the office of the Chief Surveyor at Wellington under Number 15699), a 1 chain strip around the lake, the Hokio Stream from the outlet of the lake to the sea, and surrounding land:

And whereas certificate of title, Volume 121, folio 121, Wellington Registry, was issued in pursuance of the said Order:

And whereas by Maori Land Court Partition Order dated 19 October 1898 the lake was vested in trustees for the purposes of a fishing easement for all members of the Muaupoko Tribe who might then or thereafter own any part of the Horowhenua XI Block (in this section referred to as the **Maori owners**):

And whereas the minutes of the Maori Land Court relating to the said Partition Order recorded that it was also intended to similarly vest the 1 chain strip around the lake, the Hokio Stream from the outlet of the lake to the sea, and a 1 chain strip along a portion of the north bank of the said stream, but this was not formally done:

And whereas the Horowhenua Lake Act 1905 declared the lake to be a public recreation reserve under the control of a

Domain Board (in this section referred to as the **Board**) but preserved fishing and other rights of the Maori owners over the lake and the Hokio Stream:

And whereas by section 97 of the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1916 the said 1 chain strip around the lake was made subject to the Horowhenua Lake Act 1905, and control was vested in the Board:

And whereas subsequent legislation declared certain land adjoining the said 1 chain strip, and more particularly firstly described in subsection (13), to form part of the recreation reserve and to be under the control of the Board:

And whereas as a result of drainage operations undertaken some years ago on the said Hokio Stream the level of the lake was lowered, and a dewatered area was left between the margin of the lake after lowering and the original 1 chain strip around the original margin of the lake:

And whereas this lowering of the lake level created certain difficulties in respect of the Board's administration and control of the lake, and in view of the previous legislation enacted relating to the lake, doubts were raised as to the actual ownership and rights over the lake and the 1 chain strip and the dewatered area:

And whereas a Committee of Inquiry was appointed in 1934 to investigate these problems:

And whereas the Committee recommended that the title to the land covered by the waters of the lake together with the 1 chain strip and the said dewatered area be confirmed by legislation in ownership of the trustees appointed in trust for the Maori owners:

And whereas certain other recommendations made were unacceptable to the Maori owners, and confirmation of ownership and further appointment of a Domain Board lapsed pending final settlement of the problems affecting the lake:

And whereas by Maori Land Court Order dated 8 August 1951 new trustees were appointed for the part of Horowhenua XI Block in the place of the original trustees, then all deceased,

appointed under the said Maori Land Court Order dated 19 October 1898:

And whereas agreement has now been reached between the Maori owners and other interested bodies in respect of the ownership and control of the existing lake, the said 1 chain strip, the said dewatered area, the said Hokio Stream and the chain strip on a portion of the north bank of that stream, and certain ancillary matters, and it is desirable and expedient that provision be made to give effect to the various matters agreed upon:

Be it therefore enacted as follows:

(1) For the purposes of the following subsections:

lake means that area of water known as Lake Horowhenua enclosed within a margin fixed by a surface level of 30 feet above mean low water spring tides at Foxton Heads **dewatered area** means that area of land between the original margin of the lake shown on the plan numbered SO 15699 (lodged in the office of the Chief Surveyor, at Wellington) and the margin of the lake as defined aforesaid

Hokio Stream means that stream flowing from the outlet of the lake adjacent to a point marked as Waikiekie on plan numbered SO 23584 (lodged in the office of the Chief Surveyor, at Wellington) to the sea.

(2) Notwithstanding anything to the contrary in any Act or rule of law, the bed of the lake, the islands therein, the dewatered area, and the strip of land 1 chain in width around the original margin of the lake (as more particularly secondly described in subsection (13)) are hereby declared to be and to have always been owned by the Maori owners, and the said lake, islands, dewatered area, and strip of land are hereby vested in the trustees appointed by Order of the Maori Land Court dated 8 August 1951 in trust for the said Maori owners.

(3) Notwithstanding anything to the contrary in any Act or rule of law, the bed of the Hokio Stream and the strip of land 1 chain in width along a portion of the north bank of the said stream (being the land more particularly thirdly described in

subsection (13)), excepting thereout such parts of the said bed of the stream as may have at any time been legally alienated or disposed of by the Maori owners or any of them, are hereby declared to be and to have always been owned by the Maori owners, and the said bed of the stream and the said strip of land are hereby vested in the trustees appointed by Order of the Maori Land Court dated 8 August 1951 in trust for the said Maori owners.

(4) Notwithstanding the declaration of any land as being in Maori ownership under this section, there is hereby reserved to the public at all times and from time to time the free right of access over and the use and enjoyment of the land fourthly described in subsection (13).

(5) Notwithstanding anything to the contrary in any Act or rule of law, the surface waters of the lake together with the land firstly and fourthly described in subsection (13), are hereby declared to be a public domain subject to the provisions of Part 3 of the Reserves and Domains Act 1953:

provided that such declaration shall not affect the Maori title to the bed of the lake or the land fourthly described in subsection (13):

provided further that the Maori owners shall at all times and from time to time have the free and unrestricted use of the lake and the land fourthly described in subsection (13) and of their fishing rights over the lake and the Hokio Stream, but so as not to interfere with the reasonable rights of the public, as may be determined by the Domain Board constituted under this section, to use as a public domain the lake and the said land fourthly described.

(6) Nothing herein contained shall in any way affect the fishing rights granted pursuant to section 9 of the Horowhenua Block Act 1896.

(7) Subject to the provisions of this section, the Minister of Conservation shall appoint in accordance with the Reserves and Domains Act 1953 a Domain Board to control the said domain.

(8) Notwithstanding anything to the contrary in the Reserves and Domains Act 1953, the Board shall consist of—

(a) 4 persons appointed by the Minister on the recommendation of the Muaupoko Maori Tribe:

(b) 1 person appointed by the Minister on the recommendation of the Horowhenua County Council:

(c) 2 persons appointed by the Minister on the recommendation of the Levin Borough Council:

(d) the Director-General of Conservation, *ex officio*, who shall be Chairman.

(9) Notwithstanding anything in the Land Drainage Act 1908, the Soil Conservation and Rivers Control Act 1941, or in any other Act or rule of law, the Hokio Drainage Board constituted pursuant to the said Land Drainage Act 1908 is hereby abolished, and all assets and liabilities of the said Board and all other rights and obligations of the said Board existing at the commencement of this Act shall vest in and be assumed by the Manawatu Catchment Board, and until the said Catchment Board shall have completed pursuant to the Soil Conservation and Rivers Control Act 1941 a classification of the lands previously rated by the said Drainage Board, the said Catchment Board may continue to levy and collect rates in the same manner as they have hitherto been levied and collected by the said Drainage Board.

(10) The Manawatu Catchment Board shall control and improve the Hokio Stream and maintain the lake level under normal conditions at 30 feet above mean low water spring tides at Foxton Heads: provided that before any works affecting the lake or the Hokio Stream are undertaken by the said Catchment Board, the prior consent of the Domain Board constituted under this section shall be obtained:

provided further that the said Catchment Board shall at all times and from time to time have the right of access along the banks of the Hokio Stream and to the lake for the purpose of undertaking any improvement or maintenance work on the said stream and lake.

(11) The District Land Registrar for the Land Registration District of Wellington is hereby authorised and directed to deposit such plans, to accept such documents for registration, to make such entries in the register books, and to do all such other things as may be necessary to give effect to the provisions of this section.

(12) The following enactments are hereby repealed: (a) the Horowhenua Lake Act 1905:

(b) section 97 of the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1916:

(c) section 64 of the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1917:

(d) section 53 of the Local Legislation Act 1926.

(13) The land to which this section relates is particularly described as follows:

Firstly, all that area in the Wellington Land District, being Subdivision 38 and part of Subdivision 39 of Horowhenua 11B Block, situated in Block I, Waiopehu Survey District, containing 13 acres 3 roods and 37 perches, more or less, and being all the land comprised and described in certificate of title, Volume 165, folio 241, Wellington Registry: as shown on the plan marked L and S 1/220, deposited in the Head Office, Department of Lands and Survey, at Wellington, and thereon edged red (SO Plan 15589).

Secondly, all that area in the Wellington Land District situated in Block XIII, Mount Robinson Survey District, Block II, Waitohu Survey District, and Block I, Waiopehu Survey District, containing 951 acres, more or less, being part of the land comprised and described in certificate of title, Volume 121, folio 121, Wellington Registry, and being more particularly the bed of the lake, the islands therein, the dewatered area, and the strip of land 1 chain wide around the original margin of the lake: as shown on the plan marked L and S 1/220A, deposited in the Head Office, Department of Lands and Survey, at Wellington, and thereon edged blue, and coloured orange and red respectively (SO Plan 23584).

Thirdly, all that area in the Wellington Land District situated in Block IV, Moutere Survey District, and Block II, Waitohu Survey District, containing 40 acres, more or less, being part of the land comprised and described in certificate of title, Volume 121, folio 121, Wellington Registry, and being more particularly the bed of the Hokio Stream together with a strip of land 1 chain wide along a portion of the north bank of the said stream: as shown on the plan marked L and S 1/220A, deposited in the Head Office, Department of Lands and Survey,

at Wellington, and thereon coloured blue and sepia respectively (SO Plan 23584).

Fourthly, all that area in the Wellington Land District situated in Block I, Waiopehu Survey District, being that portion of the dewatered area together with so much of the 1 chain strip of land herein secondly described as in each case fronts Subdivision 38, Horowhenua 11B Block, herein firstly described, and being parts of the land coloured orange and red respectively on the plan marked L and S 1/220A, deposited in the Head Office, Department of Lands and Survey, at Wellington (SO Plan 23584).

Section 18(7): amended, on 1 April 1987, by section 65(1) of the Conservation Act 1987 (1987 No 65).

Section 18(8)(d): amended, on 1 April 1987, by section 65(1) of the Conservation Act 1987 (1987 No 65).

19 Authorising the Corporation of the Borough of Balclutha to sell portion of a public cemetery

Whereas the land described in subsection (6) was with other land vested in the Corporation of the Borough of Balclutha (in this section referred to as the **Corporation**) under the provisions of section 10 of the Reserves and Other Lands Disposal Act 1945 for the purpose of a public cemetery: And whereas the said land is unsuitable and has never been used for cemetery purposes:

And whereas it is expedient that the Corporation should be empowered to sell the said land and to apply the proceeds in the acquisition of other lands to be held for the purpose of a public cemetery or in the development or improvement of any lands now vested in or which may hereafter become vested in the said Corporation for the said purpose: Be it therefore enacted as follows:

(1) The reservation for cemetery purposes of the land described in subsection (6) is hereby revoked, and the said land is hereby declared to be vested in the Corporation freed and discharged

from all trusts, reservations, and restrictions heretofore affecting the same.

(2) The Corporation is hereby empowered to sell the land described in subsection (6) or any part thereof by public auc-

tion, public tender, or private contract, or partly by the one and partly by the other of such modes of sale, and either in one lot or in subdivisions as the Corporation may in its discretion decide, but subject to such conditions as to title, time, or mode of payment of purchase money or otherwise as it thinks fit, and with or without a grant or reservation of rights of way, rights of water easements, drainage easements, or other rights, privileges, or easements in favour of the purchaser or the said Corporation, or any other person.

(3) The net proceeds from the sale of the land referred to in subsection (6), or of any part thereof, shall be applied towards all or any of the following objects, namely:

(a) the purchase or other acquisition of lands to be held for the purpose of a public cemetery:

(b) the development or improvement of any lands now vested, or which may hereafter become vested in the said Corporation for the said purpose.

(4) The Corporation may utilise for street purposes any portion of the land described in subsection (6), and shall by special order declare to be a street any portion so used.

(5) The District Land Registrar for the Land Registration District of Otago is hereby authorised and directed to make such entries in the register books, to deposit such plans, to accept such documents for registration, and to do all such other things as may be necessary to give effect to the provisions of this section.

(6) The land to which this section relates is particularly described as follows:

All that area in the Otago Land District, being Lot 1, DP 8780, being part Cemetery Reserve situated in Block XVII, Town of Balclutha, containing 2 acres 2 roods 22 perches and five-tenths of a perch, more or less, and being part of the land

comprised and described in certificate of title, Volume 319, folio 75, Otago Registry: as shown on the plan marked L and S 2/632, deposited in the Head Office, Department of Lands and Survey, at Wellington, and thereon edged green.

20 Amending section 5(3) of the Paritutu Centennial Park Act 1938 in respect of certain lands adjacent to the park

[Repealed]

Section 20: repealed, on 21 September 1968, by section 7(1) of the Paritutu Centennial Park Act 1968 (1968 No 8 (L)).

21 Abolishing the Foxton Harbour Board and authorising the disposal of the said Board's endowment lands and other assets

Whereas the Foxton Harbour Board Act 1908 constituted a Harbour Board known as the Foxton Harbour Board (in this section referred to as the **Board**) for the Port of Foxton and endowed the Board with certain lands:

And whereas shipping has long ceased to use the Port of Foxton and the Board's function as a Harbour Authority has ceased to exist:

And whereas the Board has over the years subdivided into building lots certain of its endowment lands at Foxton Beach Township and has leased certain of those building lots:

And whereas there is no need for the maintenance of a Port at Foxton and it is desirable that the Board be abolished:

And whereas the Chairman, Councillors, and Inhabitants of the County of Manawatu (in this section referred to as the **Corporation**) have agreed under certain conditions to administer and control the Board's endowment lands at the Foxton Beach Township together with certain adjacent Crown land:

And whereas it is desirable and expedient that provision be made for:

(a) the abolition of the Board;

(b) the various matters agreed upon with the Corporation for the taking over of the Foxton Beach endowment lands and adjacent Crown land; and

(c) the disposal of the balance of the Board's endowment lands and other assets:

Be it therefore enacted as follows:

(1) Notwithstanding anything in the Harbours Act 1950, or in any other Act or rule of law, the Board constituted by the Foxton Harbour Board Act 1908 is hereby abolished, and all assets

and liabilities of the Board, excepting the foreshore and other endowment lands dealt with in this section, shall vest in and become assets and liabilities of the Crown, and the Minister of Marine, on behalf of the Crown, is hereby authorised to dispose of any such assets and discharge any such liabilities, and the said Minister is hereby further authorised to dispose of any money remaining after discharge of the said liabilities in such manner as he thinks fit.

(2) The vesting in the Board as an endowment of the foreshore and other lands described in subsection (8) of the Foxton Harbour Board Act 1908, and of the lands described in subsections (5) and (6) of section 120 of the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1924, and of the land firstly described in subsection (12), is hereby cancelled, and the said foreshore is hereby vested in Her Majesty. The balance of the said lands shall be disposed of in accordance with the provisions of this section: provided that nothing in this section shall be deemed to affect the validity of any dealing with any part of the said land before the date of the commencement of this section in accordance with the terms and conditions under which it was held before that date.

(3) For the purpose of dealing with the land secondly described in subsection (12) (in this section referred to as the **endowment area**), the Corporation is hereby declared to be a leasing authority within the meaning of the Public Bodies Leases Act 1908.

(4) Notwithstanding the provisions of section 58 of the Land Act 1948 and subject to subsection (6), the endowment area is hereby declared to be vested in the Corporation as an endowment subject to the provisions of this section, and subject also to all leases, liens, encumbrances, easements, and other restrictions heretofore affecting the land.

(5) The terms under which the endowment area is vested in the Corporation shall be as follows:

(a) the Corporation shall pay to the Crown for the endowment area an amount, not exceeding 40,000 pounds,

determined by the Minister of Lands in that behalf, and any such amount shall be payable, free of interest, over a period of 12 years by equal annual instalments, the first of the instalments being payable on 1 December 1957:

(b) *[Repealed]*

(c) the Corporation shall, on the expiry of current leases of the endowment area, or, by agreement with the lessees, before expiry, grant to all lessees of subdivisions of the endowment area perpetually renewable leases for a term of 21 years: provided also that any such subdivisions shall be subject to the provisions of the Land Subdivision in Counties Act 1946:

(d) where any part of the endowment area is, at the commencement of this section, unalienated, any subdivisions of that land may be leased by the Corporation on perpetually renewable leases, for a term of 21 years: provided also that any such subdivisions shall be subject to the provisions of the Land Subdivision in Counties Act 1946:

(e) notwithstanding the provisions of paragraphs (c) and (d), the Corporation may, in specific cases and with the approval of the Minister of Lands, grant leases of any part of the endowment area for a fixed non-renewable term but otherwise in accordance with the provisions of those paragraphs. The Corporation shall take such steps as may be necessary to ensure that any lease under paragraph (c) or paragraph (d) are registerable under the Land Transfer Act 1952, but any lease granted under this paragraph may or may not be registerable under that Act:

(f) *[Repealed]*

(g) in the event of the Foxton Beach Township being created a borough, the transfer of the endowment area from the Corporation to the borough and the terms and conditions of the transfer shall be a matter for consideration and determination by the Local

Government Commission in accordance with the Local Government Commission Act 1953.

(6) *[Repealed]*

(7) If default is made by the Corporation in complying with the provisions of this section, the Governor-General may, by Order in Council, cancel the vesting of the endowment area in the Corporation subject to such terms and conditions as he thinks fit and, upon the publication in the *Gazette* of any such Order in Council, the land shall be deemed to be Crown land subject to the provisions of the Land Act 1948.

(8) The Minister of Lands may, subject to agreement with the Corporation, by notice in the *Gazette* vest in the Corporation any other Crown land which in his opinion should be included in the endowment area and any land so vested in the Corporation shall be subject to the provisions of this section, and the Minister of Lands may, with the consent of the Corporation, by notice in the *Gazette*, declare that any part of the endowment land shall no longer be subject to the provisions of this section and shall be Crown land subject to the Land Act 1948.

(9) The land thirdly described in subsection (12) is hereby declared to be Crown land subject to the provisions of the Land Act 1948 and subject also to all leases, liens, encumbrances, easements, and other restrictions heretofore affecting the same.

(10) The District Land Registrar for the Land Registration District of Wellington is hereby authorised and directed to accept such documents for registration, to deposit such plans, to make such entries in the register books, and to do all such other things as may be necessary to give effect to the provisions of this section.

(11) The following enactments are hereby repealed: (a) the Foxton Harbour Board Act 1908:

(b) section 88 of the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1910:

(c) the Foxton Harbour Board Amendment Act 1917:

(d) section 51 of the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1921:

(e) section 120 of the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1924.

(f) *[Repealed]*

(12) The lands to which this section relates are particularly described as follows:

All those areas in the Wellington Land District being—

Firstly, all that area situated in Block I, Moutere Survey District, containing 94 acres, more or less, being Lot 1 on Deposited Plan Number 17622 and being part of the land comprised and described in certificate of title, Volume 662, folio 42, Wellington Registry: as shown on the plan marked L and S 22/2843, deposited in the Head Office, Department of Lands and Survey, at Wellington, and thereon bordered red (SO Plan 23692).

Secondly, all those areas situated in Block I, Moutere Survey District, being Section 5, containing 106 acres and 2 roods, more or less; Section 6, estimated to contain about 48 acres, more or less; Section 7, estimated to contain about 90 acres, more or less, and being part of the land in certificate of title, Volume 662, folio 42, Wellington Registry; Lot 1 on Deposited Plan Number 17622, containing 94 acres, more or less, and being part of the land comprised and described in certificate of title, Volume 662, folio 42, Wellington Registry; part Section 270 of the Township of Foxton, containing 224 acres 1 rood and 16 perches, more or less, and being part of the land comprised and described in certificates of title, Volume 662, folio 42, and Volume 518, folio 188, Wellington Registry; and part Section 268 of the Township of Foxton, containing 101 acres 1 rood 5 perches and fifty-eight hundredths of a perch, more or less, and being part of the land comprised and described in certificate of title, Volume 518, folio 188, Wellington Registry: as shown on the plan marked L and S 22/2843, deposited in the Head Office, Department of Lands and Survey, at Wellington, and thereon coloured blue (SO Plan 23692).

Thirdly, all that area situated in Block I, Mount Robinson Survey District, containing 342 acres and 7 perches, more or less, being part Section 332 of the Township of Carnarvon and being part of the land comprised and described in certificate of title, Volume 518, folio 188, Wellington Registry: as shown on the plan marked L and S 22/2843, deposited in the Head Office, Department of Lands and Survey, at Wellington, and thereon coloured orange (SO Plan 23692).

(13) This section shall come into force on 16 November 1956.

Section 21(5)(b): repealed, on 17 December 1968, by section 13(17)(a) of the Reserves and Other Lands Act 1968 (1968 No 130).

Section 21(5)(c) first proviso: repealed, on 17 December 1968, by section 13(17)(b) of the Reserves and Other Lands Act 1968 (1968 No 130).

Section 21(5)(d) first proviso: repealed, on 17 December 1968, by section 13(17)(c) of the Reserves and Other Lands Act 1968 (1968 No 130).

Section 21(5)(f): repealed, on 17 December 1968, by section 13(17)(d) of the Reserves and Other Lands Act 1968 (1968 No 130).

Section 21(6): repealed, on 28 October 1965, by section 9(10) of the Reserves and Other Lands Disposal Act 1965 (1965 No 120).

Section 21(11)(f): repealed, on 19 November 1971, by section 11(2) of the Harbours Amendment Act (No 2) 1971 (1971 No 58).

Contents

1 General
2 Status of reprints
3 How reprints are prepared
4 Changes made under section 17C of the Acts and Regulations Publication Act 1989
5 List of amendments incorporated in this reprint (most recent first)

Notes

1 General

This is a reprint of the Reserves and Other Lands Disposal Act 1956. The reprint incorporates all the amendments to the Act as at 1 April 1987, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, *see* http://www.pco.parliament.govt.nz/reprints/.

2 Status of reprints

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 *How reprints are prepared*

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and

Notes

provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, *see* http://www.pco.parliament.govt.nz/editorial-conventions/ or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 *Changes made under section 17C of the Acts and Regulations Publication Act 1989*

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted.

A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as "of this section" and "of this Act")
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
- indentation

- position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January
1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
- format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
- small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint (most recent first)*

Conservation Act 1987 (1987 No 65): section 65(1)

Harbours Amendment (No 2) Act 1971 (1971 No 58): section 11(2)
Reserves and Other Lands Act 1968 (1968 No 130): section 13(17)
Paritutu Centennial Park Act 1968 (1968 No 8 (L)): section 7(1)
Reserves and Other Lands Disposal Act 1965 (1965 No 120): section 9(10)

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RECEIVED ON
19/04/2021

Submission to Long Term Plan 2021-2041

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We are seeking actions and advocacy from Horowhenua District Council (HDC) as part of its Long Term Plan work programmes.

