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 X1 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.

(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.

(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)

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

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

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

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]

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, Prepublication, Part V*, pp 215–228, 268–271

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

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

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.

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)

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

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-

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

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)

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)

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

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

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

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.

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)

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

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. N F 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

> 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

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

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:

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

> 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

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.

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

(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 L R Harvey, 18 December 2012, paras 11(7)–11(8) (Philip Taueki, papers in support of brief of evidence (doc B1(b)), p [7])

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

259. See, for example, Māori Land Court, oral judgment of Judge L R Harvey, 18 December 2012 (Philip Taueki, papers in support of brief of evidence (doc B1(b))).
260. Hamer, '"A Tangled Skein"' (doc A150), p 173
261. Hamer, '"A Tangled Skein"' (doc A150), p 176
262. Transcript 4.1.11, pp 182, 185 (Philip Taueki), 268 (Vivienne Taueki)
263. Paul Hamer, answers to questions of clarification, September 2015 (doc A150(j)), p 3
264. Hamer, answers to questions of clarification (doc A150(j)), p 3

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.

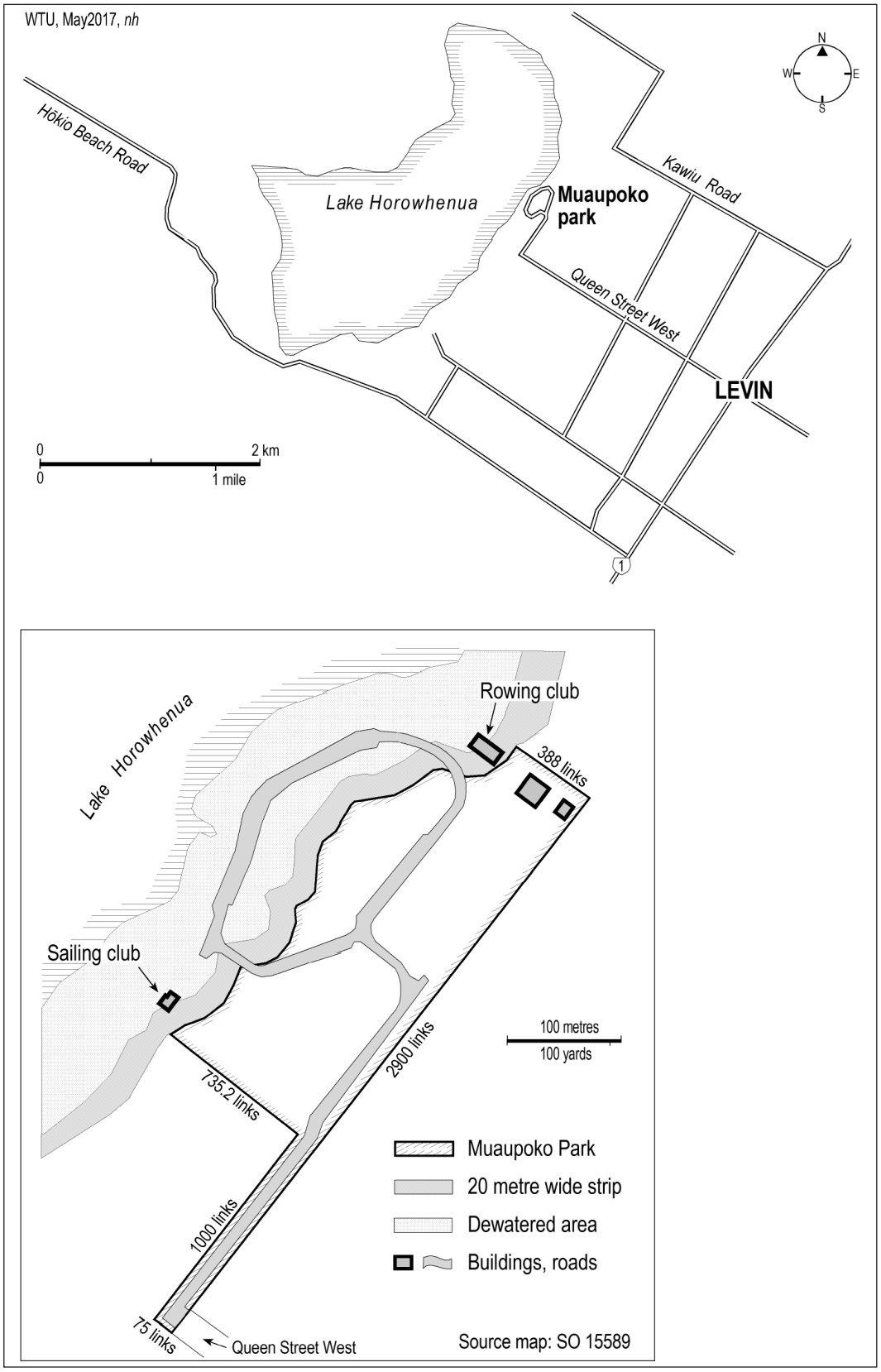
This was a situation which the Maori Affairs Act 1953 was supposed to have prevented. Under section 235 of that Act, no lease of Māori land could be for a period longer than 50 years, *unless 'expressly provided in any [other] Act'* (emphasis added). Section 18 of the ROLD Act 1956 certainly did not 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)



Map 9.1: Location of Muaupoko Park and of the boating and rowing club buildings

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

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

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)

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

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.

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

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

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

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

- 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)

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

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

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

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)

(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)

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

- 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:

370. Reserves and Other Lands Disposal Act 1956, s 18(5)
371. Crown counsel, closing submissions (paper 3.3.24), p 57
372. Claimant counsel (Bennion, Whiley, and Black), submissions by way of reply (paper 3.3.33), p 11

- 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

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, p 10 (Procter, papers in support of brief of evidence (doc C22(b)(iii)))

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)

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

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

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

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

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

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

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 'long-standing 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

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

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]

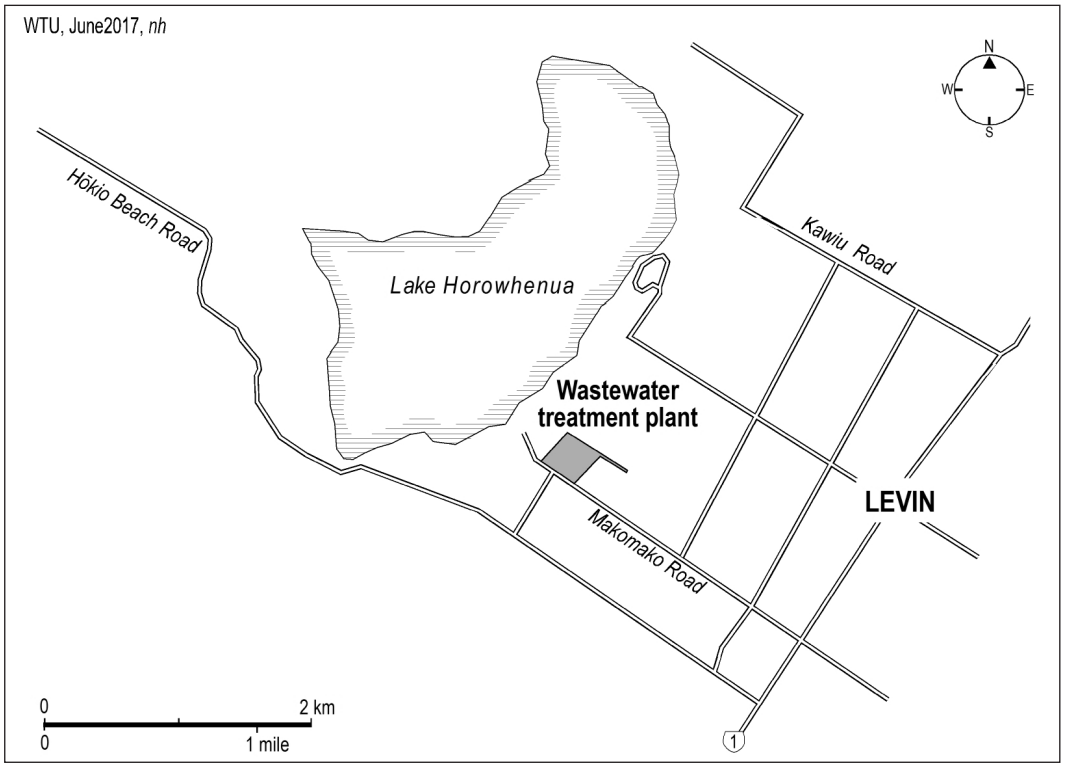
In our view, the crucial issue here is the water race constructed in 1902, against which Muaūpoko protested because of its potential to pollute the lake as a result of livestock contamination. Before it was built, the sanitary commissioner pondered an obvious question: '[H]ow are several miles of open 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

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



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

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

the treatment plant. R H 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

59. R H 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)

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)

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

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. R H 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

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)

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)

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

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)

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*

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)

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–c 1990', 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)

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)

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

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

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

- 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. R H S 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)

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)

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

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)

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

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)

> 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

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

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.

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

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 storm-water 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

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.

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

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

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]

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

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

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]

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

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:

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

- 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.

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]

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.

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.

42. Philip Taueki, closing submissions (paper 3.3.15), pp [2], [3]
43. Philip Taueki, closing submissions (paper 3.3.15), pp [3], [4]

> 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]

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)

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.

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

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)

> 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.

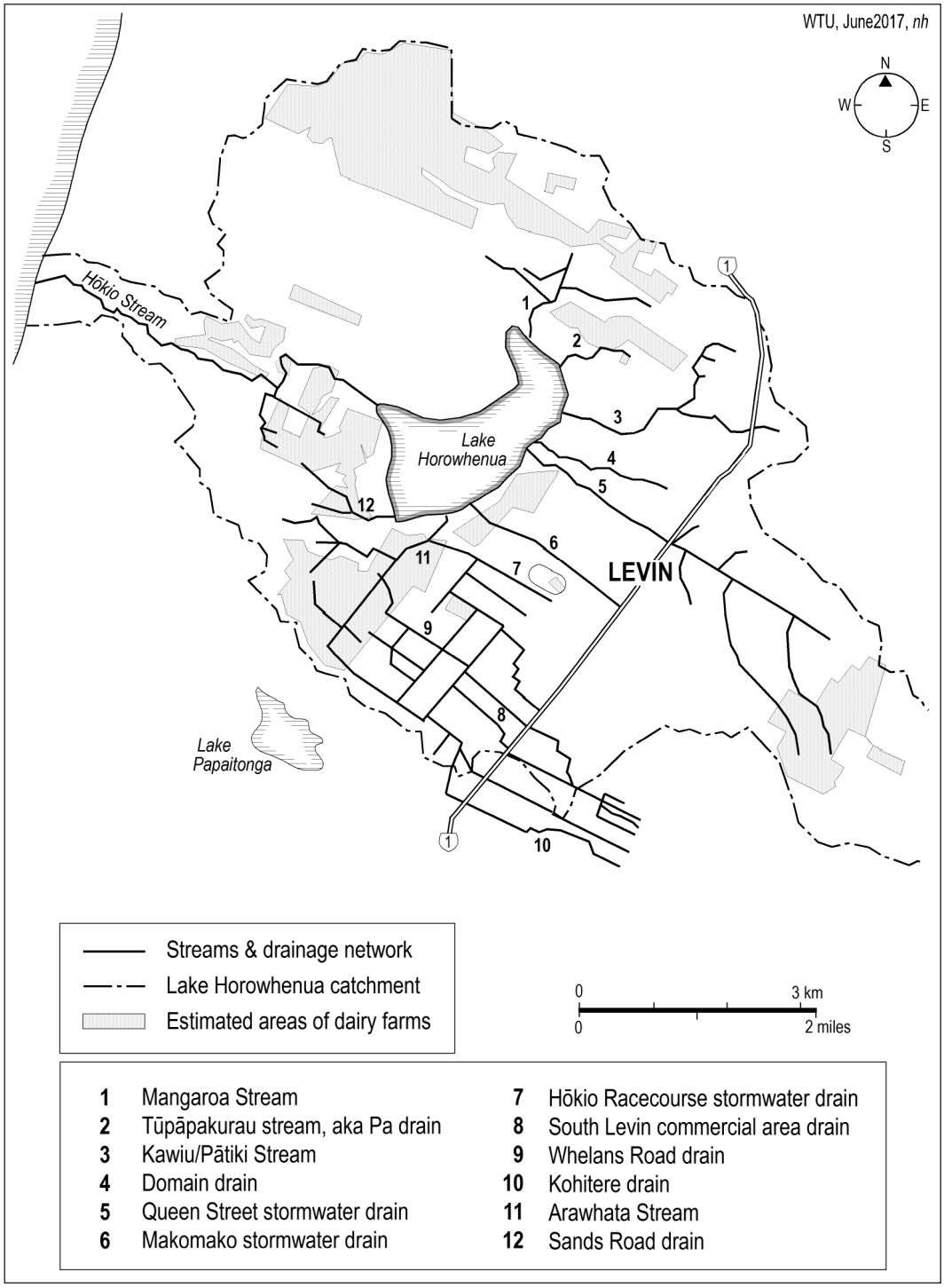
We are not in a position to be able to make findings with respect to all the allegations made. What we do note is that resource management issues, land use planning, and consenting for water and land discharges and takes within the catchment are important and go to the issue of whether the current governance 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)



Map 11.1: Lake Horowhenua catchment

> 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",

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)

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

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

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)

Aerial view of the wastewater treatment plant in the mid-1980s

Horizons Regional Council Archives Central, HRC_00027_52_2068c. Source: http://www.linz.govt.nz/. Licensed by LINZ for reuse under the Creative Commons Attribution 4.0 International Licence https://creativecommons.org/licenses/by/4.0.

Overflow of effluent from the treatment plant, August 2008

Used with the permission of Russel Norman

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

> *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)

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)

- 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)

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

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)

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,

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

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

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.

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

(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)

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

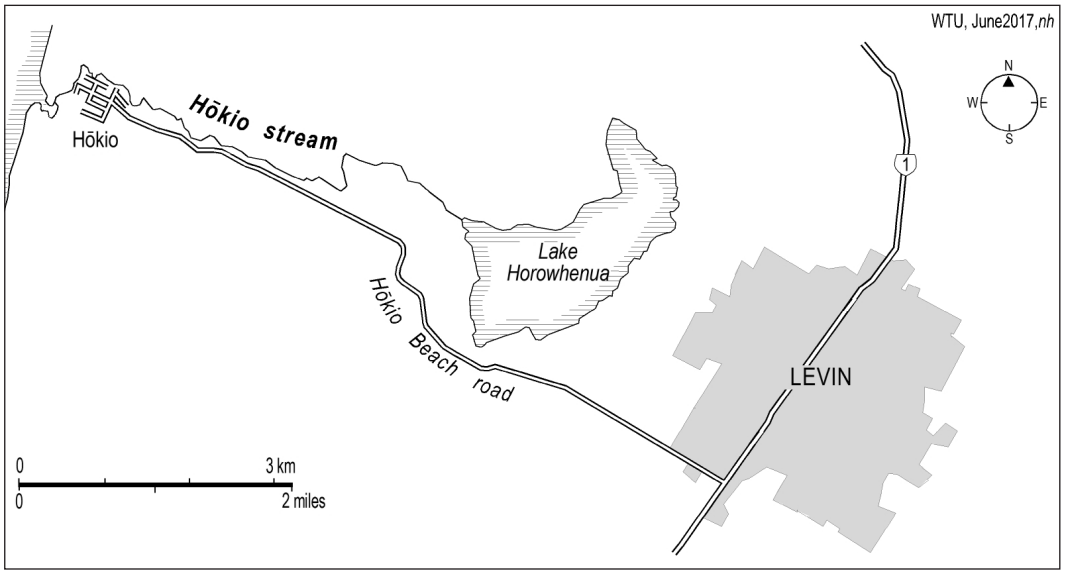
The Crown acknowledged the importance to Muaūpoko of the Hōkio Stream as a part of their identity.[151] The Hōkio Stream, like the lake, was heavily impacted during the years 1950–90.[152] In 1978, the Hokio Progressive Association wrote to the Health Department to inform it that the stream had been 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



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

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

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

> 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), p 399)
165. Hamer, '"A Tangled Skein"' (doc A150), p 399
166. Hamer, '"A Tangled Skein"' (doc A150), p 399
167. Hamer, '"A Tangled Skein"' (doc A150), p 400
168. Hamer, '"A Tangled Skein"' (doc A150), p 400
169. Hamer, '"A Tangled Skein"' (doc A150), p 400
170. Hamer, '"A Tangled Skein"' (doc A150), p 400
171. Philip Taueki, amended statement of claim, 6 August 2015 (Wai 2306 ROI, statement of claim 1.1.1(b)), p 113

> 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

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 R01, statement of claim 1.1.1(a)), pp 11, 13; Philip Taueki, amended statement of claim (Wai 2306 R01, 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

> 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

> 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

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)

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.

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

> 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

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)

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

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

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

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

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)).

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), p 383
275. Hamer, '"A Tangled Skein"' (doc A150), p 383
276. Hamer, '"A Tangled Skein"' (doc A150), p 383
277. Hamer, '"A Tangled Skein"' (doc A150), p 382
278. Hamer, '"A Tangled Skein"' (doc A150), p 382
279. Hamer, '"A Tangled Skein"' (doc A150), p 382
280. Hamer, '"A Tangled Skein"' (doc A150), p 384

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

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

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

> 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), p 387)
290. Hamer, '"A Tangled Skein"' (doc A150), p 388
291. Hamer, '"A Tangled Skein"' (doc A150), p 389
292. Hamer, '"A Tangled Skein"' (doc A150), p 389
293. Hamer, '"A Tangled Skein"' (doc A150), p 390

> 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)

> [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

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.

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

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

> 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)

- 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)

- 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

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

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

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

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

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), p 72
357. Sword, brief of evidence (doc C17), p 1
358. Sword, brief of evidence (doc C17), p 5
359. 'He Hokioi Rerenga Tahi/The Lake Horowhenua Accord', p 7 (Hamer, indexed bundle of cross-examination documents (doc A150(l)), p 7)

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), p 71
361. Crown counsel, closing submissions (paper 3.3.24), p 71
362. Crown counsel, closing submissions (paper 3.3.24), p 71

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

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].

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]

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

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.

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

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).

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.

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

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

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

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.

- *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.

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

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.

- 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

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.

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.

(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

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

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]

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

(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.

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

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

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

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

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

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

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

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

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.

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.

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

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)

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

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

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

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

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)

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:

- 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. N F 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)

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)

- 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, s 18(5)
38. Crown counsel, closing submissions (paper 3.3.24), p 57
39. Claimant counsel (Bennion, Whiley, and Black), submissions by way of reply, 21 April 2016 (paper 3.3.33), p 11

- 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.

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)

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.

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)

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.

- 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)

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)

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

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)

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)

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

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

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:

- 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.

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)

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)

	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

	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

APPENDIX II

THE 81 OWNERS OF HOROWHENUA 11

			Area allotted (acres)		
Persons entitled to Horowhenua 11[1]	**Court Order (No)**	**Court Order (name)**	**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

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

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	

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

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

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

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

Contents

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.

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

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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:

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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:

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).

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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:

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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:

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(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:

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:

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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.

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:

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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.

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.

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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:

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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

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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

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-

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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;

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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-

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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

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)

Published under the authority of the New Zealand Government—2012
Wellington, New Zealand:

Submission No. 415

Growing our future Together

Horowhenua DISTRICT COUNCIL

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: Ms

Full Name: Amanda Coats on behalf of Property Consultants Limited as agent for

Name of Organisation: FRP Investments Limited, FRP Agricultural Limited and Heritage Estates (2000) Limited.

[redacted]

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 OR ☑ zoom subject to Covid 19 Level.

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

NEUTRAL.

- ◯ **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

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.

No. The Council increase on annual net debt limit appears to be unsustainable. The Council options should include enabling partnerships with developers to build the infrastructure required at their cost to Councils Standards.

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?

- [x] Yes
- [ ] No

Activities

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.

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.
- [x] Other (please specify)

Developer led infrastructure to provide services to the level of council servicing. So that the barriers to development are removed. to some degree.

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 not completely.

(a) On issue of legal title for subdivision is supported.

(b) In relation to building consents a site that is brownfield should not attract further development contribution where fully serviced already.

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

There is insufficient information in the notified information to support or oppose the submitter agrees that reductions should be available but the thresholds should be clear and not subject to alteration or unknowns.

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%.

The submitter is opposed to the proposed changes to the rating differentials. The notified information appears to be unclear and is complex to understand the outcome intended or resulting.

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. The questionaire leads a response for one option or another but neither option is clearly articulated in relation to the notified material. The submitter opposes the changes to the ratings differentials. The supplied information suggest a 100% (doubling) of rates if applied. i.e. a highest and best use approach rather than what the land is. Classifications in the consultation documents are unclear.

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).
- ✓ **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 ○ No

Neutral – but concerned that the debt Limits are not sustainable.

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?

○ Yes ✓ No

Debt levels are unsustainable. How borrowing rates exist currently, but are subject to change.

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 NEUTRAL.

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

Horowhenua DISTRICT COUNCIL

Free

Horowhenua District Council
Private Bag 4002
Levin 5540

Submission to Long Term Plan 2021-2041

RECEIVED ON 19/04/2021

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):

1	We would like to ensure that there is funding for a clearly defined HDC plan for O2NL and the revocation of SH1 (and SH57) and that this forms part of Council's work programme for 2021/2022. We believe it is essential that the plan include details of what HDC will advocate for on behalf of affected communities (such as Manakau), as well as specific aspects that HDC needs to ensure NZTA addresses as part of the project, and revocation phase.
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5. Protection of our natural environment (bores, aquafers, streams, wildlife and arable lands)
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	Elizabeth Everett Barry Everett.
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Signature	
Date	12/4/21.

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7. Maintain full connectivity between Manakau Heights Drive and Manakau Village

Name	CHRIS MITCHINSON
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Signature	C. M. Mitchinson
Date	12-4-2021

RECEIVED ON
19/04/2021

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Name	MARGARET MITCHINSON
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Signature	Margaret Mitchinson.
Date	12-4-2020

Submission No. 419

Submission to Long Term Plan 2021-2041

RECEIVED ON 19/04/2021

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7. Maintain full connectivity between Manakau Heights Drive and Manakau Village

Name	MARIAN IAGARU
Address	10 NIKAU LANE RD 3 OTAKI 5583
Email	IAGARUMARIAN@YAHOO.COM
Signature	
Date	15/04/2020.

Submission to Long Term Plan 2021-2041

RECEIVED ON 19/04/2021

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Name	Anca Elena Iagaru
Address	10 NIKAU LANE, MANAKAUHEIGHTS,
Email	ghitaanca21@gmail.com.
Signature	Anca Iagaru
Date	15/04/2021

RECEIVED ON 19/04/2021

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Name	Leo Goodman
Address	25 Hanerera Ridge Rd, Manakau
Email	leo@2LP.co.nz
Signature	
Date	13/4/21

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Name	Sonya Martin
Address	28 Walkers Lane, Waikawa Bch
Email	son.martin@hotmail.com
Signature	S Martin
Date	12 April 2021

Submission to Long Term Plan 2021-2041

RECEIVED ON 19/04/2021

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Name	Ethney Brown
Address	5 Wikau Lane. Manakau.
Email	kblholdings @ xtra. co. nz
Signature	EBrown
Date	12.4.2021

RECEIVED ON
19/04/2021

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Name	Barry Brown
Address	5 Nikau Lane Manakau
Email	kblholdings@xtra.co.nz
Signature	
Date	12/04/2021

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Name	Linda Goodman
Address	25 Hanawera Ridge Rd, Manakau
Email	lagoodman510@gmail.com
Signature	
Date	13/4/2021

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Name	Sandra Vidulich
Address	69 South Manakau Rd
Email	CraigSandra@xtra.co.nz
Signature	Sandra Vidulich
Date	12.4.2021

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Name	Tracy Connor & Aaron Smith
Address	32 Eastern Rise, Manakau
Email	tracyleeconnor@gmail.com
Signature	
Date	17-4-21 17/4/21

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We would like HDC to rally and push Government to ensure the completion of O2NL and to provide the absolute best version of the O2NL Expressway, which includes:

1. Full inflation adjusted funding through to completion of both projects – being the construction of the O2NL Expressway and the much needed improvements to SH1 (which has to carry the additional load of traffic resulting from district and regional growth until the O2NL Expressway is built)
2. Genuinely fair compensation in accordance with the Public Works Act
3. A standard of noise mitigation that does not reflect the bare minimum, rather fit for purpose mitigation that preserves quality of life and amenity
4. Mitigation of noise, dust and other inconveniences caused during the construction process, noting particularly the impact of dust and contaminants entering rain water collection systems
5. Protection of our natural environment (bores, aquafers, streams, wildlife and arable lands)
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	Sue Sexton-Smith & Gary Sexton
Address	32 Eastern Rise Manakau (House B)
Email	Sueandgarys@xtra.co.nz,
Signature	
Date	16 - 4 - 21.

Submission No. 429
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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7. Maintain full connectivity between Manakau Heights Drive and Manakau Village

Name	Linda James.
Address	63 Manakau Heights Drive, RD3 Otaki.
Email	barjj@gmail.com.
Signature	James
Date	15. april 2021.

RECEIVED ON
19/04/2021

Submission to Long Term Plan 2021-2041

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7. Maintain full connectivity between Manakau Heights Drive and Manakau Village

Name	Ernie James
Address	63 Manakau Heights Drive
Email	bartyj@gmail.com
Signature	E.W James
Date	15/4/21

RECEIVED ON
19/04/2021

Submission to Long Term Plan 2021-2041

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7. Maintain full connectivity between Manakau Heights Drive and Manakau Village

Name	William Alan Howard
Address	42 Manakau Heights Drive RD3 OTAKI
Email	hoverdalay@gmail.com
Signature	W. A. Howard
Date	16/04/2021

RECEIVED ON
19/04/2021

Submission to Long Term Plan 2021-2041

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7. Maintain full connectivity between Manakau Heights Drive and Manakau Village

Name	B. L. Rutherford
Address	25 Nikau Lane RD3 Otaki
Email	bevlrutherford@gmail.com
Signature	
Date	12. 4. 21

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.