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Submission No. 314

RECEIVED ON
19/04/2021

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Submission No. 315

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RECEIVED ON
19/04/2021

Submission to Long Term Plan 2021-2041

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Date	13/4/21

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6. Provide a safe passage for our children to get to and from Manakau School from their homes in Manakau Village, Manakau South, Manakau North and Waikawa Beach
7. Maintain full connectivity between Manakau Heights Drive and Manakau Village

Name	KIMBAL McHugo
Address	173 TAKAPU Rd Manakau
Email	McHugo@Mchugo.co.nz
Signature	[signature]
Date	15 Apr 2021

RECEIVED ON
19/04/2021

Submission to Long Term Plan 2021-2041

The focus of this submission is roading in the Manakau area and the Otaki to North of Levin expressway project.

We are seeking actions and advocacy from Horowhenua District Council (HDC) as part of its Long Term Plan work programmes.

Our submission seeks the following actions and budget provisions (where applicable):

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Name	P.J. Sannazzaro
Address	95 Gladstone Road RD1 Levin
Email	p.sannazzaro@xtra.co.nz
Signature	[signature]
Date	17/04/2021

Submission No. 319

RECEIVED ON
19/04/2021

Submission to Long Term Plan 2021-2041

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Name	Sam Ward
Address	63 Hinemoa St, Levin
Email	swd@otakicollege.school.nz
Signature	[signature]
Date	17/4/21

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19/04/2021

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Name	Sylvia Allison McHugo
Address	151 Takapu Road RD31 Manakau
Email	mcshugo@gmail.com
Signature	[signature]
Date	15 April 2021.

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19/04/2021

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Name	Wilfred Geerling
Address	1234 SH 1 Manakau
Email	wilfred.sharon@outlook.com
Signature	[signature]
Date	17/4/2021

Submission No. 322

From: Long Term Plan 2021-41 Project Team
Sent: Monday, 19 April 2021 8:43 AM
To: Records Processing
Subject: FW: Summerset submission on the draft Development Contribution Policy
Attachments: Submission on Horowhenua District Council Development Contributions Policy.pdf

From: Young Yoon <Young.Yoon@summerset.co.nz>
Sent: Friday, 16 April 2021 6:29 PM
To: Long Term Plan 2021-41 Project Team <ltp@horowhenua.govt.nz>
Subject: Summerset submission on the draft Development Contribution Policy

Dear Sir/Madam

Please see **attached** our submission on the draft Development Contribution Policy.

Please let us know if you require anything further from us at this time.

Kind regards

Young Yoon
Legal Counsel
Summerset Group Holdings Limited
Mob 021 972 613
Office 04 894 7320 Fax 04 894 7319
Web www.summerset.co.nz
Email Young.Yoon@summerset.co.nz
Office PO Box 5187, Wellington 6140
Level 27, Majestic Centre
100 Willis St, Wellington

Toitū carbonzero CertTM certified business

This is a confidential and privileged communication. If sent to you in error please notify me and delete.

RECEIVED ON
19/04/2021

SUBMISSION

IN THE MATTER OF:	Draft Development Contributions Policy 2021
TO:	Horowhenua District Council
FROM:	Summerset Group Holdings Limited
DATE:	16 April 2021
BY EMAIL:	ltp@horowhenua.govt.nz

INTRODUCTION

1. Summerset Group Holdings Limited (*Summerset*) is pleased to have the opportunity to submit on the Draft Development Contributions Policy 2021 (*Policy*) proposed by Horowhenua District Council (*Council*).

BACKGROUND

2. Summerset is New Zealand's second largest developer and operator of retirement villages, which makes it one of New Zealand's largest home-builders. Summerset currently operates 29 villages across New Zealand and provides a range of living options for more than 6,200 residents.

3. Summerset develops and operates comprehensive care retirement villages, that provide a continuum of care, with its villages containing independent (villas, townhouses and apartments) and assisted living units and residential care (rest home, hospital and dementia level care) for those who require greater assistance. The average age of a resident entering Summerset's villages is 81 years. This resident demographic is associated with a typically low pattern of demand on community infrastructure, amenities and facilities.

4. Over the next 50 years the number of people over 75 in New Zealand is expected to grow by 245% from 315,000 in 2018 (6% of the population) to more than one million in 2068 (17% of the population). It is therefore vital that the regulatory environment recognises and provides for the development that is required to meet this growing demand, and funding for associated infrastructure, but does so on a fair and proportionate basis.

LOWER OCCUPANCY AND DEMAND PROFILE

5. Summerset acknowledges the Policy's recognition of retirement villages' lower demands on the district's infrastructure, reflected by the lower contribution rates for transport, water and wastewater. Summerset also supports the Policy's distinction between aged care rooms and independent units within retirement villages. However, Summerset considers that the Policy fails to take into account the full characteristics of comprehensive care retirement villages and their occupants, and the extent to which they, on their own or cumulatively with those of other developments, substantially reduce the impacts of development requirements for infrastructure and community facilities in the district or parts of the district both at a citywide and local area level.

6. "Retirement village" is an umbrella term given to all types of retirement living, encompassing both "comprehensive care" and "lifestyle" retirement villages.

   6.1. As discussed above, comprehensive care retirement villages provide a full range of living and care options from independent living through to assisted living, rest home, hospital and memory care (dementia). The residential care component makes up a relatively high percentage of the overall unit mix.

   6.2. Lifestyle retirement villages focus mostly on independent living units with occasionally a small amount of serviced care on a largely temporary basis. When a resident becomes frail over time, usually they would be forced to move from a lifestyle village. This is because care provision is minimal and not suitable as a long-term solution.

7. There is a fundamental difference between a comprehensive care retirement village (as Summerset's new villages are) and a lifestyle retirement village. Each village attracts a very different resident demographic. As discussed above, the average age of a resident entering Summerset's villages is 81 years. For completed and fully occupied villages, the average age across all residents is closer to mid-80s. Residents are typically people that chose to live in their own homes for as long as possible and have moved to a retirement village primarily due to a specific need (such as deteriorating health or mobility challenges, or for companionship – many of Summerset's residents are widows). By contrast, lifestyle villages cater for a younger, more active early retiree, with a higher proportion of couples. The average age of a resident moving into a lifestyle village is more mid-to-late 60s.

8. Summerset's villages typically provide an extensive range of on-site amenities that are suited to the older residents' specialist physical and social needs – including on-demand mini-vans for residents' shopping and outings, a bar, café and restaurant, small residents' convenience shop, pool, gym, activities room, pool table, piano, hairdressing and beauty salon, treatment room, bowling green, hobbies shed, meeting rooms, theatre, library, communal sitting and lounge areas, residents' vegetable gardens and large park-like landscaped gardens. These on-site amenities greatly reduce, and in some cases eliminate, usage of Council's community amenities and facilities by Summerset's residents.

9. Summerset's average occupancy for its independent units is 1.3 residents per unit regardless of the number of bedrooms in the unit. Summerset's average occupancy for its care units is 1 resident per unit. The reduced occupancy per unit, together with the reduced demand per occupant, results in a reduced demand on both local infrastructure and community facilities when compared against the demand assumptions for a typical household unit.

10. Summerset notes that the reduced occupancy, and demand per occupant, for comprehensive care retirement villages has been thoroughly tested and is now provided for by Auckland Council which has defined "Retirement Villages" in the Auckland Unitary Plan and its Development Contributions Policy. This approach recognises the reduced demand placed on local infrastructure and community amenities.

11. Summerset considers that Council, in developing the Policy, has not given adequate consideration to the unique characteristics of comprehensive care retirement villages, and the significantly lower demand profile when compared to lifestyle retirement villages, particularly due to:

    11.1. reduced activity levels of the residents due to their age and frailty; and

    11.2. the provision of specialist on-site amenities provided to cater for the residents' specific needs.

POLICY NOT FAIR AND PROPORTIONATE

12. Summerset notes and supports the decrease in development contribution charges for rooms and units in retirement villages generally. However, the Policy does not distinguish between lifestyle retirement villages and comprehensive care retirement villages.

13. The Policy therefore does not account for:

    13.1. the unique characteristics of comprehensive care retirement villages, as compared to lifestyle retirement villages; or

    13.2. the extensive on-site amenities and facilities provided by comprehensive care retirement village operators.

RELIEF SOUGHT

14. To fairly account for the lower demand profile, both a population per unit discount (to account for the lower occupancy) and a demand factor discount (to account for the older demographic and on-site amenities) should be applied to set specific contribution calculations for comprehensive care retirement villages.

15. Summerset requests that a separate rate is set for retirement villages, consistent with development contribution policies being developed by other councils. This should distinguish retirement units, and aged care rooms, and provide separate rates for each.

16. Water and wastewater contributions should be assessed according to the demand factors for comprehensive care retirement villages calculated and agreed with Council at resource consent stage against those assumed for typical household equivalent units, to recognise the lower demand on those reticulated services.

17. Stormwater contributions should be assessed according to the demand factors for comprehensive care retirement villages based on the site-specific stormwater management outlined and agreed with Council at resource consent stage. Council need to clearly demonstrate

the causal connection between any public stormwater infrastructure required as a result of the increase in demand (if any) directly attributable by the retirement village.

18. Taking into account both population per unit/room, and demand factors, Summerset suggests the rates in the table below. These are based on the equivalent rates in the current Auckland Council Development Contribution Policy, which were established after robust hearings processes including the calling of expert evidence in relation to demand.

Development type	Activity	Units of demand
Retirement unit	Transport	0.3 HUE per unit
	All others	0.1 HUE per unit
Aged care room	Transport	0.2 HUE per room
	Community infrastructure	0.1 HUE per room

TIMING

19. Summerset submits that the Policy should be explicit about the assessment and timing of payment for large staged projects that require both land use resource consent(s) and building consent(s). Summerset submits that where both a land use resource consent and a building consent are required, the activity should be assessed for development contributions based on the relevant Policy applicable at the time that the resource consent application is lodged, with payment of the total assessed development contributions staged such that a proportionate amount is payable prior to uplift of the code of compliance certificates for each staged building consent. That manner of assessment and payment is fair and reasonable and gives developers certainty of the development contributions payable on large, staged projects such as comprehensive care retirement villages.

20. Section 3.5.2 of the Policy provides that for a subdivision consent or a building consent, the development contributions will be assessed at the time of granting the consent, but invoiced and payable upon granting a s224(c) certificate or at the time of the first building inspection. Summerset requests clarification of section 3.5.2 of the Policy as follows, in line with the above approach.

    20.1. Where a building consent is required to be issued for the development proposed, then the development contributions should be payable on the issue of associated code compliance certificate(s) rather than at the time at the request of the first inspection of building works. That is the point at which the land use could lawfully be given effect to without breaching the Building Act 2004. Given occupancy is permitted at that point, it is also the time at which any additional demand on Council infrastructure would arise. In a larger staged development, this may mean a series of payments over time as the building work under each staged building consent is completed and signed off.

    20.2. While section 3.5 relates to invoicing and payment, it should be clarified that in terms of the timing of the assessment and the version of the policy that applies, the development contributions would be calculated and assessed against the relevant Policy at the time

that the land use consent application was lodged but payable at the time of code compliance certificate(s).

FINAL COMMENTS

21. Summerset is grateful for the opportunity to submit on the Policy and looks forward to engaging with the Council during the consultation process. Summerset would be happy to meet with the Council or attend at a hearing to discuss this submission further if that would assist.

Aaron Smail
General Manager Development
Summerset Group Holdings Limited

RECEIVED ON
19/04/2021

From: Long Term Plan 2021-41 Project Team
Sent: Monday, 19 April 2021 8:43 AM
To: Records Processing
Subject: FW: Topic ONE - Foxton Pool

From: Roger Clement <roger.clement@xtra.co.nz>
Sent: Friday, 16 April 2021 7:23 PM
To: Long Term Plan 2021-41 Project Team <ltp@horowhenua.govt.nz>
Subject: Topic ONE - Foxton Pool

NAME: Roger Clement

ADDRESS: 27 Avenue Road Foxton 4814

TOPIC ONE - Foxton Pool

PREFERRED OPTION: Option 1

COMMENTS:

I fully support option one, give our kids in our town the same opportunities as Levin.

Personally I would use the pool if the hours were extended.

The other options dont make any sense.

The extra cost to open extended times is outweighed by the benifits, both socially and health.

Hope this email conforms to the requirements to make a submission.

Regards

Roger Clement

Horowhenua Rate Payer.

RECEIVED ON
19/04/2021

Submission No. 324

From: Long Term Plan 2021-41 Project Team
Sent: Monday, 19 April 2021 8:44 AM
To: Records Processing
Subject: FW: Foxton pool

From: Jenny Benfell <lukenflower@hotmail.co.nz>
Sent: Saturday, 17 April 2021 10:12 AM
To: Long Term Plan 2021-41 Project Team <ltp@horowhenua.govt.nz>
Subject: Foxton pool

Name: Jenny Benfell

Address: 59 Herrington Street Foxton

Topic One – Foxton Pool

Preferred Option: 1

Comments: this option would be fantastic for the growth of Foxton, and can be used by many age groups and being a yearly open facility rather than seasonal which will bring in more revenue. Also fitness classes and rehabilitation for injuries will be great. We have children, but our extended family would be able to use this when visiting also.

Get [Outlook for Android]()

Submission No. 325

RECEIVED ON
19/04/2021

Sue-Ann Russell

33 Andrews Street

Foxton Beach

17 April 2021

Mob 021 727 380

Email sueann100@hotmail.com

RE - Submission to the HDC LTP 2021-2041

Yes I would like to speak on these topics

TOPICS Include

Stomwater

While I realise the National Policy Statement for freshwater Management 2020 will be the future instrument for controlling this contamination, I would like to say the HDC has not taken this Activity - Stormwater seriously enough.

We have the current problems (that I am aware of);

1. Consents for Stormwater that have not been applied for, or are contested
2. Infrastructure not up to capacity
3. No allowances for pollution or treatment of the stormwater and the contaminants that end up in the Lake Horwhenua or out to sea.
4. Data supposedly collected on stormwater flows into the river has not been made public, to show pollution levels.
5. While flooding is important, not much is done to mitigate pollution.
6. Why are the stormwater discharges for Foxton Beach being considered when the discharge runs into a Ramsar site, which protects migrating birds, fish, fauna and flora? This discharge has no treatment.
7. Lake Horowhenua needs urgent attention for excessive pollution and drain off from the surrounding areas and this has been occurring for far too long

Solution

We need high level experts to give the Horowhenua District solutions to this uniquely placed region, so it does not become a scene from Dr Seuss's The Lorax.

Property

The HDC decided to sell off land as it is not part of its core business.

That is a reasonable approach so why did they;

1. Sell at a loss in a bull market? What does this say about the HDC's ability to recover monies from property sales in a bad market?
2. Buy more land at Durham Street? How did this fit in with overall HDC objectives?
3. The Commercial Property portfolio has been sold – where are the profits on these transactions for the ratepayers' advantage?

Secret Meetings

Why? We are all part of our community, should we (they call us the public) not be included in all discussions, for a bottom up, fully worked through decision making process. "Gain the trust and confidence of district residents by being open, transparent and accountable" is HDC's statement on page 156 of the LTP 2021-2041.

Project Accounting

HDC is and will be involved with many joint projects with funds being supplied outside the HDC rate take or fees.

Projects such as;

The Manawatu River Foxton Loop project

The Foxton Beach wharf project

The Surf Life Saving Club at Foxton Beach

The Churches rebuild.

These projects have no proper financial reporting to the organizations' or the public involved and show no accountability or transparency as to the income and expenditure of those projects, or the additional funds the HDC says it commits to each project. It would be a more business like and professional approach to show and account for the financial transactions as every other business is required to do.

Many thanks

Sue-Ann Russell

RECEIVED ON
19/04/2021

Submission to Horowhenua District Council LTP 2021 – 2041
Water Supply:

- Water rates to be introduced. While controversial, it makes no sense not to introduce them. Water is such an important resource. **Our lives depend on its availability.** It has been noted that the demand on water has markedly reduced since a rating system was put in place by Kapiti District Council. Foxton has a water rating system.
  If the benchmark is set to a certain level (Council will already know what the average usage is) the impact on single person households will be negligible. Larger families would need a higher level of allowable usage. There would be an expectation that the practicalities of implementation would be worked out fairly by Council.

- Community education around the value of clean water is quite critical in this area of climate change. Schools are a great way to start. There is a captive audience and children can take home the knowledge they gain to inform the parents. Another avenue is the Council's newsletter included in the Chronicle – one or two highlighted sentences is all thats needed.

- Ageing infrastructure of water supply assets p.7. HDC identifies this as a challenge yet Council have consistently stated when promoting the Taraika Development that water, sewage and waste would be connected up to the existing Levin infrastructure. Please explain how this is a sensible, economic and environmentally good decision?

- Key Risks p.8 What systems/policies/procedures are in place to ensure consistency in strategic planning and to prevent poor business/continuity planning? Please explain.

- Water drinking safety standards p.10. Seems this is a well kept secret! Does the Levin population know there is an ongoing problem with our water safety for drinking purposes and that the standard will not be achieved until possibly 2023? Does the population realise that Foxton, Foxton Beach and Tokomaru have no timeline for having safe drinking water?This needs investigation pronto.

- Continuing on to p.11 Please explain how the figure of 1 complaint received regarding drinking water 2021 -2041 has been arrived at?

- Please explain how water taste and odour should not be considered an urgent callout? It can indicate a serious issue is occurring.

- Capital Expenditure. p.14-17. Most of these figures do not make sense. For instance Foxton resource consents expiring in 2038 – how come budgeting for this starts in 2031/32 starting at an amount of $100,624 to $91,224 = $449,257 over a five year period. Please explain.

- Foxton Beach Reticulation – renewals year 7 = $238,100 then year 8 = $550.950. Why is there a big jump? Then an even bigger jump occurs in year 13 = $271,066 to year 14 = $1,273,448. Please explain.

- Shannon has a sum of $159,360 budgeted in year 1 for its consent renewal, then nothing through to year 41, yet Foxton has five consecutive years budgeted for its consents. It does not make sense.

- The figures presented in this Capital Expenditure need serious examination. A breakdown of these costings for each item should be presented to the community. Timely that Council

introduces Project Accounting that would provide transparency of how it arrives at these monetary amounts.

- Council sought feedback on water sustainability. From whom?

- Council resolved to establish a Horowhenua Water Working Party. Has this been done? If so what is the member composition?

- Emphasise that Taraika development water tanks will have non-potable water not drinking water.

****

Leone Brown
leoneb@xtra.co.nz
021 1219765

I wish to speak to this submission

RECEIVED ON
19/04/2021

From: Long Term Plan 2021-41 Project Team
Sent: Monday, 19 April 2021 8:47 AM
To: Records Processing
Subject: FW: Proposed rates change

From: j.b-5342@xtra.co.nz <j.b-5342@xtra.co.nz>
Sent: Saturday, 17 April 2021 5:11 PM
To: Long Term Plan 2021-41 Project Team <ltp@horowhenua.govt.nz>
Subject: Proposed rates change

Dear rate change proposers,

Ref properties at 487, Hickford Rd. Foxton,with Assessment nos. 32730 and 175752:

Due to the proposed rating changes 32730 has an increase of $87 from $1543.50 to $1630.50 which, though undesirable, is acceptable. However, 175752 has an increase of $425.21 from$510.32 to $935.53. This is an increase of 83% which is totally unreasonable. This property, which is directly linked to 32730, consists of 4 paddocks with area 2.7 hectares and used solely for grazing.

I cannot see how such an increase is merited and would politely but forcefully request that the proposed change be withdrawn.

Yours sincerely

Jeremy Brockhouse

ph 063637303/0275637303

RECEIVED ON
19/04/2021

From: Long Term Plan 2021-41 Project Team
Sent: Monday, 19 April 2021 8:48 AM
To: Records Processing
Subject: FW: Submission

From: Ina Kleinsman Hill <inakleinsmanhill@gmail.com>
Sent: Saturday, 17 April 2021 7:23 PM
To: Long Term Plan 2021-41 Project Team <ltp@horowhenua.govt.nz>
Subject: Submission

Hi there,

This is my submission for the 2021-41 long term plan.

Name: Ina Kleinsman Hill

Address: 50 Stewart St Foxton

Topic One – Foxton Pool

Preferred Option: Option 1

Comments: As a lifeguard, I think Option 1 would be great. It would be awesome if the bombing pool was big enough to have Aqua jogging or at least an Aqua Deep class as I have been asked about this multiple times.

Thank you.

Best,

Ina

RECEIVED ON
19/04/2021

From: Long Term Plan 2021-41 Project Team
Sent: Monday, 19 April 2021 8:48 AM
To: Records Processing
Subject: FW: Foxton Pool submission

From: jay mcc <lovenzbush@mail.com>
Sent: Saturday, 17 April 2021 7:34 PM
To: Long Term Plan 2021-41 Project Team <ltp@horowhenua.govt.nz>
Subject: Foxton Pool submission

Name: Jason McCaskie

Address: 50 Stewart st, Foxton.

Topic One – Foxton Pool

Preferred Option: Option #1

Comments: This is the most expensive option. However in the long term the best option (in my opinion) for an ever growing town. Thanks J.

--
Sent from my Android phone with mail.com Mail. Please excuse my brevity.

Submission No. 330

RECEIVED ON
19/04/2021

From:	Long Term Plan 2021-41 Project Team
Sent:	Monday, 19 April 2021 8:50 AM
To:	Records Processing
Subject:	FW: Waitarere's surf club

-----Original Message-----
From: Barb Freeman <barbjfr@icloud.com>
Sent: Sunday, 18 April 2021 9:16 AM
To: Long Term Plan 2021-41 Project Team <ltp@horowhenua.govt.nz>
Subject: Waitarere's surf club

To whom it may concern

My partner and I live at Waitarere Beach My family and I have been coming here for over 20years. During that time my 4 grandchildren have been little nippers at our Surf Club, they've trained as life guards and, more recently, have worked as life guards saving lives when swimmers have been in trouble and keeping our beautiful beach safe. Our surf club facilities are now appalling as the old clubhouse has fallen into disrepair and is dangerous! A new clubhouse is needed ASAP! Consents have been given and we are still waiting! Our community, growing fast, needs this facility to be built as soon as possible closer to the beach and the water for greater visibility and faster access.

PLEASE give the building of our Waitarere Beach Surf clubhouse your urgent consideration.