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Name	Jacques Blignaut
Address	23 Manakau Heights Drive RD3, Otaki
Email	migjacques@xtra.co.nz
Signature	
Date	13/04/2021

RECEIVED ON
19/04/2021

Submission to Long Term Plan 2021-2041

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Name	Mia Blignaut
Address	23 Manakau Heights Drive, RD3, Otaki
Email	miajacques@xtra.co.nz
Signature	Mia Blignaut
Date	13/04/2021

RECEIVED ON
19/04/2021

Submission to Long Term Plan 2021-2041

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Name	MARIA E.J. du PLESSIS
Address	23 MANAKAU HEIGHTS DRIVE RD3, OTAKI
Email	mijadu@yahoo.co.nz
Signature	
Date	13/04/2021

RECEIVED ON
19/04/2021

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Name	JAN DIEDRICK DU PLESSIS
Address	23 MANAKAU HEIGHTS DRIVE MANAKAU
Email	RIJADU@YAHOO.CO.NZ
Signature	
Date	13/04/2021

RECEIVED ON
19/04/2021

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7. Maintain full connectivity between Manakau Heights Drive and Manakau Village

Name	DAVID BILLINGTON
Address	8 HAWKEA RIDGE ROAD MANAKAU
Email	dbweb@inspire.net.nz
Signature	
Date	12/4/21

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.

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Name	Barbara Hoverd
Address	42 Manakau Heights Drive, RD3 Otaki, 5583 Manakau South
Email	blhoverd@gmail.com
Signature	B L Hoverd
Date	13.4.2021.

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Name	Bryan Bishop
Address	21 Manakau Heights Dr.
Email	bryleah@xtra.co.nz
Signature	B Bish
Date	13/04/2021

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19/04/2021

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Name	Leah Bishop
Address	21 Manakau Heights Drive
Email	bryleah@xtra.co.nz
Signature	LBishop
Date	13/04/2021

Submission No. 441

RECEIVED ON 19/04/2021

From: Ashley Huria
Sent: Monday, 19 April 2021 4:21 PM
To: Records Processing
Subject: FW: Submission to Long Term Plan

Ashley Huria
Projects Coordinator - Customer and Strategy | Kaikōtuitui Hinonga – Rautaki, Whakawhanake

Waea Mahi | (06) 366 0999
Waea Pukoro | 64272096402

126 Oxford Street, Levin
Private Bag 4002, Levin 5540

Horowhenua DISTRICT COUNCIL | We are. LGNZ.

From: Kim Stewart <kims@horowhenua.govt.nz>
Sent: Monday, 19 April 2021 4:19 PM
To: Ashley Huria <ashleych@horowhenua.govt.nz>
Subject: FW: Submission to Long Term Plan

Kia ora Ash,
Here is one of the emails that you have requested

Ngā mihi
Kim Stewart

Kim Stewart
Community Development Advisor | Kaitohutohu Tautāwhi Hapori

Waea Mahi | (06) 366 0999
Waea Pukoro | 64272989287

126 Oxford Street, Levin
Private Bag 4002, Levin 5540

Horowhenua DISTRICT COUNCIL | We are. LGNZ.

From: Kim Stewart <kims@horowhenua.govt.nz>
Sent: Monday, 15 March 2021 11:40 am
To: Ashley Huria <ashleych@horowhenua.govt.nz>
Subject: FW: Submission to Long Term Plan

FYI

Kim Stewart
Community Development Advisor | Kaitohutohu Tautāwhi Hapori

Waea Mahi | (06) 366 0999
Waea Pukoro | 64272989287

126 Oxford Street, Levin
Private Bag 4002, Levin 5540

Horowhenua DISTRICT COUNCIL | We are. LGNZ.

From: Monique Leith <moniquel@horowhenua.govt.nz>
Sent: Wednesday, 3 February 2021 10:40 am
To: Kim Stewart <kims@horowhenua.govt.nz>
Cc: Jo Mason <cr.jo.mason@horowhenua.govt.nz>
Subject: RE: Submission to Long Term Plan

Hi Kim,

One point from me would be for Council to be more digitally accessible to those who are deaf or have hearing impairments.

Offering NZSL interpreters as a standard service for anyone who wants to meet with Council staff or communicate with staff within a Council facility should be available and well-advertised.

In addition, people should be able to contact and communicate with Council staff via Google Meet as this platform has an exceptional live captioning feature. Presently, Zoom is used as the medium for live-streaming as well as online meetings, which does not have this function and therefore deaf/HOH people cannot engage. Google Meet cannot be used on HDC staff computers without firstly setting up an appointment with the IT team due to firewall issues. This barrier needs to be broken down. Alternatively, Council should set up an account with Ai-Media to provide live transcriptions for all online mediums.

I'd also like to point out that video content on Council's FB page always seem to have captions on their videos which ought to be commended.

I'll keep thinking of other accessibility ideas!

Kind regards,
Monique

From: Kim Stewart <kims@horowhenua.govt.nz>
Sent: Tuesday, 2 February 2021 2:00 PM
Cc: Jo Mason <cr.jo.mason@horowhenua.govt.nz>
Subject: Submission to Long Term Plan

Kia ora,

Thank you for helping with the audits of areas in the Horowhenua that are accessible.

The Horowhenua District Council Long Term Plan submission process is starting in beginning of March. This is a good opportunity for us as the accessibility champions to have our suggestions considered and support increased accessibility in our community.

We have identified that parking could be more accessible in the Horowhenua so let's submit to the plan and evoke change. What places can you identify where you think there should be mobility parking? Take this question back to your organisation, whanau and friends and I will start to collate our information to formulate into a submission.

Please give me a call to discuss or if you have any questions:
kims@horowhenua.govt.nz
027 2989287

Looking forward to working together to make the Horowhenua more accessible.

Ngā mihi nui
Kim Stewart

Kim Stewart
Community Development Advisor | Kaitohutohu Tautāwhi Hapori

Waea Mahi | (06) 366 0999
Waea Pukoro | 64272989287

126 Oxford Street, Levin
Private Bag 4002, Levin 5540

RECEIVED ON
19/04/2021

From: Ashley Huria
Sent: Monday, 19 April 2021 4:22 PM
To: Records Processing
Subject: FW: Access and Inclusion

Ashley Huria
Projects Coordinator - Customer and Strategy | Kaikōtuitui Hinonga – Rautaki, Whakawhanake

Waea Mahi | (06) 366 0999
Waea Pukoro | 64272096402

126 Oxford Street, Levin
Private Bag 4002, Levin 5540

Horowhenua DISTRICT COUNCIL | We are. LGNZ.

From: Kim Stewart <kims@horowhenua.govt.nz>
Sent: Monday, 19 April 2021 4:20 PM
To: Ashley Huria <ashleych@horowhenua.govt.nz>
Subject: FW: Access and Inclusion

Kia ora Ash,

Email number 3 for the Long Term Plan

Ngā mihi
Kim

Kim Stewart
Community Development Advisor | Kaitohutohu Tautāwhi Hapori

Waea Mahi | (06) 366 0999
Waea Pukoro | 64272989287

126 Oxford Street, Levin
Private Bag 4002, Levin 5540

Horowhenua DISTRICT COUNCIL | We are. LGNZ.

From: Sarah Walker <sarahw@horowhenua.govt.nz>
Sent: Friday, 12 March 2021 9:22 am
To: Kim Stewart <kims@horowhenua.govt.nz>
Subject: RE: Access and Inclusion

Hi,

I don't know if these are relevant, but pathways around Levin, especially by the Adventure Park along Oxford Street which is extremely dangerous. Also pathways around residential areas need fixing. I tend to go to actual destinations to go for a 'walk' because it ends up not being enjoyable because I have to watch the paths closely so I can negotiate the large cracks or steps in the path. Also, Kowhai park's walkways need to be changed from gravel. I know of a couple of people who would love to be able to take their dogs there, but because of mobility issues are not able to. If I go there with my dogs I am either pushed in my wheelchair on the path or end up being extremely slow which is not ideal in that situation.

Hope this helps.

Thanks,
Sarah

Sarah Walker
Support Officer | Āpiha Tautoko

Waea Mahi | (06) 366 0999
Waea Pukoro | +64274486070

126 Oxford Street, Levin
Private Bag 4002, Levin 5540

From: Kim Stewart <kims@horowhenua.govt.nz>
Sent: Friday, 12 March 2021 8:53 am
To: Sarah Walker <sarahw@horowhenua.govt.nz>
Subject: RE: Access and Inclusion

Hi Sarah,

No problem. There are other opportunities.

Do you have any ideas for the long term plan?
Anything that you think the council should consider.

Thanks
Kim Stewart

Kim Stewart
Community Development Advisor | Kaitohutohu Tautāwhi Hapori

Waea Mahi | (06) 366 0999
Waea Pukoro | 64272989287

126 Oxford Street, Levin
Private Bag 4002, Levin 5540

From: Sarah Walker <sarahw@horowhenua.govt.nz>
Sent: Friday, 12 March 2021 8:32 am

To: Kim Stewart <kims@horowhenua.govt.nz>
Subject: RE: Access and Inclusion

Hey Kim,

Sorry, but I have to put in my apologies for this one. It doesn't seem to be working out for me this time round!

Thanks,
Sarah

Sarah Walker
Support Officer | Āpiha Tautoko

Waea Mahi | (06) 366 0999
Waea Pukoro | +64274486070

126 Oxford Street, Levin
Private Bag 4002, Levin 5540

From: Kim Stewart <kims@horowhenua.govt.nz>
Sent: Thursday, 11 March 2021 3:56 pm
Subject: Access and Inclusion

Kia ora,

I have attached the minutes from the December meeting and the agenda for this meeting being held at Horowhenua Learning Centre on Monday 15 March at 1pm.
There is also an attachment about "I can't wait" for you to read in preparation for the meeting.

I look forward to seeing you there.

Kia pai tō rā
Have a good day

Kim Stewart

Kim Stewart
Community Development Advisor | Kaitohutohu Tautāwhi Hapori

Waea Mahi | (06) 366 0999
Waea Pukoro | 64272989287

126 Oxford Street, Levin
Private Bag 4002, Levin 5540

From: Long Term Plan 2021-41 Project Team
Sent: Monday, 19 April 2021 4:27 PM
To: Records Processing
Subject: FW: submission
Attachments: Submission to LTP_Re MultiUsePark_Final Submission.pdf; Horowhenua Multi-Experience Park_Concept_Final Draft 180421.pptx

From: Marty Jarrett <marty@martyspanelandpaintltd.co.nz>
Sent: Monday, 19 April 2021 4:23 PM
To: Long Term Plan 2021-41 Project Team <ltp@horowhenua.govt.nz>
Subject: submission

To Council members,
Please except this submission for consideration in the 30 year plan, as I have the support of numerous members of local clubs & motorsport enthusiast's.
I truly believe this is what our town needs to help with all other council strategy's moving forward into the future.

Kind regards,

Marty Jarrett
(Managing director)

Marty's Panel & Paint Ltd
(Horowhenua/Kapiti Coast Largest Bake Oven)

Tel: 06 3688276
Email: marty@martyspanelandpaintltd.co.nz
Facebook: Marty's Panel & Paint LTD
Web: www.martyspanelandpaintltd.co.nz

Submission to Long Term Plan 2021-2041

Send completed submission form to ltp@horowhenua.govt.nz

The person making this submission is:

Name	Marty Jarrett
Address	17 Lancaster St, Levin
Email	marty@martyspanlandpantltd.co.nz
Signature	M R Jarrett
Date	18/4/2021
Organisation / Club (if applicable)	Instigator of "the park Concept"
Relationship to the concept (tick all that apply)	☑ Member of the consortium behind the concept ☑ Likely future user of the concept facility ☑ Likely funder of, or contributor to, the concept facility ☑ Likely future visitor to the concept facility ☑ General supporter of the concept

Purpose of Submission

The focus of this submission is on seeking Council assistance to progress a driver training, motorsport, and related recreation facility for Horowhenua ('the Park concept'). The submission seeks some short-term support actions from Council.

I request speaking rights.

The concept is outlined in the attached PowerPoint. Please note that the PowerPoint may be amended prior to presentation at the LTP hearings.

Executive Summary

By making this submission, I indicate my support for the concept outlined and seek the following actions from Council:

1. Budget allocation in the long-term plan for an initial 'fail fast' concept feasibility study in the 2021/2022 financial year
2. Engagement with the concept promoters to identify any Council-owned properties or sites that may be suitable for or compatible with the concept (with the terms of the lease, use or acquisition being subsequently agreed between the parties)

3. If no Council-owned sites are suitable or available, engagement with the concept promoter to identify suitable geographic locations within the District where the concept could conceivably be located (e.g. minimal residential dwellings etc.)
4. Advocacy and support to advance the concept, including facilitation of engagement with appropriate Iwi partners
5. Support to identify and prepare grant applications and explore additional funding pathways

The Concept

I support the concept which is outlined in greater detail in the attached PowerPoint presentation and promoted by the Horowhenua Motorsport, Driver Training & Recreation Park Consortium, being a collective of like-minded individuals who wish to turn the concept from an idea into a reality.

In summary, the three key pillars of the concept are the creation of:

- a driver training facility
- a motorsport park
- an adrenalin and recreation space

It is proposed that these key activities could and should be supplemented by a range of other activities, including commercial development as well as other complementary facilities, pursuits and enterprises. A key design principle would be to make the facility as truly multi-use as possible to ensure that it is used regularly and for multiple purposes, including at concurrent times, and that the facility is future-proofed.

The concept involves staged development of a location to deliver increasing driver, training, motorsport and recreation offering and attraction. The objective is to develop the facility into a valued and admired facility locally and nationally and one that ultimately delivers increasing social and economic benefits to the Horowhenua community over time.

Driver Training

To make the commercial viability of the facility more feasible, we are proposing to formally pitch to New Zealand Police to relocate their driver training from Manfield to Horowhenua, which has been floated as a realistic possibility due to the need for a facility that is closer to Porirua's Police college. With various expressway upgrades underway, Horowhenua has never been closer to Wellington. We believe the economic, environmental (reduced emissions/climate change), and social benefits of a driver training facility in closer proximity to Wellington and its surrounds present a significant opportunity.

Driver training and education is an essential component of enabling young people to take up and access professional and educational opportunities.

A fit for purpose driver training facility provides an opportunity to create a safe environment for the development of defensive driving skills, testing and driving reviews. The facility would enable advanced driver education, including for professional purposes. The establishment of aquaplaning simulation facilities would be a key feature.

A driver training facility will provide a safe environment for young and older people to develop and test their driving skills. The intention would be to work with local schools and the Horowhenua Learning Centre to provide a fit for purpose driver training programme.

Motorsport activities

A key proposal is to establish both sealed and unsealed tracks and spaces to accommodate a wide range of motorsport activities. The intention is to make the motorsport park as multi-purpose as possible, with a number of track configurations enabled.

The facility would be designed to cater for a wide of motorsport activities to appeal to a range of clubs and associations involved in motorsport. There is a clear and identified need and want among the motorsport and car enthusiast communities to develop in such a facility.

The motorsport facilities are intended to deliver increasing commercial viability to the space and generate positive social outcomes by reducing antisocial behaviour on local streets by providing a safe and controlled area to partake in vehicle-centric activities.

Recreation Park

It is envisaged that the facility will be able to accommodate a wide range of recreational activities and pursuits, (1) because it is aligned to the goal to be genuinely multi-use and the objective of creating a 'destination' that the community can be proud of and utilise, and (2) there are clear benefits of attracting a more comprehensive range of users because it will increase community acceptance of the facility, but it will also increase the commercial viability and attract investors to invest and develop the space further.

Future Phases

It is envisaged that further development can be staged to increase the offering and deliver commercially viable enterprise and revenue streams.

Discussion

The concept, as outlined in the attached presentation, presents a significant opportunity for Horowhenua.

The concept, if realised, will produce significant economic and recreational benefits for the Horowhenua district. Motorsport and driver training matters, and both activities generate substantial revenue. Motorsport participants spend large amounts of money on goods and services as part of their chosen recreation and pursuit; motorsport is a high-spend recreational pursuit. The concept will also increasingly deliver jobs, training opportunities, and better social and economic outcomes as the facility develops (i.e. as education and other commercial opportunities are created).

Horowhenua has a popular car and bike culture, with similar enthusiasm across the lower north island. Like other sports and recreational pursuits, participants need and expect spaces to be able to conduct their chosen activity. If those facilities are not provided, then other public spaces are utilised, potentially leading to antisocial or undesirable behaviour on public roads (burnouts, drag racing and other related nuisances). These behaviours can

have negative social outcomes (e.g. young person loss of licence for unlawful driving behaviour, with downstream impact on employment or access to education). A key aim of the concept is to provide spaces for motor enthusiasts to pursue their chosen motorsport pursuits in a safe, controlled and legal environment.

Although motorsport has been a popular activity within the region in the past, over recent years, the availability of proximate and suitable motorsport venues has diminished, not through lack of demand by motorsport enthusiasts, but as a result of more demanding environmental standards about noise and other emissions, a lowering of tolerances of such activities close to urban areas. A clear example is the very popular burnout pad that used to exist in Levin.

It is a special note in history that Levin played host to the first permanent motorsport facility in New Zealand. Big-name drivers, like Bruce McLaren and others, frequented the circuit. Horowhenua has an opportunity to reignite the motorsport passion that already exists in the community and translate it into a facility and space that the whole community can be proud of, and benefit from.

From concept to reality

To get this project off the ground, we need:

1. Suitable land to construct a facility
2. Sufficient funding to build various phases
3. Advocacy and support to demonstrate the value of the project to the community and other key stakeholders
4. To leverage off various local and national networks and relationships

Principally it is item one that is the barrier to the concept progressing at this stage.

This submission does not seek funding for the project or construction itself; however, there is scope to work with Council in partnership to advance, develop and operate the facility in the future, mainly to accommodate complimentary recreational activities.

The consortium behind the concept has identified realistic funding approaches, with the bulk of the construction cost from private investors and in-kind labour and services from key contributors.

What is needed first and foremost is a suitable location to be identified.

What is being sought from Council?

The submission seeks short-term actions from Council.

First, engagement with Council around the following sites that may be compatible with accommodating the concept:

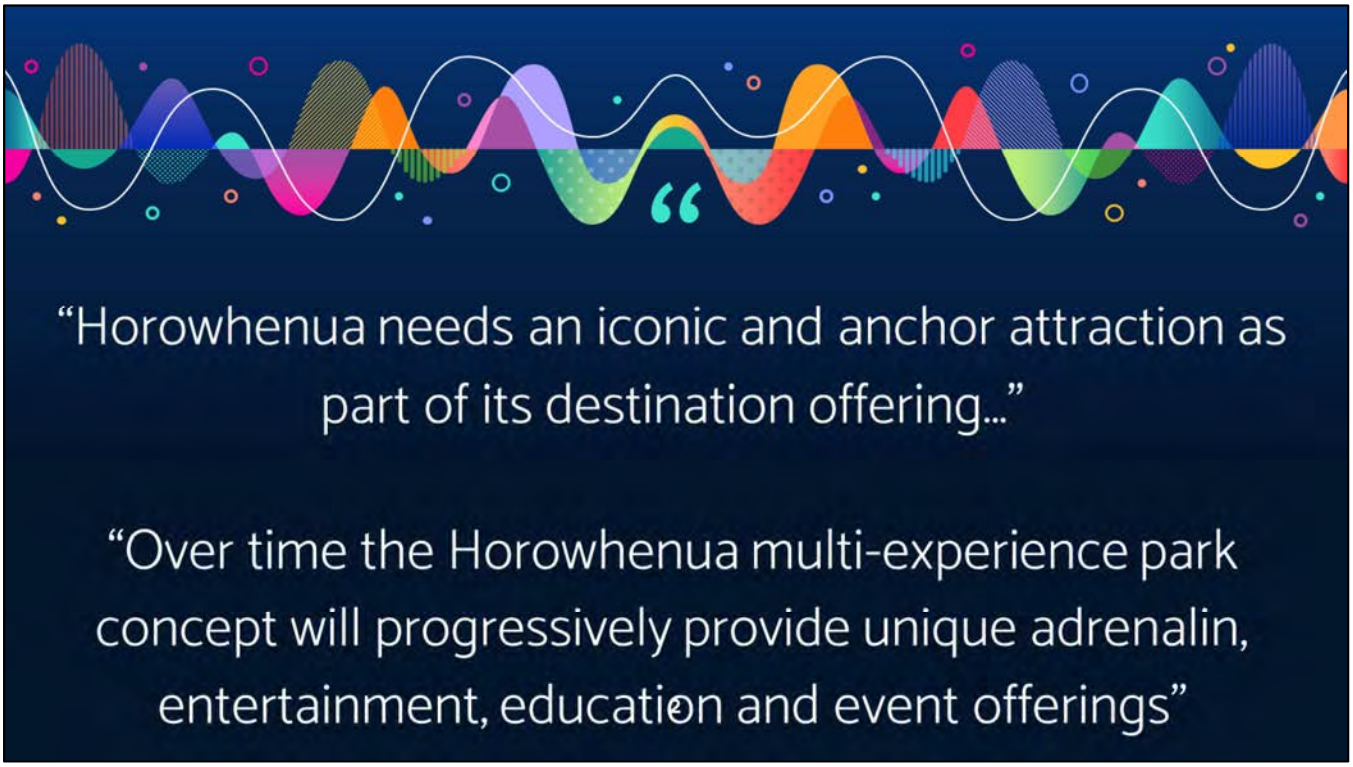
- Levin Landfill site (assuming a closure date within the next two years
- Council-owned property in Foxton
- Other suitable blocks of land

If Council owned property is not available or feasible, we need assistance identifying other suitable sites within the District with a low concentration of residential dwellings.

Other support needed from Council is:

- Commissioning (via Council directly or its economic development service-delivery partner) of a 'fast fail' feasibility study to guide the consortium on the viability of the project, planning/ resource consent requirements and constraints, and to quantify likely economic development and social opportunities to Horowhenua
- Early planning guidance around any site-specific and general planning issues – traffic, permitted activities, noise, stormwater, light spill, operational hours.
- Guidance on potential zoning/district plan change to accommodate a full range of concept activities and add-on opportunities
- Potential support to access 3rd party and government funding/grants
- General advocacy and support
- Support with facilitating initial engagement with interested Iwi groups


Horowhenua
Multi-Experience Park
Concept – “the Park”


"Horowhenua needs an iconic and anchor attraction as part of its destination offering..."
"Over time the Horowhenua multi-experience park concept will progressively provide unique adrenalin, entertainment, education and event offerings"

HELLO!

This concept presentation is made on behalf of "the Park" consortium

The consortium want to make Horowhenua a 'must do' place to visit for a range of recreational and motorsport experiences and driver training

3


THE CONCEPT
We're aiming high...
Experiences
Adrenalin
Entertainment
Events
Education
4

Key principles

ICONIC ATTRACTION	Establishment of an iconic, anchor attraction for Horowhenua
GENUINE MULTI-USE	Facility is designed and operated to optimise multi-use
DON'T DUPLICATE OFFERING	The Park will have key points of difference and fill gaps in the motorsport, driver training and recreational offering
MEET LOCAL NEEDS	Meet local and Lower North Island driver training, motorsport and recreational needs and expectations
DELIVER LOCAL BENEFITS	Deliver economic, social and recreational/amenity benefits to the community
SUSTAINABLE & VIABLE	Designed and operated to be financially sustainable and commercially viable
FILL LOCAL GAPS	The Park will allow flexibility to meet current or emerging gaps or needs within the community – e.g. accommodation, event and entertainment space and additional recreational offerings
BE VALUED AND SUPPORTED	The Park will be designed and operated in a way that it is valued and used by the community – the District is proud of the facility
FUTURE PROOFED	Future proofed to enable a wider range of complimentary future activities and facilities to meet changing demands and community customer expectations


A facility for the purposes of driver training, motorsports and other adrenalin and complimentary recreational activities
Phased add-on of other complimentary activities (e.g. accommodation, aviation operations, and commercial activities) to drive financial sustainability and broader viability
Our Target

OUR VISION: CORE ACTIVITIES

Driver Education
Driver training & education activities, track & facilities

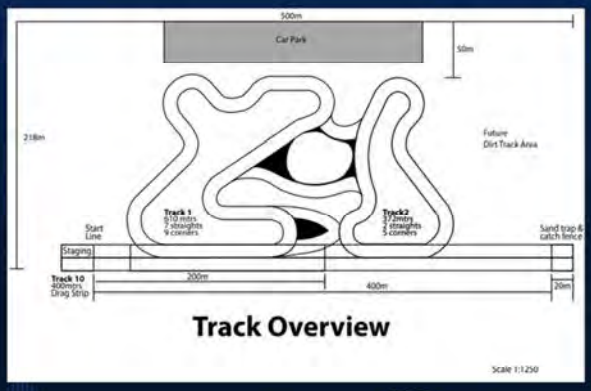
Motorsport
On and off-road motorsport activities, tracks & facilities

Recreation
Walking, cycling and mountain biking, & equestrian areas

Accomodation
Group accommodation, camp ground, RV/Caravan Park & facilities

7

OUR STARTING POINT



- 10m wide track / 1km length
- Sealed Track Configurations:
  - Driver Training
  - Motorsport Activities
- Multi-functional club rooms & education space / ablution

8


OUR VISION: COMPLIMENTARY ACTIVITIES & FACILITIES TO DRIVE ATTRACTION VALUE & COMMERICAL VIABILITY
Shared Clubrooms
Fun & Games
Amphitheatre & Spectator Facilities
Rental Garages / Hangars
Hospitality
Conference & Event Spaces
9


1.
WHY HOROWHENUA
Why should this happen here?

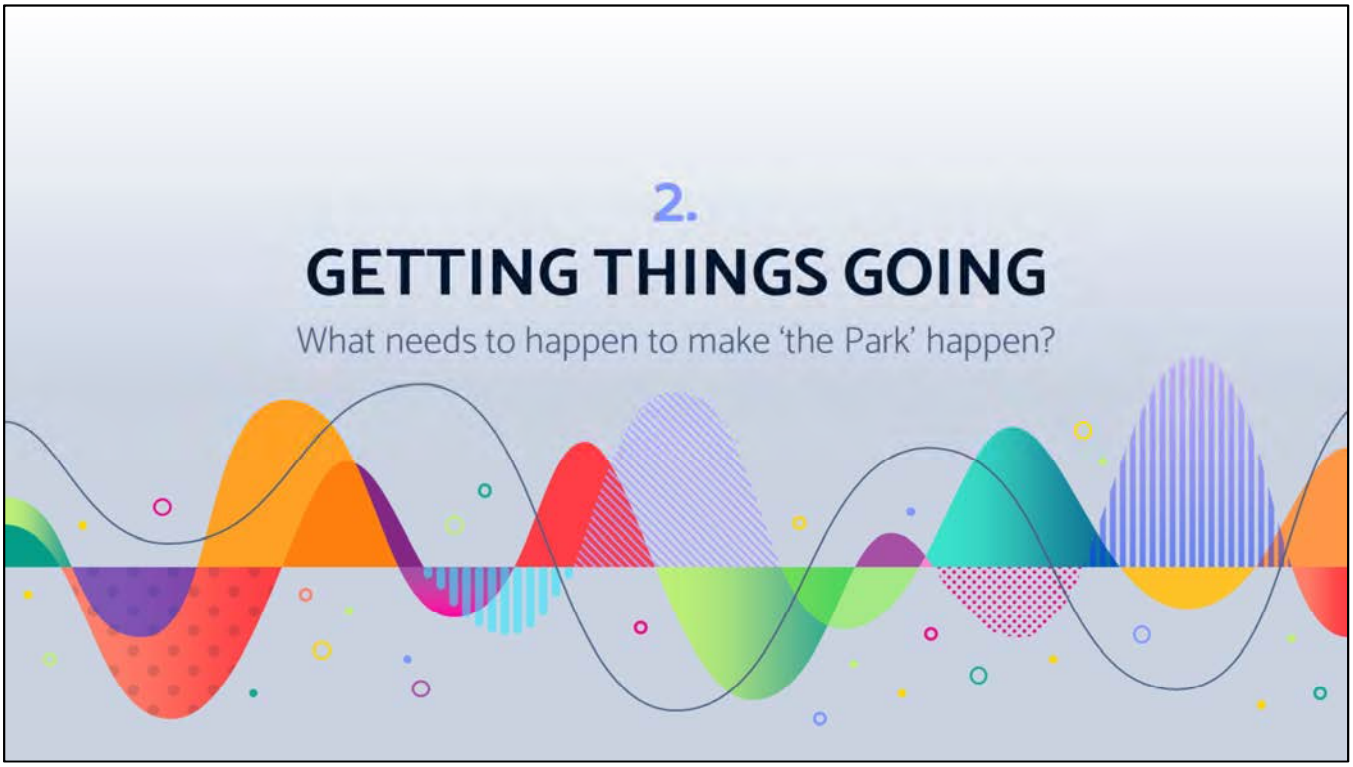

HOROWHENUA'S STRENGTHS & OPPORTUNITIES
STRENGTHS
Strong Local Car Culture & Motorsport Enthusiasts
Proximity to Police College
Driver Training Demand
OPPORTUNITIES
Proximity to Two Major Cities
Transport Connections
Ideal location for receiver of visitors & spectators
Strong Local Support
Limited Existing Recreational Offering
Need for Iconic / Anchor Attraction
Lack of Fit for Purpose Local Multi-Purpose Motorsport Venue
11

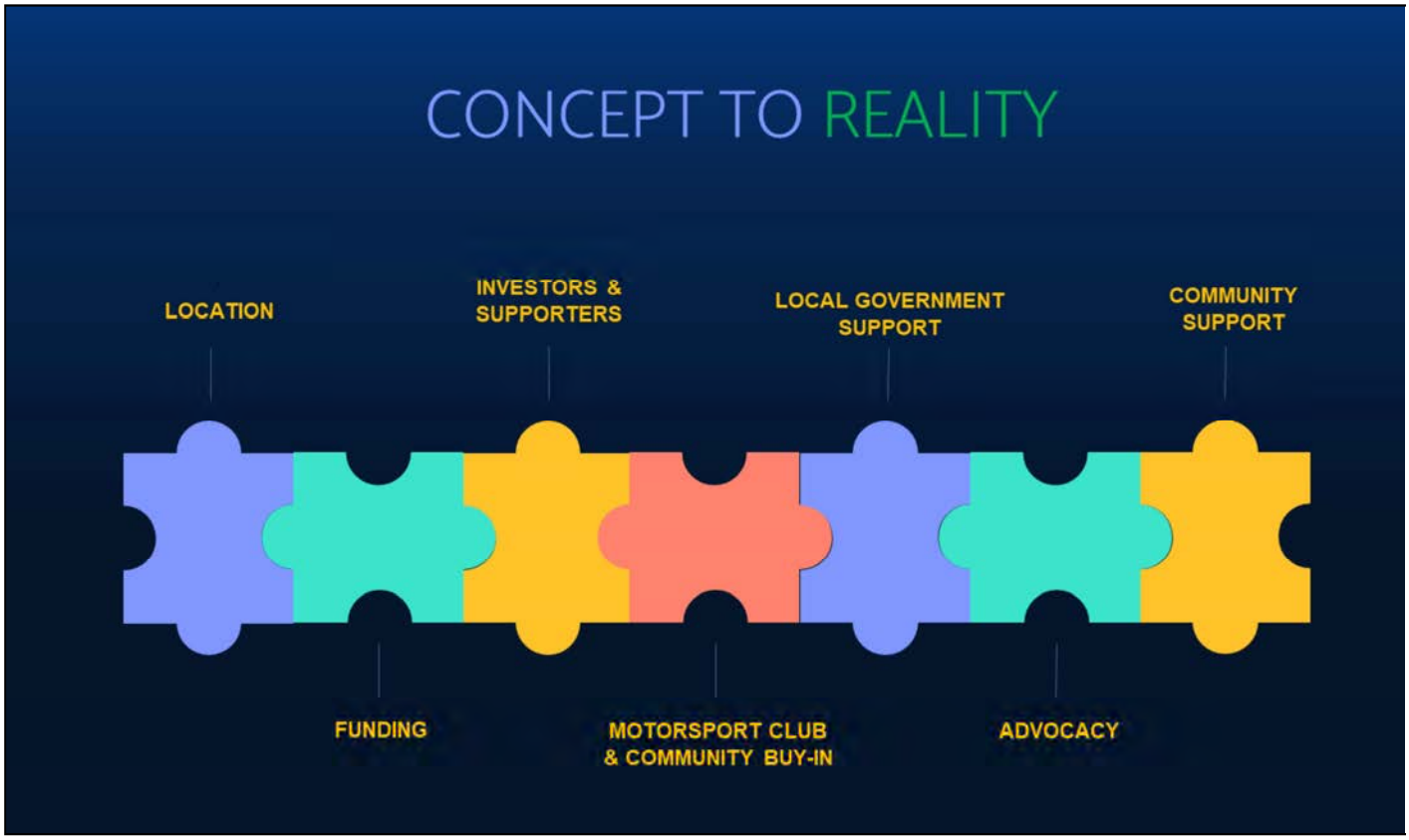

Rich motorsport history
Strong car culture and motor enthusiast
Large unserved interest and recreational groups

Horowhenua's Rich Motorsport History

High profile drivers from NZ & overseas to drive at the track in Levin:
Denny Hulme, Chris Amon, Bruce McLaren, Jack Brabham, Jim Clark, Jackie Stewart and Sterling Moss

- Levin Motor Racing Circuit was New Zealand's first permanent motorsport facility
- Built in 1956 – operated for 20 years
- Crafted inside the Levin horse racing circuit, the track ultimately disappeared when its lease was not renewed and the equine racing authorities wanted to expand.
- Small in scale but massively important for the development of the sport in the country, which had previously relied on temporary street and airfield circuits.
- Driving force behind the development of the track was an ex-pat Englishman, Ron Frost MBE
- 23,000 spectators would visit races, with the resident population only 8,000 at the time


2.
GETTING THINGS GOING
What needs to happen to make 'the Park' happen?


CONCEPT TO REALITY
LOCATION
INVESTORS & SUPPORTERS
LOCAL GOVERNMENT SUPPORT
COMMUNITY SUPPORT
FUNDING
MOTORSPORT CLUB & COMMUNITY BUY-IN
ADVOCACY


TO GET THE CONCEPT UNDERWAY
Location
A suitable location/site to construct a facility (preferably owned, or long-term secure lease)
Investment
Funding to design, plan and construct the core components of the facility
Support & Advocacy
Local government advocacy and support to demonstrate the value of the project to the community and other key stakeholders & planning advice
Initial Funding
Funding to progress initial concept, feasibiltiy and design work and to purchase/lease suitable land
User Buy-In
Buy-in from investors, clubs, associations and ongoing contributors
Community Buy-In
Take the community on the journey - to build support. Leverage-off local and national networks and relationships
16

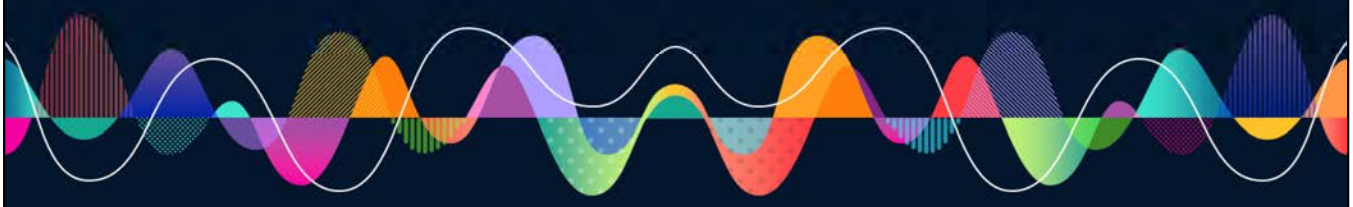

OUR PLAN – THE ROAD TO VICTORY
1. Concept is Supported: There is identified need and want, and community support to realise concepts
3. Legal Structure: appropriate structure to make things happen (likely Trust, transition to company)
5. Plan, Consent, Construct: Master design and plan for phased construction – works are completed
2. Suitable Location: A workable site for the Park is identified and secured
4. Investment Invited: Private sources and third party funding sources pursued
6. Operation: Core components are implemented and Park beings opernation
17

WHY HASN'T IT HAPPENED ALREADY?

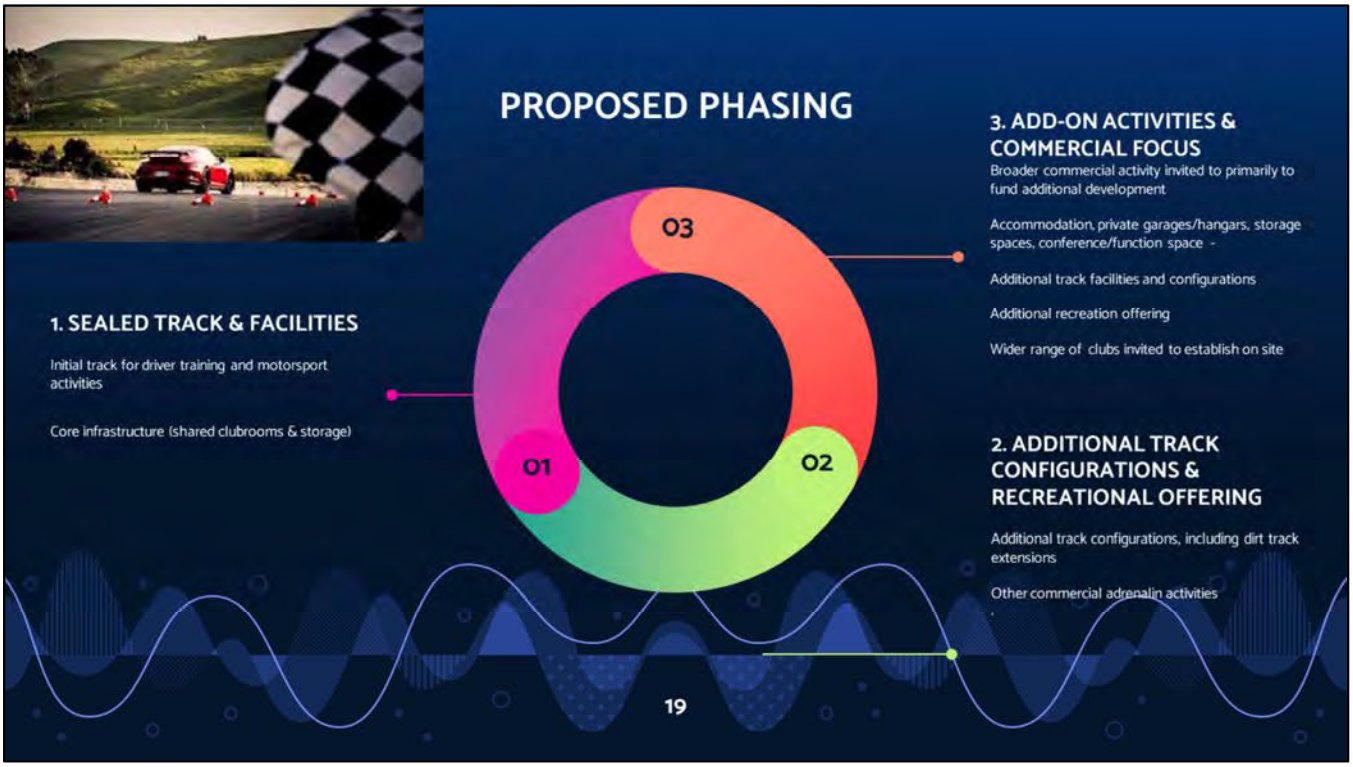
The primary issue is finding the right location

Facility site needs to be:

- away from dwellings
- affordable, to allow phased development
- supported by suitable transport links and access



18



- Phase 1
- Initial driver training & motorsport track(s) and facilities

- Phase 2

- Phase 3 +


3.
WHO'S BEHIND THE CONCEPT
Who is involved in the concept?


WHO'S INVOLVED
Consortium of like-minded individuals
Wider collective of local motorsport enthusiasts – clubs, associations and individuals
Well resourced individuals interested in investing
Other individuals & business interested in pooling resources, providing in-kind services & labour
21

PROPOSED OPERATING STRUCTURE

- Park trust made up of key stakeholders to oversee the initial design, planning and fundraising
- Trust to lead consenting and construction
- Trust to invest funds raised to deliver core facilities, services and infrastructure
- Trust to sub-lease the facility to a separate entity

PROPOSED OPERATING STRUCTURE CONTINUED...

- Limited liability company to be established - owned by private investors and various motorsport clubs
- Company to be used as the vehicle to operate and coordinate activities of the Park

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FUNDING THE CONCEPT

What	Who
Feasibility & planning	Consortium with support from Council?
Land acquisition (purchase/lease)	Consortium – likely via Trust structure
Construction of facilities (tracks etc)	Consortium – likely via Trust structure In-kind construction labour / earth moving from private contributors
Construction of wider facilities (buildings and add-on facilities)	Consortium – likely via Trust structure Private investors Partnering with Council
Operations	Consortium – via a trading entity

24


KEY COMMERCIAL REVENUE SOURCES ENVISAGED
Events
Entertainment
Shows / Displays
Wider Commercial
Development & Ground
Leases
Garage &
hangar rental
Storage
Motorsport
activity
-Participants
-Spectators
Motor
Industry Skills
Development
Accomodation
Camp Ground
Police Driver Training
Corporate & Government
Training
Advanced Motorsport
Driver Training
Research &
Development
Technology &
Innovation
Commercial
Recreational
Activities
Aviation Activity
25

COMMUNITY BENEFITS

Safety & Better Driver Behaviour

Drivers and motorsport & car enthusiasts have a controlled and safe place to learn & pursue their chosen interests / hobby/ recreation – increased road safety by keeping novice & anti-social behaviour off local streets

.

Economic & Social

- Direct economic benefits to hospitality & visitor businesses, and other supply chains
- Social cohesion among like-minded individuals + improved local amenity & recreational offering

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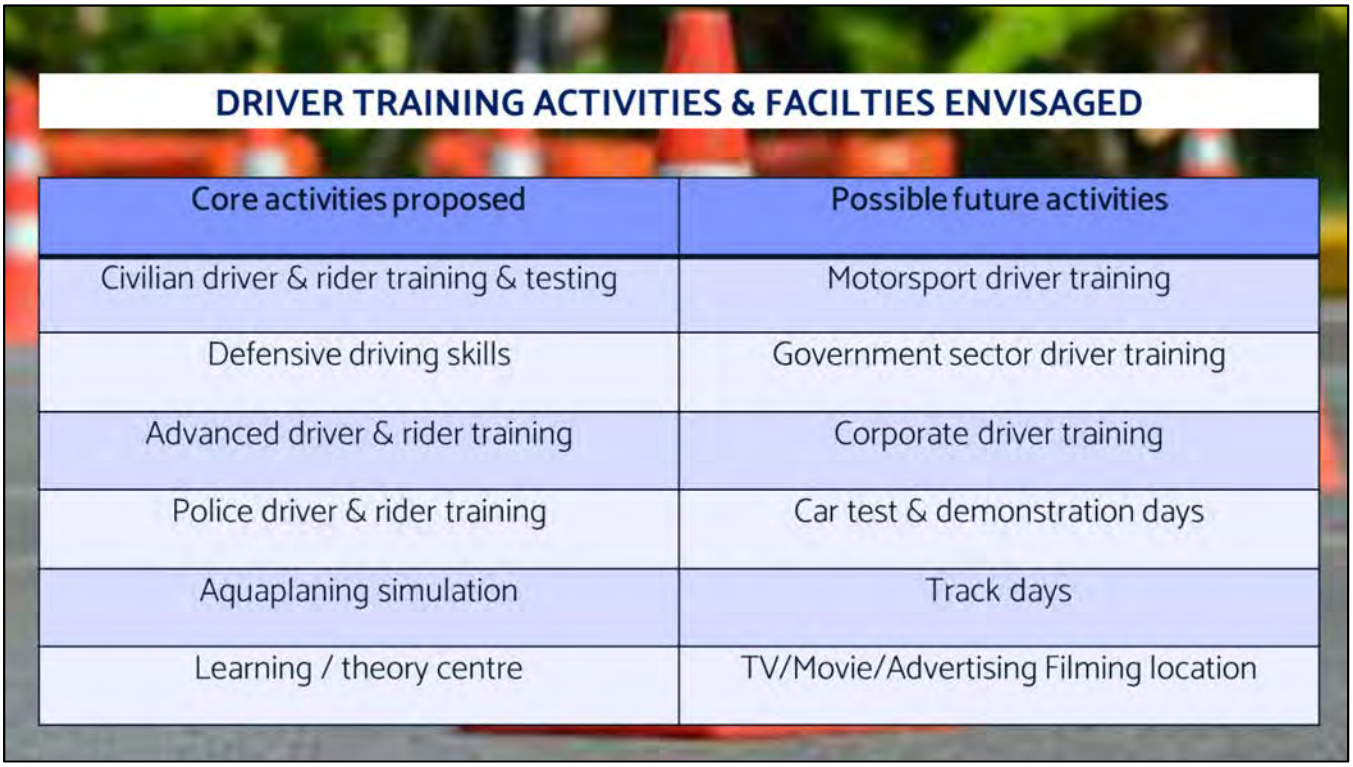
SPIN-OFF BENEFITS

- Higher level of driver skills within our community
- Young people are supported to obtain and retain drivers licences as an important component of gaining & keeping employment and engagement in education
- Dirt bikes, buggies and similar vehicles are potentially removed off the beach and dunes – delivering greater environment protection
- Reduced incidence of damage to roads and anti-social behaviour (from burnouts, drag racing, boy-racer cruising etc)

27



DRIVER TRAINING ACTIVITIES & FACILTIES ENVISAGED

Core activities proposed	Possible future activities
Civilian driver & rider training & testing	Motorsport driver training
Defensive driving skills	Government sector driver training
Advanced driver & rider training	Corporate driver training
Police driver & rider training	Car test & demonstration days
Aquaplaning simulation	Track days
Learning / theory centre	TV/Movie/Advertising Filming location

MOTORSPORT ACTIVITIES & FACILTIES ENVISAGED

Initial Phases (Sealed Track)	Secondary Phases (Unsealed Track/ Off-Road Configurations)
Multi-purpose tar-sealed track	Rally cross
Motorsport training (car & bike)	Auto cross
Drifting & drift carts	4WD events
Burnout pad	Quad, dirt and trail bikes
Bucket racing & events	Off-road buggies and vehicles
Range of car/bike club events / time trials/ track days	
Go carts	1/8 mile for drag cars/street cars/hot-rods and junior drag racers (to double as future airstrip)
Car & bike storage / rental units	Research, development & innovation


98
GUNK
48
45
66
49
173

RECREATIONAL ACTIVITIES & FACILTIES ENVISAGED

Initial Phases	Possible Future Phases
Mountain biking	Motorised water sports -Jet boat racing/time trials -Jetski activities
Cycling	Water-sport hire
Walking / running tracks/trails	Go carting
Play areas	Team building and skills development activities
Pump/bmx track	Mini golf / pitch & putt /driving range
Dog park / dog sled trails	Outdoor maze / outdoor skills courses / treetops experience
Playgrounds & children's activities	Zorbing / blow carts / paintball other tourist-like attractions
Animal Exercise Area	Dog obedience / dog sled tracks

COMMERCIAL & COMPLIMENTARY ACTIVITIES ENVISAGED	
Facilities	Event & Activities
Camping ground/Caravan park/RV park	Drive-in cinema / outdoor cinema Showcase movies as well as sporting events
Rental garages, workshops, storage and club houses	Research, development & innovation (university/private sector pilots/development)
Commercial activities – cafes, eateries and hospitality businesses	Motorsport events, shows and displays (hard parks)
Indoor and outdoor event spaces	Public displays of major motorsport events
Airstrip (using 1/8 mile drag track), aviation operations & rental hangars	Music / entertainment / performing arts
Outdoor (potentially covered) mixed use amphitheatre /music bowl for motorsport spectating + entertainment + music + performing arts	Walking, running and cycling events
Gym / pool / other sporting facilities	Drones and model aircraft

CREATING A POINT OF DIFFERENCE

1/8 Mile
Mixed Drag & Air Strip

Research &
Development Hub

Amphitheatre
& Music Bowl

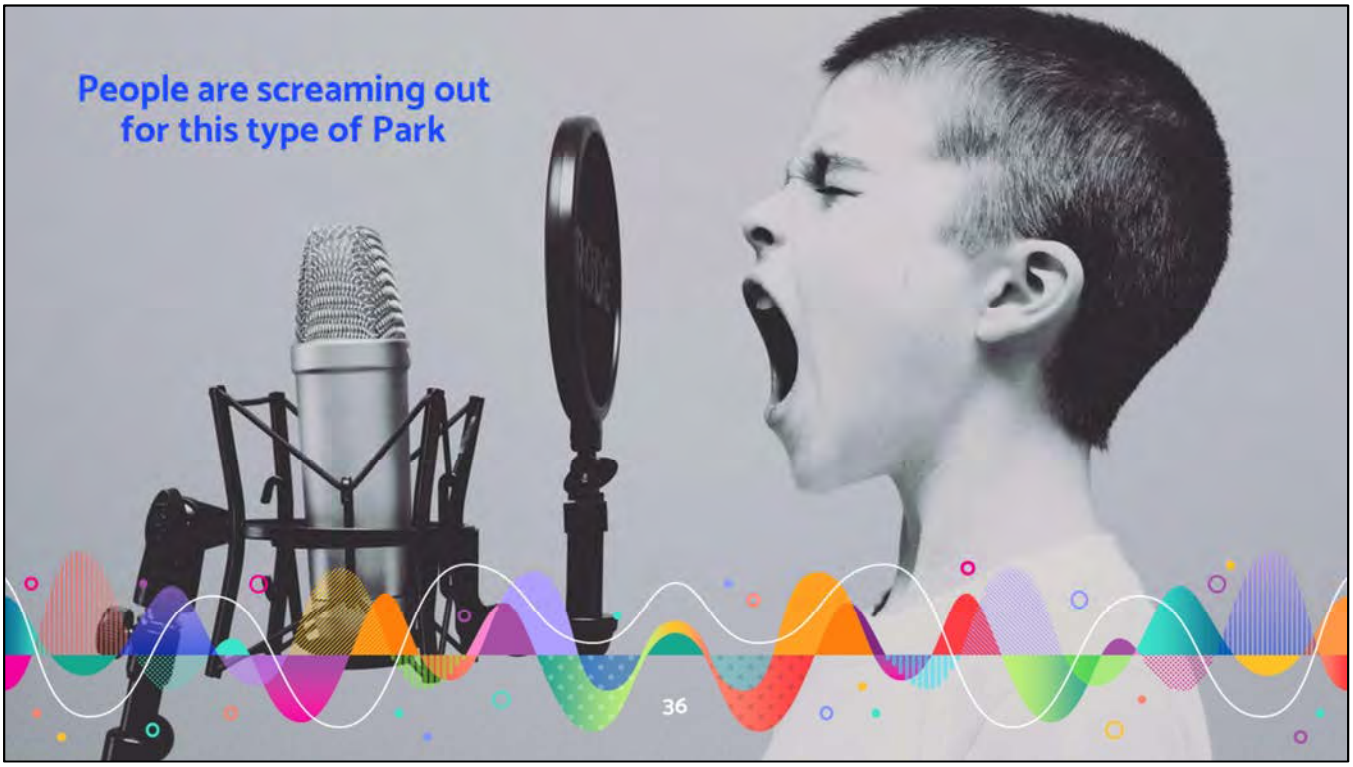
Motorised
Watersport Zone

ENTERTAINMENT & EVENTS

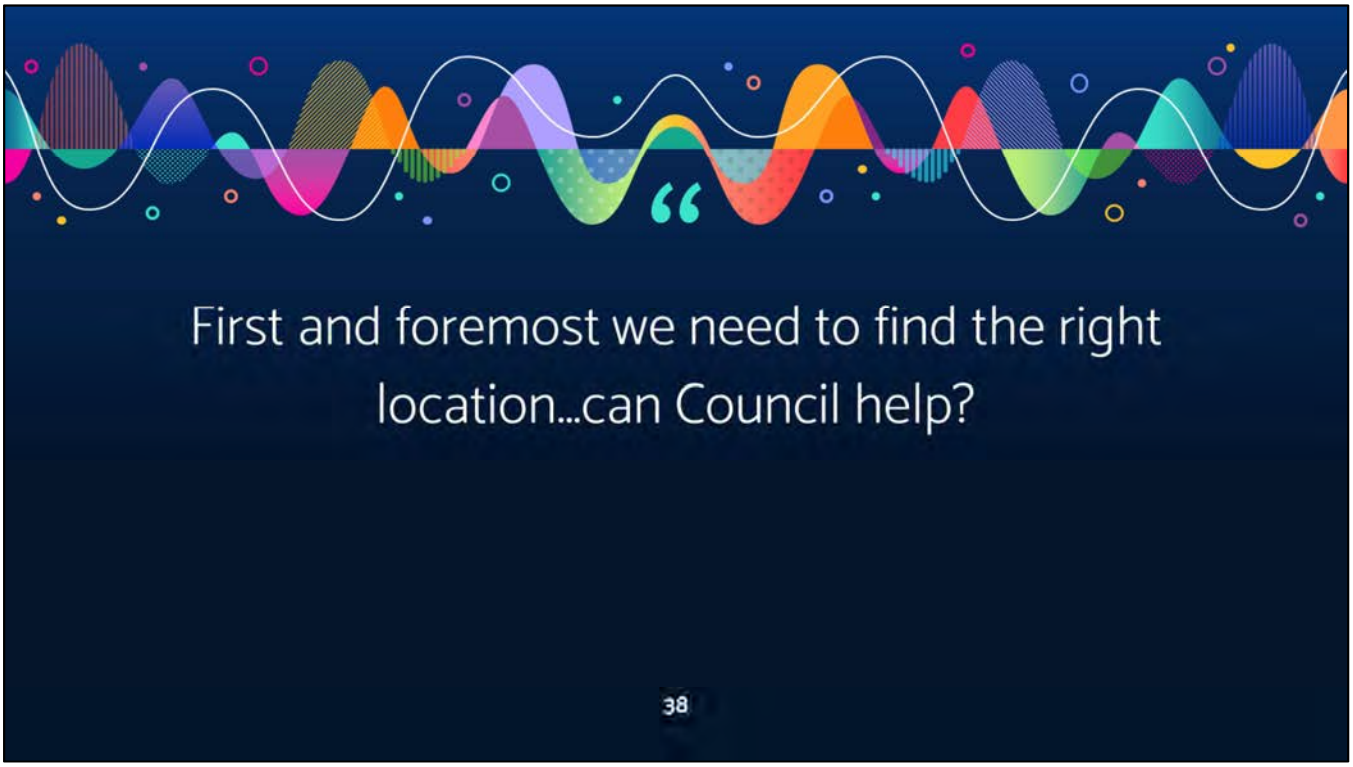
AMPITHEATRE SPACE – FOR MOTORSPORT, MUSIC, AND MORE...