Yours Sincerely
Barbara Freeman

Sent from my iPhone

Submission No. 331

RECEIVED ON
19/04/2021

From: Long Term Plan 2021-41 Project Team
Sent: Monday, 19 April 2021 8:50 AM
To: Records Processing
Subject: FW: Have your Say - Foxton Pool

From: Emma Clarke <emma@woodhavengardens.co.nz>
Sent: Sunday, 18 April 2021 11:24 AM
To: Long Term Plan 2021-41 Project Team <ltp@horowhenua.govt.nz>
Subject: Have your Say - Foxton Pool

Good Morning

I would like to submit my support for option 1 : Indoor and Outdoor Leisure Pool

I appreciate the financial implications to those on fixed incomes, but with O2NL confirmed, and the growth within the district I feel it is a fantastic investment into the Foxton community.

It is also in line with the work being done by Foxton Futures and the recent and on going development of the Foxton as a whole.

I would also like to submit on Option 4: Changes to the general rate.

My view is that this rate should be according to land use as opposed to size. Many farms have multiple small blocks that are intensively farmed – and are not rural life style blocks at all.

Thank you for the opportunity to submit.

Emma Clarke.

Submission No. 332

From: Long Term Plan 2021-41 Project Team
Sent: Monday, 19 April 2021 8:51 AM
To: Records Processing
Subject: FW: Emailing: HDRRAI Submission LTP 2021-41
Attachments: HDRRAI Submission LTP 2021-41.pdf

-----Original Message-----
From: leoneb <leoneb@xtra.co.nz>
Sent: Sunday, 18 April 2021 8:45 PM
To: Long Term Plan 2021-41 Project Team <ltp@horowhenua.govt.nz>
Subject: Emailing: HDRRAI Submission LTP 2021-41

Hello
Please see attached submission document.
We request speaking rights to this plan and ask for 60 minutes from the chair.

Thank you
Leone Brown (secretary)
Horowhenua District Residents and Ratepayers Association Inc

RECEIVED ON
19/04/2021

Submission to HDC Long-Term Plan 2021-2041

Christine Moriarty

Horowhenua District Residents and Ratepayers Association Inc

20 Muaupoko Street, Hokio Beach, RD1, Levin, 5571

06 3678919

camoriaty52@gmail.com

✓ pre-engagement

present at Council.... In person, or zoom

Horowhenua District Residents and Ratepayers Association Inc (HDRRAI)

Submission to HDC Long-Term Plan 2021-2041

Is HDC able to deliver on what we are putting into our Long-Term Plans?

The LTP master-plan approach is very seductive, but fragile with a very small number of individuals (planners) anticipating the district's needs in 10 to 20 years or more.

The future is uncertain and transparency about the potential impact of that uncertainty, particularly such as the impact of climate change, three waters reform, assumptions related to population growth, other demand changes, and funding sources are important to highlight for submission discussions[1].

Without early public consultation and the expertise and work of local communities who know their area and its needs, HDC's masterplan appears to fail to build financial resilience and prosperity, to keep profits locally, all the while it delivers a greater and greater debt burden for future generations of ratepayers.

Concerning Audit New Zealand, and many within the building industry, is whether the local contracting sector can do the work programmes and deliver on time and on budget.

An engineering shortage nationwide actually means Council will be competing for more expensive engineers and the risk is a slow up in pre-construction phase.

The potential impacts of not achieving the capital programme will mean greater costs in the long term.

In parts of our submission, we make observations about what has happened in the past to look forward to the future. We do not want these things to happen again We are not looking to relitigate these things. Rather, by putting in these actions and recommendations we support the introduction of a Fiduciary Duty of Care policy.

HDRRAI Recommendations

1. Action: Introduce immediately a "Fiduciary Duty of Care Policy" so that the principle of fiduciary care is embedded in all operations, policies, and procedures. (See Appendix 1)
    - Legal precedence: Councils are to "seek to balance fairly respective interests of different categories of ratepayers."[2]
        - The outcome would be HDC's professional staff and Councillors provide transparency.
        - A fiduciary must act in good faith, must not take profit out of their trusted role, must not place themselves in the position where their duty and their personal interests' conflict, and may not act for their own benefit or for the benefit of a third person.
        - Wellington City Council are processing a Fiduciary Duty of Care Policy.

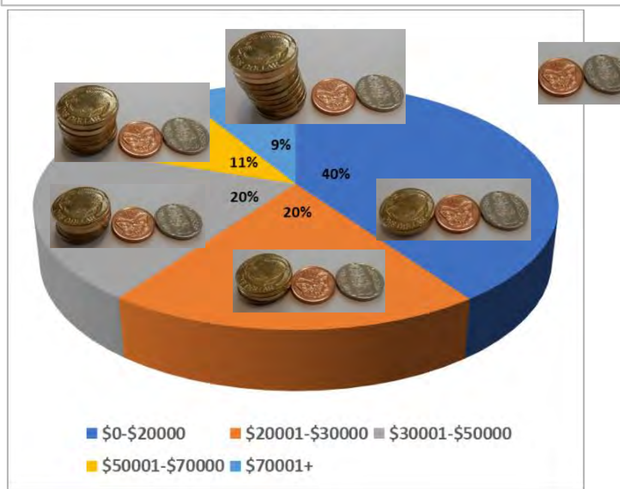
2. Action: Develop a policy by 30 April 2022 for the 2022 Annual Plan, to provide a "rates affordability protocol or scale" for residents of Horowhenua to understand and comment upon.
    - The outcome would be a rates regime that is affordable to everyone in the community.

[1] Assumptions underpinning your long-term plan: Office of the Auditor General New Zealand

[2] *Mackenzie District Council v Electricity Corporation of New Zealand* [1992] 3 NZLR 41 (CA) at 47.

- The work programme during the year would involve public forums such that we, the people, have bottom-up discussions and input to find ideas and information for Councillors and Council staff to consider and implement.
    - With the highest dependency ratio of all local authorities, at 70%, (77% in 2018, see figure below) i.e., those not working or receiving government benefits, youth in training, superannuitants, cannot sustain payments of the increases in rates demands that HDC are continually proposing.
    - According to the Productivity Commission affordable rates are calculated 2-3% of the median wage ($50,000)[3] being about $1700 per annum.
    - HDC rates seem to be comparable to other district councils however HD has one of the lowest incomes per capita, and highest dependency of all territorial authorities: the 13 city councils and 53 district councils.

➢ <u>Analysis: On a pension income of $22,000 HDC rates account for about 12% of income.</u>



Rates affordability by income compared to money available after payment of rates. (% Horowhenua earners)

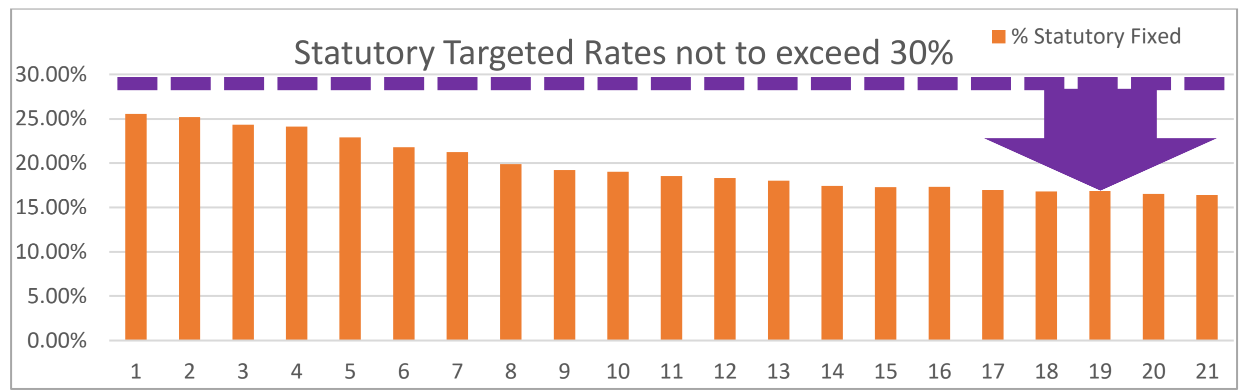
National taxes are an increasing scale dependent on income, unlike SUIPs which are fixed per household.

Thus affordability of rates (local govt tax) is significantly different to national tax and needs investigation and remedy.

3. Action: Introduce by 30 June 2023 Financial Year a "Capital Value" Rating System[4].
   Action: Remedy the decrease in statutory targeted rates[5] (graph below) back to 30%.

- The outcome would be a fairer rating system that does not unduly burden urban ratepayers because the current system favours business and rural business ratepayers with differentials.
- The work programme during the year would involve public forums such that we, the people, have bottom-up discussions and input to find ideas and information for Councillors and Council staff to consider and implement.

[3] https://ecoprofile.infometrics.co.nz/Horowhenua%20District/Infographics/Ranking
[4] Proposed Change to Capital Value Rating System as part of the 2015-2025 HDC Long Term Plan
[5] S21, Local Government (Rating) Act 2002



- Outcome: Properties with high capital value pay proportionally less rates than lesser valued properties because the fixed value rates (SUIPs) gain prominence.... a gain for wealthy at the expense of the less-wealthy ratepayers.
- A Fiduciary Duty of Care issue?

4. Action: Provide mechanisms and accountability by 30 June 2022 Annual Plan, to promote the social, economic, environmental and cultural well-being of citizens and communities (Local Government Act) in the LTP 2021-41.
   - The impact of poverty, mental health (loneliness, anxiety, and depression) violence (including alcohol and drug dependency), affordable housing and affordable rates affect the well-being of the citizens.

5. Action: Council immediately withdraws this overinflated rise in Employee Benefit Expenses.
   - Justify the need for extra staff to allow for district growth, rather than management promoting increased productivity. LTP Financial Statement p23 shows A submission for HDC staff for <u>13% rise</u> in Employee benefits, followed by 2-3% annual rises, is unacceptable. This is shown in one line in the document, without explanation.
     - If extra staff are employed, will they be permanent or fixed term, the latter would show as decreases in Employee benefit Expenses at the termination of growth projects.

6. Address and provide data, evidence, policies on the following issues before introducing the 2022 Annual Plan.
   a. <u>Action</u>: publish data/forecasts as it comes to hand how the reform in the Three Water sector will impact on HDC's finances for the LTP.
   b. <u>Action</u>: publish data/forecasts as it comes to hand how the reform in the Resource Management Act will impact on HDC's finances for the LTP.
   c. <u>Action</u>: Before the LTP is agreed, recalculate and disclose all LTP financials without Tokomaru's involvement.
      - Tokomaru boundary change will affect 830 properties (CV $811,721,250, LV $258,875,400 with a loss of rates revenue of $2,172,483 or 5.05% less than expected income. While HDC opposes the breakaway, many Tokomaru residents are resoundingly in favour of the break. Who prevails?

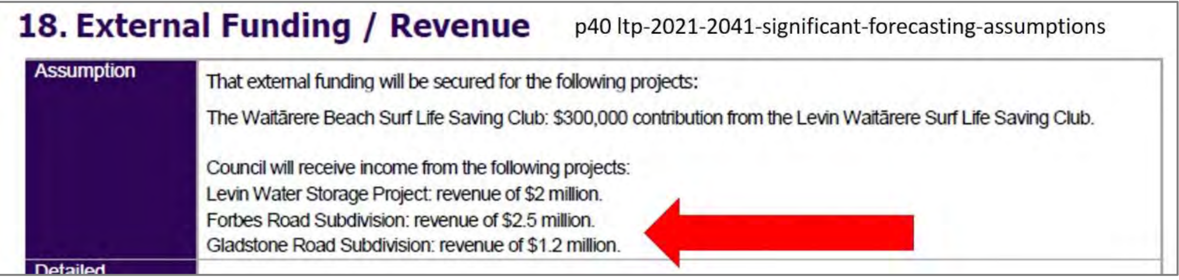
   d. <u>Action</u>: Provide a closing date for the Levin landfill closure, and further evidence to justify the intended outcomes re future of a (Levin) Landfill for Solid Waste Disposal.

- The Levin landfill will close, timeframes are agreed, yet Council sees the need to generate income by accepting waste from other districts. (pp 80-81 2021-2041 LTP Activity Statement). A company has been employed to advise the councillors on closure dates. The action plan shows this should be done before the LTP is accepted. Is this statement should be true and accepted.
- Financing details show continuation of Levin Landfill because “Cap Shape Correction costs” are included in the 20-year plan cost $1,131,065 (pp 85-86 2021-2041 LTP Activity Statement). Why is there a discrepancy in the outcomes of planning if the landfill is to close?
- What reliable data, and mitigation proposals, does HDC have on the climate change risk of blowout from angry seas or river flooding, for the Levin Landfill?

e. Action: Revocation of the Oxford Street shopping precinct - HDC must show proof the community is in total agreement with the research, justification and return on investment data, before commencement of the project.
- Revocation is not guaranteed to be financed by O2NL.
- Further, 02NL has not been locked in as an inflation-proofed value by central government – the outcome may be less than predicted or planned.

f. Action: Stop all development for the Levin Splashpad
- Most submitters on last year’s Annual Plan wanted the old paddling pool at the park removed, rather than replaced.
- Water and children in an unsupervised area is an unacceptable liability.

g. Action: Before accepting the LTP pass a motion that HDC will not be a developer anywhere in the Horowhenua.
- What proof is presented that there is a demand for 2500 extra new homes in Levin?
- It is not acceptable that additional expenses to be charged to current ratepayers with extra rates increases to cover extra demand caused by growth.


18. External Funding / Revenue p40 ltp-2021-2041-significant-forecasting-assumptions

Assumption	That external funding will be secured for the following projects: The Waitārere Beach Surf Life Saving Club: $300,000 contribution from the Levin Waitārere Surf Life Saving Club. Council will receive income from the following projects: Levin Water Storage Project: revenue of $2 million. Forbes Road Subdivision: revenue of $2.5 million. Gladstone Road Subdivision: revenue of $1.2 million.
Detailed	

- For the highlighted items significantly differ in amounts reported for the same items, that is:
- “Gain Disposal of Assets LTP Financial Statement p35 is $1.2 million, vs. the above, LTP Significant Forecasting Assumptions, p40, is $3.7 million.

7. Action: Do not move the debt level to 250%[6] of the rate revenue.

- Debt Increases – data is inconsistent within and between documents.
- Predicted debt rises to $300 million in 14 years = approximately $11,000 per ratepayer.

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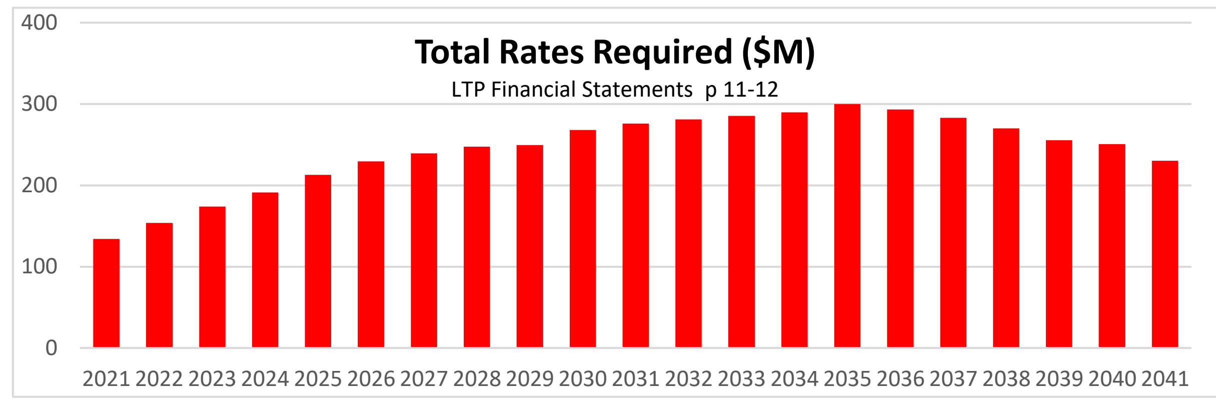
[6] Draft LTP 2021 2041 Consultation Document, p31 (LTP CD)



- The increased level of debt appears to simply send the District, if it was a business, into insolvency.
- The assumption that more ratepayers can pay off the debt is true only if the debt level is maintained and does not grow. Assumptions of 95th percentile growth are just that…. crystal ball wishful thinking.
- The more we grow the poorer we become[7]. Infill development uses existing infrastructure unlike greenfield development. Eventual infrastructure upgrades for 1000 greenfield home costs each ratepayer 1/1000th of the costs. Infill by 10% of 1000 existing properties means 1100 infilled home costs each ratepayer 1/900th for replacement. Maths….

8. Action: Accurately present data in graphs.
    - Annual rates increases are to be kept at between 4.6% and 7.5% per year, for the first ten years with an average of 4.4% for the following ten years. (LTP CD p31).
    - The graph below shows the long-term rates accumulation. Like every LTP before this, HDC expects ratepayers to believe the level of rates increase will decrease after 10 years. This has not happened recently and probably won't happen soon. Who is held accountable if this is not accomplished?

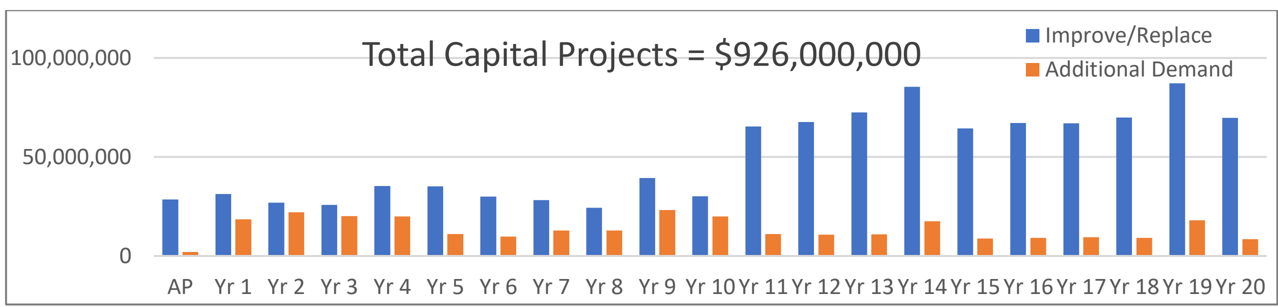
9. Action: Do and show the maths that proves: "HDC advises they will provide affordable levels of service through prudent infrastructure management."

   Action: Provide evidence of the business plans for the first three years of Capex and Opex so ratepayers know where HDC intends to provide infrastructure

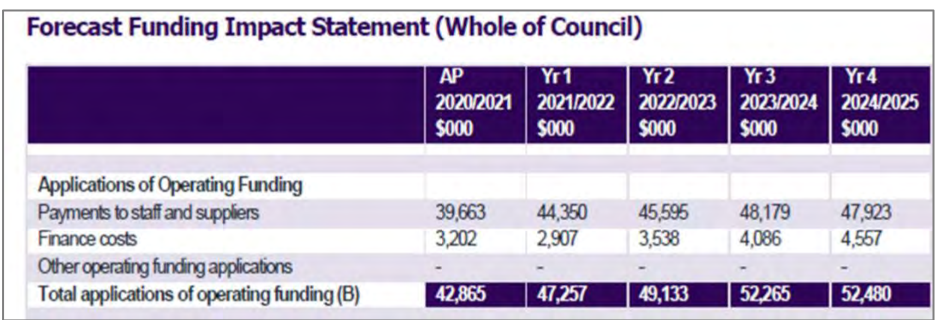
   Action: HDC must specify where this additional funding for growth will come from before commencing actions to spend.
    - Do the maths and present data that shows that while finances to meet additional growth = $280 million there is a shortfall in cash flow of $140 million from collecting DCs. (Total growth projects: Financial Statements pp 39-40)

[7] https://www.strongtowns.org/journal/2018/8/22/the-more-we-grow-the-poorer-we-become

- Do the maths and present in the LTP data that support the assumption that affordability to current ratepayers is not compromised by growth.
    - Current ratepayers have already paid for their usable infrastructure.
- Do the maths and present data that shows affordability of "Our net debt limit is 250% of our operating income". (LTP CD p31).
    - It is not acceptable to change the current debt limit from 195%.
    - HDC plans to spend more than $3 billion on infrastructure during the 20-year period. Is $153 million per year average an affordable level of service?
    - Capital expenditure (Capex) and Operation expenditure (Opex) = $3,851 / ratepayer/year, an affordable level of burden?
    - Planned for Growth-Related capital expenditure = $2126 per ratepayer per year in addition to the above figure.

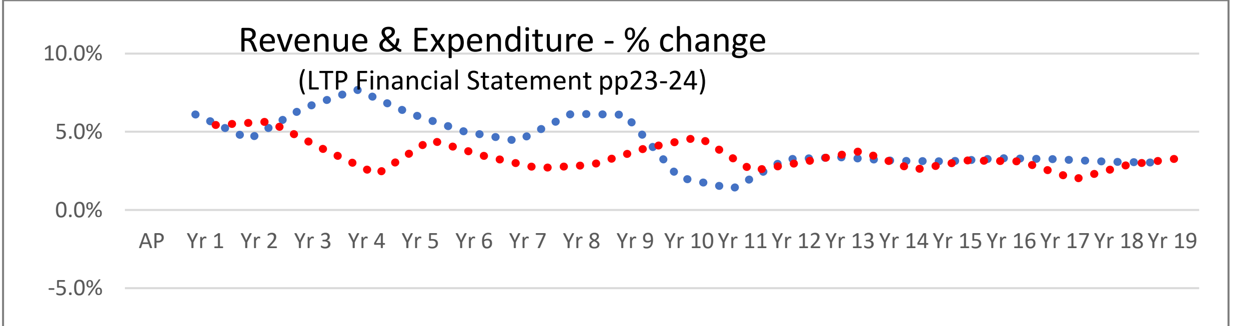


- Analysis: Demand is not steady, yet the "Rateable Rating Units" increases by exactly 418 units per year, every year (Financial Statement p11). This projection in rateable units is formulistic while a comparison of Total Capital Projects (graph above), substantially rising in years 10-20, bears no resemblance to the % Revenue & Expenditure Finances (graph below) which is fluctuating.



Forecast Funding Impact Statement (Whole of Council)

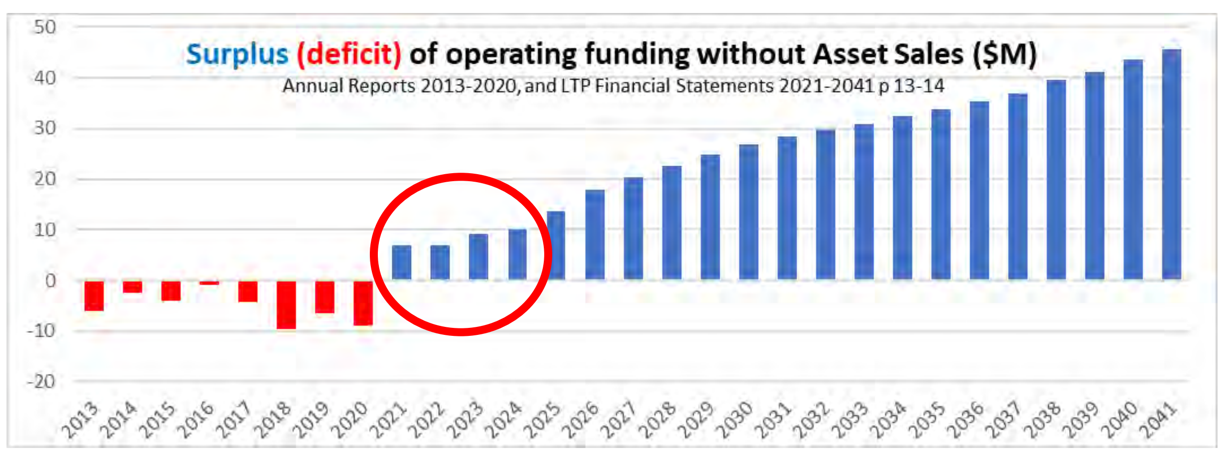
	AP 2020/2021 $000	Yr 1 2021/2022 $000	Yr 2 2022/2023 $000	Yr 3 2023/2024 $000	Yr 4 2024/2025 $000
Applications of Operating Funding					
Payments to staff and suppliers	39,663	44,350	45,595	48,179	47,923
Finance costs	3,202	2,907	3,538	4,086	4,557
Other operating funding applications	-	-	-	-	-
Total applications of operating funding (B)	42,865	47,257	49,133	52,265	52,480

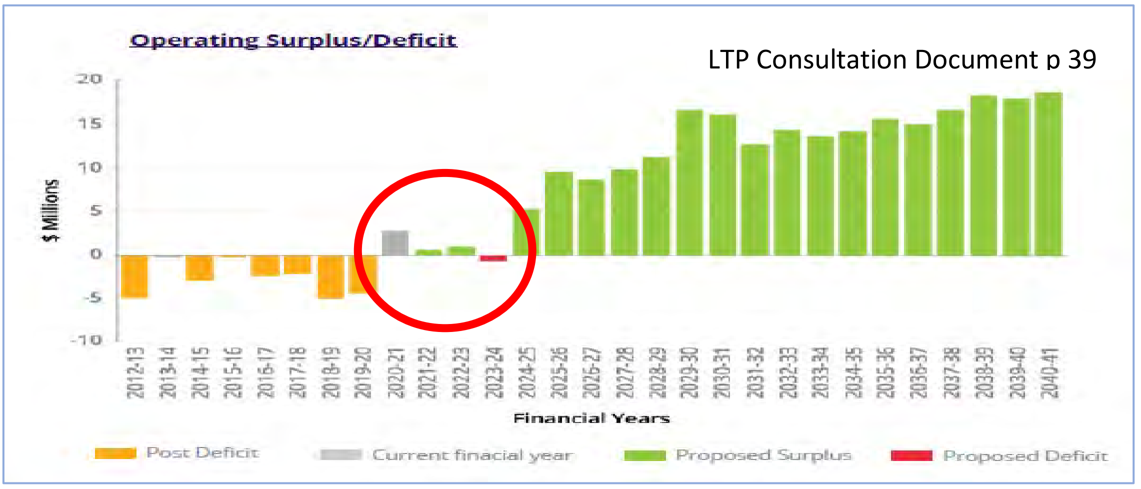


Analysis: the graph above Revenue & Expenditure % Change reveals the moving average is inconsistent between years 1-10 for revenue (blue) and expenditure (red). The data appear formulistic.

10. a. Action: Present accurate transparent information re Surplus/Deficit.
b. Action: Who will be held accountable if the operating surplus is not accomplished in future years?

The graphs presented in the LTP CD p39 do not compare favourably with LTP Financial Statements, p13-14. The graph presented to the general public is fictitious, bearing no resemblance to the current data (red circles) where the accounts have not balanced in the past 7 years. Annual Reports (2013-2020) show deficit budgeting (spending more than receiving), but while this LTP Financial Statements p13-14 puts the accounts in surplus, the graph in the LTP CD p39 is very different. Is a surplus wishful thinking? Similarly, HDC want ratepayers to believe they will operate surplus accounts.





11. Action: Taraika development should be abandoned if current ratepayers and residents are required to supply any additional finances.

- External funding for infrastructure development has not been secured (LTP CD p54).
  - Of the $39 million cost, government supplies $13 million free grant, the $13 million loan, requiring $13 million of external funding which has not been secured.
- The following questions have not been answered.
  - What long-term costs are associated with govt supplied parks and reserves?
  - What are the long-term replacement costs for roads, drinking water, wastewater and stormwater pipes supplied and donated by developers?

- Will these costs be associated directly and only with Taraika ratepayers and residents, or spread to all ratepayers and residents, even if they live in Foxton or Shannon or elsewhere?
- HDC is not providing basic information to Councillors about the long-term cost of the Taraika development. That information should be part and parcel of any business plan that shows long-term benefits and liabilities. "**We currently have no such analysis**" is an indictment against the HDC planning team.

> - We seek further clarification on the following question please - HDRRAI's LGOIMA question 2021-1-6 Fiscal Benefits of Taraika
>
> **(ii) Please present the life cycle costs, liabilities and obligations analysis for the Tara Ika development (a) provided by the Government, (b) provided by the developers, (c) provided by the future business and residential ratepayers of Tara Ika, and (d) provided by current ratepayers.**
>
> It is unclear on what specifically is being asked here. We do not currently have such an analysis. The questions asked is requesting for things that there is no certainty of such as future businesses.

12. Action: Provide an accurate Rating Database (cloud based) to those interested in the maths.
An analysis of the Total Rating Database supplied through a LGOIMA request show the sum or total figures do not match those reported in the Annual Report.

13. Action: Foxton Pool: Remove the building over the top of the pool and have a summer swimming. Alternately remove the pool.
    - As a result of poor planning, management or other, a 13-year-old building needs replacement. Currently the operation costs all "approximately $63 per person per visit".

14. Action: Infrastructure Funding: Supportive of Introduce Development Contributions

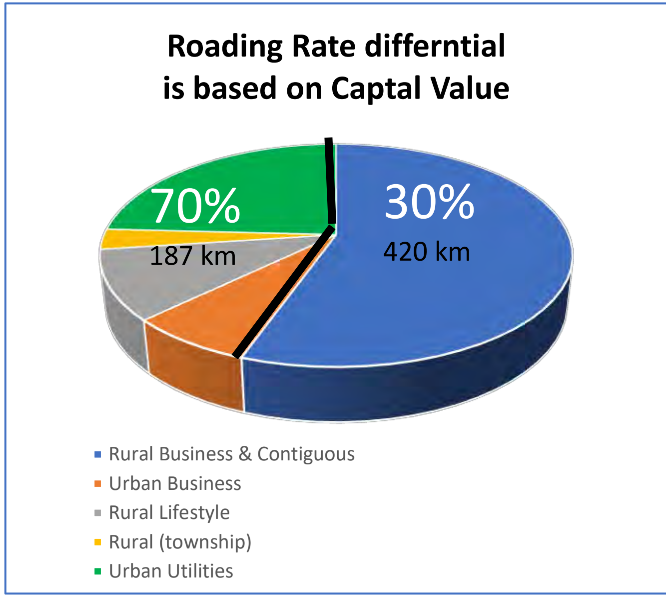
- **$21 million (approx) in Development Contributions was not collected by a 2015 Council decision.**
- **HDRRAI's Analysis of property development LGOIMA responses, Annual and FAR reports, and finance team comments (*pers. comm*.) show subdivision consents, new home consents and SUIPs added to the rating database, provide evidence that the $21 million figure is within the 95th to 99th percentile of accuracy.**
- Fiduciary Duty of Care was not exercised because the decision financially benefited one set or people (developers) at the expense of others (all ratepayers and residents).
- The exacerbators (developers and therefore new ratepayers and residents) did not pay, rather current ratepayers and residents are loaded with the costs through debt to pay for new infrastructure caused by growth.

- NB: Not all developers are residents in the Horowhenua District.

15. Action HDRRAI recommends: Removal of the Land Transport Differential (Targeted rate) and the quoted statement that justifies business differentials.

- All residents and ratepayers, irrespective of location and position are permitted to use all roads. Rural township people use rural roads to come to town, as do rural businesspeople.
- The central government roading subsidy is presumably not earmarked for rural and urban road individually, meaning the Council's separation of funding based on location and business interests is unjustified.
- HDRAAI asserts that offering a lower dollar rate as an incentive to remain in business in the district is an issue where fiduciary duty of care is not being exercised fairly.
    - Businesses should not be incentivised over residents and ratepayers. We are all the one community. In business "rates" are a claimable expense set against taxable income.
    - 69% of the 607 km of roads in the Horowhenua District are rural, yet 50% of the population are urban. Cross subsidising part of the rate is not a fair distribution. The rationale that Land Transport Business Differential is reduced from 35%[8] to 30% comes about because urban land values have increased substantially compared with farming land and businesses (see later).

Be that as it may, the reason for a business differential being set up is dividing the community: "**To offer a lower rate in the dollar for businesses as an economic incentive to establish and remain in the Horowhenua District"[9] is unjust and may conflict with Human Rights Legislation.**



An analysis of the whole Horowhenua District rating database (left figure) shows that rural businesses represent more than the 30% suggested capital value. As there may be duplication these figures cannot be relied upon as accurate.

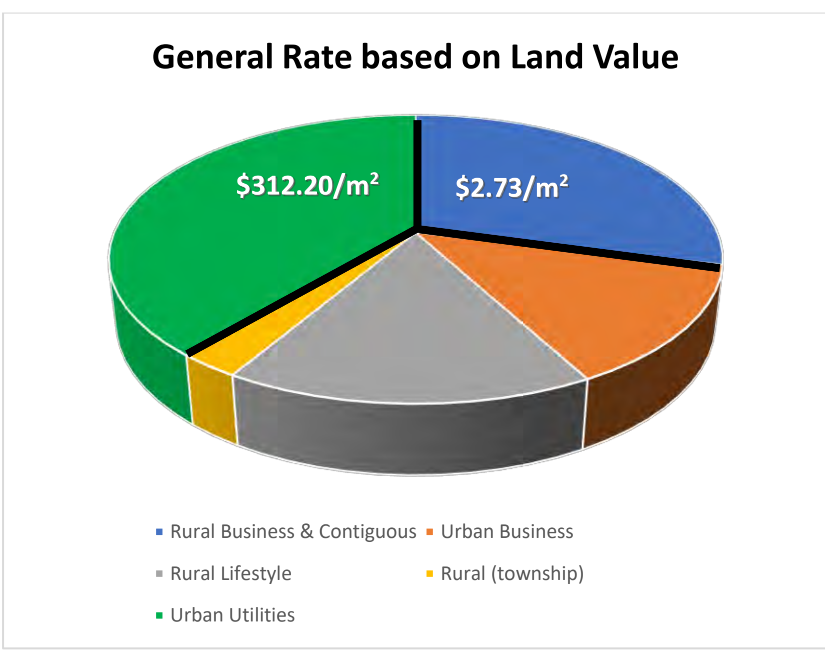
16. a. Action: Remove the Business and Farming General Rate Differential
b. Action: Immediately after the LTP Plan is accepted, Councillors propose community-led discussions involving rural and urban businesses, HDRRAI, Grey Power, budgeting services and others (bottom-up) to find solutions to ensure the rating system is fair, equitable and affordable for all residents and ratepayers with proposals to be put for consultation of the general public before 1 December 2021.

[8] Horowhenua District Council Annual Plan 2020/2021 p96
[9] Horowhenua District Council 2018-2038 Long Term Plan p265

- The suggestion that farms have higher land values is biased and inaccurate. That is like comparing the price of diamonds and bananas. Giving the identical value of "*values per square metre"* farm values average at $\$2.73/m^2$ while urban Levin properties average at $\$312.20/m^2$. Therefore, the significant assumption does not hold true.

A business differential is a subsidy and the reason for a business differential being set up is: "**To offer a lower rate in the dollar for businesses as an economic incentive to establish and remain in the Horowhenua District"[10] is unjust and may conflict with Human Rights Legislation.**

- In business "rates" are a claimable expense set against income.



HDC's assumption, based on "higher land value", is a "total value" number. It does not measure apples with apples, rather apples and lemons.

.The assumption is therefore biased and is neither justifiable nor defendable.

$312.20 does not equal $2.73!

17. Action: Council explore and develop other growth funding protocols within six months of commencing the Long-Term Plan 2021-41 for all other developments in the district.
    - No plan, funding expenditure is set for promote safe environment. Change that.
    - Lake Horowhenua and non-compliant Queen Street drain. Get Compliance.
    - Working with NZTA for stormwater reticulation and storage.
    - Mangaori and Kopotoroa Streams. Get Compliance.
    - Industrial drains polluting Lake Horowhenua. Get Compliance.
    - Pakiti and Arawhata stream restoration clean up.
    - Non-compliant business pollution. Find, fine, and get Compliance.
    - Solid waste and long term landfill solutions. Disclose proposals.
    - Sewage Treatment stations and water discharge. Monitor consistently and establish science-based evidence.

[10] Horowhenua District Council 2018-2038 Long Term Plan p265

18. Action: Recover from developers' monies spent to provide "master plans for development". HDC – should not be involved in the development of Taraika or any other area.

- HDC is providing the master plan to developers for free and providing parks should be a condition attached to the development, not at ratepayer's and residents' expense. Recover the monies.
- Planning, as an asset, should be provided by the developer and not provided by residents and ratepayers.
- HDC has shown no expertise in development and has a track record of creating deficits (overspending)

19. NZTA submission for Taraika

- NZTA will provide all stormwater capacity from the highway road surface, not properties.

Action: HDC to explore collaboration with NZTA to create a combined water retention, pond and slow-release scheme.

Currently surface water from Taraika flows through the Queen Street drains into Lake Horowhenua. Is this to continue or be diverted into the Kopotoroa Stream?

- We note neither of these stormwater release processes have resource consent currently.
- Stormwater from properties should be retained on site. Stormwater from roads and paths goes where?
- Will Taraika development pollute the lake?
- Questions for the mitigation of Lake Horowhenua or Kopotoroa stream?

Appendix “Fiduciary Duty of Care Policy”

Wellington City Council is investigating setting up a Fiduciary Duty of Care Policy.

A Fiduciary Duty of Care Policy is required, to be embedded in all operations of policy and procedure, to show that HDC’s professional staff and councillors provide transparent operation of fiduciary duty of care. Further that information must be made available to the public and regulatory and audit authorities.

The principle of fiduciary care requires local authorities to “seek to balance fairly respective interests of different categories of ratepayers and residents.[11]” A fiduciary must act in good faith, must not take profit out of their trusted role, must not place themselves in the position where their duty and their personal interests’ conflict, and may not act for their own benefit or for the benefit of a third person.

There should be no, nor any appearance of, impropriety. Examples include, but are not limited to the following:

- **Development Contribution removal**: a few developers gained financial benefits at the expense of all ratepayers and residents. HDC, by not collecting development contributions, has lost an estimated $21 million.

- **Performing assignments and acting after the event to obtain Resource Consents**:
  - **a.** Matakarapa Waste Disposal, $603,000 payment overcame Ngati Raukawa’s resource consent objections.
  - **b.** Purchase of 104 Main Street Foxton.
  - **c.** “The Pot”, $2.2 million overcame Levin’s wastewater discharge resource consent objection: Raukawa and Muaupoko tribal authorities (not direct landowners)
  - **d.** North East Levin Stormwater discharge, possible purchase from landowner, thereby evading Environmental Court action: $???

- **Selling Assets**
  - **a.** Pensioner Flats
    - **i** In November 2017 Horowhenua District Council sold its pensioner housing portfolio[12] to Compassion Housing to improve service levels for its tenants.
    - **ii** Had it been sold on the open market it may have attracted a higher price.
    - **iii** The sale reduced Council’s debt, removed the future liability for upgrading or replacing housing units and reduced operational costs now and into the future.

    HDRAAI asserts “Selling on an open market may have resulted in a higher price[9]” did not reflect HDC’s Property Strategy to maximise a return on investment. As such HDRRAI assert there was a failure of a fiduciary duty of care to all ratepayers and residents.

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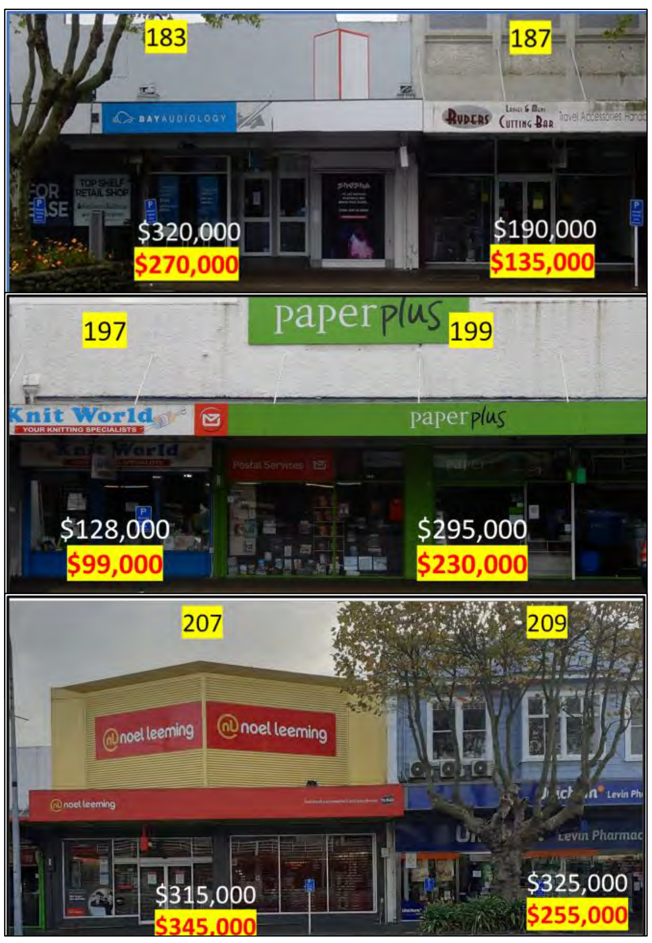
[11] *Mackenzie District Council v Electricity Corporation of New Zealand* [1992] 3 NZLR 41 (CA) at 47.

[12] https://www.horowhenua.govt.nz/Community/Older-People/Community-Housing

b. Oxford Street Commercial properties



The land in the photos (left) was owned by HDC and offered to the building owners in 2019 at a discounted (-15%) price of the 2016 Rateable Land Valuation. The valuation is the white colour, the sale price is coloured red.

On 13/9/2019 Council Manager Mark Lester disclosed to candidates for HDC Council elections that the sale price for the Oxford Street properties were discounted. "The discount was, on average, approximately 15% less than the registered (2016) market value. The Furthermore, Mr Lester commented:

"The one off, discounted from market value sale price, was in recognition of the relationship these leaseholders have had with the Council (in many cases) many years and the contribution the leaseholders have made to the local community and economy through the businesses they operate out of their buildings".

"Recognition of the relationship, contribution to the community" do not appear in the HDC Property Strategy November 2015.

HDRRAI asserts there was a failure of a fiduciary duty of care to all ratepayers and residents.

i) Why was the current 2019 value not used to find the actual value before advertising?

ii) Did HDC fail to follow the Horowhenua District Property Strategy November 2015? This requires Council to undertake commercial transactions in accordance with sound business practices, to minimise the risk of loss, and to maximise the returns from investments.

iii) One of the properties was sold to the family or family trust of the current Mayor Mr Bernie Wanden, for $230,000 when the 2016 rated land value was $295,000. Significantly, after the July 2019 rating revaluation, the Land Value were revalued downwards reflecting the sale price. As a result, the rates on the property from which the Mayor runs his family business have decreased -27%, (not the average -1.8%) a commercial windfall, saving of over $1000 per annum.

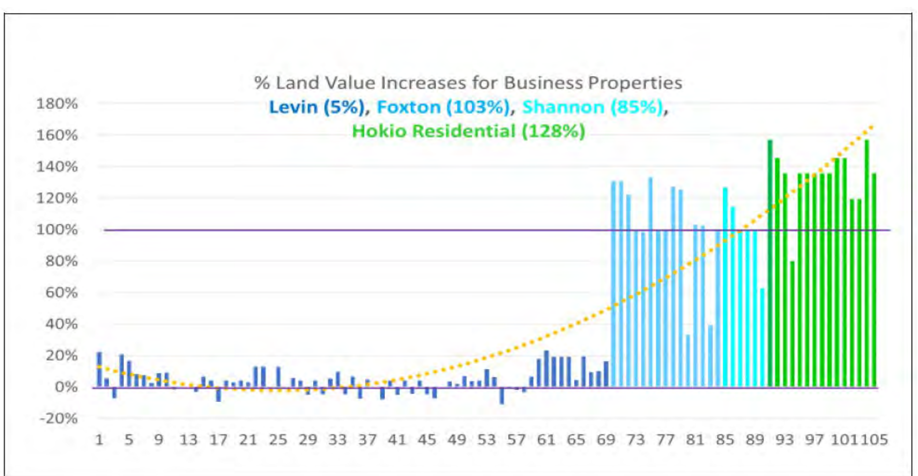
iv) Because of this HDRRAI questions the Mayor's judgement of his fiduciary duty of care (must not make a profit out of their trusted role, may not act for their own benefit) to all ratepayers and residents.
The change

v) The decrease in land values in Oxford Street commercial properties has decreased HDC rates intake by approximately $100,000 per annum compared to the previous year. This decrease continues *ad infinitum*.

Land values for Oxford Street properties increased on average only 5% while those in Foxton increased 103% and Shannon 85%. At a time of sustained property increases throughout the Horowhenua District Oxford Street land values did not substantially increase.

The low sale price of HDC's commercial property sales in Oxford Street adversely - and artificially - affects the existing landowners in Oxford St, compared to commercial properties in Foxton and Shannon.

As a result, the rating revaluation rates paid by Oxford Street commercial properties decreased -19%, averaging $1430 less than the previous year's rates. Foxton commercial produced -2% ($51), and Shannon commercial -6% ($110).



- **Purchasing Property Assets**
  - **a.** 645 Hokio Beach Road.
  - **b.** 104 Main Street Foxton
  - **c.** 718 Makerua Road Tokomara
  - **d.** Mangahao Road Shannon
  - **e.** Gladstone Road Levin

How are these properties "Strategic Assets", or were they purchased for other nefarious reasons, such as stopping legal action or other?