MULTI-USE INDOOR & OUTDOOR EVENT SPACE

35

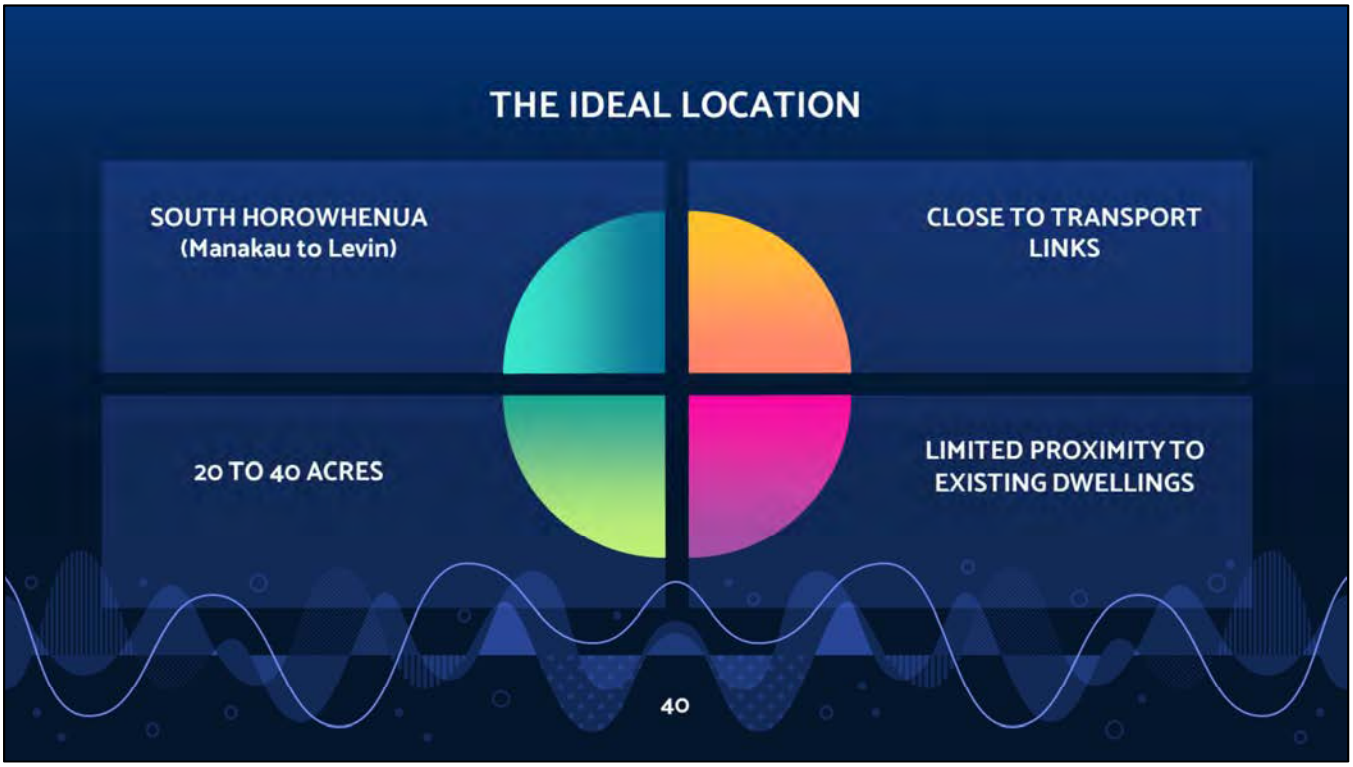

People are screaming out
for this type of Park
36


THE PITCH TO HOROWHENUA DISTRICT COUNCIL
What we are seeking and the value we offer



Opportunity for our District to become known as the host of the best little mutli-use motorsport and recreation venue in New Zealand. Making our district the place to go to, not drive through


3.
THE RIGHT LOCATION
What is the preferred site for the Park?


THE IDEAL LOCATION
SOUTH HOROWHENUA
(Manakau to Levin)
CLOSE TO TRANSPORT
LINKS
20 TO 40 ACRES
LIMITED PROXIMITY TO
EXISTING DWELLINGS
40


Levin Landfil (Once Closed)
Ideal location & compatible with concept
North of Foxton Golf Club
Site of previously investigated concept
Other Unknown Sites
Does Council know of a more suitable site?
41

stuff ☰ taranaki daily news

Driver training facility to reduce road crashes proposed for former New Plymouth dump site

Garnett Henderson, of the Taranaki Car Club, goes over his proposal for a driver training facility at Colson Rd.

A proposal has been launched to transform part of a soon-to-be closed Taranaki landfill into a facility to educate the region's drivers.

On Monday Garnett Henderson, of the Taranaki Car Club, and Waitara Community Board chairman Andrew Larsen, presented a plan to the New Plymouth District Council to develop a driver training facility at the Colson Rd landfill site.

"It's a fantastic position for driver training, it's very close to the high schools - within five minutes to three of the four majors," Henderson said.

2

Been done before...

The Landfill site is ideally positioned away from built-up areas.

We can give it a second-life as a valued community asset & recreation space.

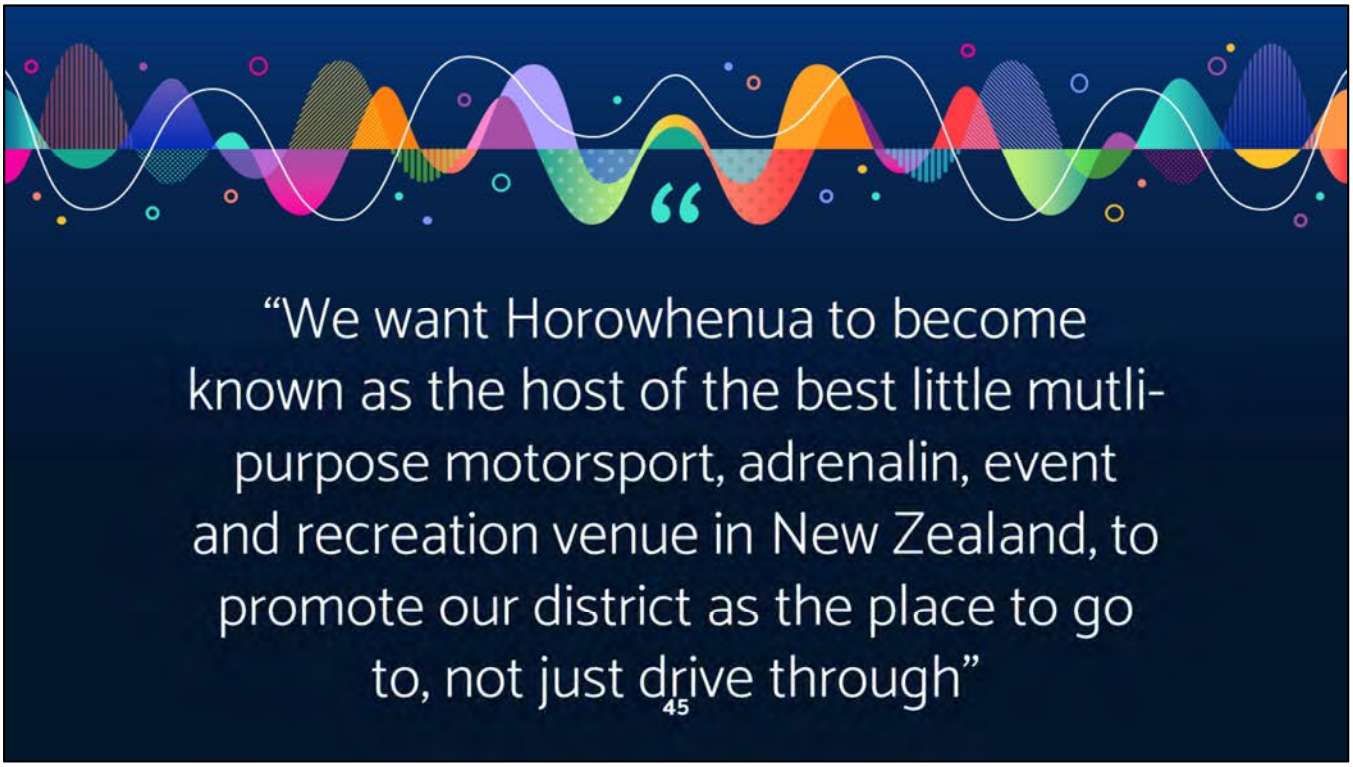
SUPPORT SOUGHT

Location	Feasibility	Support
Access to suitable land/location (either via lease/sale) Assistance to find a suitable location (via mapping, planning and feasibility advice/assistance)	Commissioning of a feasibility study to guide the consortium on planning/ resource consent requirements Potential support to access 3rd party and government funding/grants	Early planning guidance around site specific & general planning issues – traffic, permitted activities, noise, stormwater, light spill, operational hours Zoning / district plan change to accommodate activities Advocacy and support

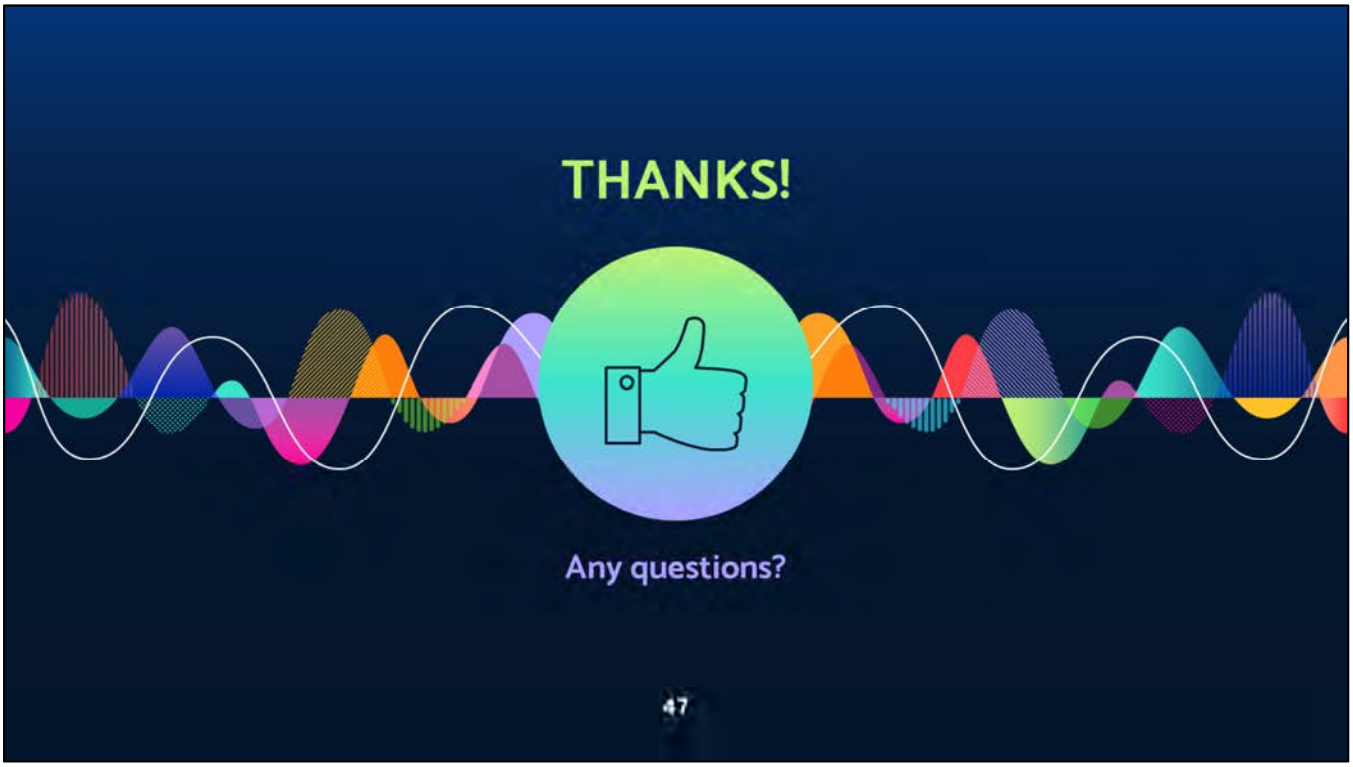
No funding is being sought for initial core facility construction or operation – support requested is limited to staff time, planning support & advocacy

WHY HDC SHOULD SUPPORT THE CONCEPT

- Motorsport & identified recreational activities are valid and well-supported local activities that need to be serviced
- We can assist HDC meet local recreational need and want
- We can fill gaps in accommodation & destination & recreational offering
- Contribution to community wellbeings
- Jobs & skills development
- Positive focus & engagement of young people
- Opportunity for our District to become known as the host of the best little mutli-use motorsport and recreation venue in New Zealand. Making our district the place to go to, not drive through
- Combined, multi-use, fit for purpose clubrooms - will allow consolidation of car/bike clubs, hobby and recreation groups in to a concentrated space to drive economies of scale and increase commercial viability and financial sustainability of groups/clubs


“We want Horowhenua to become known as the host of the best little mutli-purpose motorsport, adrenalin, event and recreation venue in New Zealand, to promote our district as the place to go to, not just drive through”
45


The Park
Horowhenua's newest and boldest attraction
46


THANKS!
Any questions?
47

Long Term Plan 2021-2041 - Submission Form

Submission date:	**19 April 2021, 4:34PM**
Receipt number:	**157**
Related form version:	**3**

Contact Details

Title:	**Mr**
Full Name:	**Colleen Burgess**
Name of Organisation:	
Postal Address:	**214 Wallace Road Levin**
Postcode:	**5571**
Telephone:	**021 1488 362**
Mobile:	
Email:	**tandcburgess@slingshot.co.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?	**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:	

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?	**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?	**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:

Submission No. 445

Growing our future Together

Horowhenua DISTRICT COUNCIL

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:

Full Name: John Olifant

Name of Organisation:

Postal Address: 797 Gladstone Road

Post Code:

Telephone: 367-9743

Mobile:

Email: johnolifant@xtra.co.nz

RECEIVED 19 APR 2021 HOROWHENUA DISTRICT COUNCIL

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

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
- ✓ No

Activities

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.

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)

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.

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- 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%.

But you will need to ensure Capital Valuations are up to date

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

- ☑ **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 ○ 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?

○ 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

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Horowhenua District Council
Private Bag 4002
Levin 5540

Growing our future Together

Horowhenua DISTRICT COUNCIL

Long Term Plan 2021 – 2041

Submission Form

Submissions must be provided to Council by no later than **4pm, Monday 19 April 2021**

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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 & Mrs

Full Name: Philip and Shona Davies

Name of Organisation:

[redacted]

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

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
- ✓ No

Activities

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.

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)

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

They should pay (the dereloper) Fees themselves and it should not fall back on the rate payer.

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

- ○ **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 ✓ 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?

○ 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

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Private Bag 4002
Levin 5540

Submission No. 447

Growing our future Together

Horowhenua District Council

Long Term Plan 2021 – 2041

Submission Form

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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:

Full Name: Vivienne Bold

Name of Organisation: N/A

Postal Address: 155 Montere Rd, RD1

Levin **Post Code:** 5571

Telephone: 027431 5181

Mobile:

Email: Vivienneg@orcon.net.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	✓	✓			
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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

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- ◯ **Option 2:** Basic All-year Pool
- ◯ **Option 3:** Seasonal Outdoor Leisure Pool
- ⊘ **Option 4:** Seasonal Outdoor Basic Pool
- ◯ **Option 5:** Permanently Close Facility

If Permanently closed Council fund a Bus to & fro Levin for swimming.

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.

Ratepayers are not a business. Council is not thinking of our young people ~~for~~ just themselves. And I don't want to go into Debt for them (Council)

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 ◯ No

Activities

What activities do you think development contributions should be collected for as a source of funding growth infrastructure?

- ✓ Roading
- ✓ Water supply
- ✓ Wastewater treatment
- ✓ Stormwater - Run-off
- ✓ Community infrastructure such as parks, sportsfields, activity centres, playgrounds and more.

Council needs to develop all of these
Maybe not so much Roading.
Next three - Yes including Waste Management.

Enclosed is a page from Solid Waste Management - showing the ~~growth~~ amount of Leakage from Dump site alone.

Catchments

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- ◯ Harmonisation: all required contributions are the same across the district.
- ✓ Other (please specify)

Growth areas causing the Problems
of course - they pay
Their Run-off.

Time of payment

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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.

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- A building consent, at the time the first building inspection is carried out.

Do you agree with this approach?

☑ Yes ○ No

Reductions

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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

The Environment and the community need HELP

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.

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- ◯ **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.

Why not capital gains/value rate for all

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 ◯ No

Your preparation was to put it out there in the public. Finances prove you want/need $300 million to do your schemes. Saying this is just for Tara Ika/Gladstone Green, which Council has been putting money away for ~~sh~~ since 2018!! 62.2% of Ratepayers are on limited Budgets. Yet for a long time now; your engineering/planning has been hopeless wasting more & more of Ratepayer money doing the fix ups around Horowhenua. Not replacements.

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?

◯ Yes ◯ No

There is no balance/harmony in ~~these~~ our communities

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

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Solid Waste Management Report
March 2021 - Landfill at Hokio.

There were **twenty-four exceedances** of the resource consent conditions in samples from the Hokio Stream during the November 2020, December 2020, and January 2021 sampling rounds; these are summarised as:

- For all sampling rounds (November 2020, December 2020, and January 2021), most of the results for scBOD5 exceeded the ANZECC AE (95%) trigger value for HS1A (new), HS1, HS2, and HS3. The only exception was in January 2021 for HS1A (new) which was below the trigger value.
- For December 2020, nitrate-n exceeded the ANZECC AE (95%) trigger value at HS1A (new), HS1, HS2, and HS3.
- For December 2020 and January 2021, dissolved copper exceeded the ANZECC AE (95%) trigger value at HS1A (new), HS1, HS2, and HS3.
- For November 2020, dissolved zinc exceeded the ANZECC AE (95%) trigger value at HS3.

The difference between the sites is marginal and shows little to no change in concentrations between upstream and downstream sites. For some parameters there may be an apparent decreasing trend downstream but this is not consistent over all parameters and may even increase slightly for some parameters. Therefore, this suggests that any influence found is likely the result of upstream sources and not the old (closed) landfill.

3.0 GAS DETECTION IN MONITORING WELLS

Condition 4 of Discharge Permit 6011 requires that: "*...groundwater monitoring wells shall be sampled for landfill gas when groundwater samples are taken from the wells. As a minimum, sampling shall be undertaken for methane, carbon dioxide and oxygen...*"

In the past, gas monitoring results were reported in the Annual Report. A recommendation of the 2019-2020 Annual Report is that this should be done every quarter so that if any results are unusually high, that appropriate action can be undertaken, including putting safeguards in place at bores.

Appendix E summarises the results of gas testing undertaken on 05 January 2021.

- Methane was detected in various amounts in 20 of the 23 groundwater monitoring bores.
- The highest recorded level was 0.94% in Bore D4, which is 9,400ppm and is 5 times below the lower explosive limit. Another nine bores also recorded levels above 5,000ppm.
- These results are significantly higher than recorded in the past and it is important to determine the reasons for this. It may be that there is an accumulation of methane that disperses rapidly once the bore cover is removed. If the reading is taken immediately in removing the cover then it is also suggested that a further reading be taken at the end of the groundwater sampling procedure to determine if it has changed. It is also possible that a different instrument is being used compared to the past. This matter should be discussed with Downer.
- The elevated methane results require that health and safety measures are adopted around the groundwater monitoring bores, as for the landfill gas extraction wells. No smoking should be permitted by personnel who undertake the groundwater sampling when in the vicinity of the groundwater wells, besides adhering to the landfill rules about no smoking at the site.

4.0 DISCUSSION

4.1 SAMPLING QUALITY CONTROL AND ASSURANCE

The landfill extends over a significant area and there are many sampling locations. However, it is important that the length of the sampling period is kept as brief as possible because a sampling period that is too long may make comparisons of results between rounds and individual monitoring locations less valid. This current monitoring round was carried out over a 19-day period between 24 December 2020 and 11 January 2021. This is a longer timespan than the previous monitoring round which was 15 days. This monitoring period is slightly longer than the recommended period (i.e. obtaining all samples within 7 days) and therefore the results must be interpreted with some caution.

Determinant	Units	ANZECC AE (95%)	Consent Trigger Values (Table C1)	HS1A (new)			HS1			HS2			HS3		
				Nov	Dec	Jan	Nov	Dec	Jan	Nov	Dec	Jan	Nov	Dec	Jan
Dissolved Boron	mg/L	0.370	-	0.05	0.05	0.06	0.04	0.05	0.06	0.05	0.05	0.06	0.05	0.05	0.06
Dissolved Cadmium	mg/L	0.0002	Med. 0.0002	*0.0001*	*0.0001*	*0.0001*	*0.0001*	*0.0001*	*0.0001*	*0.0001*	*0.0001*	*0.0001*	*0.0001*	*0.0001*	*0.0001*
Dissolved Chromium (VI)	mg/L	0.001	-	*0.0005*	*0.0005*	*0.0005*	*0.0005*	*0.0005*	*0.0005*	*0.0005*	*0.0005*	*0.0005*	*0.0005*	*0.0005*	*0.0005*
Dissolved Copper	mg/L	0.0014	Med. 0.0014	0.0013	**0.0019**	**0.0017**	0.0012	**0.0019**	**0.0014**	0.001	**0.0018**	**0.0016**	0.0011	**0.0018**	**0.0014**
Dissolved Iron	mg/L	-	-	0.028	0.057	0.058	0.027	0.057	0.035	0.036	0.113	0.056	0.031	0.078	0.06
Dissolved Lead	mg/L	0.0034	Med. 0.0034	*0.00025*	*0.00025*	*0.00025*	*0.00025*	*0.00025*	*0.00025*	*0.00025*	*0.00025*	*0.00025*	*0.00025*	*0.00025*	*0.00025*
Dissolved Manganese	mg/L	1.9	-	0.0016	0.0062	0.0043	0.0020	0.0075	0.0040	0.0026	0.0321	0.0036	0.0050	0.0086	0.0032
Dissolved Mercury	mg/L	0.0006	Med. 0.0006	*0.00025*	*0.00025*	*0.00025*	*0.00025*	*0.00025*	*0.00025*	*0.00025*	*0.00025*	*0.00025*	*0.00025*	*0.00025*	*0.00025*
Dissolved Nickel	mg/L	0.011	Med. 0.011	*0.00025*	*0.00025*	*0.00025*	*0.00025*	*0.00025*	*0.00025*	*0.00025*	*0.00025*	*0.00025*	*0.00025*	*0.00025*	*0.00025*
Dissolved Zinc	mg/L	0.008	Med. 0.008	0.001	0.003	0.002	*0.001*	*0.001*	*0.001*	*0.001*	0.002	0.002	**0.008**	*0.001*	*0.001*

Notes:

NR = Not reported

Bold – denotes an exceedance of the ANZECC AE 95% protection level trigger values

All '<' values have been reported as half the detection limit for statistical purposes and are expressed in italics

From: Long Term Plan 2021-41 Project Team
Sent: Monday, 19 April 2021 9:14 PM
To: Records Processing
Subject: FW: LTP

From: Philgwellington <grimmettphil@gmail.com>
Sent: Monday, 19 April 2021 4:54 PM
To: Long Term Plan 2021-41 Project Team <ltp@horowhenua.govt.nz>
Subject: LTP

Hi

Thanks for the opportunity to make a formal submission to the LTP.

Firstly, as a resident of Manakau I am most interested in the safety and increasing danger posed by the traffic on SH 1. The intersection with Waikawa Beach road has been worsened by previous 'safety upgrades' to this stretch of road, including the dairy. A power poll on SH1 obscures vehicles turning south from Waikawa Beach Road into SH1. THere is no filter in lane, ' plastic safety poles' have reduced space for vehicles making it more dangerous.
The speed limit should be reduced to 60kph through the Manakau stretch of SH1. My grandchildren's lives are in peril every time they go to kindy or school and significant safety improvements need to be implemented now, not in 10-20 years time! I know you will say, it's not my issue. lol This stretch of road is deadly and needs sorting. NZTA have, so far done little, or made it worse.

I also observe a very low 'token' allocation to the importance of low energy forms of transport walking, cycling and public transport. Previous governments have started to roll out more cycleways, but this is too slow and lacks real intent. Nelson has a much greater commitment to cycling and council needs to get on to it now - not in 10 -20 years. More short term action is far better for the public than long term envisioning, maybe not for planners.
The LTP process is largely irrelevant for ordinary citizens and a better way must be found if council is serious in getting public involvement and kudos. Mary and Joe don't care about LTP, and the impact of the costs on todays citizens.
On a broader scale I question the premise of the LTP which is one which accepts the inevitability of continuous growth. There is acknowledgement of much uncertainty in the GOFT and I would agree that any LTP should have flexibility built in, but, given the reality of climate change, economic disruption and general instability, it is intemperate to accept and push the " growth, growth, growth " mantra, when it is far more sensible to look at the broader context and plan for less consumption and controlled growth, if any. Many parts of the world are aware of global limitations and it is foolish not to consider the current issues that confront our global society.
At government level, local, national and regional it is clear that previous planning efforts have failed to produce better outcomes.e.g. river water quality, algal blooms, railway infrastructure, leaky building, BSE cow disease, Hawkes Bay water poisoning of the public etc
There needs to be greater focus on fixing our current problems before planning for future ones that we don't have, yet.
The costings in the LTP are notional, at best, and not grounds for current planning for a future that may never occur.
Greater consideration should be on sustainability and resilience.
Clearly the focus of this plan is to market to the public the future is growth, growth, growth.. which is, frankly, irresponsible and counterproductive for future generations.

I realise you are selling a brighter future, but really, this LTP is disappointing for me as it demonstrates a total lack of awareness of what our current predicament is.
The future will not be determined by a CFO at council.
It will be determined by our community being supported by council in its determination to conceive a new way of living for all, not by financial controllers and accountants.
Leadership is needed.
Leadership is lost when the leader asks his troops, in battle, what to do.
This consultative document, however well intended, is shallow, and fails in the attempt to be part of any sensible, realistic 10-20 years.
The communication function and community involvement is largely broken and perfunctory.

I could go on, but I hope this makes some difference ..

Best wishes

Phil

Submission No. 449

DATE 4/19/2021

ADDRESS. 52 waterlily cct carseldine, QLD 4034

RECEIVED ON 19/04/2021

By email: ltp@horowhenua.govt.nz

Submission: Consultation document on Horowhenua District Council Long-term Plan 2021-2041

Kia ora HDC/LTP,

I acknowledge our Taitoko mana whenua Nga Muaūpoko Tūpuna, Whanau, Hapu and Iwi. Whakahono ki a tu kaha Muaūpoko.

As a resident and ratepayer I take this opportunity to provide feedback to the Horowhenua District Council Long-term Plan 2021-2041 consultation document.

I have read your latest plans for 2021-2041 and summarise my submission to articulate the following concerns starting with;

1. This council' plans to 'grow' our population is of particular interest to me in terms of what will be provided regarding additional growth and who will pay for that growth?

2. I have grave concerns about this council's assumptions that key public infrastructure will be delivered and funded externally and **will not be funded by Council debt.** I agree with the independent auditor concerning the districts growth area 'Tara-Ika' and he states that HDC's assumption is unreasonable and provides evidence of why, i.e. to date, external funding has not been secured. Therefore, I too am led to understand that if council is unsuccessful in securing external funding, what would the impact on the underlying information be? An increase in debt of $27 million and delaying capital upgrades of $19 million. (LTP 2021-2041 Auditors report pg. 54)

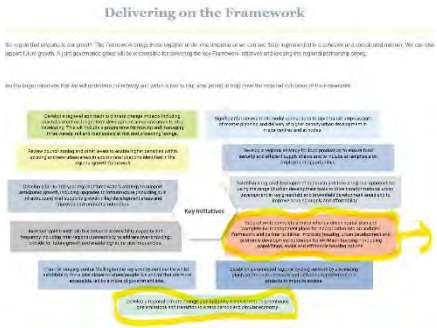
3. The LTP outlines the government's intention on page 22 of their three waters reform decisions during 2021. **The effect that the reforms may have on three waters services provided is currently uncertain because no decision has been made yet.** As the auditor writes the consultation document was prepared as if these services will continue to be provided by council, but future decisions may result in significant changes, which would affect the information on which the consultation document has been based. (LTP 2021-2041 Auditors report pg. 55). The short sightedness of this LTP did not include a commitment towards developing an action ready plan in support of the 3-waters review.

4. On page 23 of LTP the council states it has budgeted to deliver a capital programme of approximately $46 million per year over a planned 20-year period. I agree with the auditor general' statement that 'while council has put in place a number of initiatives to deliver on its capital programme there are risk factors, including resource availability, which could result in increased pressure on existing assets and delayed

development of future growth areas and thus could result in uncertainty of delivering their capital programme pipeline of works.

5. Council outlines on pages 24 and 25 their decision on when to replace ageing assets is informed by continual assessment of asset condition and monitoring of reactive maintenance costs. The auditor general further states that 'the renewal of assets budget is based on the age of the assets. And goes on to say, 'there is therefore a risk that unbudgeted expenditure may be required to pay for renewals that are needed earlier than planned and can result in an increased risk of disruption in services. I agree with this statement and use this submission to further highlight that risk to the current residents of Horowhenua. (LTP 2021-2041 Auditors Report pg. 55)

6. A missed opportunity goes begging. The Horowhenua District Council's continuation of the status quo, which narrows down the ability to influence other areas of value added growth, and certainly has the potential of creating additional inequity in the Horowhenua region. It is obvious that LTP has not considered other housing options with council's immediate Treaty partner.



7. I conclude my submission focusing on the biggest asset or taonga, that has for several decades not been respected, protected or treated with the mana it deserves. Sadly, provision in the LTP is lacking for the lake. It is important to understand the connection Muaūpoko have with their lake based on their whakapapa. It is long over-due for local government to apologise for the mismanagement and negligence of lake Horowhenua. For that reason, there needs to be a concerted environmental effort to prioritise eco-friendly work to move the lake from being one of the seven worst lakes in New Zealand to a tourist attraction.

I appreciate that there will be many submissions made on what HDC proposes for the next twenty years, and as such, I expand my submission on the issues of most importance to me with the future of my whanau in the heart of my submission.

Yours sincerely

SIGN OFF HERE

The structure of my submission covers 12 topics. I will cover each topic speaking to each item.

i. Growth vs infrastructure a national issue for councils
ii. Demands on central government to resolve Wellington housing crisis and Horowhenua' is thrust into a 20-year housing growth that they have not planned. Can HDC put a bid for financial support based on this premise?
iii. Capacity building Māori landowners to develop housing solutions for Māori home ownership is not included.
iv. Lack of Horowhenua sustainable and environmentally healthy 3-water plan.
v. Testing water does not improve water quality and costs ratepayers
vi. Catchment levels and farm levels
vii. Community Outcome reflects aspirations of Horowhenua
viii. LTP Consultation document – Topic 1 – Foxton Pool feedback
ix. LTP Consultation document – Topic 2 – Infrastructure funding - Development contributions.
x. LTP Consultation document – Topic 3 – Changes to the Land transport targeted rate
xi. LTP Consultation document – Topic 4 – Changes to the general rate
xii. General comments for LTP 2021 - 2041

I've itemised the 12 sections listed above. 7 relate to my '**key points**' listed below and the numbers from 8 – 12 responds to the questions in the LTP 2021-2041 consultation document to feedback our preference based on the 4 topics offered by Horowhenua district council.

Section 12 General topics is where I conclude my submission.

Key points
In considering my submission, my key points are as follows:

I. Understanding if the LTP proposes a massive population **growth** with an ageing and under-invested legacy infrastructure what, has been considered in this LTP 2021-2041 to accommodate additional **infrastructure** stresses. My concerns are grounded in the knowledge that many councils nationally are grappling with their current infrastructure issues and with many facing 13.5% increase in rates approximately. For Wellington to address their infrastructure bill it is currently estimated at 2 billion dollars and this is due to the council under investing historically, and this is not too dissimilar to Horowhenua District Council.

II. In my view the consideration of **Central government** priorities to mitigate Wellington cities housing crisis by encouraging a district council in close proximity of Wellington to plan a 20-year growth in Horowhenua. Therefore, what has HDC raised with central government in terms of HDC meeting both land mass and a housing development pipeline that will support the Wellington housing **demand**? Ultimately the LTP is reliant on a $46 million financial support per year over 20 years. LTP lacks a correlation with central government' Wellington housing crisis and the districts planned growth.

III. It is very disappointing to see there is no provision in the LTP for the inclusion of **developing Māori landowner capability** to utilise their land as an option to address sustainable and affordable housing for Māori in Horowhenua?

IV. The greater Horowhenua has a role as a national contributor to New Zealand food-basket. Inevitably this continues to impact on Horowhenua' ability to being a **sustainable and environmentally** healthy district and further impacts on the 3-waters review programme.

V. The LTP lacks intention to r**eview** the continued measuring of **water quality** parameters which has little or no impact on improving water quality, at a cost to the ratepayer.

VI. Has provision been given to apply exemptions for areas (at a **catchment level** and a farm level) where there are no resource pressures, or where resource pressures have not been effectively addressed.

VII. HDC Question	My comments
1. Do you think the proposed Community Outcomes reflect the aspirations of the Horowhenua community? (HDC LTP 2021-2041Pg. 11)	It is aspirational, but this LTP is missing measures of success statements such as "we know when we have achieved success when…" and describe what success looks like. How does the community know that the outcomes are being achieved?
VIII. Topic One Foxton Pool	Oppose or **support**
Option 1. Indoor and Outdoor Leisure Pool	Oppose
Option 2 **Basic All-year Pool**	**Support this option**
Option 3. Seasonal Outdoor Leisure Pool	Oppose
Option 4. Seasonal Outdoor Basic Pool	Oppose
Option 5. Permanently Close Facility	Oppose
IX. Topic Two Infrastructure funding - Development contributions.	**We are proposing the following options. Do you agree?**

Option 1. **Using development contributions as the key source of funding for growth infrastructure, in combination with other sources.** Using development contributions as a significant way of funding growth alongside other options such as grants and SPVs. This option ensures growth pays for growth regardless of the scale of development. Development contributions have the potential to provide income of over $3 million per year in the first 10 years.	My comments: My preference is for growth to pay for growth. Therefore, I **support this option.** My reservations of submitting my full support is primarily due to the future risks and uncertainties that HDC have little or no control over as highlighted on page 43 of LTP 2021-2041.
Option 2 Not using development contributions for funding growth infrastructure, and increasing rates instead.	Oppose this option. This does not reflect growth paying for growth. Make sure that new properties pay their share introduce development contributions so that the cost of infrastructure for growth is paid for by those new properties. I urge partnerships with Central Government to fund some of the significant development and avoid the need to review capital spending.
X. Topic 3. Changes to the Land Transport Targeted Rate	**We are proposing the following options. Do you agree?**
Option 1. **Remove Differential** The Land Transport Targeted Rate will be paid for by all ratepayers based on capital value. Businesses will pay 30% of the rates, because they hold 30% of the capital values throughout the district.	**I support this option.** **Proposing option 1.** For business this is fairest option out of the two. As a result of this option I'd like to see the future of business increasing as the population grows.
Option 2 - Status quo.	Oppose this option.
XI. Topic 4. Changes to the General Rate	
Option 1. Creating a Farming differential For this option there would be a differential that only applies to Farming properties. The Farming differential has been proposed because the higher farming land value would mean an unfair level of rates being attributed to rural agricultural rating units. The way the differential would be calculated would be on a dollar value, for every $1 the District Wide ratepayers pay, the Farming properties would pay 50c.	**Support this option** Nothing more to add here.
Option 2. Status Quo Rural properties (including all businesses in the rural zone) pay 25% of the General Rate rates income. District Wide (excluding rural) pay 75% of the General Rate rates income.	Oppose this option

XII. General comments LTP 2021-2041

The Need to replace ageing infrastructure

The LTP outlines a considerable amount of development occurred in 1960's, which highlights how old and ageing the districts infrastructure is, especially in terms of the three waters network. Across all of the infrastructure activities, particularly for the three waters network, historically there has been an underfunding of renewals. A key challenge for the district is making smart decisions around when to replace these ageing assets.

Continual assessment of asset condition and monitoring of reactive maintenance costs are undertaken to inform decision making. This ensures that we replace our older assets at the best time. We plan to replace our assets just-in-time to ensure we get the greatest use possible out of them. When replacing assets, we need to consider whether any upgrades are needed to meet increasing demands. This approach ensures our infrastructure is future proofed for increases to demand where appropriate.

Has the renewal of assets been budgeted for based on the age of the assets? Prior to undertaking condition assessments should asset of renewals be done first to plan a future programme around it? My question is will the condition of assets differ from what is expected from the age of the asset, or has the option of renewals being required earlier or later than planned into the budget?

What we told you HDC what we want to see in our community

The community engagement feedback highlighted that one of the most important actions residents want to see is for council to focus on delivering high quality infrastructure. The community also said a reliable, high-quality drinking water supply is also important too.

What I'd like to see reflected in the LTP 2021-2041 is;

- fairness to everyone when considering funding infrastructure for population growth
- investigate different ways to invest in funding the infrastructure.
- plans to restore and maintain healthy rivers, lake and Moana for future generations.
- need a modern, versatile transport network that makes it easy to get around whether you prefer driving, cycling, walking, or a mobility device.
- council money to be spent wisely on the things that matter like 3-waters solutions and improving the greatest natural asset in the district Lake Horowhenua.

Horowhenua Lake

My late wife Pirihira Henare' whakapapa's to Te Muaupoko through her Father. Today that same whakapapa gives our children beneficial ownership of Lake Horowhenua and they proudly uphold the duty of care to protect their preserved fishing and other rights of the Maori owners over the Lake Horowhenua and the Hokio Stream that the Crowns 1956 Rold Act section 18 holds special provisions for Lake Horowhenua.

Eugene Henare is a claimant for the Lake Horowhenua Waitangi claim and represents the Owners and ultimately Muaupoko te iwi. Muaupoko evidence has been heard by the Waitangi Tribunal 2200 Porirua Kia Manawatu that is currently sitting. The 2017 Waitangi Tribunal preliminary Muaupoko Report details the Tribunal's findings and recommendations

on the claims it has inquired into under the Treaty of Waitangi and gives evidence of historical and current breaches of Article 2 for Lake Horowhenua owners.

I submit as 'Appendices A' a copy of the Waitangi Tribunal 2017 Muaupoko report and Appendices B ROLD Act 1956 that supports the report.

I strongly oppose to the 20-year LTP that the HDC are seeking in terms of all storm-water, catchment and undertakings that HDC operate that drain straight into Lake Horowhenua. I note the concerns that the independent auditor's report cited that supports my objective.

I also **'oppose'** the following and support the independent auditor's findings:

- I oppose all resource consents mentioned in the LTP in reference to Levin Global Storm-water System.
- I support the auditor's report expressing concerns that HDC has not made provisions for a budget that gives support for the Government's new Ministry of Health 3 Waters Policy which would reflect HDC commitment to the well-being of their residents. According to WHO safe and readily available water is important for public health. Water in most parts of the world is considered as life, whether it is used for drinking, domestic use, food production or recreational purposes. Improved water supply and sanitation and better management of water resources, can boost countries' economic growth and can contribute greatly to reducing poverty.
  By 2025 more than half the world's population will be living in water-stressed areas. (WHO website).

APPENDICES A Waitangi Tribunal 2017 Muaupoko report.

APPENDICES B ROLD ACT 1956 (supports Appendices A)

Submission No. 450

On the 14th of March 2021 the Youth Empowerment Project decided to put out a Youth Survey as a part of the Long Term Plan under the Horowhenua District council.

A summary of the responses in our survey can be found here:

[redacted]

What should the council do more of?

Out of the 35 responses to this question some common or important themes mentioned were:

- Focusing on mental health
- Creating safe spaces for youth
- Work with the youth more - involving them in important decisions that concern them
- Keeping the Horowhenua clean - cleaning the environment

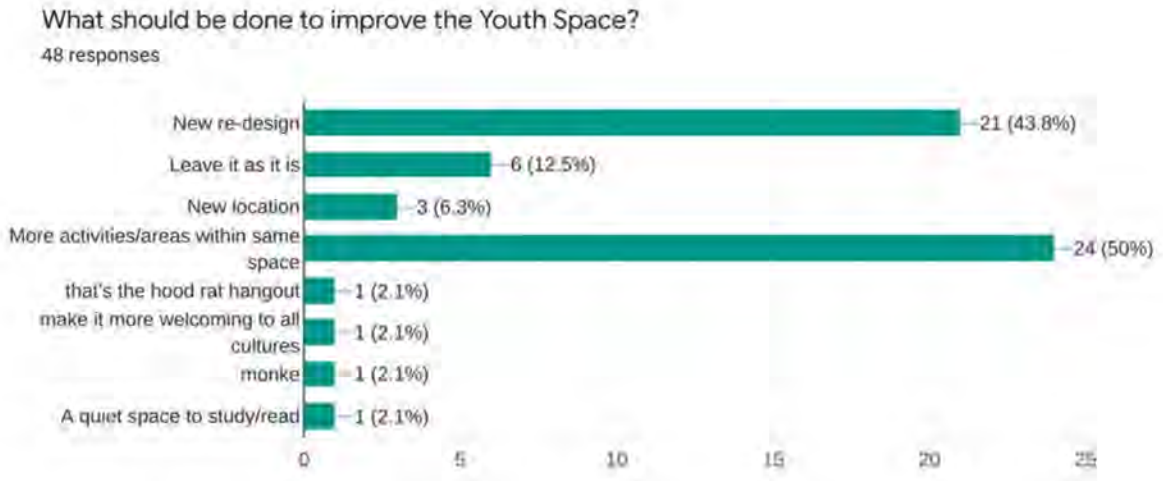
What's something that Horowhenua doesn't have but needs?

Out of the 34 responses to this question some common or important themes mentioned were:

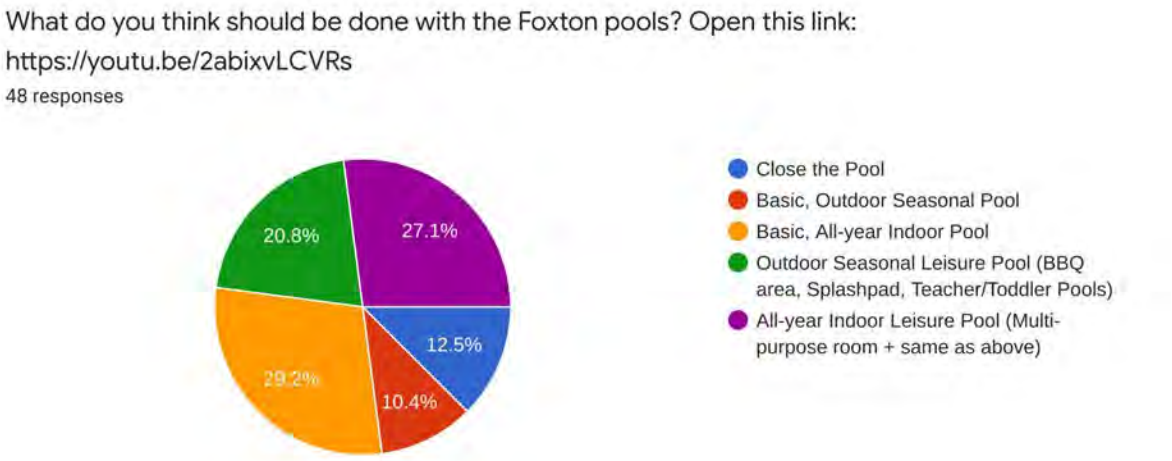
- There needs to be an increased number of councillors to represent more people
- There needs to be more doctors available for youth
- More mental health support for teens
- Gender neutral facilities and uniforms
- More activities and opportunities for artists

What should be done to improve the youth space?

Summary of the responses from our form:



What do you think should be done with the Foxton pools?
Summary of the responses from our form:



Other comments from YEP and responders on what they would like to see:

- There needs to be safer spaces for youth - private and personal so students are able to study and relax
- More hot food options in the library cafe
- There needs to be a monitored skatepark, there are too many inconsiderate teens that like to bully others
- More public toilets - preferably unisex
- Free pool entry passes
- Safer roads
- A community that is more inviting for cultures

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

*Required

1. Email address *

2. Full Name *

3. Postal Address and Postcode *

4. What is your age? *

Mark only one oval.

- 12-13
- 14-15
- 16-17
- 18-19

5. Contact Phone number

_____

6. What is your ethnicity? *

Mark only one oval.

- ◯ NZ/European
- ◯ Māori
- ◯ Asian
- ◯ Pacific Islander
- ◯ Other: _____

Questions

7. What do you think the council should do more of?

_____

8. What do you think the council should do less of?

_____

_____

_____

_____

_____

9. What's something that Horowhenua doesn't have but needs?

10. What should be done to improve the Youth Space?

Tick all that apply.

- [ ] New re-design
- [ ] Leave it as it is
- [ ] New location
- [ ] More activities/areas within same space
- [ ] Other: _____

11. What do you think should be done with the Foxton pools? Open this link: https://youtu.be/2abixvLCVRs

Mark only one oval.

- ◯ Close the Pool
- ◯ Basic, Outdoor Seasonal Pool
- ◯ Basic, All-year Indoor Pool
- ◯ Outdoor Seasonal Leisure Pool (BBQ area, Splashpad, Teacher/Toddler Pools)
- ◯ All-year Indoor Leisure Pool (Multi-purpose room + same as above)