From: Long Term Plan 2021-41 Project Team
Sent: Monday, 19 April 2021 8:52 AM
To: Records Processing
Subject: FW: LTP Submission from Sport New Zealand
Attachments: HDC Draft LTP submission (1) (1).pdf

From: Colin Stone <Colin.Stone@sportnz.org.nz>
Sent: Monday, 19 April 2021 8:43 AM
To: Long Term Plan 2021-41 Project Team <ltp@horowhenua.govt.nz>
Subject: LTP Submission from Sport New Zealand

Greetings from Sport New Zealand,

Please find attached our submission to the Long Term Plan. Can you please acknowledge receipt.

We would welcome the opportunity to talk to this submission

Nāu te rourou, nāku te rourou, ka ora ai te iwi / With your food basket and my food basket the people will thrive

Ngā mihi

Colin Stone
Regional Partnerships Manager-Central

+64 274 451 339
sportnz.org.nz

Sport New Zealand is the crown entity responsible for Aotearoa New Zealand's play, active recreation and sport system.

For more details, visit www.sportnz.org.nz

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Your assistance is appreciated.

RECEIVED ON
19/04/2021

Long Term Plan Submission

Submission to the Horowhenua District Council
April 2021

About Sport New Zealand

Sport New Zealand (Sport NZ) is the crown agency responsible for contributing to the wellbeing of everybody in Aotearoa New Zealand by leading an enriching and inspiring play, active recreation, and sport system. Sport NZ's vision is simple - to get **Every Body Active in Aotearoa New Zealand**.

Our role as kaitiaki of the system focusses on lifting the physical activity levels of all those living within Aotearoa and having the greatest possible impact on wellbeing. We achieve our outcomes by aligning our investment through partnerships, funds and programmes to our strategic priorities set out in our four-year strategic plan.

Horowhenua District Council is important to the work of Sport NZ in the central region.

The importance of Council

Horowhenua District Council is the major provider of sport and recreation facilities in the region. We appreciate this support and investment – without it much of what happens in our sector would not be possible. Council investment has provided positive outcomes for a wide range of sports codes and community members from diverse cultures, ages, and abilities. We also acknowledge the commitment of council staff in supporting the sector.

Play, active recreation and sport make an enormous contribution to the health and wellbeing of all the residents of Horowhenua District, contributing to happier, healthier people and connected communities. Physical activity, its wide-ranging benefits and its importance to our communities are fundamental to meeting the outcomes identified in several council plans and strategies.

We acknowledge the challenges Council faces with balancing the various competing demands such as growth, transport, climate change and water quality. The impact of Covid-19 will be with us for some time to come, so too the decisions made in this LTP Budget.

The importance of Sport Manawatū

Sport New Zealand invests into Regional Sports Trusts, like Sport Manawatū for their regional leadership of the play, active recreation and sport system and consider them to be our significant regional partner and champion of our strategic vision. This aligns well with their own vision of 'Everyone Active, Every Day'. Sport Manawatū work hard to build strong strategic relationships, particularly with councils and direct investment and support to Sport Manawatū by Horowhenua District Council will enable Sport Manawatū to have a greater presence throughout the district and positively impact their effectiveness and influence.

For example, Horowhenua District Council are proposing the upgrade of parks and open spaces such as Donnelly Park, Holden Reserve, Foxton Beach and Plyford Park. This is strongly supported by Sport New Zealand and, through the leadership, advocacy, and influence of Sport Manawatū, there is opportunity to better activate these spaces and places. The changing participation trends of participants requires continued innovative thinking and Sport Manawatū continue to demonstrate their willingness to try new approaches and partnerships, to reach more inactive communities and partner new organisations.

The impact of COVID-19 on the play, active recreation and sport sector

COVID-19 has placed significant pressure on Aotearoa New Zealand's play, active recreation, and sport system.

- Through our insights, we know the COVID-19 lockdowns has exacerbated inequalities, putting some population groups at even more risk regarding their physical and mental wellbeing.
- Analysis of media commentary also identified concerns about returning to previous activities in shared public spaces due to safety.
- Sector organisations which play a key role in enabling New Zealanders to be active were also impacted by COVID-19. These impacts include lost revenue, cash flow difficulties, reduced capacity and change of membership.

All these things have hit the sector hard, and Sport NZ is working with regional sports trusts, like Sport Manawatū, councils, and other local stakeholders to find solutions to help address these.

The Future of Play, Active Recreation and Sport

The impacts of Covid-19 have accelerated the need for our sector to consider the future state of play, action recreation and sport to position itself for the next 20 years and beyond. Over the last year work has been underway with the sector to better understand the challenges and create a more active future through a system that does things differently and better. Emerging themes from this work paint a picture of a system that is:

- Values-based, inclusive, equitable, fair, affordable, bi-cultural, multi-cultural, gender neutral/gender free, caring, strong sense of belonging, safe, affordable, universally accessible, universal design, cooperative and co-designed.
- Locally led and behaves as a dynamic network, which integrates action across many agencies / communities / regions and leverages systems thinking and practice.
- Collaborative through a high trust model with clear roles and incorporates new parties, innovative funding, distributed decision-making and continuously learns and adapts to changing needs, situations, and facts (data-driven).
- Giving effect to the principles of Tiriti o Waitangi through Mana Ōrite – partnership, Mana Maori – protection, Mana Taurite – participation.
- Caring and protective of the unique natural environment (mountains, lakes, seas, native bush, fauna and flora) in which people can be active, and contribute to environmental sustainability through safeguarding natural resources (air, water, land) and planning the physical environment to support activity, universal access and accessibility of spaces and places to be active.
- Achieving Mauri Tū, Mauri ora – 'an active soul is a healthy soul'. Mauri ora describes a heightened state of physical, mental, emotional, spiritual wellbeing and cultural vitality. In physical activity it is when we are fully engaged, active, strong, and well.

Target audiences and activity areas

Sport NZ remains committed to making progress towards our primary goal of ensuring more tamariki and rangatahi (aged 5 – 18) have access to quality physical activity options. We aspire to reduce the drop off in activity levels of rangatahi from ages 12 to 18 and increase the levels of activity for those tamariki and rangatahi who are less active.

Sport New Zealand is aware that there are potential challenges in the Foxton community with the provision of sport and recreation facilities for Tamariki and Rangatahi with High School facilities no longer being made available to the community. As such we applaud the approach and consideration of a sports hub concept in Foxton. Sport New Zealand has recently developed a Sports Hub Guide building on the experiences of numerous such facilities around New Zealand and through Sport Manawatū support is available to assist council thinking and processes.

Horowhenua District Council investment in Play, Active Recreation and Sport

Sport NZ acknowledges the challenges faced by Council in providing community services through its sport and recreation assets and that many of these are ageing and require significant renewal investment.

Sport NZ, Sport Manawatū, Sport Whanganui, and Horowhenua District Council officers have been working alongside representatives from Palmerston North City Council, Manawatū District Council, Rangitīkei District Council, Taraua District Council and with the active recreation and sports sector to develop a co-ordinated and collaborative approach for future sport and recreation facility provision. The Manawatū-Whanganui Regional Sport Facilities Plan provides Council with a clear strategic view of infrastructure needs for the District and the evaluation criteria to prioritise investment and ultimately make better decisions.

Furthermore Sport NZ acknowledges Council's commitments to improving the active transport options of the district through investment into walking and cycling infrastructure over the next 20 years that will better connect the community to key community facilities such as our parks and reserves.

Horowhenua District Council's support for Play

Play is self-directed activity which a young person freely chooses, usually for its own sake. Play is not just about the provision of fixed assets in the form of playgrounds. Commitment to playful communities requires consideration of all the decisions and factors made by Council and its partners that create space, time, and permission for our whanau to play.

Research shows that play has many benefits for children, families, and the wider community.

- Play contributes the largest number of physically active hours for 5–18-year-olds on a weekly basis.
- Play is vitally important for a young person's resilience and wellbeing.
- Playful childhoods lead to healthy, happy, active lives.

It has been taken for granted that play will always be a part of New Zealand childhoods. However, levels of play are in decline due to shifting cultural values, increasingly sedentary behaviours, family circumstances, urbanisation, and fears about children's safety.

Through its network of parks and open spaces council can be a significant catalyst for play. We would also urge Council to give consideration through its numerous roles and services as to how the Council creates opportunities for more playful communities. An integrated planning approach though a play lens would ensure there is more opportunity to activate spaces and places and create environments that encourage physical activity through play.

Sport NZ recommendations/feedback on specific consultation topics

1. Aquatic Facilities

- Sport New Zealand acknowledges and supports the work undertaken by Council in developing an Aquatic Facilities Strategy to provide a blueprint for the future of Aquatic Facilities across the district. We also acknowledge the 'best practice' approach Council has undertaken in developing feasibility studies for its aquatic facilities and projects.
- We note that Council has identified that a major decision will need to be made by 2027 in respect of the future redevelopment of the Levin Aquatic Centre and that a business case will be required to inform the case for any investment. Sport New Zealand supports this

approach and would welcome the opportunity, through Sport Manawatū to assist in this work where appropriate.

2. Foxton Pool

- Sport New Zealand supports Council's Proposed Option 2 – Basic All Year Pool. This option would appear to offer the best value to the community, will ensure that current residents can continue to access the services this pool provides and will provide an important recreation amenity as the community to continues to grow. In addition, this proposed option will provide an opportunity to extend the operating hours of the facility.
- We would encourage Council to ensure that the detailed design and construction of this project does not preclude further development of the aquatic facilities on the site in the future, should demand and the community regard this as necessary to meet their needs, particularly given the potential population growth.

3. Active Transport Improvements

- Sport New Zealand acknowledges and supports Council's intent to improve active transport infrastructure and would urge Council to make this a requirement and a priority as new residential and commercial developments are planned and delivered by the private sector across the district.

Thank you for the opportunity to submit to the Horowhenua District Council draft 10-year plan.

Ngā mihi

Sport New Zealand

RECEIVED ON
19/04/2021

Horowhenua

Submission No. 334

Long Term Plan 2021 - 2041

Submission Form

Submissions must be provided to Council by no later than **4pm, Monday 19 April 2021**

Submissions can be:

Delivered to:
Horowhenua District Council Offices, Takeretanga o Kura-hau-pō, Te Awahou Nieuwe Stroom and Shannon Library.

Posted to:
Horowhenua District Council, Private Bag 4002, Levin 5540

Emailed to:
ltp@horowhenua.govt.nz

Completed online or are available for download from Council's website: horowhenua.govt.nz/GrowingOurFutureTogether

Copies of the Consultation Document for the Long Term Plan 2021-2041 (and Supporting Information) are available online or at Council's Office, Te Takeretanga o Kura-hau-pō, Te Awahou Nieuwe Stroom and Shannon Library.

Any additional comments can be attached and submitted with this form.

Contact Details

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

○ Please tick this box if you want to keep your contact details private

Title: Mr

Full Name: Kimbal McHugo

Name of Organisation:

Postal Address: 173 Takapu Rd
RD31 Manakau **Post Code:** 5573

Telephone: 06 362 6395

Mobile: 029 835 1215

Email: mchugo@mchugo.co.nz

Did you provide feedback as part of pre-engagement on the Long Term Plan?

☑ Yes ○ No

Hearing of Submissions

Do you wish to present your submission to Council at a Hearing?

○ Yes ☑ No

If yes, please specify below:

○ In person ○ zoom

Do you require a sign language interpreter?

○ Yes ○ No

Do you require a translator?

○ Yes ○ No

If yes, please specify below:

Topic One — Foxton Pool

The structure of the Foxton Pool needs to be replaced for health and safety reasons. There are five options for the community to consider.

	Option 1 All-Year Leisure	Option 2 All-Year Basic	Option 3 Seasonal Leisure	Option 4 Seasonal Basic	Option 5 Close the Pool
Indoor provision – All-year	✓	✓			
Outdoor provision – Seasonal			✓	✓	
25m Pool	✓	✓	✓	✓	
Leisure Pool	✓		✓		
Teacher/Toddler Pools	✓	✓	✓	✓	
Splashpad	✓		✓		
Upgrade change rooms	✓	✓	✓	✓	
Cover over Teaching/Toddler Pools	✓		✓	✓	
Outdoor landscaping/BBQ area	✓		✓		
Multi-purpose room	✓				
Rates impact	$44.53	$26.61	$22.00	$16.02	-$12.49

Tick below to identify your preferred option

- ◯ **Option 1:** Indoor and Outdoor Leisure Pool
- ◯ **Option 2:** Basic All-year Pool
- ◯ **Option 3:** Seasonal Outdoor Leisure Pool
- ◯ **Option 4:** Seasonal Outdoor Basic Pool
- ◯ **Option 5:** Permanently Close Facility

N/A

Topic Two — Infrastructure Funding: Development Contributions

Council is considering the reintroduction of Development Contributions as a key source of funding our growth infrastructure. Do you think this is a good idea?

Tick below to identify your preferred option.

- ☑ **Option 1:** Using development contributions as the key source of funding for growth infrastructure, in combination with other sources.
- ◯ **Option 2:** Not using development contributions for funding growth infrastructure, and increasing rates instead.

Draft Development Contributions Policy

If Council reintroduces development contributions, the Draft Development Contributions Policy outlines what contributions are collected and how.

Do you wish to speak to the Development Contributions Policy at a hearing?

- [ ] Yes
- [x] No

Activities

What activities do you think development contributions should be collected for as a source of funding growth infrastructure?

- [x] Roading
- [x] Water supply
- [x] Wastewater treatment
- [x] Stormwater
- [x] Community infrastructure such as parks, sportsfields, activity centres, playgrounds and more.

Catchments

The Draft Development Contributions Policy is proposing to use district-wide contributions for roading and community infrastructure. It is also proposing scheme-by-scheme contributions for the three waters, which means different contribution amounts would apply to each scheme area. The big growth areas will pay an additional contribution for major expenses related just to them, however there are other approaches Council could use such as everyone paying the same.

Which approach do you think should be used?

- [ ] District-wide contributions for roading and community infrastructure. Scheme-by-scheme contributions for the three waters. Growth areas pay for major expenses related to them.
- [ ] District-wide contributions for roading and community infrastructure. Scheme-by-scheme contributions for the three waters. Growth areas do not pay for major expenses related to them, these are spread out over the rest of the scheme.
- [ ] Harmonisation: all required contributions are the same across the district.
- [ ] Other (please specify)

THERE IS NO Information on this in your consultation document

Time of payment

Normally development contributions are charged when granting development consents. That is early in the development process and developers can find it difficult to manage cash flows when there is still a lot to do before selling a lot or a new house.

The draft policy proposes to invoice developers at later times in the case of subdivision and building consents, closer to when lots and homes are to be sold as identified below.

A subdivision consent, at the time of granting a certificate under section 224(c) of the Resource Management Act 1991; and

A building consent, at the time the first building inspection is carried out.

Do you agree with this approach?

☑ Yes ◯ No

Reductions

The draft policy proposes a limited scope for reducing development contributions once they are calculated for a development. This scope includes just two principles, that the development:

a. provides a significant public benefit; or
b. addresses significant affordability issues.

Before agreeing to any reduction, Council needs to be sure it can fund the income it forgoes from another source.

Do you agree with the proposed scope for reducing development contributions?

☑ Yes ◯ No

Topic Three — Changes to the Land Transport Targeted Rate

Council is considering whether the differential on the Land Transport Targeted Rate should be removed. Currently there is a differential that means businesses only pay 35% of the Land Transport Targeted Rate. This was set up when businesses made up 38% of the capital values in the district. However, due to residential growth, businesses now only make up 30% of the district, but are still paying 35% of the Land Transport Targeted Rate.

Tick below to identify your preferred option

☑ **Option 1: Remove Differential**
All ratepayers pay the Land Transport Targeted Rate based on capital value.

◯ **Option 2: Status Quo**
Differential where businesses pay 35% of the Land Transport Targeted Rate and District Wide properties pay 65%.

Topic Four

Changes to the General Rate

Council is considering changes to the General Rate to enable rural properties to gain the same benefits from growth as urban properties. The existing differential treated non-farming properties the same as farms even though they do not have the same large footprint and land value.

Tick below to identify your preferred option

- [x] **Option 1: Creating a Farming differential**
  Differential that only applies to Farming properties with a differential factor of 0.5 (Farming) to 1 (District Wide).
- [ ] **Option 2: Status Quo**
  Rural properties (including all business in the rural zone) pay 25% of the General Rate rates income, District wide pay 75% of the General Rates Rates income.

Draft Revenue and Financing Policy

Topics Three and Four propose changes to the draft Revenue and Financing Policy.

Do you have any other comments about the draft Revenue and Financing Policy?

- [ ] Yes
- [x] No

Financial Strategy

To deliver the projects and services planned over the next 20 years, we are proposing the limit on annual rates increases to range between 4.6% and 7.5% per year for the first 10 years, with an average of 4.4% for the following 10 years. We are also proposing to increase our net debt limit from 195% to 250% of our operating income. Generally operational costs to run the business and renewals are funded by rates, and capital projects such as building new facilities and putting in new infrastructure is funded by debt.

Have we got the balance right between rates increases and debt levels?

- [x] Yes
- [ ] No

Community Outcomes

Council has reviewed the community outcomes which are what we aim to achieve for our community.

The outcomes are Vibrant Economy, Outstanding Environment, Fit for purpose Infrastructure, Partnership with Tangata Whenua and Strong Communities.

Do you think the proposed Community Outcomes reflect the aspirations of the Horowhenua community?

☑ Yes ◯ No

Are we missing something, or focusing on something we shouldn't be?

Thank you for your submission

Privacy Act 1993

Please note that submissions are public information. Information on this form including your name and submission will be made available to the media and public as part of the decision making process. Your submission will only be used for the purpose of the long term plan process. The information will be held by the Horowhenua District Council, 126 Oxford Street, Levin. You have the right to access the information and request its correction.

FreePost 108609

Free

Horowhenua District Council
Private Bag 4002
Levin 5540

From:	Brent Harvey
Sent:	Monday, 19 April 2021 9:26 AM
To:	Records Processing
Subject:	FW: Foxton Pool - Growing Our Future Together

RECEIVED ON 19/04/2021

Brent Harvey
Community Facilities and Events Manager

Waea Mahi | (06) 366 0999
Waea Pukoro | 64276491982

126 Oxford Street, Levin
Private Bag 4002, Levin 5540

From: Adam Radich <Adam.Radich@trhservices.co.nz>
Sent: Monday, 19 April 2021 9:25 AM
To: Brent Harvey <BrentH@horowhenua.govt.nz>
Subject: RE: Foxton Pool - Growing Our Future Together

Morning Brent,

Sorry I haven't had time to complete the submission and am replying to you via email.

Name: Adam Radich
Address: 6B Hennessey street east Foxton Beach (Postal 212 Hendersons Line Palmerston North)
Topic One- Foxton Pool
Preferred option: Option 1
Comments/ Rationale,
I am currently a Surf Lifeguard, committee member at Foxton SLSC.
Many people who visit Foxton Beach are not even aware that Foxton has a pool, being a west coast beach we have a large number of days that swimming is not advised on our beach and a perfect alternative for holiday makers would be to go to the pool or outdoor water park.
Foxton SLSC run a nippers program over summer and on days when the weather is sub-optimal going and using the local pool would be perfect with some thing for everyone.
Foxton SLSC currently train lifeguards at the pool for the few months its open then are forced to split our squad up and train in Palmy or Levin, if the pool was year round we would continue to utilise this facility 12 months of the year.
Talking to schools associated with the SLSC club, if Foxton pool was a heated adequate resource we would see school swimming programmes re-implemented there instead of using the tiny learn to swim pools at the school.
As we are all aware Foxton and the beach population and popularity is increasing exponentially, having a recreational water ark facility similar to Raumati would be outstanding for both permanent and holiday makers alike.

Best Regards

Adam Radich
GM Operations

TRHServices LTD
NZ Windfarm Operations and Maintenance

Street: North Range Road, RD1 Postal: PO Box 20031, Summerhill, Palmerston North 4448, New Zealand
Phone: +64 (6) 280 2773 ext 1 Mobile:+64 (21) 933 191
Mail: adam@trhservices.co.nz Web: www.nzwindfarms.co.nz

Please consider the environment before printing this e-mail

"Clear and honest communication removes the anxiety of the unknown"

From: Brent Harvey <BrentH@horowhenua.govt.nz>
Sent: Friday, 16 April 2021 11:03 am
To: Brent Harvey <BrentH@horowhenua.govt.nz>
Subject: FW: Foxton Pool - Growing Our Future Together

Good morning all,

We are approaching the end of the Long Term Plan consultation period with the official period concluding at 4pm on Monday 19 April. I know that a lot of you have submitted and provided your thoughts on Foxton Pool which is fantastic – thank you.

For those who haven't, I encourage you to take the time to make a submission, there is still time to do so.

The simplest way to reply to me with the following information and I will ensure it is included with the submissions.

Name:

Address:

Topic One – Foxton Pool

Preferred Option:

Comments:

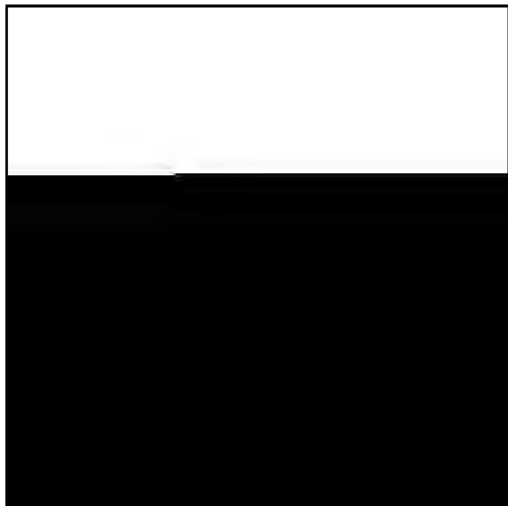
Thank you for your time. If you have any last minute questions about the options please don't hesitate to give me a call.

Regards
Brent

Brent Harvey
Community Facilities and Events Manager

Waea Mahi | (06) 366 0999
Waea Pukoro | 64276491982

126 Oxford Street, Levin
Private Bag 4002, Levin 5540



From: Brent Harvey <BrentH@horowhenua.govt.nz>
Sent: Thursday, 8 April 2021 4:16 PM
To: Brent Harvey <BrentH@horowhenua.govt.nz>
Subject: Foxton Pool - Growing Our Future Together

Good afternoon,

Thank you to those of you that have submitted to the 2021-41 Long Term Plan, we are just over halfway through the consultation period and have received a number of submissions. For those of you that haven't submitted, there is still time to do so as consultation period closes 4pm Monday 19 April.