12. Any further ideas? i.e what could be improved in the youth space, comments...

Timestamp	Username	Full Name	Postal Address and Postcode	What is your age?	Contact Phone number	What do you think the council should do more of?	What do you think the council should do less of?	Whatâ€™s something thet Horowhenua doesnâ€™t have but needs?	What should be done to improve the Youth Space?	What do you think should be done with the Foxton pools? Open this link: https://youtu.be/2abixvLCVRs	Any further ideas? i.e whet could be improved in the youth space, comments...
2021/04/15 8:05:15 am GMT+12		Samuel				Helping people get build consent in a reasonable amount of time and actually make decisions instead of not making up their minds.	spending money on stupid roads which donâ€™t need work like the one beside the warehouse.	Low Poverty, No Gangs. But yeah we need a skid pad, give somewhere for the hoons to have a safe environment to skid around without putting their selves or others at risk.	Leave it as it is	Basic, All-year Indoor Pool	
2021/04/15 8:05:47 am GMT+12		Brooke				creating safer environment and easier to reach places for children undergoing domestic violence		a scooter/ skateboard park which is monitored and for younger kids. Children are not able to go to the main skatepark without feeling overwhelmed by the rude inconsiderate teenagers. Having a scooter place with a age limit will mean children arenâ€™t bullied off of the park.	More activities/areas within same space	Close the Pool	
2021/04/15 8:10:03 am GMT+12		Anika				hold events for teens so that we donâ€™t get bored cause when thereâ€™s nothing people get bored and trouble happens	not sure	indoor heated areas for interval and lunch, heat pump/aircon in every classroom, better free lunches	New re-design;More activities/areas within same space	Outdoor Seasonal Leisure Pool (BBQ area, Splashpad, Teacher/Toddler Pools)	get a second doctors in levin, have a hot food cafe kinda thing with cheap prices in the library, let senior students leave at lunch times to go get lunch, have a new hangout space and more events
2021/04/15 8:25:07 am GMT+12		Hoana							thatâ€™s the hood rat hangout	All-year Indoor Leisure Pool (Multi-purpose room + same as above)	
2021/04/15 8:39:24 am GMT+12		kasey							New location	All-year Indoor Leisure Pool (Multi-purpose room + same as above)	
2021/04/15 8:46:35 am GMT+12		Mason				Mufti days/fundraising.	Not sure.	A bigger mall, a road bypassing Levin.	More activities/areas within same space	Basic, All-year Indoor Pool	
2021/04/15 8:56:45 am GMT+12		Miles				increase Shannon's budget	Stop pouring money into the foxton pools at the expense of region wide ratepayers.	a shannon gym. It would be well used, would make the community healthier, and be an awesome asset to the community.	More activities/areas within same space	Basic, All-year Indoor Pool	
2021/04/15 8:58:31 am GMT+12		Keighley				Work with the youth . FIX THE ROADS eg: the intersections by weraroa and the southern end of town heading towards Oahu. ALso the patch of road at the traffic lights outside of dominos		Public toilets		Basic, Outdoor Seasonal Pool	More inviting for all cultures
2021/04/15 9:00:03 am GMT+12		oceanah						shannon needs a maccas		Basic, Outdoor Seasonal Pool	
2021/04/15 9:00:07 am GMT+12		nikita				fix potholes			New re-design;More activities/areas within same space	Basic, All-year Indoor Pool	
2021/04/15 9:00:47 am GMT+12		Lilly				Clean the god damn lake lol	Iâ€™m not sure	Iâ€™m not sure	More activities/areas within same space	Outdoor Seasonal Leisure Pool (BBQ area, Splashpad, Teacher/Toddler Pools)	
2021/04/15 9:02:03 am GMT+12		Ashlee				upgrading well used areas of the town		Entertainment for youth/families. When you want to go out somewhere to have fun, but in Levin the selection is very poor.	New re-design	All-year Indoor Leisure Pool (Multi-purpose room + same as above)	
2021/04/15 9:07:34 am GMT+12		Noah							More activities/areas within same space	Basic, All-year Indoor Pool	
2021/04/15 9:24:52 am GMT+12		Oliver				more things to do with sport around the community	no clue	canâ€™t think of anything	Leave it as it is	Basic, All-year Indoor Pool	N/A
2021/04/15 9:46:05 am GMT+12		Owen				Bigger better pool	Less tax	Full on water park	New re-design	Close the Pool	Give out free pool entry passes
2021/04/15 9:47:15 am GMT+12		Jorja				fix the roads and work to het the lake up and running		more public toilets	make it more welcoming to all cultures	Basic, Outdoor Seasonal Pool	
2021/04/15 10:04:21 am GMT+12		piper									
2021/04/15 10:15:29 am GMT+12		kaamaleigh				create more parks and pools etc	footpaths lol	deep outside pool	More activities/areas within same space	Basic, Outdoor Seasonal Pool	
2021/04/15 10:22:05 am GMT+12		Hutch							New re-design;New location	All-year Indoor Leisure Pool (Multi-purpose room + same as above)	
2021/04/15 10:23:59 am GMT+12		Aja				put more money into helping the earth	paying into unnecessary things	more counsellors or people like that so more people are seen	New re-design	All-year Indoor Leisure Pool (Multi-purpose room + same as above)	
2021/04/15 11:34:39 am GMT+12		Paradise							New re-design	Outdoor Seasonal Leisure Pool (BBQ area, Splashpad, Teacher/Toddler Pools)	
2021/04/15 11:49:48 am GMT+12		Willow				Social events for adults, kids and teens	NA	More variety of places to hangout	New re-design;More activities/areas within same space	Outdoor Seasonal Leisure Pool (BBQ area, Splashpad, Teacher/Toddler Pools)	NA
2021/04/15 2:22:55 pm GMT+12		Callum				Give Collages more funding	Repairing and Checking State Highway 1 in school holidays	A place of interest for all ages that changes, something like Te Papa's Paid exhibition room that changes every 2 to 3 months	More activities/areas within same space	All-year Indoor Leisure Pool (Multi-purpose room + same as above)	Upgrades to parking and better enforcement of road safety laws(There are some really dangerous drives still on the road)
2021/04/15 2:39:38 pm GMT+12		Ethan				helping support locals businesses and supplying the region with more	overly advertising things that aren't entirely needed	more funding for social/school events	More activities/areas within same space	Close the Pool	
2021/04/15 2:44:54 pm GMT+12		Ruby				More activities in levin that appeal to everyone			New re-design	Basic, All-year Indoor Pool	
2021/04/15 6:04:22 pm GMT+12		Cole							Leave it as it is	Basic, All-year Indoor Pool	
2021/04/15 8:01:48 pm GMT+12		Sione				Provide more for the school	Building parks	More outdoor activities other than a park	New re-design	Outdoor Seasonal Leisure Pool (BBQ area, Splashpad, Teacher/Toddler Pools)	
2021/04/15 8:42:20 pm GMT+12		Minnie						fun things for kids like a trampoline park. go karts . bowling	More activities/areas within same space		
2021/04/15 9:37:06 pm GMT+12		Ake				Have programmes for mental health care			More activities/areas within same space	All-year Indoor Leisure Pool (Multi-purpose room + same as above)	
2021/04/16 8:52:19 am GMT+12		shanee				idk	idk	idk	New re-design	All-year Indoor Leisure Pool (Multi-purpose room + same as above)	idk
2021/04/16 8:53:29 am GMT+12		Dakota							More activities/areas within same space	Basic, All-year Indoor Pool	
2021/04/16 8:55:26 am GMT+12		Kayla-Jane				I don't know	I don't know		Leave it as it is	Basic, All-year Indoor Pool	No
2021/04/16 8:55:29 am GMT+12		Madison				not to sure	not to sure	not to sure	New re-design	All-year Indoor Leisure Pool (Multi-purpose room + same as above)	no
2021/04/16 8:55:45 am GMT+12		Cody				Mufti days	I donâ€™t know	Longer breaks	Leave it as it is	All-year Indoor Leisure Pool (Multi-purpose room + same as above)	I donâ€™t know
2021/04/16 8:55:47 am GMT+12		Charlette				.	.	turf	More activities/areas within same space	Outdoor Seasonal Leisure Pool (BBQ area, Splashpad, Teacher/Toddler Pools)	.
2021/04/16 8:55:47 am GMT+12		Blake				More mufti.	Not sure	Longer breaks.	Leave it as it is	All-year Indoor Leisure Pool (Multi-purpose room + same as above)	Not sure
2021/04/16 8:55:49 am GMT+12		Penelope				Not too sure	I don't know	Better Netball Hoops	New re-design	Outdoor Seasonal Leisure Pool (BBQ area, Splashpad, Teacher/Toddler Pools)	
2021/04/16 8:56:03 am GMT+12		DJ							More activities/areas within same space	Close the Pool	
2021/04/16 8:56:51 am GMT+12		Zyran				?	?	?	New re-design	Close the Pool	?
2021/04/16 8:58:29 am GMT+12		Ryan				Promoting hat wearing to help bring more people aware of skin cancer	Just talking but doing nothing	A local museum	More activities/areas within same space	Basic, All-year Indoor Pool	What about adding a regular play ground on the grass area.
2021/04/16 9:00:45 am GMT+12		Ben				Free vbuck giveaway	less schools	free food that is good	monke	Close the Pool	free yearly subscription to Xbox gamepass ultimate
2021/04/16 9:01:27 am GMT+12		Jemel				Opp idk	Opp idk	ParkðŸ¤£	New re-design;More activities/areas within same space		
2021/04/16 9:29:00 am GMT+12		Caitlin				Cleaning up Levin, there is rubbish and cigarettes and gross stuff everywhere	To stop fluffing around and actually do something	Somewhere for a older kids to hangout at, the youth space is boring	More activities/areas within same space	Outdoor Seasonal Leisure Pool (BBQ area, Splashpad, Teacher/Toddler Pools)	
2021/04/16 10:18:37 am GMT+12		Alyssa		NZ/European					New re-design	All-year Indoor Leisure Pool (Multi-purpose room + same as above)	

Timestamp	Username	Full Name	Postal Address and Postcode	What is your age?	Contact Phone number	What is your ethnicity?	What do you think the council should do more of?	What do you think the council should do less of?	Whatâ€™s something thet Horowhenua doesnâ€™t have but needs?	What should be done to improve the Youth Space?	What do you think should be done with the Foxton pools? Open this link: https://youtu.be/2abixvLCVRs	Any further ideas? i.e whet could be improved in the youth space, comments...
2021/04/16 10:30:07 am GMT+12	[redacted]	Tahlia [redacted]	[redacted]							New re-design;New location;More activities/areas within same space	Outdoor Seasonal Leisure Pool (BBQ area, Splashpad, Teacher/Toddler Pools)	
2021/04/16 10:54:39 am GMT+12		Natasha [redacted]								More activities/areas within same space	Basic, All-year Indoor Pool	
2021/04/16 11:23:56 am GMT+12		Abby [redacted]					Investing money in more safe places for the youth	Wasting money on roads that are perfectly fine	A platform for youth to speck on decision about youth	New re-design;More activities/areas within same space	Basic, All-year Indoor Pool	
2021/04/16 11:24:48 am GMT+12		Hermione [redacted]					Invest more money on safe places for the youth.	Invest less money in roads that are perfectly fine.	A platform for youth, this is for youth to speak on and feel empowered although we are teenagers.	New re-design;More activities/areas within same space	Basic, All-year Indoor Pool	
2021/04/16 12:36:13 pm GMT+12		nathaniel [redacted]					fix up the roads	nothing	more places to go for kids like trampoline parks	More activities/areas within same space	Basic, Outdoor Seasonal Pool	
2021/04/16 4:29:48 pm GMT+12		Gin [redacted]								New re-design;A quiet space to study/read	All-year Indoor Leisure Pool (Multi-purpose room + same as above)	
2021/04/16 10:51:43 pm GMT+12		claire [redacted]					focus on mental health issues more.		Mental health questions each year for students in college, gender normality for all uniform based schools, extra classes after school on a subject a student would like to improve on (students who would also like to improve on the subject will attend at the same time), more activities people can participate in locally, give youth more opportunities not only in sports but art wise also, teachers that do not enforce their opinion on students e.g talking about politics, Arcade where people can hangout, extension on the mall in levin e.g adding a second floor, and help kids with drug addictions and alcohol addictions more.	New re-design	Outdoor Seasonal Leisure Pool (BBQ area, Splashpad, Teacher/Toddler Pools)	

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

Samuel [redacted]

[redacted] *

What is your age? *

- 12-13
- 14-15
- 16-17
- 18-19

[redacted]

Questions

What do you think the council should do more of?

Helping people get build consent in a reasonable amount of time and actually make decisions instead of not making up their minds.

What do you think the council should do less of?

spending money on stupid roads which don't need work like the one beside the warehouse.

What's something that Horowhenua doesn't have but needs?

Low Poverty, No Gangs. But yeah we need a skid pad, give somewhere for the hoons to have a safe environment to skid around without putting their selves or others at risk.

What should be done to improve the Youth Space?

- [ ] New re-design
- [x] Leave it as it is
- [ ] New location
- [ ] More activities/areas within same space
- [ ] Other: .....

What do you think should be done with the Foxton pools? Open this link: https://youtu.be/2abixvLCVRs

- ( ) Close the Pool
- ( ) Basic, Outdoor Seasonal Pool
- (•) Basic, All-year Indoor Pool
- ( ) Outdoor Seasonal Leisure Pool (BBQ area, Splashpad, Teacher/Toddler Pools)
- ( ) All-year Indoor Leisure Pool (Multi-purpose room + same as above)

Any further ideas? i.e what could be improved in the youth space, comments...

.....

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

Brooke[redacted]

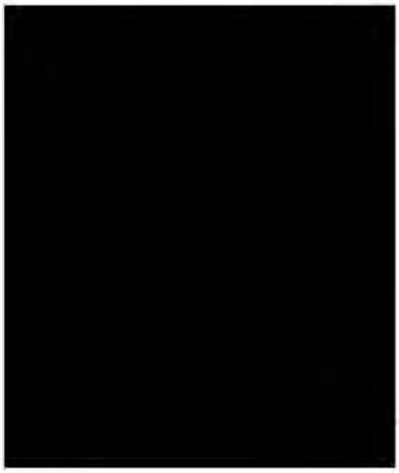
[redacted]

What is your age? *

- 12-13
- 14-15
- 16-17
- 18-19

[redacted]

What is your ethnicity? *



Questions

What do you think the council should do more of?

creating safer environment and easier to reach places for children undergoing domestic violence

What do you think the council should do less of?

What's something that Horowhenua doesn't have but needs?

a scooter/ skateboard park which is monitored and for younger kids. Children are not able to go to the main skatepark without feeling overwhelmed by the rude inconsiderate teenagers. Having a scooter place with a age limit will mean children aren't bullied off of the park.

What should be done to improve the Youth Space?

- [ ] New re-design
- [ ] Leave it as it is
- [ ] New location
- [x] More activities/areas within same space
- [ ] Other: _____

What do you think should be done with the Foxton pools? Open this link: https://youtu.be/2abixvLCVRs

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Any further ideas? i.e what could be improved in the youth space, comments...

_____

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

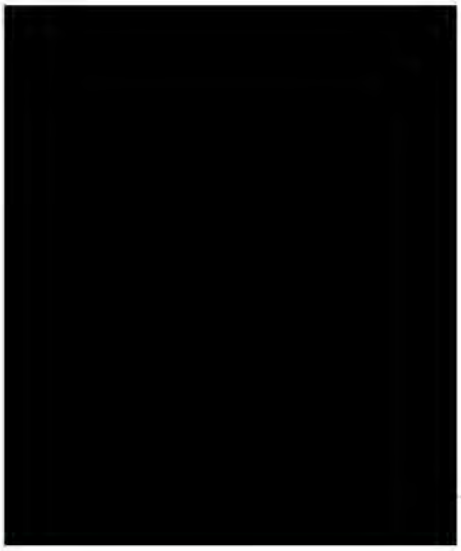
Anika [redacted]

[redacted]

What is your age? *

- 12-13
- 14-15
- 16-17
- 18-19

[redacted]



Questions

What do you think the council should do more of?

hold events for teens so that we don't get bored cause when there's nothing people get bored and trouble happens

What do you think the council should do less of?

not sure

What's something that Horowhenua doesn't have but needs?

indoor heated areas for interval and lunch, heat pump/aircon in every classroom, better free lunches

What should be done to improve the Youth Space?

- [x] New re-design
- [ ] Leave it as it is
- [ ] New location
- [x] More activities/areas within same space
- [ ] Other: _____

What do you think should be done with the Foxton pools? Open this link: https://youtu.be/2abixvLCVRs

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- ( ) All-year Indoor Leisure Pool (Multi-purpose room + same as above)

Any further ideas? i.e what could be improved in the youth space, comments...

get a second doctors in levin, have a hot food cafe kinda thing with cheap prices in the library, let senior students leave at lunch times to go get lunch, have a new hangout space and more events

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

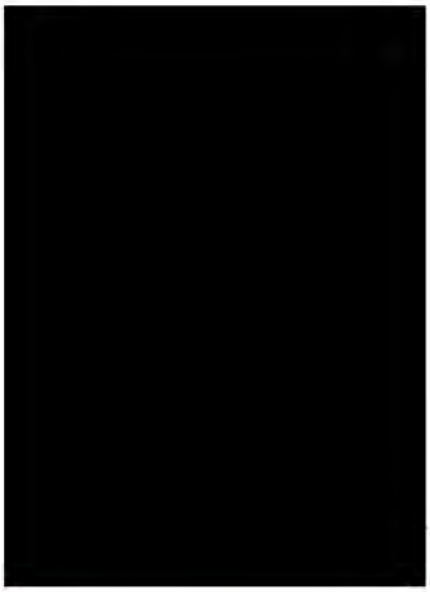
Hoana[redacted]

[redacted] *

What is your age? *

- 12-13
- 14-15
- 16-17
- 18-19

[redacted]



Questions

What do you think the council should do more of?

What do you think the council should do less of?

What's something that Horowhenua doesn't have but needs?

What should be done to improve the Youth Space?

- [ ] New re-design
- [ ] Leave it as it is
- [ ] New location
- [ ] More activities/areas within same space
- [x] Other: that's the hood rat hangout

What do you think should be done with the Foxton pools? Open this link: https://youtu.be/2abixvLCVRs

- ( ) Close the Pool
- ( ) Basic, Outdoor Seasonal Pool
- ( ) Basic, All-year Indoor Pool
- ( ) Outdoor Seasonal Leisure Pool (BBQ area, Splashpad, Teacher/Toddler Pools)
- (•) All-year Indoor Leisure Pool (Multi-purpose room + same as above)

Any further ideas? i.e what could be improved in the youth space, comments...

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

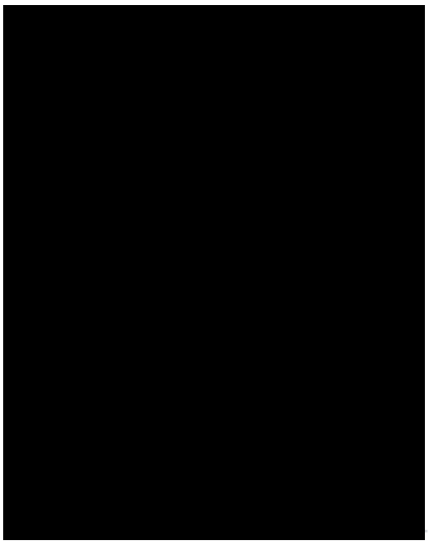
kasey [redacted]

[redacted]

What is your age? *

- 12-13
- 14-15
- 16-17
- 18-19

[redacted]



Questions

What do you think the council should do more of?

What do you think the council should do less of?

What's something that Horowhenua doesn't have but needs?

What should be done to improve the Youth Space?

- [ ] New re-design
- [ ] Leave it as it is
- [x] New location
- [ ] More activities/areas within same space
- [ ] Other: _____

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- (•) All-year Indoor Leisure Pool (Multi-purpose room + same as above)

Any further ideas? i.e what could be improved in the youth space, comments...

_____

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

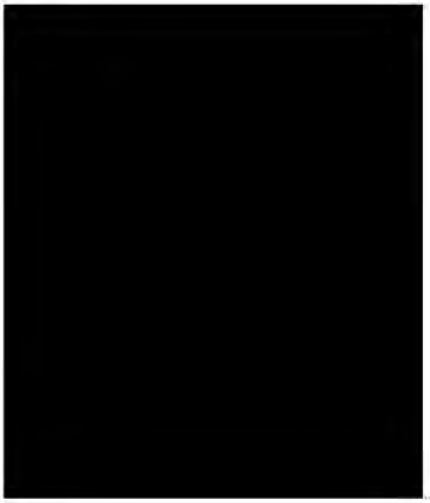
Mason [redacted]

[redacted]

What is your age? *

- 12-13
- 14-15
- 16-17
- 18-19

[redacted]



Questions

What do you think the council should do more of?

Mufti days/fundraising.

What do you think the council should do less of?

Not sure.

What's something that Horowhenua doesn't have but needs?

A bigger mall, a road bypassing Levin.

What should be done to improve the Youth Space?

- [ ] New re-design
- [ ] Leave it as it is
- [ ] New location
- [x] More activities/areas within same space
- [ ] Other: _____

What do you think should be done with the Foxton pools? Open this link: https://youtu.be/2abixvLCVRs

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- ( ) All-year Indoor Leisure Pool (Multi-purpose room + same as above)

Any further ideas? i.e what could be improved in the youth space, comments...

_____

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

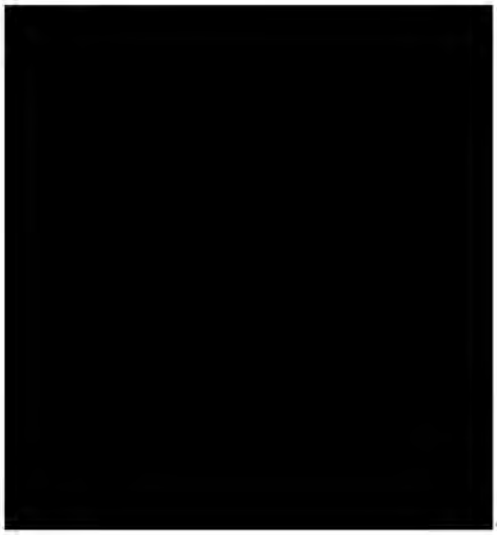
Miles [redacted]

[redacted]

What is your age? *

- 12-13
- 14-15
- 16-17
- 18-19

[redacted]



Questions

What do you think the council should do more of?

increase Shannon's budget

What do you think the council should do less of?

Stop pouring money into the foxton pools at the expense of region wide ratepayers.

What's something that Horowhenua doesn't have but needs?

a shannon gym. It would be well used, would make the community healthier, and be an awesome asset to the community.

What should be done to improve the Youth Space?

- [ ] New re-design
- [ ] Leave it as it is
- [ ] New location
- [x] More activities/areas within same space
- [ ] Other: _____

What do you think should be done with the Foxton pools? Open this link: https://youtu.be/2abixvLCVRs

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- ( ) All-year Indoor Leisure Pool (Multi-purpose room + same as above)

Any further ideas? i.e what could be improved in the youth space, comments...

_____

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

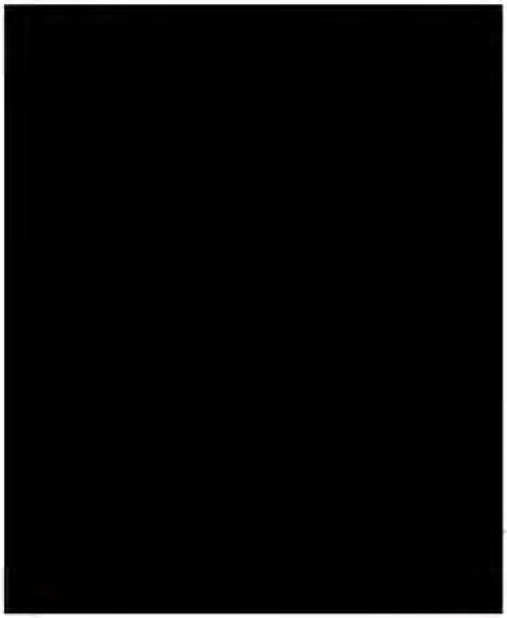
Keighley [redacted]

[redacted]

What is your age? *

- 12-13
- 14-15
- 16-17
- 18-19

[redacted]



Questions

What do you think the council should do more of?

Work with the youth . FIX THE ROADS eg: the intersections by weraroa and the southern end of town heading towards Oahu. ALso the patch of road at the traffic lights outside of dominos

What do you think the council should do less of?

What's something that Horowhenua doesn't have but needs?

Public toilets

What should be done to improve the Youth Space?

- [ ] New re-design
- [ ] Leave it as it is
- [ ] New location
- [ ] More activities/areas within same space
- [ ] Other: _____

What do you think should be done with the Foxton pools? Open this link: https://youtu.be/2abixvLCVRs

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- ( ) All-year Indoor Leisure Pool (Multi-purpose room + same as above)

Any further ideas? i.e what could be improved in the youth space, comments...

More inviting for all cultures

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

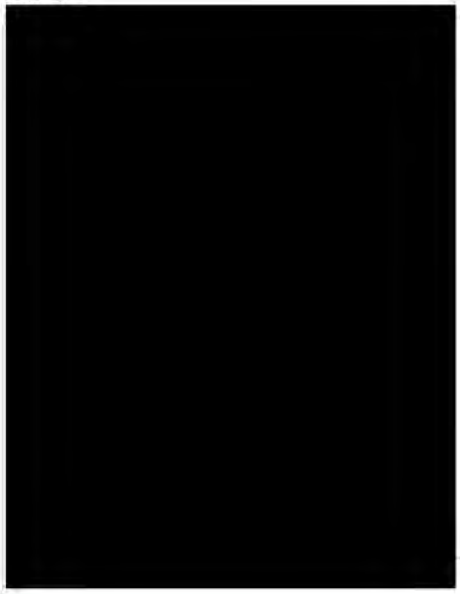
oceanah

[redacted]

What is your age? *

- 12-13
- 14-15
- 16-17
- 18-19

[redacted]



Questions

What do you think the council should do more of?

What do you think the council should do less of?

What's something that Horowhenua doesn't have but needs?

shannon needs a maccas

What should be done to improve the Youth Space?

- [ ] New re-design
- [ ] Leave it as it is
- [ ] New location
- [ ] More activities/areas within same space
- [ ] Other: _____

What do you think should be done with the Foxton pools? Open this link: https://youtu.be/2abixvLCVRs

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- ( ) Outdoor Seasonal Leisure Pool (BBQ area, Splashpad, Teacher/Toddler Pools)
- ( ) All-year Indoor Leisure Pool (Multi-purpose room + same as above)

Any further ideas? i.e what could be improved in the youth space, comments...

_____

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

nikita [redacted]

[redacted]

What is your age? *

- 12-13
- 14-15
- 16-17
- 18-19

[redacted]

Questions

What do you think the council should do more of?

fix potholes

What do you think the council should do less of?

What's something that Horowhenua doesn't have but needs?

What should be done to improve the Youth Space?

- [x] New re-design
- [ ] Leave it as it is
- [ ] New location
- [x] More activities/areas within same space
- [ ] Other: _____

What do you think should be done with the Foxton pools? Open this link: https://youtu.be/2abixvLCVRs

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- ( ) All-year Indoor Leisure Pool (Multi-purpose room + same as above)

Any further ideas? i.e what could be improved in the youth space, comments...

_____

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

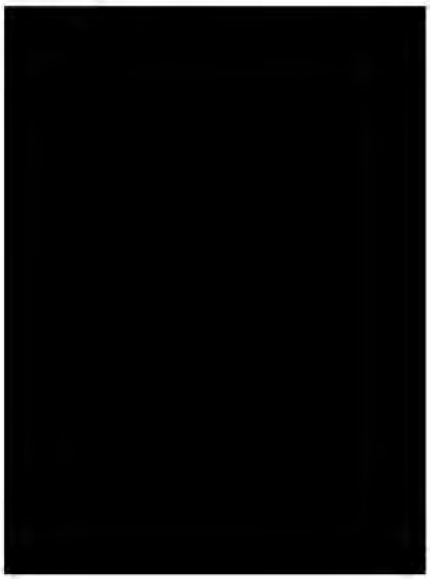
Lilly [redacted]

[redacted]

What is your age? *

- (●) 12-13
- ( ) 14-15
- ( ) 16-17
- ( ) 18-19

[redacted]



Questions

What do you think the council should do more of?

Clean the god damn lake lol

What do you think the council should do less of?

I'm not sure

What's something that Horowhenua doesn't have but needs?

I'm not sure

What should be done to improve the Youth Space?

- [ ] New re-design
- [ ] Leave it as it is
- [ ] New location
- [x] More activities/areas within same space
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What do you think should be done with the Foxton pools? Open this link: https://youtu.be/2abixvLCVRs

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Any further ideas? i.e what could be improved in the youth space, comments...

_____

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

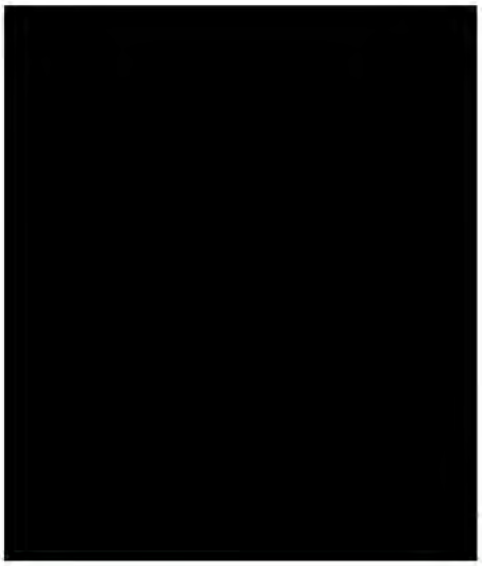
Ashley [redacted]

[redacted]

What is your age? *

- 12-13
- 14-15
- 16-17
- 18-19

Contact Phone number



Questions

What do you think the council should do more of?

upgrading well used areas of the town

What do you think the council should do less of?

What's something that Horowhenua doesn't have but needs?

Entertainment for youth/families. When you want to go out somewhere to have fun, but in Levin the selection is very poor.

What should be done to improve the Youth Space?

- [x] New re-design
- [ ] Leave it as it is
- [ ] New location
- [ ] More activities/areas within same space
- [ ] Other: _____

What do you think should be done with the Foxton pools? Open this link: https://youtu.be/2abixvLCVRs

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- (•) All-year Indoor Leisure Pool (Multi-purpose room + same as above)

Any further ideas? i.e what could be improved in the youth space, comments...

_____

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

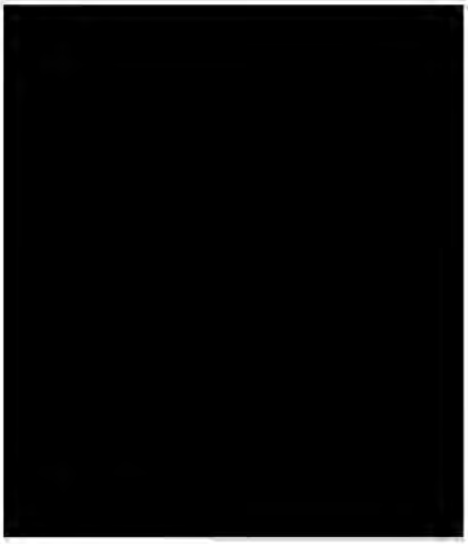
Noah [redacted]

[redacted]

What is your age? *

- 12-13
- 14-15
- 16-17
- 18-19

[redacted]



Questions

What do you think the council should do more of?

What do you think the council should do less of?

What's something that Horowhenua doesn't have but needs?

What should be done to improve the Youth Space?

- [ ] New re-design
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- ( ) All-year Indoor Leisure Pool (Multi-purpose room + same as above)

Any further ideas? i.e what could be improved in the youth space, comments...

_____

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

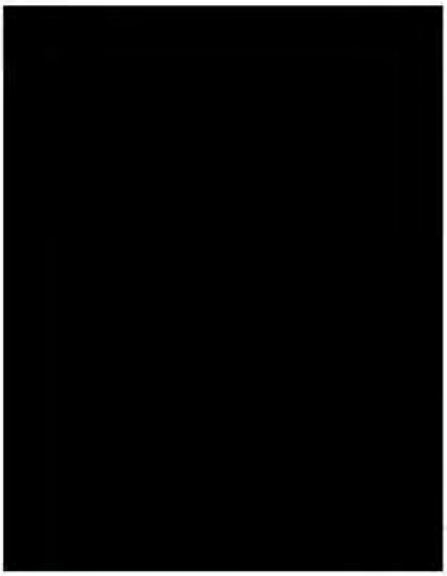
Olive[redacted]

[redacted]

What is your age? *

- ○ 12-13
- ◉ 14-15
- ○ 16-17
- ○ 18-19

[redacted]



Questions

What do you think the council should do more of?

more things to do with sport around the community

What do you think the council should do less of?

no clue

What's something that Horowhenua doesn't have but needs?

can't think of anything

What should be done to improve the Youth Space?

- [ ] New re-design
- [x] Leave it as it is
- [ ] New location
- [ ] More activities/areas within same space
- [ ] Other: _____

What do you think should be done with the Foxton pools? Open this link: https://youtu.be/2abixvLCVRs

- ( ) Close the Pool
- ( ) Basic, Outdoor Seasonal Pool
- (•) Basic, All-year Indoor Pool
- ( ) Outdoor Seasonal Leisure Pool (BBQ area, Splashpad, Teacher/Toddler Pools)
- ( ) All-year Indoor Leisure Pool (Multi-purpose room + same as above)

Any further ideas? i.e what could be improved in the youth space, comments...

N/A

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

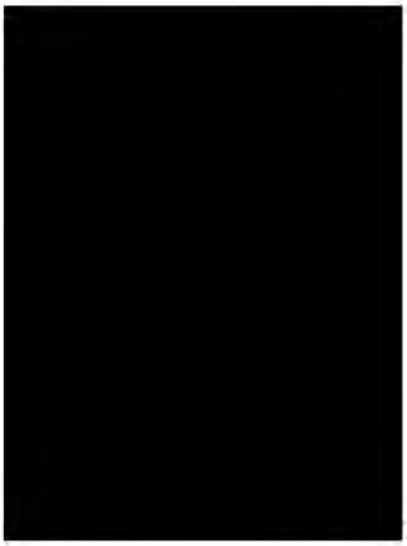
Owen [redacted]

[redacted]

What is your age? *

- (●) 12-13
- ( ) 14-15
- ( ) 16-17
- ( ) 18-19

[redacted]



Questions

What do you think the council should do more of?

Bigger better pool

What do you think the council should do less of?

Less tax

What's something that Horowhenua doesn't have but needs?

Full on water park

What should be done to improve the Youth Space?

- [x] New re-design
- [ ] Leave it as it is
- [ ] New location
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- [ ] Other: _____

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Any further ideas? i.e what could be improved in the youth space, comments...

Give out free pool entry passes

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

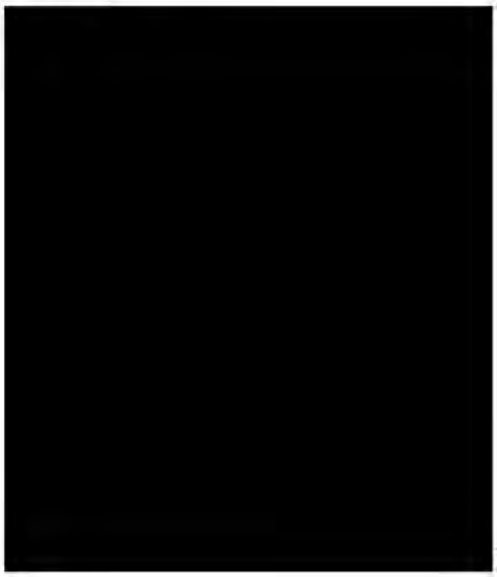
Jorja [redacted]

[redacted]

What is your age? *

- 12-13
- 14-15
- 16-17
- 18-19

[redacted]



Questions

What do you think the council should do more of?

fix the roads and work to het the lake up and running

What do you think the council should do less of?

What's something that Horowhenua doesn't have but needs?

more public toilets

What should be done to improve the Youth Space?

- [ ] New re-design
- [ ] Leave it as it is
- [ ] New location
- [ ] More activities/areas within same space
- [x] Other: make it more welcoming to all cultures

What do you think should be done with the Foxton pools? Open this link: https://youtu.be/2abixvLCVRs

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Any further ideas? i.e what could be improved in the youth space, comments...

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

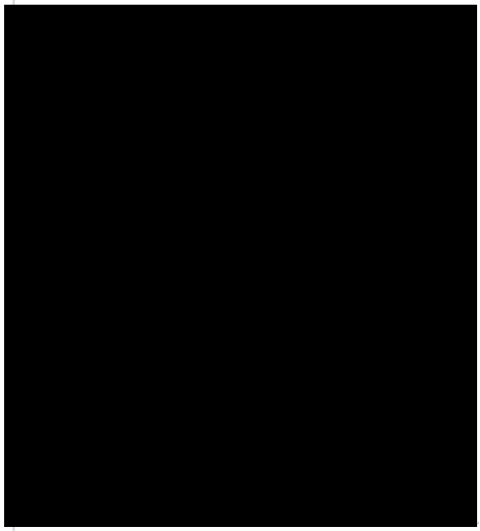
piper[redacted]

[redacted]

What is your age? *

- 12-13
- 14-15
- 16-17
- 18-19

[redacted]



Questions

What do you think the council should do more of?

What do you think the council should do less of?

What's something that Horowhenua doesn't have but needs?

What should be done to improve the Youth Space?

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- ( ) All-year Indoor Leisure Pool (Multi-purpose room + same as above)

Any further ideas? i.e what could be improved in the youth space, comments...

_____

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

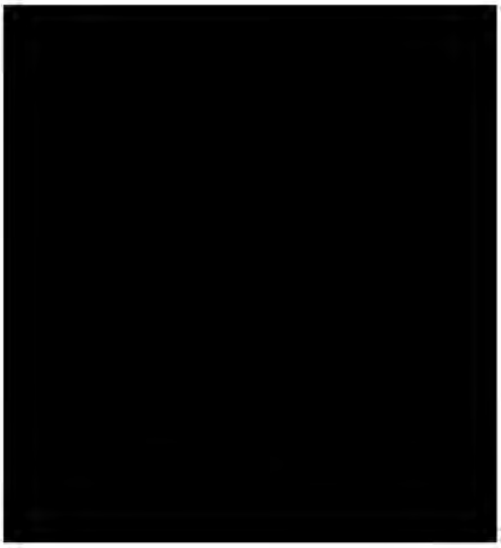
kaamaleig[redacted]

[redacted]

What is your age? *

- 12-13
- 14-15
- 16-17
- 18-19

[redacted]



Questions

What do you think the council should do more of?

create more parks and pools etc

What do you think the council should do less of?

footpaths lol

What's something that Horowhenua doesn't have but needs?

deep outside pool

What should be done to improve the Youth Space?

- [ ] New re-design
- [ ] Leave it as it is
- [ ] New location
- [x] More activities/areas within same space
- [ ] Other: _____

What do you think should be done with the Foxton pools? Open this link: https://youtu.be/2abixvLCVRs

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Any further ideas? i.e what could be improved in the youth space, comments...

_____

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

Hutch [redacted]

[redacted]

What is your age? *

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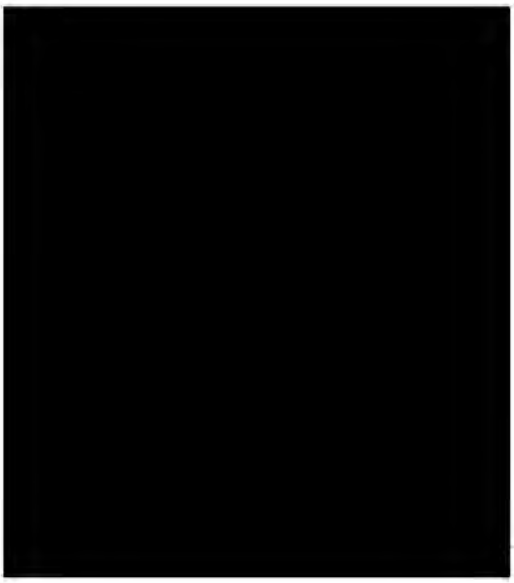
- 18-19

[redacted]



Questions

What do you think the council should do more of?

What do you think the council should do less of?

What's something that Horowhenua doesn't have but needs?

What should be done to improve the Youth Space?

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- (•) All-year Indoor Leisure Pool (Multi-purpose room + same as above)

Any further ideas? i.e what could be improved in the youth space, comments...

_____

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

Aja [redacted]

[redacted]

What is your age? *

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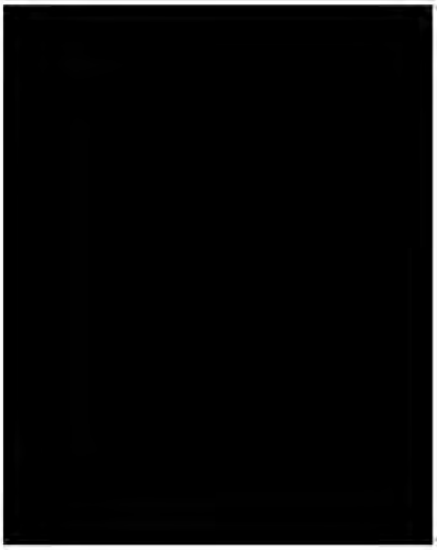
- 14-15
- 16-17
- 18-19

[redacted]



Questions

What do you think the council should do more of?

put more money into helping the earth

What do you think the council should do less of?

paying into unnecessary things

What's something that Horowhenua doesn't have but needs?

more counsellors or people like that so more people are seen

What should be done to improve the Youth Space?

- [x] New re-design
- [ ] Leave it as it is
- [ ] New location
- [ ] More activities/areas within same space
- [ ] Other: _____

What do you think should be done with the Foxton pools? Open this link: https://youtu.be/2abixvLCVRs

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Any further ideas? i.e what could be improved in the youth space, comments...

_____

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

Paradise [redacted]

[redacted]

What is your age? *

- (●) 12-13
- ( ) 14-15
- ( ) 16-17
- ( ) 18-19

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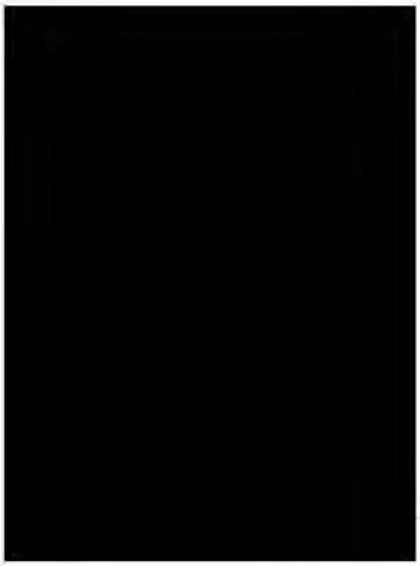

Questions

What do you think the council should do more of?

What do you think the council should do less of?

What's something that Horowhenua doesn't have but needs?

What should be done to improve the Youth Space?

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- [ ] Leave it as it is
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Any further ideas? i.e what could be improved in the youth space, comments...

_____

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

Willow [redacted]

[redacted]

What is your age? *

- 12-13
- 14-15
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- 18-19

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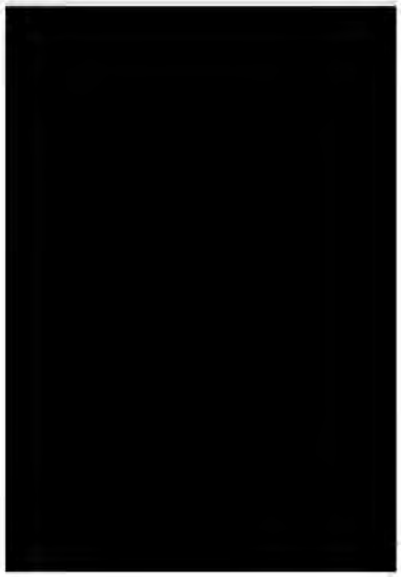

Questions

What do you think the council should do more of?

Social events for adults, kids and teens

What do you think the council should do less of?

NA

What's something that Horowhenua doesn't have but needs?

More variety of places to hangout

What should be done to improve the Youth Space?

- [x] New re-design
- [ ] Leave it as it is
- [ ] New location
- [x] More activities/areas within same space
- [ ] Other: _____

What do you think should be done with the Foxton pools? Open this link: https://youtu.be/2abixvLCVRs

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- ( ) All-year Indoor Leisure Pool (Multi-purpose room + same as above)

Any further ideas? i.e what could be improved in the youth space, comments...

NA

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

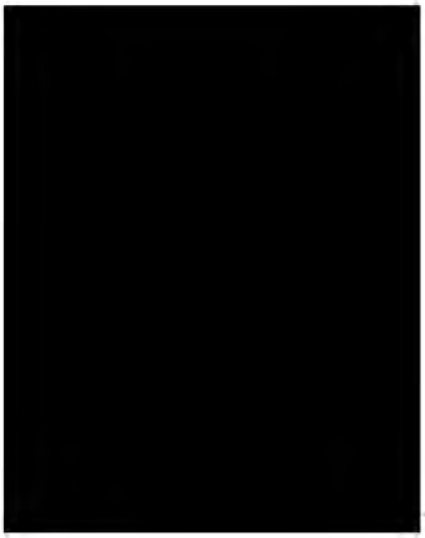
Callum [redacted]

[redacted]

What is your age? *

- 12-13
- 14-15
- 16-17
- 18-19

[redacted]



Questions

What do you think the council should do more of?

Give Collages more funding

What do you think the council should do less of?

Repairing and Checking State Highway 1 in school holidays

What's something that Horowhenua doesn't have but needs?

A place of interest for all ages that changes, something like Te Papa's Paid exhibition room that changes every 2 to 3 months

What should be done to improve the Youth Space?

- [ ] New re-design
- [ ] Leave it as it is
- [ ] New location
- [x] More activities/areas within same space
- [ ] Other: _____

What do you think should be done with the Foxton pools? Open this link: https://youtu.be/2abixvLCVRs

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- (•) All-year Indoor Leisure Pool (Multi-purpose room + same as above)

Any further ideas? i.e what could be improved in the youth space, comments...

Upgrades to parking and better enforcement of road safety laws(There are some really dangerous drives still on the road)

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

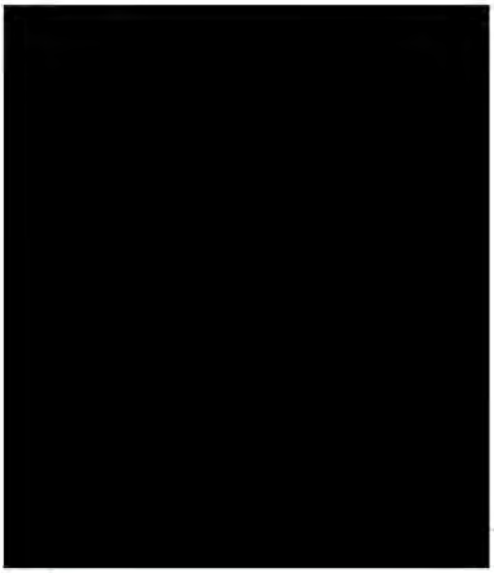
Ethan [redacted]

[redacted] *

What is your age? *

- (●) 12-13
- ( ) 14-15
- ( ) 16-17
- ( ) 18-19

[redacted]



Questions

What do you think the council should do more of?

helping support locals businesses and supplying the region with more

What do you think the council should do less of?

overly advertising things that aren't entirely needed

What's something that Horowhenua doesn't have but needs?

more funding for social/school events

What should be done to improve the Youth Space?

- [ ] New re-design
- [ ] Leave it as it is
- [ ] New location
- [x] More activities/areas within same space
- [ ] Other: _____

What do you think should be done with the Foxton pools? Open this link: https://youtu.be/2abixvLCVRs

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Any further ideas? i.e what could be improved in the youth space, comments...

_____

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

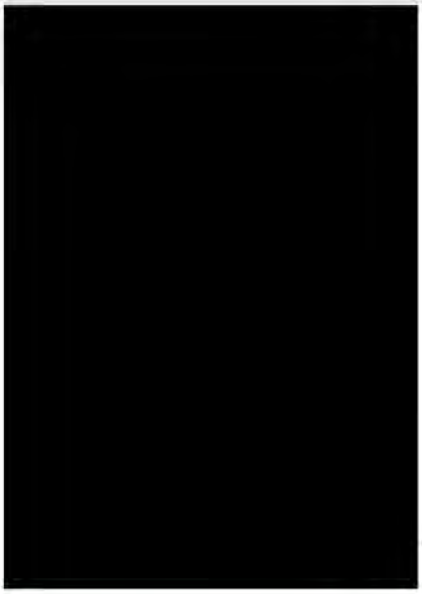
Ruby [redacted]

[redacted]

What is your age? *

- 12-13
- 14-15
- 16-17
- 18-19

[redacted]



Questions

What do you think the council should do more of?

More activities in levin that appeal to everyone

What do you think the council should do less of?

What's something that Horowhenua doesn't have but needs?

What should be done to improve the Youth Space?

- [x] New re-design
- [ ] Leave it as it is
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Any further ideas? i.e what could be improved in the youth space, comments...

_____

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

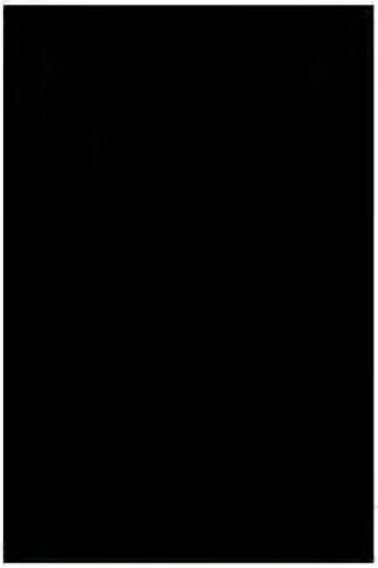
Cole [redacted]

[redacted]

What is your age? *

- 12-13
- 14-15
- 16-17
- 18-19

[redacted]



Questions

What do you think the council should do more of?

What do you think the council should do less of?

What's something that Horowhenua doesn't have but needs?

What should be done to improve the Youth Space?

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- ( ) All-year Indoor Leisure Pool (Multi-purpose room + same as above)

Any further ideas? i.e what could be improved in the youth space, comments...

_____

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

Sione [redacted]

[redacted]

What is your age? *

- 12-13
- 14-15
- 16-17
- 18-19

[redacted]

[redacted]

Questions

What do you think the council should do more of?

Provide more for the school

What do you think the council should do less of?

Building parks

What's something that Horowhenua doesn't have but needs?

More outdoor activities other than a park

What should be done to improve the Youth Space?

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- [ ] Leave it as it is
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- [ ] Other: _____

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Any further ideas? i.e what could be improved in the youth space, comments...

_____

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

Minnie [redacted]

[redacted] *

What is your age? *

- (●) 12-13
- ( ) 14-15
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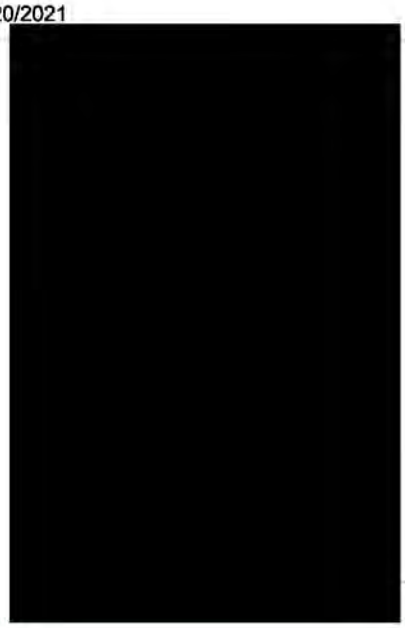
- ( ) 18-19

[redacted]



Questions

What do you think the council should do more of?

What do you think the council should do less of?

What's something that Horowhenua doesn't have but needs?

fun things for kids like a trampoline park. go karts . bowling

What should be done to improve the Youth Space?

- [ ] New re-design
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Any further ideas? i.e what could be improved in the youth space, comments...

_____

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

Ake [redacted]

[redacted]

What is your age? *

- 12-13
- 14-15
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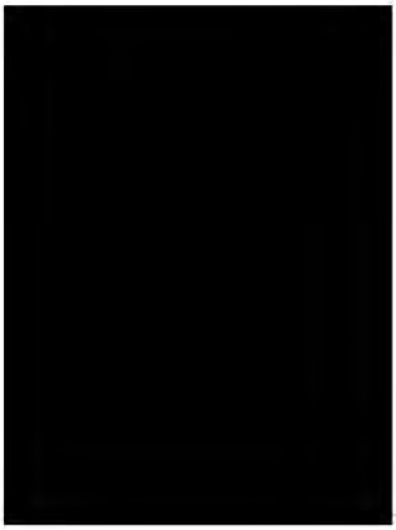
- 18-19

[redacted]



Questions

What do you think the council should do more of?

Have programmes for mental health care

What do you think the council should do less of?

What's something that Horowhenua doesn't have but needs?

What should be done to improve the Youth Space?

- [ ] New re-design
- [ ] Leave it as it is
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Any further ideas? i.e what could be improved in the youth space, comments...

_____

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

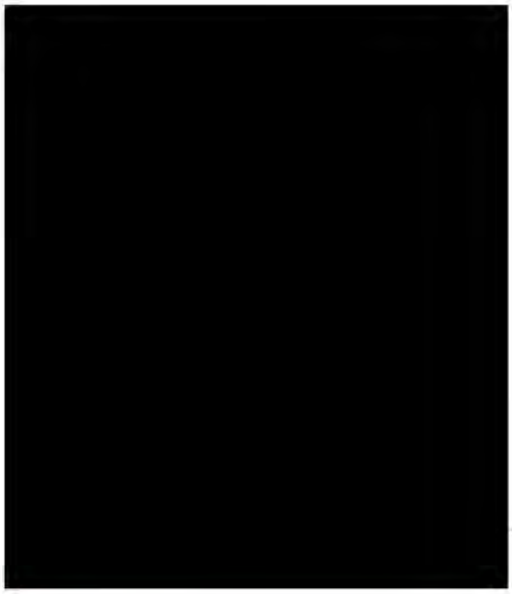
shanee[redacted]

[redacted]

What is your age? *

- (●) 12-13
- ( ) 14-15
- ( ) 16-17
- ( ) 18-19

[redacted]



Questions

What do you think the council should do more of?

idk

What do you think the council should do less of?

idk

What's something that Horowhenua doesn't have but needs?

idk

What should be done to improve the Youth Space?

- [x] New re-design
- [ ] Leave it as it is
- [ ] New location
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What do you think should be done with the Foxton pools? Open this link: https://youtu.be/2abixvLCVRs

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- ( ) Basic, Outdoor Seasonal Pool
- ( ) Basic, All-year Indoor Pool
- ( ) Outdoor Seasonal Leisure Pool (BBQ area, Splashpad, Teacher/Toddler Pools)
- (•) All-year Indoor Leisure Pool (Multi-purpose room + same as above)

Any further ideas? i.e what could be improved in the youth space, comments...

idk

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

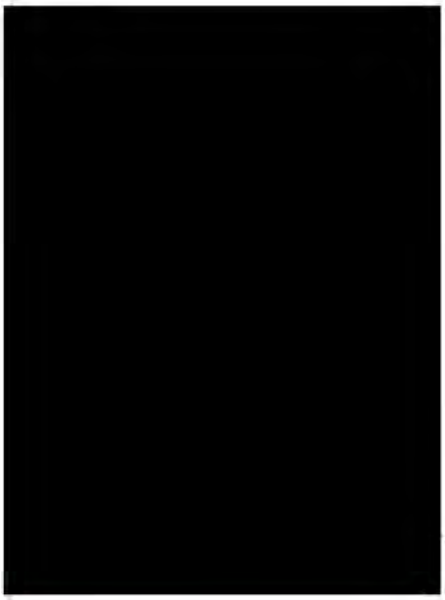
Dakota [redacted]

[redacted]

What is your age? *

- 12-13
- 14-15
- 16-17
- 18-19

[redacted]



Questions

What do you think the council should do more of?

What do you think the council should do less of?

What's something that Horowhenua doesn't have but needs?

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Any further ideas? i.e what could be improved in the youth space, comments...

_____

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

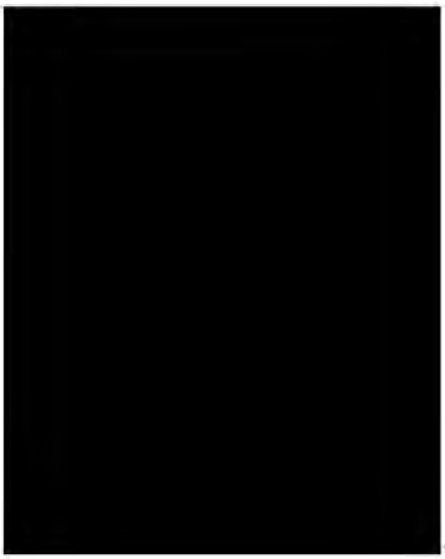
Kayla-Jane [redacted]

[redacted]

What is your age? *

- (●) 12-13
- ( ) 14-15
- ( ) 16-17
- ( ) 18-19

[redacted]



Questions

What do you think the council should do more of?