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More information on the five options and can be found here - www.horowhenua.govt.nz/GrowingOurFutureTogether

You are able to make a submission via email provided it includes the following information – These can be sent directly to me or to ltp@horowhenua.govt.nz

Name:

Address:

Topic One – Foxton Pool

Preferred Option:

Comments:

We have a free swim and sausage sizzle this Friday at Foxton Pool (3.30pm – 6.30pm) and will have staff onsite to answer any questions about the options being considered. If you don't have any questions, you are most welcome to come along and enjoy the facility and an evening at the pool – we will also have the dunk tank operating for those that are extra keen!

Kind regards
Brent

Brent Harvey
Community Facilities and Events Manager

Waea Mahi | (06) 366 0999
Waea Pukoro | 64276491982

126 Oxford Street, Levin
Private Bag 4002, Levin 5540

From: Brent Harvey <BrentH@horowhenua.govt.nz>
Sent: Tuesday, 30 March 2021 8:50 AM
To: Brent Harvey <BrentH@horowhenua.govt.nz>
Subject: FW: Foxton Pool - Growing Our Future Together

Good Morning,

In November last year, you provided feedback on various concepts as part of a Feasibility Study on Foxton Pool. The feedback received demonstrated the importance that the community places on aquatic provision in Foxton with 676 responses to the proposed concepts.

On Wednesday 16th March, Councillors adopted the draft Long Term Plan Consultation Document. The purpose of the Long Term Plan 2021-2041 Consultation Document is to get your feedback to help Council set out what we are going to do over the next 20 years.

One of the key topics in the 2021-41 Long Term Plan is the future of Foxton Pool. Your feedback provided in November last year has directly help shape the options for consideration. The Consultation Document asks the community to consider five options. All of the options have been quantity surveyed and operational modelling completed to help inform future decision making. The options are:

- Option 1: Indoor and Outdoor Leisure Pool
- Option 2: Basic All-year pool
- Option 3: Seasonal Outdoor Leisure Pool
- Option 4: Seasonal Outdoor Basic Pool
- Option 5: Permanently Close Facility

The purpose of the email today is to let you know that the submission period is now open and to encourage you to have your say – the submissions received through this period will assist Council when it comes to making a decision on the future of the facility. It's important that the community is heard when considering the pools future and I encourage as many people as possible to take the time to complete a submission.

The full LTP Consultation Document, including supporting information and how to make a submission can be found here: Long Term Plan 2021 - 2041, Growing Our Future Together. **Submissions close at 4pm on Monday 19 April 2021**.

Please join us on Friday 09 April for a free swim and sausage at Foxton Pool from 3.30pm – 6.30pm. We'll have staff on hand to answer any questions you may have in relation to Foxton Pool. Alternatively, if you have any questions feel free to contact me by replying to this email.

Kind regards

Brent

Brent Harvey
Community Facilities and Events Manager

Waea Mahi | (06) 366 0999
Waea Pukoro | 64276491982

126 Oxford Street, Levin
Private Bag 4002, Levin 5540

Submission No. 336

Long Term Plan 2021-2041 - Submission Form

Submission date:	**19 April 2021, 9:27AM**
Receipt number:	**139**
Related form version:	**2**

Contact Details

	Please tick this box if you want to keep your contact details private
Title:	**Mr**
Full Name:	**Andy Kent**
Name of Organisation:	**Surf Life Saving New Zealand**
Postal Address:	[redacted]
Postcode:	[redacted]
Telephone:	[redacted]
Mobile:	
Email:	[redacted]
Did you provide feedback as part of pre-engagement on the Long Term Plan?	**No**

Hearing of Submissions

Do you wish to present your submission to Council at a Hearing?	**No**
If yes, please specify below:	

Do you require a sign language interpreter?	**No**
Do you require a translator?	**No**
If yes, please specify translation details below:	

Topic One - Foxton Pool

Tick below to identify your preferred option:	**Option 1: Indoor and Outdoor Leisure Pool**
Comments:	**Surely with the expected increase in population Option 1 makes the most sense. The facility needs to be fit for the future.... not a quick fix.**

Topic Two - Infrastructure Funding: Development Contributions

Tick below to identify your preferred option:	**Option 1: Using development contributions as the key source of funding for growth infrastructure, in combination with other sources.**
Comments:	

Draft Development Contributions Policy

Do you wish to speak to the Development Contributions Policy at a hearing?	**No**
What activities do you think development contributions should be collected for as a source of funding growth infrastructure?	**Water supply** **Stormwater**
Comments:	
Which approach do you think should be used?	**Harmonisation: all required contributions are the same across the district.**
Comments on Catchments:	
Do you agree with this approach?	**Yes**

Comments on Time of payment:	
Do you agree with the proposed scope for reducing development contributions?	**Yes**
Comments on Reductions:	

Topic 3 - Changes to the Land Transport Targeted Rate

Tick below to identify your preferred option:	**Option 2: Status Quo - Differential where businesses pay 35% of the Land Transport Targeted Rate and District Wide properties pay 65%.**
Comments:	

Topic Four - Changes to the General Rate

Tick below to identify your preferred option:	**Option 1: Creating a Farming differential - Differential that only applies to Farming properties with a differential factor of 0.5 (Farming) to 1 (District Wide)**
Comments:	

Draft Revenue and Financing Policy

Do you have any other comments about the draft Revenue and Financing Policy?	**No**
If yes, please provide comments:	

Draft Rates Remission Policy

Do you have any comments or suggested changes on the Rates Remission Policy?	

Financial Strategy

Have we got the balance right between rates increases and debt levels?	**Yes**

Comments:

Community Outcomes

Do you think the proposed Community Outcomes reflect the aspirations of the Horowhenua community?	**Yes**

Are we missing something, or focusing on something we shouldn't be?

Additional Comments

Please identify any additional comments you have on what is proposed as part of Council's Draft Long Term Plan 2021-2041.

Attach any other comments:

RECEIVED ON
19/04/2021

From: Brent Harvey
Sent: Monday, 19 April 2021 9:39 AM
To: Records Processing
Subject: FW: Foxton Pool - Growing Our Future Together

Brent Harvey
Community Facilities and Events Manager

Waea Mahi | (06) 366 0999
Waea Pukoro | 64276491982

126 Oxford Street, Levin
Private Bag 4002, Levin 5540

From: every day <keithandcathy265@gmail.com>
Sent: Monday, 19 April 2021 9:38 AM
To: Brent Harvey <BrentH@horowhenua.govt.nz>
Subject: Re: Foxton Pool - Growing Our Future Together

Hi, Brent - submission below.

Thanks

Keith

> On 16/04/2021, at 11:03 AM, Brent Harvey <BrentH@horowhenua.govt.nz> wrote:
>
> Good morning all,
>
> We are approaching the end of the Long Term Plan consultation period with the official period concluding at 4pm on Monday 19 April. I know that a lot of you have submitted and provided your thoughts on Foxton Pool which is fantastic – thank you.
>
> For those who haven't, I encourage you to take the time to make a submission, there is still time to do so.
>
> The simplest way to reply to me with the following information and I will ensure it is included with the submissions.
>
> **Name: Keith McCartney**
>
> **Address:12 Andresen Street, Foxton Beach**
>
> **Topic One – Foxton Pool**
>
> **Preferred Option: 1**

Comments:

The 12 month operation of the pool is critical. Including a leisure pool with a higher temperature is important for the health well-being and support of the older demographic within our community. Needs to be a great facility to cater for the anticipated growth in and around Foxton.

Keith McCartney

Thank you for your time. If you have any last minute questions about the options please don't hesitate to give me a call.

Regards
Brent

Brent Harvey
Community Facilities and Events Manager

Waea Mahi | (06) 366 0999
Waea Pukoro | 64276491982

126 Oxford Street, Levin
Private Bag 4002, Levin 5540

From: Brent Harvey <BrentH@horowhenua.govt.nz>
Sent: Thursday, 8 April 2021 4:16 PM
To: Brent Harvey <BrentH@horowhenua.govt.nz>
Subject: Foxton Pool - Growing Our Future Together

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Name:

Address:

Topic One – Foxton Pool

Preferred Option:

Comments:

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Kind regards
Brent

Brent Harvey
Community Facilities and Events Manager

Waea Mahi | (06) 366 0999
Waea Pukoro | 64276491982

126 Oxford Street, Levin
Private Bag 4002, Levin 5540

From: Brent Harvey <BrentH@horowhenua.govt.nz>
Sent: Tuesday, 30 March 2021 8:50 AM
To: Brent Harvey <BrentH@horowhenua.govt.nz>
Subject: FW: Foxton Pool - Growing Our Future Together

Good Morning,

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Kind regards

Brent

Brent Harvey
Community Facilities and Events Manager

Waea Mahi | (06) 366 0999
Waea Pukoro | 64276491982

126 Oxford Street, Levin
Private Bag 4002, Levin 5540

RECEIVED ON
19/04/2021

From: Brent Harvey
Sent: Monday, 19 April 2021 9:57 AM
To: Records Processing
Subject: FW: Foxton Pool - Growing Our Future Together

Brent Harvey
Community Facilities and Events Manager

Waea Mahi | (06) 366 0999
Waea Pukoro | 64276491982

126 Oxford Street, Levin
Private Bag 4002, Levin 5540

From: Himatangi Transport Office <office@himatangitransport.co.nz>
Sent: Monday, 19 April 2021 9:56 AM
To: Brent Harvey <BrentH@horowhenua.govt.nz>
Subject: RE: Foxton Pool - Growing Our Future Together

Hi Brent

My preferred option for the Foxton Pool is – option 2 – all year round, basic, heated pool!

Kind regards

Susan Pedersen
Himatangi Transport
RD11
FOXTON 4891

From: Brent Harvey <BrentH@horowhenua.govt.nz>
Sent: Friday, 16 April 2021 11:03 am
To: Brent Harvey <BrentH@horowhenua.govt.nz>
Subject: FW: Foxton Pool - Growing Our Future Together

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Preferred Option:

Comments:

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Regards
Brent

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Community Facilities and Events Manager

Waea Mahi | (06) 366 0999
Waea Pukoro | 64276491982

126 Oxford Street, Levin
Private Bag 4002, Levin 5540

From: Brent Harvey <BrentH@horowhenua.govt.nz>
Sent: Thursday, 8 April 2021 4:16 PM
To: Brent Harvey <BrentH@horowhenua.govt.nz>
Subject: Foxton Pool - Growing Our Future Together

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Name:

Address:

Topic One – Foxton Pool

Preferred Option:

Comments:

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Brent

Brent Harvey
Community Facilities and Events Manager

Waea Mahi | (06) 366 0999
Waea Pukoro | 64276491982

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Private Bag 4002, Levin 5540

From: Brent Harvey <BrentH@horowhenua.govt.nz>
Sent: Tuesday, 30 March 2021 8:50 AM
To: Brent Harvey <BrentH@horowhenua.govt.nz>
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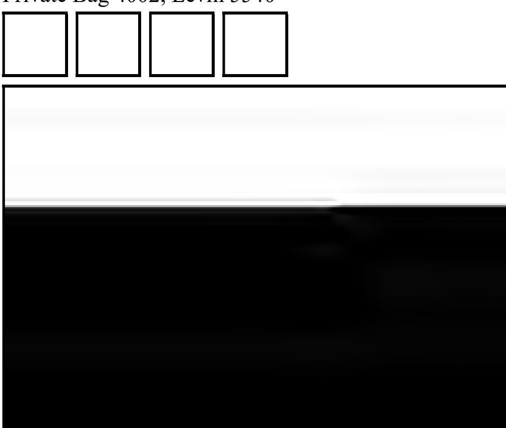
Kind regards

Brent

Brent Harvey
Community Facilities and Events Manager

Waea Mahi | (06) 366 0999
Waea Pukoro | 64276491982

126 Oxford Street, Levin
Private Bag 4002, Levin 5540



Submission No. 339

RECEIVED ON
19/04/2021

From: Customer Services - Public
Sent: Monday, 19 April 2021 10:03 AM
To: Records Processing
Subject: FW: LTP

For your action.

Kind regards
Sue

From: GJ and CM Kane <kanevale@xtra.co.nz>
Sent: Sunday, 18 April 2021 3:45 PM
To: Customer Services - Public <CustomerServices@horowhenua.govt.nz>
Subject: LTP

Hi Please add this to submissions on LTP.
I do not wish to speak to it.
Att. Doug Law.
Following on from discussion with farmers I have researched the 3 pieces of Maori land I lease on Hokio beach road as part of my dairy farm.
Mostly to keep them tidy but I do pay rates and a fee of $250 per acre.
Titles or assess, no,s are 58594, 58586, and 56552.
The rates will double from $1400 to $2500 or the same as I pay in lease for bare land.
Geoff Kane 0274451251.
Kanevale@xtra.co.nz

I feel that by doing this you will end up with land being left empty and not get paid the rates that are owing.

Submission No. 340

Long Term Plan 2021-2041 - Submission Form

Submission date:	**19 April 2021, 10:17AM**
Receipt number:	**140**
Related form version:	**2**

Contact Details

	Please tick this box if you want to keep your contact details private
Title:	**Mr**
Full Name:	**Colin Petterson**
Name of Organisation:	
Postal Address:	[redacted]
Postcode:	[redacted]
Telephone:	[redacted]
Mobile:	[redacted]
Email:	[redacted]
Did you provide feedback as part of pre-engagement on the Long Term Plan?	**Yes**

Hearing of Submissions

Do you wish to present your submission to Council at a Hearing?	**No**
If yes, please specify below:	

Do you require a sign language interpreter?	**No**
Do you require a translator?	**No**
If yes, please specify translation details below:	

Topic One - Foxton Pool

Tick below to identify your preferred option:	**Option 4: Seasonal Outdoor Basic Pool**
Comments:	

Topic Two - Infrastructure Funding: Development Contributions

Tick below to identify your preferred option:	**Option 1: Using development contributions as the key source of funding for growth infrastructure, in combination with other sources.**
Comments:	

Draft Development Contributions Policy

Do you wish to speak to the Development Contributions Policy at a hearing?	**No**
What activities do you think development contributions should be collected for as a source of funding growth infrastructure?	**Water supply** **Wastewater treatment** **Stormwater**
Comments:	
Which approach do you think should be used?	**Harmonisation: all required contributions are the same across the district.**
Comments on Catchments:	
Do you agree with this approach?	**Yes**
Comments on Time of payment:	

Do you agree with the proposed scope for reducing development contributions?	**Yes**
Comments on Reductions:	

Topic 3 - Changes to the Land Transport Targeted Rate

Tick below to identify your preferred option:	**Option 2: Status Quo - Differential where businesses pay 35% of the Land Transport Targeted Rate and District Wide properties pay 65%.**
Comments:	**/cant see how the increase in rates for bare land will give us the same benefits as those in town**

Topic Four - Changes to the General Rate

Tick below to identify your preferred option:	**Option 2: Status Quo - Rural properties (including all business in the rural zone) pay 25% of the General Rate rates income, District wide pay 75% of the General Rates rates income.**
Comments:	**as the previous comment - hard to see the benefits of a farm owner getting huge rate hikes on bare land!!!**

Draft Revenue and Financing Policy

Do you have any other comments about the draft Revenue and Financing Policy?	**No**
If yes, please provide comments:	

Draft Rates Remission Policy

Do you have any comments or suggested changes on the Rates Remission Policy?	

Financial Strategy

Have we got the balance right between rates increases and debt levels?	**No**
Comments:	

Community Outcomes

Do you think the proposed Community Outcomes reflect the aspirations of the Horowhenua community?	**Yes**
Are we missing something, or focusing on something we shouldn't be?	

Additional Comments

Please identify any additional comments you have on what is proposed as part of Council's Draft Long Term Plan 2021-2041.	
Attach any other comments:	

Long Term Plan 2021-2041 - Submission Form

Submission date:	**19 April 2021, 11:30AM**
Receipt number:	**142**
Related form version:	**2**

Contact Details

Title:	**Mr**
Full Name:	**Detlef Klein**
Name of Organisation:	**MAVtech**
Postal Address:	**Coronation Hall, Avenue Road, Foxton**
Postcode:	**4814**
Telephone:	**06-363 5910**
Mobile:	
Email:	**detlef.klein@inspire.net.nz**

Did you provide feedback as part of pre-engagement on the Long Term Plan?	**No**

Hearing of Submissions

Do you wish to present your submission to Council at a Hearing?	**Yes**
If yes, please specify below:	**In person**
Do you require a sign language interpreter?	**No**
Do you require a translator?	**No**

If yes, please specify translation details below:

Topic One - Foxton Pool

Tick below to identify your preferred option:

Comments:

Topic Two - Infrastructure Funding: Development Contributions

Tick below to identify your preferred option:

Comments:

Draft Development Contributions Policy

Do you wish to speak to the Development Contributions Policy at a hearing?

What activities do you think development contributions should be collected for as a source of funding growth infrastructure?

Comments:

Which approach do you think should be used?

Comments on Catchments:

Do you agree with this approach?

Comments on Time of payment:

Do you agree with the proposed scope for reducing development contributions?

Comments on Reductions:

Topic 3 - Changes to the Land Transport Targeted Rate

Tick below to identify your preferred option:

Comments:

Topic Four - Changes to the General Rate

Tick below to identify your preferred option:

Comments:

Draft Revenue and Financing Policy

Do you have any other comments about the draft Revenue and Financing Policy?	**No**

If yes, please provide comments:

Draft Rates Remission Policy

Do you have any comments or suggested changes on the Rates Remission Policy?

Financial Strategy

Have we got the balance right between rates increases and debt levels?

Comments:

Community Outcomes

Do you think the proposed Community Outcomes reflect the aspirations of the Horowhenua community?	**No**

Are we missing something, or focusing on something we shouldn't be?	**MAVtech is seeking a partnership with the HDC to refurbish the Foxton Coronation Hall and develop the organisation's infrastructure to secure the outside investment and sector collaborations needed to fulfil its potential.** **The Trust provides the Horowhenua region with the basis for a unique national attraction. Its building and collections already engage, entertain and educate visitors of all ages.** **Other outcomes will include: a further boost to Foxton's emergence as a thriving tourism and heritage hub for the region; the restoration of an important heritage building; and provision of a safe home for an irreplaceable collection of national importance.**

Additional Comments

Please identify any additional comments you have on what is proposed as part of Council's Draft Long Term Plan 2021-2041.

Attach any other comments:	**MAVTECH submission to LTP - Summary.pdf** **MAVTECH submission to LTP.pdf** **MAVTECH submission background.pdf**

MAVtech
Submission on HDC Long-Term Plan
April 2021

SUMMARY

MAVtech is seeking a partnership with the HDC to refurbish the Foxton Coronation Hall and develop the organisation's infrastructure to secure the outside investment and sector collaborations needed to fulfil its potential.

The Trust provides the Horowhenua region with the basis for a unique national attraction. Its building and collections already engage, entertain and educate visitors of all ages.

Other outcomes will include: a further boost to Foxton's emergence as a thriving tourism and heritage hub for the region; the restoration of an important heritage building; and provision of a safe home for an irreplaceable collection of national importance.

MAVtech
Submission on HDC Long-Term Plan
April 2021

PROPOSAL

MAVtech is proposing that the Horowhenua District Council Long Term Plan 2021–2041 should include a commitment to take part in the development of a fully-fledged, professional audio-visual museum in Foxton by 2024. This proposal would contribute significantly to a number of the HDC's Community Outcomes - specifically *Vibrant Economy; Fit for Purpose Infrastructure;* and *Strong Communities*:

1. A NATIONAL ATTRACTION
HDC OUTCOME*: Vibrant Economy*

MAVtech draws visitors from around the country and when further developed can become a major attraction for the Horowhenua region. No other site in New Zealand combines a huge collection of the technology of film, music, television and radio with cinema screenings, performances and live broadcasting.

Properly developed, managed and promoted, MAVtech can contribute significantly to a vibrant visitor economy for the region.

In partnership with local government, nationally-significant institutions are able to attract major third-party investment - particularly from the Lottery Grants Board, Ministry for Culture and Heritage and Te Papa National Services. MAVtech is already engaged with these bodies. A successful application to funders will require a clear partnership commitment from HDC.

2. REVITALISED FOXTON
HDC OUTCOME*: Strong Communities*

Alongside other drawcards like Te Awahou/Nieuwe Stroom, Flax Museum, de Molen and the reinstated river loop, MAVtech can help revitalise Foxton as a centre of heritage and tourism. The town can fill a unique role as the Horowhenua region's economy grows and its links with major centres to the north and south develop.

3. A RESTORED BUILDING
HDC OUTCOME*: Fit for Purpose Infrastructure*

The Horowhenua District Council and MAVtech have a long-standing relationship, based primarily on the Museum's occupancy of the Foxton Coronation Hall – a Council-owned property. The Hall is in urgent need of seismic strengthening and MAVtech has developed plans to add value to that work - maximising the community and balance sheet benefits of upgrading the building. Working with consultants and supporters the Museum has already prepared a development strategy and a supporting fundraising campaign.

A partnership with MAVtech would also enable the HDC to address the requirement of the Local Government Act 2002 for local authorities to "promote the social, economic, environmental, and **cultural** well-being of its district or region…". This provides a fourth outcome for the proposed partnership :

4. HERITAGE PRESERVED
OUTCOME (LOCAL GOVERNMENT ACT): *Cultural Well-Being*

MAVtech holds the only nationally-significant heritage collection in the region. Spanning generations of popular culture, it draws in and involves all sectors of the community and can be a source of pride and identity. As Horowhenua develops, it can look to the Museum to articulate and promote a unique role in New Zealand's cultural landscape.

MAVtech
Submission on HDC Long-Term Plan
April 2021

BACKGROUND

1. MAVtech

1.1 MAVtech is the museum, cinema and radio station established by The National Museum of Audio Visual Arts and Sciences of NZ Trust. Since its opening in 1992, the Museum has been housed in the Coronation Hall, Foxton a heritage building it leases from Horowhenua District Council.

1.2 The Coronation Hall was built as a replacement Town Hall in 1926. Currently it contains a large cinema with seating for up to 190 patrons and MAVtech's nationally significant collection of audio visual technology and content. The building has undergone three significant upgrades since 1990:

- an initial renovation, funded by the 1990 Commission;
- seismic strengthening and improvements to services such as heating and toilets, financed by HDC in 2006; and
- seismic strengthening of the backstage area to 100% of code in 2010 and a rebuild of the backstage collection storage area in 2011-2012 by the Trust with funding from the Lottery Grants Board, the Eastern & Central Community Trust, HDC and private sponsors.