I don't know

What do you think the council should do less of?

I don't know

What's something that Horowhenua doesn't have but needs?

What should be done to improve the Youth Space?

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Any further ideas? i.e what could be improved in the youth space, comments...

No

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

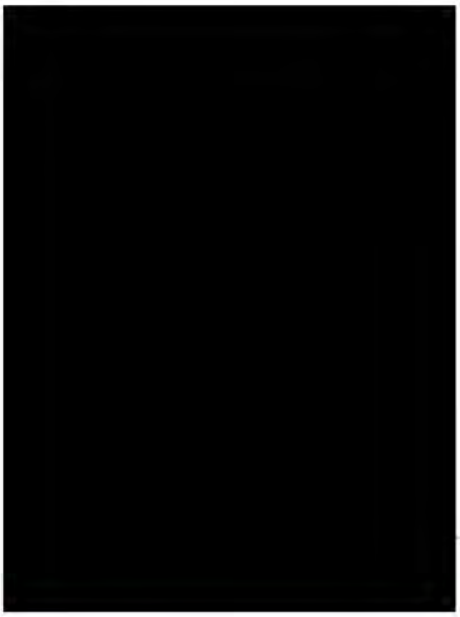
Madison [redacted]

[redacted]

What is your age? *

- (●) 12-13
- ( ) 14-15
- ( ) 16-17
- ( ) 18-19

[redacted]



Questions

What do you think the council should do more of?

not to sure

What do you think the council should do less of?

not to sure

What's something that Horowhenua doesn't have but needs?

not to sure

What should be done to improve the Youth Space?

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- [ ] Leave it as it is
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Any further ideas? i.e what could be improved in the youth space, comments...

no

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

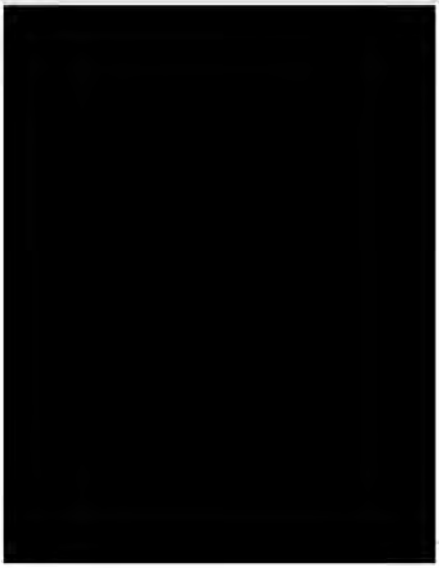
Cody [redacted]

[redacted]

What is your age? *

- (●) 12-13
- ( ) 14-15
- ( ) 16-17
- ( ) 18-19

[redacted]



Questions

What do you think the council should do more of?

Mufti days

What do you think the council should do less of?

I don't know

What's something that Horowhenua doesn't have but needs?

Longer breaks

What should be done to improve the Youth Space?

- [ ] New re-design
- [x] Leave it as it is
- [ ] New location
- [ ] More activities/areas within same space
- [ ] Other: _____

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- (•) All-year Indoor Leisure Pool (Multi-purpose room + same as above)

Any further ideas? i.e what could be improved in the youth space, comments...

I don't know

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

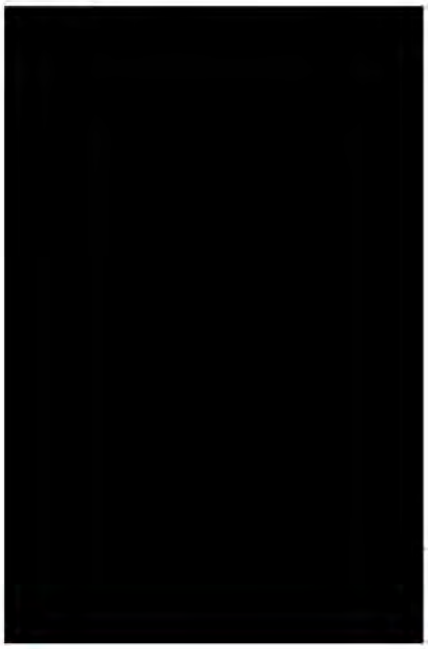
Charlett[redacted]

[redacted]

What is your age? *

- (●) 12-13
- ( ) 14-15
- ( ) 16-17
- ( ) 18-19

[redacted]



Questions

What do you think the council should do more of?

.

What do you think the council should do less of?

.

What's something that Horowhenua doesn't have but needs?

turf

What should be done to improve the Youth Space?

- [ ] New re-design
- [ ] Leave it as it is
- [ ] New location
- [x] More activities/areas within same space
- [ ] Other: _____

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- ( ) All-year Indoor Leisure Pool (Multi-purpose room + same as above)

Any further ideas? i.e what could be improved in the youth space, comments...

.

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

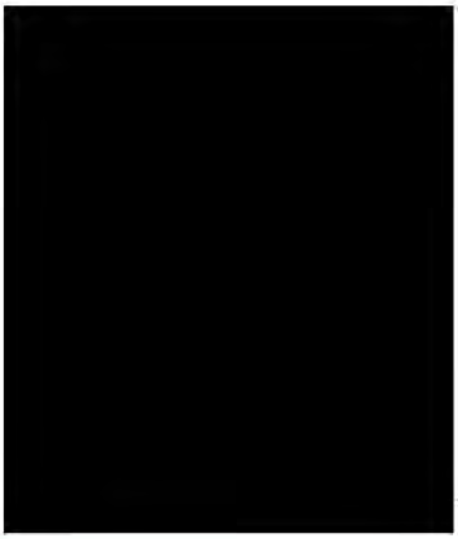
Blake [redacted]

[redacted]

What is your age? *

- (●) 12-13
- ( ) 14-15
- ( ) 16-17
- ( ) 18-19

[redacted]



Questions

What do you think the council should do more of?

More mufti.

What do you think the council should do less of?

Not sure

What's something that Horowhenua doesn't have but needs?

Longer breaks.

What should be done to improve the Youth Space?

- [ ] New re-design
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Any further ideas? i.e what could be improved in the youth space, comments...

Not sure

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

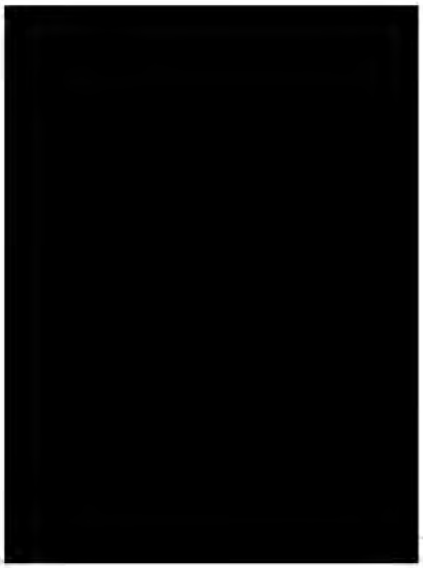
Penelope [redacted]

[redacted]

What is your age? *

- (●) 12-13
- ( ) 14-15
- ( ) 16-17
- ( ) 18-19

[redacted]



Questions

What do you think the council should do more of?

Not too sure

What do you think the council should do less of?

I don't know

What's something that Horowhenua doesn't have but needs?

Better Netball Hoops

What should be done to improve the Youth Space?

- [x] New re-design
- [ ] Leave it as it is
- [ ] New location
- [ ] More activities/areas within same space
- [ ] Other: _____

What do you think should be done with the Foxton pools? Open this link: https://youtu.be/2abixvLCVRs

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Any further ideas? i.e what could be improved in the youth space, comments...

_____

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

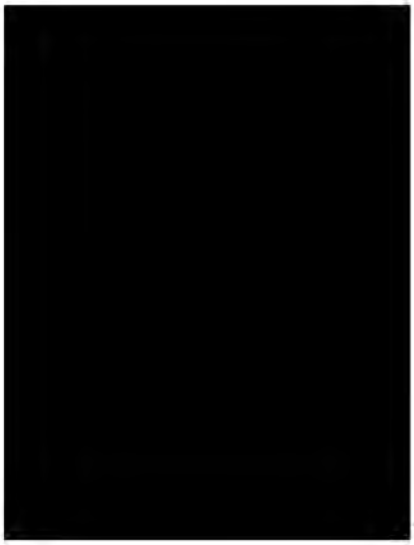
DJ[redacted]

[redacted]

What is your age? *

- 12-13
- 14-15
- 16-17
- 18-19

[redacted]



Questions

What do you think the council should do more of?

What do you think the council should do less of?

What's something that Horowhenua doesn't have but needs?

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Any further ideas? i.e what could be improved in the youth space, comments...

_____

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

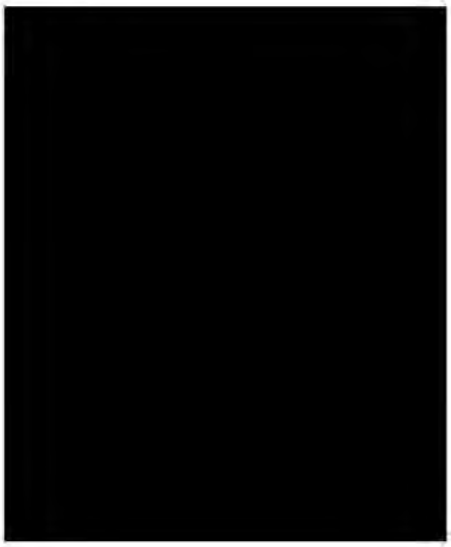
Zyran [redacted]

[redacted] *

What is your age? *

- 12-13
- 14-15
- 16-17
- 18-19

[redacted]



Questions

What do you think the council should do more of?

?

What do you think the council should do less of?

?

What's something that Horowhenua doesn't have but needs?

?

What should be done to improve the Youth Space?

- [x] New re-design
- [ ] Leave it as it is
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- [ ] More activities/areas within same space
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- ( ) All-year Indoor Leisure Pool (Multi-purpose room + same as above)

Any further ideas? i.e what could be improved in the youth space, comments...

?

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

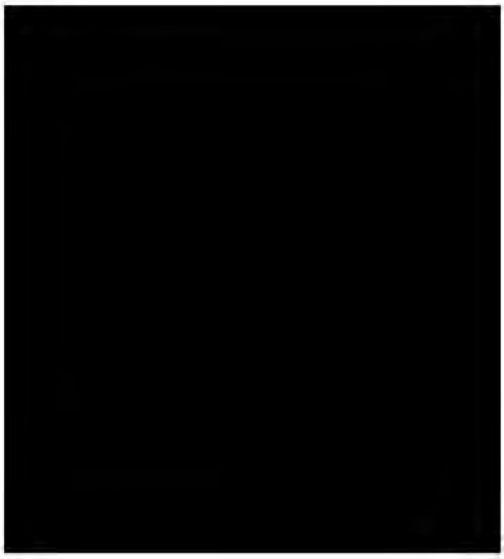
Ryan [redacted]

[redacted]

What is your age? *

- (●) 12-13
- ( ) 14-15
- ( ) 16-17
- ( ) 18-19

[redacted]



Questions

What do you think the council should do more of?

Promoting hat wearing to help bring more people aware of skin cancer

What do you think the council should do less of?

Just talking but doing nothing

What's something that Horowhenua doesn't have but needs?

A local museum

What should be done to improve the Youth Space?

- [ ] New re-design
- [ ] Leave it as it is
- [ ] New location
- [x] More activities/areas within same space
- [ ] Other: _____

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Any further ideas? i.e what could be improved in the youth space, comments...

What about adding a regular play ground on the grass area.

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

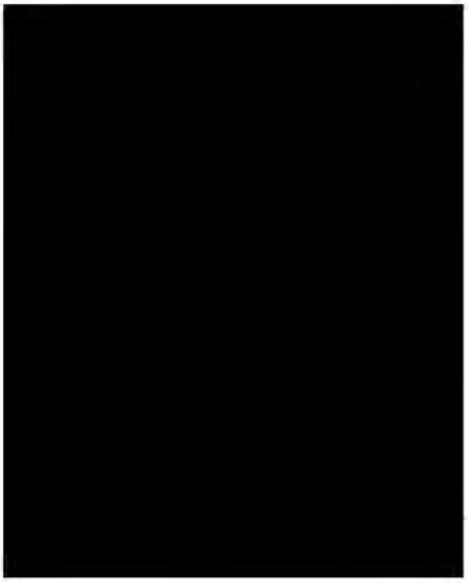
Ben[redacted]

[redacted] *

What is your age? *

- 12-13
- 14-15
- 16-17
- 18-19

[redacted]



Questions

What do you think the council should do more of?

Free vbuck giveaway

What do you think the council should do less of?

less schools

What's something that Horowhenua doesn't have but needs?

free food that is good

What should be done to improve the Youth Space?

- [ ] New re-design
- [ ] Leave it as it is
- [ ] New location
- [ ] More activities/areas within same space
- [x] Other: monke

What do you think should be done with the Foxton pools? Open this link: https://youtu.be/2abixvLCVRs

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- ( ) All-year Indoor Leisure Pool (Multi-purpose room + same as above)

Any further ideas? i.e what could be improved in the youth space, comments...

free yearly subscription to Xbox gamepass ultimate

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

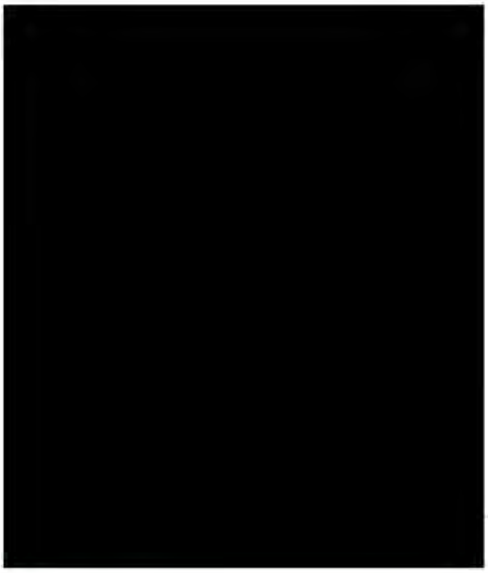
Jemel [redacted]

[redacted]

What is your age? *

- 12-13
- 14-15
- 16-17
- 18-19

[redacted]



Questions

What do you think the council should do more of?

Opp idk

What do you think the council should do less of?

Opp idk

What's something that Horowhenua doesn't have but needs?

Park

What should be done to improve the Youth Space?

- [x] New re-design
- [ ] Leave it as it is
- [ ] New location
- [x] More activities/areas within same space
- [ ] Other: _____

What do you think should be done with the Foxton pools? Open this link: https://youtu.be/2abixvLCVRs

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- ( ) All-year Indoor Leisure Pool (Multi-purpose room + same as above)

Any further ideas? i.e what could be improved in the youth space, comments...

_____

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

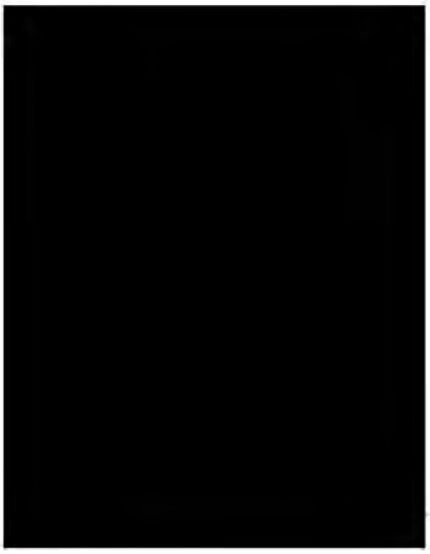
Caitlin [redacted]

[redacted]

What is your age? *

- 12-13
- 14-15
- 16-17
- 18-19

[redacted]



Questions

What do you think the council should do more of?

Cleaning up Levin, there is rubbish and cigarettes and gross stuff everywhere

What do you think the council should do less of?

To stop fluffing around and actually do something

What's something that Horowhenua doesn't have but needs?

Somewhere for a older kids to hangout at, the youth space is boring

What should be done to improve the Youth Space?

- [ ] New re-design
- [ ] Leave it as it is
- [ ] New location
- [x] More activities/areas within same space
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Any further ideas? i.e what could be improved in the youth space, comments...

_____

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

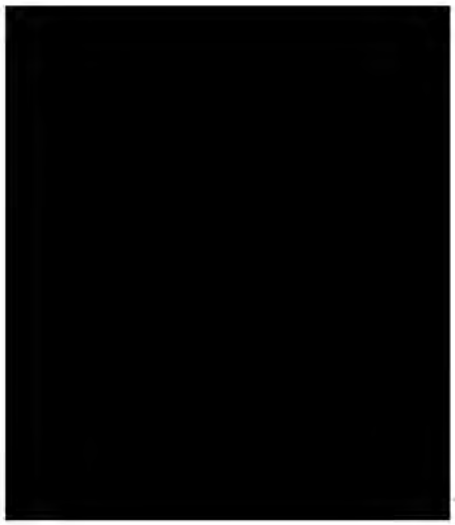
Alyssa [redacted]

[redacted]

What is your age? *

- (●) 12-13
- ( ) 14-15
- ( ) 16-17
- ( ) 18-19

[redacted]



Questions

What do you think the council should do more of?

What do you think the council should do less of?

What's something that Horowhenua doesn't have but needs?

What should be done to improve the Youth Space?

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- (•) All-year Indoor Leisure Pool (Multi-purpose room + same as above)

Any further ideas? i.e what could be improved in the youth space, comments...

_____

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

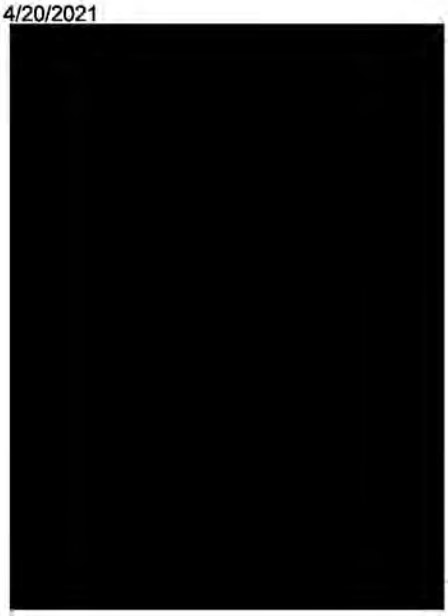
Tahlia[redacted]

[redacted]

What is your age? *

- 12-13
- 14-15
- 16-17
- 18-19

[redacted]



Questions

What do you think the council should do more of?

What do you think the council should do less of?

What's something that Horowhenua doesn't have but needs?

What should be done to improve the Youth Space?

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- [ ] Leave it as it is
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What do you think should be done with the Foxton pools? Open this link: https://youtu.be/2abixvLCVRs

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- ( ) All-year Indoor Leisure Pool (Multi-purpose room + same as above)

Any further ideas? i.e what could be improved in the youth space, comments...

_____

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

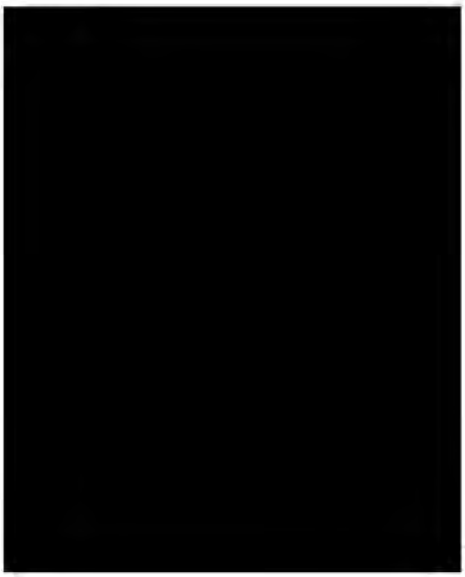
Natasha [redacted]

[redacted]

What is your age? *

- (●) 12-13
- ( ) 14-15
- ( ) 16-17
- ( ) 18-19

[redacted]



Questions

What do you think the council should do more of?

What do you think the council should do less of?

What's something that Horowhenua doesn't have but needs?

What should be done to improve the Youth Space?

- [ ] New re-design
- [ ] Leave it as it is
- [ ] New location
- [x] More activities/areas within same space
- [ ] Other: _____

What do you think should be done with the Foxton pools? Open this link: https://youtu.be/2abixvLCVRs

- ( ) Close the Pool
- ( ) Basic, Outdoor Seasonal Pool
- (•) Basic, All-year Indoor Pool
- ( ) Outdoor Seasonal Leisure Pool (BBQ area, Splashpad, Teacher/Toddler Pools)
- ( ) All-year Indoor Leisure Pool (Multi-purpose room + same as above)

Any further ideas? i.e what could be improved in the youth space, comments...

_____

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

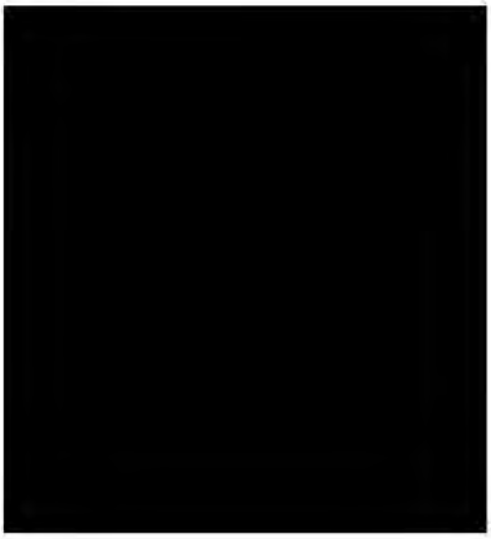
Abby[redacted]

[redacted]

What is your age? *

- 12-13
- 14-15
- 16-17
- 18-19

[redacted]



Questions

What do you think the council should do more of?

Investing money in more safe places for the youth

What do you think the council should do less of?

Wasting money on roads that are perfectly fine

What's something that Horowhenua doesn't have but needs?

A platform for youth to speck on decision about youth

What should be done to improve the Youth Space?

- [x] New re-design
- [ ] Leave it as it is
- [ ] New location
- [x] More activities/areas within same space
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Any further ideas? i.e what could be improved in the youth space, comments...

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Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

Hermione [redacted]

[redacted]

What is your age? *

- 12-13
- 14-15
- 16-17
- 18-19

[redacted]

[redacted]

Questions

What do you think the council should do more of?

Invest more money on safe places for the youth.

What do you think the council should do less of?

Invest less money in roads that are perfectly fine.

What's something that Horowhenua doesn't have but needs?

A platform for youth, this is for youth to speak on and feel empowered although we are teenagers.

What should be done to improve the Youth Space?

- [x] New re-design
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- [x] More activities/areas within same space
- [ ] Other: _____

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Any further ideas? i.e what could be improved in the youth space, comments...

_____

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

nathaniel [redacted]

[redacted]

What is your age? *

- 12-13
- 14-15
- 16-17
- 18-19

[redacted]

Questions

What do you think the council should do more of?

fix up the roads

What do you think the council should do less of?

nothing

What's something that Horowhenua doesn't have but needs?

more places to go for kids like trampoline parks

What should be done to improve the Youth Space?

- [ ] New re-design
- [ ] Leave it as it is
- [ ] New location
- [x] More activities/areas within same space
- [ ] Other: _____

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Any further ideas? i.e what could be improved in the youth space, comments...

_____

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

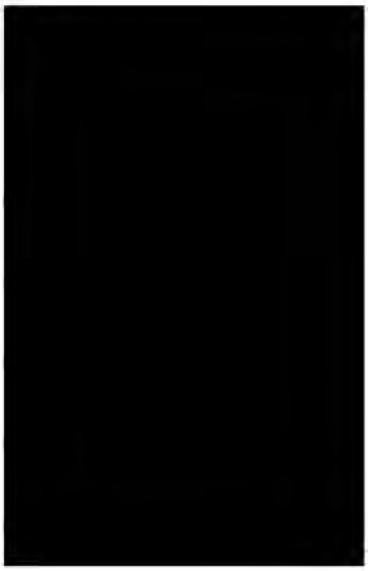
Gin [redacted]

[redacted]

What is your age? *

- 12-13
- 14-15
- 16-17
- 18-19

[redacted]



Questions

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What do you think the council should do less of?

What's something that Horowhenua doesn't have but needs?

What should be done to improve the Youth Space?

- [x] New re-design
- [ ] Leave it as it is
- [ ] New location
- [ ] More activities/areas within same space
- [x] Other: A quiet space to study/read

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Any further ideas? i.e what could be improved in the youth space, comments...

Youth Long Term Plan Survey

Please answer as many of these questions as you can.

[redacted]

Full Name *

-

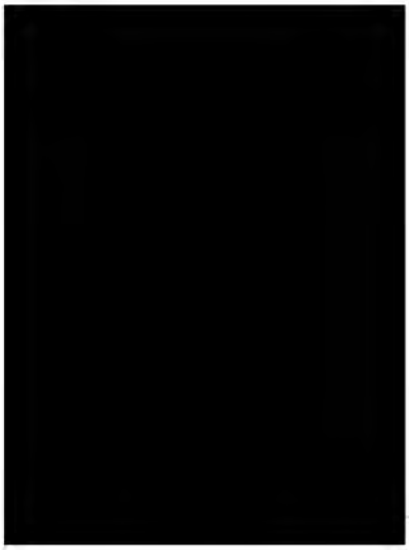
claire [redacted]

[redacted]

What is your age? *

- 12-13
- 14-15
- 16-17
- 18-19

[redacted]



Questions

What do you think the council should do more of?

focus on mental health issues more.

What do you think the council should do less of?

What's something that Horowhenua doesn't have but needs?

Mental health questions each year for students in college, gender normality for all uniform based schools, extra classes after school on a subject a student would like to improve on (students who would also like to improve on the subject will attend at the same time), more activities people can participate in locally, give youth more opportunities not only in sports but art wise also, teachers that do not enforce their opinion on students e.g talking about politics, Arcade where people can hangout, extension on the mall in levin e.g adding a second floor, and help kids with drug addictions and alcohol addictions more.

What should be done to improve the Youth Space?

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