1.3 MAVtech has stated its mission as follows: "To be valued as a local asset by the Horowhenua community and as a national asset by New Zealanders, through delivering significant social, cultural and economic value by effectively telling New Zealand's audio-visual story to diverse audiences".

2. ISSUES

2.1 The combined effects of under-investment, the volunteer basis of the current organisation and the strictures of operating under COVID-19 conditions have resulted in MAVtech struggling to achieve its potential. The building has been open to the public only intermittently over the last year and the facilities are run-down.

2.2 While some of the Coronation Hall complex has been seismically strengthened, there are still significant issues with the building. An engineering review of the work needed to bring the structure up to current seismic code has been commissioned. In oder to make the most of the resulting structural

work, the Trust has initiated a project which aims to combine public and collection safety with a greatly enhanced visitor experience.

2.3 Working with the building owner, the Horowhenua District Council, over the next three years MAVtech is planning to redevelop the building, incorporating the following elements:

- seismic strengthening of the auditorium and proscenium arch;
- repair and replacement of the roof;
- upgrading of the projection and performance area;
- development of collection storage and display; and
- creation of hospitality and community facilities.

3. ACTION

3.1 The first steps towards realisation of these objectives have been taken. The Trust has undertaken a facilitated strategic planning process with the objective of increasing the resilience and professionalism of the organisation. It is acknowledged that an upgraded MAVtech will need to develop beyond its current operating structure in order to attract outside funding and meet performance targets.

3.2 With help from the HDC, the Trust has commissioned a draft concept plan from Workshop e (*Appendix B*), received funding from Te Papa National Services for collection development and is currently preparing a submission to the Lottery Grants Board for capital funding. Other fundraising plans are also under development. The requirements for earthquake strengthening are currently being reviewed in relation to recent changes in regulations and engineering practice.

3.3 Project development is scheduled to continue through 2021 with a focus on developing:

- a new Strategic Plan;
- a confirmed Concept Plan;
- a collection database;
- a business case for the enhanced MAVtech operation;
- a successful funding bid to Lottery Environment and Heritage; and
- a sustainable annual Business Plan.

3.4 The target opening date for the redeveloped Coronation Hall is January 2024.

Submission No. 342

Long Term Plan 2021-2041 - Submission Form

Submission date:	**19 April 2021, 11:36AM**
Receipt number:	**141**
Related form version:	**2**

Contact Details

Title:	**Mr**
Full Name:	**Brian Forth**
Name of Organisation:	
Postal Address:	**130 Park Ave**
Postcode:	**5510**
Telephone:	**0272265052**
Mobile:	**0272265052**
Email:	**bforth4@gmail.com**
Did you provide feedback as part of pre-engagement on the Long Term Plan?	**No**

Hearing of Submissions

Do you wish to present your submission to Council at a Hearing?	**No**
If yes, please specify below:	
Do you require a sign language interpreter?	**No**
Do you require a translator?	**No**

If yes, please specify translation details below:

Topic One - Foxton Pool

Tick below to identify your preferred option:	**Option 2: Basic All-year pool**
Comments:	

Topic Two - Infrastructure Funding: Development Contributions

Tick below to identify your preferred option:	**Option 2: Not using development contributions for funding growth infrastructure, and increasing rates instead.**
Comments:	

Draft Development Contributions Policy

Do you wish to speak to the Development Contributions Policy at a hearing?	**No**
What activities do you think development contributions should be collected for as a source of funding growth infrastructure?	
Comments:	
Which approach do you think should be used?	**District-wide contributions for roading and community infrastructure. Scheme-by-scheme contributions for the three waters. Growth areas pay for major expenses related to them.**
Comments on Catchments:	
Do you agree with this approach?	**Yes**
Comments on Time of payment:	
Do you agree with the proposed scope for reducing development contributions?	**Yes**

Comments on Reductions:	

Topic 3 - Changes to the Land Transport Targeted Rate

Tick below to identify your preferred option:	**Option 2: Status Quo - Differential where businesses pay 35% of the Land Transport Targeted Rate and District Wide properties pay 65%.**
Comments:	

Topic Four - Changes to the General Rate

Tick below to identify your preferred option:	**Option 2: Status Quo - Rural properties (including all business in the rural zone) pay 25% of the General Rate rates income, District wide pay 75% of the General Rates rates income.**
Comments:	

Draft Revenue and Financing Policy

Do you have any other comments about the draft Revenue and Financing Policy?	**No**
If yes, please provide comments:	

Draft Rates Remission Policy

Do you have any comments or suggested changes on the Rates Remission Policy?	

Financial Strategy

Have we got the balance right between rates increases and debt levels?	**Yes**

Comments:

Community Outcomes

Do you think the proposed Community Outcomes reflect the aspirations of the Horowhenua community?	**Yes**

Are we missing something, or focusing on something we shouldn't be?

Additional Comments

Please identify any additional comments you have on what is proposed as part of Council's Draft Long Term Plan 2021-2041.	**I Support a new surf club building. This is an urgent matter as the present building is in a very poor state.** **I Support council ownership of the new building as Waitarere beach lifeguarding is a service to the Horowhenua District.** **I ask that funding is moved to Year 1 of the LTP. (from year 3) due to the urgent matter regarding the state of the existing structure.**

Attach any other comments:

Submission No. 343

RECEIVED ON 19/04/2021

From:	Grant Purdie <grant.purdie@pragmatic.co.nz>
Sent:	Monday, 19 April 2021 11:53 AM
To:	Records Processing
Cc:	secretary@nzfwda.org.nz
Subject:	Long Term Plan - Submission from NZ Four Wheel Drive Association Inc

Good Morning,

Please accept this brief email as a submission to the Horowhenua District Council (HDC) Long Term Plan, from the New Zealand Four Wheel Drive Association Inc (NZFWDA).

NZFWDA is the peak body for the organised recreational 4wd community throughout New Zealand, comprising some 62 4wd clubs and 1,979 members. As a volunteer organisation, the NZFWDA exists to encourage and promote the responsible use of 4wd vehicles and to advocate for their use on public and private land.

Many of our members place high value on the Horowhenua Coastline and in particular recreational use of the McKenzie Trail in the Foxton Beach area. Some of our 4wd clubs in the broader area, mostly under the leadership of the Cross Country Vehicle Club Wellington Inc (CCVC), have invested huge numbers of volunteer hours over the last 21 years on work parties doing clean-ups (massive in the earlier days) and extensive dune planting in the Foxton Beach area.

We note that the latest Coastal Management Plan covering Foxton Beach recognises the use of the McKenzie Trail under a permit and gate protocol managed by HDC. This has operated successfully for many years and we have not been made aware of any issues or complaints concerning our members' activities.

While we understand that the Long Term Plan does not go down to the level of detail concerning the future use of the McKenzie Trail, we note that there has been at least one other submission that suggests review of that future use.

Please add us to your list of interested parties when it comes time to review the Coastal Management Plan or its successor, as we would value the opportunity to participate again, as our members have done in the past.

Regards – Grant Purdie

Grant Purdie
National Public Relations Officer
New Zealand Four Wheel Drive Association Incorporated

H 04 233 1207, 04 233 1192
M 021 612 216
pro@nzfwda.org.nz
Grant.Purdie@pragmatic.co.nz

Submission No. 344

Long Term Plan 2021-2041 - Submission Form

Submission date:	**19 April 2021, 11:58AM**
Receipt number:	**143**
Related form version:	**2**

Contact Details

Title:	**Mr**
Full Name:	**David Roache**
Name of Organisation:	**Foxton Community Board**
Postal Address:	**126 Oxford Street**
Postcode:	**5510**
Telephone:	**027 442 5961**
Mobile:	**027 442 5961**
Email:	**DavidRoache@horowhenua.govt.nz**

Did you provide feedback as part of pre-engagement on the Long Term Plan?	**Yes**

Hearing of Submissions

Do you wish to present your submission to Council at a Hearing?	**Yes**
If yes, please specify below:	**In person**
Do you require a sign language interpreter?	**No**
Do you require a translator?	**No**

If yes, please specify translation details below:	

Topic One - Foxton Pool

Tick below to identify your preferred option:	**Option 1: Indoor and Outdoor Leisure Pool**
Comments:	**The Board supports Option 1. It is the belief of the Board that Council should take a positive and proactive approach in considering what is needed to support and sustain community facilities in response to the the district growth that is currently being seen and is predicted to continue over the next 20 years. The Council's recent adoption of the 95th percentile confirms this. The alternative is ad hoc planning that will quickly make it difficult to create positive outcomes and a lack of a suitable facility for our growing community in the aquatics space in Foxton and across the district. The existing pool is an example of what happens when planning for the future is not considered, an aquatics facility that is not fit for purpose within 12 years of construction, and as a result is poorly attended and unpleasant to use. The Board urge Council to make a decision that reflects the needs of the community and wider district for both now and the future.**

Topic Two - Infrastructure Funding: Development Contributions

Tick below to identify your preferred option:	**Option 1: Using development contributions as the key source of funding for growth infrastructure, in combination with other sources.**
Comments:	

Draft Development Contributions Policy

Do you wish to speak to the Development Contributions Policy at a hearing?	**Yes**
What activities do you think development contributions should be collected for as a source of funding growth infrastructure?	**Roading** **Water supply** **Wastewater treatment** **Stormwater** **Community infrastructure such as parks, sportsfields, activity centres, playgrounds and more.**
Comments:	
Which approach do you think should be used?	**District-wide contributions for roading and community infrastructure. Scheme-by-scheme contributions for the three waters. Growth areas pay for major expenses related to them.**
Comments on Catchments:	
Do you agree with this approach?	**Yes**
Comments on Time of payment:	
Do you agree with the proposed scope for reducing development contributions?	**Yes**
Comments on Reductions:	

Topic 3 - Changes to the Land Transport Targeted Rate

Tick below to identify your preferred option:	**Option 1: Remove Differential - All ratepayers pay the Land Transport Targeted Rate based on capital value.**
Comments:	

Topic Four - Changes to the General Rate

Tick below to identify your preferred option:	**Option 1: Creating a Farming differential - Differential that only applies to Farming properties with a differential factor of 0.5 (Farming) to 1 (District Wide)**

Comments:

Draft Revenue and Financing Policy

Do you have any other comments about the draft Revenue and Financing Policy?	**Yes**
If yes, please provide comments:	**Horowhenua needs to spend a considerable sum on Infrastructure and assets both new and replacement. Putting off these major expenses does not make them go away Debt is the mechanism that shares the cost of new assets with future uses.**

Draft Rates Remission Policy

Do you have any comments or suggested changes on the Rates Remission Policy?	

Financial Strategy

Have we got the balance right between rates increases and debt levels?	**Yes**
Comments:	

Community Outcomes

Do you think the proposed Community Outcomes reflect the aspirations of the Horowhenua community?	**Yes**
Are we missing something, or focusing on something we shouldn't be?	

Additional Comments

Please identify any additional comments you have on what is proposed as part of Council's Draft Long Term Plan 2021-2041.	
Attach any other comments:	**Foxton Community Board - LTP Submission 2021-2041 - 19 April 2021.pdf**

Foxton Community Board

Submission to the Horowhenua District Council 2021-2041 Long Term Plan

Economic Development

Destination Management Strategy

The Board supports the development of the Destination Management Strategy and encourages Council to investigate and identify the mechanisms to drive it. We need to develop a clear identity for Foxton/Foxton Beach which are distinct but complementary. Foxton as the commercial centre and Foxton Beach as the recreation hub.

The development of a Foxton Town Centre Strategy should be incorporated to draw tourists into the town centre and promote the unique attractions Foxton has to offer.

Foxton Futures

Fundamental to Foxton Futures is the re-opening of the River loop.

The Board supports Horowhenua District Council continuing to pursue funding opportunities to progress the projects and community aspirations outlined in the Foxton Futures Report and implementation plan to improve Foxton and Foxton Beach.

Economic Development

The Board support Council with the development and implementation of an Economic Development Plan this should include the Foxton and Foxton Beach and the wider area. The Board is keen to explore opportunities to play a greater supporting role in any economic initiatives.

Redevelopment of Foxton War Memorial Hall

The Board supports the redevelopment of the Memorial Hall and encourage Council to support the proposal presented to the Board by the Interim society on the 22 March 2021, to return the Foxton War Memorial Hall to Foxton Community ownership through the sale or gifting of the hall to a Foxton-based incorporated society.

Heritage and Arts

Continued support for the ongoing development of MAVTEC including the work around the development plan and support the preparation of the business plan.

The Board would like to see the re-establishment of the Heritage Fund, recognising Foxton as the heritage capital of the district and subject to reconsideration of the criteria.

Growth Planning

Housing

The Board support and encourage Council to progress with the development of Foxton Beach endowment land with an immediate focus on the Kilmeister block development.

The Board would like to ensure an adequate supply of land for residential housing and that natural hazards are appropriately considered and sustainability is incorporated into future planning.

Foxton Pool

The Board supports Option 1. It is the belief of the Board that Council should take a positive and proactive approach in considering what is needed to support and sustain community facilities in response to the the district growth that is currently being seen and is predicted to continue over the next 20 years. The Council's recent adoption of the 95th percentile confirms this.

The alternative is ad hoc planning that will quickly make it difficult to create positive outcomes and a lack of a suitable facility for our growing community in the aquatics space in Foxton and across the district. The existing pool is an example of what happens when planning for the future is not considered, an aquatics facility that is not fit for purpose within 12 years of construction, and as a result is poorly attended and unpleasant to use.

The Board urge Council to make a decision that reflects the needs of the community and wider district for both now and the future.

Holben Reserve

The Board would like to see sufficient funding allocated to the Holben Reserve development in accordance with the concept plan.

Without the funding from central government the board identifies the Road Safety improvements as its first priority. The Board would like to see funding allocated to Holben Reserve road safety improvements to be undertaken in the first year of the LTP.

A further priority is to dedicate the $700k from the Foxton Beach Reserves Investment fund to stormwater mitigation coupled with beautification such as boardwalks, wetland planting and ecological improvements.

The Board further requests Council to allocate sufficient funding in the first three years of this LTP to enable a staged development across the reserve over subsequent years including playground and recreational facilities.

Dawick Street reserve

The Board support Council investigating opportunities for commercial development of Dawick Street Reserve. We urge Council to progress with the development of the residential lots along Hall Place.

Community Wellbeing

Environmental Enhancement

The Board encourage continued engagement and collaboration with key partners to lead the development of and joint funding of an overarching management plan for the Manawatu Estuary and surrounding dune fields.

The Board support increased stewardship by statutory partners of this internationally recognised RAMSAR site and surrounding environment and urge Council to lead this work.

The board also see that partnership with local environmentally focused groups and stakeholders such as Foxton Beach Progressive Assn Inc, Manawatu Estuary Trust, Manawatu Estuary Management Team, and Iwi, is vital to ensure there is an ongoing coordinated and collaborative

approach to this important work to achieve the best outcomes for this sensitive and highly valued environment.

CCTV

The Board supports and encourages CCTV establishment in the Foxton Town Centre and requests consideration be given to an allocation of funding to support this project.

CCTV in the town centre/Main Street is a good investment which will help curb unsavoury behaviour and crime, as well as providing health and safety to citizens using the streets. And will offer support to the local Police who are only in Foxton a few hours each day.

Foxton Water Tower lighting/ lighting projects

Recognising the iconic nature of the water tower for locals and visitors alike. The Board recommend that Council identify the income stream from the telecommunications rental as a source of funding and allocate additional funding for maintenance as required.

Maintenance costs part sourced from telecommunications rental would reduce cost for Council allocation.

Foxton beach surf club promenade enhancement

The Foxton Community Board are supportive of the Foxton Beach Surf club promenade enhancement work and request for funding to be allocated to complete the required work. The Board recommend the Foxton Beach Freeholding account as the funding source.

The Board recognise the completion of the promenade enhancement work in unison with the Surf club improvements will support the predicted growth and provide for future generations.

Submission No. 345

Long Term Plan 2021-2041 - Submission Form

Submission date:	**19 April 2021, 12:39PM**
Receipt number:	**144**
Related form version:	**2**

Contact Details

	Please tick this box if you want to keep your contact details private
Title:	**Ms**
Full Name:	**Sarah Elliot**
Name of Organisation:	
Postal Address:	[redacted]
Postcode:	[redacted]
Telephone:	[redacted]
Mobile:	[redacted]
Email:	[redacted]
Did you provide feedback as part of pre-engagement on the Long Term Plan?	**No**

Hearing of Submissions

Do you wish to present your submission to Council at a Hearing?	**Yes**
If yes, please specify below:	**In person**
Do you require a sign language interpreter?	**No**
Do you require a translator?	**No**
If yes, please specify translation details below:	

Topic One - Foxton Pool

Tick below to identify your preferred option:	
Comments:	

Topic Two - Infrastructure Funding: Development Contributions

Tick below to identify your preferred option:	**Option 2: Not using development contributions for funding growth infrastructure, and increasing rates instead.**
Comments:	**I am opposed to the implementation of Development Contributions. Contributions are being made available by Govt for significant infrastructure needs, there is a significant disparity in blanket charges when not all have access to the intended improvement or infrastructure. There is no set fund, all monies enter the consolidated fund - previous contributions were not itemized or identified in Annual Reports etc, no specific benefit was noted. Numerous areas have no need for such contribution given they don't access urban networks (water, sewerage, footpaths etc). There is a requirement to provide infrastructure currently in subdivision or developments already.**

Draft Development Contributions Policy

Do you wish to speak to the Development Contributions Policy at a hearing?	**Yes**
What activities do you think development contributions should be collected for as a source of funding growth infrastructure?	
Comments:	**I don't believe they are required for the individual - especially when they have already been paid by the original developer, or instated during the development of a lot or subdivision. There is no evidence the funds were used for the above noted when in place previously - clear evidence to the contrary.**
Which approach do you think should be used?	
Comments on Catchments:	**I do not support the introduction of another tax that is not able to be utilised by those who pay it necessarily - this is only access by those of urban areas. There is then disparity and unfairness in the charges and allocation.**
Do you agree with this approach?	
Comments on Time of payment:	**I am opposed to the addition of these contributions/taxes.**
Do you agree with the proposed scope for reducing development contributions?	
Comments on Reductions:	**I am opposed to the introduction, these proposals indicate further layers of administrative requirements which are a cost. We do not need increased costs in any manner.**

Topic 3 - Changes to the Land Transport Targeted Rate

Tick below to identify your preferred option:	**Option 2: Status Quo - Differential where businesses pay 35% of the Land Transport Targeted Rate and District Wide properties pay 65%.**

Comments:	**Most businesses receive inwards and outwards goods within the urban catchment - the greater roading needs are within those areas - the rating basis can remain the same.**

Topic Four - Changes to the General Rate

Tick below to identify your preferred option:	**Option 2: Status Quo - Rural properties (including all business in the rural zone) pay 25% of the General Rate rates income, District wide pay 75% of the General Rates rates income.**
Comments:	**I am opposed to any changes in the General Rate. Urban property by it's nature has access to the facilities and infrastructure that rural does not. Rural properties already pay the same (pro rata) rates as urban, but have no facilities or access. There are significantly more homes throughout the region now contributing to a greater rating collection already and the need should be met within the revenue available. Prudence needs to be shown in Council spending to operate within means per any business model, with greater focus on need to have rather than nice to have.**

Draft Revenue and Financing Policy

Do you have any other comments about the draft Revenue and Financing Policy?	**Yes**

If yes, please provide comments:	**Council needs to be operating within its financial limits - there is excess and additional spending on unnecessary items during a time of restriction, and this applies to the rating base which is not at liberty to be called upon to fund these tickets. Council needs to work within the business model where funds are finite, and operations are based within the available income, rather than seeking to increase debt and tax obligations for current and future generations. Council could also work in partnership and with sponsorship for various programs of work seen as desirable but commercially unaffordable against the operating budget. Greater creative strategies to achieve outcomes could be employed - whereas to exclusively demand greater rating increases and other "contributions" is single lens viewing and limited.**

Draft Rates Remission Policy

Do you have any comments or suggested changes on the Rates Remission Policy?	**This is an area which requires further exploration - there are commercial operations that are not equally contributing and would benefit from closer scrutiny regarding their blanket entitlements.**

Financial Strategy

Have we got the balance right between rates increases and debt levels?	**No**

Comments:	**Successful business works within operating limits - continued debt growth is not sustainable in an era of paying down debt. Working within financial constraints requires diligence and efficiency - noting the increase of rating base, still there is insufficient to fund the intended operating model indicating greater efficiencies and economies are required before considering further charges and debt.**

Community Outcomes

Do you think the proposed Community Outcomes reflect the aspirations of the Horowhenua community?	**No**
Are we missing something, or focusing on something we shouldn't be?	**Duplication - an issue across the rohe.**

Additional Comments

Please identify any additional comments you have on what is proposed as part of Council's Draft Long Term Plan 2021-2041.	**I look forward to speaking with Council. My details are private due to the nature of my employment, nga mihi, Sarah**
Attach any other comments:	

Submission No. 346

RECEIVED ON 19/04/2021

From: Long Term Plan 2021-41 Project Team
Sent: Monday, 19 April 2021 12:44 PM
To: Records Processing
Subject: FW: Submission: vacant lifestyle blocks

From: WIlliam Huzziff <william.huzziff@gmail.com>
Sent: Monday, 19 April 2021 10:12 AM
To: Long Term Plan 2021-41 Project Team <ltp@horowhenua.govt.nz>
Subject: FW: Submission: vacant lifestyle blocks

Subject: Submission: vacant lifestyle blocks

The Horowhenua District Council has decided to transfer the so called "vacant lifestyle blocks"into the urban classification. This is wrong for the following reasons:

(a) there are 850 vacant lifestyle blocks in the district most of which are being farmed. They are not urban. The affect of this transfer is to increase the rates, on our block, by 80%. This increase will be entirely made up of a general rate. How can this be seen as anything other than another imposition on the rural community. These blocks of land will already be paying more than the average general rate paid by urban residents. There is no equity in HDC's proposal.

(b) the justification for this proposal is based on the valuation and classification role played by Q.V. but Q.V. is only assessing the potential of the property for lifestyle development. It is not saying that is what it is used for presently.That is a decision that has been made by Council. It is continuing its policy of the urbanisation of Horowhenua to the detriment of the District.

(c) this policy of urbanisation of rural Horowhenua is part of the long-term policy of the District Council. First of all they included the lifestyle blocks within urban residential. Now their intention is to transfer 850 farming blocks into urban residential. This has nothing to do with Q.V. The Council is trying to hide behind a Q.V. smokescreen but the changes proposed are those of the Council officers and the elected members who are supposed to represent all ratepayers district wide. This the council has never done. If they had done that we would not be in the position of having a rate burden that will exceed $30,000 this year.

We wish to speak to this submission.

Regards, Rosalie and Bill Huzziff phone: 063638701

Sent from Mail for Windows 10

RECEIVED ON
19/04/2021

From: Long Term Plan 2021-41 Project Team
Sent: Monday, 19 April 2021 12:46 PM
To: Records Processing
Subject: FW: Plan feedback

From: Derek j Robinson <drrobbo@xtra.co.nz>
Sent: Monday, 19 April 2021 11:27 AM
To: Long Term Plan 2021-41 Project Team <ltp@horowhenua.govt.nz>
Subject: Plan feedback

Paul Robinson 362 Kimberley Rd RD1 Levin 5571 027 663 9183 I do not want to present to council.

Foxton Pool I prefer option 2 all year basic.

Infrastructure funding Development contributions. I prefer option 1 Funding of growth of infrastructure by development contributions, for all the activities mentioned (as applicable eg sewerage and maybe water would not apply to rural properties with own septic tanks and water supply. and district wide catchments. The time of payment should be at time of subdivision or earlier unless there is a way of excluding previously subdivided properties that paid the old development contribution 15 years or so ago as it would not be fair for them to pay twice. I don't think there should be reductions unless the public are notified of them for transparency.

I am happy for the removal of the differential for the land transport targeted rate.

I generally support the creation of a farming differential for the general rate but it is not clear that lifestyle blocks are considered? They could have farms, gardens , forests that would not be fair to rate as there is a greater land area than urban sections but the pressure on general rates is no greater from these properties. So the farming rate should apply to them.

Financial strategy and community outcomes ok.

Regards

Paul

Submission No. 348

RECEIVED ON
19/04/2021

16 April 2021

To: Horowhenua District Council

From: Julie Palmer, 154 Fairfield Road, Levin 5010

Re: Long Term Plan 2021-2041 Proposed Rating Distribution Change

I **do not support Option 1** Creating a Farming differential and **support retention of Option 2**, Status Quo.

My reasons are as follows:

- Farming is a business and expenses, including rates, are tax deductible. This tax deductibility is not available to home or lifestyle property owners.
- Lifestyle (rural) properties do not get the same services as urban properties. There is no reticulated sewerage and property owners must supply and maintain their own septic tanks. There is no stormwater system in rural areas and properties are dependent upon natural seepage and runoff or collection tanks collecting water off roofs to deal with rainwater.
- There is little or no maintenance of the council land alongside the roads and few areas have street lighting.
- The increase in density of urban properties together with larger dwellings, outbuildings and paved areas are increasing runoff into the stormwater system which is now struggling to cope. If there is to be a change in rating distribution it needs to take this change in urban properties into account. A fairer rating change would relate the % of land area covered with impermeable surfaces such as roofs, driveways, patios, paths, swimming pools etc to the general rate. The increase in land cover means there is now considerably less seepage into open ground to deal with runoff. Instead the water is channelled into the stormwater system which needs to be upgraded to deal with the increase. For example, formerly natural ponding areas such as Okarito Drive are now urban with a tar sealed road, medium density housing all with hard surface driveways and minimal opportunity for natural seepage. The result has been localised flooding requiring expensive upgrades to the stormwater system in NE Levin. These costs need to be born by the urban landowners not by the rural sector.
- Horowhenua is renowned for its first-class soils. These are soils of national significance and need protection from housing and industrial developments. It is imperative landowners of these soils are incentivised not to subdivide or develop these soil types. While many of them are presently in lifestyle properties their undeveloped status means they are available for national food production in the future when needed. Market gardening land needs periodic resting from production and having other properties in the region available to ensure uninterrupted production is imperative. HDC has the opportunity to show leadership and protect first-class soils for the future. One of the best ways to ensure this happens is to limit the land use of these soils to rural activity such as raising animals for food or planting trees, particularly in riparian zones. This incentive will only work if the properties with these soils continue to be zoned as rural with activities limited and district council rates that reflect this zoning.

Submission No. 349

RECEIVED ON
19/04/2021

To: Horowhenua District Council
Private Bag 4002
Levin 5540
ltp@horowhenua.govt.nz

From: Mrs C. Paton
6 Warren Street
Foxton Beach
Foxton 4815
Email malimidwe@gmail.com

Subject: Submission to Long Term Plan 2021 – 2041

I wish to present my submission to Council at a Hearing.

Foxton Pool. Option 5 Close the Pool.
Patronage is very low; costs are high for maintenance and or renewal. Poor to nil research offered. No statistics supplied as to private/school ownership of pools in the Foxton/Foxton Beach area.

Draft Development Contributions Policy.
Overall I support the re-introduction of Development Contributions. Do not be sucked in with the Provincial Growth Fund as that is in my view just Central Government enticing local government to take over the problem of insufficient housing with only financial tokenism offered. Take time out with your decisions. The RMA repeal will have a significant effect. The three replacement Acts details are unknown at this point in time.

Submission No. 350

Long Term Plan 2021-2041 - Submission Form

Submission date:	**19 April 2021, 12:46PM**
Receipt number:	**32**
Related form version:	**2**

Contact Details

Title:	**Mr**
Full Name:	**Michael Kay**
Name of Organisation:	**Ratepayer farmer**
Postal Address:	**54 Gleeson Road** **RD 31 Manakau** **Levin**
Postcode:	**5573**
Telephone:	**021 458 505**
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Email:	**michaelkay280@gmail.com**

Did you provide feedback as part of pre-engagement on the Long Term Plan?	**Yes**

Hearing of Submissions

Do you wish to present your submission to Council at a Hearing?	**Yes**
If yes, please specify below:	**In person**
Do you require a sign language interpreter?	**No**

Do you require a translator?	**No**
If yes, please specify translation details below:	

Topic One - Foxton Pool

Tick below to identify your preferred option:	**Option 1: Indoor and Outdoor Leisure Pool**
Comments:	**One of the biggest features of the foxton community is youth, family and fun. The lifting community up to be part of the notion of growth is very much linked to collective assets that bring the community together.**

Topic Two - Infrastructure Funding: Development Contributions

Tick below to identify your preferred option:	**Option 1: Using development contributions as the key source of funding for growth infrastructure, in combination with other sources.**
Comments:	**This has been a cornerstone of contention and low public trust in council and severely at a financial and social cost excluded many from engaging and building a robust, safe and diversely rich Horowhenua. It has marred every single huge ambitious project and accomplishment the council has prevailed on, endured and for many it has been an opportunity, to engage in small medium and large projects. At one point this stimulus was a decision made, I am sure with much trepidation. However without having the courage to make it, much of the opportunity that now lays before our community to grow would not have happened. The urgency to have placed D C'S back on truly has been in the extreme recently. Had we still, thriving manufacturing and almost full employment as we had from 1938 to 1967 when Levin**

Originally grew the fastest.
This economic well-being is best explained as a money flow that capitalised in wages paying for housing, paying rates or wages and profits being in excess, such as these excesses could be spent beyond needs, to wants. These wants would be cars, holidays etc.
Wage based wealth, low social need, low suicide, high community participation and engagement with democracy and sharing in social good.

From 69 to 84, this was the engagement of debt economic recovery.
Our area started to see stress on export based enterprises and a shrinking of jobs and wages and most importantly a rapid rise in debt interest rates. This is where a mere few capitalised huge gains on the defaulting of loans. And where a great many became dependent on the state.
Suicide ramped up with joblessness and community engagement with democracy was that of protest, outrage and revolution.

From 84 In flowed cheap money.
Most importantly loans could actually been drawn down, on the close of the previous section of economic normative, loans even a simple overdraft at the close of this era, simply banks just said no.

Now not only did they say yes. Later in this period prior to 2008 and only few years ago, banks would actually ring to offer more cheap money.
This has been liberating, it has created what we could visibly see as growth. We no longer see many cars over 10 years old and when the world talks electric cars,, the following day they are driving down oxford street.
This is growth, not at the means of wages and salaries but at the cost of debt.

This debt is up to 80 percent of some properties and as is the same all over NZ some homes that once were freehold are now 10 times their original value in debt.
We have multiple forms of debt, we have our fixed debt in our mortgages and our debt in our annual creditors, all of which is much higher than it ever was when the economy was powered by productivity that fuelled wages and salaries and by extension built houses.
Now we are building houses, perceiving this as productivity when it is only debt that is paying wages.
And our collective additional debt our elected peers are charged with oversight is our local government debt we are all guarantors for.

If we view our growth equally in the view of the cost it comes at in our debt as property owners and the debt in our growing costs on infrastructure not just as ethereal in on the exterior things seem to be inflating.

Big debt such as that we are equal to of Greece now comes with massive risk when those that lent want their money back or global shock sends a growth in interest rates.

We run the risk many of our young people will build many houses in their lifetime but may never be able to afford to own one.

It was inflation that in the end brought a government borrowing money to heal that was hell bent on spending its way out of negative growth.

It's truly remarkable the action of the decision to remove DC Fees at the time this council did.

It was inevitable that the cost of this would come to

bare on us all.

There is no obstruction or subsidies needed to bring people to build houses.
The council and the community now need to collectively plan and individually plan to solidify the gains of our collective aims at growth but we must expect everyone to pay their way and pay their fair share.

We also must place much more lucidity at what cost growth without productivity and meaningful permanent employment and productivity will look like as NZ as a whole adjusts rather sharply to debt levels personally, and collectively guarantors for central and local governments debt.

Failure to deduct fees now will have a tenfold effect on collective rate payers in the future and potentially very near future.

The only way a central government can cool the inflation is rise interest rates.
Or manipulate the market by fixing caps on inflationary concerns.

What will this look like to our long term ability to grow.

It took 30 years to deflate wage based growth.
It took a consumption tax, removal of collective unions.

I appreciate the council attention to bring a core principle of health and well-being.
We all know the intrinsic link in lack of meaningful employment and the rise in suicide or poor mental health.
Although it’s highly contested that as a country with collective debt levels higher than that Greece when it

fell into financial meltdown.
I would ask the councillors to if take nothing else from my little tale here.
Please reconcile there is a big difference between a government or even local government in debt failure.

Mass population debt failure, or collapse of personal family home lending is something that before we reconcile our collective prospects in the next 30 years we must not lose sight of the obvious, debt is so finitely managed to its end that there's no wiggle room.

We must not forget our aged population in horowhenua have a debt horizon that inflation of costs will terminate the age term of which was their expectations to live independently after working hard all their lives.

Farming has previously been able to hold a bottom line of export income of which it can not be counted on to do so while disproportionately Horticulture dairy sheep and beef the most NZ owned of NZ farming enterprises Has taken the lions share of the restrictive regulations in three waters and carbon zero.

With the real winners being the foreign owned enterprises of water And waste treatment And pine investment whole logs.

This is a double cost and long tail risk to all regional and local councils.
Perennial pasture farming without urea is the number one best model worldwide even before it undertakes any regenerative practice opening up more income earning Pipelines.

Perennial horticulture combined with grazing of residue crops and intercropping of row crop

vegetables is by far superior to anything we have done before.
In horowhenua our biggest growers will release this in time as they innovate every week urgently seeking long term solutions.

There is no available solution to monoculture pine and it's severe erosion costs to waterways that it poses on light soils hill country that we have in the Horowhenua.

Of which this cost of mega tonnes of soil this winter that will flow from the clear felling that is equal to early settlers first felling of the Bush throughout this district will decimate our waterways and our ocean and already tortured lakes.

In the micro enormous good work of small local catchment groups on any given watercourse

Must be emulated one day across districts that share or in our case are the recipient of something like all Palmerston north's Natures calls.

A model of the Soviet Harvard school of thought (extreme managerialism of consultants, experts and supposedly science) has managed to consume the peoples money of Palmerston and is now narrowed it down from shooting it into the atmosphere to pumping it strait to the waterways.

We are a country of innovation and the majority of that has come from the cliff face, from the workforce and from real people doing real jobs.

If nothing else you get from me as a stimulus to think a little differently.
Let's look hard at what's worked best and what truly if we stood back and confronted it with courage and

honesty is not working at all.

We must cap and rein in spending on the whimsical, on planning and managerialism at the cost of $1 that enters council earmarked to spend on $1 of infrastructure.
Let's make sure it gets there.

Let's make sure we exhaust our local knowledge from within our community first before we take money from innovative and productive hard working people and the poor of Horowhenua and pay it to someone with a degree in whimsy.

We see out of 903 workshop meetings nationally only 103 were inclusive and open to the communities these meetings were about.

As all councils ask for more funds from their ratepayers May I please ask Horowhenua to reach across the table and open the door to a future of the best public trust and open Local government and integrity in NZ.

Draft Development Contributions Policy

Do you wish to speak to the Development Contributions Policy at a hearing?	**Yes**
What activities do you think development contributions should be collected for as a source of funding growth infrastructure?	**Roading** **Water supply** **Wastewater treatment** **Stormwater** **Community infrastructure such as parks, sportsfields, activity centres, playgrounds and more.**

Comments:	**These DC'S should be targeted to not only buy in but to bring a collective feeling of being part of the district. Sure it's unfair if you have sold one property to move to another, and you have paid all your life. It's absolutely unfair if your rural and moving to residential where as a rural rate payer you have paid very high rates to pay for urban growth or expansion beyond infrastructure. However this is a one off payment. The alternative is councils having the uncomfortable consequences of inflating rates to subsidise the profits that were capitalised by cutting up production land or making high density high infrastructure dependant housing.**
Which approach do you think should be used?	**Other: Harmonise a portion but direct rate brand new areas or high density high dependence**

Comments on Catchments:	**We can either expect to benefit collectively from potentially a brand new start for the Horowhenua, then we should accept that as this takes shape that not on house value.. but on where we can protect and enhance our business district, actually collectively yield from our agricultural economy and focus on innovation of food and fibre Of which Levin was once a leader in. If we can to be very blunt, pour youth and vibrancy into a productivity in Levin of the growth of resettlement. Then collectively we should feel a pride and belonging to pay our share. However Where brand new settlements are planned to land and draw from existing infrastructure this catchment should be able to spread this cost over time to make up the differential. However, the original principal developer can only sell these as going concerns based on the communities contract to supply waste and water and the community assets and such this is not a gift based economic exchange so a percentage value of this shortfall must be contributed in fair and reasonable DC fees.**
Do you agree with this approach?	**No**

Comments on Time of payment:	**The fees must be paid before consent is granted. In the event a consent is withdrawn or fails to be granted the fees must be repaid less any debts owed in the process. In the event a development falls into receivership these fees should be frozen from liquidators until all reasonable open market attempts have failed to sell as a going concern.**
Do you agree with the proposed scope for reducing development contributions?	**No**
Comments on Reductions:	**If central government wishes to subsidise affordable housing. which it does. It is best to avoid any public trust or Anti trust issues if the rigour of central government actually defines qualification and being that its the state Or central government that had mandated affordable housing Then it is the state that can refund those fees. Should we ask each other as a district via our council to socialise a fund from us all and to then offer affordable housing we have as a district received into council a no interest housing Corp loan and supplied affordable housing and then later decided with great deliberation to sell this. This option would be the extreme dog of the previous as we ratepayers would be guarantors for others to get into the business of cheap housing with zero gains to us only rising rates and compete capitalisation for picked winners, picked by our council.**

Topic 3 - Changes to the Land Transport Targeted Rate

Tick below to identify your preferred option:	**Option 1: Remove Differential - All ratepayers pay the Land Transport Targeted Rate based on capital value.**
Comments:	**Forestry rates for the damage to our roaring should he sought with urgency. These should be charged in managed consents to all export log harvests unless the logs are manufactured locally. Charging per harvest block should have a formula for the road use and tonnage charged before harvesting can be commenced.**

Topic Four - Changes to the General Rate

Tick below to identify your preferred option:	**Option 1: Creating a Farming differential - Differential that only applies to Farming properties with a differential factor of 0.5 (Farming) to 1 (District Wide)**
Comments:	**Declaring conflict of interest or self interest. Farmer. In declaring this conflict please note as ratepayers owning homes or as councillors hearing my pleas. We must speak to our interests otherwise how would any one know what is good bad or ugly. I concur with the discussion documents we pay on our small one employee farm 8k to HDC and about the same to HRC. Of which 12 hectares has been taken with no compensation in fencing waterways. That sounds emotive, look it’s still there, it’s just a rat super corridor. We pay target catchment rates for that waterway which is 3,500 alone to HRC. Again on land we can not use. Our rates are based on the premise our farm and all neighbours farms can be cut up to lifestyle blocks. What this means to the district is many farmers discouraged their kids to be farmers and instead to get educated and work for the council.**

I am humbled that we get considered as a potential productivity and have a value of more than what our farms we want to pass on to future generations to grow food and fibre and we may have a future plan one day that protects land that can grow and sustain and generate export income.

There are very few countries that do so.
And we see the consequences as populations march singing songs such as the French about their grandfathers selling the farms.

This is haunting to a farming boy whom grew up on the enormous vibe of NZ rural sector and its competitive nature in the global economy of agriculture.

All I have seen as have the kids of Africa, India, France, Ireland, Canada, America and the UK is the number of farmers decline, the size and corporate nature of farming expand and places like Kentucky, the fable bluegrass state loosing 300 hectares a day to urbanisation.

I have been as best I can to start to promote natural farming and I expect regardless of any of our activities, this will be a focal point of meeting the needs of better environmental, social and economic outcomes in the future especially at the pace and rapid engagement throughout NZ and the world with regenerative agriculture.

Our achievements in NZ in bringing energy back into the grass roots and soil of farming is in paralleled by any paid for enterprise drive in the past.

Our location as a growing district to two cities and now with the smart action of our council to secure a major transport hub in Levin.

Growing the best food and fibre and supplying it locally and internationally is at our finger tips.

But not if we let farming be grabbed like as a country we let manufacturing be liquidated by trade policy.

We have regardless of our natural farming hat or our standard farming boots a huge headwinds of policy in water and carbon.
None of which will be anything but cost to us as farmers and consumers and costs to councils to super manage.

We have seen intensive managerialism ruin Building, health, education and governance.
We are well aware as farmers not one council nor farmer wanted any of the presets in these policies we know you were all right there with no one listening to you like no one listened to us.

Universities and self interest investment , investment pine monoculture and consulting managed to swiftly run a bow wave of self interest past a several select committee to the floor or parliament and now universities are out first offering a $3000 per farmer course on farm management plans.

However until this policy reaches reforms it will cost an enormous amount of difficulties for all local authorities, for land users and for central government.

The first councils to accept soil carbon progressive testing and data banking will circumnavigate the failures and conflictive nature of both the water and carbon policies.

Working together with regional council and a target group to secure self testing and digital data mapping

will be the most progressive way to manage infrastructure projects and farming enterprises for profit and avoid the catastrophic nature of bad policy.

In short what I am saying is even as a farmer whom uses no chemicals, no fertiliser I will still endure costs and prohibiting of what I do.

This is at a time post Covid where we need to as a farming export country be our most productive and innovative.

Draft Revenue and Financing Policy

Do you have any other comments about the draft Revenue and Financing Policy?	**No**
If yes, please provide comments:	

Draft Rates Remission Policy

Do you have any comments or suggested changes on the Rates Remission Policy?	

Financial Strategy

Have we got the balance right between rates increases and debt levels?	**No**
Comments:	**In any business where demand has increased and councils fall into the same trap rational and meaningful discussion on where to spend money wisely has to happen.**

As I have already stated, it has besieged NZ governance to overburden the workforce and workplace with management.

Stripping out managerialism, the reports, team leaders, consultants, planners. To hands a hands on roll up your sleeves work force that's carried this masterclass. Is removing a scar from a society and meaningful jobs all over NZ both civil and private enterprises.

This consolidation and trimming or leaning up of the cost of enterprise places more worth and permanent meaningful and highly valued productive staff in the best place to enjoy and thrive in employment and pass knowledge through the staff infrastructure.

It removes bullying and the social and financial costs and personal costs to staff in job satisfaction and long term contribution.

Work from home now offers a huge change in the workplace and a higher workplace trust contract and exciting new era of civil employment.

This reduces the costs of housing huge numbers of staff and as we move post Covid and to a braver new world of living, we must shut the door on the old of highly managed and reporting staff to. A trust placed in staff and the liberty to by default place that trust and allow all staff the maximum amount of time to complete their work in trust.

To energise this workplace and to reconnect to the whole of enterprise and community with a high public trust contract of true transparency and inclusion and the ultimate diversity of a thriving local government can gather up huge savings from operations costs of which.

Given the ratepayers and society has only incurred by its means only more debt, and the council reciprocally has indeed incurred its own of which is all of our debt.

As any business or home laden with debt before we borrow more or ask for more money the exercise of spending money best has not been raised or addressed in the consultations and the culture to do so has not yet been formed with in a social contract.

Community Outcomes

Do you think the proposed Community Outcomes reflect the aspirations of the Horowhenua community?	**No**
Are we missing something, or focusing on something we shouldn't be?	**We have to be blatantly honest. Our young people leave Horowhenua to get a job to afford to live here or leave for good. We have disproportionately housed a bored older generation with many of the facilities they once could have enjoyed either sold or closed due to earthquake prone or lack of wider community engagement. A big section of the Horowhenua reluctantly pays rates into the rate pool and the distance to use the facilities and infrequent public services supplied by regional council prohibit them from truly feeling like a person of Horowhenua. Although many service facilities are an amazing confidence in the district and council of which well done, main freight, PlaceMakers mitre 10 mega We really have gone to a building supply's local greasy spoon or fast foods town from what once was a manufacturing textiles town. Our a fast highway south will drive consumers dollars south**

What's going to drive it north?

Are they going to drive to sit by the lake and inhale the smell of rotting eutrophication.

Will they want to drive out hokio beach and lay on pine logs and dirt from the harvest of logs.

For the millions we have spent in a battle of community with consultants and what should he OUR regional and local council we have a huge realisation there's life out side the retirement village or stunning rural escape or the only 30 minutes from Palmerston North dream home and it's really struggling.

Totally I am misrepresenting my view if you feel I am blaming council for this.
It's ours.

This is what we have got.

We are not a thriving connected district and we have no cohesion and push that could build confidence to make things better and it will come from many hands.

Not as the question suggests the big hand that Taketh From everyone and give to a select few.

Additional Comments

Please identify any additional comments you have on what is proposed as part of Council's Draft Long Term Plan 2021-2041.	**This is a crossroad in the middle of a four lane highway.** **We can all go together left or right and forever we can agree on somethings and disagree like mad on others.** **Should we go straight ahead however, I fear there is no U Turns no going back.**

Attach any other comments: