

**Northland Rural Rivers:
Environmental Management, Pollution, and
Kaitiakitanga since 1991**



Matthew Cunningham, Ross Webb, Perrine Gilkison, and Jessica Maynard

Report commissioned by the Waitangi Tribunal for the Te Paparahi o Te Raki inquiry

(Wai 1040)

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Cover image **Diversion canal on the Wairua River, photo by Perrine Gilkison**

He mihimihi

In the process of writing this report, we received the news that Hōri Tuhiwai, Te Parawhau ki Korokota, passed away suddenly on 18 May 2016.

Hōri was a key informant for this report and was central to the elver trap and transfer scheme discussed in chapter six.

Hōri was dedicated to his mahi with the elvers, to the environment in his rohe, and to his community.

We hope that his work, his commitment, and his spirit will live on.

Moe mai rā e te rangatira, moe mai, moe mai.



Hōri Tuhiwai, 15 December 2015
(photograph by Perrine Gilkison)

About the authors

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Commissionee responsibilities

This report was undertaken by four co-commissionees: Matthew Cunningham, Perrine Gilkison, Jessica Maynard, and Ross Webb. Each commissionee is responsible for different aspects of the report.

- Introduction: Matthew
- Chapter One: Ross
- Chapter Two: Matthew
- Chapter Three: Ross
- Chapter Four (Whangaroa): Jessica
- Chapter Five (Bay of Islands): Matthew
- Chapters Six (Southern Bay of Islands): Ross (Perrine is responsible for the Wairua Power station fish passage local study)
- Chapter Seven (Inland Whangarei): Perrine
- Chapter Eight (Hokianga): Ross

The conclusion was produced by all four co-commissionees.

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Abbreviations

AEE	Assessment of Environmental Effects
CIA	Cultural Impact Assessment
CEA	cultural effects assessment (or Assessment of Cultural Effects)
DO	Dissolved Oxygen
DOC	Department of Conservation
ERP-A	Environmental River Patrol - Aotearoa
MAF	Ministry of Agriculture and Fisheries
MfE	Ministry for the Environment
NKONWM	Ngā Kaitiaki o Ngā Wai Māori
MCI	Macroinvertebrate Community Index
NIWA	National Institute of Water and Atmospheric Research
NWSCA	National Water and Soil Conservation Authority
NRC	Northland Regional Council
PCE	Parliamentary Commissioner for the Environment
RMA	Resource Management Act 1991
RMLR	Resource Management Law Reform project
RPRWSPN	Revised Proposed Regional Water and Soil Plan for Northland
RPSN	Regional Policy Statement for Northland
RWSPN	Regional Water and Soil Plan for Northland
RWB	Regional Water Board
SoE	State of the Environment
SCRCC	Soil Conservation and Rivers Control Council
TPK	Te Puni Kōkiri
WAC	Water Allocation Council
WCO	Water Conservation Orders
WDC	Whāngārei District Council
WWTP	Wastewater Treatment Plant
WSCA	Water and Soil Conservation Act 1967

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Introduction

Kaitiakitanga to me is being a guardian and caretaker. Our role as kaitiaki is from Papatunanuku to Ranginui and everything in between. In practical terms it means that we have to look after our lands and environment for the future generations. We also have to pass on to our future generations what it means to be a kaitiaki. Although today that role has changed and to be an effective kaitiaki you have to engage with central and local governments and other organisations such as Fonterra.¹

In 1991, the New Zealand Parliament passed a wide-ranging piece of environmental legislation known as the Resource Management Act (RMA). This Act was significant for a number of reasons. It brought together a number of resource management and environmental protection functions which were previously administered under some 70 different Acts and delegated authority for these functions to newly established regional councils. It also established sustainable development as a core principle in the management of New Zealand's natural and physical resources.² Most significantly for this report, it also required 'all persons exercising functions and powers under the Act' to 'recognise and provide for' the relationship between Māori and the environment, to 'have particular regard to' the Māori concept of kaitiakitanga, and 'take into account' the principles of the Treaty of Waitangi.³ The RMA has since been complemented by other pieces of legislation relating to local government activity and the management of resources, such as the Fisheries Act 1996 and the Local Government Act 2002.

This report examines how rural rivers in the Te Paparahi o Te Raki inquiry region have been managed under this legislation, and the impact of pollution on customary river resources and kaitiakitanga, from 1991 to the present, with a focus on five specific rural river systems and their tributaries and lakes. It analyses the central and local government regimes established by the Crown to manage those rivers, and the extent to which Māori kaitiakitanga has been recognised and protected under those regimes. In assessing these topics, the report explores the overarching management regime

¹ Brief of Evidence of Allan Halliday, Wai 1040 #P2, para 3.2

² Resource Management Act (1991 No. 69), Section 5

³ Resource Management Act (1991 No. 69), Sections 6(e), 7(a), 8

established in Northland. It examines too a number of local studies relating to activities such as soil conservation, flood protection, water allocation, monitoring water quality and mitigating sources of pollution, and the protection of freshwater ecosystems and indigenous species such as tuna.

This introduction sets out the overall framework for this report. It outlines the background to this project, identifies the five selected rural river systems, and sets out the questions we have been commissioned to address. It also summarises the statements of claim and the technical and claimant evidence filed to date which relate to the subject material covered in this report. A methodology section draws this information together and sets out the approach we have taken to addressing our commission. We have also highlighted where sufficient evidence already exists on certain issues, and any limitations we have encountered in terms of primary and secondary source material.

Background

This project is part of the agreed local issues research programme for Te Papanahi o Te Raki regional inquiry. In October 2013, the Chief Historian of the Waitangi Tribunal completed a review of the sufficiency and adequacy of the existing evidence on local claim issues and made recommendations for further specific local research.⁴ Following consultation with the parties on this review and its recommendations, including the 16 November 2013 judicial conference at Waitangi, on 24 December 2013 the Presiding Officer issued a direction approving a list of research projects to be commissioned. This included three environmental projects relating to the post-1991 RMA era – Porotī Springs, the Hokianga Harbour, and a study of rural river environmental management.⁵

In approving the rural rivers environmental study, the Presiding Officer determined that claimant input into the selection of rivers should follow a similar process to that adopted for the land block studies. Claimant counsel were to submit a ‘long list’ of candidate rivers, on the basis of which the Tribunal would make a final selection. A memorandum from the Chief Historian sent to parties set out a selection methodology

⁴ Local Issues Research Review Wai 1040 #6.2.13

⁵ Memorandum-Directions of the Presiding Officer Wai 1040 #2.6.51

and criteria. These criteria included: that waterways be of substantial customary interest to claimants in the sub-region, have issues in contention between Māori and the Crown, and have sufficient documentation, data and scientific results available for targeted research to be feasible.⁶

A total of four submissions on behalf of individual claimants or groups of claimants were received. The submissions nominated four river systems:

- Whangaroa harbour, Kaeo River, Touwai Stream and other catchment waterways, nominated by Bryan Gilling and Hanna Stephen on behalf of Whangaroa claimants;⁷
- The Taumārere (Kawakawa) River and its tributaries, together with the Lake Ōwhareiti underground river system, nominated by Bryan Gilling and Hanna Stephen on behalf of Ngā Hapū o Takutai Moana.⁸
- The Hikurangi River, nominated by Bryan Gilling and Hanna Stephen on behalf of Ngā Hapū o Takutai Moana.⁹
- The Whakapara, Waiariki and Waiotū Rivers, nominated by David Stone and Cameron Hockly on behalf of the Puhipuhi State Forest Claim (Wai 246) and the Descendants of Sylvia Jones Claim (Wai 1959) claimants.¹⁰

No nominations were received in respect of the Hokianga Harbour catchment. However, an earlier research request specified two Hokianga rivers: the Punakitere and Mangamuka Rivers, proposed by Darrell Naden, counsel for the Maunga Kawakawa Block Claim (Wai 1957) and for the Land Alienation and Wards of the State (Harris) Claim (Wai 1531) respectively.¹¹ However, as is discussed below, neither the Mangamuka nor Te Touwai were included in our commission.

On 11 June 2014, the Presiding Officer approved a list of rivers recommended by the Chief Historian for inclusion in the rural rivers research based on these nominations.¹²

⁶ Local Issues Research Programme: Selection of rural river case studies, Wai 1040 #6.2.16

⁷ Wai 1040 #3.2.533

⁸ Wai 1040 #3.2.530

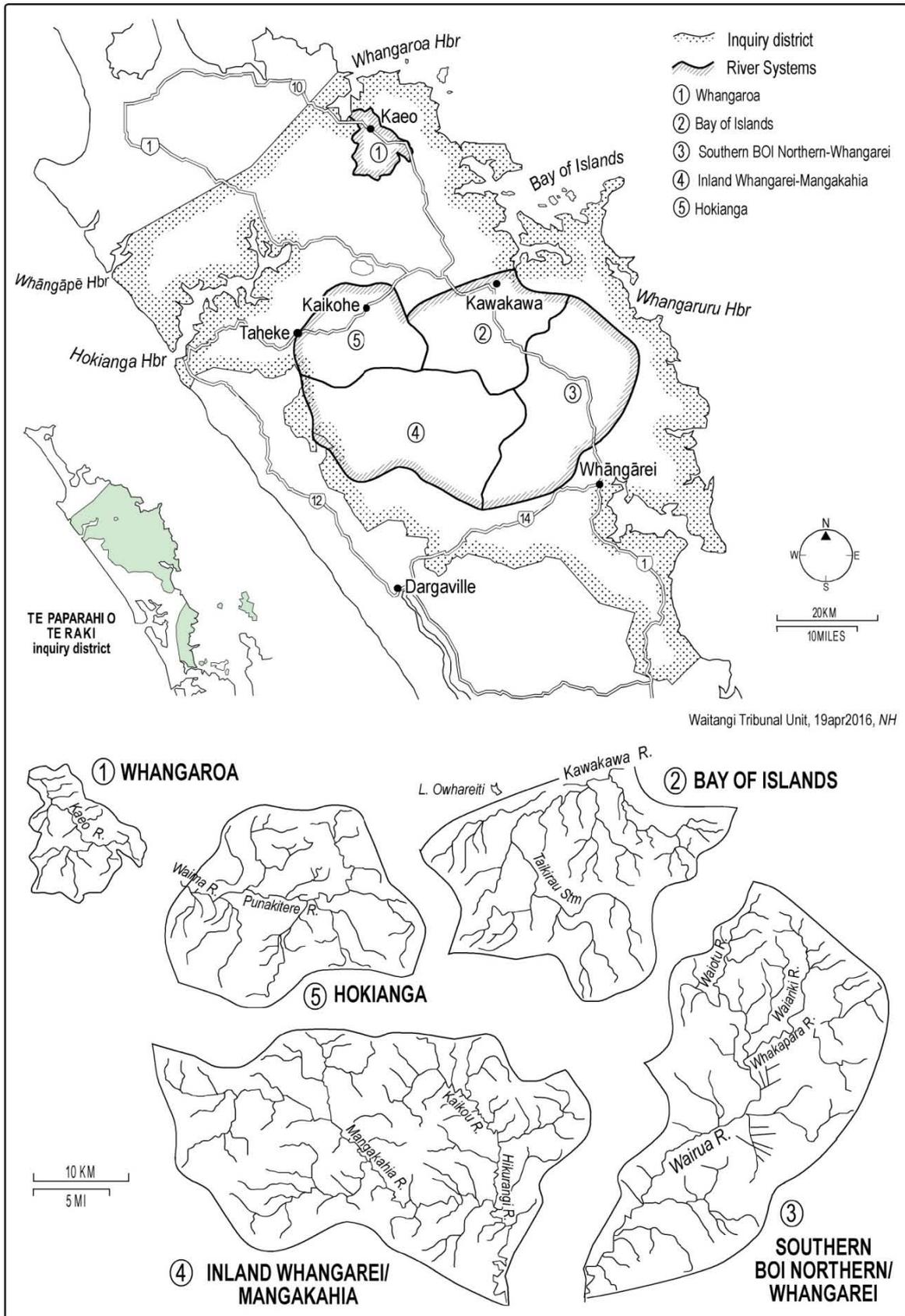
⁹ Wai 1040 #3.2.530

¹⁰ Wai 1040 #3.2.488

¹¹ Wai 1040 #3.1.916

¹² Memorandum-Directions of the Presiding Officer, Wai 1040 #2.6.73

Figure 1: Location of the five river systems included in this report



Commission questions and selected river systems

The commission for this project, which was released on 28 May 2015, directed us to prepare a report examining 'rural river environmental management and the impact of pollution on customary river resources and kaitiakitanga' since 1991, with a focus on five specific rivers and their tributaries and lakes.¹³ As is outlined below in our methodology, we have used this as a framework for our interpretation of the commission questions.

The commission questions are:

- a) In what ways and to what extent have the Crown and local bodies it delegated power to under the Resource Management Act 1991 recognised and protected the customary authority and ownership of Te Raki Māori in these rivers and lakes?
- b) In what ways and to what extent has this regulation and delegation impacted upon on [sic.] whanau and hapu and their exercise of tino rangatiratanga and kaitiakitanga over and cultural use and enjoyment of these rivers and lakes?
- c) How have Te Raki Māori sought to be included in the resource management of these rivers and lakes, under local government planning and zoning regimes or under the Resource Management Act 1991? How successful have they been?
- d) In what ways and to what extent have the Crown and its delegates consulted with Te Raki Māori and/or provided for their representation and/or participation in environmental planning, decision-making and management regimes concerning these rivers and lakes since 1991?
- e) What provision has the Crown and its delegates made to ensure that Te Raki Māori have been and are resourced to cope with the demands of dealing with local government and Resource Management Act activities?
- f) To what extent (if at all) have these rivers and lakes been polluted and/or degraded and what factors have contributed to these changes?
- g) What role have the actions or inactions of the Crown and/or local body delegates generally and under the Resource Management Act 1991 played in those changes?

¹³ Commission-Directions of the Presiding Officer, Wai 1040 #2.3.26

h) Any other related issues the researchers consider to be relevant.

The five rural river systems selected for the project are:

- 1) In Whangaroa: The Kaeo River and its tributaries, and Whangaroa Harbour in respect of river discharge impacts.
- 2) In the Bay of Islands: The Taumarere (or Kawakawa) River and its tributaries including Otiria, Waiharakeke, Orauta, Hawera, Taikirau, Waiomio and Tirohanga, and Lake Owhareiti.
- 3) In Southern Bay of Islands/northern Whangarei: The Whakapara, Waiariki and Waiotu Rivers in the upper catchment of the Wairua River, and their tributaries (including Mokotuna, Waipuna, Kaimamaku, Taparahaia).
- 4) In inland Whangarei/Mangakahia: The Hikurangi and Kaikou rivers north of the junction with the Mangakahia River and their tributaries including Pipiwai, Te Hoanga, Kahuwera, Patutahi, Papatahora and Moengawahine.
- 5) In Hokianga: The Punakitere River upstream of Taheke, and its tributaries including Mangatōa, Huehue, Mangaone and Te Opou.

These are shown in figure 1.

Tribunal statement of issues

This research project relates to question 10 of the Tribunal statement of issues for the Te Raki inquiry: the ownership and management of environmental, water and other non-land resources. In particular, it addresses matters relating to understandings and impact; consultation and delegation; protection; degradation and pollution; resource management legislation, policy and practice; environmental management of water and waterways; and resourcing and current status.¹⁴

The Crown's position on environmental management

The Crown has not, at this stage, notified concessions on any aspect of claims concerning environmental management, water and other non-land resources in the Te Raki inquiry. The Crown's general position on matters with which this report is

¹⁴ Tribunal Statement of Issues, Wai 1040 #1.4.2, pp29-32

concerned is summed up in its statement of positions and concessions. Crown counsel has stated the following in regards to whether the RMA is consistent with the Treaty:

The Crown considers the RMA to be consistent with Treaty principles. It requires a balancing of interests which is also provided for in Te Tiriti and/or The Treaty. There are multiple interests in the environment and natural resources of the inquiry district that must be carefully weighed and the RMA regime provides for this.

The Crown notes that what has been viewed as an appropriate balance has altered over time in accordance with factors such as the state of the economy, knowledge of the environment and greater awareness of the need to provide for Māori participation in decision-making processes. This may mean differences over time in how Māori interests have been addressed.¹⁵

...

The Crown does not accept that it has a general obligation, under Te Tiriti/the Treaty or otherwise, to prevent all adverse environmental effects that result from activities. The Crown must weigh up often competing interests of diverse groups and, at times, the avoidance of prejudicial environmental effects may be outweighed by other considerations or interests.

In addition, Crown actions and the applicable environmental regimes must be assessed against a range of factors such as knowledge regarding the environmental effects of activities and the economic and other circumstances of the time.¹⁶

In addition, the Crown has drawn a distinction between the actions of local government bodies that have been delegated authority over environmental management and the legislative framework under which they operate:

Local authorities are not the Crown nor do they act on behalf of the Crown for the purposes of the Treaty of Waitangi Act 1975. Under the Local Government Act 2002 local authorities are separate bodies corporate, created by Parliament and vested with particular powers by statute.

...

While the Crown does not accept that it has responsibility for the actions of such bodies, it acknowledges that it is responsible for the legislative framework within which they operate. Whether or not legislation

¹⁵ Crown Statement of Positions and Concessions, Wai 1040 #1.3.2, paras 636-638

¹⁶ Wai 1040 #1.3.2, paras 646-647

affecting the inquiry district appropriately provided for the Crown's Treaty obligations is a relevant matter for the Tribunal's inquiry.¹⁷

We have tried to reflect this distinction in our approach, which is outlined below in our methodology.

Statements of claim

In its Te Paparahi o Te Raki inquiry the Tribunal is inquiring into and reporting on several hundred claims covering a wide range of treaty grievances, only some of which relate specifically to the management of the environment. Appendix 1 highlights those claims which raise issues relating to the five river systems that are the subject of this report. While we have attempted to be as comprehensive as possible, there may be claims with issues relating to the five river systems that are not listed here.

The claim summaries which we have prepared in Appendix 1 are based on our reading of the claims as they relate to this project, and may not reflect the key emphases of the claimants themselves. Bearing that in mind, several general themes appear throughout the claims:

- The traditional relationship of Māori with waterways and customary resources and the duties of kaitiakitanga;
- Environmental management regimes established by the Crown, and the extent to which Māori have been consulted over, or are able to participate in, such regimes;
- Crown legislation over the management, ownership and use of waterways (including Māori customary title and the resource consent process); and
- Allegations of detrimental effects to the waterways caused by Crown (or its delegates') action or inaction (including deforestation and erosion, discharges to water, water quality, agricultural runoff, drainage, and their impacts on customary resources).

¹⁷ Wai 1040 #1.3.2, paras 613, 644

While the claim issues relating to waterways are mostly of a general nature, some specific sites are mentioned. The statement of claim for the Taumārere River and Te Moana o Pikopiko-I-whiti (Wai 46) raises issues about the reclamation at Ōpua Marina in the Bay of Islands, and the Puhipuhi State Forest Claim (Wai 246) discusses the Wairua Falls Hydroelectric Scheme.

Methodology

Definitions

As stated above, our commission directs that we prepare a report examining ‘rural river environmental management and the impact of pollution on customary river resources and kaitiakitanga’. We have used this statement as an overarching framework for the eight commission questions and five rural river systems we have examined. There are four aspects to this framework: environmental management, pollution, customary resources, and kaitiakitanga.

Environmental management

We have interpreted ‘environmental management’ as referring to the local and central government regimes established by the Crown to manage rural rivers and customary river resources in the Te Raki inquiry district, in particular the five river systems identified in our commission. The Northland Regional Council is featured heavily in our report. As the body delegated authority by the Crown over Northland’s waterways, NRC’s management and monitoring work is required to deal with matters of pollution and its impact on such river life as tuna. In addition, the NRC is the body that the majority of Te Raki Māori have the most frequent and day-to-day contact with regarding environmental management in Northland. However, we have also looked at a number of central government agencies which have an ongoing presence in the management of Northland waterways and fisheries, including the Ministry for Primary Industries, the Ministry for the Environment, and the Environmental Protection Authority. Chapter One summarises the legislation which governs the operations of these bodies, and Chapter Two examines how they operate and interact in the Northland region.

Pollution

Our commission, as we interpreted it, did not require us to write a report about environmental degradation and possible remedies. This would be outside our area of expertise as historians. Rather, we have examined how sources of pollution have been managed by the central and local government regimes set up by the Crown. To do this, we have relied on several standard definitions used by the scientific community to categorise different types of pollution and their sources. The Parliamentary Commissioner for the Environment has divided freshwater pollutants into three categories: pathogens (invisible microbes in human and animal waste that cause disease), sediment (particles of soil and rock eroded from the land), and nutrients (in particular nitrogen and phosphorus from fertilisers and human and animal waste). As will be seen throughout this report, managing these types of pollutants is a major part of the NRC's work.

It is important to distinguish the different sources of pollution. We have adopted the categories of point and non-point source (often called diffuse) pollution that are commonly used in the scientific literature. Point source pollution refers to intentional or accidental discharges to land or water from a specific site (such as a pipe), including sewage treatment plants, dairy processing plants, and dairy yards. In contrast, non-point source pollution involves the dispersal of pollutants to waterways over a broad area. Non-point source pollution is gradual, depending on soil type and weather conditions and can take decades from the time of initial release until results may be observed in the receiving waters. It is most commonly used to refer to the leaching of agricultural goods and by-products, such as fertilisers and animal effluent, into nearby waterways through ground absorption and rainfall. It can also refer to soil erosion and sedimentation, which is often caused by deforestation and the clearing of riverbank foliage.

Customary river resources

We have largely relied on tangata whenua to define what their customary river resources are, both historically and in the present. Their kōrero has been gleaned from several sources, including statements of claim, briefs of evidence, research hui, and the primary sources that we have analysed. From the sources, it is clear that tuna (eel) is

one of the most important customary resources for Te Raki Māori throughout the Northland region. Tuna were a concern in virtually all of the five river systems we have examined in our report, and were the subject of several scientific studies that are summarised in Chapter Three. Other common resources mentioned include tio (oyster), watercress, and kuta (a rush used for weaving). Given the holistic way in which tangata whenua view their awa, many claimants also describe the rivers themselves as a customary resource – a foodbasket or pantry which they and their tupuna have been able to rely on as a source of kaiawa for their whānau.

Kaitiakitanga

Kaitiakitanga is central to our report.¹⁸ Environmental management, mitigating pollution, and protecting customary resources are all arguably duties that kaitiaki may consider themselves responsible for. ‘Guardianship’ and ‘stewardship’ are commonly used as English analogues for kaitiakitanga, including in the RMA. Under the 1991 Act, kaitiakitanga was defined as ‘the exercise of guardianship; and, in relation to a resource, includes the ethic of stewardship based on the nature of the resource itself.’¹⁹ In a 1997 amendment to the Act, the definition was updated to ‘the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Maori in relation to natural and physical resources; and includes the ethic of stewardship’.²⁰

In *Ko Aotearoa Tēnei*, the Waitangi Tribunal found that ‘guardianship’ and ‘stewardship’ do not fully encapsulate the spiritual dimension of kaitiakitanga:

Kaitiaki nurture and care for the environment and its resources – not necessarily by forbidding their use, but by using them in ways that enhance rather than damage kin relationships. The kaitiaki relationship with the environment is not the transactional or proprietary kind of the Western market, and does not rest on ‘ownership’. Rather, like a family relationship, it is permanent and mandatory, binding both individuals and

¹⁸ The term ‘kaitiakitanga’ is used interchangeably with ‘tiakitanga’ and ‘mana motuhake’ by some claimants. We have opted to use the term ‘kaitiakitanga’ given that it appears in several pieces of legislation and is thus the term most commonly used in central and local government material concerning resource management and Māori. ‘Kaitiakitanga’ is also the term used in our commission.

¹⁹ Resource Management Act (1991 No. 69), Part I

²⁰ Resource Management Amendment Act (1997 No. 104), Section 2(4)

communities over generations and enduring as long as the community endures.²¹

This spiritual dimension is interwoven with the body of traditional knowledge known as mātauranga Māori. In *Ko Aotearoa Tēnei*, the Waitangi Tribunal described mātauranga Māori as an evolving body of knowledge incorporating ‘language, whakapapa, technology, systems of law and social control, systems of property and value exchange, forms of expression’, and many other concepts that constitute part of a Māori worldview. This knowledge is, for the most part, transferred orally through a variety of ways. Tapiki Korewha of Ngāti Hau and Ngāti Kaharau described the importance of these ‘vehicles’ for transmitting mātauranga Māori in his evidence before the Tribunal:

In the days of our tupuna, mātauranga Maori was the most important part of living as Maori. This knowledge has the ability to be embodied in a range of different sophisticated cultural vehicles for transmission. Only by ensuring that these vehicles are actively utilised do we, as Māori, preserve and continue the growth and development of that knowledge or mātauranga.

As mentioned above, these “vehicles” can be, but are not limited to waiata, whakatauki, purakau, whakapapa, haka. And the use of metaphors and poetic imagery was common.

The way in which this knowledge has been passed down is through the original composition of this oral literature as well as the continuation of its use through performance and/or recitation.²²

The Tribunal also suggested in *Ko Aotearoa Tēnei* that mātauranga Māori encompasses not only what is known, but how it is known. Its various aspects and expressions are embedded within a framework of whanaungatanga, which defines the relationship between Māori and the environment:

In te ao Māori, all of the myriad elements of creation – the living and the dead, the animate and inanimate – are seen as alive and inter-related. All are infused with mauri (that is, a living essence or spirit) and all are related through whakapapa. Thus, the sea is not an impersonal thing but the ancestor-god Tangaroa, and from him all fish and reptiles are descended. The plants of Aotearoa are descendants of Tāne-mahuta, who also formed and breathed life into the first woman, and his brother

²¹ Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity: Te Taumata Tuatahi* (Wellington: Legislation Direct, 2011), p269

²² Brief of Evidence of Tapiki Korewha, Wai 1040 #Q19, paras 38-40

Haumia-tiketike. The people of a place are related to its mountains, rivers and species of plant and animal, and regard them in personal terms. Every species, every place, every type of rock and stone, every person (living or dead), every god, and every other element of creation is united through this web of common descent, which has its origins in the primordial parents Ranginui (the sky) and Papa-tu-ā-nuku (the earth). This system of thought provides intricate descriptions of the many parts of the environment and how they relate to each other.²³

Māori relationships with environmental taonga (including waterways) are thus articulated through kinship, and it is this kinship which gives rise to the obligations of kaitiakitanga. Kaitiakitanga is therefore, according to the Tribunal, ‘the obligation, arising from the kin relationship, to nurture or care for a person or thing. It has a spiritual aspect, encompassing ... an obligation to care for and nurture not only physical well-being but also mauri.’²⁴

In Dr Manuka Henare, Dr Hazel Petrie and Dr Adrienne Puckey’s tribal landscape overview for the Te Raki inquiry, kaitiakitanga is described as one of three guiding principles governing the way whakapapa works in Ngāpuhi society (the other two being whanaungatanga and tohatoha).²⁵ Henare et al drew on the work of Merata Kawharu to illustrate how kaitiakitanga intersects with these other principles:

Kaitiakitanga is not simply a word that has a single meaning and translation ... kaitiakitanga pervades not only the environmental realm but also the social. Implementing kaitiakitanga is as much about managing resources of the environment as it is about managing the people. An important reason for exercising kaitiakitanga is to promote and enhance socio-political status. Moreover, the same values of kaitiakitanga which are applied to the environment are applied between people, particularly between kin group leaders and the wider kin. That is, kaitiakitanga is not simply an ‘environmental ethic’ but rather a socio-environmental ethic. It is about relationships between humans and the environment, humans and their gods and between each other.²⁶

²³ Waitangi Tribunal, *Ko Aotearoa Tēnei*, pp16-17

²⁴ Waitangi Tribunal, *Ko Aotearoa Tēnei*, p17

²⁵ Manuka Henare, Hazel Petrie and Adrienne Puckey, “*He Whenua Rangatira*” *Northern Landscape Overview* (CFRT, 2010) Wai 1040 #A37, p135

²⁶ Merata Kawharu, ‘Dimensions of Kaitiakitanga: an Investigation of a Customary Maori Principle of Resource Management’, PhD thesis, Oxford University, 1998, p7. Quoted in Henare et al, “*He Whenua Rangatira*” Wai 1040 #A37, pp139- 40

Henare et al defined kaitiakitanga as ‘sustainability in Māori cultural terms [which] allows the earth’s bounties to be retained for the following generations’.²⁷ This intergenerational obligation was also stressed by claimant Ross Gregory in his brief of evidence before the Tribunal:

Kaitiakitanga means having the responsibility of caring for or nurturing of something. For example, you have a responsibility to make sure that this place is not desecrated or that there is going to be food in a particular place for years to come. It is your responsibility to make sure that that comes to pass.²⁸

Ngāti Hau claimant Allan Halliday also stressed the obligation of kaitiaki to their mokopuna, both to preserve natural resources and to pass on the responsibilities of kaitiakitanga:

Kaitiakitanga to me is being a guardian and caretaker. Our role as kaitiaki is from Papatuanuku to Ranginui and everything in between. In practical terms it means that we have to look after our lands and environment for future generations. We also have to pass on to our future generations what it means to be a kaitiaki.²⁹

Claimant group Mana Whenua ki Whatitiri describe this as ‘a responsibility rather than a right – a duty we are bound to by both culture and tradition and whakapapa to maintain’.³⁰

Two further concepts need to be noted regarding kaitiakitanga as it relates to the issues discussed in our report. The first is the holistic and interconnected way in which many Te Raki Māori view the environment. In this worldview the water that flows through a river or catchment, the bed that lies underneath it, and the flora and fauna that are nourished by the water are all part of an indivisible whole. Furthermore, the river or catchment cannot be considered independently of the environment that surrounds it. This is sometimes referred to as ‘ma uta ki tai’ (from the mountains to the sea), which was one of the concepts used in a recent NIWA study of tuna populations in Lake

²⁷ Henare et al, “*He Whenua Rangatira*”, Wai 1040 #A37, p139

²⁸ Brief of Evidence of Ross Gregory, Wai 1040 #B5, para 14

²⁹ Brief of Evidence of Allan Halliday, Wai 1040 #P2, para 3.2

³⁰ Brief of Evidence of Mana Whenua ki Whatitiri, Wai 1040 #U27(a), p13

Ōmāpere and the Utakura River.³¹ The importance of adopting a holistic approach to resource management was stressed to us by tangata whenua at a research hui we attended in Kawakawa on 11 June 2016.

The second concept that needs to be considered is tino rangatiratanga. While we felt that the broader question of sovereignty was outside the scope of our commission, it is important to consider the connection between tino rangatiratanga and kaitiakitanga. The Tribunal noted in *Ko Aotearoa Tēnei* that kaitiakitanga is ‘the obligation side of rangatiratanga’, as those who hold mana over an environmental taonga must exercise it in accordance with the values of kaitiakitanga. It is not dependent on ownership or property rights in the Pākehā sense of the word, but rather on ‘who exercises control over it’. According to the Tribunal in that inquiry, it is ‘the degree of control exercised by Māori and their influence in decision-making that needs to be resolved in a principled way by using the concept of kaitiakitanga.’ The degree of control in specific instances will vary according to several factors, which may include the importance and health of the environmental taonga, and any competing interests in it.³²

Locally specific expressions of kaitiakitanga will be explored in Part Two of this report, where aspects of kaitiakitanga relevant to each river system will be discussed. It suffices to say at this stage that kaitiakitanga represents a spiritual relationship with ‘the myriad elements of creation’ that gives rise to a series of obligations to protect and preserve environmental taonga. As will be seen in subsequent chapters, Te Raki Māori clearly see this role, both historically and in a contemporary setting, as involving the authority to make decisions, or to participate in making decisions, about their environmental taonga.

Approach

Given our interpretations of the terms above, our overall approach to our commission has been to examine the central and local government regimes established by the Crown to manage rural rivers in the Te Raki inquiry district (in particular sources of pollution), and the extent to which these regimes have recognised and protected the

³¹ Wendy Henwood and Renama Henwood, ‘Mana whenua kaitiakitanga in action: Restoring the mauri of Lake Omapere’, *Alternative*, (Vol. 7, 2011), pp220-232

³² Waitangi Tribunal, *Ko Aotearoa Tēnei*, p270

kaitiakitanga responsibilities of Te Raki Māori over their traditional waterways and customary resources. The RMA and its implementation in the Northland region have been a primary focus. This reflects not only the central position of the Act in environmental management, but also our perception that it is the implementation of this Act by the NRC that has the greatest impact on Māori kaitiakitanga and customary resources in the Northland region. However, as the Ministry for Primary Industries is the central government body established by the Crown to manage customary river resources, we have also analysed the relevant fisheries legislation and, where relevant, how they have been implemented in different parts of the Northland region. As discussed above, we have also examined the resource management role of a number of other central government agencies, including the Ministry for the Environment and the Environmental Protection Authority.

A further tension explored throughout this report is the relationship between central and local government regarding resource management. At the heart of this theme lies the question of what constitutes ‘the Crown’, and the extent to which the Crown can be considered responsible for the actions of local government bodies. This is a matter of legal argument, which lies outside both the scope of our commission and of our area of expertise as historians. However, we considered that a related question – the extent to which central government bodies are involved in aspects of resource management beyond merely setting the legislative framework under which local government bodies operate – was a crucial part of the overall picture of the management of rural rivers in the Northland region. As a result, we have explored the ongoing and interwoven nature of central and local government authority and control over aspects of resource management throughout our report, and in particular in Chapter Two.

Structure

The report’s structure has been shaped by our commission and by the overarching framework discussed above. It is divided into two parts. Part One, which is comprised of Chapters One to Three, discusses the environmental regime established by the Crown for the management of waterways and customary resources in the Northland region since 1991. Chapter One provides an historical overview of the resource management policy regimes established by the Crown since 1840 as they relate to pollution,

customary resources and kaitiakitanga, with a focus on the post-1991 period. Chapter Two examines how the post-1991 legislation has been applied in practice in the Northland region, and on the selected river systems. It focuses on how central and local government regimes have managed Northland waterways, the ways in which Te Raki Māori are able to participate in management regimes, and the extent to which they are adequately resourced to do so. Chapter Three summarises the monitoring and scientific literature regarding freshwater pollution in Northland and the factors that have contributed to this pollution.

Part Two, which comprises Chapters Four to Eight, includes a chapter on each of the five river systems included in our commission. These chapters are designed to do two things. Firstly, they provide a general summary of the river system, including the issues raised by claimants and the general environmental state of the river. Secondly, they provide a detailed account of a small number of local studies within each river system. These local studies were chosen for several reasons. Most of them featured in statements of claim or briefs of evidence, including the Kaikohe wastewater treatment plant, the AFFCO meat processing plant, the Wairua Hydro Station eel transfer, and Lake Ōwhareiti. Other studies, such as the M. J. Pinny farms, were recommended to us by claimants during research hui throughout the region on 14-15 March 2015. In general, we have chosen to focus on resource consent applications given our assessment that, for the majority of Te Raki Māori, they are the most frequent method available for them to participate in the resource management regime for waterways that has been established by the Crown. In addition, resource consents are useful sources of reporting and monitoring on matters of pollution and water quality. We have discussed a variety of different types of resource consents, including wastewater discharges, gravel extraction, farming consents, and property subdivisions. However, we have not limited the focus of our local studies to resource consents. We have also included studies relating to customary fisheries management, flood protection works, and water conservation orders.

Our conclusion brings together the material from throughout these chapters and addresses several key themes that emerge from the material and the commission questions.

Sources

Primary sources

This report has relied on a broad range of primary and secondary sources. Given the focus on the post-1991 period and the implications of the RMA, the files held by the NRC have been a significant source. Chief amongst these have been river and lake files, resource consent files, and farm and dairy effluent files. These files are reasonably thorough, and include consent applications and submissions, environmental assessments, compliance monitoring reports, and a wide variety of internal correspondence including letters, emails, phone logs, and file notes. We have supplemented NRC files where necessary with additional material from the three District Councils that operate within the Northland region, which are sometimes the holders of the resource consents we have analysed in our local studies. In addition, we utilised material from the Ministry for the Environment (such as information on conservation orders) and the Ministry for Primary Industries (such as information on customary fishing). We have also drawn upon a large body of scientific and environmental monitoring literature produced by several central and local government agencies, including the NRC (and its predecessor, the Northland Catchment Commission and Regional Water Board), the Ministry for the Environment (MfE), the Ministry for Primary Industries (MPI), the National Institute of Water and Atmospheric Research (NIWA), and Te Puni Kōkiri (TPK), as well as various private environmental researchers contracted by these agencies. Environmental legislation has also been a key source for this report, although we have tried to draw on relevant secondary literature (including previous Tribunal reports and commissioned research) wherever possible to provide background context on such legislation.

Technical evidence

A significant amount of evidence relating to the five river systems has been filed on the Te Raki record of inquiry (Wai 1040). Several technical reports deal with environmental management of rural rivers and the impact of pollution on river resources and kaitiakitanga. Chief amongst these is David Alexander's 'Land-Based Resources,

Waterways and Environmental Impacts' report.³³ Alexander's report is divided into two parts. The first, titled 'environmental change and its impact on Māori', deals with the expansion of the Crown's legislative and administrative control over the Northland environment since 1840, the concurrent changes to the environment, and the impact on Northland Māori. This section provides a detailed overview of the various pieces of legislation relating to waterways that were passed in the first half of the twentieth century, which covered matters such as the ownership of riverbeds, power generation, and swamp drainage.³⁴ This section also briefly touches upon environmental matters in the post-1991 period, including a short description of the RMA.³⁵

The implementation and effects of the RMA in Northland are also mentioned briefly at several points, including an irrigation scheme in the Mangakāhia Valley in the 1990s that Māori opposed (further information on this scheme is provided in Tony Walzl's *mana whenua* report for Tai Tokerau District Māori Council).³⁶ Alexander acknowledges, however, that his coverage of more recent environmental issues is light given that those who have direct experience with these issues may wish to discuss them in their own briefs of evidence.³⁷ He concludes that the RMA is 'a long-winded obstacle course involving a different language, complex interactions between a variety of different documents operating at different levels, and often years of effort required between the start and the finish of a consultation and appeals process'. Consultation with Māori under the Act, he added, occurs 'within certain confines'.³⁸

The second section of Alexander's report includes several detailed studies, including Lake Ōmāpere, Ngāwhā Springs, and Whāngārei Harbour. Three of the studies relate to areas within the five river systems that are the focus of this report. The first examines environmental issues on the Kawakawa River between 1902 and 1977, including timber floating, drainage, and catchment schemes under the 1967 Water and Soil Conservation

³³ David Alexander, *Land-based Resources, Waterways, and Environmental Impacts* (CFRT, 2006) Wai 1040 #A7

³⁴ Alexander, *Land-based Resources*, Wai 1040 #A7, pp206-231

³⁵ Alexander, *Land-based Resources*, Wai 1040 #A7, pp282-289

³⁶ Alexander, *Land-based Resources*, Wai 1040 #A7, pp298-300; Tony Walzl, *Tai Tokerau District Māori Council Hapu Claims Collective, Mana Whenua Report* (CFRT, 2012) Wai 1040 #E34, pp329-336

³⁷ Alexander, *Land-based Resources*, Wai 1040 #A7, pp17-18

³⁸ Alexander, *Land-based Resources*, Wai 1040 #A7, p35

Act.³⁹ The second covers the timber industry at Whangaroa between the 1820s and the 1980s, including the consequences for the rivers (especially the Kaeo River) and the harbour.⁴⁰ The third concerns rock oyster harvesting in the Bay of Islands from the 1870s to the 1960s, and discusses the Crown's licensing and ultimate nationalisation of harvesting activities.⁴¹ A further study on the Waitangi River includes a section on how Lake Ōwhareiti came to be in Māori ownership.⁴² These case studies provide some background context to the post-1991 period which this report focuses on.

The impacts of deforestation on rivers in the Whangaroa region are discussed in two reports. Garth Cant's 'Crown Sponsorship of Mass Deforestation in Whangaroa and Hokianga 1840-1990' examines the Crown's knowledge about the impacts of deforestation at various points during the period under study and the actions it took in response, both at a national and a Northland regional level.⁴³ Cant also explores the impacts of deforestation, including erosion, sedimentation, flooding, and pollution via agricultural runoff, by drawing upon claimant and technical evidence. These impacts are further discussed at several points in the oral and traditional report commissioned by Whangaroa Papa Hapū, for example the flooding at Mangaiti.⁴⁴ Given the extensive coverage of deforestation in these reports, particularly relating to the Whangaroa region, we chose not to undertake significant fresh research into the subject. However, in the chapter devoted to the Whangaroa river system (Chapter Four), we have explored the response of central and local government to the impacts of deforestation on the Kaeo River and community, especially relating to flooding, and the extent to which Māori were involved in this response.

Environmental matters are also raised in several other technical reports. Environmental change is a recurring theme in Tony Walzl's twentieth century overview report and Terry Hearn's report on social and economic change in Northland between 1900 and

³⁹ Alexander, *Land-based Resources*, Wai 1040 #A7, pp639-659

⁴⁰ Alexander, *Land-based Resources*, Wai 1040 #A7, pp784-808

⁴¹ Alexander, *Land-based Resources*, Wai 1040 #A7, pp809-872

⁴² Alexander, *Land-based Resources*, Wai 1040 #A7, pp624-629

⁴³ Garth Cant, *Crown Sponsorship of Mass Deforestation in Whangaroa and Hokianga 1840 - 1990* (CFRT, 2015) Wai 1040 #A52

⁴⁴ Te Uira Associates, *Oral and Traditional History Report for Te Rohe o Whangaroa* (CFRT, 2012) Wai 1040 #E32, p111

1945.⁴⁵ Bruce Stirling's local government report provides an overview of the various local bodies established in the Northland region since 1840, albeit from the perspective of land rating rather than environmental management.⁴⁶ Philip Cleaver and Andrew Francis' report on aspects of political engagement between Māori and the Crown in Northland identifies examples of Māori Health Councils (established under the 1900 Māori Councils Act) raising concerns with government officials regarding the pollution of water bodies which Māori relied upon for everyday use.⁴⁷ Once again, these reports provide context to the events that occurred in the post-1991 period.

Tangata whenua evidence

Tangata whenua have filed a number of briefs of evidence which present information relating to the five river systems. These briefs discuss – often in great detail – specific issues within particular catchments or rivers, and are often supported by large volumes of appendices. We have grouped these briefs in Appendix 2 under the five river systems with which this report is concerned. Briefs of evidence that deal with issues across more than one river system are repeated under the heading for each river system. As with our analysis of the statements of claim above, we have attempted to be as comprehensive as possible in our identification of relevant briefs of evidence. Our summaries only highlight the portions of that evidence which is of relevance to the five river systems.

In general, the summary of tangata whenua briefs of evidence in Appendix 2 reveals that:

- There is substantial summary coverage of the general environmental issues faced in each of the five river systems, such as deforestation, farming, and flooding;
- There is considerable evidence on some local issues, in particular the environmental impacts of oyster farming in Whangaroa Harbour and on the Ōpua Marina;

⁴⁵ Terry Hearn, *Social and Economic Change in Northland c.1900 – c.1945* (CFRT, 2006) Wai 1040 #A3; Tony Walzl, *Twentieth Century Overview Part II, 1935 – 2006* (CFRT, 2011) Wai 1040 #A38

⁴⁶ Bruce Stirling, *Eating Away at the Land, Eating Away at the People: Local Government, Rates and Māori in Northland* (CFRT, 2008) Wai 1040 #A15

⁴⁷ Andrew Francis and Philip Cleaver, *Aspects of Political Engagement between Iwi and Hapu of the Te Paparahi o Te Raki Inquiry District and the Crown, 1910-1975* (Waitangi Tribunal, 2015) Wai 1040 #A50, pp194-198

- There are several specific sites mentioned which appeared to require further analysis, such as the AFFCO meat processing plant; and
- There is little evidence concerning the establishment of Crown management regimes for waterways and customary resources in the Northland region, how these regimes have operated in practice (both at a general level and through specific examples), relationships with and oversight of central government agencies, and the recognition of Māori roles and values under these regimes.

We have drawn on these briefs where relevant in our report. In particular, we have used them to outline the general claim issues for each of the five rural rivers systems with which our report is concerned. These outlines are included in the five rural river chapters in Part Two.

Oral sources

Our research has also been informed by oral sources and site visits. On 14-15 March 2015 researchers undertook research hui with claimants from the Whangaroa, Hokianga, and Inland Mangakāhia areas, including the Whangaroa Papa Hapū, Ngāti Tautahi ki te Iringa, Louis Tana, Hori Packer, and Millan Ruka (who also forwarded us relevant reports and emails which relate to his work with Ngā Kaitiaki o Ngā Wai Māori and the Environmental River Patrol Aotearoa). In addition, we met with the Consents/Monitoring Senior Programme Manager at the Northland District Council on 16 March 2015, where we discussed the Council's consenting processes, its environmental funding programs, and the initiatives it has in place to consult with Māori. We also attended a meeting between Te Raki Local Issues Research Programme commissionees and Crown counsel on 21 May 2015 at the Waitangi Tribunal offices in Wellington. We undertook further research hui in Northland on 12-13 December 2015 where we met with claimants from Whangaroa and Mangakāhia, including the Whangaroa Papa Hapū, Sharon Kaipo, and Hōri Tuhiwai. We also presented a draft copy of our report at a research hui in Kawakawa on 11 June 2016. Whilst we were unable to reflect all of the kōrero shared by tangata whenua at this research hui, we have tried to incorporate what we considered to be the key points.

Limitations

Report scope

This report focuses on the post-1991 period. The pre-1991 period is included only insofar as it provides contextual background to the events under study in this report. For example, our overview of Crown legislation relating to the management of waterways stretches back to 1840 in order to provide context for the development of the post-1991 legislation. In addition, some of the sites chosen as local studies in Part Two were established well before 1991 – in these cases, a brief background to the site is provided.

While our commission stipulated a focus on the period since 1991, it did not specify an end date. We interpreted this as allowing us to continue our examination up to the present date. For practical reasons, we have chosen the beginning of 2015 as the end date for our study given that the bulk of our research was carried out in March 2015. However, resource management is an ongoing activity, and some of the resource consent applications we have looked at in our report may have progressed since that time. Where possible, we have tried to follow up on significant recent developments. In addition, it is worth noting that the NRC is in the process of revising its Regional Policy Statement and Regional Plans. While we have discussed the consultation processes carried out by the Council in its reviews, we have focused our analysis on the versions of these documents that were active in 2015 as this was the end period of our study. The Council's new Regional Policy Statement is now largely operative as of early 2016, with the exception of one aspect regarding genetically modified organisms that is being appealed to the High Court. Similarly, we have chosen to focus on current resource management legislation rather than the proposed revisions that were released towards the end of producing our report. We have, however, included an epilogue briefly assessing several recent national developments in resource management, including the Ministry for the Environment's 'next steps for freshwater' consultation document.

Given that this project was commissioned to fill a gap in the existing evidential base, it should not be viewed as a comprehensive study of all environmental issues related to the management of rural rivers in the Northland region since 1991. Firstly, our

commission stipulated that we focus on five rural river systems which were identified via a process of consultation with inquiry parties. This naturally excludes other river systems within the inquiry boundaries, although it is worth noting that some of the material we have gathered (including legislation, central and local government regimes, and Northland-wide scientific literature) is relevant to all waterways within the inquiry boundaries. As stated earlier, our commission does not include two of the rivers originally nominated by counsel: Te Touwai Stream in Whangaroa and the Mangamuka River in Hokianga.

Coverage of issues

During the course of preparing our report, we decided to expand upon two of the river systems we had been commissioned to examine. The most prominent of these was the Inland Whāngārei/Mangakāhia river system. Our commission stipulated that, for this river system, we focus on '[t]he Hikurangi and Kaikou rivers north of the junction with the Mangakahia River'; however, it became apparent during the course of our research that there was a lack of material on this area. It does not appear to contain any major sites that could serve as local studies, and neither claimant briefs of evidence nor our consultation with claimants revealed any. However, several claimants recommended local studies on the Mangakāhia River, which largely lay just outside the southern boundary of this river system. We considered these local studies to be significant, in particular the application for a water conservation order over the Mangakāhia River which was lodged by Māori in the 1990s. Therefore, rather than produce a negligible amount of information on the Inland Whāngārei/Mangakāhia river system as it was defined in our commission, we decided to extend its boundaries to include the Mangakāhia River. In a similar vein, we decided to extend the area of the Southern Bay of Islands/Northern Whāngārei river system further south to include most of the lower catchment of the Wairua River. We did so in order to incorporate local studies on the Hikurangi Swamp Scheme and the Fonterra Kauri dairy plant, which were raised by claimants and have not been covered by other evidence before the Te Raki Tribunal.

There are several general resource management topics that we have not covered in this report. Firstly, we have not dealt with the question of riverbed or lakebed ownership, except where it arose in particular local studies (such as Lake Ōwhareiti in Chapter

Five). A discussion of the Crown's ownership of the bed of 'navigable' rivers is provided by David Alexander in his environmental overview report.⁴⁸ This has not precluded us from examining questions of ownership in a wider sense. While we have not set out to determine whether tangata whenua hold proprietary interests in water, we have examined how central and local government bodies have recognised and provided for tangata whenua claims of ownership over particular rivers or lakes. Secondly, we chose not to discuss mining in our report given that a separate scoping report on the environmental, health and cultural impacts of mining operations was included in the Local Issues Research Programme. Thirdly, we chose not to undertake significant research into deforestation given its coverage in other evidence before the Te Raki inquiry, in particular Garth Cant's report.⁴⁹

We also made the decision early in the writing process to exclude certain local studies. We decided not to include local studies on the Ōpua Marina or pacific oyster farming in Whangaroa Harbour. While these are clearly the subject of significant grievances amongst tangata whenua, we concluded that, as they are located in harbours rather than within the five river systems themselves, they lay outside our commission. There is also significant claimant evidence on these topics.

Matters of scientific expertise

Finally, we reiterate the point made earlier in the introduction that our area of expertise is history rather than science. While we have examined a significant body of scientific and environmental monitoring literature that relates to rivers in the Northland region, we have not attempted to critique this literature or to undertake original scientific research ourselves. This would require a level of scientific proficiency that is outside our area of expertise as historians. Nevertheless, the textual and factual conclusions presented within this literature are accessible to a non-scientific audience, and as such we have chosen to prepare a summary of these conclusions for the Tribunal in Chapter Three. Some of this material is also discussed in the individual river system chapters in Part Two of the report. This may assist the Tribunal in reporting on the extensive

⁴⁹ Cant, *Crown Sponsorship of Mass Deforestation* Wai 1040 #A52

environmental concerns that have been raised by claimants in the Te Paparahi o Te Raki inquiry.

Broader picture

At a research hui in Kawakawa on 11 June 2016 following a circulation of a draft report, claimants stressed the importance of viewing their rivers and lakes in a holistic fashion. For example, Whangaroa Papa Hapū member Frances Goulton argued that we needed to acknowledge ‘the connectivity of the whole. Our waters run from the mountain to the sea... Our waters are a reflection of us. Their health is our health’. We concede that, due to the terms of our commission and the limitations outlined in this section, we were not always able to provide this holistic viewpoint. However, we also reiterate that, in order to understand how resource management has played out on the ground, we needed to look at specific local sites of contention. As will be seen, one of our conclusions is that, under the RMA, local government authorities generally deal with resource consent applications individually, without assessing cumulative impacts of historic and ongoing activities on waterways as a whole.

A fuller picture emerges when our report is viewed alongside other technical and claimant evidence. Parties may, for example, wish to refer to Alexander’s ‘Land-Based Resources, Waterways and Environmental Impacts’ report for environmental issues prior to 1991, or to Cant’s ‘Crown Sponsorship of Mass Deforestation’ report for information on the effects of deforestation and the extent of the Crown’s knowledge about these effects. These reports are discussed in more detail above. Parties are also directed towards the large body of claimant evidence concerning environmental issues, which we have discussed at various points throughout this report and briefly summarised in Appendix 2. Other aspects of environmental management are discussed in briefs of evidence from the National Institute of Water and Atmospheric (NIWA) research, the Northland Regional Council, and Coast and Catchment Limited.⁵⁰ Our report, therefore, should be seen as one part of a broader evidential whole concerning Crown and Māori environmental management.

⁵⁰ Brief of Evidence of Dr Jacques Alain Teva Boubée, Wai 1040, #U19; Attachment to memorandum of Crown counsel dated 6 May 2016, part 3 (not yet filed); Statement of Evidence of Dr Shane Kelly dated 13 June 2016 (not yet filed)

PART ONE

Overview

Chapter One

A brief history of resource management legislation, 1840 to the present

1.1 *Introduction*

This chapter provides an overview of the various resource management policy regimes established by the Crown since 1840, with particular attention to how they relate to waterways. It outlines the Crown's earliest legislation relating to resource management, the role of the local government, and issues of use and ownership. It then describes how the Crown introduced more comprehensive legislation in the second half of the twentieth century as a result of emerging concerns about water quality, erosion, and the efficacy of the previous ad hoc regime. In the 1980s, the restructuring of environmental administration at central government level, local government reform, and reform of legislation relating to the management, use and allocation of resources led to further changes in environmental policy, culminating in the passing of the Resource Management Act 1991 (RMA). This chapter describes the history of the RMA, the role of local government in the legislation, the consents process, and the provisions for Māori involvement in resource management, monitoring and protection of waterways. In doing so, it provides the necessary context for understanding the RMA, its history, context, and processes.

This chapter ends with a brief summary of legislation relating to management of freshwater fisheries. This legislation followed a similar trajectory as that of waterways and resource management generally, but with some significant differences. While waterways and the fisheries they support are interconnected, the Crown has generally treated the management of waterways and fisheries as separate subjects in statute.⁵¹ Today, while the RMA covers the environment in which freshwater fisheries exist, the Crown manages fisheries through specific fisheries legislation. This chapter provides a

⁵¹ David Alexander, An overview of selected environmental and resource management issues in Te Rohe Potae Inquiry District, with a focus on the period since 1970, Waitangi Tribunal, 2014 Wai 1040 #A148 p202

broad national summary of this legislation. As a background chapter, this chapter is necessarily brief and draws almost exclusively on secondary sources.

1.2 Early Crown legislation concerning waterways

Since the arrival of humans, New Zealand's physical and natural environment has undergone significant change. This change accelerated after 1840, with the rapid expansion of European settlement and the alienation from tangata whenua of vast tracts of land. Industrial and agricultural development resulted in extensive environmental changes, as land drainage, pasture conversion, deforestation, land reclamation and mining significantly altered the landscape.⁵² Prior to European settlement, Māori customary law regulated water supplies, resource use, and waste management and, according to Nicola Wheen, assumed a 'strong underlying conservation ethic', underpinned by concepts of whanaungatanga, kaitiakitanga, arohatanga, manaakitanga, mauri and utu.⁵³ Following the signing of te Tiriti, it was generally assumed by the Crown that English common law, which emphasised individual property rights and riparian water rights, superseded Māori customary law.

As the rate of European settlement expanded, however, the Crown 'was pressed' to intervene in environmental management and, according to Michael Roche, 'played a historical role' as a developer of the New Zealand economy and environment. From the mid-nineteenth century, the Crown introduced statutes, both supplanting and supplementing customary and common law, to manage resource use and development. At the same time, the Crown also acted in response to these developments, attempting to ameliorate natural resource exploitation and depletion, often for economic, public health, and scenic purposes.⁵⁴ In other words, legislation aimed to simultaneously

⁵² Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity: Te Taumata Tuatahi*. (Wellington: Legislation Direct, 2011) p239; see chapters 5-10 of Eric Pawson and Tom Brooking, (eds), *Making a New Land: Environmental Histories of New Zealand*, (Dunedin: Otago University Press, 2013)

⁵³ Nicola Wheen, 'An updated history of New Zealand environmental law', in Eric Pawson and Tom Brooking, (eds), *Making a New Land: Environmental Histories of New Zealand*, (Dunedin: Otago University Press, 2013), p277; Nicola Wheen, 'A Natural Flow – A History of Water Law in New Zealand', *Otago Law Review*, (Vol. 9, No. 1, 1996) p72; Waitangi Tribunal, *Ko Aotearoa Tēnei*, p248

⁵⁴ Michael Roche, 'The State as Conservationist', 1920-1960', Eric Pawson and Tom Brooking, (eds), *Environmental Histories of New Zealand*, (Auckland: Oxford University Press, 2002), p183

conserve, manage, and to promote resource use and development.⁵⁵ This early legislation was characterised by ‘piecemeal rather than systemic action’ and included little or no provisions for Māori participation or consultation.⁵⁶

1.2.1 The role of local government

From its inception, local government in New Zealand has been responsible for many aspects of resource management, particularly the management and use of waterways.⁵⁷ The first piece of legislation providing for local government in New Zealand, the Municipal Corporations Ordinance of 1842, established a system of local elected bodies to administer the newly established Pākehā settlements and it enabled any district with a population of at least 2,000 (excluding Māori) to declare itself a borough.⁵⁸ Elected town authorities were given powers ‘to build and control sewers, roads, waterworks and drains within townships and their neighbourhoods’.⁵⁹ While the Ordinance was eventually disallowed, legislation passed in subsequent years (such as the Public Roads and Works Ordinance of 1845 and the Country Roads Ordinance of 1849) laid the ground work for elected local government and empowered local authorities to undertake works such as streets, bridges, waterworks and sewers.

The New Zealand Constitution Act of 1852 revived local government, establishing six provincial councils (expanded to ten in later years), and signalled the beginning of a representative form of local government for Pākehā. In subsequent years, the Crown passed various statutes providing provincial government with a range of powers and functions, including the construction of roads, bridges, ferries and providing limited education and health services and resource management.⁶⁰ The 1858 Highway and Watercourses Diversion Act, for example, empowered provincial councils to pass laws

⁵⁵ Michael Roche, *Land and Water: Water and Soil Conservation and Central Government in New Zealand 1941-1988*, (Wellington: Department of Internal Affairs, 1994) p15

⁵⁶ Roche, *Land and Water*, p15

⁵⁷ Nicola Wheen, ‘A Natural Flow – A History of Water Law in New Zealand’, *Otago Law Review*, (Vol. 9, No. 1, 1996) p73

⁵⁸ Bruce Stirling, *Eating Away at the Land, Eating Away at the People: Local Government, Rates, and Maori in Northland*, CFRT, 2008, Wai 1040 #A15, p58

⁵⁹ Cathy Marr, Robin Hodge, and Ben White, *Crown Laws, Policies, and Practices in Relation to Flora and Fauna, 1840-1912*, Waitangi Tribunal, 2001, Wai 262 #K5 p349

⁶⁰ Stirling, *Eating Away at the Land*, Wai 1040 #A15, p65

for the purpose of diverting and damming rivers and streams.⁶¹ These powers were 'generally intended to develop land to facilitate further settlement', and were 'very much in the interests of Pākehā settlers', according to Ben White.⁶²

The Municipal Corporations Act 1867 attempted to systematise the creation of local bodies. The Act provided municipal authorities with more comprehensive powers in relation to water, including powers to control and maintain waterworks, to take water for domestic supply from any stream or reservoir. It also deemed the water used as the property of the Crown, while delegating certain rights to local authorities.⁶³ The Act also empowered borough councils to make by-laws prohibiting the use of water for washing in, cleaning animals in, as well as disposing of animals, rubbish and filth in water belonging to or under the management of the council. Concurrently, 'single purpose' or ad hoc local authorities took up aspects of resource management, carrying out work not done by territorial authorities, where authority or resources were lacking. These ad hoc authorities dealt with land drainage, river control, water supply, and harbours.⁶⁴ Rural ad hoc boards were, according to Bruce Stirling, 'almost entirely related to improving the productivity of the land'.⁶⁵

The abolition of the provincial system in 1876 led to further changes in local government. The Counties Act of 1876 created rural local government bodies, dividing rural New Zealand up into 63 counties, each with a council with the power to make by-laws, levy rates, construct public works, and subsidise roads.⁶⁶ In Northland, the Act established the Hokianga, Bay of Islands, Whāngārei, Hobson, and Rodney Counties.⁶⁷ Thus, under this post-provincial government regime, territorial government in New Zealand was based around counties, boroughs and town districts⁶⁸ (a system modelled

⁶¹ Ben White, *Inland Waterways: Lakes*, Waitangi Tribunal Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1998), p10

⁶² White, *Inland Waterways: Lakes*, p10

⁶³ Marr, Hodge, and White, *Crown Laws, Policies, and Practices*, Wai 262, #K5, p349

⁶⁴ Wheen, 'A Natural Flow', p81

⁶⁵ Stirling, *Eating Away at the Land*, Wai 1040 #A15, p101

⁶⁶ Stirling, *Eating Away at the Land*, Wai 1040 #A15, p100

⁶⁷ Counties Act (1876 No 47)

⁶⁸ Established under the Town District Act (1881 No 35)

on Britain's).⁶⁹ These counties, boroughs and town districts were incorporated municipal authorities empowered to undertake public works and regulate local affairs within each district, and to levy and collect rates in order to do so. The county councils, for example, gradually absorbed the functions of the road boards, including powers relating to drainage, diversions and taking of materials from waterways.⁷⁰

Legislation during these decades provided local government with a range of powers in relation to resource management and the management and use of waterways in particular. The Public Health Act 1876, for example, provided local health boards with the power to divert rivers and discharge sewage to rivers⁷¹, while under the Public Works Act 1876 borough councils were empowered 'to perform necessary works within their jurisdiction, including drainage and water supply, or to take land for such purposes'.⁷² The various Public Works Acts passed over the late nineteenth century played a significant role in both Crown and local government assertions of authority over waterways.⁷³ The 1876 Act provided local authorities with specific legislative authority to take land for public works projects, and 'formally empowered the Crown to control waterways' and to declare any natural watercourse a 'public drain'.⁷⁴ The Counties Amendment Act 1883 gave powers to county councils to control and supply water for irrigation for farming, including the right to construct dams and associated works. Similarly, the Counties Act of 1886 further extended county council powers for irrigation and drainage.⁷⁵

The River Boards Act 1884 gave local river boards control of all rivers, streams and watercourses in a district. These River Boards could construct works on tidal rivers.⁷⁶

⁶⁹ Lloyd Burton and Chris Cocklin, 'Water Resource Management and Environmental Policy Reform in New Zealand: Regionalism, Allocation, and Indigenous Relations. Part I', *Colorado Journal of International Environmental Law and Policy*, (Vol. 7, No. 1, 1996) p77

⁷⁰ Jane Luiten, *Local Government in Te Rohe Potae*, (Waitangi Tribunal, 2011) Wai 898 #A24

⁷¹ Wheen, 'A Natural Flow', p81

⁷² Matthew Cunningham, *The environmental management of the Waipa River and its Tributaries*, (Waitangi Tribunal, 2014), Wai 898, #A150, p21

⁷³ Peter McBurney, *Northland: Public Works & Other Takings: c.1871-1993*, (CFRT, 2007) Wai 1040 #A13, p53

⁷⁴ Geoff Park, *Effective Exclusion? An Exploratory Overview of Crown Actions and Maori Responses Concerning the Indigenous Flora and Fauna, 1912-1983*, (Waitangi Tribunal, 2001), Wai 262 #K4, p187

⁷⁵ McBurney, *Northland: Public Works & Other Takings*, Wai 1040 #A13, p56

⁷⁶ McBurney, *Northland: Public Works & Other Takings*, Wai 1040 #A13, p57

The Coal-Mines Amendment Act 1903 declared the beds of all navigable rivers in New Zealand, including all minerals within such rivers, 'to have always been the property of the Crown', while the Water-Power Act 1903 vested in the Crown the sole right to use natural water for the purpose of generating or storing electricity or other power.⁷⁷ By the early twentieth century, the Crown had also introduced legislation enabling drainage in an attempt to make land 'fit for settlement'.⁷⁸ The 1908 Land Drainage Act provided for the establishment of drainage districts and ad hoc drainage boards to oversee the draining of wetlands and re-channelling of rivers for pastoral farming. The Swamp Drainage Act 1915 allowed the Crown to declare a district a 'draining area'.⁷⁹ In 1919, for example, the Crown declared the Hikurangi Swamp north of Whāngārei a drainage district and between 1919 and 1935 implemented major drainage works in the 45,000 acres under the declared district (see Chapter Six for information on the Hikurangi Swamp Scheme in the era of the RMA).⁸⁰

Thus, between the mid-nineteenth-century and the mid-twentieth century, the Crown introduced resource management legislation in a piecemeal fashion, responding to issues as they emerged, while lacking an overarching management goal or framework. By the turn of the century, numerous agencies and local boards existed to manage aspects of resource management and many of these operated under 'overlapping legislation with overlapping functions'.⁸¹ As David Alexander argues, these 'user-specific statutes' (relating to floating of timber, or hydro-electric power generation, for example) lacked 'overall coordination'.⁸² Such coordination emerged, to some extent, in the decades after 1941, and in particular with the passing of the RMA in 1991.

⁷⁷ David Alexander, *Land-based Resources, Waterways, and Environmental Impacts*, (CFRT, 2006), Wai 1040 #A7, pp207-209

⁷⁸ Alexander, *Land-based Resources* Wai 1040 #A7, p218

⁷⁹ McBurney, *Northland: Public Works & Other Takings*, Wai 1040 #A13, p57; Alexander, *Land-based Resources* Wai 1040 #A7, p218; McClean and Smith, *The Crown and Flora and Fauna*, Wai 262 #K2, p115

⁸⁰ For a detailed discussion see Alexander, *Land-based Resources* Wai 1040 #A7, pp219-226

⁸¹ Michael Belgrave et al., *Environmental Impacts, Resource Management and Wahi Tapu and Portable Taonga*, (CFRT, 2012) Wai 2200 #A11, p149

⁸² Alexander, *Land-based Resources* Wai 1040 #A7, p282

1.3 *Comprehensive legislation and water quality, 1941-1967*

In the mid-twentieth century, the Crown introduced more comprehensive and wide-ranging legislation for the management of waterways, the most notable examples being the Soil Conservation and Rivers Control Act 1941, the Water Pollution Act 1953 and the Water and Soil Conservation Act 1967.⁸³ The legislation responded to growing concerns about soil erosion and water quality in the middle of the twentieth century, in turn reflecting a broader change in national and international concerns about the environment. According to McClean and Smith, a 'new rationale for Government intervention emerged': one that viewed the state as both a developer and also a protector of the environment.⁸⁴ Indeed, while aspects of this legislation dealt with environmental regulation, these often operated 'within wider development-oriented parameters'.⁸⁵ These Acts were also characterised by what David Alexander calls a 'statutory silence' in regard to Māori interests in waterways and lacked provisions for consultation or participation.⁸⁶ Indeed, the waterways management regime established between 1941 and 1967 gave full water management powers to the Crown through the establishment of regional catchment and water boards and a National Water and Soil Conservation Authority. This Crown management regime and in particular the 1967 Act, became the subject of various Waitangi Tribunal investigations in the early- to mid-1980s.⁸⁷

1.3.1 Soil Conservation and Rivers Control Act 1941

By the middle of the twentieth century, the long term impacts of deforestation were becoming clear: the quest for minerals, timber and pasture had caused severe and widespread erosion, sedimentation, and flooding.⁸⁸ In 1941, the Crown passed the Soil Conservation and Rivers Control Act.⁸⁹ The Act came as a result of both contemporary anxiety 'about the extent and severity of accelerated soil erosion', on top of long-term

⁸³ Belgrave *et al.*, *Environmental Impacts*, Wai 2200 #A11, p149; Wheen, 'A Natural Flow', p72.

⁸⁴ McClean and Smith, *The Crown and Flora and Fauna*, Wai 262 #K2, p109

⁸⁵ Alexander, *An overview of selected environmental and resource management issues*, Wai 1040 #A148, p22

⁸⁶ Alexander, *An overview of selected environmental and resource management issues*, Wai 1040 #A148, p207

⁸⁷ McClean and Smith, *The Crown and Flora and Fauna*, Wai 262 #K2, p127

⁸⁸ Parliamentary Commissioner for the Environment, *Water Quality in New Zealand: Understanding the Science*, (Wellington: Parliamentary Commissioner for the Environment, 2012) p15

⁸⁹ Roche, 'The State as Conservationist', 1920-1960', p195

concerns about river control and flood protection.⁹⁰ Central to the Act was the creation of the Soil Conservation and Rivers Control Council (SCRCC), made up of representatives of government departments, local authorities and agricultural groups.⁹¹ The aims of the Council were to promote soil conservation, prevent and reduce erosion, prevent flood damage and to use land in a way that would achieve such aims. Its functions were set out in Section 11 of the Act and included: the carrying out of surveys and investigations into the extent of soil erosion in New Zealand; the dissemination of information regarding soil erosion, flood control and soil conservation and reclamation; the ‘assistance and supervision’ of landholders regarding soil conservation and reclamation; the provision of assistance to those whose land had been affected by soil erosion or flooding, and the ‘general supervision and control’ of the activities of the Catchment Boards (discussed below).⁹² In short, the Act charged the SCRCC with ‘various investigatory, coordinating, managerial and supervisory functions’.⁹³

At a regional level the Act enabled the election and appointment (on a voluntary basis) of catchment boards or catchment commissions (the forerunners to today’s regional councils) to manage regional water supplies.⁹⁴ In doing so, the Act introduced a ‘whole-of-catchment’ approach in addressing flooding and soil erosion issues. That is, it recognised the connection ‘between what happened in the catchment upstream and what happened to waterways lower down the catchment’.⁹⁵ However, the voluntary aspect of the Act reflected the SCRCC’s emphasis on educative methods rather than regulations.⁹⁶ By 1966, catchment boards covered 80 per cent of New Zealand. Like much of the country, Northland had experienced soil erosion and changes to rivers since the late nineteenth century, especially during the timber and gum ‘exploitation years’.⁹⁷ But it was only in 1962, that the Northland Catchment Commission was finally constituted to ‘administer and do works under’ the 1941 Act. The Northland Catchment

⁹⁰ Roche, *Land and Water*, p31

⁹¹ Alexander, *An overview of selected environmental and resource management issues*, Wai 1040 #A148, p205

⁹² Soil Conservation and Rivers Control Act (1941 No. 12)

⁹³ Wheen, ‘A Natural Flow’, p81

⁹⁴ Belgrave, *Environmental Impacts* Wai 2200 #A11 p150; Wheen, ‘A Natural Flow’ p81

⁹⁵ Alexander, *An overview of selected environmental and resource management issues*, Wai 1040 #A148, p205

⁹⁶ Roche, ‘The State as Conservationist’, 1920-1960’, p195

⁹⁷ Alexander, *Land-based Resources*, Wai 1040 #A7, p225

Commission covered Whāngārei County and City, Hobson County, Dargaville Borough, Hikurangi Town District, and parts of Ōtamatea and Bay of Islands Counties. It was not until late into the legislation's life between 1979 and 1984 that the work of the Northland Catchment Commission was extended northwards to cover Whangaroa and Hokianga.⁹⁸

1.3.2 Water Pollution Act 1953

The Water Pollution Act 1953 signalled the first legislative attempt to address the issue of water quality and pollution.⁹⁹ Before the 1953 Act, water quality 'was not high on the agenda of central or local government', according to Alexander.¹⁰⁰ But as with soil conservation, there was a growing recognition among officials of the problems with common law controls and ad hoc management, alongside the sense that regulations 'had not kept up with industrial developments'.¹⁰¹ The 1953 Act was the result of an interdepartmental committee on water pollution in the late 1940s. The Act established the Pollution Advisory Council; made up of representatives from various interests (including the Marine Department, Secretary of Marine, government appointees from Agriculture, Health and Works and Department of Scientific and Industrial Research (DSIR), as well as four local authorities, and two industry representatives), the Council was charged with the prevention and mitigation of pollution of waterways.¹⁰² It carried out investigation and surveys on water pollution, compiled model by-laws for local government and advised local and central government.¹⁰³

However, the Council had little real power. Its functions were limited to inquiry and recommendations to Minister of Marine; it had no powers to actively monitor and control water pollution. As Roche writes, the council initially had no power to enforce change and 'could only rely on the co-operation of industry to reduce water pollution'.¹⁰⁴ Regulations were gazetted in 1963, however, with the Water Pollutions

⁹⁸ Garth Cant, *Crown Sponsorship of Mass Deforestation in Whangaroa and Hokianga 1840-1990*, (CFRT, 2015) Wai 1040 #A52 pp94-95

⁹⁹ Belgrave, *Environmental Impacts* Wai 2200 #A11, p150; Wheen, 'A Natural Flow', p81

¹⁰⁰ Alexander, *Land-based Resources*, Wai 1040 #A7, p600

¹⁰¹ Belgrave, *Environmental Impacts*, Wai 2200 #A11, p150

¹⁰² Roche, *Land and Water*, p120

¹⁰³ Belgrave, *Environmental Impacts*, Wai 2200 #A11, pp150-151

¹⁰⁴ Roche, *Land and Water*, p120

Regulation Act, which provided the Council with the right to enter land, request information, take water samples, and to clarify water and issue permits to discharge polluted water.¹⁰⁵ Michael Belgrave *et al* claim that the 1953 Act ‘constituted a major increase in the attempts of the state to control water pollution’, and, while environmental and resource management legislation remained a patchwork of authorities and statutes, the Act ‘went some way in strengthening and streamlining’ the overarching statutory regime.¹⁰⁶

1.3.3 Water and Soil Conservation Act 1967

In the post-war period, continued urban growth coupled with the expansion of manufacturing and agricultural intensification placed further pressure on water access (irrigation, for example), and on water quality from industrial discharges.¹⁰⁷ After another interdepartmental review, the government passed the Water and Soil Conservation Act 1967 (WSCA) to address these demands. The Act set in place the first comprehensive legislative framework for water management in New Zealand and introduced water quality as a consideration in water management along with the concept of multiple use planning; that is water for recreation, farming, and other purposes.¹⁰⁸ The preamble to the Act outlined its comprehensive nature:

An Act to promote a national policy in respect of natural water, and to make better provision for the conservation, allocation, use, and quality of natural water, and for promoting soil conservation and preventing damage by flood and erosion, and for promoting and controlling multiple uses of natural water and the drainage of land, and for ensuring that adequate account is taken of the needs of primary and secondary industry, water supplies of local authorities, fisheries, wildlife habitats, and all recreational uses of natural water.¹⁰⁹

The Act established both the Water Allocation Council (WAC), and, most importantly, the National Water and Soil Conservation Authority (NWSCA). The Soil Conservation and Rivers Control Council (SCRCC) and the Pollution Advisory Council, established by the 1941 and 1953 Acts respectively, remained, but were ‘brought under the scope’ of the 1967 Act. Like the 1941 Act, the 1967 Act delegated responsibilities to local

¹⁰⁵ Roche, *Land and Water*, p120

¹⁰⁶ Belgrave, *Environmental Impacts*, Wai 2200 #A11 p152

¹⁰⁷ Roche, *Land and Water*, p97

¹⁰⁸ Roche, *Land and Water*, p120

¹⁰⁹ Water and Soil Conservation Act. (1967 No. 135)

authorities. The Act established Regional Water Boards, which carried out administration at a district level and supplemented Catchment Boards. In other words, as Roche explains, catchment boards remained, but ‘changed hats’ to reconstitute themselves as regional water boards when they moved from just issues of soil conservation to water allocation.¹¹⁰ In 1968, the Northland Catchment Commission reconstituted itself as the Regional Water Board, responsible for the administration of the 1967 Act. In areas where there was no catchment commission coverage, however, NWSCA oversaw the administration of the Act. According to Alexander, the Act adopted a ‘very euro-centric’ approach to use of water and it vested the control of the use of water with the Crown.¹¹¹ Section 21 of the Act states:

Except as expressly authorised by or under this Act or any other Act, the sole right to dam any river or stream, or to divert or take natural water, or discharge natural water or waste into any natural water, or to use natural water, is hereby vested in the Crown subject to the provisions of this Act.¹¹²

In doing so, the Act ‘substantially supplanted’ the common law principle of *ad medium filum aquae* and instituted a permit system (administered by regional water boards) for the acquisition of a water right, a precursor of the resource consent.¹¹³ This did not exclude the Crown, however, which also had to apply for and obtain water rights for its own needs.¹¹⁴

In subsequent years, the Crown introduced changes to the 1967 Act that recognised the intrinsic value of the environment. In the 1970s, the advisory Environmental Council and the Commission for the Environment, precursor to the Parliamentary Commissioner, advocated for changes in policy around waterways to ensure, among other things, the protection of the ‘wild and scenic values’ of waterways.¹¹⁵ These recommendations led to the 1981 Amendment to the Water and Soil Conservation Act

¹¹⁰ Roche, *Land and Water*, p106

¹¹¹ Alexander, *Land-based Resources*, Wai 1040 #A7, p282-4

¹¹² Water and Soil Conservation Act (1967 No 135), Section 21.

¹¹³ Burton and Cocklin, ‘Water Resource Management’, p91. The common law principle of *ad medium filum aquae* ‘stipulates that the owner of land adjoining a non-tidal river possesses riparian rights to the middle line of that river provided that its flow is not altered or diminished for other land owners’. Cunningham, *The environmental management of the Waipa River and its Tributaries* Wai 898, #A150, p19.

¹¹⁴ Alexander, *Land-based Resources*, Wai 1040 #A7, p282.

¹¹⁵ McClean and Smith, *The Crown and Flora and Fauna*, Wai 262 #K2, p126

1967, which provided for water conservation orders (WCOs) and local conservation notices, all with the aim of recognising and sustaining 'the amenity afforded by waters in their natural state' and recognising the finite values of nationally or locally important water bodies.¹¹⁶

There was also growing understanding and recognition of Māori interests in waterways. Before 1987, appeals to the Planning Tribunal to protect and provide for Māori interests under the WSCA were generally unsuccessful. This changed after the case of *Huakina Development Trust v Waikato Valley Authority*. This case involved an appeal of a water right permit which allowed a dairy farmer to discharge dairy-shed effluent into a stream which flowed into the Waikato River. In its decision on the appeal, the High Court found that, in relation to the granting of a water right, 'Maori spiritual and cultural values cannot be excluded from consideration if the evidence establishes the existence of spiritual, cultural, and traditional relationships with natural water held by a particular and significant group of Maori'.¹¹⁷ Thus, the 1987 *Huakina* decision 'brought Māori spiritual interests and Treaty interests' into the operation of the WSCA, according to the Waitangi Tribunal in its *Ko Aotearoa Tēnei* report, 'thereby creating an express recognition of Māori interests in the management of water for the first time'.¹¹⁸

The recognition of non-instrumental (intrinsic and ecological) values of waterways and the recognition of Māori interests in waterways were part of a broader shift in attitudes and policy that is discussed below.

1.4 Environmental law reform, 1970s-1990s

The passing of the Resource Management Act (RMA) 1991 occurred within the context of a broader process of law reform and structural change in government beginning in the 1980s.¹¹⁹ The reform of environmental administration and legislation that culminated in the RMA occurred as a result of four interconnected developments:

- the growing recognition of Māori rights under Te Tiriti o Waitangi;

¹¹⁶ Section 2, Water and Soil Conservation Amendment 1981, cited in McClean and Smith, *The Crown and Flora and Fauna*, Wai 262 #K2, p126

¹¹⁷ McClean and Smith, *The Crown and Flora and Fauna*, Wai 262 #K2, p137

¹¹⁸ Waitangi Tribunal, *Ko Aotearoa Tēnei*, p249

¹¹⁹ Waitangi Tribunal, *Ko Aotearoa Tēnei*, p248

- the restructuring of environmental administration at central government level;
- the reform of legislation relating to the management, use, and allocation of resources and the environment at local level; and
- the restructuring of the functions and territorial jurisdiction of local and regional government.¹²⁰

These developments are central to understanding the purpose, functions, philosophical underpinnings, and implementation of the Resource Management Act.

Throughout the 1970s and 1980s, greater recognition of Māori rights under the Treaty emerged following protests and challenges to the monocultural nature of Crown legislation. The Treaty of Waitangi Act 1975 established the Waitangi Tribunal as an independent commission of inquiry to inquire into claims by Māori of prejudice suffered as a result of legislation, or Crown policies or practises that can be shown to breach the principles of the Treaty. In the 1980s, the Crown's environmental management regime became the subject of various Waitangi Tribunal investigations.¹²¹ The 1983 *Motunui-Waitara Report*, for example, found that the Water and Soil Conservation Act 1967 failed to provide for protection of Māori fishing grounds and considered that key changes in environmental legislation were required.¹²² The National Water and Soil Conservation Authority responded to the Tribunal's finding by appointing one Māori member 'in order to represent the views of Māori in relation to natural water'.¹²³ Similarly, the 1984 *Kaituna Report* examined the Water and Soil Conservation Act and the role of catchment boards in regulating waste disposal following a plan by the Bay of Plenty Catchment Commission to discharge treated sewage into the upper Kaituna River. Since 1985, the Tribunal has investigated legislation that has prejudicially affected Māori, including the Public Works Acts, Coal Mines Acts, Water Power Act, and various others.¹²⁴ The Tribunal's finding contributed to a growing acknowledgement of the need

¹²⁰ Lloyd Burton and Chris Cocklin, 'Water Resource Management and Environmental Policy Reform in New Zealand: Regionalism, Allocation, and Indigenous Relations. Part I', *Colorado Journal of International Environmental Law and Policy*, (Vol. 7, No. 1, 1996)

¹²¹ McClean and Smith, *The Crown and Flora and Fauna*, Wai 262 #K2, p127; Nicola Wheen and Jacinta Ruru, 'The Environmental Reports', in Janine Hayward and Nicola R Wheen (eds), *The Waitangi Tribunal: Te Roopu Whakamana i Te Tiriti o Waitangi*, (Wellington: Bridget Williams Books, 2004), pp97-112

¹²² McClean and Smith, *The Crown and Flora and Fauna*, Wai 262 #K2, p127

¹²³ McClean and Smith, *The Crown and Flora and Fauna*, Wai 262 #K2, p127

¹²⁴ Nicola Wheen and Jacinta Ruru, 'The Environmental Reports', Janine Hayward and Nicola R Wheen (eds), *The Waitangi Tribunal: Te Roopu Whakamana i Te Tiriti o Waitangi*, (Wellington: Bridget Williams Books, 2004), pp97-112

to recognise and provide for Māori involvement in environmental and resource management.¹²⁵

1.4.1 New bodies established in the 1980s

The Fourth Labour Government reviewed and restructured central government, creating new bodies to deal with environmental management. These were the Department of Conservation (responsible for fostering the conservation of New Zealand's natural and historic resources); the Ministry for the Environment (responsible for providing advice to the government on environmental policy and later for monitoring the implementation of the RMA); and the Parliamentary Commissioner for the Environment (an environmental 'ombudsperson' with the authority to conduct independent investigations into environmental issues and report on these to Parliament).¹²⁶ The first was created by the Conservation Act 1987, while the latter two were established under the Environment Act 1986. Both Acts make reference to the Treaty of Waitangi. Under the Environment Act 1986, 'full and balanced account' is taken of the 'principles of the Treaty of Waitangi' in the management of natural and physical resources, while the Conservation Act 1987 states that 'this Act shall so be interpreted and administered as to give effect to the principles of the Treaty of Waitangi'.¹²⁷ The first role of the newly created Ministry for the Environment was to run the Resource Management Law Reform project (RMLR), a project established to review all resource management legislation, the administrative and procedural problems in the legislation, and to address the newly emerging interest, both nationally and internationally, in environmental protection and sustainability.¹²⁸ The resource management law reform process began in early 1988, and ended with the passing of the RMA in 1991.¹²⁹

¹²⁵ Claudia Orange, *The Treaty of Waitangi*, (Wellington: Bridget Williams Books, 2011), pp242-244

¹²⁶ Burton and Cocklin, 'Water Resource Management', pp82-83

¹²⁷ Environment Act (1986 No. 127), preamble; Conservation Act (1987 No 65), Part I, Section 4

¹²⁸ Waitangi Tribunal, *Ko Aotearoa Tēnei*, p249; McClean and Smith, *The Crown and Flora and Fauna*, Wai 262 #K2, p162

¹²⁹ Nicola Wheen, 'A history of New Zealand environmental law', in Eric Pawson and Tom Brooking (eds), *Environmental Histories of New Zealand*, (Auckland: Oxford University Press, 2002) p270

1.4.2 Local government reform

Concurrently, the government undertook a comprehensive restructuring of local government, continuing the previous Labour government's 1970s reform. Local Government reform in 1974 abolished the historic distinction between urban local authorities (boroughs and towns) and rural authorities (counties). The Fourth Labour Government viewed the further restructuring of local government as necessary to the full implementation of the environmental management reform discussed above.¹³⁰ Moreover, in line with its broader reform program, the government targeted what it perceived as the administrative and financial inefficiencies of local government while at the same time devolving responsibilities from central government. The reform culminated in the Local Government Amendment (No 2) Act 1989. Under the Act, the government disbanded or reduced the number of ad hoc bodies and transferred their powers and functions to the newly introduced district and regional councils.¹³¹ This was consistent with the government's restructuring of environmental and resource management: under the environmental administration reform, central government was restricted to policy and guidance, while local government would exercise a range of powers in relation to resource and environmental management under the forthcoming RMA.

Scholars Burton and Cocklin explain that reform of local government and devolution of responsibilities were greeted with enthusiasm by Māori as the reforms potentially offered the 'opportunity for greater involvement in decision making and reinstatement of rights that had been alienated by Eurocentric politics'.¹³² The Māori Local Government Reform Consultative Group (MCG) was established in 1988 to ensure Māori interests would be considered during the reforms.¹³³ However, the 1989 Act made no explicit provisions for Māori interests, Māori representation, or the Treaty of Waitangi.¹³⁴ A subsequent Amendment to the Act—The Local Government Amendment Act (No.8)—provided for Māori Advisory Committees to be attached to local authorities.

¹³⁰ McClean and Smith, *The Crown and Flora and Fauna*, Wai 262 #K2, p153

¹³¹ McClean and Smith, *The Crown and Flora and Fauna*, Wai 262 #K2, p153-4

¹³² Burton and Cocklin, 'Water Resource Management', pp86-87

¹³³ Janine Hayward, 'The Treaty Challenge: Local Government and Maori: A Scoping Report', *Nga Kaitiaki Reti Ngahere Karauna*, (CFRT 2002) Wai 863 #A65, p8

¹³⁴ McClean and Smith, *The Crown and Flora and Fauna*, Wai 262 #K2, p156

The Local Government Act 2002 aimed to bring clarity to local government relationship with Māori under the Treaty and Māori involvement in local authority decision making. Section 4 of Part I of the Act states:

In order to recognise and respect the Crown's responsibility to take appropriate account of the principles of the Treaty of Waitangi and to maintain and improve opportunities for Māori to contribute to local government decision-making processes, Parts 2 and 6 provide principles and requirements for local authorities that are intended to facilitate participation by Māori in local authority decision-making processes.

Furthermore, provisions in the 2002 Act require councils to 'take into account the relationship of Māori and their culture and traditions with their ancestral land, water, sites, waahi tapu, valued flora and fauna, and other taonga' in the decision-making process, when it comes to land or a body of water.¹³⁵

1.5 Resource Management Act 1991

1.5.1 Introduction

The developments described above all fed into the creation of the RMA, which became law in August of 1991. The RMA signalled a significant shift in resource management policy.¹³⁶ It repealed some 25 natural resource and planning statutes, and modified or repealed more than 150 other laws and regulations 'within a single, seamless and ambitious piece of law'.¹³⁷ The Act was an attempt to incorporate environmental and resource management regulation into one overarching Act and it now stands as the central piece of environmental legislation (alongside the Conservation Act 1987, the Crown Minerals Act 1991, and various Fisheries Acts). The RMA provides the key means for New Zealanders 'to plan and decide how to use, distribute, or protect natural and physical resources' outside of the conservation estate.¹³⁸ The Act represented 'a major ideological shift in approach to New Zealand's natural resources', according to the Waitangi Tribunal's, *Ko Aotearoa Tēnei* report, from 'one that was primarily

¹³⁵ Local Government Act (2002 No 84), Section 77(1)(c)

¹³⁶ Under the RMA, 'resources' encompass rivers, lakes, coastal and geothermal areas, land (including soils), forests and farmlands, the air, and the built environment (buildings, bridges and other structures in cities and towns).

¹³⁷ David Young, *Values as Law: The History and Efficacy of the Resource Management Act*, (Wellington: Institute of Policy Studies, 2001), p1

¹³⁸ Waitangi Tribunal, *Ko Aotearoa Tēnei*, p309

exploitative, to one more focused on environmental well-being in its own right'.¹³⁹ The Act also recognised Māori interests in the environment and provided opportunities for kaitiaki influence in RMA decision-making.¹⁴⁰

At the same time, there was continuity with past environmental and resource management law. Nicola Wheen writes that the RMA made many improvements, and offered much potential, but in essence sits 'comfortably with its past'.¹⁴¹ Local government, for example, maintains a central role. Under the Act, local government is delegated authority for a number of environmental responsibilities, including for water, soil conservation, coastal resources (excluding fisheries), geothermal resources, air quality, natural hazards and hazardous substances. Another continuity is the assumption of Crown rights to control water. Section 354(1)(b) of the RMA continues the vesting in the Crown of the right to water established under Section 21 of the Water and Soil Conservation Act 1967.¹⁴² Moreover, despite provisions relating to protection of the environment and its spiritual, cultural and aesthetic values, Wheen notes that the RMA is consistent with previous environmental management legislation in favouring what she calls 'developmentalism'. In other words, as Wheen writes, New Zealand's environmental law 'has always enabled resource development to promote social and economic growth' and, despite significant changes after the 1960s, the law remained 'very accommodating in this respect'.¹⁴³ The RMA largely reserves decision-making powers to the Crown and its delegates (including local authorities which carry out the bulk of day-to-day RMA decision-making).

1.5.2 Purpose and principles

The purpose and principles of the Resource Management Act of 1991 are outlined in Part II of the Act. The central principle of the RMA is 'sustainable management', defined under the Act as 'the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while—'

¹³⁹ Waitangi Tribunal, *Ko Aotearoa Tēnei*, p248

¹⁴⁰ Waitangi Tribunal, *Ko Aotearoa Tēnei*, p248

¹⁴¹ Wheen, 'A Natural Flow', p71

¹⁴² Resource Management Act (1991 No 69), Section 354(1)(b)

¹⁴³ Wheen, 'An updated history of New Zealand environmental law', p.277.

- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- (b) Safeguarding the life supporting capacity of air, water, soil, and ecosystems; and
- (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment ¹⁴⁴

Section 6 of Part II outlines a set of 'matters of national importance' that persons exercising functions and powers under the Act shall 'recognise and provide for'.¹⁴⁵

These include:

- (a) The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:
- (b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:
- (c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:
- (d) The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:
- (e) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga. ¹⁴⁶

The list has expanded since 1991 to include: (f) 'the protection of historic heritage from inappropriate subdivision, use, and development' (in 2003) and (g) the protection of protected customary rights (in 2011).¹⁴⁷ Section 7 provides a list of 'other matters' that persons exercising functions and powers under the Act shall 'have particular regard to'.

These include:

- (a) Kaitiakitanga;
- (b) The efficient use and development of natural and physical resources;
- (c) The maintenance and enhancement of amenity values;
- (d) Intrinsic values of ecosystems;
- (e) Recognition and protection of the heritage values of sites, buildings, places, or areas;
- (f) Maintenance and enhancement of the quality of the environment;
- (g) Any finite characteristics of natural and physical resources;

¹⁴⁴ Resource Management Act (1991 No 69), Part II

¹⁴⁵ Resource Management Act (1991 No 69), Part II

¹⁴⁶ Resource Management Act (1991 No 69), Section 6

¹⁴⁷ Resource Management Act (1991 No 69), Section 6

(h) The protection of the habitat of trout and salmon.¹⁴⁸

In subsequent amendments to the RMA, the ethic of stewardship (1997), the efficiency of the end use of energy, the effects of climate change, and the benefits to be derived from the use and development of renewable energy (2004) were inserted into the Act.¹⁴⁹ While the definition of 'Kaitiakitanga' in the original Act made no mention of Māori, it has since been updated to mean 'the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Māori in relation to natural and physical resources; and includes the ethic of stewardship'.¹⁵⁰

Lastly, Part II, Section 8, of the Act states:

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).¹⁵¹

Provisions in the Act relating to Māori participation and consultation are discussed in more detail below.

1.5.3 National and local policy statements and plans

The RMA sets out planning procedures and functions for central and local government (see figure 2), subject to the purpose and principles discussed above, 'in order to achieve the purpose of the Act'.¹⁵² National policy statements and national environmental standards are prepared under the RMA, largely through the Ministry for the Environment, to set a consistent framework for decision making on nationally relevant matters. The purpose of the National policy statements is to 'state policies on matters of national significance that are relevant to achieving the purpose of this Act'. Regional and district plans, discussed below, must give effect to national policy statements.¹⁵³ Under Section 46A, inserted with Resource Management Amendment Act (2013), the Minister for the Environment must notify 'the public and iwi authorities of

¹⁴⁸ Resource Management Act (1991 No 69), Section 7

¹⁴⁹ Resource Management Act (1991 No 69), Section 7

¹⁵⁰ Morris Te Whiti Love, 'Resource management, local government, and the Treaty of Waitangi' in Janine Hayward (ed), *Local Government and the Treaty of Waitangi*, (Melbourne: Oxford University Press), 2003, p35

¹⁵¹ Resource Management Act (1991 No 69), Section 8

¹⁵² Waitangi Tribunal, *Ko Aotearoa Tēnei*, p252

¹⁵³ Waitangi Tribunal, *Ko Aotearoa Tēnei*, p.252.

the proposed national policy statement'.¹⁵⁴ National environmental standards set requirements for matters such as contaminants, water quality, air quality, soil quality, and noise. These standards override any rules in regional or district plans to ensure nationally consistent decision making.¹⁵⁵ In 2011, the National Government introduced the first National Policy Statement since the passing of the RMA.

Under the RMA, regional and district councils are required to prepare policies and plans providing an overview of the resource management issues in their region, and to outline how the management of resources will be implemented.¹⁵⁶ Regional councils are given responsibility for water, soil conservation, coastal resources (excluding fisheries), geothermal resources, air quality, natural hazards, and hazardous substances. Regional policy statements are mandatory documents prepared by regional councils and, under the RMA, aim to provide 'an overview of the resource management issues of the region and policies and methods to achieve integrated management of the natural and physical resources of the whole region'.¹⁵⁷ In outlining the resource management issues of the region, council plans must state, under Section 62, 'the resource management issues of significance to iwi authorities in the region'.¹⁵⁸

Alongside the regional policy statements, regional plans 'assist a regional council to carry out any of its functions in order to achieve the purpose of the Act'.¹⁵⁹ Regional plans give effect to both regional and national policy statements, and, like these policy statements, must 'take into account' relevant iwi management plans (discussed below) and be prepared in consultation with iwi authorities in the relevant area.¹⁶⁰ Moreover, while regional plans are being formed, members of the community have the opportunity to participate through public consultation, or by making submissions and attending

¹⁵⁴ Resource Management Act (1991 No 69), Section 46a amended

¹⁵⁵ Statistics New Zealand, *New Zealand Official Yearbook 2010*, (David Bateman Ltd: Auckland, 2010) p310

¹⁵⁶ Resource Management Act 1991 (1991 No 69), Section 45; Statistics New Zealand, *New Zealand Official Yearbook 2010*, (David Bateman Ltd: Auckland, 2010) p310

¹⁵⁷ Resource Management Act 1991 (1991 No 69), Sec 59

¹⁵⁸ Resource Management Act 1991 (1991 No 69), Sec 62(b)

¹⁵⁹ Resource Management Act 1991 (1991 No 69), Sec 63

¹⁶⁰ Waitangi Tribunal, *Ko Aotearoa Tēnei*, p.253.

public hearings.¹⁶¹ Territorial authorities (district and city councils), on the other hand, are given responsibility for land use, subdivision, noise and the surface of fresh water, and must prepare a district plan, which includes rules that allow, manage and prohibit specified activities.¹⁶² Once again, district plans must give effect to any national policy statements, and applicable regional policy statement and ‘take into account’ relevant iwi management plans, and must consult iwi authorities.¹⁶³

1.5.4 The resource consent process

While the policy statements address resource management at a national and regional level, the resource consent process addresses individual cases of resource management; which is where ‘the day-to-day decision making about the use and development of the environment takes place’.¹⁶⁴ Resource consents are permits approving the use or development of natural or physical resource and/or the carrying out of an activity that affects the environment in some way.¹⁶⁵ The resource consent process is subject to the Act’s purpose and principles, any national environmental standards, as well as restrictions under Part III of the Act. In relation to waterways, Part III of the Act introduced duties and restrictions on certain uses of beds and lakes and rivers (Section 13), restrictions relating to water (Section 14), and discharges of contaminants into environment (Section 15).¹⁶⁶ Resource consents are also required to allow activity restricted under the national, regional and district policy statements and plans. Regional and district plans classify activities into three categories: 1) permitted; 2) controlled, discretionary, or non-complying, and 3) prohibited.¹⁶⁷ Under the first category, no resource consent application is required, while under the second category, resource consent is required. For prohibited activity, no resource consent will be granted.

¹⁶¹ Statistics New Zealand, *New Zealand Official Yearbook 2010*, (David Bateman Ltd: Auckland, 2010) p310

¹⁶² Resource Management Act 1991 (1991 No 69); *The New Zealand Official Yearbook*, 2010, p310; Burton and Cocklin, ‘Water Resource Management and Environmental Policy Reform in New Zealand’, p89

¹⁶³ Resource Management Act 1991 (1991 No 69), Section 72 (2A)

¹⁶⁴ Waitangi Tribunal, *Ko Aotearoa Tēnei*, p.254.

¹⁶⁵ Statistics New Zealand, *New Zealand Official Yearbook 2010*, (David Bateman Ltd: Auckland, 2010), p311

¹⁶⁶ Resource Management Act 1991 (1991 No 69), Sections 13-15

¹⁶⁷ Waitangi Tribunal, *Ko Aotearoa Tēnei*, p.255

An application for resource consent must include a description of the activity for which consent is sought, its location, an assessment of any actual or potential effects that the activity may have on the environment, and the ways in which any adverse effects may be mitigated. The assessment of potential effects is often referred to as an 'Assessment of Environmental Effects (AEE)'. Once the application and accompanying information has been received to the satisfaction of the council, the consent authority makes a decision as to whether the application will be notified, limited notified, or non-notified.¹⁶⁸

An application is 'notified' if the consenting authority believes that the proposed activity 'will have or is likely to have adverse effects on the environment that are more than minor'.¹⁶⁹ For an application to be 'non-notified', it needs to meet a set of requirements, set out in Section 94 of the RMA. If a consent authority decides to publicly notify a resource consent application, it goes through a process of public consultation (advertisement, submissions, and hearing), set out in Section 93 of the Act.¹⁷⁰ Where an application for consent is publicly notified, the consent authority must send a notice of the application to all affected parties and relevant local authorities, including iwi authorities.¹⁷¹ Any person may make a submission to the consent authority relating to any notified consent application. The consent authority may conduct a pre-hearing meeting (an informal meeting of all parties) in an attempt to settle objections or issues. If no settlement is reached, a formal hearing is held and hearing commissioners recommend to the consent authority whether or not they should grant or extend the resource consent.¹⁷² If an applicant or submitter disagrees with the decision, they can appeal it at the Environment Court (Planning Tribunal in the original Act, and updated to Environment Court in 1996).¹⁷³ In 2009, the Government introduced the Resource Management (Simplifying and Streamlining) Amendment Act, which introduced a new 'limited notification' status for resource consent. Under a 'limited notification', any

¹⁶⁸ McClean and Smith, *The Crown and Flora and Fauna*, Wai 262 #K2, p191

¹⁶⁹ Resource Management Act 1991 (1991 No 69), Section 95a

¹⁷⁰ McClean and Smith, *The Crown and Flora and Fauna*, Wai 262 #K2, pp191-2

¹⁷¹ Resource Management Act 1991 (1991 No 69), Sections 93

¹⁷² McClean and Smith, *The Crown and Flora and Fauna*, Wai 262 #K2, p192

¹⁷³ New Zealand Official Yearbook 2010, p311; Waitangi Tribunal, *Ko Aotearoa Tēnei*, p.255

‘affected persons’, or any affected protected customary rights group or affected customary marine title group, is notified and can make submissions.¹⁷⁴

In each case, the consent authority still makes the decision on whether resource consent will be approved pursuant of Section 104 of the Act.¹⁷⁵ Under Section 104, consent authorities must have regard to: any actual and potential effects on the environment; relevant regulations; any relevant national policy statement; relevant regional or district plans; any water conservation orders (discussed below); designations; heritage orders; and any other matters that the consent authority considered relevant.¹⁷⁶ As part of these considerations, consent authorities may, under Section 108, list a set of conditions on a resource consent. Conditions may include financial contribution by the applicant to the consent authority or matters relating to the design, operation and monitoring of the proposed activity.¹⁷⁷

If a consent application is not publicly notified, there are no opportunities for public input (though, as we will see in Chapter Two and Chapter Six, the Northland Regional Council has a policy of circulating non-notified applications to iwi for comment, but not submission). While the resource consent process is often seen as the major avenue for public involvement in the RMA, ‘non-notified’ applications are most common.¹⁷⁸ A 2007/2008 national survey of local authorities found that only 4.7 per cent of applications were publicly notified, while only 1.9 per cent were given limited notification. The authors of the *New Zealand Yearbook* 2010 claimed that around 50,000 resource consents applications were made to local authorities each year. Of these applications, around 6 per cent were normally notified, less than 1 per cent declined, and around 1 per cent appealed to the Environment Court.¹⁷⁹

¹⁷⁴ Protected customary rights groups and affected customary title groups are defined under the Marine and Coastal Area (Takutai Moana) Act. Waitangi Tribunal, *Ko Aotearoa Tēnei*, p254; Resource Management Act 1991 (1991 No 69), Sections 95B

¹⁷⁵ Resource Management Act 1991 (1991 No 69), Section 104

¹⁷⁶ McClean and Smith, *The Crown and Flora and Fauna*, Wai 262 #K2, p192; Resource Management Act 1991 (1991 No 69), Section 104

¹⁷⁷ McClean and Smith, *The Crown and Flora and Fauna*, Wai 262 #K2, p192

¹⁷⁸ Waitangi Tribunal, *Ko Aotearoa Tēnei*, p255

¹⁷⁹ *New Zealand Official Yearbook* 2010, p311

1.5.5 Water management and the RMA

Water management in New Zealand is largely undertaken within the framework of the RMA and is the responsibility of regional councils. This includes managing, monitoring, and controlling wetlands and freshwater bodies, and issuing permits for extraction, discharge, and damming of water. The Water and Soil Conservation Act 1967 was repealed by the RMA, while the Soil and Conservation Act 1941 remained in place to deal with maintenance and construction of flood protection structures and soil conservation measures.

The RMA includes, under Section 70, a small number of 'narrative minimum water quality standards' that apply to all wastewater discharge effects after reasonable mixing in relation to 'production of conspicuous oil or grease films, scums or foams, or floatable or suspended materials; causing conspicuous change in colour or clarity or objectionable odour; rendering water unsuitable for consumption by farm animals or significant adverse effects on aquatic life'.¹⁸⁰ Schedule 3 of the RMA also provides a mix of narrative and numeric standards for 11 different water classes (including contact recreation, shellfish gathering, water supply, fishery and aquatic ecosystem purposes) that regional councils can choose to assign to reaches in the regional plan.¹⁸¹

The RMA also provides for water conservation orders, first introduced in the 1981 amendment to the Water and Soil Conservation Act 1967. These are regulatory provisions that do not rely on regional and district plans, and can even limit the powers of regional councils in respect of waterways, prescribing standards regarding water quantity, water quality, minimum flow levels, allocation rates, and ranges of temperature and pressures in a water body.¹⁸² The purpose of the Act is to 'recognise and sustain':

- (a) Outstanding amenity or intrinsic values which are afforded by waters in their natural state:
- (b) Where waters are no longer in their natural state, the amenity or intrinsic values of those waters which in themselves warrant protection because they are considered outstanding.

¹⁸⁰ M.J Quinn, R.J Wilcock, R.M Monaghan, R.W McDowell, P.R. Journeaux, 'Grasslands farming and water quality in New Zealand', *Tearman: Irish journal of agri-environmental research*, (Vol.7, 2009), p75.

¹⁸¹ Quinn *et al.*, 'Grasslands farming and water quality in New Zealand', p75.

¹⁸² McClean and Smith, *The Crown and Flora and Fauna*, Wai 262 #K2, p189

Any person may submit an application for a water conservation order to the Minister for the Environment who may appoint a special tribunal (in consultation with the Minister of Māori Development and the Minister of Conservation) who, in turn, receive public submissions.¹⁸³ The special tribunal either prepares a draft of the conservation order or advises the Minister that the application has been declined. Like the resource consent process, decisions may be subject to appeal to the Environment Court.¹⁸⁴ (See Chapter Seven for an example of a Water Conservation Order application for the Mangakāhia River).

Under Section 35 of the RMA, local authorities are expected to ‘gather information, monitor, and keep records’ and to ‘undertake or commission such research, as it is necessary to carry out effectively its functions under the Act’. The Act states:

(2) Every local authority shall monitor—

(a) The state of the whole or any part of the environment of its region or district to the extent that is appropriate to enable the local authority to effectively carry out its functions under this Act; and

(b) The suitability and effectiveness of any policy statement or plan for its region or district; and

(c) The exercise of any functions, powers, or duties delegated or transferred by it; and

(d) The exercise of the resource consents that have effect in its region or district, as the case may be,—

and to take appropriate action (having regard to the methods available to it under this Act) where this is shown to be necessary.

The purpose of such monitoring is to inform the public of ‘their duties and of the functions, powers, and duties of the local authority’ and to enable the public to ‘participate effectively’ under the Act.¹⁸⁵ (Chapter Three discusses environmental monitoring by local authorities in Northland and provides a summary of these monitoring reports).

¹⁸³ Resource Management Act 1991 (1991 No 69), Part IX, Sections 199, 201.

¹⁸⁴ McClean and Smith, *The Crown and Flora and Fauna*, Wai 262 #K2, pp189-190

¹⁸⁵ Resource Management Act 1991, (1991 No 69), Section 30(3)

1.5.6 Provisions for Māori participation and consultation under the RMA

Legal scholar Paul Beverley writes that the ‘recognition of Maori interests permeates the purpose and principles section of the RMA, and in addition both express and implied reference to these matters are found throughout the Act’.¹⁸⁶ As discussed above, the RMA requires all persons exercising functions under the Act to: provide for and recognise the ‘relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga’ (Section 6); have particular regard to kaitiakitanga (Section 7); take into account ‘the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)’ (Section 8).¹⁸⁷ To implement these principles, the RMA sets out a procedure for Māori consultation and participation. Before preparing a proposed policy statement or plan, local authorities must consult with, among other groups, ‘the tangata whenua of the area who may be so affected, through iwi authorities’.¹⁸⁸

In addition, the RMA provides for iwi authorities to formally influence the content of local authority policies and plans through planning documents, now known as ‘iwi management plans’, submitted by iwi authorities. Councils preparing policies and plans must ‘take into account’ these iwi planning documents.¹⁸⁹ These documents usually set out key areas of concern for iwi in relation to the environmental and natural resources within their rohe, identifying wāhi tapu, or other sites of significance, and providing a plan for how the iwi wishes to exercise kaitiaki responsibilities.¹⁹⁰

The Act also provides for the delegation of powers. Under Section 33, local authorities that have functions, powers or duties under the Act may transfer any one or more of those functions to another public authority, including an iwi authority.¹⁹¹ For example, a local authority can transfer the preparation of policy statements and plans, decision-making powers of a consent authority, and monitoring and enforcement of resource consent conditions.¹⁹² The local authority maintains responsibility for the exercise of

¹⁸⁶ Paul Beverly, ‘The Mechanisms for the Protection of Maori Interests Under Part II of the Resource Management Act 1991’, *New Zealand Journal of Environmental Law*, (Vol. 2, 1998), p121

¹⁸⁷ Resource Management Act 1991 (1991 No 69) Sections 6, 7, 8

¹⁸⁸ Resource Management Act 1991 (1991 No 69), clause 3(1)(d).

¹⁸⁹ Waitangi Tribunal, *Ko Aotearoa Tēnei*, p.254

¹⁹⁰ Waitangi Tribunal, *Ko Aotearoa Tēnei*, p.254

¹⁹¹ Resource Management Act 1991 (1991 No 69), Section 33

¹⁹² McClean and Smith, *The Crown and Flora and Fauna*, Wai 262 #K2, p117, p181

such transferred powers and may change or revoke the transfer of power at any time.¹⁹³ The failure or reluctance of local authorities to utilise Section 33 of the RMA is discussed below.

The Resource Management Amendment Act 2005 aimed to improve the operation of the Act in relation to, among other things, consultation with iwi and resource planning by iwi.¹⁹⁴ During the second reading of the Bill in Parliament, Associate Minister for the Environment David Benson-Pope explained that the objective of the Amendment was to '[clarify] consultation requirements, and promote better consultation with tangata whenua during the development of plans and policy statements'. However, he added that '[i]n terms of resource consents, iwi will have the same opportunity to participate as any other person or party affected by an activity'.¹⁹⁵ Section 3(1)(d) of Schedule 1 of the 2005 Amendment to the RMA states that a local authorities shall, during the preparation of a proposed policy statement or plan, consult 'the tangata whenua of the area who may be so affected'. Moreover, the amendment aimed to improve the capacity of Māori to participate (clause 3B of Schedule 1 Act):

For the purposes of clause 3(1)(d), a local authority is to be treated as having consulted with iwi authorities in relation to those whose details are entered in the record kept under section 35A, if the local authority—

- (a) considers ways in which it may foster the development of their capacity to respond to an invitation to consult; and
- (b) establishes and maintains processes to provide opportunities for those iwi authorities to consult it; and
- (c) consults with those iwi authorities; and
- (d) enables those iwi authorities to identify resource management issues of concern to them; and
- (e) indicates how those issues have been or are to be addressed.¹⁹⁶

¹⁹³ McClean and Smith, *The Crown and Flora and Fauna*, Wai 262 #K2, p181

¹⁹⁴ Resource Management Amendment Act 2005, (2005 No 87), Section 3

¹⁹⁵ Associate Minister for the Environment David Benson-Pope, 2 August 2005, Resource Management and Electricity Legislation Amendment Bill — Second Reading, Instruction to Committee, *New Zealand Parliamentary Debates*, Vol. 627, p 22272

¹⁹⁶ Schedule 1 clause 3B: inserted, on 10 August 2005, by Resource Management Amendment Act 2005, (2005 No. 87), Section 129(1)

Section 36(B) of the 2005 Act provides for 'joint management agreements' between local authorities, iwi authorities and groups representing hapū.¹⁹⁷ In order to establish such an agreement, the local authority must satisfy itself: first, that the 'public authority' represents the relevant community interest; that it 'has the technical or special capability or expertise to perform or exercise the function, power or duty jointly with the local authority'; and lastly, 'that a joint management agreement is an efficient method of performing or exercising the function, power, or duty'.¹⁹⁸

However, co- or joint-management agreements or delegation of powers have never occurred under the RMA. In reality, such arrangements have only been made via Treaty Settlements and legislation, despite the fact that the RMA explicitly provides for them. The Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 provides for co-government arrangements, while the Nga Wai o Maniapoto (Waipa River) Act 2012 provides for the co-management of the Waipa River by the Crown and Maniapoto Māori Trust Board in relation to issues of water usage and resource consents, water quality, conservation, and customary fisheries.¹⁹⁹

1.5.7 Implementation and assessment of the RMA

Since the passing of the RMA, the legislation has been the subject of much debate by central government, local authorities, Māori, the public, and before the Waitangi Tribunal.²⁰⁰ It has also been the subject of numerous studies. The following section provides a summary of studies that relate to two interconnected issues: the capacity and capability of Māori to meaningfully participate and engage in the RMA process, and the ability of Māori to exercise kaitiakitanga.

In 1998, the Parliamentary Commissioner for the Environment published a report entitled 'Kaitiakitanga and local government: tangata whenua participation in

¹⁹⁷ Resource Management Amendment Act 2005, (2005 No. 87), Section 18

¹⁹⁸ Resource Management Amendment Act 2005, (2005 No 87), Section 18

¹⁹⁹ Matthew Cunningham, *The environmental management of the Waipa River and its Tributaries*, (Waitangi Tribunal, 2014), Wai 898, #A150, pp196-200, 203

²⁰⁰ McClean and Smith, *The Crown and Flora and Fauna*, Wai 262 #K2 p213

environmental management'.²⁰¹ The report found that the legislation provided a strong basis for tangata whenua participation in policy development and management for the natural environment with its recognition of consultation, traditional values and relationships, the principles of the Treaty, and the ongoing duties of kaitiakitanga. At the same time, however, there was widespread support from tangata whenua to bring a 'sharper and more practical focus to critical sections of the RMA'.²⁰² The report claimed that there are no national policy frameworks or standards to ensure 'efficient, consistent, and reliable systems for tangata whenua participation in environmental management or the appropriate accommodation of the values and concerns of tangata whenua as required under the RMA'.²⁰³ With that, there is a lack of 'formal accountability processes to audit and assess the performance of local authorities in these areas'.²⁰⁴ Other issues discussed were in relation to: ongoing uncertainties and differences within many iwi and hapū regarding mandating and spokespersons; often poor consultation and communication between local authorities and tangata whenua; processes are 'often overly complex, cumbersome and inefficient', and there was limited resourcing available for tangata whenua involvement in environmental management. It also commented on many cases of bad experiences between councils and tangata whenua which had soured relationships, 'eroded trust and fostered hostile assumptions and attitudes'.²⁰⁵

More recently, in 2006 and 2012, Te Puni Kōkiri (TPK) published reports providing 'baseline information' about Māori involvement and engagement in the RMA processes. The 2006 report was produced in the context of amendments to the RMA in 2005 (discussed above) which involved an inter-departmental group tasked with looking at ways to improve the effectiveness of council-Māori engagement under a range of existing legislation. The TPK report responded to the inter-departmental group's lack of

²⁰¹ The Parliamentary Commissioner for the Environment, *Kaitiakitanga and local government: tangata whenua participation in environmental management*, (Wellington: Parliamentary Commissioner for the Environment, 1998)

²⁰² The Parliamentary Commissioner for the Environment, 'Kaitiakitanga and local government', p116

²⁰³ The Parliamentary Commissioner for the Environment, 'Kaitiakitanga and local government', p116

²⁰⁴ The Parliamentary Commissioner for the Environment, 'Kaitiakitanga and local government', p116

²⁰⁵ The Parliamentary Commissioner for the Environment, 'Kaitiakitanga and local government', pp116-118

inclusion of Māori; TPK aimed to present the 'views of council staff and Māori resource management practitioners'.²⁰⁶ Some of the key findings in the report include:

- Māori participation in the RMA process is occurring primarily at the resource consent stage;
- Māori found there was a lack of engagement at the planning and policy-making stage of the RMA;
- That there are major capacity and capability barriers affecting moves to a more proactive position for Māori;
- All the councils interviewed for the study provide some level of support to Māori groups, but newly elected councillors are not fully aware of their legislative responsibilities to Māori
- Those councils that provide the most financial support to Māori to engage under the RMA regard Māori input as expert opinion.

The 2012 TPK report surveyed iwi and hapū organisations to explore Māori involvement in resource management. The survey outlined success stories, positive collaboration taking place, and challenges affecting relationships between groups and councils, and councils' ability to engage with groups. But overall, the results suggested that the council's engagement with iwi and hapū was affected by poor attitudes, lack of willingness to engage, and low levels of understanding about iwi and hapū. It also suggested that iwi and hapū groups had low levels of influence and representation and low capacity and limited resources. Groups surveyed identified solutions to such issues, including capability building for councils; strengthening the role of iwi and hapū in natural resource governance, management and decision-making, and 'capacity and capability building resources and skills to better enable groups to undertake their environmental and RMA work'.²⁰⁷

The RMA, like previous environmental management legislation, has also been the subject of Waitangi Tribunal inquiries, perhaps most importantly in its 2011 *Ko Aotearoa Tēnei* report. In this report, the Tribunal commented that while the RMA regime does 'nominally' provide for kaitiaki control, partnership and influence on environmental management through the special Treaty and Māori provisions in Part II,

²⁰⁶ Te Puni Kōkiri, *Te Kotahitanga o te Whakahaere Rawa: Māori Council Engagement Under the Resource Management Act 1991*, (Wellington: Te Puni Kōkiri, 2006)

²⁰⁷ Te Puni Kōkiri, *He Tiro Whānui e pā ana ki te Tiaki Taiao 2012: 2012 Kaitiaki Survey Report*, (Wellington: Te Puni Kōkiri, 2012) p32

the Act 'is not delivering – or at least, not delivering enough'; the Act 'has not fulfilled its promise', failing to deliver 'appropriate levels of control, partnership and influence for kaitiaki in relation to taonga in the environment'.²⁰⁸ The report recommended enhanced iwi management plans; improved mechanisms for delivering partnership and control; a commitment to capacity building, and greater use of national policy statements (especially in relation to iwi resource management plans, and arrangements for kaitiaki control, partnership, and influence on environmental decision-making).²⁰⁹ *The Whanganui River Report* (1999) also commented on Section 354 of the RMA which continued the Crown assumption of ownership of the beds of rivers, established with the Coal-mines Act Amendment Act 1903 and reinforced with the Water and Soil Conservation Act 1967, is inconsistent with Article 2 of the Treaty of Waitangi.²¹⁰

The RMA has also been the subject of a large body of academic literature, too vast to summarise here.²¹¹ Scholars have addressed the issue of consultation,²¹² the role of local government,²¹³ provisions for Māori under Part II²¹⁴ kaitiakitanga,²¹⁵ and the reluctance of local government to take up the joint- or co-management provisions.²¹⁶ These themes are explored in relation to more detail in subsequent chapters.

1.6 Management of freshwater fisheries

1.6.1 Fisheries management, 1860-1983

The Crown has generally treated the management of waterways and fisheries as separate subjects in statute, even though waterways and the fisheries they support are

²⁰⁸ Waitangi Tribunal, *Ko Aotearoa Tēnei*, p273

²⁰⁹ Waitangi Tribunal, *Ko Aotearoa Tēnei*, p286

²¹⁰ Waitangi Tribunal, *The Whanganui River Report*, (Wellington: Legislation Direct, 1999), p273

²¹¹ For a summary of this debate, see Cooper, Ronda, 'The Importance of Monsters: A Decade of RMA Debate', in Janine Hayward (ed), *Local Government and the Treaty of Waitangi*, (Melbourne: Oxford University Press, 2003)

²¹² Jenny Vince, 'Maori Consultation Under the Resource Management Act and the 2005 Amendments', *New Zealand Journal of Environmental Law*, (Vol. 10, 2006).

²¹³ Morris Te Whiti Love, 'Resource management, local government, and the Treaty of Waitangi' in Janine Hayward (ed), *Local Government and the Treaty of Waitangi*, (Melbourne: Oxford University Press, 2003)

²¹⁴ 'The Mechanisms for the Protection of Maori Interests Under Part II of the Resource Management Act 1991', *New Zealand Journal of Environmental Law*, (Vol. 2, 1998)

²¹⁵ Tikitu Tutua-Nathan, 'Kaitiakitanga: A commentary on the Resource Management Act 1991' Waitangi' in Janine Hayward (ed), *Local Government and the Treaty of Waitangi*, (Melbourne: Oxford University Press, 2003)

²¹⁶ Elizabeth Clark, 'Section 33 of the Resource Management Act 1991' in Janine Hayward (ed), *Local Government and the Treaty of Waitangi*, (Melbourne: Oxford University Press, 2003)

interconnected. Initially, Crown statutes relating to drainage and water abstraction (discussed above) altered the habitat of fish. From the 1860s onwards, however, the Crown introduced legislation specifically concerning the management and control of fisheries.²¹⁷ The first piece of legislation relating to fisheries in New Zealand was the Oyster Fisheries Act 1866.²¹⁸ The introduction of English fish by settlers spurred on further legislative responses by the Crown. In 1867, the Crown introduced both the Salmon and Trout Protection Act and the Protection of Animals Act. The first Act provided the Governor with authority to make regulations ‘for preserving and propagating’ salmon and trout, to set regulations for fishing, and to take punitive action against any person in breach of such regulations.²¹⁹ The Protection of Animals Act gave acclimatisation societies statutory recognition and ‘afforded rights in respect of fauna they introduced’.²²⁰ The effect, according to Geoff Park, was to ‘legally endorse the annihilation’ of native fisheries, as introduced fish successfully out-competed indigenous species’.²²¹

The Fish Protection Act 1877 introduced the first comprehensive fisheries management regime. The Act provided the Crown with responsibility for the protection and administration of fisheries in rivers, lakes and the sea, and it empowered the Governor to issue licenses granting exclusive rights to fisheries under the Act.²²² Section 8 of the Act stated:

Nothing in this Act contained shall be deemed to repeal, alter, or affect any of the provisions of the Treaty of Waitangi, or to take away, annul, or abridge any of the rights of the aboriginal natives to any fishery secured to them thereunder.²²³

²¹⁷ White, *Inland Waterways: Lakes*, p18

²¹⁸ The Act’s major purpose was “to provide for the protection of Oyster Fisheries” and it established a close season during the annual spawning season, set a minimum catch size, allowed for the issue of permits to form artificial beds, and required gatherers to obtain a licence issued by the local Collector of Custom. Cited in Alexander, *Land-based Resources, Waterways, and Environmental Impacts*, Wai 1040 #A7

²¹⁹ Alexander, *Land-based Resources, Waterways, and Environmental Impacts*, Wai 1040 #A7; White, *Inland Waterways: Lakes*, p19

²²⁰ White, *Inland Waterways: Lakes*, p19

²²¹ Geoff Park, *Effective Exclusion? An Exploratory Overview of Crown Actions and Maori Responses Concerning the Indigenous Flora and Fauna, 1912-1983*, (Waitangi Tribunal, 2001), Wai 262 #K4, p186

²²² White, *Inland Waterways: Lakes*, pp19-20

²²³ Fish Protection Act 1877 (1877 No 45)

Despite such a protection, however, the Waitangi Tribunal found in its *Muriwhenua Report* that Section 8 was simply ‘window dressing’. It was inserted, according to the Tribunal, ‘in the face of claims by Māori members that the Treaty should be recognised and fishing rights upheld, while no one really knew or very much cared what section 8 entailed’.²²⁴ Indeed, as White notes, the Tribunal has found such an approach adopted by the Crown typical. That is, inserting Treaty rights into legislation, despite ‘everything else in the Act being contrary to Treaty principles’.²²⁵ For example, the subsequent Fisheries Act 1908 also recognised the rights of Māori under the Treaty of Waitangi to their customary sea fisheries in general terms. However, as David Alexander writes, the 1908 Act ‘was silent on how this could be put into effect in the wider context of exploitation of fish resources by commercial industry and European recreational fishers, which the legislation also recognised (and in large part promoted)’.²²⁶

The 1908 Act included a statutory obligation to recognise the fishing rights of Māori, but this only applied to sea fisheries and not freshwater fisheries – a distinction not explained in the Act or in parliamentary debates.²²⁷ The 1908 Act remained in force, ‘relatively unchanged’ according to Park, until it was repealed in 1983, though there were several minor amendments.²²⁸ In that time, according to White, the only significant amendments that related to freshwater fisheries regarded eel fisheries. In 1963, the licensing of commercial fisheries was replaced by a permit system and in 1977 the Fisheries Amendment Act gave the Minister for Fisheries the power to declare commercial eel, paua, crayfish, mussel, and scallop fisheries to be ‘controlled fisheries’.²²⁹ Also of relevance to subsequent chapters was the introductions of fish pass regulations, introduced in 1947, in recognition of the fact that the construction of dams, fords and river crossings were detrimental to fish movement and migration.²³⁰ These regulations gave fisheries authorities the right to require a fish pass on any dam or weir built on rivers where trout and salmon did or could exist. No provision was made for

²²⁴ Waitangi Tribunal, *Muriwhenua Fishing Report*, (Wellington: Waitangi Tribunal 1988), p85

²²⁵ White, *Inland Waterways: Lakes*, p20

²²⁶ Alexander, *An overview of selected environmental and resource management issues in Te Rohe Potae Inquiry District*, Wai 1040 #A148, p82

²²⁷ White, *Inland Waterways: Lakes*, p22

²²⁸ Park, *Effective Exclusion?* Wai 262 #K4, p187

²²⁹ White, *Inland Waterways: Lakes* pp22-3

²³⁰ Royal Forest and Bird Protection Society of New Zealand Inc., *Handbook of Environmental Law*, (Wellington: Forest and Bird), 2004, p216

indigenous species.²³¹ However, there is very little information regarding how or if this legislation was utilised.

The Fisheries Act 1965 amendment to the 1908 Fisheries Act increased restrictions on Māori access and fishing rights within lakes and rivers, according to Geoff Park, in order to allow for the successful breeding and establishment of introduced game fish. It enabled 'any specified waters' to be declared spawning grounds for fish. Fishing could be prohibited, and restrictions and conditions imposed on 'entry into any such waters or onto land within a specified distance of any such waters'.²³²

The Fisheries Act 1983 consolidated all previous fishing legislation.²³³ Section 88(2) of the Act states: 'Nothing in this Act shall affect any Maori fishing rights'.²³⁴ Its protection of Māori fishing rights was also expanded to freshwater fisheries. Despite this, two Opposition Māori Members of Parliament raised the issue that the bill would nullify the 1877 protection under the provisions of the Treaty of Waitangi set out in the Fish Protection Act 1877.²³⁵ Indeed, the 1983 Act made no reference to the Treaty of Waitangi and the extent to which Section 88(2) 'affected thinking in the Ministry of Agriculture and Fisheries (the administrator of the Act) is not known', Alexander suggests.²³⁶ At the same time, Crown fisheries legislation did provide for certain customary rights in relation to indigenous fish of rivers and lakes.²³⁷ Often these statutes concerned specific lakes or rivers, most significantly the Whanganui River.

1.6.2 Current fisheries legislation

Today, the Ministry for Primary Industries is responsible for managing all freshwater fisheries excluding sports fish and whitebait under the Fisheries Act 1996.²³⁸ The Ministry also has the authority to delegate aspects of non-commercial and customary

²³¹ G. Marmulla, (ed.), *Dams, fish and fisheries. Opportunities, challenges and conflict resolution.*

FAO Fisheries Technical Paper. No. 419. Rome, FAO. 2001, p79

²³² Park, *Effective Exclusion?* Wai 262 #K4, p212

²³³ Park, *Effective Exclusion?* Wai 262 #K4, p213

²³⁴ Fisheries Act 1983 (1983 No 14)

²³⁵ Park, *Effective Exclusion?* Wai 262 #K4, p214

²³⁶ Alexander, An overview of selected environmental and resource management issues in Te Rohe Potae Wai 1040 #A148, pp264-265

²³⁷ Park, *Effective Exclusion?* Wai 262 #K4, p214

²³⁸ Fisheries Act (1996 No. 88)

fisheries management to tangata whenua. This authority is defined across several pieces of legislation and regulations, but it can be broadly summarised under three categories: general regulations relating to amateur fisheries, and regulations specifically enacted to manage customary fisheries. The latter are more wide-ranging in terms of the authority delegated to Māori; however, at the time of writing this report, customary fisheries management in Northland occurs far more prevalently under the general regulations than those specifically enacted for Māori.

1.6.2.1 Amateur fisheries provisions

General regulations relating to amateur fisheries are outlined under the Fisheries (Amateur Fishing) Regulations 2013.²³⁹ These Regulations cover all forms of non-commercial fishing activity, including customary fishing. Under Sections 50 and 51, Māori are given the authority to manage the taking of fish, aquatic life or seaweed for hui or tangi. Written approval for these activities must be obtained from authorised representatives of marae committees, Māori committees, rūnanga or Māori trust boards that represent the tangata whenua of the area. These representatives are issued books of authorisation forms by the Ministry for Primary Industries, and their contact details are kept by the nearest Ministry office. In addition to hui and tangi, Section 52 of the 2013 Regulations allows the taking of fish, aquatic life or seaweed for other ‘traditional non-commercial fishing’ uses. Unlike takes for hui and tangi, these must be approved by the chief executive of the Ministry for Primary Industries; however, he or she may choose to delegate this authority to marae committees, Māori Committees, or ‘any kaitiaki of the tangata whenua’.

1.6.2.2 Customary fisheries provisions

Under the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, the Ministry for Primary Industries (MPI) must provide for Māori non-commercial, traditional and customary fishing rights and interests and must also provide for Māori participation in management and conservation of New Zealand’s fisheries.

The Fisheries Act 1996 and the Fisheries (Kaimoana Customary Fishing) Regulations 1998 introduced several other customary fishing management tools: taiāpure-local

²³⁹ Fisheries (Amateur Fishing) Regulations 2013, (SR 2013/482)

fisheries, temporary closures/method restrictions, tangata kaitiaki, and mātaítai. These tools were designed to give effect to the obligations stated in Section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 to ‘develop policies to help recognise use and management practices of Māori in the exercise of non-commercial fishing rights.’²⁴⁰ The intention of these tools is to supersede the general regulations contained in the Fisheries (Amateur Fishing) Regulations 2013. Indeed, as more tangata kaitiaki, taiāpure and mātaítai are established under the relevant legislation and regulations, the default provisions of the 2013 Regulations will become defunct.

Taiāpure may be established under the Fisheries Act 1996 over areas of estuarine or coastal waters that are of significance to Māori as a source of food or for spiritual or cultural reasons. They are managed by a committee nominated by tangata whenua to oversee both commercial and non-commercial fishing and to advise the Minister for Primary Industries on regulations to manage fisheries within the taiāpure area. Both the taiāpure proposal and the members of the management committee must be approved by the Minister for Primary Industries.²⁴¹ Temporary closures and method restrictions allow the Minister to close an area to fishing, or to restrict or prohibit certain fishing methods, in order to recognise a customary fishing practice in that area and allow indigenous species to replenish. Although a temporary closure or methods restriction can be requested by anyone, it can only be granted by the Minister if it will ‘recognise and make provision for the use and management practices of tangata whenua in the exercise of non-commercial fishing rights’.²⁴²

The Fisheries (Kaimoana Customary Fishing) Regulations 1998 are designed to provide greater Māori control over customary fishing practices in their rohe moana. For these provisions to be enacted, Māori in a particular region must agree on who holds tangata whenua status and nominate tangata kaitiaki to act as guardians of their rohe moana.²⁴³ Once nominees are appointed by Minister for Primary Industries, they are responsible for authorising all taking of fisheries for customary food gathering within their rohe

²⁴⁰ Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, (1992 No. 121), Section 10

²⁴¹ Fisheries Act, (1996 No. 88), Sections 174-185

²⁴² Fisheries Act, (1996 No. 88), Section 186A

²⁴³ Fisheries (Kaimoana Customary Fishing) Regulations 1998 (SR 1998/434)

moana. Tangata kaitiaki can also provide input into management or sustainability measures, and can nominate honorary fisheries officers to the chief executive of the Ministry for Primary Industries. In addition, tangata kaitiaki can prepare iwi planning documents for their rohe moana which must be taken into account by the Minister for Primary Industries when preparing fisheries regulations under Section 10(b) of the Treaty of Waitangi Fisheries Claims Settlement Act 1992.²⁴⁴ The 1998 Regulations also allow tangata kaitiaki to request that a particular area within their rohe moana be set aside as a mātaimai reserve. If granted by the Minister, commercial fishing is not allowed within the area of the mātaimai, and tangata kaitiaki have the authority to recommend bylaws to the Minister.

Of particular importance to this report, is the status and regulation of the tuna (eel) populations. In the 1960s, large scale commercial eeling began, an industry spurred by the immigration of Dutch eel fishermen who used fyke nets and beginning in the 1980s, government agencies began to take incremental steps to regulate the industry. A minimum size limit was introduced in 1981, part-time commercial fishers were excluded from the industry in 1982, and a moratorium placed on the issuing of new permits around 1984.²⁴⁵ South Island eels entered the Quota Management System (QMS) in 2000; the Chatham Islands followed in 2003 and the North Island in 2004.²⁴⁶ Today, the main agency responsible for overseeing the fishing of eels is the Ministry for Primary Industries (MPI), pursuant of the Fisheries Act 1996 (the Ministry of Primary Industries was formed in 2012 following a merger of Ministry of Fisheries and the Ministry of Agriculture and Forestry in 2011). Since the Conservation Law Reform Act 1990, the Department of Conservation has been charged with responsibility for the preservation of all indigenous freshwater fisheries, and protection of recreational freshwater fisheries and freshwater fish habitats.²⁴⁷

²⁴⁴ Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, (1992 No. 121), Section 10(b)

²⁴⁵ Parliamentary Commissioner for the Environment, *On a Pathway to Extinction? An investigation into the Status and management of the longfin eel*, (Wellington: Parliamentary Commissioner for the Environment, 2013), p26

²⁴⁶ Parliamentary Commissioner for the Environment, *On a Pathway to Extinction?*, p26

²⁴⁷ Conservation Act 1987, section 6(ab), inserted, on 10 April 1990, by section 4 of the Conservation Law Reform Act 1990 (1990 No 31)

1.7 Conclusion

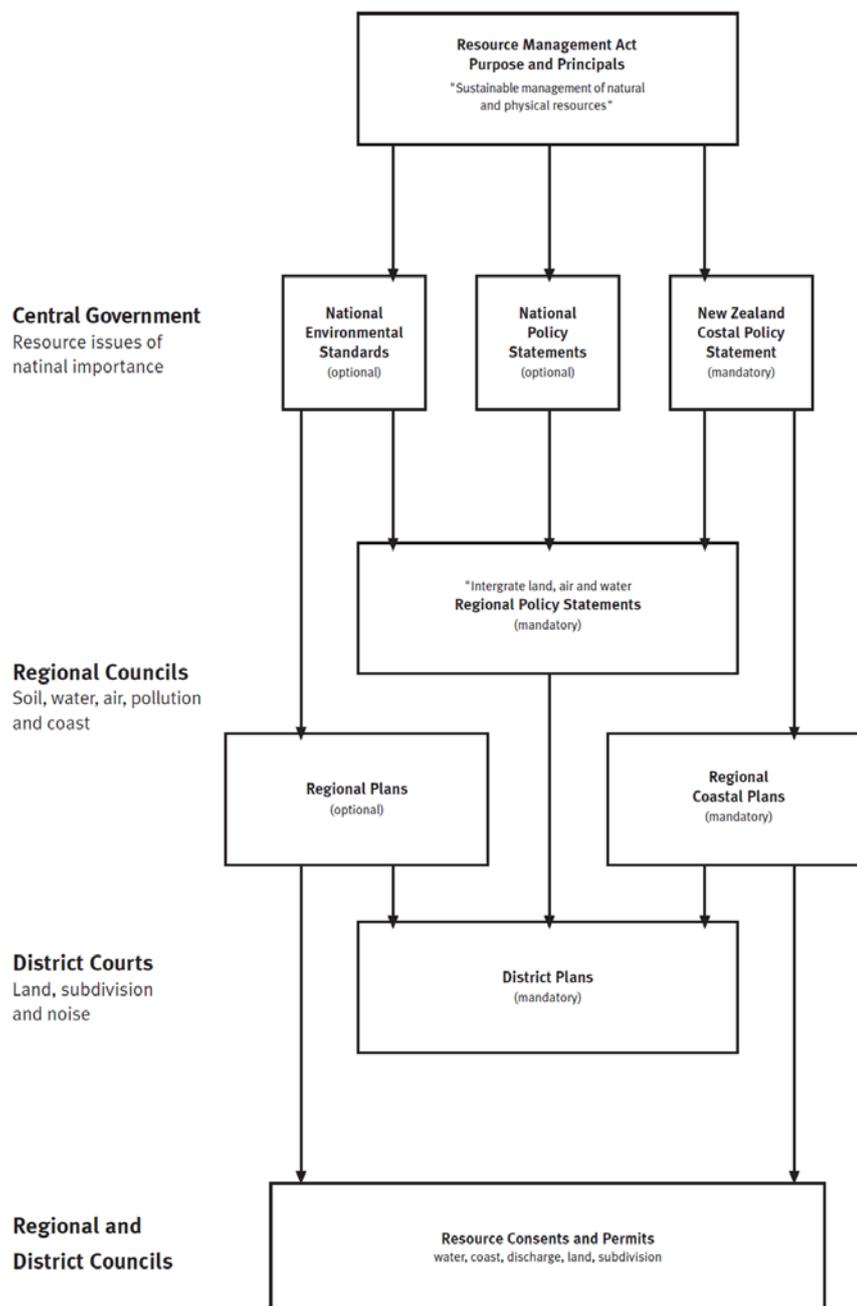
In the first century after the signing of Te Tiriti, resource management law was introduced in an ad hoc fashion and largely related to issues of development, resource use, and ownership. Local government and ad hoc authorities played a central role in the management of resources. This largely monocultural legislation provided little or no provision for Māori participation or consultation, nor recognition for rights guaranteed under te Tiriti. In the second half of the twentieth century, resource management legislation shifted significantly as earlier ad hoc legislation was replaced progressively by more comprehensive legislation, as a result of growing concern about soil erosion and water quality and the perceived failure of ad hoc management. In the 1980s and 1990s, further shifts in international environmental thinking and management policy, developing Crown recognition of Te Tiriti, and local and central government reforms shaped the nature of resource management law.

The Resource Management Act 1991, which emerged out of these developments, now stands as the centrepiece of resource management and environmental law in New Zealand. The Act's purpose is to 'promote the sustainable management of natural and physical resources'. Under its provisions, proposed uses of land, air or water must be assessed for actual and potential effects on the environment and those exercising functions under the Act shall 'take into account' the principles of the Treaty of Waitangi, shall 'have particular regard to' duties of kaitiakitanga and 'recognise and provide for... the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga'.²⁴⁸ The Act sets out the basic powers, functions, and responsibilities of the regulatory agencies charged with environmental management, as well as the mechanisms for influence on environmental decision-making by members of the public and affected parties, including iwi and hapū. These include the resource consent process, and clauses relating to co- or joint-management. As discussed in this chapter, the RMA and the provisions for Māori has been the subject of much debate, primarily regarding the capacity and capability of Māori to meaningfully participate and engage in RMA processes, and the ability of Māori to

²⁴⁸ Resource Management Act 1991 (1991 No 69); Wheen, 'An updated history of New Zealand environmental law', p.287

exercise kaitiakitanga. How the legislation has played out in Northland in general, and in the five selected river systems for this report in particular, is the subject of the following chapters.

Figure 2: The Resource Management Act



(Source: Ministry for the Environment, 'The State of New Zealand's Environment 1997', <http://www.mfe.govt.nz/publications/environmental-reporting/state-new-zealand%E2%80%99s-environment-1997>, pp 4 - 12 (accessed 11 May 2016))

Table 1: Freshwater management bodies and their responsibilities

Management Body	Role in freshwater management	Key Legislation
Minister for the Environment	<ul style="list-style-type: none"> ▪ Oversees freshwater management under the RMA ▪ Recommends the issue of national policy statements on fresh water ▪ Recommends the making of national environmental standards related to fresh water ▪ Recommends the approving of requiring authorities for water infrastructure ▪ Recommends the use of water conservation orders ▪ Calls-in matters of national significance related to fresh water ▪ Oversees the Ministry for the Environment 	<ul style="list-style-type: none"> ▪ Environment Act 1986 ▪ Resource Management 1991 ▪ Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010
Ministry for the Environment	<ul style="list-style-type: none"> ▪ Provides policy advice to the Minister on freshwater management ▪ Disseminates information on freshwater management ▪ Engages in collaborative efforts to improve freshwater management 	<ul style="list-style-type: none"> ▪ Environment Act 1986 ▪ Resource Management Act 1991
Environmental Protection Authority	<ul style="list-style-type: none"> ▪ Processes freshwater management matters of national significance that are ‘called-in’ 	<ul style="list-style-type: none"> ▪ Resource Management Act 1991
Minister of Conservation	<ul style="list-style-type: none"> ▪ Oversees coastal management under the RMA including fresh water within the coastal environment ▪ Recommends the issue of the New Zealand coastal policy statement ▪ Calls-in matters of national significance within the coastal environment ▪ Oversees the Department of Conservation and Fish and Game Councils 	<ul style="list-style-type: none"> ▪ Conservation Act 1987 ▪ Resource Management Act 1991
Department of Conservation	<ul style="list-style-type: none"> ▪ Manages the conservation estate ▪ Manages wildlife ▪ Undertakes research into freshwater fisheries ▪ Advocates for the conservation of aquatic life and freshwater fisheries including involvement in RMA proceedings ▪ Promotes the benefits of conservation and prepares and 	<ul style="list-style-type: none"> ▪ Conservation Act 1987 (especially Section 6 and Part 5B) ▪ Freshwater Fisheries Regulations 1983 ▪ Resource Management Act 1991 ▪ Wildlife Act 1953

Management Body	Role in freshwater management	Key Legislation
	<p>disseminates conservation materials. Manages the Taupo “sports” fishery and whitebait fisheries</p> <ul style="list-style-type: none"> ▪ Controls introduced species that cause damage to indigenous freshwater species and habitats 	
Minister of Fisheries	<ul style="list-style-type: none"> ▪ Manages freshwater fisheries, excluding sports fish and whitebait 	<ul style="list-style-type: none"> ▪ Fisheries Act 1996
Iwi and hapū	<ul style="list-style-type: none"> ▪ Exercise kaitiakitanga over freshwater bodies ▪ Co-governance and co-management arrangements for specific water bodies 	<ul style="list-style-type: none"> ▪ Deeds of Settlement ▪ Rotorua and Taupo fisheries regulations
Fish and Game Councils	<ul style="list-style-type: none"> ▪ Manage freshwater sports fish and game birds (mainly waterfowl) ▪ Advocate for the interests of sports and game including involvement in RMA proceedings ▪ Licence anglers and gamebird hunters ▪ Undertake hatchery and breeding programmes for sports fish ▪ Undertake research, information and education activities 	<ul style="list-style-type: none"> ▪ Conservation Act 1987 (Part 5A) ▪ Wildlife Act 1953 (Part2) ▪ Resource Management Act 1991
Regional councils	<ul style="list-style-type: none"> ▪ Control discharges affecting freshwater bodies ▪ Control the taking, use, damming and diverting of fresh water ▪ Allocate fresh water ▪ Control the impact of land use on freshwater quality, quantity, ecosystems and natural hazards ▪ Control the introduction of plants to the bed of freshwater bodies ▪ Maintain indigenous freshwater biological diversity 	<ul style="list-style-type: none"> ▪ Local Government Act 2002 ▪ Resource Management Act 1991
Territorial authorities	<ul style="list-style-type: none"> ▪ Control the impact of land use on fresh water ▪ Control activities on the surface of freshwater bodies ▪ Provide water and wastewater services ▪ May control drainage 	<ul style="list-style-type: none"> ▪ Local Government Act 2002 ▪ Resource Management Act 1991 ▪ Land Drainage Act 1908
Guardians	<ul style="list-style-type: none"> ▪ Make recommendations to the Ministers on management of hydro lakes 	<ul style="list-style-type: none"> ▪ Conservation Act 1987 ▪ Lake Wanaka Preservation Act 1973

(Source: Department of Conservation)

Chapter Two

The intersection of resource management and kaitiakitanga over Northland's rivers and lakes

2.1 *Introduction*

The previous chapter outlined the legislation governing the management of waterways and customary river resources in New Zealand. This chapter provides an overview of how central and local government bodies have applied this legislation in Northland, and the extent to which kaitiakitanga has been recognised and provided for. It is divided into three sections. The first section examines the local government bodies in the Northland region that have been delegated authority by the Crown to carry out resource management, in particular the Northland Regional Council (NRC). The second section describes the central government bodies that play a role in resource management and assesses where that role intersects with that of local government in Northland. The third section examines the position of kaitiakitanga in these central and local government regimes. It compares the Crown's framework for involving Māori in resource management in the Northland region with the expectations that Te Raki claimants have of what their role should be. It then outlines the avenues available to Māori to participate in the Crown's environmental management processes, the impressions that Te Raki Māori have of these avenues for participation, as well as other general methods by which Māori have chosen to exercise their kaitiakitanga outside the Crown's processes.

This chapter is intended solely as an overview of Crown management and kaitiakitanga as it relates to Northland's waterways and customary river resources. Part two of this report, comprised of Chapters Four through Eight, provides a more detailed analysis of the implications of these management regimes and the role of Māori as they relate to the five river systems with which this report is concerned. However, many of the processes discussed in these later chapters, such as the resource consent process, the Regional Water and Soil Plan for Northland (RWSPN), Māori Resource Management Units and Iwi Management Plans, are summarised in this chapter.

2.2 Local government

2.2.1 Northland Regional Council

Chapter One noted that the RMA requires regional councils to prepare regional policies and plans describing the resource management issues in the region and outlining how the management of natural resources will be implemented. In the case of the NRC, this legislative requirement has been implemented via a hierarchy of complementary planning documents. At the apex of this hierarchy are the Council's Regional Policy Statement for Northland (RPSN) and its Regional Plans, both of which are statutorily required under the RMA and which must be reviewed every ten years.²⁴⁹ Between 1991 and 2015 there had only been only been one version of each of these plans – the RPSN was finalised in 1999, and the Regional Plans were finalised in 2004. A new RPS was largely finalised in early 2016, and the Regional Plans are presently in the process of being reviewed. The extent to which Māori have been involved in both of these reviews is discussed in section 2.4.3.2 of this chapter.

Underneath the RPSN and its Regional Plans lie a range of statutory and non-statutory planning documents that are designed to implement the regulations contained in the RPSN and Regional Plans and, in some cases, provide information that can assist in the review of those statutory documents. These include the Annual, Long-Term, and River and Flood Management Plans. Each of these plans is discussed in turn below. For ease of reference, they are also summarised in figure 4.

2.2.1.1 Regional Policy Statement

The Regional Policy Statement for Northland is the highest level statutory document created by the NRC. According to the Council, it is designed to provide a holistic or 'integrated' guide to the management of Northland's natural resources. It does not contain specific rules around the use of natural resources: rather, it is comprised of a series of high-level policies which are intended to provide a framework for developing

²⁴⁹ Resource Management Act (1991 No 69), sections 59-70

such rules in the Council's Regional Plans.²⁵⁰ These policies relate to several areas of resource management, including coastal management, natural hazards, air quality, waste management, and hazardous substances. Four of these areas relate to the management of Northland's waterways: water quality, water quantity and flows, soil conservation and land management, and ecosystems and biodiversity.²⁵¹ The water quality section includes a set of policies for managing effluent treatment and disposal, for example its commitment to land-based disposal systems (due in part, according to the NRC, to the general preference of Māori that wastewater be discharged to land in order to pass through Papatūānuku). Several local studies of wastewater treatment plants are discussed in part two of this report.

The RPSN also includes several provisions relating to tangata whenua participation in resource management. These provisions are discussed in section 2.4.1 of this chapter, which outlines the Crown's general framework for involving Māori in resource management.

2.2.1.2 Regional Water and Soil Plan

The NRC has produced three Regional Plans to implement the policies in the RPSN: a Regional Air Quality Plan, Regional Coastal Plan, and Regional Water and Soil Plan. These Plans contain the Council's resource management objectives, the methods by which those objectives will be achieved, and the expected environmental outcomes. They also provide a detailed series of rules designed to regulate activities that are likely to have adverse effects on the environment. As such, they are arguably the most important, and the most frequently used, resource management documents produced by the Council. For example, applicants seeking to undertake an activity with likely environmental impacts must review and abide by the relevant rules and resource consent processes laid out in the Plan. Similarly, Council staff rely on the objectives and

²⁵⁰ Northland Regional Council, 'Regional Policy Statement', <http://www.nrc.govt.nz/resources/?url=%2FResource-Library-Summary%2FPlans-and-Policies%2FRegional-Policy-Statement%2FRegional-Policy-Statement%2F>, p1 (accessed 1 May 2016)

²⁵¹ Northland Regional Council, 'Regional Policy Statement', sections 17, 18, 20, and 23

rules to assess whether those activities are compliant. District Councils must also take the Regional Plans into account when preparing their District Plans.²⁵²

Northland's waterways are managed under the Regional Water and Soil Plan, which provides a series of objectives and expected environmental results. Those which relate to Māori are discussed in section 2.4.1 of this chapter. The bulk of the Plan is comprised of the rules developed to govern activities that are likely to have adverse effects on the environment. These rules cover the following activities:

- Discharges to land such as landfills, rubbish dumps and tips, sewage, stormwater, agricultural discharges, industrial and trade discharge;
- Discharges to water;
- The taking, using, damming or diverting of surface and groundwater;
- Building and modifying structures in river and lake beds;
- Introducing plants to river and lake beds;
- Drainage and river control activities;
- Earthworks;
- Vegetation clearance; and
- Activities within the Riparian Management Zone along rivers, lakes, and the coastal marine area.

Activities are classified under the Plan as falling into one of six categories: permitted, controlled, discretionary, restricted discretionary, non-complying, or prohibited. Activities that are considered to be of no consequence to the environment, or which have minor environmental effects that can be easily mitigated, are classified as permitted. If an individual or agency engages in a permitted activity they must meet the rules in the Plan that specify operating conditions and efforts to mitigate environmental impacts. Prohibited activities, as the name implies, are not allowed under the Regional Plan. Permission to undertake such activities can only be granted if the Plan itself is modified to reclassify the activity under one of the other categories.²⁵³

Activities which are likely to have more considerable effects on the environment, but which are not prohibited, are classified as controlled, discretionary, restricted

²⁵² Northland Regional Council, 'Regional Water and Soil Plan', <http://www.nrc.govt.nz/resources/?url=%2FResource-Library-Summary%2FPlans-and-Policies%2FRegional-plans%2FRegional-Water-and-Soil-Plan%2F>, section 3.6 (accessed 1 May 2016)

²⁵³ Northland Regional Council, 'Regional Water and Soil Plan', section 14.1

discretionary, or non-complying depending upon the potential severity of their impact on the environment. These activities are managed via the resource consent process, which is set out under the RMA (see Chapter One). The process laid out in the RWSPN largely follows the relevant clauses of the Act, and is graphically displayed in figure 3. In summary, an application for resource consent is received and assessed; the application proceeds on a notified, limited notified, or non-notified basis; submissions are received (in the event of notified and limited notified applications); opposing submissions are dealt with via mediation, consent conditions, or a Council hearing; and a final decision is issued granting or declining the consent application with appropriate conditions delimiting how it is to be applied.

The NRC has established additional policies for resource consent applications that are designed specifically for Māori. Firstly, it circulates copies of all non-notified consent applications to Māori who have expressed an interest in a particular area.²⁵⁴ Lists of which Māori groups to notify are maintained by the Council's Iwi Liaison Officer, and are informed by previous submissions and iwi management plans.²⁵⁵ This policy, which goes beyond the requirements of the RMA, was first trialled in 1995 in consultation with Te Kotahitanga o Te Taitokerau before being made permanent in March 1996.²⁵⁶ It allows Māori to raise their concerns informally within the statutory timeframe for processing non-notified consent applications (usually 12 days). Māori are unable to file formal submissions on non-notified consent applications, or to have their concerns aired at a hearing; however, their concerns may be addressed via resource consent conditions. There is also no right of appeal against a decision of the NRC on a non-notified resource consent application. As will be seen later in this chapter, the Council's policy regarding non-notified consents has caused confusion amongst some Māori in the Te Raki inquiry regarding the status of these informal notifications and any objections

²⁵⁴ Northland Regional Council, 'State of the Environment Report 2007', <http://www.nrc.govt.nz/resources/?url=%2FResource-Library-Archive%2FEnvironmental-Monitoring-Archive2%2FState-of-the-Environment-Report-archive%2F2007%2FState-of-the-Environment-Monitoring%2E>, p486 (accessed 1 May 2016)

²⁵⁵ NRC Iwi Liaison Officer, 'Notes on the involvement of tangata whenua in resource consent processing', 23 August 1996, NRC File 900.17.1, Vol. 2

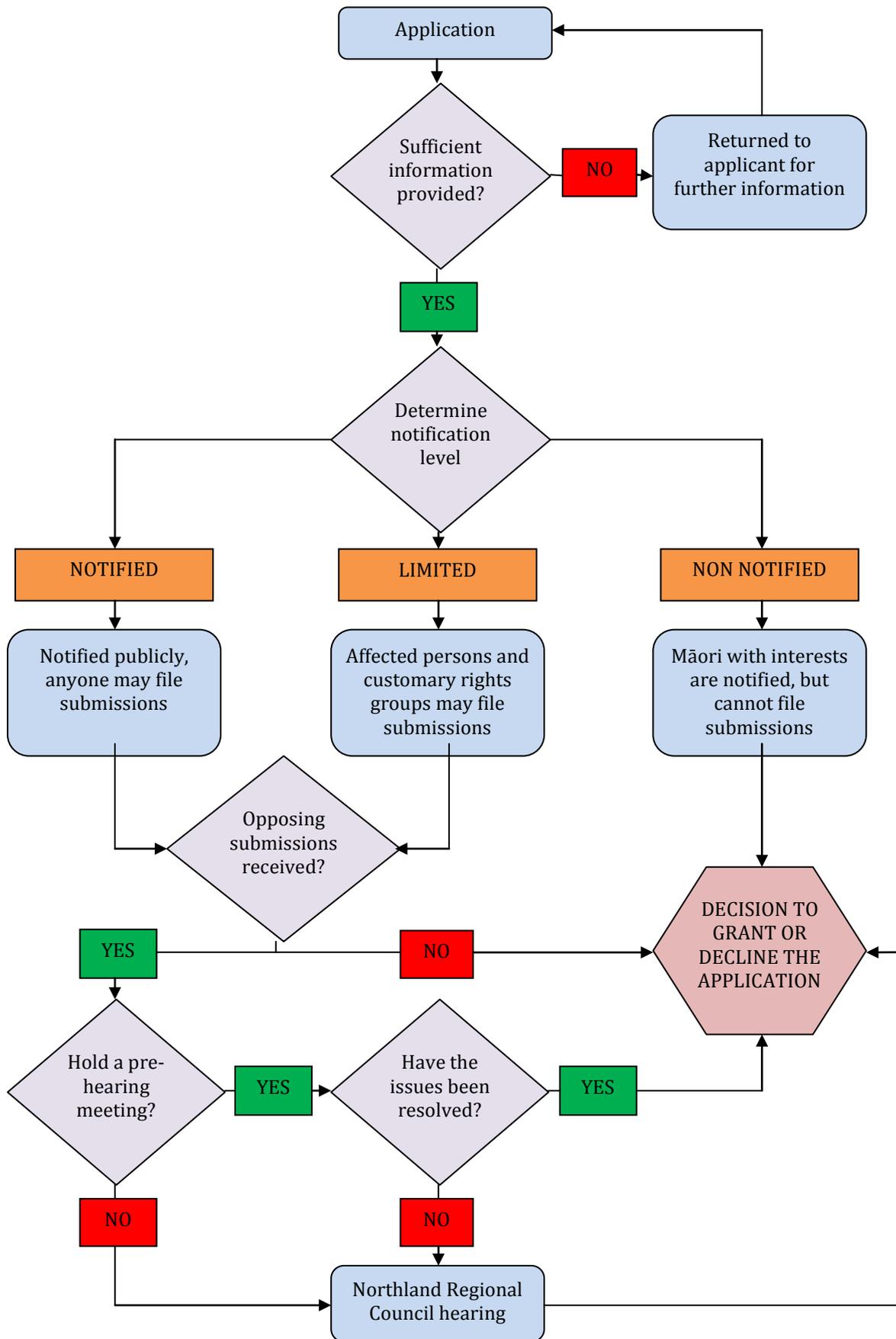
²⁵⁶ Report from the meeting between the Northland Regional Council and the Te Kotahitanga o Te Taitokerau Resource Management Sub-committee, 14 June 1995, NRC File 900.17.1, Vol. 1; Memorandum from NRC Consents Manager and Support Services Manager regarding the circulation of non-notified resource consent applications to Māori groups and options for the future, 11 March 1996, NRC File 900.17.1, Vol. 2

that are raised. Secondly, the Council also suggests that applicants for resource consent engage directly in consultation with tangata whenua as part of preparing their initial application, which may include the production of a cultural impacts assessment (CIA) report. However, there is no legal requirement under the RMA for applicants to produce a separate cultural impacts assessment as part of a resource consent application, nor are applicants required to take them into account where they have been produced. Nevertheless, Schedule 4 of the RMA includes 'cultural effects' as one of the matters that applicants must address when producing an assessment of environmental effects (AEE). These are discussed in more detail in Chapter One.

The RMA provides regional councils with significant leeway in assessing resource consent applications. The RWSPN contains assessment criteria to assist with this process. Broadly, these criteria include the adequacy and accuracy of the consent application, the extent of proposed environmental monitoring and mitigation efforts, and the extent to which alternate options have been considered.²⁵⁷

²⁵⁷ Northland Regional Council, 'Regional Water and Soil Plan', section 36

Figure 3: The Northland Regional Council's resource consent process



While the RWSPN contains a detailed set of rules relating to point-sources of pollution, it is less clear regarding the management of non-point sources of pollution. In some cases, the Regional Plan specifically excludes non-point sources of pollution from regulation: the section on animal discharges, for example, states that:

It is not the intent of the permitted activity rule to control dung and urine deposited by individual animals put out to graze on the land or while crossing roads.²⁵⁸

And:

It is not considered practical to apply this rule to animals defecating directly into water.²⁵⁹

There are no rules in the RWSPN to exclude stock from entering waterways, although there are some voluntary accords in place that are discussed in section 2.3.2 of this chapter.²⁶⁰ Grazing of stock immediately adjacent to waterways (in what is referred to as the 'riparian management zone') is considered a permitted activity, provided that it does not contribute to erosion or reduce the shading of the water. Despite being a permitted activity, the Plan notes the detrimental effects that stock can have on the riparian management zone:

Grazing in the Riparian Management Zone can reduce the effectiveness of the vegetation in that area to trap nutrients and sediments, and therefore to reduce the volumes of contaminants entering the water body.

Animal excreta directly discharged into this sensitive area is more likely to be carried into streams during rain. Where stock are able to enter the water, more immediate pollution of the water can occur.

Where stock browse the stream bank vegetation, particularly during drought conditions when feed may be low, important sources of food and shade for aquatic habitats may be lost. Rises in temperature due to loss of shade are likely to contribute to the degradation of water quality.

²⁵⁸ Northland Regional Council, 'Regional Water and Soil Plan', section 16.1

²⁵⁹ Northland Regional Council, 'Regional Water and Soil Plan', section 16.5(2)

²⁶⁰ Northland Regional Council, 'Regional Coastal Plan',

<http://www.nrc.govt.nz/resources/?url=%2FResource-Library-Summary%2FPlans-and-Policies%2FRegional-plans%2FRegional-Coastal-Plan%2F>, sections 31.3.12 (f)-(h) and 31.4.12(e)-(g) (accessed 1 May 2016)

Where cattle have access to stream banks and stream beds, there can be considerable disturbance of earth and stream sediments, which may destroy or modify aquatic habitats.²⁶¹

As these comments are not worded or presented as rules, the extent to which they are observed or encouraged is unclear. However, the NRC does have several voluntary education schemes for farmers that cover some of these issues.

The bulk of the section in the RWSPN on animal discharges consists of activity rules relating to point-sources of pollution on farms, such as dairy yards and supplementary feeding pads. These rules require farmers to dispose of collected waste to land (such as via sprays or sprinklers) at least 20 metres from any water sources such as rivers or bores. However, such land-based disposal of animal effluent is considered a permitted activity – the only prohibited activity is disposal of untreated effluent directly to water.²⁶²

2.2.1.3 Annual and long-term plans

The NRC has developed several other statutory plans to assist with the implementation of its RPSN and Regional Plans. Its Annual and Long-Term Plans are statutorily required under the Local Government Act 2002.²⁶³ The Annual Plan is largely an operational document rather than a strategic one: it provides an update on the Council's current activities, its budget, and the rates schedule for the coming financial year.²⁶⁴ These are, in turn, measured against the expectations set in the Long-Term Plan, which outlines the activities the Council plans to take over a ten-year period in order to meet the objectives and outcomes set in the Regional Plans.²⁶⁵ According to Charles Nathan (Mangauna and Te Māhurehure) the Long-Term Plan emerged out of an earlier document called the 'Long Term Community Consultation Plan'. The NRC contracted several Māori individuals to assist in drafting this plan, but it ultimately decided to abandon the plan and incorporate elements of it into several other documents

²⁶¹ Northland Regional Council, 'Regional Water and Soil Plan', section 34.1

²⁶² Northland Regional Council, 'Regional Water and Soil Plan', section 16

²⁶³ Local Government Act (2002 No 84), section 93 and 95

²⁶⁴ Northland Regional Council, 'Annual Plan 2014-2015',

<http://www.nrc.govt.nz/resources/?url=%2FResource-Library-Archive%2FPlans-Policies-and-Strategy-Archive%2FAnnual-plan-and-policies%2F2014%2FAnnual-Plan-2014-2015%2F> (accessed 1 May 2016)

²⁶⁵ Northland Regional Council, 'Long Term Plan 2015-2025',

http://nrc.objective.com/portal/final_ltp/final_ltp_2015-2025 (accessed 1 May 2016)

(including, primarily, the Long-Term Plan). Nathan claimed that he and others continued some of the work planned as part of the Long Term Community Consultation Plan, including cultural assessments and monitoring of waterways. This work, he argued, later contributed to the formation of the Waiora Northland Water programme (discussed in section 2.4.3.5 of this chapter).²⁶⁶

2.2.1.4 Non-statutory plans

The Council has also produced several non-statutory plans for river systems within the Northland region that present a high risk of flooding. These plans outline the remedial measures the Council intends to take to prevent flooding, how they will be funded (usually via targeted rates), and the ongoing management of any flood protection assets that are built (such as stopbanks). The Council decides which river systems will be granted priority for flood protection measures under its Northland River Management Policy, which includes criteria for threats to human life, buildings, public infrastructure, access and agricultural production.²⁶⁷ Flood Management Plans have been developed for the Awanui, Kaihu, Kerikeri, and Kaeo Rivers (the Kaeo River plan is discussed further in Chapter Four). In addition, the Regional Council is responsible for monitoring (via the resource consent process) any river schemes and drainage districts managed by the Kaipara, Whāngārei and Far North District Councils under the Local Government Act 1974. These schemes were typically established prior to 1989 by the old County Councils and inherited by the District Councils under the Local Government (Northland Region) Reorganisation Order 1989.²⁶⁸ The Northland River Management Policy stipulates that District Councils may opt to transfer responsibility for such schemes to the Regional Council.²⁶⁹

The NRC is currently in the process of implementing a new programme called 'Waiora Northland Water', which involves developing several new 'catchment plans' in order to meet its requirements under the 2011 and 2014 National Policy Statements for Freshwater Management. The six priority catchments it has identified are Mangere,

²⁶⁶ Personal communication with Charles Nathan, 15 June 2016

²⁶⁷ Northland Regional Council, 'Northland River Management Policy', <https://www.fndc.govt.nz/your-council/councils-policies/Policy-4302-Northland-River-Management-Policy.pdf>, part 2 (accessed 1 May 2016)

²⁶⁸ *New Zealand Gazette*, 13 June 1989, pp2391-2407

²⁶⁹ Northland Regional Council, 'Northland River Management Policy', p2

Doubtless Bay, Whāngārei Harbour, Waitangi, Poutū, and Ngunguru. Waiora Northland Water is discussed in greater depth later in this chapter in section 2.4.3.5.

2.2.1.5 Environmental monitoring

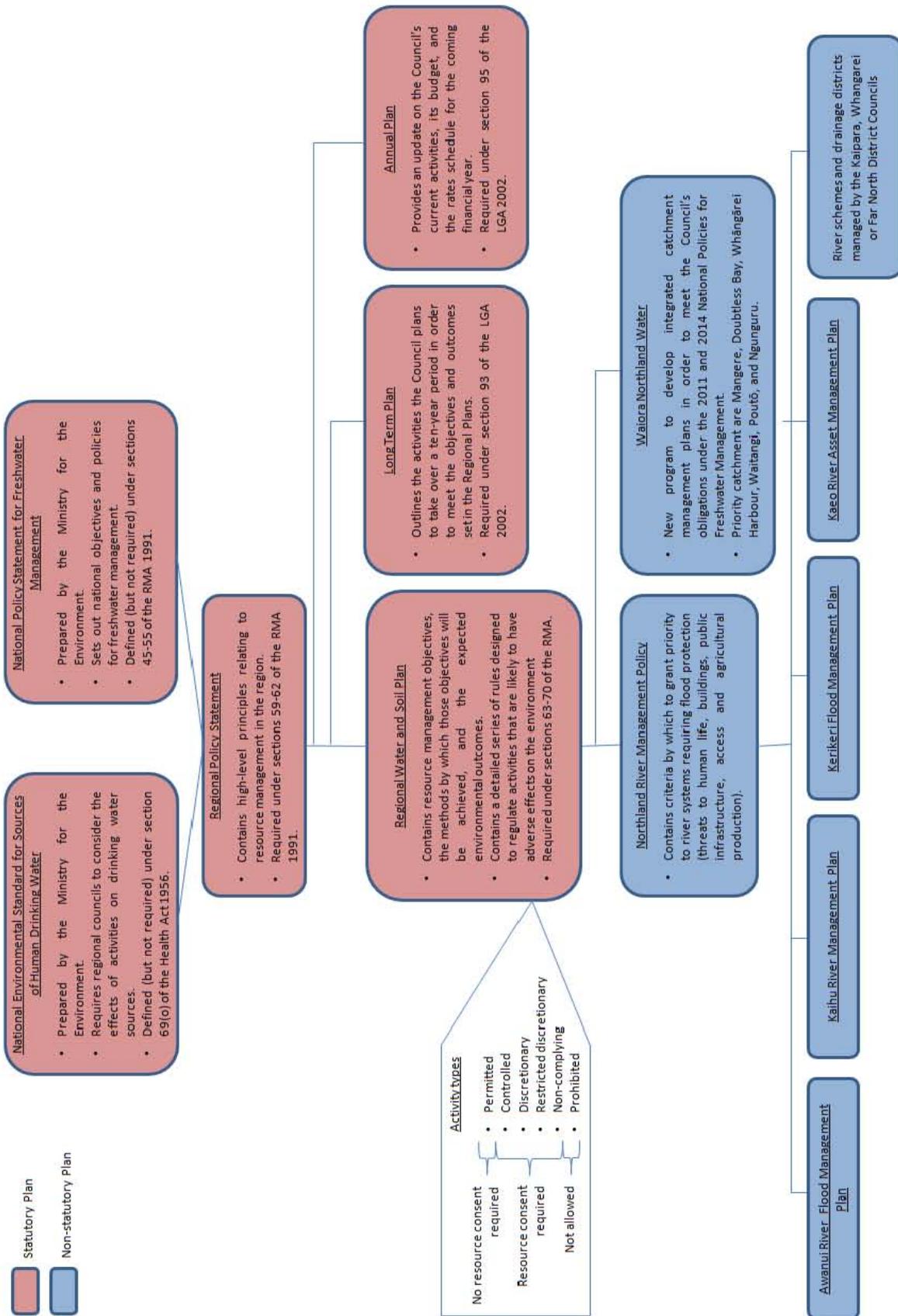
The NRC performs two broad types of environmental monitoring for the waterways in its region: the monitoring of permitted and consented activities (called ‘compliance monitoring’), and general monitoring of environmental trends (called ‘non compliance monitoring’). These are summarised in figure 6 below. Compliance monitoring relates to activities that are permitted under the RWSPN, such as discharges to water or water takes. These activities must comply with the relevant activity rules contained in the Plan. In addition, if the activity requires a resource consent, it must also comply with any conditions contained in the consent. In the case of a discharge to water, these conditions might include the maximum volume of discharge permitted, the expected forms of water treatment prior to discharge (such as an oxidation pond), the maximum level of contaminants allowed in the discharge, and pollution mitigation efforts such as riparian planting around the site of the discharge.

In practice, the NRC devotes most of its compliance monitoring resources towards holders of resource consents. Responsibility for monitoring a particular resource consent can rest with the Council, the consent holder, or both, depending on the conditions of the consent itself. If responsibility for monitoring lies with the consent holder, they are required to report the results to the Regional Council.²⁷⁰ Once the monitoring results have been assessed, the Council allocates the consent holder a status: compliance, non-compliance, or significant non-compliance. The Regional Council has the power to enforce using punitive and/or directive measures in the event of non-compliance, including infringement notices (involving a fine) and abatement notices (directing the consent holder to cease the activity or take certain action). In cases of significant non-compliance, the Council’s standard practice is to follow up with a site visit within 30 days. In some cases they may also choose to prosecute the consent holder.²⁷¹

²⁷⁰ Northland Regional Council, ‘Your Resource Consent’, <http://www.nrc.govt.nz/Consents/Consent-application-process/Your-resource-consent> (accessed 1 May 2016)

²⁷¹ Personal communication with NRC staff, 21 January 2016

Figure 4: The plans relating to freshwater management under which the Northland Regional Council operates



The NRC's largest compliance monitoring programme is its Farm Dairy Effluent programme, which accounts for approximately 25 per cent of activities monitored in the region. It involves annual inspections of every farm within the Council's territory, usually between August and December during the peak effluent loading period. The inspections, which are not announced in advance, confirm whether farmers are complying with the relevant permitted activity rules in the RWSPN. If the farmer holds one or more resource consents, an assessment is also carried out against the consent conditions. The farmer is then allocated a status of compliance, non-compliance, or significant non-compliance based on the results of the inspection.²⁷² Table 2 and figure 5 display the annual farm dairy effluent monitoring statistics from 2005/16 to 2014/15. They generally demonstrate an increase in the number of fully compliant farmers and a corresponding decrease in the number of non- and significant non-compliant farmers, although a slight increase in non- and significant non-compliance occurred between 2007/08 and 2011/12. Table 3 displays the number of farm dairy effluent infringement and abatement notices issued over the same period, and there is a correlating increase between 2007/08 and 2011/12. The standard infringement notice fee is \$750, although as Chapter Eight reveals, repeated instances of non-compliance can result in much higher fees.²⁷³

²⁷² Northland Regional Council, 'Farm Dairy Effluent', <http://www.nrc.govt.nz/Environment/Farm-Management/Farm-Dairy-Effluent/> (accessed 1 May 2016)

²⁷³ Data provided by Northland Regional Council, 14 April 2016

Table 2: NRC farm dairy effluent monitoring statistics, 2005/06-2014/15

	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15
Full Compliance	389 (37%)	474 (48%)	415 (44%)	373 (39%)	407 (43%)	384 (40%)	371 (38%)	594 (61%)	561 (58%)	547 (57%)
Non-Compliance	363 (35%)	285 (29%)	284 (30%)	327 (34%)	309 (33%)	307 (32%)	325 (33%)	175 (18%)	216 (22%)	210 (22%)
Significant Non-Compliance	291 (28%)	226 (23%)	243 (26%)	258 (27%)	231 (24%)	265 (28%)	289 (29%)	208 (21%)	189 (20%)	206 (21%)
TOTAL	1043	985	942	958	947	956	985	977	966	963

(Source: Data provided by NRC)

Figure 5: NRC farm dairy effluent monitoring statistics, 2005/06-2014/15

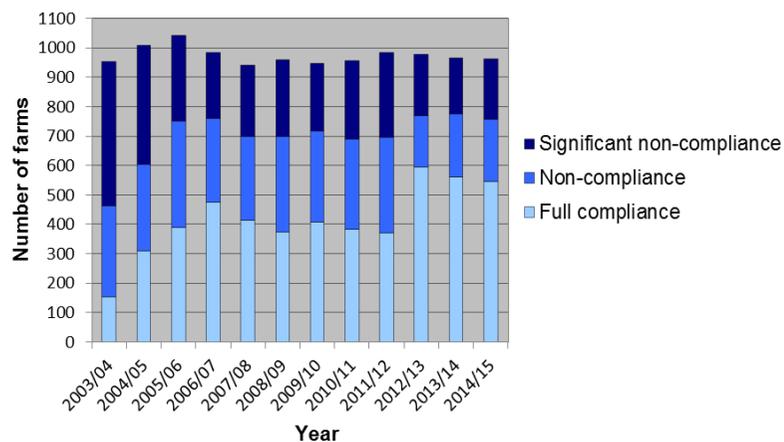


Table 3: NRC farm dairy effluent monitoring enforcement statistics, 2005/06-2014/15

Year	Abatements	Infringements
2005/06	94	66
2006/07	67	41
2007/08	113	92
2008/09	198	200
2009/10	202	174
2010/11	144	150
2011/12	171	121
2012/13	107	95
2013/14	101	110
2014/15	108	83

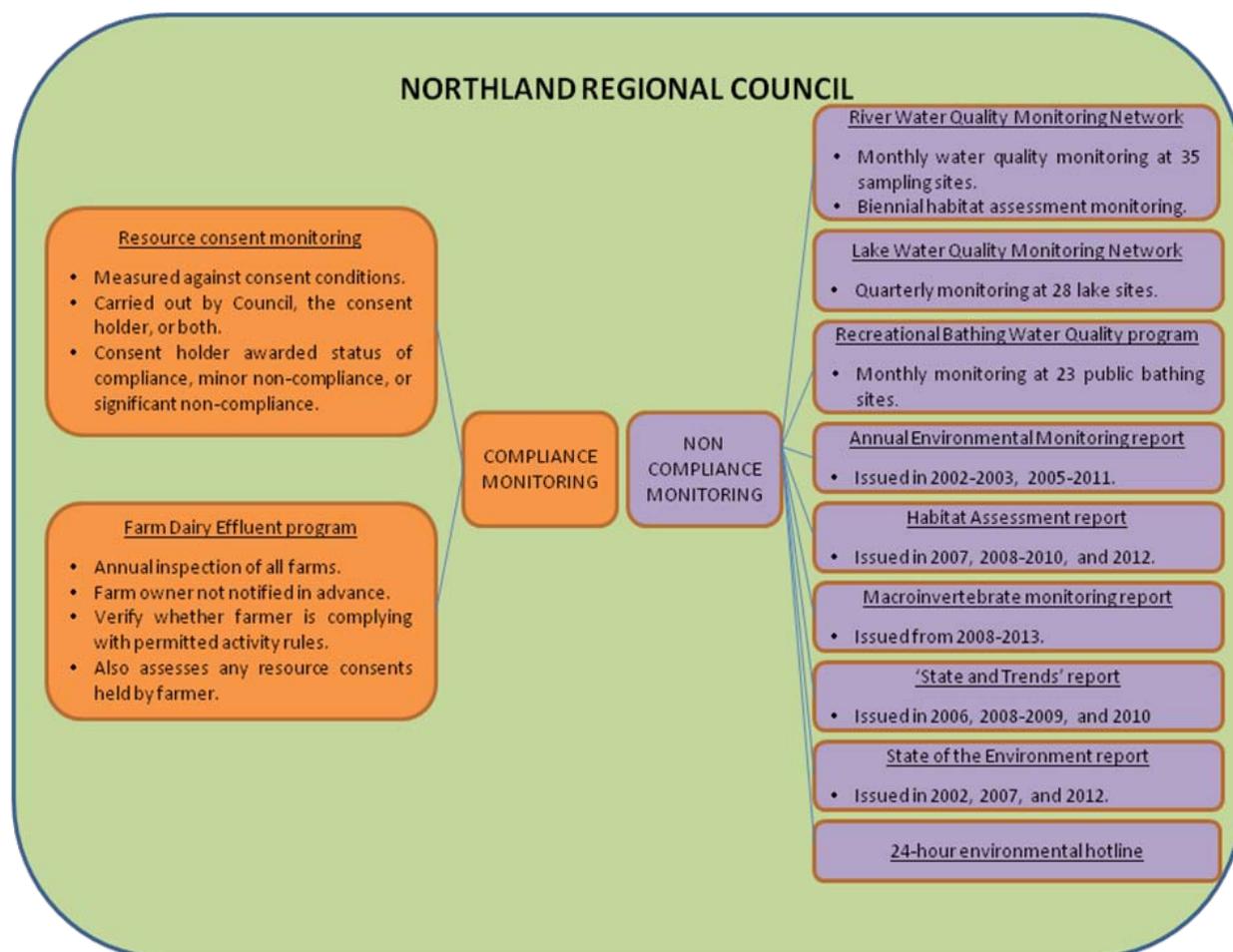
The NRC also performs several types of non compliance monitoring. Whereas compliance monitoring is intended to ensure the compliance of specific activities, the Council's non compliance monitoring records broader environmental issues and trends. The Council's three main water monitoring programmes are the River Water Quality Monitoring Network, the Lake Water Quality Monitoring Network, and the Recreational Bathing Water Quality programme. The River Water Quality Monitoring Network involves monthly monitoring at 35 water sampling sites to measure water temperature, water clarity, bacteria and nutrient concentrations. Four of these sites are monitored by NIWA as part of its National Water Quality Network monitoring programme. The Council also performs habitat assessments at each site every two years. The Lake Water Quality Monitoring Network involves quarterly monitoring of 28 lakes in the Kai Iwi, Aupōuri and Poutō lake groups for a range of things including water temperature, nutrients and clarity, which is also complemented by a programme run by NIWA that monitors 83 lakes in the Northland region. The Recreational Bathing Water Quality programme involves monthly monitoring at 23 public river/lake bathing sites to check whether microbiological water quality is suitable for contact recreation.²⁷⁴

The raw data gathered through these monitoring programmes is used by the Council to prepare several reports outlining the status of the region's land, air, and water resources, including annual environmental overview reports (although these appear to have been discontinued in 2011), periodic macroinvertebrate monitoring and 'state and trend' reports, biennial habitat assessment reports, and five-yearly 'State of the Environment' reports (published in 2002, 2007, and 2012).²⁷⁵ Chapter Three provides a broad survey of the information contained in these monitoring programmes and reports as they relate to Northland rivers and lakes. In addition, the Council operates a 24-hour environmental hotline which members of the public can use to raise their environmental concerns.

²⁷⁴ Northland Regional Council, 'Monitoring', <http://www.nrc.govt.nz/Environment/Water/Monitoring/> (accessed 1 May 2016)

²⁷⁵ Northland Regional Council, 'Environmental Monitoring Archive', <http://www.nrc.govt.nz/resources/?url=/Resource-Library-Summary/Environmental-Monitoring> (accessed 1 May 2016)

Figure 6: The Northland Regional Council's environmental monitoring programmes



2.2.1.6 Educative programmes

Alongside its monitoring programmes, the NRC conducts several educative programmes designed to raise awareness of environmental issues and improve water quality in the region. Much of this is done via informational pamphlets available at the Council's offices in Whāngārei and on its website. A pamphlet titled 'improving water quality on your property', for example, provides advice to farmers on riparian fencing and planting to minimise the amount of soil and stock waste making its way into rivers and streams.²⁷⁶ Partial funding for farmers making such changes is provided by the Council's contestable Environment Fund. The Council also provides holistic 'water quality improvement plans' to farmers seeking to reduce the impact of land use on

²⁷⁶ 'Improving water quality on your property', Northland Regional Council, <http://resources.nrc.govt.nz/upload/16495/Improving%20water%20quality%20on%20your%20property%20-%20March%202014.pdf> (accessed 1 May 2016)

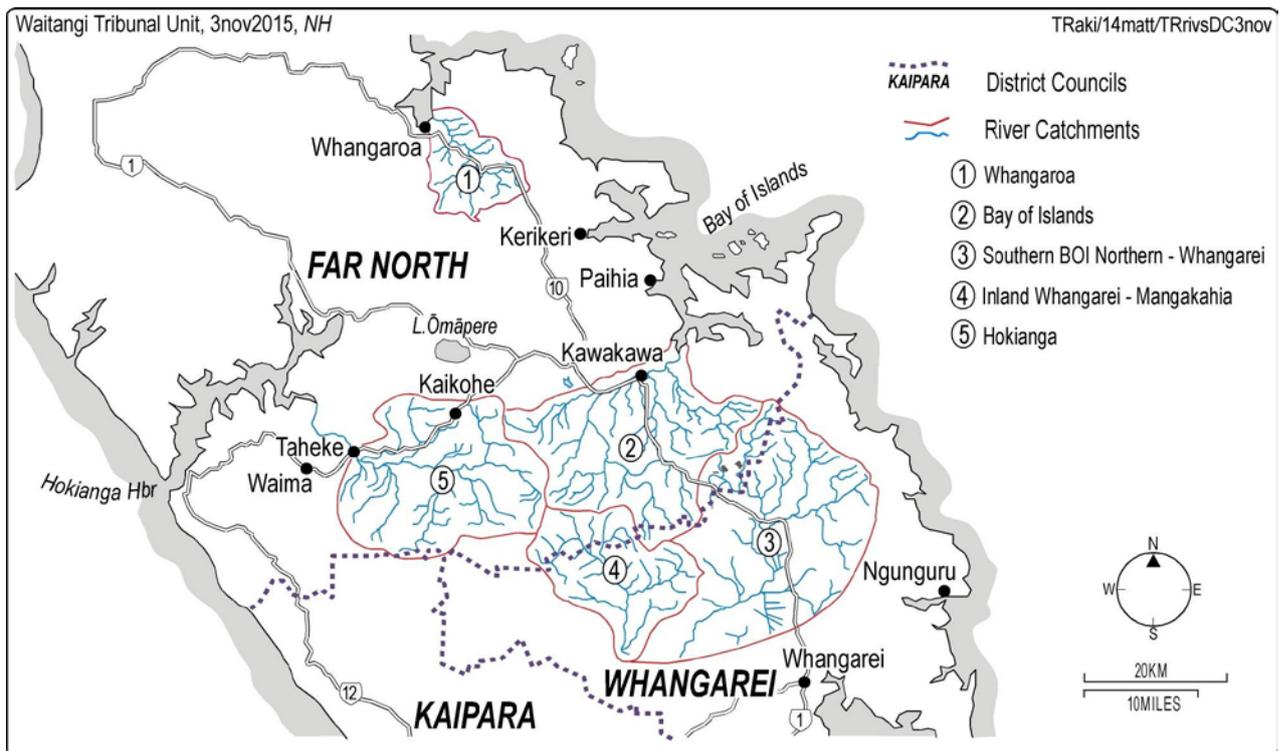
water quality. These plans are developed by the landowner and a council advisor after a site visit to the property, and can include measures such as stock exclusion, erosion issues, and riparian management. However, the farmer is not required to follow up on any of these actions in the resulting plan unless they are stipulated under the RWSPN activity rules.²⁷⁷

2.2.2 District Councils

While the NRC is responsible for issuing and monitoring resource consents relating to activities involving water, District Councils are responsible for consents relating to the use and subdivision of land. The three District Councils within the Northland region are the Whāngārei, Far North, and Kaipara District Councils (see figure 7). The rules governing land-based activities are set out in District Plans, which resemble the format of Regional Plans. While land-based activities and their associated consents may not directly relate to the management of waterways, they can nevertheless have an effect on waterways in their vicinity. Chapter Five discusses one such example where a subdivision on the shores of Lake Ōwhareiti involved substantial environmental considerations. In addition, District Councils are often themselves applicants for resource consents, in particular for large infrastructure projects such as wastewater treatment plants and flood protection schemes. There are several examples of this in part two of our report.

²⁷⁷ Northland Regional Council, 'Farm Water Quality Improvement Plans', <http://resources.nrc.govt.nz/upload/16487/FARM%20WATER%20QUALITY%20IMPROVEMENT%20PLANS%202015%20WEB.pdf> (accessed 1 May 2016)

Figure 7: District Council boundaries in the Northland region



2.3 Central government

As Chapter One discussed, the NRC has been delegated authority under the RMA to manage a number of aspects of the environment, including water, soil conservation, coastal resources (excluding fisheries), geothermal resources, air quality, natural hazards and hazardous substances. However, while the NRC is primarily responsible for day-to-day resource management activities, various central government agencies play continuing (and often intersecting) roles. These roles can be exercised at both a general, nation-wide level, but also at a local level relating to specific waterways or sites of proposed activities with potentially adverse environmental effects. They can be broadly summarised under three categories:

- Providing binding policies, legislative frameworks, and decisions on resource use;
- Monitoring environmental performance; and
- Auditing of aspects of local government activity.

The Crown's management of Northland's rivers and lakes can thus be broadly understood as an ongoing relationship between local and central government comprised of intertwined layers of authority and control. The nature of this relationship is explored in this section, and is summarised in figure 8.

2.3.1 New Zealand Parliament

At the apex is the New Zealand Parliament, which sets the legislative framework for resource management across the country. The two most relevant acts for the NRC are the Resource Management Act 1991 (and subsequent amendments) and the Local Government Act 2002, both of which are discussed in Chapter One. Apart from defining the powers and responsibilities of local government bodies over the environment, these acts also define what constitutes 'consultation'. Parliament is also responsible for enacting the various Acts and Regulations which govern customary fishing practices and drinking water standards, which are also discussed in Chapter One.

2.3.2 Ministry for the Environment

The Ministry for the Environment is arguably the central government agency with the most oversight of regional council activity. Its role is that of a policy agency, advising its Minister and local authorities. It is required to generate policy statements and standards as required, as well as advise and educate. It does not, however, police or enforce. Under the RMA this is left to local government, often on complaints or, when these remedies are exhausted, the legal system.

As noted in Chapter One, the MfE has the authority under the RMA to issue several types of instruments that are binding on local authorities. Three in particular are of relevance to Northland waterways: national environmental standards, national policy statements, and water conservation orders. National environmental standards are designed to enforce technical standards, methods or other requirements for environmental matters such as water quality and soil contamination. The National Environmental Standard for Sources of Human Drinking Water (2007) is currently the only standard of relevance to the management of Northland's waterways. It requires that all resource consents and permitted activity rules which may have an impact on sources of drinking water must meet the water quality criteria set out in the Ministry of Health's Drinking Water

Standards for New Zealand (2008).²⁷⁸ The Ministry for the Environment is also developing national environmental standards for Plantation Forestry and for Ecological Flows and Water Levels.²⁷⁹

National policy statements issued by the MfE provide national objectives and policies for aspects of environmental management. The Ministry has issued National Policy Statements for Freshwater Management – one in 2011, and one in 2014. The 2014 Statement requires regional councils to:

- Safeguard fresh water's life supporting capacity, ecosystem processes, and indigenous species including their associated ecosystems;
- Manage freshwater bodies so people's health is safeguarded;
- Maintain or improve the overall quality of fresh water within a region;
- Protect the significant values of wetlands and outstanding freshwater bodies;
- Require more efficient use of fresh water by end users;
- Avoid the over allocation of water takes and inputs of contaminants, and to phase out existing over allocation;
- Set freshwater objectives according to a specified process (the national objectives framework) to meet community and tangata whenua values which include the compulsory values of ecosystem health and human health for recreation;
- Use a specified set of water quality measures (attributes) to set the freshwater objectives (an objective can only be set below national bottom lines in specified circumstances);
- Set limits which allow freshwater objectives to be met (eg, a total catchment contaminant-load or a total rate of water take);
- Put in place measures to account for water takes and sources of contaminants, and monitor achievement towards meeting objectives;
- Take a more integrated approach to managing fresh water and coastal water; and
- Fully implement the National Policy Statement by 2025.²⁸⁰

One of the main changes in the 2014 Statement was the inclusion of compulsory national bottom lines for human and ecosystem health. Regional councils cannot set a

²⁷⁸ Resource Management (National Environmental Standards for Sources of Human Drinking Water) Regulations (SR 2007/396)

²⁷⁹ Ministry for the Environment, 'National Environmental Standards', <http://www.mfe.govt.nz/rma/rma-legislative-tools/national-environmental-standards> (accessed 1 May 2016)

²⁸⁰ Ministry for the Environment, 'About the national policy statement for freshwater management', <http://www.mfe.govt.nz/fresh-water/national-policy-statement/about-nps> (accessed 1 May 2016)

freshwater objective below these lines, nor can they allow water quality across their region to degrade. However, water quality may be allowed to degrade in one area provided that a comparable improvement in water quality occurs elsewhere within the region. The NRC established a new programme called 'Waiora Northland Water' to meet its obligations under the 2011 National Policy Statement for Freshwater Management, which it has continued and enhanced in order to meet the 2014 statement. This programme is discussed in section 2.4.3.5 of this chapter.

Water conservation orders are a slightly different form of instrument issued by the MfE, although they are no less binding on regional councils. As Chapter One notes, water conservation orders were introduced with the Amendment to the Water and Soil Conservation Act 1981, and were carried across into the Resource Management Act 1991. The purpose of water conservation orders is to preserve as far as possible the natural state of waterways with outstanding amenity or intrinsic values. While water conservation orders have no effect on resource consents granted prior to the order taking effect, regional councils cannot grant any subsequent consents that are contrary to the provisions of the order.²⁸¹ There are presently no water conservation orders within the Northland region; however, Ngā Hapū o Mangakāhia initiated (and later withdrew) a water conservation order for the Mangakāhia River in the 1990s. The process by which this application was introduced and later removed, and how it related to other environmental management processes such as the resource consent process and the creation of regional plans, is discussed in one of the local studies in Chapter Seven.

The MfE is also involved with several other initiatives aimed at improving water quality. It is one of several central and local government agencies that are 'active partners' in the Land and Water Forum, a group set up by the Crown in 2009 to provide advice on freshwater management to the Crown. This advice contributed significantly to the national policy statements issued in 2011 and 2014.²⁸² It is also a partner in the Land Air Water Aotearoa monitoring programme along with regional councils, which collates

²⁸¹ Resource Management Act (1991 No 69), section 217

²⁸² Land and Water Forum, 'About us', [http://www.landandwater.org.nz/Site/About Us/default.aspx](http://www.landandwater.org.nz/Site/About%20Us/default.aspx) (accessed 1 May 2016)

data on water quality and quantity from monitoring sites across New Zealand and makes it available via its website. Forty-six of these sites are in the Northland region, most of which are managed by NRC as part of its River Water Quality Monitoring Network and Recreational Bathing Water Quality programmes. The Ministry for the Environment was also a signatory to the 2003 Dairying and Clean Streams Accord with Fonterra, the (then) Ministry of Agriculture and Forestry and regional councils. It is a 'friend' to the Accord's successor, the Sustainable Dairying: 2013 Water Accord, along with the Ministry for Primary Industries and regional councils. Friends of the 2013 Accord 'are supportive of the purpose of this Accord and commit to contribute to its success in the spirit of collaboration'.²⁸³ Most dairy companies in New Zealand have signed up as 'accountable partners' to the 2013 Accord, which commits them to the following objectives:

- Exclusion of dairy cattle from 100 per cent of the length of waterways and drains by May 2017 (excluding drains less than one metre in width or 30cm in depth);
- Exclusion of dairy cattle from all significant wetlands on dairy farms;
- Implement measures to ensure that 100 per cent of regular stock crossing points are either bridged or culverted by 31 May 2018;
- 100 per cent of all farms with waterways to have a riparian management plan by 31 May 2020. (and all to have fully implemented the riparian management plan by 31 May 2030);
- Data collection from 100 per cent of dairy farms by May 2015 recording nitrogen loss and nitrogen conversion efficiency;
- In nutrient saturated areas, reduce, as appropriate, nitrogen and/or phosphorus loss;
- Manage phosphorus loss from sediment discharge, run off, and overland flows;
- 100 per cent of farms to be reviewed by May 2014 for regulatory compliance;
- Reduce reliance on discharges from two pond farm dairy effluent treatment systems by May 2014;
- Introduce programmes by May 2014 to help farmers meet national and local regulation controlling water takes; and
- Require 85 per cent of all dairy farms to have water meters installed by 2020.²⁸⁴

²⁸³ Dairy NZ, 'Sustainable Dairying: 2013 Water Accord', <http://www.dairynz.co.nz/media/209792/Sustainable-Dairying-Water-Accord.pdf>, p2 (accessed 1 May 2016)

²⁸⁴ Dairy NZ, 'Sustainable Dairying: 2013 Water Accord'

Regional councils play an ongoing role in the implementation of the 2013 Accord, in particular via identifying 'significant wetlands' and monitoring farms for compliance with resource consent conditions and permitted activity rules. It is worth noting, however, that the Accord only applies to dairy farmers – other livestock farmers, including sheep, beef, and pig farmers, are not bound by the Accord's commitments. However, the Land and Water Forum has recently advised the government that stream fencing requirements should extend to all livestock farmers.²⁸⁵ This most recent report of the Land and Water Forum is discussed in the epilogue to this report.

The Ministry also administers the Environmental Legal Assistance Fund, which can provide limited financial assistance to advocate for an environmental issue 'of public interest' at the Environment Court and at boards of inquiry (constituted under the 'call in' provisions of the Resource Management Act).²⁸⁶ The purpose of the fund is to help 'not-for-profit groups such as iwi/hapū, incorporated societies, and community groups to participate more effectively in resource management processes.'²⁸⁷ The Fund can cover the time and expenses of legal representatives and/or expert witnesses but does not assist with other expenses, such as awards or security for costs.²⁸⁸

2.3.3 Environmental Protection Authority

Central government also plays a role in assessing environmental impacts on proposals of national significance. Under part 6AA of the RMA, the Minister for the Environment has the authority to refer a proposal of national significance directly to the Environment Court or a board of inquiry. This can include resource consent applications, applications for changes to or cancellation of resource consent conditions, local authority plan changes or variations, requests for plan changes, requests for the preparation of regional plans, and notices of requirement.²⁸⁹ In practice, most applications considered

²⁸⁵ *Hawkes Bay Weekend*, 28 November 2015, p13

²⁸⁶ MfE, 'Environmental Legal Assistance Fund (ELA Fund)', <http://www.mfe.govt.nz/more/funding/environmental-legal-assistance-fund> accessed 16 June 2016

²⁸⁷ MfE, 'About the Environmental Legal Assistance Fund', <http://www.mfe.govt.nz/more/funding/environmental-legal-assistance-fund/about-fund> accessed 16 June 2016

²⁸⁸ MfE, 'About the Environmental Legal Assistance Fund', <http://www.mfe.govt.nz/more/funding/environmental-legal-assistance-fund/about-fund> accessed 16 June 2016

²⁸⁹ Resource Management Act (1991 No 69), part 6AA

by the Minister to be of national significance are referred to boards of inquiry rather than to the Environment Court. Only one such proposal was located within the Northland regional inquiry boundaries – the Pūhoi to Wellsford Road in 2014 – but as this is unrelated to rural river management, it is outside the scope of this report.²⁹⁰

2.3.4 Ministry for Primary Industries

The responsibility of regional councils to maintain water quality and indigenous biological diversity is interwoven with the work of two central government agencies responsible for managing the nation’s fisheries. The first is the Ministry for Primary Industries, which is responsible for administering all freshwater fisheries (excluding sports fish and whitebait) under the Fisheries Act 1996.²⁹¹ The Ministry also has the authority to delegate aspects of non-commercial and customary fisheries management to tangata whenua. This authority is defined across several pieces of legislation and regulations, which are discussed in Chapter One. They can be broadly summarised under two categories: general regulations relating to amateur fisheries, and regulations specifically enacted for Māori to manage customary fisheries. The latter are more wide-ranging in terms of the authority delegated to Māori; however, at the time of writing this report, customary fisheries management in Northland occurs far more prevalently under the general regulations than those specifically enacted for Māori.

As Chapter One discussed, general regulations relating to amateur fisheries are outlined under the Fisheries (Amateur Fishing) Regulations 2013.²⁹² These Regulations cover all forms of non-commercial fishing activity, including customary fishing. Under Sections 50 and 51, Māori are given the authority to manage the taking of fish, aquatic life or seaweed for hui or tangi. Written approval for these activities must be obtained from authorised representatives of marae committees, Māori committees, Rūnanga or Māori Trust Boards that represent the tangata whenua of the area. These representatives are issued books of authorisation forms by the Ministry for Primary Industries, and their contact details are kept by the nearest Ministry office. Eighty-six authorised

²⁹⁰ Environmental Protection Authority, ‘Ara Tūhono - Pūhoi to Wellsford Road of National Significance’, <http://www.epa.govt.nz/Resource-management/previous/Puhoi/Pages/default.aspx> (accessed 1 May 2016)

²⁹¹ Fisheries Act (1996 No 88)

²⁹² Fisheries (Amateur Fishing) Regulations (SR 2013/482)

representatives are registered with the Ministry's Whāngārei office.²⁹³ In addition to hui and tangi, Section 52 of the 2013 Regulations allows the taking of fish, aquatic life or seaweed for other 'traditional non-commercial fishing' uses. Unlike takes for hui and tangi, these must be approved by the chief executive of the Ministry for Primary Industries; however, he or she may choose to delegate this authority to marae committees, Māori Committees, or 'any kaitiaki of the tangata whenua'.

The Fisheries Act 1996 and the Fisheries (Kaimoana Customary Fishing) Regulations 1998 introduced several other customary fishing management tools: taiāpure-local fisheries, temporary closures/method restrictions, tangata kaitiaki, and mātaimai. The only taiāpure in the Northland region is over the Waikare Inlet, and there are presently no specific regulations for this taiāpure. A temporary closure exists over Maunganui Bay until 29 October 2016, and similar closures were previously in place over Kaipara Harbour (for scallop) and Marsden Bank (for pipi). At the time of writing this report, 37 individuals had been confirmed by the Minister as tangata kaitiaki in the Northland region across four rohe moana – Taiāmai ki te Marangai and Ngāti Kuta Patukeha in the Bay of Islands, Patuharakeke in Whāngārei Harbour, and Te Roroa in Kaipara Harbour. There is one mātaimai gazetted in the Northland region in the Bay of Islands called Te Puna. Some of these measures are discussed further in Chapter Five.

2.3.5 Department of Conservation

The second central government agency responsible for the nation's fisheries is the Department of Conservation. Under Section 6 of the RMA DOC has statutory responsibility for preserving all freshwater fisheries and for protecting indigenous freshwater fish, and protection of the recreational freshwater fishery. As part of this, it is tasked with managing whitebait fishing. Unlike other forms of fishing in New Zealand, this is managed under the Whitebait Fishing Regulations 1994 and subsequent amendments passed in 1995, which set restrictions on whitebait fishing and assign the responsibility for enforcing these regulations to the Department of Conservation.²⁹⁴ The

²⁹³ Personal communication with Henry Ihaka, Ministry for Primary Industries Whāngārei office, 11 April 2016

²⁹⁴ Whitebait Fishing Regulations (SR 1994/65). These regulations were made under section 48 of the Conservation Act 1987. Separate regulations exist for whitebait fishing on the West Coast of the South Island and the Chatham Islands.

regulations restrict the North Island fishing season to between 15 August and 30 November, and also restrict fishing to what are effectively daylight hours and limit the size and number of nets that can be used by each individual. Section 18 allows for the taking of whitebait for hui and tangi provided that 'the intention to take the whitebait has been notified to a warranted officer by or on behalf of a council or committee representing any Māori community'. The regulations also prohibit whitebait fishing from bridges or vessels, so the preference of many whitebaiters is to set up stands on the shore from which they can operate their nets. These stands are classified as a permitted activity under the NRC's RWSPN, provided that they meet certain conditions regarding the surrounding indigenous vegetation, the flow of water around the stand, and the duration that the stand is erected for.²⁹⁵

2.3.6 Office of the Auditor-General

The Office of the Auditor-General provides independent assessments of public entities to ensure that they are operating, and accounting for their performance, in keeping with Parliament's intentions. Under the Public Audit Act 2001, the Office of the Auditor-General may undertake financial or performance audits, audits of long-term plans, and provide advice to government departments or other agencies.²⁹⁶ It may also run its own inquiries upon request by a member of the public into any matter concerning a public entity's use of its resources. The Office of the Auditor-General does not appear to have performed any audits or inquiries into the performance of the NRC under the RMA as it relates to the management of waterways.²⁹⁷ However, it recently filed a response to a request for an inquiry from Forest and Bird and the Northland Environmental Protection Society into the alleged illegal export of swamp kauri timber. This response suggested a number of measures by which the Ministry for Primary Industries could promote better oversight, transparency, and understanding of the cultural, heritage, and scientific value of swamp kauri – an issue specific to Northland.²⁹⁸

²⁹⁵ Northland Regional Council, 'Regional Water and Soil Plan', section 29.1.7

²⁹⁶ Public Audit Act (2001 No 10)

²⁹⁷ There was an inquiry in 2011 into the construction of the Northland Events Centre by the Northland Regional Council and Whāngārei District Council which touched upon aspects of the Resource Management Act. See Office of the Auditor-General, 'Our review of the Northland Events Centre Project', <http://www.oag.govt.nz/media/2011/northland-events-centre-project> (accessed 1 May 2016)

²⁹⁸ Office of the Auditor-General, 'Request for inquiry into the regulation of the ancient swamp kauri industry', <http://www.oag.govt.nz/media/2015/swamp-kauri> (accessed 1 May 2016)

2.3.7 Parliamentary Commissioner for the Environment

The Parliamentary Commissioner for the Environment (PCE) is another statutorily independent body that performs assessments of the environmental authority exercised by public entities. Its prescribed functions under the Environment Act 1986 are to:

- Review the system of agencies and processes set up by the Government to manage the country's resources, and report to the House of Representatives;
- Investigate the effectiveness of environmental planning and management by public authorities, and advise them on remedial action;
- Investigate any matter where the environment may be or has been adversely affected, advise on preventative measures or remedial action, and report to the House;
- Report, on a request from the House or any select committee, on any petition, Bill, or any other matter which may have a significant effect on the environment;
- Inquire, on the direction of the House, into any matter that has had or may have a substantial and damaging effect on the environment;
- Undertake and encourage the collection and dissemination of information about the environment; and
- Encourage preventive measures and remedial actions to protect the environment.²⁹⁹

Members of the public may also request investigations of any matter where the environment has been or may be adversely affected. In June 2015 the Commissioner released a report on the 2014 National Policy Statement for Freshwater Management which recommended several significant changes aimed at providing greater clarity and certainty and better protection of rivers, lakes, wetlands, aquifers, and estuaries.³⁰⁰ Other reports from the PCE relating to water quality and tuna management are discussed in Chapter Three.

2.3.8 Crown Research Institutes

Finally, Crown Research Institutes monitor environmental performance and produce research on freshwater issues, land use, and other environmental impacts. These include Landcare Research, AgResearch, and, most particularly to this report, the

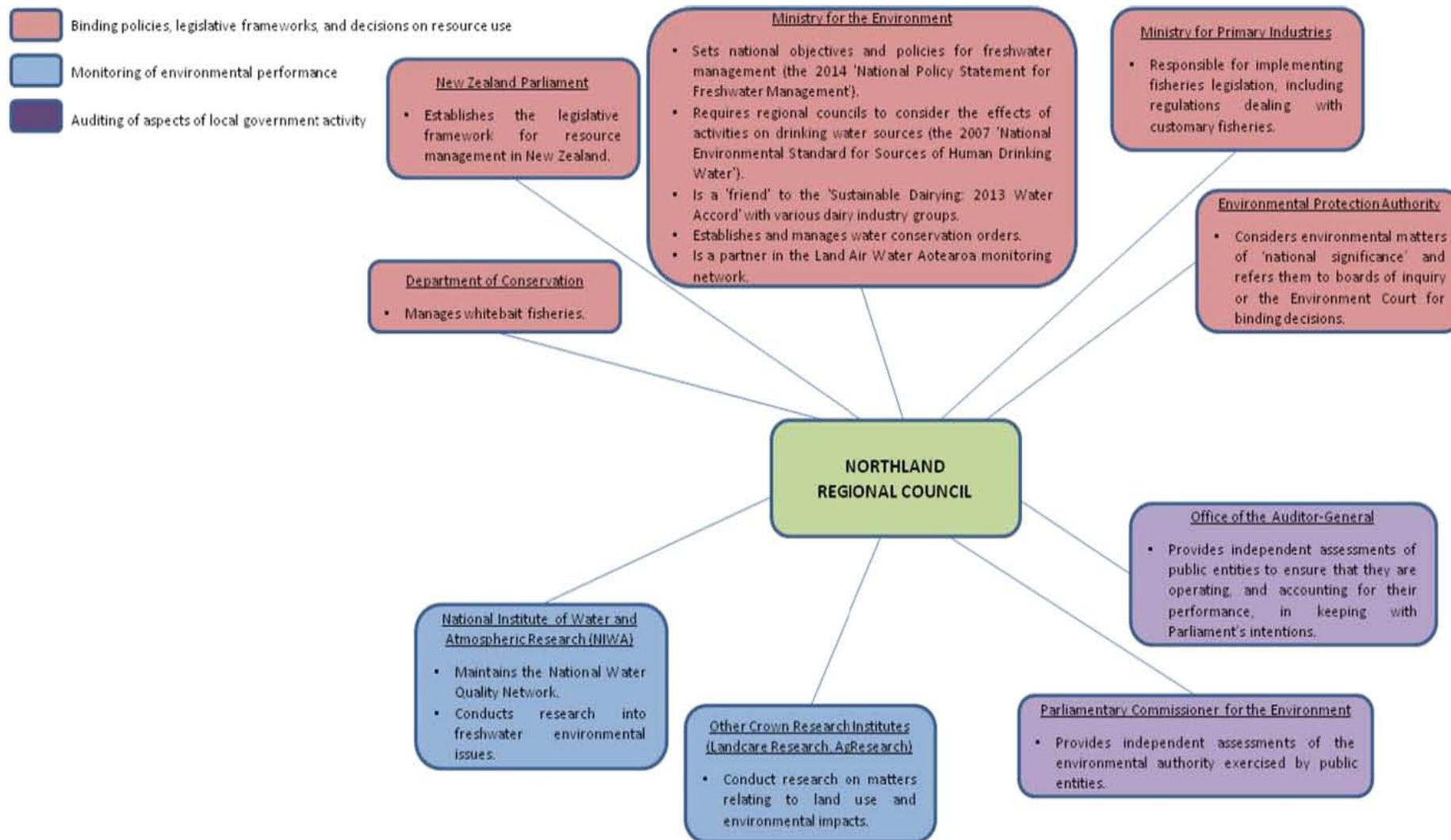
²⁹⁹ Parliamentary Commissioner for the Environment, 'Functions and powers', <http://www.pce.parliament.nz/about-us/functions-and-powers/> (accessed 1 May 2016)

³⁰⁰ Parliamentary Commissioner for the Environment, 'Managing Water Quality: Examining the 2014 National Policy Statement', <http://www.pce.parliament.nz/assets/Uploads/Managing-water-quality-web.pdf> (accessed 1 May 2016)

National Institute of Water and Atmospheric Research (NIWA). NIWA arguably produces the most relevant research to rural river management in the Northland region, which is bolstered by the National Water Quality Network which it maintains in conjunction with regional councils (including the NRC). Several relevant NIWA reports are discussed in later chapters, in particular those relating to eel populations in the Wairua/Mangakāhia and Taumārere catchments. Landcare Research also operates a Regional Council Forum consisting of representatives from ten regional councils (including the NRC) and the Ministry for the Environment. The purpose of the Forum, which meets at least once a year for two days, is to collaborate on planning and freshwater decision-making and to monitor and evaluate the effectiveness of existing policies. This includes research into incorporating Māori values and representation into freshwater management.³⁰¹ These initiatives provide another method by which the relationship between local and central government regarding environmental management is maintained.

³⁰¹ Landcare Research, 'Regional Council Forum', <http://www.landcareresearch.co.nz/science/portfolios/enhancing-policy-effectiveness/vmo/planning-and-decision-making/regional-council-forum> (accessed 1 May 2016)

Figure 8: The relationship between central government agencies and the Northland Regional Council concerning the management of waterways



2.4 Recognition and protection of kaitiakitanga

This section explores the intersections between the Crown's resource management policies and kaitiakitanga responsibilities as they relate to Northland's rivers and lakes. It compares the Crown's framework for involving Māori in resource management in the Northland region with the expectations that Te Raki claimants have of what their role should be. It then discusses the avenues available for Māori to participate in the Crown's environmental management processes in the Northland region. This section ends by highlighting the impressions that Te Raki Māori have of these avenues for participation and examines other methods by which Māori have chosen to exercise their kaitiakitanga outside the Crown's processes. The NRC features heavily in this discussion, as the majority of these avenues have been instituted by the Council to promote the involvement of Māori in resource management. In the interests of brevity, this section focuses on those programmes that are current and which relate to the management of Northland's waterways. It also does not consider any national-level initiatives such as the Freshwater Iwi Leaders Group.

2.4.1 The Crown's framework

The NRC's programmes for Māori involvement in environmental management were not developed in isolation: they have emerged out of a hierarchy of Crown policies and guidelines. This hierarchy commences at the highest level in the form of legislation and flows down to the Council's own Policy Statements and Plans. The legislation relating to resource management and local government is discussed in Chapter One, and will not be re-hashed here: however, it is worth summarising the three key parts of the RMA that relate to tangata whenua³⁰²:

- To 'recognise and provide for ... the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga' as a matter of 'national importance'.
- To 'have particular regard to' the Māori concept of kaitiakitanga.

³⁰² Resource Management Act (1991 No 69), sections 6(e), 7(a), 8

The wording of the Policy instructs local authorities to go beyond mere consultation: Māori should also be 'involved' in the overall management of freshwater and its associated ecosystems, and their values and interests 'reflected'. This is stated as being essential if the Crown's obligations to Māori under the Treaty of Waitangi are to be met. In addition, the Policy's 'national values' include ensuring that mahinga kai are safe and plentiful enough for long-term harvest, and that wai tapu (sacred waters where rituals and ceremonies are performed) are free from contaminants such as human and animal waste.³⁰⁵

The NRC has set out high-level guidelines in its statutory planning documents for the involvement of Māori in environmental management. The RPSN, for example, provides the following general principle in relation to Māori involvement in resource management:

In recognition of the partnership principles in the Treaty of Waitangi, tangata whenua are expected to have a key role in resource management ... The status of Tangata Whenua as a Treaty partner with the Crown, distinct from other interest groups and members of the public is recognised and Maori kaupapa has been included in appropriate parts of the policy statement.³⁰⁶

This principle refers specifically to the notion of a Treaty partnership and distinguishes Māori from other parties with interests in environmental management. Despite this acknowledgement, the methods suggested for implementing this principle generally relate to particular points or milestones rather than the entire gamut of the resource management process. These include consultation on policy and plan preparation, consent applications and monitoring; encouraging and supporting the preparation of iwi resource management plans; and involving Māori in environmental monitoring activity.³⁰⁷ Some of these methods are particularly relevant to the concerns raised by Māori which are discussed in section 2.4.4. For example, the Statement notes that consultation should be in a form agreed to between Māori and the Council including:

- Being as early as practicable so as to allow for sufficient time to consider issues and respond in a culturally appropriate manner;

³⁰⁵ MfE, 'National Policy Statement for Freshwater Management 2014', pp21-22

³⁰⁶ Northland Regional Council, 'Regional Policy Statement', section 9.5

³⁰⁷ Northland Regional Council, 'Regional Policy Statement', section 14

- Providing sufficient information, and advice where requested, to allow for informed consultation; and
- The level of resources to be provided for effective consultation.³⁰⁸

In addition, the Statement proposes that the development of iwi management plans be supported by ‘funding, advice, information, support services or secondment of staff as negotiated between Council and iwi’.³⁰⁹ The Statement also suggests that Council support Māori environmental monitoring initiatives:

There may be situations where Tangata Whenua could provide a cost effective monitoring service, particularly in coastal and remote rural areas. These and other opportunities should be investigated and considered by Councils.³¹⁰

The overall objective of these methods of implementation, according to the Statement, is the ‘[i]nvolvement of Tangata Whenua in the management of the natural and physical resources of the region in a manner that recognises and respects Tangata Whenua and Ahi Kaa as kaitiaki o nga taonga tuku iho’.³¹¹ In general, however, the RPSN appears to envision wide-ranging involvement and resourcing of Māori across various resource management activities. Importantly, it also suggests that this should be on terms agreed to between Māori and the Council.

The NRC has further particularised its commitments to Māori in the RWSPN. The sections of the Plan relating to tangata whenua are reasonably detailed, but the overall policies that the Regional Council has set itself are:

- To recognise and, as far as practicable provide for the relationship of Māori and their culture and traditions with respect to the use, development and protection of natural and physical resources in the Northland region.
- To gain an understanding, and as far as practicable, provide for the concerns and cultural perspectives of tangata whenua in regard to the disposal of waste into water.
- To have particular regard for kaitiakitanga and consider options for the involvement of tangata whenua in monitoring the use, development and protection of resources within the Northland region.

³⁰⁸ Northland Regional Council, ‘Regional Policy Statement’, section 14.4(a)

³⁰⁹ Northland Regional Council, ‘Regional Policy Statement’, section 14.4(d)

³¹⁰ Northland Regional Council, ‘Regional Policy Statement’, section 14.4(e)

³¹¹ Northland Regional Council, ‘Regional Policy Statement’, section 14.3

- To provide appropriate technical advice and information to assist iwi authorities in the development of hapū/iwi management plans for natural and physical resources within the area of their rohe.³¹²

The Council also lists the methods by which it intends to achieve these objectives. These include encouraging resource consent applicants to consult with Māori prior to filing an application; committing to phasing out (where appropriate) wastewater discharges to water in favour of land-based alternatives; working with Māori to determine the best means of monitoring resource use; and considering the transfer of powers under Section 33 of the RMA to iwi authorities. The extent to which these methods have been implemented is discussed in section 2.4.3.

2.4.2 Te Raki Māori expectations

The introduction to this report contains a brief definition of what kaitiakitanga means in the context of the Te Raki inquiry. Several claimants have also commented in their briefs of evidence on where they believe kaitiakitanga fits within the resource management framework established by the Crown. While their comments do not necessarily reflect the views of all Te Raki Māori, they provide an interesting counterpoint to the Crown's framework for consulting with Māori that was outlined above. As Allan Halliday put it in his brief of evidence, 'today [kaitiakitanga] has changed and to be an effective kaitiaki you have to engage with central and local governments and other organisations such as Fonterra.'³¹³

The briefs of evidence that we have analysed all argued that a broad and wide-ranging partnership between Māori and local and central government bodies is necessary to recognise kaitiakitanga responsibilities. As Ngāti Hine claimants put it in their evidence to the Tribunal:

Rather than only participating when an issue arose, our rights under Te Tiriti o Waitangi means that we should have been in an active partnership with the Crown and its delegated authorities and involved in the day to day planning and management of wai ... Unfortunately, neither the

³¹² Northland Regional Council, 'Regional Water and Soil Plan', section 6

³¹³ Brief of Evidence of Allan Keith Halliday, Wai 1040 #P2, para 3.2

Resource Management Act nor the Local Government Act has led to, in any real sense, a working partnership.³¹⁴

Ngāti Hine envisage this partnership as being comprised of several essential components, including an equal role in decision making, involvement in preparing any plans and policies that impact Ngāti Hine, extensive use of Ngāti Hine environment management plans at all stages of resource management planning, providing a pool of hearing commissioners skilled in Te Tū o Ngāti Hine, and ensuring that government staff have an understanding of Te Tū o Ngāti Hine.³¹⁵ This involves co-management or co-governance over resources that are important to Māori:

[L]ocal authorities have the ability to transfer powers and functions under the Resource Management Act, and the ability under that Act and the Local Government Act, to enter into joint management agreements with Ngati Hine. However, the councils have never used their statutory functions for our benefit. Opportunities for either of these mechanisms should be identified and incrementally implemented. For example, management of Council owned reserves and similar areas, especially where these contain wahi tapu; present a prime opportunity for this. Ngati Hine will negotiate a schedule for developing joint management agreements over key reserves within Ngati Hine that have high cultural value.³¹⁶

Allan Halliday also argued that co-governance was an essential, and inevitable, component of recognising kaitiakitanga:

We want co-governance of the waterways. We have had to undertake mitigation measures and the creation of bodies to try to work to improve waterways because the Crown has failed to do so. The waterways are a taonga, and as such we should be able to exercise our tino rangatiratanga over them. The Treaty is supposed to be about partnership - so let's have a partnership.

As part of co-governance, we want to be sitting at the decision making table. We want to be involved in making the decisions about the waterways so we can bring the waterways back to the state they should be in and protecting the environment ...

At the moment, co-governance does not seem achievable as both local and central government cannot seem to envisage it - how it would work or what it looks like - or at the very least they have great difficulty in

³¹⁴ Brief of Evidence of Ngāti Hine, Wai 1040 #M26, paras 74, 79

³¹⁵ Brief of Evidence of Ngāti Hine, Wai 1040 #M26, para 191

³¹⁶ Brief of Evidence of Ngāti Hine, Wai 1040 #M26, para 188

accepting this idea. But in future we hope that co-governance will become the norm. So many other things regarding environmental management have changed, so it is a future possibility.³¹⁷

Some Te Raki claimants have argued that co-management does not go far enough in its recognition of tino rangatiratanga. In his evidence on the Waikare Inlet taiāpure, Peter Clark argued the following:

I used to think of co-management but it's almost gone beyond that, if past experience is anything to go on. They need to understand our rohe is our rohe, no one can have control over this area. They need to understand and respect our tikanga.³¹⁸

During cross-examination by Crown counsel on 23 September 2014, Rihari Dargaville claimed that recent examples of co-management legislation were being presented to Māori as a *fait accompli* rather than as a result of genuine agreement:

Co-governance with that people, in other words, give their rangatiratanga back. That hasn't happened. They haven't given it back. That's co-governance. We will now hand this back to you. You are now the settler or you been settled really to actually have the governance of your people. But I see a lot in co-management, driven again by the legislation of which they impose in the deed of settlement. It's imposed on you in a settlement. In other words you don't agree with these terms, we can't settle.³¹⁹

At a research hui in kawakawa on 11 June 2016, claimants reinforced these expectations and frustrations and further questioned whether the unwillingness on the part of local and central government to value Māori perspectives reflected what one participant termed 'a racist ideology'.

2.4.2.1 Recognition of kaitiakitanga in resource management legislation

The Waitangi Tribunal has commented on how kaitiakitanga can be recognised through resource management legislation. In *Ko Aotearoa Tēnei*, the Tribunal found that a Treaty-compliant resource management regime should be capable of delivering the following outcomes:

- *control* by Māori of environmental management in respect of taonga, where it is found that the kaitiaki interest should be accorded priority;

³¹⁷ Brief of Evidence of Allan Keith Halliday, Wai 1040 #P2, paras 6.10, 14.2-14.3

³¹⁸ Brief of Evidence of Peter Clark, Wai1040#F27(c), para 69

³¹⁹ Transcript of hearing week ten, Wai1040#4.1.15, p309

- *partnership* models for environmental management in respect of taonga, where it is found that kaitiaki should have a say in decision-making but other voices should also be heard; and
- *effective influence and appropriate priority* to the kaitiaki interests in all areas of environmental management when the decisions are made by others.³²⁰

The Tribunal argued that the current RMA had the potential to achieve these outcomes through the transfer of authority or joint management under Sections 33, 36B, and 188 (discussed in Chapter One). These provisions and their utility for tangata whenua are discussed further in section 2.4.3.6 of this chapter.

2.4.3 Where the Crown’s framework and Te Raki Māori expectations intersect

As mentioned earlier in this chapter, the main avenues available for Māori to participate in the Crown’s management of rivers and lakes in Northland are provided by the NRC. These can be divided into two categories: consultation of a fixed duration at specific points during the resource management process, and permanent initiatives that provide a channel for Māori representatives to advise the Council on environmental and cultural matters. Most points of intersection between Māori and the Crown fall into the first category, in particular through the resource consent process. However, there are some promising initiatives in the second category involving permanent Māori advisory bodies and tangata whenua positions on standing committees. Nevertheless, it is worth stressing that both of these channels are generally limited to an advisory capacity, and the power to make decisions on resource management remains with the Council.

2.4.3.1 The resource consent process

Of all the avenues available for Māori to participate in the NRC’s resource management process, resource consents appear to be the most commonly used. The Council processes and monitors thousands of resource consents across its region every year, and each involves a degree of consultation or information sharing with Te Raki Māori. The standard resource consent process provides for Māori consultation at several points. In the first instance, the Council advises applicants for resource consent to

³²⁰ Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity: Te Taumata Tuatahi* (Wellington: Legislation Direct, 2011), p112

undertake their own consultation with Māori before lodging their application (although there is no legal requirement for them to do so). Once the application has been lodged, the Council determines whether it should proceed as notified, limited notified, or non-notified. If it is notified or limited notified, Māori have the opportunity to file submissions (along with the general public) supporting or opposing the application. In addition, as stated earlier in this chapter, the NRC has a long-standing policy of circulating non-notified consents to Māori who have expressed an interest in a particular area. While this is above and beyond the requirements of the RMA, Māori are unable to file formal submissions or have their concerns aired at a hearing as they are with notified and limited notified applications. However, Māori concerns may be addressed via resource consent conditions under all three forms of notification. These conditions may require the consent holder to foster an ongoing commitment to Māori involvement, such as by providing iwi bodies with copies of environmental monitoring results or by forming a community liaison group that includes Māori representatives.

For many Te Raki Māori, resource consent applications appear to be the only means they have of getting involved in the Council's resource management process on a semi-regular basis. While there are other Council initiatives for Māori engagement and participation (see below), these are typically infrequent or involve only a small number of Māori representatives (although these representatives may be answerable to their wider hapū and marae networks). As a result, Māori who become involved in resource consent applications often use the opportunity to raise a wide range of concerns with environmental management and the Council's consultation processes, only some of which relate to the consent being applied for. These wider concerns are invariably sidelined because they are considered to be unrelated to the specific consent for which the consultation is being held. This is apparent in several of the local studies that are discussed in part two of this report. In fairness to the Regional Council, this is likely to be, at least in part, a reflection of the legislative and policy constraints that it operates under. The Council is required under the RMA to process resource consent applications within certain timeframes – 20 days for non-notified applications, 50-70 days for notified and limited-notified applications – which leaves little opportunity to delve into matters not directly related to the consent application.

Several briefs of evidence filed by Te Raki Māori raise issues with the NRC's consultation over resource consent applications. The most common concern relates to the strictly delimited timeframe and scope. Ngāti Hine said to the Tribunal:

In the past we have only been able to be involved in environmental management on a case by case or issues basis. To date, our work has focused on kukupa and kiwi management, water quality monitoring and tuna monitoring, however we aspire to take on an 'all of catchment approach' to address all the environmental concerns of Ngati Hine.

...

Merely consulting us when an agency needs to make a decision or set a policy is inadequate. We see great value in developing Agreements or Memoranda of Understanding to umbrella these agencies relationships with Ngati Hine and to provide clarity and certainty for both partners. However, this is yet to be reciprocated.³²¹

This appears to be a fairly common feeling amongst Te Raki Māori. Tania Pene, the Iwi Development Leader for the Natural Resource Management team of Te Rūnanga-Ā-Iwi-O-Ngāpuhi, categorised her relationship with the NRC as 'distant'. The Council sends her copies of about 10-12 resource consent applications each month, along with a list of hapū groups and marae who have also been notified.³²² These resource consent notifications, she argued, are the most frequent form of contact she receives from the Council.³²³ The notifications themselves appear to be relatively formulaic:

We would welcome comment on concerns relating to how the proposal may impact on your relationship, culture and traditions with the area, including on sites, waahi tapu, and other taonga. This can be done by telephone, although a written response is preferred. If a reply has not been received by the above date, we will assume there are no concerns held about the proposal.³²⁴

Some Te Raki claimants have objected to the Council's assumption that a lack of a formal response implies that Māori have no concerns with a resource consent application. As Waimarie Bruce submitted:

³²¹ Brief of Evidence of Ngāti Hine, Wai1040#M26, paras 71, 186

³²² Personal communication with Tania Pene, Te Rūnanga-Ā-Iwi-O-Ngāpuhi Iwi Development Leader, 8 April 2016

³²³ Personal communication with Tania Pene, Te Rūnanga-Ā-Iwi-O-Ngāpuhi Iwi Development Leader, 29 July 2015

³²⁴ Email from Hearings Administrator, Northland Regional Council, to Tania Pene, Hapū Development Co-ordinator, Te Rūnanga-Ā-Iwi-O-Ngāpuhi, 15 April 2013, NRC File 31523, Vol. 1

[M]y father could speak English but he often got me to help him with some of the terms and expressions that were used by Pākēha, especially this type of kōrero ... The majority of the letters simply said if they got no reply, the consent would go ahead. How could they take no response as agreement? He had no idea of the repercussions of doing nothing and he told me that he didn't want to be hoha. I was appalled. I'm sure this was happening to more people. How could our people understand that letter or what was happening on our whenua?³²⁵

The consultation that occurs for non-notified resource consent applications (which make up the bulk of the Council's workload) appears, in some instances, to have caused some confusion amongst Te Raki Māori over the status of their objections. Despite it being above and beyond the requirements of the RMA (which does not require any notification for non-notified consents), some claimants have suggested that there is a lack of clarity regarding the status of this consultation. According to Millan Ruka of the Environment River Patrol:

They confuse the hapu by asking for comment, and we think we have a legal input when in fact it is "non-notified". We go through the pointless motions when they do not declare the status of the application ie Public Notified / Effected Notified / Non-Notified. They fudge it without being clear to say this is "Non-Notified" your comments have no legal status, but we [are] happy to have a chat.³²⁶

Māori concerns about non-notified consents are discussed further in Chapter Six. Some claimants have also alleged that the Council's notification process for resource consent applications does not take into account all Māori groups who are affected. Wiremu Reihana claimed that an application by a farmer to discharge effluent into the Punakitere River was only notified to hapū who were neighbours to the farmer, despite the fact that Ngāti Tautahi ki te Iringa reside downstream of the discharge site. Upon raising his concern with the Council, he claimed that he was only given 3 days to file a submission on the application. A more recent application, he alleges, was handled in a similar way.³²⁷ Ruiha Collier claimed in her brief of evidence not to have been notified at all about several resource consents which she considered to fall within her tribal rohe,

³²⁵ Brief of Evidence of Waimarie Bruce, Wai 1040 #I18, paras 12-13

³²⁶ Personal communication with Millan Ruka, 11 August 2015

³²⁷ Brief of Evidence of Wiremu Reihana, Wai 1040 #T10, paras 87-90

despite being involved with similar resource consent applications in the past (including one that went to the Environment Court in 1996).³²⁸

These briefs suggest that the legislative framework for processing resource consent applications limits the extent to which Te Raki Māori can engage in resource management. Rather than being a vehicle for permanent dialogue on a wide swathe of environmental issues, they are limited to consultation on specific sites and subjects, and within set timeframes. Furthermore, while Māori submissions may have some influence on an application, local authorities are not obliged to implement them: they are just one of many factors that are considered as part of reaching a decision. Te Raki Māori thus become, in the case of resource consent applications, just one of many stakeholders to be consulted – albeit one afforded slightly more opportunities to do so than the general public in Northland. The expertise and financial wherewithal to respond to consent applications are also an issue for many whānau, hapū and iwi. The NRC used to run free workshops on the RMA, but these appear to have been discontinued.³²⁹

2.4.3.2 The preparation and review of statutory policies and plans

Te Raki Māori, along with the general public, are able to participate in the preparation and review of the NRC's RPSN and Regional Plans, which must be done every ten years under the RMA. This participation generally occurs in two main ways – through hui organised by Council staff with tangata whenua, other interest groups, and the public; and through submissions filed on draft versions of the documents. The volume of submissions received by the Council can lead to a long and drawn out process – the current version of the RWSPN, for example, took eleven years to complete and was the subject of 36 appeals on more than 230 points.³³⁰ Parties filing submissions on draft versions of the RPSN and Regional Plans also have the option of appealing to the Environment Court. One such appeal by Te Awatapu o Taumārere in 1998 resulted in the Environment Court directing the NRC to amend its draft RPSN to include cultural reasons among the purposes for which water quality is to be maintained or enhanced. This decision relied on the Court's interpretation of Section 6(e) of the RMA which

³²⁸ Brief of Evidence of Ruiha Collier, Wai 1040 #N7, paras 131-144

³²⁹ Circular from NRC Consents Manager regarding 'working with the Resource Management Act' workshop, 25 May 1995, NRC File 900.17.1, Vol. 1

³³⁰ Northland Regional Council, 'Regional Water and Soil Plan', piii

required Council to recognise and provide for the relationship of Māori with Taumārere.³³¹

The NRC has recently completed a review of its RPSN, and is currently in the process of reviewing its three Regional Plans (with the goal of producing a single combined Regional Plan). The Council undertook several forms of consultation with Te Raki Māori in the initial stages of these reviews, such as commissioning reports on tangata whenua issues and holding consultation hui. As with resource consent applications, Te Raki Māori used these opportunities to raise a broad range of concerns regarding resource management across the Northland region, and the extent to which Māori kaitiakitanga was being recognised. This further demonstrates that, as there are limited opportunities for the majority of Te Raki Māori to get involved in the Council's resource management process, they make the most of the opportunities that are provided. As the concerns raised during the consultation process touch upon most of the current avenues of engagement between Māori and the Council, they are discussed in section 2.4.4.

The review process for the NRC's statutory documents provides a channel for Māori values to be incorporated at the highest level of Council planning and policy. Given their broad scope and their centrality to the resource management process, the RPSN and RWSPN are well suited for the holistic environmental concerns that are often raised by Te Raki Māori. This may, in some cases, be more fruitful (and less expensive) than central government avenues – for example, when the Mangakāhia Māori Komiti sought a water conservation order over the Mangakāhia River in the 1990s, the Ministry for the Environment advised the Komiti to pursue its objectives through the draft RPSN (this is discussed further in Chapter Seven).

NRC has made some funding available for Māori to participate in the review of its statutory plans. Throughout the development of the 'first generation' RPSN, the Council contracted Te Kotahitanga o Te Tai Tokerau, a pan tribal group with regional Māori representation, to provide policy advice on Māori environmental concerns and to hold

³³¹ Te Awatapu o Taumārere v Northland Regional Council, Environment Court, A34/98

consultative hui with Māori from across the Northland region.³³² This work was scaled back once the RPSN became operative, with Te Kotahitanga redirecting its efforts towards the development of a toolkit and template to assist tangata whenua in developing iwi and hapū management plans (discussed in section 2.4.3.3).

2.4.3.3 Iwi and hapū management plans

As outlined in Chapter One, territorial authorities are required to 'take into account' any planning document written by an iwi authority when preparing or reviewing statutory planning documents. A number of these iwi and hapū 'management plans' have been lodged with the NRC:

- Ngā Hapū o Mangakāhia Plan 1995.
- Ngātiwai Aquaculture Management Plan 2005.
- Te Iwi o Ngātiwai Iwi Environmental Policy Document 2007.
- Ngāti Rehia Environmental management Plan 2007 (updated 2015).
- Ngā Tikanga me te Taiao o Ngāti Hine 2008.
- Ngā Hapū o Te Wahapu o Te Hokianga Nui a Kupe (Ngāti Korokoro, Ngāti Wharara, Te Poukākā) Hapū Environmental Management Plan 2008.
- Kororāreka Marae Environmental Hapū Management Plan 2009.
- Kia matau, kia mohio e ora ana Te U Kai Po (Ngā Hapū o Whaingaroa) 2011.
- Te Uri o Hau Kaitiakitanga o te Taioa 2012.
- Patuharakeke Hapū Environmental Management Plan 2015.
- Whakatakoto Kaupapa mō te Hapū o Ngāti Kuta ki Te Rāwhiti (date not known).

The purpose of iwi and hapū management plans, according to the Council, is to provide a framework for ongoing consultation and engagement with tangata whenua.³³³ For example, the Council uses these plans to help determine which iwi and hapū have interests in a particular area when a resource consent application is lodged, and the contents of the plan may be considered when processing the consent application (although there is no statutory obligation for the NRC to do so). In addition, the Council relied on iwi and hapū management plans during its recent review of the RPSN.³³⁴ The

³³² See for example 'Draft performance contract between the Northland Regional Council and Te Kotahitanga o te Taitokerau', July 1998, NRC File 900.17.1, Vol. 4

³³³ Northland Regional Council, 'Iwi/Hapū management plans', <http://www.nrc.govt.nz/Your-Council/Working-with-Maori/Iwi-Hapu-Management-Plans> (accessed 1 May 2016)

³³⁴ Northland Regional Council, 'State of the Environment Report 2012', <http://www.nrc.govt.nz/resources/?url=%2FResource-Library-Archive%2FEnvironmental-Monitoring->

Council also provides an annual \$20,000 contestable fund to assist iwi groups in developing the environmental sections of their management plans.³³⁵

NRC has noted that few groups have taken up the opportunity to develop iwi or hapū management plans. As a result, the Council does not currently consider them to have been an effective means of engaging tangata whenua in resource management to date.³³⁶ This may be due to a lack of clarity amongst Te Raki Māori regarding when, and how, the NRC makes use of iwi and hapū management plans. This is discussed further in section 2.4.4 of this chapter.

2.4.3.4 Environmental monitoring and restoration

The NRC has identified environmental monitoring as a key avenue through which Te Raki Māori can participate in resource management.³³⁷ This is in line with its commitments in the RPSN (see section 2.4.1). It provides an annual contestable fund of \$15,000 for Māori intending to engage in environmental monitoring projects, which have previously included macroinvertebrate and water quality measurements, kōkako monitoring and shellfish surveys.³³⁸ The Council also provides financial and staff support for the Integrated Kaipara Harbour Management Group, a combined effort for holistic management of Kaipara Harbour which includes representatives from Te Uri o Hau Settlement Trust, Ngāti Whātua, several central and local government agencies, and various environmental interest groups. In addition, the Council operates an annual contestable 'Environment Fund' for individuals or groups planning to engage in environmental restoration work. The fund, which is available to both Māori and the general public, can pay for up to 50 per cent of the costs of the restoration project.³³⁹

[Archive2%2FState-of-the-Environment-Report-archive%2F2011%2FState-of-the-Environment-Report-for-Northland%2F](#), pp51-52 (accessed 1 May 2016)

³³⁵ Northland Regional Council, 'Tangata whenua participation in resource management', <http://www.nrc.govt.nz/contentassets/0d3e217aec2346549fdbd0b3e579c501/regional-plan-review-summary---tangata-whenua.pdf>, p8 (accessed 1 May 2016)

³³⁶ Northland Regional Council, 'State of the Environment Report 2012', p51

³³⁷ Northland Regional Council, 'Tangata whenua participation in resource management', p9

³³⁸ Northland Regional Council, 'State of the Environment Report 2012', p51

³³⁹ Northland Regional Council, 'Environment Fund', <http://www.nrc.govt.nz/Your-Council/Funding-and-awards/Environment-Fund/> (accessed 1 May 2016)

NRC's policies regarding Māori participation in environmental monitoring and restoration are, in general, a proactive approach to recognising some forms of kaitiakitanga on the ground. However, they are limited by a Council-centric, rather than Māori-centric, focus. All approved monitoring programmes (including those undertaken by Māori) must align with the Council's work programme. The Council has admitted that this 'can be too limiting as to the scope of projects funded and the capacity of groups to meet council's stringent criteria'.³⁴⁰ The criteria for the Council's Environment Fund are broader, but projects must still fall within one of the Council's priority funding streams: soil conservation, biodiversity, coastal, water quality, and 'exceptional projects'.³⁴¹ Many Māori-led environmental initiatives appear to fall outside the criteria for these Council programmes, for example rāhui, monitoring of non-disclosed sites such as the location of puru tuna (underground wetlands), and the work of the Environment River Patrol (all of which are discussed in more detail in section 2.4.5). These criteria hint at an unspoken tension between Western notions of 'technical' expertise and the mix of physical and spiritual expertise that is considered valuable by Māori as part of the responsibilities of kaitiakitanga. It is likely that applicants for these contestable funds are required to speak the right technical language when applying for them, which may not necessarily be an integral part of an environmental monitoring project under a kaupapa Māori framework. Indeed, the Council has itself noted that the uptake of its monitoring programme by Māori has been limited, due in part to a lack of technical capacity.³⁴²

2.4.3.5 Standing committees

NRC has several standing committees designed to advise the Council and provide recommendations on environmental and resource management matters. Some of these committees have seats reserved for Māori representatives. The Environmental Management Committee, for example, has one seat reserved for Māori interests nominated by iwi authorities, Te Roroa and Te Uri o Hau. It is currently held by Keir Volkerling, who is Pākehā and has experience in the resource management sector and in

³⁴⁰ Northland Regional Council, 'State of the Environment Report 2012', p52

³⁴¹ Northland Regional Council, 'Environment Fund'

³⁴² Northland Regional Council, 'Tangata whenua participation in resource management', p9

engaging with tangata whenua.³⁴³ The Council also created a Te Taitokerau Māori Advisory Committee in 2014 to enhance Māori engagement with Council activities, ensure Māori views are taken into account by the Council, and monitor Council's compliance to its obligations to Māori under the Local Government Act 2002 and the Resource Management Act 1991. It is comprised of four elected members, two representatives from each of the nine mandated iwi authorities in Northland, and representatives of various other tangata whenua groups.³⁴⁴ The committee endeavours to hold meetings in Whāngārei every two months as well as meetings with individual hapū across Northland. Committee Chairman Dover Samuels claimed in August 2015 that Te Raki Māori have responded well to the committee in the year since its inception.³⁴⁵

The Council has also allocated seats for Māori on the catchment groups that have emerged out of its 'Waiora Northland Water' programme, which was instituted in order to meet the requirements of the 2011 and 2014 National Policy Statements for Freshwater Management. The programme envisions the development of integrated catchment management plans to cover all of the catchments within the Northland region. These plans will provide the Environmental Management Committee with recommendations on regulatory and non-regulatory options to be included in the Council's revised Regional Plan (see section 2.4.3.2). The programme commenced with six 'priority catchments' – Mangere, Doubtless Bay, Whāngārei Harbour, Waitangi, Poutō, and Ngunguru – with the aim of circulating draft catchment plans by mid-2016.³⁴⁶ Membership of these catchment groups was determined by public nominations. Mangere, the only catchment that falls within the five river systems with which this report is concerned, is comprised of 16 members, four of whom are tangata

³⁴³ Northland Regional Council, 'Environmental Management Committee terms of reference', <http://www.nrc.govt.nz/contentassets/c146b70d13f34e429412e27f02f96ff5/environmental-management-committee-tor-pdf-april-2015.pdf> (accessed 1 May 2016)

³⁴⁴ Northland Regional Council, 'Te Taitokerau Māori Advisory Committee terms of reference', <http://www.nrc.govt.nz/contentassets/c146b70d13f34e429412e27f02f96ff5/te-tai-tokerau--maori-advisory-committee-terms-of-reference-february-2015-web-version-pdf.pdf> (accessed 1 May 2016)

³⁴⁵ *Northern Advocate*, 17 August 2015, p4

³⁴⁶ Northland Regional Council, 'Catchment groups', <http://www.nrc.govt.nz/Your-Council/Council-Projects/Waiora-Northland-Water/Priority-areas/> (accessed 1 May 2016)

whenua representatives: Hona Edwards (Te Uriroroi), George Tuhiwai (Te Parawhau), Allan Halliday (Ngāti Hau) and Tania Pene (Te Rūnanga-A-Iwi O Ngāpuhi).³⁴⁷

The Waiora Northland Water programme is being supported by several research projects designed to assist the NRC to meet the requirements of the National Policy Statements. A report by Volkerling on Northland tangata whenua freshwater values was carried out as a joint venture between the NRC, the Ministry for Primary Industries and the Ministry for the Environment. The report provided a framework of tangata whenua values relating to the environment (for example wairua, mātauranga, kaitiakitanga), freshwater (for example mahinga kai, akoranga and tākaro), and management processes (for example rāhui, monitoring), and suggested means by which they could be implemented in the Waiora Northland Water programme and the reviews of the RPSN and RWSPN.³⁴⁸ Volkerling noted that many of these values were encapsulated in an aspirational whakataukī, 'kia pai te kaukau i nga awa nui, kia inu pai i nga awa iti' (swim safely in the big rivers, drink safely from the small rivers). This reflected the desire of many tangata whenua that the waterways be restored to the state they remembered from their youth.³⁴⁹

In addition to the standing committees of the NRC, the Whāngārei District Council has established a body called 'Te Kārearea' consisting of eight elected representatives from the Council and eight from Te Huinga Rangatira, a body representing Whāngārei hapū. The purpose of Te Kārearea is to discuss 'issues of significance' raised by its members, rank them by priority, and develop a work programme to achieve them. In addition, both the Council and Te Huinga have agreed to 'engage in ongoing meaningful consultation with the wider Māori community to ensure that it maintains an awareness of the issues of significance to Māori in the community.'³⁵⁰ It is likely that Te Kārearea does not deal extensively with waterways given that they are the responsibility of the

³⁴⁷ Northland Regional Council, 'Mangere', <http://www.nrc.govt.nz/Your-Council/Council-Projects/Waiora-Northland-Water/Priority-areas/Mangere/> (accessed 1 May 2016)

³⁴⁸ Keir Volkerling, 'Northland tangata whenua freshwater values - final report', August 2015 (provided by personal communication)

³⁴⁹ Keir Volkerling, 'Northland tangata whenua freshwater values - final report', August 2015, preface

³⁵⁰ Whāngārei District Council, 'Te Kaupapa a Te Kārearea: Te Kārearea Strategic Relationship Agreement', <http://www.wdc.govt.nz/YourCouncil/CouncilMeetings/Committees/Documents/Te-Karearea-Terms-of-Reference.pdf> (accessed 1 May 2016)

regional council; however, it may be a forum through which Māori raise concerns with resource consents managed by the Whāngārei District Council, such as for water supply and flood protection.

2.4.3.6 Other methods that have not been implemented

As noted above, the avenues available for Māori to participate in the NRC's processes are generally limited to an advisory capacity. There are, however, several legislative options available that involve Māori participation at the decision-making level of local government, although these have not been implemented to date. Under the Local Electoral Amendment Act 2002, regional councils have the option of resolving that their region be divided into one or more Māori constituencies for the purpose of electing Māori representatives to council. However, unlike other constituencies, Māori constituencies can only be confirmed by a majority vote in a poll of registered voters in the council's region. A poll on a Māori constituency can also be requested by five per cent of the voters in the region. In both cases, the poll is binding on the regional council for at least two elections.³⁵¹ The NRC considered the option of Māori constituencies in 2011, but resolved not to introduce them. This resolution was publicly notified, but was not challenged by a request for a poll. As a result, the Council cannot consider the issue of Māori constituencies again until 2017.³⁵²

Under the RMA, regional councils may also choose to transfer part of their authority to an iwi authority or arrange a joint management agreement with an iwi authority. The relevant clauses of the legislation are discussed in Chapter One. No transfer of authority or joint management agreement has occurred in the Te Raki inquiry area, despite at least two examples where it has been suggested that it may be appropriate (Lake Ōwhareiti, discussed in Chapter Five, and the Hikurangi Swamp, discussed in Chapter Six). However, the Whāngārei District Council is currently considering a proposal to transfer partial control over the building and maintenance of papakāinga on Māori land to recognised iwi authorities. Under this proposal, iwi authorities would have responsibility for considering resource consent applications for controlled activities,

³⁵¹ Local Electoral Act (2001 No 35), section 19Z

³⁵² Northland Regional Council, 'Working in partnership', <http://www.nrc.govt.nz/Your-Council/Working-with-Maori/Working-in-partnership/> (accessed 1 May 2016)

whereas discretionary activities would be considered by Māori hearing commissioners.³⁵³ Such consent applications could conceivably involve discharges to water or water takes if the proposed kāinga reside alongside rivers or streams.

2.4.4 General concerns raised by Māori

As noted in section 2.4.3.2, NRC is presently engaged in a review of its statutory planning documents: the RPSN and the three Regional Plans. Te Raki Māori have used this opportunity to raise a broad swathe of concerns with resource management across the Northland region, and the extent to which kaitiakitanga is being recognised. These concern most of the avenues currently available for Māori involvement in the Council's resource management regime, and are discussed below. The main theme that emerges out of the concerns raised by Māori is the lack of any real decision-making power involved in the avenues available for them to participate. It is worth noting, however, that the reviews are still in progress, so information on the extent to which Council has responded to Māori concerns is limited.

The review of the RPSN, which commenced in 2010, included the production of a report outlining tangata whenua issues with the existing Statement and the resource management process in general. The issues raised by tangata whenua were summarised as follows:

- None of the measures suggested in the consultation process used in developing the original RPS appear to have been effected.
- Engagement has largely been via the resource consent process – an often frustrating and adversarial experience for both sides that has done little to develop confidence, common understanding or active partnership.
- The RPS tangata whenua provisions included in a spirit of partnership and good faith have proven inadequate. There is a gulf between NRC and tangata whenua over how those agreed measures are now to be interpreted and they have not set a template for successful roll-out into 2nd tier instruments at both regional and district level.

³⁵³ Whāngārei District Council, 'Planning for papakainga', <http://www.wdc.govt.nz/PlansPoliciesandBylaws/Plans/DistrictPlan/DistrictPlanChanges/Documents/PC-94B-Papakainga/1-General-Information/Papakainga-Housing-Brochure-New.pdf> (accessed 1 May 2016)

- Only a handful of iwi and hapū planning documents have been prepared, they have yet to be given any real recognition in Regional Council processes.
- No iwi has successfully grown their embryonic resource management units into sustainable professional units capable of interfacing with local government in any sense of parity.
- There is minimal evidence of Māori participation in any form of regional RMA decision-making processes.
- There is little evidence of tikanga Māori being incorporated into any aspect of resource management, there has been minimal use of Māori hearings' commissioners, marae-based hearings or use of tikanga in consent processing.
- There is virtually no participation of Māori in the monitoring of the region's resources.
- No transfer of powers and functions to tangata whenua has been achieved.
- There has been painfully slow progress on identification, let alone sustainable management of the region's cultural heritage, landscape sites or wāhi tapū.³⁵⁴

The report recommended the following improvements to the new RPSN in order to address these issues:

- Clarification of the Treaty of Waitangi role in regional resource management;
- Identify the partnership role of tangata whenua;
- Identify the process for tangata whenua to participate, including –
 - In policy and plan preparation and decision-making
 - Participation in monitoring and reporting
 - Participation in consent processes;
- Identify the circumstances and process for the –
 - Transfer of powers and joint management
 - Co-management or autonomous management of resources;
- Identify and acknowledge the resource management issues of concern to iwi and how these will be addressed and by when;
- Whether the provisions of the RPS will direct Regional and District Plans on involvement of and specific issues concerning tangata whenua; and
- Identify the role of Statutory Acknowledgements and how future ones will be accommodated.³⁵⁵

The NRC has yet to finalise the new RPSN, so the extent to which the above concerns and recommendations have been implemented are unclear. The most recent draft of the

³⁵⁴ Northland Regional Council, 'Tangata Whenua – Background', <http://resources.nrc.govt.nz/upload/7851/Tangata%20Whenua%20-%20Background.pdf>, p5 (accessed 1 May 2016)

³⁵⁵ Northland Regional Council, 'Tangata Whenua – Background', pp5-6

Statement (as at September 2015) includes sections aimed at identifying the resource management and environmental issues of concern to iwi.³⁵⁶ It also commits Council to developing a protocol in conjunction with iwi authorities that clarifies the processes for producing and using cultural effects assessments (CEAs) and iwi management plans, appointing Māori hearing commissioners, notifying Māori of resource consent applications, holding hearings on marae and providing translation services, and the use of key Māori concepts, values and practices.³⁵⁷ However, the draft Statement does not identify the circumstances or process by which joint management or the delegation of powers to iwi authorities can take place.

The review of the NRC's three Regional Plans commenced in 2014 with a series of consultation hui across the Northland region. These included a dedicated hui on tangata whenua participation held in Whāngārei on 6 October 2014, and three regional hui with tangata whenua representatives in Kaitaia (19 November 2014), Kaikohe (20 November 2014), and Whāngārei (24 November 2014). Māori also attended hui held for the general public on specific aspects of resource management, such as water quality, water quantity, and significant natural and heritage values.³⁵⁸ The minutes of the hui are quite detailed, and while they were written by Council staff, they appear to capture a wide range of Māori concerns. These concerns were similar to those that were raised during the early stages of the RPSN review. In an effort to demonstrate these concerns, several key concerns are listed below with some sample quotes from the minutes:

- Earlier and more robust engagement rather than at the resource consent stage:

[W]e want people to come and talk to us. Tangata Whenua wants discussions at the proposal stage. Tangata Whenua doesn't want to look

³⁵⁶ Northland Regional Council, 'Proposed Regional Policy Statement – Council Decisions – Consolidated Version',

<http://resources.nrc.govt.nz/upload/22576/Proposed%20Regional%20Policy%20Statement%20for%20Northland%20-%20Tracked%20changes%20-%20Consolidated%20version%20with%20changes%20as%20a%20result%20of%20appeals.pdf>,

sections 2.5 and 2.6 (accessed 1 May 2016)

³⁵⁷ Northland Regional Council, 'Proposed Regional Policy Statement – Council Decisions – Consolidated Version', sections 8.161, 8.2.2

³⁵⁸ Northland Regional Council, '10 year review of the Regional Plans', <http://www.nrc.govt.nz/Your-Council/Council-Projects/New-Regional-Plan/10-year-review-of-the-regional-plans> (accessed 1 May 2016)

like the bad guys by having to raise concerns at the resource consent stage rather than at the proposal.³⁵⁹

- More follow-up from Council on issues raised by Māori during consultation:

NRC was talking to communities about flood management some years ago. The community provided many ideas about how to manage flooding (eg raising road level). But since the meeting nothing has happened. People get disillusioned about getting involved in these things when nothing appears to come out of them. Need to keep people informed so that they understand why things aren't actioned.³⁶⁰

Feedback on the outcomes of the hui is important. Councils mostly consult for their own purposes and once they have what they want are never heard from again.³⁶¹

[I]ssues identified in consultation process should not be pushed to one side. People need to understand how viewpoints expressed are responded to - otherwise people get despondent.³⁶²

- The need for Council to engage more with Māori communities kanohi ki te kanohi (including meeting on marae):

Should go the Marae - you'll be well accepted. Costs a lot for people to travel to hui like this. Could rotate it around the region and get it out to the smaller areas / Marae.³⁶³

Staff and councillors need to get out and meet and talk with Tangata Whenua on the ground. Policy doesn't have mana and mauri - it's the person.³⁶⁴

- Supporting Māori to be able to participate more effectively in resource management (including technical workshops):

³⁵⁹ Northland Regional Council, 'Workshop notes: Tangata Whenua Participation in resource management processes Monday 6 October 2014',

<http://www.nrc.govt.nz/contentassets/0d3e217aec2346549fdbd0b3e579c501/tangata-whenua-workshop-notes-a695619.pdf>, p3 (accessed 1 May 2016)

³⁶⁰ Northland Regional Council, 'Environmental Hui - Te Ahu Centre, Kaitaia, 19 November 2014', <http://www.nrc.govt.nz/contentassets/0d3e217aec2346549fdbd0b3e579c501/environmental-hui-november-2014---notes.pdf>, p3 (accessed 1 May 2016)

³⁶¹ Northland Regional Council, 'Environmental Hui - Te Ahu Centre, Kaitaia, 19 November 2014', p2

³⁶² Northland Regional Council, 'Workshop notes: Tangata Whenua Participation in resource management processes Monday 6 October 2014', p8

³⁶³ Northland Regional Council, 'Environmental Hui - Te Ahu Centre, Kaitaia, 19 November 2014', p5

³⁶⁴ Northland Regional Council, 'Workshop notes: Tangata Whenua Participation in resource management processes Monday 6 October 2014', p8

We've been getting all the plan changes sent to us - we need technical support to get involved. We're providing information but doesn't get actioned as we want it. Also lots of notification happens just before Xmas - not good timing. Whānau/hapū getting overwhelmed. Support from others about lack of technical expertise and resourcing processes.³⁶⁵

- Greater clarity around how the Council 'takes into account' iwi and hapū management plans.

Iwi/Hapū management plans - there needs to be some way that they are given effect to, not just to have regard to them, and shelve them ... Big challenges to engage people in developing iwi / management plans, particularly as the perception is that they don't get listened to.³⁶⁶

This is not just [about] how should iwi/hapū management plans are taken into account its [sic.] when i.e. at the start of the process.³⁶⁷

- Greater provision for Māori in decision making (including dedicated Māori Council seats and training more Māori hearing commissioners):

Council needs to change their mindset - it's a partnership with Maori. Shouldn't be consulting with Maori, they should be part of the decision making.³⁶⁸

There are 108 RMA commissioners in Auckland and Northland - only 5 with noted Maori descent. Support for getting more Maori commissioners.³⁶⁹

Die in a ditch issue is Maori commissioners. Need to identify key people and get them trained. Should make it a priority.³⁷⁰

LGA [Local Government Act] - has ability to have Maori seats on council. WDC [Whāngārei District Council] don't want to do it. Last election had

³⁶⁵ Northland Regional Council, 'Environmental Hui - Northland Regional Council, Whangarei, 24 November 2014',

<http://www.nrc.govt.nz/contentassets/0d3e217aec2346549fdbd0b3e579c501/environmental-hui-november-2014---notes.pdf> p14 (accessed 1 May 2016)

³⁶⁶ Northland Regional Council, 'Environmental Hui - Te Ahu Centre, Kaitaia, 19 November 2014', p3

³⁶⁷ Northland Regional Council, 'Workshop notes: Tangata Whenua Participation in resource management processes Monday 6 October 2014', p6

³⁶⁸ Northland Regional Council, 'Environmental Hui - Far North District Council, Kaikohe, 20 November 2014', <http://www.nrc.govt.nz/contentassets/0d3e217aec2346549fdbd0b3e579c501/environmental-hui-november-2014---notes.pdf>, p9 (accessed 1 May 2016)

³⁶⁹ Northland Regional Council, 'Environmental Hui - Northland Regional Council, Whangarei, 24 November 2014', p15

³⁷⁰ Northland Regional Council, 'Environmental Hui - Northland Regional Council, Whangarei, 24 November 2014', p17

more Maori voting than anytime, but still only one Maori councillor - shows it doesn't work. Need Maori in all positions across councils.³⁷¹

- Better resourcing for on-the-ground kaitiakitanga activities such as monitoring pollution, consent compliance, and customary fish stocks:

Tangata Whenua want to be hands on - they would rather be out on the water looking for pollution and understanding why there's no tuna in the river. How do we increase that capacity? ... There are many on the ground kaitiaki - there needs to be better connections with them. Benefits both ways. There could be improved monitoring efficiencies by having more people on the ground.³⁷²

[W]e have some youngsters who have some great ideas for monitoring and compliance.³⁷³

- Serious consideration of the RMA provisions regarding joint management and the delegation of authority.

Transfer/delegation of powers - point made that iwi/ hapū management plans can be used to signal what resources they would like to manage ... Have there been any applications to NRC to transfer RMA powers? There was a lot of talk about this ability at the outset but now just viewed by Tangata Whenua as window dressing.³⁷⁴

As stated above, the goal of the NRC's present review of its three Regional Plans is to produce a single, combined Regional Plan. As no draft of this plan has been produced at the time of writing, it is difficult to assess the extent to which the concerns raised by Māori will be addressed. However, the Council has commissioned a 'Tangata Whenua Issues and Options' paper which considers some of the issues raised at these hui, and in the iwi and hapū management plans that have been lodged with the Council.³⁷⁵

³⁷¹ Northland Regional Council, 'Environmental Hui - Northland Regional Council, Whangarei, 24 November 2014', p17

³⁷² Northland Regional Council, 'Workshop notes: Tangata Whenua Participation in resource management processes Monday 6 October 2014', p4

³⁷³ Northland Regional Council, 'Environmental Hui - Far North District Council, Kaikohe, 20 November 2014', p10

³⁷⁴ Northland Regional Council, 'Workshop notes: Tangata Whenua Participation in resource management processes Monday 6 October 2014', p6

³⁷⁵ Keir Volkering, 'Review of the Regional Plans - Tangata Whenua Issues and Options', <http://www.nrc.govt.nz/contentassets/0d3e217aec2346549fdbd0b3e579c501/review-of-the-nrc-regional-plans---tangata-whenua-issues-and-options----final.pdf> (accessed 1 May 2016)

2.4.5 Māori-led initiatives and the response from local government

In addition to the avenues provided by the NRC, Te Raki Māori have initiated their own resource management programmes in order to meet their kaitiakitanga responsibilities. The extent to which local government bodies have responded to or recognised these initiatives depends on the extent to which they accord with the Council's own resource management policies and priorities. For example, the NRC appears to have welcomed the formation of 'Resource Management Units' by iwi and hapū as it provides them with a single point of contact for notifying Māori within a particular region of resource consent applications. However, many of these Resource Management Units are severely hamstrung by a lack of resourcing (most operate on a voluntary basis), a lack of technical and legal capacity, and the need to establish contacts within central and local government bodies. Allan Halliday's evidence regarding the formation and operation of the Ngāti Hau Resource Management Unit is likely a typical example of the issues facing Te Raki Māori. Passages from his evidence are reproduced below:

The RMU [Resource Management Unit] was set up because we, the Ngati Hau Trust Board, were receiving resource consent applications from the Whangarei District Council, the Far North District Council and Northland Regional Council. They would send us resource applications pertaining to sub-divisions, water take applications and so on. We didn't know what they were about but we still had to respond to them. All of these things were happening to our rohe around us, and Ngati Hau didn't really have a say in the matter because, at that time, we didn't have an organisation or a body to engage with these applications.

...

The original RMU consisted of about a dozen people - people were keen back then. And it wasn't just people from Akerama, it was people from all across the hapu. We had to set the RMU up from scratch. We didn't have documentation about the rohe and we didn't understand the documents that we were receiving from both the district and the regional councils. The information that we would receive in relation to the resource consents had no Maori or tikanga content to it. This was a problem because of the wahi tapu across the Ngati Hau rohe and they were not being protected. Also, the environment changing in the way it was meant that our kaitiakitanga was being impinged upon.

As the RMU, we initially received a little bit of training from the Council and it was mostly about the resource consent process. But it was from the Council's perspective and not from a Maori perspective. We didn't get the full information behind what we had to do - but then the Resource

Management Act only came into force in 1991 so Councils were not familiar or compliant with it themselves.

...

The RMU is now down to four or five members. A lot of the people who were involved in its conception have moved to Australia. I think the majority of them are now in Australia or in Auckland. We have new people becoming involved in the RMU, but this is not on a regular basis ... We wouldn't have an issue if we could hire them and pay wages. But we can't, and it is asking a lot of people. To be able to employ people we would need continued contracts from the Councils and other stakeholders. We would also need to make it into more of a business and take on contracts for other activities like planting and cleaning waterways etc.

...

The RMU is at least a five-day-a-week job. We are based at the office at Akerama Marae. We report to the Ngati Hau Trust Board on a monthly basis. The RMU provides cultural impact assessments for notified resource consents which are within our rohe. For this, we receive a copy of an application for consent. We then have to notify the council and the applicant that we consider that a cultural impact assessment needs to be undertaken, sometimes we also have to provide rationale to the Council as to why we believe a cultural impact assessment is necessary. We also provide an estimate of costs to undertake the cultural impact assessment. If the applicant agrees to pay the costs, then we go ahead. If the applicant does not agree to pay the costs, then we have to go back to the Council and let them sort it out. We do not receive consents for permitted activities - or whatever the Council deems to be a permitted activity. There are some permitted activities that we would like to have the opportunity to provide a cultural impact assessment for.

The RMU generates funding by carrying out the cultural impact assessments and cultural value assessments. Out of that we have been able to purchase some equipment from computers to safety gear. But there is no set-up or ongoing funding provided. All of the RMU members are volunteers. The RMU cover the costs of our volunteers' petrol but that is it. Our phones, cameras and other gear are all our own property. This is also probably why many hapu do not have their own resource management units - they just don't have the equipment to get started or the money to purchase them.³⁷⁶

Several pan-iwi/hapū initiatives have been organised by Māori in order to overcome some of the barriers faced by Resource Management Units and other Māori

³⁷⁶ Brief of Evidence of Allan Keith Halliday, Wai 1040 #P2, paras 5.1, 5.3-5.5, 5.7-5.8, 5.12, 5.17, and 5.30

environmental groups. Te Rūnanga-Ā-Iwi-O-Ngāpuhi operates a Natural Resource Management team designed to assist hapū in responding to resource consent applications, developing Iwi Management Plans and Cultural Impact Assessment (CIA), designing workshops to build capacity in environmental monitoring, and any other ways in which they seek to exercise their kaitiakitanga responsibilities.³⁷⁷ In addition, several hapū have formed an organisation named Ngā Kaitiaki o Ngā Wai Māori in order to coordinate efforts to protect waterways in the Wairua and Mangakāhia catchments. This organisation is in the process of being legally recognised, although it has secured the support of the Department of Conservation, NRC, Whāngārei District Council, Fonterra, Northpower, Rayonia Matariki Forestry, Te Rūnanga-Ā-Iwi-O-Ngāpuhi, Ministry of Primary Industries and NIWA.³⁷⁸ Ngā Kaitiaki o Ngā Wai Māori is discussed further in Chapter Six.

Other Māori-led initiatives that lie outside established processes for resource management have had less success in being recognised by local government. In his brief of evidence before the Tribunal, Wiremu Reihana noted that Ngāti Tautahi ki te Iringa issued a rāhui in June 2015 over the Punakitere River and its tributaries ‘to ban commercial tuna fishing, discharges into the river including farm effluent, the extraction of water and any earthworks where the water touches the banks’. Despite notifying the rāhui publicly in the *Northern Advocate*, Reihana alleged that it has proven difficult to enforce due to a lack of assistance from the Far North District Council (although he acknowledged that Ngāti Tautahi ki te Iringa did not approach the Council directly about the rāhui).³⁷⁹ While Section 186A of the Fisheries Act 1996 provides for temporary closures of fishing areas and restrictions on fishing methods, this does not extend to water uses.

Several Māori environmental monitoring initiatives that are arguably more in line with the work programme of the NRC have also received limited support. Ngāti Hine told the Tribunal that they undertake their own monitoring of undisclosed puru tuna

³⁷⁷ Personal communication with Tania Pene, Te Rūnanga-Ā-Iwi-O-Ngāpuhi Iwi Development Leader, 29 July 2015

³⁷⁸ Brief of Evidence of Allan Keith Halliday, Wai 1040 #P2, paras 6.1-6.11

³⁷⁹ Brief of Evidence of Wiremu Reihana, Wai 1040 #T2, paras 115-121

(underground wetland habitats for tuna). It is unclear whether the NRC or the Ministry for Primary Industry provides support or resourcing for this initiative, but Ngāti Hine allege that their ability to harvest tuna for customary purposes is hindered by the fact that they do not have a say in the decision-making over the resource.³⁸⁰ Chapter Five discusses the alleged impact of farming and property development on puru tuna at Lake Ōwhareiti.

The Environmental River Patrol Aotearoa (formerly the Kaitiaki Tuna Heke Aotearoa Trust) is another example of a Māori environmental monitoring initiative. Established in September 2010 by Henry and Millan Ruka, it is devoted primarily to exercising kaitiakitanga on the ground by documenting cases of pollution and tuna fatalities occurring on Northland's waterways (in particular the Southern Bay of Islands/Northern Whāngārei and inland Whāngārei/Mangakāhia areas). The resulting reports (of which there are more than two hundred) range from single issues to broad survey reports of rivers or catchments over the course of several months. These reports are sent to the NRC and Whāngārei District Council along with the GPS coordinates of any alleged incidents.³⁸¹ Several of these reports on the Wairua catchment are discussed in Chapter Six. This initiative has been primarily funded by Henry and Millan Ruka themselves (estimated up to \$130,000), but operational costs were supplemented by a Ngā Whenua Rāhui award from the Department of Conservation from June 2012 until November 2015.³⁸² The work of the Environmental River Patrol has attracted considerable media attention, including regular coverage from RNZ National's Northland reporter, at least one story on Native Affairs, as well as the support of the Green Party.³⁸³

The reports of the Environment River Patrol Aotearoa do not appear to have been well received by local authorities. Millan Ruka has argued that the majority of the reports produced by Environment River Patrol Aotearoa are not acknowledged or acted upon

³⁸⁰ Brief of Evidence of Ngāti Hine, Wai 1040 #M26, paras 59, 61

³⁸¹ Environment River Patrol Aotearoa, 'River Reports', <https://sites.google.com/site/environmentalriverpatrol/river-reports> (accessed 1 May 2016)

³⁸² Brief of Evidence of Millan Ruka, Wai 1040 #U34(b), paras 96-99

³⁸³ 'River Cop', *Native Affairs*, 23 March 2015, <http://www.maoritelevision.com/news/regional/native-affairs-river-cop>; 'River Pollution Patrol on the Wairua', *Green Party blog*, 27 February 2012, <https://blog.greens.org.nz/2012/02/27/river-pollution-patrol/>

by the NRC.³⁸⁴ He claimed that the Council rejects the reports in part because they are sometimes filed months after an event or series of events were observed, especially in the case of broad survey reports. Ruka argued that the Council considers the reports to be like any other issue raised by the public through its environmental hotline (see section 2.2.1.5), which is inappropriate given the range of issues they cover:

These Survey reports highlight “cumulative effects” at many locations on paddle and motor boat trips so it’s not practical that they be “hotline reports”. Rather their intent is for NRC and stakeholders to see evidence on any one day (or more) over quite long distances of the state of our rivers and streams ...

NRC themselves continually report on environmental studies and such a year after they were on location. Often they get consultants to do reports for NRC and the findings are not released to NRC for many months after they have been on the locations. With ERP reports that are showing well evidenced “detrimental effects” at locations, they are most likely still continuing by the same farmer all year around at various times.³⁸⁵

The NRC’s apparent lack of response to the reports of the Environment River Patrol Aotearoa is perplexing given their active commitment and funding of Māori environmental monitoring initiatives in other areas (see section 2.4.3.4). One reason for this may be that the majority of the Patrol’s reports relate to activities that are not actively monitored or enforced by council, such as a lack of riparian fencing, the resultant damage or destruction of riparian management zones by livestock, and stock urinating, defecating, and dying in waterways. As noted in section 2.2.1.2 of this chapter, the NRC’s current RWSPN contains few restrictions on these activities, and they are often specifically excluded from the Plan’s rules and conditions. Since the Council’s funding criteria for Māori environmental monitoring activities is tied to its own policies and work programmes, it is likely that the work of the Environment River Patrol Aotearoa is considered to fall outside these bounds. It is worth noting, however, that when the Patrol reports on activities occurring on land leased by the Whāngārei District Council, the response from the District Council appears to have been prompt.³⁸⁶

³⁸⁴ Personal communication with Millan Ruka, 4 November 2015.

³⁸⁵ Personal communication with Millan Ruka, 24 March 2016.

³⁸⁶ Email from the Operations Engineer, Whāngārei District Council, to Millan Ruka, 4 November 2015 (provided through personal communication); Brief of Evidence of Millan Ruka, Wai 1040 #U34(b), para 112

2.5 Conclusion

This chapter has explored how local and central government agencies have applied the legislation regarding resource management in the Northland region, and the extent to which kaitiakitanga has been recognised and provided for. It has done so at a high level, given that the more specific details of this relationship between resource management and kaitiakitanga will be explored in more depth in the chapters in part two of this report. Nevertheless, it underlines several themes that are useful in understanding the specifics of this relationship. Firstly, it has demonstrated that the Crown's management of Northland's rivers and lakes can be broadly understood as an ongoing relationship between local and central government comprised of intertwined layers of authority and control. While the NRC may be the agency which Te Raki Māori engage with most frequently over resource management issues, its activities can only be fully understood when viewed within this broader governmental context. Furthermore, given the complexity of intertwining government administration in regard to freshwater, there is evidence Maori often fall between the cracks between the national, regional and local government jurisdictions and criteria. Secondly, this chapter has argued that Te Raki Māori are largely limited to an advisory role in the management of Northland's waterways and lakes. While the NRC has pursued some promising initiatives to involve Māori in resource management activities, it has chosen not to extend this to governance roles. Finally, this chapter suggests that Te Raki Māori generally face a financial and technical disadvantage when it comes to engaging in resource management activities. The NRC has attempted to address this issue through some contestable funding options for Māori and the general public; however, the criteria for these funds do not appear to extend to several kaupapa Māori projects that fall outside the Council's own work programme.

Chapter Three

The current state of Northland's rural waterways

3.1 Introduction

This chapter discusses and summarises the monitoring and scientific literature regarding freshwater pollution in Northland and the factors that have contributed to this pollution. In doing so, it aims to address commission question (f): 'To what extent (if at all) have these rivers and lakes been polluted and/or degraded and what factors have contributed to these changes?' Drawing on research undertaken by independent researchers, local government, and central government agencies on Northland's waterways and indigenous species, this chapter provides an overview of issues relating to water quality and indigenous species. It does so in order to establish the extent of the pollution and degradation of waterways and indigenous species in Northland in general and the selected rivers for this report in particular. The first part of this chapter addresses water quality issues, before exploring freshwater fisheries. Both themes are addressed at a national and then at a Northland region level. The focus of this chapter is approximately the last thirty or so years. David Alexander's 'Land-Based Resources, Waterways and Environmental Impacts' report details the long-term impacts of deforestation, mining, gum digging, and agricultural reclamation on waterways in Northland.³⁸⁷

Following a brief summary of Alexander's report, this chapter address the more recent developments in agricultural intensification and its impact on waterways and indigenous species. These recent developments also coincide with the promulgation of the RMA and the establishment of the modern monitoring regime. In later chapters, this report addresses the issue of Crown management of waterways and the ways in which actions/inactions of the Crown and/or local body delegates generally, and under the RMA in particular, have contributed to these changes. This chapter simply outlines the state of these waterways and provides a summary of monitoring reports and studies

³⁸⁷ Alexander, *Land-based Resources*, Wai 1040 #A7

produced to date. The chapter also provides basic scientific terminology relating to water quality and monitoring as well as the parameters used by central and local government to measure water quality. It does so in order to provide context and a guide to Northland's water quality monitoring programs and to provide a guide to understanding water quality in subsequent chapters. However, it is beyond the scope of this report, and beyond the expertise of its authors, to provide a critique of the monitoring and scientific literature or to provide original research. Thus, this chapter makes no comment on methodology or on the collection and analysis of data. Instead, it provides an accessible summary of the scientific literature and monitoring findings. As discussed in previous chapters, environmental monitoring is a requirement for local government under the Resource Management Act, under Section 35(2)(a) and at a national level under international commitments as a member of the OECD. Responsibility to establish an environmental monitoring programme has been led and funded at the national level by the Ministry for the Environment (MfE), while requirements to monitor the environment are given to all regional and district councils under the RMA.

Before proceeding, it is important to point out that national and local government monitoring has not come without its critics. As we will see in subsequent chapters, Te Raki Māori have on occasion critiqued the efficacy of monitoring and the exclusion of mātauranga Māori. Māori environmental monitoring approaches, which are grounded in Māori beliefs, values and practices, 'have been developed to complement and contribute to' mainstream monitoring reports.³⁸⁸

3.2 Water quality: national trends

3.2.1 The overall picture

This section provides a summary of current national trends in water quality, with a particular focus on pollutants and land-use. As discussed in Chapter One, greater

³⁸⁸ Thank you to Dr Erica Williams, Māori Environmental Research (Te Kūwaha), NIWA, for these sources: Gareth Harmsworth and Gail Tipa, 'Māori Environmental Monitoring in New Zealand: Progress Concepts, and Future Directions', Report for Landcare Research ICM web site; Tipa, Gail and R. Welch 'Co-management of Natural Resources: Issues of Definition from an Indigenous Community Perspective', *Journal of Applied Behavioural Science* (Vol. 42, No. 3, 2006); Repo Consulting Ltd., *Maori Cultural Environmental Monitoring report: Report prepared for the Ministry for the Environment*, (2011).

concerns about water quality emerged from the mid-twentieth century onwards, as did the first legislative attempts to address the problem. In more recent decades, water quality has emerged as an increasingly significant issue. According to the Parliamentary Commissioner for the Environment, Dr Jan Wright, it is today 'a subject of high public concern and vigorous debate'.³⁸⁹ Howard-Williams *et al.* point out that opinion surveys demonstrate that water pollution, primarily from pastoral agriculture, is 'the largest environmental issue in New Zealand'.³⁹⁰ The growing concern about water quality parallels the increasing intensification of agriculture (dairy in particular) and the increasing knowledge about the degradation of the country's waterways and freshwater including indigenous aquatic species, especially from diffuse or non-point sources.

By comparison to Europe, North America and Asia, river water quality in New Zealand may be described as 'fairly good', and is 'very good' (in other words, it supports most values including habitat for aquatic life) in rivers draining the conservation estate (land reserved for ecological and recreational purposes).³⁹¹ It is a different story in the lowlands, however. Robert J. Davies-Colley of the National Institute of Water and Atmospheric Research (NIWA) explains that there is widespread diffuse pollution from developed land, particularly pastoral agriculture, with fine sediment causing reduced visual clarity, faecal microbial contamination, and nutrient enrichment.³⁹² Davies-Colley claims that water quality has declined over the past 25 years and that this is despite a 'very large expenditure on improved treatment (or diversion from rivers) of city and factory wastewaters'.³⁹³ Indeed, while gains have been made in abating 'point-source' pollution, steadily increasing diffuse ('non-point') pollution, particularly nitrogen and phosphorus enrichment from intensification of pastoral agriculture, continue to degrade waterways.³⁹⁴ Point sources are the easiest to manage, according to Dr Jan

³⁸⁹ Parliamentary Commissioner for the Environment, *Water Quality in New Zealand: Understanding the Science*, (Wellington: Parliamentary Commissioner for the Environment, 2012)

³⁹⁰ C. Howard-Williams, R.J. Davies-Colley, J.C. Rutherford, and R.J. Wilcock, 'Diffuse pollution and freshwater degradation: New Zealand perspectives', in E van Bochove, PA Vanrolleghem, PA Chambers, G. Theriault, B. Novotna, and MR Burkart, eds., *Issues and solutions to diffuse pollution*, 14th International Water Association (IWA) conference on Diffuse Pollution and Eutrophication, 2010, p126

³⁹¹ Robert J. Davies-Colley, 'River Water Quality in New Zealand: An Introduction and Overview', in J.R. Dymonds, (ed.), *Ecosystem Services in New Zealand – Conditions and Trends*, (Lincoln: Manaaki Whenua Press, 2013), p432

³⁹² Davies-Colley, 'River Water Quality in New Zealand', p432

³⁹³ Davies-Colley, 'River Water Quality in New Zealand', p432

³⁹⁴ Davies-Colley, 'River Water Quality in New Zealand', p432

Wright, as the type and amount of each pollutant is easy to measure, and its origin is easy to identify. Non-point source pollutants are far more difficult to manage and often originate from a large number of small sources. Moreover, Howard-Williams *et al.* suggest that diffuse or non-point pollution (with a few exceptions) seems less amenable than point pollution to control under the RMA.³⁹⁵

Thus, while it is 'routinely perceived as the largest environmental problem in New Zealand', according to Davies-Colley, water quality continues to be degraded, particularly by certain land-uses, particularly pastoral agriculture and other soil-disturbing land-uses such as (open cast) mining and urban expansion. Davies-Colley explains that such sources of diffuse or non-point source pollution 'continue to negate the gains made from improved wastewater treatment and the resulting clean up of point-source pollution in New Zealand'.³⁹⁶ Indeed, the scientific literature and monitoring reports largely attribute declining water quality within catchments to intensified land-use. The correlation between intensification of agriculture and declining river quality, for example, has been 'generally confirmed' in studies to date.³⁹⁷ Freshwater scientist Mike Joy has recently called the the declining state of fresh-water an 'unprecedented and mostly hidden environmental crisis'. Joy states that while the causes are many and complex, the biggest in the present has been 'building over the last few decades and that is the intensification of agriculture mainly related to the dairy industry'.³⁹⁸

3.2.2 Measuring water quality in New Zealand

In a 2012 report on water quality in New Zealand (produced pursuant to Section 16(1)(f) of the Environment Act 1986), Dr Jan Wright identified pathogens, sediment and nutrients as the three main pollutants of fresh water in New Zealand. Wright explained that the grazing of livestock, which makes up 40 per cent of New Zealand's

³⁹⁵ Howard-Williams *et al.*, 'Diffuse pollution and freshwater degradation', p.128.

³⁹⁶ Davies-Colley, 'River Water Quality in New Zealand', p444

³⁹⁷ Davies-Colley, 'River Water Quality in New Zealand', pp432, 442; M.J Quinn, R.J Wilcock, R.M Monaghan, R,W McDowell, P.R. Journeaux, 'Grasslands farming and water quality in New Zealand', *Tearman: Irish journal of agri-environmental research*, (Vol.7, 2009)

³⁹⁸ Dr Mike Joy, *Squandered: The Degredation of New Zealand's Freshwaters*, p28. Published online: <https://freshwaternz.files.wordpress.com/2015/05/squandered.pdf>

land-use, 'mobilises' these three pollutants.³⁹⁹ Below is a summary of these main pollutants of fresh waterways, drawn from the Wright report, with a focus on how these pollutants get into water, what impacts they have, and how they are measured. The report also provides a summary of what Wright calls the 'natural factors' that influence the impact of pollutants on water quality as well as a discussion on land-use, point, and non-point source pollution.

3.2.2.1 Pathogens

Pathogens are invisible microbes – bacteria, viruses, and so on – that cause disease.⁴⁰⁰ The main sources of pathogens in fresh water are human sewage and animal manure. While most human waste in New Zealand is treated by municipal sewage treatment systems (with the aim of reducing the number of pathogens into water), the extent and effectiveness of such treatment varies. In some cases storm water overflows, broken sewer pipes, and poorly located and maintained septic tank systems mean that sewage enters into water without being treated at all. This is often an issue for small towns and local authorities that lack the rating base to build compliant treatment infrastructure.] When animal manure gets into water, it releases pathogens. Some animals, including cattle, are attracted to water. Dairy cows, for example, are 50 times more likely to defecate straight into water when given the opportunity.⁴⁰¹ It is estimated that around 15 per cent of dairy cow effluent is deposited in the shed during milking. Despite a two-pond treatment system for dairy effluence being widely employed, pathogens still survive the process when eventually discharged into water.⁴⁰² Around 20,000-30,000 people get gastrointestinal illness from pathogens in polluted water every year, and skin infections are also common.⁴⁰³ Pathogens also impact on food within contaminated waters. Filter-feeding shellfish such as pipi and mussels, for example, can be particularly risky to eat if grown in polluted water.⁴⁰⁴

³⁹⁹ Davies-Colley, 'River Water Quality in New Zealand', pp 432, 442; JM Quinn, 'Grassland farming and water quality in New Zealand'.

⁴⁰⁰ PCE, *Water Quality in New Zealand*, p21

⁴⁰¹ PCE, *Water Quality in New Zealand*, p22

⁴⁰² PCE, *Water Quality in New Zealand*, p22

⁴⁰³ PCE, *Water Quality in New Zealand*, p21

⁴⁰⁴ PCE, *Water Quality in New Zealand*, p23

There are two commonly used ways of measuring pathogens in fresh water. Both are measured in units of the number of live bacteria per 100 millilitres of water. The faecal coliform (FC) bacteria count measures sewage and manure contamination in water. This measure can give a false impression of health risk, however, because coli forms of plant (not faecal) origin can grow when water samples are tested. *Escherichia coli* (*E. coli*) bacteria, on the other hand, live in the guts of mammals and birds, so any sewage or manure contains many millions of these bacteria. Most *E. coli* strains are not harmful. However, high levels of *E. coli* indicate the presence of faecal material in the water, and therefore other pathogens too. So the level of *E. coli* in a water sample indicates how likely the water is to cause disease. Water is only deemed safe for drinking if there are no *E. coli* present. When *E. coli* counts in rivers and lakes are detected above 550 per 100 millilitres, health authorities put up signs stating 'Swimming or collecting shellfish is not recommended'.⁴⁰⁵

3.2.2.2 Sediment

Sediment (that is, particles of soil and rock eroded from the land and washed or blown by the wind into rivers and lakes) is a widespread and serious water quality pollutant in New Zealand.⁴⁰⁶ Erosion and sedimentation are 'continual processes that slowly redistribute vast volumes of material'.⁴⁰⁷ More than 200 million tonnes of sediment washes down New Zealand rivers into the sea every year and that soil is lost forever.⁴⁰⁸ Before the arrival of humans in New Zealand, the extensive cover of trees, tussocks, and other vegetation enabled land to cope with heavy rain. Human activity has changed this significantly. The removal of much of the original forest cover in New Zealand exposed soil to the elements and has greatly accelerated its erosion and thus sedimentation into water. Pasture produces two to five times more sediment than an equivalent area of forest as animals break down banks pushing soil directly into streams, while overgrazing leaves soil exposed, and sheep tracks along hillsides create channels for water to carry away soil in rivers, lakes and wetlands.⁴⁰⁹ Other causes of sedimentation

⁴⁰⁵ PCE, *Water Quality in New Zealand*, p24

⁴⁰⁶ PCE, *Water Quality in New Zealand*, p25

⁴⁰⁷ PCE, *Water Quality in New Zealand*, p26

⁴⁰⁸ PCE, *Water Quality in New Zealand*, p26

⁴⁰⁹ PCE, *Water Quality in New Zealand*, p26

include tree harvesting and replanting, open cast mining, urban development and road building.

Sediment turns clear water murky, smothers aquatic life, alters water flows, exacerbates flooding, and, as discussed below, carries phosphorus into water. Native freshwater plants need light and most cannot grow in murky water, while thick layers of silt provide a 'foothold' for exotic weeds.⁴¹⁰ Suspended sediment can damage the gills and delicate body parts of invertebrates, such as īnanga (one of the five species of whitebait) and in some cases can kill freshwater species. Reduction in visibility as a result of sedimentation can also impact on the ability of those freshwater species that rely on sight to catch food. Sediment build up can also change water flows, reduce the capacity of waterways, and make rivers, lakes and estuaries more vulnerable to flooding. In 2007, for example, flooding along Northland's Awanui River was made considerably worse by a build up of silt in the flood channel.⁴¹¹

There are various methods used for measuring both sediment that is suspended in water and sediment that has settled on river and lake beds. Suspended sediment can be measured directly (in grams of sediment per litre of water), or inferred by measuring the murkiness of the water or its opposite, the clarity of the water. Murkiness can be measured by the amount of light scattered when a beam of light is passed through water. The technical term for murkiness is turbidity and the unit of measurement is 'nephelometric turbidity units' (NTU). Clarity can be measured by the distance through water before a standard black disk can no longer be seen. Sometimes a 'Secchi disk' is used to measure clarity. A Secchi disk has alternate black and white segments and is lowered into the water until it can no longer be seen. Deposits of sediment on river, lake, or estuary beds can also be assessed by measuring changes in the percentage of silt and clay in sediments and surveying the elevation and shape of the bed.

3.2.2.3 Nutrients

Excessive nutrients are the third major issue affecting water quality in New Zealand. While plants need nutrients to grow, a build up of nutrient in waterways, and in

⁴¹⁰ PCE, *Water Quality in New Zealand*, pp27-28

⁴¹¹ PCE, *Water Quality in New Zealand*, p28

particular nitrogen and phosphorous together, cause 'algal blooms' and other unwanted plant growth within waterways. Sewage and animal effluent are rich in both nitrogen and phosphorus. Many smaller sewage plants have limited treatment capability, leaving behind nitrogen and phosphate; some sewers overflow, while septic tanks can be poorly maintained and located. Animal effluent comes from dairy sheds, piggeries, freezing works, mole and tile drains, and from animals with access to waterways. Manure can also wash off of paddocks in heavy rain.

Both nitrogen and phosphorous occur in different chemical forms. The two common forms of nitrogen in water are nitrate and ammonia, whereas phosphorus mainly exists as phosphate. There are important differences between nitrogen and phosphorous, which affect how the nutrients get into the water, what happens to them in water and how they can be prevented from entering water. Nitrogen (the most common source of nitrogen in New Zealand waterways is farm animal urine) is highly soluble in water, while phosphorus (in the form of phosphate) clings to soil and sediment.⁴¹² While point-source input of nitrogen and phosphorus into waterways can be significant at specific places and times, non-point sources (animal urine and sediment) are now far more common and far more significant.⁴¹³ Nitrate and ammonia, the most common forms of nitrogen in water, can cause several problems: high levels of nitrate can make groundwater unsafe to drink, and can kill sensitive organisms including native fish and trout and salmon, while ammonia is also highly toxic to fish and other in-stream life such as benthic (bottom-dwelling) invertebrates and plants. . Direct discharges of ammonia-rich wastes, such as raw sewage and dairy effluent can be particularly damaging.⁴¹⁴

One of the major impacts of nutrient discharge on waterways is 'over-fertilisation' of aquatic plants, leading to excessive plant growth, algal blooms and the depletion of oxygen dissolved in the water.⁴¹⁵ 'Algal blooms' refer to an extremely rapid increase of

⁴¹² While urine can act as a nitrogen fertiliser, it can also seep down into groundwater or wash into streams. Phosphate, on the other hand, clings to soil particles and gets into waterways as a result of erosion.⁴¹² PCE, *Water Quality in New Zealand*, pp31-2

⁴¹³ PCE, *Water Quality in New Zealand*, p32

⁴¹⁴ PCE, *Water Quality in New Zealand*, p32

⁴¹⁵ There are three types of aquatic plants: *periphyton*, *macrophytes*, and *phytoplankton*. Periphyton grow on the surfaces under water and forms the film or slime covering stones and wood streams, and can grow on, smother or kill larger plants. Excessive growth of periphyton carpets the bottom of lakes and rivers,

phytoplankton (plants that float freely in waterways) that form in slow moving water as a result of high nutrient enrichment. 'Algal blooms' discolour water, making it a vivid green, brown or red, while some cyanobacteria produce poisonous toxins that reach dangerous levels for days during a bloom.⁴¹⁶ 'Algal blooms' make food gathering dangerous and cooking will not destroy its toxins in food. Eels, for example, become poisonous once they habituate waters infested with algae.⁴¹⁷ Similarly, oxygen depletion caused as a result of excessive plant growth impacts fish and other animals in rivers and lakes.⁴¹⁸ There are many ways of measuring nutrients and their impacts in water. Dr Wright outlines two: 1) indicators of nutrient status; and 2) indicators of ecosystem 'health'.

1) Indicators of nutrient status:

Both nitrogen and phosphorus can be measured as totals or in their dissolved forms.

Dissolved inorganic nitrogen (DIN): DIN includes nitrate, ammonia, and other forms of inorganic nitrogen. It is nitrogen available for plant growth.
Total nitrogen (TN): TN is the total amount of nitrogen present in water. It includes nitrogen from dead plants and animals as well as DIN. When dead plants and animals decay, they release nitrogen into the water, so it becomes available for plant growth.
Dissolved reactive phosphorus (DRP): DRP is the amount of phosphorus that has dissolved in water and is therefore readily available for plant growth.
Total phosphorus (TP): TP is the total amount of phosphorus present in water. It includes the phosphate that is stuck to sediment as well as DRP. TP is a particularly

degrading swimming and fishing spots and driving away creatures that spawn, feed, and shelter on the bed. Macrophytes generally root at the bottom and send stem leaves up towards the light; some emerge above the water like rushes in a wetland, others have leaves floating on the surface and still others are entirely submerged. Phytoplankton, on the other hand, float freely in the water, and are not attached to surfaces under the water. Rivers act as 'conduits' for nutrient loads to water bodies downstream that respond adversely to nutrient loading. In lakes, for example, nutrient enrichment promotes growth of phytoplankton, rendering lake waters turbid and reducing light penetration (desirable, sediment-stabilising) benthic plants.⁴¹⁵ PCE, *Water Quality in New Zealand*, p33; Davies-Colley, 'River Water Quality in New Zealand', p440

⁴¹⁶ PCE, *Water Quality in New Zealand*, p34

⁴¹⁷ PCE, *Water Quality in New Zealand*, p34

⁴¹⁸ PCE, *Water Quality in New Zealand*, p36

important measure for lakes, because over time phosphate that is stuck to sediment can be released and become available for plant growth

2) Indicators of ecosystem 'health'

Dissolved oxygen (DO): The amount of dissolved oxygen gas in water is usually reported as a percentage of the maximum possible concentration – 'saturation'. Trout are affected when saturation drops below 80 per cent; many native fish and invertebrates are affected below 50 per cent, and killed if oxygen depletion persists.

Trophic Level Index (TLI): The nutrient (trophic) status of a lake is often assessed using the TLI – a composite index that amalgamates measures of nitrogen, phosphorus, chlorophyll and the clarity of the water. A low TLI value (2 or less) indicates the lake has low levels of nutrients and plant growth, as would be expected of many New Zealand lakes in their natural state. A high TLI (4 or above) indicates the lake is enriched with nutrients and likely to experience growth of macrophytes and algae.

Macroinvertebrate Community Index (MCI): The MCI is an ecological index that measures the variety of insects, worms, snails, and so on, that are present in a stream or river. An MCI score of less than 80 indicates poor ecological health while a score of 120 or more indicates excellent ecological health.

3.2.3 'Natural vulnerability' to water pollution

The impacts of the three pollutants described above also depend on what Dr Jan Wright calls the 'natural vulnerability' of waterways.⁴¹⁹ Lakes, rivers and streams, wetlands, estuaries, and aquifers are different receiving environments, and some catchments are naturally more sensitive than others: rainfall, amount of forest cover, steepness and the types of soil and rock present all influence how vulnerable a catchment is to water pollution. For example, a catchment with exposed steep slopes can be vulnerable to sedimentation, while a flatter-gradient catchment with stony or gravelly soils can be vulnerable to nitrogen leaching into groundwaters.⁴²⁰ Lakes are generally more vulnerable to pollution than rivers as they act like 'sinks', accumulating pollutants that

⁴¹⁹ PCE, *Water Quality in New Zealand*, p39

⁴²⁰ PCE, *Water Quality in New Zealand*, p39

feed down the catchment, especially sediment and phosphate. Lakes also provide ideal conditions for weeds and algae to grow. As a result, lack of oxygen is a major issue in lakes with high nutrient levels and excessive plant growth; oxygen levels fluctuate wildly and dramatic overnight drops can kill invertebrates and fish.⁴²¹ Rivers and streams are less vulnerable, depending, on the 'flow regime'. That is, how much water is in a river or stream, how fast it moves, and whether its flow is constant or fluctuates.⁴²² Small, stable flows increase the vulnerability of rivers, allowing sediment, and aquatic plants to build up. Larger and more variable flows, on the other hand, reduce vulnerability by carrying sediment and weeds away and diluting any nutrients. Floods – an extreme example of larger and more variable flows – can scour out sediment, weeds rooted in the sediment, and aquatic plants clinging to rocks, but can also wash soil into land, adding more sediment and phosphorus.⁴²³ Taking water out of rivers for irrigation and other purposes reduces flows and dilution, making rivers more vulnerable to pollutants.

In summer, rivers and streams are more vulnerable to nutrient enrichment. Algae and weed growth occur at this time due to less rainfall. The result is fewer flushing flows and high concentrations of nutrients, while more sunlight warms the water and results in more photosynthesis.⁴²⁴ Because Northland is prone to both droughts and floods, river flows vary considerably with rainfall with high intensity storms causing flash floods, while prolonged dry spells lead to very low flows in many smaller catchments. Moreover, because Northland is dominated by deeply weathered geology and fine clay soils, its rivers are generally characterised as being slow flowing and muddy.⁴²⁵

Wetlands differ in vulnerability to pollutants. Alpine wetlands (tarns and bogs) receive all water from rainfall and therefore there is no easy pathway for pollutants to water. Lowland wetlands (swamps and marshes) receive water from streams, rivers, or lakes as well as rainfall and thus receive nutrients from the wider catchment. As a result,

⁴²¹ PCE, *Water Quality in New Zealand*, p40

⁴²² PCE, *Water Quality in New Zealand*, p41

⁴²³ PCE, *Water Quality in New Zealand*, p41

⁴²⁴ PCE, *Water Quality in New Zealand*, p41

⁴²⁵ Northland Regional Council, *River water quality and ecology in Northland, State and Trends 2007-2011*, p7

lowland wetlands, unlike alpine wetlands, can be more resilient to nutrient pollution, but only to a point. As nutrient levels increase, introduced weeds and animals can ‘out-compete’ the native species and, if nutrient levels reach high levels, native plants can be smothered by algae, making these lowland wetlands shift, sometimes irreversibly, from being resilient to polluted.⁴²⁶ Like lakes, aquifers (underground lakes that are fed by water soaking through the ground) are still and contained, making them vulnerable to nitrate and pathogen accumulation (though pathogen die off over time). However, hidden from sunlight, weeds and algae cannot grow in aquifers.⁴²⁷

3.3 Water quality: Northland

3.3.1 Background: Long term environmental changes in Northland

Northland, like much of the country, has experienced significant environmental change since 1840.⁴²⁸ Alexander explains that most of the forest, fernland and swampland present in 1840 has since disappeared; replaced by grass and introduced trees, while waterways and harbours have changed ‘so completely as to not leave any traces of the former environment’.⁴²⁹ Alexander separates environmental change in Northland since 1840 into four distinct periods: ‘The Stagnation Years, 1840-1870’, ‘The Exploitation Years, 1870-1910’, ‘The Transition Years, 1910-1945’, and ‘Since the Second World War’. At 1840, the environmental impacts of both Māori and Pākehā were minimal. Apart from small clearances around various harbours and coastal land, Northland remained largely forest. Following the signing of Te Tiriti, the Northland economy entered something of a slump and faced population decline as the focus of economic activity shifted from the Bay of Islands and Hokianga towards Auckland and further South. Māori reverted to a subsistence existence and the few Pākehā who remained survived in isolated communities. As a result, there was little change to the physical environment. However, Alexander does note that Pākehā settlers had little regard for Māori laws relating to wāhi tapu and in this way, ‘while economic development may have been slight, other impacts caused by the very presence of Europeans were felt’.⁴³⁰

⁴²⁶ PCE, *Water Quality in New Zealand*, p45

⁴²⁷ PCE, *Water Quality in New Zealand*, p47

⁴²⁸ Alexander, *Land-based Resources, Waterways, and Environmental Impacts*, Wai 1040 #A7

⁴²⁹ Alexander, *Land-based Resources, Waterways, and Environmental Impacts*, Wai 1040 #A7, p21

⁴³⁰ Alexander, *Land-based Resources, Waterways, and Environmental Impacts*, Wai 1040 #A7, p62

It was only in the 1860s, according to Alexander that ‘the era of major resource exploitation of the region began’.⁴³¹ In contrast to the ‘stagnation years’, the last 30 or 40 years of the nineteenth century significantly shaped the contemporary Northland environment. These ‘exploitation years’, as Alexander calls them, represented the ‘greatest change’ in Northland’s physical environment and still holds a legacy today.⁴³² During this time, timber milling, gum digging and coal mining were at their peak, while the Crown surveyed and cut up land it had purchased into farm sections.⁴³³ The timber industry emerged as Northland’s major economic driver and a large portion of Northland’s forests were affected by logging. The acceleration of economic activity based on these extractive industries had major environmental impacts, and provided little in the way of economic benefit for Māori.⁴³⁴

Alexander describes how, by the early twentieth century, the kauri industry and gum digging went into decline. Agriculture, by contrast, emerged as a central element of the Northland economy, with the establishment of dairy factory cooperatives and a railway. The expansion of agriculture led to further forest clearance, swamp drainage and the conversion of gumfields into grassland. Since 1945, agriculture has remained central to the Northland economy. Alexander describes the period after the 1950s as the ‘fertiliser era’, as agricultural development was increasingly fuelled by the application of fertiliser as well as supporting infrastructure, such as roads and dairy factories. The second half of the twentieth century has also seen the emergence of tourism and pine as key industries in Northland.

In the final section of the overview, Alexander describes how agricultural intensification in the last decades of the twentieth century—which has involved extensive land drainage and irrigation—has had major impacts on water quality. In rural areas, the lack of an industrial base has led to urban migration where the population is concentrated in Whāngārei, for example which has led to further pressures on water supply and sewage disposal. Today, several issues relating to water quality and fisheries

⁴³¹ Alexander, *Land-based Resources, Waterways, and Environmental Impacts*, Wai 1040 #A7, p54

⁴³² Alexander, *Land-based Resources, Waterways, and Environmental Impacts*, Wai 1040 #A7, pp.22, 110

⁴³³ Alexander, *Land-based Resources, Waterways, and Environmental Impacts*, Wai 1040 #A7, p110

⁴³⁴ Alexander, *Land-based Resources, Waterways, and Environmental Impacts*, Wai 1040 #A7, p110

remain. While industrial shutdowns and water treatment upgrades have relieved pressures on water quality in some cases, over a similar period intensive agricultural development has increased. The lower reaches of rivers therefore no longer meet water quality standards. Similarly, demand for water irrigation has increased, particularly from the agricultural sector, while the long-term impacts of riparian vegetation removal has contributed to erosion, flooding, increased stream temperature and a reduction in habitat for aquatic life.

3.3.2 Northland's current water quality and monitoring

Like much of the country, the water quality of Northland's rivers varies greatly across the region. Northland has more than 24,000 river tributaries within small catchments. These are generally shallow, short run and narrow with the exception of the Wairoa River, which is Northland's largest river. Some waterways are pristine, especially those that are located in upper native forest catchments, while most low-land catchments, in particular those in agricultural and urban areas, are no longer suitable for swimming. These low-land rivers are generally in poor health and contain higher levels of sickness-causing organisms. The Northland Regional Council lists a number of 'trouble spots', including the Wairua, Whakapara, Mangakāhia, Awanui, and Waitangi rivers. In line with national trends, the three water contaminants of greatest concern identified by the Northern Regional Council are faecal pathogens, sediment and nutrients.⁴³⁵ The 2012 'State of the Environment' report identified sediment in particular as 'probably the most widespread and serious contaminant of water in Northland'.⁴³⁶

The NRC monitors water quality through its Annual Monitoring Reports, the River Water Quality Monitoring Network (RWQMN) and regional State of the Environment reports. The reports draw data from testing sites across Northland, including within the selected river systems for this report. At the selected sites, monthly water quality sampling is carried out and samples are analysed for a range of chemicals and physical parameters: including temperature, dissolved oxygen, conductivity, water clarity, turbidity, *E. coli*, dissolved reactive phosphorus, total phosphorus, ammonical nitrogen,

⁴³⁵ Northland Regional Council, *State of the Environment Report 2012*, pp153-154

⁴³⁶ Northland Regional Council, *State of the Environment Report 2012*, p154

total nitrogen and pH.⁴³⁷ In most cases, the reports compare these parameters to the 2000 Australian and New Zealand Environment and Conservation Council (ANZECC) ‘trigger’ guidelines for aquatic ecosystems and the 2002 recreational bathing guidelines produced by the Ministry for the Environment (MfE), with some exceptions (summaries of these parameters and the guidelines are outlined in table 4). The NRC also undertakes macroinvertebrate and habitat monitoring in the selected sites. Macroinvertebrate (which includes insects, snails, crustaceans, and worms that live in Northland’s rivers and streams) ‘show varying degrees of sensitivity to water quality and the condition of habitat. Because of this sensitivity, they are good indicators of the state of fresh water ecosystems’.⁴³⁸

Table 4: Parameters, descriptions and trigger values for water quality

Parameter	Definition/Description ⁴³⁹	Trigger values: - ANZECC 2000 lowland river/upland rivers *other trigger values
Temperature	Most creatures can survive in water temperatures ranging between 10 degrees Celsius and 25 degrees Celsius. If the temperature rises or falls outside that range, the creatures may die or move away. Cool water contains the most dissolved oxygen, which is why trees planted along streams and rivers help keep streams healthy for fish and stream life. Hot summer temperatures can heat the water to the point at which fish and other aquatic life have trouble breathing and may suffocate	<25°C
Dissolved oxygen (% Saturation)	The oxygen content of water. Dissolved oxygen is important for fish and other aquatic life to breathe. For example, water quality guidelines recommend that water should be more than 80 per cent saturated with DO for aquatic plants and animals to be able to live in it. Its deficiency is a sign of an unhealthy river	98 – 105 / 99 – 103 (<80) ⁴⁴⁰
Conductivity	An indirect measure of charged particles (electrolytes) in water. For example, salt water has high, and freshwater low, conductivity. Conductivity can be used as an indicator of nutrient enrichment	

⁴³⁷ These, and the guideline trigger values, are outlines in: Northland Regional Council, *Northland River Water Quality Monitoring Network Report, 2008-2009*, (Northland: Northland Regional Council, 2010), p3

⁴³⁸ Northland Regional Council, *Annual Environmental Monitoring Report 2001-2002*, p25

⁴³⁹ Unless referenced to another source, the definitions and descriptions here are drawn from the Land Air Water Aotearoa (LAWA) glossary page: <http://www.lawa.org.nz/Learn>

⁴⁴⁰ Resource Management Act (1991 No. 69), Third Schedule

Water clarity (m)	Water clarity refers to the ability of light to travel through water and has two important aspects: light penetration and visual clarity. Light penetration is important as it controls the amount of light in the water needed for aquatic plants to grow. Visual clarity indicates how much suspended sediment (soil) is in the water	> 0.6 / > 0.8 *Visual clarity greater than 1.6 ⁴⁴¹
Turbidity (NTU)	Turbidity is an index of cloudiness of water. It measures the scattering of light caused by fine particles in our waterways. Water with high turbidity can be caused by heavy rainfall, disturbance of the riverbed or bank by heavy machinery or through direct discharges. Turbidity is measured in nephelometric turbidity units (NTU)	< 5.6 / < 4.1
<i>E coli</i>	<i>E. coli</i> (Escherichia coli) is a type of bacteria commonly found in the intestines of warm-blooded mammals (including people) and birds. <i>E. coli</i> naturally occurs in freshwater and is not usually harmful in itself. However, high concentrations of this bacteria exceeding water quality guidelines indicate faecal contamination which can be harmful to humans	
Dissolved reactive phosphorus (mg/L)	Dissolved reactive phosphorus (DRP) is the amount of phosphorus dissolved in water and is most immediately and readily absorbable for plant and algae growth	< 0.01 / < 0.009
Total phosphorus (mg/L)	Total phosphorus is a measure of all forms of phosphorus that are found in a sample, including dissolved and particulate, organic and inorganic. High levels of total phosphorus in water can come from either wastewater or run-off from agricultural land. Too much phosphorus can encourage the growth of nuisance plants such as algal blooms	< 0.033 / < 0.026
Ammoniacal nitrogen (mg/L)	Covers two forms of nitrogen: ammonia and ammonium. Animal waste (particularly from humans and farmed animals such as sheep and cows) is the major source of ammoniacal nitrogen in New Zealand waterways. If ammoniacal nitrogen reaches very high concentrations it can become toxic under certain temperature and pH conditions	< 0.021 / < 0.01
Total Nitrogen (mg/L)	Total Nitrogen is a measure of all organic and inorganic forms of nitrogen that are found in a sample. High total nitrogen, like total phosphorus can be a cause of eutrophication in lakes, estuaries and coastal waters and can cause algal blooms	< 0.614 / < 0.295
pH (0-14)	The degree of acidity or alkalinity as measured on a scale of 0 to 14 where 7 is neutral, less than 7 is more acidic, and greater than 7 is more alkaline. Most natural waters fall within the slightly alkaline range between pH 6.5 to 8.0 and in the absence of contaminants most waters maintain a pH value that varies only a few tenths of a pH unit	7.2 – 7.8 / 7.3 – 8.0

3.3.3 Results of water quality monitoring, 2006 – 2011

Using data collected by the RWQMN, the NRC has published ‘State and Trends’ reports on water quality in Northland Rivers for the years 2006, 2008-2009, and 2010. The aim

⁴⁴¹ Northland Regional Council, *The Regional Water and Soil Plan*, 2007

of these reports is to provide information about the state of Northland's rivers and to look at long-term trends in water quality over time.

3.3.3.1 RWQMN: State and Trends, 2006

The report for the year 2006 found that many of Northland's rivers occasionally had poor water quality while some consistently had poor water quality.⁴⁴² The quality of water largely related to the surrounding land use, a finding consistent with national trends and other regional studies. For example, sites in catchments dominated by native forests had the best water quality, followed closely by those with catchments dominated by exotic forests, while the worst water quality was at sites of intensive pastoral farming and urban development. As noted in the NRC's Annual Environmental Monitoring report for 2005 and 2006, the RWQMN report found that extreme high and low dissolved oxygen (DO) levels were of concern and further investigation carried out in 2007 showed large daily fluctuations in dissolved oxygen at un-shaded sites with high plant biomass and significant drops in DO at night when plants respire. The report suggested that in some situations riparian planting would create enough shade over the stream to reduce photosynthetic respiration, while riparian fencing would stabilise the dissolved oxygen levels as well as reducing inputs of faecal pathogens.

The report found that many sites occasionally had water quality indicator levels outside the 'trigger values' for the protection of aquatic ecosystems (under the 2000 Australia New Zealand Environment and Conservation Council ANZECC guidelines, see section 3.4.1) and exceeding the recreational bathing guidelines (under the 2002 Ministry for the Environment guidelines). The exceptions were those sites situated in catchments near native or exotic forests, where water was relatively pristine.⁴⁴³ The report did find several positive changes in water quality in the 'trends analysis' between 1996 to 2006. There were, for example, decreasing levels of dissolved reactive and total phosphorus, oxides of nitrogen (NNN) and ammoniacal nitrogen at particular sites. Other sites, including the Mangakāhia, exhibited decreasing trends in several nutrient parameters. The report concluded that the decreasing trends in ammoniacal nitrogen at several

⁴⁴² Northland Regional Council, Northland River Water Quality Monitoring Network: State and Trends 2006, p64

⁴⁴³ NRC Northland River Water Quality Monitoring Network: State and Trends 2006, p64

sites, was a 'good indication of improvements in point source discharges'.⁴⁴⁴ There were also improvements in water clarity at three sites (Waipapa River, Mangahahuru, and Mangere Stream), suggesting improvement in point source discharges upstream in these sites. However, in contrast to these positive trends, there were increases in dissolved oxygen, pH levels, *E. coli* levels, and dissolved reactive and total phosphorus. All of these were issues of particular concern, the report concluded.

Overall, the 2006 report found that Northland's rivers have 'severely deteriorated water quality, particularly in pastoral farming catchments, while water is best in native forest catchments'.⁴⁴⁵ Trend analysis in the ten year period between 1996 and 2006 suggested improvements in relation to point source discharges, while the region needed to shift focus to reducing the impact on non-point or diffuse surface runoff on water quality.⁴⁴⁶

3.3.3.2 RWQMN: State and Trends, 2008-2009

The 2008-2009 RWQMN report provides details on each river site monitored.⁴⁴⁷ The summary below provides an overview of the report's findings relevant to the river systems discussed in this report (each are explored in more detail in Chapters Four through Eight). Results for the sites are also summarised in the tables below. These include the median, range and percentage of sampling occasions that complied with relevant guidelines for the 12 sampling occasions. An asterisk in the table below denotes a median value outside the recommended guideline.

In Whangaroa

The Kaeo River, beginning north of Waipapa and flowing north into the Whangaroa Harbour, is the major waterway in the Whangaroa river system identified for this study (the subject of Chapter Four). The sampling site is located below the township of Kaeo, just before the influence of salt water. According to the study, approximately half the catchment is indigenous forest and scrub, with the remainder in pine forests or pastoral farming. The underlying geology of the river is soft sediment.

⁴⁴⁴ NRC Northland River Water Quality Monitoring Network: State and Trends 2006, p65

⁴⁴⁵ NRC Northland River Water Quality Monitoring Network: State and Trends 2006, p65

⁴⁴⁶ NRC Northland River Water Quality Monitoring Network: State and Trends 2006, p65

⁴⁴⁷ Northland Regional Council, Northland River Water Quality Monitoring Network Report, 2008-2009

The 2008-09 report found that water quality in the Kaeo River had improved from the previous year and all nutrient parameters reached their trigger values on all sampling occasions. However, consistent with results in the previous year, *E. coli* and turbidity compliance was still poor. The report also found that pH levels improved with levels falling within the trigger range.⁴⁴⁸ The report could not, however, determine actual trends due to insufficient data.

Table 5: The sampling site at Kaeo River

Parameter	Median	Range	% comply with guideline
Temperature (deg. cel.)	17.6	10.5 - 24.6	
Dissolved oxygen (% Sat.)	96.4*	78.2 - 109.6	25
Conductivity (mSm)	13.8	11.7 - 14.9	
Water clarity (m)	0.90	0.5 - 1.5	75
Turbidity (NTU)	6.1*	2.6 - 16.4	50
<i>E. coli</i> (n/100mL)	538.5	86 - 2613	50
Dissolved reactive phosphorus (mg/L)	0.005	0.005	100
Total phosphorus (mg/L)	0.016	0.01 - 0.025	100
Ammoniacal nitrogen (mg/L)	0.005	0.005 - 0.02	100
Total nitrogen (mg/L)	0.254	0.064 - 0.502	100
pH	7.2	6.9 - 7.3	67

(Source: NRC Northland River Quality Monitoring Network Report)

In the Bay of Islands

The Waiharakeke River at Stringer Road is another sampling site, sitting within the Bay of Islands river system (the subject of Chapter Five). The Waiharakeke River, originating in the Matatau forest, flows north through a mixture of pine forests, pastoral land and indigenous forest before reaching Moerewa. It is a tributary of the Kawakawa River, which flows out into the Waikare inlet in the Bay of Islands.⁴⁴⁹

The results of the 2008-09 report indicate that the Waiharakeke River's nutrient and turbidity levels often exceed trigger values; dissolved reactive and total phosphorus compliance was particularly poor with only three samples complying with the trigger values. Turbidity compliance was the same as the previous year, with only one sample meeting the trigger value. Bacterial levels were lower than the previous years, shifting

⁴⁴⁸ NRC, *Northland River Water Quality Monitoring Network Report*, 2008-2009, p15

⁴⁴⁹ NRC, *Northland River Water Quality Monitoring Network Report*, 2008-2009, p23

from 50 per cent compliance to 83 per cent.⁴⁵⁰ Like the Kaeo River, trend analysis was not provided for the Waiharakeke River due to insufficient data.

Table 6: The sampling site at Waiharakeke River

Parameter	Median	Range	% comply with guideline
Temperature (deg. cel.)	15.3	10.7 - 21.8	
Dissolved oxygen (% Sat.)	93*	70.4 - 101.1	18
Conductivity (mSm)	15.7	10.2 - 18.6	
Water clarity (m)	0.67	0.4 - 1.21	55
Turbidity (NTU)	10.3*	4.1 - 25	8
<i>E. coli</i> (n/100mL)	273.5	121 - 1565	83
Dissolved reactive phosphorus (mg/L)	0.016*	0.005 - 0.052	27
Total phosphorus (mg/L)	0.042*	0.025 - 0.078	25
Ammoniacal nitrogen (mg/L)	0.020	0.005 - 0.07	67
Total nitrogen (mg/L)	0.522	0.212 - 0.822	67
pH	7.4	6.2 - 7.5	75

(Source: NRC Northland River Quality Monitoring Network Report)

In Southern Bay of Islands/Northern Whāngārei

There are five testing sites that sit within the Southern Bay of Islands/North Whāngārei river system. These are: Whakapara River, Waiotū River at SH1, Wairua River at Purua, Mangahuru Stream at Main Road, and Hātea River.

The Whakapara River originates from the ranges east of Hikurangi and Whakapara, eventually joining the Waiotū River, forming the headwaters of the greater Wairua River. The Whakapara River cuts through hard sediments formed from faulted greywacke, along a relatively low gradient. The site is located in a beef and sheep farm near State Highway 1, while the upstream catchment is dominated by forests hills and pastoral farming.

⁴⁵⁰ NRC, *Northland River Water Quality Monitoring Network Report*, 2008-2009, p23

Table 7: The sampling site at Whakapara River

Parameter	Median	Range	% comply with guideline
Temperature (deg. cel.)	15.4	11 - 21.6	
Dissolved oxygen (% Sat.)	98.1	69.1 - 124.2	25
Conductivity (mSm)	9.0	8.3 - 10.2	
Water clarity (m)	0.79	0.48 - 2.62	73
Turbidity (NTU)	6.5*	3.1 - 35	42
<i>E. coli</i> (n/100mL)	148.5	30 - 2098	92
Dissolved reactive phosphorus (mg/L)	0.021*	0.01 - 0.032	18
Total phosphorus (mg/L)	0.044*	0.032 - 0.154	17
Ammoniacal nitrogen (mg/L)	0.015	0.005 - 0.12	83
Total nitrogen (mg/L)	0.497	0.112 - 1.197	50
pH	7.1*	6.5 - 7.9	42

(Source: NRC Northland River Quality Monitoring Network Report)

The report states that the water quality in the Whakapara River during 2008 and 2009 was poor with high nutrient and turbidity levels. Total phosphorus and dissolved reactive phosphorus compliance was poor with only two samples meeting respective trigger values. Turbidity, dissolved oxygen (per cent) and pH also failed to meet respective trigger values on most sampling occasions. In terms of long term trends, the report found decreasing nitrate nitrogen, dissolved reactive phosphorus and total phosphorus concentrations, which are 'positive trends' possibly due to improved land management practises.⁴⁵¹ There was, however, an increase in total kjeldahl nitrogen (that is, the sum of organic nitrogen, ammonia and ammonium).

The Waiotū River at SH1, the third testing site within the Southern Bay of Islands/northern Whāngārei river system is a hard sediment bottomed river derived from a predominately agricultural catchment. The Waiotū River originates from the hills to the northeast of SH1 between Kawakawa and Whāngārei, and runs into the Whakapara River to form the greater Wairua River.

⁴⁵¹ NRC, *Northland River Water Quality Monitoring Network Report*, 2008-2009, pp17-18

Table 8: The sampling site at Waiotū River

Parameter	Median	Range	% comply with guideline
Temperature (deg. cel.)	15.2	10.6 - 21.2	
Dissolved oxygen (% Sat.)	92*	67.1 - 105.9	8
Conductivity (mSm)	9.6	8.9 - 10.9	
Water clarity (m)	0.71	0.39 - 1.6	82
Turbidity (NTU)	9.7*	4.6 - 34	25
<i>E. coli</i> (n/100mL)	283.5	134 - 1850	75
Dissolved reactive phosphorus (mg/L)	0.022*	0.01 - 0.031	18
Total phosphorus (mg/L)	0.067*	0.024 - 0.212	8
Ammoniacal nitrogen (mg/L)	0.03*	0.005 - 0.1	42
Total nitrogen (mg/L)	0.665*	0.172 - 1.207	50
pH	7.1*	6.6 - 7.3	42

(Source: NRC Northland River Quality Monitoring Network Report)

The 2008-09 results for water quality were consistent with the previous year: the medians for the majority of water quality parameters did not meet their respective trigger values. For example, total phosphorus and dissolved oxygen compliance was poor. Trend analysis showed a decrease in nitrate nitrogen, suggesting a reduction in fertiliser use in the catchment. However there was an increase in turbidity levels. The report claimed that the increasing trend in turbidity indicated increased erosion in the catchment and it suggested that excluding stock from waterways and planting riparian margins would improve stream bank stability and reduce sediment loading into waterways.

The Wairua River above Whāngārei flows west into the Kaipara Harbour and is one of the major tributaries of the greater Wairoa River. The Wairua River site at Purua is one of four sites in Northland that are part of the NRWQN administered by NIWA. The river cuts through hard sediment along a low gradient and the sampling site is near predominantly pastoral land.

Table 9: The sampling site at Wairua River

Parameter	Median	Range	% comply with guideline
Temperature (deg. cel.)	16.7	11.7 - 22.6	
Dissolved oxygen (% Sat.)	94.5*	76.6 - 118	8
Conductivity (mSm)	12.9	10.8 - 14.1	
Water clarity (m)	0.8	0.16 - 2.34	83
Turbidity (NTU)	8*	3 - 39.5	17
<i>E. coli</i> (n/100mL)	68.6	29.5 - 2419.2	83
Dissolved reactive phosphorus (mg/L)	0.019*	0.017 - 0.029	0
Total phosphorus (mg/L)	0.06*	0.033 - 0.14	10
Ammoniacal nitrogen (mg/L)	0.026*	0.004 - 0.146	50
Total nitrogen (mg/L)	0.528	0.226 - 1.29	60
pH	7.0*	6.6 - 7.7	42

(Source: NRC Northland River Quality Monitoring Network Report)

Elevated turbidity, phosphorus, and nitrogen results in the report for 2008-2009 indicate that the Wairua is polluted. Medians for six of the nine water quality parameters did not meet their respective trigger values: dissolved oxygen compliance was poor, and extreme range in oxygen levels found in this river is a likely result of large beds of aquatic plants in the river which are in turn a result of high nutrient concentrations. In the previous ten years, according to trend data, there were several positive trends, including decreasing ammoniacal nitrogen, nitrate nitrogen and total nitrogen. However, nitrogen levels remained high and trigger value compliance was poor. The report concluded that excluding stock from waterways and reducing fertiliser use in the catchment would further reduce nutrient levels in the river. Trend analysis also found that pH levels were increasing, a 'beneficial trend' since pH was often below the optimum range for the protection of aquatic ecosystems.⁴⁵²

Mangahahuru Stream at Main Road is another sampling site and sits within the southern Bay of Islands/northern Whāngārei river system selected for this study. A small tributary of the Wairua River, the Mangahahuru stream begins in *pinus radiata* forests to the southeast of Hikurangi. The sampling site is located in the upper catchment where predominant land use is exotic forestry.

⁴⁵² NRC, Northland River Water Quality Monitoring Network Report, 2008-2009, p22

Table 10: The sampling site at Mangahahuru Stream

Parameter	Median	Range	% comply with guideline
Temperature (deg. cel.)	14.3	10.7 - 20.4	
Dissolved oxygen (% Sat.)	96.3*	66.3 - 108.9	33
Conductivity (mSm)	9.8	9.1 - 12.4	
Water clarity (m)	1.11	0.92 - 1.6	100
Turbidity (NTU)	6.0*	3.6 - 14.6	25
<i>E. coli</i> (n/100mL)	213.5	52 - 862	83
Dissolved reactive phosphorus (mg/L)	0.005	0.005 - 0.014	73
Total phosphorus (mg/L)	0.079*	0.014 - 0.204	33
Ammoniacal nitrogen (mg/L)	0.015	0.005 - 0.04	75
Total nitrogen (mg/L)	0.250	0.097 - 0.442	100
pH	7.0*	6.8 - 7.2	33

(Source: NRC Northland River Quality Monitoring Network Report)

The water clarity and total nitrogen levels were good in the stream and both complied with trigger values on sampling occasions. However, the compliance level for phosphorus and turbidity was poor, a result of erosion caused by harvesting pine plantations in the catchment. Macroinvertebrate community index data indicates that the Mangahahuru Stream is mildly polluted.⁴⁵³ Only added as a monitoring site by RWQMN in 2005-06, there was insufficient data to undertake trend analyses.

The Hātea River begins as the Waitaua River which originates from Springs Flat area just north of Kamo and flows southeast through Tikipunga and Mair park then out into the Whāngārei Harbour. There is a mix of urban, native forest and pastoral land in the catchment. The first year of results indicated that there were moderately high nutrient and bacterial levels in the Hātea River. Water clarity was the only parameter to meet the trigger value on all sampling occasions. Total nitrogen compliance was poor with only 36 per cent of the samples meeting the lowland trigger value of <0.614 mg/l. Like many other RWQMN sites, dissolved oxygen compliance was also poor with only three samples falling within the trigger value range during the season. There was insufficient data to undertake trend analyses

⁴⁵³ NRC, *Northland River Water Quality Monitoring Network Report*, 2008-2009, p13

Table 11: The sampling site at Hātea River

Parameter	Median	Range	% comply with guideline
Temperature (deg. cel.)	15.5	11.3 - 23.4	
Dissolved oxygen (% Sat.)	102.6	73.5 - 112.8	27
Conductivity (mSm)	52.4	15.4 - 2339.4	
Water clarity (m)	1.21	0.87 - 2.6	100
Turbidity (NTU)	4.0	2.6 - 11.2	73
<i>E. coli</i> (n/100mL)	464	145 - 677	64
Dissolved reactive phosphorus (mg/L)	0.005	0.005 - 0.068	64
Total phosphorus (mg/L)	0.023	0.01 - 0.25	73
Ammoniacal nitrogen (mg/L)	0.010	0.005 - 0.57	82
Total nitrogen (mg/L)	0.633*	0.392 - 0.884	36
pH	7.7	7.4 - 8	73

(Source: NRC Northland River Quality Monitoring Network Report)

In inland Whāngārei/Mangakāhia

Mangakāhia River at Twin Bridges and Titoki are two separate sampling sites on the Mangakāhia River in the inland Whāngārei/Mangakāhia river system (the subject of Chapter Seven) The Titoki site is one of the four Northland sites that are part of the NRWQN administered by NIWA. The Mangakāhia River originates from Mataraua Forest and flows southwest until it reaches Wairua Bay. The Twin Bridges sampling site lies at the confluence of the Awarua and Mangakāhia Rivers midway through the catchment, while the Titoki site is in the lower reaches of the Mangakāhia River near Titoki Bridge. The upstream catchment is a mixture of plantation forestry, beef and sheep farming, with an acidic, volcanic underlying geology. As the Mangakāhia reaches Titoki, the surrounding land use is largely beef and dairy farming with an underlying geology of acidic, volcanic rock.⁴⁵⁴

Across both sites (tables provided below), results differed for the years 2008-09. At Twin Bridges, nitrogen levels were well below trigger values and phosphorus levels were also good, with the median for total and dissolved reactive phosphorus complying with the trigger values. Furthermore, trend analysis showed that there is a significant decrease in total phosphorus in the river. However, the median of dissolved oxygen and pH were above their trigger values. The high dissolved oxygen levels occurred in

⁴⁵⁴ NRC, *Northland River Water Quality Monitoring Network Report*, 2008-2009, pp7, 19

summer during lower flows, when photosynthesis rates were greater.⁴⁵⁵ Downstream at Titoki, water quality was worse, due to the surrounding land use, which is predominantly pastoral. However, trend analysis found that there was a decrease in ammoniacal nitrogen, nitrite/nitrate nitrogen and total phosphorus.⁴⁵⁶

Table 12: The sampling site at Mangakāhia River at Twin Bridges

Parameter	Median	Range	% comply with guideline
Temperature (deg. cel.)	16.5	10.9 - 22.6	
Dissolved oxygen (% Sat.)	105.6*	91.9 - 121	8
Conductivity (mSm)	11.3	8.2 - 14	
Water clarity (m)	1.82	0.46 - 3.26	91
Turbidity (NTU)	3.3	1 - 36	67
<i>E. coli</i> (n/100mL)	109.0	20 - 880	75
Dissolved reactive phosphorus (mg/L)	0.005	0.005 - 0.012	91
Total phosphorus (mg/L)	0.010	0.005 - 0.049	83
Ammoniacal nitrogen (mg/L)	0.005	0.005 - 0.02	100
Total nitrogen (mg/L)	0.209	0.076 - 0.492	100
pH	7.9*	7.2 - 8.5	50

(Source: NRC Northland River Quality Monitoring Network Report)

Table 13: The sampling at Mangakāhia River at Titoki

Parameter	Median	Range	% comply with guideline
Temperature (deg. cel.)	16.6	11.8 - 23.3	
Dissolved oxygen (% Sat.)	96.2*	90.6 - 100.8	17
Conductivity (mSm)	14.6	12 - 17.1	
Water clarity (m)	0.73	0.03 - 2	75
Turbidity (NTU)	5.9*	2.5 - 62.5	50
<i>E. coli</i> (n/100mL)	216.5	125.9 - 1732.9	92
Dissolved reactive phosphorus (mg/L)	0.007	0.005 - 0.012	83
Total phosphorus (mg/L)	0.022	0.013 - 0.149	70
Ammoniacal nitrogen (mg/L)	0.014	0.01 - 0.03	83
Total nitrogen (mg/L)	0.211	0.166 - 0.721	90
pH	7.4	7.1 - 7.8	92

(Source: NRC Northland River Quality Monitoring Network Report)

In Hokianga

Punakitere River at Taheke is a sampling site that sits within the Hokianga river system (the subject of Chapter Eight). The Punakitere River originates from wetlands

⁴⁵⁵ NRC, *Northland River Water Quality Monitoring Network Report*, 2008-2009, p7

⁴⁵⁶ NRC, *Northland River Water Quality Monitoring Network Report*, 2008-2009, p8

southwest of Kaikohe and is a major tributary of the Waimā River, which flows into the Hokianga Harbour. The land use is predominantly agricultural, while the underlying geology is soft sediments. According to the report, the Punakitere River suffered from significant nutrient overloading; medians for turbidity, dissolved reactive phosphorus and total nitrogen all exceeded their respective trigger values. Run-off from surrounding land-use was the most likely source of nutrient and bacterial contamination in the river, the report suggested. It also found, however, that phosphorus compliance was better than the previous year, while trend analysis on eight years of data suggested an improvement in water clarity and a decrease in total nitrogen and total phosphorus.⁴⁵⁷

Table 14: The NRWQN sampling site at Punakitere River at Taheke

Parameter	Median	Range	% comply with guideline
Temperature (deg. cel.)	15.4	10.9 - 22.4	
Dissolved oxygen (% Sat.)	100.6	85.7 - 119	33
Conductivity (mSm)	12.7	10.9 - 15.4	
Water clarity (m)	1.38	0.41 - 2.37	82
Turbidity (NTU)	6.4*	2 - 62	42
<i>E. coli</i> (n/100mL)	320	160 - 1723	83
Dissolved reactive phosphorus (mg/L)	0.017*	0.005 - 0.038	36
Total phosphorus (mg/L)	0.033	0.015 - 0.082	50
Ammoniacal nitrogen (mg/L)	0.01	0.005 - 0.04	92
Total nitrogen (mg/L)	0.826*	0.112 - 1.134	25
pH	7.8	7 - 8.4	50

(Source: NRC Northland River Quality Monitoring Network Report)

3.3.3.3 RWQMN: State and Trends, 2010

The 2010 Water Quality Monitoring Network (RWQMN) report presented an overview of water quality in Northland and unlike the 2008-2009 report, did not go into detail about specific waterways and monitoring sites. Overall, the report suggested that Northland's rivers 'on occasion' had poor quality, as assessed against the trigger guidelines, even in sites in more pristine environments. Like previous years' reports, surrounding land use is cited as a determining factor in water quality. At sites in intensive farming catchments, for example, compliance with 'trigger' guidelines was

⁴⁵⁷ NRC, *Northland River Water Quality Monitoring Network Report*, 2008-2009, p17

consistently poor. Trend analysis revealed some positive changes, including improvements in dissolved reactive phosphorus and total phosphorus, nitrogen, and water clarity.⁴⁵⁸ Overall, the report found that there were ‘fewer negative trends than positive trends detected in water quality this year’; positive trends were observed in water clarity, turbidity, and all phosphorus and nitrogen species.⁴⁵⁹ However, bacterial compliance dropped significantly at a number of RWQMN sites in 2010. Some rivers, including the Kaeo River and Mangahahuru Stream (Apotau Rd site) had continuously poor results. The report recommended faecal source tracking samples be undertaken to determine the source of bacterial pollution at these sites.⁴⁶⁰

3.3.3.4 Water quality and ecology in Northland: State and Trends 2007-2011

The ‘River Water Quality and Ecology in Northland State and Trends, 2007-2011’ report provides a snapshot of the state of water quality and ecosystem health at the RWQMN testing sites over the years 2007 to 2011. Of the then 36 sites tested, data for trend analysis was provided for 24. Alongside physical and nutrient data, the report presents data on *E. coli*, habitat, periphyton, macroinvertebrate and fish. The report concluded that Northland’s main issues with water quality included faecal pollution and poor visual clarity (affected by fine sediment) and phosphate. Eighty-eight per cent of RWQMN sites failed the livestock drinking water (ANZECC 2000) guidelines for *E. coli*; 53 per cent failed the national guidelines (trigger values) for turbidity, and 50 per cent failed the national guidelines for phosphate. The sites also tended to have poor ecosystem sites where the surrounding land use was predominantly pastoral, a finding consistent with the national trends described above. In general, the majority of RWQMN testing sites (61 per cent) were in a degraded condition when tested.⁴⁶¹

3.4 Results of State of the Environment (SoE) Reports, 2002-2012

The RMA requires all regional councils to monitor the overall state of the environment for the purposes of informing the public of ‘their duties and of the functions, powers, and duties of the local authority’ and to enable the public to ‘participate effectively’ under Section 53 of RMA. Monitoring of the state of the environment also feeds back

⁴⁵⁸ NRC, *Northland River Water Quality Monitoring Network Report*, 2008-2009, p2

⁴⁵⁹ NRC, *Northland River Water Quality Monitoring Network Report*, 2008-2009, p34

⁴⁶⁰ NRC, *Northland River Water Quality Monitoring Network Report*, 2008-2009, pp34-35

⁴⁶¹ NRC, *Northland River Water Quality Monitoring Network Report*, 2008-2009, 2011,

into the development of Regional Policy Statements and Plans. Since the passing of the RMA, the NRC has produced three 'State of the Environment' (SoE) reports, for the years 2002, 2007, and 2012. SoE reports bring together information gathered by the NRC's various monitoring programmes, including the annual state of the environment monitoring and compliance monitoring required through the resource consent process, as well as information from other organisations, such as the Department of Conservation (DOC) and the National Institute of Water and Atmospheric Research (NIWA). Below is a brief summary of the findings of the SoE reports as they relate to Northland water quality and quantity. Freshwater species is dealt with separately later in the chapter. Because the SoE reports repeat much of the same information across the studies, a detailed summary of the 2002 report will be provided, followed by brief summaries of the 2007 and 2012 reports, with particular reference to where trends have been identified.

3.4.1 State of the Environment Report 2002

The 'State of the Environment Report 2002', the first produced by the NRC, provided 'baseline information' on the state of the health of the region's natural and physical resources and functioned, according to the chair of the NRC as an 'accountability card' or 'an environmental balance sheet' against which future changes could be measured. The report outlined some of the major environmental issues the region faced, including the 'poor standard of water quality in some rural areas' and threats to the region's biodiversity from animal pests, weeds and changing land use patterns. One of the report's key questions and concerns, outlined at the outset, was: 'How can we intensify land use without causing environmental degradation?' The report follows the Pressure – State – Response (PSR) framework, which explores pressures (indicators of environmental pressures or issues), state (indicators of environmental conditions), and response (indicators of society's responses).⁴⁶² Below is a summary of relevant sections of the report as they relate to surface water quality, water quantity and flows, Northland lakes, and land and soils.

⁴⁶² Northland Regional Council, *State of the Environment Report 2002*, p3-5

3.4.1.1 Surface water quality

In line with the RWQMN monitoring reports, the 2002 SoE reports suggested that water quality 'varies greatly from pristine in upper native forest catchments through to highly impacted in modified lowland catchments'.⁴⁶³ In general, it claimed that the management of water quality in surface waters and lakes 'is a major issue in Northland' and listed the following main concerns:

- The adverse effects of pollution on the uses and values of water bodies, and coastal waters including their life-supporting capacity for indigenous flora and fauna, water supplies, food gathering and marine farming, spiritual, recreational and aesthetic values.
- The degradation of the mauri (life force) and wairua (spirit) of water bodies and adverse effects on kaimoana, due to pollution.
- Pollution of water bodies from point-source discharges of contaminants, particularly from sewage treatment and disposal, cowsheds, and agricultural product processing.
- Pollution of rural water bodies (including the coastal waters those water bodies flow into) from contaminants in non-point source discharges and stormwater runoff, including sediment from earthworks and vegetation clearance, wetland drainage, stock effluent, residue from agrichemicals, leachate from contaminated sites and dumped rubbish and dead stock.
- Pollution of urban water bodies with contaminants from stormwater runoff from roads and car parks, industrial and trade premises, disposal of industrial and household waste into stormwater systems, sediment from earthworks, sewage overflows and leachate from contaminated sites.
- The sensitivity of closed water bodies and coastal waters to the adverse effects of water pollution.
- The effects on water quality of existing land use, major land use changes, large scale water abstraction, clearance of riparian margins and drainage.⁴⁶⁴

The key pressures affecting water quality in Northland included: point sourced discharges, non-point (diffuse) source discharges, and discharges from agricultural land use in particular. These are discussed below.

3.4.1.2 Point-source discharges

As of May 2001, there were more than a thousand point source discharges authorised by resource consents in Northland with the potential to result in the contamination of

⁴⁶³ NRC, *State of the Environment 2002*, p59

⁴⁶⁴ NRC, *State of the Environment 2002*, p59-60

surface water.⁴⁶⁵ These include discharges to surface water or land (where there is potential for runoff to contaminate surface water) from agricultural (dairy and piggery) use, earthworks (sediment), food industry, flood control, horticulture, quarries, power generation, sewage, storm water, landfill leachate, and others.⁴⁶⁶ By May 2001, there were 1,409 farm dairy effluent treatment systems in the region and these were by far the most numerous point source discharges to surface waters and land in Northland. The report suggested that while dairying contributes significantly to the Northland economy, 'the challenge is to minimise its environmental effects'.⁴⁶⁷ The report pointed out that effluent from dairymen's treatment ponds, for example, had the potential to have significant impacts on receiving waters, particularly in areas of numerous discharges or low river flows.

The potential adverse effects included: increased nutrient loadings promoting nuisance biological growths; high ammonia levels that are toxic to fish; microbial contamination of waterways rendering them unsuitable for drinking and contact recreational use; and suspended solids resulting in the reduction of water clarity and smothering of aquatic life.⁴⁶⁸ Areas where dairy effluent discharges are concentrated include the Whāngārei and Kaipara District, with areas such as the Ruawai flats and the Northern Wairua River Catchment (which includes the Hikurangi Swamp and Kaihu, Mangakāhia and Wairua/Mangere River tributaries) under particular pressure. Other areas subject to intensive dairy farming include the Kaikohe/Ohaeawai area and Bay of Islands catchment.

In the past, point-source discharges from dairy effluent were untreated and discharged directly into waterways. Since the 1980s, local government has conducted a successful campaign to have all farm dairy effluent treated before discharge. The vast majority of farms have installed treatment systems (ponds or barrier ditches). However, surveys conducted in 1992 concluded that as a result of lack of maintenance of treatment systems, they were inadequate for the current herd sizes.⁴⁶⁹ While pond systems

⁴⁶⁵ NRC, *State of the Environment 2002*, p61

⁴⁶⁶ See table 5 on p61 of NRC, *State of the Environment 2002*, p61

⁴⁶⁷ NRC, *State of the Environment 2002*, p61

⁴⁶⁸ NRC, *State of the Environment 2002*, p61

⁴⁶⁹ NRC, *State of the Environment 2002*, p61

considerably reduce the levels of contaminants discharged to water compared with untreated effluent, significant contaminants are still present. The SoE cited a study conducted by the NRC in cooperation with the Ngātiwai Resource Management Unit in 2000 which revealed the poor ecosystem health in sites downstream of farm dairy effluent discharges.⁴⁷⁰

Industrial discharges (such as dairy factories and meat-processing industries) have been a major contributor to localised contamination of surface water quality in Northland. Some industrial works were sited and constructed at 'a time when little importance was placed on waste treatment'. At the time of the report, however, there were few major discharges from industry to water or land in Northland; as of May 2001, there were 105 consented industrial discharges in Northland.⁴⁷¹

Sewage waste discharges are another significant historical pressure of waterways. As of May 2001, there were 372 discharges authorised by resource consent for the treatment of sewage in Northland; 91 per cent of those were to land. In developed urban areas, most sewage is treated through wastewater treatment plants. Most treatments have oxidation ponds or mechanical treatment plants, and many discharge to wetlands for additional treatment. Treated effluent is then discharged to land or into rivers or estuaries with the potential for contamination of surface water. The possible effects include:

- Increased nutrient levels (leading to proliferation of algal growth)
- High bacteria numbers (increased human health risk)
- High levels of ammonia (toxic to fish)
- Lowered dissolved oxygen
- Discoloration of surface waters
- Degraded macroinvertebrate communities.⁴⁷²

In the decade before 2001, treatment systems had been progressively upgraded in an effort to reduce the environmental effects of such discharges.

⁴⁷⁰ NRC, *State of the Environment 2002*, p63

⁴⁷¹ NRC, *State of the Environment 2002*, p65

⁴⁷² NRC, *State of the Environment 2002*, p65

Similarly, septic tank effluent can potentially contaminate groundwater with excess nutrients, bacteria, and viral pathogens. This is a particular issue in Northland where approximately 45 per cent of Northland's population dispose of their sewage on-site, using septic tanks and soakage trenches or holes. If properly maintained and in areas of low population density, the environmental effects are minimal, however, potential problems exist where the density of septic tanks is high, or where effluent soakage is poor or excessive. Moerewa in the Bay of Islands is listed among the population centres still dependent on septic tanks for sewage treatment.

3.4.1.3 Non-point source discharges

Pastoral agriculture, which makes up approximately 53 per cent of land in Northland, is the most significant source of non-point source pollution with the major contaminants being:

- organic matter (sourced from faecal contamination)
- sediment (as a result of deforested slopes converted to pasture and bare land)
- nutrients (sourced from dung and urine, excess fertiliser)
- pathogens (disease-causing organisms sourced from dung and urine) ⁴⁷³

These contaminants are largely washed off the land during rainfall, but direct livestock access to streams can also degrade water quality by both damaging stream banks and cattle directly excreting in waterways. As already discussed, dung and urine are a major source of nutrients (nitrogen and phosphorus), pathogens, and oxygen-consuming organic matter.⁴⁷⁴ Most of Northland's lowlands rivers typically exhibited elevated levels of both phosphorus and nitrogen and in some intensively farmed catchments (such as Ruawai and Te Kopuru) nutrient levels in waterways were high and waterways greatly impacted from agricultural land use.⁴⁷⁵

3.4.1.4 Water quality

The SoE Report provides information about the current state of water quality (based on the previous four years of data before 2002). It notes that standardised monitoring programmes had not been in operation long enough to determine whether the state of water quality was changing over time. Monitoring showed that there were excessive *E.*

⁴⁷³ NRC, *State of the Environment 2002*, p68

⁴⁷⁴ NRC, *State of the Environment 2002*, p68

⁴⁷⁵ NRC, *State of the Environment 2002*, p69

coli levels in many Northland rivers and streams with particulate sites of high *E. coli* levels including the Mangahuru Stream located in the Hikurangi Drainage Scheme and the Ōtiria Stream at Ōtiria. The Mangahuru Stream is located downstream from the Hikurangi Township sewage treatment system and the Kauri Dairy Factory effluent disposal area. Discharges from these sources, in association with runoff from non-point sources, have made these waterways no longer safe for bathing – which is also a measure of wider ecological impacts.⁴⁷⁶

3.4.1.5 Water quantity and flows

The report found that Northland's water resources were under increasing pressure to meet demands from a variety of consumptive uses, including agriculture, horticulture, public and private water supply and industry sectors. At the time of the report in 2002, there were 416 resource consents allocating up to 563,869m³/day of water from streams, rivers and dams in Northland with the Wairua, Whāngārei Harbour and Kerikeri catchments being the most heavily utilised for water resources.⁴⁷⁷ The issues relating to surface water quantity included:

- The conflict between allocation of water for consumptive uses such as public and industrial water supplies and irrigation while still protecting natural, intrinsic and amenity values of the water body.
- The competition between various consumptive water uses where the demand for water exceeds quantities naturally available.
- The loss of natural wetlands, their habitat and intrinsic values due to land drainage.
- The changes in water quantities due to major land use changes, such as deforestation, afforestation, urbanisation and major drainage works.
- The effects of dams, weirs, culverts and other structures in streams, particularly as barriers to the movement of stream life, flooding, erosion and flow reductions.

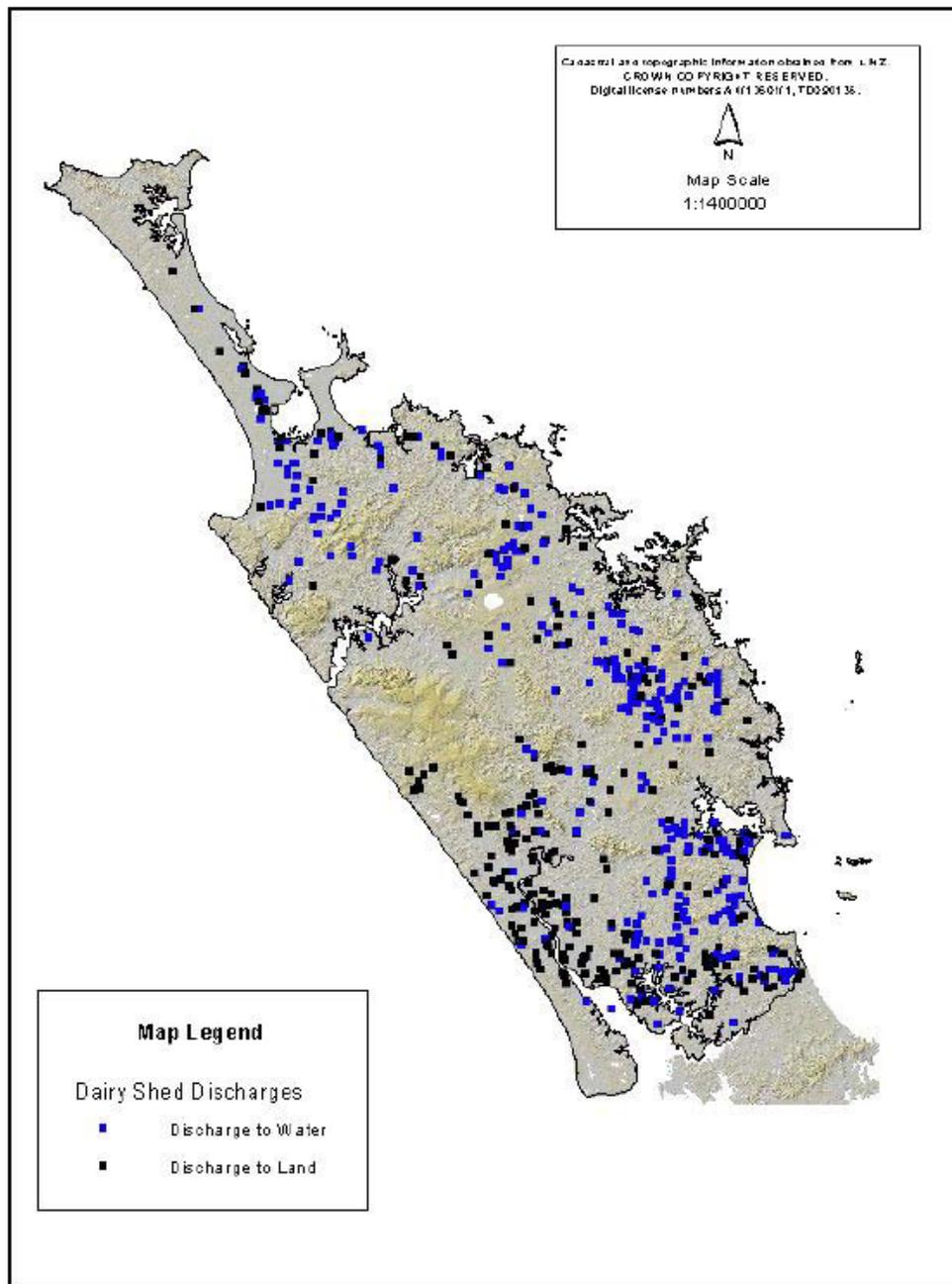
In terms of surface water use, agriculture accounted for 42 per cent, largely for irrigation and to a lesser extent for cowshed wash and stock watering; horticulture accounted for 33 per cent; water supplies to towns and cities accounted for 19 per cent, and water use for industrial needs comprises of only five per cent of total water allocation. The report suggested that land uses changes had a direct impact on river

⁴⁷⁶ NRC, *State of the Environment 2002*, p72

⁴⁷⁷ NRC, *State of the Environment 2002*, p87

flow and water balance and outlined trends in land use over the thirty years prior to 2002.⁴⁷⁸ These trends included the reversion from pasture to scrub/weeds, pasture and scrub/weeds to pines, and intensifying agricultural land-use.

Figure 9: Farm dairy effluent discharges in Northland



(Source: Northland Regional Council, *State of the Environment Report 2007*, p 64)

⁴⁷⁸ NRC, *State of the Environment 2002*, p95

Figure 10: Stock drinking from a stream can foul water and damage banks



(Source: Northland Regional Council, *State of the Environment Report 2002*, p 69)

3.4.1.6 Northland lakes

The report found that aquatic weeds were a major threat to Northland's lakes, with some species posing a significant threat to both water quality and aquatic biodiversity by choking out native species; in some shallow lakes aquatic weed growth could be over the entire area of the lake. Once again, the report found that catchment land use was a major determining factor in lake water quality. Unrestricted stock accesses to foreshore

areas, as well as pasture and groundwater inputs, have contributed to nutrient enrichment of lakes.⁴⁷⁹

3.4.2 State of the Environment 2007

The 2007 report found that that progress had been made in some areas, 'due to often quite significant effort and increased awareness of environmental issues, but overall the region's environment was in a similar state' to that documented in the 2002 SoE report. Among the ongoing issues that the region still faced were: the poor water quality of many rivers and lakes in rural and urban areas; threats to the region's biodiversity from animal pests, weeds and changing land use patterns and the high or potential over-allocation of some water resources. The continuing pressures on water quality included point source discharges (including sewage from town and city treatment plants, industrial and stormwater discharges and farm dairy effluent) of which there were, in 2007, 1,100 resource consent discharges to water and 1,150 to land; non-point discharges (rural run-off after rainfall, leachate from contaminated sites and leaking wastewater treatment plants); environmental incidents (oil or sewage spills, illegal discharges to water, and dead stock in waterways); weeds and pest fish (a threat to both water quality and aquatic diversity), nutrient enrichment; and land use practises.⁴⁸⁰ The pressures on water quantity, on the other hand, included abstraction (meeting the demands from a variety of users—agriculture, horticulture, tourism, heavy industry and domestic—while balancing the need to sustain the ecological, aesthetic, and cultural values of particular waterways), dams (which affect the ability of fish to travel up and downstream, sediment transport, downstream water availability and the natural flow of a water body), diversions (which can lead to erosion of river beds and banks, inhibit fish movement, disrupt aquatic environments and effect natural flow), land use, and climate change.⁴⁸¹

3.4.3 State of the Environment 2012

The NRC's most recent State of the Environment report was released in 2012. Like the previous reports, it listed the major pressures on water quality and quantity, the three

⁴⁷⁹ NRC, *State of the Environment 2002*, p150

⁴⁸⁰ Northland Regional Council, *State of the Environment Report Card: Freshwater Quality 1 2007*

⁴⁸¹ NRC, *State of the Environment Report 2007*.

main water contaminants (pathogens, sediment, and nutrients) and outlined the key sources of point and non-point source discharges to waterways. This information is discussed in detail above and does not need repeating here. Below is a summary of the issues that relate to freshwater in the report:

- In most summers, at least a quarter of the freshwater swimming spots sampled generally meet the suitability for swimming guidelines, while at least a quarter typically have water quality that does not meet the guidelines. Faecal bacteria levels usually exceed guidelines after rainfall which washes contaminants off the land into waterways.
- Rivers in at least partly forested catchments remain in relatively good health. Lowland streams are often highly modified and water quality is often poorer, largely the result of agricultural land use, and associated runoff. Point source discharges (such as dairy effluent) are improving but diffuse agricultural runoff (directly off the land) remains a significant problem.
- Many of the river sites have shown positive trends such as decreasing nutrient levels or increasing water clarity, which suggests there have been improvements in point source discharges. However, some sites have also shown negative trends such as increasing turbidity and decreasing oxygen levels.
- Lake water quality varies widely over the rest of Northland with eutrophication apparent in some lakes on Aupōuri and Poutō peninsulas. Despite this, 67 per cent of the lakes surveyed by NIWA are classed as either 'outstanding' or 'high value' based on ecological and water quality data.
- Several of Northland's catchments have relatively high levels of allocation for a variety of uses. Abstraction of the allocation has the potential to cause environmental issues during prolonged dry periods because demand during this time is the highest. Uses include agriculture, horticulture, water supply to towns and cities and industrial purposes.
- There are more consents to take groundwater than surface water from rivers, lakes and springs. However, surface water takes, including those from dams account for 92 per cent of the total water allocated.
- The Regional Water and Soil Plan currently contains minimum flows for rivers but does not contain minimum levels for lakes or wetlands, or any allocation limits (the amount of water that can be extracted above a minimum flow or level).
- The Council has assessed the likely level of allocation in the region's catchment using methods in the Proposed Environmental Standards and Ecological Flows and Water Levels 2008. Identifying areas of high allocation helps prioritise catchments for establishing freshwater

objectives and setting associated water quantity limits, required for the National Policy Statement for Freshwater Management 2011.

- Irrigation is the main water use in Northland, with pasture irrigation accounting for 31 per cent and horticultural irrigation 19 per cent of total volume allocated whereas water use for industrial purposes is low, at only 6 per cent of allocation.
- In general, groundwater in Northland is of a high enough quality that it can be consumed without treatment. However, elevated concentrations of nitrates, manganese, iron, sodium and chloride (saltwater) and bacteria have occurred at some sites.
- The Council undertakes appropriate groundwater quality investigations where potential issues have been identified from groundwater quality monitoring, for example, elevated nitrate or increased risk of saltwater intrusion from coastal areas.
- The Northland Regional Pest Management Strategies 2010-2015 includes 17 freshwater plants and 12 freshwater animals of concern.
- Targeted freshwater weed surveillance is carried out in seven high priority lakes, and an additional 8-12 lakes, during the ecological assessment surveys each year.
- In 2009, the Council started the Top Wetlands Project. More than 900 of Northland's wetlands have been added to a database and 304 of the region's best and most irreplaceable wetlands were ranked and prioritised for management and protection using a scoring system based on national methods.
- The non-statutory approaches to biodiversity management are working well. The Northland Biodiversity Enhancement Group is a good example of inter-agency co-operation on an informal level and there are over 50 active environmental land care groups in the region.
- Northland continues to lose significant indigenous wetland and species through human activity, such as land drainage.⁴⁸²

3.5 Biodiversity and indigenous fisheries

3.5.1 National trends

There is a wide variety of biota that makes up freshwater ecosystems in New Zealand, including fish, birds, and invertebrates which in turn depend on plants and communities of microscopic organisms such as algae, bacteria and fungi.⁴⁸³ There are around 38

⁴⁸² Northland Regional Council, *State of the Environment Report 2012*, pp13-15.

⁴⁸³ Raewyn Peart, Kate Mulcahy, and Natasha Garvan, *Managing Freshwater: An EDS Guide*, (Auckland: Environmental Defence Society Incorporated, 2010), p22

species of native freshwater fish in New Zealand, many of which are found nowhere else in the world.⁴⁸⁴ Prior to the arrival of humans, much of New Zealand was blanketed in ancient forest and extensive wetlands and a unique flora and fauna gave New Zealand global prominence as a 'hot spot for biological diversity'.⁴⁸⁵ However, as discussed above, the picture has changed rapidly; biodiversity decline has been described, by the Ministry for the Environment in its first SoE report (1997), as 'New Zealand's most pervasive environmental issue'.⁴⁸⁶ A recent report by Marie A. Brown *et al.* explains that, like water quality, habitat destruction, extinction and the impacts of invasive species on aquatic life and indigenous fish species in particular are legacies of past and modern pressures alike.

Today, New Zealand's farming, tourism, and recreation industries put increasing pressure on freshwater ecosystems, to the extent that freshwater biodiversity is declining faster than that of terrestrial or marine ecosystems. The degradation from these 'profound use pressures, pollution and other impacts is reflected', the report states, 'not only in declining water quality but also in the fact that New Zealand now ranks among the world's worst for the proportion of its freshwater species that are threatened with extinction'.⁴⁸⁷ Mike Joy and Russel Death reinforce this picture in a 2013 article on freshwater biodiversity, arguing that New Zealand's record for threatened species is one of the world's worst, with 68 per cent of all native fish species listed as threatened.⁴⁸⁸ According to Joy and Death, the future of freshwater biodiversity 'looks bleak as agricultural intensification and urban spread expand while at the same time environmental regulations are reduced'.⁴⁸⁹

In line with literature regarding water quality, scholars generally attribute the declining state of freshwater biodiversity to surrounding land use, including the long term impacts of deforestation and sedimentation and more recently the intensification of

⁴⁸⁴ Peart, Mulcahy, and Garvan, *Managing Freshwater*, p26

⁴⁸⁵ Marie A. Brown, R. T. Theo Stephens, Raewyn Peart and Bevis Fedder, *Vanishing Nature – facing New Zealand's Biodiversity Crisis*, (Auckland: Environmental Defence Society, 2015), p2

⁴⁸⁶ Ministry for the Environment, *The State of New Zealand's Environment 1997*, (Wellington: 1997), p10.6

⁴⁸⁷ Brown, *et al.*, *Vanishing Nature*, pp76-77

⁴⁸⁸ Michael K. Joy and Russel G. Death, 'Freshwater Biodiversity', in J.R. Dymonds, ed., *Ecosystem Services in New Zealand – Conditions and Trends*, (Lincoln: Manaaki Whenua Press, 2013), p451

⁴⁸⁹ Joy and Death, 'Freshwater Biodiversity', p448

agriculture over the past 30 or so years. Raewyn Peart *et al.* (2010) explain that catchments where land cover is predominantly pasture, urban, or exotic forest have significantly less native fish than catchments with native forest cover. Furthermore, there has been a 'significant decline' in freshwater biodiversity since 1970, with the biggest decline occurring during the past decade.⁴⁹⁰

3.5.2 Tuna (eels)

Tuna (eels) are a significant customary resource for Māori. According to R. M McDowell, freshwater eels have always been for Māori communities throughout New Zealand a 'dietary taonga' and 'a significant, widely valued, cultural icon'.⁴⁹¹ There are two types of native eel in New Zealand: the longfin eel (*Anguilla dieffenbachia*) and the shortfin eel (*Anguilla australis*). Eels live in rivers and lakes, often well inland from the coast. Longfin prefer clean, inland waters, while shortfin eels prefer lowland lakes and swamps. The longfin eel, which is declining in abundance and is classified by the Department of Conservation as 'At Risk/Declining', is one of the largest freshwater eels in the world and is found only in New Zealand.⁴⁹² A female longfin eel can grow nearly two metres long and live over a century.⁴⁹³ The longfin have an unusual life cycle: adults breed only once at the end of their life and in order to do so swim five thousand kilometres to spawning grounds in the tropics, thought to be in deep ocean trenches near Tonga. After spawning, the adult eels die and never return to New Zealand. The fertilised eggs develop in larvae which drift back to New Zealand on ocean currents; these larvae develop into small 'glass' eels (elvers) which swim up river and slowly grow into adults.

The state of longfin eel is an area of concern for many. In 2013, the Parliamentary Commissioner for the Environment, Dr Jan Wright, produced a report entitled 'On a Pathway to Extinction?' investigating the status and management of the longfin eel in New Zealand. The Wright report responded to the 'increasing public concern about the

⁴⁹⁰ Peart, Mulcahy, and Garvan, *Managing Freshwater*, p33

⁴⁹¹ R.M McDowall, *Ikawai: Freshwater fishes in Māori culture and economy*, (Christchurch: Canterbury University Press, 2011), p142

⁴⁹² Peart, Mulcahy, and Garvan, *Managing Freshwater*, p30

⁴⁹³ Parliamentary Commissioner for the Environment, *On a Pathway to Extinction? An investigation into the Status and management of the longfin eel*, (Wellington: Parliamentary Commissioner for the Environment, 2013), p9

sustainability of the longfin eel fishery and the potential risk of extinction' following concerns raised by many Māori, environmental groups, the New Zealand Conservation Authority, and some scientists and local government representatives.⁴⁹⁴ The report noted that the eels have generally faced many challenges since European intervention. European settlers felled trees for timber and later resorted to the burning down of vast areas of forest to 'hasten the conversion to pasture'; successive Governments continued to subsidise the clearance of land until the 1980s. Wright notes that 'over time this caused widespread erosion and sedimentation of rivers, lakes and wetlands' and in many parts of the country 'clear flowing streams with shaded stony beds – a favoured habitat for longfin eels – became open to the sun and smothered in sediment'.

Habitat degradation continued when wetlands were drained (though Wright notes that this had a more significant impact on shortfin eels), while early European settlers launched extermination campaigns against eels, considered 'public vermin', to protect trout.⁴⁹⁵ [Eels were being exterminated by Wildlife Div, Internal Affairs for many years, even post war: see McDowall on Acclimatisation, or my book *Our Islands, Our Selves: A history of Conservation*.]The extermination campaigns only stopped once evidence emerged that the presence of eels could actually lead to bigger and better trout and when eels were recognised as having commercial value. The report also noted that hydroelectric dams prevent young eels travelling upriver where they mature. On the other side of the life cycle, dam turbines kill mature eels as they swim downriver to begin their journey back to the sea (this issue is discussed in Chapter Six).⁴⁹⁶ Today, where wetlands continue to be drained, eels 'can be sucked into unscreened pump intakes', while increased sedimentation of lowland rivers continued to affect eel populations, as do other farming practises, such as irrigation.⁴⁹⁷

Dr Jan Wright made three major recommendations, including the suspension of the commercial catch of longfin eels until longfin eel stocks are shown to have recovered;

⁴⁹⁴ Parliamentary Commissioner for the Environment, *On a Pathway to Extinction?*

⁴⁹⁵ Parliamentary Commissioner for the Environment, *On a Pathway to Extinction?* pp21-23; RM McDowall, *Gamekeepers for the Nation: the story of New Zealand's Acclimatisation Societies, 1861-1990*, (Christchurch: Canterbury University Press, 1994), pp20-24

⁴⁹⁶ Parliamentary Commissioner for the Environment, *On a Pathway to Extinction?* p10

⁴⁹⁷ Parliamentary Commissioner for the Environment, *On a Pathway to Extinction?* p21

the protection of eel habitat and promotion of fish passage; that the Minister of Conservation direct officials to use the policy mechanisms available to them to increase the protection for longfin eels and other threatened migratory fish; and that the Minister for Primary Industries direct their officials to establish a fully-independent expert peer review panel to assess the full range of information available on the status of the longfin eel population.⁴⁹⁸

The National Institute of Water and Atmospheric Research (NIWA) found that because of their extensive migrations and long life to maturation, eels are a difficult fishery to manage, notably because the relative importance and interaction between habitat, recruitment and fishing pressure have not been quantified. Furthermore, as there is no control on the life stages of tuna while at sea, the restoration of the tuna fishery has had to rely on activities that enhance the population while in freshwater. Thus, future management of this species will need to be increasingly conservative, with reduced levels of harvest, increased reserve areas, and more emphasis on ensuring the safe downstream passage of silver eels. To ensure long-term tuna conservation and a sustainable fishery, there are research questions still to be addressed in terms of recruitment trends around the country, optimal methods for restocking depleted waters, habitat restoration and enhancement.⁴⁹⁹

3.6 Biodiversity and indigenous fisheries: Northland

Like water quality, monitoring of freshwater biodiversity is undertaken by the NRC. While in general, water quality, habitat and biological diversity are closely linked, the Northern Regional Council undertakes separate habitat assessment biennially at all river water quality monitoring sites. This assessment involves assigning scores to the following stream characteristic: aquatic habitat abundance, aquatic habitat diversity, hydrologic heterogeneity, channel alternation, bank stability, channel shade, and riparian vegetation.⁵⁰⁰ Habitat quality for aquatic biota is broken down into four categories: optimal, suboptimal, marginal and poor.

⁴⁹⁸ Parliamentary Commissioner for the Environment, *On a Pathway to Extinction?*

⁴⁹⁹ The National Institute of Water and Atmospheric Research (NIWA), 'Tuna - population concerns', <https://www.niwa.co.nz/te-k%C5%ABwaha/tuna-information-resource/solutions-and-management/conservation-concerns>

⁵⁰⁰ NRC, *State of the Environment Report 2002*, p162

3.6.1 The 2002 State of the Environment Report: aquatic life

For native fish in particular, the 2002 SoE report found that habitat availability and migratory pathways limited native fish distribution throughout the region. Threats to native fish included loss of habitat, principally riparian margins, and degraded waterways.⁵⁰¹ Some native species are caught for human consumption, including eels, whitebait and freshwater crayfish (koura). The drainage of wetlands also resulted in many species becoming rare or endangered. The report uses the following parameters as guides to the suitability of Northland's Rivers and Streams Suitable for Aquatic Life.

<p>Dissolved Oxygen</p>	<p>An adequate supply of dissolved oxygen is essential for the survival of aquatic life.</p> <p>The 2002 SoE report pointed out that 92 per cent of samples collected at sites in Northland between 1996 and 2000 complied with the dissolved oxygen standard of 80 per cent saturation.⁵⁰² Dissolved oxygen in rivers and streams varied throughout Northland, the report found, with generally high levels in upper catchments (such as the upper Mangakāhia) as a result of turbulent, well-aerated waterways and low organic loading. Some lowland rivers sites, on the other hand, showed depressed dissolved oxygen levels. Sites in the Wairua catchment (including the Whakapara River) consistently record low values. This catchment includes the Hikurangi Drainage Scheme. Dissolved oxygen levels also varied seasonally at all sites (higher levels in winter and lower levels) and also over a daily cycle as a result of aquatic plant photosynthesis/respiration and stream temperatures. The NRC conducted a study which involved 24-hour monitoring of dissolved oxygen levels in the Mangere River of the Wairua catchment: one-off monthly sampling identified the lower reaches of the river as having oxygen levels that often did not meet recommended guidelines. The furthest downstream site in the study was the Mangere River at Knight's Road that exhibited dissolved oxygen levels well below the guideline for protection of aquatic ecosystems—the result of numerous farm dairy effluent discharges within the catchment and diffuse agricultural runoff.⁵⁰³</p>
<p>pH</p>	<p>The pH of river water is the measure of how acidic or basic the water is, measured on a scale of 0-14. It is a measure of hydrogen ion concentration. Extremes of pH can make a river inhospitable to life. Low pH is especially harmful to immature fish and insects. Acidic water also speeds the leaching of heavy metals harmful to fish. Geology within the river catchment generally influences the pH of rivers and streams.</p> <p>The 2002 SoE report found that overall 94 per cent of samples collected at sites throughout Northland between the years 1996 and 2000 were within the normal range of 6.5 – 9.0. Sites that had the lowest compliance with the guidelines range included those in the Whakapara and Wairua Rivers and</p>

⁵⁰¹ NRC, *State of the Environment Report 2002*, p83

⁵⁰² NRC, *State of the Environment Report 2002*, p74

⁵⁰³ NRC, *State of the Environment Report 2002*, pp74-5

	Wairua catchment. Non-compliances had pH values generally lower than the guideline values, which could adversely affect aquatic life. ⁵⁰⁴
Temperature	<p>Temperature is an important parameter for fish spawning and the physiology of aquatic life. Water temperature is affected by climate and industrial discharges, but can also be affected by the amount of vegetation providing stream shading.</p> <p>Overall, the report found that 100 per cent of all samples collected at sites throughout Northland between 1996 and 2000 were below the maximum temperature of 25°C recommended for the protection of aquatic life.</p>
Nutrients	<p>As discussed above, high levels of nutrients (phosphorus and nitrogen) contribute to algal growth and eutrophication processes. Excessive algal growths degrade recreational and aesthetic values, as well as impacting on aquatic life habitat.</p> <p>Overall, 51 per cent of samples were less than the guidelines value of 0.03 gm-3 for dissolved reactive phosphorus (DRP), while only 36 per cent were below the guidelines value of 0.1 gm-3 for dissolved inorganic nitrogen (DIN). Levels greater than these values can promote nuisance algal growth in rivers and streams. Most catchments have DIN concentrations high enough to promote excessive algal growths, with levels regularly high in developed catchments such as Wairua, Whakapara, Mangakāhia, Awanui and Waitangi Rivers. In some rivers, including Mangere and Mangahuru, levels are extremely high. The report states that it is likely that a significant proportion of nitrogen is derived from point and non-point agricultural sources. ⁵⁰⁵</p>
Ammonia	<p>High levels of ammonia can be toxic to aquatic life under certain pH and temperature conditions.</p> <p>Ammonia levels in all samples from large rivers throughout the region are well below levels considered to be toxic, at conservative levels of pH and temperature. However, levels are slightly elevated in some rivers. The Mangere River's higher levels are related to the cumulative effect of dairymed effluent discharges and runoff. Higher levels that might be toxic to aquatic life were sometimes found in smaller streams in dairy farming areas, particularly downstream of farm dairy effluent discharges. ⁵⁰⁶</p>
Turbidity	<p>Turbidity is the measure of the 'cloudiness' of water, which is generally an indication of the amount of sediment in water. High turbidity reduces the amount of light penetrating into water that would be available for aquatic life. It makes it difficult for fish to see prey and reduces the ability of plants to photosynthesise. The report notes that there are no published guidelines for turbidity, but it is generally considered that turbidity should be less than 5 NTU to support plant life. High turbidity also makes water less attractive to swim in.</p> <p>Overall, 48 per cent of samples met this criteria. Sites ranged from eleven per cent compliance at the Wairua River (Purua) site to 86.5 per cent compliance at the Victoria River (Thompson's Bridge). Lowland rivers</p>

⁵⁰⁴ NRC, *State of the Environment Report 2002*, p75

⁵⁰⁵ NRC, *State of the Environment Report 2002*, p76

⁵⁰⁶ NRC, *State of the Environment Report 2002*, p76

	surrounded by intensive land use (such as the Mangere, Awanui, Whakapara and Wairua) all showed consistently high levels of turbidity. ⁵⁰⁷
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3.6.2 The 2007 State of the Environment Report: Indigenous biodiversity

3.6.2.1 Biodiversity and habitat

Unlike the 2002 SoE report, the 2007 report included an individual chapter on indigenous biodiversity. The chapter outlined the pressures on biodiversity in Northland. These includes: habitat loss, habitat fragmentation, pests and weeds, disruption of natural processes, agriculture, and climate change. The report noted that habitat loss in Northland included 95 per cent of forests and wetlands over the past 160 years of European settlement. Such areas, the report claimed, are home to many of the most critically endangered plants and animal species in Northland. Alongside vegetation clearance and wetland drainage, nutrient and sediment run-off into wetlands, lakes and rivers can alter the characteristics to the point that conditions are no longer suitable for the species that would be naturally present. Animal pests and weeds, too, lead to habitat modification.

The report suggested that agriculture was central to habitat modification and a key pressure on biodiversity. It claimed that the landscape of New Zealand, including Northland, had been dramatically modified due to developments in agriculture, exotic forestry and horticulture. The report listed the number of ways in which agriculture threatens indigenous habitat and biodiversity: clearance of indigenous vegetation results in a direct loss of biodiversity and habitat and food supply loss for other species. In steeper areas, such vegetation loss can result in increased erosion, with resulting detrimental downstream impacts on wetlands and waterways from sediment and nutrients. Similarly, when stock have direct access to waterways, they can reduce water clarity and increase nutrient inputs, which have a detrimental impact on indigenous flora and fauna. Lastly, the report listed climate change as a key issue for indigenous biodiversity. In the Intergovernmental Panel on Climate Change's fourth assessment report in 2007, natural ecosystems were identified as one of the sectors most

⁵⁰⁷ NRC, *State of the Environment Report 2002*, p77

vulnerable to projected climate related changes, including an increase in intensity of heat waves, fire risks, floods, landslides, droughts and storms.

3.6.2.2 Native fish

At the time of the 2007 report, there were 20 native freshwater fish species recorded in Northland. The most frequently recorded were short fin and long fin eels. Many of these species are important to Northland, New Zealand, and international freshwater biodiversity. Many of the native freshwater fish species are endemic to New Zealand (not found anywhere in the world) and more specifically to Northland. The Northland mudfish, for example, is only found in Northland, and is classified as 'nationally endangered' on the threatened species list. Dwarf inanga and dune lake galaxiids are only found in the Kai Iwi and Poutō dune lakes in Northland. Their only other locations are a couple of dune lakes on the South Head of the Kaipara Harbour in the Auckland Region. They are classified as 'nationally vulnerable'. Dune lake galaxiids are different from dwarf inanga as they have been geographically separated for so long. In Northland, giant kōkopu have only been found in one Dune Lake and have a national classification of 'gradual decline'. . This has been stated by a number of government agencies, in a variety of reports, not least by the NRC itself. Short jaw kōkopu are also relatively rare in Northland, being recorded at about 10 different locations. They have a national classification of 'sparse'.⁵⁰⁸

3.6.3 Tuna (eel) in Northland

The decline of tuna (eel) is of particular concern to Te Raki Māori. Unfortunately, there is limited data on the size of tuna populations in Northland. Beside a Ministry of Fisheries Assessment (discussed below), many of the studies on tuna have been done at the request of, and with, hapū/iwi.

Ngāti Hine were involved in producing studies on tuna with NIWA and the then the Ministry of Fisheries. The 2008 study with NIWA concluded that there were very few large eels left in the Te Rohe Whenua o Ngāti Hine which were of a size preferred for

⁵⁰⁸ NRC, *State of the Environment Report 2002*, p409-410

customary take.⁵⁰⁹ The Ministry of Fisheries assessment of eel fishery in the Kawakawa (Tamāreere) River catchment, which was done in 'close collaboration' with Te Rūnanga o Ngāti Hine looked the distribution, species composition, age structure, growth rate, and sex composition of freshwater eels in the Kawakawa (Taumāreere) River catchment 'to provide a reference point for any future monitoring of the population and management of customary fishery'.⁵¹⁰ The report claimed that New Zealand's freshwater eel population is generally under pressure from activities such as overexploitation, habitat removal, and the construction of in-stream barriers. The report found that, in comparison to other New Zealand catchments, the density of eels was low and that the large eels (over 750 mm), those preferred for customary take, were rare, reinforcing the findings of the 2008 report.⁵¹¹ The report also noted the importance of freshwater eels (tuna) to the lives of Ngāti Hine and that anecdotal observations indicate a decline in the numbers of both the downstream migratory adults and juvenile populations since the 1970s. Ngāti Hine are concerned about how this decline will affect the ability of tangata whenua to sustainably harvest eels for their sustenance, commercial, and customary needs, particularly kaumātua and kuia who continue to rely on this resource as a staple dietary item.⁵¹²

Similarly, in October 2013, NIWA prepared a report on tuna populations in the Wairua and Mangakāhia Rivers for Ngā Kaitiaki o Ngā Wai Māori (this group is discussed in Chapter Two and in more detail in Chapter Six), the NRC, Northpower, and the Ministry of Primary Industries.⁵¹³ As with the Ngāti Hine report, this study noted the importance of tuna to many whānau, marae and hapū who harvest tuna from the catchment as part of their regular dietary intake, as well as for hui and tangi. The report noted that tangata whenua had concerns about the reduced availability of eel stock, as well as about local land use practises and the associated effects on water quality. The report noted that the

⁵⁰⁹ Erica Williams, Jacques Boubée, Tohe Ashby, Norma Cooper, 'Tuna population survey of Te Rohe Whenua o Ngāti Hine, 2008', (Wellington: NIWA, 2008) pp 63-68

⁵¹⁰ Erica Williams, Jacques Boubée, C Paterson, 'Assessment of the eel fishery in the Kawakawa (Taumāreere) River Catchment', *New Zealand Fisheries Assessment Report 2011/28*, (Wellington: Ministry of Fisheries), pp4-5

⁵¹¹ Williams *et al.*, 'Assessment of the eel fishery in the Kawakawa (Taumāreere) River Catchment', pp4-5

⁵¹² Williams *et al.*, 'Assessment of the eel fishery in the Kawakawa (Taumāreere) River Catchment', pp4-5

⁵¹³ Erica Williams, Jacques Boubée, Allan Halliday, George Tuhiwai, 'Tuna Populations in the Wairua and Managakāhia Rivers, Prepared for Ngā Kaitiaki o Ngā Wai Māori, Northland Regional Council, Northpower & Ministry of Primary Industries', (Wellington: NIWA, 2013)

local land use, predominantly pastoral, swamp drainage waterway re-alignment, decrease in the extent and frequency of flooding, loss of bank side cover, increased nutrient loading had contributed to a significant loss of fish habitat within the catchment. Moreover, natural and anthropogenic barriers also impeded tuna migration (discussed in Chapter Six).

3.7 Conclusion

The impact of pollution on kaitiakitanga and customary resources is a central environmental issue for Te Raki Māori, who have pointed to a number of issues relating to water quality degradation, agricultural run-off, drainage, erosion, discharges to waterways and the impact on their traditional relationship with the awa. There are also significant concerns about the depletion of customary resources, namely tuna (eel). This chapter has reinforced these concerns. It has outlined the state of Northland's rivers and lakes, the extent to which they have been polluted and/or degraded and the factors that have contributed to these changes. Like much of the country, Northland's environment has altered significantly since European settlement. The conversion of native vegetation to pasture, which involved large-scale land drainage and deforestation, has left an indelible mark on the region's environment, and on its waterways in particular. In more recent decades, urban development and changes in land-use (in particular the intensification of agriculture) have put increasing pressure on Northland's water resources and water quality. In line with national trends, Northland's lowland waterways, especially those with surrounding agricultural land-use, are degraded, largely as a result of diffuse or non-point source pollution. Part Two of this report explores the role of the Crown and/or local delegates in the management of these waterways.

PART TWO

River Systems

Chapter Four

Kaeo River

(Whangaroa river system)

Figure 11: Kaeo River, March 2015



(Source: Photograph by Matthew Cunningham, 14 March 2015)

4.1 Introduction

This chapter considers how the Kaeo River, as an environmental resource, has been used and managed since 1991. More specifically, it examines the extent to which the Crown/local authorities have recognised and protected the customary authority of Kaeo kaitiaki. It also considers how tangata whenua have sought to be included in the management of the river through the resource consent process under the Resource Management Act 1991 (RMA). The chapter focuses on two local studies/activities for which resource consent has been granted. The first case is the development of a flood protection scheme and works aimed at mitigating the risk of flooding in Kaeo, works for which the NRC itself was the resource consent holder. The second case looks at the Far North District Council's construction and operation of the Kaeo wastewater treatment plant, which treats sewage from Kaeo township before discharging it into the Kaeo River. These local studies provide some insight into the variety of issues with which the Regional Council and Northland communities are faced in terms of rural river use and management; the former study revealing how communities seek to physically alter their environment in response to unwanted change and disruptions, while the latter concerns the increasingly pertinent question of how best to deal with waste and preserve water quality. Together these examples of resource use also present a clearer picture of the varying extents to which Te Raki Māori have been involved in resource management processes under the RMA.

4.2 River system, rohe, and environment

The Kaeo River is an environment like many others in New Zealand: one which humans have drastically and often unintentionally altered in their use and struggle for control of the catchment area. Situated in the Far North District, the Kaeo River feeds into Whangaroa⁵¹⁴ Harbour and is approximately 18 kilometres in length, with its head situated roughly at the confluence of the Waiare and Upokorau Streams. The upper portions of the Kaeo catchment reach a maximum elevation of 456 metres above sea

⁵¹⁴ Whaingaroa is the traditional spelling for the Harbour and region. However, the 'i' was removed after the arrival of Europeans in New Zealand in order to avoid confusion with Whaingaroa (Raglan) in the Waikato (M. Henare, H. Petrie, and A. Puckey, "He Whenua Rangatira": Northern Tribal Landscape', 2009, CFRT, Wai 1040 A37, p188). Whangaroa is the spelling used in this report to maintain consistency with the sources consulted, except where the traditional spelling is used in a direct quote or title.

level.⁵¹⁵ Although it is a moderately small watercourse today, the Kaeo River provides the main source of freshwater input to the harbour. Its upper reaches, along Waiare Road to Whangaroa College, follow a meandering channel before taking a reasonably straight channel downstream to Dip Road and onwards towards the harbour.⁵¹⁶ The lower reaches of the river take the form of a broad estuary fringed with mangroves. Between the State Highway 10 Bridge and Whangaroa Harbour, the Kaeo River is classified as part of the common marine and coastal area. The river catchment, 114 m² in area, includes a series of small tributaries, of which the Waiare and Waionepu streams and Mangaiti Creek are the principal ones.

The soil through which the Kaeo River runs is alluvium (loose, fine-grained soil deposited by flowing water) and prone to erosion. The entire length of the river bed itself is made up of gravel.⁵¹⁷ This river system passes through a valley of both native forest and scrub land as well as through pine forests and pastoral farms.⁵¹⁸ Close to 60 per cent of land coverage in the Kaeo River catchment is native forest and scrub, roughly 13 per cent is exotic forest cover, and 27 per cent is farm land.⁵¹⁹ The river also flows through Kaeo township (population 453 in 2013)⁵²⁰, which straddles the river roughly five kilometres from its mouth and is situated within the Kaeo floodplain.⁵²¹ A prominent physical feature of the town is Pohue, a conical hill which served as a pā site for Ngāti Uru until the 1830s.⁵²² Small settlements at Orotere, Upokorau, and Waiare also fall within the catchment area.

⁵¹⁵ Northland Regional Council, 'Asset Management Plan: Kaeo Flood Risk Reduction Scheme', 2015, p8

⁵¹⁶ Northland Regional Council (NRC), Kaeo River Flood Management Proposed Stage 1 Works Supporting Information for Resource Consent Applications, August, 2001, p15, in NRC Kaeo, NRC File 9390, vol. 1

⁵¹⁷ Northland Regional Council (NRC), Kaeo River Flood Management Proposed Stage 1 Works Supporting Information for Resource Consent Applications, August, 2001, p15, in NRC Kaeo, NRC File 9390, vol. 1

⁵¹⁸ MWH New Zealand Limited, Far North District Council, Kaeo Wastewater Treatment and Disposal, Resource Consent Applications and Assessment of Effects on the Environment, April, 2005, para 6.5.1, p28, in Far North District Discharge, NRC File 7205 vol. 3; LAWA: Land Air Water Aotearoa, 'Kaeo River' <http://www.lawa.org.nz/explore-data/northland-region/river-quality/kaeo-river/> (accessed 2 November 2015)

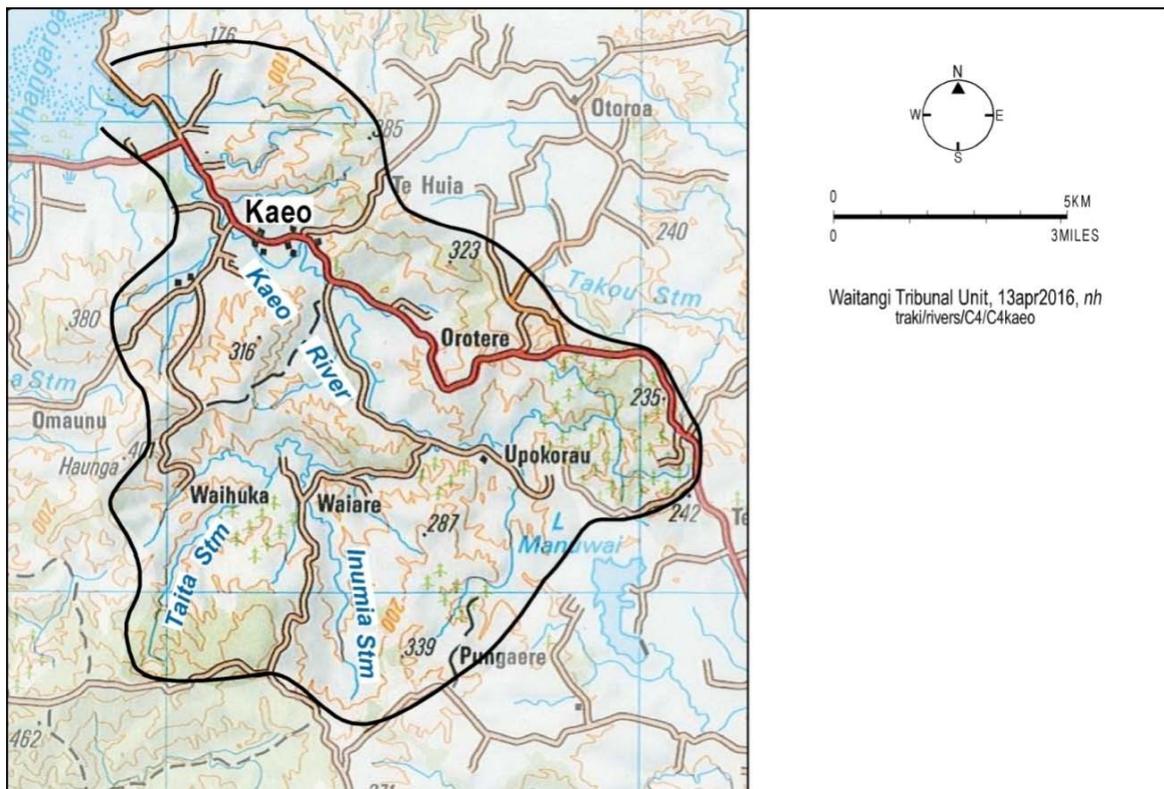
⁵¹⁹ Landcover Types for Kaeo River Catchment, map, in Kaeo Whangaroa Liaison Committee, NRC File R5.2.2 vol.1

⁵²⁰ Statistics New Zealand, 'Far North, 2013' <http://www.stats.govt.nz/~media/Statistics/Census/2013%20Census/data-tables/population-dwelling/far-north.xls> (accessed 19 November 2015)

⁵²¹ Northland Regional Council, Asset Management Plan: Kaeo Flood Risk Reduction Scheme, 2015, p8

⁵²² Te Uira Associates, *Oral and Traditional History Report for Te Rohe o Whangaroa*, (April 2012), Wai 1040 #E32, p43

Figure 12: Kaeo River catchment



4.2.1 State of waterways

As is evident from claimants' briefs of evidence, water quality in Whangaroa is a major focus and concern for tangata whenua as their customary rights, culture, and traditions are inextricably linked to their kaitiakitanga of the waterways. Recent scientific investigations confirm that their concerns about the degradation of Whangaroa waters are well-founded and that the Kaeo River has been 'a significant source of faecal contamination to the Harbour'.⁵²³ Following frequent incidences of bacterial contamination in Whangaroa Harbour which threatened the operation of commercial oyster farms, a sampling programme was developed in and around the harbour in 2003 to identify sources of contamination. Five of approximately 12 sampling sites were located in the Kaeo River. The results showed that *E. coli* was entering the harbour from numerous waterways. They also revealed that between the head of the Kaeo River and some metres downstream of Kaeo township, freshwater quality deteriorated, providing evidence of the impact of land use on the river. The most contaminated site in the Kaeo River was below the point at which the town's treated wastewater is discharged, with a

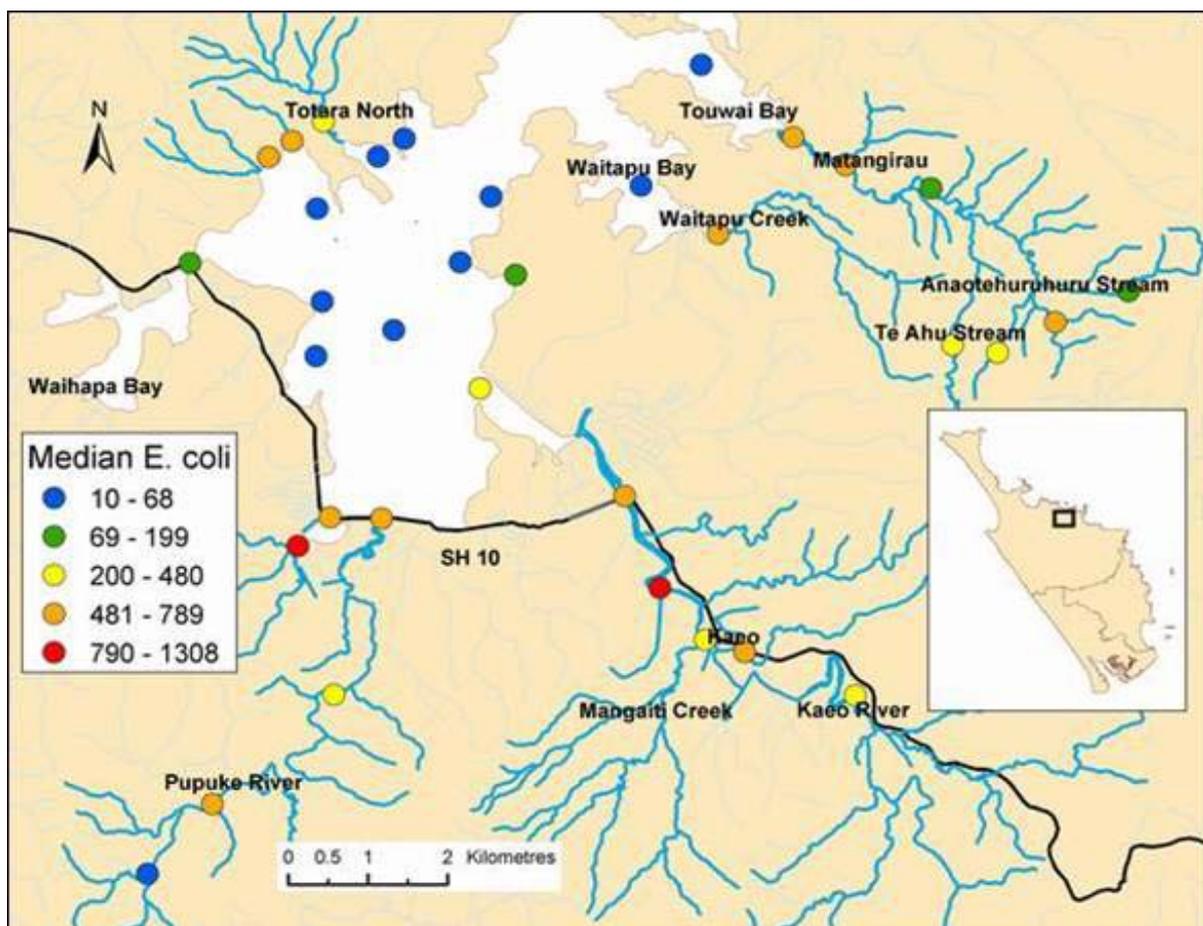
⁵²³ Northland Regional Council, *State of the Environment Report*, 2007, p165

median *E. coli* level at that test site of 932/100ml. However, treated effluent was not considered to be the sole issue:

Microbiological water quality was also impacted above the Kaeo township. The most likely source is faecal contamination carried in surface runoff from agricultural farming and where stock have access to the river. Faecal contamination from septic tanks and feral animals is also a possibility.⁵²⁴

Discussions around what these results meant (i.e. how polluted the Kaeo River was) do not appear to have been a clear feature of this research. The testing programme on the Kaeo River ended in late 2005, though testing continued in other contributing catchments including the Pupuke River, Touwai Stream, and Waitapu Creek.⁵²⁵

Figure 13: Median *E. coli* (n/100mL) results at Whangaroa Harbour, 2003-2005



(Source: Northland Regional Council, *State of the Environment Report 2007*, p162)

⁵²⁴ Northland Regional Council, *State of the Environment Report*, 2007, p162

⁵²⁵ Northland Regional Council, *State of the Environment Report*, 2007, pp161-5

Monthly samples were taken from the Kaeo River 'at Dip Road' by the Regional Council between 2007 and 2011. These samples were later compared and revealed that the median *E. coli* and sedimentation levels in the Kaeo River (with medians of 627 MPN/100ml and 6.35 NTU respectively⁵²⁶) were higher than national guidelines, and as such the river's water quality was assessed as being 'fair' - as opposed to excellent, good, or poor.⁵²⁷ Elevated nutrient levels and the associated poor water quality was 'likely to be related to high sediment loads from tree harvesting and runoff from agricultural land use'.⁵²⁸ Faecal contamination in the river was largely attributed to ruminants (i.e. cattle).⁵²⁹ The river was also determined to have a poor habitat quality, due in part to a lack of shade from trees along its banks and to high sedimentation levels, which was 'reflected in the degraded nature of the macro-invertebrate community', containing a 'low diversity of five fish species'.⁵³⁰ Still, the Kaeo River was said to be exhibiting improvements in terms of nutrient levels.⁵³¹

Turning back to the harbour, as part of a Far North harbours study, additional testing was carried out on Whangaroa Harbour in 2013 to assess water and sediment quality. According to the results, the levels of enterococci and faecal coliforms across all the sampling sites in the harbour fell within acceptable levels as set by the Ministry for the Environment. Apparently, all the harbours examined as part of the Far North investigation had 'very low' levels of micro bacteria, as results from testing in 2004 had also generally revealed.⁵³² These readings were considered to indicate that 'in all harbours the water at the time of sampling was safe for swimming and collecting seafood. The low levels of micro bacteria indicates [sic] that there was little pollution from animal or human waste or rotting vegetation'.⁵³³ However, ammonium levels (generally a result of livestock waste) at the Kaeo River mouth, Lane Cove, and Touwai Bay exceeded the recommended guidelines. Reactive phosphorus levels, which support

⁵²⁶ Northland Regional Council, River Water Quality and Ecology: State and Trends 2007-2011, p93

⁵²⁷ Northland Regional Council, River Water Quality and Ecology: State and Trends 2007-2011, p19

⁵²⁸ Northland Regional Council, River Water Quality and Ecology: State and Trends 2007-2011, p93

⁵²⁹ Northland Regional Council, River Water Quality and Ecology: State and Trends 2007-2011, p38

⁵³⁰ Northland Regional Council, River Water Quality and Ecology: State and Trends 2007-2011, pp21, 93

⁵³¹ Northland Regional Council, River Water Quality and Ecology: State and Trends 2007-2011, pp31, 32

⁵³² Northland Regional Council, Far North Harbours Water and Sediment Quality Investigation, December, 2013, pp56, 58

⁵³³ Northland Regional Council, Far North Harbours Water and Sediment Quality Investigation, December, 2013, p61

algal growth, were also above the recommended guideline levels at the testing sites in Whangaroa, except at the harbour entrance.⁵³⁴ With regard to sediment quality and nutrient enrichment, the results suggested that sediment at the Kaeo River mouth contained lower nutrient levels (nitrogen, organic carbon, and phosphorus) than at the other test sites in the harbour. There was also less mud and fine sand at the Kaeo River mouth than at the other sites.⁵³⁵ However, sediment in the harbour as a whole largely consisted of mud⁵³⁶, washed into the harbour from the land.

It is difficult to draw decisive conclusions about what this data means in terms of the health of the Kaeo River and Whangaroa Harbour and to what extent it has improved or declined in recent years. However, what is evident is that land usage is having a considerable impact on waterways in Whangaroa and that water quality in the Kaeo River has been far from ideal. As Terry Smith has noted, 'Rivers that we once drank from we would not now, because of pollution from farming and poor effluent systems'.⁵³⁷ The development and operation of the Kaeo wastewater treatment plant examined later in this chapter provides further insight into how this situation has arisen and some of the actions that have been undertaken to improve water quality in the Kaeo River.

4.3 *Claim issues*

For Whangaroa claimants, the 'rivers, streams, lakes and other resources are taonga'. Terence Tauroa explains that:

They were an important source of food and economic activity. They were also really important for cultural, social and spiritual purposes. Most kainga or village dwellings were located near a river, for access to water, food sources and travelling. This can be seen within our culture with the use of the pepeha. All Maori pepeha start with the Maunga or Mountain, going to the name of the stream or spring source around or from that mountain to the sea and on from there. That presents Whangaroa connected all the way down to the clashing of the oceans and wairua at Te

⁵³⁴ Northland Regional Council, Far North Harbours Water and Sediment Quality Investigation, December, 2013, pp43, 44

⁵³⁵ Northland Regional Council, Far North Harbours Water and Sediment Quality Investigation, December, 2013, pp46-7

⁵³⁶ Northland Regional Council, Far North Harbours Water and Sediment Quality Investigation, December, 2013, pp57, 59

⁵³⁷ Brief of Evidence of Terry Smith, Wai 1040 #S31, p23

Reinga where the water is again turned into vapour to form clouds and replenish the water over the mountain range (in a circle of life).⁵³⁸

Therefore, the treatment of such waterways has far-reaching consequences for Whangaroa tangata whenua, for their survival, their culture, and their identity. In nominating river systems for investigation in this rural rivers research project, Whangaroa claimants stated that there 'is no substantial waterway in Whangaroa in terms of a main river that is a source of grievance' but they considered that there were issues in connection to the Kaeo River which could fit within the Waitangi Tribunal's research programme. The claimants noted that main issue relevant to the Kaeo River was the frequency of flooding and the associated problems of siltation, pollution, destruction of property, the effect on the community, and the alteration of the tidal zone. For Whangaroa claimants, flooding in Kaeo raises questions around 'Crown responsibility either for creating the problem or failing to properly regulate or ameliorate the problem's causes and consequences'.⁵³⁹

Figure 14: Flood waters in Kaeo c. 1910s. The hill in the right-hand side of the frame looks to be Pohue



(Source: Northwood Brothers, Photographs of Northland, Alexander Turnbull Library, Wgt, Ref 1/1-005719-G)

⁵³⁸ Brief of Evidence of Terence Wirihana Tauroa, Wai 1040 #N1, p19

⁵³⁹ Memorandum of Counsel Filing Rural Rivers Long List for Whangaroa Taiwhenua, Wai 1040 #3.2.533, pp1-2

Figure 15: Kaeo's Wesleydale Memorial Church swamped by flood waters in April 1956



(Source: Kaeo Kerikeri Union Parish, <http://www.kaeokerikeriunionparish.org.nz/> accessed 11 May 2016)

Figure 16: Flooding at the Wesleydale Memorial Church in July 2007



(Source: Kaeo Kerikeri Union Parish, <http://www.kaeokerikeriunionparish.org.nz/> accessed 11 May 2016)

The prevalence and extent of flooding in Kaeo is an issue that some claimants have referred to in briefs of evidence for the Papatirangi o Te Raki Inquiry and one which they mostly attribute to the forestry industry.⁵⁴⁰ Terence Tauroa, representing Te Aeto hapū, has explained that the 'Upokorau White Hills area is the source of the Kaeo River catchment, and is where constant cutting of the blocks around the rain season leads to the flooding of the Kaeo basin'.⁵⁴¹ Tauroa continues:

We have almost yearly flooding of the Kaeo River and township.... Flooding has always been an issue here – although not as much as it is today Bigger floods are now much more frequent and the floods do more damage. This flooding happens for a number of reasons.... One is because of the current forestry harvesting practices in the Upokorau catchment. As I have said they harvest pine just before the winter sets in, the rains come and, because the vegetation that would hold a lot of the water has been destroyed, the catchment floods, ending up in the harbour.... A lot of the dead vegetation left on the bare ground is washed into the rivers causing damage and blockages in the channels.⁵⁴²

Other claimants, such as Kura Te Waru-Rewiri, have described how those living along Omaunu Road on the lands surrounding Mangaiti Creek 'struggle to exist as a marae and whanau' as a result of frequent flooding in the Kaeo catchment. They argued that regular flooding 'has been tremendously disheartening', preventing development in horticulture, agriculture, and aquaculture.⁵⁴³ Though others maintain that despite the challenges, whanau still 'utilise the land efficiently to sustain them[selves], with garden crops and beef, poultry, [and] pigs', as their tūpuna had done.⁵⁴⁴

⁵⁴⁰ The issue of flooding has been raised by the following claimants: Brief of Evidence of William Grant Douglas Hori, Wai 1040 #G5; Brief of Evidence of Waitangi Annette Wood, Wai 1040 #S12; Brief of Evidence of Terence Wirihana Tauroa, Wai 1040 #N1; Deborah Annie Hill Wai 1040 #N3; Brief of Evidence of Sailor Morgan, Wai 1040 #S13

⁵⁴¹ Brief of Evidence of Terence Wirihana Tauroa, Wai 1040 #N1, p21. The impacts of forestry on Whangaroa waterways has already been examined by Garth Cant, *Crown Sponsorship of Mass Deforestation in Whangaroa and Hokianga 1840 - 1990* (CFRT, 2015) Wai 1040 #A52 and David Alexander *Land Based Resources, Waterways and Environmental Impacts*, (CFRT, 2006) Wai 1040 #A7. Therefore, it is only noted briefly in this report.

⁵⁴² Brief of Evidence of Terence Wirihana Tauroa, Wai 1040 #N1, p25. Violet Walker has noted that after the 2007 floods, the Whangaroa Maori Trust Board initiated discussions with Juken Nisho, which owns pine plantations in Kaeo, to discuss their harvesting practices. 'Juken Nisho has since become Summit Plantation and the Whangaroa Maori Trust Board has worked with and alongside Summit Plantation for the past seven (7) years to develop an improved "best practice harvesting guideline" which has been implemented for the past five (5) years, so therefor [sic] is no longer a contributor to flooding in Kaeo'. (Personal Communication, 11 June 2016)

⁵⁴³ Brief of Evidence of Kura Irirangi Te Waru-Rewiri, Wai 1040 #N18, p5

⁵⁴⁴ Violet Walker, Personal Communication, 11 June 2016

The majority of the Whangaroa claims concerned with environmental issues concentrate on the condition of Whangaroa Harbour and activities within it, such as oyster farming. The harbour itself is outside the scope of this rural rivers report. Nevertheless, the health of the harbour is influenced by the health of the rivers that feed into it; 'all the waters in Te Raki are connected together'.⁵⁴⁵ Hence, issues with the harbour are worth noting here. The concerns raised by claimants in relation to the Whangaroa Harbour can be broadly summarised as:

- a) Pollution of the harbour at Totara North from Lane's Timber Mill.⁵⁴⁶
- b) The effect of deforestation and agriculture on food sources, particularly the tio (a native rock oyster): agricultural runoff, siltation, and wastewater have polluted the water and hence contaminated the tio, as well as the pacific oyster.⁵⁴⁷
- c) The impact of the introduction of the pacific oyster: drove the tio to near extinction.⁵⁴⁸
- d) Exploitation of kaimoana by recreational fishers.⁵⁴⁹
- e) Problems with oyster farms: including blocking the flow of sediment out of the harbour⁵⁵⁰ and out of the Kaeo River, thereby contributing to flooding.⁵⁵¹
- f) Sewage seepage into waterways from septic tanks.⁵⁵²

⁵⁴⁵ Brief of Evidence of Ani Taniwha, Wai 1040 #G3, p38

⁵⁴⁶ Brief of Evidence of Sonny Edward Hape, Wai 1040 #N14, p4; Brief of Evidence of Waitangi Annette Wood, Wai 1040 #S12, p11; Brief of Evidence of William Grant Douglas Hori, Wai 1040 #G5, p19; Affidavit of Tarzan Brown Hori Wai 1040 #G6, p42; Brief of Evidence of Darryl Gene Hape, Wai 1040 #N10, p10

⁵⁴⁷ Supplementary Submission in Support of the Whariki (Opening) Statement for Whangaroa Taiwhenua, Wai 1040 #E57, p11; Brief of Evidence of Terence Wirihana Tauroa, Wai 1040 #N1, p20, 21, and 23; Brief of Evidence of Tepau Pomana, Wai 1040 #S16, p10; Brief of Evidence of William Grant Douglas Hori, Wai 1040 #G5, pp19-20; Brief of Evidence of Waitangi Annette Wood, Wai 1040 #S12, p12; Brief of Evidence of Terry Smith, Wai 1040 #S31, pp22-23; Brief of Evidence of Sonny Edward Hape, Wai 1040 #N14 p4; Brief of Evidence of Deborah Annie Hill, Wai 1040 #N3, pp19, 20 and 21

⁵⁴⁸ Joint Brief of Evidence of Mataroria Lyndon and Ruiha Te Matekino Collier, Wai 1040 #N7, p10; Brief of Evidence of William Grant Douglas Hori, Wai 1040 #G5, p18; Brief of Evidence of Isabella Kathleen Ulrich, Wai 1040 #G8, p25; Brief of Evidence of Waitangi Annette Wood, Wai 1040 #S12, p13

⁵⁴⁹ Brief of Evidence of Moana Nui A Kiwa Wood, Wai 1040 #S11, p8; Brief of Evidence of Waitangi Annette Wood, Wai 1040 #S12, p11; Brief of Evidence of Sailor Morgan, Wai 1040 #S13, p.12

⁵⁵⁰ Brief of Evidence of Rusty Poata, Wai 1040 #N6, p5; Brief of Evidence of Terence Wirihana Tauroa, Wai 1040 #N1, pp21-22

⁵⁵¹ Brief of Evidence of William Grant Douglas Hori, Wai 1040 #G5, p18; Brief of Evidence of Waitangi Annette Wood, Wai 1040 #S12, p12

⁵⁵² Brief of Evidence of Sonny Edward Hape, Wai 1040 #N14, p4; Brief of Evidence of Terence Wirihana Tauroa, Wai 1040 #N1, p24

g) The inability to collect the same amount and type of kai moana and kai awa⁵⁵³: Fish, pipi, oysters, crabs, pupu, tuna, freshwater crayfish, and whitebait were collected from the rivers and harbour, but their numbers have fallen.⁵⁵⁴

Figure 17: Whangaroa oyster beds viewed from St Paul's Rock, 2013. To the left of the oyster beds (out of view) is the mouth of the Kaeo River



(Source: NZ Frenzy Guidebook, <https://ssl.panoramio.com/photo/96644078> accessed 11 May 2016)

For Whangaroa Māori, the harbour ‘was very much part of our food basket’⁵⁵⁵ meaning that declining water quality and the resulting impact on sources of kai has ‘affected the way we mahinga kai and practice our own culture’.⁵⁵⁶ As Moana Woods and Harry Brown explained, ‘Our mana is connected with our ability to feed our manuhiri.... The kai is a reflection of our mana, and our mana is connected with our ability to serve the

⁵⁵³ Brief of Evidence of Terry Smith, Wai 1040 #S31, p22; Brief of Evidence of William Grant Douglas Hori, Wai 1040 #G5, pp18, 19; Affidavit of Tarzan Brown Hori Wai 1040 #G6, pp42-44; Brief of Evidence of Sonny Edward Hape, Wai 1040 #N14 pp4-5; Brief of Evidence of Deborah Annie Hill, Wai 1040 #N3, p20

⁵⁵⁴ Brief of Evidence of Karanga Pourewa, Wai 1040 #G7, pp26, 32; Brief of Evidence of Terence Wirihana Tauroa, Wai 1040 #N1, pp20, 25; Brief of Evidence of Deborah Annie Hill, Wai 1040 #N3, p20

⁵⁵⁵ Brief of Evidence of Moana Nui A Kiwa Wood, Wai 1040 #S11, pp2-3

⁵⁵⁶ Brief of Evidence of Waitangi Annette Wood, Wai 1040 #S12, p13

kai'. Therefore, the degradation of Whangaroa's waters impacts not only the quality of the kai, but also 'our mana and our wairua'.⁵⁵⁷ More than this, diminishing resources has also had a very immediate effect on people's ability to survive and thrive in Whangaroa. Deborah Hill, who grew up next to Waihapa Bay, explained that:

The way I live today is as it was when I was a little girl. I do not have power or running water and I depend very much on what papatuanuku can provide.... Many of the things that I had growing up are no longer here anymore – the kai, the ngahere and the moana. These days our kai is gone. If you want food, you have to buy it. To buy food, you need money. To get money, you need a job and to get a job you generally need to leave the rohe.⁵⁵⁸

Thus, good water quality is a vital component to the ability of Te Raki Māori to exercise their customary authority and rights.⁵⁵⁹

Alongside the changes that have been witnessed in the kai and wairua of Whangaroa Harbour and rivers is a sense among Whangaroa Māori that they have been unable to fully exercise their kaitiakitanga.⁵⁶⁰ Claimants consider that the actions of the NRC have 'contributed to the [poor] condition of our harbour', while Māori concerns have been constantly ignored and their customary authority afforded little status⁵⁶¹; 'Maori conservation and management practices have been totally sidelined by the Crown, even though they have been practiced for centuries'.⁵⁶² As Ngāti Kawau kaumātua, Karanga Pourewa, explained:

We have put in objections to the Regional Council about aqua farming in Whangaroa. We have had no reply. This all raises a bigger problem that we have with Ngati Kawau not having adequate representation on Local Government bodies. We don't have a say in decision-making on the environment or conservation. There is a lack of Maori voices on these councils, which means that our cases, resource consent, and building

⁵⁵⁷ Joint Brief of Evidence of Moana Woods and Harry Brown, Wai 1040 #N8, pp5-6

⁵⁵⁸ Brief of Evidence of Deborah Annie Hill, Wai 1040 #N3, pp22, 24

⁵⁵⁹ MWH, *Far North District Council, Kaeo Sanitary Works Subsidy Scheme – Provisional Application*, vol. 1, April, 2007, p1, in Kaeo Wastewater Reports, Far North District Council (FNDC) File KAE2

⁵⁶⁰ Brief of Evidence of Ani Taniwha, Wai 1040 #G3, p34; Brief of Evidence of Terry Smith, Wai 1040 #S31, p23

⁵⁶¹ Joint Brief of Evidence of Mataroria Lyndon and Ruiha Te Matekino Collier, Wai 1040 #N7, pp19, 31; Brief of Evidence of Waitangi Annette Wood, Wai 1040 #S12, p11; Brief of Evidence of Terence Wirihana Tauroa, Wai 1040 #N1, p23; Brief of Evidence of Moana Nui A Kiwa Wood, 12 August 2015, Wai 1040, p9

⁵⁶² Brief of Evidence of Terence Wirihana Tauroa, Wai 1040 #N1, p20

requests don't get presented properly. It also means that Maori views on coastal activities and protection of aquaculture do not get recognised.⁵⁶³

In the view of Woods and Brown, the Crown/local government assume ultimate control of environmental management, and in doing so 'it says that our tikanga is not good enough to take care of the Harbour despite us doing so successfully for generations'.⁵⁶⁴ Therefore, for some claimants, the RMA has served as an ineffective means of protecting resources, managing use, and ensuring that the kaitiakitanga of Te Raki Māori is respected and that tangata whenua are afforded an appropriate level of influence.

There are, however, more positive views of the prospects for Māori engagement in resource management under the RMA. For instance, Violet Walker considers that:

There is plenty of opportunity for Tangata Whenua/hapu/Iwi to engage if you make the effort.... Wai Care and the Whangaroa Maori Trust Board participated un-resourced for many many years because we were working for the people, our people and the community. We got wise along the way and worked out how to get resourced If you actually know the RMA you will know that there are actually many sections Tangata Whenua/Iwi can utilise if they so choose.⁵⁶⁵

Other claimants have also had more favourable experiences in terms of their ability to engage with resource management processes. William Hori, for instance, noted that applicants seeking a resource consent within the Ngāti Kawau rohe used to approach Karangahape Marae in Matangirau, either directly or through Te Rūnanga O Whaingaroa (the Rūnanga), to obtain 'cultural assessments'. However, he also found that:

As well as being time consuming, this was a huge ask for the Far North Regional Council [sic] to expect tangata whenua to perform. Although it was a privilege to be asked, the practicalities were unworkable, some sites taking 3 or more visits to complete.... The Karangahape Marae Trust would provide sign off on some consents with various requirements about protection mechanisms that should be in place, for others we would forward our findings and recommendations. I felt we were just a reporting back function with no real powers to be effective.⁵⁶⁶

⁵⁶³ Brief of Evidence of Karanga Pourewa, Wai 1040 #G7, pp32-3

⁵⁶⁴ Joint Brief of Evidence of Moana Woods and Harry Brown, Wai 1040 #N8, p3

⁵⁶⁵ Personal Communication, 11 June 2016

⁵⁶⁶ Brief of Evidence of William Grant Douglas Hori, Wai 1040 #G5, p24

Thus, in this instance, Māori engagement was still overshadowed by limited regard for kaitiakitanga and there is a feeling in Whangaroa that the Regional Council is asking too much without giving tangata whenua the support they need to effectively engage in environmental management. Although Mr Hori was not referring to resource consents connected to the Kaeo River, his account highlights how little space Te Raki Māori generally consider has been opened up 'for hapu involvement and hapu directed initiatives for environmental management' under the RMA.⁵⁶⁷ The resource consents examined in this chapter provide further insight into the mixed bag that is Māori engagement in rural river management in Northland since 1991.

4.4 Local Study #1: Kaeo River flood risk reduction works

As already mentioned, the Kaeo River is well known for its propensity to flood and it has long been an issue in Kaeo. Over time the river has become progressively narrower and shallower, mainly due to deforestation and the subsequent build-up of sediment and vegetation in the river channel.⁵⁶⁸ Combined with the 'extremely high intensity, short duration rainstorms which are a feature of Northland', these changes to the physical features of the Kaeo River have caused it to overflow its banks more frequently.⁵⁶⁹ Prior to European settlement, if the channels of the Kaeo River and its tributaries became clogged with gravel, fallen trees, branches, and other vegetation, the river would simply change its course. However, as people increasingly occupied the Kaeo floodplain, building homes, factories, shops, and roads, so too did the need grow for the river 'to stay within one channel rather than meandering at will on the floodplain.'⁵⁷⁰ This has resulted in an increasing need to find a way to maintain and manage the Kaeo River.

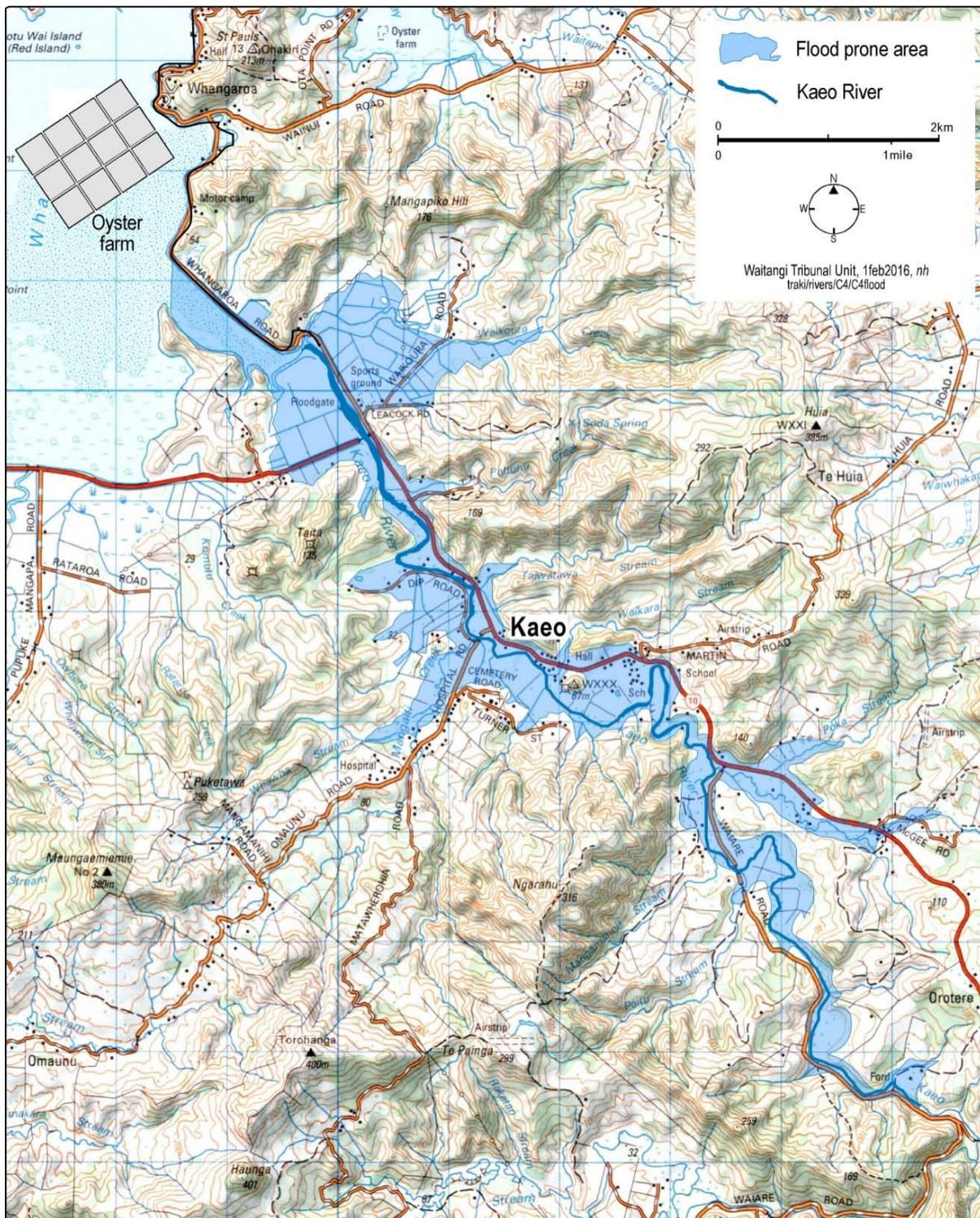
⁵⁶⁷ Brief of Evidence of William Grant Douglas Hori, Wai 1040 #G5, p25

⁵⁶⁸ 'Managing The Flood Risk in Kaeo', in Kaeo River Management, NRC File 830.1.2 vol. 2

⁵⁶⁹ Land Operations Manager, NRC, to Connell Wagner, 24 November, 2000, in Kaeo River Management, NRC File 830.1.2 vol. 2

⁵⁷⁰ 'Interim Flood Management Plan for the Kaeo River and for Smaller Whangaroa Rivers and Streams from Taupo Bay to Te Ngairi', NRC Special Meeting, 25 June, 2008, pp17-8, in Kaeo River Management, NRC File R5.2

Figure 18: Flood prone areas along the Kaeo River



The flood mitigation works carried out by the NRC in recent decades provide an example of the ways in which the actual form of the Kaeo River has been managed, and provide evidence of a project whereby tangata whenua eventually came to hold a key role in environmental management. Though, as will be shown, effective engagement

with tangata whenua appears to be most apparent where their interests are most tangible (e.g. where a pā site is concerned), rather than in relation to water and the river as a resource in its entirety.

Figure 18 shows the flood-prone areas of Kaeo as determined by the NRC. These areas were identified as being at risk as part of the Regional Council's wider flood risk reduction scheme.⁵⁷¹

4.4.1 Initial steps towards managing the flood risk in the Kaeo River under the Resource Management Act 1991

By the NRC's own admission, during the 1980s and 1990s river management was largely neglected in Northland following the dismantling of the Government's subsidy scheme for flood and erosion control works. As a consequence, the condition of Northland's rivers generally deteriorated during this period, with many river channels becoming blocked and the frequency of flooding in the region increasing.⁵⁷²

The build-up of gravel in the Kaeo River was an evident problem. Deforestation and pastoral farming, combined with Northland's heavy rain falls, has resulted in the soils of the Kaeo catchment being prone to erosion and slipping. In heavy rains, gravel and other sediments from lands within the river catchment are washed into the river namely in the lower catchment area where there is 'extensive slumping of steep slopes of the valleys at the head of the catchment'. Rock and soil is then carried downstream during high river flows and accumulates mostly at river bends.⁵⁷³ This build-up reduces the amount of water that the Kaeo River can hold during heavy rainfall, increasing the risk of flooding, while also having the potential to divert or push the flow of water into river and streambanks causing further erosion and sedimentation downstream.⁵⁷⁴ Furthermore, such erosion results in sediment being washed into Whangaroa Harbour,

⁵⁷¹ Data for this map was taken from the Northland Regional Council's online maps, <http://www.nrc.govt.nz/Your-Council/online-maps/>, accessed 16 November 2015

⁵⁷² Northland Regional Council, *Northland River Management Policy*, Consolidated Document, February, 2006, p18

⁵⁷³ Northland Regional Council, *Kaeo River Flood Management Proposed Stage 1 Works Supporting Information for Resource Consent Applications*, August, 2001, p19, in Northland Regional Council Kaeo, NRC File 9390 vol.1

⁵⁷⁴ Northland Regional Council, 'Gravel Management' <http://www.nrc.govt.nz/gravelmanagement> (accessed 6 November 2015)

which was estimated in 1985 to have been infilling at a rate of 2.6 millimetres per year, decreasing the volume of water held within the harbour and reducing the habitat for fish species.⁵⁷⁵ Gravel and sediment build-up in the river is also said to have been exacerbated by the planting of grasses and bushy vegetation along the river banks which trap sediment.⁵⁷⁶

Historically, gravel had been removed from the Kaeo River on occasion by individuals, and some contractors, for the construction of roads and farm tracks for instance⁵⁷⁷, thereby reducing gravel build-up. However, after the introduction of the RMA, the 'charging of a fee for consent to take gravel [when taking more than 100 cubic metres in any 12 month period⁵⁷⁸] was interpreted locally as a "ban" on gravel extraction' and 'meant that little or no gravel was being extracted from the river'.⁵⁷⁹ This point has also been reiterated by claimant Gary Bramley; 'With the RMA, that practice [of gravel extraction] stopped, and there was no extraction for many years'.⁵⁸⁰

Prior to the 2000s, flood protection works on the Kaeo River had been relatively minimal: a stopbank adjacent to the Whangaroa College grounds had been erected, along with a raised footpath along State Highway 10, an embankment at Hospital Road, a box culvert to assist with drainage at Hospital Road, and the elevation of land on the edge of the river by Janits Family Diner.⁵⁸¹ However, after extensive flooding in Northland in the late 1990s, the NRC began to take more proactive steps towards

⁵⁷⁵ Northland Regional Council, Far North Harbours Water and Sediment Quality Investigation, December, 2013, p11

⁵⁷⁶ 'Interim Flood Management Plan for the Kaeo River and for Smaller Whangaroa Rivers and Streams from Taupo Bay to Te Ngairi', Northland Regional Council Special Meeting, 25 June 2008, pp17-8, in Kaeo River Management, NRC File R5.2

⁵⁷⁷ Northland Regional Council, *Kaeo River Flood Management Proposed Stage 1 Works Supporting Information for Resource Consent Applications*, August, 2001, p16, in Northland Regional Council Kaeo, NRC File 9390 vol.1

⁵⁷⁸ According to the Regional Water and Soil Plan for Northland, gravel extraction from rivers was a permitted activity provided that the Vol. taken for individual/private use did not exceed 100 cubic metres in a 12 month period. If more gravel was sought, then it was treated as a discretionary activity for which a resource consent was required. (Northland Regional Council, *Regional Water and Soil Plan for Northland*, 2004, clause 31.1.1 and 31.1.3)

⁵⁷⁹ 'Interim Flood Management Plan for the Kaeo River and for Smaller Whangaroa Rivers and Streams from Taupo Bay to Te Ngairi', NRC Special Meeting, 25 June 2008, p19, in Kaeo River Management, NRC File R5.2

⁵⁸⁰ Personal communication, email, 21 December 2015

⁵⁸¹ Northland Regional Council, *Kaeo Flood Management Plan, Draft Report*, April, 2001, p4, in Kaeo River Management, NRC File 830.1.2 vol.1

reducing the risk of flooding in the region. In 2000, seeking to respond to ‘increasing demand for advice and assistance with river management issues and to help clarify the role and responsibilities of local government’, the Regional Council put together a River Management Policy which set out an ‘integrated approach to flood hazard management’ with an aim to minimising the damage caused by flooding.⁵⁸²

Figure 19: An example of the build-up of shingle in the Kaeo River after flooding in 2009. This image also shows stopbanking works undertaken as a flood mitigation measure



(Source: Environmental Monitoring Officer to Land Operations manager, 4 June 2009, NRC File 9390, Vol. 2)

In the past, it appears that the Regional Council had relied to some extent on landowners whose property adjoined waterways to maintain the free flow of water (e.g. to remove any obstructions from their property out to the midline of the river) as was

⁵⁸² Northland Regional Council, ‘River Management Policy’, #4.1.3, 23/08/00, p1, received 10 November, 2015; Northland Regional Council, *Northland River Management Policy*, Consolidated Document, February, 2006, p2
[http://resources.nrc.govt.nz/upload/4180/Northland%20River%20Management%20Policy%20\(web\).pdf](http://resources.nrc.govt.nz/upload/4180/Northland%20River%20Management%20Policy%20(web).pdf) (accessed 5 November 2015)

their responsibility under the Land Drainage Act 1908.⁵⁸³ In the Regional Council's view, communities needed to accept "ownership" of rivers and their management. But by 2000, the Regional Council also accepted that there was a 'need to coordinate management on one bank with that on the opposite bank and with work both up and down stream'.⁵⁸⁴ In order to achieve this, the Council was 'prepared to facilitate community involvement in firstly recognising and accepting ownership of the problem', then in considering solutions and implementing a course of action.⁵⁸⁵

As part of the new River Management Policy, and as a means to manage funding for the 'backlog' of work, the Regional Council adopted a method for establishing 'an order of priority for preparing and undertaking river management schemes' by assessing factors such as the threat flooding posed to life, buildings, and farmland in Northland's river catchments.⁵⁸⁶ In 2000, the Priority Rivers Project thus came to fruition. Along with 26 other river catchments, the Kaeo River was categorised as a priority river and the Kaeo Flood Management Plan was developed, the primary aim of which was to improve river flow capacity.⁵⁸⁷ This plan was prepared by the Regional Council, in its capacity as a catchment board, under the Soil Conservation and Rivers Control Act 1941.⁵⁸⁸ Under the 1941 Act, the Regional Council was not required to consult with Māori in the development of the plan, though it would still have to have regard to kaitiakitanga in relation to resource consent applications lodged to carry out activities set out in the river management plan.

4.4.2 Seeking a resource consent for the Kaeo flood management works

The Kaeo River Flood Management Plan proposed that works be undertaken to increase river channel capacity through clearing obstructions like tree limbs and widening some channels, constructing stopbanks, providing for ongoing management of gravel in the

⁵⁸³ Northland Regional Council, *Regional Water and Soil Plan for Northland*, 2004, clause 11.1, p114; clause 27.1.3, p222. This Act is still in force.

⁵⁸⁴ Northland Regional Council, 'River Management Policy', #4.1.3, 23/08/00, p2

⁵⁸⁵ Northland Regional Council, 'River Management Policy', #4.1.3, 23/08/00, p6

⁵⁸⁶ Northland Regional Council, *Northland River Management Policy*, Consolidated Document, February, 2006, pp9-11

⁵⁸⁷ Northland Regional Council, 'Kaeo River Flood Management Proposed Stage 1 Works Supporting Information for Resource Consent Applications', August, 2001, p25, in Northland Regional Council Kaeo, NRC File 9390 vol.1

⁵⁸⁸ Land Operations Manager, NRC, to Chairperson Far North Branch, Forest and Bird, 29 October 2002, in Northland Regional Council Kaeo, NRC File 9390 vol. 2

river, and setting a minimum for floor levels in buildings on the floodplains.⁵⁸⁹ Following some initial discussions with local residents in late 2000, and seeking to gauge public support for a flood control scheme for the Kaeo River, the Regional Council held a meeting with community representatives in May 2001. The purpose of the meeting was to talk about the Council's draft Kaeo River Flood Management Plan.⁵⁹⁰ A public meeting was also organised for later that month and was attended by over 100 people.⁵⁹¹ Additionally, the Regional Council held preliminary discussions about the proposed plan with the Department of Conservation, the New Zealand Royal Forest and Bird Protection Society (Forest and Bird), and Te Rūnanga O Whaingaroa. The general message from the Kaeo community at this time was that river works were essential; the Kaeo River needed to be cleared of gravel and other debris in order to reduce the risk of flooding.⁵⁹² In fact, Hiwi Tauroa even offered the services of the Rūnanga to carrying out the flood mitigation works, acknowledging the great need to clear the rivers and streams of the Kaeo catchment of accumulated gravel.⁵⁹³

In September 2001, Environmental and Business Group Ltd filed a resource consent application, on behalf of the NRC, to carry out works and activities in the Kaeo River and Mangaiti and Waikare streams. The Regional Council was therefore both the applicant and the decision-maker for this consent. This application sought approval to remove gravel, some trees and vegetation from the Kaeo River and its banks, spray weeds along its banks, deepen and widen the lower parts of Waikara Stream, and widen some sections of the Kaeo River.⁵⁹⁴ Only Gary Bramley (a Kaeo claimant previously referred to), in his capacity as Chairperson of the Far North District Branch of Forest and Bird,

⁵⁸⁹ Northland Regional Council, *Kaeo Flood Management Plan, Draft Report*, April, 2001, p1, in Kaeo River Management, NRC File 830.1.2 vol.1

⁵⁹⁰ Project Plan for Kaeo River Management Plan, 29 August, 2000, in Kaeo River Management, NRC File 830.1.2 vol. 2

⁵⁹¹ Northland Regional Council media release, 'Strong Local Interest in Kaeo River Management', 5 June 2001, in Kaeo River Management, NRC File 830.1.2 vol. 1

⁵⁹² Northland Regional Council, 'Kaeo River Flood Management Proposed Stage 1 Works Supporting Information for Resource Consent Applications', August, 2001, p27, in Northland Regional Council Kaeo, NRC File 9390 vol.1

⁵⁹³ Northland Regional Council, 'Kaeo River Flood Management Proposed Stage 1 Works Supporting Information for Resource Consent Applications', August, 2001, p26, in Northland Regional Council Kaeo, NRC File 9390 vol.1

⁵⁹⁴ Application for a Resource Consent, 26 September 2001, in Northland Regional Council Kaeo, NRC File 9390 vol.1; NRC Staff Report 01 9390 (01-11), 30 April 2002, para 2, p4, in Northland Regional Council Kaeo, NRC File 9390 vol. 2

appears to have responded to notice of the resource consent application having being made, voicing concern that there was a lack of detail in the application regarding, for instance, the extent to which the works would actually reduce the risk of flooding and the environmental effects of the works.⁵⁹⁵

Figure 20: A view of the Kaeo River from the Kaeo webcam which was installed as part of the Regional Council's flood risk reduction scheme. The top right-hand corner of the image shows where a gravel island has been building up



(Source: Northland Regional Council, <http://www.nrc.govt.nz/Environment/River-and-rainfall-data/Kaeo-Webcam/> accessed 11 May 2016)

4.4.2.1 Uncertainty about consent holding

On 8 October 2001, the Regional Council sent letters to the Far North District Council, Forest and Bird, and the Rūnanga informing them that a consent application for flood mitigation works on the Kaeo River had been lodged and that consultation was

⁵⁹⁵ Chairperson Far North Branch, Forest and Bird, to Lands Operation Manager, NRC, 28 October 2001, in Northland Regional Council Kaeo, NRC File 9390 vol.1

ongoing.⁵⁹⁶ It appears that Forest and Bird was the only one to respond. The Council's letter did not stipulate which aspects of the application were still being discussed. However, one of the main remaining issues was undoubtedly who the consent holder would be.

The Northland River Management Policy was intended to clarify the respective roles of the Regional and District Councils amidst 'confusion within Northland as to which authority is responsible for promoting river management'.⁵⁹⁷ The river management policy notes that the Regional Council was eager for the community or the relevant District Council to apply for river management consents, let tenders, and manage contracts.⁵⁹⁸ However, the Regional Council and Far North District Council had apparently reached an agreement with regards to the Kaeo River that:

[The] District Council will continue to manage the rural drainage districts ... and urban areas which are subject to comprehensive stormwater management plans. The Regional Council will manage rivers and drainage in the rural areas outside of the gazetted drainage districts and the small settlements for which stormwater management plans will not be prepared.... As the Kaeo itself only occupies a small part of the floodplain and most of the work would need to be done in the rural area, the Northland Regional Council would be the lead authority.⁵⁹⁹

Still, confusion over their respective roles remained. Although the consent application had been submitted on behalf of the NRC, the Regional Council was under the impression that the District Council would ultimately accept responsibility for the resource consent. When the District Council failed to supply any written verification of its willingness to act as the consent holder, the Regional Council put the application on hold.⁶⁰⁰ Finally, in December 2001, based on discussions with its Chair, the Regional

⁵⁹⁶ Lands Operation Manager, NRC, to Te Runanga O Wairanga [sic], 8 October 2001, in Northland Regional Council Kaeo, NRC File 9390 file vol.1

⁵⁹⁷ Northland Regional Council, 'River Management Policy', #4.1.3, 23/08/00, p1

⁵⁹⁸ Northland Regional Council, 'River Management Policy', #4.1.3, 23/08/00, p6

⁵⁹⁹ 'Managing The Flood Risk in Kaeo', in Kaeo River Management, NRC File 830.1.2 vol. 2

⁶⁰⁰ Consents Manager, NRC, to General Manager, NRC, 30 November 2001, in Northland Regional Council Kaeo, NRC File 9390 file vol.1; Consents Manager, NRC, to NRC staff members, 2 October, 2001, in Northland Regional Council Kaeo, NRC File 9390 vol.1

Council decided that its Land Operations Department would take responsibility for the consent; the Regional Council would be the consent holder.⁶⁰¹

The files consulted for this report do not reveal on what basis the Regional Council thought the District Council would assume responsibility for the Kaeo flood mitigation works. Nor is there any explanation in the files as to why the Regional Council ultimately agreed to act as the consent holder, though it may simply have been ‘in recognition of the Regional Council’s responsibilities as a catchment board and the “regional” benefits of reducing the incidence of flooding’.⁶⁰² Whatever the reason, it seems that the Regional Council’s dominant role in managing flood risk in rural river catchments soon became standard policy from October 2002 when the Regional Council amended the Northland River Management Policy. These amendments saw the Regional Council commit to accepting primary responsibility for investigating river management issues, undertaking surveys and flood modelling, preparing management plans, establishing funding systems, and gaining resource consents and approval for river management schemes under the Soil Conservation and Rivers Control Act 1941.⁶⁰³

4.4.2.2 Consultation and granting of the consent

In January 2002, the Regional Council sent letters to Mangaiti Marae, Te Iwi o Ngātikahu ki Whangaroa, Te Rūnanga O Whaingaroa, Whangaroa Māori Executive, Te Pā O Whakakii, and other affected parties notifying them of the resource consent application for flood mitigation works.⁶⁰⁴

In March 2002, the resource consent application was publicly notified, presumably because of the widespread community interest in the works. The Regional Council

⁶⁰¹ General Manager, NRC, to Consents Manager, NRC, NRC Memorandum, 20 December, 2001, in Northland Regional Council Kaeo, NRC File 9390 vol.1

⁶⁰² Land Operations Manager, NRC, to Kaeo Engineers, 13 August, 2001, in Kaeo River Management, NRC File 830.1.2 vol.1

⁶⁰³ Northland Regional Council, *Northland River Management Policy*, Consolidated Document, February, 2006, p2

⁶⁰⁴ ‘Request for Iwi Contacts’, Northland Regional Council Kaeo NRC 9390 vol.1; ‘Notification of Application for Resource Consent’, draft letter, 29 January, 2002, in Northland Regional Council Kaeo, NRC File 9390 vol.1

received 28 submissions in response, none of which were from Māori groups.⁶⁰⁵ Three submitters objected to the application, one of whom was Gary Bramley from Forest and Bird, and 15 submitters wished to be heard at a formal hearing regarding certain aspects of the consent application. However, draft recommendations which sought to address submitters' concerns were sent out to those submitters and, content with the recommendations, they each agreed to sign a waiver indicating that they no longer wished to be heard at a formal hearing.⁶⁰⁶

In order to deal with some of the concerns raised by Forest and Bird, an agreement was reached whereby students from Whangaroa College, in conjunction with Forest and Bird, would carry out tests for water clarity, suspended sediment levels, invertebrates and shellfish levels, as well as observing birdlife along the riverbanks in order to monitor the impact of the flood mitigation works on the Kaeo River.⁶⁰⁷ But, in the Council's view, the flood management plan was 'not a wider water quality and habitat management plan', and in any case, the potential environmental impact of the river works was considered to be no more than minor.⁶⁰⁸ However, perhaps this was too narrow an approach, as one claimant recently set out in their brief of evidence that 'Riverways are regularly cleared by Council to increase water flow into the harbour – destroying any natural food development areas such as watercress growth and tuna spawning'.⁶⁰⁹ Bramley similarly told the author that he considers that the Council failed in its approach to flood mitigation to appreciate the nature of the river's ecosystem:

[T]here has been no catchment wide approach – the issue is wider than flooding in Kaeo and protection of people and property there. There are issues around siltation of the harbour, encroachment of mangroves ... health and availability of kaimoana, habitats for aquatic life (including Kaeo (freshwater mussels), which were previously common in Kaeo

⁶⁰⁵ Northland Regional Council Staff Report 01 9390 (01-11), 30 April 2002, para 5, p9, in Northland Regional Council Kaeo, NRC File 9390 vol. 2; Submissions on application for Resource consent, 2002, in Northland Regional Council Kaeo, NRC File 9390 vol. 2

⁶⁰⁶ Northland Regional Council Staff Report 01 9390 (01-11), 30 April 2002, para 5, p9, in Northland Regional Council Kaeo, NRC File 9390 vol. 2

⁶⁰⁷ Northland Regional Council Staff Report 01 9390 (01-11), 30 April 2002, para 6, p9, in Northland Regional Council Kaeo, NRC File 9390 vol. 2. Unfortunately, this monitoring programme fell through. However, it was not included as a consent condition and therefore there was no obligation for any of the parties to reinstate any such a programme.

⁶⁰⁸ Land Operations Manager, NRC, to Chairperson Far North Branch, Forest and Bird, 29 October, 2002, in Northland Regional Council Kaeo, NRC File 9390 file vol. 2

⁶⁰⁹ Brief of Evidence of Terence Wirihana Tauroa, Wai 1040 #N1, p24

(hence the name), but now hard to come by), riparian habitat for birds like banded rail, freshwater fisheries, catchment protection in the headwaters (including from pine forest slash being washed in), cattle in the river, flooding at Mangaiti, etc, and all the mauri/cultural issues associated with those things. To date the NRC's [Northland Regional Council's] main response has been to build a stop bank in Kaeo and regard the problem solved.⁶¹⁰

For the Council, the only alternative to the works was 'to do nothing and leave the properties at risk of continuing flooding during storm events'.⁶¹¹

The Regional Council determined that the proposed flood protection works complied with its policies and consent was issued in May 2002, with an expiry date of 31 October 2012.⁶¹² This consent allowed the Regional Council to:

- a) remove up to 26,300 cubic metres of gravel from the Kaeo River at designated locations during the first year and up to 11,850 cubic metres in following years;
- b) remove trees and other vegetation, and to plant grasses, native shrubs, and trees on the banks of the Kaeo River and the Mangaiti and Waikara Streams;
- c) enlarge the channel capacity of the Waikara Stream and Kaeo River by excavating sediment;
- d) divert floodwater by raising the existing stopbank at Whangaroa College;
- e) remove vegetation and accumulated sediment between Dip Road and the Kaeo River;
- f) divert floodwater by lowering the embankment on 'Brown's property' and the removal of the old Omaunu Road bridge approach; and
- g) discharge herbicides to air, land and water by means of application to weeds on the river banks.⁶¹³

The Council's intention was that the bulk of the works would be carried out over a one or two year period, after which time the consent would 'go into a maintenance mode'.⁶¹⁴

⁶¹⁰ Personal communication, email, 21 December 2015

⁶¹¹ Northland Regional Council Staff Report 01 9390 (01-11), 30 April 2002, para 4.3, p8, in Northland Regional Council Kaeo, NRC File 9390 vol.1

⁶¹² Consents Manager, NRC, to Land Operations Manager, NRC, 30 April, 2002, in Northland Regional Council Kaeo, NRC 9390 file vol. 2; Northland Regional Council Staff Report 01 9390 (01-11), 30 April 2002, in Northland Regional Council Kaeo, NRC File 9390 vol. 2

⁶¹³ Resource Consent, NLD 01 9390 (01-11), in Kaeo River Management, NRC File 830.1.2 vol.1

The consent conditions did not stipulate that tangata whenua should be involved in the flood mitigation works. Although this does not seem to have been requested, the Rūnanga had indicated early on that it was eager to be actively involved. According to the Council, in the areas relevant to the consent, no sites of cultural or spiritual significance had been 'identified', but identified by whom it is not clear.⁶¹⁵

4.4.3 Kaeo River flood risk reduction works

The Regional Council employed Fraser Thomas Ltd to assist in carrying out work on the Kaeo River. In June 2002, Fraser Thomas consultants put out a tender for local contractors to carry out works under the Kaeo River flood risk reduction consent.⁶¹⁶ After a weekend of flooding in June, the work of clearing of trees and vegetation from the Waikara Stream was quickly contracted out.⁶¹⁷ Separate contracts were tendered for gravel removal, clearing Mangaiti Stream, and for channel works at Omaunu Road and at Green Lane.⁶¹⁸

In February 2003, the tenders for contracts for the Kaeo River works were selected. Tim Hemi of Kaeo Excavators was contracted for bulk gravel removal. He was apparently selected because of his local knowledge – he was 'familiar with the Kaeo River and regularly excavates gravel at Site G1', the site closest to the river mouth.⁶¹⁹ The Regional Council informed the company that once the Kaeo Excavators' contract ended, it 'may continue to extract gravel under the NRC Kaeo River Scheme resource consent, rather than apply for a new and separate consent to replace the one the company previously

⁶¹⁴ Land Operations Manager (NRC) to FNDC, 19 November 2002, in Kaeo River Works, NRC File R5.2.1 vol.1

⁶¹⁵ Northland Regional Council Staff Report 01 9390 (01-11), 30 April 2002, para 4.2, p8, in Northland Regional Council Kaeo, NRC File 9390 vol. 2

⁶¹⁶ Fraser Thomas LTD to Land Operations Manager, NRC, 19 June, 2002, in Kaeo River Works, NRC File R5.2.1 vol.1

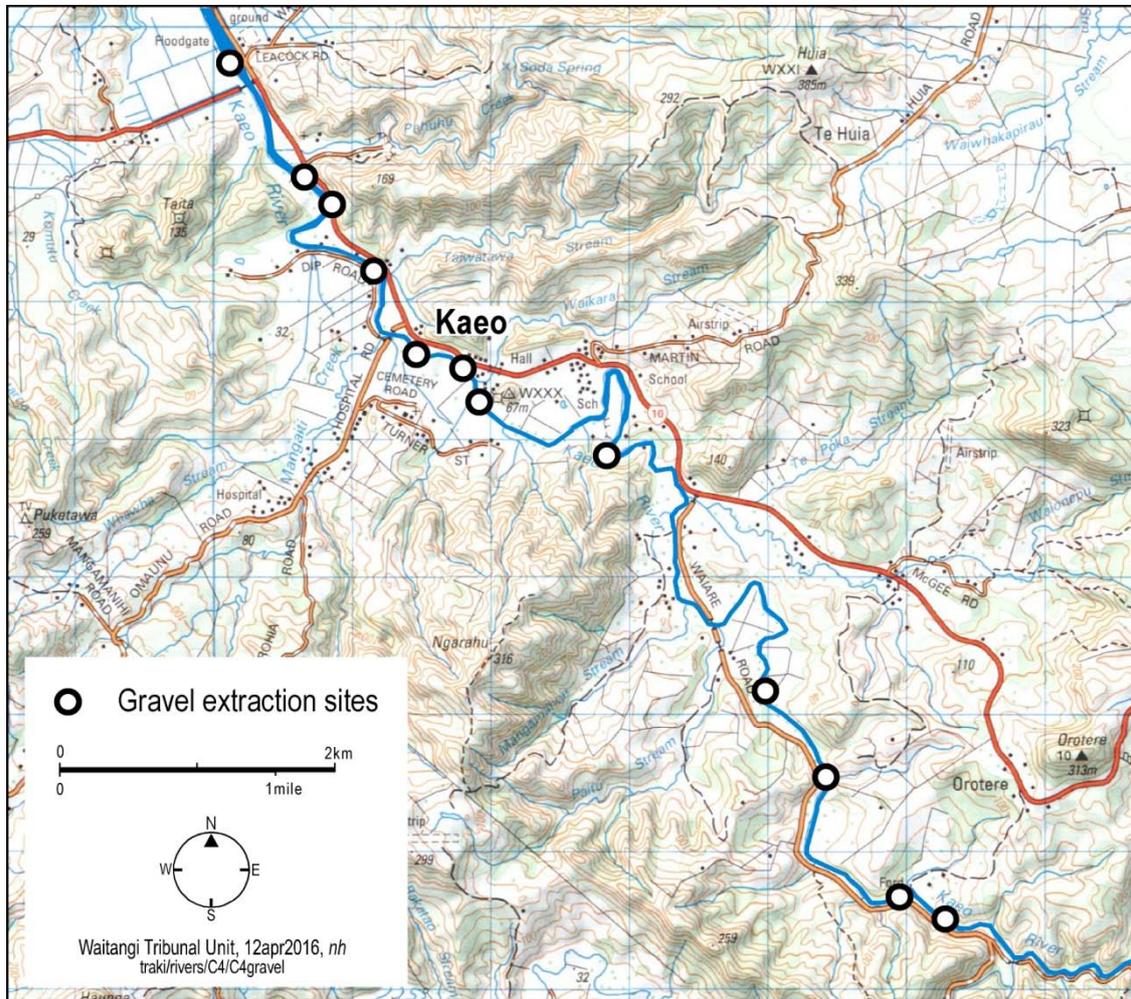
⁶¹⁷ Fraser Thomas LTD to Fraser Thomas LTD contractor, 27 June, 2002, in Northland Regional Council Kaeo, NRC File 9390 vol. 2

⁶¹⁸ 'Kaeo River Management Scheme', advertisement for tenders, in Kaeo River Works, NRC File R5.2.1 vol.1

⁶¹⁹ Fraser Thomas LTD to Land Operations Manager, NRC, 14 February, 2003, in Kaeo River Workd, NRC File R5.2.1 vol.1. Tim Hemi had been granted a resource consent in 1997 to extract up to 5,000 cubic metres of gravel annually from the Kaeo River. (Resource Consent 7789, 7 July, 1997, in Northland Regional Council Kaeo, NRC File 9390 vol.1)

held'.⁶²⁰ Ken Rintoul Cartage and General Construction LTD were contracted to do other channel works such as removing vegetation.⁶²¹

Figure 21: Gravel extraction sites on the Kaeo River



The Regional Council appeared keen to get the Kaeo community involved in helping out with its flood management works. In June 2003, the Council informed Judy Steele from the Rūnanga that anyone could take up to 100 cubic metres of gravel per year for private use from the Kaeo River, but that the Council also held a resource consent for extracting gravel under the Kaeo River management scheme, which people were 'welcome to operate under'. The Rūnanga may have been considering prospects for extracting ornamental gravel because the Council commented that the 'extraction,

⁶²⁰ Land Operations Manager, NRC, to FNDC, 9 June, 2003, in Kaeo River Works, NRC File R5.2.1 vol.1

⁶²¹ Fraser Thomas LTD to Ken Rintoul Cartage and General Construction Ltd, 13 June, 2003, in Kaeo River Works, NRC File R5.2.1 vol.1

screening and bagging of coloured gravel could well be a venture that the Rūnanga may wish to investigate.... [The Council] may be able to assist further with finding the best sites, estimating sustainable quantities and putting together a business plan'.⁶²² It does not seem that anything came of this suggestion.

Following advice from the Far North District Council that members of the community were not aware where river shingle could be extracted from⁶²³, the Regional Council issued a media report in April 2004 highlighting the availability of gravel from the Kaeo River. The article noted that 'Farmers keen to re-metal farm tracks and home gardeners wanting landscaping material are just some who stand to benefit from a NRC offer inviting people to extract gravel from the Kaeo River for free'. It continued that people from Kaeo/Whangaroa were permitted to take gravel from dry gravel beds in the Kaeo River under the Council's existing consent, but 'anyone intending to take advantage of the free gravel offer will need to advise staff at the Far North District Council's Kaeo Service Centre if they take more than a car trailer load'.⁶²⁴ Under its consent, the Council authorised Te Rūnanga O Whaingaroa and Kaeo Excavators to take gravel from the river between 1 July 2004 and 30 June 2005. Kaeo Excavators took 12,000 cubic metres during that period. But in the end the Rūnanga did not take any gravel.⁶²⁵ This may have been due to the associated costs of the heavy machinery needed to remove large quantities of gravel, a difficulty which Kaeo claimants mentioned to the author in December 2015.

By May 2004, the main flood works on the Kaeo River had been completed.⁶²⁶ However, there was frustration amongst some community members that more was not being done, especially in light of the major flooding which hit Kaeo several times in 2007. In December 2007, the Chairperson of Wai Care Environmental Consultants Whangaroa

⁶²² Land Operations Manager, NRC, to Judy Steele, 23 June, 2003, in Kaeo River Management, NRC File 830.1.2 vol. 2

⁶²³ Community Board Liaison Officer, FNDC, to Land Operations Manager, NRC, 11 March, 2004, in Kaeo River Management, NRC File 830.1.2 vol. 3

⁶²⁴ NRC Media Release, 29 April, 2004, in Northland Regional Council Kaeo, NRC File 9390 vol. 2

⁶²⁵ Land Operations Manager, NRC, to NRC staff member, 1 August, 2005, in Northland Regional Council Kaeo, NRC File 9390 vol. 2

⁶²⁶ Land Operations Manager, NRC, to Chief Executive Officer, FNDC, 31 May, 2004, in Kaeo River Works, NRC File R5.2.1 vol.1

(Wai Care)⁶²⁷, Bryce Smith, sought to meet with the Regional Council ‘to discuss concerns with the progress and status of consents required for gravel removal from the Kaeo’.⁶²⁸ Smith noted that:

There is only a narrow “window” [summer] during which this work can take place and if this opportunity is not taken our community will go into the next winter in a far more precarious situation than ever before. We see no evidence of preparations to excavate and dispose of the 125,000cu metres of shingle required to be removed from the lower reaches of the Kaeo River.⁶²⁹

The Council replied that it was planning on lodging a new resource consent application for dredging the tidal section of Kaeo River and that it already held a consent for works as far as 300 metres downstream of the State Highway 10 bridge. But, the Council noted, the flood mitigation works were never expected or intended to prevent flooding completely, simply to reduce the risk of damaging floods. This was an important message that the Regional Council perhaps should have reiterated more often. The Council suggested that if Wai Care wanted to be of assistance, it could work to ensure ‘that any person of any organisation that may have concerns about dredging the lower river ... raises these concerns with the Council prior to the submission period closing’.⁶³⁰ Evidently, the Council saw the resource consent process, and more specifically the submission process, as the only way tangata whenua and the wider Kaeo community could actively contribute to resource consenting/management; any collaboration would come through in the form of the Council’s consideration of submissions.

⁶²⁷ Further information about Wai Care, run by Violet Walker and Bryce Smith, appears in the second local study of this chapter. Wai Care was first known as Awa Care which was a ‘steering group’, established by the Kaeo community in 2005. The group consisted of community members, business members, a Rūnanga member, a member from Sandford’s (the oyster processing plant), FNDC members, ‘cultural members’ (being Walker and Smith), and a subcontractor employed by FNDC from MWH New Zealand. It was initially formed to represent the community in discussions with the Far North District Council regarding the wastewater treatment plant resource consent application. (Personal communication, email, 17 February 2016)

⁶²⁸ Chairman’s Personal Assistant, NRC, to Chairperson, Wai Care, 6 December, 2007, in Kaeo River Management, NRC File 830.1.2 vol. 3

⁶²⁹ Chairperson, Wai Care, to Chairman, NRC, 6 December, 2007, in Kaeo River Management, NRC File 830.1.2 vol. 3

⁶³⁰ Chairman, NRC, to Chairperson, Wai Care, 18 December, 2007, in Kaeo River Management, NRC File 830.1.2 vol. 3

Again, in February 2008, after several days of rain and flooding which ‘came as a timely reminder’, Smith wrote to the Council stating that ‘nothing of any consequence had been achieved since the very serious floods of 29 March and 10 July 2007. According to local observations, the Kaeo River is in the worst condition ever’.⁶³¹ These exchanges between Smith and the Council appear to suggest that there were some discrepancies in the Council’s intentions and the Kaeo community’s understanding of the works, perhaps being indicative of a lack of communication, as well as a reaction to the frustration brought with regular flooding.

4.4.4 New flood works proposed for the Kaeo River

Undoubtedly provoked by the recent flooding, in early 2008, the Regional Council sought to extend the scope of the Kaeo flood management plan and began the process of consulting with residents neighbouring the proposed work sites, downstream water users and the Rūnanga.⁶³² In January 2008, ‘the whanau and residents’ of 142 Omaunu Road signed a letter stating that they agreed to ‘the council post flood plan to bring the entire road [an unsurveyed road providing access to their houses] up to the level of Omaunu Road’. Charlie and Isabella Kareko of Omaunu Road also agreed to allow affected whānau access to their own properties via the Kareko residence while works were being carried out.⁶³³

In February 2008, the Regional Council made an application to carry out additional flood risk mitigation works.⁶³⁴ With this application, the Council intended to construct/widen a natural overflow pass upstream of Whangaroa College (near Green Lane), raise some sections of the stopbank alongside State Highway 10 between the Police Station and the college, and construct an overflow channel and floodgate behind Kaeo Memorial Hall (later withdrawn). The Council also proposed to dam and divert flood flows by the Mangaiti stopbank, noting that:

⁶³¹ Chairperson, Wai Care, to Chairperson, NRC, 29 February, 2008, in Kaeo River Management, NRC File 830.1.2 vol. 3

⁶³² Assessment of Environmental Effects – Carry out Works in the Beds or Banks of a Water Body, C.2, in Northland Regional Council Kaeo, NRC File 9390 vol. 2

⁶³³ ‘Whanau and Residents Situated at 142 Omaunu Road, Mangaiti KAEO’, 14 January, 2008, in Northland Regional Council Kaeo, NRC File 9390 vol. 2

⁶³⁴ Application Form for Resource Consent, 5 February, 2008, in Northland Regional Council Kaeo, NRC File 9390 vol. 2

Local residents, in an attempt to prevent floodwaters overflowing the left bank of Mangaiti Creek immediately downstream of Omaunu or Hospital Road, constructed a stopbank along the left bank of the stream from the road to the marae buildings. Initially the stopbank was built between the access road and the stream and began to erode. A Council officer has recently instructed them to move the bank back from the riverbanks onto the alignment of the access road and to rebuild the road either on the bank or between the bank and the road.⁶³⁵

All of these works would take place on dry land rather than in the riverbed or channel.⁶³⁶ Unlike the application for the initial flood mitigation works, the application was not publicly notified, but as is its policy, the Council sent letters to Mangaiti Marae, Te Rūnanga O Whaingaroa, Te Iwi o Ngātikahu Ki Whangaroa, Whangaroa Māori Trust Board, and Karangahape Marae Trust in February 2008, requesting that they provide the Council with any 'comment on concerns relating to how the proposal may impact on your relationship, culture and traditions with the area, including on sites, waahi tapu, and other taonga'.⁶³⁷

The Regional Council received some critical feedback from tangata whenua on the proposed works. Violet Walker from Wai Care was of the opinion that the works proposed at Mangaiti were different to what had previously been discussed and she questioned whether the Rūnanga had actually been consulted as no one at the Rūnanga could recall being contacted.⁶³⁸ Additionally, there were some claims from iwi/hapū groups and members of the wider community that information provided to the Rūnanga did not always filter out to others.⁶³⁹ For instance, in April 2008, a meeting was held at the Whangaroa Māori Trust Board between representatives from the Regional Council and Ngāti Uru to discuss the flood mitigation works being carried out on Waikare Stream. Several days prior to the meeting, Ngāti Uru individuals had asked the contractor working on the stream to cease works until consultation had happened between themselves and the Regional Council. Ngāti Uru wanted to know if the Council

⁶³⁵ Application Form for Resource Consent, 5 February, 2008, Schedule 1, in Northland Regional Council Kaeo, NRC File 9390 vol. 2

⁶³⁶ Application Form for Resource Consent, 5 February, 2008, Part B – Assessment of Environmental Effects, in Northland Regional Council Kaeo, NRC File 9390 vol. 2

⁶³⁷ Secretary for Consents Manager, NRC, to Mangaiti Marae, 7 February, 2008, in Northland Regional Council Kaeo, NRC File 9390 vol. 2

⁶³⁸ Wai Care to Water Resources Officer, 18 February, 2008, in Northland Regional Council Kaeo, NRC File 9390 vol. 2

⁶³⁹ Bruce Mills to Land Operations Manager, NRC, 14 September, 2007, in Kaeo River Management, NRC File 830.1.2 vol. 3

had consulted affected parties, if the Council had “contracted” the Rūnanga to hold consultation hui with ngā hapū o Whaingaroa, and if it had paid the Rūnanga to do so.⁶⁴⁰ It is not evident, however, whether such instances of apparent communication breakdowns were symptomatic of inadequate Council processes or of tensions between/within hapū, or both.

The files consulted do not provide any insight into what the outcome of the abovementioned meeting was, though presumably the Regional Council informed Ngāti Uru of the consultation process and works on the stream were resumed. In May 2008, the Council emailed Walker asking if there were any ‘cultural concerns’ regarding the proposed widening of the floodway near Green Lane, reconstructing the stopbank at Mangaiti Marae and moving the access road to the top of the stopbank, and improving the stopbank along State Highway 10.⁶⁴¹ Walker replied that the works were not considered to pose any significant cultural threat but she noted that Wai Care expected to be contacted if there were any change to the scope of the consent or if any artefacts were uncovered during construction. Furthermore, having clarified how information would be shared, she requested that the Council keep Wai Care informed of the progress of the flood works so that she could in turn keep Ngāti Uru informed.⁶⁴²

4.4.5 Confirmation of additional works

The non-notified change/additions to the Kaeo River flood mitigation consent were granted several days after the Regional Council’s discussion with Walker in May 2008 and the works were completed by mid-2009.⁶⁴³ Condition 14 of the consent stated that ‘In the event of archaeological sites or koiwi being uncovered, activities in the vicinity of the discovery shall cease. The Consent Holder shall then advise the Regional Council Monitoring Manager and consult with the New Zealand Historic Places Trust’.⁶⁴⁴

⁶⁴⁰ ‘Discussion on Waikare Stream works’, 7 April, 2008, in Northland Regional Council Kaeo, NRC File 9390 vol. 2

⁶⁴¹ River Management Engineer, NRC, to Water Resources Officer, NRC, 5 May, 2008, in Northland Regional Council Kaeo, NRC File 9390 vol. 2

⁶⁴² Wai Care to River Management Engineer, NRC, 6 May, 2008, in Northland Regional Council Kaeo, NRC File 9390 vol. 2

⁶⁴³ Environmental Monitoring Officer, NRC, to Land Operations Manager, NRC, 4 June, 2009, in Northland Regional Council Kaeo, NRC File 9390 vol. 3

⁶⁴⁴ Resource Consent Decision, Non-notified Change, CON 20080939012, para 14, in Northland Regional Council Kaeo, NRC File 9390 vol. 2

However, there was no condition requiring the consent holder to inform tangata whenua of such an occurrence, as Walker had requested.

Despite this renewed commitment to implementing additional measures to reduce the risk of flooding in Kaeo, some people were disenchanted with the flood protection scheme. In June 2008, the Chair of the Whangaroa Community Trust wrote to the Council concerned that flood protection measures and maintenance had not been carried out in recent years. The Chair claimed that following ‘two 150 year floods’ in the previous year, the Regional Council had held a series of public meetings in which Council representatives informed attendees that river maintenance was the responsibility of landowners.⁶⁴⁵ Whether or not this was an accurate retelling of discussions between the Council and the Kaeo community, such comments seem to reflect a continued misapprehension with regards to the roles, responsibilities, and intentions of river management programmes.

4.4.6 Kaeo-Whangaroa catchment liaison committee

Presumably in response to extensive flooding in 2007 and the apparent lack of public awareness of the details of the Kaeo flood risk reduction scheme, in 2008 the Regional Council set up the Kaeo-Whangaroa Catchment Liaison Committee. It consisted of 15 key stakeholders, including nominated representatives from Te Rūnanga O Whaingaroa and Wai Care.⁶⁴⁶ The inaugural meeting was held in August 2008.⁶⁴⁷ It seems likely that this Committee was a reinvention of sorts of a liaison committee which had been elected at a public meeting in Kaeo in August 2000 to represent the community in discussions with the Council on flood control works in place of the Whangaroa Community Board.⁶⁴⁸ However, it does not appear that the Council engaged with the group at that time.⁶⁴⁹

⁶⁴⁵ Chairman, Whangaroa Community Trust, to NRC, email 8 June 2008, in Kaeo River Management, NRC File 830.1.2 vol. 3

⁶⁴⁶ Northland Regional Council, Asset Management Plan: Kaeo Flood Risk Reduction Scheme, 2015, pp6-7

⁶⁴⁷ Report of the Meeting of the Kaeo River – Whangaro Catchment Management Liaison Committee, 13 August, 2008, in Kaeo Whangaroa Liaison Committee, NRC File R5.2.2 vol.1

⁶⁴⁸ Agenda, Kaeo Meeting on Flood Control, 28 August, 2000 in Church Hall, Kaeo, in Kaeo River Management, NRC File 830.1.2 vol.1

⁶⁴⁹ Kaeo Branch, Federated Farmers, Submission, 4 March, 2002, in Northland Regional Council Kaeo, NRC File 9390 vol.1

The Kaeo-Whangaroa Catchment Liaison Committee was established in order to assist the Regional Council 'to develop and implement plans to reduce the risk of damage by floods and erosion', to provide a forum for local stakeholders to contribute to the development of policies and plans, facilitate communications between the Council and stakeholders, and enable stakeholders to participate in the ongoing management of flood control.⁶⁵⁰ Meeting on a bi-annual basis, the Committee worked to 'ensure the Council is fully briefed in respect of views and aspirations of the people of the Whangaroa area in respect of catchment management and flood risk reduction'⁶⁵¹, and reported to the NRC Environmental Management Committee.⁶⁵²

Unfortunately, the Liaison Committee meetings were not always well attended. Some members apparently 'simply couldn't be bothered [attending]!' and it was considered by some to be a consequence of the view that the Regional Council's efforts were too belated and that 'previous flood schemes were not delivered'.⁶⁵³ However, as flood risk reduction works had been carried out on the Kaeo River, these views may have once again reflected instead a sense in the community that the works had been insufficient, and perhaps highlights the miscommunication between the Regional Council and the community with regards to flood mitigation versus prevention.

In spite of such challenges, the Regional Council began working with the Liaison Committee to develop a flood risk reduction strategy for the Kaeo River which involved maintaining clear river channels, the further construction of stopbanks, and drainage works in Kaeo township.⁶⁵⁴ In addition, the scheme comprised the installation of the Kaeo River webcam and flood warning systems, flood hazard mapping, better land use planning, and high-risk house relocation.⁶⁵⁵ The Regional Council reported in 2015 that

⁶⁵⁰ Northland Regional Council, Advertisement, 'Kaeo River-Whangaroa Catchment Management Liaison Committee', 16 & 17 April, 2008, in Kaeo Whangaroa Liaison Committee, NRC File R5.2.2 vol.1; Land/Rivers Senior Programme Manager, NRC, to John Richardson, 28 March, 2010, in Kaeo Whangaroa Liaison Committee, NRC File R5.2.2 vol.1

⁶⁵¹ Land Operations Manager, NRC, *Establishment of a Kaeo-River Whangaroa Catchment Management Liaison Committee*, 26 February, 2008, p66, in Kaeo River Management, NRC File 830.1.2 vol. 3

⁶⁵² Northland Regional Council, Asset Management Plan: Kaeo Flood Risk Reduction Scheme, 2015, p7

⁶⁵³ Geoff Stone to Chairman's Personal Assistant, NRC, 20 October, 2008, in Kaeo Whangaroa Liaison Committee, NRC File R5.2.2 vol.1

⁶⁵⁴ Update on 2010/2011 Expenditure for Kaeo-Whangaroa Flood Management Scheme Works, 10 September, 2010, in Kaeo River Works, NRC File R5.2.1 vol.1

⁶⁵⁵ Northland Regional Council, Asset Management Plan: Kaeo Flood Risk Reduction Scheme, 2015, p12

the 'Committee is instrumental in providing recommendations relating to management of assets [e.g. flood-related infrastructure] and expenditure of budgets based on the provision of information and advice from NRC'.⁶⁵⁶ For some claimants as well, the Liaison Committee is seen as providing a useful means for the Whangaroa community to communicate with the Regional and District Councils. Sailor Morgan of Wainui, for instance, has noted that:

Because of the flooding in Kaeo, Wainui [on the East coast, outside of Whangaroa Harbour] has been deemed as a flood plain area, which they [the Regional Council] allocate a budget to.... I am part of the flooding committee through the Wainui Marae, and we just work through them about how we can alleviate our concerns.... We like to engage with the FNDC as much as we can and voice our concerns. These concerns are heard.

Still, Morgan acknowledged that 'Everything revolves around the budget and everyone wants a bigger slice of the cake'⁶⁵⁷, thus making it difficult to provide everything to everyone.

4.4.7 Renewing the flood mitigation resource consent

In May 2012, the Regional Council applied to renew its resource consent for flood risk reduction works which was due to expire in October. The consent sought was only for gravel extraction in the bed of the Kaeo River.⁶⁵⁸ The Council acknowledged that gravel extraction was part of the ongoing maintenance work on the Kaeo River to ensure good floodway capacity. The other activities for which consent had previously been granted, such as the removal of vegetation and discharge of herbicides, were not included in this application, seemingly because works like willow removal had 'been undertaken during the term of the existing consent' and the river was considered to be clear of unwanted vegetation and debris.⁶⁵⁹

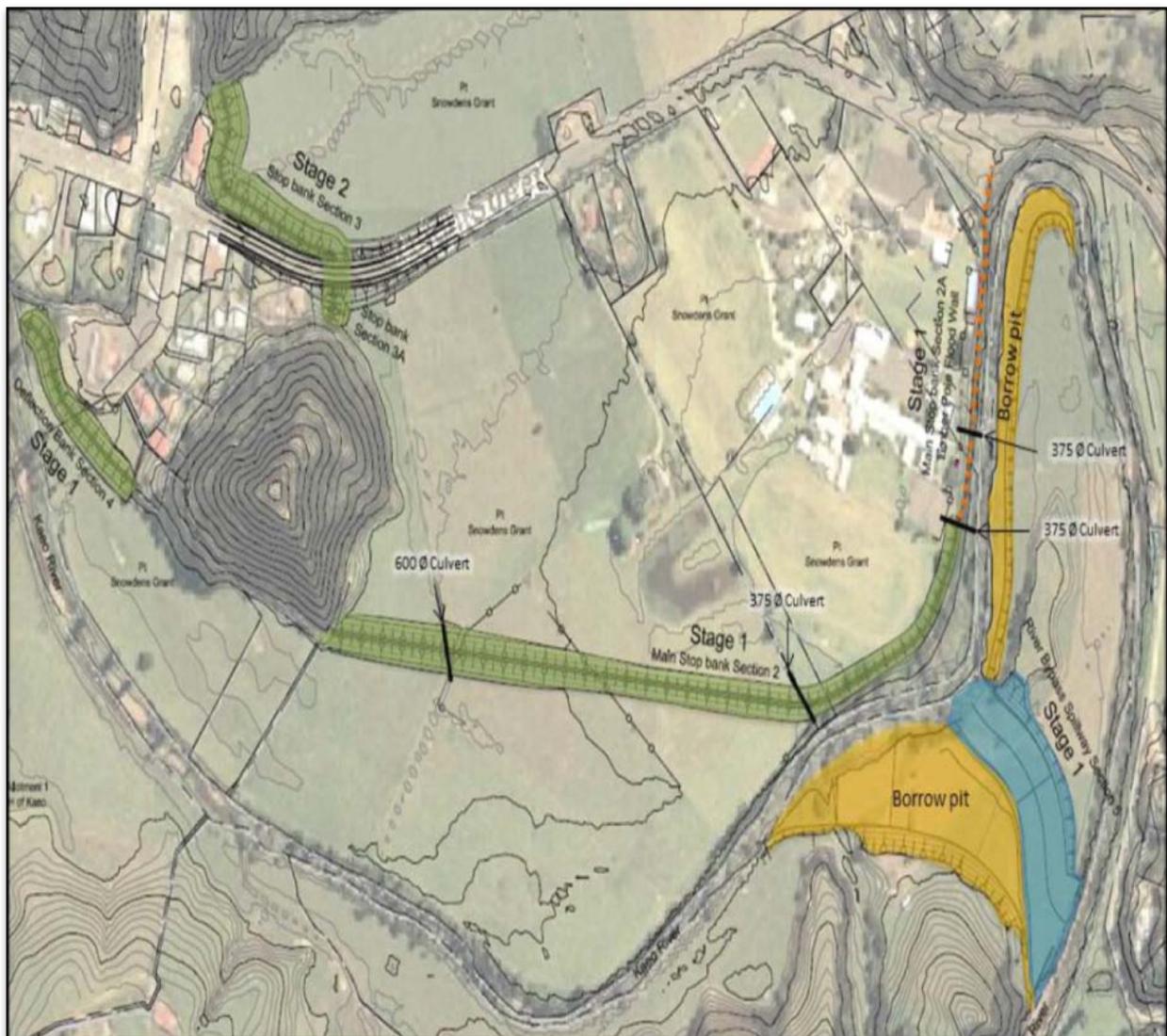
⁶⁵⁶ Northland Regional Council, Asset Management Plan: Kaeo Flood Risk Reduction Scheme, 2015, p10

⁶⁵⁷ Brief of Evidence of Sailor Morgan, Wai 1040 #S13, p32

⁶⁵⁸ Application Number CON20120939001, June, 2012, in Northland Regional Council Kaeo, NRC File 9390 vol. 3

⁶⁵⁹ Application Number CON20120939001, June, 2012, in Northland Regional Council Kaeo, NRC File 9390 vol. 3

Figure 22: Some of the stage one and two works planned under the Kaeo flood risk reduction scheme. Pohue is shown on the left-hand side of the image, to the left of which is Kaeo township. The cluster of buildings to the right of Pohue is Whangaroa College



(Source: NRC, 'Asset Management Plan: Kaeo Flood Risk Reduction Scheme', 2015, p 42)

The application was non-notified but letters were sent to 'Iwi Groups' informing them of the Council's application. The applicant also had to obtain written approval for the gravel removal from those people the Council considered to be affected by the application before the consent could be processed, but none of the affected parties appear to have been Māori.⁶⁶⁰ It is possible that the Regional Council considered that those Māori groups which could potentially be affected by the works would have been

⁶⁶⁰ Hearings Administrator to Iwi Groups, 24 May, 2012, in Northland Regional Council Kaeo, NRC File 9390 vol. 3; Land Management Consents Officer, NRC, to Land/Rivers Senior Programme Manager, NRC, 25 May 2012, in Northland Regional Council Kaeo, NRC File 9390 vol. 3

sufficiently informed and had opportunity to voice any concerns or support through the representatives of the Rūnanga and Wai Care on the Liaison Committee, which the Council noted was the means through which community consultation had been taking place.⁶⁶¹ However, the Rūnanga's iwi management plan stated that it considered itself to 'be an affected party for all resource consents' and while it would assist the Regional and District Councils to direct resource consent applications to appropriate hapū/whānau, it considered that it was the Council's responsibility to ensure that that happened; the Rūnanga expected councils to develop meaningful relationships not just with itself but with hapū as well.⁶⁶² Evidently, the Regional Council did not take this aspect of the iwi management plan into account.⁶⁶³

In June 2012, the consent renewal was granted. The files do not shed any light on the extent of gravel extraction under this consent, perhaps indicating that extraction has since been limited to small amounts not requiring notice to the Council. This 'maintenance' consent now appears to be viewed as a rolling consent under the Flood Risk Reduction Scheme, ensuring that large quantities of gravel can be taken by anyone at any time.⁶⁶⁴

Still, the Council has continued to carry out other significant flood mitigation works under its Flood Risk Reduction Scheme, the main works arguably being the construction of a stopbank behind Whangaroa College and around to Pohue (see figure 22) which was completed in late 2014.⁶⁶⁵ While it seems that the lines of communication between the Regional Council and tangata whenua were improving, there were still difficulties. For instance, the Regional Council was granted an authority by the New Zealand Historic Places Trust (NZHPT) to undertake the abovementioned stopbanking work which would potentially damage Pohue pā, a registered archaeological site. The NZHPT

⁶⁶¹ Part B Assessment of Environmental Effects – Carry out Works in the Beds or Banks of a Water Body, p5, in Northland Regional Council Kaeo, NRC File 9390 vol. 3

⁶⁶² Te Rūnanga o Whangaroa, *Iwi Resource Management Plan*, July, 2011, p8

⁶⁶³ A. Richards, Reason for the Decision, 27 June, 2012, in Northland Regional Council Kaeo, NRC File 9390 vol. 3

⁶⁶⁴ Northland Regional Council, Asset Management Plan: Kaeo Flood Risk Reduction Scheme, 2015, p16.

⁶⁶⁵ The resource consent process through which this work was approved was not evident in the files consulted for this project

noted that it appreciated ‘the effort you [the Council] have made to consult with them [Whangaroa Māori Trust Board and Ngāti Uru] and provide for the long term protection of the site’.⁶⁶⁶ However, at a meeting in December 2013 between the Regional Council, NZHPT, Whangaroa Māori Trust Board, Ngāti Uru, and a consultant archaeologist, the Trust Board stated that there had been ‘lack of clear and appropriate communication with them in regards to the works. Specifically that the agreed upon protocols had not been upheld in regards to the specific areas that required cultural monitoring’.⁶⁶⁷ The Regional Council noted that it had written to Ngāti Uru several months prior and had several telephone conversations to discuss the works. The two parties both acknowledged that there had been some miscommunication. The outcome of this meeting was that the Regional Council agreed to provide Ngāti Uru with a map of the proposed works on which to indicate any sites requiring cultural monitoring, the hapū would be advised when works were to start, and the plan would be held on site for all contractors to consult. It was also agreed that Bryce Smith would act as cultural advisor on behalf of Ngāti Uru for any future projects and that the Council would contact Violet Walker if it required any clarification on cultural matters.⁶⁶⁸

4.4.8 Conclusion - Kaeo River flood risk reduction works

In 2000, the NRC developed a river management policy for Northland in light of a lack of clarity over responsibilities for flood mitigation. This policy involved the establishment of the priority rivers project, aimed at selecting rivers which required immediate attention. The Kaeo River was one such priority river and the Regional Council promptly began meeting with community representatives to discuss its ideas for reducing the risk of serious floods.

In September 2001, the Regional Council applied for a resource consent to carry out flood prevention works on the Kaeo River. These works largely involved clearing the river of excess gravel, vegetation, and debris which would increase the flow capacity of the Kaeo River in heavy rains. While Forest and Bird raised concerns about some of the

⁶⁶⁶ Archaeologist, National Heritage Policy Team to Northland Regional Council, 22 December, 2011, in Kaeo River Works, NRC File R5.2.1 vol.1

⁶⁶⁷ Kaeo Stop-Banks Agreed Summary Meeting Notes Authority 2012-250, 19 December, 2013, in Kaeo River Management, NRC File R5.2

⁶⁶⁸ Kaeo Stop-Banks Agreed Summary Meeting Notes Authority 2012-250, 19 December, 2013, in Kaeo River Management, NRC File R5.2

details of the proposed works, the Kaeo community was largely in support of the Council's intentions. Still, issues around who would act as the consent holder held up the processing of the application, which was finally granted to the Regional Council in May 2002.

Figure 23: Flooding in Kaeo in 2014



(Source: *Whangaroa Whispers*, Vol. 40, No. 4, September 2014, NRC file R5.2)

In June 2002, contractors began carrying out the flood control works on the river. These works were mostly completed by early 2004. By this stage, there was some concern within the Kaeo community that the township was still being flooded and that the works to prevent flooding had ceased. However, the Regional Council's plan had always been to reduce the risk of flooding, rather than prevent flooding entirely, and to carry out the bulk of the work of clearing the river channels within a few years.

In 2008, the Council sought to implement further flood mitigation works, some of which would have a very direct impact on the whānau who lived nearby. The files suggest that consultation with residents happened from an early stage and the works were generally supported, but some groups felt that they should have been better informed. It was around this time that the Kaeo-Whangaroa Catchment Liaison Committee was established, providing tangata whenua and the wider community, with a more formal and targeted means to inform the Regional Council of their concerns and provide advice with regards to flooding and flood prevention measures.

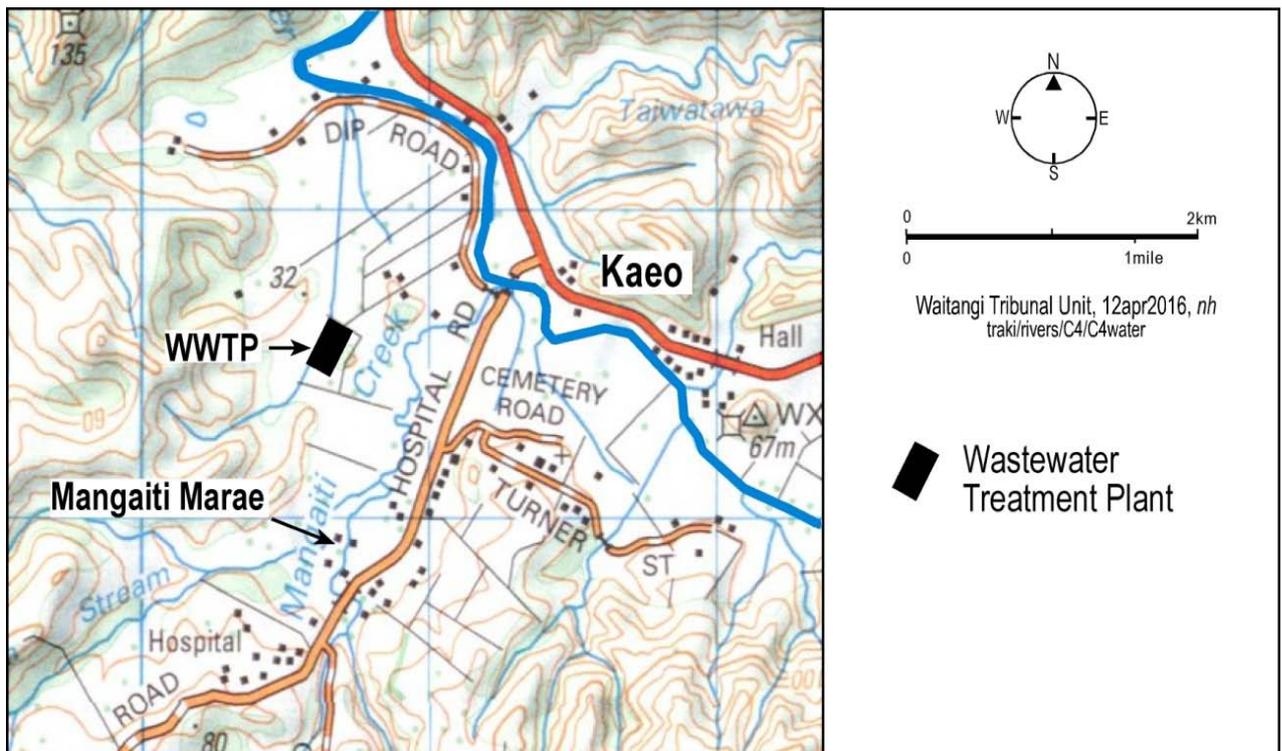
The Regional Council renewed its resource consent for gravel extraction in 2012. It also got underway additional works shortly afterwards as part of its continuing Flood Risk Reduction Scheme, namely being the construction of a stopbank around the back of Whangaroa College to Pohue, aimed at deflecting high velocity flood flows away from the township. According to some in Kaeo, this stopbank has proved to be the most effective means of quelling the worst of the flooding in Kaeo so far, though flooding remains a common phenomenon.⁶⁶⁹

4.5 Local Study #2: Kaeo wastewater treatment plant

In contrast to the flood mitigation works which were the outcome of a plan developed under the Soil Conservation and Rivers Control Act 1941, the construction, implementation, and modification of the Kaeo wastewater treatment plant (WWTP) can perhaps be described as a more conventional example of river management under the RMA. The history of the plant provides a glimpse into how the District and Regional Councils have sought to deal with waste disposal in Kaeo, the array of views on appropriate uses of freshwater and understandings of pollution, and how tangata whenua have pushed to play a more meaningful part in the management of the Kaeo River under the RMA.

⁶⁶⁹ 'Kaeo's flood stopbank deemed a success', *The Northern Advocate*, 12 June, 2014, http://m.nzherald.co.nz/northern-advocate/news/article.cfm?c_id=1503450&objectid=11272664 (accessed 5 November 2015)

Figure 24: Kaeo wastewater treatment plant



4.5.1 Management of the Kaeo wastewater treatment plant before the introduction of the RMA 1991

The Kaeo WWTP, located roughly 500m to the west of Omaunu Road and Mangaiti Creek, has existed in various forms since 1975, when the Whangaroa County Council (before it became part of the Far North District Council) first applied to the Northland Catchment Commission for a water right allowing it to discharge effluent from Kaeo township into the Kaeo River via dual oxidation ponds.⁶⁷⁰ The treatment plant was commissioned in 1982/3 and consisted of a reticulation network that drains to seven pump stations which then pump sewage to the treatment plant.⁶⁷¹ At the time of the issuing of the first water right, there does not appear to have been any substantial discussion about the environmental impacts the treatment system may have had on the

⁶⁷⁰ Northland Catchment Commission, Application for Right to Discharge Natural Water or Waste to Natural Water, 4 March, 1975, in Far North District Council Discharge, NRC File 7205 vol.1

⁶⁷¹ MWH, Far North District Council, Kaeo Sanitary Works Subsidy Scheme – Provisional Application, vol.1, April, 2007, in Kaeo Wastewater Reports, FNDC File KAE2

Kaeo River, unlike those required for consents issued under the RMA, nor were there particularly detailed conditions accompanying the right to discharge.⁶⁷²

No objections to the initial water right appear on the NRC's files. However, Terry Smith noted in his brief of evidence that:

In the early 1980s, the Whangaroa Council proposed the development of a sewerage scheme for the Kaeo area. The proposal saw the pipeline go across out marae atea at Mangaiti, across the centre of our hapu garden area, the placement of a sewerage pond right next to an ancient urupa, and the overflow going directly into the Kaeo River that flowed out into the harbour where we had gathered kai moana for centuries. It was like the council was deliberately trying to offend us. My father was the only one who objected.⁶⁷³

Community concern about the impact of treated wastewater on the river, particularly in relation to the downstream effect on oyster farms in Whangaroa Harbour, was also evident by the early 1980s.⁶⁷⁴ In the view of the Northland Catchment Commission, the Kaeo River was 'undesirably polluted', with indirect effluent discharge from commercial and domestic septic tanks being a considerable contributing factor. The installation of a community treatment system was seen as a means to help rectify that situation and test results were soon considered to show that the effluent quality from the treatment system was satisfactory, that the discharge was having 'little effect' downstream.⁶⁷⁵

4.5.2 The first resource consent application for the WWTP under the RMA

The Whangaroa County Council/Far North District Council's water right to discharge effluent into the Kaeo River was renewed several times between 1975 and 1989 under the Water and Soil Conservation Act 1967. On 31 October 1994, for the first time since

⁶⁷² Application No. 1059 for Water Right, June 1975, in Far North District Council Discharge, NRC File 7205 vol.1; Northland Catchment Commission, Right in Respect of Natural Water, Water Right No 771, 13 August, 1975, in Far North District Council Discharge, NRC File 7205 vol.1

⁶⁷³ Brief of Evidence of Terry Smith, Wai 1040 #S31, p21

⁶⁷⁴ General Manager, Sanford Limited, to Northland Catchment Commission and Regional Water Board, 24 September, 1981, in Far North District Council Discharge, NRC File 7205 vol.1; General Manager, Sanford Limited, to Secretary, Northland Catchment Commission and Regional Water Board, 14 October, 1981, in Far North District Council Discharge, NRC File 7205 vol.1; General Manager, Sanford Limited, to Secretary, Northland Catchment Commission and Regional Water Board, 19 May, 1982, in Far North District Council Discharge, NRC File 7205 vol.1

⁶⁷⁵ Northland Catchment Commission and Regional Water Board to General Manager, Sanford Limited, 2 October, 1981, in Far North District Council Discharge, NRC File 7205 vol.1; Monitoring Report, p2, Manager, Water Resources, Northland Catchment Commission, to County Clerk, Whangaroa County Council, 22 April, 1986, in Far North District Council Discharge, NRC File 7205 vol.1

the RMA had been enacted, the water right was due to expire.⁶⁷⁶ In July 1994, the Far North District Council submitted a resource consent application to discharge 'up to 318 cubic metres of domestic wastewater per day from primary and secondary oxidation ponds in series to the Kaeo river [sic]'.⁶⁷⁷ The application contained little additional, specific information, such as an AEE and list of affected parties, as the District Council was still in the process of 'review[ing] the existing systems and their performance and the potential for modifications'.⁶⁷⁸

As part of the review process, the District Council indicated that it would consult with 'affected parties, including the relevant iwi'.⁶⁷⁹ Those parties identified by the District Council as having an interest in the application were namely adjoining land owners, as well as Te Rūnanga O Whaingaroa, Mangaiti Marae, and the owners of the Te Mangaiti 4D block.⁶⁸⁰ A consultant from VK Consulting Environmental Engineers Ltd (VK Consultants), working on behalf of the District Council, informed the Regional Council that once consultation had taken place, she would provide the Regional Council with all the information it was still waiting on to process the application.⁶⁸¹

But the consultation process was slow to progress. In August 1994, the Regional Council notified the District Council's consultant that pursuant to Section 92 of the RMA, the processing of the Kaeo sewage discharge application could not be completed until all information was provided and gave the applicant a deadline of 30 September to supply the information.⁶⁸² However, for reasons not revealed in the files, consultation still did not get under way until early the following year, by which time the existing consent had expired several months prior.

⁶⁷⁶ Consents Manager, NRC, to Far North District Council, 28 June, 1994, in Far North District Council Discharge, NRC File 7205 vol.1

⁶⁷⁷ Application for a Resource Consent, Far North District Council, Consent no. 2367, 29 July, 1994, NRC File 7205 vol. 2

⁶⁷⁸ VK Consulting Environmental Engineers Ltd to Water Quality Officer, NRC, 28 July, 1994, in Far North District Council Discharge, NRC File 7205 vol. 2

⁶⁷⁹ VK Consulting Environmental Engineers Ltd to Water Quality Officer, NRC, 28 July, 1994, in Far North District Council Discharge, NRC File 7205 vol. 2

⁶⁸⁰ VK Consulting Environmental Engineers Ltd to Water Quality Officer, NRC, 15 August, 1994, in Far North District Council Discharge, NRC File 7205 vol. 2

⁶⁸¹ VK Consulting Environmental Engineers Ltd to Water Quality Officer, NRC, 28 July, 1994, in Far North District Council Discharge, NRC File 7205 vol. 2

⁶⁸² Water Quality Officer, NRC, to VK Consulting Environmental Engineers Ltd, 12 August, 1994, in Far North District Council Discharge, NRC File 7205 vol. 2

In February 1995, consultation over the WWTP began and VK Consultants met with Willie More from the Rūnanga to ask his advice 'on any associated groups of Marae which should be consulted [about the WWTP upgrade], and the best way to go about this'.⁶⁸³ By this time, the Council had developed a proposal for upgrading the plant which involved constructing a wetland treatment system to work alongside the oxidation ponds, stormwater infiltration repairs, preparing a management plan, and installing a telemetry alarm system to ensure fast responses to any pump failures. The purpose of the wetland was to help remove algae from the effluent and reduce its bacterial and viral content.⁶⁸⁴ For Māori, the discharge of waste into water bodies is generally recognised to be culturally abhorrent, particularly because of their importance as a source of kai. As the Regional Council has more recently acknowledged:

Tangata whenua take a holistic approach to the management of the environment and its resources. Tangata whenua consider therefore that water, soil and air are all integral elements of the environment and must be managed as one, rather than as separate entities. They therefore consider that any discharge of contaminants into water, no matter how well treated, reduces the water's ability to sustain life, thereby reducing its, mauri or life force.⁶⁸⁵

However, no alternative methods of sewage treatment were considered by the District Council at the time that the review was undertaken. The Regional Council was aware of tangata whenua views and was of the opinion that the proposed new treatment system would 'achieve more compliance with Maori cultural and spiritual values regarding discharges of human wastes to water'.⁶⁸⁶ This perceived compliance was presumably in reference to the construction of the wetland, which would provide for effluent to be discharged to and filtered through land before entering the river.

More took on the role of co-ordinating the response of tangata whenua, meeting with representatives from 14 marae to discuss the proposal, only one of which, Matangirau

⁶⁸³ VK Consulting Environmental Engineers Ltd to Te Rūnanga O Whaingaroa, 7 February, 1995, in Far North District Council Discharge, NRC File 7205 vol. 2

⁶⁸⁴ Water Quality Officer, NRC, 'Staff Report for Discharge Permit Application 7205', p2, in Far North District Council Discharge, NRC File 7205 vol. 2; Water Quality Officer, NRC, to Te Rūnanga O Whaingaroa, 7 September, 1999, in Far North District Council Discharge, NRC File 7205 vol. 2

⁶⁸⁵ Northland Regional Council, *Regional Water and Soil Policy for Northland*, 2004, para 4, p29

⁶⁸⁶ Water Quality Officer, NRC, 'Staff Report for Discharge Permit Application 7205', p2, in Far North District Council Discharge, NRC File 7205 vol. 2; Water Quality Officer, NRC, to Te Rūnanga O Whaingaroa, 7 September, 1999, in Far North District Council Discharge, NRC File 7205 vol. 2

Marae, requested 'further information'.⁶⁸⁷ VK Consultants subsequently considered that the 'local iwi are generally supportive of the resource consent renewal', and assured More that 'as we proceed through the process I will keep you informed of the progress'.⁶⁸⁸ In March, other affected parties were contacted about the consent renewal and plant upgrade.

By August 1995, the District Council had still not provided the required information to the Regional Council, almost a year after its existing consent had expired. The Regional Council wrote to the applicant stating that it had had 'more than enough time ... to provide this information to process the applications' and gave the District Council until 15 September to supply the outstanding information or withdraw the application, 'otherwise we shall have to advise the [Regional] Council to decline your applications'.⁶⁸⁹ Three days after the September deadline passed, the District Council submitted a new resource consent application to discharge 360 cubic metres of treated domestic wastewater into the Kaeo River via dual oxidation ponds and a constructed wetland.⁶⁹⁰

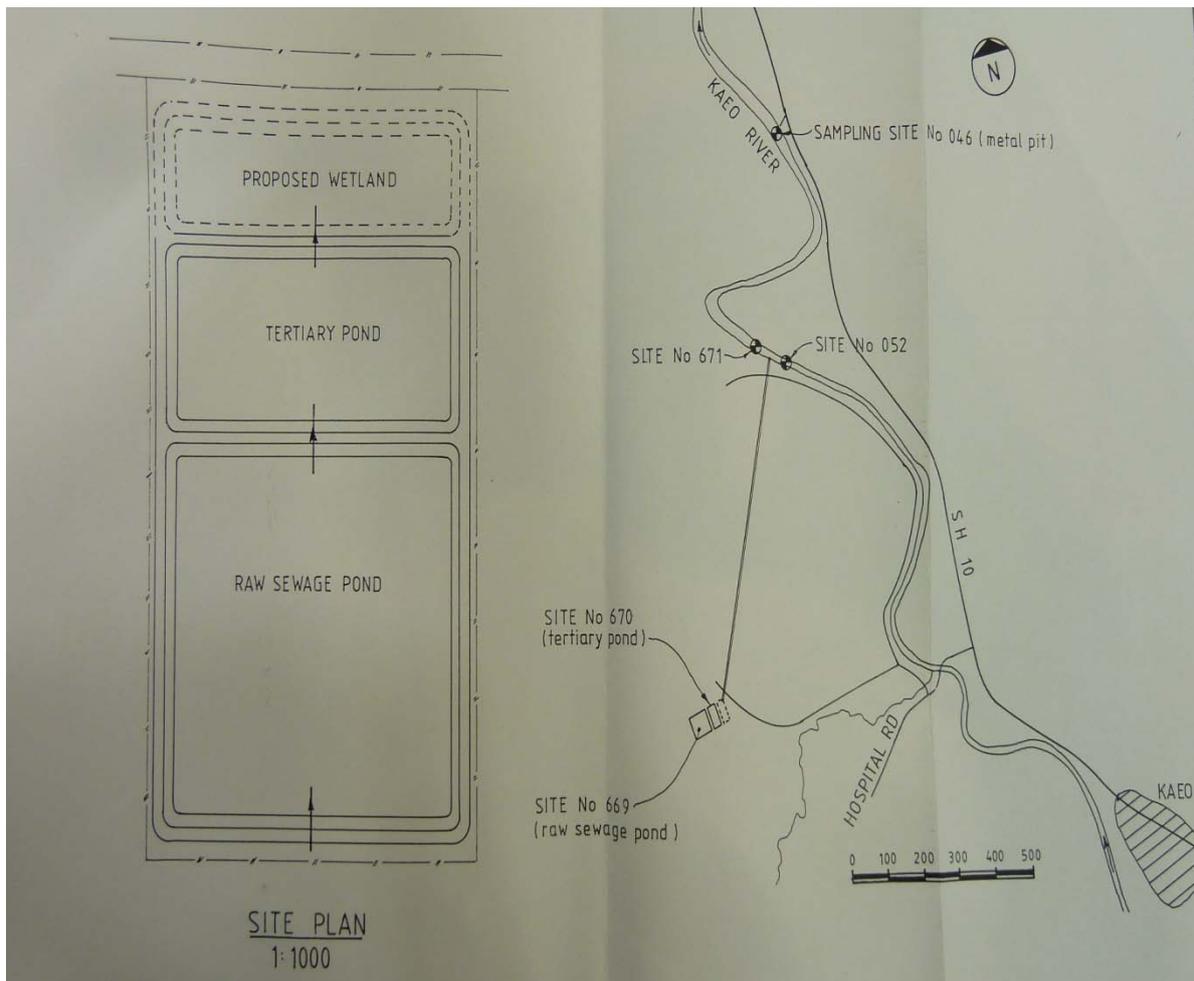
⁶⁸⁷ VK Consulting Environmental Engineers Ltd, 'Resource Consent Renewal for Kaeo Sewage Treatment System', prepared for Far North District Council, September, 1995, para 7, p16, in Far North District Council Discharge, NRC File 7205 vol. 2

⁶⁸⁸ VK Consulting Environmental Engineers Ltd to Te Rūnanga O Whaingaroa, 8 March, 1995, in Far North District Council Discharge, NRC File 7205 vol. 2

⁶⁸⁹ Consents Manager, NRC, to VK Consulting Environmental Engineers Ltd, 23 August, 1995, in Far North District Council Discharge, NRC File 7205 vol. 2

⁶⁹⁰ Application for a Resource Consent, Consent no. 2637, in Far North District Council Discharge, NRC File 7205 vol. 2

Figure 25: The proposed upgrade to the Kaeo wastewater treatment plant showing the discharge point into the river (between Site No 671 and 052), May 1995



(Source: FNDC File 36523, Box File A)

According to the VK Consultants report which accompanying the application, the main source of bacterial contamination entering Whangaroa Harbour from the Kaeo River came from non-point source pollution rather than treated effluent from the existing WWTP; effluent from the treatment plant was having 'a negligible effect on the receiving environment'.⁶⁹¹ This echoes the Northland Catchment Commission's understanding of pollution in the Kaeo River back in 1981. Still, there had been some issues with and changes to the existing treatment plant which probably prompted the District Council's review of its operation, including problems around the detection of emergency

⁶⁹¹ VK Consulting Environmental Engineers Ltd, *Resource Consent Renewal for Kaeo Sewage Treatment System*, prepared for Far North District Council, September 1995, para 5.1, p10, in Far North District Council Discharge, NRC File 7205 vol. 2

overflows⁶⁹² and stormwater infiltration which overloaded the system⁶⁹³, as well as the addition of sewage from Whangaroa township which was now being trucked to the Kaeo plant.⁶⁹⁴

The Regional Council wrote to the Rūnanga informing it of the application for resource consent the same day as the application was received.⁶⁹⁵ The application was then publicly notified on 26 September, with a submission closing date of 25 October 1995.⁶⁹⁶ Only one submission was received and that was from Northland Health (Community Health Services) concerning the capacity of the treatment plant to deal with future population growth.

4.5.3 Implementing the consent

In November 1995, the Kaeo wastewater discharge consent was granted, with 11 conditions concerning pollution levels, monitoring, and reporting to the Regional Council.⁶⁹⁷ While there were some teething issues, the construction of the new wetland was completed by early 1997.⁶⁹⁸ The completion of the upgrade, however, did not allay concerns over the impact of effluent from the treatment plant on receiving waters. In July 1999, Neil Smith from the Rūnanga wrote to the Regional Council explaining that the ‘methods of effluent disposal in the Whaingaroa area is of importance to the Resource Management Unit of Te Runanga O Whaingaroa’. Smith requested a copy of the operations and maintenance plan and “Resource Consent Renewal for Kaeo Sewage Treatment System” report, which the Council sent out to him the following day.⁶⁹⁹ On 4

⁶⁹² VK Consulting Environmental Engineers Ltd, *Resource Consent Renewal for Kaeo Sewage Treatment System*, prepared for Far North District Council, September 1995, para 4.3, p9, in Far North District Council Discharge, NRC File 7205 vol. 2

⁶⁹³ Fraser Thomas Ltd to Kaeo Bowling Club, 25 July, 1996, in Kaeo Whatuwhiwhi Sewer Rehab, FNDC File 36523, Box File A

⁶⁹⁴ VK Consulting Environmental Engineers Ltd, *Resource Consent Renewal for Kaeo Sewage Treatment System*, prepared for Far North District Council, September, 1995, para 2.2, p2, in Far North District Council Discharge, NRC File 7205 vol. 2

⁶⁹⁵ Consents Manager, NRC, to Te Rūnanga O Whaingaroa, 18 September, 1995, in Far North District Council Discharge, NRC File 7205 vol. 2

⁶⁹⁶ ‘Application for Replacement of an Existing Consent’ advertisement, 26 September, 1995, in Far North District Council Discharge, NRC File 7205 vol. 2

⁶⁹⁷ Monitoring Officer, NRC, to FNDC, 27 March, 1997, in Far North District Council Discharge, NRC File 7205 vol. 2

⁶⁹⁸ Monitoring Officer, NRC, to FNDC, 27 March, 1997, in Far North District Council Discharge, NRC File 7205 vol. 2

⁶⁹⁹ Resource Management Unit Co-ordinator, Te Rūnanga O Whaingaroa, to Waste Management Officer, NRC, 29 July, 1999, in Far North District Council Discharge, NRC File 7205 vol. 2; Water Management

August 1999, Smith sent another letter to the Council highlighting the Rūnanga's trepidation about the water quality of Whangaroa Harbour, increasing use of septic tanks in the Whangaroa area, and the Council's plans for sewage disposal in the future. The Rūnanga requested that the Regional Council advise it of its plans to ensure 'the issue of sewage disposal will be addressed' before the consent expired in 2005.⁷⁰⁰ Such comments suggest that the Regional and/or District Councils did not necessarily maintain an effective line of communication with tangata whenua after granting this resource consent.

The Regional Council responded, asking that the Rūnanga 'provide a more detailed account of what potential adverse effects you are concerned with'. The Council suggested that if the Rūnanga was concerned about increasing discharges and septic tank seepage within the catchment that it could get involved in the process of approving subdivisions which result in 'further on-site sewage treatment and disposal systems, or increase the amount of sewage treated by the Kaeo Treatment System'.⁷⁰¹ It seems that at this point there was not a lot of appetite from the Regional Council for tangata whenua to take up active roles in resource management beyond the initial consultation and submission phase of consent granting.

4.5.4 Renewing the resource consent

In February 2004, the Regional Council wrote to the Far North District Council regarding the upcoming expiry of the Kaeo WWTP consent in October the following year. While previous monitoring reports had not identified any serious risks posed by or issues with the treatment plant, the Regional Council stipulated that,

Given the age and nature of the Kaeo treatment system, it is considered that the effluent from this system is likely to pose a significant risk to the marine farm operations in the Whangaroa Harbour.... Consequently, it is recommended that urgent attention on the preparation of replacement consent applications be given.

Officer to Resource Management Unit Co-ordinator, 30 July, 1999, in Far North District Council Discharge, NRC File 7205 vol. 2

⁷⁰⁰ Resource Management Unit Co-ordinator, Te Rūnanga O Whaingaroa, to General Manager, NRC, 4 August, 1999, in Far North District Council Discharge, NRC File 7205 vol. 2

⁷⁰¹ Water Quality Officer, NRC, to Te Rūnanga O Whaingaroa, 7 September, 1999, in Far North District Council Discharge, NRC File 7205 vol. 2

The Regional Council recommended that work be carried out as early as possible and strongly recommended that the District Council ‘consult with the marine farming industry in the Whangaroa Harbour and other interested parties including iwi and Northland Health’, as ‘given the current issues within Whangaroa Harbour ... significant delays to the consenting process would be highly undesirable’, suggesting that there would likely be some opposition to the resource consent.⁷⁰² The Regional Council did not go into any further detail about the issues in Whangaroa Harbour, but it may have been alluding to commercial shellfish harvesting in the harbour having to be closed for an average of 38 per cent of each year between 1997 and 2003 ‘for a number of reasons’. There was considerable concern at the time that ‘the quality of shellfish in Northland is not high’ and that contaminated shellfish had the potential to cause ‘significant public health problems’.⁷⁰³ Misgivings about the state of the Kaeo treatment plant and its effect on Whangaroa Harbour were no doubt compounded by the recent forced closure of oyster farms in Waikare Inlet in 2001 which had been contaminated with norovirus. Oyster farmers there attributed the contamination to effluent discharge and spills into the Kawakawa River.⁷⁰⁴ The need to upgrade the WWTP was therefore ‘driven in part by the identification of deficiencies in the performance of the plant’, but also by ‘considerable local concern that the discharge is a source of microbiological contamination of the upper Whangaroa Harbour’.⁷⁰⁵

4.5.4.1 Consultation

The District Council was far more organised when it came to renewing the Kaeo WWTP consent this time around. In December 2004, the Council, through MWH New Zealand Ltd, sent ‘contact letters to iwi and oyster farmers’, followed by an invitation to meet

⁷⁰² Water Quality Monitoring Team Leader, NRC, to FNDC, 23 February, 2004, in Far North District Council Discharge, NRC File 7205 vol. 2

⁷⁰³ MWH, Far North District Council, Kaeo Sanitary Works Subsidy Scheme – Provisional Application, vol.1, April, 2007, p16, in Kaeo Wastewater Reports, FNDC File KAE2

⁷⁰⁴ Minutes, Consultation – Local Iwi, Far North District Council, Kaeo Service Centre, Kaeo, 27 January 2005, p1, in Far North District Council Discharge, NRC File 7205 vol. 3; ‘Oyster farmers take king hit as contamination case fails’, *NZ Herald*, 22 October 2006, http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10407156.

⁷⁰⁵ MWH, Far North District Council, Kaeo Wastewater Treatment and Disposal, Resource Consent Applications and Assessment of Effects on the Environment, April, 2005, para 3.1 and 3.2.1, p7, in Far North District Council Discharge, NRC File 7205 vol. 3

with the Council and discuss proposed changes to the wastewater treatment system.⁷⁰⁶ In light of what had happened at Kawakawa, MWH consultants maintained that the District Council needed to 'expect' that a higher level of effluent quality was needed and that was the aim of the proposed upgrade.⁷⁰⁷ The main aspects of the proposed upgrade were to fill in the second oxidation pond and install a filtration unit and UV disinfection system on the site. The primary pond would be used solely for excess flow, and the wetland would also be reconfigured.⁷⁰⁸ The District Council's preference was to discontinue use of the wetland, but it would apparently only do so if Māori agreed.⁷⁰⁹

MWH New Zealand contacted individuals from Mangaiti Marae, Te Rūnanga O Whaingaroa, Whangaroa Māori Trust Board, Te Iwi o Ngātīkahu ki Whangaroa, and Te Pā o Whakakii. The first consultation hui were held on 27 January 2005, firstly with Whangaroa oyster farmers and then with representatives from Te Rūnanga O Whaingaroa and Te Pā o Whakakii. Pat Tauroa from the Rūnanga informed the council that for Māori, the ultimate goal was that 'nothing' should enter the harbour and she was concerned that the District Council was 'not looking at the issue in a holistic manner. It is not just the sewage that causes problems'. She also expressed her disappointment that land-based sewage treatment was not given due consideration.⁷¹⁰ Land-based sewage disposal had been considered by the District Council, recognising that Māori consider it 'culturally inappropriate to discharge treated wastewater into natural water'.⁷¹¹ However, the soil in the Kaeo valley was found to be ill-suited to land-based disposal, providing insufficient soakage. Consequently, MWH New Zealand was of the opinion that the continued use of the constructed wetland as part of the treatment

⁷⁰⁶ MWH, Far North District Council, Kaeo Wastewater Treatment and Disposal, Resource Consent Applications and Assessment of Effects on the Environment, April, 2005, Table 8.3, p47, in Far North District Council Discharge, NRC File 7205 vol. 3

⁷⁰⁷ Minutes, Consultation – Local Iwi, FNDC, Kaeo Service Centre, Kaeo, 16 March 2005, p1, in Far North District Council Discharge, NRC File 7205 vol. 3

⁷⁰⁸ MWH, Far North District Council, Kaeo Wastewater Treatment and Disposal, Resource Consent Applications and Assessment of Effects on the Environment, April, 2005, para 3.2.2, p8, in Far North District Council Discharge, NRC File 7205 vol. 3

⁷⁰⁹ Minutes, Consultation – Kaeo Marine and Federated Farmers, FNDC, Kaeo Service Centre, Kaeo, 16 March 2005, p2, in Far North District Council Discharge, NRC File 7205 vol. 3

⁷¹⁰ MWH, Far North District Council, Kaeo Wastewater Treatment and Disposal, Resource Consent Applications and Assessment of Effects on the Environment, April, 2005, para 7.3.4, p40, in Far North District Council Discharge, NRC File 7205 vol. 3

⁷¹¹ MWH, Far North District Council, Kaeo Wastewater Treatment and Disposal, Resource Consent Applications and Assessment of Effects on the Environment, April, 2005, para 7.3.4, p40, in Far North District Council Discharge, NRC File 7205 vol. 3

system was an appropriate middle-ground that would generally be accepted by Māori. The District Council was said to be undertaking further investigations into land-based disposal options, along with Māori consultation.⁷¹²

In February 2005, the District Council and MWH New Zealand issued a media statement that the Council was looking to renew the Kaeo WWTP resource consent and extended the call to the wider community to contribute to discussions about upgrading the plant. The Council acknowledged 'that there is considerable local concern regarding the risks of contamination of the Kaeo River, which may, in turn, subsequently affect oyster production and the recreational use of the Whangaroa Harbour', and as such it would consult with the local community to identify any issues and address any concerns before making an application.⁷¹³

On 16 March 2005, MWH New Zealand and the District Council met with Whangaroa oyster farmers and the Rūnanga again to discuss the details of the proposed upgrade. One of the messages from the Rūnanga was that tangata whenua had been excluded from the management of the Kaeo River and WWTP since the 1990s and felt that there had been a lack of robust monitoring by the Regional Council.⁷¹⁴ A similar issue was raised at the public hui which followed on 6 April. Attended by various residents and community members including representatives from the Rūnanga and Te Whakaminenga o Ngā Hapū Ngāpuhi, some of those present considered that the consultation process had been 'poor', and that the District Council was simply disseminating information rather than discussing the proposal and giving the community the opportunity to contribute to the decision as to how to upgrade the treatment system. However, this was somewhat in contrast to the experience of the Rūnanga. Pat Tauroa confirmed that the Rūnanga had been advised and given relevant information on the proposal, although she noted attendance at previous consultation

⁷¹² MWH, Far North District Council, Kaeo Wastewater Treatment and Disposal, Resource Consent Applications and Assessment of Effects on the Environment, April, 2005, Table 4.1, p13; para 4.4, p16; para 7.3.4, p40; and para 8.4.1, p48, in Far North District Council Discharge, NRC File 7205 vol. 3

⁷¹³ Joint Media Release, 'Kaeo wastewater treatment plant Resource Consent Renewal', 21 February, 2005, in Far North District Council Discharge, NRC File 7205 vol. 3

⁷¹⁴ Minutes, Consultation – Local Iwi, FNDC, Kaeo Service Centre, Kaeo, 16 March, 2005, p1, in Far North District Council Discharge, NRC File 7205 vol. 3

hui had been poor.⁷¹⁵ In this case, it seems that tangata whenua (and oyster farmers) had been treated as the primary interested parties. The reason tangata whenua and their concerns received greater consideration during this process, Tauroa maintains, was largely due to whanaungatanga:

When MWH arrived in Whangaroa, one of the consultants introduced herself as the daughter of a former colleague – a personal relationship was strengthened and therefore mutual confidence was demonstrated from the outset. That particular consultant expressed the constrictions of FNDC in what they were able to do, however, with the aspect of ‘whanaungatanga’ in place, consultation with Tangata Whenua took place, and the FNDC was eventually prepared to listen.⁷¹⁶

While the wider community was not excluded entirely from the consultation process, priority was given to those whose cultural and economic interests may have been most affected by any changes. The Kaeo community passed a motion at the hui that another public meeting would be held to continue discussions about the development of the Kaeo WWTP.⁷¹⁷ MWH New Zealand also reported that as a result of the meeting on 6 April and ‘a community desire to be actively involved in the consent process’, a community group called Awa Care (which would later come to be known as Wai Care) was established to represent the interests of tangata whenua and the wider Whangaroa community in discussions with the District Council.⁷¹⁸ Consisting of members of the community and MWH New Zealand, Awa Care ‘was formed to design and implement the upgrade to the wetland treatment system’⁷¹⁹ and subsequently held workshops in Kaeo to provide more information to the community about the proposed upgrade.⁷²⁰ Awa/Wai Care also came to assume a central role in representing tangata whenua interest in the wider resource consent process in Kaeo, as is evident with the flood mitigation works previously discussed.

⁷¹⁵ Minutes – Public Meeting, Kaeo Memorial Hall, Kaeo, 6 April, 2005, p2, in Far North District Council Discharge, NRC File 7205 vol. 3

⁷¹⁶ Pat Tauroa, Personal Communication, 2 June 2016

⁷¹⁷ Minutes – Public Meeting, Kaeo Memorial Hall, Kaeo, 6 April, 2005, p3, in Far North District Council Discharge, NRC File 7205 vol. 3

⁷¹⁸ Violet Walker, Personal communication, 17 February, 2016

⁷¹⁹ Northland Regional Council, Resource Consent Decision, Resource Consent Number 20040720501, Schedule 1, p17, in Far North District Council Discharge, NRC File 7205 vol. 4

⁷²⁰ MWH, Far North District Council, Kaeo Wastewater Treatment and Disposal, Resource Consent Applications and Assessment of Effects on the Environment, November, 2005, p59, in Kaeo Oxidation Ponds Discharge, FNDC File 7205

4.5.4.2 Making the application

MWH New Zealand submitted a resource consent application on behalf of the District Council on 29 April 2005. This consent was for the disposal of treated wastewater to the Kaeo River, to discharge contaminants to air, and to discharge treated wastewater to land (in the oxidation ponds and wetland). In making a case for the consent the consultant's report again noted that previous Regional Council testing had consistently shown that effluent from the WWTP had a 'negligible effect on river water quality'.⁷²¹ However, this probably said more about the background water quality of the Kaeo River than the effluent quality, for as the Assessment of Environmental Effects (AEE) which accompanied the application noted:

The final treated wastewater is characterised by relatively high concentrations of suspended solids, and variable faecal coliform counts.... Overall the treated wastewater quality is less than optimal for a treatment system comprising two oxidation ponds in series followed by a constructed wetland.⁷²²

The final version of the AEE also acknowledged that although 'it generally operated within the previous resource consent limits, the existing system is contributing to contamination of the Kaeo River and the Whangaroa Harbour'.⁷²³ However, according to the AEE, the Kaeo River's 'background water quality' (800 cfu's/100 ml) had higher faecal coliform levels than the effluent which the new treatment plant would discharge (14 cfu's/100 ml). This meant that, although background levels of contaminants could at times render the Kaeo River unsuitable for contact recreation/bathing, 'the proposed effluent quality from the treatment system should meet shellfish gathering standards to allow continued traditional shellfish gathering within the river'⁷²⁴; the contamination of shellfish in Whangaroa Harbour could be not attributed to effluent from the upgraded treatment plant. Such an analysis seemed to ignore the cumulative impacts of numerous

⁷²¹ MWH, Far North District Council, Kaeo Wastewater Treatment and Disposal, Resource Consent Applications and Assessment of Effects on the Environment, April, 2005, para 2.4, p6, in Far North District Council Discharge, NRC File 7205 vol. 3

⁷²² MWH, Far North District Council, Kaeo Wastewater Treatment and Disposal, Resource Consent Applications and Assessment of Effects on the Environment, April, 2005, para 2.4 p6 and para 6.5.2, p29, in Far North District Council Discharge, NRC File 7205 vol. 3

⁷²³ MWH, Far North District Council, Kaeo Sanitary Works Subsidy Scheme – Provisional Application, vol.1, April, 2007, p24, in Kaeo Wastewater Reports, FNDC File KAE2

⁷²⁴ MWH, Far North District Council, Kaeo Wastewater Treatment and Disposal, Resource Consent Applications and Assessment of Effects on the Environment, November, 2005, pp13, 52, in Kaeo Oxidation Ponds Discharge, FNDC File 7205

point (and non-point) source pollutants on the Kaeo River, and thereby disregarded the river as a whole, environmental system. This AEE appears to provide the first official acknowledgment in discussions about the treatment plant of concern over microbial contamination on traditional food gathering areas within the Kaeo River itself.⁷²⁵

Figure 26: Algae-laden effluent being discharged into the Kaeo River from the WWTP



(Source: MWH, Far North District Council, *Kaeo wastewater treatment plant Upgrade Feasibility Report*, March 2007, p12, FNDC File KAE2)

Between June and October 2005, Awa Care held several meetings to discuss what to do with the Kaeo WWTP and to design a more effective wetland. One point which was raised during one of these meetings, and which would surely have been an easy condition to include in the renewed resource consent, was that the Rūnanga wished to receive monitoring data for the site, which Whangaroa oyster farmers were already understood to be receiving.⁷²⁶ Another point was that the community wanted the

⁷²⁵ MWH New Zealand Limited, Far North District Council, Kaeo Wastewater Treatment and Disposal, Resource Consent Applications and Assessment of Effects on the Environment, November, 2005, p13, in Kaeo Oxidation Ponds Discharge, FNDC File 7205

⁷²⁶ Minutes – Awa Care Group Meeting, 10 June 2005, in MWH, Far North District Council, Kaeo Wastewater Treatment and Disposal, Resource Consent Applications and Assessment of Effects on the Environment, November, 2005, in Kaeo Oxidation Ponds Discharge, FNDC File 7205

specific treatment method that would be implemented to be defined in the consent conditions.⁷²⁷

A public consultation hui was held on 4 October 2005 by Awa Care, who gave a presentation on the progress of the resource consent application and the options that had been discussed for improving the treatment system. Those in attendance were 'happy to proceed with the application assuming minimum pathogen level is met'.⁷²⁸ MWH New Zealand informed the Regional Council that it was 'now satisfied that [the] processing of this application can proceed'⁷²⁹, and interestingly, reported that at the abovementioned meeting a motion was passed to continue to provide information on the progress of the consent and upgrade to the community via Awa Care as 'the agent to undertake this negotiation'.⁷³⁰ The application was publicly notified in November and December 2005. Letters were also sent to interested parties, including Te Rūnanga O Whaingaroa, Te Pā O Whakakii, Whaingaroa Māori Trust Board, Mangaiti Marae, and Ngā Uri A Ngāti Pakahi Trust, informing them that submissions could be made.⁷³¹

The Regional Council received 12 submissions in the statutory timeframe and one from Whakaminenga Environmental Watch Group after the submission closing date.⁷³² One of the submissions, from Northland Health, expressed a positive view of the plant upgrade and even commended the consultation that had taken place with local iwi and commercial shellfish operators and for considering local issues more generally.⁷³³ Most of the submissions, however, were in opposition to the resource consent renewal and

⁷²⁷ Minutes – Awa Care Group Meeting, 23 August, 2005, in MWH, Far North District Council, Kaeo Wastewater Treatment and Disposal, Resource Consent Applications and Assessment of Effects on the Environment, November, 2005, in Kaeo Oxidation Ponds Discharge, FNDC File 7205

⁷²⁸ Minutes – Awa Care Group Public Meeting, 4 October, 2005, in MWH, Far North District Council, Kaeo Wastewater Treatment and Disposal, Resource Consent Applications and Assessment of Effects on the Environment, November, 2005, in Kaeo Oxidation Ponds Discharge, FNDC File 7205

⁷²⁹ Senior Planner, MWH, to Consents Manager, NRC, 10 November, 2005, in Far North District Council Discharge, NRC File 7205 vol. 4

⁷³⁰ MWH, Far North District Council, Kaeo Wastewater Treatment and Disposal, Resource Consent Applications and Assessment of Effects on the Environment, November, 2005, p59, in Kaeo Oxidation Ponds Discharge, FNDC File 7205

⁷³¹ Northland Regional Council, 'Notification of Application for Replacement and New Resource Consents', 30 November and 1 December, 2005, in Far North District Council Discharge, NRC File 7205 vol. 4; 'List Of Names For Role Types', in Far North District Council Discharge, NRC File 7205 vol. 4

⁷³² This group was formed to instigate beach clean-ups in Whangaroa, the first of which were carried out in 2004-2005. (Personal communication, Wai Care, 17 February, 2016)

⁷³³ Northland Health to Water and Wastes Management Officer, NRC, 20 January, 2006, in Far North District Council Discharge, NRC File 7205 vol. 4

plant upgrade. Only two submissions, from Violet Walker on behalf of Whakaminenga Environmental Watch Group and from Desmond Mahoney, were from Māori. Walker opposed the addition of consent for the unplanned discharge of waste to land or water (referring to sewage overflows which may occur in times of heavy rain at the pump stations/pipe network), stating that she had been personally involved in the development of the treatment plant design and this aspect had never been discussed.⁷³⁴

In February 2006, after the submission period had closed on 30 January, the Regional Council informed the District Council that it was putting the processing of its application on hold until additional information was provided as the Regional Council considered that there was reasonable community concern and hence that 'your proposed activity may have a significant adverse effect on the environment'.⁷³⁵ The Regional Council set out to deal with the concerns of submitters and incorporate suggested changes into a draft set of recommendations for the consent. The draft was sent to submitters for their input in June 2006 and the council had 'extensive discussion[s] with submitters, including on an individual basis'.⁷³⁶ Based on this consultation, all the submitters, bar one, withdrew their wish to be heard at a hearing.

Desmond Mahoney, a resident of Kaitaia, opposed all aspects of the consent as he considered it to:

[F]ail to address any protection of the environment and further fails to address issues to [sic] public safety. Fails to address issues of culture and fails to protect our kaimoana.⁷³⁷

As it did with other submitters, the Regional Council made concerted efforts to meet with Mahoney and discuss his concerns, a process which increasingly became a source of irritation for the Regional and District Councils, as well as the wider community. In

⁷³⁴ Whakaminenga Environmental Watch Group, Submission, 23 January, 2006, in Far North District Council Discharge, NRC File 7205 vol. 4

⁷³⁵ Water and Wastes Management Officer, NRC, to Utilities Planning and Development Manager, FNDC, 10 February, 2006, in Far North District Council Discharge, NRC File 7205

⁷³⁶ Northland Regional Council, Resource Consent Decision, Resource Consent Number 20040720501, Schedule 1, p19, in Far North District Council Discharge, NRC File 7205 vol. 4

⁷³⁷ Desmond Mahoney, Submission to the Northland Regional Council, 19 January, 2006, in Far North District Council Discharge, NRC File 7205 vol. 4

July 2006, the Regional Council informed the District Council that Mahoney was not willing to talk about his concerns, to which the District Council replied that it was:

[U]nhappy that someone from out of the area is having such an influence on the process as we have spent considerable time with the community working through the process together. Anyway, I guess that is just how it is with the RMA.⁷³⁸

This frustration was echoed in a letter from Violet Walker of Awa Care to the Regional Council in October after Mahoney failed to meet with the group and kaumātua to discuss the system upgrade. She stated that it seemed ‘that both Councils have gone beyond their duty and requirements within the RMA 2005 to meet with Mr Mahoney ... [who] is holding both Councils to ransom [sic], but all it is doing for the Community of Kaeo and our group is causing frustration and delaying progress’.⁷³⁹

Based on the discussions eventually held between Mahoney and the Regional and District Councils, it was agreed that some changes to the consent conditions would be made, such as that the WWTP upgrade would be completed within 2 years and three months from date of issue, the plant would only treat wastewater from Kaeo township, and that the Regional Council would carry out sampling on a bi-monthly basis without having to give prior notice to the District Council as the applicant.⁷⁴⁰ With these changes agreed to, ‘resolution on proposed conditions was finally reached on 12 December 2006’ and the resource consent was granted on 22 December 2006 for a period of 15 years.⁷⁴¹ In this instance, the Regional Council was satisfied that tangata whenua had been sufficiently involved in the consultation process, through Awa Care, and that the objectives and policies of the Northland Regional Water and Soil Plan regarding recognition of Māori and their culture and traditions had been adhered to.⁷⁴²

⁷³⁸ FNDC to Water and Wastes Team Leader, NRC, 14 July, 2006, in Far North District Council Discharge, NRC File 7205 vol. 4

⁷³⁹ Wai Care to Utilities Planning and Development Manager, FNDC, 11 October, 2006, in Far North District Council Discharge, NRC File 7205 vol. 4

⁷⁴⁰ Utilities Planning and Development Manager, FNDC, to Water and Wastes Management Officer, NRC, 30 November, 2006, in Far North District Council Discharge, NRC File 7205 vol. 4; Utilities Manager, FNDC, to Des Mahoney, 6 November, 2006, in Kaeo Oxidation Ponds Discharge, FNDC File 7205

⁷⁴¹ Northland Regional Council, Resource Consent Decision, Resource Consent Number 20040720501, Schedule 1, p19, in Far North District Council Discharge, NRC File 7205 vol. 4

⁷⁴² Northland Regional Council, Resource Consent Decision, Resource Consent Number 20040720501, Schedule 1, p17, in Far North District Council Discharge, NRC File 7205 vol. 4

4.5.5 Changes to the new resource consent

The upgrade to the Kaeo WWTP did not quite proceed as planned. In July 2009, the District Council wrote to the Regional Council 'requesting a relaxation in clause 4 which relates to the completion of the improvement works', a clause which Mahoney had requested.⁷⁴³ Essentially, the specified deadline for the completion of the upgrade had passed, meaning that the consent was now non-compliant. In the District Council's view, the upgrade, with the installation of a filter and UV disinfection system, would 'have an adverse effect on the community in terms of both capital and operational expenditure', and as such the Council did not wish to proceed with the agreed changes to the WWTP.⁷⁴⁴ The Regional Council responded that it was not in a position 'to simply allow any significant "relaxation" of consent conditions' and recommended that if the consent conditions could not be met then the District Council should make a new application to change them.⁷⁴⁵ It is not clear whether any other parties were informed of these developments.

The District Council's request for leniency with regards to the Kaeo WWTP upgrade appears to have been part of a wider issue. In October 2009, the District and Regional Councils met to discuss the former's appeal for 'an amnesty on sewage treatment plant upgrades and associated consent compliance' in several Far North towns. The Regional Council maintained that offering amnesty was not an appropriate course of action and instead insisted 'that other alternative pragmatic and practical options are worthy of investigation'. The Regional Council suggested that for Kaeo, the District Council consider installing the soon-to-be disused UV disinfection system from Kerikeri as an economical solution.⁷⁴⁶

In February 2010, the District Council confirmed that it would seek to amend several conditions of the current resource consent by: removing the pump station upgrade,

⁷⁴³ Acting Water, Wastewater and Refuse Manager, FNDC, to Consents Manager, NRC, 2 July, 2009, in Far North District Council Discharge, NRC File 7205 vol 5

⁷⁴⁴ Kaeo wastewater treatment plant, Resource Consent CON20040720501, Amendment under Section 127 RMA, October, 2010, p2, in Far North District Council Discharge, NRC File 7205 vol 5

⁷⁴⁵ Monitoring Senior Programme Manager, NRC, to Acting Water, Wastewater and Refuse Manager, FNDC, 4 August, 2009, NRC File 7205 vol 5

⁷⁴⁶ Monitoring Senior Programme Manager, NRC, to Far North District Council, 18 November, 2009, in Kaeo Oxidation Ponds Discharge, FNDC File 7205

relaxing the 4-log viral removal⁷⁴⁷ (later retracted), and relaxing the prescriptive elements of the consent. The Council also acknowledged that a robust AEE would be needed and the community consulted.⁷⁴⁸ By June, the Regional Council had not received a new application from the District Council and requested that the District Council provide a report on the status and timeframes of its proposal by 15 June.⁷⁴⁹ It was not until October 2010 that the District Council finally did so. The urgency and thoroughness with which the Council had approached its 2005 resource consent application seemed to have dissipated.

The key change proposed by the Council was that the consent would no longer contain any condition regarding the particular type of treatment method to be installed. The consent would focus instead on setting and monitoring effluent quality rather than determining the actual treatment process.⁷⁵⁰ The Regional Council's understanding of the situation was that the system currently set out in the consent was not there as a Regional Council requirement but because of 'an agreement between the FNDC and the community'.⁷⁵¹ The District Council also wanted to be able to treat sewage from Whangaroa and Totara North, communities which relied heavily on septic tanks, through the Kaeo plant⁷⁵² - something which was deliberately prohibited in the existing consent as a result of objections from Mahoney. This amendment was later abandoned, however, in response to Mahoney's submission.⁷⁵³

The District Council stated that it was committed to ensuring that the proposed amendments would still result in the higher level of effluent quality as defined in the

⁷⁴⁷ This meant that if the effluent had a faecal coliform count of 100,000 MPN/100 ml, then the treated wastewater is to have a count of no more than 10 MPN/100 ml.

⁷⁴⁸ Acting Manager, Waste, Wastewater and Refuse Group, FNDC, to Monitoring Senior Programme Manager, NRC, 24 February, 2010, in Far North District Council Discharge, NRC File 7205 vol 5

⁷⁴⁹ Monitoring Senior Programme Manager, NRC, to FNDC, 8 June, 2010, in Far North District Council Discharge, NRC File 7205 vol 5

⁷⁵⁰ Kaeo wastewater treatment plant, Resource Consent CON20040720501, Amendment under Section 127 RMA, October, 2010, pp11-12, in Far North District Council Discharge, NRC File 7205 vol 5

⁷⁵¹ Monitoring Senior Programme Manager, NRC, to Far North District Council, 18 November, 2009, in Kaeo Oxidation Ponds Discharge, FNDC File 7205

⁷⁵² FNDC, Kaeo wastewater treatment plant, Resource Consent CON20040720501, Amendment under Section 127 RMA, October, 2010, pp11, 17, in Far North District Council Discharge, NRC File 7205 vol 5

⁷⁵³ Northland Regional Council Staff Report, Limited Notified Section 127 Change, p5, in Far North District Council Discharge, NRC File 7205 vol 5

2006 consent conditions, and as such requested that the application not be notified.⁷⁵⁴ The Regional Council informed the District Council that while it was expected that the application would be non-notified, it would be circulated to iwi groups.⁷⁵⁵ On 3 November 2010, the Regional Council sent letters to Karangahape Marae Trust, Te Iwi o Ngātīkahu ki Whangaroa, Te Rūnanga O Whaingaroa, Whangaroa Māori Trust Board, and Mangaiti Marae, asking for comment on the changes the District Council was proposing.⁷⁵⁶ Stephen Rush from Te Rūnanga O Whaingaroa contacted the Regional Council with concerns about the amendments.⁷⁵⁷ There is no record as to what issues Rush raised or how the Council responded to them.

In February 2011, the Regional Council informed the District Council that it had determined that the consent application could be processed without notification but that written approval from Mahoney would be required before the application could be processed.⁷⁵⁸ Based on earlier consultation with tangata whenua, the Regional Council considered that the proposed changes to the consent conditions would not have ‘any additional cultural effect’, but given the ‘wide range of issues’ Mahoney raised previously and the extent of his involvement, the Council ‘considered it appropriate to treat this party as affected in this case’ and obtain his approval.⁷⁵⁹ This decision was possibly also based on the fact that the proposed changes would affect some of the conditions which had originally been included because of Mahoney’s requests. As mentioned above, the Regional and District Councils did still inform and meet with some Māori parties⁷⁶⁰ regarding the new proposal, but written approval simply was not sought from tangata whenua (though, unlike Mahoney, tangata whenua had not previously submitted objections – apart from that by Walker).

⁷⁵⁴ Acting Manager Waste, Wastewater and Refuse Group, FNDC, to Consents Programme Manager, NRC, 22 October, 2010, in Far North District Council Discharge, NRC File 7205 vol 5

⁷⁵⁵ Consents Team Administrator, NRC, to Acting Manager Water, Wastewater, and Refuse Group, FNDC, 1 November, 2010, in Far North District Council Discharge, NRC File 7205 vol 5

⁷⁵⁶ Hearings Administrator, NRC, to Karangahape Marae Trust, 3 November, 2010, in Far North District Council Discharge, NRC File 7205 vol 5

⁷⁵⁷ Hearings Administrator, NRC, to Consents Officer, NRC, 18 November, 2010, in Far North District Council Discharge, NRC File 7205 vol 5

⁷⁵⁸ Consents Officer, NRC, to FNDC, 24 February, 2011, in Far North District Council Discharge, NRC File 7205 vol 5

⁷⁵⁹ Notification Decision Report, April, 2011, in Far North District Council Discharge, NRC File 7205 vol 5.

⁷⁶⁰ Assistant Project Manager, FNDC, to NRC and others, 11 March, 2011, in Far North District Council Discharge, NRC File 7205 vol 5

The Regional Council wrote to Mahoney to inform him of the new consent application on 6 April 2011, stating that should he wish to make a submission he should do so by 24 June.⁷⁶¹ Mahoney made a submission on 7 April opposing the amendments and requested that 'a date be applied for at the Environment Court for the setting down of this matter'. Mahoney voiced concern primarily that the Regional Council had failed to enforce the conditions in the existing consent (i.e. the original upgrade did not happen within the timeframes set out in the consent).⁷⁶² A series of email exchanges between Mahoney and the Regional Council ensued, whereby the Council sought to meet with him and address his concerns.

In June the Regional Council informed Mahoney that it would send him the draft consent conditions and if he still did not agree to the changes, then the Council would set a hearing date and appoint a Hearing Committee.⁷⁶³ These changes included the condition that an upgraded system be commissioned and constructed by 31 December 2011.⁷⁶⁴ Although the District Council was seeking to eliminate 'reference to items within the treatment process ... [as] a matter of principle', none of the changes took into account the assurances previously given by the District Council that it would further investigate land-based treatment options.⁷⁶⁵ As such, this may have been a missed opportunity for the Regional Council to ensure that a treatment system was installed, or at the very least seriously considered, which would have recognised and respected the views of tangata whenua.

While there does not appear to have been much discussion with the Regional Council about the new treatment system it was considering, the District Council was all the while investigating the possible installation of a Biofiltro plant, which filters wastewater

⁷⁶¹ Consents Officer, NRC, to Des Mahoney, 6 April, 2011, in Far North District Council Discharge, NRC File 7205 vol 5

⁷⁶² Des Mahoney to Consents Programme Manager, 7 April, 2011, in Far North District Council Discharge, NRC File 7205 vol 5

⁷⁶³ Consents Programme Manager to Des Mahoney, 29 June 2011, in Far North District Council Discharge, NRC File 7205 vol 5

⁷⁶⁴ Consent No.: CON20100720501, draft conditions, attached to email, Consents Officer, NRC, to Mr Mahoney, 20 July, 2011, in Far North District Council Discharge, NRC File 7205 vol 5

⁷⁶⁵ Assistant Project Manager, FNDC, to Consents Officer, NRC, 19 July, 2011, in Far North District Council Discharge, NRC File 7205 vol 5

through layers of worms, sawdust, and gravel.⁷⁶⁶ After having met with Mahoney in July, the District Council informed the Regional Council that:

We have evidence of strong community support for the proposal [of installing a Biofiltro plant].... In view of Mr. Mahoney knowing clearly the course of action we are pursuing, the strong community support for the proposal, its planned installation and frankly a practical inability to correct the sins of the past we can only view Mr. Mahoney's demand as vexatious and designed to embarrass FNDC rather than contribute to any positive improvement to the current decisions already reached.⁷⁶⁷

The District Council refused to communicate with Mahoney any further. Mahoney objected to the suggested amendments and a Hearings Committee hearing date was set for 1 September in Kaitaia (the location of which was specifically chosen for Mahoney's benefit⁷⁶⁸).⁷⁶⁹

Although a key issue of Mahoney's was the culpability of the Regional Council in not enforcing consent conditions, the Hearings Commissioner's jurisdiction was 'limited to a consideration of the potential effects of the changes sought to the existing resource consent conditions'.⁷⁷⁰ In this case, the Commissioner found that changes to the implementation date of the upgrade were acceptable, as well as there being no need to specify within the consent the particular type of treatment system employed as that was a decision for the consent holder to make.⁷⁷¹ As a result, the Commissioner recommended that the Regional Council allow for the changes to be made to the conditions of the existing consent.⁷⁷²

⁷⁶⁶ Assistant Project Manager, FNDC, to Consents Officer, NRC, 19 July, 2011, in Far North District Council Discharge, NRC File 7205 vol 5

⁷⁶⁷ General Manager, FNDC, to Consents Officer, NRC, 25 July, 2011, in Far North District Council Discharge, NRC File 7205 vol 5

⁷⁶⁸ NRC to Te Rarawa Rūnanga, 27 July, 2011, in Far North District Council Discharge, NRC File 7205 vol 5.

⁷⁶⁹ Hearings Administrator, NRC, to D. Mahoney, 3 August, 2011, in Far North District Council Discharge, NRC File 7205 vol 5

⁷⁷⁰ Report and Decision of the Council, through its Hearings Committee meeting held at the Far North REAP Community Learning Centre, Kaitaia, on Thursday 1 September, 2011, p2, in Far North District Council Discharge, NRC File 7205 vol 5

⁷⁷¹ Report and Decision of the Council, through its Hearings Committee meeting held at the Far North REAP Community Learning Centre, Kaitaia, on Thursday 1 September, 2011, pp4, 5, in Far North District Council Discharge, NRC File 7205 vol 5

⁷⁷² Report and Decision of the Council, through its Hearings Committee meeting held at the Far North REAP Community Learning Centre, Kaitaia, on Thursday 1 September, 2011, p7, in Far North District Council Discharge, NRC File 7205 vol 5

The Regional Council notified Mahoney of its decision to approve the changes to the resource consent on 2 September and explained that he had 15 working days to lodge an appeal with the Environment Court if he so wished. Mahoney responded the following day that he did indeed intend to file an appeal, though this does not appear to have happened.⁷⁷³

4.5.6 A new treatment method

By the beginning of January 2012, despite 'several assurances' that all was on track, the installation of the new wastewater treatment system had not been carried out. Upon further inspection, it was found that the WWTP site was 'currently unsuitable for the proposed Biofiltro system'. The Regional Council wrote to the District Council informing it that:

[I]t is some years since the required upgrade was initially due for completion and that NRC and the public of Kaeo are understandably anxious that the upgrade has not gone ahead as required.... Further significant delays will not be acceptable to NRC.⁷⁷⁴

The issue with the ground requirements and measurements at the site were quickly resolved however and the District Council contracted Transfield Services Limited to carry out the upgrade, which was constructed by June 2012.⁷⁷⁵ This new system consisted of a worm filter in the second oxidation pond, and was the first of its kind in the Far North. There were also additional plans to upgrade the wetland at a later date and possibly install an ultra-violet light treatment aspect.⁷⁷⁶ It took quite a long time for the worms to reach their optimal population and thus for the system to reach its peak performance, but by late 2014, the upgraded WWTP was producing effluent to a quality which met the resource consent conditions.⁷⁷⁷

⁷⁷³ Desmond Mahoney to Consents Officer, NRC, and others, 3 September, 2011, in Far North District Council Discharge, NRC File 7205 vol 5

⁷⁷⁴ Monitoring Senior Programme Manager, NRC, to General Manager, FNDC, 6 January, 2012, in Far North District Council Discharge, NRC File 7250 vol 6

⁷⁷⁵ Resource Consents Specialist, FNDC, to Monitoring Programme Manager, NRC, 28 June, 2012, in Far North District Council Discharge, NRC File 7250 vol 6

⁷⁷⁶ '400,000 new council staff wallow in their work', *The Northern Advocate*, 13 September 2012 http://www.nzherald.co.nz/northern-advocate/news/article.cfm?c_id=1503450&objectid=11074938 (accessed 21 December 2015)

⁷⁷⁷ Environmental Monitoring Officer, NRC, to Far North District Council, 19 November, 2014, in Far North District Council Discharge, NRC File 7250 vol 6

There is a conspicuous absence of any communications with or mention of Wai Care in the Regional Council's files regarding the upgrade of the WWTP. However, throughout the process of developing the new treatment system, Awa Care, now known as Wai Care Environmental Consultants Whangaroa, was a key participant. Violet Walker has explained that Wai Care was there from the beginning in 2005 to the commissioning of the new biofiltro plant in 2012:

We looked at three different designs, a membrane reactor (too large), a membrane filter (smaller footprint but high maintenance costs) and the biofiltro system (met required standards, and culturally acceptable). We negotiated a budget with FNDC, tweaked [the] design to save costs to community rate payers, consulted with Tangata whenua about the design meeting cultural requirements – i.e. waste water being cleansed by passing through Papatuanuku [-] then started work in 2011.⁷⁷⁸

Wai Care was also successful in negotiating with the District Council a reconfiguration of the wetland to work alongside the biofiltro plant. Wai Care was contracted to design and plant the wetland with the assistance of Te Whare Wananga o Awanuiarangi students to whom Violet Walker had been teaching customary fishing and fresh water management.⁷⁷⁹ For Walker, 'This project shows how the community, tangata whenua and the [District] council can collaborate on an innovative initiative and achieve an efficient, compliant, low-maintenance, cost-effective and environmentally-sound result'.⁷⁸⁰

4.5.7 Conclusion - Kaeo wastewater treatment plant

The Kaeo WWTP has had a reasonably long and complicated history. In 1994, for the first time since the RMA was enacted, the Far North District Council's right to discharge wastewater into the Kaeo River from the treatment plant was due to expire. The District Council had plans to upgrade the plant from its two existing oxidation ponds, and held discussions with various interested parties, including landowners, Te Rūnanga O Whaingaroa, and representatives from Mangaiti Marae. However, despite prompting

⁷⁷⁸ Personal communication, Wai Care, 17 February, 2016

⁷⁷⁹ Personal communication, Wai Care, 17 February, 2016

⁷⁸⁰ 'Natural Sewerage System a First for the Far North', Far North District Council, media release, 10 September 2012 <http://www.fndc.govt.nz/communication/media-releases/releases/natural-sewerage-system-a-first-for-the-far-north> (accessed 6 November 2015)

and numerous warnings from the Regional Council, the process of renewing the consent was slow to progress.

In 1995, the District Council submitted a new application, seeking to renew its resource consent and for approval for the construction a wetland which would add another stage to the treatment process. The Regional Council informed the Rūnanga of the application which was soon publicly notified. No submissions were made in opposition to the resource consent applied for and the consent was granted in November 1995.

It seems likely that the construction of the wetland was partially an attempt to find a middle ground with regards to the view of tangata whenua that nothing should enter the waterways, and suggests that the consultation process had delivered some real and constructive results. Yet, evidence suggests that once the consent had been approved, the Rūnanga and Regional Council had not maintained a steady flow of communication and the Rūnanga's attempts to initiate discussions around the future planning of the WWTP in 1999 were met with a less-than-welcoming response. The Regional Council was not apparently particularly open to the idea of finding a place for tangata whenua in the management of the Kaeo River beyond the consultation phase of the resource consent process.

The Kaeo WWTP consent was due to expire again in 2005 and in light of recent issues around the bacterial contamination of shellfish in Northland, the District Council developed plans to further upgrade the Kaeo plant by installing a UV disinfection system. The District Council, namely through its contractors MWH New Zealand, took a more proactive approach with the renewal of this consent and held a series of consultation hui with tangata whenua, oyster farmers, and the wider community in the early months of 2005. Tangata whenua appear to have been generally satisfied with the consultation process, though there was some disappointment that a land-based treatment system was not an option the Council considered to be viable. The Council did, however, provide assurances that land-based disposal methods would continue to be investigated.

The wider Kaeo community, on the other hand, felt as though it had been kept on the back foot as far as consultation was concerned and considered that it had not been given a fair opportunity to contribute to plans for the plant upgrade. As a result of these hui in early 2005, Awa Care was established to ensure that the Kaeo community was better involved in and informed about the resource consent process, providing the community with a representative with the specific objective of addressing its concerns in relation to resource consents.

The District Council submitted an application to renew its resource consent in April 2005, which was notified shortly thereafter. The Regional Council received twelve submissions, most of which were in opposition to the application, and only two of which were from Māori. Through various communications with submitters and amendments to the draft consent conditions, the Regional Council eventually got all but one of the submitters to agree to withdraw their wish to be heard at a hearing. Desmond Mahoney was initially opposed to the entire application and his resistance to it significantly prolonged the process, much to the annoyance of the Kaeo community. Eventually though, after much consultation, Mahoney and the Regional and District Councils reached agreement on the inclusion of several conditions which provided additional parameters around the activities the District Council sought to undertake. The resource consent was granted on 22 December 2006.

By 2009, the consent was in a state of non-compliance. The UV disinfection system the District Council had planned to install was now considered to be an uneconomical option and the Council sought to amend the conditions of its resource consent detailing the particular treatment method to be undertaken. The Regional Council sent letters to Māori groups, informing them of the District Council's intentions to amend the consent. The changes were not notified but the Regional Council was of the opinion that Mahoney needed to be informed. Mahoney made a submission against the proposed changes, but was mostly concerned with the fact that the existing consent had been non-compliant for some time without any enforcement or repercussions from the Regional Council. A Hearings Committee hearing was held in September 2011 and the Commissioner recommended that the Regional Council grant the consent, not seeing the

proposal as having any significant harmful environmental impacts. Mahoney threatened to appeal the decision in the Environment Court. However, this did not eventuate.

The District Council was now free to choose an alternative method of treating sewage at the Kaeo plant under the existing consent without having to go through a consultation process. The District Council, Transfield Services Limited, and Wai Care worked together to find a suitable system to upgrade the treatment plant with which would improve the quality of Kaeo's treated wastewater. Again, the consent became non-compliant when the District Council encountered issues with the proposed plant upgrade. But by mid-2012, a new vermiculture treatment system was installed.

4.6 Conclusion

The Kaeo River in Whangaroa is influenced heavily by human actions, expectations, and land use. It is both an integral and yet taxing part of life in Kaeo which tangata whenua and the wider Kaeo/Whangaroa community have sought to protect. This chapter has examined the way in which the Kaeo River has been managed under the Resource Management Act 1991 by investigating the resource consent process through which flood mitigation works and upgrades to the Kaeo wastewater treatment plant were approved. In this, the chapter has concentrated on tangata whenua engagement in the resource consent process in order to reveal the extent to which the Crown/local bodies have recognised, protected, and provided for the exercise of tino rangatiratanga and kaitiakitanga by Kaeo tangata whenua under the RMA. In some ways, it is difficult to compare the narratives around the flood mitigation works and the wastewater treatment plant upgrades as they involved different environmental considerations and interests. Still, the NRC took similar approaches in granting resource consents for these activities, both of which were implemented to service the community, and as such received considerable community attention.

The Wai 262 Tribunal has previously acknowledged that the RMA 'provides statutory recognition of the Māori relationship with the environment, the kaitiakitanga interest, and the Treaty in the context of environmental management, and makes some provision

for Māori involvement in decision-making processes'.⁷⁸¹ It is fair to say that in the granting of the resource consents for the flood mitigation works and the Kaeo WWTP, attempts were made to meet the statutory requirements of the RMA. In both these local studies, the District and Regional Councils (namely through their contractors) made early contact with Māori groups before consent applications were made, informing them of the applicants' intentions. As is its standard policy, the Regional Council was also quick to notify such groups once the initial and subsequent applications were made, even if the applications were not publicly notified; tangata whenua were always viewed as interested parties. In this way, for these two local studies, it could be argued that the NRC recognised, in theory, the status of Kaeo Māori as tangata whenua and hence as kaitiaki, as having customary rights and interest in the river which meant that they had a right to be informed about activities that may impinge upon their relationship with the river.

The Regional Council's longstanding policy of informing Te Raki Māori of all resource consent applications is commendable and seemingly well-intentioned. However, it perhaps is not so well thought out. In providing Māori groups with notice of all applications, the Council has attempted to ensure that tangata whenua have the opportunity to inform the Council of any concerns they may have and have some say in shaping the final result. Of course, the potential to influence the resulting resource consents is dependent upon the ability to engage with the process in the first place. Both local studies reveal that, while there were pre-application discussions and initially some positive feedback from Māori groups, there was virtually no engagement from Māori during the submission phase for the consent applications. In discussion with Kaeo claimants in December 2015 regarding the Council's policy, claimants spoke to the author of finding it overwhelming, of the Rūnanga not having the resources to be able to respond to the applications, and of feeling as though they were ill-equipped in terms of understanding the RMA/consenting process/scientific data to be able to provide effective responses. This is a point that academics have also long since argued; without sufficient resources, Māori may have difficulty responding to all consent applications

⁷⁸¹ Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity: Te Taumata Tuatahi*. (Wellington: Legislation Direct, 2011), p260

sent to them by local authorities.⁷⁸² Therefore, instead of the lack of response from tangata whenua being an affirmation of their support for the applications, it seems likely that it was more an indication of their inability to engage, but also due to an impression that any concerns they did raise would only be given superficial consideration.⁷⁸³ From the files consulted, it does not appear that the Council attempted to confirm that indeed no response to the applications was indicative of tangata whenua support, or even to obtain feedback into the way in which Council processes were working for Māori groups on the ground. Needless to say, the Regional Council will have budgetary and time constraints around its ability to work with interested parties, and having to go back to every non-submitting Māori group for confirmation of their position would not be an easy or cost-effective task. But, by proceeding in the manner that it has, without reconsidering its policy, the Regional Council's attempts to connect with tangata whenua in this context arguably look like a box-ticking exercise.

In contrast however, when the Regional Council did receive submissions from Māori, the Council made concerted efforts to address submitter concerns. In particular, when Desmond Mahoney made a submission in opposition to the WWTP upgrade in 2005, the Regional Council and the Far North District Council spent months trying to discuss the matter with him and come to some resolution. The community group, Awa Care, considered the Councils to have gone above and beyond their duties to consult with him⁷⁸⁴ and in the end, as a result of discussions with Mahoney, the draft consent conditions were amended to incorporate some of the changes that Mahoney sought. This situation was complicated somewhat by the fact that Mahoney was not a resident of Kaeo, and it is not evident from the files what his connection to the area was. This raises questions, though outside the scope of this report, as to whether parameters need to be placed around who can submit on local resource consent issues. Regardless, in order for consultation to be effective and provide for tangible Māori influence in resource management, consultation must be a genuine discussion approached with an

⁷⁸² Jenny Vince, 'Maori Consultation Under the Resource Management Act and the 2005 Amendments', *New Zealand Journal of Environmental Law*, (Vol. 10, 2006), pp311-2

⁷⁸³ Personal communication, 21 December 2015

⁷⁸⁴ Wai Care to Utilities Planning and Development Manager, FNDC, 11 October, 2006, in Far North District Council Discharge, NRC File 7205 vol. 4

open mind, as opposed to simply information sharing.⁷⁸⁵ In this case, consultation between the Regional Council and an individual of Māori descent was sincere and saw an interested party influence the resulting resource consent.

Particularly during the earlier days of the flood mitigation works and wastewater treatment plant upgrades however, the willingness or ability of the Regional Council to (continue to) engage with tangata whenua outside of the consent-granting process appears to have been minimal, evident in the very limited communication between the Council and Māori groups. As Terence Tauroa put it: 'I think the Council used to consult with the Whangaroa Runanga occasionally, but I am not sure how often or how much attention the Council paid their comments'.⁷⁸⁶ In these local studies, several years after the initial resource consents were issued Māori groups contacted the Regional Council seeking information on the status and future of the consented activities and were seemingly requesting that they be more involved in the planning and monitoring of the consents. The Council though was apparently disinclined to allow for further tangata whenua engagement in environmental management outside of the processes already established. Instead the Council proposed that if groups had concerns, they should look to make submissions through the consenting process when applications were made/renewed. Evidently, the inclusion of tangata whenua in the practice of resource management in Kaeo has been more reactive than proactive. There has been a lack of creativity around ways that the Council could better integrate tangata whenua into and support their exercise of kaitiakitanga through its environmental management processes as a whole. The Council's current approach to resource management certainly highlights a disconnect between the implementation of the resource consent process and tangata whenua worldviews. As the Whangaroa Papa Hapū explains, the Council's approach is to:

[D]eal with the river in segments rather than seeing the entire awa as a system which in its turn connects to the whenua and the moana. As such their solutions to any problem tend towards the engineering, the fixing or correcting of natural processes rather than looking at the causes of the problem.... Until such time as the councils (particularly NRC) adopt a

⁷⁸⁵ Paul Beverley, 'The Mechanisms for the Protection of Maori Interests Under Part II of the Resource Management Act 1991', *New Zealand Journal of Environmental Law*, (1998), p138; Vince, p321

⁷⁸⁶ Brief of Evidence of Terence Wirihana Tauroa, Wai 1040 #N1, p23

more holistic world view which gives weight to the concepts of wairua and mauri, there will always be a certain dysfunction to any consultation process, where the councils pay lip service to the concept of kaitiakitanga without really embracing it or possibly even understanding it.⁷⁸⁷

While local authorities 'are prepared to consult in situations where they need to show they have sign off from iwi, this does not extend into their everyday business'.⁷⁸⁸

Additionally, even within the standard resource consent process for these applications, no official measures were put in place to make allowances for continued tangata whenua involvement after the consents were granted. None of the initial or renewed consents for the flood mitigation works or wastewater treatment plant upgrades included any conditions relating to Māori participation. It would seem to be a reasonably straightforward step to include consent conditions such as that monitoring reports needed to be sent to the Rūnanga, or that (particularly in the case of the amendment to the WWTP in 2011) land-based treatment systems would be further investigated and that Kaeo tangata whenua would be consulted on the preferred options. Such inclusions may not necessarily have provided for the exercise of kaitiakitanga in themselves, but surely they would have afforded some level of certainty around continued tangata whenua involvement and recognition of their rights. Thus, there does appear to be areas within the existing regime where improvements could easily be made, provided some 'proper consideration' is given to them.⁷⁸⁹

Despite the challenges Kaeo tangata whenua have encountered in their attempts to be included in the resource management of the Kaeo River, there have been positive developments, namely with the establishment of Awa/Wai Care and the Kaeo-Whangaroa Catchment Liaison Committee. These groups arose out of growing community concern that there was insufficient communication between the Regional and District Councils and the Kaeo community with regard to the WWTP and the flood mitigation works. The Liaison Committee, being part of the NRC Environmental Management Committee, has provided an avenue through which the Rūnanga, Wai Care, and others in the Kaeo community can inform the Council of their concerns and provide

⁷⁸⁷ Personal Communications, 14 June 2016

⁷⁸⁸ Whangaroa Papa Hapū, Personal Communications, 14 June 2016

⁷⁸⁹ Brief of Evidence of William Grant Douglas Hori, Wai 1040 #G5, p25

input into the flood mitigation scheme. While starting as a community group consisting mainly of Kaeo residents and MWH contractors, Wai Care has come to play a central role in presenting a tangata whenua perspective in discussions with the Regional Council over resource consents, working alongside the District Council to develop an innovative wastewater treatment plant. Wai Care and its work provide an example of active Māori engagement in environmental management and of influencing the management of the Kaeo River from the ground up. Wai Care's role in the Kaeo WWTP upgrade, and in the flood mitigation works, does shine a light on the possibilities for environmental management and kaitiakitanga within the current RMA system but also suggests that the onus lies heavily on tangata whenua to find their own way – in their own time and at their own expense and level of expertise -- to engage in resource management. Furthermore, while this chapter has not examined any 'private' resource consent applications and therefore cannot draw any conclusions as to the extent of Māori influence in such instances, it is interesting to contemplate whether the influence achieved by Wai Care would be as attainable for consent applications made by private individuals.

In the cases examined in this chapter, the tangata whenua of Kaeo have not been excluded from environmental management to the extent that they may have been under previous legislative regimes. However, nor have they been wholly embraced, relegated for the most part to the margins of environmental decision-making.⁷⁹⁰ The regulation of environment management under the RMA and the Crown's delegation of power to the NRC has restricted the extent to which tangata whenua have been able to exercise tino rangatiratanga and kaitiakitanga over the Kaeo River. The Regional Council has made genuine efforts to provide for tangata whenua participation in environmental management of the Kaeo River through the resource consent process. But still, its efforts have been limited. During the span of the WWTP operation and flood mitigation works under the RMA, Māori have for the most part been expected to act as 'consultees', who 'react when they can, often as objectors when the law gives them standing to object'.⁷⁹¹ Responding to a request in 2009 from the Whangaroa Māori Trust Board for a

⁷⁹⁰ Waitangi Tribunal, *Ko Aotearoa Tēnei*, p284

⁷⁹¹ Waitangi Tribunal, *Ko Aotearoa Tēnei*, p273

reimbursement for work the Board had done in relation to resource consents, the NRC wrote that:

While the 2005 amendments to the Resource Management Act 1991 clearly provided (Section 36(A)) that there is no duty upon the Applicant nor the Council to consult with any person about an application for resource consent, the Council does encourage applicants to consult with Tangata Whenua in order to discover what, if any, cultural concerns there may be.... The Council does recognise and respond to cultural concerns that are brought to its attention, and weighs these up, in accordance with its statutory duty, when considering such applications. The Council's policy is to invite such comment or cultural concern there may be about a proposal, but sees this as an opportunity for iwi themselves to participate in the decision making process, rather than something that iwi are duty bound to do. In other words, while it is an opportunity to respond, it is for iwi to choose to participate in the process rather than see it as a compulsory service provided, and for which reimbursement is required from the Council.⁷⁹²

The Wai 262 Tribunal considered that a Treaty-compliant environmental management regime is one that is capable of delivering partnership models and control by Māori in respect of taonga, and effective influence and appropriate priority to kaitiaki interests in all areas of environmental management when decisions are made by others. It also deemed that the 'RMA regime has the potential to achieve these outcomes'.⁷⁹³ Whether the implementation of the Act in Northland has met that test (or another test, if found to be more fitting), will be for the Wai 1040 Tribunal to decide. But, it is fair to say that regional councils have been tasked with the unenviable challenge of having to reconcile 'the statutory mandate conferred on it by the Resource Management Act with the meaningful recognition and implementation' of Treaty rights, and there is no doubt that the NRC has made attempts to do so.⁷⁹⁴ However, there still appears to be considerable room for improvement in providing a space and support for tangata whenua to exercise tino rangatiratanga and kaitiakitanga over rural rivers in their rohe.

⁷⁹² Consents Senior Programme Manager, NRC, to Whangaroa Maori Trust Board, 13 May, 2009, in Maori Issues, NRC File 900.17.2 vol. 36

⁷⁹³ Waitangi Tribunal, *Ko Aotearoa Tēnei*, pp285-6

⁷⁹⁴ Waitangi Tribunal, *The Whanganui River Report*, (Wellington: Legislation Direct, 1999), p322

Chapter Five

Te Awa Tapu o Taumārere (Bay of Islands river system)

Figure 27: Ngāti Hine pā tuna on the Pokapu Stream, March 2015



(Source: Photograph by Matthew Cunningham, 15 March 2015)

5.1 *Introduction*

This chapter explores how the Crown and its delegated authorities have managed the Bay of Islands river system, and the extent to which kaitiakitanga has been recognised and provided for. Our commission defines this river system as being comprised of the Taumārere (or Kawakawa) River and its tributaries including Ōtiria, Waiharakeke, Orauta, Hawera, Taikirau, Waiomio and Tirohanga, and Lake Ōwhareiti. The Kawakawa catchment covers approximately 820 square kilometres from the Hikurangi Swamp in the south to Moerewa and Ōpua in the north.⁷⁹⁵ The southern part of the river system, which includes the Opahī and Taikirau Swamps, is characterised largely by dairy and beef farming. Most of the major tributaries (including the Ōtiria, Waiharakeke and Taikirau Streams) converge on Kawakawa from the west and south, where farming gives way to industrial discharges (such as the AFFCO meat processing plant and the Kawakawa wastewater treatment plant). From here, the Kawakawa River flows to the northeast through a wide, flood-prone river valley before reaching the Waikare Inlet, which gradually makes its way out to the Bay of Islands.

The chapter begins with a brief summary of the river system as a whole, including how it fits within the Crown’s resource management framework. This is followed by a summary of the issues raised by Te Raki Māori in their statements of claim and briefs of evidence before the Tribunal. Two local studies are then explored in greater depth – the AFFCO meat processing plant, and Lake Ōwhareiti. These local studies were identified in claimant briefs of evidence before the Tribunal and in the submission by counsel nominating this river system for analysis as part of this commission. This chapter does not cover Ōpua Marina or the Kawakawa wastewater treatment plant, but it does summarise the evidence before the Tribunal on these subjects. Similarly, more attention is devoted to the northern portion of the river system than the southern, given that there was less material available on the inland rivers and there were no particular sites of contention that we were aware of which could have been featured as local studies.

⁷⁹⁵ Northland Regional Council, ‘About our rivers and streams’, <http://www.nrc.govt.nz/Environment/River-Management/How-do-we-manage-Northlands-rivers/About-our-rivers-and-streams> (accessed 1 May 2016)

Figure 28: The Bay of Islands river system

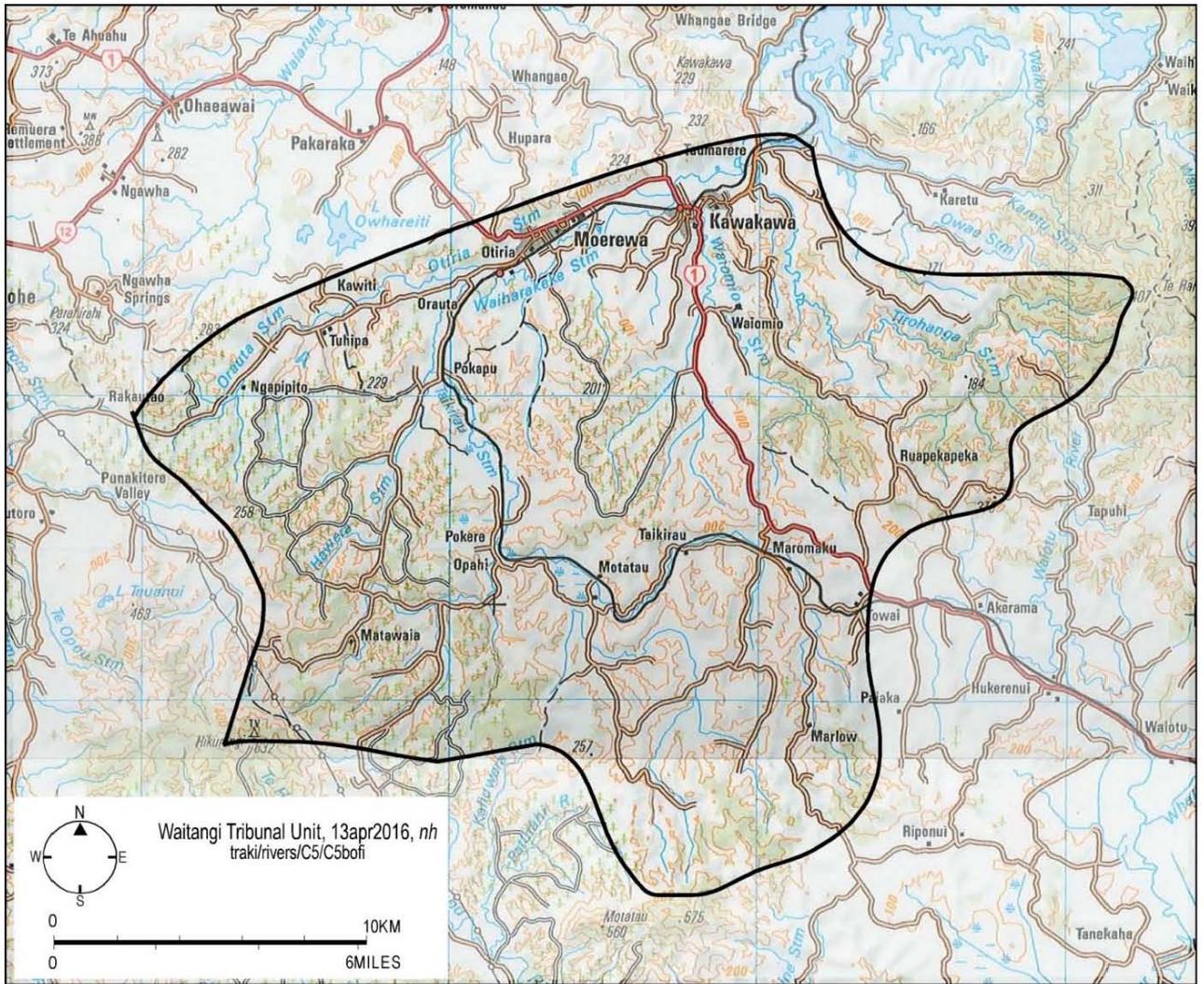
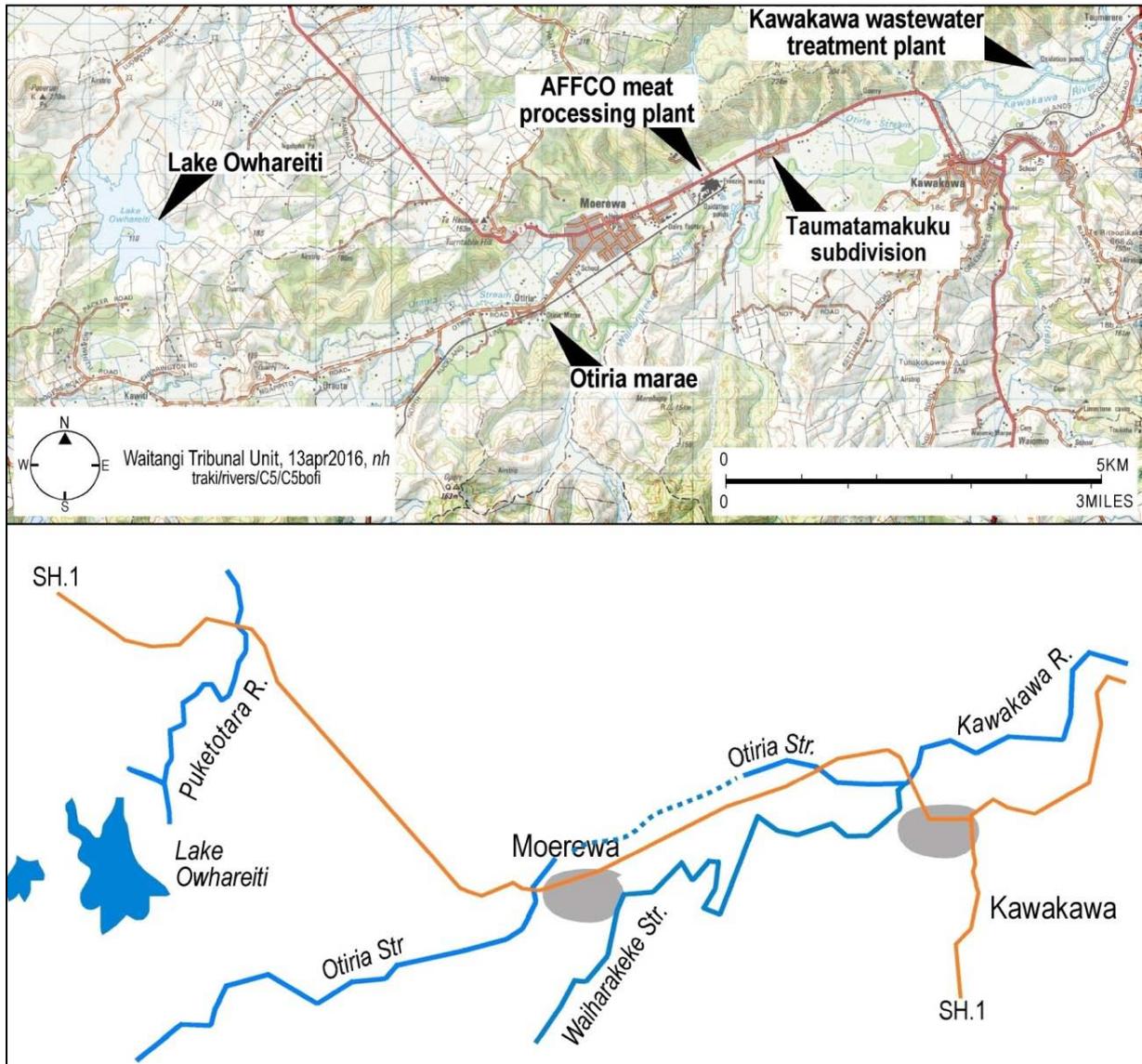


Figure 29: Location of key sites and local studies in the Bay of Islands river system



5.2 River system, rohe, and environment

5.2.1 Customary significance and mātauranga Māori

The river system with which this chapter is concerned is really an interconnected web of rivers, streams, lakes, underground channels and springs stretching from inland Hokianga to Waikare Inlet and the Bay of Islands. Ngāti Hine, Ngāti Manu, and Te Kapotai Hapū call this web ‘Te Awa Tapu o Taumārere’, and it is of the highest spiritual significance to them. As Ngāti Hine put it in a brief of evidence to the Tribunal:

The power of the awa is from Ranginui and it is his life-force that provides for tangata whenua and for rangatira, as a source of manaaki and also as

Te Awa o Nga Rangatira - the highway of the meetings of our chiefs. Te Awa Tapu o Taumārere and Te Moana o Pikopiko i Whiti [north of Ōpua to Te Haumi] is a taonga which is held to possess a life-force or mauri which permeates through every living being and is revered and protected for its life giving powers and sustenance. Te Moana o Pikopiko i Whiti is also a site where our warriors would prepare for war before leaving by performing a traditional ritual of paddling their waka around the area before leaving. That this has been so for generations of our forebears; imparts spirituality and a tapu over the area.⁷⁹⁶

According to Ngāti Hine, the Taumārere and the Hokianga are two of the most significant rivers within the broader rohe of Ngāpuhi.⁷⁹⁷ The intricate link between the two rivers is captured in the following whakataukī:

Ka mimiti te puna ki Hokianga, ka toto ki Taumārere
ka mimiti te puna ki Taumārere, ka toto ki Hokianga

(When the spring of Hokianga dries up, that of Taumārere fills up
When the spring of Taumārere dries up, that of Hokianga fills up)⁷⁹⁸

At a research hui in Kawakawa on 11 June 2016, Te Māhurehure and Maungaunga claimant Charles Nathan stressed that the link between Hokianga and Taumārere manifests on multiple levels, both physical and spiritual. The two river systems meet inland at Ngāwhā and are ‘one landscape’, reflecting the holistic nature of the environment in the Māori worldview. They are connected by underground waterways that allow for the passage of taniwha such as Rangiriri, who both protects the waterways and enhances their importance. This physical connection is mirrored by the kinship connections that flow from Hokianga to Taumārere and vice versa. The people come from the same ‘ancestral human spring’, and support each other in times of adversity. Thus, the springs referred to in the whakataukī are not merely representative of water, but of wairua and nga tangata.⁷⁹⁹

Tuna are a central part of life to the iwi and hapū of the Taumārere. Apart from being a staple customary food resource, they are an important part of manaakitanga

⁷⁹⁶ Brief of Evidence of Ngāti Hine, Wai 1040 #M30, para 11

⁷⁹⁷ Brief of Evidence of Ngāti Hine, Wai 1040 #M30, para 23

⁷⁹⁸ Brief of Evidence of Ngāti Hine, Wai 1040 #M30, para 21

⁷⁹⁹ Brief of Evidence of Ngāti Hine, Wai 1040 #M30, paras 23-25

responsibilities at the marae of Taumārere Māori and their neighbours.⁸⁰⁰ Ngāti Hine, Ngāti Manu and Te Kapotai Hapū continue to harvest tuna today through traditional cultural practices that have been handed down over many generations. Ngāti Hine, for example, refer to the annual tuna whakaheke (downstream migration) in mid-summer.⁸⁰¹ They also claim to protect tuna habitats within their rohe, including the sites of puru tuna or underground wetlands:

Puru are underground caverns varying in size, up to a small bedroom in exceptional cases. These caverns can be found up to one metre underground. In some cases they have been known to be only ten to fifteen centimetres below the ground. Sometimes these puru can be located right beside waterways, from which the eels can draw their water source and food if necessary, while others are located up to three hundred metres from any waterway. When puru are linked underground to an adjacent water source, often this link is short and shaped like an s-bend. This allows the tuna to move between the puru and the stream or water source without the puru being flooded should that water source rise.⁸⁰²

This knowledge of puru tuna gave the tupuna of Ngāti Hine the knowledge by which to keep tuna alive out of water for extended periods.⁸⁰³ Similarly, Ngāti Manu claim to protect traditional hiringa or communities of tuna that live in the banks of the Taumārere River. The location of these hiringa are considered a closely guarded secret, as only two remain.⁸⁰⁴

Tangata whenua have historically managed Te Awa Tapū o Taumārere through the tenets and practices of kaitiakitanga. One documented case of this is a pou rāhui established over the eel fishery in the Taikirau River in the eighteenth century. The following account of the pou rāhui, which was captured in 1929 by a collector for the Auckland Museum, is reproduced in an article by Roger Neich published in the *New Zealand Journal of Archaeology*:

This carved post represented the end of a feud between Pu Totara and Pora Harakeke, who with his tribe would insist on poaching the Rahui

⁸⁰⁰ Brief of Evidence of Te Kapotai Hapū, Wai 1040 #F27, para 6; Brief of Evidence of Ngāti Hine, Wai 1040 #M26, paras 55, 203; Brief of Evidence of Arapeta Hamilton dated 20 June 2016 (not yet filed), paras 8-9

⁸⁰¹ Brief of Evidence of Ngāti Hine, Wai 1040 #M26, paras 216-217

⁸⁰² Brief of Evidence of Ngāti Hine, Wai 1040 #M26, paras 59, 61, 211

⁸⁰³ Brief of Evidence of Ngāti Hine, Wai 1040 #M26, para 212

⁸⁰⁴ Brief of Evidence of Arapeta Hamilton dated 20 June 2016 (not yet filed), para 10

(preserve) on the Tai Kirau Creek, near the present Ōtiria Railway Station. Wi Rimu [Wiremu] Ngawati told me that his ancestor, Pu Totara, after many feuds and quarrels, caught Pora Harakeke in the act of poaching Eels from this preserve, known as a 'food basket'. Pu Totara came on Pora Harakeke unawares and caught Pora by the legs. Pu held Pora under the water and nearly drowned him; he was supposed to have sunk to the bottom of the creek. With sudden compassion Pu Totara dived in and rescued Pora Harakeke and restored Pora's life by making a small fire and holding him over the dense smoke head first, so resuscitating him. To mark the end of the feud and to prove the fishing rights of this Rahui 'bread basket', Pu Totara with Pora Harakeke's consent, had this post carved and from then on no more poaching by Pora Harakeke took place - or so the story goes. The post was used by Pu Totara and his tribe as a supporting post on the bank of the creek to anchor Eel-pots or nets and lines in fishing.⁸⁰⁵

In his brief of evidence to the Tribunal, Arapeta Hamilton noted that many Ngāti Manu rangatira laid rāhui on different sections of the awa throughout the 1830s. This custom has continued down to the present, most recently in the form of the rāhui placed on the river in 1998 after Māori raised concerns about the Kawakawa wastewater treatment plant.⁸⁰⁶

5.2.2 The Crown's management regime for the Taumārere

Māori traditional environmental management techniques were gradually encroached upon by the Crown's developing resource management regimes throughout the nineteenth and twentieth century. While our report does not focus on the pre-1991 period, David Alexander's 'Land-Based Resources, Waterways and Environmental Impacts' report contains a case study on the Kawakawa River between 1902 and 1977, including such activities as timber floating, drainage, and catchment schemes under the 1967 Water and Soil Conservation Act.⁸⁰⁷ Further historical background on the Taumārere is provided in a report by Bruce Stirling for Ngāti Manu. However, as this

⁸⁰⁵ Roger Neich, 'A Pou Rahui from a North Auckland Eel-Fishery', *New Zealand Journal of Archaeology*, (Vol. 13, 1991), p61

⁸⁰⁶ Brief of Evidence of Arapeta Hamilton dated 20 June 2016 (not yet filed), para 8

⁸⁰⁷ David Alexander, *Land-based Resources, Waterways, and Environmental Impacts* (CFRT, 2006) Wai 1040 #A7 pp639-659

was filed shortly before the completion of this report, we did not have enough time to incorporate this material into our report.⁸⁰⁸

With the passage of the Resource Management Act in 1991, the NRC was vested with the authority to manage the waterways in the Northland region, including those of the Taumārere. As is outlined in Chapter Two, the Council's management processes are set out in the Regional Policy Statement and Regional Water and Soil Plan. There are no specific Council plans for managing the Taumārere or its tributaries: there is no flood management plan specific to the Taumārere, nor was it identified as a priority catchment under the Council's 'Waioira Northland Water' project. However, tangata whenua have had some success in having their interests in the Taumārere recognised in the Council's statutory planning documents. In 1998, Te Awatapu o Taumārere successfully appealed to the Environment Court to have two additional objectives added to the draft RPSN. This is discussed in Robert McClean and Trecia Smith's research report for the Wai 262 Tribunal on the Crown's management of flora and fauna between 1983 and 1998:

This case involved Te Awatapu o Taumārere wanting two additional objectives to be included in the Northland Regional Policy Statement. One was that cultural aspects be among the purposes for which water quality should be maintained or enhanced. The other was that the gathering of shellfish for human consumption be a purpose for which water quality is to be maintained or enhanced. The council argued these objectives should not be included in the regional policy statement as there were no measurable standards for managing water for cultural purposes. The Environment Court found in favour of Te Awatapu o Taumārere and recognised the committee as the kaitiaki of the Taumārere waters. The court directed the council to amend the regional policy statement to provide for cultural purposes in the water quality objective. Accordingly, the water quality and water quantity sections of the regional policy statement have been amended to include as an objective the maintenance of water quality and quantity for cultural purposes, and a policy to ensure that the potential effects on kaimoana and kaiawa are considered when water quality standards are set.⁸⁰⁹

⁸⁰⁸ Bruce Stirling, 'Historical report on Taumarere River', index and appendices to the statement of evidence of Arapeta Hamilton dated 20 June 2016 (not yet filed)

⁸⁰⁹ Robert McClean and Trecia Smith, *The Crown and Flora and Fauna: legislation, policies and practices, 1983-98* (Waitangi Tribunal, 2001) Wai 262 #K2, pp247-248; *Te Awatapu o Taumārere v Northland Regional Council*, Environment Court, A34/98

Te Rūnanga o Taumārere were also successful in appealing a 1995 decision of the NRC to grant a consent to discharge treated sewage into Te Uruti Bay, as described by the Parliamentary Commissioner for the Environment in a report on kaitiakitanga and local government:

In *Te Runanga o Taumarere v Northland Regional Council*, the Environment Court considered a proposal for disposal of high quality treated sewage to a wetland and thence into the sea. The runanga objected to the proposal as the disposal of sewage, regardless of how well it was treated, would mean that Māori would not be able to collect shellfish from the bay affected. The Environment Court found that, although the council had consulted at considerable length and made changes to the proposal as a result, it had not adequately investigated alternatives, and therefore the proposal was not an appropriate use of the coastal environment and did not enable local Māori to provide for their well-being. The Court also found that the council's proposal fell short of what was required by s 8, to the extent that a possible disposal option that would not offend against the Treaty principle of active protection had not been eliminated as not feasible. The Court made it clear that, if further investigation showed that disposal to ground bores was not feasible, the urgent public health needs of the whole community may have to prevail over the cultural needs of tangata whenua.⁸¹⁰

However, a similar appeal by Māori from the Waiomio area in 1996 against a resource consent to dam the Waiopitoitoi Stream for a water supply was rejected by the Environment Court.⁸¹¹

Tangata whenua in the Taumārere area have pursued some of the avenues available to participate in the Crown's resource management process. Ngāti Hine have formed a charitable trust named Ngā Tirairaka o Ngāti Hine to protect its land, sea and water-based resources. The trust performs tasks such as developing the capacity of Ngāti Hine members, producing research such as Cultural Impact Assessments, and responding to resource consent applications. Ngāti Hine also produced an iwi management plan in 2008 called 'Nga Tikanga me te Taiao o Ngati Hine', which the NRC must take into

⁸¹⁰The Parliamentary Commissioner for the Environment, *Kaitiakitanga and local government: tangata whenua participation in environmental management*, (Wellington: Parliamentary Commissioner for the Environment, 1998) ; *Te Rūnanga o Taumārere v Northland Regional Council*, [1996] NZRMA 77

⁸¹¹ Robert McClean and Trecia Smith, *The Crown and Flora and Fauna: legislation, policies and practices, 1983-98*, p248; *Tautari v Northland Regional Council*, Environment Court, A55/96

account when preparing or reviewing its statutory planning documents.⁸¹² In addition, Ngāti Manu recently signed a memorandum of understanding with Far North Holdings (a wholly owned NRC company responsible for managing Opuā Marina) to jointly improve the water quality of the Taumārere and ensure that their cultural values are adequately represented. They also formed a group called ‘Te Kāhui Kaitiaki o Ngāti Manu mō Te Awa Tapu o Taumārere’ which has undertaken several environmental initiatives.⁸¹³

5.2.3 Customary fisheries management

Some Māori in the Taumārere area have made use of the various customary fishing regulations that are outlined in Chapter One. Approximately 22 tangata kaitiaki have been confirmed by the Minister for Primary Industries for the Taiāmai ki te Marangai rohe moana, although only 11 are active. A further 11 tangata kaitiaki are active in the Ngāti Kuta Patukeha rohe moana.⁸¹⁴ In theory, the creation of these rohe moana overrode the authority of any existing customary fishing representatives under the general regulations. Ngāti Hine asserted before the Tribunal that this eroded their existing authority:

The Ministry approved the establishment of a Rohe Moana and Kaitiaki within the Bay of Islands, which Ngati Hine objected to. As it currently now stands, our Ngati Hine appointed permit issuers can no longer issue customary permits, which has further alienated Ngati Hine people from our moana ...

As also mentioned earlier, our traditional fishing practices including the tuna whakaheke, have been criminalised. We have had elders within Ngati Hine known to supply our communities with tuna, charged by Fisheries Officers for taking more than the recreational limit. We require this matter to be resolved so that Ngati Hine people can continue to manage our fisheries in a traditional manner.⁸¹⁵

⁸¹² ‘Ngā Tikanga mo te Taiao o Ngāti Hine’,

<http://www.wdc.govt.nz/PlansPoliciesandBylaws/Plans/DistrictPlan/Documents/Iwi-Management-Plan-Ngati-Hine-Iwi-Environmental-Management-Plan-2008.pdf> (accessed 2 May 2016)

⁸¹³ Brief of Evidence of Arapeta Hamilton dated 20 June 2016 (not yet filed), paras 21-22

⁸¹⁴ Personal communication with Henry Ihaka, Ministry for Primary Industries Whāngārei office, 11 April 2016

⁸¹⁵ Brief of Evidence of Ngāti Hine, Wai 1040 #M26, paras 178-179

The only taiāpure that has been established in the Northland region is located in Waikare Inlet. Te Kapotai Hapū described the establishment of this taiāpure in their brief of evidence:

The establishment of the Taiapure is an example of our hapu working within existing statutory frameworks to try to exercise rangatiratanga. Obtaining the consent of the Government to establish the committee was a feat in itself as it took eight years to be officially endorsed. While establishing the committee has been an achievement for our hapu it still fails to adequately provide for our rangatiratanga and protect the inlet.⁸¹⁶

Peter Clark, one of the Te Kapotai Hapū claimants, argued that the Waikare Inlet taiāpure was hamstrung by a lack of funding or prioritisation by local government:

The Committee comprises members elected by the hapu and has the power to create regulations to protect the use of the inlet, however no regulations have been made to date and we struggle to hold regular meetings.

We fought for so long to get it and it is really quite ineffective, simply because it is not resourced and the Councils and Government do not really value these types of committees. However, I do not think it is even so much about money and resources, it is really about our relationship with the Councils and the Government. These "environmental managers" just do not understand or respect us.⁸¹⁷

In recent years, NIWA have collaborated with tangata whenua on a number of projects aimed at determining the state of the tuna fishery in the Taumārere. A 2008 tuna population survey prepared by NIWA for Te Māra a Hineāmaru determined that, while the growth rate for shortfin and longfin eels from Te Rohe Whenua o Ngāti Hine were similar to or higher than elsewhere in New Zealand, very few were female. Consequently, the report recommended limiting the harvest of eels in the lower reaches of the Taumārere as part of a national eel fisheries management strategy.⁸¹⁸ The report also recommended a number of future initiatives, including monitoring of tuna populations during Ngāti Hine's annual tuna whakaheke, tuna restocking programs (in particular for Lake Ōwhareiti), riparian management to improve tuna habitats, and fish

⁸¹⁶ Brief of Evidence of Te Kapotai Hapū, Wai 1040 #F27, para 65

⁸¹⁷ Brief of Evidence of Peter Clark, Wai 1040 #F27(c), paras 66-67

⁸¹⁸ Erica Williams, Jacques Boubée, Tohe Ashby, Norma Cooper, 'Tuna population survey of Te Rohe Whenua o Ngāti Hine, 2008', (Wellington: NIWA, 2008) pp64-65.

passages to bypass natural or man-made barriers to tuna migration.⁸¹⁹ A 2011 report based on the original 2008 study assessed the distribution, species composition, age structure, growth rate, and sex composition of freshwater eels in the Kawakawa (Taumārere) River catchment.⁸²⁰ Ngāti Hine followed up on the NIWA reports with a pilot tuna enhancement project in 2012-2013, which involved the manual transfer of elvers to various locations in the Taumārere (Kawakawa) catchment and the identification of priority areas for tuna habitat improvement.⁸²¹

5.2.4 Water quality

When counsel for Ngā Hapū o Te Takutai Moana filed their submission nominating the Taumārere for inclusion in this report, they noted that it was heavily polluted due to the AFFCO meat processing plant, the Kawakawa wastewater treatment plant, the construction of the Ōpua Marina, and farming and forestry.⁸²² These concerns are generally reflected in the available monitoring data on the Taumārere, which has been collated and summarised by Dr Shane Kelly in a report commissioned by Ngāti Manu for the Te Raki inquiry. Kelly concludes that the Taumārere has undergone 'an environmentally significant and progressive change over many decades', noting in particular the following:

- The Taumarere has been physically modified, with coastal sections that are now occupied by causeways, reclamations, port and marina facilities, moorings, remnant oyster racks and other structures.
- Sediment has been accumulating at a much faster rate than it did historically.
- There has been a corresponding increase in mangrove forest cover of about 0.3% per year since the late 1970s
- A large decline in the number of "harvestable" pipi and cockles at Te Haumi has been recorded since 2000.

⁸¹⁹ Erica Williams et al., 'Tuna population survey of Te Rohe Whenua o Ngāti Hine', pp63-68

⁸²⁰ Erica Williams, Jacques Boubée, C Paterson, 'Assessment of the eel fishery in the Kawakawa (Taumārere) River Catchment', *New Zealand Fisheries Assessment Report 2011/28*, (Wellington: Ministry of Fisheries).

⁸²¹ Tui Shortland, 'Kete Tangariki - Pilot Tuna Enhancement Project', http://waimaori.maori.nz/documents/publications/KETE_TANGARIKI_REPORT.pdf (accessed 2 May 2016)

⁸²² Wai 1040, #3.2.530, para 43

- Ngāti Manu observations of fewer and smaller fish in the Taumarere is consistent with the expected outcomes of contemporary fisheries management.
- Freshwater sections of the Taumarere have relatively low numbers and small sizes of tuna.
- A number of introduced marine species have become established or been recorded at Opuā marina and other parts of the Taumarere
- There is relatively little information on the quality and condition of freshwater sections of the Taumarere. Macroinvertebrate community health on the Waiharakeke Stream is ranked as "fair" and habitat quality is ranked as "marginal".
- Freshwater swimming holes in the rohe of Ngāti Manu are not monitored.
- General water quality in the outer, estuarine sections of the Taumarere appears to be reasonably good.
- Marina sediments typically have elevated contaminant concentrations.⁸²³

The NRC has undertaken some monitoring of the streams that are discussed in this chapter. As Chapter Three discusses, measurements taken from a site on the Waiharakeke Stream in 2008-2009 indicated that nutrient and turbidity levels often exceed trigger values, with dissolved reactive and total phosphorus compliance being particularly poor. Subsequent measurements up to 2011 revealed an improvement in total phosphorus while all other variables remained the same.⁸²⁴ The Waiharakeke was also rated as not suitable for swimming in 2011.⁸²⁵

In 2007 the Ōtiria Stream had the highest e-coli readings of all the sites measured as part of the NRC's Recreational Bathing Water Quality Programme. The Council identified the stream as having high bacterial levels regardless of rainfall, and warned

⁸²³ Statement of Evidence of Dr Shane Kelly dated 13 June 2016 (not yet filed), para 13

⁸²⁴ Northland Regional Council, 'State of the Environment Report 2012', <http://www.nrc.govt.nz/resources/?url=%2FResource-Library-Archive%2FEnvironmental-Monitoring-Archive%2FState-of-the-Environment-Report-archive%2F2011%2FState-of-the-Environment-Report-for-Northland%2E>, p171 (accessed 2 May 2016)

⁸²⁵ Northland Regional Council, 'State of the Environment Report 2012', p177

that it was unsuitable for swimming.⁸²⁶ A 2008 review by NRC of the water quality data for the Ōtiria Stream concluded that the main sources of pollutants were:

- Diffuse surface runoff from agricultural land of animal waste from sheep and cattle and direct stock access to waterways.
- Microbial activity in catchment wetlands.
- Diffuse surface runoff from indigenous or exotic forest land cover of animal waste from wild animals such as pigs, deer, possums, goats, mustelids and rats.
- Faecal contamination from water fowl in wetland and stream areas.⁸²⁷

The Council's 2012 State of the Environment report noted that an 'investigative sampling' programme was undertaken for rivers that have ongoing water quality problems such as Ōtiria Stream.⁸²⁸ Given the consistently poor quality of Ōtiria Stream, the NRC opted in 2013 to remove it from its regular monitoring programme and erect a permanent warning sign. Fresh measurements will be taken after five years to see if the situation has changed.⁸²⁹

5.3 *Claim issues*

The three key claims that relate to the Bay of Islands river system are:

- Wai 49, the Taumārere River and Te Moana o Pikopiko-I-whiti Claim
- Wai 682, the Ngāti Hine Lands, Forests and Resources claim
- Wai 2027, the Ngāti Hine and Ngāti Manu (Mahanga) Lands and Resources Claim

Wai 49, which was filed in 1988 by the late Sir James Henare, pre-dates the passing of the RMA. The Wai 49 claim alleged that the Crown:

- Has failed and continues to fail to take account of the existence of spiritual, cultural and traditional relationships.

⁸²⁶ Northland Regional Council, 'State of the Environment Report 2007', <http://www.nrc.govt.nz/resources/?url=%2FResource-Library-Archive%2FEnvironmental-Monitoring-Archive%2FState-of-the-Environment-Report-archive%2F2007%2FState-of-the-Environment-Monitoring%2F> pp307-309 (accessed 2 May 2016)

⁸²⁷ Northland Regional Council, 'Review of water quality information for Otiria Stream, Moerewa', <http://resources.nrc.govt.nz/upload/5181/Final%20Otiria%20report%20August%202008.pdf>, p49 (accessed 24 June 2016)

⁸²⁸ Northland Regional Council, 'State of the Environment Report 2012', p185

⁸²⁹ Northland Regional Council, 'Sites removed', <http://www.nrc.govt.nz/Living-in-Northland/At-the-beach/Swimming-water-quality/Previous-results/Sites-removed/> (accessed 2 May 2016)

- Has failed and continues to fail to protect and recognise the claimants' collective mana, title and control over the foreshores, fisheries, waters and riverbeds.
- Has through the Minister of Conservation in respect of the Gateway Marina, Opuā, given its consent to the reclamation application thereby failing to give effect to the principles of the Treaty of Waitangi as required by Section 4 of the Conservation Act 1987.
- Has breached and continues to breach its duty to the claimants according to the Treaty of Waitangi.⁸³⁰

Wai 682, which was filed in 1997 to complement the Wai 49 claim, listed a number of Acts, regulations, and policies that are allegedly inconsistent with the principles of the Treaty of Waitangi, including the Fisheries Act 1983, the Fisheries Amendment Act 1986, and the Resource Management Act 1991. Broadly, these Acts and other regulations and policies are claimed to have failed to recognise Ngāti Hine's proprietary and customary rights or their role as guardians. The claim also includes the request with regard to water quality:

That the quality of the water of the streams, lakes, waterfalls and rivers ... be reviewed and that impairment of such quality permitted by legislation or resulting from legislation, regulations, policies or practices or acts or omission be rectified and that compensation be provided for past losses caused by breach of the principles of the Treaty of Waitangi and for such continuing loss as cannot be avoided.⁸³¹

Wai 2027 was filed in 2008 by Harry Mahanga, and alleged that Crown policy and practice had failed to protect his land from pollution, erosion and environmental destruction. Mahanga specifically noted the environmental damage to the Kawakawa River and its effects on food supply for tangata whenua:

I have lived in Kawakawa for the past 40 odd years. I could go down to the river and fish out five eels to feed my family. Today there are none left in the river to fish. The resources have been subject to severe, detrimental impacts since colonisation. The destructions of wetlands, drafting off of water from waterways, pollution and sedimentation have affected the resources we rely on (tuna). Man made obstructions have made traditional migration patterns for species impossible (dams, weirs and culverts). Why should our families go hungry?⁸³²

⁸³⁰ Wai 1040 #1.1.2, para A

⁸³¹ Wai 1040 #1.1.80, para 7

⁸³² Wai 1040, #1.1.340, pp2-3

These claim issues have been further explored through a number of briefs of evidence, in particular those filed for Ngā Hapū o Te Takutai Moana hearing weeks 2 (13-17 May 2013) and 9 (4-8 August 2014). Several general themes are raised in these briefs.

Environmental degradation and its impact on customary resources is a key theme across the briefs of evidence concerning the Taumārere. Harry Mahanga, for example, argued that the rivers have changed in thirty years from 'pure and clean' to 'absolutely disgusting' through a combination of pollutants including fertiliser, farming, roading, increased sedimentation, swamp drainage, and specific sites such as the AFFCO meat processing plant and the Kawakawa wastewater treatment plant.⁸³³ Ngāti Hine argued that the waterways have suffered from 'extensive pollution and degradation' due to the Crown's management regime being inadequate and inconsistent with the Treaty of Waitangi.⁸³⁴ Several claimants argued that the increase in pollution has impacted on their ability to access customary food sources. As Ngāti Manu claimant Kitty Mahanga-Nisbet put it:

There are no longer the same varieties of fish species in our traditional fishing areas near the Taumārere Railway Bridge, Derrick Landing or further down river. The amounts of species, if any, have simply diminished and stock levels have been depleted due to pollution, horses and stock in our waterways. This, coupled with commercial fishing and other forms of abuse, have aided in the decline of specific marine life because of the lack of education, monitoring and accountability by local Councils.⁸³⁵

Harry Mahanga argued that a combination of pollution and the introduction of the quota management system have depleted tuna populations throughout the Taumārere, while Te Kapotai Hapū made a similar argument about the depletion of the oyster fishery in the Waikare Inlet.⁸³⁶ Ngāti Hine asserted that eel populations have been in decline since the 1970s due to habitat destruction, impediments to fish passage, and commercial pressures. Given the breeding and migration patterns of tuna, they argued that a small

⁸³³ Brief of Evidence of Harry Mahanga, Wai 1040 #F1(d), paras 5.3-5.14

⁸³⁴ Brief of Evidence of Ngāti Hine, Wai 1040 #M26, paras 67-81

⁸³⁵ Brief of Evidence of Kitty Mahanga-Nisbet, Wai 1040 #F3, para 3.2

⁸³⁶ Brief of Evidence of Harry Mahanga, Wai 1040 #F1(d), paras 5.18-5.43; Brief of Evidence of Te Kapotai Hapū, Wai 1040 #F27, paras 34-45

drop in the population now will mean near extinction in the future. Ngāti Hine therefore oppose the commercial fishing of tuna.⁸³⁷

The impact of the Crown's environmental management on tino rangatiratanga is also a common theme in claimant briefs of evidence. The evidence of Ngāti Hine for the Wai 49 claim provided a succinct summary of this issue:

We have an enduring relationship with Te Awa Tapu o Taumārere and Te Moana o Pikopiko i Whiti that has spanned centuries and we have exercised kaitiakitanga over Te Awa Tapu o Taumārere and Te Moana o Pikopiko i Whiti since time immemorial. However, almost immediately after signing Te Tiriti o Waitangi, the Crown sought to take control and ownership of the lands surrounding both waterways and all natural resources.⁸³⁸

According to Ngāti Hine, the Crown had appropriated rangatiratanga through means such as taking the lands adjoining waterways, assuming control over the oyster fishery, passing the Coal Mines Amendment Act 1903, and other Acts in support of timber floating, swamp drainage, and flood protection works.⁸³⁹ Harry Mahanga argued that the Crown considers Māori tikanga to be 'in the way of Pakeha progress', despite the guarantees provided under the Treaty of Waitangi. Tangata whenua have been kaitiaki for hundreds of years, he claimed, yet they are largely ignored by the Crown because they are not considered 'experts'.⁸⁴⁰ Kitty Mahanga-Nisbet suggested that the erosion of rangatiratanga has also impacted on Māori customary practices – Ngāti Manu are less able to manaaki their manuhiri due to decreased fishing stocks, and they are unable to pass on the full extent of their customary knowledge to their children due to the degraded state of the waterways.⁸⁴¹ Several briefs of evidence look forward as to how tino rangatiratanga can be restored. Ngāti Hine envisage 'a full partnership with central and Local Government over management of all freshwater resources within our rohe' that is based on the Treaty.⁸⁴²

⁸³⁷ Brief of Evidence of Ngāti Hine, Wai 1040 #M26, paras 253-255

⁸³⁸ Brief of Evidence of Ngāti Hine, Wai 1040 #M30, para 47

⁸³⁹ Brief of Evidence of Ngāti Hine, Wai 1040 #M30, paras 60-80. The Crown's assumption of control over the oyster fishery is also discussed in the Te Kapotai brief of evidence – see #F27, paras 20-33

⁸⁴⁰ Brief of Evidence of Harry Mahanga, Wai 1040 #F1(d), paras 5.2, 6.1-6.10

⁸⁴¹ Brief of Evidence of Kitty Mahanga-Nisbet, Wai 1040 #F3, paras 4.1-5.4

⁸⁴² Brief of Evidence of Ngāti Hine, Wai 1040 #M26, para 81

Te Raki claimants have also provided more detailed evidence on several specific sites of contention, including the AFFCO meat processing plant and Lake Ōwhareiti. This evidence is summarised before each of the two local studies in this chapter. Claimants have also raised the Kawakawa wastewater treatment plant as a concern. As stated in the introduction to this report, we chose not to include a local study on the plant because we have already included studies on what we understand to be similar situations at Kaeo and Kaikohe wastewater treatment plants. In addition, information on the plant has also been provided by the NRC to the Te Raki Tribunal.⁸⁴³ The chief concern raised by claimants is the impact on customary river resources and the health of their whānau who use the river. Having the wastewater plant positioned so close to the river is, according to claimant Harry Mahanga, 'a bloody disgrace'.⁸⁴⁴ Mahanga resided in Taumārere when the plant was first installed in 1960, and recalled how local Māori felt about it at the time:

At the time I remember many Maori being upset about the Council's decision to put the pond where they did, especially as it was already a flood prone area. But the Council, as they did, made the decision with little or no consultation. As a youngster I thought nothing of it or the rapid decline it would cause for the awa, the eel, and our health. As an adult I now firmly believe the intention was to put the Plant where they did because it was right by the river and therefore meant the sewage could be easily swept away and out to sea.⁸⁴⁵

Ngāti Hine have also presented evidence on their objections to the site in the late 1980s:

Issues concerning the management of Taumārere River and Te Moana o Pikopiko-i-whiti escalated, when a resource consent application to discharge sewage from the Kawakawa sewage Treatment plant into the Taumārere river was made. On 12 October 1989, the Motatau Maori Committee filed objections to the discharge of sewage into Taumārere, claiming that they were no longer able to harvest kaimoana in the vicinity of the outfall and that the annual migration of eels which traverse the waters from Taumārere to Motatau, would be effected. Te Runanga o Taumārere and the Te Awatapu o Taumārere Committee also objected to the discharge of the sewage into the water saying that it was an offence to

⁸⁴³ Attachment to memorandum of Crown counsel dated 6 May 2016, part 3 (not yet filed)

⁸⁴⁴ Brief of Evidence of Harry Mahanga, Wai 1040 #F1(d), para 5.44

⁸⁴⁵ Brief of Evidence of Harry Mahanga, Wai 1040 #F1(d), para 5.45

the mana and tapu of the river and court cases were taken against the Local Councils.⁸⁴⁶

Mahanga claimed that, while there have been many subsequent improvements in the sewage treatment at the site, it continues to have a detrimental effect on the river. His primary concern is for the health of Ngāti Manu and neighbouring hapū, in particular through the contamination of kaimoana and drinking water. He said that sewage overflows are so common that there is a standard process in place to notify local residents.⁸⁴⁷ When combined with other sources of pollution on the river and the effects of commercial fishing, Mahanga argued that the Kawakawa wastewater treatment plant had decimated the eel population of the Taumārere.⁸⁴⁸ Te Kapotai Hapū are similarly concerned with the effects of sewage discharge on kaimoana at the Waikare Inlet.⁸⁴⁹

The establishment and growth of Ōpua Marina is another specific issue raised by claimants in relation to the Taumārere. However, as was discussed in the introduction to this report, we have chosen not to include it as a local study given that it is located in a harbour rather than within the river system itself. In addition, Ōpua Marina has already been discussed in several tangata whenua briefs of evidence, in particular the Ngāti Hine brief for the Wai 49 claim.⁸⁵⁰ This brief outlines how the Marina was established against the objections of tangata whenua, arguing that 'the Crown failed to consult with our hapu, ignored our views and shut us out of the decision making process.'⁸⁵¹ The first proposal to erect a marina at Ōpua was made in 1983. When another proposal was floated in 1987, tangata whenua formed 'Te Puna o Taumārere ki Hokianga' to oppose it. Several hui were held by hapū to discuss the proposal, and the original Wai 49 claim was lodged by Sir James Henare around this time. At a meeting in December 1988, Ngāti Hine, Te Kapotai and Ngāti Manu discussed options for opposing the marina development, including a judicial review, a Waitangi Tribunal claim, or a Planning Tribunal hearing. Given a lack of resources, they opted to draft letters to the

⁸⁴⁶ Brief of Evidence of Ngāti Hine, Wai 1040 #M30, para 98

⁸⁴⁷ Brief of Evidence of Harry Mahanga, Wai 1040 #F1(d), paras 5.49-5.57

⁸⁴⁸ Brief of Evidence of Harry Mahanga, Wai 1040 #F1(d), para 5.6

⁸⁴⁹ Brief of Evidence of Peter Clark, Wai 1040, #F27(c), para 41.

⁸⁵⁰ Brief of Evidence of Ngāti Hine, Wai 1040 #M30. Other briefs discussing Opua Marina are #F1, #F2, #F25, #F27, and #M26. Opua Marina is also discussed extensively in Arapeta Hamilton's brief of evidence, but as it was filed so close to the completion date of this report we did not have time to incorporate it fully into this report. See Brief of Evidence of Arapeta Hamilton dated 20 June 2016 (not yet filed).

⁸⁵¹ Brief of Evidence of Ngāti Hine, Wai 1040 #M30, para 83

governing and opposition parties at the time, and received a sympathetic reply from the then Minister of Conservation Helen Clark (although the brief does not specify if anything came of this). They also erected a pou whenua on the harbour in March 1989.⁸⁵²

In 1995 Hopper Marine Developments filed a resource consent application to build the Ōpua Marina. Their proposal included surplus Crown land earmarked for landbanking for a future settlement. According to Ngāti Hine, the Far North District Council decided on advice from Cabinet that the land was not suitable for landbanking. It was subsequently vested in the Council and then sold to Far North Holdings. A further consent application was filed in January 1998 by Far North Maritime Ltd and heard by the Council on 18-21 May. Te Rūnanga o Taumārere, Ngāti Hine, Te Kapotai and Ngāti Manu all submitted in opposition to the application, but were unsuccessful in preventing it from being granted. Ngāti Hine argued that the subsequent marina development has caused many adverse environmental, cultural and spiritual effects, including the diminution of customary food resources, altering of tidal flow and sediment patterns, threats to biodiversity, chemical and sewage contamination. A Te Kapotai kaumātua was also killed when a yacht collided with his dinghy in the harbour in January 2014 and threw him into the water. Ngāti Hine also claimed that they were not adequately consulted about proposed extensions to the marina in 2013, although they have more recently started to build a relationship with the Council.⁸⁵³ However, according to Ngāti Manu claimant Maiki Marks, the NRC, FNDC and the Department of Conservation have failed to take sufficient action against the owner of a boatyard on the harbour who has repeatedly encroached on publicly owned land that forms part of the Walls Bay Esplanade Reserve.⁸⁵⁴ Marks is presently pursuing legal action in the High Court against the boatyard owner. In addition to the evidence she presented in the Te Raki inquiry, Marks has alleged before the High Court that the inaction of the FNDC and the NRC has 'rendered invisible' the Waitangi Tribunal proceedings and due process.⁸⁵⁵

⁸⁵² Brief of Evidence of Ngāti Hine, Wai 1040 #M30, paras 83-97

⁸⁵³ Brief of Evidence of Ngāti Hine, Wai 1040 #M30, paras 98-123

⁸⁵⁴ Brief of Evidence of Maiki Marks, Wai 1040 #M3

⁸⁵⁵ Personal communication with Shehan Gunatunga, 13 June 2016

5.4 Local study #1: AFFCO meat processing plant

Figure 30: AFFCO site at Moerewa, with the Waiharakeke Stream in the background



(Source: AFFCO, 'Processing plants', <http://www.affco.co.nz/locations/processing/> accessed 11 May 2016)

5.4.1 Background

The history of the AFFCO meat processing plant in Moerewa is closely interwoven with that of the town itself. It was founded in 1917 by the Auckland Farmers' Freezing Company, who chose the site at Moerewa to take advantage of the newly completed northern railway which ran through the town. The town of Moerewa grew largely in order to house and service the labour force of the new plant and a nearby dairy factory that was established in 1929. The town's population peaked at 1,605 in 1981, and was comprised predominantly of young working age families of Māori descent. The economic rationalisation of the 1980s hit the town hard: the AFFCO plant reduced its staff numbers, the dairy factory shifted its operations to Whāngārei, and vital services such as the post office closed.⁸⁵⁶ AFFCO was publicly listed in May 1995 during a major overhaul of its facilities, including those at the Moerewa plant (discussed further below). From October 2001, Talley's Group Limited began buying progressively more stock in the company.⁸⁵⁷ By October 2010 it had purchased sufficient stock to launch a

⁸⁵⁶ Rayma Ritchie, *Turn of the Tide: Bay of Islands County Council 1977-1989* (Paihia: Bay of Islands Colour Print, 1990), pp100-101

⁸⁵⁷ 'Fisherman Talley's takes bigger stake in meat', *New Zealand Herald*, 1 October 2001, http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=220692

compulsory acquisition of all remaining AFFCO stock and de-list it from the stock exchange.⁸⁵⁸ Today the Moerewa AFFCO plant is the region's largest employer. Its website describes the functions carried out at the plant:

AFFCO Moerewa is a multispecies plant processing ovine and bovine species, including calves, from slaughter through to further processing, including a full range of cuts covering both chilled and frozen. A full range of offals and associated products, including foetal blood is produced. It operates double shifts during peak season times. It has its own onsite blast freezing and cold storage operation, and operates a rendering plant which produces quality meat and bone meal, and tallow.⁸⁵⁹

There is a degree of tension between the impact of the AFFCO Moerewa plant on the environment, its customary resources and the practice of kaitiakitanga, and the fact that, as the primary employer in a region with limited employment prospects, it provides jobs for a large number of individuals (including Māori). This tension was apparent in the sources consulted for this local study, and is elaborated on throughout the text. The reader is encouraged to keep this tension in mind when reading this local study.

The AFFCO meat processing plant draws water from, and discharges treated wastewater to, the Waiharakeke, Ōtiria, and Kotukutuku Streams, which are tributaries of the Kawakawa River. These streams run to the north and south of the town of Moerewa, and are in close proximity to residential housing. As discussed in section 5.2.4 of this chapter, the quality of both streams is poor, and neither are suitable for swimming. The plant also discharges gaseous emissions, and the odours associated with these discharges are an issue throughout this local study.

5.4.2 Issues raised by claimants

Claimants in the Te Raki inquiry have filed evidence on the allegedly detrimental environmental impacts of the AFFCO meat processing plant and the lack of monitoring by local authorities. Kitty Mahanga-Nisbet recalled occasions when 'animal offal and

⁸⁵⁸ 'Talley's takes charge', *New Zealand Herald*, 7 October 2010,

http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=10678676

⁸⁵⁹ AFFCO New Zealand, 'Processing Plants', <http://www.affco.co.nz/locations/processing/> (accessed 2 May 2016)

blood waste' were flushed directly into the Ōtiria Stream.⁸⁶⁰ Harry Mahanga argued that the plant has 'a really detrimental impact on the river and the ecosystem', noting that the 'river would run red with blood and bits and pieces discarded from the works'.⁸⁶¹ He also claimed that the plant had not been 'properly monitored or called to account' for its deleterious activities.⁸⁶² When combined with other sources of pollution on the river and the effects of commercial fishing, Mahanga argued that the AFFCO plant had 'decimated' the eel population of the Taumārere.⁸⁶³ Ngāti Hine also submitted evidence on the alienation of Māori land to the AFFCO meat processing plant, but this did not touch on environmental issues.⁸⁶⁴

5.4.3 Pre-1991 era

AFFCO's relationship with its neighbouring waterways enters the archival record in 1969, when the plant was granted a water right by the Water Allocation Council to discharge two million gallons of treated wastewater per day to the Waiharakeke Stream.⁸⁶⁵ Shortly after this the Northland Catchment Commission assumed the functions of a Regional Water Board under the Water and Soil Conservation Act 1967, which made it the authority responsible for assessing any future water right applications. On 9 January 1975 AFFCO applied for a whole suite of water rights, which indicates the extent to which its activities depended on nearby sources of freshwater:

- Discharge 682,000 litres per day of fellmongery waste to Waiharakeke Stream.
- Discharge 8,000,000 litres per day of meat works waste to Waiharakeke Stream.
- Discharge 12,300,000 litres per day of ammonia condenser cooling water to Waiharakeke Stream.
- Dam the Waiharakeke, Ōtiria, and an unnamed tributary of the Ōtiria [the Kotukutuku] to provide water supply.

⁸⁶⁰ Brief of Evidence of Kitty Mahanga-Nisbet, Wai 1040 #F3, para 3.4

⁸⁶¹ Brief of Evidence of Harry Mahanga, Wai 1040 #F1(d), para 5.59

⁸⁶² Brief of Evidence of Harry Mahanga, Wai 1040 #F1(d), para 5.60

⁸⁶³ Brief of Evidence of Harry Mahanga, Wai 1040 #F1(d), para 5.6

⁸⁶⁴ Brief of Evidence of Ngāti Hine, Wai 1040 #M25, paras 426-461

⁸⁶⁵ Water right no. 13, 4 July 1969, NRC File 7381, Vol. 1

- Extract 13,092,740 litres per day from Waiharakeke Stream, Ōtiria Stream, and a dam on an unnamed tributary of the Ōtiria Stream [the Kotukutuku].

These water rights were granted by the Northland Catchment Commission and Regional Water Board on 22 May 1975 with an expiry date of 30 April 1980.⁸⁶⁶ On 10 September 1976 a further water right was granted for AFFCO to discharge 146,000 litres per day of treated wastewater to the Ōtiria Stream.⁸⁶⁷ On 26 March 1980 AFFCO applied to renew all of these rights, along with an additional right for emergency discharges of meat works waste to the Waiharakeke Stream. These rights were granted on 17 July 1980 with an expiry date of 30 April 1985.⁸⁶⁸ In November 1982 the wastewater treatment plant on site broke down, resulting in several emergency discharges of untreated wastewater to the Waiharakeke Stream. An assessment of the breakdown by the Northland Catchment Commission and Regional Water Board suggested that 'the waste water discharge loading from the Moerewa factory is at times of low stream flows well beyond the assimilative capacity of the Waiharakeke', and recommended that further upgrades to the plant be made.⁸⁶⁹ It was not clear from the files what upgrades, if any, occurred. The last water rights prior to the post-1991 resource management era were granted in July and August 1990 until 30 April 1995.⁸⁷⁰ The applications were advertised in the *Northern Advocate* and the *Northern News*, and the Department of Conservation was notified as a person or organisation likely to be affected by or interested in the application in accordance with Section 24(3) of the Water and Soil Conservation Act 1967.⁸⁷¹ Local Māori were not notified of the application.

⁸⁶⁶ Water right nos. 1025, 1026, 1028, 1029, and 1030, NRC File 7381, Vol. 1

⁸⁶⁷ Water right no. 751, NRC File 7381, Vol. 1

⁸⁶⁸ Water right nos. 2213-2217, NRC File 7381, Vol. 1

⁸⁶⁹ 'Auckland Farmers' Freezing Co-operate Ltd - Moerewa', 13 April 1983, NRC File 7381, Vol. 1

⁸⁷⁰ Water right nos. 1851, 1852, 1876, and 1878, NRC File 7381, Vol. 2

⁸⁷¹ Letter from NRC Secretary to Whāngārei Department of Conservation, 10 April 1990; 'Application for right in respect of water' notice, 22 February 1990, NRC File 7381, Vol. 2

5.4.4 Resource consent applications for plant upgrade, 1994-1996

5.4.4.1 Application

On 28 June 1994, the NRC advised AFFCO that its existing water permits were due to expire on 30 April 1995.⁸⁷² AFFCO filed a combined application for twelve new resource consents on 22 November 1994.⁸⁷³ As the application was filed more than six months before the consents were due to expire, AFFCO had the right under Section 124 of the RMA to continue operating under its existing water permits until the application for the new consents were decided upon. The twelve new consents were for:

- Water takes:
 - Dam the Kotukutuku Stream
 - Take 4,600 cubic metres of water per day from the reservoir created on the Kotukutuku Stream by the dam
- Discharges to air
 - Rendering plant gaseous emissions
 - Boiler plant gaseous emissions
 - Inadvertent discharges to air
- Discharges to land/ground
 - Discharge sludge from oxidation ponds
 - Discharge 36 cubic metres per day of treated human effluent
 - Discharge up to 260 cubic metres per day of inadvertent pond leakage
- Discharge to water
 - Discharge 3,400 cubic metres per day of treated abattoir process wastewater to an unnamed tributary of the Waiharakeke Stream
 - Discharge up to 1.9 cubic metres per second of stormwater discharge to the Waiharakeke Stream

⁸⁷² Letter from NRC Consents Manager to AFFCO, 28 June 1994, NRC File 7381, Vol. 2

⁸⁷³ 'AFFCO Moerewa meat processing plant, resource consent applications, November 1994', NRC File 7381, Vol. 3. The figures were taken from the notified versions of the applications in September 1995, located in the same file/volume.

- Discharge up to 220 litres per second of stormwater to the Waiharakeke Stream
- Discharge 400 cubic metres per week of water treatment plant filter backwash water to the Ōtiria Stream

This broad range of resource consents were being requested as part of a general upgrade to the plant that was projected for completion in September 1998. AFFCO requested that they be granted for a period of 10 years.

The proposed upgrades to the AFFCO plant had been shaped in part to meet Māori cultural considerations. AFFCO claimed in its consent application to have met with representatives of Te Rūnanga o Taumārere and Te Awa Tapu o Taumārere several times in 1993 and 1994, and had agreed to separate human effluent from its general wastewater discharge in order to dispose of it on land. In addition, AFFCO agreed that its general wastewater would pass through a constructed wetland and a rock media bed before it reached the Waiharakeke Stream. As AFFCO explained in their application:

AFFCO's approach has taken Maori cultural concerns into account and was the main reason for separately treating human waste with a discharge to ground. This bed aims to bring the treated discharge into contact with the ground which goes towards satisfying the cultural concerns of Maori and has been approved by the local Iwi representatives.⁸⁷⁴

The rock media bed in particular had been added solely to 'bring the effluent into contact with the ground in accordance with Maori cultural values', although AFFCO noted that it could provide additional treatment.⁸⁷⁵ This concession to Māori cultural values may have reflected the predominantly Māori population of Moerewa, which may have translated into a significant number of Māori being employed at the plant. Either way, this was a positive attempt to incorporate tikanga Māori into standard engineering practice. The application also noted that AFFCO had notified seventeen adjacent landowners of their intention to file for new resource consents. Several of these

⁸⁷⁴ AFFCO Moerewa meat processing plant, resource consent applications, November 1994', section 3.1, NRC File 7381, Vol. 3

⁸⁷⁵ AFFCO Moerewa meat processing plant, resource consent applications, November 1994', section titled 'abattoir process wastewater', NRC File 7381, Vol. 3

landowners were Māori, including the Tana and Pihema households.⁸⁷⁶ A handwritten note on the back of the report also states that a copy was sent to T. Tipene (possibly Toko Tipene), although it does not say when it was sent. Given that Toko Tipene opposed later consents in the 2000s, it may be that a copy was sent to him at that time.⁸⁷⁷

The combined resource consent application included several technical reports assessing the environmental effects of the AFFCO plant and the proposed upgrades. Two reports produced by Bioresearchers on the effects of the plant's wastewater discharges suggested that there was no evidence to indicate that the AFFCO discharges are adversely affecting the benthic macroinvertebrate fauna (organisms without backbones such as insect larvae and worms) of the Waiharakeke or Kotukutuku Streams. However, the reports noted that both streams were of very poor quality upstream of the discharge points, with few organisms and low species diversity.⁸⁷⁸ This indicates that the Waiharakeke or Kotukutuku Streams were already in a degraded state prior to reaching the AFFCO plant. A separate report produced by AFFCO itself discussed the treatment of gaseous emissions from the rendering plant. It concluded that the plant would continue to use its existing biofiltration system to treat gaseous emissions, given that it was already performing to a suitable standard and the high capital cost of upgrading or replacing it.⁸⁷⁹ Despite this, odours from the plant were an ongoing issue for the Moerewa community. On 11 August 1994 local resident Tom Wharerau rang the Far North District Council to complain of odours coming from the plant. A site inspection by NRC staff revealed that the odour was coming off one of the oxidation ponds. Council staff informed Wharerau that 'nothing out of the ordinary is happening at the works' and that they would shortly be going through the resource consent process.⁸⁸⁰ Wharerau raised a further complaint about odours on 18 December 1994. The NRC

⁸⁷⁶ AFFCO Moerewa meat processing plant, resource consent applications, November 1994', section 3.2, NRC File 7381, Vol. 3

⁸⁷⁷ Handwritten note, , NRC File 7381, Vol. 3

⁸⁷⁸ Bioresearchers, 'Impact of Moerewa discharge on Waiharakeke Stream' [undated], p14; Bioresearchers, 'Impact of Moerewa discharge on Kotukutuku Stream' [undated], p10, NRC File 7381, Vol. 3

⁸⁷⁹ AFFCO Moerewa meat processing plant, resource consent applications, November 1994', section titled 'rendering plant operational processes', NRC File 7381, Vol. 3

⁸⁸⁰ Environmental hotline incident report, 11 August 1994, NRC File 7381, Vol. 3

called AFFCO's chief engineer, who agreed to investigate, and sent Wharerau a diary to record any further instances of odours emanating from the plant.⁸⁸¹

For the first several months of 1995, a series of exchanges took place between AFFCO and the NRC as the Council sought further information on the twelve consent applications. One of the concerns identified by environmental consulting firm Den Ouden Cooper Associates (who assessed the applications for the NRC) was that the rock media bed was not large enough to provide any real treatment value. They suggested increasing the size of the rock media bed and possibly doing away with the wetland altogether. Den Ouden Cooper also noted that AFFCO had incorrectly framed their consent application for discharging abattoir wastewater as being to land via the rock media bed. They argued that the consent should be for a discharge to water, with the rock bed as the last treatment stage prior to discharge.⁸⁸² The response from AFFCO indicated that they considered a change in focus for the abattoir wastewater consent application would undermine the Māori cultural concerns which it had been designed to address:

Any conventional treatment by the rock media filter will be incidental to the prime purpose of meeting Maori concerns. It was as a result of the Maori consultation that the wording of the discharge was requested ... It is regarded as inappropriate to change this emphasis of the rock media filter from meeting the Maori spiritual/health concern to an effluent treatment stage and possibly replacing the Wetland Stage.⁸⁸³

Den Ouden Cooper insisted that, while it appreciated Māori cultural concerns, the discharge was still ultimately to water rather than land, and the consent application needed to be re-worded to reflect this. They also noted that the characteristics of the discharge had not been well-defined, and that the assessment by Bio researchers had not taken into account key variables such as the high amount of ammonia nitrogen and low dissolved oxygen it would contain.⁸⁸⁴ AFFCO replied that there was an absence of data on these variables, but that they were likely to exceed recommended guidelines for the prevention of nuisance algal growths. They also argued that eels were resistant to low

⁸⁸¹ Environmental hotline incident report, 19 December 1994, NRC File 7381, Vol. 3

⁸⁸² Letter from Den Ouden Cooper Associates to NRC, 9 December 1994, NRC File 7381, Vol. 3

⁸⁸³ 'Response to request for further information', 31 January 1995, NRC File 7381, Vol. 3

⁸⁸⁴ Further information AFFCO Moerewa, 2 March 1995, NRC File 7381, Vol. 3

oxygen levels whereas trout were not. No response was given to the broader issue regarding the framing of the discharge as being to land or water.⁸⁸⁵ Den Ouden Cooper replied that AFFCO had still not addressed the issue of ammonia toxicity to aquatic life that would result from the discharge, which they believed would cause 'highly toxic' conditions in the Waiharakeke Stream. They also commented on AFFCO's failure to respond to the framing of the discharge:

[T]he discharge will be to the Waiharakiki [sic.] Stream and not to land. I understand that AFFCO have made a commitment to Iwi that the discharge of the effluent will be made in the terms outlined above, however, it is my opinion that the Regional Council cannot accept the application in it's [sic.] present terms as it does not adequately and accurately describe the activity proposed.⁸⁸⁶

On 25 July 1995 Den Ouden Cooper informed the NRC that AFFCO was finally providing the outstanding information requested, and that they would advise the Council by 28 August if any further information was required.⁸⁸⁷ No further information from AFFCO or requests from Den Ouden Cooper were located on the file.

5.4.4.2 Notification and submissions

The 12 AFFCO resource consent applications were publicly notified on 26 September 1995. Copies were sent to neighbouring landowners, although no Māori groups appear to have been notified. It is possible, but unclear whether the NRC viewed such additional notification as unnecessary given the consultation carried out by AFFCO with Te Rūnanga o Taumārere and Te Awa Tapu o Taumārere prior to lodging its application. Interestingly, the application for discharging abattoir wastewater remained as being listed as being to land, albeit 'with seepage or submerged flow into an unnamed tributary of the Waiharakeke Stream'.⁸⁸⁸ This is questionable given the issues raised repeatedly by Den Ouden Cooper over the framing of the consent application.

Only one objection was submitted in response to AFFCO's resource consent applications. Neil James Fenning, a resident of Kerikeri, submitted on 4 October 1995

⁸⁸⁵ Letter from AFFCO to NRC, 16 June 1995, NRC File 7381, Vol. 3

⁸⁸⁶ Review of further information provided by AFFCO NZ Ltd., NRC File 7381, Vol. 3

⁸⁸⁷ Letter from Den Ouden Cooper Associates to NRC, 25 July 1995, NRC File 7381, Vol. 3

⁸⁸⁸ Letter from NRC Consents Manager to neighbouring landowners, 22 September 1995; Public notices - applications for resource consents, 26 September 1995, NRC File 7381, Vol. 3

that the applications were 'contrary to RMA intention'. He also claimed that the area was flood-prone, and opposed 'all issues relating to discharge to waterways'.⁸⁸⁹ The NRC organised a pre-hearing meeting between Fenning and AFFCO, at which AFFCO agreed to prepare a report on flood protection for its waste treatment ponds. The report recommended increasing the height of an existing stopbank to prevent the accidental discharge of partially treated wastewater from the plant's oxidation ponds to the Waiharakeke Stream.⁸⁹⁰ AFFCO lodged a further resource consent application for this stopbank on 4 April 1996, and a second pre-hearing meeting was arranged with Fenning for 29 April.⁸⁹¹ Fenning was satisfied with the proposed consent conditions and withdrew his opposition on 3 May.⁸⁹²

5.4.4.3 Decision

Given Fenning's withdrawal, the NRC granted all consent applications on 18 June 1996 until 30 April 2006. One of the conditions attached to the consents required AFFCO to complete the upgrades to the plant by 22 January 1998.⁸⁹³ On 27 February 1998 AFFCO advised the NRC that the upgrade had not been completed due to all of its resources being redirected to finishing the wetland.⁸⁹⁴ The upgrades were not fully completed until August 1998.⁸⁹⁵ Once the wetland and rock media bed were commissioned, AFFCO met with representatives from Te Rūnanga o Taumārere to confirm that their design and operation were in accordance with their expectations.⁸⁹⁶

Several environmental monitoring studies produced during and after the AFFCO plant upgrades demonstrated the detrimental effects of the plant's activities on the Waiharakeke Stream. A macroinvertebrate assessment commissioned by AFFCO in May 1997 revealed a decline in the macroinvertebrate community diversity and taxa diversity (a measure for the diversity of species) downstream of the plant's discharge

⁸⁸⁹ Submission to application for a resource consent, 4 October 1995, NRC File 7381, Vol. 3

⁸⁹⁰ AFFCO Moerewa resource consent applications - water treatment ponds flooding protection, March 1996, NRC File 7381, Vol. 3

⁸⁹¹ Application for a resource consent to divert floodwaters, 5 April 1996; letter from NRC Consents Manager to parties for pre-hearing meeting, 18 April 1996, NRC File 7381, Vol. 3

⁸⁹² Letter from Neal James Fenning to NRC Consents Manager, 3 May 1996, NRC File 7381, Vol. 3

⁸⁹³ Decision on application 7381 for a resource consent, 18 June 1996, NRC File 7381, Vol. 3

⁸⁹⁴ Letter from AFFCO Chief Engineer to NRC Consents Manager, 27 February 1998, NRC File 7381, Vol. 6

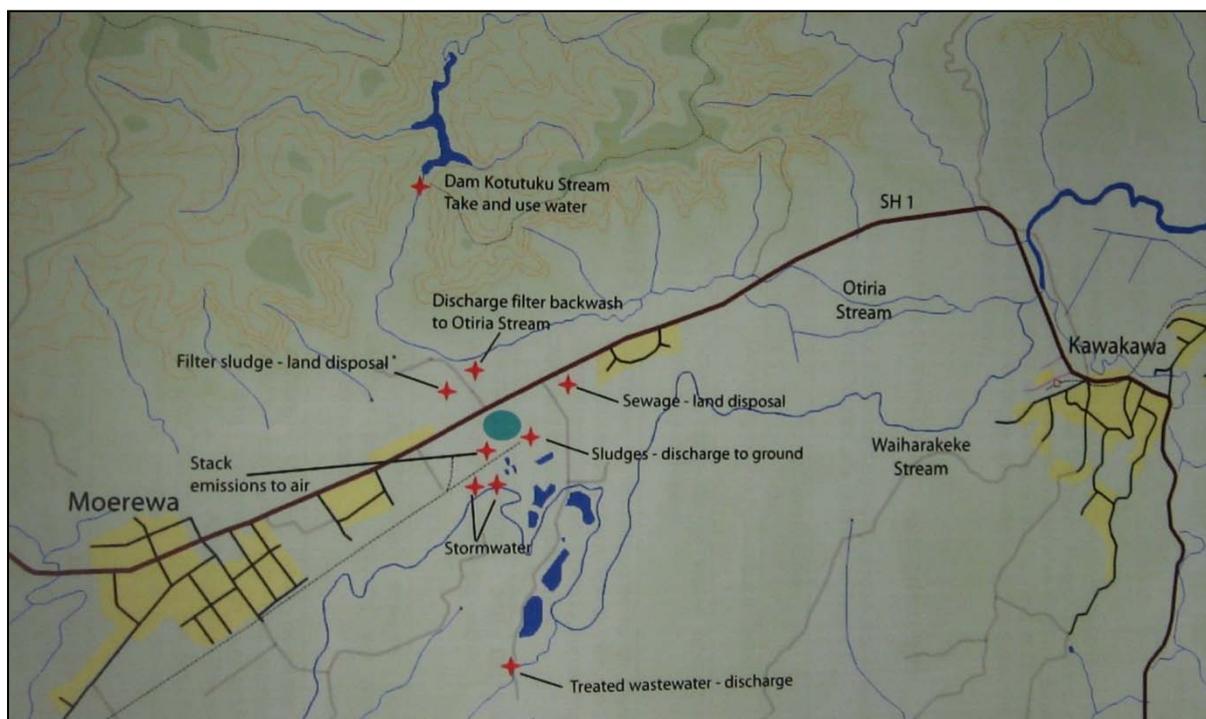
⁸⁹⁵ Letter from AFFCO Chief Engineer to NRC Consents Manager, 3 August 1998, NRC File 7381, Vol. 6

⁸⁹⁶ AFFCO Moerewa meat processing plant - application for resource consents and assessment of environmental effects, October 2005, p97, NRC File 7381, Vol. 10

site, which 'underlined the degradation of water quality and habitat'.⁸⁹⁷ A 2001 NRC aquatic invertebrate monitoring report stated that organic enrichment levels on the Waiharakeke Stream increased significantly downstream of the AFFCO discharge site, which had altered the macroinvertebrate community structure.⁸⁹⁸

5.4.5 Applications to renew resource consents, 2005-2009

Figure 31: Location of consented activities at the AFFCO plant in the mid-2000s



(Source: AFFCO Moerewa meat processing plant – application for resource consents and assessment of environmental effects, October 2005, p 97, NRC File 7381, Vol. 10)

5.4.5.1 Application

On 7 September 2005, the NRC advised AFFCO that its resource consents were due to expire on 30 April 2006. The NRC also recommended that AFFCO seek written approval from parties likely to be adversely affected before filing any new consent applications to decrease the chances that they would need to be publicly notified.⁸⁹⁹ AFFCO filed a combined application for 11 resource consents, along with an assessment of

⁸⁹⁷ Streamline Biomonitoring, 'Macroinvertebrate assessment of the Waiharakeke Stream in Moerewa, subject to a point discharge from the AFFCO freezing works', May 1997, NRC File 7381, Vol. 5

⁸⁹⁸ NRC Aquatic invertebrate monitoring report, 13 March 2001, NRC File 7381, Vol. 7

⁸⁹⁹ Letter from NRC Consents Manager's Secretary to AFFCO, 7 September 2005, NRC File 7381, Vol. 9

environment effects, on 30 October 2005.⁹⁰⁰ As the application was filed more than six months before the consents were due to expire, AFFCO had the right under Section 124 of the RMA to continue operating under its existing water permits until the application for the new consents were decided upon. The 11 consent applications largely reflected the existing consents, with some slight changes in the amount of discharge or extraction. In addition, AFFCO had combined its three existing discharges to air into a single consent application, and had added a second sludge disposal to land from its stilling basins. The consent applications were for:

- Water takes:
 - Dam the Kotukutuku Stream
 - Take 4,500 cubic metres of water per day from the reservoir created on the Kotukutuku Stream by the dam
- Discharges to air:
 - Air contaminants arising from the operation of boilers, a rendering plant, a meat processing plant, effluent treatment plant, sludge drying bed and all other incidental operations
- Discharges to land/ground:
 - Discharge sludge from anaerobic balance pond and paunch pond
 - Discharge sludge from the bottom of filter backwash stilling basins
 - Discharge 36 cubic metres per day of treated human effluent
 - Discharge contaminants from all effluent treatment and solids holdings lagoons, sludge drying bed, wetlands and rock media filter by seepage
- Discharges to water:
 - Discharge 3,400 cubic metres per day of treated abattoir process wastewater to an unnamed tributary of the Waiharakeke Stream
 - Discharge up to 1.9 cubic metres per second of stormwater discharge to the Waiharakeke Stream

⁹⁰⁰ AFFCO Moerewa meat processing plant - application for resource consents and assessment of environmental effects, October 2005, NRC File 7381, Vol. 10

- Discharge up to 220 litres per second of stormwater and defrost water to the Waiharakeke Stream
- Discharge 400 cubic metres per week of water treatment plant filter backwash water to the Ōtiria Stream

AFFCO requested that the consents be granted not for a further five, but for a period of 35 years.

Despite the impressive detail of AFFCO's combined application and assessment of environmental effects, its consideration of Māori values and concerns was almost non-existent. Out of the almost one hundred pages of technical and procedural information, only half a page was devoted to discussing consultation with Māori and the wider community – most of which simply relayed the consultation that had gone into the earlier consent applications and plant upgrades of the mid-1990s. Of its current consent applications, AFFCO had little to say:

Since [the 1990s] AFFCO has continued to operate the facilities as agreed, and with full awareness of the importance of the need to appropriately treat wastewaters prior to discharge to the receiving environment.

The company maintains contact with any interested parties and its neighbours, and in particular with the nearest adjoining neighbour. Discussions are invariably cordial and any queries and issues are addressed openly and promptly.⁹⁰¹

Although AFFCO was under no legal obligation to consult with Māori, the fact that it did not appear to have done so stands in stark contrast to the collaborative approach it had adopted in the 1990s with its implementation of land-based disposal methods. The change in company ownership likely played a part, given that the time period in question coincided with AFFCO's public listing and the increasing majority of Talley's Group (which reached 58% in 2006).⁹⁰²

⁹⁰¹ AFFCO Moerewa meat processing plant - application for resource consents and assessment of environmental effects, October 2005, p97, NRC File 7381, Vol. 10

⁹⁰² 'Success shows AFFCO offer fair', *New Zealand Herald*, 13 June 2006, http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=10386280

It may have also been the case that, as there was no major upgrade planned as part of these consent applications, AFFCO did not consider it necessary to engage with Māori to the same extent as it had done previously – after all, it still intended to continue with land-based disposal. But Moerewa was still a predominantly Māori community, as were undoubtedly many of the plant’s local employees. In addition, the NRC had made it clear to AFFCO that it recommended consulting with parties likely to be adversely affected by the consent applications, even if they had previously given consent to AFFCO’s activities.⁹⁰³

The NRC sought additional information on AFFCO’s consent applications over the next few months. One particular point raised by the NRC was that, under the Regional Water and Soil Plan that had been approved in 2004, several activities for which AFFCO sought resource consent were now covered by permitted activity rules. If AFFCO could demonstrate that it met those permitted activity rules, it could withdraw its consent applications for those activities.⁹⁰⁴ AFFCO replied that it did meet those rules, and consequently four of its consent applications were withdrawn (dam on the Kotukutuku Stream, sludge discharge from filter backwash stilling stations, stormwater and defrost water discharge to the Waiharakeke Stream, and filter backwash water discharge to the Ōtiria Stream).⁹⁰⁵

5.4.5.2 Notification and submissions

AFFCO’s resource consent applications were publicly notified by the NRC in the *Northern Age* on 17 January 2007, with feedback requested by 28 February. Copies were also sent to local residents who might be affected, iwi representatives (although it is not clear who these were), the Department of Conservation, and Forest and Bird.⁹⁰⁶ The NRC received 22 submissions in response, all but one of which opposed granting

⁹⁰³ Letter from NRC Consents Manager’s Secretary to AFFCO, 7 September 2005, NRC File 7381, Vol. 9

⁹⁰⁴ Email from NRC Water Resources Officer to AFFCO, 27 September 2006, NRC File 7381, Vol. 11

⁹⁰⁵ Letter from Argo Environmental Limited (authorised representative for AFFCO) to NRC, 6 November 2006, NRC File 7381, Vol. 11; Northland Regional Council staff report on AFFCO consent applications, p5, NRC File 7381, Vol. 8. The consent for sludge discharge from filter backwash stilling stations may have been incorporated into the other sludge discharge consent application, as it is not mentioned in the Northland Regional Council staff report.

⁹⁰⁶ Northland Regional Council staff report on AFFCO consent applications, p6, NRC File 7381, Vol. 8

the consents, and 13 of which wished to be heard if a hearing took place.⁹⁰⁷ The majority of these submissions were from Māori families living in or around Moerewa, in particular in the Taumatamakuku subdivision that is located next to the AFFCO plant. The submissions were concerned with the odour emanating from the plant, the contamination of waterways by plant discharges and its effect on plants and animals, and the negative impacts on the health of community members. The odour was the main concern raised, and was exemplified in Mate Palmer's submission:

I have lived in this area for fifty years. When this plant was larger we grew up with the smell. Now that AFFCO has downsized its plant i.e. employing only 350 people the smell from the effluent has worsened and gets worse all the time. I have my mokopuna live here and they too find the smell unbearable to the extent of having to close windows, lock doors etc. I would hate to think what effects this would have on our health especially our mokopuna. We the residents of Taumatamakuku are worse affected as we are within meters of AFFCO & its stench from their ponds. I strongly oppose their intentions.⁹⁰⁸

Judy Waiomio similarly submitted that the odour was 'one of the major causes contributing to the health & illness of my tamariki'.⁹⁰⁹ Koru Wikaire submitted that the consents would have negative effects on the water, air, and land:

1/ Water permits - our streams have been abused with effluents which have caused an imbalance in our waterways. The waters [are] no longer pristine and this has also affected numerous flora and fauna.

2/ Discharge to air of contaminants is totally unacceptable - again an imbalance of pollutants to air would affect & eventually bring about irritants to persons being in & around the areas, causing increases to allergies.

3/ Discharge to land - much of the areas of land have stormwater problems & I feel that because of this the land along with natural seepages will cause ongoing problems which will find its way to the waterways &

⁹⁰⁷ The 21 opposing submissions were from William Whittaker, Koru Wikaire, Roy Heta, Anthony Wiki, Daisy Komene, Frances Tipene, Andrew Tuiatua, Maisie Cherrington, Judy Waiomio, Toko and Daphne Tipene, Michael Hau, Mate Palmer, Kahukuirā Parata, Alice Kingi, George Mori, Agnes Wynyard, Kereama Tane, Georgina Irimana, Wiremu Pihema, Rebekah Hiro, and the Taumatamakuku Māori Charitable Trust. A submission from Northland Health neither supported nor opposed the applications. Copies of all submissions are contained in NRC File 7381, Vol. 8

⁹⁰⁸ Submission of Mate Palmer, 11 February 2007, NRC File 7381, Vol. 8

⁹⁰⁹ Submission of Judy Waiomio, 11 February 2007, NRC File 7381, Vol. 8

once again effluents & pollutants will increase long term unacceptable conditions for the future of peoples, flora & fauna.⁹¹⁰

A submission was also filed by the Taumatamakuku Māori Charitable Trust on behalf of all the residents of Taumatamakuku. It raised four broad concerns with the consent applications:

- The residents of Taumatamakuku have grievances regarding fugitive odours that leave a stench
- Contamination to waterways affecting local plant & animal life
- Local Residents Health Safety and Protection from effluent disposal
- The 35 year term for which the resource consent is sought⁹¹¹

The Trust noted that it would agree to consents being granted if a ‘monitoring board’ was set up consisting of representatives from the Trust, NRC, and AFFCO. It was proposed that the board’s function would be ‘to perform and record tests, to monitor water intake and discharge to waterways and other duly required monitoring to insure the health safety and protection of Taumatamakuku residents.’⁹¹² It is clear from the submissions that the Māori submitters were concerned with the broader effects that the plant might have on the environment and the community above and beyond the specific activities proposed in the consent applications.

While the NRC was processing the consent applications, AFFCO developed a proposal to install a new milk powder plant on site. In May 2007 it submitted two new resource consent applications to the NRC for the proposed new plant, as well as modifications to four of the existing applications that were submitted in October 2005. This resulted in a separate notification process, which was followed by a parallel round of submissions later in 2007. The process and outcome of these consent applications is discussed in the next section – however, it is mentioned here to demonstrate the fact that the two processes ran alongside each other for a time. It is also mentioned because, in its combined application for the milk powder plant consents, AFFCO stated that it was holding ongoing meetings with those who had submitted in opposition to the original

⁹¹⁰ Submission of Koru Wikaire, 22 January 2007, NRC File 7381, Vol. 8

⁹¹¹ Submission of the Taumatamakuku Māori Charitable Trust, 13 February 2007, NRC File 7381, Vol. 8

⁹¹² Submission of the Taumatamakuku Māori Charitable Trust, 13 February 2007, and attached minutes of Taumatamakuku Māori Charitable Trust community meeting, 12 February 2007, NRC File 7381, Vol. 8

applications. AFFCO also noted that it was undertaking 'an extensive review of site operations to identify and rectify odour sources.'⁹¹³

The NRC attempted to address the concerns of submitters in a number of ways. It organised a pre-hearing meetings between submitters and AFFCO representatives on 20 November 2007.⁹¹⁴ While the minutes of this meeting were not found, one of the outcomes was a set of draft consent conditions designed to address the concerns of submitters. The NRC circulated these on 14 August 2008, and noted that three main components had been added to meet submitters' concerns:

- Creation of a Community liaison group consisting of representatives from the Taumatamakuku community, other neighbouring property owners, AFFCO and the Northland Regional Council. It is intended that this group will provide a forum to discuss complaints, receive monitoring reports and provide feedback to AFFCO on the operation of the plant.
- A requirement for AFFCO to draft a desludging management plan to address odour issues from this activity.
- A requirement to regularly review all odour generating operations at the plant and determine whether additional improvements and/or changes are required.⁹¹⁵

The community liaison group in particular appeared to be a direct response to the request for a 'monitoring board' by the Taumatamakuku Māori Charitable Trust, albeit with some changes: the proposed group was to receive and review monitoring reports produced by AFFCO rather than undertake any independent monitoring itself.⁹¹⁶ Only Northland Health (which had submitted that it was neither in support nor in opposition to the application) replied that it was happy with the proposed consent conditions and no longer wished to be heard.⁹¹⁷

5.4.5.3 Assessment and hearing

As none of the remaining 12 submitters wishing to be heard withdrew their objections, the NRC arranged a hearing. The NRC staff assessment report produced prior to the

⁹¹³ AFFCO Moerewa meat processing plant - application for resource consents and assessment of environmental effects, May 2007, p52, NRC File 7381, Vol. 12

⁹¹⁴ Circular from NRC Team Leader Air Quality, 20 November 2007, NRC File 7381, Vol. 12

⁹¹⁵ Circular from NRC Air Quality Management Specialist, 14 August 2008, NRC File 7381, Vol. 13

⁹¹⁶ Circular from NRC Air Quality Management Specialist, 14 August 2008, attached draft consent conditions schedule A, NRC File 7381, Vol. 13

⁹¹⁷ Northland Health withdrawal of wish to be heard, 28 August 2008, NRC File 7381, Vol. 13

hearing reveals the general perception that the Council had of the submitters and their issues at the time. The Council appears to have considered the submissions as if they had come from general members of the community rather than from Māori. This may have been due to the way the submissions had been framed. The submitters were clearly concerned with the immediate effects of the plant on the environment and the health of their whānau. Given their close proximity to the plant and allegedly frequent exposure to its odorous emissions, this seems fairly natural. However, the NRC may have viewed the lack of broader cultural concerns around kaitiakitanga and customary river resources as indicative that there were no such concerns. They did not, however, opt to test this by requesting a cultural impacts assessment or any other method. As a result, the NRC staff assessment included a minimal assessment of its obligations to Māori under Sections 6-8 of the RMA. In assessing whether the applications met the requirements of Section 6, which required the NRC to 'recognise and provide for' the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga, Council staff simply noted that '[n]o submission has been received indicating that sites of cultural or spiritual significance to Maori would be affected by this activity'.⁹¹⁸ For Section 7, which required the NRC to 'have particular regard to' kaitiakitanga, staff noted that this had been covered in other sections of the report – yet there is no mention of 'kaitiakitanga' at any other place in the report.⁹¹⁹ Council staff also believed that the Section 8 requirement to 'take into account' the principles of the Treaty of Waitangi had been met by 'circulation of the application to local iwi'.⁹²⁰ The assessment of the Council's own commitments to Māori under Section 6 of its Regional Water and Soil Plan, which are outlined in section 2.4.1 of Chapter Two, was equally brief:

The present application has been publicly notified and while a number of parties have submitted on the application, particularly in regard to odour, none of these parties have identified that the application is inconsistent with Section 6 of the Regional Water and Soil Plan.

On the basis that, by installing a land based treatment process [in 1998], the applicant has taken into account the concerns of Maori in regard to the disposal of waste into water, and that no new matters have arisen

⁹¹⁸ Northland Regional Council staff report on AFFCO consent applications, pp39-40, NRC File 7381, Vol. 8

⁹¹⁹ Northland Regional Council staff report on AFFCO consent applications, p40, NRC File 7381, Vol. 8

⁹²⁰ Northland Regional Council staff report on AFFCO consent applications, p40, NRC File 7381, Vol. 8

through the notification process, it I [sic.] considered that the above objectives and policies have been met.⁹²¹

This clearly suggests that Council viewed the submissions as being largely unrelated to its regulatory requirements relating to Māori, despite most of them having been submitted by Māori individuals.

The assessment by NRC staff also included an evaluation of the effects that the AFFCO plant was having on the receiving environment. While it concluded that the discharge to the Waiharakeke Stream was not having a significant adverse impact for some variables (such as pathogens), it also found that it was a major source of nutrients to the overall Kawakawa River (supplying an estimated 13 per cent of the total nitrogen and 36 per cent of the total phosphorus concentrations per year).⁹²² This was likely to be having an adverse effect on water quality, and could result at times in toxic algal blooms.⁹²³ One of the reasons that the AFFCO discharge to the Waiharakeke Stream was considered to have such a major effect was because, during dry periods, the discharge constituted a large part of the flow. As the Waiharakeke Stream is the dominant waterway discharging into the Kawakawa River, this provided a route to convey contaminants downstream into the Waikare Estuary.⁹²⁴ There was also a marked impact on the macroinvertebrate community downstream of the discharge, although there did not appear to be any impediment to fish passage upstream.⁹²⁵ To mitigate these effects, NRC staff had proposed draft consent conditions that specified a maximum quantity of nitrogen allowed in the discharge and required AFFCO to investigate the effects of phosphorus discharge and investigate ways to mitigate them.⁹²⁶

Three technical witnesses produced statements of evidence for AFFCO prior to the hearing. The witnesses, and their relationship to AFFCO, were:

⁹²¹ Northland Regional Council staff report on AFFCO consent applications, p42, NRC File 7381, Vol. 8

⁹²² Northland Regional Council staff report on AFFCO consent applications, p33, NRC File 7381, Vol. 8

⁹²³ Northland Regional Council staff report on AFFCO consent applications, p36, NRC File 7381, Vol. 8

⁹²⁴ Northland Regional Council staff report on AFFCO consent applications, pp29-30, NRC File 7381, Vol. 8

⁹²⁵ Northland Regional Council staff report on AFFCO consent applications, p35, NRC File 7381, Vol. 8

⁹²⁶ NRCstaff report on AFFCO consent applications, p36, NRC File 7381, Vol. 8

- Garry Venus, Managing Director of Argo Environmental Limited, who had coordinated and supervised several technical studies for AFFCO and had written its assessment of environmental effects;
- Albert van Oostrum, a self-employed waste management consultant who provided consulting services to AFFCO; and
- John Henry, AFFCO plant engineer.⁹²⁷

The three technical witnesses generally agreed with the assessment produced by NRC staff and the recommended consent conditions, albeit with some minor caveats around the extent of the impact that the wastewater discharge was having on the Waiharakeke Stream. As Venus argued:

I accept that AFFCO is at times a large contributor of Nitrogen and Phosphorus (N & P) into the system but this is not an adverse environmental effect in itself. Increased N & P would only result in an adverse effect if the receiving environment was in some way deficient in N & P - to my knowledge this has not been the case in rural waterways such as the Waiharakeke where there are many upstream sources of N&P including standard agricultural practices.⁹²⁸

John Henry's evidence emphasized the alleged contributions of the AFFCO plant to the economic wellbeing of the community:

The site employs up to 380 staff in the peak season. AFFCO pays out close on \$15 million in wages and salaries annually. In addition to this the engineering budget is close to 2 million per year and during the shutdown we would employ up to 40 engineering contractors on site. Around 95% of the labour employed to operate the plant is sourced locally with a small proportion being sourced from outside the region when necessary.

AFFCO Moerewa is the largest private sector employer in the Far North District.

Since the 1993 rebuild, AFFCO has invested significant new capital in to the Moerewa Plant, the rebuild alone cost in excess of \$25 million. The rebuild in 1993 had two major impacts: firstly a large percentage of the contracts were let to local firms whether directly or as a subcontractor to the principle of the contract; and secondly and more importantly it

⁹²⁷ Statements contained in NRC File 7381, Vol. 8

⁹²⁸ Statement of evidence of Garry Charles Venus, para 10.4, NRC File 7381, Vol. 8

secured the plant's future thus providing long term employment opportunities for the region.⁹²⁹

The witnesses agreed with the NRC staff assessment that they had taken tangata whenua values into account through the upgrades that had occurred in the 1990s. Implicit in this argument was a belief that the submissions in opposition to the current consent applications were unrelated to the regulatory provisions relating to Māori – as Venus put it, 'Kaitiakitanga applies only to the exercise of guardianship by the tangata whenua of an area and is in my opinion a mater [sic.] for consideration between the NRC and tangata whenua rather than between applicant and tangata whenua.'⁹³⁰

The NRC hearing was convened on 9 December 2008 in the Te Punawai Centre in Moerewa.⁹³¹ NRC staff were present at the hearing, along with the AFFCO Moerewa manager, the three AFFCO technical witnesses, Toko Tipene (who appeared on behalf of himself and eight other submitters) and Syd Parata (who appeared on behalf of the Taumatamakuku Māori Charitable Trust).⁹³² The Council staff responsible for producing the assessment spoke first, followed by the three technical witnesses who largely followed their statements of evidence. Tipene and Parata, who had not filed written statements of evidence prior to the hearing, were noted in the Hearings Committee decision as having replied that:

[T]hey acknowledged the serious detrimental social and economic implications for the local community if the consent for this application by AFFCO was not granted. Their main concerns had been in regard to odour problems experienced from time to time by the residents, especially those living at Taumatamakuku. However due to recent changes in dealing with the clearing of the paunch ponds, they were comfortable that the odour problem was being addressed.

They considered the establishment of the Community Liaison Committee to assist the Northland Regional Council in the management, supervision and monitoring of the consent, and in dealing with formal complaints about discharge of contaminants into the air from AFFCO contaminants, would be beneficial to both parties.⁹³³

⁹²⁹ Statement of evidence of John Philip Henry, paras 3.11-3.13, NRC File 7381, Vol. 8

⁹³⁰ Statement of evidence of Garry Charles Venus, para 6.10, NRC File 7381, Vol. 8

⁹³¹ Circular from NRC Administration Programme Manager, 24 November 2008, NRC File 7381, Vol. 13

⁹³² Report and Decision of the Council, 22 January 2009, pp1, 10, NRC File 7381, Vol. 13

⁹³³ Report and Decision of the Council, 22 January 2009, p10, NRC File 7381, Vol. 13

5.4.5.4 Decision

Given this concession by Tipene and Parata, the Hearings Committee issued a decision granting the resource consents on 22 January 2009. As had been recommended by NRC staff, the consent conditions required that a community liaison committee be established that would meet within a month of the conditions being granted and quarterly thereafter that unless otherwise agreed to by both parties.⁹³⁴ The Committee also agreed to include the condition recommended by staff that AFFCO ‘undertake an investigation into, and prepare a report on, the effects of nutrients in the wastewater discharge on the Waiharakeke Stream and downstream water bodies including the Kawakawa River’ by 1 May 2009.⁹³⁵ The Committee claimed to have ‘taken into account the relevant principles outlined in Sections 6, 7 and 8 of the [Resource Management] Act’ in its decision, although it did not elaborate on how it had done so.⁹³⁶ Without clearly specifying its reason for consider the requirements of the Act relating to Māori had been met, it can be assumed that the Hearings Committee agreed with the assessment carried out by NRC staff that the concerns raised by submitters were largely unrelated to the Council’s regulatory requirements relating to Māori.

5.4.5.5 Follow-up on consent conditions

The community liaison committee was slow in being established. The first meeting was held on 9 June 2009 at the AFFCO plant, and was attended by an NRC staff member as chair, the AFFCO manager and plant engineer, Syd Parata, and Toko Tipene. The Council’s minutes of the meeting note that the plant engineer gave an update of the work that had been done since the granting of the consents, including environmental monitoring. Tipene questioned the fact that AFFCO undertook its own monitoring, but was reassured by the chair that NRC staff checked the monitoring results for compliance.⁹³⁷ It is not clear when the second meeting was held as the minutes erroneously list the date as being 9 June 2009. An NRC staff member, the AFFCO plant engineer, and Toko Tipene were present. The Council’s minutes note that there had recently been a complaint about odour from the AFFCO plant during a desludging

⁹³⁴ Report and Decision of the Council, 22 January 2009, consent conditions schedule B, NRC File 7381, Vol. 13

⁹³⁵ Report and Decision of the Council, 22 January 2009, consent condition no. 40, NRC File 7381, Vol. 13

⁹³⁶ Report and Decision of the Council, 22 January 2009, pp11-12, NRC File 7381, Vol. 13

⁹³⁷ Minutes of community liaison meeting, 9 June 2009, NRC File 7381, Vol. 14

operation that had resulted in enforcement action from the NRC. The committee agreed that AFFCO would develop a plan to avoid a similar situation arising in the future.⁹³⁸ On 8 November 2010 the NRC requested that AFFCO organise another community liaison meeting before the end of the year, to which AFFCO replied that it had scheduled a meeting for 14 December.⁹³⁹ No minutes for this meeting were found. Given that AFFCO's consent applications relating to a milk powder had recently been heard by the NRC and were the subject of an appeal to the Environment Court by Toko Tipene, it may be that the community liaison committee had been shelved until these proceedings were resolved.

There was also a delay in producing a study on the effects of nutrients on the Waiharakeke Stream and downstream water bodies. AFFCO produced this study in July 2009, which concluded that while periphyton development (freshwater organisms attached or clinging to plants and other objects projecting above the bottom sediments) was occurring up to 300 metres downstream of the discharge point on the Waiharakeke Stream, the peak flow regime in the Waiharakeke Stream and the substrate of the Kawakawa River prevented this growth from being a problem. It also argued that the nitrogen levels in the discharge were only a small proportion of the total nitrogen loading in the catchment, and did not anticipate any adverse effect on estuary eutrophication (a measure of water pollution).⁹⁴⁰ Three assessments of this study by NRC staff argued that it had underestimated the impact that the AFFCO discharge was having on the Waiharakeke Stream and downstream rivers. Given that the discharge provided an estimated nine to ten per cent increase in total nitrogen and 27-36 per cent increase in total phosphorus, one of the reviewers suggested that this was a 'significant increase in the nutrient input to the system and is likely to have a greater than minor impact on the nutrient concentration of the sediment and an associated effect on the benthic community and the wider estuarine ecosystem.'⁹⁴¹ A further assessment by AFFCO in March 2010 concluded that the AFFCO discharge was having 'no significant

⁹³⁸ Minutes of community liaison meeting, [date not clear], NRC File 7381, Vol. 14

⁹³⁹ Letter from NRC Environmental Monitoring Officer to AFFCO, 8 November 2010; letter from AFFCO plant engineer to NRC Environmental Monitoring Officer, 18 November 2010, NRC File 7381, Vol. 16

⁹⁴⁰ AFFCO New Zealand Ltd Moerewa - Nutrient Study, July 2009, p20, NRC File 7381, Vol. 14

⁹⁴¹ Email from NRC to Argo Environmental Consultants, 14 September 2009, NRC File 7381, Vol. 14

adverse effect on downstream nutrient concentrations.⁹⁴² As with the previous report, an NRC reviewer asserted that '[t]he water quality results clearly show a discernible effect of the discharge on the Waiharakeke Stream DO [dissolved oxygen] and nutrient levels but this is not actually stated in the report'.⁹⁴³

5.4.6 Resource consent applications for a milk powder plant, 2007-2011

5.4.6.1 Application

While the NRC was reviewing AFFCO's consent applications for its meat processing plant, AFFCO submitted an additional application in May 2007 to build a milk powder plant at its Moerewa site. As the proposed milk powder plant would largely rely on the existing wastewater treatment infrastructure, the application sought two new consents as well as the modification of four of the consents it had already applied for in 2005⁹⁴⁴:

- New consent applications:
 - Discharge to land up to 3,500 cubic metres per day of treated milk powder processing effluent
 - Discharge contaminants to air during the process of irrigation to land
- Modifications of existing consent applications:
 - Dam the Kotukutuku Stream (modified to include dairy as one of the purposes for this consent)
 - Take 4,500 cubic metres of water per day from the reservoir created on the Kotukutuku Stream by the dam (modified to include dairy as one of the purposes for this consent)
 - Air contaminants arising from the operation of boilers, a rendering plant, a meat processing plant, effluent treatment plant, sludge drying bed and all other incidental operations (modified to include dairy as one of the purposes for this consent)

⁹⁴² AFFCO New Zealand Ltd., 'Periphyton and water quality assessment, Waiharakeke Stream', March 2010, p14, NRC File 7381, Vol. 14

⁹⁴³ Email from Mortimer Consulting to NRC, 30 March 2010, NRC File 7381, Vol. 14

⁹⁴⁴ AFFCO Moerewa meat processing plant - application for resource consents and assessment of environmental effects, May 2007, pp4-5, NRC File 7381, Vol. 12

- Discharge 3400 cubic metres per day of treated wastewater to an unnamed tributary of the Waiharakeke Stream (increased to 4,000 cubic metres and to include dairy as one of the purposes for this consent)

Due to the large number of opposing submissions that had been received in response to its 2005 application to renew its consents, AFFCO stated that it was undertaking ‘an extensive review of site operations to identify and rectify odour sources’. It had also arranged meetings with submitters and was keen to avoid any odour risk associated with its proposed milk powder plant.⁹⁴⁵

5.4.6.2 Notification and submissions

The application was publicly notified by the NRC on 25 July 2007 with the submission period closing on 22 August 2007. The NRC received 46 submissions in response, all but one of which opposed the application.⁹⁴⁶ The submissions raised a broad range of concerns, including odour, contamination of waterways, negative impacts on river flora and fauna, environmental hazards, and health and hygiene issues. Toko Tipene was one of the opposing submitters, as he had been on AFFCO’s application in 2005 to renew its consents. He stated that he:

Can see major health & hygiene problems arising from these activities by AFFCO. It is highly probable that if the dairy trust were granted permission to pursue the same objectives this problem will be compounded. I refer you to the milk treatment plant in Kauri. It won't happen overnight but it will happen!⁹⁴⁷

⁹⁴⁵ AFFCO Moerewa meat processing plant - application for resource consents and assessment of environmental effects, May 2007, p52, NRC File 7381, Vol. 12

⁹⁴⁶ The 44 opposing submissions were from Toitoti Lawrence, Brian Oram, Northland Fish and Game, Lance Halliday, Dorothy Halliday, Waikare Inlet and Orongo Bay Delivery Centre, Anthony Wiki, George Mori, Te Runanga o Ngāti Hine, Mary-Diane Tipene, Wiremu Pihema, John Davis, Susan Henare, Wikitoria Cook, Kerei James, Cecelia Pihema, Tanya Martin, Judy Waiomio, Kene Martin, William Whittaker, Frances Tipene, Glen Scobie, Isabel Tane, Toko Tipene, Hautautari Hereora, Michael Hau, Phillip Bristow, Mangaiti Conrad, Maria Palmer, Georgina Edmonds, Watene Kawiti, Kahukuiria Parata, Maynard Kingi, Elton Tane, Allen Edwards, Hine Hau, Georgina Edwards, Ngahau Davis, Rycharleen Barber, Hariata Taira, Barry Hau, Anita Palmer, Maryann Mangu, Violet Paraone, and Tamati Paraone. Copies of all submissions are contained in NRC File 7381, Vol. 12. The NRC staff assessment of the application only mentioned 45 submissions, noting that two were subsequently withdrawn (these appear to have been those of Violet and Tamati Paraone); however, their list includes the other 44 submissions, so this appears to have been a simple miscount. See NRCstaff report on AFFCO consent applications, 20 August 2010, pp7-9, NRC File 7381, Vol. 15

⁹⁴⁷ Submission of Toko Tipene, 16 August 2007, NRC File 7381, Vol. 12

Unlike the submissions in response to the 2005 application, several submitters specifically raised objections relating to Māori cultural values and customary river resources. Judy Waiomio believed that the milk powder plant would 'contaminate our whenua and awa'.⁹⁴⁸ John Davis and Violet and Tamati Paraone were concerned about the impact that the plant would have on eels.⁹⁴⁹ Tohe Ashby on behalf of Te Rūnanga o Ngāti Hine objected because '[t]he Ngāti Hine land claim [has] not yet been settled', and raised the following areas of concern with the application:

- Historic values - sights [sic.] of significance
- Blood offle [sic.] and dairy contamination of land - effect on land & flora
- Chemical usages for cleaning plant - rivers drain land run off eg. eels, river life
- Health [and] safety - air pollution - fly (smell etc.)
- Sitting on volcanic ash layers - no soakage - floods
- Effects on marae, school, kohanga, town and communities⁹⁵⁰

Maryann Mangu listed a number of areas where she believed the application demonstrated 'further insensitivity to tangata whenua':

- Concerns about how the forms of discharges are being mismanaged & polluting our waterways
- Piecemeal approach to the whole area based only around an application to NRC
- Inhibits catching of eels downstream of AFFCO⁹⁵¹

Kerei James submitted that '[t]he discharge would seriously affect the mauri of the water thru [sic.] pollution which will deplete food stocks in the area and eventually kaimoana'.⁹⁵² Susan Henare submitted that:

Growth must be accompanied by sustainable management of natural & water resources inland & waterways & freshwater fisheries resources in their natural habitat are finite resources & should be sustainably managed & protected.

⁹⁴⁸ Submission of Judy Waiomio, 18 August 2007, NRC File 7381, Vol. 12

⁹⁴⁹ Submission of John Davis, 19 August 2007; submission of Violet Paraone, 20 August 2007; submission of Tamati Paraone, 21 August 2007, NRC File 7381, Vol. 12

⁹⁵⁰ Submission of Te Runanga o Ngāti Hine, 20 August 2007, NRC File 7381, Vol. 12

⁹⁵¹ Submission of Maryann Mangu, 22 August 2007, NRC File 7381, Vol. 12

⁹⁵² Submission of Kerei James, 17 August 2007, NRC File 7381, Vol. 12

That the council engage with Hapu about their respective Hapu Management Plan[s].

Upstream work at headwaters & downstream work at river mouths require a complete approach.

That meaningful engagement with Maori requires that authentic commitments show results.⁹⁵³

It is clear from the submissions that there was considerable Māori opposition to AFFCO's consent application for a proposed milk powder plant, both on general environmental and health matters as well as those relating to kaitiakitanga and customary river resources.

The NRC decided to postpone further processing of AFFCO's application for a milk powder plant until it had finalised the general consent renewal applications lodged in 2005. After a series of exchanges with AFFCO in 2009 seeking further information on the consent application for a milk powder plant, the NRC circulated a list of draft consent conditions to submitters on 3 March 2010.⁹⁵⁴ On 5 July 2010 the Director of Repo Consultancy Tui Shortland emailed the NRC asking about the status of the consent applications.⁹⁵⁵ The NRC replied that '[a]fter a long delay in action on the consent' they had circulated the consent conditions, but as they had received very little response the Council was intending to progress straight to a hearing.⁹⁵⁶

5.4.6.3 Assessment and hearing

Despite the number of opposing submissions from Māori and the nature of those submissions, the NRC staff assessment of AFFCO's application in regards to Māori cultural issues was fairly brief. In regards to the requirement under Section 6 of the RMA to 'recognise and provide for ... the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga', the

⁹⁵³ Submission of Susan Henare, 18 August 2007, NRC File 7381, Vol. 12

⁹⁵⁴ AFFCO Moerewa processing plant - resource consent applications - draft conditions, 3 March 2010, NRC File 7381, Vol. 14

⁹⁵⁵ Email from Tui Shortland to NRC, 5 July 2010, NRC File 7381, Vol. 14

⁹⁵⁶ Email from NRC to Tui Shortland, 7 July 2010, NRC File 7381, Vol. 14

assessment argued that the concerns raised in submissions would be met by the land-based nature of the waste disposal:

There are no recorded sites of significance to Maori or historic heritage values attributed to the stream but clearly the iwi (Ngati Hine) and local Maori, have a relationship with it as their written submissions demonstrate.

It is relevant to note that land disposal of effluent, such as is proposed during low flows, is generally considered consistent with protecting Maori spiritual and cultural values in relation to water.⁹⁵⁷

It also claimed that the application was 'consistent' with Sections 7 and 8 of the RMA – to 'have particular regard to' kaitiakitanga and to 'take into account' the principles of the Treaty of Waitangi – but did not explain why.⁹⁵⁸ The NRC staff assessment also examined whether the application was consistent with the NRC's commitments to Māori under the RWSPN. However, rather than refer to Section 6 (which deals specifically with tangata whenua) it referred instead to the brief comment on tangata whenua at Section 7.5.7 under water quality management:

To manage water bodies which are recognised by an iwi authority, or any judicial authority to be a taonga of special significance, having particular regard to those cultural values and traditional uses [emphasis added].

...

While Maori cultural issues have been raised and considered, the Waiharakeke Stream is not been formally identified as a water body which is a taonga of special significance through the process set out in the RWSPN.⁹⁵⁹

The decision to assess the merits of the application as it related to Māori under Section 7 rather than Section 6 is perplexing. The broader policies relating to tangata whenua that are contained in Section 6 of the RWSPN were arguably more appropriate in this

⁹⁵⁷ Northland Regional Council staff report on AFFCO consent applications, 20 August 2010, p17, NRC File 7381, Vol. 15

⁹⁵⁸ Northland Regional Council staff report on AFFCO consent applications, 20 August 2010, pp17-18, NRC File 7381, Vol. 15

⁹⁵⁹ Northland Regional Council staff report on AFFCO consent applications, 20 August 2010, p20, NRC File 7381, Vol. 15

case given the large number of submissions filed by Māori and the cultural concerns raised therein. Furthermore, NRC staff had chosen to apply Section 6 in their assessment of the consent renewal application lodged by AFFCO in 2005. In addition, while Section 6 of the RWSPN applies across all aspects of decision-making, Section 7.5.7 only applies to water bodies that have been recognised as a ‘taonga of special significance’ by an iwi or judicial authority. This higher threshold was clearly disadvantageous to the concerns raised by Māori submitters in this instance. The staff assessment concluded by recommending that the consents be granted until 30 June 2030.⁹⁶⁰

Four statements of evidence were filed prior to the hearing – two on behalf of AFFCO by Garry Venus and Albert van Oostrum; one on behalf of Te Rūnanga o Ngāti Hine, Mangaiti Conrad and Wikitoria Cook by Tui Shortland; and one by Toko Tipene on behalf of 22 submitters. The two initial statements by Venus and van Oostrum were largely technical in nature, and in many cases replicated word-for-word the statements that they had prepared for the hearing for the renewal of consent in 2008. Venus, however, also replied to some of the issues raised in the opposing submissions. He argued that, as the NRC had already granted the general consents for the meat processing works in 2009, these should be accepted as a ‘permitted baseline’ for considering the consents for the milk powder plant. Both the AEE and the NRC staff report demonstrated that the additional effects of the milk powder plant would not adversely affect this permitted baseline, he claimed.⁹⁶¹ Venus also commented on the commitments to tangata whenua under Section 6-8 of the RMA. While he accepted that AFFCO needed to ‘recognise and provide for ... the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga’ (Section 6(e)), he opted to combine his discussion of Section 6(e) issues with his discussion of Section 8 issues, where he wrote:

The proposed activities involve a discharge of treated wastewater to natural waters, and given the well understood relationship between

⁹⁶⁰ Northland Regional Council staff report on AFFCO consent applications, 20 August 2010, p31, NRC File 7381, Vol. 15

⁹⁶¹ Statement of evidence of Garry Charles Venus, 30 August 2010, paras 5.8-5.10, NRC File 7381, Vol. 15

tangata whenua and natural waters the AFFCO discharge may potentially affect the relationship of Maori to ...water... (section 6(e)).

In regard to relations with tangata whenua, AFFCO Moerewa has for many years recognised the importance of providing for tangata whenua values in its activities, as evidenced by the inclusion of a wetland and rock filter prior to the existing meatworks discharge. In addition, AFFCO has engaged in discussion and consultation with various groups representing tangata whenua over the years and has been mindful of the importance of recognising tangata whenua values in the Moerewa area, particularly where a significant percentage of the AFFCO Moerewa workforce is of Maori descent.

Based on evaluation of all these matters I consider that the principles of the Treaty of Waitangi have been taken into account in the application as envisaged.

...

Furthermore, the land irrigation of wastewater at times of low flow in the Waiharakeke Stream involves a process (land disposal) which I understand to be consistent with Maori aspirations in regard to purification of wastewater.⁹⁶²

Combining the discussion of Section 6(e) and Section 8 issues might seem like a trivial matter of structural convenience; however, the wording of Section 8 only requires that the principles of the Treaty of Waitangi be 'take[n] into account' – as opposed to being 'recognise[d] and provide[d] for'. Legal counsel may be able to shed further light on the relative weight assigned to the two different sections of the RMA. Regarding the Section 7 requirement to 'have particular regard to' kaitiakitanga, Venus repeated what he had stated in his evidence for the 2008 hearing:

Kaitiakitanga applies only to the exercise of guardianship by the tangata whenua of an area and is in my opinion a matter for consideration between the NRC and tangata whenua rather than between applicant and tangata whenua.⁹⁶³

Venus had seemingly argued this at the 2008 hearing on the basis that the submissions filed in opposition to that application were of a general nature rather than being related

⁹⁶² Statement of evidence of Garry Charles Venus, 30 August 2010, paras 7.14-7.17, NRC File 7381, Vol. 15

⁹⁶³ Statement of evidence of Garry Charles Venus, 30 August 2010, para 7.11, NRC File 7381, Vol. 15

to the regulatory provisions relating to Māori. Irrespective of whether this was the case at that time, it was clearly not the case in this instance. The submissions opposing the milk powder plant application specifically raised objections relating to Māori cultural values and customary river resources, one of which had come from a recognised iwi authority (Te Rūnanga o Ngāti Hine). Ngāti Hine were also recognised as kaitiaki of the Taumārere waters by the Environment Court in 1998 (see section 5.2.2).

Toko Tipene's statement of evidence presented a mixture of historical information and an assessment of the proposed consent conditions. He spoke of how the old dairy plant (which closed in the 1980s) used to discharge its waste to a paddock adjacent to the Taumatamakuku subdivision, causing an overwhelming smell of rancid milk and an influx of flies. He also extensively recalled the impact that AFFCO had had on the Waiharakeke Stream and tuna since the 1950s. Given the level of detail provided about customary river resources around Moerewa, Tipene's evidence on the subject is quoted in full below:

One thing I will never ever forget, happened in about 1958. It was the sight of hundreds of dead eels floating around on top of the water in the creek at the back (Waiharakeke Stream) another thing I found hard to forget was the smell of eels rotting in the sun, and also the sight and smell of the water.

The water was a dark gray colour with a highly toxic smell, I remember one of the kids with us that day was a chronic asthmatic, and he had trouble breathing we had to half carry him away from there up the bank and out away from the creek into the paddock. He recovered somewhat after about 10 minutes or so.

It was later revealed to us that the reason the water was like that was from the discharge coming from what was commonly known as the "ponds" at AFFCO. I don't remember how long AFFCO had been discharging this solution into the creek but it didn't stop overnight, in fact it went on for another three years or so maybe longer.

Up until the year that AFFCO began to discharge what we later called 'acid' into the creek, Moerewa, and especially Tuna Town was renowned in Tai Tokerau as the Pataka for tuna. As an example, in those days if we were hungry for pipi's we went to Te Haumi, that was their pataka ... if we wanted oysters we went to Waitangi, that was their pataka ... if we wanted kumara we went to Mataraua ... if we wanted kukupa we went to Motatau or Matawaia ... different rohe were renowned for different things, and

Moerewa was renowned in that era as the Tuna Capital of the world, or more in particular Tuna Town.

That name came from the engineers or train drivers who operated the steam engine trains that came through Moerewa where they stopped to pick up or hook the rail wagons that were usually waiting there and delivered them to the Port or wharf at Opuia, where eventually they would be loaded onto cargo ships and exported to ports throughout the world. It was said that as these travelled from place to place, they occasionally looked out to the side of their engines and speculated on the homes they saw. And every time they came through Moerewa, they would look out to the side and marvel at our village, they said that in all their travels they had never ever seen so many eels.

Every time someone caught any eels, they were stripped of slime (para) split open (paawhara) and hung up on the fence of clothes lines to dry. And they claimed that to them it seemed as if it was every day of the year that they saw this sight, not just once or twice a week or fortnight, this was every day.

Anyway word was spread by mouth and everybody started calling our little village "Tuna Town". Ever since I can remember, the name of the station was "Tuna Town", not to be confused with Moerewa or Taumatamakuku. Tuna Town is Tuna Town, however it doesn't exist now a part of the history of Moerewa.

And now we have to go to areas outside of Moerewa to catch eels, to places like Pokapu, Matawaia, Tautoro or Mataraua and Te Iringa, we have lost our pataka through the progress of commerce.⁹⁶⁴

Tipene suggested that the proposed resource consent conditions would give the milk powder plant too much leeway, and that there should be a wider buffer zone around the proposed areas for land-based discharge. He concluded that the residents of Taumatamakuku strongly opposed any consent applications.⁹⁶⁵

Tui Shortland's statement of evidence drew largely upon the issues, objectives, policies and methods contained in the Ngāti Hine environmental management plan (lodged in 2008), which she assessed against the sections of the RMA and the RWSPN relating to tangata whenua. In doing so, she sought to develop a more fundamental relationship between AFFCO, tangata whenua, and the environment:

⁹⁶⁴ Statement of evidence of Toko Tipene, 30 August 2010, pp1-2, NRC File 7381, Vol. 15

⁹⁶⁵ Statement of evidence of Toko Tipene, 30 August 2010, pp2-3, NRC File 7381, Vol. 15

[W]e are seeking an improvement to the relationship between Ngāti Hine, council, AFFCO and the local people and we are seeking an enhancement to the environment which AFFCO utilises to their economic benefit, so as to balance more appropriately the social, cultural, environmental and economic wellbeings.⁹⁶⁶

Shortland stressed the importance of water to Ngāti Hine, and noted that the Environment Court had recognised them as kaitiaki in *Te Awatapu o Taumārere v Northland Regional Council*. She requested that a partnership be instituted between Ngāti Hine and AFFCO involving:

- A working party ... to coordinate environmental enhancement and monitoring of the waterways throughout AFFCO properties.
- A minimum of five metres of indigenous riparian margins for the length of AFFCO property along Waiharakeke tributary and instream habitat enhancement that may be required.
- A monitoring programme of the receiving environments which includes Cultural Health Index monitoring.⁹⁶⁷

One of the chief concerns Shortland raised was that she had not had enough time to fully ascertain the impacts that the proposed milk powder plant would have on Ngāti Hine's ancestral land, taonga, wahi tapū, and culture and traditions.⁹⁶⁸ She also asserted that neither AFFCO nor the NRC had taken into account the processes of engagement outlined in Ngāti Hine's environment management plan, and had therefore 'not made any attempt to gain an understanding of our concerns or perspectives'.⁹⁶⁹ Given these 'many inherent cultural "unknowns"', Shortland recommended that the Hearings Committee place the application on hold until further information had been gathered. She claimed to have requested a Cultural Impact Assessment prior to the hearing being convened, but had apparently been told by the NRC that AFFCO felt it was unnecessary as it believed it could deal with each of the opposing submissions individually.⁹⁷⁰

⁹⁶⁶ Statement of evidence of Tui Shortland, 30 August 2010, para 5, NRC File 7381, Vol. 15

⁹⁶⁷ Statement of evidence of Tui Shortland, 30 August 2010, para 7.2, NRC File 7381, Vol. 15

⁹⁶⁸ Statement of evidence of Tui Shortland, 30 August 2010, paras 6.3, 8.1-8.2, 9, 10, NRC File 7381, Vol. 15

⁹⁶⁹ Statement of evidence of Tui Shortland, 30 August 2010, para 12.7, NRC File 7381, Vol. 15

⁹⁷⁰ Statement of evidence of Tui Shortland, 30 August 2010, paras 12.3, 12.4, NRC File 7381, Vol. 15

The NRC hearing was convened on 30 August 2010 in Te Punawai Centre in Moerewa.⁹⁷¹ Venus, van Oostrum, Tipene and Shortland each presented their statements of evidence. In addition, four other opposing submitters gave verbal statements. Ngahau Davis referred to the principles of the Treaty of Waitangi and argued that the Waiharakeke Stream was a taonga tuku iho. Hautautari Hereora agreed with the concerns raised by others about the pollution of waterways and the Bay of Islands, and queried how many extra jobs the proposed milk powder plant was likely to create. Kerei James noted that he had concerns with the effects of pollution on the mauri of the waterways. Ariana Martin (on behalf of Tanya and Kene Martin) raised concerns about water quality and the effects of air discharges on the community.⁹⁷² In his right of reply, Venus proposed tightening up the wording of certain consent conditions to meet Tipene's concern that the dairy plant would be given too much leeway. He also replied to Hereora's question by stating that the plant would employ an additional 10-15 staff members as well as tanker drivers.⁹⁷³ Venus filed a more detailed submission in reply after the hearing, where he responded in particular to Shortland's submission on behalf of Ngāti Hine. However, much of his reply was to the concerns raised in Ngāti Hine's original submission opposing the consent.⁹⁷⁴ Venus did not comment on Shortland's suggestion of a partnership between Ngāti Hine and AFFCO. He also appears to have interpreted her request for further time as her questioning 'the qualifications of NRC staff and AFFCO consultants to discuss cultural effects', to which he replied that he had 'more than 30 years of experience dealing with Tangata Whenua issues relating to the disposal of wastewater'.⁹⁷⁵

5.4.6.4 Decision

The NRC Hearings Committee issued its decision on 8 October 2010. Despite the various cultural issues that had been raised by submitters, the committee considered the issues of contention were limited solely to adverse environmental effects:

- Will the proposed discharge have an adverse effect on the water quality of the streams and downstream water bodies?

⁹⁷¹ Circular from NRC Consents Team Administrator, 12 August 2010, NRC File 7381, Vol. 15

⁹⁷² Report and Decision of the Council, 8 October 2010, pp13-14, NRC File 7381, Vol. 16

⁹⁷³ Report and Decision of the Council, 8 October 2010, p11, NRC File 7381, Vol. 16

⁹⁷⁴ AFFCO's submission in reply, 30 August 2015, para 6.4, NRC File 7381, Vol. 15

⁹⁷⁵ AFFCO's submission in reply, 30 August 2015, NRC File 7381, Vol. 15

- Will the disposal of the highly treated effluent to land irrigation create adverse effects of odour for residents?⁹⁷⁶

The hearings committee determined that there had been no evidence presented substantiating such adverse effects; therefore, it decided to grant the consents until 30 June 2030. In doing so, it claimed to have taken into account Sections 6-8 of the RMA and the 'relevant provisions' of the RPSN and the RWSPN.⁹⁷⁷ As the hearings committee did not specify how it had taken those provisions into account, it may be assumed that they agreed with the NRC staff assessment and Garry Venus' statement of evidence.

5.4.6.5 Appeal to the Environment Court

On 2 November 2010 Toko Tipene appealed the decision of the NRC hearings committee to grant the consent applications for the milk powder plant to the Environment Court. He noted the following grounds for appeal:

- Korere to the name Moerewa (Brief History including Tuna Town & Taumatamakuku)
- Irrigation to land
- Discharge to air (emissions whether fugitive or otherwise)
- No regard to section 6 and section 7 of the Act - not applied correctly
- No regard to Te Tiriti o Waitangi
- Seek to remove Discretionary Powers applying to all Irrigation and all Discharges
- Inaccurate statements giving wrong impressions therefore wrong conclusions
- Seek review of all Discharge Consents
- Question the Integrity of Statement: Social and Economic Benefits⁹⁷⁸

Tipene sent a fax to the Environment Court a few days later outlining how unfamiliar he was with the process and requesting that the Court waive its application fee, the standard time frame for filing an appeal, and requirement to serve all parties given the cost he would incur by doing so:

I apologise for any inconvenience I have caused but at this particular point in time I am at my wits end and don't know if I am coming or going. This is the first time ever that I have ventured into this type of activity and

⁹⁷⁶ Report and Decision of the Council, 8 October 2010, p17, NRC File 7381, Vol. 16

⁹⁷⁷ Report and Decision of the Council, 8 October 2010, pp17-18, NRC File 7381, Vol. 16

⁹⁷⁸ Notice to Environment Court of appeal, 2 November 2010, NRC File 7381, Vol. 16

to tell the truth I am completely clueless as to what I am doing or in what direction I am going, howeve [sic.] since I feel so strongly about this matter I feel that I need to at least try and reach some sort of equitable solution for my people of Taumatamakuku.⁹⁷⁹

The Court agreed to waive the application fee.⁹⁸⁰ It asked AFFCO and the NRC if they objected to waiving the standard time frame, and when no reply was received, it agreed to do so. The Court also agreed to waive the requirement to serve the appeal on all parties.⁹⁸¹

AFFCO and its legal counsel Warwick Heal were sceptical of the appeal's merit. In an email to NRC staff, Heal noted that he intended to request that the appeal be struck out:

The grounds [for striking out the appeal] will be that the appeal does not show any legally sustainable grounds of appeal and that the cost of delay to the applicant (potentially millions of dollars) outweighs the "right" of the appellatant to prosecute the appeal in the circumstances.

My expert planner (and myself) do not think that the appellatant has a chance in Hades of success. He has not so far produced a carrack of evidence to support his opposition to the application, and I do not expect that to change in the Environment Court.

The application will also support the application for security for costs and will show I think, that the appeal is completely without merit and that it will fail and that Mr. Tipene runs the risk of having costs awarded against him which by his own admission he had no possibility of paying.

As best I can ascertain, Mr. Tipene's appeal has no significant community backing.⁹⁸²

It is not clear on what basis Heal assumed that Tipene did not have the support of the community, especially given that he had been authorised to speak on behalf of a number of Taumatamakuku residents in the 2008 and 2010 hearings over AFFCO consent applications.

⁹⁷⁹ Fax from Toko Tipene to Environment Court, 5 November 2010, NRC File 7381, Vol. 16

⁹⁸⁰ Fees waiver/reduction or postponement - decision of deputy registrar, 18 November 2010, NRC File 7381, Vol. 16

⁹⁸¹ Letter from Environment Court Hearings Manager to Toko Tipene, 23 December 2010, NRC File 7381, Vol. 16

⁹⁸² Email from Warwick Heal to NRC, 23 January 2011, NRC File 7381, Vol. 16

Heal filed the application to strike out the appeal on behalf of AFFCO on 25 February 2011.⁹⁸³ He argued that the appeal should be struck off for a number of reasons. Firstly, he claimed that Tipene had presented no evidence to the NRC hearings committee that the milk powder plant would have any adverse effects on the environment. Secondly, he argued that, due to Tipene's 'apparently impecunious state', he was unlikely to call any witnesses that would provide evidence of such adverse environmental effects. Heal claimed that the Court would therefore 'almost certainly' rule in favour of AFFCO award costs against Tipene, which he would be unable to afford. If the Court decided not to strike out the appeal, Heal requested that Tipene be directed to provide security for costs, set out the matters he intended to raise at the appeal, and provide an estimate of the time he would need to present his case.⁹⁸⁴

Heal's submission was accompanied by a sworn affidavit from Garry Venus supporting the request to strike out the application for appeal. Venus argued that Tipene's statement of evidence before the NRC hearings committee had gone well beyond the issues raised in his submission, yet he had presented 'no technical or other evidence' to support his claims. He also pointed out that AFFCO had been willing to adjust its consent conditions to meet some of Tipene's concerns. Venus also argued that none of the issues raised by Tipene in his appeal to the Environment Court had any grounds, and some (such as his questioning of the social and economic benefits of the proposed milk powder plant) were unrelated to his original submission to the NRC. Venus also appears to have interpreted Tipene's appeal as being entirely opposed to irrigation to land, for he argued the following:

Based on more than thirty years of experience with waste disposal projects throughout New Zealand, it is my clear understanding that land irrigation of treated wastewater is consistent with the aspirations of Tangata Whenua throughout the country including Northland. The land irrigation as proposed will use state of the art controls to avoid adverse effects, and the evidence was that land irrigation would reduce loadings on the Waiharakeke Stream at times of low flow. This represents an important positive environmental effect as I see it.⁹⁸⁵

⁹⁸³ Application by AFFCO for an order striking out the appeal or for security for costs and incidental orders, 24 February 2011, NRC File 7381, Vol. 16

⁹⁸⁴ Memorandum of counsel for applicant, 24 February 2011, NRC File 7381, Vol. 16

⁹⁸⁵ Affidavit of Garry Venus, 7 February 2011, para 8.4, NRC File 7381, Vol. 16

Venus agreed with Heal that pursuing the appeal would cost AFFCO \$40,000 - \$50,000, in particular for the services of counsel and expert witnesses. He also concluded that delaying the consents for the milk powder plant would add substantially to the costs incurred by AFFCO, including higher construction costs, loss of profits 'and also costs to the wider community with respect to loss of employment opportunities and flow-on losses of a wider economic nature'.⁹⁸⁶

The Presiding Judge for the Environment Court issued directions on 4 March 2011 that Tipene and NRC were to file and serve notices of support or opposition for the strike out application by 21 March. The Judge also requested that Tipene file and serve any further material in response by 31 March 2011, after which the strike out application would be decided on the papers.⁹⁸⁷ The NRC advised the Environment Court that it was neutral in respect of AFFCO application to strike out Tipene's appeal.⁹⁸⁸

Tipene filed a submission on 25 March 2011 outlining the concerns of himself and the residents of Taumatamakuku. His 14-page submission contained both historical and contemporary material, and was directed not only at the consent applications for the proposed milk powder plant but the entirety of AFFCO's discharge facilities. He began by discussing the history of Moerewa and how it had once been famed for the abundance of tuna in its waterways.⁹⁸⁹ He then described the impact that AFFCO had had on the Waiharakeke Stream over his lifetime:

History tells us that, in the 1950's - 1960's - and again in the early 1970's, AFFCO did discharge a highly toxic, extremely volatile stream of effluent into the Waiharakeke Stream, severely compromising the 'Waiharakeke' to the extent that all fish life and in particular, eel life were cruelly decimated. This discharge and its drastic outcome was witnessed by several people who were kids at the time, but who are now rather mature adults aged in their 50's and 60's. This action destroyed what until then, had been considered by Maori throughout the Bay of Islands as "Pataka Tuna".

...

⁹⁸⁶ Affidavit of Garry Venus, 7 February 2011, para 9.2, NRC File 7381, Vol. 16

⁹⁸⁷ Circular from Environment Court Case Manager, 4 March 2011, NRC File 7381, Vol. 16

⁹⁸⁸ Letter from Consents Senior Programme Manager to the Environment Court Case Manager, 7 March 2011, NRC File 7381, Vol. 16

⁹⁸⁹ Toko Tipene on behalf of the people of Taumatamakuku, 25 March 2011, pp1-2, NRC File 7381, Vol. 16

This act of discharging said toxic wastes [sic.] into the Waiharakeke also destroyed the 'Wairua', or the very essence of the river. The 'Wairua' of any river is crucial to Maori in the one instance because it is life sustaining in many and varied [sic.] ways, for instance it is the habitat of that most staple of Maori food, the eel. It can be used for cooking, drinking, and all ablutions etc. And at the same time it can offer holistic healing to certain people which is still quite a common practice among the more mature Maori of certain areas even now, but more importantly it provides an almost tangible link between the people and the river, and it provides the link to the trilogy very sacred to Maori whakapapa, an embodiment of their Pepeha.⁹⁹⁰

Tipene then listed the objections of the Taumatamakuku residents. He advised that it was chiefly the discharge of wastewater to the Waiharakeke Stream and to farmland during times of low flow that the residents were opposed to. He noted that they were not concerned with the water being drawn from the Kotukutuku Stream, or the discharge of treated human effluent to land. However, they considered that the consents that had been issued to AFFCO in 1996 had not properly applied the principles of the Treaty of Waitangi or Sections 6-8 of the RMA.⁹⁹¹ As Tipene explained later in his submission, he believed that AFFCO had consulted with the wrong people about its proposed plant upgrades in the 1990s:

AFFCO are claiming that they consulted with Te Runanga o Taumarere, an organisation that at the time AFFCO mistakenly assumed had the mana to speak as Tangata Whenua or Kaitiaki for and on behalf of the people living in the Moerewa/Taumatamakuku area. Be advised that Te Runanga o Taumarere does not have the mana to speak or to advise on any of these issues as AFFCO are assuming, it is people of Taumatamakuku, who live in the village located on the Eastern boundary of AFFCO's property and a distance of Two hundred metres away from AFFCO's Meat Processing Plant [sic.], who are the recognised Tangata Whenua or Kaitiaki of this area, simply because they are the encumbe [sic.] residents, and have been since 1950. Te Runanga o Taumarere have mana only in Karetu, a Maori settlement approximately Seventeen (17) kilometres distant from Moerewa and Taumatamakuku.

...

To explain the status of the people of Taumatamakuku to the land ... In the first instance; Ngati Hine are the original settlers of this land and as such

⁹⁹⁰ Toko Tipene on behalf of the people of Taumatamakuku, 25 March 2011, p2, NRC File 7381, Vol. 16

⁹⁹¹ Toko Tipene on behalf of the people of Taumatamakuku, 25 March 2011, pp3-4, NRC File 7381, Vol. 16

are considered to be the Tangata Whenua. In the second instance; The people of Taumatamakuku are people originally from hapu and Maori settlements throughout the wider area of Tai Tokerau, but who have been living firstly at Tuna Town and then relocating to Taumatamakuku, where they have been living for the last 50 - 60 years. That gives them the status of Kaitiaki, or the guardians of the land.⁹⁹²

Tipene reiterated that the residents of Taumatamakuku were opposed to all resource consent applications relating to the proposed milk powder plant, due in large part to the similar activities of the former Moerewa dairy plant in the 1980s that had allegedly caused terrible odours and fly problems.⁹⁹³ He also argued that the activities of the AFFCO plant were largely failing to 'recognise and provide for' any of the conditions in Section 6 of the RMA, including the intrinsic values of ecosystems, the maintenance and enhancement of the quality of the environment, and the effects of climate change (in particular regarding the increased flooding Tipene had observed during the 2000s that occasionally caused AFFCO's oxidation ponds to overflow).⁹⁹⁴ Tipene also disagreed that the milk powder plant would bring economic and social benefits to Moerewa as the town's business sector had been in decline since the 1990s. In addition, he did not believe that the 10-15 jobs that the plant would create could justify the allegedly negative impacts its operation would have on the 300 residents of Taumatamakuku.⁹⁹⁵ He concluded by requesting that the Court should overturn the proposal to build a milk powder plant at AFFCO.⁹⁹⁶

Heal replied on behalf of AFFCO that, while Tipene's memorandum had provided notice of the matters which he intended to raise through the appeal, it had done so 'in a meandering and circuitous way'. He therefore sought an order from the Environment Court that Tipene be required to set out his grounds for appeal and the names of any witnesses he intended to call 'in a concise manner'. If he did so, Heal stated that AFFCO would drop its application to strike out the appeal. As Tipene had not responded on the

⁹⁹² Toko Tipene on behalf of the people of Taumatamakuku, 25 March 2011, pp4, 6-7, NRC File 7381, Vol. 16

⁹⁹³ Toko Tipene on behalf of the people of Taumatamakuku, 25 March 2011, pp5-6, NRC File 7381, Vol. 16

⁹⁹⁴ Toko Tipene on behalf of the people of Taumatamakuku, 25 March 2011, pp6-9, NRC File 7381, Vol. 16

⁹⁹⁵ Toko Tipene on behalf of the people of Taumatamakuku, 25 March 2011, pp9-10, NRC File 7381, Vol. 16

⁹⁹⁶ Toko Tipene on behalf of the people of Taumatamakuku, 25 March 2011, p14, NRC File 7381, Vol. 16

subject of security and time requirements, Heal sought further orders that Tipene be required to pay \$10,000 in security costs and provide an estimate of how long he needed to present his case.⁹⁹⁷

The Presiding Judge issued directions on 26 April 2011 which largely agreed with Heal's assessment of Tipene's submission. He argued that it was unclear whether Tipene's submission was a summary of his case, a submission on the merits of the case, a statement of evidence, or a combination of all three. While the Judge was 'conscious of the fact that Mr Tipene is acting on his own behalf in these proceedings', he considered that Tipene's submission had not set his case out in a concise manner. He therefore directed that Tipene advise the court by 13 May as to whether his submission contained all of the information which he wished to put before the Court, and whether he intended to call evidence from any person other than himself. He also asked if Tipene would be willing to participate in mediation. The Judge deferred a decision on the matter of security for costs until this information had been received.⁹⁹⁸

Tipene replied on 18 May with the information requested by the Presiding Judge. He noted that his submission of 25 March contained all the points that the Taumatamakuku community were concerned about, but that he wished to reserve the right to respond to any of AFFCO's claims or statements. He also commented on Heal's characterisation of his submission:

I will admit that my submission to the court may be in a 'meandering and circuitous fashion', for which I humbly apologise. However, as the content of the submission is based on 'cause and effect', I feel strongly that to edit or to condense the submission in any way, would rob it of its [sic.] essence thereby substantiating AFFCO's claim that said submission is a matter of little import and, "trivial and vexatious". Therefore, and with all due respect to the Court I would ask that my appeal be considered on the merits as submitted.

⁹⁹⁷ Further memorandum of counsel for applicant, 10 April 2011, NRC File 7381, Vol. 16

⁹⁹⁸ Minute and directions of the Environment Court, 26 April 2011, NRC File 7381, Vol. 16

Tipene also noted that he intended to call an officer from the Northland District Health Board as a witness, subject to their availability, and that he would welcome the opportunity to participate in mediation.⁹⁹⁹

The Presiding Judge held a teleconference on 18 July 2011 with Tipene and Heal. While no minutes for this teleconference were found in the NRC files, it appears to have related primarily to the question of security for costs. Tipene advised the Court that, were costs awarded against him, he would not be able to meet them. He also advised that his submission dated 25 March contained all of the material which he wished to place before the Court.¹⁰⁰⁰ In a post-conference direction, Heal was directed to file a memorandum by 1 August advising the number of witnesses that AFFCO intended to call, any additional submissions in support of the application for costs, a likely estimate of costs, and a suggested timetable for a hearing. Tipene was granted leave to respond to these submissions by 15 August if he wished.¹⁰⁰¹

Heal responded via submission on 27 July that the probable costs to AFFCO for hearing the appeal amounted to \$90,100, based on six technical witnesses (including Buddy Mikaere on 'Treaty of Waitangi/maori [sic.] issues') and legal costs. The broad range of witnesses and associated cost was due to the failure of Tipene to provide a concise summary of the issues he intended to raise through the appeal:

It is difficult to estimate what the probable reduced cost of conducting the appeal might have been if Mr. Tipene had been more specific in respect of the issues that he proposes to raise at the appeal. The above estimate is based on the applicant having to "cover all of the bases" given the inchoate nature of the appeal to date.¹⁰⁰²

Heal also questioned whether Tipene truly represented wider public or Māori concerns:

[T]here is some doubt that the appellant does in fact represent the wider public interest because of the fact that the appeal is not made by or supported by any formal Hapu or Iwi group, and the Court has only Mr Tipene's claim that he does so. I note that in his original submission to the

⁹⁹⁹ Letter from Toko Tipene to the Environment Court Case Manager, 18 May 2011, NRC File 7381, Vol. 17

¹⁰⁰⁰ Decision on application for security for costs, 15 September 2011, para 7, NRC File 7381, Vol. 17

¹⁰⁰¹ Minute and directions of the Environment Court, 18 July 2011, NRC File 7381, Vol. 17

¹⁰⁰² Further memorandum of counsel, 27 July 2011, para 2, NRC File 7381, Vol. 17

Northland Regional Council in respect of the matter Mr. Tipene did not claim to represent anyone other than himself and that among the submitters to the Council in respect of the application were Te Runanga [o] Ngāti Hine who presumably represent tangata whenua. That organisation has not chosen to appeal, and has presumably accepted the Hearing Commissioner's decision.¹⁰⁰³

While Heal was correct that Tipene's original submission to the NRC was not made on behalf of anyone else, he did not mention that Tipene had been chosen to represent the concerns of a number of submitters, as well as the broader Taumatamakuku community, at the NRC hearings in 2008 and 2010. Furthermore, it is a matter of speculation as to why Ngāti Hine were not involved in the appeal, although in the Lake Ōwhareiti case study (section 5.5 of this chapter) the Rūnanga made it clear that they felt obligated to defer to the the hapū and whānau who held mana in a particular area. Heal concluded that the appeal was 'weak in the extreme' and had 'zero' chance of success, which would likely result in the Court awarding costs against Tipene. Given Heal's assumption that Tipene would oppose an order for costs, he argued that Tipene would '[use] his impecunious position to put unfair pressure on the applicant bearing in mind the apparent extreme weakness of his appeal.'¹⁰⁰⁴ As the estimated costs were higher than anticipated, Heal requested that the Judge order that Tipene provide costs for security in the amount of \$20,000, although he anticipated that this was less than the Court would order Tipene to pay in the event of his appeal being lost.¹⁰⁰⁵

The Presiding Judge issued his decision regarding the application for security for costs on 15 September 2011. The Judge assessed two factors in reaching his decision – whether Tipene would be able to meet an award for costs (which he was not, the Judge concluded), and the merits and bona fides of Tipene's case. As Tipene had previously advised that his submission dated 25 March (which the Judge referred to as Tipene's 'Statement of Position'), contained all of the material he intended to place before the Court, the Judge based his assessment on the submission:

¹⁰⁰³ Further memorandum of counsel, 27 July 2011, para 4, NRC File 7381, Vol. 17

¹⁰⁰⁴ Further memorandum of counsel for AFFCO, 27 July 2011, paras 3, 5, NRC File 7381, Vol. 17

¹⁰⁰⁵ Further memorandum of counsel for AFFCO, 27 July 2011, paras 6, NRC File 7381, Vol. 17

It seems apparent from Mr Tipene's Statement of Position that he speaks as a person with longstanding association with the Moerewa site and its surrounding area. He does not claim any expertise or experience in matters relating to the effects of discharges, economic impacts or the design of waste water treatment systems all of which are issues which he has addressed in his Statement of Position. I do not doubt the genuineness of the concerns which he has expressed regarding these matters but on their face those concerns are unsubstantiated by evidence from witnesses with appropriate expertise in the matters which Mr Tipene has raised.¹⁰⁰⁶

The Judge then weighed Tipene's submission against the decision of the NRC Hearings Committee to grant the consents and the additional expert evidence that AFFCO was likely to present to the Environment Court:

The evidence which lead the Council Hearing Committee to make [its] findings is described briefly in the Council decision. Assuming that similar evidence will be presented by Affco at the appeal proceedings (and its advice as to the witnesses to be called indicates that an even wider range of evidence is to be given) then it appears highly unlikely that Mr Tipene's case, based entirely on his own unsubstantiated opinion, will succeed.

In making that finding, I appreciate that some of the matters raised by Mr Tipene arise from aspects of particular concerns to tangata whenua where Mr Tipene claims to represent a view to which the Court must have regard. Even weighting [sic.] that factor as high as I can in my considerations, nothing in Mr Tipene's Statement of Position presents a substantive challenge to the main findings of fact made by the Council which are likely to be determinative in the outcome of these proceedings.¹⁰⁰⁷

The Judge therefore agreed that it was 'entirely appropriate' for Tipene to provide security for costs in the amount of \$20,000, and directed that he do so within 15 working days. If he did not, the Judge proposed to strike off the appeal.¹⁰⁰⁸

No further correspondence from Toko Tipene appears in the NRC AFFCO file after this point. On 11 October 2011 the Environment Court advised Tipene, AFFCO and the NRC that, as no security of costs had been provided by Tipene by the deadline, the appeal

¹⁰⁰⁶ Decision on application for security for costs, 15 September 2011, para 15, NRC File 7381, Vol. 17

¹⁰⁰⁷ Decision on application for security for costs, 15 September 2011, paras 17-18, NRC File 7381, Vol. 17

¹⁰⁰⁸ Decision on application for security for costs, 15 September 2011, paras 22, 24, NRC File 7381, Vol. 17

was struck out.¹⁰⁰⁹ The new and revised resource consents were subsequently confirmed by the NRC.

5.4.7 Subsequent events

The AFFCO community liaison committee still appears to be in existence, although it now meets annually instead of quarterly as had been originally envisioned. This appears to have evolved naturally, although the committee members officially agreed at the 28 July 2014 meeting that they would only meet annually henceforth.¹⁰¹⁰ Toko Tipene no longer appears to attend the meetings – the community representatives at the meeting on 12 July 2013 were Syd Parata and Tama Wihongi, and on 28 July 2014 they were Syd Parata and Christian Prime.¹⁰¹¹ At the July 2014 meeting the attendees discussed the need for additional community input, which AFFCO promised to approach the community about prior to their next meeting in 2015.¹⁰¹²

5.4.8 Conclusion - AFFCO meat processing plant

The history of the AFFCO meat processing plant in Moerewa is closely interwoven with that of the town itself. Apart from being the region's primary employer, AFFCO also draws water from, and discharges to, the Waiharakeke, Ōtiria, and Kotukutuku Streams which run alongside Moerewa. As the population of Moerewa is predominantly Māori, and there are several marae nearby (including Ōtiria), there is a degree of tension between the plant's economic benefits and its impacts on the local environment, customary resources and the practice of kaitiakitanga.

Māori were first consulted on the operation of the AFFCO plant in 1993 and 1994, when the plant owners sought a suite of new resource consents as part of a major plant upgrade. During the course of several hui with Te Rūnanga o Taumārere and Te Awa Tapu o Taumārere, AFFCO agreed to adopt a full land-based disposal model for human effluent and a partial land-based treatment of other wastewater (in the form of a wetland and a rock bed). This was done primarily to meet Māori cultural concerns, and

¹⁰⁰⁹ Circular from Environment Court Regional Manager, 11 October 2011, NRC File 7381, Vol. 17

¹⁰¹⁰ AFFCO Moerewa community liaison meeting, 28 July 2014, NRC File 7381, Vol. 18

¹⁰¹¹ Letter from NRC Environmental Monitoring Officer to AFFCO, 22 July 2013; AFFCO Moerewa community liaison meeting, 28 July 2014, NRC File 7381, Vol. 18

¹⁰¹² AFFCO Moerewa community liaison meeting, 28 July 2014, NRC File 7381, Vol. 18

demonstrated a positive attempt to incorporate tikanga Māori into standard engineering practice. As a result, the consent applications were approved by the NRC for a period of 10 years with little objection. Nevertheless, plant odour was raised as an issue by local residents at the time, and several environmental monitoring studies produced after the consents were granted demonstrated the detrimental effects of the plant's activities on the water quality and macroinvertebrate community of the Waiharakeke Stream.

In contrast, the process of renewing AFFCO's resource consents in the mid-2000s demonstrated little in the way of consideration of Māori values. Indeed, AFFCO does not appear to have consulted with Māori as part of preparing its application, nor did the NRC insist that they should. Perhaps as a consequence of this, the NRC received 21 submissions opposing the application after it was publicly notified in January 2007. The majority of these were from local Māori residents living in the Taumatamakuku subdivision next to the plant, and were concerned with plant odour, contamination of waterways, the impact on flora and fauna, and health effects. These concerns were considered by the NRC, its staff, and AFFCO as if they had come from general members of the community rather than from Māori. As a consequence, the assessment of Māori concerns under Sections 6-8 of the RMA and Section 6 of the RWSPN was minimal, although the Council did propose the formation of a community liaison committee to address submitters' concerns. The NRC convened a hearing on 9 December 2008, where evidence was presented by three AFFCO technical witnesses and two local Māori residents, Toko Tipene and Syd Parata. The technical witnesses reiterated their belief that they had met Māori concerns through the installation of partial land-based treatment in the 1990s. They also stressed the economic benefits that the plant brought to the region. The NRC subsequently decided in January 2009 to grant the consents until 30 June 2030. It claimed to have taken Sections 6-8 of the RMA into account in its decision, although it did not elaborate on how it had done so.

The impact of the AFFCO plant discharge on the Waiharakeke Stream and Kawakawa River were also raised as an issue during the consent renewal. In the NRC staff assessment of AFFCO's consent application, the plant was identified a major source of nutrients to the overall Kawakawa River, which was impacting on water quality and the

macroinvertebrate community. As a result, one of the conditions attached to the consents was that AFFCO investigate the effects of nutrients in the wastewater discharge on the Waiharakeke Stream and downstream water bodies including the Kawakawa River. Two subsequent reports produced by AFFCO concluded that the discharge was not having a major adverse impact on the receiving waters; however, on both occasions, these conclusions were disputed by NRC experts.

AFFCO's consent application to build a milk powder plant in 2007 followed a similar path as its 2005 application. It generated considerable opposition from the Māori community of Moerewa (many of whom had submitted against the previous consents in 2005), which resulted in an NRC hearing to determine the application in 2010. One crucial difference in this instance was that, while the opposing submissions raised a broad range of concerns, several submitters specifically raised objections relating to Māori cultural values and customary river resources. These included local community members as well as Te Rūnanga o Ngāti Hine. Despite this fact, the obligations of the NRC to Māori under the RMA and the RWSPN appear to have been considered in a once-over-lightly fashion by AFFCO, NRC staff and the NRC Hearings Committee, with little acknowledgement that Māori cultural concerns had even been raised. This is especially striking given that Ngāti Hine is a recognised iwi authority and was recognised as kaitiaki of the Taumārere waters by the Environment Court in 1998 as part of Te Awa Tapu o Taumārere. The NRC granted the consent on a narrow assessment of adverse environmental effects. This was despite an at best a long-standing patchy environmental record by AFFCO with its meatworks, and despite the request of Tui Shortland on behalf of Ngāti Hine that a decision be deferred until further information had been gathered to answer the various 'cultural unknowns'.

One of the opposing submitters to the 2007 consent applications, Toko Tipene, appealed the decision of the NRC to the Environment Court. From the outset it was clear that he was unprepared and under-resourced to formulate the kind of concise and targeted evidence that the Environment Court was after. Tipene was also faced with a well-resourced AFFCO who were prepared to call in several expert witnesses to counter every aspect of his broad appeal. AFFCO were expressly dubious of the merit of Tipene's appeal, and sought to either have it struck out or else secure a direction from the Court

ordering Tipene to pay costs for security. When the Court directed that he pay said costs to the amount of \$20,000 or else have his appeal struck out, Tipene simply withdrew from the process. He also appears to have withdrawn from the AFFCO community liaison committee, which had been formed in part because of his opposition to AFFCO's resource consents.

5.5 Local study #2: Lake Ōwhareiti

Figure 32: Hōri Packer and Louis Tana at Lake Ōwhareiti, March 2015



(Source: Photograph by Ross Webb, 14 March 2015)

5.5.1 Background

Lake Ōwhareiti is located to the west of Moerewa and Kawakawa, at the base of Pouterua volcano. It is a shallow lake covering approximately 110 hectares (although this has varied significantly over time), and is surrounded predominantly by farm land and some residential housing. With no natural above ground outlet, Lake Ōwhareiti is believed to drain to several nearby springs and waterways through a series of

underwater channels and via ground seepage through the lakebed. The Pouerua volcanic cone and the surrounding landscape, including the northern portion of Lake Ōwhareiti, were the subject of a detailed archaeological programme in the early 1980s led by a team from the University of Auckland.¹⁰¹³ This programme revealed several settlement and pā sites, including two kāinga on the shore of the lake.¹⁰¹⁴ It is possible that one of these sites was related to the pa that a hapū from Taiamai sought to build on a headland overlooking the lake in early 1840.¹⁰¹⁵ As a consequence of that survey, the area was declared a Heritage Precinct in 1990 upon application by Te Rūnanga-Ā-Iwi o Ngāpuhi.¹⁰¹⁶

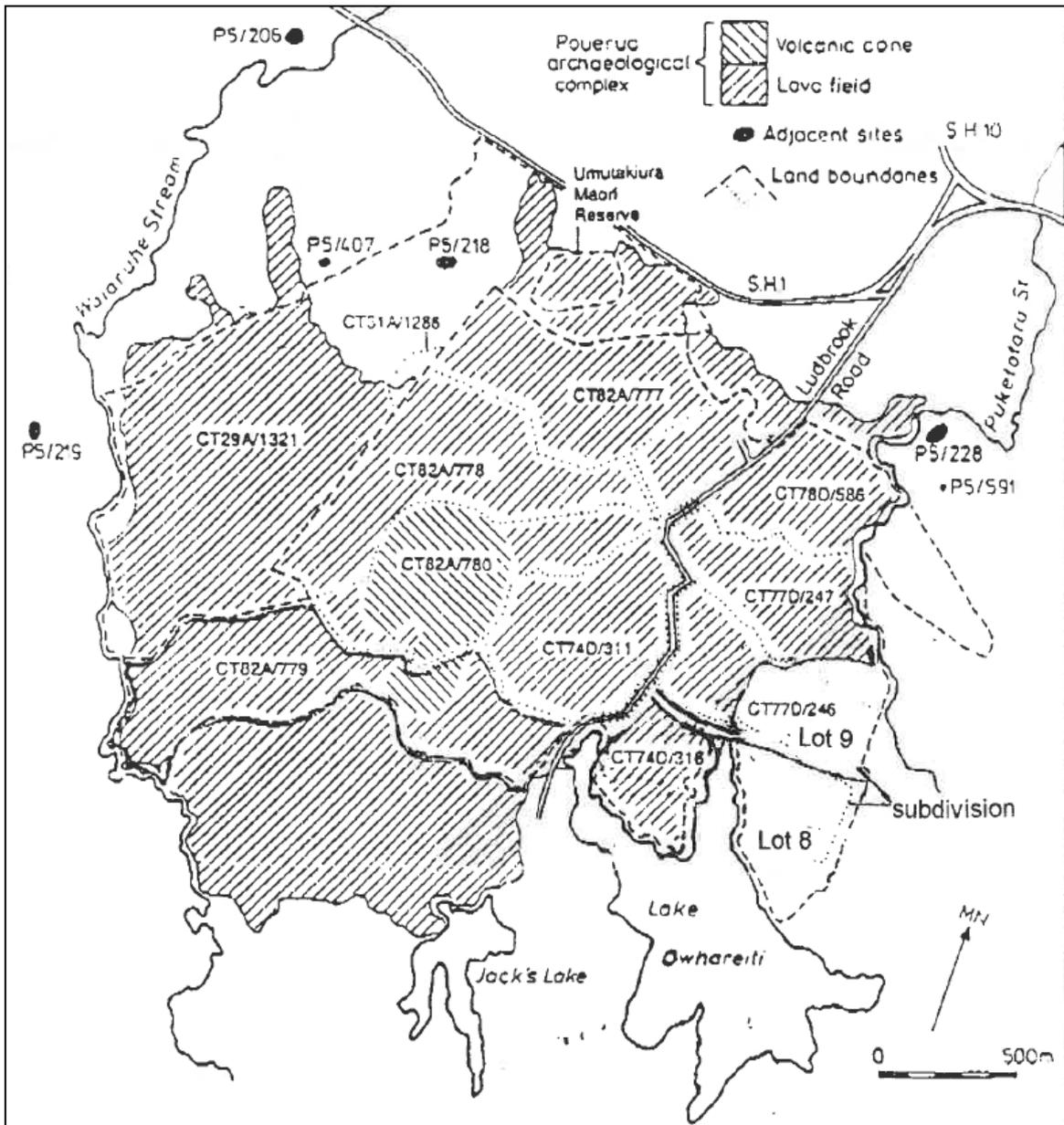
¹⁰¹³ Michael Taylor, 'Archaeological monitoring of the construction of a road through the Pouerua (Pakaraka) Heritage Precinct', *Archaeology North*, October 1998, p7. FNDC File 1980120 1

¹⁰¹⁴ Doug G. Sutton, Louise Furey, Y. M. Marshall, *The Archaeology of Pouerua* (Auckland, Auckland University Press, 2003), p19

¹⁰¹⁵ Philippa Wyatt, *Issues Arising from the Evidence of F. Sinclair (Doc#I3), D. Armstrong (Doc#J3), D. Armstrong (Doc#I4) and D. Armstrong and B. Stirling (Doc#J2) in reference to Pre-Treaty Land Transactions*, (Waitangi Tribunal, 1995) Wai 45 #L6, p32

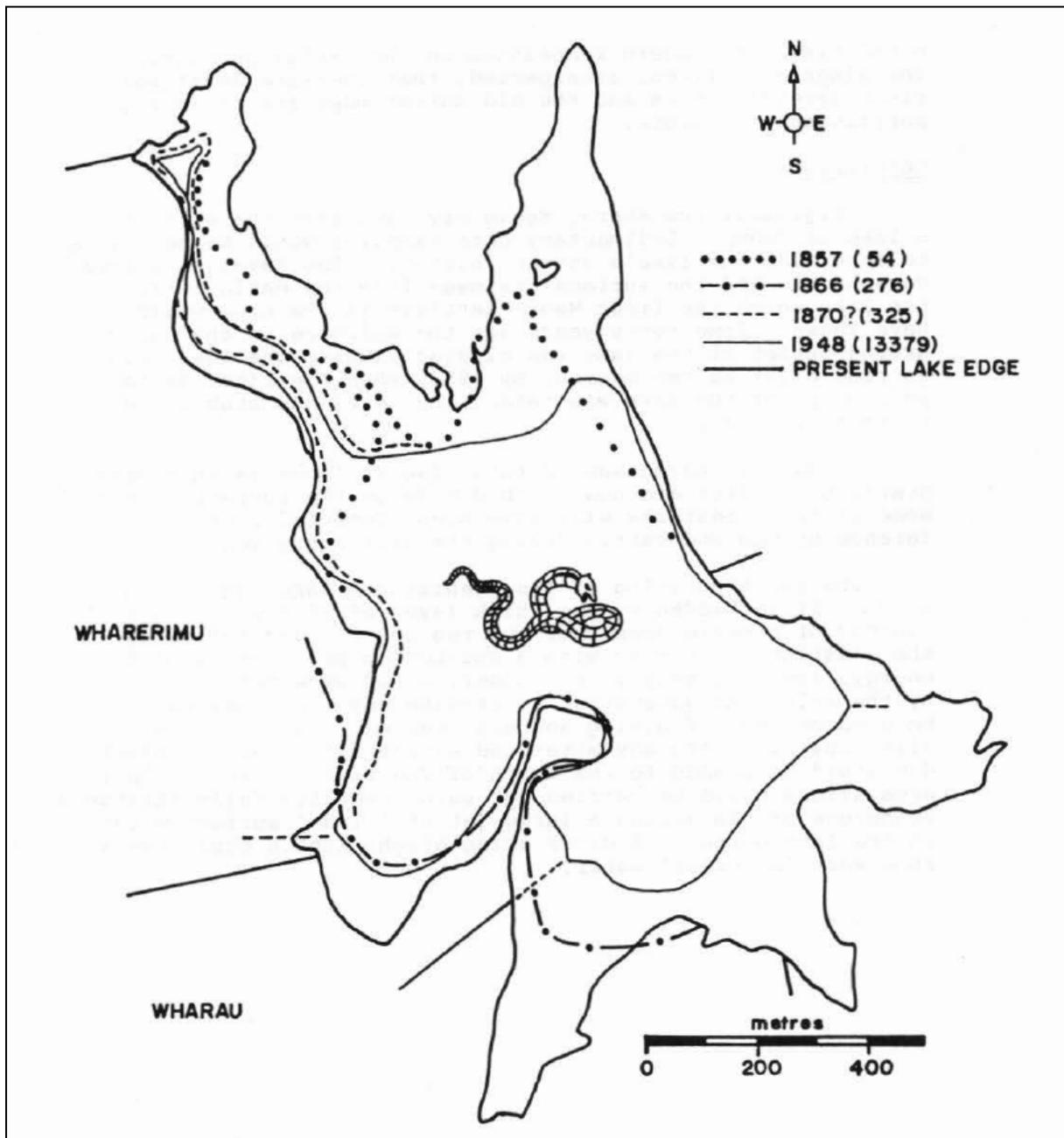
¹⁰¹⁶ Heritage New Zealand, 'Pouerua', <http://www.heritage.org.nz/the-list/details/6711> (accessed 2 May 2016)

Figure 33: Pouerua Heritage Precinct



(Source: Michael Taylor, 'An Archaeological assessment of a proposed subdivision of lot 8 and pt lot 9, DP 12824', *Archaeology North*, June 1997, p 4, FNDC File 1980120 1)

Figure 34: The historical lake edge of Lake Ōwhareiti taken from early survey maps



(Source: John Campbell, 'Underwater survey of Lake Ōwhareiti, *New Zealand Archaeological Association Newsletter*, Vol. 29. No. 3, 1986, p 187)

Lake Ōwhareiti is of spiritual and cultural significance to Māori. According to Ngāti Hine kaumātua and lake trustee Louis Tana:

In years gone when Tohunga (Priests) were in their heyday [sic.], Turoro and mauiui (the sick and confirmed) were brought to the lake for pure (purification and whakaroa whakaora) healing.

Equally the lake resources are of tremendous cultural value and the stewardship of Tuna (long and short finned eel) Kuta (*Scirpus Lacustris*) Parera (native duck) and of late introduced water fowl of various species.¹⁰¹⁷

The lake's tuna population are of particular importance to Māori. A kōrero tuku iho of Ngāti Hine tells of a taniwha named Rangiriri who travelled inland to Ōwhareiti and Kaiwae after a fierce battle with another taniwha named Pokopoko at Derrick's Landing:

On his way, [Rangiriri] encountered young children at Te Rere i Tiria, (across the road from where the Otiria Marae now stands), engaged in a most interesting exercise. He observed them scooping up the tangariki (elvers) in small tightly woven kete from the pool halfway up the falls, taking them up to the top of the pools and then releasing them back into the water so that they could continue their journey inland to Kaiwae and Owhareiti. This was to assist them on their journey as they had become tired climbing the first part of the falls. He gave the name to this process that the children were doing Te Puna i Keteriki (the pool for gathering, using finely woven kete).¹⁰¹⁸

A natural underground outlet from the northeastern tip of Lake Ōwhareiti was one traditional location for tuna harvesting. According to the late Lady Rose Henare, this outlet was destroyed by blasting in the mid-twentieth century, which contributed to the rising of the lake level by several metres in subsequent years.¹⁰¹⁹ At a research hui in Kawakawa on 11 June 2016, Lake Ōwhareiti resident and Trustee Hōri Packer explained that a local farmer had dynamited the northern outlet without realising the ongoing environmental issues this would cause.

The history of Lake Ōwhareiti from European settlement until 1991 is defined in part by the effort by Te Raki Māori to have their kaitiaki status recognised through title to the lake bed. According to David Alexander, the land surrounding Lake Ōwhareiti was part of the Pouerua block that was purchased by Henry Williams in 1835 (and retroactively surveyed in 1851). In the 1940s an application for investigation of title to the lake was lodged, possibly as a result of the success of Ngāpuhi in having their interests in Lake

¹⁰¹⁷ Louis Tana, Lake Owhareiti Statement of Evidence, April 1998, p1, FNDC File 1980120 1

¹⁰¹⁸ Brief of Evidence of Ngāti Hine, Wai 1040 #M27, para 206

¹⁰¹⁹ John Campbell, Underwater survey of Lake Owhareiti, *New Zealand Archaeological Association Newsletter* (Vol. 29, No. 3, 1986), p186

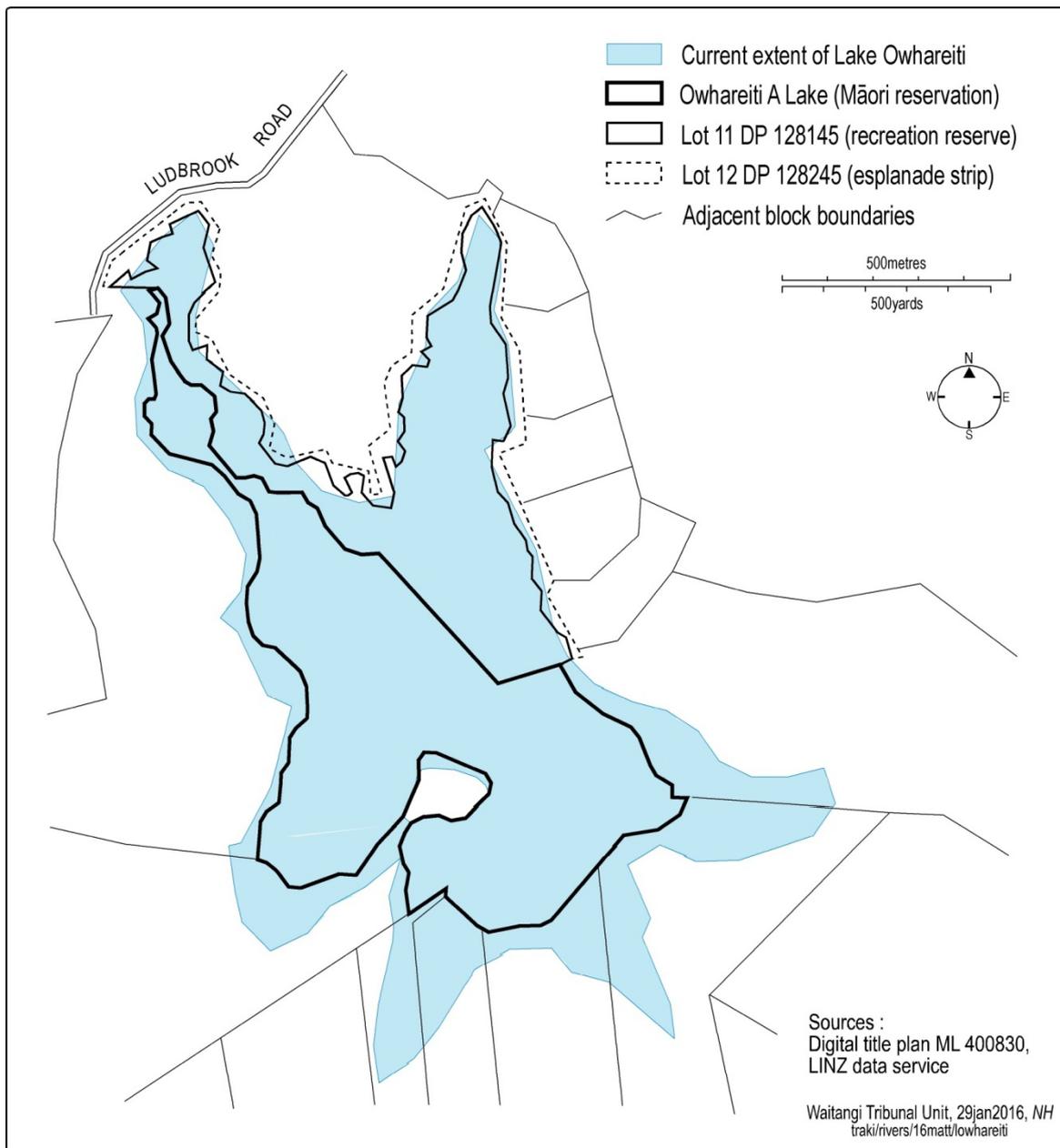
Ōmāpere recognised by the Native Land Court. As the lake had expanded since 1851 onto the land purchased by Williams, only part of the lake bed remained without title. This portion of the lake bed (amounting to approximately 45 hectares) was set aside as a Māori reservation in February 1964 for the use and benefit of Ngāti Hine as a fishing ground. During the 1989 subdivision of the original Williams purchase, the portion of the lake bed that formed part of that purchase (approximately 28 hectares) was vested in the Bay of Islands County Council (now the Far North District Council) as a recreation reserve. In addition, an esplanade strip was laid off along the edges of the recreation reserve. Alexander argued that neither the Department of Survey and Land Information nor the Department of Justice (District Land Registrar) consulted with Māori about the subdivision, due in part to a lack of certainty regarding who to consult with.¹⁰²⁰ This uncertainty may explain why 13 Lake Ōwhareiti Trustees were appointed by the Māori Land Court in September 1989 to administer the portion of the lake bed that had been set aside as a Māori reservation.¹⁰²¹ The amount of water in Lake Ōwhareiti has increased steadily since 1989, the causes and impacts of which are discussed throughout this local study. As a result, the lake now covers all of the Māori reservation, most of the recreation reserve, part of the esplanade strip, and parts of several privately owned blocks (see figure 35).

It is worth reiterating that 'ownership' is more than a question of land title. Customary law, including the tenets of kaitiakitanga and tino rangatiratanga, are also part of the discussion of who 'owns' the lake. For example, it is clear throughout this case study that the Lake Ōwhareiti Trustees consider themselves to be kaitiaki over the entire lake (including the water and fauna that it contains), rather than simply the owners of part of the land that lies at the bottom of the lake. Our discussion in this case study focuses on to extent to which this customary authority and ownership has been recognised and protected by the Crown.

¹⁰²⁰ Alexander, *Land-based Resources, Waterways, and Environmental Impacts*, pp624-629

¹⁰²¹ 17 KH 212. The trustees were Caroline Beattie Wihongi, Hori Packer, George Owen, Harriet Simeon, Parata Cherrington, Hori Te Tenga Cherrington, George Edwards, Pane Cooper, Jim Shortland, Mataroria Brown, Kene Martin, Lou Tana, and Jim Tipene

Figure 35: Ownership of the bed of Lake Ōwhareiti



5.5.2 Issues raised by claimants

The tuna population which resides in Lake Ōwhareiti, and the methods by which they migrate in and out of the lake, are the main concern raised by Te Raki claimants concerning the lake. Season-Mary Downs and Tui Shortland presented evidence that tuna migrate in and out of the lake via a series of interconnected underground channels

that lead to neighbouring springs and waterways.¹⁰²² One such underground channel, according to Emma Gibbs-Smith, ran via the Puketotara Stream and various other waterways before reaching the Waitangi River.¹⁰²³ According to Shortland and Downs, these underground channels were destroyed as a result of earthworks that were constructed as part of a subdivision beside the lake.¹⁰²⁴ When we visited the lake in March 2015, we were told by two lake Trustees that the alleged collapse of these channels was a primary cause of the periodic overflowing of the lake in the 2000s, in particular the major flooding event in July-August 2008.¹⁰²⁵ Other claimants have argued that pollution (presumably from neighbouring farms) has further depleted the number of tuna residing in the lake.¹⁰²⁶

5.5.3 Lakeland subdivision, 1997-1998

5.5.3.1 The initial subdivision proposal

In 1997, Lake Ōwhareiti landowner Stan Morley submitted an application to the Far North District Council to subdivide two lakeside blocks into seven smaller lifestyle lots, and to construct a private access road to the new lots over an existing farm track that ran off Ludbrook Road. The application was prepared by environmental consultants Stephenson and Williams. It was divided into two parts – an assessment of the effects on the Pouerua Heritage Precinct, and an assessment of environmental effects. The application noted that, while the subdivision itself lay outside the Pouerua Heritage Precinct, the private access road – which proposed widening the existing farm track – was within the Precinct.¹⁰²⁷ The applicant therefore commissioned an archaeological assessment of both the access road and the subdivision. This assessment, which was prepared by Michael Taylor of Archaeology North, concluded that:

The proposed access road across the Pouerua Heritage Precinct will have no effect on nearby archaeological features which are well set apart from

¹⁰²² Brief of Evidence of Ngāti Hine, Wai 1040 #M26, para 59; Transcript of hearing week nine, Wai 1040 #4.1.14, pp876-877.

¹⁰²³ Brief of Evidence of Emma Gibbs-Smith, Wai 1040 #B18(a), para 120

¹⁰²⁴ Brief of Evidence of Ngāti Hine Wai 1040 #M26, para 59; Transcript of hearing week nine, Wai 1040 #4.1.14, pp876-877.

¹⁰²⁵ Research hui at Lake Ōwhareiti, 14 March 2015

¹⁰²⁶ Brief of Evidence of Wayne Graham Stokes, Wai 1040 #H9, para 24

¹⁰²⁷ Letter from Janet Stephenson to FNDC Environmental Services, 30 July 1997, p2, FNDC File 1980120

the road on top of steep hills. Because the road follows an existing formed track, and is confined by landforms and existing fences and shelter belts, it will have little, if any, additional impact on the archaeological landscape.

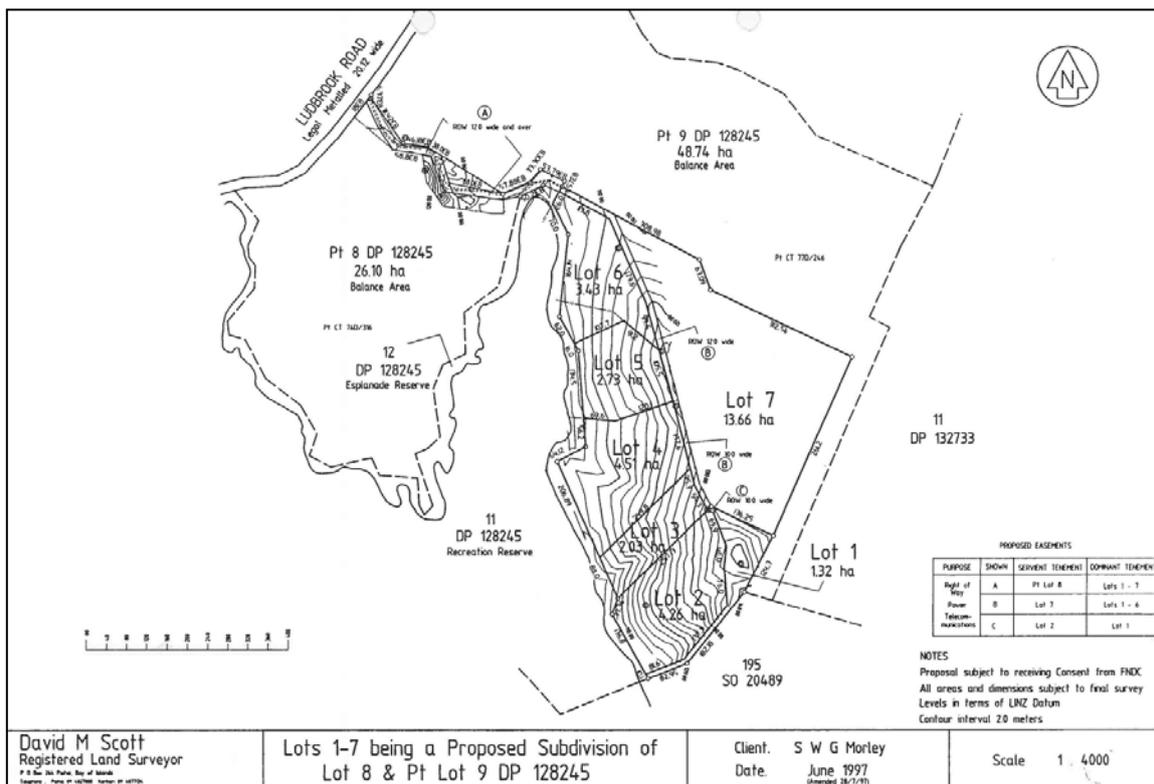
No archaeological sites have been located on the area of the proposed subdivision.

...

Should additional archaeological sites come to light during the construction of the access road or any development subsequent to the subdivision they remain protected from modification, damage or destruction by the Historic Places Act (1993) and assistance should be sought.¹⁰²⁸

It is worth noting that neither the archaeological assessment nor the protections of the Historic Places Act extended to puru tuna (underground wetland habitats for tuna) which were (and remain) a primary concern of Ngāti Hine.

Figure 36: Proposed Lakeland subdivision lots and access road



(Source: Letter from Janet Stephenson to FNDC Environmental Services, 30 July 1997, FNDC File 1980120 1)

¹⁰²⁸ Michael Taylor, 'An archaeological assessment of a proposed subdivision of lot 8 and pt lot 9, DP 128245', Archaeology North, June 1997, p7, FNDC File 1980120 1

The assessment of environmental effects traversed a number of matters, including land use, traffic, visual effects, and natural hazards. As discussed below, two of the matters covered in the assessment proved to be of particular importance to the application – cultural/spiritual concerns and water quality. The application noted that Morley had ‘consulted with both Ngapuhi and Ngatihine’ who had ‘no cultural or spiritual concerns regarding the proposal’ and had given their ‘full support’.¹⁰²⁹ The written approvals of Rudy Taylor (Te Rūnanga-Ā-Iwi o Ngāpuhi) and Reweti Pomare Kingi Paraone (Te Rūnanga o Ngāti Hine) were included in the application. Regarding water quality, the assessment noted:

The soils in the proposed subdivision are extremely well drained, based on volcanic ash. The sites have ample room for on-site effluent disposal.

At present the quality of the water in the lake is affected by stock entering the lake from the property, as it is not fenced off. By subdividing and making the land available for smallholdings, it is likely that there will be less stock and greater protection of the lake foreshore as a result of fencing and beautification.¹⁰³⁰

The reasoning of the second paragraph was somewhat disingenuous. If the state of the lake foreshore was a genuine concern of the applicant, he could easily have addressed it himself by erecting a fence and planting some native flora. However, as Chapter Two outlines (and as Morley would likely have known), preventing stock from entering lakes and waterways was not enforced by the NRC. The only way that subdividing the land could address this would be if a covenant was added to the land title requiring riparian fencing and/or planting.

The Far North District Council’s District Engineers Department assessed the application and found no issues with it.¹⁰³¹ However, an assessment by a Planning Assistant from the NRC raised some concerns about the possibility of effluent seeping through the soil into the lake:

¹⁰²⁹ Letter from Janet Stephenson to FNDC Environmental Services, 30 July 1997, p4, FNDC File 1980120
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¹⁰³⁰ Letter from Janet Stephenson to FNDC Environmental Services, 30 July 1997, p4, FNDC File 1980120
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¹⁰³¹ 'District Engineer's Department Engineering Report', 27 August 1997, FNDC File 1980120 1

[The land] is not "... extremely well drained based on volcanic ash..." as quoted by the attached report by Stephenson and Williams.

Council has concerns about small lot subdivisions in catchments of land-locked lakes, particularly on poorly drained soils. Such subdivisions, if allowed, need to have strict restrictions on effluent disposal, particularly assessment of soil soakage properties (permeability's) and design to cater for poor soakage. The location of any effluent fields should be sited well away from the lake edge. Consideration should be given to the requirement of fencing and planting a native buffer zone around the lake edge. Also certain land uses should not be permitted (e.g. free range pigs).¹⁰³²

To address this concern, the Planning Assistant recommended that a minimum distance from the lake edge be included as a condition for any houses built on the new lots.¹⁰³³

5.5.3.2 Public submissions on the proposal

The Far North District Council publicly notified the consent application on 6 November 1997 and called for submissions by 4 December.¹⁰³⁴ It received four submissions in response – two from local Pākehā residents residing beside the lake (Ned and Alec Jack, and Spencer White and Deborah Ludbrook), one from the New Zealand Historic Places Trust, and one from the Ngāti Kopaki-Ngāti Teara Trust (associated with Ōtiria Marae). White and Ludbrook supported granting the consent as they believed that it would enhance the small rural community of Pakaraka.¹⁰³⁵ The Historic Places Trust recommended that consent be granted only if several conditions were met:

- That Council require the applicant to apply to the Historic Places Trust for an authority to upgrade the access way for the subdivision.
- That Council advise the applicant that should archaeological remains in the area of the subdivision proper (Lots 1-6) be revealed during development the contractor/developer must stop work in that area and notify the Trust immediately so the deposit can be assessed.
- That the entire extent of the archaeological site P5/623, as determined by a qualified archaeologist, is included within the esplanade reserve adjacent to the lake and is not impacted upon by the proposed development.¹⁰³⁶

¹⁰³² Letter from NRC Planning Assistant to FNDC, 18 August 1997, FNDC File 1980120 1

¹⁰³³ Letter from NRC Planning Assistant to FNDC, 18 August 1997, FNDC File 1980120 1

¹⁰³⁴ 'Notification of application for resource consent', 6 November 1997, FNDC File 1980120 1

¹⁰³⁵ Submission on behalf of Spencer White and Deborah Ludbrook, 23 February 1998, FNDC File 1980120 1

¹⁰³⁶ Letter from HPT Regional Archaeologist to Far North District Council, 3 December 1997, FNDC File 1980120 1

Ned and Alec Jack opposed the submission on three grounds: the risks of increased traffic on Ludbrook Road; the fact that the proposed private access road ran over a flood-prone area which would 'overflow with greater frequency and volume ... as the natural scoria seepage areas become more blocked'; and the detrimental visual effects that urbanisation would have on the rural character of Lake Ōwhareiti and its surrounds.¹⁰³⁷ They also argued that '[a] tapu traditional food gathering area of Ngatihine sub-tribes ... should surely be better protected from the "uglies" of urban sprawl e.g. pet cats and dogs damaging the diversity and quantity of the local ecosystems native fauna, domestic waste runoff and sewerage scheme.'¹⁰³⁸

The submission from the Ngāti Kopaki-Ngāti Teara Trust (which was written and signed by R. R. Harris) was also opposed to the consent. Their submission raised two main concerns – that the Lake Ōwhareiti Trustees had not been notified or consulted about the application, and that no consideration had been given to the possible effects that the subdivision would have on the lake's tuna population. The Trustees listed the parts of the application that they opposed (the subdivision, the construction of new homes, and the road), and added '[w]hat about our eel elvers?'¹⁰³⁹ They listed the reasons for their objection as:

- Why weren't the Trustees (Māori) of the lake notified?
- This lake has supplied our valley with eels and watercress for years - we consider the waters & environment significant.
- We don't want the road to go through as a 25 metre because of erosion [wording in original].

They also asked for more time for the lake trustees and whānau to prepare a full submission for the Council.¹⁰⁴⁰

5.5.3.3 The first hearing

The application was heard by the Far North District Council Hearings Committee on 24 February 1998. Briefs of evidence were filed by Janet Stephenson (on behalf of the

¹⁰³⁷ Submission of Edmund Charles Jack and Alexander Donald Jack, 3 December 1997, FNDC File 1980120 1

¹⁰³⁸ Submission of Edmund Charles Jack and Alexander Donald Jack, 3 December 1997, FNDC File 1980120 1, p4

¹⁰³⁹ Submission of Ngāti Kopaki-Ngāti Teara Trust, 4 December 1997, FNDC File 1980120 1

¹⁰⁴⁰ Submission of Ngāti Kopaki-Ngāti Teara Trust, 4 December 1997, FNDC File 1980120 1

applicant Stan Morley), Alec Jack, and Louis Tana (on behalf of the Ngāti Kopaki-Ngāti Teara Trust and the Lake Ōwhareiti Trustees). Stephenson's evidence largely responded to the concerns raised in the submissions.¹⁰⁴¹ She dismissed most of the concerns raised by Jack and the Planning Assistant from the NRC. For example, she disputed Jack's claim that the lake bed was becoming more blocked, citing lake level measurements taken by Morley over a five-month period. She concluded that 'the proposed subdivision will have no impact on the likelihood of a breach or overflow'.¹⁰⁴² Regarding the concerns of the Ngāti Kopaki-Ngāti Teara Trust, she claimed that Morley had not been aware of the lake trustees prior to the application:

It is unfortunate that no one provided any information about the fact that there are Trustees of the lakebed, as if we had known this, consultation would also have occurred with the Trustees at that stage. We apologise for not consulting with the Ngati Kopaki Ngati Tera Whanau Trustees before the application was lodged. As it is, we were first made aware of their existence through their submission.

However Mr Morley has now had two telephone conversations with Mrs Harris and has invited her to visit the site to discuss any issues. Unfortunately she was too committed in the period leading up to the hearing to do so. To date it has not been possible to get any more specific information about the concerns listed in the submission.¹⁰⁴³

She added that, while Morley accepted that the trustees were 'kaitiaki for the whole lake', the lake bed in front of the proposed subdivision was owned by the Council. Morley was not aware of any watercress growing on that portion of the lake edge, although he had fenced off a source of watercress on his own property 'which he allows local people to pick'. Regarding tuna, Stephenson noted that [i]t would be helpful if the Trust could explain their specific concerns' at the hearing. She added that Morley was proposing to undertake a number of measures to improve water quality, such as riparian planting and fencing. Finally, she noted that any erosion caused by the private access road could be redirected away from the lake.¹⁰⁴⁴

¹⁰⁴¹ Evidence of Janet Stephenson, undated [c. February 1998], FNDC File 1980120 1

¹⁰⁴² Evidence of Janet Stephenson, undated [c. February 1998], FNDC File 1980120 1, p4

¹⁰⁴³ Evidence of Janet Stephenson, undated [c. February 1998], FNDC File 1980120 1, p1

¹⁰⁴⁴ Evidence of Janet Stephenson, undated [c. February 1998], FNDC File 1980120 1, p2

While Alec Jack was not available to present his evidence in person to the Committee, it was focused primarily on the alleged 'significant and adverse effects' that the subdivision would have on the environment and the rural character of Lake Ōwhareiti. He argued that the landlocked nature of the lake and the poorly drained clay soil meant that it was highly susceptible to the increased pollution that subdivision would cause. This would impact on the natural values of the lake and inhibit the potential for eco-tourism. In addition, he worried that approving this application would result in further applications for subdivision which the Council would be forced to grant in order to be consistent.¹⁰⁴⁵ Jack also commented on his experiences with local Māori and their relationship with Lake Ōwhareiti:

As I am not Maori I cannot begin to understand the cultural and spiritual significance of the treasure that Lake Owhareiti is to the Tangata Whenua. However when enjoying their hospitality on their marae's[sic.], and their company around the lake during duck shooting season it has become plain to me how highly they treasure this property of theirs.

The eels represent a significant and traditional food source which are enjoyed almost 'religiously', and swans, pukekos, and various other waterfowl are gathered in season.¹⁰⁴⁶

For these reasons, and because it was 'not in keeping with the spirit, purpose and principles of the RMA', Jack asked that the consent application be declined.

Louis Tana's evidence was more general in nature: rather than focusing on the subdivision, he outlined the spiritual and cultural significance of Lake Ōwhareiti to Ngāti Hine, and the role that they should play in any decisions that affected the lake.¹⁰⁴⁷ Tana commenced by outlining the value of the lake as a place of healing and as a source of customary resources. These resources, he argued, were not as abundant as they once had been due to current land use practices, the commercialisation of eeling, and the failure to observe 'rahui tikanga'. Preserving these resources was essential if Ngāti Hine was to continue providing for its people:

¹⁰⁴⁵ Alec D. Jack statement of evidence, 24 February 1998, FNDC File 1980120 1

¹⁰⁴⁶ Evidence of Janet Stephenson, undated [c. February 1998], FNDC File 1980120 1, pp2-3

¹⁰⁴⁷ Louis Tana statement of evidence, undated [c. February 1998], FNDC File 1980120 1

¹⁰⁴⁷ Louis Tana statement of evidence, undated [c. February 1998], FNDC File 1980120 1, pp2-3

In these current times of economic down turn and rampant unemployment more families are returning to this region and therefore are placing increasing demands on this lake for food supplements. Preservation of this resource is therefore a responsibility we take very seriously, more particularly so as this is Ngatihine's only inland fishing ground.

Lake resources were also an important part of manaakitanga:

Both the tuna and kuta are very important in terms of perpetuated Maori culture. If we are unable to provide eels at our marae and ceremonies, it is considered inhospitable. Kuta for mats for the majority of marae in the north have come from Owhareiti. Under the Runanga Iwi Act 1990 the Ngatihine Runanga is charged with further responsibilities, particularly the fostering of Thymos.

Tana contrasted the European ownership model, which distinguished between the lake bed, the water, and surrounding flora and fauna, with the more holistic approach that kaitiakitanga entailed:

The Trustees specifically and Ngatihine generally bear the onerous task as Kaitiaki (guardianship) of not only the lake bed but also the water, its environs and all flora and fauna [that] are in, above and below it ...

In 1964 the bed of Lake Owhareiti was gazetted as a Maori Reservation under Section 439 of the Maori Affairs Act, 1953 for the purposes of a fishing ground for the common use of the Ngatihine Tribe. While it is noted that the bed of the lake is described in the Gazette Notice as being reserved, the bed of the lake does not constitute the fishing ground; the water does. This anomaly and omission, blatant as it appears has a chance for redress by your decision to recognize our rights over the water.

What I do wish to impress on this hearing is that historically and morally at the time of gazetting this reserve, Lake Owhareiti is a Maori Reservation administered by the Trustees of the lake for the benefit of Ngati-Hine. It is not a commodity, which in our view can be apportioned, allocated or traded other than by the Trustees of Owhareiti on advice from the wishes of Ngatihine.

Tana also referred to the guarantees under the second article of the Treaty of Waitangi:

Article II of the treaty of Waitangi confers distinct rights and guarantees to us and of Ngatihine absolute possession of all our lands, fisheries and forests and we have never ceded any rights to this lake [emphasis in original] ...

Lake Owhareiti is a taonga (a treasure) as defined under Article II of the Treaty of Waitangi and guaranteed to us.

He attached several documents to his brief, including the 1964 gazette notice setting aside a portion of the lake bed as a reservation and the 1989 order vesting the reservation in thirteen trustees (including himself).

5.5.3.4 Further information sought by the Hearings Committee

The Hearings Committee adjourned the hearing in order to request a further investigation into riparian management, landscape issues, and the nature of the ownership of the bed of Lake Ōwhareiti and its margins. However, while the Far North District Council contracted Littoralis Landscape Architecture to prepare a report on riparian management and landscape issues, no expert opinion was sought on the ownership of the lake bed or on the broader issues regarding kaitiakitanga and rangatiratanga. Indeed, the report by Littoralis contained no mention of tangata whenua concerns: it simply recommended including consent conditions aimed at limiting the visual impact of any new buildings, fencing and planting around the lots and in any overland flow depressions, and fencing off the edge of the lake.¹⁰⁴⁸ The Hearing Committee decided to provide a copy of the report to Morley and his advisers, and to reconvene the hearing for 28 April.¹⁰⁴⁹

On 1 April 1998, Stephenson and Williams submitted a revised subdivision proposal to the Far North District Council on behalf of Morley. The revised proposal included several changes to meet the points raised in the Littoralis report, including building and effluent field covenants and fencing off the lake edge. Other changes that had been added to reduce the visual impact of the subdivision included a reduction in the number of new lots and an increase in the size of the remaining lots.¹⁰⁵⁰ The revised proposal was assessed by Peter Stanley from Northland Planning Consultants, who broadly supported the changes and suggested that the consent be granted subject to several conditions relating to fencing, effluent disposal, construction height, and a financial contribution by Morley in lieu of reserves. One of the reasons for this decision, Stanley argued, was that the subdivision ‘will not offend tangata whenua values associated with the area or adversely affect cultural usage of Lake Owhareiti’ – a strange argument,

¹⁰⁴⁸ Letter from Mike Farrow, Littoralis Landscape Architecture, to FNDC Manager Resource Planning Section, 26 February 1998, FNDC File 1980120 1

¹⁰⁴⁹ P. D. Stanley, 'Far North District Council planning report', 17 April 1998, FNDC File 1980120 1

¹⁰⁵⁰ Letter from Janet Stephenson to FNDC Environmental Services, 1 April 1998, FNDC File 1980120 1

given that the only testimony on tangata whenua values (that of Louis Tana) had suggested the opposite. Stanley also investigated the nature of the ownership of the bed of Lake Ōwhareiti and its margins in his assessment. While his investigation was limited to the question of lake bed title, his recommendation was broad and far-reaching: he suggested that, given the 'complex issues that have arisen from this application', that 'some form of a Kaitiakitanga structure' be set up to manage the lake and its catchment. This structure would involve the lake trustees, private landowners, the Northland Regional and Far North District Councils, the Historic Places Trust, and Fish and Game.¹⁰⁵¹

The same day as the revised subdivision proposal was submitted, Reweti Pomare Kingi Paraone wrote to the Far North District Council advising that Te Rūnanga o Ngāti Hine was withdrawing its support for the application:

At a meeting of the Lake Owhareiti Trustees and the Ngatikopaki Ngatiteara Trust held at the Te Rito Marae, Moerewa last evening, it was unanimously resolved that Te Runanga o Ngatihine withdraw its approval dated 18 July 1997, to the above application.

Their opposition to the proposed subdivision is out of concern for the habitat and the affect [sic.] that it will have on traditional food resources. They also believe that the foreshore of the lake will be further eroded with the influx of people to the area.

Paraone explained that the change in position was in recognition of the hapū and whānau who had authority over the lake:

Both these bodies are constituent members of Te Runanga and are recognised as having both mana tangata and mana whenua over Lake Owhareiti. As such Te Runanga are obligated to recognise their mana and take heed of their concerns.

Paraone asked that his letter be referred to the Hearings Committee 'prior to the issue of their decision'.¹⁰⁵²

¹⁰⁵¹ P. D. Stanley, 'Far North District Council planning report', 17 April 1998, FNDC File 1980120 1

¹⁰⁵² Letter from Pita Paraone to FNDC Environmental Services Manager, 1 April 1998, FNDC File 1980120

5.5.3.5 The second hearing

A second hearing was convened on 28 April 1998 by the Far North District Council Hearings Committee. Janet Stephenson filed a brief of evidence on behalf of Morley responding to the assessment of Peter Stanley. This brief was largely supportive of the consent conditions proposed by Stanley, and only recommended minor changes.¹⁰⁵³ Morley also ‘strongly supported’ the formation of a kaitiakitanga management structure, and reassured the lake trustees that he was not proposing that the lake be used for motorboating or other commercial uses.¹⁰⁵⁴ While no briefs of evidence appear to have been filed by Māori, one or more of the lake trustees were present at the hearing:

[T]he Maori submitters reaffirmed their opposition to the development. They advised the Committee that several meetings had been widely attended with some of the general landowners as well as some Maori landowners around Lake Owhareiti. They advised the Committee that agreement had been reached at those meetings that there should be no further houses constructed in the catchment of Lake Owhareiti. The Committee was advised that the applicant [Morley] had not been party to these meetings.¹⁰⁵⁵

Alec Jack was also present at the hearing. The Committee questioned him about the three houses located on his property, noting that ‘because of their low profile and backdrop they had a minimal impact on the visual landscape’.¹⁰⁵⁶

5.5.3.6 Decision to grant the consent

The Far North District Council Hearings Committee issued its decision approving the consent on 26 May 1998. In issuing the consent, the Committee noted that:

The Council recognises that Lake Owhareiti is a “precinct” of Pouerua that is of immense cultural and spiritual significance to Ngatihine and Ngapuhi. The Council considers however, that subject to imposition of the environmental mitigation conditions attached to the granting of this consent, the amended proposal will not offend tangata whenua values

¹⁰⁵³ Evidence of Janet Stephenson, undated [c. April 1998], pp3-4, FNDC File 1980120 1

¹⁰⁵⁴ Evidence of Janet Stephenson, undated [c. April 1998], pp3-4, FNDC File 1980120 1, pp2-3

¹⁰⁵⁵ Evidence of Janet Stephenson, undated [c. April 1998], pp3-4, FNDC File 1980120 1, p2

¹⁰⁵⁶ Evidence of Janet Stephenson, undated [c. April 1998], pp3-4, FNDC File 1980120 1, p2

associated with the area or adversely affect cultural usage of Lake Owhareiti.¹⁰⁵⁷

The conditions attached to the consent followed the recommendations of Stanley's assessment of the revised proposal and the evidence presented by Stephenson at the hearing, with the addition that the cost of processing the application be borne by Morley. The Committee also supported the 'kaitiakitanga structure' suggested by Stanley, and suggested that such a structure could work towards the goal of transferring authority for the lake to the trustees under Section 33 of the RMA and consolidating the lake bed title in Māori ownership:

The far north district council, in recognition of the immense cultural and spiritual significance of Lake Owhareiti as a "precinct" of pouerua to ngatinehine and ngapuhi, and the majority ownership of the bed of the lake by the Maori Trustees of Lake Owhareiti, consider:

Promoting the establishment of a kaitiakitanga structure for the sustainable management of Lake Owhareiti and its catchment consisting of

1. Maori Trustees of Lake Owhareiti
2. Northland Regional Council
3. Far North District Council
4. Fish and Game Council
5. NZ Historic Places Trust
6. Private landowners

The primary focus of the kaitiakitanga structure shall be the sustainable management of the bed, margins and catchment of Lake Owhareiti through the preparation, implementation and administration of a management plan.

Among other management methods, it is recommended that the kaitiakitanga structure consider promoting:

1. The transfer of resource management powers from the far north district council and the northland regional council over the bed, margins and surface of Lake Owhareiti to the Maori Trustees of Lake Owhareiti pursuant to section 33 of the Resource Management Act 1991.
2. The transfer of the ownership of the recreation reserve covering part of the bed of the Lake Owhareiti (lot 11 dp 128245) and the esplanade reserve around the margins of parts of the lake (lot 12

¹⁰⁵⁷ Decision on application number RC 1980120, 26 May 1998, FNDC File 1980120 1

dp 128245) from the Far North District Council to the Maori Trustees of Lake Owhareiti.

This ambitious proposal never eventuated, and it is not mentioned again in any of the sources consulted for this report. It is open to speculation as to why this was the case. It may simply be that it was forgotten once the hearing was over and the subdivision began in earnest. The wording of the proposal may also provide a hint as to its fate: the Hearings Committee directed that the Far North District Council 'consider' the proposal, but there was no requirement to do so. There may also have been some doubt as to whether the Committee had the authority to issue consent conditions that did not appear to be directly related to the application for subdivision, and which concerned central and local government authorities other than the District Council. The powers relating to setting resource consent conditions are outlined in Section 108 of the RMA, and are also subject to considerable case law.¹⁰⁵⁸ Legal counsel may be in a better position than us to determine how these powers apply in relation to the Lakeland subdivision application.

The application to construct a private road across Pouerua Heritage Precinct was also approved by the New Zealand Historic Places Trust. Although we were unable to find the Trust files relating to this application, the conditions of the authority were:

- Consultation of the authority holder and an Historic Places Trust approved archaeologist over the implementation of practicable means to minimise or avoid as appropriate the archaeological effects of earth works.
- Monitoring of any earth works that may affect suspected archaeological sites by an approved archaeologist who would ensure that:
 - Archaeological stratigraphy, features and remains (including garden soil horizons) are recorded, measured, investigated, and sampled in accordance with accepted archaeological practice, and
 - Any midden encountered to be sampled, processed and analysed.
- A report on the monitoring satisfactory to the Trust and tangata whenua.¹⁰⁵⁹

¹⁰⁵⁸ See Jennifer Caldwell et al., 'Resource Management Law Association Roadshow: conditions of consent',

[http://www.rmla.org.nz/upload/files/conditions_of_consent_docs/010714_conditions_of_consent_\(legal_paper\).pdf](http://www.rmla.org.nz/upload/files/conditions_of_consent_docs/010714_conditions_of_consent_(legal_paper).pdf) (accessed 2 May 2016)

¹⁰⁵⁹ Michael Taylor, 'Archaeological monitoring of the construction of a road through the Pouerua (Pakaraka) Heritage Precinct', October 1998, p2, FNDC File 1980120 1

This work was carried out by Michael Taylor of Archaeology North. His final report, which was filed in September 1998, noted that the earthworks had ‘a minimal effect on archaeological values’.¹⁰⁶⁰ However, as was noted earlier in this local study and will be discussed further below, some Te Raki claimants, lake trustees, and local residents believe that the earthworks caused the collapse of underground channels leading to the lake, which cut off tuna migration routes and contributed to the flooding that occurred in the following years.

5.5.4 Growing Northland Regional Council interest in lake monitoring, 2003

It appears that the NRC undertook little monitoring of Lake Ōwhareiti prior to the 2000s (with the exception of periodically measuring the lake’s depth). This changed with the development of the Council’s Lake Management Strategy, which included the Lake Water Quality Monitoring Network that was launched in 2005.¹⁰⁶¹ Interestingly, Council staff’s first step in setting up a monitoring programme for Lake Ōwhareiti was to approach the lake trustees to ask how they currently managed the lake. This somewhat deferential attitude was arguably the closest the Council ever came to recognising the authority of a ‘kaitiakitanga structure’ as had been suggested by the Far North District Council staff Hearings Committee in their decision on the Lakeland subdivision. On 15 August 2003 the Council’s freshwater ecologist emailed Prime Paraha, who was working with the Lake Ōwhareiti Trustees at the time. Interestingly, it appears that the trustees were working on a ‘management strategy’ for the lake, which was one of the suggestions of the Hearings Committee in 1998:

I am keen to find out more about Lake Owhareiti, the trustees and landowners involvement and quality of the lake water. We have not collected any samples there for a few years and I think it would definilty [sic.] be worth our while. I am interested to find out what is happening with the Lake and what is being done to help the lake, Kevin [Prime] said that you were writing a management strategy.¹⁰⁶²

¹⁰⁶⁰ Michael Taylor, ‘Archaeological monitoring of the construction of a road through the Pouerua (Pakaraka) Heritage Precinct’, October 1998, p2, FNDC File 1980120 1, p9

¹⁰⁶¹ Email from NRC freshwater ecologist to Richard Borren, 13 October 2004, NRC electronic record management system.

¹⁰⁶² Email from NRC freshwater ecologist to Prime Paraha, 15 August 2003, NRC File 830.1.35

Paraha offered to arrange a site visit through one of the Trustees, Hori Packer, who lived beside the lake. He also invited the ecologist to sit in on the meetings of the Lake Ōwhareiti Trust once they had finalised their management strategy for the lake.¹⁰⁶³ When neither of these eventuated, the NRC freshwater ecologist wrote to Prime again on 20 August 2004:

I am still keen to get in touch with you or someone else that is able to help. I am keen to know what is being done at present, as I understand there is a Lake Owhareiti Trust and also Northland Regional Council would like to set up routine water quality monitoring of the lake and assist with management where possible.¹⁰⁶⁴

The ecologist also sent a fax to Trust Chairperson Lou Tana outlining her proposal for monitoring the lake and offering to assist the Trust in developing a management strategy:

If you are happy for [the] sampling to go ahead, we can arrange a date so that any of the trustees that would like to be there, can be. Than [sic.] if we decide that the lake should be sampled on a routine basis, we can consult with you over this to make sure the Trust are happy with the entire process. We can provide you with any data that you would like.

...

Northland Regional Council could be of assistance to the Trust with advice or resources to help towards developing a management strategy for Lake Owhareiti.¹⁰⁶⁵

The ecologist sent a further follow-up letter to Tana on 20 September 2005.¹⁰⁶⁶ No reply appears to have been received, although the fact that the Council currently undertakes monthly monitoring of the lake as part of its Lake Water Quality Monitoring Network suggests that an arrangement was worked out.¹⁰⁶⁷ The Council's 2007 State of the Environment report noted that the lake was eutrophic (meaning a high level of nutrients) and had a low ecological condition ranking.¹⁰⁶⁸

¹⁰⁶³ Emails from Prime Paraha to NRC freshwater ecologist, 15 August 2003, 4 September 2003, 21 October 2003, NRC File 830.1.35

¹⁰⁶⁴ Letter from NRC freshwater ecologist to Prime Paraha, 20 August 2004, NRC File 830.1.35

¹⁰⁶⁵ Fax from NRC freshwater ecologist to Lou Tana, 27 September 2004, NRC File 830.1.35

¹⁰⁶⁶ Letter from NRC freshwater ecologist to Lou Tana, 20 September 2005, NRC File 830.1.35

¹⁰⁶⁷ Northland Regional Council, 'State of the Environment Report 2012', p194

¹⁰⁶⁸ Northland Regional Council, 'State of the Environment Report 2012', p191

5.5.5 Lake flooding and proposed mitigation, 2003-2009

5.5.5.1 Rising lake levels, 2003-2007

Measurements collected by the NRC suggest that the lake level has been rising since the Council began monitoring in the 1980s, and at least one major flooding event occurred in either 1983 or 1989.¹⁰⁶⁹ However, this became a more pressing issue when the lake began periodically overflowing in the early 2000s. In the winters of 2002 and 2003, Lake Ōwhareiti overtopped its northeastern bank and flowed down a broad grassy slope to a tributary of the Puketotara Stream. The repeated water flows caused some erosion through the soft volcanic soil at the bottom of the slope. Some local residents were concerned that Lakeland subdivision had caused these overflows. In April 2003 Alec Jack wrote to the NRC claiming that the private road development had raised the overflow level of the lake, 'resulting in both environmental damage and production losses on properties surrounding the lake.'¹⁰⁷⁰ A letter from the Council's River Management Officer claimed that the construction of the road had been 'fully explored' by the Far North District Council when it considered the application for subdivision in 1998, and that any effects it was having on the lake level would be insignificant.¹⁰⁷¹

To prevent the flooding from reoccurring, Kerry Ludbrook – the owner of the lakeside property onto which the overflow was spilling – contracted Bruce Judd Consultancy in early 2004 to investigate means for stabilising the lake level. Their report, which was produced in March, noted that the mean annual lake level had risen by 2.6 metres between 1992 and 2002. The likely reasons for this increase were:

- The runoff from the catchment would contain more silt than it did hundreds of years ago. This silt may be blocking the natural seepage paths [through the lake bed].
- The lake water would contain more nutrients than it did in the past. These nutrients meant an increase in the shallow water vegetation. Decaying

¹⁰⁶⁹ Drs Jacques Boubée and Erica Williams, 'Biological Perspective on the proposed Overflow Management Options at Lake Owhareiti', NIWA, 10 November 2008, pp3-4, NRC electronic record management system; Evidence of Janet Stephenson, undated [c. February 1998], p4, FNDC File 1980120 1

¹⁰⁷⁰ Letter from NRC Land Operations Manager to FNDC General Manager, 9 April 2003, NRC File 830.1

¹⁰⁷¹ Letter from NRC River Management Officer to Keri [sp.] Ludbrook, 18 August 2003, NRC File 830.1

organic matter from this vegetation could be blocking the natural seepage paths.

- The annual rainfall over the past 10 years had been higher than average.¹⁰⁷²

The report also suggested that future overflows and erosion might breach the lake boundary, causing its entire contents to empty and resulting in considerable damage and 'possible loss of life'. To prevent that from happening, and to stabilise the level of the lake, the authors recommended that a pipeline be constructed across the Ludbrook property to carry excess water from the lake to the tributary of the Puketotara Stream. The total cost of this pipeline was estimated at \$27,000 plus GST.¹⁰⁷³

The question of who should pay for the pipeline became an obstacle to a solution being implemented. Bruce Judd Consultancy argued that the cost should not have to be met by local farmers given the wider ramifications that flooding could cause.¹⁰⁷⁴ As if to illustrate this point, the authors forwarded a copy of the report to the NRC (and apparently also to the local MP, John Carter). In response, the NRC's Land Operations Manager performed an inspection of the lake in April 2004 and met with Kerry Ludbrook. He explained what he had relayed to Ludbrook in a subsequent letter to Carter:

As I explained to Kerry, the Northland River Management Policy [see Chapter Two] ... provides for the Regional Council to investigate flooding problems but those who benefit are to meet the cost of any works. In the case of Lake Owhareiti, the work will require a resource consent and, subject to Kerry gaining the support of the local iwi, I am prepared to meet the cost of the resource consent. The cost of installing the pipe system and controlling the gully erosion will need to be met by those who benefit from the work.¹⁰⁷⁵

The Land Operations Manager suggested that the landowners adjacent to the lake work out a cost-sharing agreement based on the portion of each owner's land that was currently underwater. He added that, if further erosion did cause the lake to empty, it

¹⁰⁷² 'Stabilising the level of Lake Owhareiti', Bruce Judd Consultancy, March 2004, p1, NRC File FDE12155

¹⁰⁷³ 'Stabilising the level of Lake Owhareiti', Bruce Judd Consultancy, March 2004, p5, NRC File FDE12155

¹⁰⁷⁴ 'Stabilising the level of Lake Owhareiti', Bruce Judd Consultancy, March 2004, p5, NRC File FDE12155

¹⁰⁷⁵ Letter from NRC Land operations Manager to John Carter, M.P., 15 April 2004, NRC File FDE12155

would do so in a gradual fashion rather than in a torrential flood of water as local residents feared.¹⁰⁷⁶

As the NRC's River Management Policy precluded it from funding the proposed remedial works, Ludbrook sought funding through other Council channels. In May 2004 he filed a submission on the Council's draft Long Term Community Consultation Plan explaining that, while local lake residents were willing to meet some of the costs of installing the pipeline, 'there is an expectation that, because the lake is of such significance, the Council will also contribute towards its protection.' He claimed that existing Council policies 'did not provide for such support', and that the annual Environment Fund 'gives no certainty'. Instead, he submitted that the draft Plan be revised to include a commitment to meet 50 per cent of the cost of installing the pipeline.¹⁰⁷⁷

Around the same time, Ludbrook filed his application for resource consent to install the pipeline.¹⁰⁷⁸ This included a 'social and environmental assessment' which focused primarily on what he perceived as the benefits that the pipeline would bring, including lessening erosion, preserving lake edge habitat for birds, and increasing the amount of rateable farming land. Local Māori were not mentioned in either his application or his assessment, although Ludbrook did note that '[t]raditional valued historical precincts have disappeared under water.'¹⁰⁷⁹ On 21 June 2004, the NRC replied that Ludbrook's application was incomplete because he had not included the \$900 application fee. The fact that an assessment of environmental effects had not been provided with the application was not mentioned. The letter from the Council noted that the question of who was going to pay the fee was still being worked out between Ludbrook and Council staff.¹⁰⁸⁰ On 28 September 2004, the Council's Land Operations Manager advised through internal Council correspondence that '[t]he Council has not yet agreed to

¹⁰⁷⁶ Letter from NRC Land operations Manager to John Carter, M.P., 15 April 2004, NRC File FDE12155

¹⁰⁷⁷ Kerry Ludbrook, 'Submission on NRC draft Long Term Community Consultation Plan', 25 May 2004, NRC File FDE12155

¹⁰⁷⁸ Application form for resource consent, 19 October 2003, NRC File FDE12155. This form appears to have been filled out the previous year, but it was not filed by Ludbrook until after he contracted Bruce Judd to undertake the assessment.

¹⁰⁷⁹ 'Lake Owhareiti social and environmental [sic.] impact', 15 May 2004, NRC File FDE12155

¹⁰⁸⁰ Letter from NRC Team Leader Water and Wastes to Kerry Ludbrook, 21 June 2004, NRC File FDE12155

contribute anything to this project, either as an extra LTCCP/Annual Plan project or as an Environmental Fund project.’¹⁰⁸¹

Twelve months later, the application for resource consent had not progressed any further. On 9 November 2005 the Council's Team Leader (Water and Wastes) contacted Ludbrook to note that, unless the application fee was received by 15 December 2005, the application would be archived. Unlike the Council's previous letter on 21 June 2004, this letter also noted that an assessment of environmental effects was needed. Handwritten notes attached to the letter suggest that Ludbrook was trying to secure funding from the Council's Biodiversity and Environment Funds, as well as from the Lake Ōwhareiti Trust.¹⁰⁸² As far as we can tell from the files we consulted, this appears to be the first time that local Māori were involved in the discussion about the proposed pipeline. It may be that, as part of the lake bed was vested in Māori ownership, local lake residents considered that the lake trustees should meet some or all of the cost of the pipeline. The archival record is unclear at this point, although a meeting held in April 2006 by Council staff with local landowners and the lake trustees suggests that the issue of who would pay for the pipeline was still far from resolved:

[We] met on site with Kerry Ludbrook, other landowners and the Maori Trustees who own the lake bed to discuss the issues. There is a whole lot of things that would need to be resolved before a consent could go through. They are happy that discussions are currently underway to come up with a solution palatable to all.¹⁰⁸³

The need for a 'palatable solution' appears to have been overtaken by the major flooding event in 2008 (see below), for on 26 May 2010 Ludbrook's resource consent application was archived.¹⁰⁸⁴

Ludbrook was not the only lake resident concerned with the potential effects of flooding. In October 2007 Ned Jack contacted Transit New Zealand expressing his concern that Lake Ōwhareiti would breach its banks during a big storm and cause flood

¹⁰⁸¹ Email from NRC Land Operations Manager to Janarie Jongkees, 27 September 2004, NRC File FDE12155

¹⁰⁸² Letter from NRC Team Leader Water and Wastes to Kerry Ludbrook, 9 November 2005, NRC File FDE12155

¹⁰⁸³ Email from NRC Land Management Team Leader to Water and Wastes Team Leader, 28 April 2006, NRC File FDE12155

¹⁰⁸⁴ Letter from NRC Consents Specialist to Kerry Ludbrook, 26 May 2010, NRC File FDE12155

damage to a nearby bridge and road embankment on State Highway 1. A Transit New Zealand Engineer visited the lake with Jack and concluded that any overflow would likely only cause 'localised flooding', although the exact impact would require a hydraulic assessment and computer modelling. He also informed Jack that 'the stabilising of the lake was a private matter'. The Engineer informed NRC of the visit.¹⁰⁸⁵

5.5.5.2 Major flood event in July-August 2008

A large amount of rainfall in July-August 2008 caused a much more significant overflow of lake water onto the Ludbrook property. The excess water also spilled onto the private road, which impacted on the ability of the residents of Lakeland subdivision to access their properties.¹⁰⁸⁶ The small-scale erosion that had begun to occur in previous years transformed into a wide eroding gully at the bottom of the ridge that began to expand up the slope towards the lake edge as the rainfall continued. This led several local residents to worry that the erosion gully would breach the lake and empty its entire contents onto neighbouring properties. One resident of Ludbrook Drive, Roger Browning, contacted Transit New Zealand to express his concern that the lake would 'let go in late December' if the current rate of erosion continued. Transit New Zealand raised the matter with the NRC, presumably out of a concern that, if the lake emptied along the flood path, the water might engulf State Highway 1.¹⁰⁸⁷

¹⁰⁸⁵ Letter from Engineer Northland, Transit New Zealand, to the NRC Land Management Team Leader, 10 October 2007, NRC File 830.1.35

¹⁰⁸⁶ 'Residents urge action on flood-prone lake', *Northern Advocate*, http://www.nzherald.co.nz/northern-advocate/news/article.cfm?c_id=1503450&objectid=10974217

¹⁰⁸⁷ Email from Projects Manager, Downer EDI Works Limited, to NRC, 1 September 2008. NRC electronic record management system

Figure 37: Direction of overland flow path caused by July-August 2008 flooding of Lake Ōwhareiti

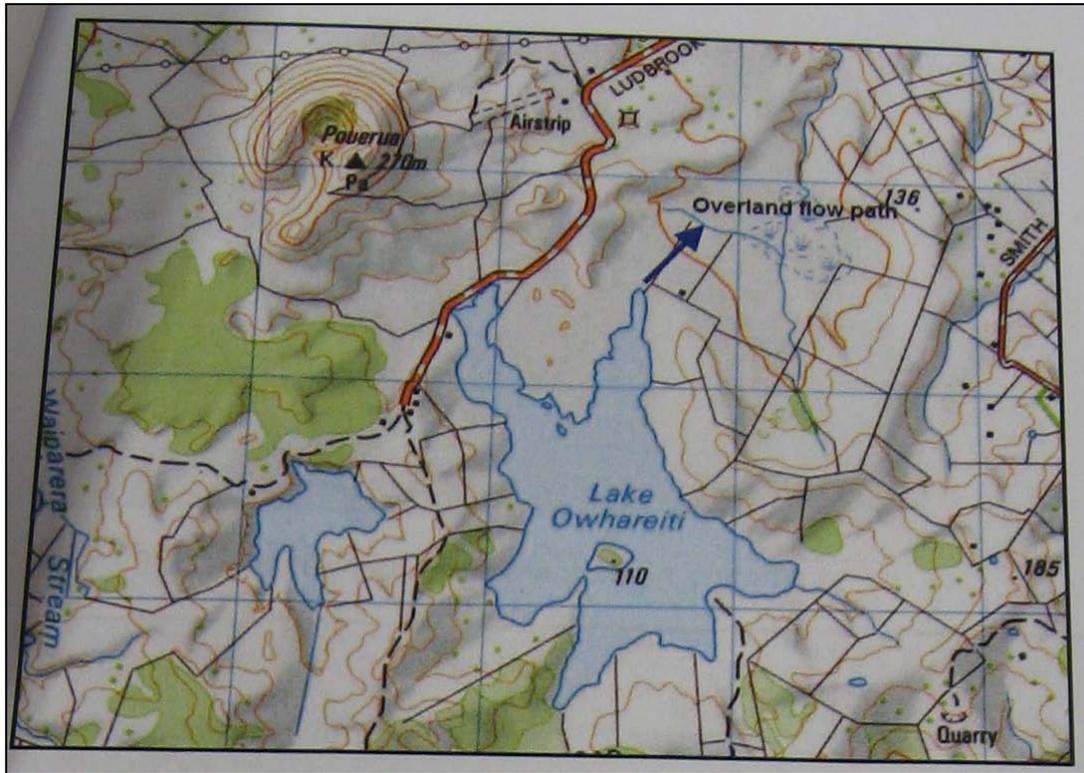


Figure 38: Eroding gully caused by overland flood path



(Source for both images: Letter from Tonkin & Taylor to NRC, 19 September 2008, NRC File R5.35)

5.5.5.3 Regional Council response to the flooding

In response to the flooding, the NRC contracted engineering firm Tonkin & Taylor to undertake a geotechnical assessment of the damage caused by the overland flow path and assess the risk of further flooding. Two representatives from Tonkin & Taylor visited the lake with a Council staff member on 1 September 2008. They observed that the overland flow had created an erosion gully three to six metres wide and up to three metres deep. However, they argued that further erosion was unlikely to occur given that the overflow had eroded down to the underlying basement rock mass. Tonkin & Taylor also reviewed the report produced by Bruce Judd Consultancy in March 2004. While they concluded that the proposed pipeline to discharge excess lake water into a nearby river was 'acceptable engineering practice', they provided some additional suggestions to improve the pipe design. They also noted that '[t]he design solution does not consider fish passage', and suggested that 'an open channel might be a more appropriate solution' if fish passage was a concern for Kerry Ludbrook.¹⁰⁸⁸

While Tonkin & Taylor were producing their geotechnical assessment of the lake, NRC staff attended a meeting with the Lake Ōwhareiti Trustees, lake residents, and other interested persons on 4 September 2008 in Kawakawa. The meeting was chaired by Tohe Ashby of Te Rūnanga o Ngāti Hine. The Council's minutes of the meeting are brief, but they note that there was 'considerable discussion of historical issues and explanation of the natural and human accelerated geological processes happening and likely outcomes.' It is likely that part of this 'considerable discussion' related to the effects of the Lakeland subdivision, as this was raised by Ngāti Hine through other forums (see below). The discussion then turned to options for remedial measures. Council staff outlined two broad options – a 'do nothing, let nature take its course' approach which would likely see the erosion gully widen and lower the lake level by three or more metres; or construct a pipeline to stabilise the lake level and alleviate future flooding, which was estimated to cost \$50,000.¹⁰⁸⁹ While this figure was larger than the \$27,000 estimated by Bruce Judd Consultancy in 2004, it may have reflected

¹⁰⁸⁸ Letter from Tonkin & Taylor to NRC, 19 September 2008, NRC File R5.35

¹⁰⁸⁹ Email from NRC Land Management Officer to Doug Foster, 5 September 2008, NRC electronic record management system

the improvements suggested by the Tonkin & Taylor engineers.¹⁰⁹⁰ There was unanimous support for some sort of remedial measures, with the lake trustees particularly concerned about the lake level dropping by three or more metres. However, in line with the Council's River Management Policy, staff made it clear that the Council 'would at most only be paying part of the costs as a public good component [emphasis in original]'. One of the outcomes of the meeting was that the lake trustees, 'who had contacts with various Maori funding sources', would 'make preliminary approaches to see whether external funding of this work was a possibility.'¹⁰⁹¹

Subsequent media coverage revealed that the lake trustees were unhappy at being asked to pay for the remedial measures. In a story run by *Te Karere* on 11 September 2008, local Māori linked the flooding to the earthworks undertaken as part of Lakeland subdivision. Louis Tana stated:

I had many concerns about the subdivision there. They dug the road and we are now seeing the consequences. This is the price - the water is overflowing. You can see the damage the overflow of the lake is causing to the land.

...

They wanted to dig three metres down but we opposed that idea as it may cause the lake level to drop and cause erosion around the edges. This would change the lake entirely.¹⁰⁹²

Tohe Ashby was more forthright in assigning blame to the NRC:

They are to blame. They brought in their heavy machinery and dug up the earth. Now the water has no outlet. We must now find a way to satisfy all those affected.¹⁰⁹³

One local resident on Ludbrook Road said he would be happy to contribute towards some of the costs, but suggested that the bulk of the funding should come from the

¹⁰⁹⁰ NRCstaff received a preliminary copy of these suggested improvements the day of the meeting. See email from Tonkin & Taylor Engineering Geologist to NRC, 4 September 2008, NRC electronic record management system

¹⁰⁹¹ Email from NRC Land Management Officer to Doug Foster, 5 September 2008, NRC electronic record management system

¹⁰⁹² 'The piece of land in Northland that was', *Te Karere*, 11 September 2008, transcript by Chong Newztel, NRC electronic record management system

¹⁰⁹³ 'The piece of land in Northland that was', *Te Karere*, 11 September 2008, transcript by Chong Newztel, NRC electronic record management system

NRC.¹⁰⁹⁴ Ngāti Hine were far more blunt – Hirini Henare from *Te Karere* summarised their response to the Council as ‘you broke it, you fix it’.¹⁰⁹⁵

After reviewing the geotechnical assessment prepared by Tonkin & Taylor, the NRC developed three options for addressing the lake overflow: managing the natural overflow using the existing overland path (estimated cost \$10-15,000); managing the natural overflow by diverting and dispersing it over an adjacent paddock (estimated cost \$12-15,000); and the pipeline option already discussed (estimated cost \$50,000).¹⁰⁹⁶ Funding the works still remained an issue. On 24 October 2008 a Council Land Management Officer emailed Tui Shortland, Manager of Ngā Tirairaka o Ngāti Hine, to ask ‘whether any funding is likely from outside sources for works to stabilise / control lake levels’ as had been discussed at the meeting the previous month.¹⁰⁹⁷ The three options were discussed at a meeting with representatives from Ngāti Hine on 29 October. Although we were unable to find minutes of this meeting, a follow-up email sent by Shortland noted that the kaitiaki of the lake (presumably the lake trustees) were concerned with broader issues beyond remedial measures, including removing excess nutrients from the lake and monitoring the underground water flows. Shortland also requested that the Council provide information on how the design of the pipeline would ensure the passage of tuna, and the impact that the large volumes of water will have on the receiving environment.¹⁰⁹⁸ NRC staff replied that the receiving environment (Puketotara Stream) would benefit from the proposed pipeline as it would avoid the reoccurrence of the damage that had been caused by the recent flooding, in particular the high amount of sedimentation caused by the eroding gully. However, the Council considered the question of tuna passage to be unrelated to the purpose of the pipeline:

The proposed pipeline has not been designed to ensure the passage of tuna and tuna will not be able to climb up the pipeline. The reason behind this is that there has never been a water passage for tuna to get into the

¹⁰⁹⁴ ‘To be flood-free, they face footing bill’, *Northern Advocate*, http://www.nzherald.co.nz/northern-advocate/news/article.cfm?c_id=1503450&objectid=10974681

¹⁰⁹⁵ ‘To be flood-free, they face footing bill’, *Northern Advocate*, http://www.nzherald.co.nz/northern-advocate/news/article.cfm?c_id=1503450&objectid=10974681

¹⁰⁹⁶ ‘Lake Owhareiti - Overflow Management Options’, *Northland Regional Council*, 8 October 2008, NRC electronic record management system

¹⁰⁹⁷ Email from NRC Land Management Officer to Tui Shortland, 24 October 2008, NRC electronic record management system

¹⁰⁹⁸ Email from Tui Shortland to NRC, 31 October 2008, NRC electronic record management system

lake in the past. The only way tuna can enter the lake without human assistance is to climb overland which they are quite capable of. If there is interest in increasing tuna numbers in the lake, a proposal to trap and release tuna can be discussed in future meetings. Approval from MFE is required to do this but would make a good community project.¹⁰⁹⁹

This demonstrates the differing viewpoints held by tangata whenua and Council regarding the migration of tuna in and out of Lake Ōwhareiti. Whereas Māori held traditional knowledge about the existence of underground channels and puru tuna through which tuna could travel, Council staff did not appear to believe that these channels existed. However, Council staff did later clarify that the pipe design would allow tuna to migrate out of the lake (although not vice versa).¹¹⁰⁰

This difference of opinion regarding tuna migration became more apparent after Ngāti Hine sought advice from NIWA on the proposed pipeline. This advice was prepared by Drs Jacques Boubée and Erica Williams as part of the tuna population survey of the Taumārere (Kawakawa) catchment that was then being carried out by NIWA in conjunction with Ngāti Hine. Boubée and Williams's assessment was 'from a biological science point of view only' and focused on assessing the potential impacts of the proposed pipeline on aquatic life in the lake and in the Puketotara Stream, in particular tuna.¹¹⁰¹ They briefly summarised the state of the tuna fishery in Lake Ōwhareiti:

Lake Owhareiti has a well established traditional and contemporary customary eel fishery. Because eels have a marine life stage, the past and present resident population must have reached the lake either 1/ by manual transport; 2/ through occasional overland routes (i.e. during prolonged storm events); or 3/ via natural underground passages.

Manual transport of elvers is an established method of enhancing eel populations in the Ngāti Hine rohe. It is known that some transfers of juvenile eels into Lake Owhareiti has occurred in relatively recent times (e.g., by Kamo Fisheries), but the exact timing, and number of eels involved has not been established. Although the possibility of overland or

¹⁰⁹⁹ Email from NRC to Tui Shortland, 4 November 2008, NRC electronic record management system

¹¹⁰⁰ Email from NRC Land Management Officer to Jacques Boubée, 14 November 2008, NRC electronic record management system

¹¹⁰¹ Jacques Boubée and Erica Williams, 'Biological Perspective on the proposed Overflow Management Options at Lake Owhareiti', NIWA, 10 November 2008, p1, NRC electronic record management system

underground passage is a real possibility, some of the eels now present may have originated from such manual transfer(s).¹¹⁰²

Unlike the NRC, Boubée and Williams considered that underground migration channels were a possibility; however, they noted that the recent increase in the lake level may have been the result of these passages having become blocked.¹¹⁰³

Boubée and Williams considered the proposed pipeline as being 'biologically unsustainable' because of the adverse effect it would have on biota on the lake margin and in downstream waterways. They also argued that it would impact negatively on tuna migration routes:

With the pipe proposal, (assuming it works as intended) overland movement of water between the lake and the waterways to the east will essentially cease and the intermittent existing passage route for eels will be blocked.

...

[U]pstream passage of eels (including elvers) through the pipe will not be possible as the water velocity in the pipe will be too high for upstream migrating eels to negotiate. The installation of the pipe will also prevent the safe seaward passage of migrant eel that is currently possible when the lake overtops. The reason for this is that although a 150 mm pipe is large enough to allow the passage of all but the largest longfin female migrants, pressure changes along the route will be too rapid for the eels to cope with. Furthermore the impact of eels on the proposed energy dissipater at the end of the pipe will be fatal.¹¹⁰⁴

They suggested that a better option would be to upgrade the natural overland flooding route by adding several mechanisms to prevent further flooding and erosion, such as a culvert over the private road, a rock-lined channel down the slope where erosion had been occurring, and a pool at the point where the floodwater met the Puketotara Stream. This would also preserve a passage for tuna migration. If the Council chose the pipeline option instead, they suggested that an annual tuna transfer program would

¹¹⁰² Jacques Boubée and Erica Williams, 'Biological Perspective on the proposed Overflow Management Options at Lake Owhareiti', p4

¹¹⁰³ Jacques Boubée and Erica Williams, 'Biological Perspective on the proposed Overflow Management Options at Lake Owhareiti', p3

¹¹⁰⁴ Jacques Boubée and Erica Williams, 'Biological Perspective on the proposed Overflow Management Options at Lake Owhareiti', p5

need to be implemented. This would require the approval of the Ministry for Primary Industries and a source of funding.¹¹⁰⁵

The NRC was highly critical of the NIWA assessment. 'I would be embarrassed to have my name associated with this report', declared the Land Programme Manager. He argued that biota on the lake margin had already been affected by the sustained lake level in recent years – '[w]hat was there has drowned!' – and doubted whether the proposed pipeline would have any downstream effects. He also dismissed the idea of underwater channels through which tuna migrated in and out of the lake:

Previously the lake seeped out through its bed and only overflowed on rare occasions. In recent years the rate of seepage has slowed causing the water level to remain high. Rather than defined passages through which eels could swim, water would have simply drained through the more porous volcanic rock and scoria deposited by eruptions of the adjoining mountain. Even if there were defined passages I wonder whether eels would swim 500 metres through such passages.¹¹⁰⁶

The Land Programme Manager also argued that the energy dissipater in the proposed pipeline (a device designed to protect downstream areas from erosion by reducing the velocity of water flow) would not affect tuna any more than going over major waterfalls.

In 2009 the NRC returned to the idea of upgrading the natural overland flooding route instead of installing a pipeline. This shift away from the proposed pipeline solution (which had been discussed in one form or another since 2004) may have been due to the negative responses received regarding funding and tuna migration. It may also have reflected the wishes of the lake trustees themselves. At a research hui in Kawakawa on 11 June 2016, Hōri Packer informed us that the trustees ultimately opposed the pipeline solution because the lake had historically taken care of itself during periods of high rainfall through natural overflows to nearby tributaries and springs. In May 2009 the Council's Land Programme Manager proposed to create a grassed waterway over the Ludbrook farm contained by a low bund wall, and to fence off the eroded gully and plant

¹¹⁰⁵ Jacques Boubée and Erica Williams, 'Biological Perspective on the proposed Overflow Management Options at Lake Owhareiti', pp5-6

¹¹⁰⁶ Email from NRC Land Programme Manager to Land and Rivers Senior Project Manager, 3 April 2009, NRC electronic record management system

willows around its edges.¹¹⁰⁷ The estimated cost of these works was \$7000 which, despite its earlier stance, the Council agreed to fund along with 'some community / land owner time and machinery use contributions' that were agreed upon by the local landowners. The cost of a culvert to prevent flooding on the private road would be met by the residents of Lakeland subdivision.¹¹⁰⁸ A Council Land Management Officer forwarded this proposal to Tui Shortland, who agreed to discuss it with Te Rūnanga o Ngāti Hine and was 'confident that we can come to an amenable decision'.¹¹⁰⁹ The Land Management Officer followed up with a further email asking whether anyone from the Rūnanga would be willing to assist in planting the willows as a 'community contribution'.¹¹¹⁰ Although no agreement between the Council and the Rūnanga could be found in the Council's files, the remedial works appear to have been completed by the end of 2009.

5.5.6 Subsequent events

Lake Ōwhareiti has not experienced any major flooding events since 2008, so the question of major flood protection works has remained dormant. A Regional Council file note dated July 2009 recorded that the Council had not allocated funding for a pipeline, and stated that no further action would be taken unless an emergency arose (such as another major flooding event).¹¹¹¹ The Council's Rivers Programme Manager engaged Kaitaia Contractors on an on-call emergency basis for this purpose.¹¹¹²

Lake Ōwhareiti has been an important part of recent research done by Ngāti Hine and NIWA concerning tuna. The reports produced in conjunction with NIWA in 2008 and 2011, which are discussed in section 5.2.1 of this report, included some material on the lake. The 2011 report concluded that, while the tuna in the lake were some of the largest in the country, recruitment of elvers was low due to a lack of migration routes to

¹¹⁰⁷ 'Protection of Lake Owhareiti Overflow', Land Programme Manager, NRC, 13 May 2009, NRC electronic record management system

¹¹⁰⁸ Email from NRC Land Management Officer to Tui Shortland, 8 June 2009, NRC electronic record management system

¹¹⁰⁹ Email from Tui Shortland to NRC Land Management Officer, 5 July 2009, NRC electronic record management system

¹¹¹⁰ Email from NRC Land Management Officer to Tui Shortland, 13 July 2009, NRC electronic record management system

¹¹¹¹ NRC file note, 12 July 2009, NRC File FDE12155

¹¹¹² Letter from Rivers Program Manager, NRC, to Kaitaia Contractors, 9 June 2009, NRC electronic record management system

the lake.¹¹¹³ However, the report concluded on a positive note about the prospect of growing the tuna population:

Shortfin eels in Lake Ōwhareiti exhibited growth rates, and attained lengths, that are amongst the highest recorded in New Zealand. The results obtained in this study indicate that this lake is extremely productive and could, with careful stocking, sustain a much greater population of fast growing eels. It is estimated that shortfins in Lake Ōwhareiti would take only about four years to reach the minimum commercial weight limit of 220 g. As passage for elvers into this lake is limited due to blocked underground passages which historically facilitated access, a low cost elver transfer/stocking programme could be initiated.¹¹¹⁴

The 2013 pilot tuna enhancement project by Ngāti Hine included the manual transfer of elvers to Lake Ōwhareiti.¹¹¹⁵ The project also identified the lake as a priority area for tuna habitat improvement due to the lack of riparian planting around its margins.¹¹¹⁶

5.5.7 Conclusion - Lake Ōwhareiti

Lake Ōwhareiti is an important taonga for Ngāti Hine that is valued for its spiritual significance, its healing powers, and its supply of customary resources such as tuna. Ngāti Hine believe that tuna have historically migrated in and out of the lake via the series of underground channels that is believed to connect the lake to nearby springs and waterways. An archaeological survey of the Pouerua volcanic cone by the University of Auckland in the 1980s revealed several Māori settlement sites on the northern edge of the lake, which resulted in the area being declared a Heritage Precinct by Heritage New Zealand (formerly the Historic Places Trust) in the 1990s. The land surrounding the lake was part of the Pouerua block that was purchased by Henry Williams in 1835 and retroactively approved by the Crown in 1851, although it did not include title to the lake bed itself. The Māori Land Court set the untitled lake bed aside as a Māori reservation in 1964, although by that time the lake had expanded to cover parts of the land that fell within the original Pouerua block. This portion of the lake bed was vested in the Bay of Islands County Council (now the Far North District Council) during the

¹¹¹³ Erica Williams et al., 'Assessment of the eel fishery in the Kawakawa (Taumārere) River Catchment', pp14-16

¹¹¹⁴ Erica Williams et al., 'Assessment of the eel fishery in the Kawakawa (Taumārere) River Catchment', p18

¹¹¹⁵ Tui Shortland, 'Kete Tangariki - Pilot Tuna Enhancement Project', p8

¹¹¹⁶ Tui Shortland, 'Kete Tangariki - Pilot Tuna Enhancement Project', p15

subdivision of the Pouerua block in 1989, and an esplanade strip was set aside along the edges of the portion of the lake bed owned by the Council. The lake has continued to expand since then, with the result that the lake bed is now a patchwork of Māori, Council, and freehold land.

In 1997 Stan Morley applied to the Far North District Council to subdivide his lakeside property into several smaller lifestyle blocks. Prior to lodging his application, he had secured the written approval from the Chairpersons of Te Rūnanga-Ā-Iwi o Ngāpuhi and Te Rūnanga o Ngāti Hine, although the latter would later withdraw his approval. The Far North District Council received four submissions in response to the application, two of which were in opposition. One of those opposing was the Ngāti Kopaki-Ngāti Teara Trust on the lack of consultation, the potential adverse effects on tuna and watercress, and erosion. The Far North District Council heard the application on 24 February 1998. Louis Tana, a Ngāti Kopaki-Ngāti Teara Trust kaumātua and Lake Ōwhareiti Trustee, presented evidence at the hearing on the significance of Lake Ōwhareiti to Ngāti Hine and the rights to the lake that were guaranteed under the Treaty. After reconvening the hearing on 28 April, the Hearings Committee decided to grant the application subject to several conditions relating to fencing, effluent disposal, and construction height. The decision also included an ambitious recommendation that a 'kaitiakitanga structure' be formed to manage the lake, with the ultimate goal of transferring authority for the lake to the trustees under Section 33 of the RMA and consolidating the lake bed title in Māori ownership. So far as we could ascertain, this recommendation was never mentioned again, although NRC staff adopted a deferential attitude towards the Lake Ōwhareiti Trust when seeking to improve its monitoring of the lake in the early 2000s.

The lake experienced periodic overflows throughout the 2000s, with one major flooding event in 2008. Lake level measurements indicate that the lake has been rising since the 1980s, with some assessments suggesting that this was due to the underground passages in and out of the lake becoming clogged with silt and other land runoff. However, some local residents argued that the construction of a private road for the subdivision had caused the increased overflows. Kerry Ludbrook, the Pākehā resident onto whose land the overflow was directed, contracted Bruce Judd Consultancy to

investigate means for stabilising the lake level. Their suggestion, a pipeline to a nearby stream, was delayed due to a funding impasse: local residents wanted the Council to pay, whereas the Council's policy was that remedial flooding works be paid for by those who would benefit from the work. The pipeline proposal gained added impetus after the major flooding event in July-August 2008, which caused a considerable amount of erosion and led some local residents to fear that the entire contents of the lake would empty onto nearby roads and properties. Ngāti Hine and the Lake Ōwhareiti Trustees made it clear to the NRC that they believed the flooding was the direct result of the subdivision having blocked the lake's underwater drainage system, and that the Council should bear the cost of remedial measures. Tangata whenua also expressed their concern that the proposed pipeline would not provide for tuna migration in and out of the lake, and prepared a report with NIWA to suggest some alternatives. Some Council staff were sceptical of Ngāti Hine traditional knowledge of historic tuna migration and puru tuna, although they asserted that the pipeline could allow for downstream migration. The impasse over funding ultimately led to the pipeline option being dismissed in favour of upgrading the overland flooding route, which the Council agreed to fund. No flooding events have occurred since then.

5.6 Conclusion

It appears fairly clear from the scientific and monitoring literature that the Kawakawa River and its tributaries have been degraded by pollution, and that this has impacted on the state of customary resources such as tuna. It is also clear that the AFFCO meat processing plant is a significant contributor of nutrients (nitrogen and phosphorus) to the river system. This chapter provides several contrasting examples of how Māori have fared when they have attempted to exercise kaitiakitanga in order to address these issues. In each example, their attempts have been weighed and assessed against a range of other factors. In the case of the AFFCO meat processing plant, Māori concerns were consistently weighed against expert technical opinion and the not inconsiderable economic benefits that the plant brings to an otherwise impoverished and predominantly Māori community. These other factors were raised at all stages of the resource consent process, including the original applications, staff assessments, briefs of evidence before the NRC and the Environment Court, and in the rationale for approving consents. Māori considerations appear to have been treated fairly briefly in comparison,

with the requirements under Sections 6-8 of the RMA and Section 6 of the RWSPN often considered as little more than an afterthought (or not considered at all in some cases). Māori were, in general, treated as stakeholders in the resource management process, despite their clear interests in the rivers and lakes and the customary resources they supported.

There were two important exceptions to this pattern regarding the consideration of Māori concerns. The first was the partial land-based disposal techniques adopted by AFFCO in the mid-1990s, largely to meet Māori cultural concerns about disposal of wastewater to land. Although there were some concerns raised in the 2000s as to whether AFFCO had engaged with the right people, this was clearly an attempt to incorporate tikanga Māori into standard engineering practice. Nevertheless, both AFFCO and the NRC seem to have acted on the assumption that, once this land-based disposal system had been put in place, there was little else that needed to be done to take Māori cultural considerations (including kaitiakitanga and customary river resources) into account. Indeed, the objections raised by Māori submitters against the 2005 and 2007 consent applications appear to have been treated as if they came from members of the general public rather than Māori. This was despite the fact that, in 2007, Māori cultural concerns were specifically mentioned in several submissions. One of these submissions came from Te Rūnanga o Ngāti Hine, a recognised iwi authority who were also recognised as kaitiaki over the Taumārere waters by the Environment Court in 1998.

The second exception was the FNDC's decision on the Lakeland subdivision in 1998 which recommended the formation of a 'kaitiakitanga structure' to manage the lake, with the ultimate goal of transferring authority for the lake to the trustees under Section 33 of the RMA and consolidating the lake bed title in Māori ownership. So far as we could ascertain, this ambitious recommendation was never mentioned again, although NRC staff adopted a deferential attitude towards the Lake Ōwhareiti Trust when seeking to improve its monitoring of the lake in the early 2000s. Māori concerns appear to have played more of a role in NRC decision making around the major flooding event in July-August 2008, in particular regarding their decision not to pursue a pipeline option to stabilise the lake level. However, this was likely to have been driven just as much by

economic necessity – the NRC had made it clear that local ratepayers should meet the cost of the works, which local residents (including the Lake Ōwhareiti Trustees) were unwilling to do.

Both the AFFCO and Lake Ōwhareiti examples demonstrate how Māori tikanga and concerns regarding the environment are treated when they conflict with technical opinion during the resource management process. It is a case of two worldviews talking past each other; however, only one of those worldviews aligns with the process followed by those with decision-making power. As Chapter Two argues, resource consent applications are strictly delimited in scope, with any broader concerns being largely sidelined as irrelevant. The holistic and historical view of many Māori who wish to see their lakes and waterways restored to a pristine condition has little impact when contrasted with technical reports that outline the effects of a particular discharge site on the baseline state of a river or stream (which may already be heavily polluted). Thus, Toko Tipene's submissions to the NRC and the Environment Court concerning the long-term impacts of the AFFCO plant were considered only insofar as they related to specific consent conditions. His submissions were also openly criticised by AFFCO and its legal representatives as 'circuitous', 'meandering', and 'inchoate' – descriptors which the Environment Court agreed were apt. Similarly, Māori customary knowledge about the passage of tuna in and out of Lake Ōwhareiti (including the existence of puru tuna) were generally dismissed by NRC staff. When NIWA scientists backed the view of tangata whenua, their reports were criticised by NRC staff as embarrassing. While it is outside our area of expertise to determine whether or not the Lakeland subdivision caused the collapse the puru tuna at Lake Ōwhareiti and contributed to the flooding in the following decade, it is clear that there is a significant body of customary knowledge held by Ngāti Hine about tuna habitats that, in this instance, was not considered as reliable as technical evidence by the NRC.

The local study of Lake Ōwhareiti provides an example of the contrast between Māori and Crown models of resource management. To the Lake Ōwhareiti Trustees, the lake is a taonga which they have a duty to protect as kaitiaki. This extends not only to the bed of the lake, but to the water itself, its fisheries, and the surrounding flora and fauna that are dependent on it. This relationship between Māori and the lake was, to them,

recognised in 1964 when the Māori Land Court set aside part of the lake bed as a reservation for the use and benefit of Ngāti Hine as a fishing ground. Under the Crown model, however, the reservation only granted title to the lake bed – the water itself was owned by no one, and any rights bestowed by the legal presumption of *ad medium filum aquae* were subject to the Crown’s management rights under the RMA (and the Water and Soil Conservation Act 1967 that preceded it). Furthermore, the remaining portion of the lake bed is owned by the Far North District Council under two separate titles (a recreation reserve and an esplanade strip) as well as several private landowners adjacent to the lake. This is a reflection of the dynamic nature of the lake itself, which has expanded significantly over the past 60 years. This fragmentation of title is matched by a similar fragmentation of central and local government authority. While the NRC is responsible for regulating water use, the Far North District Council regulates land use surrounding the lake – thus, when an adjoining landowner sought to subdivide his lakeside property into several lifestyle blocks, it was the District Council that assessed the application. The landowner also needed to consult with the Historic Places Trust (now Heritage New Zealand) given that Pouerua heritage precinct extends to the northern boundary of the lake. When the lake flooded in 2008, it was the NRC who bore responsibility for dealing with it, yet Transit New Zealand also got involved when there was talk of the floodwaters engulfing major highways and roads. Finally, the lake’s tuna population – as well as its considerable potential for supporting recruitment of elvers – is managed by the Ministry for Primary Industries. Although it is unclear why the FNDC’s suggested ‘kaitiakitanga structure’ for Lake Ōwhareiti did not eventuate, this fragmentation of title and authority is likely an impediment to achieving the holistic approach envisioned by the Lake Trustees.

Chapter Six

Wairua River Catchment

(Southern Bay of Islands/Northern Whāngārei river system)

Figure 39: The flat farmland in the Hikurangi Valley



(Source: Photograph by Ross Webb, 15 March 2015)

6.1 Introduction

This chapter looks at rural river environmental management within the Southern Bay of Islands/Northern Whāngārei river system. After providing an overview of the river system, the major environmental concerns and the issues raised by claimants in relation to this river system, this chapter focuses on three local studies: the Hikurangi Swamp Scheme, the NorthPower Hydro-Station, and the Fonterra Kauri Plant. Each local study looks at the resource consent processes in particular, and the management of the schemes in general. In doing so, this chapter addresses some of the main themes of this report: kaitiakitanga, water pollution, customary resources, and Māori representation and/or participation in environmental planning, decision-making and management regimes under the RMA. The first two case studies, the Hikurangi Swamp Scheme and the NorthPower Hydro-Station, address the issue of tuna populations and their migration patterns through barriers in the Wairua River, the involvement of Māori in the resource consents for these schemes and recognition of their role as kaitiaki. The third, the Fonterra Dairy Plant, addresses the issue of effluent discharge and of consent notification. Taken together, these local studies demonstrate some of the concerns raised by claimants about water quality and the decline of tuna populations, concerns about the inadequacies of the resource consent process and of the resource management regime in recognising Māori cultural and spiritual values, and, in particular, their duty and role as kaitiaki.

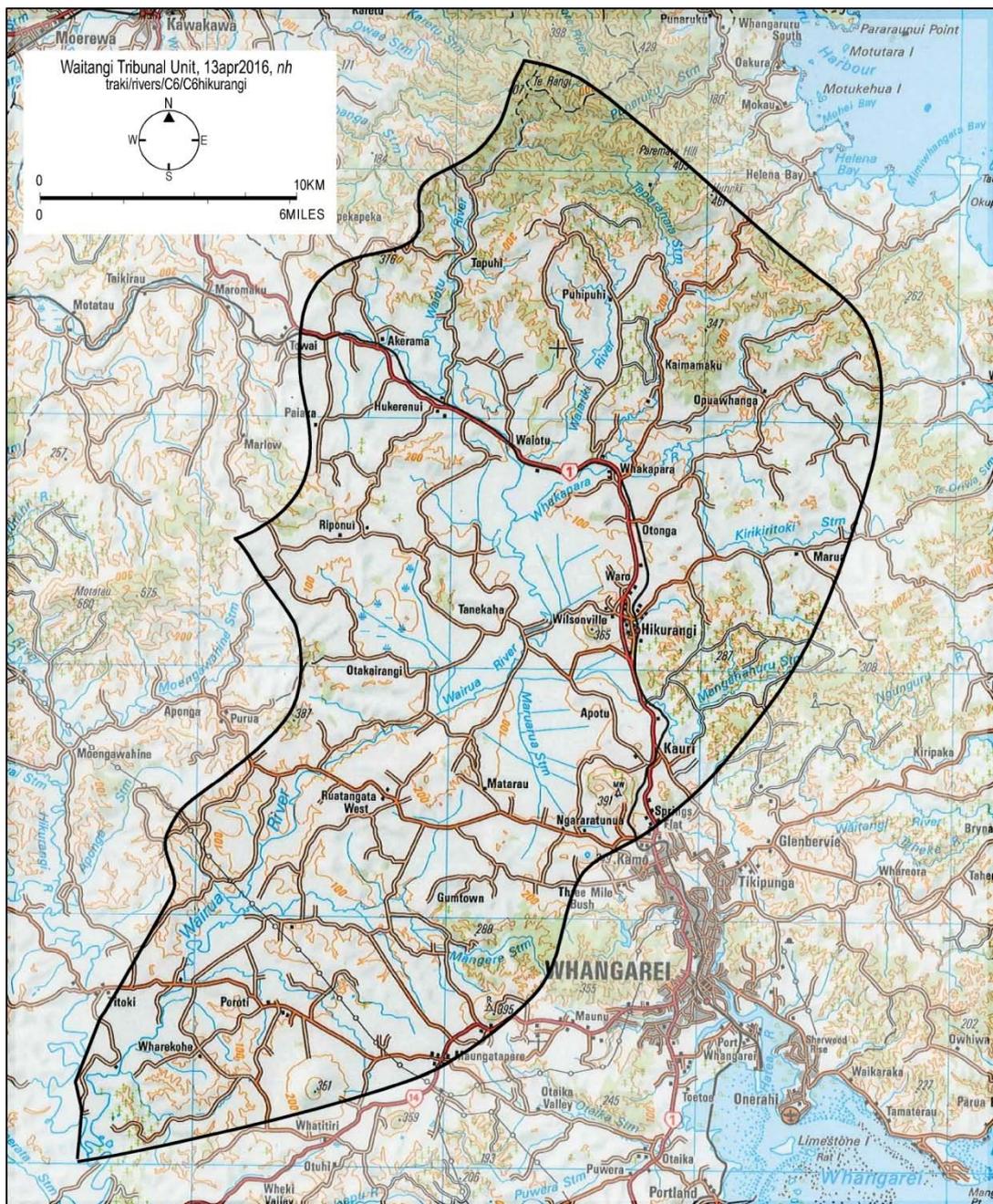
6.2 River system, rohe, and environment

The Southern Bay of Island/Northern Whāngārei river system selected for this report sits within the Wairua River Catchment. The 750 kilometres squared catchment is fed by three main waterways, the Waiotū, Waiariki, and Whakapara Rivers, which all originate in the steep hills a few kilometres from the east coast before joining in the northern part of the Hikurangi Swamp to form the Wairua River.¹¹¹⁷ These rivers and their tributaries all flow from the area in the immediate vicinity of the Puhipuhi Māori land blocks, and the site of extensive mercury mining in the first half of the twentieth century. Draining to the south-west, the Wairua River passes through the Hikurangi

¹¹¹⁷ LAWA: Land Air Water Aotearoa, 'Northern Wairoa River', <http://www.lawa.org.nz/explore-data/northland-region/river-quality/northern-wairoa-river/> (accessed 21 April 2016)

Swamp, which is dominated by a large drainage scheme and dairy farms. As the Waitotū and Whakapara rivers reach their confluence in the Swamp, the surrounding land quickly turns from native forest to pastoral land. In the past, the surrounding land was characterised by extensive and mature kauri forest, since cut down for timber and development. More recently, the rapid development of extensive dairy farming has been a major feature of this river system.

Figure 40: Southern Bay of Islands/Northern Whāngārei River System



The Hikurangi Swamp Scheme, a major feature of this river system, is a land drainage and flood protection scheme designed in the 1970s to control floodwaters that regularly flooded adjacent farmland. The Scheme lies approximately 20 kilometres to the North of Whāngārei and spans from where State Highway 1 crosses the Whakapara River and Waitōtū River, to approximately where the Lewis Bridge crosses the Wairua River. The Hikurangi Valley is characterised by flat farmland dissected with a network of rivers and canals that form the drainage scheme. In contrast to the generally flat landscape, lies Mount Hikurangi, just west of Hikurangi town. As mentioned, the surrounding land use is pastoral, largely dairy, and the nearest dairy plant, Fonterra's Kauri plant, lies just south of the Swamp, on State Highway 1.

Below the Lewis Bridge in the southern part of the Swamp, the Wairua River drains the Swamp, runs for another six kilometres before reaching the Purua Falls, then the Purua Rapids and then another sixteen kilometres before it cascades down Omiru/Wairua Falls, where it is partially diverted down a canal that then runs through the turbines the Wairua Power Station. After Omiru/Wairua Falls, the Wairua River joins the Mangakāhia River to form the Northern Wairoa River at Tangiteroria. The Wairoa River, in turn, flows past Dargaville and out into the Kaipara Harbour on the west coast of Northland, the largest estuary in New Zealand.

Some of the major environmental issues for the catchment include natural and anthropogenic barriers to fish passage, water abstraction, and discharges, deoxygenation of water during flooding, and management of stock access to riparian margins.¹¹¹⁸ As discussed in Chapter Three, the Southern Bay of Islands/Northern Whāngārei river system includes several monitoring sites: Whakapara River, Wairua River at Purua, Waitōtū River at SH1 and Mangahuru Stream at Main Road, Hātea River, Wairohia (Whau Valley) and Wairohia (Second Ave).¹¹¹⁹ Current regular monitoring within the catchment includes measurement of water quality, river levels, rainfall, aquatic macroinvertebrates, habitat quality and periphyton in the larger rivers, one stream site and two drain sites. In general, the results of such monitoring show that

¹¹¹⁸ Department of Conservation, 'Baseline Report: Hikurangi Catchment, Contract 4553', 2014. Provided by Erica Williams, NIWA.

¹¹¹⁹ The results from the individual monitoring sites are discussed in Chapter Three.

waterways in the catchment have relatively low quality habitat for aquatic biota, and show comparatively high *E. coli*, ammonia and turbidity levels, while aquatic macroinvertebrate community indices are consequently low, particularly at the lowland pastoral-dominated sampling sites. More diverse and sensitive communities have been found within the upper catchments at forested sampling sites.

In February 2016, NIWA scientist Neale Alan Hudson presented evidence to the Waitangi Tribunal regarding water quality and the ecological status of the Wairua River catchment, upstream of the Wairua Power Station and Omiru Falls. Hudson's evidence described the surface water quality monitoring programmes, including the physico-chemical and biological variables used to determine the state of rivers and streams and compared the results of monitoring with various guideline values. The data indicated that improved management of agricultural wastewater is having a beneficial impact on surface water quality. However, several metrics (for example, *E. coli* and nutrient concentrations) indicated generally impaired water quality. Surface waters across the Hikurangi Swamp Scheme were generally unsuited to recreation involving immersion, and might represent a risk to individuals involved in contact recreation. Sufficient nutrient existed to stimulate growth of aquatic plants provided habitat and substrate is suitable. Dissolved oxygen (DO) concentrations indicate that conditions likely to stress organisms could exist during much of the year, particularly during the summer low-flow period.¹¹²⁰

Hudson explained that river condition are generally poor to fair, rather than good as a result of the combined impacts of DO concentrations (in part due to inputs of biodegradable organic material such as agricultural runoff and decaying aquatic vegetation, and the respiration of rooted plants), and degraded habitat conditions (occurrence of extensive sediment deposits). Ongoing access by stock in rivers appears to have had a deteriorious effect on surface water quality, Hudson claimed, while concentrations of heavy metals in sediment and the overlying water column in reaches

¹¹²⁰ Brief of Evidence of Dr Neale Alan Hudson, Wai 1040 #U20, paras 12-17

of the upper Wairua River catchment exceed trigger thresholds for lowlands streams.¹¹²¹

Tuna are the taonga species in the Wairua River catchment, and a significant issue of concern for claimants. A 2013 NIWA study concluded that Swamp and wetland drainage, waterway realignment, decrease in the extent and frequency of flooding, loss of natural bankside cover and increased nutrient loads have all contributed to a significant loss of fish habitat within the entire catchment.¹¹²² In evidence to the Tribunal, Dr Jacques Boubée explained that the Tuna populations are ‘faced with a multitude of challenges during their long and complex life cycles’.¹¹²³ In order to complete their life cycles, freshwater eels must move between freshwater and the sea (known as a diadromy), and must spend extended periods in marine, estuarine and freshwater habitats. Breeding occurs in the marine environment, following an extended adult growth stage in freshwater (40-60 years) and a long migration from their freshwater habitat to spawn in the Pacific Ocean near Tonga.¹¹²⁴ Boubée argued that the most likely reasons for the decline in tuna populations in the Wairua River catchment (and elsewhere in New Zealand) was the reduction in habitat caused by drainage and degradation of freshwater habitat as well as ‘a number of significant migrations blocks’ for both upstream and downstream migrants’.¹¹²⁵ Barriers to tuna migration—the Wairua Power Station and the Hikurangi Swamp Scheme—are the topics of local studies discussed below.¹¹²⁶

6.3 Claim issues

The two key claims that relate to the Bay of Islands river system are Wai 246, Puhipuhi State Forest Claim, and Wai 1959, Lissa Lyndon and Huhuna Seve for and on behalf of the descendents of Sylvia Jones. 1959 claimants contend that the Treaty of Waitangi

¹¹²¹ Brief of Evidence of Dr Neale Alan Hudson, Wai 1040 #U20, paras 12-17

¹¹²² Erica Williams, Jacques Boubée, Allan Halliday, George Tuhiwai, ‘Tuna Populations in the Wairua and Managakāhia Rivers, Prepared for Ngā Kaitiaki o Ngā Wai Māori, Northland Regional Council, Northpower & Ministry of Primary Industries’, (Wellington: NIWA, 2013), p21

¹¹²³ Wai 1040 #U19

¹¹²⁴ Conal Summers, ‘Managing Fish Passage in the Hikurangi Swamp Land Drainage and Flood Protection Scheme’, *Water, Water New Zealand Journal: The New Zealand Water & Wastes Association Waiora Aotearoa*, Issue 180, July 2013, p23-31

¹¹²⁵ Brief of Evidence of Dr Jacques Alain Teva Boubée Wai 1040, #U19, paras 11-19

¹¹²⁶ Brief of Evidence of Dr Jacques Alain Teva Boubée Wai 1040, #U19, paras 11-19

imposed upon the Crown the duty to: a) Actively protect the claimant interests in their whenua, waterways and other resources; b) Act in good faith towards the claimants and their descendants; c) Consult with the claimants on all matters pertaining to the management of their whenua, waterways and other resources; and d) Act in partnership and in good faith with the claimants in protecting their resources.¹¹²⁷

In nominating the river system as a case study for the rural rivers projects, Wai 246 and Wai 1959 claimants outlined their customary interest in these waterways and the major environmental issues:

The customary interests in the Rivers are substantial. The Rivers have been a source of kai in the form of tuna, puha, inanga, kokopu, native freshwater mussel, mudfish and kewai. The Rivers were also the source of water for Ngāti Hau and especially for those who lived at Whakapara Marae. This degradation of the Rivers has also impacted on the wairua and mauri of the river and the ability of Ngāti Hau to utilize the according to their tikanga.¹¹²⁸

While the claim centres on Ngāti Hau's interest in the waterways, the claimants also acknowledged that there are others with interests in the rivers, namely Ngāti Hine, Ngātiwai, Ngāti Te Ra, and Ngāti Manu.¹¹²⁹ More recently, hapū have established a group, Ngā Kaitiaki o Ngā Wai Māori (NKONWM), made up of Ngāti Hau, Ngāti Kahu o Torongare, Te Orewai, Te Uriroroi, Te Parawhau, Te Kumutu and Ngāti Hine. NKONWM is an initiative to restore waterways and address resource management issues within the rohe, and seeks a partnership relationship with other stakeholders in the region.

For some claimants, the undermining of kaitiakitanga is a central issue. In his evidence to the Tribunal, Allan Halliday (Ngāti Hau) explained the meanings and responsibility of kaitiaki:

Tangata whenua means person of the land. It is not simply referring to a person who lives on the land, it is deeper than that. We whakapapa to every part of the land. Being tangata whenua, it also means that we are

¹¹²⁷ Amended Statement of Claim by Lissa Lyndon and Huhana Seve for and on behalf of the descendants of Sylvia Jones, Wai 1959, 1.1.1(c)

¹¹²⁸ Wai 1040, #3.2.488

¹¹²⁹ Wai 1040, #3.2.488

kaitiaki. Being kaitiaki is both a journey and an obligation. I don't think that I have a choice about whether or not to practice kaitiakitanga...

Kaitiakitanga to me is being a guardian or caretaker. Our role as kaitiaki is from Papatuanuku to Ranginui and everything in between. In practical terms it means that we have to look after our lands and environment for future generations. We also have to pass on to our future generations what it means to be a kaitiaki. Although today that role has changed to be an effective kaitiaki you have to engage with central and local government and other organisations such as Fonterra.

As kaitiaki we have to ensure that the practises are continued by future generations. For example, in relation to tuna, we have to pass on the knowledge about how to protect them, their habitat and their habits and then how to catch them, clean them, cook them etc. We also have to teach the next generation about the environment in which they live, movement of the tuna pertaining to the weather conditions and their life cycle how to improve their habitat and ensure that the mauri is in existence within their living area.¹¹³⁰

Millan Ruka (Te Uriroroi, Te Parawhau, Te Mahurehure ki Whatitiri), too, explained:

As part of our exercise of kaitiakitanga and despite claims that the waterways in our rohe are not ours, we continue to do what we can to exercise our kaitiakitanga in our relations with our neighbours (Pakeha farmers and tangata whenua) as well as government—local and national.¹¹³¹

According to Halliday, environmental degradation has 'impinged upon' kaitiakitanga, while the legislative framework does not properly protect it it: '[T]he baseline of the RMA is often set too low to properly recognise our views, values and our responsibility as kaitiaki'.¹¹³²

Indeed, Te Raki Māori have suggested that the resource management regime is ill-equipped to address Māori interests in either waterways or environmental impacts generally. Halliday claims that the resource consent process is flawed in that it neglects to take account of cumulative impacts of consents granted. Halliday explained: 'farmers along the waterways generally put effluent into the water and draw out water from waterways. The Regional Council looks at each as an individual consent ... [but] fails to

¹¹³⁰ Brief of Evidence of Allan Halliday, Wai 1040 #P2, para 3

¹¹³¹ Brief of Evidence of Millan Tame Ruka, Wai 1040 #U34, para 5

¹¹³² Halliday, Wai 1040 #P2(c), para 15.36

take an accumulative view of the impacts of the consents granted on the waterways in their entirety... If we knew the cumulative takes and discharges throughout the Wairua I suspect the results would be really alarming'.¹¹³³ Halliday is also concerned about the length of the consents granted. 'Resource consents are now being obtained by farmers for a period of 35 years', he explained. 'This is a long time - practices change'.¹¹³⁴ As we will see in the Hikurangi Swamp local study, tangata whenua see the granting of 35 year consents and an 'anathema' to the treaty partnership.

Others have pointed to specific activities that have affected waterway quality and customary resources, such as damming, agricultural and forestry run-off, siltation, and mining as the cause of waterway pollution. Millan Ruka (on behalf of Te Uriroroi, Te Parawhau and Te Mahurehure ki Porotī hapū), has set himself up to monitor his hapu rivers out of concern that little enforcement was being conducted. Ruka has described the state of the Waiotū, Whakapara and Wairua Rivers during a trip down the rivers. 'I just couldn't believe what I saw. The banks were a sea of stinking slushy excrement and urine from dairy and beef cattle for over 30 km'.¹¹³⁵ Halliday has also pointed to intensive dairying, among other things, as having a deleterious impact on water quality. 'The increase in herd sizes and milk production have had various impacts on waterways including damage through the excess water takes, excess discharges into the waterways and erosion of banks and silting into our waterways'.

The decline of tuna (eels) is also of central importance to Te Raki Māori. Edwards and Doreen Anderson recalled:

[when we were kids], we would go down to the creek to swim and fish for eels. There were always plenty of eels... You can hardly get an eel down in our creeks any more The Whakapara used to be clean and used to flow... Now the Whakapara is so silted up it is stagnant and only flows when there is heavy rain or flooding.¹¹³⁶

Halliday, too, suggested that before the 1970s, large populations of tuna and water-fowl lived in and around the swamp. These were an important food source for our people'

¹¹³³ Halliday, Wai 1040 #P2(c), para 4.3

¹¹³⁴ Halliday, Wai 1040 #P2, para 4.2

¹¹³⁵ Ruka, Wai 1040, #U34, para 106

¹¹³⁶ Joint Brief of Evidence of Eru Edwards and Doreen Anderson, Wai 1040, #P5, para 118

and for Akerama Marae in particular. ‘Today we are unable to cater for our visitors in the way we used to’.¹¹³⁷ Claimants contend that the declining tuna population is due to declining water quality, habitat degradation and migration barriers (including the Hikurangi Swamp Scheme and Wairua Power Station, discussed below).

Figure 41: Millan Ruka, below the Wairua Power Station, late 1970s



(Source: Northpower Wairua Dam and discharge, NRC File LUC11, Vol. 2)

Two other environmental issues relevant to the Wairua River catchment, though not covered in the report, include the ownership and management of the Porotī Springs and the impact of mining in Puhipuhi. Porotī Springs is the subject of its own report.¹¹³⁸ The impact of mining is also addressed briefly in another research report¹¹³⁹, while the impacts of mining on waterways are discussed in published scientific literature¹¹⁴⁰ and in claimant commissioned research for resource consents.¹¹⁴¹

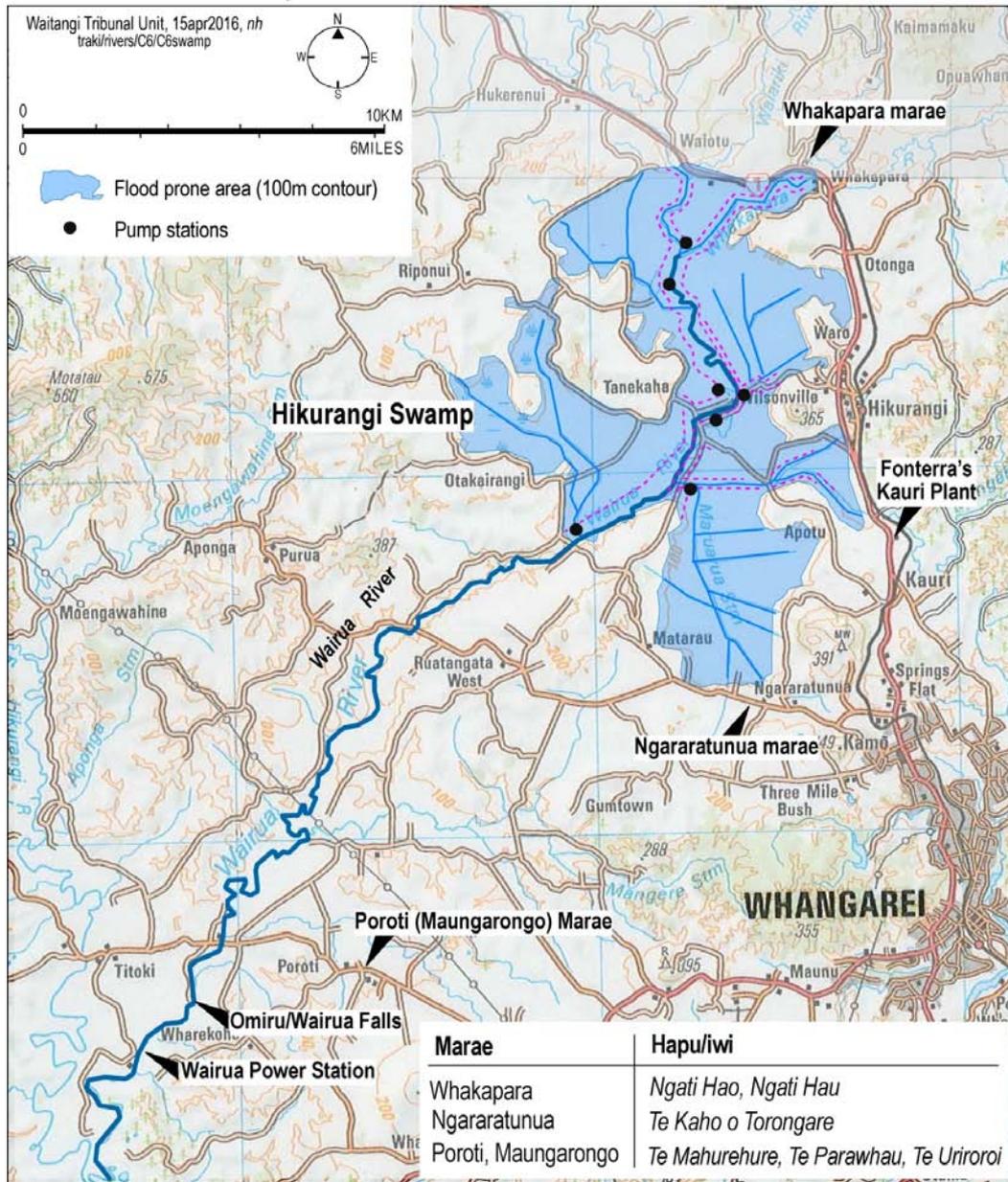
¹¹³⁷ Halliday, Wai 1040 #P2, para 8.3

¹¹³⁸ Paul Hamer, ‘Porotī Springs and the Resource Management Act, 1991-2015’, Wai 1040, #A55 2016

¹¹³⁹ Mark Derby, ‘“Fallen Plumage”: A History of Puhipuhi, 1865 – present’, Draft for QA dated 12 February 2016 (not yet on the Wai 1040 record of inquiry)

¹¹⁴⁰ F E Hoggins and R R Brooks, ‘Natural dispersion of mercury from Puhipuhi, Northland, New Zealand’ *New Zealand Journal of Marine and Freshwater Research*, (Vol. 7, 1973), pp 125-132; D Craw, D Chappell, D

Figure 42: Location of key sites and local studies in the Southern Bay of Islands/Northern Whāngārei river system



and A Black, 'Surface runoff from mineralised road aggregate, Puhipuhi, Northland, New Zealand' *New Zealand Journal of Marine and Freshwater Research*, (Vol.36, 2002), pp 105-116

¹¹⁴¹ K.V.Bennett, R.S. Rebstock, 'Waiariki Stream, Puhipuhi: Baseline Stream Survey'. Report prepared by Bioresearches Limited for Ngāti Hau on behalf of Fonterra Kauri Limited, 2012. Also see appendices to Allan Halliday's Brief of Evidence, Wai 1040 #P2(a), pp140-151, which includes a Cultural Impacts Assessment Report on Puhipuhi Quarry Consent Application, May 2000.

6.4 Local Study #1: The Hikurangi Swamp Scheme

Figure 43: The Hikurangi Valley, east of Jordon Valley Road



(Source: Photograph by Ross Webb, 15 March 2015)

6.4.1 Introduction

This local study looks at the management of the Hikurangi Swamp Scheme under the RMA as it relates to the recognition of kaitiakitanga, and the impacts of the Scheme on customary resources, namely tuna. In particular, it explores Māori involvement in the resource consent application process between 2004 and 2010, before outlining the current management of the Scheme and the continued concerns on the part of Te Raki Māori about the impact of the Scheme on tuna populations.

The Hikurangi Swamp Scheme comprises of a system of earth banks, which, in the first instance, confine floodwater away from farmland. These stop banks are within a strip along the length of the Wairua River between Lewis Bridge and Junction, and upstream of the Junction along the Whakapara and Waitotū River along SH1. In addition, the

agricultural land on both sides of the stop banks has been separated into seven pockets (Te Mata, Junction, Otonga, Tanekaha, Okarika, Mountain, and Ngaratunua), which accept flood flows in excess of the design flood level within the Wairua and its major tributaries. In other words, if the river continues to rise beyond a set level, the water spills over the banks and through specially constructed spillways into confined areas of land known as pockets. Rainfall runoff from within the pockets, together with occasional flood flows overtopping the banks, is collected by a series of drains and canals and returned to the river via flap gates and/or pump stations at low points in the stop banks. The pump stations are generally able to deal with small to moderate rainfall events without significant flooding of pasture. However, heavy sustained rainfall within the Scheme catchment and/or overtopping of the stop banks can lead to extensive flooding, leaving floodwaters lying on pasture for three or more days.

Figure 44: The Waiotū River in flood looking Northwest (upriver)



(Source: Puhipuhi mining action group, 'Rain and floods', <http://puhipuhi.co.nz/rain-and-floods/> accessed 11 May 2016)

6.4.2 Claims

The Swamp has been described as ‘a very significant area for several hapū of Whangarei’ and is the subject of various claims by Te Raki Māori, especially in relation to customary resources.¹¹⁴² In his evidence to the Tribunal, Benjamin Frank Pittman claimed that the Hikurangi Swamp Scheme ‘totally altered the natural course and total environment of the Waiotū River and allied land configuration, creating severe effects on traditional foods such as *tuna*, *kākahi*, and *kēwai* and areas for *harakeke* and *kuta* gathering’.¹¹⁴³ Allan Halliday has described the impact of the Scheme on Ngāti Hau’s rangatiratanga, kaitiakitanga, and their ability to manaaki visitors.¹¹⁴⁴ Millan Ruka detailed the impacts of the pump stations on tuna: ‘The seven flood pump-stations cut and kill migrating tuna by the thousands as they pass through the turbines’, Ruka explained. He went on to say that ‘the lack of pump management during floods has caused substantial fatalities that have left water sapped of oxygen in the summer floods to kill even more’.¹¹⁴⁵

The hapū Ngāti Hau, Ngāti Kahu o Torongare and Te Parawhau (collectively referred to as Ngā Hapū o te Reponui) claim status as mana whenua or kaitiaki of the area of the Hikurangi Swamp Scheme. Furthermore, as discussed above, a group of hapū (Ngāti Hau, Ngāti Kahu o Torongare, Te Orewai, Te Uriroroi, Te Parawhau, Te Kumutu and Ngāti Hine) formed Ngā Kaitiaki o Ngā Wai Māori in response to concerns about the Hikurangi Swamp pumps and the impact on tuna (the broader projects of this group is discussed later in this chapter).

The importance of the swamp to these hapū, and in particular tuna within the swamp, is evident in their sustained activism, their calls for joint management and their cooperation with other organisations, namely NIWA, in attempting to preserve the habitat of the tuna.

¹¹⁴² Wai 1040 Te Paparahi O Te Raki District Stage 2 Hearing Week 12, 15 February, 2015, Whāngārei Site Visit, Te Mana Motuhake ā Rohe o Whangaroa’, 11 February, 2015, Wai 1040 #P37, p5

¹¹⁴³ Brief of Evidence of Dr Benjamin Frank Pittman Wai 1040, #P38, para 5.14

¹¹⁴⁴ Halliday, Wai 1040, #P2, para 8.3

¹¹⁴⁵ Ruka, Wai 1040 #U34, para 88

6.4.3 Pre-1991 management of the Hikurangi Swamp

David Alexander's 'Land-Based Resources, Waterways and Environmental Impacts' report outlines the early history of the Hikurangi Swamp and its management regimes.¹¹⁴⁶ Alexander notes that the swamp lands were largely encompassed by the Otakairangi and Hikurangi purchases made by the Crown in 1875, meaning that the swamp lands were almost exclusively Crown owned. As briefly noted in Chapter One, the Crown declared the swamp a 'drainage district' in 1919 and until 1935 implemented major drainage works in the 45,000 acres area under the declared district, undertaken by the Land and Survey Department.¹¹⁴⁷ In 1936, devastating floods resulted in settlers petitioning for a thorough investigation into the possibility of lessening the 'flood menace' by completion of further development work.¹¹⁴⁸ Subsequent investigation by the Lands and Survey Department concluded that it was impossible to prevent flooding in the swamp, that further work between the Falls and Lewis Bridge would 'certainly trigger serious slips', and that 'hastened discharges would detrimentally affect low lying lands further down the Wairua'.¹¹⁴⁹

In 1953, the Whāngārei County Council adopted responsibility for work in the Swamp, and, with the aid of government subsidies provided through the Soil Conservation and Rivers Control Council, reopened all the channels constructed by the Lands and Survey Department. When the Northland Catchment Commission was established, it accepted responsibility for work in the swamp and for the preparation of proposals to improve conditions in the catchment.¹¹⁵⁰ A report by the Northland Catchment Commission in 1968 found that flooding in the swamp was caused by the inflow exceeding the capacity of the outflow channel. It also found that floods persisted on the land for two to three weeks, particularly following storms of three to four days' duration which were not unusual in the area.¹¹⁵¹ The report called for a scheme to control not only flood

¹¹⁴⁶ Alexander, *Land-based Resources*, Wai 1040 #A7, pp219-226

¹¹⁴⁷ Conal Summers, 'Managing Fish Passage in the Hikurangi Swamp Land Drainage and Flood Protection Scheme', *Water, Water New Zealand Journal: The New Zealand Water & Wastes Association Waiora Aotearoa*, (Issue 180, July 2013), p23-31; Alexander, *Land-based Resources*, Wai 1040 #A7, p222

¹¹⁴⁸ Northland Catchment Commission, 'Hikurangi Swamp Major Scheme Report, Vol.1: General Statement', Whāngārei, 1968, p2, NRC File 11375, Volume 1

¹¹⁴⁹ NCC, 'Hikurangi Swamp Major Scheme Report', p2

¹¹⁵⁰ NCC, 'Hikurangi Swamp Major Scheme Report', p2

¹¹⁵¹ NCC, 'Hikurangi Swamp Major Scheme Report', p1

frequency, but also flood duration. As a result, the Hikurangi Valley Swamp Scheme was designed in the 1960s and constructed in the 1970s with the purpose of controlling floodwaters that regularly flooded some 5,600 hectares of farmland within the Hikurangi Valley.

Today, the Whāngārei District Council (WDC)—created following local government amalgamation with the passing of the Local Government Amendment Act 1989—manages the Scheme, while the day-to-day operations and maintenance are contracted to an external contractor, Transpacific Ltd.¹¹⁵²

6.4.4 Environment impact of the Hikurangi Swamp Scheme

The creation of the Scheme significantly modified what was ‘one of the largest wetlands in the southern hemisphere’ and has resulted ‘in major impacts on the eel fishery which is of significant cultural and historic importance to local landlocked iwi as well as a commercial source’, according to Conal Summers of the Whāngārei District Council.¹¹⁵³ When Europeans first encountered the swamp, it was heavily forested, chiefly with kahikatea.¹¹⁵⁴ Such flora and fauna have declined, as a result of deforestation, the drainage of the swamp between 1919 and 1935, the implementation of the Scheme in the early 1970s, and current land use, which is primarily pastoral. As Geoff Park writes, ‘Te Tai Tokerau was one of New Zealand’s swampiest regions... much of the bush that settlers were downing was swamp forest, in order to get to the rich soil of the flats—then to drain, burn, fence, grass and stock it’.¹¹⁵⁵

As outlined above, a significant issue for Te Raki Māori is the impact of the scheme on tuna populations. As Conal Summers (WDC) explains, significant barriers exist to both upstream elver passage and downstream migrant passage. There is evidence, according to Summers, of eel mortality through ‘deoxygenation of impounded waters and pump stations’.¹¹⁵⁶ Within the Scheme, the main barrier to upstream migration are the pump

¹¹⁵² Whāngārei District Council, ‘Hikurangi Swamp Scheme Management Plan’, (2012), p9

¹¹⁵³ Summers, ‘Managing Fish Passage in the Hikurangi Swamp’, p23-31

¹¹⁵⁴ Alexander, *Land-based Resources*, Wai 1040 #A7, p220

¹¹⁵⁵ Geoff Park. “Swamps which might doubtless easily be drained”: Swamp Drainage and its Impact on the Indigenous’, in Pawson, Eric, and Brooking, Tom, (eds), *Environmental Histories of New Zealand*, Melbourne, (Auckland: Oxford University Press, 2002)

¹¹⁵⁶ Summers, ‘Managing Fish Passage in the Hikurangi Swamp’, p23-31

stations, each of which has a gravity flapgate designed to prevent flows from the main river channel entering the pockets during elevated river levels. Elvers must pass through these gates to access upstream tributaries. The downstream migration of eels is impeded in two ways: eel mortality through entrapment in the scheme pumps and the impediments to migrant movement into the main river channel during periods of oxygen depletion following significant storm events.¹¹⁵⁷ However, Summers explained that the extent, and exact factors, that lead to mortality were unknown:

In the case of extreme storm events where water are impounded for several days and extensive oxygen depletion occurs, eels mortality may occur across large areas of the catchment but may not be evident until water is drawn down to the pump stations and eel carcasses are destroyed through the pumping process. Video evidence exists showing significant numbers of chopped mature eels downstream of a pump station. It is difficult to ascertain whether eels passing through the pumps were dead or alive prior to entrainment.¹¹⁵⁸

Moreover, Summers explained swamp drainage, waterway realignment, decrease in the extent and frequency of flooding (during which eels feed extensively on land invertebrates), loss of natural riparian cover and increased nutrient loading have all contributed to a significant loss of fish habitat within the catchment.¹¹⁵⁹

6.4.5 The Hikurangi Swamp under the RMA

Prior the RMA, the Scheme was approved by the Soil Conservation and Rivers Control Council and the Minister of Works (by Order in Council) under the Soil Conservation and Rivers Control Act 1941. In 1970, local authorities notified the Scheme as an “existing use” under Section 21 of the Water and Soil Conservation Act 1967. Following the creation of the NRC, and the passing of the RMA, the Council recognised this as “permission” or an “existing authority” under Section 365 of the RMA. Under Section 386(3) of the RMA¹¹⁶⁰, this existing authority expired on the tenth anniversary of the commencement of the RMA (that is, 1 October 2001). As this anniversary approached, the NRC warned the WDC of the pending expiry of the authorisation, and repeatedly advised the WDC after October.

¹¹⁵⁷ Summers, ‘Managing Fish Passage in the Hikurangi Swamp’ pp23-31

¹¹⁵⁸ Summers, ‘Managing Fish Passage in the Hikurangi Swamp’ pp23-31

¹¹⁵⁹ Summers, ‘Managing Fish Passage in the Hikurangi Swamp’ pp23-31

¹¹⁶⁰ ‘Every permit resulting from an existing authority shall be deemed to include a condition to the effect that it finally expires on the tenth anniversary of the date of commencement of this Act’

In the meantime, the WDC applied for and were granted various consents for upgrades and other work related to the Scheme. In October 1998, the NRC granted resource consent to the WDC to reconstruct the control banks on the Wairua, Waiotū, Whakapara Rivers and Apotu Stream, to divert floodwaters of Apotu Stream and Wakelin Drain, to excavate and disturb the bed of Wakelin Drain and to carry out associated vegetation removal and earthworks on Soil Conservation and Rivers Control Reserve Lands in the Hikurangi Swamp.¹¹⁶¹ It set the consent's expiry date at 30 June 2000.¹¹⁶² In June 2001, the NRC granted WDC further resource consents to carry out riverworks and stream clearing in various sub-catchments in the Hikurangi Urban Drainage Area, and to divert water within and discharge stormwater from those sub-catchments to the Mangawhero Stream and its tributaries and the Otonga Stream tributary. However, the NRC's resource consent files for the Hikurangi Swamp Scheme contain no detail on the process surrounding the consents, whether they were publicly notified and whether or not public consultation was sought or received. For this reason, this case study focuses largely on the 2004 resource consent application. As far as the records show, this is the first resource consent application where public consultation was sought.

6.4.6 Resource consent application, 2004

In 2004, the WDC applied for resource consent to continue the operation of the Scheme and for works relating to the Scheme. Since the establishment of the Swamp Scheme, a series of *ad hoc* changes coupled with a series of cyclonic storms which caused flooding raised questions about the Scheme's operation and performance. Following a review of the Scheme's hydraulic performance, alongside monitoring of the scheme's performance, practical experience, and engineering and environmental investigations, the WDC identified a number of activities and structures that required modification and upgrading, including adjustments to the stop bank spillway level and crest length, and upgrading of structures, and mechanical equipment.¹¹⁶³ Thus, in 2004, the WDC applied for resource consents for the continuance of the existing Scheme as well as associated maintenance, repair, and modification. The WDC applied for land use consent (pursuant to Section 9 of the RMA), location of structure within river beds (Section 13),

¹¹⁶¹ 'Resource Consent 98 8427 (01-04), NRC File 11375, Volume 1

¹¹⁶² 'Resource Consent 98 8427 (01-04), NRC File 11375, Volume 1

¹¹⁶³ Whāngārei District Council 'Hydraulic Performance of the Hikurangi Swamp System', March 2003, NRC File 11375, Volume 1

a water permit (Section 14) and a discharge permit (Section 15). In doing so, the WDC sought consent for the maximum period of 35 years.¹¹⁶⁴

In preparation of the application, the WDC organised meetings with representatives of the WDC and NRC, as well as the Hikurangi Swamp Field Officer for the WDC. The notes from these meeting suggest that WDC staff did not see any reason to consult Māori. The notes read: 'While Iwi have not been consulted, no issues of significance to Iwi have been identified by the applicant in its operation of the Scheme'.¹¹⁶⁵ This initial position would change in later years, as we shall see.

6.4.6.1 Environmental impact reports

As part of the resource consent application, the WDC commissioned a consultancy, Montgomery Watson Harza (MWH), to produce both an 'Aquatic Ecology Assessment' report (12 September 2003), and an 'Assessment of Effects on the Environment' report (4 October 2004). The Aquatic Ecology Assessment assessed the effects of the Hikurangi Swamp Drainage Scheme on the water quality and ecology of the Wairua River and its tributaries. It based this on a site inspection undertaken on 10 September 2003, a review of water quality information provided by the NRC, an ecological survey report (NIWA 2000) and an analysis of fish observation records obtained from the New Zealand Freshwater Fish Database, administered by NIWA.¹¹⁶⁶ The 'Aquatic Ecology Assessment' report concluded that water quality at monitoring sites within the Hikurangi Swamp (at the Whakapara, Mangahahuru, Wairua, Mangere, and Mangakāhia Rivers) was characterised by elevated nutrient concentrations, low visual clarity, and low dissolved oxygen concentrations. These characteristics were a result of low gradient and soft silt substrate of the watercourses passing through the swamp, as well as the extensive agricultural development within the catchment, and the warm summer temperatures experienced in this region. In terms of the effects of the Drainage Scheme on water quality, the report concluded:

¹¹⁶⁴ Whāngārei District Council, 'Application for Resource Consent and Assessment of Environmental Impacts', October, 2004, NRC File 11375, Volume 1

¹¹⁶⁵ Notes are reproduced in: Nigel Mark Brown, 'NRC Staff Report for Hikurangi Swamp Scheme Resource Consent Application CON20031137501', NRC File 11375, Volume 7

¹¹⁶⁶ Whāngārei District Council, 'Hikurangi Swamp Consents – Aquatic Ecology Assessment', October, 2004, NRC File 11375, Volume 1

These same conditions prevail at other sites in adjacent catchments. There is no evidence to suggest that the operation of the drainage scheme *per se* adversely affects water quality, except on those rare occasions when extensive pasture flooding is accompanied by warm summer conditions, resulting in grass die-off and subsequent oxygen depletion of receding floodwaters.

This situation can arise as a result of the river overtopping its banks and flood waters being held in pockets (approximately once every five years on average). It can also occur when intensive rainfall within the scheme catchment causes floodwater to build up faster than it can be pumped back into the river. Pasture may remain under water for as long as 3 days in extreme events and the worst case scenario is that this may result in mortality.¹¹⁶⁷

In regard to fish populations, the report noted the environmental concerns associated with the ongoing operation of the Hikurangi Swamp Drainage Scheme, including potential obstructions to eel passage through the Scheme such as floodgates and pumping stations, and oxygen depleted drainage waters entering the tributaries of the Wairua River as a result of summer pasture flood and pasture die-off.

The Assessment of Effects on the Environment report outlined the then current state of the environment of the Hikurangi Swamp Scheme, the regulatory plans and policies relevant to the Scheme, the effects of the Scheme on the environment, mitigation measures, consultation, and five suggested consent conditions. In relation to fish kill and passage restriction, the report stated:

The primary environmental concerns relating to fish life in the Scheme's river and channels are oxygen depletion in drainage water entering the channels, drains, and tributaries of the Wairua River. This is caused by pumping flood waters that are significantly warmer than the receiving waters in the canals and the river course. This water is warmer due to having sat in shallow pools in paddocks. The warm water does not contain as much oxygen as cooler waters in the canals and river course. This causes fish kill.

Operation of gates and pumps causes restriction of fish and eel movement and is suspected of killing fish and eels as they pass through the pumping stations.

¹¹⁶⁷ Whāngārei District Council, 'Hikurangi Swamp Consents – Aquatic Ecology Assessment', October, 2004, NRC File 11375, Volume 1

Despite this, the report suggested that no mitigation was needed:

No mitigation is suggested in relation to barriers to eel movement or fish and eel kill from pump operation as this is considered to be a minor effect on these populations.

Increasing the rate at which floodwater is removed from pasture and returned to the river would reduce the effects of deoxygenated water on both pasture and aquatic life. This could be done by increased pumping capacity being established when this option becomes viable.¹¹⁶⁸

An environmental engineer Nigel Mark-Brown expressed doubts to the NRC about the claim on the part of the applicant that no mitigation was suggested despite the Aquatic Ecology Assessment referencing a 2000 NIWA report that stated: 'eels were less abundant within the swamp drains than in the adjacent water ways and – migration barriers provided by the falls and the hydro electric control gate have an overriding influence on native fish distribution'.¹¹⁶⁹ As a result Water Resource Officer (Engineering) for the NRC wrote a letter to the WDC on 21 December 2004, requiring further information on the matter of the eel population. 'Further justification is required', the letter read, 'on this matter including any evidence of the occurrence or non-occurrence of eel kill by the pumps and the likelihood or probability of eels in drains being sucked into pumps'.¹¹⁷⁰

6.4.6.2 Public notification and submissions

The WDC's application for resource consent was publicly notified on 12 December 2006, with a closing date for submission on 1 March 2007. The application received 50 submissions. Of these 28 opposed the application, while 17 expressed support (of the 17, six submissions were in general support, while opposing elements of the application¹¹⁷¹). Five submitters did not indicate either support or opposition.

¹¹⁶⁸ Whāngārei District Council, 'Application for Resource Consent and Assessment of Environmental Impacts', October, 2004, NRC File 11375, Volume 1

¹¹⁶⁹ Nigel Mark-Brown to Dave Roke, Email correspondence, 15 December, 2004, NRC File 11375, Volume 1

¹¹⁷⁰ Janarie Jongkee, Water Resource Officer (Engineering), Northland Regional Council, to Whāngārei District Council, 'Resource Consent Application CON20031137501 – Whāngārei District Council – Request for Further Information, 21 December 2004, NRC File 11375, Volume 1

¹¹⁷¹ In particular, the proposed modification to spillway lengths.

Te Raa Nehua (Ngāti Hau) was one of those opposing the granting of consent on behalf of Ngāti Hau Trust Board.¹¹⁷² On 27 February 2007, Nehua submitted an objection which centred on the impact on freshwater species. First, the submission cited the purpose of the RMA (that is, ‘the sustainable management of natural physical resources including freshwater animals and their habitat’) and argued that local government ‘must consider effects on freshwater fish and their habitat when considering resource consent applications’. Nehua’s objection continued:

Habitat degradation within the Wairua and Mangakahia catchment, including the Hikurangi swamp scheme, is of utmost concern to Ngāti Hau and other hapu of these catchments. Significant modification to the waterways over the years has impacted detrimentally on the freshwater fishery.

Habitat degradation is a major concern and Ngāti Hau and other hapu, in reasserting their mana and exercising effective kaitiakitanga, recognises that restoring habitats is the foundation upon which the fishery can develop...¹¹⁷³

The submission concluded that there was ‘[n]o effective input and participation by Ngāti Hau and other hapu into the effective management of the waterways including freshwater fishery’. The current management regime for the Scheme was ‘unacceptable’, Nehua stated, and led to tuna ‘being chopped up by pump stations during floods’, as well as having a detrimental impact on waterways and fisheries. The submission also called for access to available research and education to avoid ‘re-inventing the wheel’ and the building of strategic relationships with other stakeholder groups to establish more effective management of the waterways including the freshwater fishery.¹¹⁷⁴ In December of the same year, Nehua advised that he wished to be heard at any hearing in relation to the application.¹¹⁷⁵

¹¹⁷² Ngāti Hau Trust Board to Northland Regional Council, ‘Re: Hikurangi Swamp Scheme Consent Application: Con200311375 (01-09), 27 February 2007, NRC File 11375, Volume 2

¹¹⁷³ Ngāti Hau Trust Board to Northland Regional Council, ‘Re: Hikurangi Swamp Scheme Consent Application: Con200311375 (01-09), 27 February 2007, NRC File 11375, Volume 2

¹¹⁷⁴ Ngāti Hau Trust Board to Northland Regional Council, ‘Re: Hikurangi Swamp Scheme Consent Application: Con200311375 (01-09), 27 February 2007, NRC File 11375, Volume 2

¹¹⁷⁵ ‘Te Raa Nehua, to Dave Roke, ‘Hikurangi Swamp Resource Application’, 11 December, 2007, NRC File 11375, Volume 3

Other submitters also commented on the impact of freshwater fish habitat. In March 2007, for example, the Director General of Conservation wrote a submission concerning freshwater fish habitat. 'The area affected by the Hikurangi Scheme', the submission read, 'includes areas of high freshwater fish habitat values and includes land administered by the Department of Conservation. The area has indigenous freshwater fish present'. The submission argued that the proposal 'will have adverse effects on those values' and that it 'does not offer mitigation that will adequately address any adverse effects on natural and habitat values and processes'. Moreover, it claimed that the proposal did not meet the relevant policies and objectives of the Regional Policy Statement for Northland and the relevant policies of the Water and Soil Plan for Northland. In summary, the submission claimed that the proposal 'does not achieve the purposes of the Resource Management Act 1991'.¹¹⁷⁶

Indeed, the issue of tuna populations and habitat appear throughout the resource consent files relating to the Hikurangi Swamp. In April 2008, Solomon Tipene, the Māori Relationships Manager for the Whāngārei District Council wrote to Rachel Ropiha, the NRC's Iwi Liaison Officer, relaying concern about the decline of tuna populations in the Hikurangi Swamp:

I have had a recent query re. the pumps that drain Hikurangi Swamp.

During these recessionary times more and more Maori families are forced to live off the land. In the Hikurangi Swamp area, eels used to be numerous and history tells us that hundreds of families lived off the eeling industry in this area. Since the swamps have been drained, eels have all but disappeared. Lately, some Maori families have returned to the drains to find kai but it is extremely hard to find any eels at all.

To add insult to injury, they are allegedly finding eel carcasses that have been mashed up by the pumps used to drain the swamps.

Tipene asked Ropiha to advise who such families might approach to 'raise the possibility of placing filters or screens to reduce the number of eels being destroyed by the pumps' and he noted that the Ngāti Hine Iwi Environmental Management Plan 'placed a huge emphasis on the preservation/management of tuna stocks in the

¹¹⁷⁶ 'Submission by Director General of Conservation', 1 March, 2007, NRC File 11375, Volume 2

area'.¹¹⁷⁷ Ropiha replied, explaining that she would forward the concerns to the NRC Consenting Office and she suggested that if Tipene and others were concerned about tuna fatalities, they should call the NRC Hotline Number.¹¹⁷⁸

6.4.6.3 Modified consent application, 2009

Following the submission closing date on 1 March 2007, and after meeting with hapū, the WDC requested that the application be placed on hold until it was able to carry out a further review of the proposed modification of the scheme and to consult with submitters. As a result, the WDC submitted a modified application in June 2009 to replace the original application.¹¹⁷⁹ All original submitters were advised of the amended application, and asked to comment on the application and whether or not they wished to withdraw their original submission.¹¹⁸⁰

Concerns about the status of tuna populations remained. In July 2009, Solomon Tipene called a meeting of the WDC's Waste and Drainage Department with hapū and iwi. The meeting was attended by Tipene himself, WDC staff, Allan Halliday, Te Raa Nehua (Ngāti Hau), Tui Shortland (Te Rūnanga-Ā-Iwi Ō Ngāti Hine), Fred Tito, Sophie Tito, Waimiriangi Heihei (Te Parawhau) and two staff members from the Department of Conservation. To open the meeting, a WDC staff member announced that while there had been little consultation since the passing of the RMA in 1991, the WDC 'are now willing to engage in early consultation with iwi/hapū'. Tipene then explained that the meeting was called following concerns 'that eel stocks were low and that the pumps were destroying what was remaining'. Tui Shortland recommended that 'the Council should not lodge their application until they have received a Cultural Impacts Assessment from iwi/hapu to determine cultural effects'. Sophie Tito spoke about the history of the swamp from an 'iwi/hapu perspective', emphasised that 'the sustainability of the eels were the livelihood for whanau/hapu/iwi' and requested further consultation with iwi following the hui. The minutes also record other issues

¹¹⁷⁷ Solomon Tipene, to Rachel Ropiha, 'Pumps at Hikurangi Swamp', 9 April 2009, NRC File 11375, Volume 3

¹¹⁷⁸ Rachel Ropiha to Solomon Tipene, 'Re: Pumps at Hikurangi Swamp', 15 April 2009, NRC File 11375, Volume 3

¹¹⁷⁹ NRC, 'Report of the Council, through its Hearing Committee', NRC File 11375, Volume 7

¹¹⁸⁰ NRC, 'Report of the Council, through its Hearing Committee', NRC File 11375, Volume 7

discussed, such as the 'continued kaitiakitanga with hapu', the suggestion of 'a Rahui to be put over the swamp to help sustain it' and the possibility of a fish bypass.¹¹⁸¹

With the amended application, the WDC also commissioned Hawthorn Geddes (Engineers & Architects ltd) to produce an updated 'Assessment of Effects on the Environment of the Hikurangi Swamp Scheme'. As with the original, the updated Assessment of Effects on the Environment report largely downplayed the impacts on eel movement and suggested that no mitigation measures were necessary in relation to barriers to eel movement or fish and eel kill from operation 'as this is considered to be a minor effect on these populations ... especially in comparison to the impact of commercial fishing activities'. Moreover, drawing on the Aquatic Ecology Impact Assessment report produced for the original application, the report again claimed that there was no evidence that the operation of the Scheme adversely affected water quality, except on rare occasions when extensive pasture flooding occurred for prolonged periods of time.¹¹⁸²

The NRC also received a cultural effects assessment (CEA) in December 2009 as part of the consent application. At the request of Ngāti Hau Trust Board and Tui Shortland, the WDC agreed to commission Repo Consultancy Ltd to produce the report.¹¹⁸³ To accompany and inform the report, Repo Consultancy Ltd also commissioned NIWA, again on behalf of the Ngāti Hau Trust Board, to review the WDC's Assessment of Environmental Effects (AEE) report (this review is discussed below). It is unclear whether or not the CEA was made a requirement by the NRC, or was done voluntarily by the Whāngārei District Council.

6.4.6.4 The cultural effects assessment report

The cultural effects assessment report opened by stating that, until the commissioning of the report, there had been 'minimal consultation with tangata whenua regarding the Scheme' despite their repeatedly expressed wish for 'active participation in any

¹¹⁸¹ 'Minutes: Hikurangi Swamp Meeting, Wednesday 15 July 2009'. Provided by Andrew Carvel, 3 December 2015.

¹¹⁸² Hawthorn Geddes (Engineers & Architects ltd), on behalf of Whāngārei District Council, *Assessment of Effects on the Environment of the Hikurangi Swamp Scheme (Amended)*, June 2009, p17

¹¹⁸³ Repo Consultancy Ltd., *cultural effects assessment Report: Hikurangi Swamp Scheme*, October 2009. Provided by Erica Williams, NIWA

assessment or review of this Scheme'.¹¹⁸⁴ As part of the preparation of the cultural effects assessment, Ngā Hapū o Te Reponui (comprising Ngāti Hau, Ngāti Kahu o Torongare and Te Parawhau) held hui at Whakapara Marae in September and October 2009 where they identified their relationship to the Hikurangi Swamp and the effects on the Scheme, its operation and proposed maintenance and upgrade on those relationships. These were recorded and transposed onto spreadsheets.¹¹⁸⁵ In particular, the report outlined Ngā Hapū o Te Reponui's cultural relationship to the Swamp as kaitiaki and as Treaty partners.

Nga Hapu of Te Reponui all have relationships with the Hikurangi Swamp. The relationships of these hapu was considered in terms of the various categories listed in section 6(e), and 7(a) of the RMA 1991: that is to say the relationship of tangata whenua and their culture and traditions with the catchment of the Hikurangi Swamp, the river and wetland systems of the Hikurangi Swamp, sites, wahi tapu and other taonga of that vicinity; and their status as kaitiaki and practitioners of kaitiakitanga in regard to those resources.

However, the report explained that the status as kaitiaki and the capacity to practise kaitiakitanga has been eroded for a number of reasons:

the loss of title to large tracts of land and the progressive introduction of increasing layers of government control over resources and their management ... land ownership laws, western science, fisheries controls, catchment and drainage boards, reserve and wildlife legislation, and more recently district and regional councils, department of conservation and heritage agencies.

At the same time, the report stated that the 'tight-knit character and isolation of the small communities of the area' had allowed the maintenance of kaitiakitanga to some extent 'in the face of these external pressures'.¹¹⁸⁶

Ngā Hapū o Te Reponui sought recognition of their status as kaitiaki and a 'collaborative partnership' with all relevant agencies, scientific bodies, and the wider community to develop and implement a sustainable catchment plan to 'restore the health of the Swamp and awa'. 'The revitalisation of their relationship as kaitiaki', the report

¹¹⁸⁴ Repo Consultancy Ltd., *cultural effects assessment* Report, p5

¹¹⁸⁵ These are included in appendices to Allan Halliday's Brief of Evidence, Wai1040 #P2(a) Appendix E, pp102-112

¹¹⁸⁶ Repo Consultancy Ltd., *cultural effects assessment* Report, p13

continued, 'is seen as vital to their future aspirations as recognised owners of such resources'.¹¹⁸⁷ The report quoted statements recorded at the hui held in preparation for the report:

The swamp scheme has changed the history of our storytelling

The swamp was/is known as Pataka Kai and its retention is essential to provide for... [Māori] primary requirements to preserve taonga, manaaki manuhiri, and feed whanau, hapu.

The whakapapa of the eels has been lost ...

A pervasive fear exists that their mokopuna may never get to harvest tuna, and that the art and science of catching them, the knowledge of their lifecycle and behaviours has been lost to the current generation of rangatahi.¹¹⁸⁸

In addition to being kaitiaki of the rohe, Ngā Hapū o Te Reponui 'have a further relationship', the report stated, 'that of Treaty partner'. The subject of Section 8 of the RMA brought about 'extensive debate' at the hui. Tangata whenua were 'clear that they are the sovereign owners of the Swamp, and their rangatiratanga has been usurped during the four decades the swamp scheme has been in place'. Hui participants considered the 35 year term of consent sought 'an anathema to the spirit of partnership' and 'consistently stated that Te Tiriti o Waitangi must underpin all decision-making with respect to the management of our resources'.¹¹⁸⁹

Following the discussion of their relationship as kaitiaki and as Treaty partners, the report outlined the effects of the scheme itself on Ngā Hapū o Te Reponui, and their culture and values. It claimed that the AEE was 'narrowly focused', both on the effects on flooding on farmland and 'also glossing over other actual and potential biophysical effects'. The report stated that the report needed to consider the 'overall historical cumulative effect' of the Scheme, not just the narrow focus on the immediate effects of the upgrade.¹¹⁹⁰ The AEE also failed to consider cultural effects and matters of importance to Māori, the report explained.¹¹⁹¹

¹¹⁸⁷ Repo Consultancy Ltd., cultural effects assessment Report, p13

¹¹⁸⁸ Repo Consultancy Ltd., cultural effects assessment Report, p13

¹¹⁸⁹ Repo Consultancy Ltd., cultural effects assessment Report, p8

¹¹⁹⁰ Repo Consultancy Ltd., cultural effects assessment Report, p15

¹¹⁹¹ Repo Consultancy Ltd., cultural effects assessment Report, p14

In many instances, the focus of the inquiry of Nga Hapu o Te Reponui concerns issues that might not normally be considered by engineering planning consultants. Such matters as the impact of an activity on the mauri of a place or on the mana of a people are not easily described or quantified in a modern planning context – mana, or the effects of activities on it, cannot be measured with a ruler and manaakitanga cannot be calculated as a percentage. However, within the ambit of “environment” given in the [RMA] they cannot be considered any less real or relevant than biophysical and ecological issues that might appear more tangible or visible to the untrained eye. For tangata whenua it must be assumed that effects on such matters are at least as real as any other type of effect and, where identified, need to be addressed as such. ¹¹⁹²

Hui participants identified effects under the four themes: economic, bio-physical, cultural, and social – all of which, the report claimed, were ‘interconnected’. Overall, the major concern surrounded activities that had the potential to ‘create further adverse effects on the mauri of the Swamp’.¹¹⁹³

In addition, the CEA report questioned the accuracy of aspects of the AEE report and claimed that the consenting authority (the NRC) lacked information to adequately assess the application. Accompanying the cultural effects assessment, Repo Consultancy (on behalf of Ngāti Hau) commissioned Dr Jacques Boubée of NIWA to produce a review of the AEE report. In outlining the acknowledged effects of the Scheme of the AEE, the Boubée report was also critical of the information presented. Boubée’s review outlined both the adverse effects acknowledged in the AEE as well as their shortcomings:

‘The AEE acknowledged the following adverse effects of the Scheme:

- a) Poor water quality in waterways running through the Scheme but considers this to be natural, although amplified by the additional agricultural activities. (Note however that no details are provided so it is not possible to judge how important this is)
- b) Oxygen depletion and loss of aquatic life does occur when extensive pasture flooding occurs for prolonged time. Such events are reported as less severe and occurring on fewer occasions with the Scheme in existence. (It is noted, however, that the AEE at page 16 states *“Prior to the existence of the scheme the vegetation was a*

¹¹⁹² Repo Consultancy Ltd., cultural effects assessment Report, p14

¹¹⁹³ Repo Consultancy Ltd., cultural effects assessment Report, p15

hardy water based nature such as reeds and rushes. The introduction of pasture has increased the damage rate associated with inundation.” – presumably, therefore, the effects are now more severe than prior to scheme not “*less severe*” as stated in the AEE].

c) Dams and floodgates potentially form barriers to fish migration. However, the report considers that there is a natural barrier (waterfall) downstream and that the effects of the Scheme are only minor.

d) There are low numbers of eels within the Scheme but that is attributed to overfishing (Note that this overfishing statement appears to be attributed to a NIWA (2000) report which has the same reference as Chisnall & Boothroyd (2000). I could find no such comment regarding overfishing in Chisnall & Boothroyd (2000). On the contrary, the authors clearly identify the structures as a problem....

e) Eel mortality caused by the pumps has been reported, but the AEE states that there is: “*little scientific evidence to support this*”; that “*on average the pumps operate for 10% of the time (or less)*”; that “*flow rates in the canals are low during pump operation at lease 1m/sec*”. (Note that evidence of eels killed by the pumps is available in the NRC files...) ¹¹⁹⁴

Moreover, in terms of consultation, Dr Boubée stated the following:

It is noted that although WDC staff did point out interest from other parties, no consultation with iwi, commercial eel fishers, Fish & Game, Department of Conservation (who administer fish passage regulations) and other stakeholders appear to have taken place at time of lodgement. It is my understanding that such consultation is a requirement of the RMA. (Note, however, that if no such consultation took place it is difficult to understand how the last two paragraphs in Section 4.3 [of the AEE], that relate to observation of eel migration and fish kill, were obtained) ¹¹⁹⁵

Boubée explained that to properly assess the effects of the Scheme, a ‘good understanding of the life history of the fish species present or likely to be present’ was required, as well as a description of the structures of the Scheme. This, Boubée claimed, was missing from the AEE and thus it ‘did not accurately describe the Hikurangi Swamp Scheme or the resulting adverse effects’. Boubée also stated the need for ‘long term

¹¹⁹⁴ Dr Jacques Boubée, (NIWA), Review of the Whangarei District Council, Hikurangi Swamp AEE, 30 October, 2009, p2. Provided by Erica Williams, NIWA

¹¹⁹⁵ Boubée , ‘Review of the Whangarei District Council, Hikurangi Swamp AEE’, p3

vision' and for the 'guardians, managers and users of the Wairua River to develop an integrated fish management plan for the entire catchment'.¹¹⁹⁶

Figure 45: Severed migrant shortfinned eels retrieved from downstream of one of the Hikurangi pumping stations in March 2008



(Source: Dr Jacques Boubée, (NIWA), 'Review of the Whangarei District Council, Hikurangi Swamp AEE', 30 October 2009, p 9. Provided by Erica Williams, NIWA)

The conclusion of the cultural effects assessment outlined potential mitigation measures and recommendations. The report conceded that because the Scheme was established over three decades earlier, there appeared little the WDC could do in terms of avoiding the adverse effects identified. However, it suggested that in terms of the planned modification to the design of the scheme, there could be opportunities to avoid the continuation of such effects and there were 'certainly prospects for remedying and mitigating aspects of the scheme'. These included:

¹¹⁹⁶ Boubée, 'Review of the Whangarei District Council, Hikurangi Swamp AEE', p9

- agreeing to and implementing a kaitiaki based monitoring regime;
- investigating and prioritising the role of tangata whenua in decision-making over local resource use and management;
- establishing a joint-management committee (pursuant of Section 36B of the RMA) between Ngā Hapū o Te Reponui, the WDC and NRC;
- developing a Integrated Catchment Management Plan for the Hikurangi Catchment (in conjunction with DoC, Fish and Game, community groups and farming representatives)¹¹⁹⁷;
- the installation of 'fish friendly' screw pumps to mitigate the impact on fisheries;
- the provision of upstream fish passage at the floodgates by initiating a catch; and,
- transfer program at the hydro power station downstream.

Finally, the report listed the following recommendations to the applicant and the consent authority:

1. That the content and recommendation contained in the report be received and considered by the applicant in conjunction with the findings of the peer review of the application;
2. Given the concerns raised over the adequacy of the application and the potential effects identified in this cultural effects assessment that NRC consider placing an RMA section 92 hold on the application until further information is received that accurately describes the Hikurangi Swamp Scheme and the resulting adverse effects. For example, it is suggested a thorough review of the life history of the fish species present or likely to be present within the affected reaches, and a description of the structures including the pump characteristics, screen and floodgates and their operation;
3. That WDC be encouraged to continue working in collaboration with Nga Hapu o Te Reponui on all aspects of this application and that this includes regular progress reports to the marae communities on all aspects of the Hikurangi Swamp Scheme;
4. That the WDC enter into negotiations with Nga Hapu o Te Reponui over the use of the remedial and mitigation measures outlined in the assessment 'prior to processing to hearing';
5. Regardless of the future direction of this proposal, Nga Hapu o Te Reponui must be supported by the applicant to seek formation of a joint management regime for the Hikurangi Swamp as allowed by s.36 of the Resource Management Act. ¹¹⁹⁸

¹¹⁹⁷ Such a plan, the report stated, could address issues such as riparian planting in the upper catchment, the protection and enhancement of remaining areas of swamp, and local fisheries management actions.

¹¹⁹⁸ Repo Consultancy Ltd., *cultural effects assessment* Report, p28

6.4.6.5 Response to cultural effects assessment

Following a review of the cultural effects assessment, the NRC requested that the Stormwater Asset Engineer for the Whāngārei District Council arrange for further information regarding the Scheme. In particular, it requested information regarding fish population and movement, the effects of existing pumps and floodgates on fish migration, and mitigation measures relating to the effects on fish. It also asked the applicant to respond how 'Nga Hapu o Te Reponui could be involved in monitoring and management and to develop a draft management and monitoring plan or table of contents to be presented at the hearing'.¹¹⁹⁹

In the meantime, on 12 January 2010, a Hikurangi Swamp Iwi Liaison Committee meeting was held (there is little information about the establishment of this committee, but it appears to have been subsumed by the general Hikurangi Swamp Scheme Liaison Committee) The attendees included the WDC's Gary Oldcorn and Conal Summers and the authors of the cultural effects assessment, Juliane Chetham and Tui Shortland and Allan Halliday, representing the Ngāti Hau Resource Management Unit. The notes from the meeting list the following outcomes:

Agreement by the applicant to engage J Boubée to further examine distribution and prioritise fishery protection options and means of monitoring outcomes

The applicant would like more information on the local fishery, relative importance of this to population numbers, overview of how the quota is managed in the eel fishery. Reepo is to find the appropriate contact at the MFish[Ministry of Fisheries]

There is to be an examination of options elsewhere, including EBOP electrification, to determine best practice for screens, fish passes and riparian management.

Discussed the potential for a catchment plan for the Wairua catchment, this may more appropriately reside with the Regional Council.

¹¹⁹⁹ Memorandum from Nigel Mark-Brown to Conal Summers, Whāngārei District Council, November 18, 2009, NRC File 11375, Volume 3

Opportunity identified to continue engagement between applicant, Iwi, the Fish and Game Council, the Department of Conservation (DOC), and other stakeholders, most appropriate means for this to be decided.¹²⁰⁰

In late January 2010 a consultant writing on behalf of the WDC responded to the NRC's memorandum. The letter responded to both the 'technical elements of the memorandum', as well as the request for a response on how Ngā Hapū o Te Reponui could be involved in monitoring and management.¹²⁰¹ The consultant stated the following and attached minutes of the Hikurangi Swamp Iwi Liaison meeting (discussed above):

Further to the engagement by WDC of Ngati Hau to undertake the Cultural Impact Assessment, the WDC has instigated meetings with iwi and it is expected that these will form part of an ongoing dialogue aimed at quantifying and addressing the impacts of the scheme on the eel fishery to the satisfaction of both parties.¹²⁰²

6.4.6.6 The decision

The hearings for the application were held over three days in March 2010 and the NRC granted consent the following month, on April 30. The NRC appointed Mr Alan Watson and Dr Jeff Jones as independent Hearings Commissioners to consider the application, the submissions, and the Section 42(a) RMA report (the staff or 'officer's report'), prepared by consultant Nigel Mark-Brown for the NRC.¹²⁰³ The 'officer's report', produced at the end of the resource consent process, provided a summary of the proposed changes, the content of the submissions, and the various 'effects assessments' reports. It also outlined how the application complied with both the RMA and the Regional Policy Statement, and made recommendations about whether or not to grant consent, and what consent conditions and mitigation measures should be attached to the successful application.¹²⁰⁴ In relation to the tuna population, the report claimed that

¹²⁰⁰ 'Minutes of the Hikurangi Swamp Iwi Liaison Meeting, Tuesday, 12 January 2010'. NRC File 11375, Volume 4

¹²⁰¹ Memorandum from Nigel Mark-Brown to Conal Summers, Whāngārei District Council, November 18, 2009, NRC File 11375, Volume 4

¹²⁰² Memorandum from Nigel Mark-Brown to Conal Summers, Whāngārei District Council, November 18, 2009, NRC File 11375, Volume 4

¹²⁰³ Northland Regional Council, 'Report and Decision of the Council, through its Hearing Committee' February, 2010, NRC File 11375, Volume 7

¹²⁰⁴ Nigel Mark Brown, NRC Staff Report for Hikurangi Swamp Scheme Resource Consent Application CON20031137501, NRC File 11375, Volume 7

the entrapment and killing of fish in the pumps 'will occur when there are elevated levels of ponded water within the pockets and the pumps are operating'. It cited Boubée's review of the AEE and included mention of site visits in which 'a number of chopped up eels were found as a result of moving through the pump stations'.¹²⁰⁵ The report found that, given the evidence of such eel kills and the significance of the eel habitat upstream of the pumps, that such interruption of fish passage was a significant effect that needed to be mitigated.

The report claimed that the application was not contrary to Section 5 ('Purposes') of the RMA in that the proposed activities 'will result in sustainable management of natural resources and enable efficient use of a resource, to the extent practicable given the established Scheme and previous works'. Furthermore, it suggested that proposed mitigation measures would 'assist in enhancing the current life-supporting capacity of air, water, soil and ecosystems in the Hikurangi Swamp area'. The report states that while Section 5 ('matters of national importance') included the preservation of the natural character of wetlands, the Hikurangi Swamp 'has already been compromised to a large extent by the construction of the Hikurangi Swamp Scheme'.¹²⁰⁶

In regard to compliance of the proposed activities with RMA Sections relating to Māori interests (Sections 6, 7, and 8), the report concluded:

The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga, is also a section 6 matter. The applicant is continuing to discuss the implication of the Scheme with the Ngati Hau Trust Board. The proposed mitigation measures take into account the comments made and requests of the cultural effects assessment Report....

Section 7 requires (inter alia) that particular regard is had to kaitiakitanga, stewardship, efficient use and development of resources, maintenance and enhancement of the quality of the environment. It is considered that the wide range of recommended mitigation measures, including establishment of habitat within the floodway and improved fish passage is showing particular regard to these requirements.

¹²⁰⁵ Nigel Mark Brown, NRC Staff Report for Hikurangi Swamp Scheme Resource Consent Application CON20031137501, NRC File 11375, Volume 7

¹²⁰⁶ Nigel Mark Brown, NRC Staff Report for Hikurangi Swamp Scheme Resource Consent Application CON20031137501, NRC File 11375, Volume 7

Section 8 requires that account is taken of the principles of the Treaty of Waitangi. Those principles were taken into account during the processing of the Scheme application, including consultation with iwi and the applicant commissioning the cultural effects assessment Report.

Consequently the conclusion is that the application is not contrary to Part II of the Act.

The report also assessed the extent to which application complied with the objectives and policies of the Regional Policy Statement and relevant plans. Once again, the report's comments regarding Māori are worth quoting in full:

Tangata whenua

The Regional Council must provide for Tangata Whenua involvement in resource management, particularly where it affects their taonga. The Regional Council has the duty to protect and provide for the sustainable management of their taonga.

This application was circulated as part of the public notification to the Iwi groups in the area that have expressed an interest in reviewing resource consent applications lodged with the Northland Regional Council in this area. One submission has been received from the Ngati Hau Trust Board who has objected to this application. Assessment of the application has included addressing issues raised in the cultural effects assessment Report, which was prepared for the Ngati Hau Trust Board.

No submissions or comments have been received from any other iwi group.

Therefore, it is considered that Objective 14.3 of the Regional Policy Statement has been met. Likewise, the process of iwi involvement is consistent with Policy 14.4(a)(1), 14.4(c)(1) of the Regional Policy Statement.¹²⁰⁷

6.4.6.7 The approved consent

The Consent was granted on 30 April 2010 for the maximum period of 35 years to undertake the following activities in the Hikurangi Swamp Scheme:

- (01)** To divert and dam floodwaters – Water Permit
- (02)** To discharge floodwaters on to land and into surface water via flood control mechanisms – Discharge Permit.

¹²⁰⁷ Nigel Mark Brown, NRC Staff Report for Hikurangi Swamp Scheme Resource Consent Application CON20031137501, NRC File 11375, Volume 7

- (03)** To place, use, restore, manage, and maintain existing dams, culverts, control banks and floodgates on the bed of the watercourses – Land Use Consent
- (04)** To carry out excavation or disturbance of the bed of the water courses for the purpose of maintaining the free flow of water – Land Use Consent
- (05)** To undertake earthworks on the control-banks and berms adjacent to watercourses, including modification to spillways – Land Use Consent¹²⁰⁸

As a condition of the consent, the NRC required the applicant to produce a Scheme Management Plan detailing the practises and procedures to be adopted to comply with the resource consent (these are discussed below). Among other things, the consent required the management plan to provide details about monitoring programmes (g), including:

- a) Management of the floodgates of the Scheme, including assessment of the provision of fish passage both upstream and downstream including during summer low flow conditions
- b) Monitoring any fish mortality within the Scheme, distribution and likely causes

The consent also required that '[a]ll floodgates shall be maintained and modified if necessary to ... ensure that in conditions of low flows from pockets all floodgates open sufficiently, or are opened and held open to allow fish passage upstream into the pockets or provide other measures to ensure fish passage upstream past or through the floodgates'. Consent condition 17 required that the consent holder undertake research in relation to mechanisms, structures and other techniques to, as far as practicable, minimise fish entry into the pumps and to enhance the passage of fish through the Scheme. It required, within 24 months of the commencement of the consent, a Fishery Management Plan to set out 'proposals and timetables for enhancement of fish passage pump fish entrainment deterrent and ongoing monitoring and management of such measures as are implemented'.¹²⁰⁹

¹²⁰⁸ Nigel Mark Brown, NRC Staff Report for Hikurangi Swamp Scheme Resource Consent Application CON20031137501, NRC File 11375, Volume 7

¹²⁰⁹ Nigel Mark Brown, NRC Staff Report for Hikurangi Swamp Scheme Resource Consent Application CON20031137501, NRC File 11375, Volume 7

6.4.7 Current management

In accordance with the consent granted in 2010, the WDC has produced scheme management reports: The Hikurangi Swamp Scheme Management Plan (SMP) and the Flood Riparian and Ox-Bow/Cut-off Channel Management Plan (2011) set out the operating and management procedures for the Hikurangi Swamp Scheme. The Fishery Management Plan (2012) is also a condition of the consent and ‘recognises the cultural significance of the traditional tuna fishery to Ngāti Hau’.¹²¹⁰ These are discussed below.

6.4.7.1 The Fisheries Management Plan

The Fisheries Management Plan was sent to the NRC in May 2012. The report explained that as a result of the cultural effects assessment prepared in conjunction with Ngāti Hau, the WDC had developed ‘an ongoing relationship with Ngati Hau to examine the fishery issues within the scheme’. It explained that the WDC, NIWA and Ngāti Hau had undertaken a number of field trips and meetings and workshops to examine issues and to evaluate mitigation measures in place both nationally and internationally. The report noted that the primary fishery of concern in the Scheme is the eel (tuna)—due to the nature of the eel lifecycle, the migration barriers present within the scheme, and the strong cultural links with local iwi—and it outlined four factors impacting on eel population within and adjoining the scheme boundaries. These were commercial fishing, natural barriers to upstream passage, anthropogenic barriers to upstream and downstream fish passage and loss of habitat. The extent and impact of past and present commercial fishing within the scheme and wider catchment has not been documented.. Anecdotally, commercial presence and catches have decreased markedly over the last decade or so, the report claimed.

The most significant natural barrier to upstream migration is Omiru/Wairua Falls. Since the construction of the Wairua Power Station in 1916, significant flows have been diverted through the headrace to the channels, at times reducing the base flows by up to 90 per cent. Given the historical abundance of eels within the Scheme area, it appears that in its natural state the falls did not severely impact elver recruitment. In terms of

¹²¹⁰ These management plans are available on the WDC’s website, on the Hikurangi Swamp page: <http://www.wdc.govt.nz/WaterandWaste/Stormwater/Pages/HikurangiSwamp.aspx> (accessed July 2015)

artificial barriers, the report claims that the Wairua Power Station is the most significant barrier (as discussed below). Within the Hikurangi Swamp Scheme itself, the pump stations and stopbanks present barriers to both upstream and downstream migration to tributaries within the swamp scheme “pockets” but do not impact on migration within the channel or to the tributaries above SH1. The pumps also cause loss of downstream migrants while the stopbanks impound water in major flood events resulting in oxygen depletion and temperature rises that result in fish kills.¹²¹¹ Loss of habitat is another reason for the decline of natural fishery within and adjoining the Hikurangi Swamp scheme boundaries, the report stated. Swamp and wetland drainage, waterway re-alignment, decrease in extent and frequency of flooding (during which eels gorge themselves on land invertebrates), loss of natural banksides cover and increased nutrient loads have all contributed to significant loss of fish habitat within the entire catchment.

The WDC’s report noted that upstream migration and downstream migrations required differing management and it proposed mitigation measures within the Hikurangi Swamp. Upstream migration relates to the movement of juvenile eels (elvers) from the sea to inland waters where they will remain until returning to sea to spawn as tuna heke (downstream migrants). Based on records obtained at the Wairua Power Station in summer 2011/2012, the report noted that the upstream migration appeared to begin around September-October and run until approximately March. The report claimed that the Council ‘has been and will continue to be engaged with stakeholders downstream in a supporting role to facilitate elver movement past these barriers’.¹²¹² Within the scheme the primary barriers to movement from the main Wairua River channel to tributaries are at the pump stations. Each station has a gravity flapgate designed to prevent flows from the main channel entering the pockets during elevated river levels. Elvers must pass through these gates to access the upstream tributaries. The issues and proposed measures to mitigate upstream passage within the Scheme are detailed in the table 15.

¹²¹¹ Whāngārei District Council, ‘Hikurangi Swamp Scheme Fishery Management Plan’, (2012), p15. Available here: <http://www.wdc.govt.nz/WaterandWaste/Stormwater/Pages/HikurangiSwamp.aspx> (accessed July 2015)

¹²¹² WDC, ‘Hikurangi Swamp Scheme Fishery Management Plan’, (2012), p15

Downstream migration is a significantly more complex issue to manage, the report claimed, and involved two main issues:

- 1) eel mortality through entrapment in scheme pumps; and
- 2) impediments to migrant movement into the main river channel during period of oxygen depletion in the pocket areas following significant storm events (where the river has spilled into the pockets).

In explaining the eel mortality, the report stated ‘the extent and exact factors that lead to mortality is unknown’. It continued: ‘in the case of extreme storm events where water is impounded for several days and extensive oxygen depletion occurs, eels may be dead within large areas of the catchment but this may not be evident until water is drawn down to the pump stations and eel carcasses are destroyed through the pumping process. There is video evidence showing significant numbers of chopped mature eels downstream of a pump station, however such events are likely to be time and location specific and it would be erroneous to assume that this occurs at every station during every pumping event’.¹²¹³ Furthermore, it stated that seasonality, the size of storm, and time of migration by eels to the stations from within the pocket catchment all impact on mortality throughout the scheme. Mortality due to oxygen depletion would most likely also have occurred in the natural (pre-developed) state of the swamp area following extreme storm. Thus, the report claimed, ‘it is difficult to quantify the effect of the scheme on the extent of mortality through this mechanism’.¹²¹⁴

According to the report the WDC worked closely with NIWA and proposed that a number of measures be trialled at a single pump station to validate their effectiveness before implementation across the scheme. The proposed approach involved catching migrant eels ‘with the permission and assistance of local iwi’, and attaching a Radio Frequency Identification (RFID) transmitter to the migrants. The migrants would then be released upstream of the pump station. The issues, proposed mitigation measures and timelines are outlined in the table 16. The Fisheries Management Plan outlined a plan to monitor fish mortality:

¹²¹³ WDC, ‘Hikurangi Swamp Scheme Fishery Management Plan’, (2012), p15

¹²¹⁴ WDC, ‘Hikurangi Swamp Scheme Fishery Management Plan’, (2012), p16

It is proposed that monitoring of mortality be undertaken subsequent to pump operation through a visual inspection of the main channel (once waters have receded) to determine if any eel carcasses in the vicinity. Photographic records shall be undertaken and the date, location, and number of carcasses shall be noted and notified to WDC. This will be undertaken by the scheme maintenance contractor.¹²¹⁵

The WDC also produced plans to improve habitat. The Riparian and Oxbow Management Plan (ROBMP) provides a 'staged approach to undertaking riparian restoration of both the main waterway and the oxbows'.¹²¹⁶

Table 15: Issues and mitigative measures proposed for upstream migration

Issue	Mitigative Measure	Timeline
Invert of flapgate is above the invert of the outlet channel, and at low flows it is difficult for elvers to climb over the gate frame	Build up weir (with rock spalls or similar) to level of gate invert at approach to gate to maintain permanent water level above flagpole invert.	December 2012
Flapgates can only slightly open at low flows, increasing water velocities and making elver passage difficult	Flapgates all have cable lifts to ensure these are used to open gates sufficiently at times of low flow in the periods November-March. Note- this will require maintenance contractors and/or farmers to monitor and raise and lower gates accordingly	December 2012

Table 16: Issues and mitigative measures proposed for downstream migration

Issue	Mitigative Measure	Timeline
Migrant eels' only exit to the main channel during a flood event (after floodgates have closed) is via the pumps.	Deter eels from entering the pump intakes until flood recedes through: Electrification of screens (12V pulsed while pumps operate) Reduce aperture size on pump intakes screen to 20mm	Trial installed at Mountain pump station by December 2012
Oxygen depletion during larger events	Examine options for increased gravity drainage reducing ponding extent and duration	July 2013

(Source for both tables: 'Hikurangi Swamp Scheme Fishery Management Report')

¹²¹⁵ WDC, 'Hikurangi Swamp Scheme Fishery Management Plan', (2012), p17.

¹²¹⁶ Available here: <http://www.wdc.govt.nz/WaterandWaste/Stormwater/Pages/HikurangiSwamp.aspx> (accessed July 2015)

6.4.8 Hikurangi Swamp Scheme Liaison Committee and Working Group

In August 2011, a Hikurangi Swamp Scheme Liaison Committee was formed to provide a forum for discussion of the management of the scheme; the group includes 'an invited iwi/hapu representative'.¹²¹⁷ On 7 December 2012, the minutes of a Liaison Committee meeting recorded the following: 'Fish passage at stations – working to improve elvers passage upstream by using bunds created with cement/sand filled sacks'.¹²¹⁸ This is one of only two references to fish passages in the meeting minutes between 2011 and late 2015. In an August 2012 meeting of the Hikurangi Swamp Working Group, Te Raa Nehua raised the issue of the impact of the pumps on tuna and asked if the issue had been addressed. Conal Summers advised that at the Mountain pump station, trial installation would be undertaken with electrical pulses to repel eels from one intake, and monitoring of tagged eels through the station.¹²¹⁹

6.4.9 Monitoring of consent and ongoing concerns about tuna population

Despite this, Te Raki Māori continue to voice concern about the management of the scheme and the impact on tuna. On 11 April 2012 Millan Ruka wrote to a range of local government staff and interested parties, providing an update of his recent activities relating to eels, reminding WDC that any recorded fish fatalities needed to be reported to NRC, saying this applied to the Northpower consent for Wairua Power Station.¹²²⁰ The Stormwater Asset Engineer at Whāngārei District Council Conal Summers responded on 11 April, saying the resource consent required details of a monitoring programme by 27 May 2012. He said this was the same date the fishery management plan was due, and hoped it would provide a plan for addressing impacts on tuna.¹²²¹ He also mentioned a workshop, facilitated by Ngāti Hau and NIWA, held 24-26 February 2012, attended by Ngāti Hau, WDC, NRC, and Northpower representatives. Ruka

¹²¹⁷ 'Hikurangi Swamp Scheme Working Group Terms of Reference, May 2012', provided by Andrew Carvell, email correspondence, 17 December, 2015.

¹²¹⁸ Hikurangi Swamp Working Group Meeting, 7 December 2012. Available here: <http://www.wdc.govt.nz/WaterandWaste/Stormwater/Pages/HikurangiSwamp.aspx#Expand> (accessed July 2015)

¹²¹⁹ Minutes: Hikurangi Swamp Working Group Meeting', 28 August 2012. NRC File 11375 Volume 8

¹²²⁰ Millan Ruka to Jacques Boubée and others, 'Update on tuna situation as at 11.04.2012', 11 April 2012, NRC File: Northpower

¹²²¹ Conal Summers, Stormwater Asset Engineer, Whāngārei District Council, to Millan Ruka and others, 'RE: Update on tuna situation as at 11.04.2012', 11 April 2012, NRC 'Fish Passage File'

thanked Summers for his reply and the 'open forum' for all stakeholders.¹²²² Summers wrote to Boubée on 10 May 2012, asking if it was possible to do a post-mortem on eels that were found 'in pieces' downstream from a pump, to determine whether they were killed by the pump, or by lack of oxygen earlier.¹²²³ Boubée responded that a post-mortem would be difficult unless done immediately after the death, and he had previously observed downstream migrants coming out of the pumps cut and still trying to swim. He said they needed to install 'more fish friendly' pumps.¹²²⁴

Figure 46: Millan Ruka, Hikurangi pump stations



(Source: Millan Ruka (Environment River Patrol – Aotearoa) to Whangarei District Council, 'Report #062 – Hikurangi Swamp tuna fatality report to WDC', 15 May 2014. Report #062 – Tuna fatality report – WDC Hikurangi pump stations – May 2014, accessed 11 May 2016)

In 2014, four years after the granting of the consent, Millan Ruka (Environment River Patrol – Aotearoa) produced two papers reporting tuna fatalities to the WDC and the NRC (both reports were also sent to NIWA and DOC). In the first, dated May 15

¹²²² Millan Ruka to Conal Summers and others, 'RE: Update on tuna situation as at 11.04.2012', 13 April 2012, NRC File: 'Fish Passage File'

¹²²³ Conal Summers to Jacques Boubée and Katrina Hansen, 'Eel mortality question', 10 May 2012, NRC File: Northpower 'Fish Passage File'

¹²²⁴ Jacques Boubée to Conal Summers, Katrina Hansen, and Erica Williams, 'RE: Eel mortality question', 10 May 2012, NRC File: Northpower 'Fish Passage File'

2014, Ruka explained that ‘since the commissioning of the Hikurangi Swamp Drainage Scheme in the mid-1970s, tuna fatalities have been reported to authorities over the past approx. 38 years’. The report continued:

During the summer floods (Feb 2011 example) tuna migrators in their thousands come out of the high country around the swamp and have been stranded behind the pumps behind the pockets of heated de-oxygenated water after initial big rains. Here they often died (lack of oxygen), or been cut up in the pumps. Their carcasses of hundreds and thousands have been seen by eel fishermen (and other river users) in these flood situations.

This scenario could be largely mitigated by pump management at the critical time of their migration run.

In normal high rains of March and April, the emigration tuna heke make their run for the sea and the tuna located behind the pump have only one path to take which is through one of the seven pump stations. This is the time that the pumps are operational and there is no co-ordination or consideration for the tuna life cycle at this time. Consequently a great deal are cut up in 500mm lengths as they pass through the operating pumps. These tuna, males and females are on average 30 to 40 years older (or older) and are on their way to the Tongan trenches some 4,500 klm away. With the luck of sea currents, their offspring (elvers) return to the waters of Aotearoa.

Ruka claimed that at a recent stakeholders group hui, it was ‘apparent that there is no co-ordinated management plan for the operation and coordination of the “switch on/off” of the pumps and little or no monitoring of tuna migration at this critical time’. As part of his report, Ruka provided photos of chopped up tuna and called for a tuna fatality mitigation plan. Ruka also cited a 2013 NIWA report (discussed above and in Chapter Three) on to tuna in the Scheme, which ‘clearly shows that the swamp no longer sustains tuna as it once did and that it is in declining environmental state’, Ruka explained.¹²²⁵

In the letter accompanying his 15 May report, Ruka quoted from the WDC’s resource consent conditions (g)(i) and (g)(ii) relating to fish pass and monitoring (listed above). Ruka claimed that despite the NRC and WDC being aware of his reports of tuna fatalities

¹²²⁵ Millan Ruka (Environment River Patrol – Aotearoa) to Whāngārei District Council, ‘Report #062 – Hikurangi Swamp tuna fatality report to WDC’, 15 May, 2014. [Report #062 - Tuna fatality report - WDC Hikurangi pump stations - May 2014](#) (accessed April 2015)

over an extensive period, no fatalities had been registered in accordance with the consent criteria. Moreover, he claimed that the WDC had achieved little progress in the previous three years in meeting with stakeholders in regard to tuna fatality mitigation. Ruka's recommendations included: the establishment of a task force of stakeholders whose sole purpose would be to 'restore the environment and tuna life-cycle of the Wairua River, its catchment and tributaries'; he claimed that the swamp pumps and Wairua Power Station should be the priority focus 'to get right in regards to tuna impediments and fatalities'. Habitat enhancement for habitat and water quality should also be the focus as this would benefit tuna and all of the biodiversity of the river and its catchments. Such an initiative, Ruka explained, would encourage the WDC to meet its obligations under its resource consent as well as the commitments of the *Freshwater Management Policy 2011*. Ruka also called for the WDC to bring together all relevant written studies and information on the Wairua river catchment and environment for the purpose of enhancing 'knowledge and understanding of this vital waterway'.¹²²⁶

Ruka followed up with a second report to WDC and the NRC, dated 20 June 2014, again detailing tuna fatalities on the Hikurangi Swamp. To date, he claimed, there had been no response from the WDC and NRC to the report. Moreover, while Ngā Kaitiaki o Ngā Wai Māori had lobbied the NRC and WDC for the past three years to resolve the issue of tuna fatalities at the Hikurangi Swamp Pump Stations, 'no apparent mitigation in place and no advice of any plans to date and the mutilations of tuna continues'. Ruka called for a meeting of NRC, WDC and Ngā Kaitiaki o Ngā Wai Māori to form an 'action plan'.¹²²⁷

¹²²⁶ Ruka to WDC, 'Report #062 – Hikurangi Swamp tuna fatality report to WDC'.

¹²²⁷ Millan Ruka (Environment River Patrol – Aotearoa) to Whāngārei District Council and Northland Regional Council, 'Report #071 – Hikurangi Swamp tuna fatality survey 18.06.2014 Report to WDC & NRC', 6 June, 2014

Figure 47: Allan Halliday and Millan Ruka, Ngararatunua pump station



(Source: Millan Ruka (Environment River Patrol – Aotearoa) to Whangarei District Council, ‘Report #062 – Hikurangi Swamp tuna fatality report to WDC’, 15 May 2014. Report #062 – Tuna fatality report – WDC Hikurangi pump stations – May 2014, accessed 11 May 2016)

In his evidence to the Waitangi Tribunal in 2015, Allan Halliday presented on the environmental impacts of the Hikurangi Swamp Scheme and the ongoing concerns he had:

In 2007 we produced a cultural impact assessment for a retrospective Whangarei District Council Resource Consent for the seven pumps within the Hikurangi Swamp. There were supposed to be mitigation measures – for example eel passes – which have still not been installed many years later.

The resource consent was granted for 35 years and to this day the Council has still not complied with the resource consent. No fish passes have been installed, the pumps are still cutting up tuna ... These turbines have no barriers to stop tuna from entering into the pump. The pump cut the tuna up and kills them. Installing fish passes is crucial so the tuna don't go through the pumps and they would be able to get back into the main water course. While sitting outside the river, the water on the outside of the stop banks becomes depleted of oxygen, the hotter the weather the

faster it happens. The tuna can't survive in those conditions, so they either die from lack of oxygen or they are killed by the pumps.¹²²⁸

The Ngāti Hau Trust Board, their Resource Management Unit, and Ngā Kaitiaki o Ngā Wai Māori, continue to lobby the WDC for involvement in the Scheme and the surrounding waterways. In March, 2014, Allan Halliday (the Ngāti Hau representative on Ngā Kaitiaki o Ngā Wai Māori) wrote a letter to the Whāngārei District Council, which stated the following:

As a result of a Resource Consent application lodged by the WDC in regards to the Hikurangi Pumps within the Hikurangi Swamp, the Ngati Hau Trust Board Resource Management Unit (RMU) decided to and achieved its goal in getting other tribes within the Wairua River Catchment to unite and once again become active kaitiaki (caretakers/guardians) of these water ways.

This group is now known as Nga Kaitiaki o Nga Wai Maori (NKONWM, Caretakers of fresh water, rivers and tributaries). The purpose of this group is to provide Te Huarahi hei whakahokia ma ii te mauri o nga awa (a path way to return the essence of life to the water ways).

Ngati Hau holds mana over the Hikurangi Block

The letter outlined a range of joint management proposals for the Hikurangi Swamp:

The RMU will with the inclusion of NKONWM, ensure that the fencing off of the Wairua River and Ox Bows are completed and riparian planting undertaken as the WDC Management Plans require.

...

The RMU will engage other groups both Govt and non Govt thus providing opportunities for all stakeholders to become involved in the proposed project.

That the RMU carry out monitoring and surveying of eel populations thus ensuring their sustainability and survival.

That the RMU and NKONWM provide marae with the opportunity to once more have eels on the table to feed visitors once numbers reach sustainable proportions.

That the RMU and NKONWM provide a Management Plan to assist with eel populations and distribution processes.

¹²²⁸ Halliday, Wai 1040 #P2

Succession Plan:

Ngati Hau believes that it is imperative that we include the future generations into our pathway going forward.

Ngati Hau may hold annual Ngati Hau Festivals within the proposed licensed area where a portion of land to use will be required each year for approximately 3 – 4 days. This will need to include minimal grazing disruption (if any) to the farmers operations

It is envisaged that water and land based sports be held to help promote kaitiakitanga and educational skills (protection of land and water from pollution etc).¹²²⁹

The proposal was subsequently rejected by the WDC, according to Halliday.¹²³⁰

Halliday continues to express concern about the management of the Scheme. In relation to tuna, 'Those who wrote consent conditions have no idea about the tuna habitat', Halliday maintains. 'We're quite happy to help them understand it'. Halliday assumed the WDC would 'do the right thing' and 'looking back at things we should have gone through the Environment Court', he explained. Halliday has also expressed disappointment about the NRC monitoring of consent conditions and the lack of response from either WDC or NRC regarding the continued proposals for joint-management.¹²³¹ 'I think that at some point co-governance has to happen', Halliday explained to the Tribunal. 'But at the moment both local and central government are just not ready and not accepting of the idea'.¹²³²

6.4.9.1 Consent monitoring

In early 2016, NRC staff provided the following notes by the WDC in regard to consent conditions relating to fish passage and fish mortality:

With regards to g) i) "Management of the floodgates of the Scheme, including assessment of the provision of fish passage both upstream and downstream including during summer low flow conditions".

In 2011/12, weirs were installed on the gravity channels on Okarika & Te Mata to ensure that the flood gates remained flooded at all times and therefore would remove the issue experienced in low flows when the gate would cause velocity issues around the sides. No weirs were required on

¹²²⁹ Document provided by Allan Halliday. 17 December 2015

¹²³⁰ Email correspondence with Allan Halliday. 17 December 2015

¹²³¹ Phone Conversation with Allan Halliday, 21 December 2015

¹²³² Halliday, Wai 1040 #P2

any of the other stations as they remained continuously flooded all year round (either due to existing weirs or just so low they were not required) and therefore didn't have this original high velocity around the floodgate issue. WDC have recently issued instructions to their contractor, as per the attached e-mail, to install spat ropes on 5 of the pump stations to remove the possibility of the weirs causing an upstream fish passage issue. This should be completed within the next couple of months. Once the spat rope installation has been completed, there are no proposals to undertake any further work as it is believed that all practicable steps have been taken to resolve the provision of fish passages. Progress with the spat ropes and the eel study (see below) will be included in the next revision of the Fishery Management Plan.

With regards to g) ii) "Monitoring any fish mortality within the Scheme, distribution and likely causes"

Monitoring of fish mortality is an ongoing activity on the swamp, however there have been no confirmed/reported eel fatalities to date by WDC staff to NRC. The contractor who operates the scheme on behalf of WDC is tasked with reporting any fish mortality to WDC. Anecdotal evidence indicates that fish mortality (particularly eels) is occurring, with 3rd parties providing evidence on an ad hoc basis to both WDC and NRC. The provided photographic evidence of fish mortality from the 3rd parties is typically a significant distance downstream and outside the practical monitoring ability of WDC or the contractor. Monitoring of fish mortality is particularly difficult due to the flooded nature and high flows associated during pump station operation, with all the 3rd party evidence occurring downstream of the pump stations and typically after a few days when the river levels have subsided. It is hoped that a joint WDC/Living Water/Northpower funded NIWA eel study planned for this autumn (2016) should give an indication if tagged eels are passing through the pumps or gravity gates on the pump stations.¹²³³

The '3rd party providing' evidence is most likely a reference to Millan Ruka and the reports he provided in 2014 (discussed above). However, while the note suggests that the reporting occurred 'a significant distance downstream and outside the practical monitoring ability of WDC', it is clear that Ruka's report in fact was within the Swamp Scheme, at the Ngararatunua Pump Station.

6.4.9.2 'Large Scale Fish Mortality Incidence', February 2016

In early 2016, the tuna in the Hikurangi Swamp began their one and only journey to the sea to the Tongan trenches to breed. But as Radio New Zealand Presenter Lois Williams

¹²³³ Notes provided by Compliance Monitoring Manager, NRC. Compliance Monitoring Manager to Matthew Cunningham, 'Hikurangi Swamp resource consent (CON20031137501)', email correspondence 15 February 2016

reported, 'for many of them, it was a short hikoī'.¹²³⁴ On 25 February, 2016, the WDC wrote to the NRC reporting a 'large scale fish mortality incidence', in accordance with Condition 2(g)(ii). Between 14 and 19 February, the Hikurangi Swamp and contributing catchment received a fairly significant rainfall event, resulting in elevated river and drain levels and causing the pumps to operate on a number of Hikurangi Swamp Pumping Stations. HydroTech staff attended the pump station as part of the usual post pump operation activities and noted a number of eel fatalities at the first station they visited. Staff then proceeded to visit the rest of the pump stations taking the photographs of the tuna. The fish carcasses were identified at four of the seven pump stations; Ngararatunua, Okarika, Te Mata & Otonga.

The report stated the vast majority of tuna showed evidence of being hit/cut up, which is the type of injury 'which would be expected with passage through the pumps'. The report concluded:

Over the last three months, WDC has been in liaison with Jacques Boubée of NIWA about repeating an eel survey that occurred two years ago where the results were unfortunately inconclusive ... [A] study is expected to begin in early autumn and continue for a number of months.¹²³⁵

The NRC explained that it would not be taking any action, the Radio New Zealand report explained, because under the consent, monitoring and reporting the incident is all the Whāngārei District Council was required to do.¹²³⁶ The report of the fatality was reported to the NRC, but neither the NRC nor the WDC appears to have forwarded this report to hapū.

¹²³⁴ 'Eels sliced to pieces by swamp pumps', *Radio New Zealand*, 18 March 2016, <http://www.radionz.co.nz/news/regional/299253/eels-sliced-to-pieces-by-swamp-pumps> (accessed 31 March, 2016)

¹²³⁵ WDC to NRC, 'Hikurangi Swamp Condition 2 (g) (ii) - Fish Mortality Monitoring', 25 February 2016.

¹²³⁶ 'Eels sliced to pieces by swamp pumps', *Radio New Zealand*, 18 March 2016, <http://www.radionz.co.nz/news/regional/299253/eels-sliced-to-pieces-by-swamp-pumps> (accessed 31 March, 2016)

Figure 48: Tuna fatality at Okarika pump station



Figure 49: Tuna fatality at Te Mata pump station



(Source: WDC to NRC, 'Hikurangi Swamp Condition 2 (g) (ii) - Fish Mortality Monitoring', 25 February 2016)

6.4.10 Conclusion - Hikurangi Swamp Scheme

The Hikurangi Swamp is one of many of the examples in this report of Te Raki Māori asserting their role as kaitiaki and attempting to work with other agencies, including local government, to protect waterways and customary resources. From the evidence available, Te Raki Māori were not consulted in the years before the Whāngārei District Council's first publicly notified 2004 resource consent application. This application provided the first opportunity for Te Raki Māori to have a say in the management and future of the Hikurangi Swamp Scheme; the opportunity to do so was provided by the statutory requirements under the RMA. It is clear that Māori involvement in the resource consent process played a role in the final outcome and consent conditions and local government agencies made some genuine efforts to address Māori concerns. From the initial position that consultation with Māori was unnecessary, the applicant and the consenting authority eventually acknowledged the importance of the swamp and of tuna to hapū. Looking back over the resource consent process in 2013, Conal Summers of the WDC wrote that the WDC 'was largely unaware of these issues until the [cultural effects assessment] report and has since developed an 'ongoing relationship with Ngati Hau to examine the fishery issues within the scheme'.¹²³⁷ The conditions of the consent granted in 2010 and the various management plans produced in subsequent years clearly reflect aspects of the cultural effects assessment report, and, in particular the accompanying NIWA report commissioned by Ngā Hapū o Te Reponui.

However, these acknowledgements have had their limits. Te Raki Māori continue to feel that tuna, a key customary resource, is not being protected, nor is there proper acknowledgement of their role and responsibility as kaitiaki. Furthermore, despite continued demands to play a role in the management of the Scheme, the WDC and NRC have not addressed these proposals. Māori continue to play a role as an interested party, rather than in the decision-making and management of the Scheme. Te Raki Māori ongoing concerns about the management of the Scheme have recently been confirmed with another incident of tuna being killed at pump stations.

¹²³⁷ Summers, 'Managing Fish Passage in the Hikurangi Swamp', p23-31

This local study also raises other issues about the consent process. The inaccuracies of the Assessment of Environmental impacts, which suggested no mitigation was required, raises serious questions about the adequacy of such reports in general, which are produced for most resource consent applications. From the examples in this reports, these assessments are rarely peer-reviewed. Furthermore, for Te Raki Māori, the Councils address pollution and environmental impacts in a narrow way, not taking into account either cumulative and historic impacts, or Māori cultural understandings. The cultural effects assessment report produced as part of the application highlighted these concerns. Indeed, while this submission and the technical report produced by Boubée clearly changed the views of the applicant and consenting authority, it was the technical report that had the most impact. The demands made in the CEA were not addressed, except to acknowledge Ngāti Hau’s relationship to the swamp. The Fisheries report claimed that the WDC had developed ‘an ongoing relationship with Ngati Hau to examine the fishery issues within the scheme’, and initial meetings with hapū seemed to suggest this, but Te Raki Māori continue to feel left out of the management of the scheme. Allan Halliday claimed that ‘[T]he baseline of the RMA is often set too low to properly recognise our views, values and our responsibility as kaitiaki’.¹²³⁸ This local study supports this point. While tangata whenua have gone to great lengths to exercise kaitiakitanga—often at great personal and financial sacrifice—the opportunities for joint management, recognition of the treaty partnership and of kaitiakitanga fall short of their potential.

¹²³⁸ Wai 1040 #P2(c)

6.5 *Local Study #2: Wairua Power Station fish passage*

6.5.1 Introduction

This local study looks at a fish pass and an eel trap and transfer scheme initiated following an upgrade to the Wairua hydro electric power station. The NRC set the fish pass as a consent condition, while tangata whenua initiated the eel trap and transfer scheme. This section briefly covers the history and location of the power station, and proceeds to look at the resource consent process for the upgrade and installation of fish passes. It focuses on the role of tangata whenua in securing fish passage, undertaking eel trap and transfer, and monitoring the impacts of the power station on fish species in the river, particularly tuna. This local study relies on NRC files on the power station's resource consent process, tangata whenua evidence presented to the Waitangi Tribunal, as well as communications between stakeholders in the eel trap and transfer scheme. The focus is on the extent to which Māori have been able to exercise kaitiakitanga in this process, rather than on the success of fish passes or the trap and transfer scheme.

Figure 50: Facing upstream from Wairua Power Station



(Source: Photograph by Perrine Gilkison, 13 December 2015)

6.5.2 Wairua Power Station and its location

The Wairua Power Station (also known as Titoki Power Station) was built in the early 1900s, with its first two-turbine generator units completed in 1916.¹²³⁹ The power scheme consists of a canal approximately two kilometres long which diverts flow from the river upstream of Omiru/Wairua Falls, a headpond, penstocks (intake structures that control water flow) and a power station.¹²⁴⁰ The station supplied electricity to the Whāngārei and Maungatāpere area from 1916 until after World War Two.¹²⁴¹ In 1925 an external reinforced concrete wall was bonded to the exterior wall of the power station to protect the machine hall from flooding from the Wairua River. A third penstock and generator unit was added in November 1940, and further upgrades, including the 2007 addition of a fourth penstock, will be covered in this study.¹²⁴²

The power station is located on the Wairua River at Titoki, about 30 kilometres west of Whāngārei. Approximately 2 kilometres upstream is Omiru/Wairua Falls.¹²⁴³ The falls are roughly 90 metres wide and 25 metres high,¹²⁴⁴ and form a natural barrier to the upstream movement of a number of fish species. Below the falls the gradient of the river is moderate and then slow under normal conditions, offering no barriers to fish movement.¹²⁴⁵ Downstream from the station is Te Ripo, the confluence of the Wairua, Mangakāhia, and Upper Wairoa Rivers.¹²⁴⁶

¹²³⁹ Northpower, 'Wairua Hydro Station', <http://northpower.com/network/generation> (accessed 23 December 2015); and *Wairua Falls hydro scheme: Outline plan prepared for Northland Regional Council*, April 2006, pp4, 8, NRC file: Northpower

¹²⁴⁰ Northpower, *Wairua Falls hydro scheme: Outline plan prepared for Northland Regional Council*, April 2006, p8, NRC file: Northpower

¹²⁴¹ Northland Regional Council, 'Draft report: water/discharge permit 4845', undated, NRC file: Northpower Wairua Dam and discharge LUC11, vol. 1

¹²⁴² Northpower, *Wairua Falls hydro scheme: Outline plan prepared for Northland Regional Council*, April 2006, p8

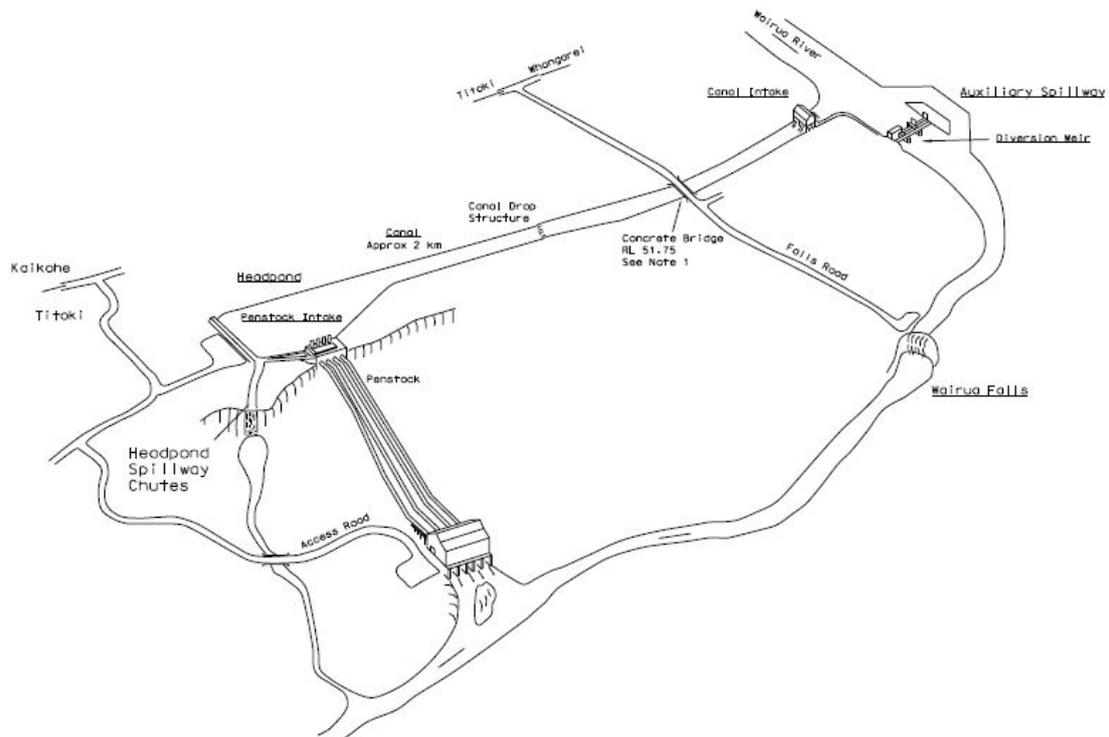
¹²⁴³ Northland Regional Council, 'Draft report: water/discharge permit 4845', undated

¹²⁴⁴ Brief of evidence for Hōri Tuhiwai, Wai 1040 #J8(c), para 24

¹²⁴⁵ Boffa Miskell, 'Northpower resource consent 4845: Assessment of fish pass requirements', February 2001, p4

¹²⁴⁶ Golden Bay Cement Company Limited, 'Application for consent under section 88 of the Resource Management Act 1991', 7 November 1991, p1, NRC file: Northpower Wairua Dam and discharge LUC11, vol. 1; Tonkin & Taylor, 'Wairua Falls hydro station upgrade: Landscape assessment', p2, NRC file: Northpower Wairua Dam and discharge LUC11, vol. 1

Figure 51: Layout of Wairua Power Station



(Source: Northpower Archives)

6.5.3 Claims issues and evidence

Tangata whenua evidence relating to this study focuses on fish passage and impacts of the power station on the mauri of waterways. In Hōri Tuhiwai’s statement to the Waitangi Tribunal in March 2013, he said that the falls located on the Wairua River—Omuru Falls, often incorrectly referred to as the ‘Wairua Falls’—are a place of significance for the people of Korokota (this report refers to them as Omiru/Wairua Falls). He explained that the diversion of Wairua River waters for a power station diminished the water flow over Omiru/Wairua Falls, preventing their taniwha and kaitiaki Rangiriri from being able to traverse the waters, which he says has impacted on the mauri of the waterway.¹²⁴⁷

¹²⁴⁷ Hōri Tuhiwai, Wai 1040 #E54(d), p4. Millan Ruka and Joseph Rapana also gave evidence that local Māori know the river as Omiru. Brief of evidence for Millan Ruka, Wai 1040 #U34(b), para 166; Brief of evidence for Joseph Rapana, Wai 1040 #J15(a), para 51

In his evidence to the Tribunal on 16 February 2015, Ngāti Hau Resource Management Unit Manager Allan Halliday spoke of the ongoing loss of tuna, listing diversion from the Tītoki Power Station as contributing to this.¹²⁴⁸ He said the water diversion to the power station caused Omiru/Wairua Falls to dry up, meaning elvers could not climb them. As a result, they were dying before they matured and bred, further depleting the eel population.¹²⁴⁹ The situation worsened as the number of turbines increased. Halliday claimed that as more water was diverted, elvers could not climb up at all. He said that even in winter the water only trickled over the falls in a few areas. Because the elvers could not get up the falls they would die, meaning of course that they would not grow into breeding adults. Discussing the trap and transfer scheme that will be covered in this local study, he said that millions of elvers had been transferred since 2011, without which 'pretty much all of them' would have died.¹²⁵⁰

Figure 52: 'The Wairua Falls', 1911



(Source: <http://www.digitalnz.org/records/22301138?search%5btext%5d=wairua+river> accessed 31 March 2016)

¹²⁴⁸ Allan Halliday, Wai 1040, #4.1.17 (hearing week 12 transcript, Akerama Marae, Whāngārei), pp158-159

¹²⁴⁹ Halliday, #4.1.17, p 159. Halliday added in personal communication of 15 June 2016 that prior to the scheme, millions of elvers were dying each year.

¹²⁵⁰ Halliday, #4.1.17, p161

Figure 53: Omiru/Wairua Falls



(Source: Photograph by Perrine Gilkison, 13 December 2015)

Millan Ruka told the Tribunal that the diversion of the Wairua ‘almost totally’ dries up the falls for eight months per year or more.¹²⁵¹ He said Omiru/Wairua Falls now runs dry for 70 to 80 per cent of the year, causing elvers to try to pass ‘impassable’ spillway falls.¹²⁵² NIWA scientist Jacques Boubée’s evidence to the Tribunal reinforced Ruka’s claim. ‘[I]t appear[ed] that in its natural state the falls did not severely impede elver recruitment. However, tuna passage over these falls is now affected by the harnessing of the flows by the Wairua Power Station (at times reducing river base flows by at least 90%)’.¹²⁵³

6.5.4 Application for consent to upgrade the Wairua Power Station

In November 1991 the power station’s then-owners, Golden Bay Cement, applied to the NRC for water permits, resource consents and land use consents for upgrade works for

¹²⁵¹ Ruka, Wai 1040 #U34(b), para 187

¹²⁵² Ruka, Wai 1040 #U34(b), para 189

¹²⁵³ Brief of evidence for Jacques Boubée, Wai 1040, #U19, para 33

the power station.¹²⁵⁴ The canal, headpond, penstocks and power station had been constructed almost eight decades earlier and the power station was considered almost at the end of its economic life.¹²⁵⁵ It had, under the Water and Soil Conservation Act 1967, a water right to dam the Wairua River (by means of automatic tilting gates and a vertical lift sluice gate) to divert, take, use and discharge water at the rate of up to ten cubic metres per second (cumecs) to generate electricity power. This permit was due to expire in 31 May 1999.¹²⁵⁶

In their application, Golden Bay Cement supplied NRC with contact details for ‘persons possibly affected’ by the proposal.¹²⁵⁷ This included S. Nepia and R.K. Tito of Korokota Marae in Tītoki, but aside from the marae, there does not appear to be specific mention of consultation with local Māori. On 5 November 1991, Golden Bay Cement wrote to Mr Tito and Mr Nepia at Korokota Marae (spelled Korotoa in the letter), providing information on the proposed upgrade of the Wairua Hydro Power Station, including responses to questions that had been raised (it is unclear who raised questions and when), and diagrams highlighting features of construction that would impact the local area.¹²⁵⁸ Golden Bay Cement, at the request of Tito and Nepia, undertook to notify them if it became necessary to carry out work closer to the nearby cliff and burial ground. On 8 November 1991 Tito, Nepia, and two others (illegible) signed and returned the form attached to the letter, saying: ‘We have studied the enclosed information and, subject to our request as above [regarding notification if it became necessary to carry out work closer to the cliff and burial ground], being met, approve the establishment and use of the proposed Wairua Hydro Power Scheme.’¹²⁵⁹ A similar letter, also of 5 November 1991, was sent to Tito at Tapora, excluding the request for notification if it became

¹²⁵⁴ Golden Bay Cement Company Limited, ‘Application for consent under section 88 of the Resource Management Act 1991’, 7 November 1991, p3

¹²⁵⁵ NRC, ‘Draft report: water/discharge permit 4845’, undated

¹²⁵⁶ NRC, ‘Draft report: water/discharge permit 4845’, undated

¹²⁵⁷ F.E. Petherick, Engineering Manager, Golden Bay Cement, to NRC,, 14 November 1991, NRC file: Northpower Wairua Dam and discharge LUC11, vol. 1

¹²⁵⁸ K.J. Cowie, Works Manager, Golden Bay Cement, to Mr Tito and Mr Nepia, 5 November 1991, and response, 8 November 1991, NRC file: Northpower Wairua Dam and discharge LUC11, vol. 1

¹²⁵⁹ K.J. Cowie, Works Manager, Golden Bay Cement, to Mr Tito and Mr Nepia, ‘Wairua hydro power station’, 5 November 1991, and response, 8 November 1991, NRC file: Northpower Wairua Dam and discharge LUC11, vol. 1

necessary to carry out work closer to sites described.¹²⁶⁰ The response, 'I have studied the enclosed information and approve the establishment and use of the proposed Wairua Hydro Power Scheme', was dated 8 November 1991 had two signatures, neither of which appear to be Tito's (to whom the original letter was sent).

A landscape assessment was prepared by Tonkin & Taylor, describing the area and its defining features and assessing the perceived visual impact of the upgrade.¹²⁶¹ The effects on the view from 'marae settlement on Tokiri Road' (presumably referring to Korokota Marae) was considered, among other views.¹²⁶² The assessment concluded that the upgrade was an 'extension of an existing use, and an accepted feature of the surrounding landscape'.¹²⁶³ Tonkin & Taylor responded to Dave Roke, NRC Consents Manager, (letter not available within the archive) that the situation of fish going through turbines would essentially not change, but that 'most smaller fish pass through ... turbines without significant damage.'¹²⁶⁴

6.5.5 Resource consent process for power station upgrade

6.5.5.1 NRC consideration of application and public notification, with a focus on fish passage

NRC archives contain a copy of a letter from the Council to P. Noakes of Tokiri Road in Tītoki, who was first in Golden Bay Cement's list of persons possibly affected – presumably a copy of the letter was sent to all of the people listed by Golden Bay Cement.¹²⁶⁵ The letter offered an opportunity for recipients to make submissions, providing just under a month in which to do so.

¹²⁶⁰ K.J. Cowie, Works Manager, Golden Bay Cement, to P.K. Tito, 'Wairua hydro power scheme', 5 November 1991, and response, 8 November 1991, NRC file: Northpower Wairua Dam and discharge LUC11, vol. 1

¹²⁶¹ Tonkin & Taylor, 'Wairua Falls hydro station upgrade: Landscape assessment', NRC file: Northpower Wairua Dam and discharge LUC11, vol. 1

¹²⁶² Tonkin & Taylor, 'Wairua Falls hydro station upgrade: Landscape assessment', p6

¹²⁶³ Tonkin & Taylor, 'Wairua Falls hydro station upgrade: Landscape assessment', p12

¹²⁶⁴ John Duder, Tonkin & Taylor, to Northland Regional Council, 7 November 1991, p1, NRC file: Northpower Wairua Dam and discharge LUC11, vol. 1

¹²⁶⁵ C.G. Whimp, Secretary, Northland Regional Council, to P. Noakes, 'Notification of application for a resource consent under section 93(2) of the Resource Management Act 1991', 18 November 1991, NRC file: Northpower Wairua Dam and discharge LUC11, vol. 1

As NRC began the process of considering the application, and publicly notifying the application, fish passage was clearly a concern to consent staff.¹²⁶⁶ Though the November 1991 application did not mention a fish pass, on 31 October 1991 Garry Venus of Tonkin & Taylor (consulting engineers), sent Roke an extract of a draft chapter, presumably commissioned by Golden Bay Cement, entitled 'Measures to minimise or mitigate potential adverse environmental effects' for NRC's information and comment.¹²⁶⁷ The chapter detailed potential regulations for flood gate levels and noise levels, and proposed the following:

- a) Existing wetted surfaces would be retained to allow fish passage past the works; and
- b) Existing residual flow of water over Omiru/Wairua Falls would be retained to allow the passage of juvenile fish up the river and falls.¹²⁶⁸

In addition to communications with the applicants and their engineers, NRC consent staff sought advice on fish passage from a central government agency. In a file note of 6 December, an NRC staff member, Dwane Kokich, detailed a phone call to Charles Mitchell of the Ministry of Agriculture and Fisheries (MAF) in Rotorua, seeking advice on the need for a fish pass at Wairua Power Station, and on design and cost.¹²⁶⁹ Mitchell advised that the proposed scheme was likely to impact upstream and downstream eel migrations.¹²⁷⁰ He gave advice on the best location for a pass, other fauna which would benefit from the pass, the water requirement for the pass and its supply, and other requirements for the pass such as shade and slope. The cost was considered 'moderate to inexpensive' in the scheme of the proposal.¹²⁷¹ Mitchell also advised on mortality rates of eels migrating downstream through turbines (75-100 per cent mortality).¹²⁷² Kokich noted that Golden Bay Cement could use a fish pass as an educational and public relations tool, and emphasised the need for active management of fish passes, 'rather than the existing 'passive' maintenance of wetted surfaces'.¹²⁷³

¹²⁶⁶ NRC, 'Applications for Resource Consents', 19 November 1991, NRC file: Northpower Wairua Dam and discharge LUC11, vol. 1

¹²⁶⁷ Garry Venus to NRC, 31 October 1991, NRC file: Northpower 'Fish Passage File Only'

¹²⁶⁸ Venus to NRC, 31 October 1991, NRC file: Northpower 'Fish Passage File Only'

¹²⁶⁹ NRC, file note 4845: 'Golden Bay Cement – Wairua proposal', 9 December 1991 NRC file: Northpower Wairua Dam and discharge LUC11, vol. 1

¹²⁷⁰ NRC, file note 4845: 'Golden Bay Cement – Wairua proposal', 9 December 1991, p1

¹²⁷¹ NRC, file note 4845: 'Golden Bay Cement – Wairua proposal', 9 December 1991, p2

¹²⁷² NRC, file note 4845: 'Golden Bay Cement – Wairua proposal', 9 December 1991, p2

¹²⁷³ NRC,, file note 4845: 'Golden Bay Cement – Wairua proposal', 9 December 1991, p2

Local industry also expressed concerns about the impacts of the proposed upgrade, which were met with reassurances from the applicants regarding their process of liaising with DOC and the local fish and game council. A local eel processor and exporter, John Jameson, contacted Golden Bay Cement in December 1991 expressing concern that raising the spillway crests would eliminate, for much of the year, wet rock surfaces necessary for elver migration. He requested that Golden Bay Cement liaise with his company, Thomas Richard & Co Ltd, and a representative of the eel fishers' association to incorporate an elver ladder into the upgrade. If a ladder was incorporated, the company would support the proposed upgrade, but otherwise they would oppose it. K.J. Cowie of Golden Bay Cement replied that they had discussed the 'fisheries' aspects of the proposed upgrade with Northland Fish and Game Council and DOC and had 'taken into account' information those organisations felt should be included.¹²⁷⁴ Golden Bay Cement had agreed to consult with DOC on the design of the overflow spillway to allow for the passage of fish, and anticipated that the eel fishers' association would be involved with DOC in the process.¹²⁷⁵

In February 1992, NRC drafted conditions for a climbing fish pass to ensure that fish, especially eels, could move upstream into the Wairua River system. The draft clause required Golden Bay Cement to 'maintain and operate the passes as intended' for the permit period. This draft was an acknowledgement that the proposed scheme would 'dry' the falls and downstream channel for significant periods, making migration more difficult.¹²⁷⁶ The staff member who drafted the conditions emphasised the importance of getting expert advice and planning the fish pass at an early stage.¹²⁷⁷ In communications of around February-March 1992 NRC's Processing Officer, Jan-Arie Jongkees, prepared a draft report on the application discussing possible effects on the environment and flow rates.¹²⁷⁸ He noted that kōkopu (galaxias genus), eels, and

¹²⁷⁴ K.J. Cowie, Golden Bay Cement Development and Technology Manager, to Thomas Richard & Co Ltd, 13 December 1991, NRC file: Northpower Wairua Dam and discharge LUC11, vol. 1

¹²⁷⁵ K.J. Cowie, Golden Bay Cement Development and Technology Manager, to Thomas Richard & Co Ltd, 13 December 1991, NRC file: Northpower Wairua Dam and discharge LUC11, vol. 1

¹²⁷⁶ NRC, 'Reasons for conditions', 5 February [1992], NRC file: Northpower Wairua Dam and discharge LUC11, vol. 1

¹²⁷⁷ NRC, 'Reasons for conditions', 5 February [1992]

¹²⁷⁸ NRC, 'Draft report: Water/discharge permit 4845', undated

whitebait inhabited the river below the falls, and that juvenile fish were mainly at the overflow of the power station, and in lesser numbers at Omiru/Wairua Falls.

6.5.5.2 Decision to grant resource consent and conditions imposed

On 20 March 1992, NRC granted resource consent to Golden Bay Cement for upgrade works on the Wairua Power Station (application 4845), valid to 31 May 2020.¹²⁷⁹ In granting the water permit, the Council listed a number of conditions for Golden Bay Cement to adhere to. Condition 13 stated:

(i) A climbing fish pass shall be installed to allow the passage of upstream migrating fish from the river near the power generating house into the headpond. The fish pass design shall be submitted to Council for approval prior to construction,

(ii) The penstock(s) shall be adequately screened with grills having no gap wider than 25 mm,

(iii) Provision shall be made in the headpond for downstream migration of eels. The design for this feature must be submitted to Council for approval prior to construction,

(iv) Fish passes shall be operated and maintained in accordance with their design and intended function.¹²⁸⁰

The Council reserved the right to review the conditions under Section 128 of the RMA if the exercise of the consent led to any adverse effects on the environment not anticipated or foreseen at the time of granting.¹²⁸¹ The decision was delivered to neighbours who had participated in the resource consent process (either opposing, or supporting with conditions) and to Golden Bay Cement and Tonkin & Taylor.¹²⁸² Like the original information about the proposed works, the decision was not sent to iwi, hapū, or marae groups. This time it was not sent to Tito or Nepia either, likely due to the letters of approval that Golden Bay Cement had received. When later asked by Jongkees to comment on the proposed conditions for fish passage, Kokich said the proposed

¹²⁷⁹ NRC, 'Water permit 4845', 20 March 1992, supplied by Stuart Savill of NRC

¹²⁸⁰ NRC, 'Water permit 4845', 20 March 1992

¹²⁸¹ NRC, 'Water permit 4845', 20 March 1992

¹²⁸² NRC, 'Water permit 4845', 20 March 1992

conditions would ensure upstream migration of fish, especially eels, to the Wairua River system but that downstream migration was also required.¹²⁸³

6.5.5.3 Northpower's response to application being granted

The resource consent was issued but not used by Golden Bay Cement. In 1993 the new owners of the power station contacted NRC about plans to refurbish the power station. On 23 November, Northpower, who had purchased the power station in June 1993,¹²⁸⁴ advised they had decided to upgrade the existing power station and to undertake associated works.¹²⁸⁵ Northpower advised they would be prepared to incorporate a climbing fish pass and provide for the safer downstream migration of eels between the headpond and the river (which were consent conditions of 'water permit 4845') into upgrade work planned for completion at the end of summer 1995.¹²⁸⁶ They requested confirmation that the plan was not in conflict with the RMA, or with the resource consents, and that these plans avoided the need for notification.¹²⁸⁷ Roke responded that he considered that 'the approach would conform to the logical interpretation of the Act.'¹²⁸⁸ He advised that Northpower should inform 'the local maori[sic] group' of the proposal and reach agreement with them as far as possible prior to NRC deciding whether the application should be publicly notified.¹²⁸⁹ Roke's letter did not require Northpower to report on the outcome of contact with local Māori.

Northpower's annotations (in italics below) to condition 13 for the 1992 resource consent (water permit 4845) outline their specific responses to each Section 13.¹²⁹⁰

¹²⁸³ Rob Loeffering to Dale Hansen, 'Comments on Northpower Fish Pass Report', 28 February 2001, NRC file: Northpower Wairua Dam and discharge LUC11, vol. 1

¹²⁸⁴ Andrew Lewis, Senior Associate, Simpson Grierson Butler White, to NRC, 'Wairua Hydro sale – the Golden Bay Cement Company Ltd – Northpower Ltd', 14 June 1993, NRC file: Northpower Wairua Dam and discharge LUC11, vol. 1

¹²⁸⁵ C.H. Whaley, System Manager, Northpower, to D.L. Roke, Consents Manager, NRC, 'Wairua Falls Power Station – Resource Consents', 23 November 1993, p1, NRC file: Northpower Wairua Dam and discharge LUC11, vol. 1

¹²⁸⁶ C.H. Whaley, System Manager, Northpower, to D.L. Roke, Consents Manager, NRC, 'Wairua Falls Power Station – Resource Consents', 23 November 1993, pp1-2

¹²⁸⁷ C.H. Whaley, System Manager, Northpower, to D.L. Roke, Consents Manager, NRC, 'Wairua Falls Power Station – Resource Consents', 23 November 1993, p2

¹²⁸⁸ D.L. Roke, Consents Manager, NRC to System Manager, Northpower, 'Wairua Falls Power Station Resource Consents', 9 December 1993, NRC file: Northpower Wairua Dam and discharge LUC11, vol. 1

¹²⁸⁹ D.L. Roke, Consents Manager, NRC, to System Manager, Northpower, 'Wairua Falls Power Station Resource Consents', 9 December 1993

¹²⁹⁰ Northpower, 'Schedule', NRC file: Northpower Wairua Dam and discharge LUC11, vol. 1

(i) A climbing fish pass shall be installed to allow the passage of upstream migrating fish from the river near the power generating house into the headpond. The fish pass design shall be submitted to Council for approval prior to construction.

This will be provided as part of the present upgrade.

(ii) The penstock(s) shall be adequately screened with grills having no gap wider than 25 mm.

The existing screens comply.

(iii) Provision shall be made in the head pond for downstream migration of eels. The design for this feature shall be submitted to Council for approval prior to construction.

This will be provided as part of the present upgrade.

(iv) Fish passes shall be operated and maintained in accordance with their design and intended function.

*We will comply as part of the present upgrade.*¹²⁹¹

In the early and mid-1990s, refurbishment works were undertaken, which aimed to prolong the life of the scheme until about 2005.¹²⁹²

6.5.5.4 Debate over the need to install fish passes

As at 23 February 2000, the fish pass was not yet installed and the power station owners were questioning whether it was necessary. Northpower had apparently investigated migration of eels from the power station to the headpond and at Omiru/Wairua Falls, and reportedly asked whether there was a need for a fish pass as eels were naturally migrating to upper levels.¹²⁹³ NRC advised that Northpower should submit the information for discussion, and start the process for installing the fish pass as per the conditions of the resource consent. They said this should be completed before the September migration season. On 26 September 2000 NRC staff phoned Calvin Whaley of Northpower for an update, who advised that Northpower had sent documents and structural plans to Boffa Miskell, an environmental planning and design

¹²⁹¹ Northpower, 'Schedule', p3

¹²⁹² Northpower, 'Wairua Falls hydro scheme: Outline plan prepared for Northland Regional Council', April 2006, p8

¹²⁹³ NRC, 'Monitoring, Wairua, Power', 23 February 2000, NRC file: Northpower Wairua Dam and discharge LUC11, vol. 1

consultancy, to assess fish pass construction and climbing fish at Omiru/Wairua Falls.¹²⁹⁴

Boffa Miskell staff had indicated to Northpower that fish passes may only be required at certain parts, rather than a complete construction from top to bottom of the diversion.¹²⁹⁵ Boffa Miskell had carried out field assessments, identified weak links to the existing diversion, and would consider a new design or tweaking the existing system.¹²⁹⁶ On 26 September 2000, Mark Poynter of Boffa Miskell advised NRC that in his view another fish pass was not required.¹²⁹⁷ He said there was already good access for elvers via the diversion overflow stream, which he believed to be the primary route for elver migration. He said the long-term presence of a 'substantial eel fishery' above the falls despite the power station proved that elvers were migrating successfully. He said access through the existing fish pass could be improved, and he would provide information on how. Boffa Miskell reported on fish pass requirements in February 2001.¹²⁹⁸ They advised that 'field observations and evidence to hand at this point suggests that Northpower is in compliance' with the consent conditions.¹²⁹⁹ They considered that the presence of 'a significant eel fishery' in the catchment above the power station was evidence that the power station's structures and operation had not undermined the sustainability of the fishery over the previous 80 years or so, and it followed 'not only that eels have and continue to successfully migrate into the Wairua catchment, but that they successfully negotiate the Wairua Falls and the power station structures.'¹³⁰⁰ They concluded that '[n]o further structures are required to meet the

¹²⁹⁴ NRC, 'Monitoring, Wairua, Power', 26 September 2000, NRC file: Northpower Wairua Dam and discharge LUC11, vol. 1

¹²⁹⁵ NRC, 'Monitoring, Wairua, Power', 26 September 2000

¹²⁹⁶ NRC, 'Monitoring, Wairua, Power', 26 September 2000

¹²⁹⁷ Mark Poynter, Boffa Miskell, to Rob Lieffering, NRC, 'Wairua Fish Pass', 26 September 2000, NRC file: Northpower Wairua Dam and discharge LUC11, vol. 1

¹²⁹⁸ Boffa Miskell, 'Northpower resource consent 4845: Assessment of fish pass requirements', February 2001

¹²⁹⁹ Boffa Miskell, 'Northpower resource consent 4845: Assessment of fish pass requirements', February 2001, p13. The report references NIWA's *Ecological survey of the Wairua River catchment*, 2000, discussed below, and another NIWA report: D. Rowe, M. Hicks, and J. Richardson, *Reduced abundance of banded kokopu (Galaxias fasciatus) and other native fish in turbid rivers of the North Island of New Zealand*, 2000

¹³⁰⁰ Boffa Miskell, 'Northpower resource consent 4845: Assessment of fish pass requirements', February 2001, p13

conditions of the consent but simple modifications are proposed which would improve the performance of the existing headpond spillway.’¹³⁰¹

NRC staff had doubts about the advice provided by Boffa Miskell, and Northpower’s consent compliance. On 28 February 2001, an NRC staff member, Rob Lieffering, noted that, contrary to the NRC advice, it did not appear that the fish pass design was ever considered or included in any design drawings.¹³⁰² He also noted that the Boffa Miskell report did not mention that other climbing species were found in other waterways downstream of the falls, instead it discussed the possibility that other species may not choose to migrate up the Wairua catchment because of its turbidity.¹³⁰³ He disagreed with this premise as the same species were found in the Mangakāhia catchment and would have to migrate up the turbid Northern Wairoa River to get there.¹³⁰⁴ Lieffering also noted discrepancies between the Boffa Miskell report and a NIWA report produced in 2000¹³⁰⁵ on whether or not eels were impeded by the hydro power station, with Boffa Miskell saying they were not impeded, as evidenced by significant eel fisheries in the Wairua catchment, and the NIWA report saying size distribution was skewed and recruitment of eel species was restricted.¹³⁰⁶ He agreed with Boffa Miskell’s recommendation that Northpower modify the area below the rock face, down from the head pond, to avoid eel casualties as they migrated downstream. This could be done by constructing a plunge pool for eels to fall into instead of falling onto boulders.¹³⁰⁷

While Lieffering agreed with Boffa Miskell that technically there was a suitable fish pass for upstream migration, he noted that Boffa Miskell did not discuss the restrictions of fish passage at the diversion gate at the head of the diversion canal. He said that while fish could get into the canal, there was no way they could swim under the diversion gates and back to the river proper, due to water velocity. He was concerned about the

¹³⁰¹ Boffa Miskell, ‘Northpower resource consent 4845: Assessment of fish pass requirements’, February 2001, p13

¹³⁰² Rob Lieffering to Dale Hansen, ‘Comments on Northpower Fish Pass Report’, 28 February 2001, NRC file: Northpower Wairua Dam and discharge LUC11, vol. 1

¹³⁰³ Lieffering to Hansen, ‘Comments on Northpower Fish Pass Report’, 28 February 2001

¹³⁰⁴ Lieffering to Hansen, ‘Comments on Northpower Fish Pass Report’, 28 February 2001

¹³⁰⁵ B.L. Chisnall and I Boothroyd, NIWA, *Ecological survey of the Wairua River catchment: October 1999*, February 2000, NRC file: Northpower ‘Fish Passage File Only’

¹³⁰⁶ Lieffering to Hansen, ‘Comments of Northpower Fish Pass Report’, 28 February 2001

¹³⁰⁷ Lieffering to Hansen, ‘Comments of Northpower Fish Pass Report’, 28 February 2001

diversion gate and main tilt gates across the Wairua River, but noted there was no legal requirement for fish passes to be constructed over them. During a site visit, Council staff had suggested to Poynter (of Boffa Miskell) that some form of fish pass should be designed for both of these structures, as any fish getting past the falls would have no chance of getting past the tilt gates, which were vertical and had no wetted surface. While eels could climb overland to get around such obstacles, other fish species could not. The Boffa Miskell report said a detailed analysis of species above and below the falls during migration would be necessary to determine which species were being restricted. Lieffering agreed, saying it should also be done above and below the control and diversion gates, recommending that this happen during the next migration, and that the plunge pool be created as soon as possible.¹³⁰⁸

Despite this debate, it does not appear that the Council took any actions to enforce consent conditions regarding fish passage. Millan Ruka said in his February 2016 evidence to the Tribunal that the resource consent condition requiring fish passes was ignored until hapū 'pushed the issue' in 2011/2012.¹³⁰⁹

6.5.6 New resource consent application for refurbishment of Wairua Power Station

Several years passed, and in 2005, Northpower looked into upgrade and renewal works to maintain the economic life of the existing power scheme for a further 40 years, and to increase its generating capacity.¹³¹⁰ Northpower proposed to do the following by May 2007:

- a) Install a mechanical weed rake and bar screen for the canal intake structure;
- b) Replace the hinged flap gates and counterweights on the river diversion weir;
- c) Remedial work and enhancements to the left bank (canal) access track;
- d) Raise the canal bank freeboard;
- e) Raise the headpond wall for increased freeboard;
- f) Penstock intake works for the fourth penstock;
- g) Install a fourth turbine, generator and related equipment; and

¹³⁰⁸ Lieffering to Hansen, 'Comments of Northpower Fish Pass Report', 28 February 2001

¹³⁰⁹ Ruka, #U34(b), para 187

¹³¹⁰ Northpower, 'Wairua Falls hydro scheme: Outline plan prepared for Northland Regional Council', April 2006, p8

h) Civil works at the power station to accommodate the fourth turbine.¹³¹¹

The plan did not discuss provisions for fish passage. The power station was upgraded in 2007, and all of these works were completed except the weed rake and bar screen for the canal intake (a screen and weed rake was fitted at the new penstock intake instead), and as it was the canal banks were of a sufficient height to handle water take for four generators, the banks were only raised where erosion had taken place.¹³¹²

6.5.6.1 Māori concerns about tuna populations

At the same time as consents were being granted and the need for further fish passage was being debated, tangata whenua were taking action on their concerns about tuna populations. Allan Halliday of Ngāti Hau proposed the idea of a tuna trap and transfer scheme to Ngāti Hau, then to other hapū and to TRAION.¹³¹³ Then, in 2007, local hapū Te Uriroroi, Te Parawhau and Ngāti Hau created a group called Ngā Kaitiaki o Ngā Wai Māori, and a strategic plan of the same name. The group aimed to enhance tuna populations and the environment of the Wairua River and its catchments.¹³¹⁴ According to Halliday, tikanga Māori was implemented into the group and its work.¹³¹⁵ He said they were frustrated at the way government departments worked and wanted to do things 'their way'. They wanted co-governance of waterways, and to form a joint committee with other groups (such as local government, Fonterra, DOC, etc) so that both sets of values could inform the governance of waterways.¹³¹⁶

Local Māori also provided NRC with advice on protecting tuna. In a draft 'Report on resource consents that give right of way for immigrating elvers and migrating eels in the Wairua River catchment' dated 10 August 2011, Millan Ruka detailed the intentions of the Kaitiaki Tuna Heke Aotearoa Trust that he had established.¹³¹⁷ These included

¹³¹¹ Northpower, 'Wairua Falls hydro scheme: Outline plan prepared for Northland Regional Council', April 2006, p4

¹³¹² Personal communication with Bill Grimes, 18 April 2016

¹³¹³ Personal communication with Allan Halliday, 15 June 2016. Halliday says the initiative came by way of NIWA staff, who advised him about similar initiatives in other parts of the country.

¹³¹⁴ Millan Ruka to many, 'Re: Panui/progress report #005 on elver season 2012 – elvers have arrived 23rd September 2012', 24 September 2012, NRC file: Northpower; Halliday, #P2, para 6.1

¹³¹⁵ Personal communication with Allan Halliday, 15 June 2016

¹³¹⁶ Halliday, #P2, para 6.9

¹³¹⁷ Millan Ruka, 'Report on resource consents that give right of way for immigrating elvers and migrating eels in the Wairua River catchment: Titoki/Mangakahia/Hikurangi Swamps/Whakapara', 10 August 2011, NRC file: Northpower 'Fish Passage File Only'

ensuring that migrating eels and elvers had ladders that met the criteria set out in resource consent conditions, and ensuring the Wairua Power Station (Northpower) and the Hikurangi Pump Station consent holders met their fish pass obligations.¹³¹⁸ He concluded, after eight months of study, that obligations had not been met, and the problem was made worse by the extra turbine and extra infrastructure added, which was detrimental to tuna and elver life cycles.¹³¹⁹ Ruka said that prior to the power station being built the falls did not pose problems for tuna and elver migration.¹³²⁰ After the power station was commissioned and up to the mid-1970s, tuna heke (downstream migrating eels) would encounter a weir dam above Omiru/Wairua Falls, which caused water to rise, and divert down through the canal, before entering into penstock pipes, making the migration more perilous.¹³²¹ Ruka also outlined difficulties and options faced by elvers entering the catchment in this period, and how this changed after the Hikurangi Swamp drainage scheme was commissioned.¹³²² Ruka said the tuna life cycle was not given due consideration in the 2007 (he says 2009) refurbishments, and it 'set the path to the collapse of the tuna heke breeding stock and severely diminishes elver return.'¹³²³ He explained the impact of the upgrade on elver migration, estimating an 80 per cent decrease in elver access past the Wairua Power Station.¹³²⁴ His report also included options for a trap and transfer scheme.¹³²⁵

On 18 November 2011 Ruka initiated an email conversation on the trap and transfer scheme between a range of stakeholders emailing a number of interested parties with

¹³¹⁸ Ruka, 'Report on resource consents that give right of way for immigrating elvers and migrating eels in the Wairua River catchment: Titoki/Mangakahia/Hikurangi Swamps/Whakapara', 10 August 2011, p1

¹³¹⁹ Ruka, 'Report on resource consents that give right of way for immigrating elvers and migrating eels in the Wairua River catchment: Titoki/Mangakahia/Hikurangi Swamps/Whakapara', 10 August 2011, pp1-2

¹³²⁰ Ruka, 'Report on resource consents that give right of way for immigrating elvers and migrating eels in the Wairua River catchment: Titoki/Mangakahia/Hikurangi Swamps/Whakapara', 10 August 2011, p2.

According to personal communication with Northpower's Bill Grimes on 18 April 2016, the upgrade took place in 2007, not 2009

¹³²¹ Ruka, 'Report on resource consents that give right of way for immigrating elvers and migrating eels in the Wairua River catchment: Titoki/Mangakahia/Hikurangi Swamps/Whakapara', 10 August 2011, pp2-3

¹³²² Ruka, 'Report on resource consents that give right of way for immigrating elvers and migrating eels in the Wairua River catchment: Titoki/Mangakahia/Hikurangi Swamps/Whakapara', 10 August 2011, pp3-5

¹³²³ Ruka, 'Report on resource consents that give right of way for immigrating elvers and migrating eels in the Wairua River catchment: Titoki/Mangakahia/Hikurangi Swamps/Whakapara', 10 August 2011, p5

¹³²⁴ Ruka, 'Report on resource consents that give right of way for immigrating elvers and migrating eels in the Wairua River catchment: Titoki/Mangakahia/Hikurangi Swamps/Whakapara', 10 August 2011, p6

¹³²⁵ Ruka, 'Report on resource consents that give right of way for immigrating elvers and migrating eels in the Wairua River catchment: Titoki/Mangakahia/Hikurangi Swamps/Whakapara', 10 August 2011, pp13-16

recommendations on sites for elver catch and release.¹³²⁶ Boubée responded with his advice, and Te Raa Nehua of Te Uriroroi and Te Parawhau replied with information from a visit on 22 November, including saying that Northpower had offered a shed at the power station to store catch and transfer equipment, and that Hōri Tuhiwai and a Northpower staff member (John, probably John Andrews) recommended a second elver catch point be set up at the bridge downstream of the power station.¹³²⁷ Nehua added that Tuhiwai required NIWA training in monitoring and recording procedures.¹³²⁸ NIWA had been helping to develop ways to protect and enhance indigenous freshwater fish resources (primarily tuna) in the Hikurangi Repo and Wairua River catchment since 2009, at the invitation of Ngāti Hau Resource Management Unit, WDC and Northpower,¹³²⁹ and NIWA's Jacques Boubée produced a report on the state of elvers in November 2011.¹³³⁰

The same month, Ruka also prepared a report on the elver trap and transfer scheme. This report was intended to feed into the development of a tuna and elver information manual. He believed a manual should be prepared as part of the consents for the Wairua Power Station eel transfer scheme and the Hikurangi Swamp pump scheme, and as a resource for mokopuna.¹³³¹ He said this manual should include reports prepared by Tuhiwai and NIWA on the elver trap and transfer scheme, which was in its early stages.¹³³² He also provided advice on how to deal with larger eels (tuna heke) going over the spillway, and how to intercept and catch the tuna heke. He recommended custom-making a steel cage to fit the spillway, which could be unloaded, and tuna could be transferred. He provided advice about how the transfer would be done, including the

¹³²⁶ Millan Ruka to many, 'Suggestion for elver catch on the spillway access', 18 November 2011, NRC file: Northpower 'Fish Passage File Only'

¹³²⁷ Te Raa Nehua to Jacques Boubée and others, 'RE: Suggestion for elver catch on the spillway access', 22 November 2011, NRC file: Northpower 'Fish Passage File Only'

¹³²⁸ Nehua to Boubée and others, 'RE: Suggestion for elver catch on the spillway access', 22 November 2011

¹³²⁹ NIWA, 'Wairua Power Station elver trap and transfer program: 2011-12 season', July 2012, p7, NRC file: Northpower

¹³³⁰ Jacques Boubée, NIWA, to Millan Ruka, Te Raa Nehua, Conal Summers, Rachel Ropiha, Solomon Tipene, Russell Watson, Dick Shepherd, Mario Hohaia, Allan Halliday, and Erica Williams, 'RE: elvers from Wairua power station', 29 November 2011, NRC file: Northpower

¹³³¹ Millan Ruka to many, 'Wairua Power Station & Infrastructure / tuna & elvers – by Millan Ruka – Kaitiaki Tuna Heke Aotearoa Trust', 24 November 2011, NRC file: Northpower

¹³³² Ruka to many, 'Wairua Power Station & Infrastructure / tuna & elvers – by Millan Ruka – Kaitiaki Tuna Heke Aotearoa Trust', 24 November 2011

need for Northpower to regulate flow into the canal so there was no overflow. He considered this option simple, practical and effective.¹³³³ He also discussed a second option of completely keeping tuna out of the canal, with lights and electric fence to deter them from entering, so they went over the falls 'the natural way'. Northpower would have to ensure there was enough flow for them to go this way, and Ruka reported that Russell Watson of Northpower thought this was feasible with monitoring, as there was excess water. Ruka said NIWA had also considered this option.¹³³⁴ He emphasised it was important to put a plan into place for the March 2012 migration, saying that they had 'lost' three seasons since the new works directed more tuna down the canal.¹³³⁵ If his preferred option was implemented (custom-made steel cage for transfer), Ruka explained, they could perform more accurate monitoring of tuna catch, size and sex.¹³³⁶ They could then action the second option (excluding tuna from the canal).¹³³⁷

¹³³³ Millan Ruka to Jacques Boubée and others, 'Re: Wairua Power Station & Infrastructure / tuna & elvers Forum', 24 November 2011, NRC file: Northpower

¹³³⁴ Ruka to Boubée and others, 'Re: Wairua Power Station & Infrastructure / tuna & elvers Forum', 24 November 2011

¹³³⁵ Ruka to Boubée and others, 'Re: Wairua Power Station & Infrastructure / tuna & elvers Forum', 24 November 2011

¹³³⁶ Ruka to Boubée and others, 'Re: Wairua Power Station & Infrastructure / tuna & elvers Forum', 24 November 2011

¹³³⁷ Ruka to Boubée and others, 'Re: Wairua Power Station & Infrastructure / tuna & elvers Forum', 24 November 2011

Figure 54: Elver ladder/fish pass leading in to trap, Wairua Power Station



(Source: Photograph by Perrine Gilkison, 13 December 2015)

Less than two months later, Ruka provided an update on his monitoring activities, further information and opinions on elver migration past the power station, a discussion about consent holder obligations and expressed frustrations about a lack of communication between parties. Ruka emailed stakeholders on 12 January 2012 saying hundreds of elvers were seen in the spillway and climbing to get into the canal. His email dealt with a number of elver migration problems he and Tuhiwai had seen,

including losses due to not having a ladder below the station bridge.¹³³⁸ He attributed this to Northpower not addressing the situation and suggested, 'again', a floating ladder below the bridge. He discussed Tuhiwai's catch and release work, saying it was 'not sustainable for him to continue, or increase his workload if transport and costs are not addressed in the very near future.'¹³³⁹ He reported that Tuhiwai was not aware of any plans by Northpower, WDC, NRC or NIWA to address the upcoming downstream migration of tuna (March-May 2012). Ruka warned that they were now heading into the fourth year where the new infrastructure at the Wairua Power Station would impact the migration.¹³⁴⁰

Ruka also expressed disappointment that NRC did not appear to understand their duty under the RMA regarding consents for Wairua Power Station, and that tuna were not being given the assistance they needed. He said Northpower needed to address their resource consent responsibility and get systems in place as the support for Tuhiwai's work was not sufficient. He finished the email by remarking that nobody seemed to want to draw on tangata whenua knowledge, which he said was frustrating and delayed progress. He also commented on a lack of coordination, reporting systems, and leadership, saying all parties needed to focus on their RMA obligations. Craig Brown, Chair of NRC, responded to Ruka's email on 17 January 2012, advising that he had asked senior staff to investigate Ruka's concerns about the exclusion of livestock from local waterways (in the same email as his tuna concerns), but not addressing the content regarding tuna.¹³⁴¹ It is not clear why concerns about tuna were not acknowledged or addressed.

On 12 January 2012 WDC's Stormwater Asset Engineer, Conal Summers, advised Ruka that WDC would prepare a fisheries management plan by May 2012 as part of their consent for the Hikurangi Swamp scheme.¹³⁴² While this was good news, Ruka

¹³³⁸ Millan Ruka to Te Raa Nehua and others, 'Re: Resourcing elver transfer at Wairua Power Station', 12 January 2012, NRC file: Northpower

¹³³⁹ Ruka to Nehua and others, 'Re: Resourcing elver transfer at Wairua Power Station', 12 January 2012

¹³⁴⁰ Ruka to Nehua and others, 'Re: Resourcing elver transfer at Wairua Power Station', 12 January 2012

¹³⁴¹ Craig Brown, Chair, NRC, to Millan Ruka, 'RE: Resourcing elver transfer at Wairua Power Station', 17 January 2012, NRC file: Northpower 'Fish Passage File Only'

¹³⁴² Conal Summers, Stormwater Asset Engineer, WDC, to Millan Ruka, Andrew Carvell, and Jacques Boubée, 'RE: Resourcing elver transfer at Wairua Power Station', 12 January 2012, NRC file: Northpower

emphasised on 21 February that they must ensure that tangible and physical steps were taken for the 2013 migration.¹³⁴³ Ruka's 21 February email also said that Te Parawhau, Ngāti Hau and Te Uriroroi had worked together on tuna transfers, and acknowledged that Northpower had made a start, with the engagement of NIWA.¹³⁴⁴ He continued that they needed to optimise the catch, and raised again the need for information to be collated in a manual, saying despite many studies having been done, no authority had collated the information.¹³⁴⁵ He reported that on 19-20 February 2012 elvers were seen on the flat concrete surface below the station bridge, heading for the spillway, and was disappointed that there had been no attempt to catch them at that point, as per recommendations to Northpower and NRC.¹³⁴⁶ He observed that there was no sign of elvers at the top of the canal, though they were coming up the spillway, saying this confirmed that they were getting sucked back down the intake pipes as they attempted to pass. If they did pass, they had little chance of getting past the weir, and faced 'severe hydraulics' at the top entrance to the canal, and he estimated that 95 per cent had not made it through that year so far. He said they needed to intercept and catch them for release, and urged Northpower to meet their consent obligations, saying a lot of work was needed to optimise the catch and transfer scheme.

6.5.6.2 Tuna trap and transfer scheme

The catch and transfer scheme required consent from two government agencies in order to legally proceed. To obtain a permit, applicants needed to meet a range of criteria including having a legal entity for the permit to be issued to. The first season of the scheme (2011-12) was undertaken with a permit obtained by NIWA. On 23 February 2012, the Ministry of Agriculture and Forestry (MAF) and the Ministry of Fisheries (MFish) issued a permit to Ngāti Hau Trust Board, under the Fisheries Act 1996, to 'take, transfer and release longfin and shortfin eels (*Anguilla* spp.), and freshwater shrimp (*Paratya curvirostris*) irrespective of size, for the purpose of

¹³⁴³ Millan Ruka to Jacques Boubée and others, 'Feb 2012 update on elvers Wairua power Station and preparation on pending tuna heke migration', 21 February 2012, NRC file: Northpower

¹³⁴⁴ Ruka to Boubée and others, 'Feb 2012 update on elvers Wairua power Station and preparation on pending tuna heke migration', 21 February 2012

¹³⁴⁵ Ruka to Boubée and others, 'Feb 2012 update on elvers Wairua power Station and preparation on pending tuna heke migration', 21 February 2012

¹³⁴⁶ Ruka to Boubée and others, 'Feb 2012 update on elvers Wairua power Station and preparation on pending tuna heke migration', 21 February 2012

investigative research'.¹³⁴⁷ Regulations stipulated that these species could be taken from the Wairua River catchment and must be returned to it. It could not be used to collect any fish, aquatic life or seaweed for sale or for bait. The permit listed the fishing methods permitted, and said that any transfer or release of eels could only be undertaken with approval under the Conservation Act 1987. Biosecurity conditions, reporting requirements, and general conditions were also set out. The permit was valid until 30 June 2015 and was issued to Ngāti Hau Trust Board, a legal entity which met permit criteria.¹³⁴⁸

Obtaining the permit had been a lengthy process. Jacques Boubée of NIWA wrote to stakeholders, including NRC and WDC staff, Ngāti Hau Resource Management Unit, and Northpower staff on 1 November 2011 to say that he had been following up with MAF but as of the previous day no permit had been issued.¹³⁴⁹ He recommended, if they did not hear back by the end of the following week, that local Māori (Ngāti Hau, Hōri Tuhiwai and family) do the transfer 'under customary cover'.¹³⁵⁰ He said this was already occurring at a number of sites around the country, and not to get discouraged by the bureaucracy they were facing. Two days later, Boubée advised that NIWA's special permit was extended until June (presumably 2012), so activities could continue until the permit for Ngāti Hau was in place.¹³⁵¹ So while the tuna trap and transfer scheme could proceed, the initial action to protect tuna had to work around government regulations, rather than being assisted by them.

¹³⁴⁷ Ministry of Agriculture and Forestry (MAF), 'Special Permit (508)', 23 February 2012, NRC file: Northpower 'Fish Passage File Only'

¹³⁴⁸ Personal communication with Allan Halliday, 20 June 2016

¹³⁴⁹ Jacques Boubée to Rachel Ropiha, Erica Williams, Ngāti Hau RMU, Conal Summers, Te Raa Nehua, and Russell Watson, 'RE: elver transfer and eel plan for the Wairua catchment', 1 November 2011, NRC file: Northpower 'Fish Passage File Only'

¹³⁵⁰ Boubée to Ropiha, Williams, Ngāti Hau RMU, Summers, Nehua, and Watson, 'RE: elver transfer and eel plan for the Wairua catchment', 1 November 2011. It is unclear what 'customary cover' means here, but it is presumably referring to provisions for Māori non-commercial customary fishers in the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, Fisheries Act 1996, and Maori Fisheries Act 2004

¹³⁵¹ Jacques Boubée to Rachel Ropiha, Erica Williams, Katrina Hansen, Andre Hemara, Solomon Tipene, Ngāti Hau RMU, Conal Summers, Russell Watson and Te Raa Nehua, 'elver transfer special permit extension has been granted', 3 November 2011, NRC file: Northpower 'Fish Passage File Only'

Figure 55: Hōri Tuhiwai collecting elvers at top of fish ladder, Wairua Power Station



(Source: Photograph by Perrine Gilkison, 13 December 2015)

The appendix to the fisheries permit issued to Ngāti Hau in February 2012 set out the aim and background to the trap and transfer scheme. Its aim was to facilitate upstream and downstream eel passage in the upper Wairua River, and to develop management practices for a sustainable eel population and fishery in the catchment.¹³⁵² The appendix acknowledged that the Hikurangi Swamp was once the food basket of Ngāti Hau and other members of Ngā Hapū o Te Reponui, and eels were once abundant. Following extensive development, habitat loss and commercial harvest, and also probably due to a

¹³⁵² MAF, 'Special Permit (508). Appendix One: Schedule of approved projects', 23 February 2012

decline in recruitment, eels could no longer be harvested in sufficient quantities 'to support basic cultural needs.'¹³⁵³ It said that Ngāti Hau, in consultation with stakeholders and advisors, was developing a restoration strategy. This tangata whenua-led strategy included ensuring that elvers could safely climb migration barriers at Wairua Power Station and reach the upper catchment. It also included ensuring that downstream migrants could safely pass the pump stations at Hikurangi and other obstacles.¹³⁵⁴ Letters of support for the programme had been received from DOC, Whāngārei District Council, Northpower, Fish and Game, Korokota Marae, NIWA, and Kaitiaki Tuna Heke Trust.¹³⁵⁵

Hōri Tuhiwai, of Te Parawhau ki Korokota (and who was also a member of Ngā Kaitiaki o Ngā Wai Māori), undertook the first two seasons of the trap and transfer scheme largely singlehandedly, with some resources from NIWA. While NIWA assisted the process, Tuhiwai emphasised the amount that NIWA learnt from tangata whenua. For example, NIWA used synthetic clove oil to put the captured elvers to sleep, but Tuhiwai used kawakawa, which had the same effect but allowed the elvers to wake up more quickly. Moreover, he said the effect of clove oil on the elvers and the river were unknown.¹³⁵⁶ Tuhiwai also worked with NIWA to tag and monitor tuna, a vital part of the trap and transfer scheme. On 20 March 2012, Ruka reported on the February-March period to a range of local government staff and interested parties.¹³⁵⁷ He provided details on an elver transfer he did with 'Uncle Henry' (Henry Ruka), noting a 'choke point' at a weir in the canal, where elvers were congregating near a high velocity current and getting washed back down the river, and estimated that fewer than 5 per cent of them made it beyond there, and those that did faced further hurdles.¹³⁵⁸ He said this voyage left elvers 'skinny and exhausted'.¹³⁵⁹ He said the weir had to deal with 25 per cent more water and velocity since the extra turbine was added, which severely impacted the path for elvers. He estimated that elvers that did not make it past the weir

¹³⁵³ MAF, 'Special Permit (508). Appendix One: Schedule of approved projects', 23 February 2012

¹³⁵⁴ MAF, 'Special Permit (508). Appendix One: Schedule of approved projects', 23 February 2012

¹³⁵⁵ MAF, 'Special Permit (508). Appendix One: Schedule of approved projects', 23 February 2012

¹³⁵⁶ Research meeting with Sharon Kaipo and Hōri Tuhiwai, 13 December 2015

¹³⁵⁷ Millan Ruka to Te Raa Nehua and others, 'Tuna heke and elver transfer at the Wairua Power Station', 20 March 2012, NRC file: Northpower 'Fish Passage File Only'

¹³⁵⁸ Ruka, 'Tuna heke and elver transfer at the Wairua Power Station', 20 March 2012

¹³⁵⁹ Ruka, 'Tuna heke and elver transfer at the Wairua Power Station', 20 March 2012

ended up in the lower part of the canal and eventually got pulled down the penstocks, where he estimated they faced a 99 per cent kill rate.¹³⁶⁰ Ruka reminded recipients that the hapū Te Uriroroi, with support from Ngāti Hau, had requested that a second elver ladder be fitted at a point below the access bridge. He estimated they had 'lost' three to four million elvers due to this request not being met.¹³⁶¹ He said NRC and Northpower were informed of the problem and how to solve it, and it was 'really disappointing' that they were not paying attention to their resource consent obligations, which he called 'a serious breach of the RMA'.¹³⁶² Water permit 4845 did not include a delivery date for the installation of the fish pass, and of course the argument had been made by consulting engineers for Northpower, prior to the 2007 upgrades, that the fish passage was compliant.

The first season of the elver trap and transfer scheme was reaching an end. As of March 2012, Ruka estimated that Tuhiwai had transferred more than five million elvers from the catch point at the power station to selected sites up the river, as far as Akarama (presumably Akerama) on the Waiotū River, beyond the Hikurangi Swamp. He acknowledged the great effort on Tuhiwai's part, saying Tuhiwai had involved the Mangakāhia school pupils 'and they have soaked it up with this new learning in their lives that gets them out and about our rivers.'¹³⁶³ However, Tuhiwai's car was reportedly 'on its last legs' following heavy use for the catch and release scheme. Tuhiwai was undertaking the trap and transfer voluntarily and at his own expense.

In July 2012, NIWA published a report summarising the first season of the trap and transfer programme, *Wairua Power Station elver trap and transfer program: 2011-12 season*.¹³⁶⁴ It said the monitoring and transfer of the catch from the tailrace of the Wairua Power Station from November 2011 to March 2012 was the first intensive eel

¹³⁶⁰ Ruka, 'Tuna heke and elver transfer at the Wairua Power Station', 20 March 2012

¹³⁶¹ Ruka to Nehua and others, 'Tuna Heke and elver transfer at the Wairua Power Station', 20 March 2012

¹³⁶² Ruka to Nehua and others, 'Tuna Heke and elver transfer at the Wairua Power Station', 20 March 2012

¹³⁶³ Ruka to Nehua and others, 'Tuna Heke and elver transfer at the Wairua Power Station', 20 March 2012

¹³⁶⁴ NIWA, 'Wairua Power Station elver trap and transfer program: 2011-12 season', July 2012

enhancement and recruitment monitoring programme in a Tai Tokerau catchment.¹³⁶⁵ It said the programme was instigated and implemented by Ngāti Hau Resource Management Unit and other members of Ngā Hapū o Te Reponui, with support from Northpower, NRC, WDC, and other stakeholders such as DOC, Fonterra, and landowners in the Wairua River catchment.¹³⁶⁶ The report acknowledged Hōri Tuhiwai for his work and data collection; Northpower for support, provision of access and constructing the trap and transfer facility; NIWA for providing trap design, monitoring advice, and some materials; Te Raa Nehua and Allan Halliday for their ongoing promotion and support of the project; WDC, NRC, and Ministry of Primary Industries for support; and NIWA, Ministry of Business, Innovation & Employment (formerly Ministry of Science & Innovation) and MPI for funding.¹³⁶⁷ The report described the method and facilities for elver trap and transfer, sampling for species composition, numbers, weight and length of elvers captured. It recommended that the trapping begin much earlier the next season, possibly September or October.¹³⁶⁸ NIWA said transfer locations and quantities needed to be discussed by stakeholders, and future releases should take into account the size and quality of available habitats, as well as upstream migration barriers and the presence of other fish.¹³⁶⁹

Downstream migrating eels (tuna heke) continued to concern tangata whenua, Northpower, and NIWA scientists. Ruka found eels which he thought were male tuna heke that had been killed by the turbine blades as they travelled down the pipes and turbines at the power station. He said these males, smaller than the females, probably came down in earlier rains and would have fitted through the grills above the penstock pipes. While the resource consent had a designated size for the grills, Ruka believed that neither NRC nor Northpower were aware of consent obligations until early 2011, and said they needed to perform a joint check on the grill size, and see if there were other penetrations at the grills.¹³⁷⁰ Ruka's email reported, via Tuhiwai, that NIWA and Northpower had decided to catch the tuna heke at the far end of the spillway by cutting

¹³⁶⁵ NIWA, 'Wairua Power Station elver trap and transfer program: 2011-12 season', July 2012, p5

¹³⁶⁶ NIWA, 'Wairua Power Station elver trap and transfer program: 2011-12 season', July 2012, p10

¹³⁶⁷ NIWA, 'Wairua Power Station elver trap and transfer program: 2011-12 season', July 2012, p21

¹³⁶⁸ NIWA, 'Wairua Power Station elver trap and transfer program: 2011-12 season', July 2012, p20

¹³⁶⁹ NIWA, 'Wairua Power Station elver trap and transfer program: 2011-12 season', July 2012, p20

¹³⁷⁰ Ruka to Nehua and others, 'Tuna Heke and elver transfer at the Wairua Power Station', 20 March 2012

a slot and setting up a trap in the spillway. Ruka thought that this was a good option, but had been left too late, as big rains and flooding could start at any time.¹³⁷¹ He said he had lobbied to get traps in place for the past year or so, to be ready for migration floods that could occur between March and May. He said that on 19 March there were big rains and he was certain there was nothing in place to catch the migrating tuna. He said: 'Again, does NRC and North Power take their responsibility seriously in regard to the obligations of their consent.'¹³⁷²

Ruka was concerned about consent compliance and communication channels. He said his hapū Te Uriroroi of Porotī, Maungarongo Marae sat jointly with and shared resources with Ngāti Hau and Te Parawhau on the fisheries management committee with NIWA, WDC, and NRC and were entitled to be informed about the consents. He said Te Uriroroi had not been advised of any new initiative on the Wairua Power Station and Hikurangi Pump Station consents by Northpower, saying that WDC staff had updated them on progress at Hikurangi Swamp. He requested, as a fisheries representative of Te Uriroroi, that NRC:

- a) Nominate a "point person" to oversee and coordinate the tuna/elver obligations to consents at the Wairua Power Station and the Hikurangi Swamp;
- b) Keep hapū informed with regular monthly updates with any initiative or progress on tuna and elvers; and
- c) Create an electronic information file for the collation of tuna/elver studies (historic and current) so that all stakeholders could access it, and be better informed and organised to kaitiaki the tuna, especially in the Wairua catchment.¹³⁷³

NRC's Iwi Liaison officer, Rachel Ropiha, wrote to colleagues on 20 March 2012 expressing concern with Ruka's request for an in-house contact person, saying that NRC needed to be aware of the strategic plan of Ngāti Hau. She said that Ruka 'seems to be ignoring the Strat Plan and also how we can work together.'¹³⁷⁴ She said she needed to

¹³⁷¹ Ruka to Nehua and others, 'Tuna Heke and elver transfer at the Wairua Power Station', 20 March 2012

¹³⁷² Ruka to Nehua and others, 'Tuna Heke and elver transfer at the Wairua Power Station', 20 March 2012

¹³⁷³ Ruka to Nehua and others, 'Tuna Heke and elver transfer at the Wairua Power Station', 20 March 2012

¹³⁷⁴ Rachel Ropiha to Tony Phipps, Tess Dacre, Robert Tasker, Katrina Hansen, Fleur King, and Matt Johnson, 'RE: Tuna Heke and elver transfer at the Wairua Power Station', 20 March 2012, NRC file: Northpower 'Fish Passage File'

review the plan and then talk to Ngāti Hau, who she said had ‘driven most of this’. She said she thought NRC needed a long-term strategy for dealing with Ruka’s enquiries, presumably in response to his request for an in-house contact.

On the matter of compliance, Riaan Elliot, Consents Processing Officer at NRC, wrote to colleagues, also on 20 March 2012. He said the resource consent for Wairua Power station required the consent holder to provide for eel passage past the power station, but the requirement was flawed as he understood it did not require fish passage past all station works to be provided.¹³⁷⁵ He noted that Northpower was funding a manual transfer process (but did not go into the nature or extent of any funding), but were looking to change this with further fish passage structures in future. He said that the eventual solution may require consent, but suggested that the consent should be changed to require Northpower to provide for the extended fish passage. He also noted that the consent had an old review condition which meant there was a short timeframe in which to make changes, but they must ensure they did.

Māori and involved parties raised other concerns to the Council. On 1 March 2012, the Network Planning Manager of Northpower, Russell Watson, contacted NRC’s Environmental Monitoring Officer, Water Quality, Katrina Hansen, saying he and Tuhiwai were concerned about whether water quality would be monitored prior to releasing the elvers, and also asked whether there were any initiatives to rehabilitate habitats. He offered Northpower’s assistance in this.¹³⁷⁶ There is no response to this in NRC’s archives.

A plan was hatched by NIWA and other partners, including tangata whenua and local government, to study and improve management and monitoring of the tuna resource. On 8 March 2012, Boubée provided estimates to Hansen for management and monitoring plans for eels in the Wairua River. He suggested that NRC could apply for Envirolink funding (an investment scheme with funding available to regional councils to

¹³⁷⁵ Riann Elliot to Allan Richards, Stuart Savill, Tess Dacre, and Katrina Hansen, ‘Wairua Power Station’, 20 March 2012, NRC file: Northpower ‘Fish Passage File’

¹³⁷⁶ Russell Watson, Network Planning Manager, Northpower, to Katrina Hansen, ‘Tuna Workshop’, 1 March 2012, NRC file: Northpower ‘Fish Passage File’

contract government-funded research),¹³⁷⁷ but noted that the application for Envirolink funding would have to come from NRC.¹³⁷⁸ While it is surprising that this suggestion came from NIWA rather than being initiated by NRC, the Council did act on the suggestion. On 13 June 2012, NRC applied for \$20,000 of Envirolink funding to contract NIWA to research 'Enhancement of migratory indigenous fish populations in the Wairua River catchment'.¹³⁷⁹ The project would be undertaken in partnership with Ngāti Hau and other members of Ngā Hapū o Te Reponui, NRC, WDC, Northpower, and other stakeholders including DOC, Fonterra and landowners in the Wairua River catchment.¹³⁸⁰

The project aimed to establish if there were habitat limitations for indigenous fish populations in the catchment, and how to define these so they could be mitigated. It would also describe upstream and downstream passage issues for eels and begin to establish and test solutions. The application set out the context, emphasising that the Hikurangi Swamp was the food basket for tangata whenua, and many tuna had died as they passed through the flood control pumps. It said Ngāti Hau and Ngā Hapū o Te Reponui were concerned by the significant decrease in the number of harvestable eels in the upper Wairua catchment, and had been working with stakeholders, including local government, on remedial actions.¹³⁸¹ The application said since 2009 NIWA had, at the invitation of Ngāti Hau and WDC, been assisting them to look for solutions to enhance indigenous freshwater fish populations in the area. They said the proposal fitted with the Council's aim to protect Northland's land, water, coast and air, while still allowing for sustainable development and that the Council did not have technical or financial resources to undertake the work.¹³⁸² They emphasised the complexity of the task, and discussed natural and anthropogenic barriers to fish passage, habitat

¹³⁷⁷ Envirolink, 'About Us', <http://www.envirolink.govt.nz/> (accessed 6 January 2016)

¹³⁷⁸ Jacques Boubée to Katrina Hansen, Erica Williams and Neale Hudson, 'Eels Wairua River', 8 March 2012, NRC file: Northpower 'Fish Passage File'

¹³⁷⁹ NRC, 'Ministry of Science and Innovation: Envirolink application for medium advice grants', 13 June 2012, NRC file: Northpower 'Fish Passage File'

¹³⁸⁰ NRC, 'Ministry of Science and Innovation: Envirolink application for medium advice grants', 13 June 2012, p2

¹³⁸¹ NRC, 'Ministry of Science and Innovation: Envirolink application for medium advice grants', 13 June 2012, p3

¹³⁸² NRC, 'Ministry of Science and Innovation: Envirolink application for medium advice grants', 13 June 2012, p3

constraints and the impact of uncontrolled harvesting.¹³⁸³ They appraised the success of the 2011-2012 trap and transfer season, estimating that more than three million elvers had been transferred upstream, but saying that more effective transfers were required to ensure effective use of limited resources.¹³⁸⁴ These limited resources included, of course, unpaid labour by Tuhiwai and others involved in the scheme.

It was anticipated that the proposed research would have wide-reaching benefits. Environmental benefits of the project would, according to the application, be an improved trap and transfer process and finding out whether other mitigation actions could be undertaken. Other potential benefits included use of the resource in future aquaculture ventures, and biodiversity benefits to climbing galaxiids.¹³⁸⁵ Information gathered would allow NRC and other stakeholders to make informed decisions in future habitat enhancement projects, and would provide guidelines for drafting resource consent conditions and regional plans.¹³⁸⁶ The application said the Ngāti Hau and NIWA tuna workshop of February 2012, attended by tangata whenua, NRC, WDC, and Northpower staff, was an example of an initiative already undertaken 'to develop a shared understanding of each organisation's responsibilities and aspirations to improve fish populations in the catchment for the benefit of all stakeholders.'¹³⁸⁷ They emphasised the benefits already achieved from relationships being built, outlining Northpower's commitment to provide 'in-kind' support (with goods or services rather than money) for improving capture, holding and transfer facilities, and providing material and labour to monitor and, if necessary, capture downstream migrating eels at the power station intake.¹³⁸⁸ Another example was WDC's indication they would install 'fish friendly' rock weirs at the base of flood gates, implement upstream migrant operations at Hikurangi Swamp Scheme, and provide in-kind support to test the impact

¹³⁸³ NRC, 'Ministry of Science and Innovation: Envirolink application for medium advice grants', 13 June 2012, pp3-4

¹³⁸⁴ NRC, 'Ministry of Science and Innovation: Envirolink application for medium advice grants', 13 June 2012, p4

¹³⁸⁵ NRC, 'Ministry of Science and Innovation: Envirolink application for medium advice grants', 13 June 2012, p4

¹³⁸⁶ NRC, 'Ministry of Science and Innovation: Envirolink application for medium advice grants', 13 June 2012, p5

¹³⁸⁷ NRC, 'Ministry of Science and Innovation: Envirolink application for medium advice grants', 13 June 2012, p5

¹³⁸⁸ NRC, 'Ministry of Science and Innovation: Envirolink application for medium advice grants', 13 June 2012, p5

of the existing flood pumps and potential protective barriers for downstream migrating eels. Ngāti Hau indicated they were ready to implement sustainable co-management plans for freshwater species and habitats in their rohe. The proposal was to be integrated into management plans of NRC, Ngāti Hau, and other key stakeholders.¹³⁸⁹ The estimated budget included \$3000 of funding for Ngāti Hau field support, but it did not say what this covered.¹³⁹⁰ The application was approved on 16 October 2012, with '[t]he substantial in kind support that has been offered by the partner organisations' acknowledged.¹³⁹¹

On 7 September 2012, Ruka sent a report to 'stakeholders and persons that have an interest in the environment of the Wairua River, its catchment and tuna'.¹³⁹² He celebrated gains for tuna and the entire catchment, saying that many new initiatives were in place.¹³⁹³ He said Ngāti Hau had led the initiative and Ngā Kaitiaki o Ngā Wai Māori, formed by hapū with the assistance of TRAION, were working on a planning strategy for the river and its catchments. He discussed the trap and transfer scheme's first season, saying at the time of writing that Northpower were constructing a permanent ladder to replace the prototype ladder, which had been a success. He also reported that a prototype for a second elver ladder at the spillway creek, which ERPA had lobbied for, would soon be fitted.¹³⁹⁴ He speculated that once the second ladder was completed, elver success in reaching their upstream destinations would increase from an estimated 15-20 per cent, prior to the first ladder prototype, to 90 per cent or more.¹³⁹⁵ He emphasised the importance of getting the second ladder into the best location, provided location advice and again offered his services and the services of his hapū Te Uriroroi, to construct the prototype, saying Te Uriroroi wanted to participate. He said that while the hydro station's fourth turbine had caused major problems for

¹³⁸⁹ NRC, 'Ministry of Science and Innovation: Envirolink application for medium advice grants', 13 June 2012, p5

¹³⁹⁰ NRC, 'Ministry of Science and Innovation: Envirolink application for medium advice grants', 13 June 2012, p6

¹³⁹¹ NRC, 'Ministry of Science and Innovation: Envirolink application for medium advice grants', 13 June 2012, p7

¹³⁹² Millan Ruka to Mikaera Miru and others, 'Environment River Patrol – Aotearoa – Sept 2012 #004 environment report', 7 September 2012, NRC file: Northpower 'Fish Passage File'

¹³⁹³ Environment River Patrol Aotearoa – New Zealand (ERPA), 'Report # 004 – TUNA / ELVER & Wairua River & environment – update report – Millan Ruka', 7 September 2012, p1

¹³⁹⁴ ERPA, 'Report # 004', 7 September 2012, pp1-2

¹³⁹⁵ ERPA, 'Report # 004', 7 September 2012, p2

upstream and downstream migrating tuna, the problem for upstream migrants was being solved, and that Northpower were working on the problems of downstream migrants. He said that the smaller male tuna heke were getting past the grill intakes and getting cut up by turbines, while the larger female tuna heke that entered the canal were going over the spillway to their death. He acknowledged that Northpower were working on options to guide migrants towards a pipe, where they could pass through to a spillway catchment and be manually transferred. Ruka requested that Northpower seek local knowledge so the best options could be selected, and emphasised the power station was just one point of the tuna migration, saying that all hapū should have a stake in decisions affecting the tuna life cycle.

Figure 56: Map of authorised area of eel trap and transfer permit 609



(Source: Ministry for Primary Industries, 'Special permit (609)' issued to Ngāti Hau Trust Board, 25 August 2015, Appendix 1)

By the beginning of the following elver migration season, progress had been made on upstream fish passage, and groups were working together on a range of methods to promote the eel population in the catchment. On 24 September 2012, Ruka reported

that the previous day, the first elvers had been spotted in the spillway creek.¹³⁹⁶ He noted that Northpower had nearly completed the 'replacement/permanent' elver ladder by the power station. He also offered assistance, again, from himself and his hapū Te Uriroroi to construct the second prototype for the spillway location. On 1 October 2012 Northpower's Network Planning Manager, Russell Watson, contacted NRC staff members Robert Tasker and Katrina Hansen to advise that Northpower had installed an improved version of the elver ladder and capture system under NIWA guidance, with a more permanent and robust ladder, and a larger tank.¹³⁹⁷ He said the primary ladder and capture system should be working from that day, and they planned to install the smaller tank used the previous year and some of the plastic ladder material in the head pond overflow beside the road bridge at the station as a trial. They had also ordered two 100 litre fish tanks, made to NIWA specifications, to install in a van allocated for elver transfer. The consent holders appeared to be taking the matter of fish passage seriously.

The capture and transfer that season would operate under special permit 508, issued by MPI to Ngāti Hau Trust Board.¹³⁹⁸ Northpower also advised of maintenance activities planned for that month, including installing passive integrated transponder (PIT) detector loops, which would help them to determine which proportion of the downstream migrating eels entered the canal, and what happened to the eels that did enter the canal. They advised that NIWA were planning to do a fish survey of the canal, and offered that NRC contact them for further information or for a site inspection.¹³⁹⁹ As part of power station maintenance the canal was dewatered in October 2012 and under NIWA guidance a team of volunteers from Ngā Kaitiaki o Ngā Wai Māori, Northpower and the community worked to rescue large- to medium-sized tuna from the canal while it was being dewatered.¹⁴⁰⁰

¹³⁹⁶ Millan Ruka to Russell Watson and others, 'Report #005 – Elvers sighted at the Wairua Power Station spillway 23rd Sept 2012', 24 September 2012, NRC file: Northpower

¹³⁹⁷ Russell Watson to Robert Tasker and Katrina Hansen, 'Elver Transfer 2012/13 Season', 1 October 2012, NRC file: Northpower 'Fish Passage File'

¹³⁹⁸ The previous season they had operated under NIWA's special permit

¹³⁹⁹ Watson to Tasker and Hansen, 'Elver Transfer 2012/13 Season', 1 October 2012

¹⁴⁰⁰ Boubée, #U19, para 40

Northpower and NIWA continued to communicate about the scheme. Watson wrote to Hansen on 23 April 2013, describing the system in place.¹⁴⁰¹ He noted the elver transfer was carried out by local iwi, and Northpower provided a dedicated van.¹⁴⁰² He said Northpower was not involved in determining release points, as this was left to people with knowledge of the habitat, presumably including tangata whenua.¹⁴⁰³ On 29 April 2013 Watson wrote to Hansen again, saying downstream migrating eels that arrived at the power station had two paths – over or through the diversion weir, or into the canal.¹⁴⁰⁴ He was unsure of the proportion that chose each route. He informed NRC of the 2012-13 installation, in collaboration with NIWA and iwi, of five PIT pick-up aerials, and associated logging equipment.¹⁴⁰⁵ This was to determine what proportion of eels entered the canal, and what happened to those that did. He said they aimed to see how effective a siphon was for a downstream migration passageway, and to capture and transfer eels. Northpower was considering further work including installing an electric repellent unit, based on a NIWA design, at penstock intakes. He said that as autumn rains tended to bring debris down the river, Northpower usually allowed more water than normal to pass through the diversion weir, so eels migrating at that time would most likely go through diversion weir gates.¹⁴⁰⁶ He said the dry summer had contributed to significant weed growth in the river and canal, causing problems with penstock screen cleaners and the siphon. He said Northpower were waiting for the results of NIWA's study on the migration path of downstream migrating eels to determine their approach and were also looking into electrical underwater flood lighting as a deterrent. He advised they were working with local iwi regarding fishing activities at the headpond due to the risk of people fishing too close to the machinery. He said the eel take needed to be considered when assessing the effectiveness of the downstream migration passages. Hansen responded on 1 May 2013 saying she would

¹⁴⁰¹ Russell Watson, Network Planning Manager, Northpower, to [Katrina Hansen] Environmental Monitoring Officer – Water, Northland Regional Council, 'Elver Climbing Pass – Wairua Hydro Scheme Background', 23 April 2013, NRC file: Northpower

¹⁴⁰² Watson, to [Hansen], 'Elver Climbing Pass – Wairua Hydro Scheme Background', 23 April 2013, p1

¹⁴⁰³ Watson to [Hansen], 'Elver Climbing Pass – Wairua Hydro Scheme Background', 23 April 2013, p2

¹⁴⁰⁴ Russell Watson, Network Planning Manager, Northpower, to [Katrina Hansen] Environmental Monitoring Officer – Water, Northland Regional Council, 'Wairua Hydro Scheme – Downstream Migrating Eels – Background', 29 April 2013, NRC file: Northpower 'Fish Passage File'

¹⁴⁰⁵ Watson to [Hansen], 'Wairua Hydro Scheme – Downstream Migrating Eels – Background', 29 April 2013, p1

¹⁴⁰⁶ Watson to [Hansen], 'Wairua Hydro Scheme – Downstream Migrating Eels – Background', 29 April 2013, p2

approve the work being carried out as it met condition 13, the requirement that Northpower provide a climbing fish pass for upstream migrating fish and for the downstream migration of eels in the headpond.¹⁴⁰⁷

Figure 57: Image of electric barriers and PIT aerial monitoring



(Source: Jacques Boubée, NIWA, 'Wairua River Tuna - update 22 May 2015')

¹⁴⁰⁷ Katrina Hansen to Russell Watson, 'Fish passage reports', 1 May 2013, NRC file: Northpower 'Fish Passage File'

The tuna trap and transfers have continued every year since the 2011-2012 season. On 25 August 2015 MPI's Spatial Allocations Manager, David Scranney, issued special permit 609 to Ngāti Hau Trust Board, valid until 1 September 2020.¹⁴⁰⁸ The permit replaced the expired permit (508), and was largely the same but had provisions for samples to be retained, required increased reporting, and included a provision that every person who committed an offence who contravened any term or condition of the permit was liable to a fine of up to \$100,000.¹⁴⁰⁹

Figure 58: Downstream passage at Wairua Power Station capture facility



(Source: Jacques Boubée, NIWA, 'Wairua River Tuna – update 22 May 2015')

¹⁴⁰⁸ Ministry for Primary Industries (MPI), 'Special Permit (609)' issued to Ngāti Hau Trust Board, 25 August 2015

¹⁴⁰⁹ MPI, 'Special Permit (609)' issued to Ngāti Hau Trust Board, 25 August 2015, p5

6.5.7 The situation now

Tragically, Hōri Tuhiwai passed away on 18 May 2016. In his five seasons of undertaking the tuna trap and transfer scheme, he reportedly released over 25 million elvers to at least 25 different locations.¹⁴¹⁰ The scheme appears to be improving as it continues, with Northpower's Generation Manager, Bill Grimes, advising on 17 February 2016 that the scheme had captured 'well over' six million elvers in the year to date, by comparison with a usual capture of between three and four million in a season.¹⁴¹¹ Northpower said elvers had been transferred as part of a collaborative effort between Northpower and Te Parawhau, made possible by the mahi and spirit of kaitiakitanga of the late Hōri Tuhiwai.¹⁴¹² Finnisha Tuhiwai-Birchall emphasised that Tuhiwai had held workshops and trained others, including his mokopuna, in tuna trap and transfer and that his work would continue.¹⁴¹³

Northpower continues to work with local Māori and other experts, for example Jacques Boubée of NIWA told the Tribunal that Northpower were developing a system of bypasses for tuna that enter the canal, under guidance from Tuhiwai and NIWA.¹⁴¹⁴ Tangata whenua continue to provide free labour, with Tuhiwai reporting in December 2015 that he only took one day off per year,¹⁴¹⁵ as well as providing expertise and ideas for improvements to the scheme. They continue to face obstacles of funding, such as for the suggestion to put an electronic loop into the bridge, which would cost around \$30,000.

Regarding the success of the scheme, Halliday told the Tribunal it was too early to know its effects. He said that greater monitoring and a review of its effectiveness should be undertaken, and information should be developed to assist with this work.¹⁴¹⁶ Finnisha Tuhiwai-Birchall, one of Tuhiwai's daughters, also expressed concerns that upriver

¹⁴¹⁰ Personal communication with Finnisha Tuhiwai-Birchall, 24 June 2016. See Boubée, #U19(a), appendix B for details of amount of elvers transferred and transfer locations as at 3 February 2016

¹⁴¹¹ Personal communication with Bill Grimes, 17 February 2016

¹⁴¹² Feedback on draft report received from Northpower on 13 June 2016

¹⁴¹³ Personal communication with Finnisha Tuhiwai-Birchall, 24 June 2016

¹⁴¹⁴ Boubée, #U19, para 60

¹⁴¹⁵ Research meeting with Kaipo and Tuhiwai, 13 December 2015

¹⁴¹⁶ Halliday, #4.1.17, p 161; Halliday, #P2, para 5.45

activity such as mining, fisheries and swamp management may have an impact on the effectiveness of the scheme.¹⁴¹⁷

In recent communications, Northpower advised that the eel population in the canal has been declining, and as they have learned that tuna migrate at night they have been shutting down the power station at night to stop any migrating tuna from going down the canal.¹⁴¹⁸ Canal intake gates are shut and the vertical gate in the river is opened so migrants can travel over Omiru/Wairua Falls. Tuna heke found in weed piles in the mornings are transferred below the station, with Northpower saying they have been transferring tuna below the station for many years.

Northpower are currently gathering evidence to support their application to renew water and discharge consents and replace penstocks, and to assist with drafting appropriate consent provisions.¹⁴¹⁹ They intend to obtain an independent ecological report, a hydrology report, and a cultural impact assessment. Northpower say they will be seeking consent conditions regarding fish passage which better reflect increasing knowledge about tuna.¹⁴²⁰

There is dispute about whether Northpower is compliant with the current consent conditions. Millan Ruka said in his evidence of 8 February 2016 that fish passes at Wairua Power Station were not compliant.¹⁴²¹ Yet Northpower said that reports, being prepared in advance of them applying for renewed water and discharge consent, 'confirm' Northpower are meeting existing consent conditions.¹⁴²² They said preliminary results show that flows over the falls far exceed the minimum required by resource consent, unless they are naturally affected by drought. Northpower did not make explicit reference to provision of fish passage.

¹⁴¹⁷ Personal correspondence with Finnisha Tuhiwai-Birchall, 23 June 2016

¹⁴¹⁸ Feedback on draft report received from Northpower on 13 June 2016

¹⁴¹⁹ Feedback on draft report received from Northpower on 13 June 2016

¹⁴²⁰ Feedback on draft report received from Northpower on 13 June 2016

¹⁴²¹ Ruka, #U34(b), para 154

¹⁴²² Feedback on draft report received from Northpower on 13 June 2016

In a presentation for a Hikurangi Swamp and Wairua River stakeholders meeting on 22 May 2015, NIWA's Jacques Boubée gave details on tuna, migration, and habitats and said that for downstream migrants, trap and transfer was, at that time, the safest way to ensure they reached the sea.¹⁴²³ He demonstrated the screening process for downstream migrants, and explained two trials underway at the time – the electric barrier trial and PIT aerial monitoring (monitoring the passage of tagged eels).¹⁴²⁴ He said safe downstream passage was now available to tuna during floods, and there were bypasses at the power station intake.¹⁴²⁵ He emphasised the need to improve tuna habitats, continue tagging and monitoring them, and to determine the effectiveness of the electric barrier, the downstream facility at the power station intake.¹⁴²⁶ He recommended that:

- a) The majority of large healthy downstream migrant tuna that reached Tītoki be given the chance to safely reach the sea;
- b) The eel industry become more actively involved in the improvement and monitoring of the tuna population;
- c) The flood pump owner/operators actively search for and install effective safe downstream passage for tuna;
- d) The land owners and managers improve the amount of quality aquatic habitats in the catchment; and
- e) All catchment managers promote, support and facilitate the above recommendations.¹⁴²⁷

Boubée also listed a range of stakeholders who had contributed to the information he was presenting: farmers, commercial fishers, MPI, Ngā Kaitiaki o Ngā Wai Māori, Ngāti Hau Trust Board, and NIWA. He acknowledged NRC, Northpower, Te Parawhau ki Korokota (notably Hōri Tuhiwai and whānau), WDC, and contractors.¹⁴²⁸

¹⁴²³ Boubée, 2015, p16

¹⁴²⁴ Boubée, 2015, pp17-18

¹⁴²⁵ Boubée, 2015, p19

¹⁴²⁶ Boubée, 2015, pp22-23

¹⁴²⁷ Boubée, 2015, p24

¹⁴²⁸ Jacques Boubée (NIWA), 'Wairua River Tuna – update 22 May 2015', p3

Following Boubée’s presentation at the hui, DOC published a press release in June 2015, celebrating the collaborative nature of the tuna protection efforts.¹⁴²⁹ The press release featured Allan Halliday of Ngā Kaitiaki O Ngā Wai Māori emphasising the importance of collaboration, saying it was great to have support from Living Water (a partnership between DOC and Fonterra, discussed below). The North Island Project Manager for Living Water (Tim Brandenburg) said that the project was ‘what Living Water is all about’ – supporting the hau kāinga to do work that they initiate and lead, using NIWA expertise, getting school pupils involved, and aligning with their own biodiversity improvement goals. Tuhiwai noted that the public response to the scheme had been positive, with people beginning to realise how important this work is.¹⁴³⁰

Figure 59: Trap and transfer of downstream migrants on the Wairua River



(Source: Jacques Boubée, NIWA, 'Wairua River Tuna – update 22 May 2015')

¹⁴²⁹ Department of Conservation, 'Collaborative Effort to Protect Tuna Celebrated', June 2015

¹⁴³⁰ Research meeting with Kaipo and Tuhiwai, 13 December 2015

While the scheme has been largely celebrated as a success, tangata whenua reservations and frustrations remain with the Crown process. Allan Halliday has expressed dissatisfaction with the Crown's role. In his evidence to the Tribunal, Halliday said it was disappointing that kaitiaki required the assistance of NIWA to develop this initiative.¹⁴³¹ He said that the Crown failed to either prevent harm or to remedy it when it occurred, and he believed they should have taken responsibility for the situation.¹⁴³² He later expressed frustration that tangata whenua needed a permit to undertake this work.¹⁴³³ To obtain a permit, the recipient entity had to meet criteria regarding their structure and financial arrangements, and Halliday said they had to 'jump through hoops' to meet these criteria. The permit cost approximately \$850 (which Northpower paid), but as Māori were doing the work of the trap and transfer the government were merely 'clipping the ticket'. Halliday wondered why kaitiaki had to pay the government for this 'clipping of the ticket'. He said that if the government claimed to be in charge by regulating such activities, then they should take responsibility. While he did not necessarily see tasks such as the trap and transfer scheme as being the government's job, nor did he agree that the Crown were entitled to charge tangata whenua for doing this work. In addition, once kaitiaki obtained the permit they were obliged to report to MPI on trap and transfer activity. Halliday emphasised that Māori had kaitiaki obligations, but these days they were required to enter the realm of government to fulfil their kaitiaki duties. He said that this came at a cost.

Millan Ruka was not satisfied with the process followed in establishing the scheme and issuing the permit. He said in his evidence of 8 February 2016 that there had not been collective hui where hapū had the opportunity to share information with Northpower and NIWA, and participate in decision-making.¹⁴³⁴ He also said tikanga was not considered when MAF (and later MPI) issued a licence for tuna trap and transfer to a hapū living more than 55 kilometres upriver from the power station (Ngāti Hau, the hapū credited with initiating the scheme) and asked the Tribunal to recommend that MPI advise Northpower to include his hapū on an equal footing regarding tuna and

¹⁴³¹ Halliday, #4.1.17, p160

¹⁴³² Halliday, #4.1.17, pp160-161

¹⁴³³ Personal communication with Allan Halliday, 15 June 2016

¹⁴³⁴ Ruka, #U34(b), para 193

fisheries.¹⁴³⁵ While there were practical reasons for issuing the permit to Ngāti Hau Trust Board,¹⁴³⁶ Ruka's frustration sprang from the lack of consideration to tikanga Māori shown by MPI when they issued the permit to just one hapū. Ruka continued that Northpower, NIWA and the Crown preferred to work with only one hapū for tuna trap and transfers and the hapū Te Uriroroi, Te Parawhau, and Te Mahurehure were not included in these activities or in planning.¹⁴³⁷ When discussing Northpower and NIWA initiatives to stop tuna going over the spillway, or making the spillway option safe, he said there was no process to keep his hapū informed.¹⁴³⁸

6.5.8 Conclusion - Wairua Power Station tuna passage

This local study depicts instances of Māori exercising kaitiakitanga over the Wairua River, and the barriers, frustrations, and assistance they have encountered. It has looked at the way that Māori have adapted their resource management methods to work more closely with other groups and has considered the role of the Crown and local government in the management of this resource.

While local government actively sought the protection of species such as tuna by including fish pass conditions in the resource consent issued, there were shortcomings in their approach. NRC staff identified flaws in the resource consent and suggested the resource consent be changed to provide for extended fish passage, but this does not appear to have been followed up on. Further, it does not appear that they have closely monitored compliance with resource consent conditions, with the matter of adequate

¹⁴³⁵ Ruka, #U34(b), para 359

¹⁴³⁶ Ngāti Hau Trust Board were a legal entity with a pre-existing structure and features such as a bank account which made it suitable, in a practical sense, to receive the permit. Allan Halliday, research hui, 11 June 2016. Northpower commented that they would like to see Te Parawhau being the holders of the trap and transfer permits as Te Parawhau have undertaken the majority of the transfers, and due to their particularly close connection to Omiru/Wairua Falls. Northpower said they would likely request that this be made a condition of future resource consents, pending the outcome of consultation, and say they are willing to pay for the permits. Feedback on draft report received from Northpower on 13 June 2016. In personal communication of 23 June 2016 Finnisha Tuhiwai-Birchall, one of Tuhiwai's daughters, confirmed that Te Parawhau would seek to be granted the permit in future.

¹⁴³⁷ Ruka, #U34(b), para 195. Northpower responded that they frequently consulted with Te Parawhau, who they said held mana whenua over Omiru/Wairua Falls, on many matters. Northpower regarded it as 'absolutely appropriate' that they engage with Te Parawhau as a priority, and then with others involved in the coordinated efforts of the Wairua catchment later, as appropriate. Northpower emphasised their commitment to maintaining their relationship with Te Parawhau and to supporting kaitiakitanga and cultural and safety matters. Feedback on draft report received from Northpower on 13 June 2016.

¹⁴³⁸ Ruka, #U34(b), paras 205-6

fish passage still being debated more than 20 years after the consent was issued. The lapse of time between the granting of the resource consent and the completion of fish passage provisions is of concern, and according to Ruka's recent communications, remains one. The extent to which Northpower has been compliant regarding the fish pass, and to which local government have followed up on compliance, is unclear from the evidence available.

Communication between parties seems to be a continuous challenge and Māori perspectives and requests have been regularly ignored. For instance, Ruka's repeated call for information on tuna to be collated into manuals has apparently not received any traction. Information often seems to be shared incidentally, through word of mouth or by email, with information not coming directly from the source. Similarly, Ruka's request for a contact person at NRC was an attempt by Māori to be included in resource management of the river resource which was met with wariness by council staff. Government processes have been criticised for not considering tikanga Māori in granting the trap and transfer permit.

While the tuna trap and transfer scheme has received positive feedback including in the media, Māori reservations remain regarding its success, lack of government involvement, and how local hapū have been involved, or not. Halliday has expressed frustration at the lack of government involvement. It is true that despite some Crown and local government involvement (funding from agencies such as MPI and granted through Envirolink, the eventual approval of the trap and transfer scheme, the inclusion of a fish pass as a consent condition) the scheme was initiated by tangata whenua and other stakeholders largely in spite of government participation, rather than assisted by it. The scheme relies on the time and resources voluntarily contributed by local Māori, Northpower, NIWA, and others. Aside from the environmental aspects of this scheme, one benefit that seems to have come from this initiative is the building of relationships between these groups and individuals, and they have sought to involve others, such as school pupils. Without the tangata whenua-led trap and transfer scheme, management of customary resources such as tuna would surely be in a worse position.

Works on the power station approved prior to and since the RMA have contributed to the degradation of the river and of customary resources. While the Crown and its delegates made some efforts to mitigate for the effects of the activity that their processes allowed, including the loss of huge numbers of elvers and tuna, tangata whenua have had to fight hard for this. Tangata whenua also face a great financial risk in undertaking the trap and transfer, as the permit allows for a fine of up to \$100,000 for contravening its terms or conditions. The Crown does not appear to have taken on a high level of responsibility for environmental effects of government-approved activity. Resource management in the catchment historically and since 1991 has impacted upon customary resources such as tuna and this has affected tangata whenua in their ability to use this customary resource and to exercise their manaakitanga through the hospitality of their traditionally famed resource.

Figure 60: Waitangi Tribunal members and crowd watch elver release at Akerama Marae, February 2015



(Source: Photograph by Tribunal staff, 15 February 2015)

6.6 Local Study #3: Kauri Dairy Plant

6.6.1 Introduction

Figure 61: Fonterra's Kauri Plant



(Source: Living Water, <http://www.livingwater.net.nz/kaipara#hikurangi-catchment-galley>, accessed 16 May 2016)

The Kauri Dairy plant is located 110 kilometres North from Whāngārei, and South of Hikurangi. The site is bound by State Highway 1 to the West, while the Mangahuru Stream traverses the eastern portion of the Kauri site and drains to the Hikurangi Swamp area (see figure 61). The plant is located in a predominantly agricultural area, which is aligned to its processing of farm products. The plant was initially run by the Northland Co-Operative Dairy Company Ltd, part of Kiwi Co-operative Dairies Ltd. In October 2001, Fonterra Co-operative Group Ltd was formed following a merger of three separate entities: the New Zealand Dairy Board, the New Zealand Co-operative Dairy Company Ltd and Kiwi Co-operative Dairies Ltd. In the early 2000s, the Kauri plant was run by NZMP, a subsidiary of Fonterra.

Since the promulgation of the RMA, the Kauri dairy plant has applied for various resource consents. The consents are too numerous to provide detail on each. This section discusses only those that involve Māori. It provides a brief overview of resource consent applications lodged by Fonterra between the early 1990s and today. In general, the NRC has processes consent application in relation to works at the Kauri dairy as 'non-notified'. As discussed in Chapters One and Two, the NRC has a long-standing policy of circulating non-notified consents to Māori who have expressed an interest in a particular area. However, Māori are unable to file formal submissions or have their concerns aired at a hearing as they are with notified and limited notified applications. As a result, there is no right of appeal.

6.6.2 Kauri Dairy Plant prior to the RMA

The NRC archives for the Kauri Dairy Plant go back to 1987, when the Northland Co-Operative Dairy Company Ltd ('the Company') applied for a water right to the Northland Catchment Commission and Regional Water Board. The company sought the right to discharge 1,200 cubic metres of waste water on land adjacent to the processing plant at Kauri by spray irrigation. This application was 'examined and advertised' (under Section 24 of the Water and Soil Conservation Act 1967). Of the submissions, the Whāngārei Acclimatisation Society expressed concern about the impact of the discharges on water quality and the gradual eutrophication of the streams, particularly the Mangahuru River. On 27 November 1987, the NCC & RWB granted the Water Right (4373), with an expiry date set at 30 September 2002, subject to certain conditions.¹⁴³⁹

Two years later, on 16 November 1989, the environmental manager for the NRC, wrote to the site manager of the Kauri Dairy Factory expressing concern about the effluent disposal. 'It is becoming increasingly obvious to us, and no doubt to yourselves', the letter read, 'that the installation of the spray disposal irrigation system leaves much to be desired both in terms of quality of instillation and maintenance/repair work'.¹⁴⁴⁰ The environmental manager for the NRC claimed the company's own records showed clear

¹⁴³⁹ Northland Catchment Commission and Regional Water Board, 'Water Right 4373, NRC File 4374, (Vol #1, pp22-25)

¹⁴⁴⁰ Dave Roke to Site Manager Kauri Dairy Factory, 'Kauri Effluent Disposal – Hikurangi Flats', 16 November 1989, NRC File 4373, Volume 1

evidence of 'inadequate supervision of the original installation contractors' and he urged the company to act promptly to address the matter.

In subsequent months, the Regional Council prosecuted the Northland Co-operative Dairy Company under the Water and Soil Conservation Act 1967 for breaches of its Water Right at Kauri. The Council initially laid 45 charges against the company for offences relating to six different types of pollution offences.¹⁴⁴¹ The offences largely related to inadequate attention to contingency measures in setting up an effluent disposal system. Following discussions between the company directors and Council, the Company agreed to plead guilty to offence, subject to the Council reducing the number of charges accordingly, and the Company meeting the court expenses for in bringing the case against it.¹⁴⁴² On 19 December, 1991, the Company was prosecuted for 'unauthorised discharges to Mangahuru stream catchment'.¹⁴⁴³

6.6.3 Kauri Dairy under the RMA

The Northland Co-operative Dairy Company first applied for a discharge permit resource consent under the RMA in 1993. The application sought to amalgamate four existing permits into one consent. The company sought to discharge 'up to 2500 cubic metres per day of wastewater and 2170 cubic metres of condensate/gland sealing water per day from dairy products manufacture to ground by spray irrigation on land adjacent to a milk processing plant at Kauri'. The consent was granted in April 1993, set to expire 30 September, 2002.¹⁴⁴⁴

However, in subsequent years, Council monitoring again found that the discharges were having 'significant adverse effects' on receiving water quality. A March 1995 letter from the Environmental Quality Officer for the NRC advised the company of such effects.¹⁴⁴⁵ Similarly, in September 1995, NRC Monitoring Manager wrote to the Company outlining the Council's concerns relating to the wastewater/effluence disposal scheme, and other

¹⁴⁴¹ Le Mills, to Mr J Smellie, 'Kauri Prosecutions', 10 August 1990, NRC File 4373, Volume 1

¹⁴⁴² 'Northland Co-Op Dairy Co Ltd Proscution', Memorandum from Environmental Manager', 24 January, 1991, NRC File 4373, Volume 1

¹⁴⁴³ 'Northland Co-Op Dairy Co Ltd Proscution', Memorandum from Environmental Manager', 24 January, 1991, NRC File 4373, Volume 1

¹⁴⁴⁴ Northland Regional Council, 'Discharge Permittm 4373', 23 April 1993, NRC File 4373, Volume 1

¹⁴⁴⁵ Colin Dall to Northland Cooperative Dairy Company Ltd., March 1995, NRC File 4373, Volume 1

issues on the Kauri site, and set out the improvement required if the Company was to avoid non-compliance. 'Please note', Phipps' letter ended, 'that the Council takes non-compliance with consent conditions seriously'.¹⁴⁴⁶

In June 1996, the Company applied for a variation to the discharge permit (4373) as part of its expansion of its milk processing facilities on its Kauri site. In particular, it sought variation in the conditions of its consent, and the increase in the quantity of discharge.¹⁴⁴⁷ According to the AEE report, produced as part of the application to vary the consent, while the quantity and volume of contaminants would increase, the environmental impacts would actually be lessened due to more advanced treatment processes (in particular, the provision of a physico-chemical treatment plant would, the report claimed, reduce the quantity of contaminants discharged from the factory).

The NRC processed the application as 'non-notified', but invited various tangata whenua groups to comment on the application. On 7 June 1996, a letter was sent to the Secretary of the Ngāti Hau Trust Board, the Chair of the Ngātiwai Trust Board, the Secretary of the Whāngārei Māori executive and to Te Kahu Torongare Me Te Parawhau asking for comment.¹⁴⁴⁸ There would be no formal submission process, the letter explained, but the Council would be 'pleased to receive any comments you may have on the application'. In response, the Ngātiwai Trust Board produced a Cultural Impact Assessment (CIA).¹⁴⁴⁹ The report made several recommendations in relation to the application. These were later summarised in the NRC 'officer report' as proposed conditions for the consent:

- 1) That effluent discharged to the irrigation area be maintained at 46 percent below current organic loading levels. This is to be monitored by the Regional Council.
- 2) That the Northland Dairy Company, in conjunction with the Regional Council and Whangarei District Councils Park Division engage in the

¹⁴⁴⁶ Tony Phipps, to Paul Kooy, 'Wastewater/Effluent Disposal at the Kauri Site', 19 September, 1995, NRC File 4373, Volume 2

¹⁴⁴⁷ 'Application for Variation Discharge Permit 4373: Northland Cooperative Company Ltd, Kauri', 4 June, 1996, NRC File 4373, Volume 2

¹⁴⁴⁸ 'Non-notified application for resource consent 4347', 7 June 1996, NRC File 4373, Volume 2

¹⁴⁴⁹ Ngatiwai Trust Board, 'Cultural Impact Assessment. Northland Co-operative Company', 7 February, 1997, NRC File 4373, Volume 2

planning and design of a riparian planting program which mitigates the accumulative environmental effects of discharges to the Mangawhero and Mangahahuru Streams.

3) That the macroinvertebrate study of the Mangahahuru Stream, being conducted by the Northland Regional Council, include sites which reflect the position and nature of the pollutants' sources and discharge points including the irrigation and soakage fields.

4) That the Regional Council make a condition of this consent that discharges to air from the Kauri Dairy Plant comply with both national standards and international accords. Regional Council to prepare and undertake a monitoring regime that meets these standards.

5) Construction of the new soakage field should therefore ensure that any earth exposed is not washing away into the Mangawhero Stream. Construction of bund walls, a drainage system, sediment traps and/or a effective sediment control measure should be considered by the Regional Council.¹⁴⁵⁰

The Board stated that they did not oppose the aforementioned applications, provided that their recommendations were incorporated into the conditions of the resource consent. The resource consent file also contains a draft agreement between the Ngātiwai Trust Board and the Northland Co-operative Dairy Company concerning the uncovering of wāhi tapu (sacred areas) in the operation of excavation. However, it is unclear whether or not the agreement was signed or acknowledged by the Company.

On 17 December 1996, a consultant employed by Kauri wrote to the NRC consent manager explaining that the Company had received letters of approval from eight potentially affected parties, and had, in addition, a Cultural Assessment Report from the Ngātiwai Trust Board. The letter made no mention of the wāhi tapu agreement. The consultant requested that the council now give the application urgent attention 'in order that a speedy resolution for a variation is obtained'.¹⁴⁵¹ The staff report, or 'officer's report', claimed that 'no response from iwi was received', but that a Cultural Impact Assessment report from the Ngātiwai Trust Board was received. The report claimed that the Trust Board's proposed conditions (listed above) were considered by the Regional Council and discussed between the agent for the Dairy Company and the Ngātiwai Trust Board, but only conditions 1 and 3, according to the author of the report,

¹⁴⁵⁰ NRC Staff Report for Application No CON2002043730', NRC File: 4373, Vol.11

¹⁴⁵¹ Den Ouden Cooper Associated to NRC, 'Re: NDC application for variation', NRC File: 4373, Vol. 2

were pertinent to the application and would be addressed in the revised consent conditions.¹⁴⁵² The consent was granted on 14 January, 1997 with its expiry date set at 30 September 2002. Under the consent the company was required to install a physico-chemical treatment system within seven months, and to supply the Council with regular records of monitoring. The consent holder was also required to undertake macroinvertebrate study ‘upstream and downstream of the condensate/gland sealing water discharge’.¹⁴⁵³

6.6.4 Application for renewal of consents, 2001 onwards

The following section explores a series of resource consents applied for by Fonterra since 2001. In December 2001, the Company made an application for two new resource consents—an air discharge permit to provide for air emissions associated with spray irrigation of wastewater and a discharge permit for the application of DAF (Dissolved Air Flotation) sludge onto and into land—while also collectively renewing existing consents.¹⁴⁵⁴ The Company requested that the application be processed without notification ‘given that only minor changes to the consents are being sought and the environmental effects of the activities has been and will be minor’. The company sought a term of 20 years for each consent.¹⁴⁵⁵ After NZMP Kauri agreed to waive the RMA timeframes¹⁴⁵⁶ to allow time to prepare and submit an amended AEE, the Council acknowledged the application for renewal of existing consents, and the application of two new consents.

In its application and AEE report, the NZMP outlined what it called its ‘environmental management systems’. It claimed that NZMP acknowledged its environmental responsibilities, ‘ranking them equally with other business objectives’ and was committed to a position of industry leadership through ‘sustainable manufacturing and minimising the effects of its activities on the environment and the wider community’. The overall responsibility for environmental management at the plant lay with the Site

¹⁴⁵² NRC. Staff Report for Permit Application: NLD 91 4373’, NRC File: 4373, Vol. 2

¹⁴⁵³ NRC. Staff Report for Permit Application: NLD 91 4373’, NRC File: 4373, Vol. 2

¹⁴⁵⁴ Letter from Fonterra Environmental Manager, Karen Leov, to D L Roke, Consents Manager, NRC, 17 December 2001. NRC File: 4373, Vol. 5

¹⁴⁵⁵ Letter from Fonterra Environmental Manager, Karen Leov, to D L Roke, Consents Manager, NRC, 17 December 2001. NRC File: 4373, Vol. 5

¹⁴⁵⁶ Resource Management Act, 1991, Section 37(5A)

Manager and the Environment Officer, based at the Kauri site. The report summarised the plant's management of wastewater, stormwater, air discharges, water use and solid wastes.¹⁴⁵⁷ Section Two of the report then went on to describe the resource consents sought by the Company, outlined the changes sought to existing consents and the reasons for seeking new consents.¹⁴⁵⁸

Section Three of the AEE addressed the issue of consultation and consent notification. NZMP explained that consultation 'is an important component to any resource consent application and an important forum for interested or affected parties to express views or concerns'.¹⁴⁵⁹ The interested or affected parties, in this case, included the Ngātiwai Trust Board, Ngāti Hau Trust Board, Ngāpuhi-Nui-Tonu, Te Kahu Torongare Me Te Parawhau Hapū, the Department of Conservation, Whāngārei Māori Executive, Fish and Game Council (Northland) and all factory and farm neighbours – all of whom received a copy of the AEE. More specifically, the report claimed that the Ngātiwai Trust Board, Ngāti Hau Trust Board and the Whāngārei Māori Executive were each sent letters in September 2001 which provided an overview of the resource consents sought and asked for comments or concerns about the proposed changes. Feedback was received from Ngātiwai Trust Board who requested a face to face meeting at the Board's Whāngārei office to discuss issues relating to water monitoring and management, sedimentation and siltation management, and consultation and site inspection. Subsequently, the Company met with Ngātiwai Trust Board on 12 December, 2001. In the same month, a letter was sent to Ngāpuhi-Nui-Tonu and to Te Kahu Torongare Me Te Parawhau Hapū, following consultation with NRC.¹⁴⁶⁰ However, as the NRC later pointed out, the content of the discussions and concerns raised by tangata whenua were not outlined in the AEE.¹⁴⁶¹

¹⁴⁵⁷ NZMP Kauri, 'Application for Resource Consent and Assessment of Environmental Effects', December 2001, p15, NRC File: 4373, Vol. 5

¹⁴⁵⁸ NZMP Kauri, 'Application for Resource Consent and Assessment of Environmental Effects', December 2001, pp18-29, NRC File: 4373, Vol. 5

¹⁴⁵⁹ NZMP Kauri, 'Application for Resource Consent and Assessment of Environmental Effects', December 2001, p30, NRC File: 4373, Vol. 5 (Vol.2-7, p214)

¹⁴⁶⁰ NZMP Kauri, 'Application for Resource Consent and Assessment of Environmental Effects', December 2001, pp30-31, NRC File: 4373, Vol. 5

¹⁴⁶¹ 'NZMP Kauri Resource Consent Application – Further Information Request', p5, NRC File: 4373, Vol. 5

Despite the Company's insistence on the importance of consultation, it reiterated its desire that the Council process the application on a 'non-notified' basis.¹⁴⁶² It suggested the following reasons:

The assessment of environmental effects provided in Section 4 of this report demonstrates that no significant adverse environmental effects have resulted from the exercise of the existing consents. The AEE also confirms that no significant adverse environmental effects will arise from the proposed new activities.

The changes sought to resource consents during the renewal process will not result in more than minor change in environmental effects arising from the activities and therefore the application can be processed on a non notified basis.

The activities subject to consent renewal have also been the subject of comprehensive environmental effects monitoring programme and the effects of these activities have therefore been quantified (where possible) as well as the certainty about the effects of the activities on the environment.

The neighbours to the factory site and irrigation farms have been consulted during the consent renewal process and have generally supported the Company's initiatives and improvements. Consultation with Tangata Whenua, Department of Conservation and Northland Fish and Game Council has been initiated.¹⁴⁶³

However, once again, while the Company noted that consultation took place with tangata whenua, it did not provide any information about the outcome of such consultation.¹⁴⁶⁴

6.6.4.1 Notification of application for resource consent

The NRC decided to process the application on a 'notified' basis, though the Council resource consent archives do not provide the rationale behind this. On 18 August 2003, the NRC publicly notified Fonterra's application for resource consent for 'various activities associated with the operation of a milk product manufacturing facility'. The

¹⁴⁶² NZMP Kauri, 'Application for Resource Consent and Assessment of Environmental Effects', December 2001, p31, NRC File: 4373, Vol. 5

¹⁴⁶³ NZMP Kauri, 'Application for Resource Consent and Assessment of Environmental Effects', December 2001, pp31-32, NRC File: 4373, Vol. 5

¹⁴⁶⁴ 'NZMP Kauri Resource Consent Application – Further Information Request', p5, NRC File: 4373, Vol. 5

NRC set the deadline for submissions on the application at 15 September 2003.¹⁴⁶⁵ The application was advertised in the *Northland Advocate*, posted to neighbours and potentially affected parties and advertised outside the Kauri plant itself.

Following the application's public notification in August 2003, the NRC received 21 submissions. Phillip Grimshaw, the Natural Resource Manager for Te Rūnanga-Ā-Iwi O Ngāpuhi, wrote a submission in opposition to the application, citing 'the impact of the proposed activity on areas of cultural, spiritual, historic and/or traditional significant to Ngāpuhi whānui'.¹⁴⁶⁶ It asked the Council to decline the application and encouraged 'the Consent Authority to hold a pre-hearing meeting'. The letter was signed by Grimshaw, as well as Te Raa Nehua of the Ngāti Hau Resource Management Unit. In response to Grimshaw's letter, the NRC's Consents Secretary acknowledged the submission, but sought to clarify a couple of matters:

The Council is not obliged to hold a hearing, unless the applicant or any person who made a submission requests one. There are provisions in the Resource Management Act 1991 for pre-hearing meetings for the purpose of clarifying, mediating or facilitating resolution of any matter or issue. The Council is keen to use these provisions wherever possible. If a hearing is sought then you will be given at least 10 working days notice of it.

The Council may, at any time before any hearing, request further information from the applicant. Such information may be requested in response to issues identified in staff investigations relating to the application or matters raised in submissions received.

The Council is required to make a decision on the application within a specified time period. Where no hearing is sought, then a decision is to be notified within 20 working days of the closing date of submissions. If a hearing is required, then the Council has 15 working days from the close of the hearing to notify the interested parties of its decision. There are provisions in Section 37 of the Act for these limits to be extended in certain circumstances.

¹⁴⁶⁵ Jacqui Wallace, Consents Secretary for D L Roek, Consents Manager, NRC to NZMP Kauri (pt of Fonterra Co-op Group Ltd), 'Notification of Replacement and New Resource Consent Application Under Section 93(2) of the Resource Management Act', 18 August, 2003. NRC File.4373, Vol.7.

¹⁴⁶⁶ Phillip Grimshaw, the Natural Resource Manager for Te Rūnanga-Ā-Iwi O Ngāpuhi to Northland Regional Council, 'Submission on Application for Resource Consent Under Section 96 of the Resource Management Act', 15 September, 2003. NRC Resource Consent File: 4373, Vol.7

The decision of the Council is open to appeal by the applicant and any person who made a submission. Any such appeal is to be made to the Environment Court. Further details on appeal rights will be given in the decision notice.¹⁴⁶⁷

In October, NRC's Water and Wastes Team Leader wrote to Fonterra Kauri announcing the extension of the time-frame for considering the consent application (pursuant of Section 37(5A) of the RMA) to allow for 'further discussions between Fonterra and submitters.'¹⁴⁶⁸

At this point, however, the records relating to this particular group of consents end and the details of the application are unclear in the NRC resource consent files. It appears that the NRC put the application on hold. By 2007, the Company was still waiting for final approval for the resource consents by the NRC and operated under resource consents that had expired in 2002.¹⁴⁶⁹ In the meantime, the Company continued to apply for further permits and included these in the same application. By 2007, the consent application expanded to include 18 permits.¹⁴⁷⁰

In its June 2004 application, the Company sought four discharge permits from the NRC.¹⁴⁷¹ The AEE report stated that there were 'no valuable habitats, fauna or flora on the site' and there would be 'no adverse ecological effects'. In terms of spiritual and cultural impacts, the report stated that there were 'no spiritual or cultural attributes' associated with the site and that there would unlikely be any aspects of the proposal that would compromise cultural or spiritual values'. It noted that the application had been sent to local iwi for comment.¹⁴⁷²

¹⁴⁶⁷ Consents Secretary Joy Zystra (for Consent Manger, Dave Roke), to Phillip Grimshaw, 'Resource Consent Application CON20020437301 – Fonterra Kauri Acknowledgement of Submission', 13 October, 2003. NRC File.4373, Vol.7.

¹⁴⁶⁸ NRC Water and Wastes Team Leader Rob Lieffering, To Fonterra Kauri, 24 October, 2003. NRC File.4373, Vol.7

¹⁴⁶⁹ Bioreserches, 'Assessment of Environmental Effects (Part B)', NRC File.4373, Vol.11

¹⁴⁷⁰ Bioreserches, 'Assessment of Environmental Effects (Part B)', NRC File.4373, Vol.11

¹⁴⁷¹ These are outlined in: Fonterra Co-Operative Group Ltd and Poynter & Associated Environmental Ltd, 'Resource Consent Application & Assessment of Environmental Effects', June 2004, NRC File.4373, Vol. 7

¹⁴⁷² Fonterra Cooperative Group (Kauri) and Poynter & Associates Environmental Ltd, 'Resource Consent Application & Assessment of Environmental Effects, Fonterra Co-Operative Group Ltd, To A Composting Facility at Jordon Balley Road Hikurangi', June 2004. NRC File: 4373, Vol.7

In response, the NRC requested that Kauri prepare a report that outlined consultation undertaken to date, including the information circulated to submitters and minutes of any meetings held with them.¹⁴⁷³ It also reminded the Company that the NRC should be involved in the formulation of any draft consent conditions and hearing.¹⁴⁷⁴ The Irrigation Officer for the Kauri Plant replied that it was the Company's intention 'to proceed without the need to have a formal hearing, hence seeking approval from the submitters who wished to be heard'. Fonterra wanted the application processed on a non-notified basis and potentially separately from the other bundle of consents applied for (those discussed above) because the Company wanted to get started on the construction of the composting facility. Barrell claimed that of the submissions received, only four wished to be heard. Furthermore, he added, the only submission that opposed the consent, from Te Rūnanga-Ā-Iwi O Ngāpuhi, had been withdrawn.¹⁴⁷⁵

That TRAION had withdrawn their application was news to the Regional Council. Council staff wrote to Fonterra on two occasions asking for evidence of the withdrawal, but there is no record of a reply.¹⁴⁷⁶ On the 30 October, NRC staff wrote to Fonterra expressing concern that the Company was meeting with submitters 'to attempt to get them to withdraw submissions' and not following proper NRC procedure. He explained that if Fonterra was successful in doing so, that Fonterra needed to report to the NRC on the outcome and any agreement made between Fonterra and submitters that were relevant to the consents. The NRC would then prepare draft conditions covering the matters of concern to submitters and relevant agreements, before holding a pre-hearing meeting to ensure that the conditions were acceptable to Fonterra, submitters and the NRC.¹⁴⁷⁷

On 12 November, 2004, the NRC wrote to submitters inviting them to a pre-hearing meeting in Whāngārei 'to discuss, on a relatively informal basis the still outstanding

¹⁴⁷³ Rob Lieffering, Team Leader – Water and Wastes Group, NRC, to Alan Barrell, Irrigation Officer, Fonterra Kauri Site, 4 August, 2004. NRC File: 4373, Vol.7

¹⁴⁷⁴ Rob Lieffering, Team Leader – Water and Wastes Group, NRC, to Alan Barrell, Irrigation Officer, Fonterra Kauri Site, 4 August, 2004. NRC File: 4373, Vol.7

¹⁴⁷⁵ Alan Barrell, Irrigation Officer, Fonterra Kauri Site, to Rob Lieffering, Team Leader – Water and Wastes Group, NRC, No Date. NRC File: 4373, Vol.7

¹⁴⁷⁶ Rob Lieffering, Team Leader – Water and Wastes Group, NRC, to Alan Barrell, Irrigation Officer, Fonterra Kauri Site, 6 August and 14 September, 2004. NRC File: 4373, Vol.7

¹⁴⁷⁷ Mike Larcombe to Stuard Saville, October 30, 2004. NRC File: 4373, Vol.7

issues regarding the application'.¹⁴⁷⁸ The letter was sent to both TRAION and the Ngāti Hau Resource Management Unit. It is unclear from the resource consent archives what happened to the application from this point onwards. However, almost three years later, on 9 August, 2007, the Ngāti Hau Resource Management Unit wrote to the council signalling they no longer wished to be heard, but retained their right of appeal should they deem this a necessary action.¹⁴⁷⁹ Later in August, TRAION did the same.¹⁴⁸⁰ The NRC consent files did not provide the reason for this withdrawal.

6.6.4.2 Alteration to resource consent application

In September 2007, Fonterra applied for resource consent to discharge condensate/sealing water continuously at a rate of 40.5 litres/second (or approximately 3,600m³/day) continuously from the Kauri Factory to the Wairua River. The consent, if granted, would replace the then current but expired consent to discharge condensate/sealing water to the Mangahahuru as part of the group of consents discussed above.¹⁴⁸¹ In its new consent application, the Company sought to undertake the following activities:

- a) to discharge condensate sealing water to land and the Wairua River, and consequently aerosols to air;
- b) to construct, use and maintain a rock cascade discharge structure on the bed and banks of the Wairua River;
- c) to undertake earthworks and stormwater discharge associated with the construction of a cascade discharge structure on the bed and banks of the Wairua River.

The Company commissioned Bioresercherds (consulting biologists, Auckland) to write the application and the Assessment of Effects of the discharge on the river. The report outlined the proposed discharge and associated works, the receiving environment (the Wairua River) and status of the activities and statutory framework and the assessment of effects and consultation.

¹⁴⁷⁸ Resource Consent Application CON20020437301 – Fonterra Kauri – Pre-hearing Meeting. 12 November, 2004. NRC File: 4373, Vol.7

¹⁴⁷⁹ Allan Halliday on behalf of Ngati Hau Trust Board Resource Management Unit, to NRC, 'Fonterra–Kauri Resource Consent', 9 August, 2007, NRC File: 4373, Vol.10

¹⁴⁸⁰ Lisa Kanawa, Natural Resources Coordinator, to NRC, "Fonterra–Kauri Resource Consent", NRC File: 4373, Vol.10

¹⁴⁸¹ Stuart Savill to Bioreserches, 'Resource Consent Pre-Application CON20060437319', NRC File: 4373, Vol.10

As part of its application, Fonterra claimed that ‘extensive consultation was undertaken with parties that were identified as having interest in the Wairua River’.¹⁴⁸² The Company held pre-application consultation in order to address potential concerns by interested parties. In late June, the Company sent out flyers to interested parties outlining the details of the application, and organised a community consultation meeting on 13 August, attended by representatives of various groups. These included Graham White from Fish & Game Council, Lisa Kanawa from Ngāpuhi, Te Raa Nehua and Allan Halliday of the Ngāti Hau Trust Board, Te Ihi Tito of Parawhau Trust Inc., Richard Shepherd of Ngāti Kahu o Torongare, Larry Crutcher of Whakapara Marae Board, as well as two neighbours to the plant.

On 27 August 2008, Te Ihi Tito, resource manager for Te Parawhau Trust Inc, wrote to Fonterra, following the 13 August consultation meeting and a site visit on 24 August:

Thank you for meeting me at Kauri Fonterra... Thank you for the sample of condensate/sealing water being discharged into the Wairua River, which I am certain will allay concerns iwi may have when they see the sample. Thank you also for showing me the process of turning waste product into manure...

We the Parawhau Trust Inc fully support the Fonterra proposal to discharge condensate/sealing water to the Wairua River. Te Parawhau Trust Inc has no cultural concerns with the above proposal.¹⁴⁸³

However, the Company did state in its application that cultural impacts were raised at the August 13 meeting and that these were ‘still being discussed with iwi’.¹⁴⁸⁴

The consent was processed as ‘limited notified’ on 17 September, 2007. The application was sent to Te Parawhau Trust, Ngāti Hau Trust Board, the Ngāti Hau Resource Management Unit, Te Rūnanga-Ā-Iwi O Ngāpuhi, Ngararatunua Marae Trust, and Te Rūnanga o Ngāti Hine. The letter asked these groups for comment on the application:

We would welcome comment on concerns relating to how the proposal may impact on your relationship, culture and traditions within the area,

¹⁴⁸² Fonterra Kauri, ‘Application for Resource Consent and Assessment of Environmental Effects’, September 2006, NRC File: 4373, Vol.10

¹⁴⁸³ Te Ihi Tito, to Fonterra Co-operative Group, ‘Re: Fonterra Kauri’, 27 August 2008, NRC File: 4373, Vol.10

¹⁴⁸⁴ Fonterra Kauri, ‘Application for Resource Consent and Assessment of Environmental Effects’, September 2006, NRC File: 4373, Vol.10

including on sites, waahi tapu and other taonga. This can be done by telephone, although a written response is preferred. If a reply has not been received by [2 October, 2007], we will assume there are no concerns held about the proposal.¹⁴⁸⁵

6.6.4.3 Decision and resource consent

In 2007, the NRC's Team Leader for Air Quality produced the 'officer's report' for the application.¹⁴⁸⁶ By 2007, the application from Fonterra was for the replacement of a suite of existing consents for water takes and discharges to air, land and water at the Kauri Dairy Factory. On top of this, the Company sought to discharge wastewater to the Wairua River during high flows which would include the construction of an outfall structure on the bed of the Wairua River and also a dairy waste composting system. The report noted opposition from Te Rūnanga-Ā-Iwi O Ngāpuhi and the Ngāti Hau Resource Management Unit because of the '[i]mpact on area of cultural, spiritual, historic and/or traditional significant to Ngāpuhi whānau'.¹⁴⁸⁷ However, following a series of pre-hearing meetings, all parties that opposed the application and originally wished to be heard, had subsequently provided written approval or had withdrawn their wish to be heard. Te Rūnanga-Ā-Iwi O Ngāpuhi and the Ngāti Hau Resource Management Unit withdrew their wish to be heard, but wished to retain their right of appeal. Neither group provided written approval.

In measuring the application against the regulatory frameworks in place, the officer's report outlined the requirements laid out in the Regional Water and Soil Plan relating to Tangata Whenua.

Section 6: Recognition of and Provision of Maori and their Culture and Traditions

The Regional Water and Soil Plan requires the Northland Regional Council to recognise and, as far as practical, provide for the cultural and spiritual values held by Tangata Whenua. This would suggest that in considering these applications, while it is necessary to recognise the cultural and spiritual values of Tangata Whenua, those values are not to be given any greater weight than any other matter which the Northland Regional

¹⁴⁸⁵ Kaile Nahi-Taihia, Secretary for D L Roke, Consents Manager to Te Parawhau Trust, 'Limited Notification Resource Consent Application CON20060437319', 17 September 2007. NRC File: 4373, Vol.10

¹⁴⁸⁶ NRC Staff Report for Application No CON2002043730', NRC File: 4373, Vol.11

¹⁴⁸⁷ NRC Staff Report for Application No CON2002043730', NRC File: 4373, Vol.11

Council needs to consider when making a decision. Rather, the emphasis is to make provision for these values, where possible, within the context of sustainable management as defined by the Resource Management Act.

Objective 6.3.1

The management of the natural and physical resources that recognise and provide for the traditional and cultural relationship of tangata whenua with the land and water.

Policy 6.4.1

To recognise, and as far as practicable provide for, the relationship of Maori with respect to the use, development and protection of natural and physical resources.

Policy 6.4.2

To provide for the concerns of tangata whenua in regard to the disposal of waste into water¹⁴⁸⁸

The report claimed that the applicant had met such obligations on the basis that:

The applicant has consulted with tangata whenua about the proposed consents and agreement has been reached that, provided the proposed conditions are included as part of the consent and complied with by the Consent Holder, and provided Ngati Hau receive the monthly and annual reports and are involved in the annual review required as a condition of the consents, that tangata whenua do not oppose the granting of the consents.

The concerns of tangata whenua have been considered in making recommendations on these applications, and it is considered that the above objectives and policies have been fully met with regard to the application under consideration.

Through the consultation process outlined in Section 3, the applicant and the Northland Regional Council have met their responsibilities under Section 8 of the Resource Management Act.¹⁴⁸⁹

The consent was granted on September 28, 2007.

In the following years, Fonterra applied to both change consent conditions and add new consents to include in its bundle of consent applications. In January, 2008, the company applied for a variation to consent conditions. In particular, it requested an extension, by

¹⁴⁸⁸ NRC Staff Report for Application No CON2002043730', NRC File: 4373, Vol.11

¹⁴⁸⁹ NRC Staff Report for Application No CON2002043730', NRC File: 4373, Vol.11

one year, of the date that a number of requirements are to be fulfilled.¹⁴⁹⁰ In its application Fonterra noted its consultation in the previous application, and explained that ‘attempts by Fonterra to actively engage submitters have been difficult and in this instance the lack of reply is not considered to reflect opposition to the proposal’.¹⁴⁹¹ In August 2011, Fonterra applied for resource consent for the use of a pipeline to transmit condensate and seal water to the Wairua River.¹⁴⁹² The application was processed as ‘non-notified’ by the NRC and once again various tangata whenua groups were invited to comment on the application. In September, Te Raa Nehua requested that the Ngāti Hau Resource Management Unit be involved in ‘ongoing consultation prior to, during and after the proposed activity’.¹⁴⁹³

6.6.4.4 Application for change to consent, 2014

In May 2014, Fonterra applied for a change to an existing consent (pursuant of Section 127 of the RMA). In July 2009, Fonterra had applied for, and was subsequently granted, resource consent and changes to the conditions of an existing consent, for the construction of a Wastewater Treatment Plant (WWTP) to be located at the Kauri Site and the ability to discharge treated wastewater to the Wairua River about 1km upstream from the Jordon Valley Road Bridge. The May 2014 consent application sought the ability to discharge ‘dairy liquids’ within the ambit of the existing consent.¹⁴⁹⁴ In its application, the consultant acting on behalf of Fonterra explained that the application was compliant with Section 6 and 8 of the RMA. The ‘relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu sites and other taonga’ would be ‘recognised and provided for’ by way of compliance with the existing consents. The consultant considered the application consistent with Section 8 of the RMA for the following reason:

It is considered that the proposal supports the principles of the Treaty, given that the tangata whenua throughout the country have consistently

¹⁴⁹⁰ ‘Application for Variation to Change Consent Conditions – Resource Consent Con20020437301’, January 10, 2008, NRC File: 4373, Vol. 12

¹⁴⁹¹ Fonterra Co-Operative Group Ltd and Poynter & Associated Environmental Ltd, ‘Resource Consent Application & Assessment of Environmental Effects’, June 2004, NRC File: 4373, Vol. 7

¹⁴⁹² ‘Application for Resource Consent & Assessment of Environmental Effects for Condensate Transmission Fonterra, Kauri’. NRC File: 4373, Vol. 23

¹⁴⁹³ Te Raa Nehua to NRC Mailroom, 20 September 2011, NRC File: 4373, Vol. 23

¹⁴⁹⁴ Environmental Management Services, ‘Spreading of Dairy Liquids: Application Under Section 127 of the RMA’, NRC File: 4373, Vol. 27

stated a preference for the application of dairy liquids onto land where it can be assimilated by Papatuakuku, rather than discharged into surface waters.

This was despite the fact that the change to the consent included discharging directly to the Wairua River, as the report noted:

To the extent the current application includes periodic discharges of dairy liquids to the Wairua River, this will be undertaken in compliance with existing conditions which control any adverse effects on the environment.

On the basis of the above, it is considered that the proposal is consistent with the purpose of the RMA and sections 6 to 8 of the RMA.

The consultant requested that the application be processed on a non-notified basis without the need for any written approvals from third parties.¹⁴⁹⁵ The Council did indeed process the application as non-notified, on the basis that '[t]he application does not seek to change the existing consent volume or environmental standards so no person will be affected over and above what is already authorised to occur at present'.¹⁴⁹⁶

In its letter to tangata whenua groups, however, there is no mention of the application being 'non-notified'.¹⁴⁹⁷ Despite this, tangata whenua respondents expressed concern about both the proposed activity and the fact that the proposal was processed as non-notified and/or the confusion about the status of notification. On the 27 May 2014, Richard Shepherd (Ngāti Kahu O Torongare) wrote in opposition to application:

Ngati Kahu O Torongare vigorously oppose the Fonterra Cooperative Group Limited Resource Consent Application... The effect this application has on cultural practice and relationship with ALL waterways traditionally associated with our whakapapa and tikanga Maori are damaging, offensive and insensitive to our Hapu customs. Approval of this application also flies in the face of the Tiriti o Waitangi and the RMA where it clearly signifies the special relationship Maori have with land and waterways and the protection of such.¹⁴⁹⁸

¹⁴⁹⁵ Environmental Management Services, 'Spreading of Dairy Liquids: Application Under Section 127 of the RMA', NRC File: 4373, Vol. 27

¹⁴⁹⁶ 'Notification Decision Report', NRC File: 4373, Vol. 27

¹⁴⁹⁷ 'Resource Consent Application APP.004373.01.05', NRC File: 4373, Vol. 27

¹⁴⁹⁸ Richard Shepherd to NRC Mailroom, 27 May 2014, NRC File: 4373, Vol.27

Shepherd followed this email with a larger submission on behalf of Ngāti Kahu O Torongare. The submission recommended that the 'The Northland Regional Council NOT agree with Fonterra Limited to process this application on a non-notified basis; that the Northland Regional Council consider the activity to be notifiable; and that a Cultural Impact Assessment be provided.¹⁴⁹⁹

Similarly, on 4 June 2014, Millan Ruka and Hona Edwards (Te Uriroroi Te Hapū / Ngā Kaitiaki o Ngā Wai Māori) wrote separate submissions to NRC expressing concern at the Fonterra Resource Consent Application. Edwards claimed that Te Uriroroi Te Hapū / Ngā Kaitiaki o Ngā Wai Māori were 'seeking the opportunity to engage with the Applicant and other concerned parties, to begin a meaningful dialogue, to address our concerns'.¹⁵⁰⁰ Ruka explained that his hapū's (Te Uriroroi) customary waterways on the Wairua River 'are from Purua Falls to the Karukaru stream below the Wairua power and are affected by any Fonterra discharges coming down from the Hikurangi Swamp'. Ruka outlined Te Uriroroi connection to Ngā Kaitiaki o Ngā Wai Māori (NKONWM) and their focus on the Wairua River catchment. 'Although each hapu have their own distinctive areas', Ruka wrote, 'we work together to look after both individual and shared areas of interest. From a meeting consisting of all five hapū representatives, Ruka explained that Ngā Kaitiaki o Ngā Wai Māori agreed to the following recommendations:

That this matter be notified in the first instance.

We seek consultation with Fonterra and NRC to discuss details concerning the resource consent applications so that a more informed response can be made and to enable our collective to engage in the consultation process.

Upon further development and information received, it may be deemed necessary that a more in-depth assessment of cultural effect is required.¹⁵⁰¹

On 3 June, Solomon Tipene (Te Orewai/Ngāti Hine representative on Ngā Kaitiaki o Ngā Wai Māori) recommended the same three actions to the NRC.¹⁵⁰²

¹⁴⁹⁹ 'Submission made by: Te Kahu O Torongare', 6 June, 2014. NRC File: 4373, Vol. 27

¹⁵⁰⁰ Hona Edwards to Stuart Savill, 'Fonterra RC Application', 4 June, 2014, NRC File: 4373, Vol. 27

¹⁵⁰¹ Millan Ruka to Stuart Savill, 'Fonterra RC Application', 4 June, 2014, NRC File: 4373, Vol. 27

¹⁵⁰² Solomon Tipene to NRC, 'Re. Fonterra Resource Consent Application', 3 June 2014, NRC File: 4373, Vol. 27

In response, the Water and Wastes Consents Program Manager for NRC, Stuart Savill wrote to the Environmental Team Leader for the Fonterra Kauri Site, Alan Barrel on the 5 June, 2014:

I have been receiving a few iwi responses on the application to change Kauri site discharge consents... Iwi are requesting at least to meet with Fonterra to discuss application. Can you let me know how you wish to deal with this e.g. arrange the meeting at Kauri to go over the application with iwi? We are likely to need extension to timeframes to accommodate such a meeting.¹⁵⁰³

Allan Barrell of Fonterra organised a meeting for representatives of Ngā Kaitiaki o Ngā Wai Māori.¹⁵⁰⁴ There are no notes from the meeting. However, on 21 August, Hona Edwards wrote to the Adrien Pyne of Fonterra thanking them for the meeting:

Thank you and Allan [Barrell], for clearing up a few concerns NKONWM had in and around the proposed consents. We left the meeting feeling confident that Fonterra Kauri has in place robust mitigating strategies, for discharge into the Wairua river. This as we understand to be, that all liquid waste being discharged into the Wairua river, must have gone through the treatment plant, as shown to NKONWM Aug 18 2014.

However, Edwards highlighted a few remaining issues with the process:

That NKONWM received NO consultations of consents application

That NRC was not in attendance at meeting held Aug 18

That consents application, were all but approved, prior to meeting held Aug 18.

In the letter, Edwards also explained that NKONWM wanted to be informed of the spread sites for the bio-mass solids, 'so we can monitor alongside Fonterra', as well as GPS co-ordinates, 'or the exact discharge outlet, into the Wairua River, so again we could monitor'. Edwards also wrote that the NKOWNWM's support for the consent application indicated a continued willingness 'to build and maintain a strong and productive alliance, and NKONWM seeks to be able to call on Fonterra for any support we may need

¹⁵⁰³ Stuart Savill, to Alan Barrell, 'Fonterra RC Applications', 5 June, 2014 NRC File: 4373, Vol. 27

¹⁵⁰⁴ Hona Edwards to Alan Barrell, 'Fonterra Consent App meeting', 20 June, 2014, NRC File: 4373, Vol. 27

in the future also'.¹⁵⁰⁵ In the resource consent files, emails between Fonterra staff suggest that approval from NKONWM was the last remaining barrier to the consent being approved. The consent change was granted on 11 September 2014. In its decision, the Council explained that following discussion with NKOWNWM, a condition of the consent was amended (condition 87), requiring that all wastewater discharged to the Wairua River first undergo biological treatment.¹⁵⁰⁶

6.6.5 Remaining concerns about the use of 'non-notified'

Despite the inclusion of biological treatment for wastewater discharged to the Wairua River and the approval of the consent provided by NKOWNWM, Te Raki Māori, as Hona Edwards' letter above highlighted, continued to express concern about the use of 'non-notified' status for applications in general and for the Fonterra Kauri Plant in particular. There was also a sense, as Edwards suggests in the letter and as Millan later claimed in his brief of evidence, that the NRC had already made the decision prior to the meeting. As briefly mentioned in Chapter Two, Ruka views the use of 'non-notified' consents as a token exercise in consultation. Ruka commented on this in a private communication on 11 August 2015, using the Fonterra discharge as a key example. "This is the common thread with NRC and now WDC doing same", Millan wrote. "They at some stage ask Maori/ marae/hapu for comment when they have already progressed to approval".

They confuse the hapu by asking for comment, and we think we have a legal input when in fact it is "non-notified". We go through the pointless motions when they do not declare the status of the application... They fudge it without being clear to say this is "Non-Notified" your comments have no legal status, but we are happy to have a chat.

Would be the same for the Fonterra Discharge, but they fudged it more by bamboozling us twice at hui, when in fact they already committed to approval.

What I see is a pattern of long consultation from the applicant to NRC or WDC, then the commitment evolves from NRC or WDC. Then they decide this may hit the fan so we better just consult and ask hapuu for a comment. When all the time it's been committed to sign off or has already been signed off.

¹⁵⁰⁵ Hona Edwards to Adrian Pyne, 'Consent for dairy liquid into the Wairua river', Email Correspondence, 21 August 2014, NRC File: 4373, Vol. 27

¹⁵⁰⁶ Notice of Decision and Resource Consent, 11 September, 2014. NRC File: 4373, Vol. 27

At the time, Ruka claimed that he attended a recent Iwi Leaders Forum, where many had picked up on these trends whereby Māori are 'side stepped by the use of Non-Notified'. Moreover, in his evidence to the Waitangi Tribunal, Ruka used the Fonterra Kauri Wairua River Discharge application as an example of where the consent process 'fails to address Māori and environmental concerns'.¹⁵⁰⁷ Ruka outlined how he saw the process:

Fonterra applied to renew consent to discharge 4,000 m³ treated waste from Kauri to the Wairua River at some distance up from Jordan Valley bridge.

Nga Kaitiaki o Nga Wai Maori was advised by NRC, but the status of the consent application was not clear. NKONWM attended two hui with Fonterra and NRC only to find that the consent was already approved prior to our second meeting with them.

Outcome: This was a "Non-notified" process; a pipe discharge under water that cannot be seen from the bridge was approved. Discharge can be for 24hrs rather than in set daylight hours for monitoring purposes. The process was "have a chat", no legal status for hapū as it was "non-notified".

There is no consent condition for hapū or public monitoring of this river discharge point, whatsoever, not even for NRC or WDC.¹⁵⁰⁸

As mentioned, both Edwards and Ruka accuse the Council of predetermining decisions in this particular resource consent application. Whether or not this was the case is hard to prove in the archival record, but the general confusion surrounding the consent in relation to the status of the consent and the status of tangata whenua in the process remains an issue.

6.7 Recent initiatives across the Wairua catchment

Before concluding this chapter, it is worth outlining some of the recent initiatives spanning the Wairua River catchment to address environmental management, water quality, and the depletion of tuna populations. These include the establishment of Environmental River Patrol Aotearoa, the formation and strategic plans of Ngā Kaitiaki

¹⁵⁰⁷ Summary of Evidence by Millan Tame Ruka, Wai 1040 #U34(c), para 138-141

¹⁵⁰⁸ Ruka, Wai 1040 #U34(c), para 138-141

o Ngā Wai Māori (NKONWM), iwi/hapū, NIWA, and Council Monitoring Programmes and Workshops and the Fonterra-DOC 'Living Waters' Partnership.

6.7.1 The Environmental River Patrol – Aotearoa (ERP-A)

Millan and Henry Ruka established Environmental River Patrol – Aoteroa (ERP-A) in 2010, a kaitiaki and monitoring initiative. The Rukas formed ERP-A to address concerns about waterways and tuna:

We have seen our once pristine Wairua and Mangakahia Rivers turn into polluted ditches. They carry enormous amounts of effluent, nutrients and sediment from dairy and beef farms from the upper catchments down to smother our Kaipara Harbour... Our tuna (eels) are in crisis. Their habitat and water quality are in severe decline. A power station and seven flood pump stations kill most all of our 30 to 70 year old eel migrating breeding stock as they pass through the cutting pumps and turbines on their way to the breed off the Noumea and the Tongan Trenches.¹⁵⁰⁹

The work of the ERP-A involves, according to Millan Ruka, 'kaitiaki of our tuna (eels) and awa (rivers) all over our region', monitoring and reports to local authorities and developing strategies to 'clean up the Wairua River, its catchment, and the Wairoa River on down to Dargaville'.¹⁵¹⁰ ERP-A has been primarily funded by Henry and Millan Ruka (which they estimate at \$130,000), but these costs were supplemented by a Ngā Whenua Rāhui award from the Department of Conservation from June 2012 until November 2015.¹⁵¹¹

As noted in Chapter Two, Ruka produces reports which are then sent to the NRC and Whāngārei District Council, as well as other agencies tasked with protecting Northland's environment and waterways, along with the GPS coordinates of any alleged incidents. These include incidents such as the tuna fatalities discussed above and stock grazing in waterways. As noted in Chapter Two, Ruka is frustrated by the lack of response and action by the Council as a result of the reports. The majority of the Patrol's reports relate to activities that are not actively monitored or enforced by council, such as a lack of riparian fencing, the resultant damage or destruction of riparian management zones

¹⁵⁰⁹ 'Introducing Environment River Patrol – Aotearoa, New Zealand', <https://sites.google.com/site/environmentalriverpatrol/about> (accessed 27 April 2016)

¹⁵¹⁰ Ruka, Wai 1040 #U34(c), para 58

¹⁵¹¹ Ruka, Wai 1040, #U34(b), paras 96-99

by livestock, and stock urinating, defecating, and dying in waterways. Indeed, a major focus and area of concern for ERP-A is unfenced rivers and stock access to waterways.¹⁵¹² Local farmer and NRC Chair Bill Shepherd claims that the Council takes Ruka's reports 'very seriously', but claims that the evidence supplied is not enough to act on', Reports are provided well after the stock in seen in waterways, Shepherd claims. Northland farmer, Ben Smith claims the Ruka has 'created an awareness in New Zealand primary industry to the dumping ground that a lot of waterways have been made of for generations'. However, Smith is concerned about the dismissive attitudes of farmers in local government towards Ruka, including a racist remark from a district councillor.¹⁵¹³

Figure 62: Millan Ruka, Environmental River Patrol Aotearoa



(Source: <http://picasaweb.google.com/114227402886191808236/ScrapbookPhotos> accessed 8 March 2016)

¹⁵¹² 'Introducing Environment River Patrol – Aotearoa, New Zealand', <https://sites.google.com/site/environmentalriverpatrol/about> (accessed 27 April 2016)

¹⁵¹³ 'Native Affairs Summer Series – River Cop', <https://www.maoritelevision.com/news/regional/native-affairs-summer-series--river-cop>

Nevertheless, Ruka continues to send these reports repeatedly, to further highlight the lack of regulation around stock management and pollution generally. The lack of response and action by the Council's reflects a further lack of ability for Te Raki Māori to participate in resource management – except for very minimal consultation at the beginning of a consent process - and gives lie to the Council's own Regional Policy Statement Goal of including Māori in monitoring efforts.¹⁵¹⁴ Millan has recently called for the Council to introduce enforcement policies—such as abatement notices and fines— or effluent discharges and unfenced cattle in waterways. 'We need monitor patrols that are as vigorous as our parking and noise control wardens are', Ruka said, 'and that they have the equipment and law behind them to do the job'¹⁵¹⁵.

6.7.2 Ngā Kaitiaki o Ngā Wai Māori (NKONWM)

As discussed above, Ngā Kaitiaki o Ngā Wai Māori (NKONWM) formed in 2007 as a result of concerns about the impacts of the Hikurangi Swamp Scheme on tuna in the Wairua catchment. In late 2011, the hapū that make up NKONWM (Ngāti Hau, Ngāti Kahu o Torongare, Te Orewai, Te Uriroroi, Te Parawhau, Te Kumutu and Ngāti Hine) began discussions and the drafting of a strategic plan to 'set us on the path of waterway restoration'. In January 2012, NKONWM launched a five year strategic plan for waterways in Te Ruapekapeka, Tapuhi and Puhipuhi to the confluence of the Wairua and Mangakāhia confluence. The goals included: riparian stripping and fencing, improving water quality and monitoring, participating with key stakeholders, including non-Māori, WDC, NRC, Fonterra and DOC, to develop a financial management system, a succession plan (to teach tamariki the 'tasks of kaitiakitanga', including elver transfer, water testing and monitoring, and listening to pūrākau – 'stories from different areas'), to register NKONWM as a legal entity, continued political activism, and to continue to maanaki tuna.¹⁵¹⁶ In his evidence to the Tribunal, Allan Halliday has detailed the activities of NKONWM since its establishment and summarised the Strategic Plan.¹⁵¹⁷ However, Halliday suggests that resourcing remains an issue:

¹⁵¹⁴ Northland Regional Council, 'Regional Policy Statement', section 14.4(e)

¹⁵¹⁵ 'Activist calls all Kiwis to back river plan', *Northern Advocate*, June 11, 2016

http://www.nzherald.co.nz/northern-advocate/news/article.cfm?c_id=1503450&objectid=11654442
(accessed 22 June 2016)

¹⁵¹⁶ Ngā Kaitiaki o Ngā Wai Māori, 'Nga Kaitiaki O Ngā Wai Maori - Strategic Plan, January 31st 2012 – January 31st 2016'

¹⁵¹⁷ Halliday, Wai 1040 #P2, para 6.13

It would be good to be adequately resourced and we would like some help from the Crown in this regard. For the last 180 years they Crown has taken control away from the hapu and look at the state of the environment! We want to be involved, we want to be working together with the Crown and the other agencies to restore the environment.¹⁵¹⁸

6.7.3 Iwi/hapū, NIWA, and Council monitoring programmes/workshops

Since 2007, NIWA, at the invitation of the Ngāti Hau Resource Management Unit (and later Ngā Kaitiaki o Ngā Wai Māori), Whāngārei District Council (WDC) and Northpower, has been assisting stakeholders to develop means of protecting and enhancing indigenous freshwater fish resources (primarily focusing on tuna) in the Wairua River catchment.¹⁵¹⁹ In October 2013, NIWA prepared a report entitled ‘Tuna Populations in the Wairua and Mangakāhia Rivers’.¹⁵²⁰ The authors and contributors listed were Erica Williams and Jacques Boubée of NIWA, Allan Halliday (Ngāti Hau Trust Board) and Hōri Tuhiwai (Te Parawhau ki Korokota), NIWA’s National Centre of Māori Environmental Research (also known as Te Kūwaha) have also provided workshops to ‘provide information, services and resources of relevance to Māori and support them to develop programmes (implemented by iwi/hapū/whānau) that collect site specific information required to manage their environmental resources’.¹⁵²¹ These workshops aimed to provide ‘practical hands-on training’, basic biology and ecology, and an introduction to the design of sampling and monitoring programmes to increase the capacity required by Māori to implement and monitor and the success of tuna rehabilitation and restoration activities.¹⁵²² Workshops were held at Akerama Marae and Korokota Marae.

6.7.4 ‘Living Water’: Fonterra–DOC partnership

In March 2013, Fonterra and the Department of Conservation (DOC) signed an agreement to start working together to care for some of New Zealand’s most ‘sensitive

¹⁵¹⁸ Halliday, Wai 1040 #P2, para 6.15

¹⁵¹⁹ NIWA, ‘Tuna Populations in the Wairua and Managakāhia Rivers, Prepared for Ngā Kaitiaki o Ngā Wai Māori, Northland Regional Council, Northpower & Ministry of Primary Industries’, October 2013, p12

¹⁵²⁰ NIWA, ‘Tuna Populations in the Wairua and Managakāhia Rivers, p12

¹⁵²¹ NIWA, ‘Tuna Populations in the Wairua and Managakāhia Rivers, p35

¹⁵²² NIWA, ‘Tuna Populations in the Wairua and Managakāhia Rivers, p35

waterways'.¹⁵²³ The 10-year partnership between Fonterra and DOC, part of Fonterra's existing 'Living Waters' initiative, aims to work with dairy farmers, iwi, conservation groups, schools and other agencies to improve the health of five key catchments in significant dairying regions throughout the country.¹⁵²⁴ The Kaipara Harbour is one of the five focus areas for the programme and thus the Hikurangi catchment north of Whāngārei is a target area.¹⁵²⁵ Work to achieve this includes planting native trees, shrubs and grasses along waterways in an effort to reduce sediment and nutrient runoff into the waterways and to provide a habitat for native birds and fish. In 2014, Fonterra's global sustainability and social responsibility manager Carly Robinson explained that the Living Water projects in the Kaipara were 'in their infancy, with a lot of stakeholder engagement, evaluation of current systems in place and identifying gaps in order to process.'¹⁵²⁶ In the development of a 'local vision statement' to sit below the national vision statement, the Northland Island Project Manager for the Living Water Partnership proposed the following:

Scientifically verified information and knowledge underpins practical sustainable solutions to improving water quality and enhancing biodiversity while informing a free and frank discussion between the wider community and dairy farmers about the challenges to a healthy functioning ecosystem.

But while the 'Living Waters' programme aims to include dairy farmers, iwi, conservation groups, schools and other agencies to improve the health of waterways, Te Raki Māori have expressed concern about the extent of Māori involvement. In response to the 'vision statement' above, Allan Halliday questioned the exclusion of Mātauranga Māori and the view of Māori as one of many stakeholders.

... is Tangata Whenua included in what you refer to as "the wider community". Given the fact that I was speaking to [the DOC Project Lead for Living Water] this very morning regarding the inclusion of matauranga maori and with your exclusion of matauranga maori, I'm

¹⁵²³ **Fonterra**, 'Fonterra Living Water: Our commitment to caring for New Zealand's waterways', media release:<https://www.fonterra.com/nz/en/recycle+bin/sustainability/environment/water/fonterra+living+water/fonterra+living+water> (accessed April 2016)

¹⁵²⁴ Department of Conservation, 'Living Water and Fonterra farmers protect rare plant', media release <http://doc.govt.nz/news/media-releases/2016/living-water-and-fonterra-farmers-protect-rare-plant/> (accessed April 2016)

¹⁵²⁵ 'Project Starts to clean up Kaipara Harbour', *The New Zealand Farmer*, 24 March, 2014

¹⁵²⁶ 'Project Starts to clean up Kaipara Harbour', *The New Zealand Farmer*, 24 March, 2014

now left wondering if this is because we hadn't advanced to this stage of identifying matauranga maori as a necessary component to provide practical sustainable solutions to improve water quality while enhancing biodiversity back in 2013.¹⁵²⁷

Millan Ruka also replied, explaining mātauranga Māori:

Matauranga Maori includes “practical monitoring” of mimi, tiko me para (urine / excrement / sediment) discharges to the Wairua awa and its catchment. This is a part of our kaitiakitanga psyche. This is what all comes down our waterways. Titiro, rongorogo, see, feel smell, you have to be on/at the awa to do this.

We would like to see acknowledgment that this is a practical element for our participation.¹⁵²⁸

Dr Erica Williams, a Scientist at NIWA involved in Māori Environmental Research (Te Kūwaha) also claimed the following about the programme and in particular, some of the research it was producing:

It puts whanau/hapū in the “stakeholders” and “consultation” box... DoC should have an internal review process of the report themselves and adjust the report to better reflect their commitment to the Treaty partnership and point to how it aims to engage whanau/hapū to gain an understanding of their priorities for the restoration of the repo to get the “bigger” picture.¹⁵²⁹

More recently, the ‘Living Water’ programme has released a strategic plan. The plan listed the partners in the area, which included the Northland Regional Council, Ngā Kaitiaki o Ngā Wai Māori, Fonterra Farmers, the Integrated Kaipara Harbour Management Group, Fish and Game Northland, DairyNZ, NZ Landcare Trust, Reconnecting Northland and QEII National Trust. The plan outlined its commitment to work with Ngā Kaitiaki o Ngā Wai Māori, acknowledged its five year strategic plan and seemingly responded to the critiques above. Ngā Kaitiaki o Ngā Wai Māori, the report stated, ‘want to participate fully and effectively as Kaitiaki and to ensure that their values and aspirations are reflected in the priority activities of the Living Water Programme, by weaving Mātauranga Māori through our biodiversity and water quality

¹⁵²⁷ Erica Williams, email to Ngāti Hau Resource Management Unit and Jacques Boubée, ‘RE: Living Water Opportunities for restoration: Hikurangi Floodplain’, 21 December, 2015

¹⁵²⁸ Erica Williams, email to Ngāti Hau Resource Management Unit and Jacques Boubée, ‘RE: Living Water Opportunities for restoration: Hikurangi Floodplain’, 21 December, 2015

¹⁵²⁹ Erica Williams, email to Ngāti Hau Resource Management Unit and Jacques Boubée, ‘RE: Living Water Opportunities for restoration: Hikurangi Floodplain’, 21 December, 2015

projects'. The strategic plan promised an investment of \$323,000 for iwi and community projects, including NKONWM's 'healthy tuna' project.¹⁵³⁰

6.8 Conclusion

The Wairua catchment is a landscape that has been modified extensively. The Hikurangi Swamp, in particular, which formed one of the largest wetlands in the southern hemisphere, has been transformed into the farmland that it is today. The legacies of this modification are ongoing. It is the site of a number of environmental concerns, including barriers to fish passage, water abstraction, discharges, deoxygenation of water during flooding, mining, and the management of stock access to riparian margins. For these reasons, it has been described as a 'contentious environmental zone'.¹⁵³¹ The monitoring data conducted by the Council suggests that the waterways in this catchment are degraded. The catchment has relatively low quality habitat for aquatic biota, and has comparatively high levels of *E. coli*, ammonia and turbidity; nutrient loading has stimulated aquatic plant growth and dissolved oxygen impacts on organisms. In particular, drainage, the degradation of freshwater habitat and migration blocks have all contributed to a decline of tuna within the catchment.

It is in this context that Te Raki Māori have sought to exercise kaitiakitanga,, partnership and influence on resource management. The local studies selected for this chapter—the Hikurangi Swamp Scheme, the Wairua Power Station, and the Kauri Dairy Plant—have explored a number of environmental concerns and demonstrated both the potential and limitations of the RMA in both addressing these concerns and for providing kaitiakitanga and partnership. In the Hikurangi Swamp local study, years of work in both the resource consent process, lobbying councils, and also monitoring the impacts of the Scheme of tuna has been a feature of kaitiakitanga. Similarly, the Wairua Power Station demonstrates Māori pushing for protection of tuna and for involvement in the management of a taonga species. As the Kauri Plant example highlighted, there have also been attempts by Te Raki Māori to keep council processes transparent, calling

¹⁵³⁰ Living Water, 'Kaipara Harbour, Hikurangi Catchment Strategic Plan, July 2015 – June 2018 Summary'. Provided by Erica Williams

¹⁵³¹ 'Project Starts to clean up Kaipara Harbour', *The New Zealand Farmer*, 24 March, 2014; Department of Conservation, 'Baseline Report: Hikurangi Catchment, Contract 4553', 2014. Provided by Erica Williams, NIWA.

for sustained communication and collaboration with Māori, and for the Councils to properly notify consents so that Māori are clear of their legal status in the process. In these ways, Te Raki Māori have attempted to carry out the responsibilities and duties of kaitiakitanga, both within the legislative framework established and in spite of it.

Exercising kaitiakitanga has also meant engagement with other organisations. As Halliday has explained, 'to be an effective kaitiaki you have to engage with central and local government and other organisations such as Fonterra'.¹⁵³² There have been efforts to form collaborative relationships with various stakeholders in the catchment to address issues of water quality. The authors of the 2013 NIWA study on tuna populations in the Wairua/Mangakāhia catchments, conducted with Ngā Kaitiaki o Ngā Wai Māori, noted that many of the initiatives are 'on-going and will require the continued understanding, support and involvement of multiple organisations and individuals'. Moreover, it stated that '[t]he leadership, communications pathways and networks facilitated by Ngā Kaitiaki o Ngā Wai Māori and others are key to the ongoing success of this collaborative work programme'.¹⁵³³ In his evidence to the Waitangi Tribunal, Dr Jacques Boubée, too, highlighted the importance of wide ranging commitments: 'Solutions do exist', Boubée suggested, 'but their implementation will require a long-term commitment by all stakeholders and considerably more resources than are currently made available'.¹⁵³⁴ As this chapter has demonstrated, where there has been goodwill between parties and genuine effort, there have been positive results. However, some of these collaborations have had their limits. As already noted, while the Wairua Power Station is celebrated as a success by many, there are remaining uncertainties as to its success: central government's lack of involvement, the inclusion of local hapū and monitoring of the scheme. Similarly, the Hikurangi Swamp Scheme highlights the limits of such collaborative relationships as well as their durability, again in terms of monitoring and sustained involvement of Māori. The discussion on the Swamp Scheme also demonstrates the reluctance of local authorities to take up the joint-

¹⁵³² Brief of Evidence of Allan Keith Halliday, Wai 1040 #P2, para 3

¹⁵³³ Williams, Boubée, Halliday, Tuhiwai, 'Tuna Populations in the Wairua and Managakāhia Rivers, p110

¹⁵³⁴ Boubée Wai 1040, #U19, paras 65

or co-management provisions in the RMA—a common issue highlighted in literature examining the Māori involvement in freshwater management.¹⁵³⁵

In general, there has been a growing recognition of kaitiakitanga in the area, but as this chapter has demonstrated, it too has come with its limits, and, according to Te Raki Māori, has not gone far enough. Communication with tangata whenua is an issue across the local studies, as is the issue of monitoring, and the apparent exclusion of mātauranga and tikanga Māori. It is hard to say whether the growing recognition of kaitiakitanga comes from the increased statutory obligation on the part of Councils to include Māori, a changing attitude at large, or growing pressures on and concerns generally about water quality and biodiversity. Recognition of kaitiakitanga has also largely relied on a proactive group of kaitiaki pushing for greater recognition and involvement and greater protections for waterways and tuna. Local Government and organisations such as Fonterra, are coming around to such concerns. But it still remains to be seen how much Māori will play a role in the future management of water in the catchment.

¹⁵³⁵ Elizabeth Clark, 'Section 33 of the Resource Management Act 1991' in Janine Hayward (ed), *Local Government and the Treaty of Waitangi*, (Melbourne: Oxford University Press, 2003); Miaa Moana Elizabeth Wiaira, 'Māori Ownership of Freshwater: Legal Paradox or Potential?', Honours Dissertation, University of Otago – Te Whare Wānanga o Otākou, October, 2000, pp9-10

Chapter Seven

Mangakāhia River

(Inland Whāngārei/Mangakāhia river system)

Figure 63: Mangakāhia River at Twin Bridges



(Source: LAWA: Land Air Water Aotearoa <http://www.lawa.org.nz/explore-data/northland-region/river-quality/northern-wairoa-river/mangakahia-at-twin-bridges/> accessed 11 May 2016)

bodies have recognised and protected customary authority and ownership over local waterways and how this has impacted Māori in their exercise of tino rangatiratanga and kaitiakitanga of waterways. The local studies show different methods Māori have used to participate in resource management and how the Crown and local bodies have provided for this in terms of consultation and also in terms of resources. The chapter looks at experiences of Māori and different levels of success they have had in exercising kaitiakitanga.

While this chapter focuses on RMA processes, environmental management and the impact of pollution on customary river resources and kaitiakitanga have been affected by laws and Crown policies which have regulated dairy, fisheries and forestry industries, by the actions of Crown agencies such as Ministry for the Environment and Department of Conservation and other policies of other agencies, such as Legal Aid Services.

Figure 65: Mangakāhia River at Tītoki



(Source: LAW: Land Air Water Aotearoa <http://www.lawa.org.nz/explore-data/northland-region/river-quality/northern-wairoa-river/mangakahia-at-twin-titoki/> accessed 11 May 2016)

These local studies contribute to an understanding of the extent of degradation and pollution in the river, and factors that have contributed to changes. Other general matters of concern to claimants include dairy effluent run-off, leaching of chemicals and nitrogen into waterways from forestry, depletion of customary fisheries, river straightening projects, damming, water takes, effluent management, and flooding. While these topics may also warrant investigation, the two studies were selected because of the interactions between Māori and the Crown and its delegates that were at their core. Due to the interconnected nature of waterways, other studies in connected catchments, such as the Hikurangi Swamp Scheme and the Wairua Power Station eel transfer (both covered in Chapter Six), impact on the Mangakāhia River catchment. Resource management processes do not always clearly consider downstream effects, for example the Mangakāhia gravel extraction scheme was seen by some to have impacts far downstream, all the way to the Kaipara Harbour, yet consultation did not extend far beyond the area of extraction.

This chapter relies on local and central government archives, evidence presented to the Waitangi Tribunal, court decisions, Acts of Parliament, personal communication with claimants and employees of local and central government, as well as government publications. With the material available, it is hard at times to know how Crown and local government processes impacted on tangata whenua – there are bound to be considerable impacts that are not documented, or not yet known. It is simply worth noting that the paper record is never a complete record of events and impacts and tangata whenua evidence is the best source for this type of information.

7.2 *Mangakāhia River system and rohe*

The Mangakāhia River catchment covers approximately 800 square kilometres of central Northland, with the Tutamoe Range to its west and the Wairua River catchment to its east.¹⁵³⁶ It originates in native bush in the Mataraua Forest near Waipoua Forest continuing southwest past Nukutawhiti, Pakotai, and Parakao until its confluence with the Wairua River approximately five kilometres south of Tītoki, where the Mangakāhia and Wairua merge to flow into the Upper Wairoa River, which continues south-west to

¹⁵³⁶ Northland Regional Council, 'Rivers and Streams' <http://www.nrc.govt.nz/For-Schools/School-information-packs/Rivers-and-streams/> (accessed 1 October 2015)

the Kaipara Harbour.¹⁵³⁷ The major contributing catchments are the Hikurangi (224 square kilometres), Awarua (90 square kilometres), and the Opouteke Rivers (120 square kilometres).¹⁵³⁸ The Mangakāhia River passes Twin Bridges, a recreation and picnic area, just downstream of its confluence with the Awarua River (sometimes called Awaroa River). It then passes Nukutawhiti and downstream from there the Opouteke catchment joins it.¹⁵³⁹ The Hikurangi River converges with the Mangakāhia River approximately 4.5 kilometres upstream and north of Tītoki.¹⁵⁴⁰ The Upper Mangakāhia River catchment and Hikurangi River catchment are the two largest sub-catchments of the Mangakāhia River.¹⁵⁴¹

Its territory is acidic and volcanic, with riparian margins in the upper catchment surrounded by native and pine forests, and beef and sheep farmland.¹⁵⁴² At Twin Bridges, the riparian margins are predominantly native, while further downstream at Tītoki the river is surrounded mainly by beef and dairy farmland.¹⁵⁴³ NIWA monitors the water quality of the Mangakāhia River at two sites – Twin Bridges and Tītoki, with water quality at Tītoki being affected by pastoral farming and pine forestry.¹⁵⁴⁴ From approximately four kilometres downstream of the confluence of the Opouteke catchment and the Mangakāhia the river flows past generally wide flood plains to lower lying areas at Tītoki.¹⁵⁴⁵ The Mangakāhia River has the largest and fastest flood

¹⁵³⁷ LAWA: Land Air Water Aotearoa, 'Mangakahia at Twin Bridges', <http://www.lawa.org.nz/explore-data/northland-region/river-quality/northern-wairoa-river/mangakahia-at-twin-bridges/> and 'Mangakahia at Titoki', <http://www.lawa.org.nz/explore-data/northland-region/river-quality/northern-wairoa-river/mangakahia-at-titoki/> (accessed 3 March 2016)

¹⁵³⁸ Planning Tribunal decision No. A 107/95, *Mangakāhia Māori Komiti v Northland Regional Council*, p25

¹⁵³⁹ Duffill Watts & King Ltd, NRC- Mangakahia River Flood Water Surface Profile Titoki Bridge to the Mangakahia River Gorge, April 2003, p2, NRC river file – Mangakāhia River

¹⁵⁴⁰ Duffill Watts & King, *River Flood Water Surface Profile*, p2, NRC river file – Mangakāhia River

¹⁵⁴¹ Duffill Watts & King, *Mangakahia River Flood Water Surface Profile*, p2, NRC river file – Mangakāhia River

¹⁵⁴² LAWA: Land Air Water Aotearoa, 'Mangakahia at Twin Bridges', <http://www.lawa.org.nz/explore-data/northland-region/river-quality/northern-wairoa-river/mangakahia-at-twin-bridges/> accessed 3 March 2016

¹⁵⁴³ LAWA: Land Air Water Aotearoa, 'Mangakahia at Titoki', <http://www.lawa.org.nz/explore-data/northland-region/river-quality/northern-wairoa-river/mangakahia-at-titoki/> accessed 3 March 2016

¹⁵⁴⁴ LAWA, 'Mangakahia at Titoki', <http://www.lawa.org.nz/explore-data/northland-region/river-quality/northern-wairoa-river/mangakahia-at-titoki/> accessed 3 March 2016

¹⁵⁴⁵ Duffill Watts & King, *Mangakahia River Flood Water Surface Profile*, p 2, NRC river file – Mangakāhia River

discharge of any river in the Northern Wairoa system,¹⁵⁴⁶ with water in the lower sub-catchment running off to flood plains at a relatively low elevation.¹⁵⁴⁷ In a submission to NRC in 1993, DOC said the Mangakāhia catchment was ‘recognised as one of the most important habitats for native fish in Northland.’¹⁵⁴⁸ They said it was ‘valued particularly for its continuity with Kaipara Harbour and for the lack of instream impediments, allowing non-climbing species such as smelt, inanga and black flounder to use the catchment extensively.’ Mangakāhia Māori have explained that the river is tidal, as evidenced by shells on the riverbed, the presence of a maunga named Pātiki (black flounder), kōrero about heron, and the presence of species such as snapper, mullet and sea lions being found up the river emerging from tangata whenua history.¹⁵⁴⁹

Indigenous freshwater species said to exist in the Mangakāhia rohe include tuna (long- and short-tinned eels), kēwai (freshwater crayfish), torewai (freshwater mussel), kōaro, kōkopu (giant, shortjawed, and banded), inanga (whitebait), papane (torrentfish), and kanae (mullet), according to a 1995 study.¹⁵⁵⁰ Indigenous freshwater species that were said to no longer exist or that were no longer abundant in the area included inanga (dwarf inanga and dwarf galaxias), kokopara (cockabully), toitoi (giant and common bully), and pātiki mohoao (black flounder).¹⁵⁵¹

Sharon Kaipo of Parahaki Marae said the Mangakāhia Valley is in the tribal domain of Ngāpuhi and by association of Ngāti Whātua and Ngāti Hine.¹⁵⁵² She said that hapū who have traditionally used and occupied the valley include Te Kumutu, Ngāti Horahia, Ngātītōki, Ngāti Moe, Ngāti Whakamaunga, Ngāti Terino, Te Parawhau, Te Uri Roroī and

¹⁵⁴⁶ Northland Regional Council, ‘Rivers and Streams’ <http://www.nrc.govt.nz/For-Schools/School-information-packs/Rivers-and-streams/> (accessed 1 October 2015)

¹⁵⁴⁷ Duffill Watts & King, *Mangakahia River Flood Water Surface Profile*, p2, NRC river file – Mangakāhia River

¹⁵⁴⁸ Andre Visser to NRC, ‘Resource Management Act 1991: Consent Application – Archer T W and Christie C B, Mangakahia’, 21 September 1993, NRC file 5069, vol. 1, ‘Taraunui Farms’

¹⁵⁴⁹ Research meeting with Sharon Kaipo and Hōri Tuhiwai in Mangakāhia, 13 December 2015; Brief of evidence of Richard Nathan, Wai 1040 #J19, paras 4-7

¹⁵⁵⁰ Helen Lenihan with the Kaumatua, Kuia me nga Whanau o nga hapu o Mangakahia, Te Awa o Mangakahia (The Mangakahia River Study), ‘Rohe’, March 1995, p1

¹⁵⁵¹ Helen Lenihan with the Kaumatua, Kuia me nga Whanau o nga hapu o Mangakahia, Te Awa o Mangakahia (The Mangakahia River Study), ‘Rohe’, March 1995, p2

¹⁵⁵² Sharon Kaipo, *Te Tangi A Te Iwi/Why Our People Cried: Mangakahia Irrigation from a Tangata Whenua Perspective*, Occasional Publication 35, Department of Geography, University of Auckland, 1997, p9

others.¹⁵⁵³ These hapū are interspersed between the marae of Parahaki, Te Tarai o Rahiri, Te Aroha, Korokota and Maungarongo. To the north of the valley is Parahaki marae, to the east is Te Tarai o Rahiri, to the south is Maungarongo, and to the west are Te Aroha and Korokota Marae.¹⁵⁵⁴ She described the river as the 'breadbasket' of the tangata whenua, who were known as 'tuna people'.¹⁵⁵⁵ She explained that while tuna was now a delicacy, it was once a staple.¹⁵⁵⁶ In days gone by, people could go and sit in the river wearing a suit and carrying an umbrella, then stick the umbrella into the river and catch tuna.¹⁵⁵⁷ Nowadays tangata whenua are trying to teach younger generations to catch tuna so when times are tough financially the people can survive.¹⁵⁵⁸

Speaking of the river that runs through the valley, the Mangakāhia River, Hōri Tuhiwai of Korokota marae, Te Parawhau ki Korokota hapū, said:

My old people told me that the Mangakahia comes from a puna at the foot of the Tutamoe Range, which is the highest maunga in Te Taitokerau, embracing the puna was a plant with its branches (manga) reaching into the beyond. This plant was the kohia, in pakeha terms a native passion vine and from that puna was formed the head waters of the Mangakohia, better known today as the Mangakahia. It joins many other streams and rivers on its journey to the mighty Kaipara.¹⁵⁵⁹

In his opening statement presented at the beginning of stage two hearings in the Te Paparahi o Te Raki inquiry, Tuhiwai explained that Te Ripo, the confluence of the Mangakāhia River with the Wairua and Wairoa Rivers, is important to the people of Korokota Marae as their chief Kukupa had a pā called Maungakokopu there. Pereri Tito said that Te Roha, a child of Kukupa and Te Tahinga, was buried at Te Ripo.¹⁵⁶⁰ From there, Kukupa controlled entry through their rohe, as the awa was 'the highway from which our people travelled.'¹⁵⁶¹ Tuhiwai said that all of the tupuna tracks north, south,

¹⁵⁵³ Kaipo, 1997, p9

¹⁵⁵⁴ Sharon Kaipo to Minister for the Environment, 10 June 1994. Ministry for the Environment (MfE) file NPR(A) 6/2

¹⁵⁵⁵ Research meeting with Kaipo and Tuhiwai, 13 December 2015

¹⁵⁵⁶ Research meeting with Kaipo and Tuhiwai, 13 December 2015

¹⁵⁵⁷ Research meeting with Kaipo and Tuhiwai, 13 December 2015

¹⁵⁵⁸ Research meeting with Kaipo and Tuhiwai, 13 December 2015

¹⁵⁵⁹ Opening statement of Hōri Tuhiwai, Wai 1040 #E54(d), p7

¹⁵⁶⁰ Brief of evidence of Pereri Tito, Wai 1040 #J11(b), p11

¹⁵⁶¹ Tuhiwai, #E54(d), p4

east and west led to this area which he described as ‘sacred’.¹⁵⁶² He described how the river then flows to Tangiteroria, Pukehuia, Kirikopuni, then to Tangowahine, through Dargaville, to Te Kopuru, into the Kaipara then into the Tasman Sea.¹⁵⁶³ In Pita Moon’s opening statement to the Te Raki Tribunal he linked ancestor Nukutawhiti to the river, saying he was the first man to walk through the valley and that he kept close to the river to keep himself and his mokai kekeno (pet seal) clean.¹⁵⁶⁴

Figure 66: Te Ripo: The confluence of Wairua, Mangakāhia and upper Wairoa Rivers



(Source: Photograph by Tribunal staff, 18 December 2016)

The Tribunal’s research commission requested a report on the impact of pollution on customary river resources and kaitiakitanga, but it is worth noting that kaitiakitanga is not the only expression used to describe tangata whenua connections to natural resources and the physical environment in the area. Hōri Tuhiwai said that Mangakāhia tangata whenua do not use the term ‘kaitiakitanga’, and he preferred the term ‘mana

¹⁵⁶² Tuhiwai, #E54(d), p6

¹⁵⁶³ Tuhiwai, #E54(d), p4

¹⁵⁶⁴ Opening statement of Pita Moon, Wai 1040 #E54(b), p1

motuhake’, which he believed emphasised that more than having links to and stewardship over the environment tangata whenua *are* the local environment.¹⁵⁶⁵ If anything, he said, the river guarded tangata whenua, rather than the reverse. Sharon Kaipo agreed, saying tangata whenua were ‘part and parcel’ of the environment.¹⁵⁶⁶

7.3 *Claim issues*

7.3.1 **Statements of claim**

The Ngā Uri o Mangakāhia Claim (Wai 1467) was filed for Ngāti Toki, Ngāti Horahia, Te Kumutu, and Ngāti Tautahi by Te Hapae Bob Ashby for the entire lands bounded by the Wairoa and Mangakāhia Rivers.¹⁵⁶⁷ The claim asserts that Ngā Uri o Mangakāhia exercised kaitiakitanga over the natural environment, including rivers, waterfalls, swamps and other waterways in the area bounded by Wairoa and Mangakāhia Rivers.¹⁵⁶⁸ It claims that as local government gained increasing powers, it promoted developments that served the needs of settlement, milling and farming, often encouraging or hastening decline or destruction of indigenous flora and fauna, and alleges that Māori communities were brought under local government control, limiting and undermining traditional Māori authority over natural areas and resources.¹⁵⁶⁹ Claimants say the RMA led to increased financial independence for local government and following its implementation Māori sought representation on regional councils, to exercise control over Māori land, and statutory recognition of resource management plans developed by iwi.¹⁵⁷⁰ The claim states the RMA continues previous legislation that vested ownership rights of beds of all navigable rivers in the Crown, and the RMA does not give Māori priority equating to rangatiratanga.¹⁵⁷¹ The claimants objected to the irrigation scheme on the basis that the Mangakāhia River is a taonga (source of identity, mana, and social and spiritual wellbeing) and say they were relegated to representation on a community liaison group to monitor the scheme and its effects on the river.¹⁵⁷²

¹⁵⁶⁵ Research meeting with Kaipo and Tuhiwai, 13 December 2015

¹⁵⁶⁶ Research meeting with Kaipo and Tuhiwai, 13 December 2015

¹⁵⁶⁷ Amended statement of claim for the Ngā Uri o Mangakāhia Claim, Wai 1040 #1.1.184(a)

¹⁵⁶⁸ Ngā Uri o Mangakāhia Claim, Wai 1040 #1.1.184(a), para 13.3

¹⁵⁶⁹ Ngā Uri o Mangakāhia Claim, Wai 1040 #1.1.184(a), para 12.16

¹⁵⁷⁰ Ngā Uri o Mangakāhia Claim, Wai 1040 #1.1.184(a), para 12.20

¹⁵⁷¹ Ngā Uri o Mangakāhia Claim, Wai 1040 #1.1.184(a), paras 13.16-13.26

¹⁵⁷² Ngā Uri o Mangakāhia Claim, Wai 1040 #1.1.184(a), paras 13.27-13.32

The Te Taumata o Te Parawhau (Tuhiwai, Tito and Nepia) Claim (Wai 2355) was filed by Hōri Tuhiwai, Tupari (Paddy) Tito, Te Ruihana Lucy Nepia, Raniera Jan Tito and Pariri (Fred) Tito on behalf of Te Taumata o Te Parawhau.¹⁵⁷³ It alleges the Crown imposed and developed a resource management regime that failed to recognise or consider the mana of Te Parawhau to manage and preserve the whenua, awa, ngahere, maunga and resources in the rohe.¹⁵⁷⁴ Claimants say the RMA is grossly inadequate to protect Māori interests and recognise Māori rights under Te Tiriti.¹⁵⁷⁵ They allege the RMA breaches Treaty principles, and discuss the consultation process (for example, that claimants must actively oppose a proposal or they will not have a basis to challenge any decisions), the large number of resource consent applications, a lack of resources to participate in resource consent applications, and their belief that their concerns are often marginalised.¹⁵⁷⁶

The Te Awa o Mangakāhia Claim (Wai 990) was filed by Sharon Kaipō on behalf of Mangakāhia Māori Komiti.¹⁵⁷⁷ It alleges the RMA does not cater for tangata whenua, tangata whenua are unable to adhere to their responsibilities as kaitiaki and that local government bodies have not upheld their responsibilities. They claim the Mangakāhia River has been continuously degraded by local industry.

The Ngā Hapū o Whāngārei Lands, Waters, Forests and Resources Claim (Wai 668) was filed by Mate-Paihana Puriri, Richard Nathan and others.¹⁵⁷⁸ It alleges the Crown, in breach of Te Tiriti obligations, failed to provide ongoing benefits to claimants in the rohe and has failed to institute measures which would conserve natural resources.

¹⁵⁷³ Statement of claim for the Te Taumata o Te Parawhau (Tuhiwai, Tito and Nepia) Claim, Wai 1040 #1.1.388

¹⁵⁷⁴ Te Taumata o Te Parawhau (Tuhiwai, Tito and Nepia) Claim, Wai 1040 #1.1.388, para 11.1

¹⁵⁷⁵ Te Taumata o Te Parawhau (Tuhiwai, Tito and Nepia) Claim, Wai 1040 #1.1.388, para 11.2.11

¹⁵⁷⁶ Te Taumata o Te Parawhau (Tuhiwai, Tito and Nepia) Claim, Wai 1040 #1.1.388, para 11.2.15

¹⁵⁷⁷ Statement of claim for the Te Awa o Mangakāhia Claim, Wai 1040 #1.1.110

¹⁵⁷⁸ Amended statement of claim for the Ngā Hapū o Whāngārei Lands, Waters, Forests and Resources Claim, Wai 1040 #1.1.82(a)

7.3.2 Evidence presented to the Tribunal

Evidence presented to the Tribunal relating specifically to the Mangakāhia River has tended to focus on the impacts of industry on the river and the people and the levels of tangata whenua input.

In his evidence to the Te Raki Tribunal Joseph Rapana spoke about how the RMA removed tangata whenua ability to exercise rangatiratanga over waterways and that local government, whom he said ‘do not care about protecting or enhancing’ waterways, now have control over them.¹⁵⁷⁹ He raised the lack of options, information, and consultation that he and his whānau encountered when they expressed concerns about pollution, water redirection, and health impacts.¹⁵⁸⁰

Sharon Kaipo also discussed pollution, saying that the Mangakāhia River used to be pure and clean and provided sustenance and transport for people. She said as well the amount of water being diminished, the water is now paru.¹⁵⁸¹ Kaipo emphasised that forestry had a major effect on the community in recent years, destroying food baskets, and discussed the large amount of water that pine forestry requires and linked forestry to low water levels during droughts.¹⁵⁸² She said the Crown had failed to impose conditions on the forestry sector, requiring companies to take responsibility for damage to waterways.¹⁵⁸³ Kaipo also expressed concern about a recent housing ‘trend’ of ready-made structures being transported to the land with no septic system and no power. She said she had asked local government about water run-off and septic systems, but said she believed local government did not want to get involved if the matter related to Māori land.¹⁵⁸⁴ In her opening statement Kaipo said that Mangakāhia hapū were losing mana as they were once known as ‘the tuna people’ and would have been able to feed manuhiri kai tuna at hui and tangi.¹⁵⁸⁵

¹⁵⁷⁹ Brief of evidence of Joseph Rapana, Wai 1040 #J15(a), para 112. Mr Rapana spoke about management of Waipao Stream below Porotī Springs as an example to illustrate these general points.

¹⁵⁸⁰ Rapana, #J15(a), paras 113-117

¹⁵⁸¹ Brief of evidence of Sharon Kaipo, Wai 1040 #J6, para 3

¹⁵⁸² Kaipo, #J6, paras 48, 54

¹⁵⁸³ Kaipo, #J6, para 58

¹⁵⁸⁴ Kaipo, #J6, paras 45-47

¹⁵⁸⁵ Opening statement of Sharon Kaipo, Wai 1040 #E54(a), p3

Te awa was once abundant in flora and fauna and a bountiful food resource, including a plentiful tuna fishery. Te awa is no longer abundant in flora and fauna, nor is it any longer a bountiful food resource, diminishing the mana of ngā hapū, besides not being able to feed the people.¹⁵⁸⁶

As well as tuna, Kaipo mentioned the former abundance of watercress, freshwater kōura (crayfish), and freshwater fish in general.¹⁵⁸⁷

Daniel Kaipo told the Tribunal about how his tūpuna would have seen 'the awa flowing through and between these amazing maunga with bush alive, birds, the awa, the tuna, the kahawai [arripis trutta]'.¹⁵⁸⁸ He said that at Te Ripo the river is tidal, and there are mullet, tuna, freshwater kūtai (mussels), and pipi.¹⁵⁸⁹ He discussed the effects of farming, irrigation and forestry in his lifetime, with an increase in pine forestry pollution and water levels dropping.¹⁵⁹⁰

The Mangakāhia flows through the maunga of the Mangakāhia rohe giving life to everyone, everything in its path. Our maunga, our whenua will never disappear but our awa is drying up.¹⁵⁹¹

Richard Nathan asserted that water is important for Māori as it is inherently linked to identity and the land.¹⁵⁹² He discussed the unique qualities of water in Northland, emphasising the size and tidal nature of the Mangakāhia River (as far as Te Aroha/Parakao Marae), which had enabled Māori to travel easily in both directions, and caused special flow characteristics, as well as meaning ocean species were present in the river, including snapper, mullet and sea lions.¹⁵⁹³ He presented evidence about how clear felling of kauri caused further acidification of the waters and the kauri forestry industry used fertilisers and herbicides which polluted waterways and had a disproportionate impact on Māori, affecting principal food sources from the waterways.¹⁵⁹⁴

¹⁵⁸⁶ Hearing week 1 transcript, #4.1.6, p443

¹⁵⁸⁷ Opening statement of Sharon Kaipo, Wai 1040 #E54(a), p2

¹⁵⁸⁸ Hearing week 6 transcript, #4.1.11, p75

¹⁵⁸⁹ Hearing week 6 transcript, #4.1.11, p76

¹⁵⁹⁰ Hearing week 6 transcript, #4.1.11, pp76-77

¹⁵⁹¹ Hearing week 6 transcript, #4.1.11, p77

¹⁵⁹² Brief of evidence of Richard Nathan, Wai 1040 #J19, paras 2-3

¹⁵⁹³ Brief of evidence of Richard Nathan, Wai 1040 #J19, paras 4-7

¹⁵⁹⁴ Brief of evidence of Richard Nathan, Wai 1040 #J19, paras 33-34

In her evidence, Aorewa Nahi discussed the loss of kaitiakitanga and local resources.¹⁵⁹⁵ She emphasised the need to reaffirm kaitiakitanga and return mauri to the rohe.¹⁵⁹⁶ Topics of concern were the irrigation scheme, clearing of trees from near the riverbanks, increased water temperatures, and reduction of oxygen in the water which led to fewer and smaller tuna.¹⁵⁹⁷ She also discussed the effects of farming run-off on the river and pataka kai and pollution leading to a ban on swimming at the opening of a new wharekai at Oue and how that was the first time, apart from times of flooding, when the river was unswimmable.¹⁵⁹⁸ She discussed local government obligations under the RMA to promote the sustainable management of natural and physical resources. She was concerned that hapū were disenfranchised from decision-making and that mismanagement of resources affected hapū ability to practice kaitiakitanga.¹⁵⁹⁹ She expressed her concern that the Crown's lack of foresight and focus on economics affected long-term conservation of the local environment.¹⁶⁰⁰

Kaile Nahi-Taihia said in her opening statement to the Tribunal in March 2013, 'We were once the major land owners and guardians of our natural resources but now we are merely participants in hearing processes that may or may not recognise us as such'.¹⁶⁰¹ She said tangata whenua 'continue to battle for recognition as kaitiaki of our natural resources and are continuously challenged when faced with issues relating to the over allocation of water and poor land management practises'.¹⁶⁰² During the Mangakāhia hearing week, she told the Tribunal how she had sought greater engagement with government departments regarding resource management.¹⁶⁰³ In cross-examination, she said:

I guess the preferred option for a lot of these organisations [local and central government bodies] is to speak to one group as opposed to speaking to the most important people, and so I don't think the Resource

¹⁵⁹⁵ Brief of evidence of Aorewa Nahi, Wai 1040 #J3(a), paras 1-3

¹⁵⁹⁶ Nahi, #J3(a), para 7

¹⁵⁹⁷ Nahi, #J3(a), para 8

¹⁵⁹⁸ Nahi, #J3(a), paras 9, 16

¹⁵⁹⁹ Nahi, #J3(a), para 10

¹⁶⁰⁰ Nahi, #J3(a), para 15

¹⁶⁰¹ Opening statement of Kaile Nahi-Taihia, Wai 1040 #E54(c), p1

¹⁶⁰² Opening statement of Kaile Nahi-Taihia, Wai 1040 #E54(c), p1

¹⁶⁰³ Brief of evidence of Kaile Nahi-Taihia, Wai 1040 #J4(a), para 24

Management Act clearly – well I just don't think that it works well in our favour the way that the consultation process works.¹⁶⁰⁴

Te Ruihana (Lucy) Nepia spoke of decline in tuna quality, numbers, and size.¹⁶⁰⁵ She discussed not being able to access former fishing spots due to electric fences, which also affected access to worms tangata whenua used to dig for fishing. This has meant that tangata whenua were prevented from using traditional fishing techniques.¹⁶⁰⁶

7.3.3 Issues raised at Mangakāhia research hui

A range of issues were raised at the research hui with Mangakāhia claimants in December 2015. Issues of concern included fisheries, forestry and its impacts, water quality, erosion, and the need to monitor the Mangakāhia River. Regarding fisheries, Tuhiwai emphasised the need for a scheme to protect the elvers in the Mangakāhia catchment saying 'that river has been left too long'.¹⁶⁰⁷ Fishing allocations were also of concern, with Tuhiwai noting that 97 per cent of the fisheries allocation in New Zealand was commercial (20 per cent of which is specifically Māori), 2 per cent was recreational, and 1 per cent was customary. Tuhiwai expressed concern about these allocations and their impacts on mokopuna. Tuhiwai and Kaipō also discussed local people finding dead eels in the river, which they believed were thrown back in by fishers. They discussed the impact of forestry on the river, including the decline of water levels over summer, and raised a proposal by a forestry company to log near a pā site which belonged to the tupuna Manaia and his daughter Āhuaiti. They feared the works would cross the river onto the pā site. Water quality was also discussed, with claimants saying that while tangata whenua drank from the river in the 1970s, they no longer did. They said there was no public rest area with a toilet between Whāngārei and Kaikohe, and that people used the river as a toilet facility. They also raised the lack of rubbish bins, saying that local people ended up cleaning up rubbish at these sites; they had discussed these problems with DOC and WDC. Regarding the rest area at Omiru/Wairua Falls, they raised concerns about the dangers of swimming there, saying tangata whenua had threatened to close it off but that they could, however, monitor it if they were funded for

¹⁶⁰⁴ Transcript of evidence presented by Kaile Nahi-Taihia, Wai 1040 #4.1.11, p581

¹⁶⁰⁵ Brief of evidence of Te Ruihana Nepia, Wai 1040 #J14(a), para 16

¹⁶⁰⁶ Transcript of evidence presented by Te Ruihana Nepia, Wai 1040 #4.1.11, p616

¹⁶⁰⁷ Research meeting with Kaipō and Tuhiwai, 13 December 2015

this. Tangata whenua were also concerned that ‘crap ponds’ (dairy shed effluent ponds) were too low, and that effluent was seeping from these ponds on private farmland straight into riverways during floods. Concerns around erosion included too many trees being cut down and not enough riparian planting. The claimants emphasised that all of this was allowed to happen as a result of a Crown process.

7.4 *Local Study #1: Mangakāhia water conservation order application*

7.4.1 Introduction

On 22 December 1993 Sharon Kaipo, Heketari (Secretary) of Mangakāhia Māori Komiti, applied to the Minister of the Environment for a water conservation order over the Mangakāhia riverbed, water, and associated estuaries and tributaries.¹⁶⁰⁸ This application proceeded alongside the resource consent process and appeals, and was one strategy employed by tangata whenua to exercise kaitiakitanga over the Mangakāhia River.

This local study considers the application process, looking briefly at previous publications on this application, then outlines how water conservation orders work, before turning specifically to discuss the Mangakāhia Māori Komiti application. Pivotal to the water conservation order narrative is the Mangakāhia irrigation scheme, in which a group of farmers in the Mangakāhia Valley applied to NRC for consent to take water from the Mangakāhia for farm irrigation. While this process is interlinked with the application for a water conservation order, it has been discussed in several other publications and will not be dealt with in great detail here. For that reason, the Planning Tribunal decision on the consent application and a range of secondary sources are relied upon in this section.

There are several secondary sources that look at the Planning Tribunal process. Sharon Kaipo of Parahaki Marae published a report on Mangakāhia irrigation from a tangata

¹⁶⁰⁸ Sharon Kaipo to Minister of the Environment, 22 December 1993. MfE file NPR(A) 6/2

whenua perspective in 1997.¹⁶⁰⁹ The report outlined Māori cosmology, hapū structure and relations, then covered the opposition process including the role of tikanga Māori, reasons for Māori objections, and tangata whenua reactions to decisions. The Kaipo report was connected to an ethnographic study of rural sustainability in the Mangakāhia Valley published by the Department of Geography at the University of Auckland in 1997, analysing relations between communities, sustainability and land-based production.¹⁶¹⁰ It covered the application and consultation process, as well as the appeal to the Planning Tribunal, and the subsequent appeal to the High Court, focusing on experiences of community groups. Historian Tony Walzl's mana whenua report produced for Tai Tokerau District Māori Council in December 2012 explores the Mangakāhia River as a case study in a section entitled 'Challenges to Local Rangatiratanga'.¹⁶¹¹ Walzl summarised the Mangakāhia irrigation scheme resource consent process and the subsequent appeal to the Planning Tribunal, relying on extracts from the Planning Tribunal decision. Walzl also briefly covered events after the Planning Tribunal decision, including NRC's 2002 recommendation to grant six replacement resource consent applications to take water for ten years.¹⁶¹² Finally, historian David Alexander's November 2006 environmental impact report, commissioned for this inquiry by Crown Forestry Rental Trust, also looked at the irrigation scheme, briefly outlining the application, Māori objections, NRC and Planning Tribunal processes, and Māori reactions.¹⁶¹³

7.4.1.1 Irrigation claims issues

The irrigation scheme was discussed in the amended statement of claim for the Ngā Uri o Mangakāhia Claim (Wai 1467) with claimants objecting to irrigation on the basis that the Mangakāhia River is a taonga, a source of identity, mana, and social and spiritual wellbeing.¹⁶¹⁴ It was also raised in evidence presented to the Waitangi Tribunal by

¹⁶⁰⁹ Kaipo, 1997. This was produced in conjunction with the Scott, Park, Cocklin and Blunden report of the same year.

¹⁶¹⁰ Kathryn Scott, Julie Park, Chris Cocklin and Greg Blunden, *"A Sense of Community": An Ethnography of Rural Sustainability in the Mangakahia Valley, Northland*, Occasional publication 33, Department of Geography, University of Auckland, 1997

¹⁶¹¹ Tony Walzl, Tai Tokerau District Māori Council Mana Whenua Report, Wai 1040 #E34

¹⁶¹² Walzl, #E34, p336

¹⁶¹³ David Alexander, Land-based resources, waterways and environmental impacts, Wai 1040 #A7, pp298-300

¹⁶¹⁴ Ngā Uri o Mangakāhia Claim, Wai 1040 #1.1.184(a), para 13.28

Sharon Kaipo, who discussed the scheme and the consultation process at the Mangakāhia hearing week in December 2013.¹⁶¹⁵

7.4.2 Water conservation orders

Before looking at this specific application, it is worth looking at the purpose of water conservation orders (WCOs) and how they work. Water conservation orders are a protection mechanism provided for in the Resource Management Act 1991, which the Ministry for the Environment says exist ‘to provide recognition of the outstanding amenity or intrinsic values of water bodies.’¹⁶¹⁶ As discussed in Chapter One, water conservation orders were first introduced in the Water and Soil Conservation Amendment Act 1981 and later incorporated into the RMA in 1991. Unlike many RMA processes, however, water conservation orders are dealt with directly by the Ministry for the Environment, a Crown agency. They can be applied over rivers, lakes, streams, ponds, wetlands or aquifers and over freshwater or geothermal water.¹⁶¹⁷ They can prohibit or restrict a regional council from issuing new water and discharge permits, but cannot affect existing permits and councils must ensure that their regional policy statements and plans do not contradict water conservation order provisions.¹⁶¹⁸ The water conservation order website set up by Fish & Game New Zealand describes them as ‘the highest level of protection that can be afforded to any water body’, saying they can protect water bodies from ‘ad hoc and potentially harmful activity that [conflict] with the values of the river.’¹⁶¹⁹

According to the Ministry for the Environment, water conservation orders can provide for:

- Preservation of the water body’s natural state as far as possible;
- Protection of characteristics (as habitat for terrestrial or aquatic organisms; as fisheries; for wild, scenic or other natural characteristics;

¹⁶¹⁵ Kaipo, #J6, paras 59-61, 71-72

¹⁶¹⁶ MfE, ‘About water conservation orders’ <https://www.mfe.govt.nz/fresh-water/reform-programme/water-conservation-orders/about-water-conservation-orders> (accessed 8 December 2015)

¹⁶¹⁷ MfE, ‘About water conservation orders’ <https://www.mfe.govt.nz/fresh-water/reform-programme/water-conservation-orders/about-water-conservation-orders> (accessed 8 December 2015)

¹⁶¹⁸ MfE, ‘An Everyday Guide to the RMA Series 1.4: National Level Guidance and Processes’, 2015, p10

¹⁶¹⁹ Fish & Game New Zealand, ‘Highest Level Protection’ <http://www.outstandingrivers.org.nz/moreinfo.html> (accessed 1 April 2015)

for scientific and ecological values; and for recreational, historical, spiritual or cultural purposes) which the water body has or contributes to; and

- Protection of characteristics which any water body has or contributes to and which are considered to be of outstanding significance in accordance with tikanga Māori.¹⁶²⁰

Prior to the RMA, water conservation orders were administered by the Minister for the Environment under the Water and Soil Conservation Amendment Act 1981, with national water conservation orders and local water conservation notices. In a 1989 internal Ministry for the Environment briefing on the drafting of water conservation order text for the upcoming resource management legislation, the public participation process was discussed.¹⁶²¹ Mandatory public hearings were suggested and there was discussion about introducing a requirement to prove a case for the protection of the water body, as well as of the burden that required information could place on applicants.¹⁶²² The briefing paper noted that the need to 'briefly cover Maori values' would 'probably mean the applicant [would] have to carry out some consultation with iwi', but the Ministry for the Environment staff member who wrote the briefing paper did not think any specific consultation requirement should be imposed on the applicant.¹⁶²³

A year after the introduction of the RMA Ministry for the Environment policy staff acknowledged some of the difficulties facing those seeking a water conservation order. They commented that water conservation order applications 'tend[ed] to be an extremely costly process particular[ly] on the applicant in terms of the preparation of evidence, legal fees and other costs.'¹⁶²⁴ Also, 'conservation orders to date have only been sought for waters where there are significant conflicts', and 'costs tend to be proportional to the degree of competing interest for the water resource.'¹⁶²⁵ In response to an external query, Ministry staff advised that other ways to seek protection of the

¹⁶²⁰ MfE, 'About water conservation orders' <https://www.mfe.govt.nz/fresh-water/reform-programme/water-conservation-orders/about-water-conservation-orders> (accessed 8 December 2015)

¹⁶²¹ Jacky Challis to John Hassan, Brent Cowie, Tom Fookes, Craig Lawson, Morrie Love, Claire Mulcock, and Karen Baird, 'Water conservations: Notes for law drafting', 11 August 1989, MfE file NPR(A) 6/2

¹⁶²² Challis, 'Water conservations: Notes for law drafting', 11 August 1989, MfE file NPR(A) 6/2

¹⁶²³ Challis, 'Water conservations: Notes for law drafting', 11 August 1989, MfE file NPR(A) 6/2

¹⁶²⁴ David le Marquand to R.L. Dozell, 'Water conservation order', 7 July 1992, MfE file NPR(A) 6/2

¹⁶²⁵ le Marquand, 'Water conservation order', 7 July 1992, MfE file NPR(A) 6/2

environment included ensuring that relevant local government plans and policy statements had ‘appropriate policies and rules’; participating in the issuing of resource consents; or, if all else failed, initiating enforcement action against any person who generated adverse effects on the environment under the RMA.¹⁶²⁶

The Ministry for the Environment’s website sets out the current process for assessment of applications.¹⁶²⁷ Anyone can apply to the Minister of the Environment for a water conservation order and if application criteria are met, the Minister appoints a special tribunal to consider and make recommendations on the application.¹⁶²⁸ The appointed tribunal notifies the application, allowing for a submission period of at least 20 working days at which stage anyone may make a submission.¹⁶²⁹ Hearings are held, and then the tribunal makes recommendations.¹⁶³⁰ The applicant and submitters may then make submissions on the tribunal’s report and recommendations. If they do, the Environment Court must hold a public inquiry and recommend whether the tribunal’s report should be rejected, accepted, or modified.¹⁶³¹ Finally, the Minister considers the tribunal’s report (or the Environment Court decision if a public inquiry was held) and decides whether to make the water conservation order. If the Minister does not find in accordance with the relevant report, s/he must provide reasons for rejecting it.¹⁶³² If the Minister decides to grant it, the recommendation is made to the Governor-General who makes the water conservation order by Order in Council.¹⁶³³

7.4.3 Mangakāhia irrigation scheme and the application for a water conservation order

Concerns about a proposed irrigation scheme that would take water from the Mangakāhia River led the Mangakāhia Māori Komiti to apply for a water conservation order in December 1993. This section looks at the irrigation scheme’s consent process and tangata whenua responses. In early 1993, a group of dairy farmers in the

¹⁶²⁶ le Marquand, ‘Water conservation order’, 7 July 1992, MfE file NPR(A) 6/2

¹⁶²⁷ MfE, ‘About water conservation orders’ <https://www.mfe.govt.nz/fresh-water/reform-programme/water-conservation-orders/about-water-conservation-orders> (accessed 8 December 2015)

¹⁶²⁸ MfE, ‘An Everyday Guide to the RMA’, 2015, p11

¹⁶²⁹ MfE, ‘An Everyday Guide to the RMA’, 2015, p12

¹⁶³⁰ MfE, ‘An Everyday Guide to the RMA’, 2015, p11

¹⁶³¹ MfE, ‘An Everyday Guide to the RMA’, 2015, p11

¹⁶³² MfE, ‘An Everyday Guide to the RMA’, 2015, p12

¹⁶³³ MfE, ‘An Everyday Guide to the RMA’, 2015, p12

Mangakāhia Valley formed the Mangakāhia Irrigation Committee, an unincorporated body, in order to approach the NRC for consents to take Mangakāhia River water for farm irrigation.¹⁶³⁴ The original application sought approval for 26 applicants to take water from the Mangakāhia River to irrigate their farms, in order to improve operational efficiency and increase returns.

The applicants conducted some consultation with the Mangakāhia Māori community over the consent application.¹⁶³⁵ The consent application was publicly notified and NRC also advised some Māori groups in the district of the application. In May 1993, Wallace Poa, on behalf of Ngāti Terino Marae Trustees, objected to the application on the grounds that there had been insufficient time for trustees to meet and discuss it.¹⁶³⁶ The Trustees filed a further submission in July 1993, objecting due to the short time frame for consultation, adverse environmental effects, and limited data available.¹⁶³⁷ They mentioned DOC's environmental concerns and expressed their own that 'money [would] dictate the decision', saying they hoped that the Council would not be swayed by the financial benefits envisaged.¹⁶³⁸ They requested that the hearing be delayed until the NRC's draft proposals on water, soil and conservation became policy. They said further discussion and consultation was needed for iwi, the community, and the applicants to formulate sensible, acceptable and realistic proposals, monitoring processes and financial responsibilities.¹⁶³⁹

After the Mangakāhia Irrigation Committee's original application was lodged with the NRC, a hui was held at Parahaki Marae on 17 July 1993 attended by applicants and representatives of five marae.¹⁶⁴⁰ Shortly after this hui Kaipō, on behalf of the Komiti, wrote to NRC requesting an extension to the consultation period, saying that they needed to discuss implications to resources such as tuna, kēwai (freshwater crayfish),

¹⁶³⁴ Planning Tribunal decision No. A 107/95, *Mangakāhia Māori Komiti v Northland Regional Council*, pp 4-5. The Planning Tribunal decision provides few details on the application itself.

¹⁶³⁵ NIWA, 'Environmental Monitoring Report for the Mangakahia River, prepared for the Mangakahia Irrigation Committee', July 1996, NRC file 5069, vol. 1, 'Taraunui Farms Ltd'

¹⁶³⁶ W.E. Poa to NRC, 14 May 1993, NRC file 5088, vol 1, 'Mangakahia applications'. The original application has not been accessed for this research, so it is unclear how long the notification period was.

¹⁶³⁷ Wallace E. Poa to NRC, 'RE: File: N.R.C.: 5033-5010. Water Right Application No: N.R.C. 5009-33', 22 July 1993, NRC file, vol. 2, 'Mangakahia Submissions'

¹⁶³⁸ Poa, 22 July 1993, p2, NRC file 5033-009, vol. 2, 'Mangakahia Submissions'

¹⁶³⁹ Poa, 22 July 1993, pp2-3, NRC file 5033-009, vol. 2, 'Mangakahia Submissions'

¹⁶⁴⁰ Scott et al, 1997, p203

and watercress.¹⁶⁴¹ Also in July 1993, Kaipo, this time on behalf of Te Rōpū Takiwā o Mangakāhia, requested an extension for submissions, saying they lacked information, the timeframes set were too short, and that there was only opportunity for one hui.¹⁶⁴²

By 29 July 1993 the NRC had received submissions from the Komiti and Te Rōpū Takiwā o Mangakāhia and advised that they would accept additional evidence, as consultation was still taking place.¹⁶⁴³ The Council also asked if there were any additional iwi groups who registered their concern at the hui and wished to file submissions. On 9 August Kaipo contacted the Council offering to host a hui on a Mangakāhia marae to establish relationships with NRC and to discuss hapū cultural and spiritual values of rivers and waterways as resources.¹⁶⁴⁴ She also said Maungarongo Marae wished to be considered as a submitter. On 19 August a Council employee called Kaipo to discuss attendance of the hui, saying the Council was unable to fund it, but could possibly attend; Kaipo was to contact the Council again.¹⁶⁴⁵

The proposed irrigation scheme and related resource management planning featured in the media. A *Northern Advocate* article from 30 July 1993 covered the proposed irrigation scheme, saying one of the biggest problems was that until the NRC's Regional Water and Soil Plan was finalised (scheduled for the following year), it had no official policy for dealing with such proposals.¹⁶⁴⁶ The *Advocate* reported that NRC had already determined the maximum amount of water it would allow to be taken from most of the region's major rivers. In *Sustainable Land Management News* of July 1993, the NRC discussed the proposed irrigation scheme, listing the ten 'main resource management issues'. Tangata whenua values were not listed as an issue, the closest point was that of '[c]onflict with other water uses or values (eg habitat values for aquatic life, aesthetic

¹⁶⁴¹ S. Kaipo to Jo Brosnahan, 8 July 1993, NRC file 5033-009, vol. 2, 'Mangakahia submissions'

¹⁶⁴² S. Kaipo to NRC, 20 July 1994, NRC file 5033-009, vol. 2, 'Mangakahia'

¹⁶⁴³ Helen B. Codlin to S. Kaipo, 'Application for Resource Consents from Mangakahia River', 29 July 1993, NRC file 5033-009, vol. 2, 'Mangakahia Submissions'

¹⁶⁴⁴ S. Kaipo to Helen B. Codlin, 9 August 1993, NRC file 5009-33 vol. 3, 'Mangakahia'

¹⁶⁴⁵ NRC, file note, 'Sharon Kaipo/9 Aug 1993: Request for hui', 19 August 1993, NRC file 5009-33 vol. 3, 'Mangakahia'

¹⁶⁴⁶ *Northern Advocate*, 'NRC may revamps 1980s policy', 30 July 1993, NRC file 5009-33 vol. 3, 'Mangakahia'

and recreational values)'.¹⁶⁴⁷ On 9 August the *Northern News* reported that NRC held a meeting the previous week to inform dairy farmers of environmental issues to do with taking water from rivers for large-scale irrigation.¹⁶⁴⁸ Reporting on the hearing held in August 1993 as part of NRC's efforts to formulate an irrigation policy, the *Northern Advocate* quoted John Smith, WDC's Water Resources Manager, as saying it was 'of the utmost importance the allocation of water was done in a manner that is transparent and fair to all legitimate water users while at the same time taking into consideration the values of the in-stream life and those of the tangata whenua'.¹⁶⁴⁹ In a November 1993 *Northern Times* article covering irrigation in Northland, NRC's Consents Manager, Dave Roke, said that consultation with tangata whenua played an important part in the RMA consent process:

The Act requires the Council to recognise and provide for the cultural and spiritual concerns Maori have in relation to water. The potential applicant who avoids consultation with the tangata whenua will find his application may be delayed in the absence of information which can only be obtained by consultation.¹⁶⁵⁰

He continued that such negotiation was better done at a community level rather than in a more adversarial and formal consent hearing process.

Preliminary discussions were occurring in advance of the irrigation consent hearings, as the Council and Māori groups continued to discuss the irrigation proposal. On 23 August 1993, NRC advised TRAION that the applicants had commissioned a study of the potential impacts of the proposal, which would 'hopefully' address water quality, river flows, and ecological effects.¹⁶⁵¹ Once the Council received the report, they expected that a hearing, if necessary, would be scheduled no more than 25 days later.¹⁶⁵² They said a hearing would probably be held around mid-October. The Council said they encouraged consultation and that the groups should continue to hold discussions

¹⁶⁴⁷ Geoff Heaps, 'Northland Regional Council, in *Newsletter: Sustainable Land Management*, edition 3, July 1993, NRC file 5009-33 vol. 3, 'Mangakahia'

¹⁶⁴⁸ *Northern News*, 'Farms may compete for Awanui water', 5 August 1993, NRC file 5009-33 vol. 3, 'Mangakahia'

¹⁶⁴⁹ *Northern Advocate*, 'Huge North irrigation proposal arouses fears over water usage', 19 August 1993, NRC file 5009-33 vol. 3, 'Mangakahia'

¹⁶⁵⁰ *Northland Times*, 6 November 1993 NRC file 5088, vol 1, 'Mangakahia applications'

¹⁶⁵¹ R. Elliot (for D. Roke) to Leatrice Smith, 'Application to take water for pasture irrigation Mangakahia Catchment', 23 August 1993, NRC file 5009-33 vol. 3, 'Mangakahia'

¹⁶⁵² Elliot, 23 August 1993, NRC file 5009-33 vol. 3, 'Mangakahia'

throughout the consents process. Leatrice Smith wrote to NRC on behalf of TRAION, requesting that the hearing date be extended, as the tangata whenua connected with the Mangakāhia did not consider one hui to be sufficient consultation, with many marae with affiliations to the river not being informed. They said the Ngāpuhi Conservation Portfolio would organise four further hui with the appropriate tangata whenua and farmers before the hearing.¹⁶⁵³

September 1993 was the deadline for submissions on the proposal and NRC received seven in support and 17 in opposition. DOC sought that the application be declined, due to the importance of the Mangakāhia catchment as a habitat for native fish. They emphasised the need to assess alternatives, to measure base flows, and expressed concerns about the intake pipe proposal and the term, saying if granted, it should be no more than five years.¹⁶⁵⁴ Lucy Nepia, on behalf of Korokota Board of Trustees, wrote to the Council opposing the scheme for physical, historical, environmental, cultural and spiritual reasons.¹⁶⁵⁵ She expressed concerns about Korokota Marae's water supply diminishing and becoming contaminated. She said tangata whenua had depended on the river for their wellbeing for centuries, 'and we cannot let our already impoverished family give up yet another slice [of] their heritage.' C.A. (Carol) Dodd, Sharon Kaipo's sister, also wrote to NRC opposing the application due to a lack of information and scientific data on the scheme, which she said had excessively high draw-off levels. These would, she thought, have long-term effects on the environment and food resources and could lead to worse pollution from farm effluent.¹⁶⁵⁶ Dodd wrote that she hoped the Council would put the application on hold until further information was compiled and standards and plans were set. She wrote that if the application succeeded, she thought that an iwi authority should work with the Council to monitor performance.

¹⁶⁵³ Leatrice M. Smith to Colin Dall, 'Re - Mangakahia Farmers Water Extraction Application', 30 July 1993, NRC file 5033-009, vol. 2, 'Mangakahia Submissions'

¹⁶⁵⁴ Andre Visser to NRC, 'Resource Management Act 1991: Consent Application - Archer T W and Christie C B, Mangakahia', 21 September 1993, NRC file 5069, vol. 1, 'Taraunui Farms'

¹⁶⁵⁵ Lucy Nepia to NRC, 'Re: Application for Right Take Water Supply', 14 May 1993, NRC file 5088, vol 1, 'Mangakahia applications'

¹⁶⁵⁶ C.A. Dodd to NRC, 're:- Application for water rights - Mangakahia River', 19 July 1993, NRC file 5033-009, vol. 2, 'Mangakahia Submissions'

Māori groups objected to the application to use Mangakāhia River water for mass-scale irrigation for a range of reasons. In his statement of claim to the Waitangi Tribunal dated 1 November 2011, Te Hapae Bob Ashby said, 'Ngā Uri o Mangakahia objected on the basis that the Mangakahia River is a taonga. It is a source of their identity and mana, and their social and spiritual wellbeing.'¹⁶⁵⁷ In her 1997 report, Sharon Kaipo discussed the hapū decision to oppose the application, based on cultural and spiritual concerns for the protection and preservation of the awa.¹⁶⁵⁸ In Kaipo's view the irrigation scheme 'was a totally inappropriate use of our taonga (treasure)' and she feared that if the irrigation scheme was approved 'further degradation would occur' due to farming and forestry activity.¹⁶⁵⁹

The farmers' application faced major initial hurdles. On 2 October 1993 NRC staff Riann Elliot and Sam Napia met with the Komiti at Maungarongo Marae. They subsequently recommended declining the application due to, according to Lorraine Norris' Planning Tribunal evidence, the cultural and spiritual significance of the river.¹⁶⁶⁰ On 27 October 1993, the Mangakāhia Irrigation Committee withdrew the application, requesting the scheduled hearing be postponed. The Irrigation Committee then commissioned a more detailed environmental assessment report and would reapply the following year.

7.4.3.1 Mangakāhia Māori Komiti application for a water conservation order

Though the irrigation application was temporarily withdrawn, concerns about the river remained and, at the suggestion of whānau who worked at the Ministry for the Environment, the Mangakāhia Māori Komiti applied to the Ministry for a water conservation order to be applied to the Mangakāhia River.¹⁶⁶¹ The Mangakāhia Māori Komiti had been set up under the Māori Community Development Act 1962 and consisted of five marae within Mangakāhia: Parahaki Marae at Nukutawhiti, Te Tarai O Rahiri Marae at Pakotai, Te Aroha Marae at Parakao, Korokota Marae at Tītoki, and Maungarongo Marae at Porotī. In the application, Kaipo stated the river was of great cultural and spiritual value to the people and their wellbeing and thus the application

¹⁶⁵⁷ Statement of claim of Te Hapae Bob Ashby for Ngā Uri o Mangakāhia Claim, Wai 1040 #1.1.184(a), para 13.28

¹⁶⁵⁸ Kaipo, 1997, p6

¹⁶⁵⁹ Kaipo, 1997, p6

¹⁶⁶⁰ Planning Tribunal decision No. A 107/95, p13

¹⁶⁶¹ Research meeting with Kaipo and Tuhiwai, 13 December 2015

was based on 'a need to protect' their taonga in accordance with tikanga Māori.¹⁶⁶² They sought to protect the natural and spiritual values of the river, as well as the community's recreation needs. Kaipo described the importance of the river to the marae and their people 'since the beginning of time'.¹⁶⁶³ Kaipo outlined concerns about 'severe adverse' effects of the irrigation scheme on the river and the people, explaining that the Komiti considered the taking of water for irrigation an inappropriate use of taonga which would be detrimental to their people's livelihood, including to their unborn mokopuna.¹⁶⁶⁴ The application ended by saying that the Mangakāhia Māori Komiti 'strongly believe that prohibition of the taking of water is necessary in order to protect, sustain, and preserve our Taonga'.¹⁶⁶⁵ A cheque for \$250 was enclosed to pay for the application.

7.4.4 The Ministry's initial assessment of the Mangakāhia water conservation order application

The Komiti application was the first water conservation order application based on cultural values, seeking to protect the river as a taonga in its natural state. Ministry for the Environment staff were unsure how to proceed.¹⁶⁶⁶ Ministry for the Environment head office staff Sue Veart and Craig (possibly Craig Lawson) reacted cautiously to the application. Veart wrote to fellow Ministry staff on 18 January 1994 that she would prefer that staff at the Northland regional office of the Ministry talk over the process with the applicants before the cheque was banked.¹⁶⁶⁷ This was suggested as an initial course of action 'not to dis[s]uade them but to ensure they are aware of the process, cost etc and see if they have investigated the options of a regional plan, policies in the [regional plans] etc.'¹⁶⁶⁸ Veart suggested that such contact from the Ministry could be framed as 'a [public relations] exercise to ensure the applicants are aware of the process

¹⁶⁶² Sharon Kaipo to Minister for the Environment, 22 December 1993, MfE file NPR(A) 6/2

¹⁶⁶³ Kaipo, 22 December 1993, MfE file NPR(A) 6/2

¹⁶⁶⁴ Kaipo, 22 December 1993, MfE file NPR(A) 6/2

¹⁶⁶⁵ Kaipo, 22 December 1993, MfE file NPR(A) 6/2

¹⁶⁶⁶ Kathleen Ryan to Minister for the Environment, 'Application for a water conservation order on the Mangakāhia River and tributaries', 8 July 1994, MfE file NPR(A) 6/2

¹⁶⁶⁷ S. Veart to B. Zuur, C.A. Lawson, A.J. Gallen, K. Ryan, S. Smith, 'RE: Another water conservation order application', 18 January 1994, MfE file NPR(A) 6/2

¹⁶⁶⁸ Veart, 18 January 1994, MfE file NPR(A) 6/2

and the alternatives.’¹⁶⁶⁹ She concluded by saying that the Ministry considered that ‘this is obviously an issue that may (would) be better [served] via a regional plan.’¹⁶⁷⁰

These initial suggestions about how the Mangakāhia water conservation order application could be handled led to questions about what criteria such applications needed to meet. A Ministry staff member, Bob Zuur, suspected that the river would not qualify under the ‘national significance test’.¹⁶⁷¹ It is not clear how formal any such ‘national significance’ criteria were at the time. The mention of such criteria seems to have surprised legal staff member, John (A.J.) Gallen, who responded, ‘What national significance test?’¹⁶⁷² He emphasised the Minister and Ministry’s ‘very circumscribed’ role in dealing with these applications and advised:

We must be careful not to usurp the role of the special tribunal. It is their task to inquire into the application and if, after considering the matters stipulated, they consider that an order should not be made, they can recommend to the Minister that the application be declined.¹⁶⁷³

Gallen supported Veart’s initial suggestion that the staff in the Ministry’s Northland office be asked to discuss the application with the Komiti. Gallen stated that he saw ‘no harm’ in those staff discussing the application with the Komiti, saying it ‘made good sense’ but he considered that it would ‘have to be done with considerable tact and discretion.’ He was aware that ‘[t]he treatment of Maori interests and aspirations in resource management (including [water conservation orders]) is particularly sensitive just now.’ Again, he warned that ‘there be no attempt on our part to pre-judge the application or the issues, no suggestion that we are coercing or leaning on the Komiti, and no exercise of any authority other than that contemplated by the [Resource Management] Act.’¹⁶⁷⁴ In order to be ‘scrupulous’ in dealing with the application and avoid any later questions about staff pre-judging it, Gallen recommended the cheque for

¹⁶⁶⁹ Veart, 18 January 1994, MfE file NPR(A) 6/2

¹⁶⁷⁰ S. Veart to B. Zuur, C.A. Lawson, A.J. Gallen, K. Ryan, S. Smith, ‘RE: Another water conservation order application’, 18 January 1994, MfE file NPR(A) 6/2

¹⁶⁷¹ B. Zuur to K. Ryan, S. Veart, A.J. Gallen, B. Arthur, J. Challis, S. Baird, C. Barton, E. Blake, J. Challis, T. Halliburton, F. Lane, ‘Another water conservation order application’, 11 January 1994, MfE file NPR(A) 6/2

¹⁶⁷² A.J. Gallen to B. Zuur, B. Arthur, H. Atkins, M.M. Bramley, A.J. Gallen, S. Smith, M. Wilson, ‘RE: Another water conservation order application’, 11 January 1994, MfE file NPR(A) 6/2

¹⁶⁷³ Gallen, 11 January 1994, MfE file NPR(A) 6/2

¹⁶⁷⁴ A.J. Gallen to S. Veart, B. Zuur, C.A. Lawson, K. Ryan, S. Smith, L. Gow, ‘RE: RE: Another water conservation order application’, 19 January 1994, MfE file NPR(A) 6/2

the application fee be banked, as was the normal practice when an application was received.¹⁶⁷⁵

Meanwhile, Ministry staff in Wellington began assessing the adequacy of the application. Head office staff member Sian Smith, produced an internal report on the application on 14 January 1994. The report assessed the application against the application requirements under the Resource Management Act to:

- a) identify the water body;
- b) provide reasons for application; and
- c) say what provisions the applicants wish to have included in any order.¹⁶⁷⁶

The report concluded there was probably enough information to identify the water body. However, it was not clear to Smith which reason for application (whether to recognise and sustain outstanding value of waters in their natural state, or to recognise and sustain values of waters which were no longer in their natural state but whose values were outstanding enough to warrant protection) applied.¹⁶⁷⁷ Smith did note that the application's request for a prohibition on taking water was deemed a valid restriction to include in an order.¹⁶⁷⁸

In addition to a lack of clarity on the reason for the application, Smith considered that it had failed to address the needs of industry and community and relevant provisions in national, regional and district policy statements and plans, as required by the RMA.¹⁶⁷⁹ It is worth noting that Section 207 of the RMA requires special tribunals to 'have particular regard to' the needs of industry and the community, and relevant provisions in various policy statements and plans, but the Act does not require this to be dealt with in the application.¹⁶⁸⁰ Smith suggested that Ministry staff should seek further information from the Komiti regarding needs of industry and community and relevant

¹⁶⁷⁵ Gallen, 19 January 1994, MfE file NPR(A) 6/2

¹⁶⁷⁶ Sian Smith to Sue Veart, John Gallen, Jacky Challis, 'Application for Water Conservation Order in respect of Mangakahia River', 14 January 1994, MfE file NPR(A) 6/2

¹⁶⁷⁷ Smith, 14 January 1994, MfE file NPR(A) 6/2

¹⁶⁷⁸ Smith, 14 January 1994, MfE file NPR(A) 6/2

¹⁶⁷⁹ Smith, 14 January 1994, MfE file NPR(A) 6/2

¹⁶⁸⁰ Resource Management Act 1991, s 207

provisions in policy statements and plans.¹⁶⁸¹ With regard to provisions to be included in the order, Smith thought that they should seek further information on what effect the taking of water would have on the river.¹⁶⁸² The application was considered 'deficient in some respects', and Smith provided a list of questions to ask the applicants.¹⁶⁸³ She advised that once the applicant had satisfactorily answered these questions, the application should move to the next stage, and only if the applicant did not satisfactorily supply these particulars could the Minister consider rejecting the application.¹⁶⁸⁴

7.4.5 Ministry advice to the Komiti about the water conservation order and their options

As Veart had proposed, Ministry staff contacted the Komiti to discuss the group's options. A staff member at the Northland regional office, Kathleen Ryan, wrote to colleagues about a conversation with Kaipō and advised that the Komiti planned to file a submission on the Northland Regional Policy Statement.¹⁶⁸⁵ Regarding the application, Ryan said she 'repeatedly stressed' that the Ministry would process it if the Komiti wished to proceed, saying the Ministry were 'concerned that [the Komiti] achieve what they want'.¹⁶⁸⁶

As well as internal concerns about the merits of the application, Ministry staff also expressed more generalised concerns about the way local government in Northland were managing water. Upon hearing that NRC staff recommended that the water take applications be turned down 'on iwi grounds', Bob Zuur of the Wellington office responded that he 'would have to question' NRC's understanding of water management issues, referring to another case where a flower grower was charged \$100 for consultation, presumably with Māori, which Zuur considered 'quite unreasonable'.¹⁶⁸⁷ While he had concerns about the level of water to be taken under the irrigation scheme,

¹⁶⁸¹ Smith, 14 January 1994, MfE file NPR(A) 6/2

¹⁶⁸² Smith, 14 January 1994, MfE file NPR(A) 6/2

¹⁶⁸³ Smith, 14 January 1994, MfE file NPR(A) 6/2

¹⁶⁸⁴ Smith, 14 January 1994, MfE file NPR(A) 6/2

¹⁶⁸⁵ K. Ryan to S. Veart, L. Gow, A.J. Gallen, M. Love, G. Willis, B. Zuur, K. Ryan, 'WCO application', 19 January 1994, MfE file NPR(A) 6/2

¹⁶⁸⁶ Ryan, 19 January 1994, MfE file NPR(A) 6/2

¹⁶⁸⁷ B. Zuur to K. Ryan, S. Veart, L. Gow, A.J. Gallen, M. Love, G. Willis, 'RE: WCO application', 20 January 1994, MfE file NPR(A) 6/2

he ‘would be concerned if no abstractions were permitted, solely on Maori grounds.’¹⁶⁸⁸ He said that NRC ‘need to determine what the iwi’s concerns are, and to try to determine a flow regime which will meet their needs, as well as those of the non-Maori environment’.¹⁶⁸⁹ He continued, ‘[c]learly a water allocation plan is needed whether or not a [water conservation order] is issued. If a [water conservation order] is issued, it is likely to specify the values to be protected, and possibly something like a minimum flow – it will not specify how this flow is to be allocated.’¹⁶⁹⁰

The Māori advisory unit of the Ministry, Maruwhenua, were also in contact with the Komiti and staff expressed concerns about how water conservation order applications could be resourced, discussing other options for the Komiti. An undated file note written by Maruwhenua staff member Morrie Love (probably early- mid- 1994) detailed his meeting with counsel for the Komiti, reporting that they were ‘very sincere’ but were up against a well-resourced farming lobby group (in the resource consent process, at least).¹⁶⁹¹ He reported that the Komiti sought financial and technical information and their legal counsel Stewart Henderson asked whether the Ministry for the Environment could offer financial and/or technical help. Love advised that the best source of funding he knew was through Crown Forestry Rental Trust related to a claim to the Waitangi Tribunal.¹⁶⁹² Love and Henderson discussed how to establish what the RMA meant by ‘outstanding significance in accordance with tikanga Maori’ and the types of information the Minister would need to consider advancing the application.¹⁶⁹³ They also discussed whether a water conservation order was the best strategy to advance the matter and how a regional plan process might be initiated.¹⁶⁹⁴

¹⁶⁸⁸ Zuur, 20 January 1994, MfE file NPR(A) 6/2

¹⁶⁸⁹ Zuur, 20 January 1994, MfE file NPR(A) 6/2

¹⁶⁹⁰ Zuur, 20 January 1994, MfE file NPR(A) 6/2

¹⁶⁹¹ Morrie Love, ‘Mangakahia’, undated, MfE file NPR(A) 6/2

¹⁶⁹² Love, ‘Mangakahia’, MfE file NPR(A) 6/2

¹⁶⁹³ Love, ‘Mangakahia’, MfE file NPR(A) 6/2. See sections 2.3.2 and 7.4.2 of this report for discussion on water conservation orders.

¹⁶⁹⁴ Love, ‘Mangakahia’, MfE file NPR(A) 6/2

7.4.6 Confusion over the cancellation and reinstatement of the water conservation order application

Following internal Komiti discussions and discussions with the Ministry's Northland regional office, including a meeting with Kathleen Ryan and Gerard Willis on 26 January 1994, Kaipo wrote to the Minister for the Environment on 10 February 1994 saying the Komiti wished to cancel the application.¹⁶⁹⁵ She said they planned to pursue change through submissions on the Regional Policy Statement and through Waitangi Tribunal claims, but that they would or might pursue the water conservation order application later. Kaipo thanked the Auckland staff for sharing information.¹⁶⁹⁶

Yet after seeking further advice and consultation (she does not say with whom or provide further information), Kaipo wrote to the Minister for the Environment (dated 20 February, but possibly 20 March)¹⁶⁹⁷ asking to reinstate the Komiti's application for a water conservation order.¹⁶⁹⁸ This was, she noted, despite advice from the aforementioned Auckland staff who had emphasised that it was a long, drawn-out process which could 'more probably... prove fruitless, time consuming and expensive', and that staff had suggested the Komiti 'pursue' the Northland Regional Policy Statement, which was open for submissions at the time.¹⁶⁹⁹

After the Komiti sought to reinstate the application, Ministry staff and the Minister were evidently unclear about the status of the application and the Komiti were becoming frustrated with the process. In late February or early March 1994, the Minister wrote to Murray Douglas, chair of the Mangakāhia Irrigation Committee.¹⁷⁰⁰ He advised that he was not taking any action on the application at that stage 'as the applicant is presently reconsidering whether an order is appropriate.'¹⁷⁰¹ Following this, Ministry staff contacted Kaipo and reported, on 5 April 1994, that she was 'less than impressed' that

¹⁶⁹⁵ Sharon Kaipo to Minister for the Environment, 10 February 1994, MfE file NPR(A) 6/2

¹⁶⁹⁶ Kaipo, 10 February 1994, MfE file NPR(A) 6/2

¹⁶⁹⁷ See M.M. Bramley to Minister for the Environment, 'Application for water conservation order over Mangakahia River', 17 May 1994, MfE file NPR(A) 6/2

¹⁶⁹⁸ Sharon Kaipo to Minister for the Environment, 20 February 1994, MfE file NPR(A) 6/2

¹⁶⁹⁹ Kaipo, 20 February 1994, MfE file NPR(A) 6/2

¹⁷⁰⁰ Simon Upton, Minister for the Environment, to M Douglas, 28 February or 2 March 1994, MfE file NPR(A) 6/2

¹⁷⁰¹ Upton, 28 February or 2 March 1994, MfE file NPR(A) 6/2

she never received a refund of the initial application fee and that she had not received any acknowledgement letters.¹⁷⁰² Indeed, in her 'reinstatement' letter, she requested acknowledgement of the reinstatement.¹⁷⁰³ Gerard Willis of the Ministry's Auckland office noted to Ministry colleagues that he was eager to maintain good relationships with the Komiti, saying 'it would be a pity to spoil' good relations to date.¹⁷⁰⁴ He said he wished to avoid appearing 'overly bureaucratic' or as if the Ministry was stalling the process.¹⁷⁰⁵ He told colleagues that he wanted to make it clear it was in the best interests of the Komiti to follow their legal advice and formally re-lodge the application.¹⁷⁰⁶

Simon Upton, Minister for the Environment, responded to Kaipo (undated, but most likely 6 April 1994) saying that as the Komiti had cancelled the original application they would need to reapply for a water conservation order.¹⁷⁰⁷ He requested further information from them regarding:

- a) whether the river was in its natural state, and if so, what was outstanding about the river or what values were outstanding;
- b) what outstanding values required protection if the river was not in its natural state;
- c) the needs of the community in respect of the river; and
- d) the effect that a prohibition on taking water would have on the river.¹⁷⁰⁸

He advised that he would retain the original \$250 fee, which had not been refunded when Kaipo cancelled her original application, as the fee for the new application.¹⁷⁰⁹

7.4.7 The renewed water conservation order application

The Komiti reapplied on 18 April 1994.¹⁷¹⁰ The Minister wrote again on 24 May 1994 (there is also a letter dated 11 May with the exact same content) requesting the same

¹⁷⁰² Gerard Willis[?] to SV [Sue Veart], MMB [Marilyn Bramley], KR [Kathleen Ryan], DLM[David le Marquand], 'Mangakahia WCO', 5 April 1994, MfE file NPR(A) 6/2

¹⁷⁰³ Kaipo, 20 February 1994, MfE file NPR(A) 6/2

¹⁷⁰⁴ Willis[?], 5 April 1994, MfE file NPR(A) 6/2

¹⁷⁰⁵ Willis[?], 5 April 1994, MfE file NPR(A) 6/2

¹⁷⁰⁶ Willis[?], 5 April 1994, MfE file NPR(A) 6/2

¹⁷⁰⁷ Simon Upton, Minister for the Environment, to S. Kaipo, undated, MfE file NPR(A) 6/2

¹⁷⁰⁸ Upton to Kaipo, undated, MfE file NPR(A) 6/2

¹⁷⁰⁹ Upton to Kaipo, undated, MfE file NPR(A) 6/2

details as above but this time requesting information in accordance with Section 201(3) of the RMA.¹⁷¹¹ This was following Ministry advice that the Minister's previous letter did not constitute a request under Section 201 of the Act. Section 201(3) of the RMA allows the Minister to request, in writing, 'further information in respect of the application as the Minister considers necessary.'¹⁷¹² This meant that provisions of Section 202 (obliging the Minister to either appoint a special tribunal or reject the application) would apply to the application, but that obligation would not be imposed on the Minister until after he received the information requested.¹⁷¹³ Staff had advised that if the Minister continued to wait for information without making a request under Section 201(3) his delay in appointing a special tribunal or rejecting the application could be challenged.¹⁷¹⁴

On 10 June 1994, Kaipo responded to the Minister's request for further information.¹⁷¹⁵ She stated that only tangata whenua could determine use, management and significance of any particular resource within their rohe as only they held mana over that resource.¹⁷¹⁶ She emphasised the centrality of hapū in Māori society which she said was recognised in Te Tiriti o Waitangi and listed marae of the Mangakāhia Valley area, saying their maunga, awa and hapū were all entwined and linked by the Mangakāhia River.¹⁷¹⁷ She claimed the river was outstanding in its natural state (as much as it could be due to climatic and human-caused changes) because it was a taonga of iwi of Mangakāhia, iwi Māori, and of their spiritual and cultural significance.¹⁷¹⁸ She emphasised that the water was the lifeblood of ngā hapū/te iwi and any taking of water would demean the wairua and mauri of the river and affect the mana of tangata whenua/kaitiaki of the resource.¹⁷¹⁹ She said the river should be preserved for:

¹⁷¹⁰ The original is not in Ministry files, but it is referred to in M.M. Bramley, Assistant Office Solicitor, to Minister for the Environment, 'Application for water conservation order over Mangakahia River', 17 May 1994, MfE file NPR(A) 6/2

¹⁷¹¹ Simon Upton, Minister for the Environment, to S. Kaipo, 'Request for further information', 24 May 1994, MfE file NPR(A) 6/2

¹⁷¹² Resource Management Act 1991, s 201(3)

¹⁷¹³ Bramley, 17 May 1994, MfE file NPR(A) 6/2

¹⁷¹⁴ Bramley, 17 May 1994, MfE file NPR(A) 6/2

¹⁷¹⁵ S. Kaipo to Minister for the Environment, 'RE: Request for further information', 10 June 1994, MfE file NPR(A) 6/2

¹⁷¹⁶ Kaipo, 10 June 1994, p1, MfE file NPR(A) 6/2

¹⁷¹⁷ Kaipo, 10 June 1994, p1, MfE file NPR(A) 6/2

¹⁷¹⁸ Kaipo, 10 June 1994, p1, MfE file NPR(A) 6/2

¹⁷¹⁹ Kaipo, 10 June 1994, p1, MfE file NPR(A) 6/2

- a) tangata whenua spiritual and cultural values;
- b) its natural and physical qualities; and
- c) the community's recreational needs.¹⁷²⁰

Kaipo went on to discuss potential impacts on the environment and community. She said taking, damming, and diverting water would have a detrimental effect on water levels, habitat, and soil erosion.¹⁷²¹ She argued that a prohibition on the taking of Mangakāhia River water would have the long-term effect of allowing time for regrowth of flora and fauna.¹⁷²² She listed schools, churches, marae, and other community facilities in the Mangakāhia area, saying that they all used the water resource at various times and this 'must take precedence over farming and or forestry as the river at this stage is at a sustainable level only for community/Marae use.'¹⁷²³ She noted that the proposed Regional Policy Statement could affect the river and that the Komiti had made submissions to the NRC on the proposed policy.¹⁷²⁴ She finished by saying that their tupuna were 'the best conservators ever', protecting the resource for its precious qualities rather than for greed or wealth. She said the 'new generation' must continue tupuna traditions for the wellbeing of iwi Māori, especially for unborn mokopuna.¹⁷²⁵

7.4.8 Ministry concerns about the application

Internal correspondence indicates resourcing pressure on the Ministry's staff for the application.¹⁷²⁶ On 30 March 1994 there was an internal memorandum from Kathleen Ryan of the Northland regional office, saying that the Mangakāhia water conservation order should be processed as far as possible in that financial year, which would 'place very real pressure' on the Northland regional office if they were to take the lead role in processing it.¹⁷²⁷ Staff expressed concerns about how it would affect annual budgets.¹⁷²⁸ The Mangakāhia water conservation order was described by one staff member as

¹⁷²⁰ Kaipo, 10 June 1994, p1, MfE file NPR(A) 6/2

¹⁷²¹ Kaipo, 10 June 1994, p1, MfE file NPR(A) 6/2

¹⁷²² Kaipo, 10 June 1994, p1, MfE file NPR(A) 6/2

¹⁷²³ Kaipo, 10 June 1994, p1, MfE file NPR(A) 6/2

¹⁷²⁴ Kaipo, 10 June 1994, p2, MfE file NPR(A) 6/2

¹⁷²⁵ Kaipo, 10 June 1994, p2, MfE file NPR(A) 6/2

¹⁷²⁶ S. Veart to G. Willis, M.M. Bramley, K. Ryan, D. LeMarquand, M. Love, A.J. Gallen, 7 April, MfE file NPR(A) 6/2

¹⁷²⁷ Ryan, 30 March 1994, MfE file NPR(A) 6/2

¹⁷²⁸ Jacky Challis to [Kathleen] Ryan, Sue Veart, 'Mangakahia WCO Application', 3 April 1996, MfE file NPR(A) 6/2

‘[Northland regional office]’s woes.’¹⁷²⁹ Staff member Ian Lineham provided an internal assessment of the resource demands of water conservation order processes, based on experience in Kawerau.¹⁷³⁰ Lineham estimated the application would take 1,000 hours to service.¹⁷³¹ As well as resourcing concerns, Ministry staff were concerned that the application needed to be strong. Lineham advised that given the time constraints prescribed in the RMA, he believed a water conservation order application needed to be a ‘very good [application] at the outset.’¹⁷³² He argued that the onus was on the applicant to put forward a ‘very good case’, but acknowledged it was the special tribunal that would have to seek further information, not the Minister or Ministry.¹⁷³³ Despite these concerns, following the Komiti’s letter of 10 June, Ministry staff determined there were no legal grounds for declining the application and prepared advice for the Minister and to applicants.¹⁷³⁴

7.4.9 Advice to the Minister for the Environment and his response to the applicants

On 8 July 1994 the Regional Manager of the Northland regional office, Kathleen Ryan, advised the Minister to receive the Komiti’s application for a water conservation order over the Mangakāhia River and its tributaries.¹⁷³⁵ Ryan identified Māori concerns about the irrigation schemes and their impact, and advised that there were no specific Treaty of Waitangi claims relating to the Mangakāhia River.¹⁷³⁶ She advised that as well as recognising and sustaining outstanding amenity or intrinsic values of waters, a water conservation order may also provide for the protection of characteristics considered to be of outstanding significance in accordance with tikanga Māori.¹⁷³⁷ There were no legal grounds for declining the application, Ryan advised, and the Minister’s discretion to

¹⁷²⁹ Ryan, 30 March 1994, MfE file NPR(A) 6/2

¹⁷³⁰ I. Lineham to D. LeMarquand, K. Ryan, L. Gow, S. Veart, A.J. Gallen, ‘Resources on WCOs’, 30 March 1994, MfE file NPR(A) 6/2

¹⁷³¹ Kathleen Ryan to Lindsay Gow, DLM [David le Marquand], GW [Gerard Willis], MC [?], MHS [?], SV [Sue Veart], AJG [John Gallen], AH[?], IL[?], FL[?], CB[?], 30 March 1994, MfE file NPR(A) 6/2

¹⁷³² I. Lineham to D. LeMarquand, K. Ryan, L. Gow, S. Veart, A.J. Gallen, ‘Resources on WCOs’, 30 March 1994, MfE file NPR(A) 6/2

¹⁷³³ Lineham, 30 March 1994, MfE file NPR(A) 6/2

¹⁷³⁴ Marilyn Bramley, ‘Notes re Mangakahia teleconference – Friday 24 June’, MfE file NPR(A) 6/2

¹⁷³⁵ Kathleen Ryan to Minister for the Environment, ‘Application for a water conservation order on the Mangakahia River and tributaries’, 8 July 1994, MfE file NPR(A) 6/2

¹⁷³⁶ Ryan, 8 July 1994, MfE file NPR(A) 6/2

¹⁷³⁷ Ryan, 8 July 1994, MfE file NPR(A) 6/2

decline an application was limited.¹⁷³⁸ In advice provided to the Secretary for the Environment on 24 August 1994, Crown counsel M.T. (Malcolm) Parker said the RMA 'suggests that the role of the Minister is to decide whether there is sufficient merit in the application to justify referring it to a Special Tribunal.'¹⁷³⁹ Parker advised that while the application must pass a basic threshold test, this test should not be very high.¹⁷⁴⁰ If the Minister was satisfied that an application could never be granted, he would be justified in rejecting the application, but he should 'put the test no higher.'¹⁷⁴¹

Following this advice the Minister wrote to the Komiti, saying he was beginning the process of appointing a special tribunal to hear the application (undated, unclear if it was sent).¹⁷⁴² He wrote that the application appeared to include some matters outside of the scope of water conservation orders, relating to riverbeds and coastal waters, and suggested the Komiti may find it helpful to seek legal advice on their application.¹⁷⁴³ The Minister also wrote to various ministers and members of parliament seeking nominations for special tribunal members (also undated, unclear if it was sent).¹⁷⁴⁴

After seeking further advice on the requirements for water conservations, his powers, and the tests he must apply under the RMA the Minister wrote to the Komiti again (also undated), seeking further information. He advised that for a river to qualify as 'outstanding' it would need to 'stand out from the rest' in comparison with other water bodies and in accordance with tikanga Māori.¹⁷⁴⁵ His Section 202 RMA responsibilities were, he noted, to decide whether there was sufficient merit in applications to refer them to a special tribunal and he could reject applications if he was satisfied they could

¹⁷³⁸ Ryan, 8 July 1994, MfE file NPR(A) 6/2

¹⁷³⁹ M.T. Parker to Secretary for the Environment, 'Water Conservation Orders – Ministers Powers', 24 August 1994, p1, MfE file NPR(A) 6/2

¹⁷⁴⁰ Parker, 24 August 1994, p 2, MfE file NPR(A) 6/2

¹⁷⁴¹ Parker, 24 August 1994, p 2, MfE file NPR(A) 6/2

¹⁷⁴² Simon Upton, Minister for the Environment, to Sharon Kaipo, undated, MfE file NPR(A) 6/2 [different from previous undated]

¹⁷⁴³ Upton to Kaipo, undated, MfE file NPR(A) 6/2

¹⁷⁴⁴ Simon Upton, Minister for the Environment, to Ministers with a portfolio interest in the application (Minister of Conservation, Minister of Māori Affairs, Minister of Agriculture, Minister of Forestry, Minister of Cultural Affairs, Minister of Justice) and Government members of parliament for Northland (the Member for the Far North, the Member for Hobson, the Member for Whāngārei, the Member for Kaipara), 'Nominations sought for special tribunal to hear water conservation order application for the Mangakahia River', undated, MfE file NPR(A) 6/2

¹⁷⁴⁵ Simon Upton, Minister for the Environment, to S. Kaipo, 'Application for water conservation order – Mangakahia River', undated, MfE file NPR(A) 6/2

never be granted.¹⁷⁴⁶ The Minister advised that the information provided on the significance of the Mangakāhia River to Kaipō's hapū was not sufficient and he needed to know if there was information showing that the river was 'quite out of the ordinary' or 'stands out from the rest' as compared to other water bodies.¹⁷⁴⁷ Thus, the Minister requested further information under Section 201(3) on which characteristics of the river were considered of 'outstanding significance in accordance with tikanga Maori and in comparison with other water bodies.'¹⁷⁴⁸ Internal correspondence of September 1994 indicates that the Minister was concerned about risks of declining the application:

The Minister asks that the [briefing note] be quite explicit with regard to arguments along with an explanation[sic] of the relative risks he faces if he declines the application[sic] ie he assumes that there has to be some recognition that his interpretation could exist.¹⁷⁴⁹

7.4.10 The granting of resource consent for the irrigation scheme

Meanwhile, in August 1994 Mangakāhia Irrigation Committee reapplied for irrigation consents, with 17 applicants requesting consents to irrigate 1,533 hectares, 67,000 cubic metres per day for a period of ten years.¹⁷⁵⁰ The NRC convened a hearing at Mangakāhia Area School on 8 September 1994 which local Māori attended but then walked out of for protocol reasons.¹⁷⁵¹ The hearing was reconvened at Maungarongo Marae on 3 October 1994. At the time of the 1994 hearings, Kaipō was quoted in the *Northern Advocate*: 'We will do whatever we have to do. We do not want any water at all taken from the river'.¹⁷⁵² On 4 November 1994, the NRC issued its decision to grant consents for five years,¹⁷⁵³ allowing for 59,000 cubic metres to be extracted per day, and setting out other conditions.

¹⁷⁴⁶ Upton, to Kaipō, 'Application for water conservation order – Mangakahia River', undated, MfE file NPR(A) 6/2

¹⁷⁴⁷ Upton, to Kaipō, 'Application for water conservation order – Mangakahia River', undated, MfE file NPR(A) 6/2

¹⁷⁴⁸ Upton, to Kaipō, 'Application for water conservation order – Mangakahia River', undated, MfE file NPR(A) 6/2

¹⁷⁴⁹ S. Veart to M.M. Bramley, K. Ryan, Mangakahia wco', 14 September 1994, MfE file NPR(A) 6/2

¹⁷⁵⁰ Scott et al, 1997, p203

¹⁷⁵¹ Scott et al, 1997, p204

¹⁷⁵² 'Water Fight at Mangakahia', *Northern Advocate*, 15 September 1994, p8

¹⁷⁵³ Fifteen of the consents were for around five years, while two of the consents (D.B. Douglas Limited and Mrs J.A. Leeuwenberg) were for around ten years.

The council later said they recognised, in making the decision in favour of the farmers, that the Mangakāhia River was ‘considered to be a taonga of great cultural and spiritual significance to the tangata whenua.’¹⁷⁵⁴ They also acknowledged the RMA’s requirement that they ‘have particular regard to kaitiakitanga, and to recognise and provide for the cultural and traditional relationship of the tangata whenua with the Mangakahia River.’¹⁷⁵⁵ They noted that the proposed NRC Policy Statement promoted storage and water harvesting for irrigation and said that by not having a water management plan for the catchment, they had not enabled public participation in determining water use priorities in the long-term planning process.¹⁷⁵⁶ The Council said the conservative approach they adopted would meet concerns of iwi and other submitters and they considered that their decision conformed with the RMA.¹⁷⁵⁷ They assumed responsibility for monitoring, and specified their monitoring programme, the cost of which would be met by the applicants.¹⁷⁵⁸

Local government and tangata whenua recounted the hearing process from quite different perspectives. According to NRC hearing committee chair Jim Peters, ‘particular attention’ was paid to tangata whenua views, and ‘[t]angata whenua were included in the decision-making process and would be part of a management group overseeing the exercising of the resource consents.’¹⁷⁵⁹ Tangata whenua did not share the chair’s satisfaction with the process or result, with Kaipo concluding that the hearing committee ‘made judgements based on greed, and not on need, in that the need of the well off far outweighed the concerns of the grass roots people.’¹⁷⁶⁰ On only one occasion, the October 1993 meeting with NRC consent officers (see section 7.4.3 of this chapter), did Kaipo feel that the hapū ‘got a fair hearing’.¹⁷⁶¹ Kaipo was disappointed by selected hearing venues and protocol, saying Māori attended one meeting (at Portobello Inn in Whāngārei) solely to let NRC facilitators know that it was ‘a totally inappropriate venue’ to discuss issues relating to the Mangakāhia River, saying there were no tangata

¹⁷⁵⁴ Planning Tribunal decision No. A 107/95, p8

¹⁷⁵⁵ Planning Tribunal decision No. A 107/95, p8

¹⁷⁵⁶ Planning Tribunal decision No. A 107/95, pp8-9

¹⁷⁵⁷ Planning Tribunal decision No. A 107/95, p9

¹⁷⁵⁸ Planning Tribunal decision No. A 107/95, p9

¹⁷⁵⁹ ‘Landowners allowed to take river water’, *Northern Advocate*, 5 November 1994

¹⁷⁶⁰ Kaipo, 1997, p7

¹⁷⁶¹ Kaipo, 1997, p7

whenua present, no pōwhiri, and protocol was not followed.¹⁷⁶² Tangata whenua also did a hīkoi to the council and presented pānui outlining their protests and were met by a delegation of councillors, but not the head of the hearing committee.¹⁷⁶³ There was also a hīkoi to Waitangi approximately a year later.¹⁷⁶⁴ These, Kaipo later noted, were to express their feelings of disempowerment, 'of things Maori not being accepted, acknowledged, respected by our so-called Treaty partners'.¹⁷⁶⁵ In her evidence to the Tribunal, Kaipo reflected:

As Tangata Whenua we felt that the consultation was inadequate, and that meetings called by both the MIC [Mangakāhia Irrigation Committee] and the NRC took place in town, rather than coming to talk to us at our marae. We didn't feel that these bodies were really interested in our perspective, they only wanted to inform us of what they wanted to do.¹⁷⁶⁶

7.4.11 The Ministry's continued concerns about the strength of the water conservation order application

Advisors at the Ministry for the Environment continued to grapple with the water conservation order application. On 29 November 1994 Ministry legal staff provided the Minister with that Crown Law advice on the circumstances in which he could reject an application. These were:

- a) If it was frivolous and vexatious;
- b) if technical requirements were breached (such as non-payment of a fee, a repeat application, an application outside the purpose of the Act); or
- c) if it failed to pass a threshold test (after reviewing the application, being satisfied that it could never be granted).¹⁷⁶⁷

Crown Law advised that the threshold test was low and the Minister could not reject an application because he considered that the waters were not outstanding – this was for the special tribunal to determine.¹⁷⁶⁸ They also advised that the Minister could not

¹⁷⁶² Kaipo, 1997, p8

¹⁷⁶³ Kaipo, 1997, p10

¹⁷⁶⁴ Research meeting with Kaipo and Tuhiwai, 13 December 2015

¹⁷⁶⁵ Kaipo, 1997, p11

¹⁷⁶⁶ Kaipo, #]6, para 61

¹⁷⁶⁷ A.F.J. Gallen, Office Solicitor for Secretary for the Environment, to Minister for the Environment, 'Mangakahia River application for a water conservation order', 29 November 1994, p1, MfE file NPR(A) 6/2

¹⁷⁶⁸ Gallen, 29 November 1994, p 1, MfE file NPR(A) 6/2

require the applicant to establish a *prima facie* case (where a civil claimant presents sufficient evidence to support the legal claim) for a water conservation order.¹⁷⁶⁹ Gallen also explored the possible consequences of the Minister rejecting the application. He advised that the applicants could seek review of the decision, likely on the grounds that the Minister applied the wrong tests and therefore failed to take into account relevant information, or that he had taken irrelevant matters that should not have influenced his decision into account.¹⁷⁷⁰ Other possible grounds for review were bias, or predetermination of the issue. Gallen advised that the High Court would be likely to direct him to reconsider the application and apply different tests.¹⁷⁷¹

As well as considerations around declining the application the Minister's advisors continued to express doubts about whether sufficient information had been provided. Crown Law considered that the applicants had not provided the information requested in the Minister's 11 (or 24) May letter, as they had not demonstrated that the river's characteristics were 'of outstanding significance'.¹⁷⁷² In Crown Law's view the only information given to support the argument that the characteristics were of 'outstanding' significance in accordance with tikanga Māori were that the river was used by local Māori in their daily life and that it linked the five marae.¹⁷⁷³

However, Crown Law were not prepared to conclude that the application could never be granted and that it could therefore be rejected.¹⁷⁷⁴ Instead they considered that it was the role of the special tribunal to test whether the river was of outstanding significance. Crown Law interpreted 'outstanding' to mean that the river 'stands out from the rest' compared to other water bodies.¹⁷⁷⁵ They said the significance of the river's outstanding characteristics was to be determined in accordance with tikanga Māori and the special tribunal would need to compare the river with other 'significant water bodies' to

¹⁷⁶⁹ Gallen, 29 November 1994, p 1, MfE file NPR(A) 6/2

¹⁷⁷⁰ Gallen, 29 November 1994, p2, MfE file NPR(A) 6/2

¹⁷⁷¹ Gallen, 29 November 1994, p2, MfE file NPR(A) 6/2

¹⁷⁷² This advice was related to the Minister by John Gallen (Gallen, 29 November 1994, p1, MfE file NPR(A) 6/2)

¹⁷⁷³ M.T. Parker to Secretary for the Environment, 'Water Conservation Orders – Ministers Powers', 24 August 1994, p2, MfE file NPR(A) 6/2

¹⁷⁷⁴ Gallen, 29 November 1994, p2, MfE file NPR(A) 6/2

¹⁷⁷⁵ Gallen, 29 November 1994, p2, MfE file NPR(A) 6/2

determine whether it was 'outstanding'.¹⁷⁷⁶ The Secretary for the Environment's Office Solicitor, John Gallen, advised that he did not consider that the Minister had sufficient information to either reject the application or to refer it to a special tribunal.¹⁷⁷⁷ He recommended that the Minister write to the applicants, setting out the tests he was applying to the application, advising he was not satisfied they had provided the information he sought in May 1994, and requesting further information to show the river was of outstanding significance in accordance with tikanga Māori and in comparison to other water bodies.¹⁷⁷⁸ Gallen advised that if the applicants provided or indicated that they had information to show the river was of 'outstanding' significance in accordance with tikanga Māori and compared to other water bodies then the Minister should refer the application to a special tribunal.¹⁷⁷⁹ If they did not provide such information he could reject the application on the grounds it was 'most unlikely' that the information existed and therefore the application could never be granted.¹⁷⁸⁰

Ministry for the Environment staff continued to discuss and seek advice on the interpretation of 'outstanding'. They referred to the Mohaka Draft Water Conservation Order of 1992 (lodged under the provisions of the Water and Soil Conservation Act 1967, which provided for distinct national and local water conservation orders) to guide their interpretation.¹⁷⁸¹ The Planning Tribunal (in their report on the draft Mohaka order) considered that 'before a characteristic or feature could qualify as outstanding, it would need to be quite out of the ordinary on a national basis'.¹⁷⁸² Marilyn Bramley, writing to Parker at Crown Law on behalf of the Secretary for Environment, wrote that the Mohaka test was 'still likely to be applied though possibly in a modified form. A water body which was locally "outstanding" would still not pass the test.'¹⁷⁸³

¹⁷⁷⁶ Gallen, 29 November 1994, p2, MfE file NPR(A) 6/2

¹⁷⁷⁷ Gallen, 29 November 1994, p2, MfE file NPR(A) 6/2

¹⁷⁷⁸ Gallen, 29 November 1994, p2, MfE file NPR(A) 6/2

¹⁷⁷⁹ Gallen, 29 November 1994, p2, MfE file NPR(A) 6/2

¹⁷⁸⁰ Gallen, 29 November 1994, p2, MfE file NPR(A) 6/2

¹⁷⁸¹ M.M. Bramley to the Solicitor General, 'Mangakahia water conservation order application', 11 November 1994, MfE file NPR(A) 6/2

¹⁷⁸² Bramley, 11 November 1994, p1, MfE file NPR(A) 6/2

¹⁷⁸³ Bramley, 11 November 1994, p1, MfE file NPR(A) 6/2

Greater uncertainty remained about how 'outstanding' could be determined in accordance with tikanga Māori. Bramley recognised that Section 199(2)(c) of the RMA provided for characteristics of any water body 'which (is) considered to be of outstanding significance in accordance with Tikanga Maori' but noted that as a tribe or iwi is the largest Māori grouping, 'there is no Maori "national" view.'¹⁷⁸⁴ Outstanding could not mean 'quite out of the ordinary on a national basis' for the purposes of Section 199(2)(c), as this would mean Section (199(2)(c)) would have no effect.¹⁷⁸⁵ This is because it was recognised that the tikanga Māori provision could not be measured on a national basis. However, if 'outstanding' in Section 199(2)(c) was taken to mean 'quite out of the ordinary, conspicuous, eminent etc., to an iwi or group of iwi', it would still give effect to the Act while remaining 'broadly consistent' with the Mohaka Tribunal.¹⁷⁸⁶ Yet Bramley considered that interpreting 'outstanding' as being "quite out of the ordinary' locally or to a small group of Maori' would be contrary to the general scheme of Section 199.¹⁷⁸⁷

Ministry staff sought Crown Law's interpretation of this.¹⁷⁸⁸ In Crown Law's 22 November 1994 response Parker advised that Section 199(2)(c) must be read in conjunction with Section 199(1) which set out the purpose for a water conservation order: to recognise and sustain the outstanding amenity or intrinsic values of a water body.¹⁷⁸⁹ As per Subsection (2), a water conservation order may provide for protection of 'characteristics which are considered to be of outstanding significance in accordance with Tikanga Maori.'¹⁷⁹⁰ The Planning Tribunal had previously interpreted 'outstanding' in a national context and Crown Law considered that the normal dictionary definition meant it 'must stand out' in comparison with other rivers.¹⁷⁹¹ Parker considered that the word 'outstanding' required some kind of comparison, which did not necessarily have to be on a national basis, but should be sufficiently wide to show 'on some

¹⁷⁸⁴ Bramley, 11 November 1994, p2, MfE file NPR(A) 6/2

¹⁷⁸⁵ Bramley, 11 November 1994, p2, MfE file NPR(A) 6/2 (emphasis in the original)

¹⁷⁸⁶ Bramley, 11 November 1994, p2, MfE file NPR(A) 6/2

¹⁷⁸⁷ Bramley, 11 November 1994, p2, MfE file NPR(A) 6/2

¹⁷⁸⁸ Bramley, 11 November 1994, p2, MfE file NPR(A) 6/2

¹⁷⁸⁹ M.T. Parker to Secretary for the Environment, 'Mangakahia water conservation order application', 22 November 1994, p1, MfE file NPR(A) 6/2

¹⁷⁹⁰ Parker, 22 November 1994, p1, MfE file NPR(A) 6/2

¹⁷⁹¹ Parker, 22 November 1994, p1, MfE file NPR(A) 6/2

objective basis' why protection should be given to a river's characteristics.¹⁷⁹² Counsel advised that they must identify which characteristics were significant to Māori and then determine whether those characteristics were of 'such significance' to warrant protection in comparison with other rivers.¹⁷⁹³ Māori customary practice should inform them as to whether a characteristic was significant, but a 'more objective method' was needed to determine characteristics to be protected by a water conservation order.¹⁷⁹⁴

Comments in an earlier Ministry publication had expressed a view on this. *The Resource Management Act: Kia Matiratira* was produced to help Māori develop their resources and reduce barriers which prevented Māori from participating in decision-making processes. It said that water conservation orders 'tend to be made for freshwater bodies which have a significance wider than just local interest', saying a river that flowed through more than one iwi or hapū might be 'better approached in terms of a water conservation order in some cases.'¹⁷⁹⁵ So while it was not a requirement that the river had broad interests in terms of iwi and hapū the Ministry appeared to encourage applications with broader interests.

7.4.12 Applicants press for progress on the water conservation order and appeal the irrigation consent

Back in the Mangakāhia Valley the Komiti were in the process of appealing NRC's decision to grant consent for the irrigation scheme, and were eager for the water conservation order process to proceed. On 23 December 1994 Stuart Henderson, legal counsel for the applicants, wrote to the Minister. 'It is of particular concern to us', he wrote, 'that the application for an Order be considered and dealt with urgently.'¹⁷⁹⁶ He noted that the Komiti had appealed NRC's decision to the Planning Tribunal and said the appeal was likely to be resolved in mid-1995.¹⁷⁹⁷ In the meantime, he wrote that the local authority was receiving and having to deal with further resource consent applications to take water from the river which in his view 'smacks of ad hoc

¹⁷⁹² Parker, 22 November 1994, p2, MfE file NPR(A) 6/2

¹⁷⁹³ Parker, 22 November 1994, p2, MfE file NPR(A) 6/2

¹⁷⁹⁴ Parker, 22 November 1994, p2, MfE file NPR(A) 6/2

¹⁷⁹⁵ MfE, *The Resource Management Act: Kia Matiratira: A Guide for Maori*, Wellington 1992, p27

¹⁷⁹⁶ Stuart Henderson to Minister for the Environment, 'RE: Mangakahia Maori Komiti', 23 December 1994, p1, MfE file NPR(A) 6/2

¹⁷⁹⁷ Henderson, 23 December 1994, p1, MfE file NPR(A) 6/2

development, the opposite of planning and prudent management of resources.’¹⁷⁹⁸ He said, ‘A Preservation Order from you would prevent such development’,¹⁷⁹⁹ and that if the Minister did not resolve the matter promptly any rights granted to farmers in the interim would be used to obstruct future efforts the Minister took to protect the water.¹⁸⁰⁰ Counsel warned, ‘If you ended up deciding the water should be protected, you may be facing claims for compensation from the local farmers.’¹⁸⁰¹ He said the Komiti believed that the request for a water conservation order was ‘most urgent’ and he hoped to hear from the Minister regarding any further information required and any progress made.¹⁸⁰²

On around 2 February 1995 the Minister replied to Henderson’s concerns saying he had sought further advice on requirements for water conservation orders.¹⁸⁰³ He had been advised that for a river to qualify as outstanding, ‘it would need to ‘stand out from the rest’ in comparison with other water bodies and in accordance with tikanga Maori.’¹⁸⁰⁴ He said that:

While your clients have provided information to show that the Mangakahia river is of significance to their hapu, that alone is not sufficient. I do need to know if your clients have any information showing that the river is “quite out of the ordinary” or “stands out from the rest”, in comparison with other water bodies. The information supplied by your clients does not convince me that the Mangakahia River is out of the ordinary and therefore I am not prepared, at this stage, to refer the application to a special tribunal.¹⁸⁰⁵

He requested, in accordance with Section 201(3) of the RMA, further information on the characteristics of the river which were considered of outstanding significance in accordance with tikanga Māori and in comparison with other water bodies.¹⁸⁰⁶

¹⁷⁹⁸ Henderson, 23 December 1994, p1, MfE file NPR(A) 6/2

¹⁷⁹⁹ Henderson, 23 December 1994, p1, MfE file NPR(A) 6/2

¹⁸⁰⁰ Henderson, 23 December 1994, pp1-2, MfE file NPR(A) 6/2

¹⁸⁰¹ Henderson, 23 December 1994, p2, MfE file NPR(A) 6/2

¹⁸⁰² Henderson, 23 December 1994, p2, MfE file NPR(A) 6/2

¹⁸⁰³ Simon Upton, Minister for the Environment, to S. Kaipo, undated, MfE file NPR(A) 6/2

¹⁸⁰⁴ Upton to Kaipo, undated, MfE file NPR(A) 6/2

¹⁸⁰⁵ Upton to Kaipo, undated, MfE file NPR(A) 6/2

¹⁸⁰⁶ Upton to Kaipo, undated, MfE file NPR(A) 6/2

7.4.13 Planning Tribunal hearings

The Planning Tribunal hearings on the irrigation matter were held between May and July 1995 following the appeal of the NRC's decision by both the Komiti and the irrigation applicants. The Komiti wanted the NRC's decision to be overturned and all consents to be cancelled. They said the NRC should have refused the irrigation application as the river was a resource of tangata whenua and a taonga under the Treaty of Waitangi and the RMA; that NRC had failed to observe Treaty principles in the consultation process; and that NRC's decision failed to promote the Act's purpose of sustainable management.¹⁸⁰⁷ The farmers who appealed the decision contested the consent periods and the level at which water abstraction would have to stop.¹⁸⁰⁸ The initial hearing days were held on marae and observed tikanga Māori. The evidence covered Māori connections to their environment, how pollution had diminished the mauri of the environment, loss of connection with nature, and how hapū interactions traditionally worked. Kaipo later described the appeal process on the marae, noting the big crowd and the emotional nature of the event.¹⁸⁰⁹ Kaipo also emphasised the mental and physical exhaustion experienced by tangata whenua.¹⁸¹⁰

After the initial marae hearings proceedings continued at the District Courthouse in Whāngārei. This was not always a comfortable experience for Māori. For example, Kaipo described the atmosphere at these hearings as 'cold and calculating', and said the courtrooms were a foreign environment with criminal associations.¹⁸¹¹ She also recalled hapū discomfort when they were asked to disclose wāhi tapu sites (they ultimately refused to provide that information).¹⁸¹² However, while many were not comfortable with disclosing wāhi tapu, one witness pointed out certain locations of special significance to Māori at or near the margins of the river, according to the Planning Tribunal decision.¹⁸¹³ The Planning Tribunal concluded they were satisfied:

¹⁸⁰⁷ Planning Tribunal decision No. A 107/95, p12

¹⁸⁰⁸ Planning Tribunal decision No. A 107/95, p18

¹⁸⁰⁹ Kaipo, 1997, pp13-15

¹⁸¹⁰ Kaipo, 1997, p17

¹⁸¹¹ Kaipo, 1997, p16, and research meeting with Kaipo and Tuhiwai, 13 December 2015

¹⁸¹² Kaipo, 1997, p17

¹⁸¹³ Planning Tribunal decision No. A 107/95, p43

that none of these identified locations would coincide with, or be affected by, the applicants' abstraction points. But their significance in the eyes of the tangata whenua is illustrative of the unswerving and close affinity which the tangata whenua have with the river as a life-sustaining and vibrant entity.¹⁸¹⁴

In November 1995 the Planning Tribunal upheld the decision granting consent to take water for irrigation. However, they reduced the term of the consent from 10 years to six years for the two applicants that had been granted a longer term, and provided for a possible review of conditions after three years. The consent allowed 52,675 cubic metres to be extracted per day compared to the 59,000 cubic metres allowed in NRC's original decision. Conditions of the consent included an annual river study to be paid for by consent holders and a development of a riparian management plan which was to then be approved by the Council.¹⁸¹⁵ The Planning Tribunal considered that these conditions and the limited term of the consent provided enough opportunity for hapū/iwi interests to be safeguarded. They reasoned:

Against the background of the depth of tangata whenua feeling and concern in relation to the river as a taonga, the consent period will be such as to ensure that practical experience in irrigation can be gained and data gathered, so that the council, the tangata whenua, and the farming owners can reconsider the question of whether irrigation via the river should be continued, and if so, whether to the same degree.¹⁸¹⁶

The Planning Tribunal decision contained conditions addressing:

- a) Consent duration (6 years);
- b) Intake and pumping arrangements design and construction;
- c) Water allocation;
- d) Water rationing;
- e) Specific conditions for the consent holders, including management plan and the establishment of a Monitoring Community Liaison Panel;
- f) Pumping control;
- g) Environmental monitoring and protection;

¹⁸¹⁴ Planning Tribunal decision No. A 107/95, p43

¹⁸¹⁵ Planning Tribunal decision No. A 107/95, p55

¹⁸¹⁶ Planning Tribunal decision No. A 107/95, p48, and 'Corrigendum as to Conditions of Consent', 20 December 1995, p3

- h) Dairy shed effluent and run-off;
- i) Riparian management plan;
- j) Review of conditions of consent; and
- k) Miscellaneous (charges to be paid).¹⁸¹⁷

In his environmental impacts report for the Te Paparahi o Te Raki inquiry, historian David Alexander discussed the condition that Māori were to be represented on a community liaison group to have ongoing involvement in monitoring the scheme and its effects.¹⁸¹⁸ Alexander believed that NRC and the Planning Tribunal would have seen this as a mitigation measure, but it was ‘unlikely to have reduced the sadness and heartache, or the sense of injury’ felt by Māori and said it could be argued that being closely involved in monitoring changes to the river could increase the distress felt by Māori.¹⁸¹⁹ Indeed, Kaipo likened tangata whenua inclusion in monitoring as ‘a token gesture’.¹⁸²⁰ Te Hapae Bob Ashby echoed this sentiment in his later evidence to the Waitangi Tribunal, saying ‘Mangakahia were relegated to representation on a Community Liaison Group that monitors the irrigation scheme and its effects on the River.’¹⁸²¹

After the Planning Tribunal decision was released, tangata whenua of the Mangakāhia River reported feelings of distress and fear for the future. The *Northern Advocate* covered the decision, reporting in November 1995 that Komiti member Lorraine Norris ‘was “distressed” by the tribunal’s “oppressive” decision. Only lip service had been paid to the principle of tangata whenua consultation, she said.’¹⁸²² Norris said a few farmers would profit at the expense of further loss of an already-depleted taonga and she feared it would divide the community.¹⁸²³ Similarly, Kaipo later wrote that tangata whenua were ‘devastated’:

The needs (economic) of the community outweighed the concerns of Tangata Whenua. My people felt they had lost, that from here on in was open slather for all; their fears of a disappearing awa, poisonous water

¹⁸¹⁷ Planning Tribunal decision No. A 107/95, pp49-56

¹⁸¹⁸ David Alexander, ‘Land-based Resources, Waterways and Environmental Impacts’, Wai 1040 #A7, p300

¹⁸¹⁹ Alexander, ‘Land-based Resources’, Wai 1040 #A7, p300

¹⁸²⁰ Kaipo, 1997, p19

¹⁸²¹ Ngā Uri o Mangakāhia Claim, Wai 1040 #1.1.184(a), para 13.30

¹⁸²² ‘Farmers win fight over river’, *Northern Advocate*, 18 November 1995

¹⁸²³ ‘Farmers win fight over river’, *Northern Advocate*, 18 November 1995

being left to our unborn mokopuna were now to become a reality with this decision.¹⁸²⁴

The Planning Tribunal process had consisted of a great amount of work for tangata whenua including meeting with legal counsel and educating counsel ‘of things Maori’, applying for legal aid, and other tasks.¹⁸²⁵ Kaipo detailed how legal aid was declined because the Komiti applied as a group, rather than as individuals: ‘How were we to know? We were finding things hard to understand – the legal system, process, planning strategy for the hearing, approaching witnesses, compiling briefs of evidence.’¹⁸²⁶ At the same time she emphasised the importance of adhering to tikanga in this process, for example, having hearings on marae and commencing with pōwhiri.¹⁸²⁷ Cost was certainly a concern as hapū had to consider getting experts on water quality, legal experts, and other witnesses; they appealed the decision to decline legal aid.¹⁸²⁸ There was also the matter of the debt the Komiti owed their lawyer as a result of their inability to access legal aid.¹⁸²⁹ In December 1995 the Komiti appealed the Planning Tribunal’s November 1995 decision, but withdrew this appeal in February 1996 due to financial constraints.¹⁸³⁰ Irrigation began that month.

7.4.14 Komiti provides further information in support of the water conservation order application

Following a hiatus in contact, Ministry for the Environment staff seemed to be wondering what had happened to the application for a water conservation order. On 18 January 1996, Bronwyn Arthur, counsel for the Minister for the Environment, wrote to Stuart Henderson, counsel for the Komiti, saying it had been almost a year since the Minister requested further information for the application and he had not received a reply.¹⁸³¹ She asked Stuart Henderson to advise within the next month whether the Komiti wished to withdraw its application or, if it wished to continue the application,

¹⁸²⁴ Kaipo, 1997, p19

¹⁸²⁵ Kaipo, 1997, p11

¹⁸²⁶ Kaipo, 1997, p13

¹⁸²⁷ Kaipo, 1997, pp12-13

¹⁸²⁸ Kaipo, 1997, p13

¹⁸²⁹ Kaipo, 1997, p13

¹⁸³⁰ ‘Cash-strapped Maori give up appeal for river’, *Northern Advocate*, 17 April 1996

¹⁸³¹ Bronwyn Arthur to Stuart Henderson, ‘Application for a water conservation order for Mangakahia River’, 18 January 1996, MfE file NPR(A) 6/2

when further information could be expected.¹⁸³² Counsel Emily Henderson responded to Arthur on 26 January 1996 saying the Komiti wished to continue its application and they would be compiling a list of the characteristics of the river including affidavits from local kaumātua which they would send to Ministry once complete.¹⁸³³

Resourcing the water conservation order application and appeal process continued to be a struggle, with the Komiti's lawyer expressing frustration at their lack of access to legal aid. On 13 February 1996, Arthur wrote that she had talked to lawyer Stuart Henderson, who was 'fighting other battles' on behalf of the Komiti, 'including trying to get legal aid for them even though body corporate are not entitled to it - makes "a monkey" of the Act and the consultation requirements.'¹⁸³⁴ Henderson expressed hope that the Komiti would be able to organise their own evidence as they had just been through Planning Tribunal hearings but advised that organising the evidence could take two months or longer.¹⁸³⁵

On 20 February 1996 Kaipo wrote to the Minister, responding to his 18 January 1996 letter (Ministry archives do not have an 18 January letter from the Minister to Kaipo, but it is likely that Kaipo is referring to the 18 January letter from Arthur to her counsel Stuart Henderson, a copy of which was sent to her).¹⁸³⁶ She said the Komiti were engaging in the 'local process', that is, getting involved with NRC policies and plans, as recommended by Ministry staff.¹⁸³⁷ She also expressed misgivings about processes, saying:

We find these processes foreign to us, "Tangata Whenua". We are having to take part in processes not fully understood by our people, and being disadvantaged by way of inadequate resources, funding and people in the know fully with the R.M.A. We followed the process right through to Planning Tribunal again with inadequate resources, in particular funding, but in order to follow the due processes of the law of this country we did

¹⁸³² Arthur, 18 January 1996, MfE file NPR(A) 6/2

¹⁸³³ Emily Henderson to Bronwyn Arthur, 'RE: Application for water conservation order for the Mangakahia River', 26 January 1996, MfE file NPR(A) 6/2

¹⁸³⁴ Upton to Kaipo, undated, MfE file NPR(A) 6/2

¹⁸³⁵ Upton to Kaipo, undated, MfE file NPR(A) 6/2

¹⁸³⁶ S. Kaipo to Simon Upton, 'Re. 04-3-15 Conservation order', 20 February 1996, MfE file NPR(A) 6/2

¹⁸³⁷ Kaipo, 20 February 1996, p1, MfE file NPR(A) 6/2

this even though at the end of the day there was no real consideration and/or acknowledgement of Tangata Whenua concerns.¹⁸³⁸

She enclosed:

- a) Ngā Hapū o Mangakāhia plan;
- b) Mangakāhia River study, outlining eel fisheries in particular; and
- c) Auckland University paper written by Lloyd Burton and Chris Cocklin, which Kaipo said outlined anomalies within the RMA and in particular with reference to the Treaty of Waitangi.¹⁸³⁹

The hapū plan and river study submitted are outlined below.¹⁸⁴⁰ Kaipo requested that the Minister forward further information on the water conservation order process but did not provide details about the type of information she required.¹⁸⁴¹ She also included a poem, 'Tell me where my culture went', written by a mokopuna of Mangakāhia.¹⁸⁴²

7.4.14.1 Ngā Hapū o Mangakāhia Plan 1995

The *Ngā Hapū o Mangakāhia Plan for the Whāngārei District and the NRC* (July 1995) was prepared by the Mangakāhia Māori Komiti with reference to the RMA. The Plan discussed local history, Māori concepts that informed their views, concerns about the environment and resource management (particularly water), and Crown obligations to deal with tangata whenua as equals. It set out their objectives for the management of resources in their rohe.

7.4.14.2 Te Awa o Mangakahia (The Mangakahia River Study)

Te Awa o Mangakahia (The Mangakahia River Study) (March 1995) was prepared by Auckland University student Helen Lenihan with the kaumātua, kuia and whānau of Ngā Hapū o Mangakāhia. The study described the river, including species present and the state of fisheries and habitats, discussed rights of farmers as opposed to conservation principles, and discussed the anticipated degradation of environment and threats to taonga. It also raised the complex governance system of freshwater fisheries and the different entities involved in this governance. It was anticipated that the removal of large amounts of water would degrade the environment and threaten the value of the

¹⁸³⁸ Kaipo, 20 February 1996, p1, MfE file NPR(A) 6/2

¹⁸³⁹ Kaipo, 20 February 1996, p2, MfE file NPR(A) 6/2

¹⁸⁴⁰ The article is not available

¹⁸⁴¹ Kaipo, 20 February 1996, p2, MfE file NPR(A) 6/2

¹⁸⁴² Kaipo, 20 February 1996, p3, MfE file NPR(A) 6/2

taonga.¹⁸⁴³ The study emphasised the importance of the mauri and wairua of the river and said the level and quality of the water must be protected and maintained for these to remain intact.¹⁸⁴⁴ Removal of water for irrigation would result in reduced water flow and lower water levels which would slow the water flow. This would lead to the build-up of contaminants in the river as the flow would not be fast enough to disperse pollution entering the water from the farms.¹⁸⁴⁵

7.4.15 Ministry for the Environment response to additional information

Ministry staff were not convinced that the material describing the river, the rohe and its people, their concerns and guiding principles, and anticipated effects of irrigation was fit for purpose for a water conservation order application. Following receipt of these reports, Ministry staff advised the Minister 'it appeared that it had been put together for another purpose and it did not address the matters set out in the Act.'¹⁸⁴⁶ The material may have been gathered and prepared for the resource consent process and/or the subsequent Planning Tribunal case and it seems that Ministry staff interpreted it as such, whether or not it was. The point remained that the Minister had requested specific information on the 'outstanding' significance of the river in accordance with tikanga Māori and in comparison with other water bodies and staff were not satisfied with the additional material filed.

Ministry staff attempted to communicate their misgivings to the Komiti. A draft letter from Bronwyn Arthur, Senior Solicitor for Secretary for the Environment, to Kaipo dated 27 March 1996 responded to the difficulties the Komiti had with the hearing process (presumably in the Planning Tribunal) and aimed to assist the Komiti with the water conservation order process.¹⁸⁴⁷ The letter explained the information required by the Minister under Section 201(2) of the RMA, discussing the characteristics specified in

¹⁸⁴³ Helen Lenihan with the Kaumatua, Kuia me nga Whanau o nga hapu o Mangakahia, *Te Awa o Mangakahia (The Mangakahia River Study)*, 'Rohe', March 1995, p17, MfE file NPR(A) 6/2

¹⁸⁴⁴ Lenihan and others, March 1995, p17, MfE file NPR(A) 6/2

¹⁸⁴⁵ Lenihan and others, March 1995, p17, MfE file NPR(A) 6/2

¹⁸⁴⁶ Sue Veart to Minister for the Environment, 'Application for a water conservation order for the Mangakahia River', 14 January 1996, p1, MfE file NPR(A) 6/2

¹⁸⁴⁷ Bronwyn Arthur to S. Kaipo, 'Application for a water conservation order for the Mangakahia River', draft dated 27 March 1996, MfE file NPR(A) 6/2. It appears from the response this was posted 3 April 1996, but the final version is not in the archive.

the RMA to warrant protection of a water body and how the word 'outstanding' had been interpreted by the Planning Tribunal. The letter advised that the information provided to date:

... does not provide any support for the Mangakahia River having "outstanding" characteristics. There is no comparison with other rivers which may also have similar characteristics, but of lesser or greater value. You also have not described the provisions you consider should be included in a water conservation order and the effect such provisions would have on the waterbody.¹⁸⁴⁸

While the applicant was not required to provide detailed evidence at the application stage the letter advised there must be enough information to support the presence of outstanding values.¹⁸⁴⁹ Apparently the requested provision that no water be taken and the applicants' discussion about how water takes would affect Mangakāhia Māori use of the river were not considered sufficient by Ministry staff. At that stage Ministry legal staff did not consider they could recommend that the Minister establish a special tribunal.¹⁸⁵⁰ 'I realise that you are probably feeling exasperated with the process', Arthur wrote, and suggested Kaipo and her legal counsel discuss whether RMA requirements could be met.¹⁸⁵¹ The letter concluded by saying on the basis of the information they had, the Ministry 'would have to recommend that the application be declined. You will need to consider carefully whether you wish to continue with the application and provide some information which illustrates the outstanding nature of the River, or whether you wish to withdraw the application.'¹⁸⁵² The letter advised it was still unknown whether the river must be considered nationally outstanding under the RMA (as the Water and Soil Conservation Act 1967 had provided for both national and local orders and required that national orders require a comparison with other rivers), 'but given that local authorities could now protect water bodies of local and regional significance through regional plans, it is anticipated that a water conservation

¹⁸⁴⁸ Arthur, draft dated 27 March 1996, p2, MfE file NPR(A) 6/2

¹⁸⁴⁹ Arthur, draft dated 27 March 1996, p2, MfE file NPR(A) 6/2

¹⁸⁵⁰ Arthur, draft dated 27 March 1996, p3, MfE file NPR(A) 6/2

¹⁸⁵¹ Arthur, draft dated 27 March 1996, p3, MfE file NPR(A) 6/2

¹⁸⁵² Arthur, draft dated 27 March 1996, p3, MfE file NPR(A) 6/2

order will only apply to rivers of significance which have nationally outstanding features.’¹⁸⁵³

Internally, Ministry staff expressed concern around managing Komiti expectations and a wish to avoid disappointing them. Arthur wanted to keep the process moving, saying in an email drafted to colleagues, ‘The longer we sit on it the more they may consider we have accepted the application.’¹⁸⁵⁴ At the time of the first application the fee was \$250, but by the time the Komiti reapplied, the fee had risen to \$1,000. Ministry staff were unsure if the original application fee was refunded or not (it appears from correspondence between Kaipō and the Minister that it was not), and Arthur said if it was refunded, they would need to decide whether to charge the new \$1,000 fee for the second application. She thought they should not charge \$1,000.¹⁸⁵⁵ Later in the process she said in a draft, ‘if the money still exists internally we should offer to return it if they decide to withdraw the application. That is a personal view – but at least the Komiti may feel they have not lost too much.’¹⁸⁵⁶

Finances certainly remained a consideration for the Komiti. In a *Northern Advocate* article of 17 April 1996, ‘Cash-strapped Maori give up appeal for river’, it was reported that the Komiti would not continue their appeal against the resource consents for farm irrigation as they had been unable to get legal aid.¹⁸⁵⁷ Under the Legal Services Act 1991 the Komiti was not eligible for legal aid because it represented a group of people rather than an individual.¹⁸⁵⁸ Legal aid was only available to groups for proceedings in the Waitangi Tribunal and, under certain circumstances, for trustee corporations.¹⁸⁵⁹ Emily Henderson, solicitor for the Komiti, said the RMA encouraged Māori to participate in its processes and Māori issues must be taken into account. She argued that the ineligibility for legal aid contradicted the intentions of the RMA.¹⁸⁶⁰ She noted this problem occurred in similar cases and said that iwi generally could not afford legal services. She

¹⁸⁵³ Arthur, draft dated 27 March 1996, pp2-3, MfE file NPR(A) 6/2

¹⁸⁵⁴ Bronwyn Arthur to Bronwyn Arthur, ‘Draft Letter on Mangakahia WCO application’, 27 March 1996, MfE file NPR(A) 6/2

¹⁸⁵⁵ Jacky Challis to Sue Veart, ‘Mangakahia WCO Application’, 3 April 1996, MfE file NPR(A) 6/2

¹⁸⁵⁶ Arthur, 27 March 1996, MfE file NPR(A) 6/2

¹⁸⁵⁷ ‘Cash-strapped Maori give up appeal for river’, *Northern Advocate*, 17 April 1996

¹⁸⁵⁸ ‘Cash-strapped Maori give up appeal for river’, *Northern Advocate*, 17 April 1996

¹⁸⁵⁹ Legal Services Act 1991, Sections 19(1)(f), 27

¹⁸⁶⁰ ‘Cash-strapped Maori give up appeal for river’, *Northern Advocate*, 17 April 1996

emphasised that in this case the financial considerations were greater as the Planning Tribunal had the ability to award costs against the Komiti.¹⁸⁶¹ This would have been an additional concern for the Komiti. The Komiti's financial situation was dire enough that Kaipo wrote in 1997 that their lawyer was to 'wind up' the Mangakāhia Māori Komiti due to the unpaid account.¹⁸⁶² She said there was not a lot the Komiti could do about this, even though their lawyer (Stewart Henderson) had lowered legal fees.¹⁸⁶³ This impacted on the Komiti's ability to assist their people and protect their environment. Kaipo wrote, '[i]t just makes us very conscious of the fact that we will not be able to continue our mahi of advocacy advice and awahi and support our people. Who will do this? Who will assist and advise our people?'¹⁸⁶⁴

Meanwhile, communications continued between the Ministry and counsel for the applicants on the matter of the 'outstanding' characteristics of the river. On 1 July 1996, Arthur wrote a file note that she had '[a]t last' managed to contact Emily Henderson.¹⁸⁶⁵ Arthur advised Henderson that it was not obvious from the information supplied why the river was of such significance and was told that a great deal of information on the relationship between the iwi and the river had been provided to NRC.¹⁸⁶⁶ Arthur suggested Henderson review this information in light of the requirements for a water conservation order under the RMA and decide if it was sufficient to meet the requirements of the Act.¹⁸⁶⁷

Yet as time passed, the Ministry was eager to conclude the matter. In a letter drafted to Kaipo in November 1996, Arthur said she had not heard back from Henderson or anyone else since the 1 July 1996 phone conversation.¹⁸⁶⁸ The draft letter said that almost three years had passed since the original application and the information

¹⁸⁶¹ 'Cash-strapped Maori give up appeal for river', *Northern Advocate*, 17 April 1996

¹⁸⁶² Kaipo, 1997, p20

¹⁸⁶³ At a research meeting in Mangakāhia in December 2015, Sharon Kaipo said that the Komiti's lawyer later sued them for non-payment of fees. At a subsequent research meeting in Kawakawa on 11 June 2016 Kaipo said the Komiti's legal fees for their opposition to the irrigation scheme had totalled around \$60,000.

¹⁸⁶⁴ Kaipo, 1997, p20

¹⁸⁶⁵ Bronwyn Arthur, file note, 1 July 1996, MfE file NPR(A) 6/2

¹⁸⁶⁶ Arthur, 1 July 1996, MfE file NPR(A) 6/2

¹⁸⁶⁷ Arthur, 1 July 1996, MfE file NPR(A) 6/2

¹⁸⁶⁸ Bronwyn Arthur to S. Kaipo, 'Application for a water conservation order for the Mangakahia River', draft dated 14 November 1996, MfE file NPR(A) 6/2

required had not been provided. She intended to close her file on the application, and to enclose a refund of the \$250 application fee.¹⁸⁶⁹

7.4.16 The water conservation order application is withdrawn

On 5 December 1996, Kaipo returned the template letter provided by the Ministry to Arthur, confirming that the Komiti wished to withdraw the application for a water conservation order over the Mangakāhia River, and seeking a refund for the \$250 application fee.¹⁸⁷⁰ She wrote a separate letter to Arthur, the same day, expressing frustrations felt by the Komiti:

I wish to relay to you our frustrations and feelings of inadequacy towards being unable to protect and preserve a “Taonga” of significance ...

We do know of the national significance of this and every other Awa within Aotearoa, which are all linked into each other, but unfortunately we are not resourced financially or otherwise to be able to present, research, document, as is required under [the] Resource Management Act.

Whereby the R.M.A. speaks of having regard for Cultural and Spiritual sensitivities, and recognise and provide for, we feel our “Taonga” are being exploited for monetary gain, and due to this our Cultural & Spiritual sensitivities are nowhere near being recognised or provided for.

We found this out through Northland Regional Council and it's[sic] policies and processes, the now Environment Court – Planning Tribunal – and Conservation Order all this being dictated by the Resource Management Act.

Hence our feelings of hurt, and frustration, when all we are wanting is to preserve and protect Papatuanuku – our Mother Earth for use and future generations i.e. the unborn mokopuna.

I realise you are just doing your job as council[sic], but I would like this passed onto the Minister of Environment.¹⁸⁷¹

On 20 December 1996 Arthur responded to Kaipo that the concerns raised in her letter had been ‘made known to’ the Minister for the Environment and returned the \$250 application fee.

¹⁸⁶⁹ Arthur, ‘Application for a water conservation order for the Mangakahia River’, draft dated 14 November 1996, MfE file NPR(A) 6/2

¹⁸⁷⁰ S. Kaipo to Bronwyn Arthur, ‘Mangakahia water conservation order application’, 5 December 1996, MfE file NPR(A) 6/2

¹⁸⁷¹ S. Kaipo to Bronwyn Arthur, 5 December 1996 (second letter), MfE file NPR(A) 6/2

While the application had been withdrawn, the Ministry reflected on the difficulties the Komiti had faced in the application process and on the complexity of how to assess 'outstanding' values in accordance with tikanga Māori. In advice to the Minister dated 14 January 1996 (but more likely January 1997), the Manager of the Resource Management Directorate, Sue Veart, acknowledged that the process of applying for a water conservation order could be 'onerous and costly' and there were barriers for applicants who were unable to afford technical and legal advisors.¹⁸⁷² She said that in the Mangakāhia case the application was based principally on Māori cultural and spiritual values of the river, but the Ministry's understanding was 'that the river is not recognised as having significant fisheries, recreational or scientific values, or wild and scenic characteristics.'¹⁸⁷³ She raised the question of how iwi or hapū could make a case for a body of water having characteristics 'which are considered to be of outstanding significance in accordance with tikanga Maori' as per Section 199(2)(c) of the RMA and discussed how the term 'outstanding' had been used in a comparative way by the Planning Tribunal.¹⁸⁷⁴ She said that assessing 'outstanding' values in accordance with tikanga Māori was more subjective than assessing other applications.

While rivers such as the Waikato and Whanganui and greenstone rivers in the South Island may be widely perceived as being of great importance, it may be that individual iwi or hapu value these waterbodies no more highly than the Mangakahia Maori Komiti values the Mangakahia River.¹⁸⁷⁵

She advised that a future Environment Court decision (the Planning Tribunal became the Environment Court following the Resource Management Amendment Act 1996) may be necessary to interpret this under the RMA.¹⁸⁷⁶ After the application was withdrawn, a staff member (possibly Jacky Challis) wrote to Kathleen Ryan on 16 January 1997: 'While its[sic] good its[sic] off our plate I too have some sympathies with the iwi', which she said she tried to convey in her briefing to the Minister.¹⁸⁷⁷

¹⁸⁷² Sue Veart to Minister for the Environment, 'Application for a water conservation order for the Mangakahia River', 14 January 1996, p1, MfE file NPR(A) 6/2

¹⁸⁷³ Veart, 14 January 1996, p1, MfE file NPR(A) 6/2

¹⁸⁷⁴ Veart, 14 January 1996, p2, MfE file NPR(A) 6/2

¹⁸⁷⁵ Veart, 14 January 1996, p2, MfE file NPR(A) 6/2

¹⁸⁷⁶ Veart, 14 January 1996, p2, MfE file NPR(A) 6/2

¹⁸⁷⁷ JC [Jacky Challis] to Kathleen Ryan, 16 November [1996], MfE file NPR(A) 6/2

7.4.17 Assessment of ‘outstanding’ values under tikanga

In their assessment of the application, Ministry staff were concerned about whether the Mangakāhia River could be interpreted as having ‘outstanding’ significance in accordance with tikanga Māori. While the Ministry’s role was simply to assess whether the application was complete before passing it on to the Minister, staff appeared preoccupied with whether there was evidence that could prove ‘outstanding’ values of the river under tikanga Māori. Staff were evidently unsure of how to interpret the RMA term ‘outstanding’, relying on the water conservation order drafted by the Planning Tribunal in 1992 in their advice to the Minister.¹⁸⁷⁸ Section 199(2)(c) of the RMA provides for the protection of characteristics which any water body has or contributes to which are considered to be of ‘outstanding significance’ in accordance with tikanga Māori (which Ministry staff defined as referring to the relationship of Māori and their culture and traditions with their ancestral land and other resources and which the legislation defines as meaning Māori customary values and practices).¹⁸⁷⁹ A draft briefing paper prepared by Gallen advised that tikanga Māori may require ‘outstanding’ to mean of ‘outstanding significance’ to a particular group of Māori regardless of what other Māori groups thought.¹⁸⁸⁰ However the phrase ‘in accordance with tikanga Maori’ was not considered sufficient to displace a national test for the word ‘outstanding’.¹⁸⁸¹ The paper advised that if water bodies had characteristics that were of outstanding significance to all or many Māori in accordance with tikanga Māori, these water bodies would be of national significance.¹⁸⁸² However Gallen was uncertain, seeking advice on whether there were *any* water bodies that were important to all Māori, or even several iwi, in accordance with tikanga Māori.¹⁸⁸³

¹⁸⁷⁸ Sue [Veart] to Marilyn [Bramley], 10 October [1994], MfE file NPR(A) 6/2

¹⁸⁷⁹ A.F.J. Gallen, Office Solicitor for Secretary for the Environment, to Minister for the Environment, ‘Mangakahia River – application for a water conservation order’, draft dated October 1994, p2, MfE file NPR(A) 6/2; Resource Management Act 1991, Part I Section 2

¹⁸⁸⁰ A.F.J. Gallen to Minister for the Environment, ‘Mangakahia River – application for a water conservation order’, draft dated October 1994, p2, MfE file NPR(A) 6/2

¹⁸⁸¹ Gallen, ‘Mangakahia River – application for a water conservation order’, draft dated October 1994, p2, MfE file NPR(A) 6/2

¹⁸⁸² Gallen, ‘Mangakahia River – application for a water conservation order’, draft dated October 1994, p2, MfE file NPR(A) 6/2

¹⁸⁸³ Gallen, ‘Mangakahia River – application for a water conservation order’, draft dated October 1994, p2, MfE file NPR(A) 6/2

7.4.18 Further tangata whenua attempts to exercise kaitiakitanga

Following the Planning Tribunal decision in favour of the irrigation scheme and while they continued to seek a water conservation order over the Mangakāhia River, the Komiti pursued other ways to protect the river. They discussed their concerns with the Office of Treaty Settlements and Maruwhenua, the Māori advisory unit of the Ministry for the Environment.¹⁸⁸⁴ The Office of Treaty Settlements advised that the case of the irrigation scheme was not a historical grievance arising from a Treaty breach. Kaipo was not satisfied with this, stating that Te Tiriti 'guaranteed undisturbed possession of our lands, fisheries, all taonga; the mauri of the awa is a taonga, as are the waters of awa another taonga'.¹⁸⁸⁵ It is also worth noting that the jurisdiction of the Office of Treaty Settlements is not restricted to addressing historical Treaty grievances. The Office of Treaty Settlements passed the Komiti's grievances on to Maruwhenua, who advised the Komiti should:

- a) formulate relationships and develop memorandums of understanding with Whāngārei District Council and Northland Regional Council; and
- b) get information on regulations on customary fisheries through Te Ohu Kaimoana (Treaty Fisheries Commission).¹⁸⁸⁶

Kaipo said of her contact with the Ministry for the Environment:

Initially the Ministry for the Environment, back in 1993, advised us to pursue this 'take' using processes in place; submissions to the NRC, hearings process, submissions on annual plans, District Plans and Proposed Policy Statements. We did this, but again felt, based on our cultural and spiritual concerns, that we did not fit into the scheme of things.¹⁸⁸⁷

7.4.19 Renewal of the irrigation consents, 2001-03

As the Komiti tried various methods to protect the Mangakāhia River and exercise kaitiakitanga, farmers continued to exercise their consents, taking water from the Mangakāhia River. In 2001, the Irrigation Committee applied for replacement water permits, requesting their application be non-notified. An Assessment of Environmental

¹⁸⁸⁴ Kaipo, 1997, p19

¹⁸⁸⁵ Kaipo, 1997, pp19-20

¹⁸⁸⁶ Kaipo, 1997, p20

¹⁸⁸⁷ Kaipo, 1997, p19

Effects (AEE) prepared by Streamline Environmental Management in May 2001 determined that renewing the consents would have ‘no obvious negative environmental effect’.¹⁸⁸⁸ In June 2001 the Council wrote to ‘iwi contacts’ on two separate occasions about an application for renewal of water take consents (5009, 5014, 5021, 5022, 5027 and 5069)¹⁸⁸⁹. These ‘iwi contacts’ included Mangakāhia Māori Komiti, Ngāpuhi ki Mangakāhia Takiwā, Ngāpuhi-nui-tonu Resource Management Consents Committee, Ngāti Kahu o Torongare/Te Parawhau Hapū, Te Kete Mahinga Kai, Te Parawhau me Te Uri o Hau o Korokota, the Resource Management Convenor at Te Parawhau Trust, TRAION, and Te Aroha Marae Trustees. In this letter, the Council specifically requested that responses focus on ‘any *cultural* concerns’ [emphasis in original], as technical matters would be addressed by NRC’s Consents Officer. The Council also tried to facilitate communications between Mangakāhia Irrigation Committee and tangata whenua.¹⁸⁹⁰

NRC’s assessment of the application said the applicants ‘consulted widely’, and had obtained written approval of more than 30 parties with land adjacent to the river.¹⁸⁹¹ NRC had circulated the application to Māori they had an ‘agreed protocol’ with and Mangakāhia Māori Komiti and Ngāti Kahu o Torongare/Te Parawhau Trust Board had opposed it.¹⁸⁹² Ngāti Kahu o Torongare/Te Parawhau Trust Board raised the fact that a tangata whenua cultural impact report was never done for the original consent and advised that a CIA was being prepared for the Te Rata Trust.¹⁸⁹³ Te Aroha Marae

¹⁸⁸⁸ Stefan Seitzer (Streamline Environmental Management), ‘Summary assessment of environmental effects of water abstraction from the Mangakahia River for farm irrigation. NRCResource Consents: 5009 (Rika), 5014 (Bennett), 5021 (McBeth), 5022 (Fraser) and 5027 (Dark)’, May 2001, NRC file ‘Glen Mor Ltd’

¹⁸⁸⁹ D.L. Roke, ‘Non-notified application for renewal of consents 5021 5022 5069 5027 to take from Mangakahia River water for irrigation purposes’, 7 June 2001, NRC file 5069, vol. 1, ‘Taraunui Farms Ltd’; D.L. Roke, ‘Non-notified application for renewal of consent 5014 to take from Mangakahia River for irrigation purposes’, 6 June 2001, NRC file ‘Glen Mor Ltd’

¹⁸⁹⁰ Robert Lieffering (for D.L. Roke) to P.M. and J.M. Bennett, ‘Resource consents to take water from Mangakahia River’, 2 July 2001, NRC file ‘Glen Mor Ltd’

¹⁸⁹¹ Rob Lieffering, ‘NRC Staff Report’, 12 December 2003, p 4, NRC file 5069, vol. 1, ‘Taraunui Farms Ltd’

¹⁸⁹² Lieffering, ‘NRC Staff Report’, 12 December 2003, p4, NRC file 5069, vol. 1, ‘Taraunui Farms Ltd’

¹⁸⁹³ Waimarie Bruce to Rob Lieffering, ‘Mangakahia Irrigation Consents – 5009, 5014, 5021’, 6 July 2001, NRC file 5069, vol. 1, ‘Taraunui Farms Ltd’

Trustees had also objected to the renewal of two of the consents, saying they had serious implications on the marae and community.¹⁸⁹⁴

A meeting was held in Whāngārei, where NRC presented water quality monitoring results.¹⁸⁹⁵ In her December 2013 evidence, Kaipo told the Waitangi Tribunal that at that meeting, NRC acknowledged that water quality in the river was affected by agricultural run-off, dairy shed discharges, forestry, land development and flooding.¹⁸⁹⁶ The Komiti reiterated that the river was a 'significant taonga', and they were required to oppose the applications to fulfil their role as kaitiaki.¹⁸⁹⁷ NRC considered the Komiti 'affected' and as their written permission would not be granted, they processed it as a notified application.¹⁸⁹⁸ After the submissions period ended, they reported that no submissions were received.¹⁸⁹⁹ This seems rather disingenuous, given that before the notification period they had received multiple submissions and had held hui in which Māori expressed their opposition to the renewal of the consent. Those opposing the renewal may not have known that they were required to re-submit their objections once it was officially notified, and there is no evidence of the Council making them aware of this, or taking on board the significant opposition expressed prior to the official notification.

NRC's December 2003 assessment of the scheme's effects noted difficulties in measuring water levels and flow (and suggested changes to the measurement method), but noted the measured water drop was significantly less than anticipated, due to there being only five active abstractions, rather than the 17 granted.¹⁹⁰⁰ They did not consider the pH level of the water to be affected by abstractions, and noted a change in the aquatic invertebrate community, but they were unsure of the cause.¹⁹⁰¹ Council staff

¹⁸⁹⁴ Moana Eruera to D L Roke, 'Re: Non-notified application for renewal of consent 5009 and 5014 to take from Mangakahia river water for irrigation purposes', 30 July 2001, NRC file 'Glen Mor Ltd'

¹⁸⁹⁵ Lieffering, 'NRC Staff Report', 12 December 2003, p 4, NRC file 5069, vol. 1, 'Taraunui Farms Ltd'

¹⁸⁹⁶ Kaipo, #J6, para 86

¹⁸⁹⁷ Lieffering, 'NRC Staff Report', 12 December 2003, p4, NRC file 5069, vol. 1, 'Taraunui Farms Ltd'

¹⁸⁹⁸ Lieffering, 'NRC Staff Report', 12 December 2003, p4, NRC file 5069, vol. 1, 'Taraunui Farms Ltd'

¹⁸⁹⁹ Lieffering, 'NRC Staff Report', 12 December 2003, p4, NRC file 5069, vol. 1, 'Taraunui Farms Ltd'

¹⁹⁰⁰ Lieffering, 'NRC Staff Report', 12 December 2003, p5, NRC file 5069, vol. 1, 'Taraunui Farms Ltd'

¹⁹⁰¹ Lieffering, 'NRC Staff Report', 12 December 2003, pp7-9, NRC file 5069, vol. 1, 'Taraunui Farms Ltd'

emphasised that alternatives had been considered and mitigation measures had been implemented.¹⁹⁰²

The assessment made reference to RMA provisions, committing the Council to recognising and providing for the relationship of Māori and their culture and traditions with their ancestral lands, sites of wāhi tapu, and other taonga, and to having particular regard to kaitiakitanga (among other provisions) in managing the natural and physical resource.¹⁹⁰³ They committed to taking into account the principles of the Treaty of Waitangi saying they were obliged to consider cultural, economic and social benefits of the activity and balance these with potential adverse effects.¹⁹⁰⁴ The balancing of these interests was, they said, influenced by NRC policy.¹⁹⁰⁵ They considered that the life-supporting capacity, intrinsic value and natural character of the river would be preserved if the recommended continuation flow was maintained.¹⁹⁰⁶ They considered it consistent with the revised proposed Regional Water and Soil Plan (RPRWSP) for Northland.¹⁹⁰⁷ They noted that a range of RPRWSP objectives and policies must be considered, including :

- a) Managing natural and physical resources in a matter that recognises and provides for the traditional and cultural relationship of tangata whenua with land and water (objective 6.3.1);
- b) Recognising and, as far as practicable, providing for the relationship of Māori and their culture and traditions with respect to the use of natural and physical resources (policy 6.4.1);
- c) Having particular regard to kaitiakitanga and considering options for tangata whenua involvement in monitoring (policy 6.4.3); and
- d) Recognising and, as far as practicable, providing for tangata whenua cultural and spiritual values for water resources (policy 9.5.13).¹⁹⁰⁸

The Council acknowledged that the river was ‘an important element of the mana of the tangata whenua’, and noted that the Environment Court acknowledged the sincerity of the feeling and concerns of tangata whenua, but considered that the granting of consents, subject to conditions, would protect the river as a resource in a way that

¹⁹⁰² Lieffering, ‘NRC Staff Report’, 12 December 2003, p10, NRC file 5069, vol. 1, ‘Taraunui Farms Ltd’

¹⁹⁰³ Lieffering, ‘NRC Staff Report’, 12 December 2003, pp12-13, NRC file 5069, vol. 1, ‘Taraunui Farms Ltd’

¹⁹⁰⁴ Lieffering, ‘NRC Staff Report’, 12 December 2003, p13, NRC file 5069, vol. 1, ‘Taraunui Farms Ltd’

¹⁹⁰⁵ Lieffering, ‘NRC Staff Report’, 12 December 2003, p13, NRC file 5069, vol. 1, ‘Taraunui Farms Ltd’

¹⁹⁰⁶ Lieffering, ‘NRC Staff Report’, 12 December 2003, p14, NRC file 5069, vol. 1, ‘Taraunui Farms Ltd’

¹⁹⁰⁷ Lieffering, ‘NRC Staff Report’, 12 December 2003, p15, NRC file 5069, vol. 1, ‘Taraunui Farms Ltd’

¹⁹⁰⁸ Lieffering, ‘NRC Staff Report’, 12 December 2003, pp16-17, NRC file 5069, vol. 1, ‘Taraunui Farms Ltd’

would enable Māori values and concerns to be suitably recognised and provided for.¹⁹⁰⁹ They therefore considered that tangata whenua cultural values and concerns had been taken into account and as far as practicable, provided for. They reiterated that no iwi groups had lodged submissions on the replacement applications. They recommended the requested 10 year consent period.

The Council determined that the proposed activity would contribute to the social and economic wellbeing of the community and that 'very few' potential adverse effects had been identified or were considered likely to occur.¹⁹¹⁰ They considered that provided consent conditions were adhered to only minor adverse effects on the environment would occur, and the activity was therefore consistent with the purpose of the RMA and with the objectives and policies of the RPS and RPRWSP.¹⁹¹¹ The conditions could be reviewed annually and the consents were granted to 30 June 2013.¹⁹¹² Consent was granted for a period of 10 years, subject to conditions.¹⁹¹³ This was, according to Walzl, 'despite clear opposition by Mangakahia Maori'.¹⁹¹⁴

7.4.19.1 Renewal of the irrigation consents, 2013

In 2013 new consents were applied for, this time for a far longer term of 35 years. Sharon Kaipo on behalf of the Mangakāhia Māori Komiti Resource Management Unit, wrote that they totally opposed the consent renewal, and that, in a time of drought, they opposed 35 year consents.¹⁹¹⁵ Millan Ruka and Hōri Tuhiwai also expressed their concerns in correspondence with NRC.¹⁹¹⁶ Mangakāhia farmers continue to take water from the Mangakāhia River under the RMA, and the NRC's website reports that the largest amount of water taken from above ground in Northland is by the Mangakāhia

¹⁹⁰⁹ Lieffering, 'NRC Staff Report', 12 December 2003, p17, NRC file 5069, vol. 1, 'Taraunui Farms Ltd'

¹⁹¹⁰ Lieffering, 'NRC Staff Report', 12 December 2003, p18, NRC file 5069, vol. 1, 'Taraunui Farms Ltd'

¹⁹¹¹ Lieffering, 'NRC Staff Report', 12 December 2003, p18, NRC file 5069, vol. 1, 'Taraunui Farms Ltd'

¹⁹¹² Lieffering, 'NRC Staff Report', 12 December 2003, pp22-23, NRC file 5069, vol. 1, 'Taraunui Farms Ltd'

¹⁹¹³ Walzl, #E34, pp335-336

¹⁹¹⁴ Walzl, #E34, p336

¹⁹¹⁵ Sharon Kaipo to Jan-Arie Jongkees, 'Re: Resource Consents 5027, 5021, 5014, G & A Rika, and anyone else on Te Awa o Mangakahia', 8 April 2013, NRC file, 'Glen Mor Ltd', vol. 3

¹⁹¹⁶ Stuart Savill to Millan Ruka, 'Resource consent application Mangakahia pasture irrigators CON20130500901 – CON20130501401 – CON20130502101 – CON20130502201, CON20130502701', 16 April 2013; Stuart Savill to Hōri Tuhiwai, 'Mangakahia River water take consent applications', 16 April 2013; Millan Ruka to Stuart Savill, 'Fw: Mangakahia River water take consents', 16 April 2013; Millan Ruka to John Ballinger, 'Re: "Survey of Water Consents and Levels – Mangakahia River"', 18 March 2013 NRC file, 'Glen Mor Ltd', vol. 3

Irrigation Committee, who have consent to take 19,400 cubic metres per day.¹⁹¹⁷ NRC issued four consents with a 20 year term (expiring 30 June 2033) and one with a five year term (expiring 30 June 2018).¹⁹¹⁸

7.4.20 Developments in central government policy and practice

7.4.20.1 Water conservation orders

Ministry for the Environment staff, responsible for assessing the completeness of water conservation order applications, struggled to interpret the RMA in their considerations of the Mangakāhia application. It is worth looking briefly at applications for water conservation orders made in accordance with tikanga Māori which have since been granted. Since the RMA was enacted water conservation orders have been applied to a further eight rivers on top of the existing seven.¹⁹¹⁹ Three of these included protection of characteristics that were considered significant in accordance with tikanga Māori:

- a) Kowarau River (1997);
- b) Rangitata River (2006); and
- c) Oreti River (2008).

It is worth noting that all of these rivers are in the rohe of Ngāi Tahu whānui, whose historic Treaty of Waitangi grievances were settled by the Ngāi Tahu Claims Settlement Act 1998. The applications for the Rangitata and Oreti River water conservation orders note the 'special importance' of the respective rivers to Ngāi Tahu, as recognised by the Crown in the Ngāi Tahu Deed of Settlement and in the Ngāi Tahu Claims Settlement Act 1998.¹⁹²⁰

¹⁹¹⁷ NRC, 'Rivers and streams: resource consents' <http://www.nrc.govt.nz/for-schools/school-information-packs/rivers-and-streams/> (accessed 17 May 2016)

¹⁹¹⁸ NRC Resource Consents AUT.005014.01.03, AUT.005021.01.03, AUT.005022.01.03, AUT.005.027.01.03, and AUT.005009.01.03 (the consent with a 5 year term as the holders had not previously exercised their consents). Supplied by NRC

¹⁹¹⁹ MfE, 'Table of Water Conservation Orders', <https://www.mfe.govt.nz/fresh-water/reform-programme/water-conservation-orders/existing-water-conservation-orders/table> (accessed 11 February 2016)

¹⁹²⁰ New Zealand Fish and Game Council and Central South Island Fish and Game Council, 'An Application for a Water Conservation Order in respect of the Rangitata River', December 1999, para 16 <https://www.mfe.govt.nz/sites/default/files/media/rangitata-wco-%20application.pdf> (accessed 11 February 2016); and New Zealand Fish and Game Council and Southland Fish and Game Council, 'An Application for a Water Conservation Order in respect of the Oreti River', May 2005, para 27 <https://www.mfe.govt.nz/sites/default/files/freshwater/freshwater/water-conservation/oreti-wco-application/fish-game-application-wco.pdf> (accessed 11 February 2016)

The Special Tribunal that considered the Kawarau River water conservation order acknowledged the spiritual and cultural values and tikanga Māori, following evidence which described tikanga Māori as it related to Kawarau catchment and the Whakatipu area.¹⁹²¹ The Special Tribunal for the Rangitata River water conservation order said that the history as seen in place names, physical features of the catchment, historical trails, mahinga kai and mauri of the river were all values that Ngāi Tahu considered 'outstanding'.¹⁹²² They said the evidence demonstrated that the river was outstanding to manawhenua and Te Rūnanga o Ngāi Tahu and they considered the river as a whole had a range of characteristics of 'outstanding significance' in accordance with tikanga Māori.¹⁹²³ On the matter of whether 'outstanding significance' in accordance with tikanga Māori could be determined on a national level, the Tribunal was clear: 'to suggest that this river should be compared with other rivers such as the Mohaka or Motu, valued by other iwi, is not in accordance with tikanga Māori.'¹⁹²⁴

The Special Tribunal for the Oreti River water conservation order noted that 'in terms of significance it is difficult and not really possible to undertake a comparative analysis examining the relative significance of the Oreti with other rivers.'¹⁹²⁵ The Tribunal said that 'concepts of national and regional significance are difficult to apply to cultural settings where significance is accorded by the respective whānau, hapū and rūnanga.'¹⁹²⁶ Factors leading to the Tribunal deeming it 'outstanding' in accordance

¹⁹²¹ MfE, 'Report of the Special Tribunal to hear the water conservation order application on the Kawarau River and tributaries', December 1993

<https://www.mfe.govt.nz/sites/default/files/media/Kawarau%20River%20Special%20Tribunal%20report.pdf> (accessed 11 February 2016)

¹⁹²² Special Tribunal, 'Rangitata River Water Conservation Order Application', p77

https://www.mfe.govt.nz/sites/default/files/media/Rangitata%20River%20Special%20Tribunal%20Report%20Full.pdf?_ga=1.73588178.1313935713.1415143884 (accessed 12 February 2016)

¹⁹²³ Special Tribunal, 'Rangitata River Water Conservation Order Application', p77

https://www.mfe.govt.nz/sites/default/files/media/Rangitata%20River%20Special%20Tribunal%20Report%20Full.pdf?_ga=1.73588178.1313935713.1415143884 (accessed 12 February 2016)

¹⁹²⁴ Special Tribunal, 'Rangitata River Water Conservation Order Application', p76

https://www.mfe.govt.nz/sites/default/files/media/Rangitata%20River%20Special%20Tribunal%20Report%20Full.pdf?_ga=1.73588178.1313935713.1415143884 (accessed 12 February 2016)

¹⁹²⁵ Special Tribunal, 'Report by a Special Tribunal Appointed by the Minister for the Environment to Consider an Application for a Water Conservation Order for the Oreti River', November 2007, p44

https://www.mfe.govt.nz/sites/default/files/media/Oreti%20Water%20Conservation%20Order%20Decision_FINAL.pdf?_ga=1.44815716.1313935713.1415143884 (accessed 12 February 2016)

¹⁹²⁶ Special Tribunal, 'Report by a Special Tribunal Appointed by the Minister for the Environment to Consider an Application for a Water Conservation Order for the Oreti River', November 2007, p44

https://www.mfe.govt.nz/sites/default/files/media/Oreti%20Water%20Conservation%20Order%20Decision_FINAL.pdf?_ga=1.44815716.1313935713.1415143884 (accessed 12 February 2016)

with tikanga Māori were the presence of taonga species, the relatively unmodified upper catchment, evidence of past occupation in the form of archaeological sites and remains, continuity of flow from the source to the coast, and high water quality. All of these led the Tribunal to deem the mauri of the river 'robust and vibrant.'¹⁹²⁷ They concluded, '[w]hile each of these factors when considered individually may fail to pass the test of being outstanding, collectively they represent grounds for our deciding that the main stem of the Oreti is outstanding for values in accordance with tikanga Māori.'¹⁹²⁸

All three post-1991 water conservation orders which refer to the water body's 'outstanding' values in accordance with tikanga Māori made their applications under other provisions as well as the tikanga Māori provision (in fact, the original Kawarau River application did not mention tikanga Māori). It leaves the question, how would these applications have fared if they were made solely under the tikanga Māori provision? Given that all three were in Ngāi Tahu rohe, to what extent is an application under this provision assisted by a Crown acknowledgement of the importance of the water body to tangata whenua? And does this disadvantage groups who have not yet reached a settlement with the Crown for their historic Treaty of Waitangi grievances?

These recent water conservation order applications show that special tribunals have interpreted 'outstanding' in accordance with tikanga Māori in a local, rather than New Zealand-wide, way. The Ministry has not changed the way it processes water conservation orders: staff check applications for completeness and advise the Minister if they consider s/he should request further information or send it to a special tribunal.¹⁹²⁹ The RMA does not require special tribunal members to have knowledge, skill, or experience in tikanga Māori, though the Minister is to consult, 'where appropriate', with the Ministers of Conservation and Māori Development regarding

¹⁹²⁷ Special Tribunal, 'Report by a Special Tribunal Appointed by the Minister for the Environment to Consider an Application for a Water Conservation Order for the Oreti River', November 2007, p45 https://www.mfe.govt.nz/sites/default/files/media/Oreti%20Water%20Conservation%20Order%20Decision_FINAL.pdf?ga=1.44815716.1313935713.1415143884 (accessed 12 February 2016)

¹⁹²⁸ Special Tribunal, 'Report by a Special Tribunal Appointed by the Minister for the Environment to Consider an Application for a Water Conservation Order for the Oreti River', November 2007, p45 https://www.mfe.govt.nz/sites/default/files/media/Oreti%20Water%20Conservation%20Order%20Decision_FINAL.pdf?ga=1.44815716.1313935713.1415143884 (accessed 12 February 2016)

¹⁹²⁹ Kirsten Forsyth, personal communication, 1 March 2016

special tribunal membership (membership applications and appointments are usually done by the Ministry on behalf of the Minister).¹⁹³⁰ In February 2016, the Ministry published a consultation document on freshwater management, proposing to amend the RMA to:

- a) require water conservation order applications to provide evidence of consultation with relevant iwi and have one person nominated by the relevant iwi represented on the special tribunal convened to hear the application; and
- b) require the special tribunal for a water conservation order (and, where relevant, the Environment Court) to consider the needs of iwi/tangata whenua.¹⁹³¹

If these proposed changes are adopted, they may go some way to assist special tribunals to interpret 'outstanding significance' in accordance with tikanga Māori under the RMA.

7.4.20.2 Legal aid and environmental legal assistance

Civil legal aid is currently available for specialist courts, including the Environment Court (successor to the Planning Tribunal). The Legal Services Act 2011 states that legal aid may be granted for a range of civil matters including 'all applications, submissions, and appeals under the Resource Management Act 1991 or to the Environment Court under any other Act'.¹⁹³² Subject to applicants meeting criteria set out in the Legal Services Act, the Legal Services Commissioner must grant legal aid if the applicant is 'a natural person' or, under certain circumstances, a trustee corporation.¹⁹³³ The Act continues, 'To avoid doubt, legal aid in respect of civil proceedings is not available to any body of persons, whether corporate or unincorporate, except as provided for in sections 10(1) [the trustee corporation provision] and 47 [the provision for applications in respect of proceedings before Waitangi Tribunal]'.¹⁹³⁴ This means that groups of Māori will not be granted legal aid for situations outside Waitangi Tribunal proceedings (unless as a trustee corporation). While the legislation has recognised the need to consider applications from groups of Māori in respect of Waitangi Tribunal hearings, it has not catered for groups of Māori to access legal aid as part of other proceedings. It

¹⁹³⁰ Resource Management Act 1991, s 202(2)

¹⁹³¹ MfE, *Next steps for fresh water: Consultation document*, 2016, p42. There are other proposed changes relating to water conservation orders.

¹⁹³² Legal Services Act 2011, s 7(1)(o)

¹⁹³³ Legal Services Act 2011, s 10(1)

¹⁹³⁴ Legal Services Act 2011, s 11

cannot assist groups of Māori in their submissions on and appeals against resource consent applications, nor to take matters to the Environment Court.

It is worth noting that the Environmental Legal Assistance Fund, established in 2000 and administered by the Ministry for the Environment, can provide limited financial assistance 'to advocate for an environmental issue of public interest at resource management cases' at the Environment Court and at certain boards of inquiry.¹⁹³⁵ It has a total annual budget of \$600,000 (excluding GST) for all of New Zealand, and the maximum grant is \$50,000 (excluding GST) per group, per application, for any one case.¹⁹³⁶ Funding can cover the time and expenses of legal representatives and/or expert witnesses used in preparing for, resolving and/or presenting cases.¹⁹³⁷ The purpose of the fund is to help 'not-for-profit groups such as iwi/hapū, incorporated societies, and community groups to participate more effectively in resource management processes.'¹⁹³⁸ This funding has potential to assist groups of Māori but as a contestable fund it is limited, and applicants must convince the advisory panel that the issue is 'of public interest'. Its existence certainly does not guarantee legal assistance for groups of Māori to pursue resource management issues.

Inability to access legal aid affected the Mangakāhia Māori Komiti's ability to continue to oppose the irrigation scheme. The Legal Services Act 2011 continues to deny legal aid to groups of Māori for applications, submissions, and appeals under the RMA or to the Environment Court under any other Act.

¹⁹³⁵ MfE, 'Environmental Legal Assistance Fund (ELA Fund)', <http://www.mfe.govt.nz/more/funding/environmental-legal-assistance-fund> (accessed 16 June 2016)

¹⁹³⁶ MfE, 'About the Environmental Legal Assistance Fund', <http://www.mfe.govt.nz/more/funding/environmental-legal-assistance-fund/about-fund> (accessed 16 June 2016)

¹⁹³⁷ MfE, 'About the Environmental Legal Assistance Fund', <http://www.mfe.govt.nz/more/funding/environmental-legal-assistance-fund/about-fund> (accessed 16 June 2016)

¹⁹³⁸ MfE, 'About the Environmental Legal Assistance Fund', <http://www.mfe.govt.nz/more/funding/environmental-legal-assistance-fund/about-fund> (accessed 16 June 2016)

7.4.21 Conclusion - Mangakāhia River water conservation order application

This study depicts a process of Māori engagement with the Crown and its delegates over resource management and provides insights into government decision-making, showing how that decision making is viewed by tangata whenua and the demands of the process on tangata whenua. Both the water conservation order and the Planning Tribunal processes provided tangata whenua with opportunities to take their case beyond the local systems in place.

Lack of understanding of tikanga Māori and Māori values comes through as a major flaw in the Crown's resource management process in this local study. In the water conservation order process, it appears that Ministry's tools for assessing sufficiency of information on the 'outstanding significance' of water bodies in accordance with tikanga Māori were inadequate, as demonstrated by high levels of staff confusion. Similarly, it is hard to know how special tribunals make decisions on these matters and how appropriate their tests are. Kaipo was firm that tangata whenua should not be challenged on tikanga Māori, which existed long before this government process.¹⁹³⁹ She said that while government departments consider the tangible, tangata whenua look at the tangible and intangible. While the Ministry has not since developed its criteria for assessing the 'outstanding' quality of rivers in accordance with tikanga Māori, there are now precedents for water conservation orders made in accordance with tikanga Māori. Furthermore, there are proposals to refine the water conservation order application process. In the appeal process, it is also hard to say how knowledgeable the Planning Tribunal were of tikanga Māori and Māori priorities, or how seriously they took them. While their eventual decision shortened the length of two of the water abstraction permits, in part due to tangata whenua concerns, they were not convinced to rule in favour of tangata whenua, who argued against any amount of water abstraction.

Another area of concern, in considering the extent to which Māori have been able to exercise kaitiakitanga, is the legal aid funding system that did not allow Māori to access

¹⁹³⁹ Research meeting with Kaipo and Tuhiwai, 13 December 2015

funding in their appeal process. Not only did this mean that Māori were not able to appeal the Planning Tribunal's decision to the High Court, it also meant that the Planning Tribunal process and related processes crippled the Komiti financially. Kaipo emphasised that they had used the Komiti, established under the Māori Community Development Act 1962, for 'everything', not just environmental causes, and as a result local marae were flourishing in the 1980s. Incurring huge legal debts and subsequently having to dissolve the Komiti meant that Mangakāhia Māori lost an organisational body that was well-established in the community and had established relationships with local and central government.

While the Ministry may not have seen a water conservation order as the best way to protect the Mangakāhia River from the impacts of commercial activity, it was not, of course, the only means the Komiti used. They were involved in the resource consent process, resource consent appeal, and sought to be included in resource management under planning regimes by responding to draft council plans. In much of this, the Komiti by necessity played a reactive role, responding to specific events rather than having their customary authority and ownership recognised and protected from the outset. Yet despite the different methods they used, tangata whenua spent huge amounts of time, resources, and money, but had gained the ability to participate in reviews and monitoring and little else.

Māori faced very practical difficulties in their opposition of the irrigation scheme and attempts to protect the Mangakāhia River. Challenges of participating in the consultation process included troubles with communication channels, concerns about the process adhering to tikanga Māori, and needing resources such as time, money, and technical expertise in order to engage. For example, the Komiti planned to file kaumātua affidavits with the Ministry for the Environment for their water conservation order application, but later withdrew the application saying that they were not resourced to present, research, and document information as the RMA required.¹⁹⁴⁰ In the words of Hōri Tuhiwai, tangata whenua had a lot to do 'on a snotty rag'.¹⁹⁴¹ The process of opposing the resource consent application, appealing the decision to the Planning

¹⁹⁴⁰ S. Kaipo to Bronwyn Arthur, 5 December 1996 (second letter), MfE file NPR(A) 6/2

¹⁹⁴¹ Research meeting with Kaipo and Tuhiwai, 13 December 2015

Tribunal, attempting to appeal it to the High Court, and applying for a water conservation order was a huge burden on tangata whenua. Kaipo said that after the Planning Tribunal decision, tangata whenua were 'shattered'.¹⁹⁴² As well as emotional impacts, being forced to 'wind up' the Komiti had a huge practical impact. There were also impacts on community relations, with Kaipo saying she believed that the Komiti were seen as 'shit-stirrers' in their opposition to the irrigation scheme.

Māori in this local study did not leave this experience with a high level of faith in the system. They felt that the government wanted to inform them of decisions and activity, rather than to learn the Māori perspectives. Despite following the processes put into place by the Crown, the end result was still a lack of consideration and acknowledgement of their views. Whenever they provided information to the Minister on their relationship, concepts and tikanga around the river, it did not seem to be the information that the Minister required. They ultimately finished this process with a feeling that they did not 'fit'.

Māori had to grapple with processes that were foreign to them and for which they were not adequately resourced to participate in. There were many demands on tangata whenua and it is worth acknowledging that this did not go unnoticed by Ministry for the Environment staff, who expressed concerns and attempted to assist. Notwithstanding that this was not always within the confines of their roles Ministry staff appear to have made a genuine effort to communicate with and assist Māori. Despite these efforts, Kaipo reflected that the Ministry 'could have been more helpful'.¹⁹⁴³

The irrigation scheme and the processes that allowed it to proceed affected the ability of Ngā Hapū o Mangakāhia to exercise tino rangatiratanga and kaitiakitanga over, and cultural use and enjoyment of, the Mangakāhia River. When the decision was made to allow the extraction of water against the wishes of tangata whenua, local Māori were severely constrained in their ability to exercise tino rangatiratanga over the river. At a higher level, the government system and legislative scheme did not appear to have appropriate tools to respond to Māori attempts to protect the river. This certainly

¹⁹⁴² Research meeting with Kaipo and Tuhiwai, 13 December 2015

¹⁹⁴³ Research meeting with Kaipo and Tuhiwai, 13 December 2015

impacted tino rangatiratanga, kaitiakitanga, and cultural use and enjoyment of the river. A substantial group of local Māori did not feel they were consulted appropriately, or that their voices were heard.

7.5 Local Study #2: Mangakāhia gravel extraction

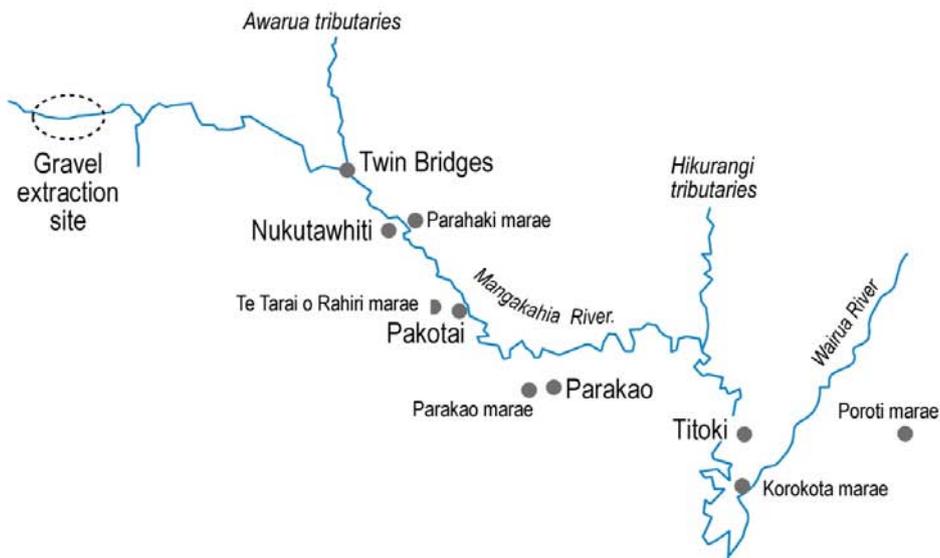
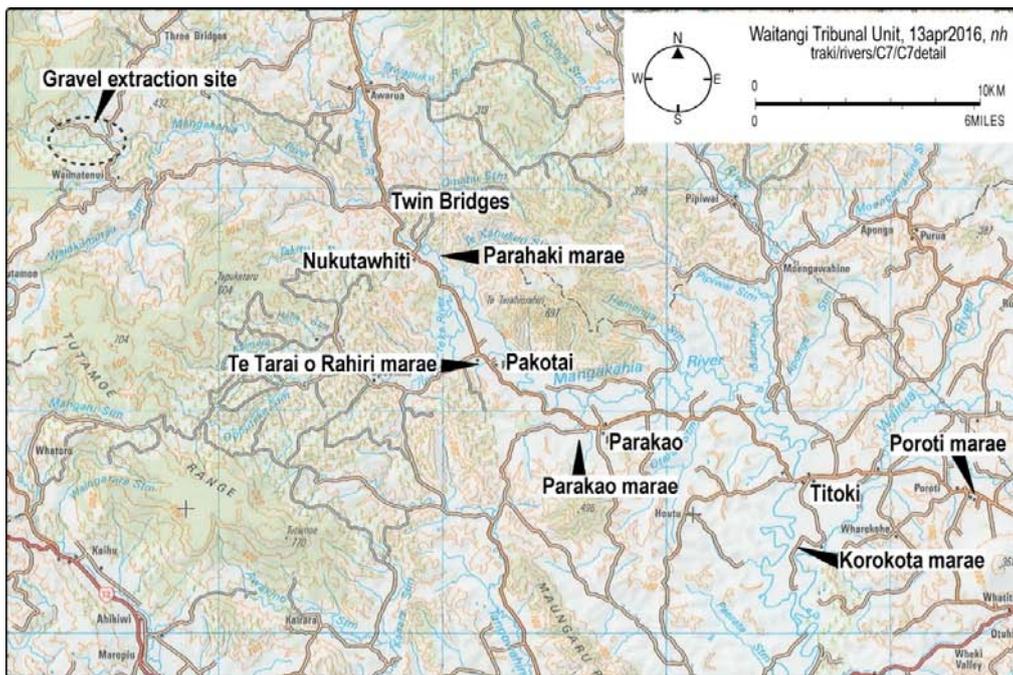
This local study looks at the resource consent process, Māori responses, and the outcome of an application to extract gravel from the upper Mangakāhia River. The extraction site is located 12 kilometres upstream from Twin Bridges and is surrounded by the Waipunga Forest which is owned by the applicants. Major issues that emerge are the adequacy of the process of consultation, including identification of consultative parties, payment of royalties, and recognition of the value of riverways to Māori, particularly their mauri. This local study relies on NRC archives, which were mostly but not always complete.

Figure 67: Mangakāhia River gravel extraction site



(Source: Amended brief of evidence of Millan Ruka, Wai 1040, #U34(b), p 54)

Figure 68: Location of Mangakāhia River gravel extraction and local marae



7.5.1 Application for resource consent

In March 2013 Taumata Plantations Ltd applied to NRC for resource consent to extract gravel from the bed of Mangakāhia River.¹⁹⁴⁴ They sought to extract up to 12,000 cubic metres of gravel per year for six years.¹⁹⁴⁵ This would be used to construct roads and

¹⁹⁴⁴ Taumata Plantations Ltd, 'Application form for resource consent', NRC file 31523, Taumata Plantations Ltd vol. 1

¹⁹⁴⁵ The application form requests consent for six years (p3) while the accompanying booklet requests five years (p15).

landings within Waipunga Forest which Taumata Plantations, a commercial forestry investor, owned. The proposed work would be undertaken by contractor Hancock Forest Management.¹⁹⁴⁶ Hancock Forest Management is the property management subsidiary of the Hancock Timber Resource Group (HTRG). According to their brochure they are ‘the world’s largest timberland investment manager for institutional investors’. They are ‘responsible for the day-to-day, on-the-ground timberland management services for HTRG’s investors on more than five million acres across the United States and New Zealand’.¹⁹⁴⁷

NRC had previously granted Taumata Plantations land use consent (NLD 02 9529 01-03) for activities within Waipunga Forest, including:

- a) Harvest plantation forestry in streamside management areas;
- b) Earthworks for the upgrade and construction of roads, tracks and landing sites; and
- c) Discharge and diversion of stormwater from land disturbance activities.¹⁹⁴⁸

The resource consent application was prepared by Hancock Forest Management (NZ) Limited and the booklet accompanying it, ‘Resource Consent application to extract gravel from the bed of the Mangakahia River’, requested consent for five years (compared with the six years requested on the application form), the duration of harvesting in the forestry industry.¹⁹⁴⁹ They considered it appropriate for the application to be assessed on a non-notified basis.¹⁹⁵⁰

7.5.1.1 Relevant plans, standards and laws

The application outlined the need for resource consent, as the planned activity did not meet ‘permitted activity standards’ under the rules of the Regional Water and Soil Plan for Northland (RWSPN).¹⁹⁵¹ The application also addressed the Regional Air Quality

¹⁹⁴⁶ Taumata Plantations, ‘Part B Assessment of Environmental Effects – Carry out Works in the Beds or Banks of a Water Body’, A6, NRC file 31523, Taumata Plantations Ltd vol. 1

¹⁹⁴⁷ Hancock Forest Management, Hancock Forest Management, North America & New Zealand: Integrated Forestry Services, 2011, p2

¹⁹⁴⁸ Hancock Forest Management, Resource Consent application to extract gravel from the bed of the Mangakahia River. Waipunga Forest, March 2013, p6, NRC file 31523, Taumata Plantations Ltd vol. 1

¹⁹⁴⁹ Hancock Forest Management, *Resource Consent application*, March 2013, p7, NRC file 31523, Taumata Plantations Ltd vol. 1

¹⁹⁵⁰ Hancock Forest Management, *Resource Consent application*, March 2013, p15, NRC file 31523, Taumata Plantations Ltd vol. 1

¹⁹⁵¹ Hancock Forest Management, *Resource Consent application*, March 2013, p4, NRC file 31523, Taumata Plantations Ltd vol. 1

Plan which contained a provision for the discharge of dust into the air. The application claimed that due to the distance of the proposed sites and stockpiles from the nearest dwelling and as almost all traffic would be on internal roads within the forestry block, there would be no offensive or objectionable dust beyond the property boundary. Thus, the applicant claimed, the proposed activity would comply with the Regional Air Quality Plan's rules, making it a 'permitted activity' under that plan.¹⁹⁵²

7.5.1.2 Possible effects

According to Hancock, the vicinity of the proposed works did not feature:

- a) Areas of indigenous vegetation or habitats of indigenous fauna in the margins of the water body;
- b) Areas where food is gathered;
- c) Natural wetlands;
- d) Waste discharges;
- e) Recreational activities;
- f) Areas of special aesthetic value;
- g) Areas of significance to iwi; or
- h) Areas prone to erosion.¹⁹⁵³

The extent of their consultation with tangata whenua on the environmental and cultural impact of the proposed gravel extraction is discussed further below. The applicants said the river contained obvious signs of and/or known aquatic biota and that adverse effects of the proposed works would be on invertebrates, but would be minor. They said extraction would not result in any sediment or silt entering any of the nearby waterways and that any water discolouration would be temporary and minor. For this reason, they said erosion control measures would not be required.¹⁹⁵⁴ Ongoing monitoring would ensure river clarity and any sediment discharges would be minimal.¹⁹⁵⁵

¹⁹⁵² Hancock Forest Management, *Resource Consent application*, March 2013, pp6-7, NRC file 31523, Taumata Plantations Ltd vol. 1

¹⁹⁵³ Taumata Plantations, 'Assessment of Environmental Effects', C3, NRC file 31523, Taumata Plantations Ltd vol. 1

¹⁹⁵⁴ Taumata Plantations, 'Assessment of Environmental Effects', C5, NRC file 31523, Taumata Plantations Ltd vol. 1

¹⁹⁵⁵ Taumata Plantations, 'Assessment of Environmental Effects', C8, NRC file 31523, Taumata Plantations Ltd vol. 1

The appended gravel extraction management plan discussed possible effects and how these could be managed. In terms of cultural impacts, the applicants said there were no known archaeological sites in the area, referring to a 1986 study of the area which was not cited.¹⁹⁵⁶ It does not appear that a cultural impact assessment was required to accompany the application. As tangata whenua can understandably be reluctant to discuss wāhi tapu in public forums, there is not a lot of this information publicly-available in the Mangakāhia, but in evidence to the Te Raki Tribunal, claimant Te Ringakaha Tia-Ward discussed areas of significance and wāhi tapu in the upper Mangakāhia which lay downstream from the gravel extraction site.¹⁹⁵⁷ As the extraction was taking place upstream from these and possibly close to other wāhi tapu it is quite possible that the extraction would have affected a number of wāhi tapu and sites of significance which a cultural impact assessment could have considered. It is not the purpose of this report to speculate on this but it points to the value of a cultural impact assessment.

The Gravel Extraction Management Plan said there would be no adverse effects on the wider community as the extracted gravel would be used in the adjacent forest, so would lead to a minimal increase in traffic density on nearby public roads.¹⁹⁵⁸ The nearest permanent resident would not be affected by extraction activities 'due to the distance, broken topography and the intervening forest plantation and farming land between the dwelling and the site.'¹⁹⁵⁹ The applicants said that extracting gravel from the Mangakāhia river bed would have fewer impacts on local infrastructure and communities than the alternative, which was importing metal for roads from 15 kilometres away and would therefore have positive effects.¹⁹⁶⁰ The applicant also claimed that there were no known recreation sites in the vicinity of extraction sites.¹⁹⁶¹

¹⁹⁵⁶ Hancock Forest Management, *Resource Consent application*, March 2013, p12; and 'Introduction', *Gravel Extraction Management Plan: Waipunga Forest*, January 2013 NRC file 31523, Taumata Plantations Ltd vol. 1. No reference given.

¹⁹⁵⁷ Brief of evidence of Te Ringakaha Tia-Ward, Wai 1040 #J7, para 41

¹⁹⁵⁸ Hancock Forest Management, 'Introduction', *Gravel Extraction Management Plan*, January 2013 NRC file 31523, Taumata Plantations Ltd vol. 1

¹⁹⁵⁹ Hancock Forest Management, 'Introduction', *Gravel Extraction Management Plan*, January 2013 NRC file 31523, Taumata Plantations Ltd vol. 1

¹⁹⁶⁰ Taumata Plantations, 'Assessment of Environmental Effects', C7, NRC file 31523, Taumata Plantations Ltd vol. 1

¹⁹⁶¹ Hancock Forest Management, *Resource Consent application*, March 2013, p12, NRC file 31523, Taumata Plantations Ltd vol. 1

7.5.1.3 Consideration of alternatives

The applicants said they considered alternatives, namely importing metal from a quarry 15 kilometres away.¹⁹⁶² They said this option would increase heavy traffic on rural roads, place pressure on infrastructure, and bring a perceived safety risk to communities.

7.5.1.4 Consultation undertaken by Hancock/Taumata Plantations

The application stated that Taumata Plantations, the owners and the body seeking resource consent, had consulted with neighbours and DOC. As for consultation with Māori, 'Ngapuhi iwi' is listed with an ambiguous note: 'to follow'.¹⁹⁶³ Hancock Forest Management (Hancock) said affected parties had been consulted extensively in the original resource consent application for forestry harvesting. As the proposed extraction was considered similar in scale and intensity to the forestry harvesting activities, they were 'of the opinion that the effects [were] similar'. The application did not discuss the possible cumulative effect of undertaking gravel extraction in addition to forestry activity. The neighbours were consulted: Far North District Council (listed in the application as the 'owner/occupier' of the north bank of the river); Kaipara District Council ('owner/occupier' of the south bank); and Tony Waaka (immediate downstream neighbour). Other neighbours 'were not considered to be adversely [affected] by the extraction due to topography, intervening pine crop or distance, [or] extraction methods and were [therefore] not consulted'.¹⁹⁶⁴

The application outlined some of Hancock's contact with tangata whenua, and Hancock provided additional information to the researchers.¹⁹⁶⁵ Hancock initially contacted Te Roroa, but were informed that they were not kaitiaki for the Waipunga Forest.¹⁹⁶⁶ They then sought advice from NRC's Iwi Liaison Officer, who provided them with contact

¹⁹⁶² Taumata Plantations, 'Assessment of Environmental Effects', C6, NRC file 31523, Taumata Plantations Ltd vol. 1

¹⁹⁶³ Taumata Plantations, 'Assessment of Environmental Effects', C2, NRC file 31523, Taumata Plantations Ltd vol. 1

¹⁹⁶⁴ Hancock Forest Management, *Resource Consent application*, March 2013, p13, NRC file 31523, Taumata Plantations Ltd vol. 1

¹⁹⁶⁵ Hancock Forest Management, *Resource Consent application*, March 2013, pp13-14, NRC file 31523, Taumata Plantations Ltd vol. 1; Feedback on draft report received from Hancock Forest Management on 26 May 2016

¹⁹⁶⁶ Feedback on draft report received from Hancock Forest Management on 26 May 2016

details for TRAION. Hancock proceeded to contact George Riley, the then-CEO of TRAION, who referred them to Carol Dodd, TRAION's Environmental Manager.

Dodd arranged for them to attend a meeting with Parahaki Marae trustees on 1 December 2012.¹⁹⁶⁷ At the meeting, concerns were raised about erosion. Hancock reported that trustees were concerned about potential changes to river flow leading to problems downstream such as erosion of river banks, flooding, and damage to infrastructure.¹⁹⁶⁸ Hancock explained that the extraction would take place on dry river banks and the volume and velocity of water in the river should not be affected.¹⁹⁶⁹ Hancock said that one attendee raised the payment of royalties, and that Hancock explained the ownership of the gravel (presumably that the gravel was considered the property of the legal landowners).

Applicants understood through subsequent discussions with Dodd that Tautoro Marae, rather than Parahaki Marae, had interests into the area of gravel extraction.¹⁹⁷⁰ The applicants detailed a February 2013 meeting with Sonny Tau and Hōne Sadler,¹⁹⁷¹ which it appears they attended as representatives of Tautoro Marae, reporting that neither raised issues with the proposal and both recognised the benefits of the proposed extraction.

Hancock said that as the closest marae on Mataraua Road was Ngāi Tāwake (presumably Kaingahoa/Mataraua Marae), they had contacted the marae and discussed the planned extraction. Hancock said Mataraua Marae were not deemed to be affected by the application, and attendees to the meeting did not raise concerns regarding the extraction. They did, however, discuss effects of forestry traffic on the community, and Hancock and marae representatives agreed on a plan to reduce the impact. Hancock

¹⁹⁶⁷ Sharon Kaipo advised in personal communication on 2 October 2015 that initial contact between Hancock and Parahaki Marae was due to the relationship the two parties already had.

¹⁹⁶⁸ Hancock Forest Management, *Resource Consent application*, March 2013, pp13-14, NRC file 31523, Taumata Plantations Ltd vol. 1

¹⁹⁶⁹ Feedback on draft report received from Hancock Forest Management on 26 May 2016

¹⁹⁷⁰ Sharon Kaipo advised in personal communication on 2 October 2015 that Parahaki Marae trustees told Hancock that they needed to talk to Mataraua Marae, as it was Mataraua Marae that would be affected by gravel extraction.

¹⁹⁷¹ Hancock later advised that they met with Sonny Tau and George Riley. Feedback on draft report received from Hancock Forest Management on 26 May 2016

said they went ‘to some length’ to seek guidance on who were kaitiaki for this area, and at times the advice provided was confusing. It is somewhat surprising that the Iwi Liaison Officer referred them to the Rūnanga rather than directly to the relevant hapū or marae. Hancock also said there seemed to be disagreement on who the kaitiaki for the proposed extraction site were.

In the application, Hancock said that because the proposed extraction site was 12 kilometres upstream from Twin Bridges (which is several kilometres north and upstream of Parahaki Marae),¹⁹⁷² the planned gravel extraction would not cause any more than minor adverse effects.¹⁹⁷³ They also considered that the extraction would assist during flood events as it would increase stream bed capacity. They did not consider a royalty applicable as the gravel would be extracted from land owned by Taumata Plantations Ltd, Far North District Council (FNDC), and Kaipara District Council (KDC).

Hancock said they discussed the proposed extraction with staff from KDC and FNDC, who owned the river banks and confirmed that neither local government body would require them to seek resource consent.¹⁹⁷⁴ KDC and FNDC both provided formal written approval for the proposed gravel extraction.¹⁹⁷⁵ The application also said that Department of Conservation (DOC) officials met with Hancock personnel and did not raise any issues or express any concerns with the proposed extraction; they would respond when the application was circulated for comment by NRC.¹⁹⁷⁶

Hancock concluded it was ‘highly unlikely’ that the proposed extraction posed a risk to river users, the wider community, or the environment.¹⁹⁷⁷ They say that iwi Māori ‘have not raised any justifiable reasons to oppose this application’ and that ongoing

¹⁹⁷² NRC says Parahaki marae is approximately 20 kilometres downstream from the extraction site

¹⁹⁷³ Hancock Forest Management, *Resource Consent application*, March 2013, p13, NRC file 31523, Taumata Plantations Ltd vol. 1

¹⁹⁷⁴ Hancock Forest Management, *Resource Consent application*, March 2013, p7, NRC file 31523, Taumata Plantations Ltd vol. 1

¹⁹⁷⁵ KDC’s written approval is not included in NRC archives

¹⁹⁷⁶ Hancock Forest Management, *Resource Consent application*, March 2013, p14, NRC file 31523, Taumata Plantations Ltd vol. 1

¹⁹⁷⁷ Hancock Forest Management, *Resource Consent application*, March 2013, p15, NRC file 31523, Taumata Plantations Ltd vol. 1

consultation with TRAION representatives would occur. They discussed local government support further, saying that FNDC were encouraging this use of gravel in efforts to reduce wear and tear to roading infrastructure and NRC supported the proposed extraction as they acknowledged the benefits of reducing gravel in riverbeds and therefore reducing riverbank erosion, flooding, and sedimentation. They said these benefits lessened risks to people, stock and property, and helped to keep roading and infrastructure open. As the application stated that NRC supported the proposal, it appears that they were already planning to approve it, which raises the question of whether the subsequent assessment and consultation process was genuine or more of a formality.

7.5.2 NRC's consideration of application

7.5.2.1 Application of relevant plans, standards and laws

Upon receiving the application, Allan Richards, NRC's Consents Programme Manager, Coastal & Works, determined it should be circulated to iwi and DOC on a non-notified basis.¹⁹⁷⁸ NRC contacted Tania Pene, Hapū Development Coordinator/Natural Resource Management for Te Rūnanga-Ā-Iwi-O-Ngāpuhi (TRAION), saying the Council 'would welcome comment on concerns relating to how the proposal may impact on your relationship, culture and traditions with the area, including on sites, waahi tapu, and other taonga.'¹⁹⁷⁹ TRAION were given just over two weeks to provide any response to the application after which date the Council would 'assume there are no concerns held about the proposal.'¹⁹⁸⁰ There was no response from TRAION. It is worth remembering that, as discussed in Chapter Two, TRAION receive 10-12 such applications per month, and have limited resources with which to deal with these. No local marae or hapū were contacted.

¹⁹⁷⁸ NRC, 'Section 88 decision form', NRC file 31523, Taumata Plantations Ltd vol. 1

¹⁹⁷⁹ Nicola Currey to Tania Pene, 'Resource consent application CON20133152301 – Taumata Plantations Limited – gravel extraction from Mangakahia River to construct roads and landings in Waipunga Forest', 15 April 2013, NRC file 31523, Taumata Plantations Ltd vol. 1

¹⁹⁸⁰ Currey, 15 April 2013, NRC file 31523, Taumata Plantations Ltd vol. 1

NRC's consent staff classified the consent application activity as 'discretionary' saying there were no relevant National Environmental Standards (NES) that applied.¹⁹⁸¹ The relevant Plan (presumably the Regional Water and Soil Plan for Northland) did not require the proposed activity to be publicly notified.¹⁹⁸² NRC determined that there were no special circumstances that meant that, under the RMA, the application should be publicly notified.¹⁹⁸³ They considered the plan was consistent with objectives and policies in the Regional Water and Soil Plan for Northland and that it was therefore consistent with the purpose and principles of the RMA.¹⁹⁸⁴

7.5.2.2 Consideration of effects

NRC considered the extraction had potential adverse effects on:

- a) Flooding;
- b) Scouring;
- c) Water quality;
- d) Ecological; and
- e) Public/recreational access.¹⁹⁸⁵

NRC did not consider it had potential adverse effects on:

- a) Cultural values and practices;
- b) Human health;
- c) Natural character; and
- d) Archaeological/historic sites.¹⁹⁸⁶

NRC consent staff did not consider that the activity would have, or was likely to have, 'adverse effects on the environment that are more than minor'.¹⁹⁸⁷ Their rationale focussed on the perceived benefits of this gravel extraction: it would avoid the need to import roading metal from another site, reduce potential for gravel to be washed downstream during flood events, and increase channel capacity at extraction sites.¹⁹⁸⁸ As gravel would be extracted from above river level and would only contain small amounts of fine silty material and some vegetation (which would be used to construct

¹⁹⁸¹ NRC, 'Notification decision report', 9 May 2013, p1, NRC file 31523, Taumata Plantations Ltd vol. 1. See Chapter 2.3.2 of this report which deals with National Environmental Standards.

¹⁹⁸² NRC, 'Notification decision report', 9 May 2013, p2, NRC file 31523, Taumata Plantations Ltd vol. 1

¹⁹⁸³ NRC, 'Notification decision report', 9 May 2013, p3, NRC file 31523, Taumata Plantations Ltd vol. 1

¹⁹⁸⁴ NRC, 'Application number: CON20133152301 (APP. 031523.01.01)', p2, NRC file 31523, Taumata Plantations Ltd vol. 1

¹⁹⁸⁵ NRC, 'Notification decision report', 9 May 2013, p2, NRC file 31523, Taumata Plantations Ltd vol. 1

¹⁹⁸⁶ NRC, 'Notification decision report', 9 May 2013, p2, NRC file 31523, Taumata Plantations Ltd vol. 1

¹⁹⁸⁷ NRC, 'Notification decision report', 9 May 2013, p2, NRC file 31523, Taumata Plantations Ltd vol. 1

¹⁹⁸⁸ NRC, 'Notification decision report', 9 May 2013, pp2-3, NRC file 31523, Taumata Plantations Ltd vol. 1

bunds – embankments used to control the flow of water – beside the river), NRC consent staff considered there would be no more than a minor disturbance of the water, and ‘negligible likelihood of any downstream sediment discharges or adverse effects on ecological values’.¹⁹⁸⁹

Consent staff outlined the applicant’s plans for refuelling and servicing machinery, crushing gravel, and avoiding extraction and crushing during wet weather. This was considered important because wet weather could cause river levels to rise to the level of crushing machinery, allowing some crushed gravel to be washed downstream.¹⁹⁹⁰ It was acknowledged that crushed gravel could be washed back into the river during a major flood event but NRC considered that this would not cause any adverse effects (compared to the existing bed load). In any case they noted that it was in the interests of the applicant to remove and use the extracted gravel promptly, so this would be unlikely to happen. Consent staff also noted that the riverbed would be graded at the completion of works at each site to ensure water flow was not obstructed.

It is unclear from this assessment how staff determined that there would not be potential adverse cultural effects on tangata whenua. It is possible that Taumata’s application which covered consultation with tangata whenua and a lack of response to their letter to TRAION was considered by assessing staff to indicate that there would be no potential adverse cultural effects on tangata whenua.

7.5.2.3 NRC’s consultation process

NRC consent staff considered the proposed works would have no adverse effects on any archaeological sites or known sites of significance to iwi and that DOC and local iwi were consulted.¹⁹⁹¹ The relevant Plan (once again, presumably the Regional Water and Soil Plan for Northland) did not rule out limited notification for this type of application.¹⁹⁹²

¹⁹⁸⁹ NRC, ‘Notification decision report’, 9 May 2013, p3, NRC file 31523, Taumata Plantations Ltd vol. 1

¹⁹⁹⁰ NRC, ‘Notification decision report’, 9 May 2013, p3, NRC file 31523, Taumata Plantations Ltd vol. 1

¹⁹⁹¹ NRC, ‘Notification decision report’, 9 May 2013, p3, NRC file 31523, Taumata Plantations Ltd vol. 1

¹⁹⁹² NRC, ‘Notification decision report’, 9 May 2013, p4, NRC file 31523, Taumata Plantations Ltd vol. 1

Hancock had sought permission from persons they considered 'directly affected' and they and the Council made efforts to get Māori feedback. While the proposed works were deemed to have 'more than a minor adverse effect' on persons directly affected, their written approval was provided. These 'persons' were FNDC and KDC, who were considered to be affected by the '[l]egal roadway beside the riverbed'.¹⁹⁹³ The immediate downstream neighbour, Tony Waaka, was not considered to be adversely affected by the proposed activity but his written approval was also provided.¹⁹⁹⁴ NRC's assessment also said that all 'persons' they had protocols with were sent a copy of the application for comment.¹⁹⁹⁵ Presumably this included the Rūnanga, as the application was sent to TRAION on 15 April 2013.¹⁹⁹⁶ It does not appear that TRAION responded.

The assessment said that DOC and local iwi (TRAION, Tautoro Marae and Parahaki Marae) representatives were consulted and did not raise any issues regarding the work's impact on cultural and spiritual values.¹⁹⁹⁷ It appears that NRC were referring to the consultation undertaken by Hancock, as there is no documentation of NRC consultation except for the 15 April letters to DOC and TRAION. NRC records do not include a record of Hancock's contact with representatives of Tautoro Marae, but it seems likely that this refers to their February 2013 meeting with Tau and Sadler (or Riley). It does not appear that Hancock consulted with Mataraua Marae as Parahaki Marae trustees had reportedly advised them to in December 2012.¹⁹⁹⁸ While Hancock's application does not refer to impacts on the river as possible impacts on cultural or spiritual values, it remains possible that tangata whenua did and do view these physical effects as having an impact on cultural or spiritual values. Yet as we will see, tangata whenua of the Mangakāhia River have expressed cultural and spiritual concerns.

7.5.2.4 NRC's decision

On the basis of the assessment, NRC consent staff recommended to the Consents Programme Manager – Coastal & Works, Allan Richards, that the application be

¹⁹⁹³ NRC, 'Notification decision report', 9 May 2013, pp4-5, NRC file 31523, Taumata Plantations Ltd vol. 1

¹⁹⁹⁴ NRC, 'Notification decision report', 9 May 2013, p5, NRC file 31523, Taumata Plantations Ltd vol. 1

¹⁹⁹⁵ NRC, 'Notification decision report', 9 May 2013, p4, NRC file 31523, Taumata Plantations Ltd vol. 1

¹⁹⁹⁶ Currey, 15 April 2013, NRC file 31523, Taumata Plantations Ltd vol. 1

¹⁹⁹⁷ NRC, 'Notification decision report', 9 May 2013, p5, NRC file 31523, Taumata Plantations Ltd vol. 1

¹⁹⁹⁸ Sharon Kaipo, personal communication, 2 October 2015

processed on a non-notified basis.¹⁹⁹⁹ Richards granted consent for Hancock to extract 12,000m³ of gravel from the Mangakāhia riverbed for six years from 15 May 2013 to 30 May 2019.²⁰⁰⁰ He determined that:

- a) Adverse effects on the environment would be no more than minor;
- b) The proposed activity was consistent with relevant statutory planning documents and regulations; and
- c) Granting resource consent achieved the purposes of the RMA.²⁰⁰¹

In granting consent, Richards decided the adverse environmental effects would be 'no more than minor' because:

- a) Extraction and use of gravel within forest would be beneficial as it would reduce transportation of roading metal along public roads. As large quantities of gravel and boulders had accumulated in the area, the removal was seen to reduce its downstream movement during flood events and help to maintain channel capacity;
- b) The area was largely free of fine materials and as activity was planned to take place in dry areas, any discharges would be no more than minor and would have no adverse effects on downstream water users. Fine silt material and vegetation would be removed and placed as a bund on adjacent land. While large flood events could 'overtop' these areas, any adverse effects would be no more than those that would naturally occur during flood events;
- c) Machinery and other equipment would not be refuelled or serviced within the riverbed. This was to minimise the discharge of contaminants to the river. Applicants were required to comply with the Gravel Extraction Management Plan (provided by the applicant) as a condition of the consent;
- d) All extracted material would be taken from dry areas of the riverbed, so there would be no more than a minor adverse effect on ecological or wildlife values. No significant indigenous vegetation or habitats of significant indigenous fauna were identified in the area;
- e) There would be 'no more than minor' impediments to public use of paper roads on both sides of the river, as the public would retain the ability to traverse along the river when conditions were suitable;
- f) No iwi group raised any concerns about the effects of the works on cultural or spiritual values; and
- g) No downstream users would be adversely affected by the works.²⁰⁰²

The resource consent was granted with a range of conditions concerning:

- a) The management of the works;

¹⁹⁹⁹ NRC, 'Notification decision report', 9 May 2013, p5, NRC file 31523, Taumata Plantations Ltd vol. 1

²⁰⁰⁰ NRC, 'Resource Consent', NRC file 31523, Taumata Plantations Ltd vol. 1

²⁰⁰¹ NRC, 'Application number: CON20133152301 (APP. 031523.01.01)', p1, NRC file 31523, Taumata Plantations Ltd vol. 1

²⁰⁰² NRC, 'Application number: CON20133152301 (APP. 031523.01.01)', NRC file 31523, Taumata Plantations Ltd vol. 1

- b) Requirements for the consent holder to give notice in advance of works beginning;
- c) Requirements that the consent holder advise the Council if any contaminants escape as a result of the works; and
- d) The Council's option to review the conditions annually to deal with any adverse environmental effects that arose from the works.²⁰⁰³

7.5.3 NRC's monitoring of the consent conditions

On 29 May 2013 Hancock's Environmental Planner, Tony Dwane, responded that Hancock Forest Management accepted the decision and the resource consent conditions.²⁰⁰⁴ Following an inspection and site meeting on 2 September 2013, NRC's Environmental Monitoring Officer – Land Use, Franco Meyer, reported that agreement was reached between NRC officers and contractors from Hancock Forest Management and Transfield (asset management services) regarding an extraction method to minimise sediment discharges to the stream.²⁰⁰⁵ Dwane noted that Hancock would provide NRC with a plan for the extraction. He also said that they (presumably NRC) hoped the site could be used as a test site for gravel extraction and the process could be documented for earthworks guidelines. The parties agreed that the contractor and the site manager would take daily photos and forward these to NRC's Environmental Monitoring Officer, Meyer. Further, they agreed that Meyer would be advised before the bund was removed so levels of discharges could be monitored. All conditions of the resource consent were complied with at the time of inspection and NRC invoiced Hancock for travel, fieldwork, and administration costs associated with the inspection. Dwane responded that the company would make a weekly (rather than daily) photographic record of the operation, would record key changes, and confirmed that NRC would be notified in advance of bund removal to allow for a monitoring visit.²⁰⁰⁶

Following an inspection in January 2014, Meyer wrote to Taumata Plantations advising that the site appeared to be in order, but not all conditions of the resource consent were

²⁰⁰³ NRC, 'Resource Consent', NRC file 31523, Taumata Plantations Ltd vol. 1

²⁰⁰⁴ Tony Dwane to NRC, 'RE: AUT.031523.01.01 – Notification of acceptance of decision and resource consent conditions', 29 May 2013, NRC file 31523, Taumata Plantations Ltd vol. 1

²⁰⁰⁵ Franco Meyer to Hancock Forest Management, 'Monitoring report for resource consent: gravel extraction from the bed of the Mangakahia River for construction of roads and landings @ Waimatenui (Waipunga Forest)', 18 September 2013, NRC file 31523, Taumata Plantations Ltd vol. 1

²⁰⁰⁶ Tony Dwane to NRC, 'RE: Monitoring report for resource consent: gravel extraction from the bed of the Mangakahia River', 20 September 2013, NRC file 31523, Taumata Plantations Ltd vol. 1

complied with.²⁰⁰⁷ The compliance issues seem to have been satisfactorily addressed. Following the inspection on 6 March 2014, Meyer advised that the earthworks and gravel extraction site were in good order and complied with the consent and requested photographs of the bund during removal.²⁰⁰⁸ Following the inspection on 1 April 2014, he advised that all conditions of the resource consent were complied with.²⁰⁰⁹

7.5.4 Application for variation of consent

In August 2014 Hancock Forest Management, on behalf of Taumata Plantations, applied to increase the volume of gravel extracted. The application proposed the following changes:

- a) An additional 12,000m³ of river gravel for the 2014 season (commencing 1 October 2014) [for a total extraction of 24,000m³ that season]; and
- b) Increase in the volume of gravel to 24,000m³ for the 2015 season.²⁰¹⁰

They said the total volume of gravel to be extracted would remain 60,000m³ but this would be completed over a three year period instead of the original five year period.²⁰¹¹ The applicants noted that these reductions were a result of a decision to reduce harvest time by two years 'to reduce the amount of time and effects on residents in the area.'²⁰¹²

The application explained that storm damage to roading within the Waipunga Forest required maintenance and repair work to be done.²⁰¹³ The metal extracted and crushed to date for the 2014 season had been used either within the forest on repairs, or on adjacent council roads which are used for forestry transportation, the school bus and residential transport. Dwane wrote that due to the 'poor state' of FNDC and KDC roads,

²⁰⁰⁷ Franco Meyer to Taumata Plantations, 'Monitoring report for resource consent: gravel extraction from the Mangakahia River for construction of roads and landings at Waimatenui (Waipunga Forest)', 22 January 2014, NRC file 31523, Taumata Plantations Ltd vol. 1. The letter notes that there are photos, but these are not in the file.

²⁰⁰⁸ Franco Meyer to Hancock Forest Management, 'Monitoring report for resource consent: gravel extraction from the bed of the Mangakahia River for construction of roads and landings at Waimatenui (Waipunga Forest)', 10 March 2014, NRC file 31523, Taumata Plantations Ltd vol. 1

²⁰⁰⁹ Franco Meyer to Taumata Plantations, 'Monitoring report for resource consent: gravel extraction from the bed of the Mangakahia River for construction of roads and landings at Waimatenui (Waipunga Forest)', 15 April 2014, NRC file 31523, Taumata Plantations Ltd vol. 1

²⁰¹⁰ Tony Dwane to NRC, 'Mangakahia River gravel extraction section 127 change to resource consent AUT.031523.01', 11 August 2014, NRC file 31523, Taumata Plantations Ltd vol. 1

²⁰¹¹ Dwane, 11 August 2014, p2, NRC file 31523, Taumata Plantations Ltd vol. 1

²⁰¹² Taumata Plantations, 'Application form for resource consent', A8, NRC file 31523, Taumata Plantations Ltd vol. 1

²⁰¹³ Dwane, 11 August 2014, NRC file 31523, Taumata Plantations Ltd vol. 1

the harvest time of Waipunga Forest would be condensed to reduce the amount of time trucks spent on the roads and the accompanying inconvenience. As a result they sought to take a greater amount of gravel per year, but the same amount of gravel in total. The application advised that Hancock had not undertaken any consultation with affected parties because the effects of the revised works would be no greater than that which they currently had consent for and might even have a positive impact by improving roads and shortening the length of their extraction operation.

In terms of the environmental impact of the proposed changes the application argued that the forest was densely vegetated and the use of sediment controls would effectively treat any discharges, preventing any adverse effects on the environment. Dwane saw 'very little likelihood' of adverse effects on water quality. He noted that in the extraction works to date, any discharges were temporary (less than 24 hours) with only a minor effect on the receiving environment. He also considered the surrounding forest and the remoteness of the location would help to reduce dust, noise and visual impact. In addition he noted that the gravel extraction had been monitored from the beginning to the satisfaction of the NRC Monitoring Officer and River Management staff. Further, he noted that compliance with consent conditions had been achieved to date, which appears to be correct with the exception of the 17 January 2014 inspection, where Meyer determined that '[n]ot all conditions of the resource consent were complied with'.²⁰¹⁴

7.5.5 Responses to the application for variation of consent

The application to vary the consent was processed as a non-notified application, so there was no formal submission process. NRC contacted DOC, representatives of TRAION, Ngāpuhi ki Mangakāhia Takiwā, Mangakāhia Māori Committee, and Parahaki Marae.²⁰¹⁵ In accordance with NRC and DOC's joint processing protocol, NRC's Land Management Consents Officer, Geoff Heaps, wrote that he 'would be pleased to receive any comments you may have on the application' and that if a reply was not received by

²⁰¹⁴ Franco Meyer to Taumata Plantations, 'Monitoring report for resource consent: gravel extraction from the Mangakahia River for construction of roads and landings at Waimatenui (Waipunga Forest)', 22 January 2014, NRC file 31523, Taumata Plantations Ltd vol. 1

²⁰¹⁵ Nicola Currey, 'Resource consent application APP.031523.01.02 – Taumata Plantations Limited – to extract up to 12,000 cubic metres of gravel per year from the bed of the Mangakahia River', 1 September 2014, NRC file 31523, Taumata Plantations Ltd vol. 1

the set date, NRC would 'assume there are no concerns held about the proposal.'²⁰¹⁶ Correspondence to tangata whenua groups 'welcome[d] comment on concerns relating to how the proposal may impact on your relationship, culture and traditions with the area, including on sites, waahi tapu, and other taonga'.²⁰¹⁷ As with DOC, NRC would assume that no concerns were held about the proposal if they did not receive a reply by the set date. It appears that of the four Māori groups contacted only TRAION and Parahaki Marae had been contacted at the time of the initial consent. The other groups may have been contacted as a result of relationship-building between NRC and tangata whenua or through other contact or advice. This wider-reaching process was an improvement on NRC's initial contact process which did not contact any specifically Mangakāhia groups.

Sharon Kaipo, in her role as 'Kaitiaki tangata nā Nukutawhiti', replied expressing concern with the impact of the extraction of the river, which she described as a taonga to tangata whenua of the Nukutawhiti rohe.²⁰¹⁸ She also discussed gravel extraction from 'Red Gate', a local 'watering hole' between Twin Bridges and Nukutawhiti used for picnics and camping, which she said took out an island and diverted the river to head into the 'horseshoe' area and caused a whirlpool.²⁰¹⁹ She said the areas were used heavily for recreation in the summertime and also expressed concern in regard to erosion at Waenga, an area of cultural significance to tangata whenua opposite Parahaki Marae, which she said had been subsiding into the Mangakāhia River for years. Kaipo's letter said that Te Rōpū Takiwā o Mangakāhia required a meeting with parties concerned with the Mataraua extraction: Taumata Plantations, NRC, central government roading staff. She said the meeting would be held on 4 October 2014 at Parahaki Marae, but this meeting never took place.²⁰²⁰ NRC's Consents Programme Manager – Coastal and Works (Allan Richards) noted on 23 September 2014 that Sharon Kaipo had raised cultural concerns, which they discussed in a subsequent phone conversation with

²⁰¹⁶ Jacqui Wallace to DOC, 'Non-notified application for a resource consent – APP.031523.01.02 – Taumata Plantations Limited s127 change to consent for gravel extraction from Mangakāhia River', 28 August 2014, NRC file 31523, Taumata Plantations Ltd vol. 1

²⁰¹⁷ Currey, 1 September 2014, NRC file 31523, Taumata Plantations Ltd vol. 1

²⁰¹⁸ Sharon Kaipo to Geoff Heaps, 'Re: Extraction of gravel for roading Taumata Plantations-Mataraua', 15 September 2014, NRC file 31523, Taumata Plantations Ltd vol. 1

²⁰¹⁹ Red Gate is a public reserve on council property, according to personal correspondence with Sharon Kaipo on 2 October 2015

²⁰²⁰ Sharon Kaipo, research meeting, 11 June 2016

her.²⁰²¹ Without a record of what was said in any phone conversations, it is difficult to say what cultural concerns apart from those in her letter were raised, how NRC responded, and whether the response was satisfactory to tangata whenua.

7.5.6 NRC's decision to vary the consent

NRC processed the application, noting the potential adverse effects to be largely the same as the original application, with the following additional potential effects:

- a) Human health; and
- b) Structural security.

The amended application was apparently deemed to no longer affect:

- a) Public/recreation access.²⁰²²

The reason given for the increase of gravel extraction was increased demand from FNDC for roading aggregate following the storms of July 2014. The consent holder wished to reduce the length of time of the works and reduce the effects on the community. All other conditions would remain the same and no additional adverse effects were foreseen. NRC determined that amendments to the permit would have no greater cultural or spiritual effect than the original extraction activity.²⁰²³

NRC noted that local iwi raised matters but said their concerns related to storm events, emergency works undertaken downstream by Whāngārei District Council, and erosion of the riverbank near Parahaki Marae, which NRC said were not the result of this extraction and would not be made worse by the proposed increase in extraction.²⁰²⁴ NRC said they advised Sharon Kaipo that they could not deal with the issue of royalties as part of the resource consent process, as Crown Minerals were responsible for royalties, but that royalties did not apply to gravel extracted from the bed of a river.²⁰²⁵

²⁰²¹ NRC, amended resource consent, 23 September 2014, p5, NRC file 31523, Taumata Plantations Ltd vol. 1

²⁰²² NRC, 'Notification decision report', 19 September 2014, p2, NRC file 31523, Taumata Plantations Ltd vol. 1

²⁰²³ NRC, amended resource consent, 23 September 2014, p2, NRC file 31523, Taumata Plantations Ltd vol. 1

²⁰²⁴ NRC, amended resource consent, 23 September 2014, p5, NRC file 31523, Taumata Plantations Ltd vol. 1. NRC staff forwarded Kaipo's concerns regarding Parahaki marae erosion to the Council's River Management team for investigation separate to this process.

²⁰²⁵ NRC, amended resource consent, 23 September 2014, p6, NRC file 31523, Taumata Plantations Ltd vol. 1

It is unclear whether or when Kaipō raised the matter of royalties to NRC staff but it had been raised by Parahaki Marae trustees in their December 2012 meeting with Hancock. The advice provided by NRC is not particularly clear in the archival record but what seems to have been suggested was that any concerns with royalties should be raised with the Crown minerals regime administration to see what kind of royalty right legally applied in their case, whether the right was asserted or reserved to the Crown or to the private property owner. As the NRC noted, the Ministry of Economic Development do not require a permit or charge a royalty in cases of gravel extraction from rivers, even if the gravel is considered part of the Crown mineral estate. In this case, even if the gravel was considered subject to private ownership and not part of the Crown mineral estate, Māori do not appear to have been considered legal private owners of the river or riverbed. Therefore they would not be seen as legally having private rights to gravel royalties, regardless of any customary rights to resources that Māori may have felt should apply.

NRC also deemed that the amended proposal would have no greater adverse effect on KDC or FNDC, the adjacent landowners who provided written approval for the original proposal, and would indeed be beneficial because the aggregate would also be used on local council roads.²⁰²⁶ The Council considered the adverse effects of proposed changes on the environment to be 'no more than minor' and that the amended proposal was consistent with statutory planning documents and regulations and its granting achieved the purposes of the RMA.²⁰²⁷ The beneficial effect of the reduced length of time local trucks would operate on local roads would be 'balanced' by higher intensity of road use in the short term.²⁰²⁸ The removal of additional gravel would have 'minimal' effect on the river system due to large amounts of accumulated material on the riverbed and additional gravel washed downstream during recent storm events.²⁰²⁹ The Council noted that Mangakāhia Marae Komiti had an iwi management plan relevant to the

²⁰²⁶ NRC, amended resource consent, 23 September 2014, p4, NRC file 31523, Taumata Plantations Ltd vol. 1

²⁰²⁷ NRC, amended resource consent, 23 September 2014, p4, NRC file 31523, Taumata Plantations Ltd vol. 1

²⁰²⁸ NRC, amended resource consent, 23 September 2014, p4, NRC file 31523, Taumata Plantations Ltd vol. 1

²⁰²⁹ NRC, amended resource consent, 23 September 2014, pp4-5, NRC file 31523, Taumata Plantations Ltd vol. 1

location (it is likely this refers to Ngā Hapū o Mangakāhia Plan 1995, which was actually prepared by Mangakāhia Māori Komiti, see water conservation order local study in section 7.4.14.1), which they said was taken into account when they processed the application alongside the objectives, policies and rules of the Regional Water and Soil Plan (RWSP) and the operative and proposed Regional Policy Statement.²⁰³⁰

The consent was amended on 23 September 2014 to permit the extraction of up to 24,000m³ of gravel in the 2014/2015 season, 36,000m³ in the 2015/2016 season, and 12,000m³ per year thereafter (2016, 2017 and 2018).²⁰³¹ It is unclear why gravel extraction permitted for the 2015/2016 season was increased to 36,000m³. The expiry date remained 30 May 2019 despite NRC's comments about the beneficial effect of the reduced length of time of the operation. It should be noted that taking into account the 12,000m³ that was presumably extracted for the 2013-14 season, these allowances would bring the total gravel extracted to 96,000m³ – considerably more than the 72,000m³ (or 60,000m³, depending on which part of the application is considered) originally requested. This difference was not noted in the amended consent. NRC considered the proposed activity consistent with the objectives and policies of the RWSP for Northland. They said that while it contravened Section 15 of the RMA (Discharge of contaminants into environment), they must consider Section 105 of the Act (Decisions on applications). They were satisfied it would not give rise to the effects outlined in Section 107 of the Act (Restriction on grant of certain discharge permits) and concluded that the activity was consistent with the purpose and principles of the RMA.²⁰³² The proposed changes were granted with no change to the duration of consent. The decision was sent to Mangakāhia Māori Committee and Hancock.²⁰³³

²⁰³⁰ NRC, amended resource consent, 23 September 2014, p6, NRC file 31523, Taumata Plantations Ltd vol. 1

²⁰³¹ NRC, amended resource consent, 23 September 2014, p1, NRC file 31523, Taumata Plantations Ltd vol. 1

²⁰³² NRC, amended resource consent, 23 September 2014, p6, NRC file 31523, Taumata Plantations Ltd vol. 1

²⁰³³ Jacqui Wallace to Mangakāhia Māori Committee and Taumata Plantations, 'Notice of decision on resource consent application APP.031523.01.01 – Taumata Plantations Limited – s127 change to consent for gravel extraction from Mangakahia River', 23 September 2014, NRC file 31523, Taumata Plantations Ltd vol. 1

7.5.7 Concerns about compliance with the amended consent

Since the original resource consent was issued, operations had been monitored by the Council on five occasions, including the initial site meeting, at the time of granting the application to vary the consent.²⁰³⁴ They said:

- a) No adverse effects downstream were recorded;
- b) No complaints from downstream neighbours were recorded;
- c) There were some concerns about the depth of extraction and inadequate bunding around the site; and
- d) Consent conditions were '[g]enerally' complied with.²⁰³⁵

On behalf of Environment River Patrol Aotearoa New Zealand, Millan Ruka contacted NRC, KDC, FNDC, Whāngārei District Council and other stakeholders about the gravel extraction in December 2014.²⁰³⁶ He raised concerns that consent was not being complied with.²⁰³⁷ The slope and depth criteria were being exceeded which affected water flow and riverbed exposure. He said that recent correspondence with an NRC officer advised that removal of gravel did not result in straightening of the river or lowering of the riverbed, so it would not cause any increase in water speed.²⁰³⁸ He believed that the changes to the slope of the riverbed led to increased velocity. He was also concerned about the lack of documentation, particularly photographs, with the application. There was no response to this report in NRC files.

7.5.8 Response to complaints and concerns

On 17 December 2014 Ruka expressed concerns about the way NRC's decision to grant consent had been made. He discussed the decision not to consider Parahaki Marae (Te Kumutu, Ngāti Toki, Ngāti Whakahotu) 'affected persons', with NRC and Taumata Plantations determining that there was no downstream effect to local hapū. He raised Hancock's meeting with Parahaki Marae and the concerns raised there which he said Hancock were not convinced by and observed that NRC gave no support to the hapū

²⁰³⁴ NRC, amended resource consent, 23 September 2014, p5, NRC file 31523, Taumata Plantations Ltd vol. 1

²⁰³⁵ NRC, amended resource consent, 23 September 2014, p5, NRC file 31523, Taumata Plantations Ltd vol. 1

²⁰³⁶ Ruka, 'Report #100', 17 December 2014

²⁰³⁷ Ruka, 'Report #100', 17 December 2014, p9

²⁰³⁸ Millan Ruka, Environment River Patrol Aotearoa New Zealand report, 'Report #100 – Part one – Survey of Northern Wairoa River, Wairua River, Mangakahia River and Manganui River', 17 December 2014, p9

trustees' wishes.²⁰³⁹ He considered that trustees' concerns had been realised with severe erosion to their whenua and no remuneration for engagement in the consent process. Ruka said that the amended resource consent raised concerns for trustees as the extraction impact would be sudden with little time to assess progressive effects.²⁰⁴⁰ Ruka also believed the downstream impacts of extraction were not being paid sufficient attention saying that 8.8 kilometres downstream from the extraction location the river flowed through WDC's rohe (until the confluence with the Wairua and Northern Wairoa Rivers).²⁰⁴¹ He was concerned that NRC did not appear to consider the effects of the extraction on WDC territory.²⁰⁴² Nor did he consider that NRC gave due consideration to alternative options and mentioned other possible quarry sites.²⁰⁴³ Ruka thought that NRC should have applied a royalty to fund monitoring and to provide a fund for hapū to monitor downstream effects.²⁰⁴⁴ He also noted the discrepancy in the original consent noting that Taumata Plantations requested 60,000m³ of gravel taking 12,000m³ per year for six years which he pointed out would actually total 72,000m³ in total.²⁰⁴⁵ He said that Hancock prepared the environmental assessment and managed environmental issues for Taumata and that NRC should have applied 'due diligence' such as by requesting an independent environmental impact assessment.²⁰⁴⁶

Environmental impacts were clearly of great concern to Ruka. He considered that an extraction of 60,000m³ would impact the river flow, direction, and depth (this impact would presumably be increased if more gravel was taken). He expressed concerns about the gravel extraction leading to:

- a) Accelerated slumping in rainy periods; and
- b) The river's natural 'hand brake' being excavated and removed, with the river being considerably widened and with increased velocity downstream.²⁰⁴⁷

²⁰³⁹ Ruka, 'Report #100', 17 December 2014, p8

²⁰⁴⁰ Ruka, 'Report #100', 17 December 2014, p9

²⁰⁴¹ Ruka, 'Report #100', 17 December 2014, pp7-8

²⁰⁴² Ruka, 'Report #100', 17 December 2014, p8

²⁰⁴³ Ruka, 'Report #100', 17 December 2014, p7

²⁰⁴⁴ Ruka, 'Report #100', 17 December 2014, p9

²⁰⁴⁵ Ruka, 'Report #100', 17 December 2014, p9

²⁰⁴⁶ Ruka, 'Report #100', 17 December 2014, p9

²⁰⁴⁷ Ruka, 'Report #100', 17 December 2014, p6

Ruka considered that gravel extraction would affect longfin tuna lifecycles and would contribute to problems with water quality and sediment, already affected by forestry run-off and cutting near river edges.²⁰⁴⁸ He said that no consideration was given to longfin tuna in the upper Mangakāhia River and their threatened ecosystem. As already discussed, Ruka believed that the gravel extraction was causing increased velocity to the upper Mangakāhia River which was causing erosion, slumping, and increased sediment to the Kaipara Harbour. He argued that NRC should apply Section 128 of the RMA (Circumstances when consent conditions can be reviewed) to review consent conditions.²⁰⁴⁹ He also said the natural heritage was being devastated by boulder extraction, which he later emphasised had a different impact compared to the removal of gravel.²⁰⁵⁰ The report described the Mangakāhia River upstream from Twin Bridges as having 'majestic beauty', saying it contained round stones and boulders that had been formed over thousands of years, and that it was a natural wonder of Te Tai Tokerau and a taonga to the local hapū.²⁰⁵¹ While tangata whenua may see a difference between the extraction of smaller stones and the extraction of boulders, this is not reflected in the Council's decision which defined gravel as 'boulders to finer material'.²⁰⁵² It is unclear whether the Council responded to any of Ruka's concerns.

Hancock said in May 2016 that gravel was only extracted from dry banks in the riverbed.²⁰⁵³ They said they did not alter or divert the channel of the river, and there were no adverse effects on the environment. They say it is 'questionable' to say that erosion occurred upwards of 15 kilometres downstream as a result of extraction. They speculated that high rainfall (as experienced in June 2014) was a more likely explanation for erosion in the vicinity of Parahaki Marae. They said that cumulative effects from the extraction to forestry were not considered as the site was independent from the forestry operation and they believed that the effects were minimal. A total of 44,747m³ of gravel (a great deal less than what they received consent for) was

²⁰⁴⁸ Ruka, 'Report #100', 17 December 2014, p8

²⁰⁴⁹ Ruka, 'Report #100', 17 December 2014, p9

²⁰⁵⁰ Ruka, 'Report #100', 17 December 2014 p12; feedback on draft report received from Millan Ruka on 27 June 2016

²⁰⁵¹ Ruka, 'Report #100', 17 December 2014, p7

²⁰⁵² NRC, 'Notification decision report', 9 May 2013, p2, NRC file 31523, Taumata Plantations Ltd vol. 1

²⁰⁵³ Feedback on draft report received from Hancock Forest Management on 26 May 2016

extracted, and extraction is now complete.²⁰⁵⁴ Finally, Hancock reported that they have been engaging regularly with Te Rōpū Takiwā o Mangakāhia.

7.5.9 Conclusion - Mangakāhia gravel extraction

In this resource consent process for gravel extraction Māori were not always able to speak for themselves either because they were not considered 'affected persons', because others made decisions about what affected them, or because the Council did not know which specific groups to consult with. It does not appear that Māori concerns about the original application and about the increase in the amount of gravel allowed to be extracted were given much attention or weight in the Council's consideration of this activity. It is worth noting that the consultation process improved at the application for a variation of the consent with two additional local Māori groups being consulted. This led to tangata whenua feedback and surely an improved process.

Despite this improvement, the resource consent process appears to have suffered from a lack of Council resourcing, Council oversights, and a lack of real engagement with matters of concern to tangata whenua. This has impacted on consultation with tangata whenua, for instance in the decision that a cultural impact assessment was not necessary, or when requested hui did not take place. Additionally, incorrect calculations of gravel extraction totals appear to have been done in haste, which could be a symptom of underresourcing in the Council.

Māori were concerned with the management of the waterways for environmental and cultural reasons. The consultation process did not bring out cultural aspects beyond that of the river being a taonga. This may be because other cultural concerns did not exist, or because the process was not conducive to them being explored. However, environmental concerns focussing on changes to the river flow and quality and fish habitats were raised by tangata whenua. It raises again the lack of holistic management of waterways with tangata whenua concerns about downstream consequences of gravel extraction apparently being ignored. Māori requests for royalties were dismissed as gravel was being extracted from land that did not legally belong to Māori. Once again

²⁰⁵⁴ Feedback on draft report received from Hancock Forest Management on 26 May 2016

this decision did not acknowledge a more holistic approach to managing riverways and nor did it acknowledge any Māori customary authority or ownership over the river.

7.6 Conclusion

The Mangakāhia River has been affected by actions of the Crown and its delegates. Tangata whenua must now manage their customary resources in ways that deal with changing environmental pressures. Mangakāhia Māori consider the river to have been degraded by consents being issued and reissued in the two studies covered in this chapter. Kaipo said she grew up on the river and had seen so much change. She also emphasised that the changes were not being caused by tangata whenua, as they were not doing anything differently.²⁰⁵⁵ The longer consent periods requested in the most recent irrigation applications are also a concern for the long-term, holistic management of the Mangakāhia River. The full effects of the Mangakāhia gravel extraction may not be seen for years. When asked if Crown processes had affected their cultural use and enjoyment of customary resources, the two main informants for the Mangakāhia catchment were clear: 'Absolutely', responded Tuhiwai.²⁰⁵⁶ Kaipo agreed, saying the river was 'not as it was', and that it was getting worse generation by generation.²⁰⁵⁷

Tangata whenua have a commitment to safeguard rivers and a responsibility to provide information on threats and impacts, but often have very limited rights, recognition or resources to do this. The management of customary resources places great demands on kaitiaki in the Mangakāhia Valley. Responding to resource consent applications and appealing decisions can be a very taxing process, with tangata whenua potentially facing financial, technical, and cultural barriers. Tangata whenua efforts are not always rewarded with recognition of their kaitiakitanga or role in managing resources.

If tangata whenua cannot access funds in order to consider resource consent applications and appeal decisions they do not agree with, the financial burden of these tasks can be heavy. This burden has at times stopped tangata whenua from proceeding with opposition and appeals, such as in the case of the Mangakāhia irrigation scheme.

²⁰⁵⁵ Research meeting with Kaipo and Tuhiwai, 13 December 2015

²⁰⁵⁶ Research meeting with Kaipo and Tuhiwai, 13 December 2015

²⁰⁵⁷ Research meeting with Kaipo and Tuhiwai, 13 December 2015

Unless they have managed to obtain funding through involvement in a resource management unit or similar, Māori must engage in these processes in their own time. This puts great pressure on Māori who feel a responsibility as kaitiaki, but face competing priorities.

There are a range of potential technical barriers, such as having a working understanding of how legislation and Crown and local government processes work. Mangakāhia Māori have at times been left struggling to understand Council processes and court room proceedings, let alone be engaged in them. Sharon Kaipō described these as 'foreign' processes. Another technical barrier is the difference between the types of knowledge tangata whenua hold and value and the types of information the Crown and local government processes require. This discrepancy was evident in the application for a water conservation order, with the Komiti providing information about the river's 'outstanding' qualities due to it being a taonga and emphasising the importance of the river and its mauri to the mana of tangata whenua. This was not sufficient for the Minister for the Environment who requested further information on the river's 'outstanding' qualities in order to assess whether the river was of national significance.

Once they are engaged in a resource management matter, Māori and Crown delegates must negotiate the process – or more often, Māori must negotiate the Crown process. This could be considered a cultural barrier to participation. Resource consent processes relating to the Mangakāhia River have occasionally made observances of tikanga Māori, such as in the initial Planning Tribunal hearings which were held on marae, but this has not been systematic and appears to be an exception to the rule. In the local study of gravel extraction, tangata whenua requested kanohi ki te kanohi hui. This did not occur. Mangakāhia Māori have reported the feeling that, try as they might to manage their resources according to tikanga, their ways of managing resources do not 'fit' with the systems put in place by the Crown. Following the application for water conservation order and irrigation appeal, Kaipō reported feeling as if 'we were nobodies in the scheme of it'.²⁰⁵⁸

²⁰⁵⁸ Research meeting with Kaipō and Tuhiwai, 13 December 2015

Despite inadequate resourcing and a number of oversights by the Crown and its agencies there seem to have been a number of genuine attempts on behalf of the Crown and local government to engage with tangata whenua. For example, the Ministry for the Environment appeared to make real efforts to engage with the Mangakāhia Māori Komiti regarding their water conservation order application. Similarly, the NRC has made efforts to engage with Māori beyond their RMA obligations, such as through contacting Māori groups about non-notified consent applications in their rohe.

Communication, or lack thereof, between tangata whenua, the Crown and its delegated authorities has been problematic in the management of natural resources in the Mangakāhia Valley. Communications are not always directed to the most relevant group. It seems that NRC has relied heavily on Te Rūnanga-Ā-Iwi-O-Ngāpuhi (TRAION) for its communication with Mangakāhia Māori on resource management matters. Resource consent proposals and applications reliably are sent to the Rūnanga but regularly miss smaller key groups. For example, when NRC processed the first gravel extraction application in 2013, it was only circulated to TRAION, not to any Mangakāhia groups. From a claimant perspective this approach can be problematic. For example, Kaipō said in December 2015 that the councils were shying away from marae and hapū groups and going to rūnanga, who were not necessarily in the best position to deal with local matters.²⁰⁵⁹ Te Rōpū Takiwā o Mangakāhia takes matters to TRAION but, with eight other takiwā on the Rūnanga, Mangakāhia concerns can get sidelined. Kaipō raised a lack of trust of rūnanga and Māori trust boards by some Māori, saying the organisations were there to serve hapū, but rather than serving hapū, they took mana away and that some hapū 'lose faith in that kind of stuff'.²⁰⁶⁰ Kaipō explained that rūnanga did not have mana in the rohe and were considered by some as 'a service provider'. Others, such as Mangakāhia claimant Kaile Nahi-Taihia, noted their impression that the Crown and its delegates preferred to speak with one 'important' group.²⁰⁶¹ This raises questions about the nature and adequacy of consultation with Māori during the RMA process.

²⁰⁵⁹ Research meeting with Kaipō and Tuhiwai, 13 December 2015

²⁰⁶⁰ Research meeting with Kaipō and Tuhiwai, 13 December 2015

²⁰⁶¹ Nahi-Taihia, #4.1.11, p581

There is some evidence that interactions between Māori groups and regional and district councils tend to rely on established relationships. For example, NRC's Iwi Liaison Officer maintains lists of Māori groups to inform of non-notified consents, based on previous submissions and iwi management plans. Tangata whenua of the Mangakāhia River also have informal relationships with specific individuals within the Regional Council who are their first port of call when an issue arises.²⁰⁶² On this matter, Kaipo emphasised how they were lucky to have a whānau member who worked for the Council to assist them.²⁰⁶³ However, tangata whenua should not have to rely on 'luck' and informal relationships in order to have effective communications with local government.

Relationships with Whāngārei District Council seem to be established more formally, with Whāngārei hapū representative group Te Huinga and Council/hapū liaison group Te Kārearea (as discussed in Chapter Two) facilitating relationships between the District Council and local Māori. Although these groups provide a practical channel for communication between tangata whenua and local bodies over RMA matters, they do not always sit well with tikanga Māori. For example, Tuhiwai said that local government often expects one person to represent huge groups of people. He emphasised that individuals can really only represent their hapū, marae and whānau when mandated to. Kaipo agreed, saying it is important to get the process right in terms of who can be expected to represent which groups. Another problem tangata whenua expressed regarding Te Kārearea is that final decisions rest with the Council rather than with Māori, or with both parties. Kaipo also raised difficulties with communication, saying that people without internet access are disadvantaged and were forced to rely on representatives from Te Huinga and Te Kārearea and on contact directly from local government.

Beyond their roles in responding to resource consents, Mangakāhia Māori do not appear to have had much success in engaging with local government at a higher level. While the Mangakāhia Māori Komiti attempted to participate in the Regional Council's policies and plans from 1996, or possibly earlier, this has not made a tangible difference in

²⁰⁶² Research meeting with Kaipo and Tuhiwai, 13 December 2015

²⁰⁶³ Research meeting with Kaipo and Tuhiwai, 13 December 2015

Mangakāhia Māori relationships with NRC. While their 1995 hapū plan is before NRC and WDC, the extent to which the plan and Mangakāhia Māori feedback has informed NRC's planning and policy documents is unclear. This uncertainty was seen in Chapter Two in which tangata whenua found that planning documents had yet to be given any real recognition in NRC processes.²⁰⁶⁴ When asked if local government had adopted the 1995 hapū plan, Kaipo was unsure.²⁰⁶⁵

The Crown does not appear to have adequately resourced Te Raki Māori groups to cope with the demands of resource management. While there are some contestable funds for input into resource management, smaller groups who have little or no association with bodies such as TRAION may not know about or benefit from this. The Regional Council's RMA workshops seem a worthwhile initiative, though their success depends on a number of factors, including tangata whenua awareness of them and ability to participate. Resourcing hapū and iwi in their planning processes is another way in which the Crown and local government could assist. Mangakāhia hapū prepared a plan in 1995 without external assistance or funding and it has not been updated. They did not receive assistance for the 1995 plan, but 20 years later, Kaipo was under the impression that funding was available to help hapū groups prepare such plans. As discussed in Chapter Two, the Council has an annual \$20,000 contestable fund to assist iwi groups to prepare the environmental sections of their management plans.

In such a challenging environment, to what extent have Māori been able to exercise kaitiakitanga and have their concerns addressed? Decisions have regularly been made for Māori, rather than by them. When the Regional Council determines that a cultural impacts assessment is not required for a resource consent process, Māori are denied another opportunity to have their concerns addressed. Similarly, the decision about whether an application is notified or non-notified and who to contact if it is non-notified, is out of tangata whenua hands yet hugely impacts upon the ways they can manage resources in their rohe. If Māori cannot make decisions about their resources,

²⁰⁶⁴ Northland Regional Council, 'Tangata Whenua – Background', p5
<http://resources.nrc.govt.nz/upload/7851/Tangata%20Whenua%20-%20Background.pdf>, (accessed 1 May 2016)

²⁰⁶⁵ Personal communication with Sharon Kaipo, 19 April 2016

then they are forced to rely upon decision-makers having good processes and a good understanding of matters of importance. Kaipo said that tangata whenua see the state of rivers every day and local government needed to 'listen to the people' rather than simply relying on scientific measuring and monitoring tools.²⁰⁶⁶ Decision-makers under the RMA balance economic interests with conservation principles, and community interests with tangata whenua concerns. The examples in this chapter demonstrate a lack of Crown understanding about how Māori relate to resources. This was seen in the Ministry for the Environment's attempts to consider whether Māori could demonstrate the Mangakāhia River's 'outstanding' qualities in accordance with tikanga Māori and uncertainty about whether this could be determined at a national level. With the gravel extraction in the Mangakāhia River, tangata whenua requested royalties from the company planning to remove gravel from the riverbed and profiting from it. While the gravel extraction may not have cost Māori economically, this was an attempt to achieve recognition that their customary resource, the river, was being depleted at their expense for a private company's benefit. Tangata whenua have stated that they want to co-own, rather than co-manage resources, and Kaipo said that tangata whenua want equal representation and partnership in the management of resources.²⁰⁶⁷

Overall, the Crown and its delegates have tended to deal with Mangakāhia resource management matters on a case by case basis, with environmental management dealt with by a number of separate processes – planning and policy, resource consents, environmental monitoring, and special mechanisms such as water conservation orders. On the other hand, Māori tend to view their environment and their relationship to it in a holistic way. As a result, they often express broader concerns about the effects of an activity on the river's wairua or more general environmental effects. As well as the health of the river system as a whole, Māori have raised the impacts that resource management decisions would have on other parts of the catchment. For example, Millan Ruka was concerned about the effect that gravel extraction from the Mangakāhia River would have on WDC's district and further downstream towards the Kaipara Harbour. Similarly, while Parahaki Marae was some distance from the gravel extraction site, Kaipo asserted that the extraction has affected the river by the marae, and other

²⁰⁶⁶ Research meeting with Kaipo and Tuhiwai, 13 December 2015

²⁰⁶⁷ Research meeting with Kaipo and Tuhiwai, 13 December 2015

downstream sites. Mangakāhia Māori calls for more holistic management of waterways seem to have been ignored.

Chapter Eight
Punakitere Catchment
(Hokianga river system)

Figure 69: Punakitere River

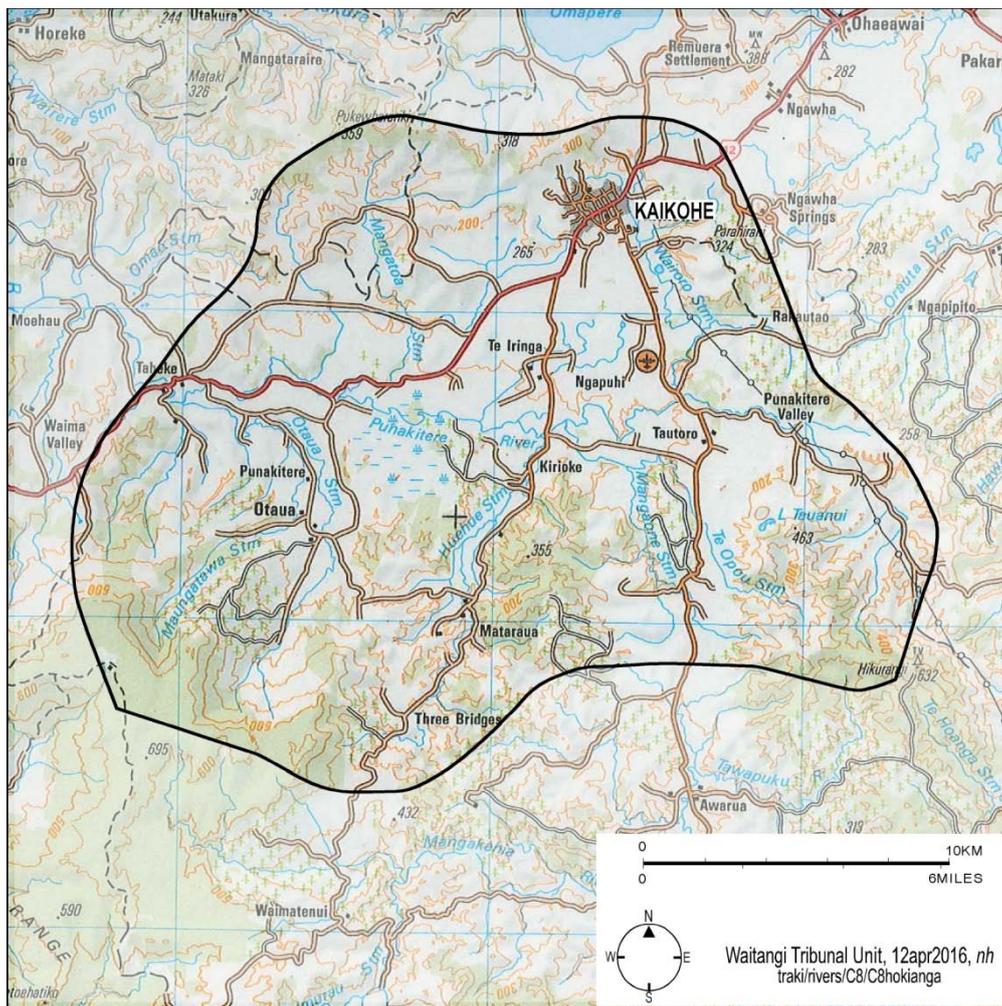


(Source: PowerPoint presentation filed in support of brief of evidence of Wiremu Reihana, Wai 1040, #T10(c))

8.1 Introduction

This chapter looks at the waterways inland of the Hokianga Harbour and south of Kaikohe, a river system sometimes referred to as the Punakitere catchment. As discussed in the introduction, the inclusion of this river system in this report did not come from nomination by claimant counsel but rather stemmed from an earlier research request proposed by counsel for the Maunga Kawakawa Block Claim.

Figure 70: South Hokianga Inland river system



This chapter is relatively brief for a number of reasons. Unfortunately, the sources for this river system are generally scarce. Unlike other catchments, there is little local or central government data on the Punakitere catchment, other than that in regional environmental monitoring reports. In addition, there appears to be a lack of coordination among tangata whenua in this river system in relation to resource

management, possibly as a result of under-resourcing. As far as we can tell, no iwi management plan has been submitted, and there is no overarching response to resource management issues. Nor is there established iwi-, hapū- or marae-based resource management units to address such issues. Thus, the available evidence suggests that issues are largely dealt with on an ad hoc basis and by individuals rather than resource management units or as hapū/iwi groups.

Nevertheless, this chapter sheds some light on the adequacy of the legislative and policy regime for monitoring, managing and protecting river and water bodies and for ensuring the ability of Māori to exercise kaitiakitanga over rivers and their resources. After a brief summary of the river system and the claims issues relating to this river system this chapter explores the resource consent process for two local studies of effluent disposal: the Kaikohe Wastewater Treatment Plant, and a dairy effluent system on farms south of Kaikohe. It also focuses on the monitoring of environmental impacts, and the role of Māori in the management of both.

8.2 River system, rohe, and environment

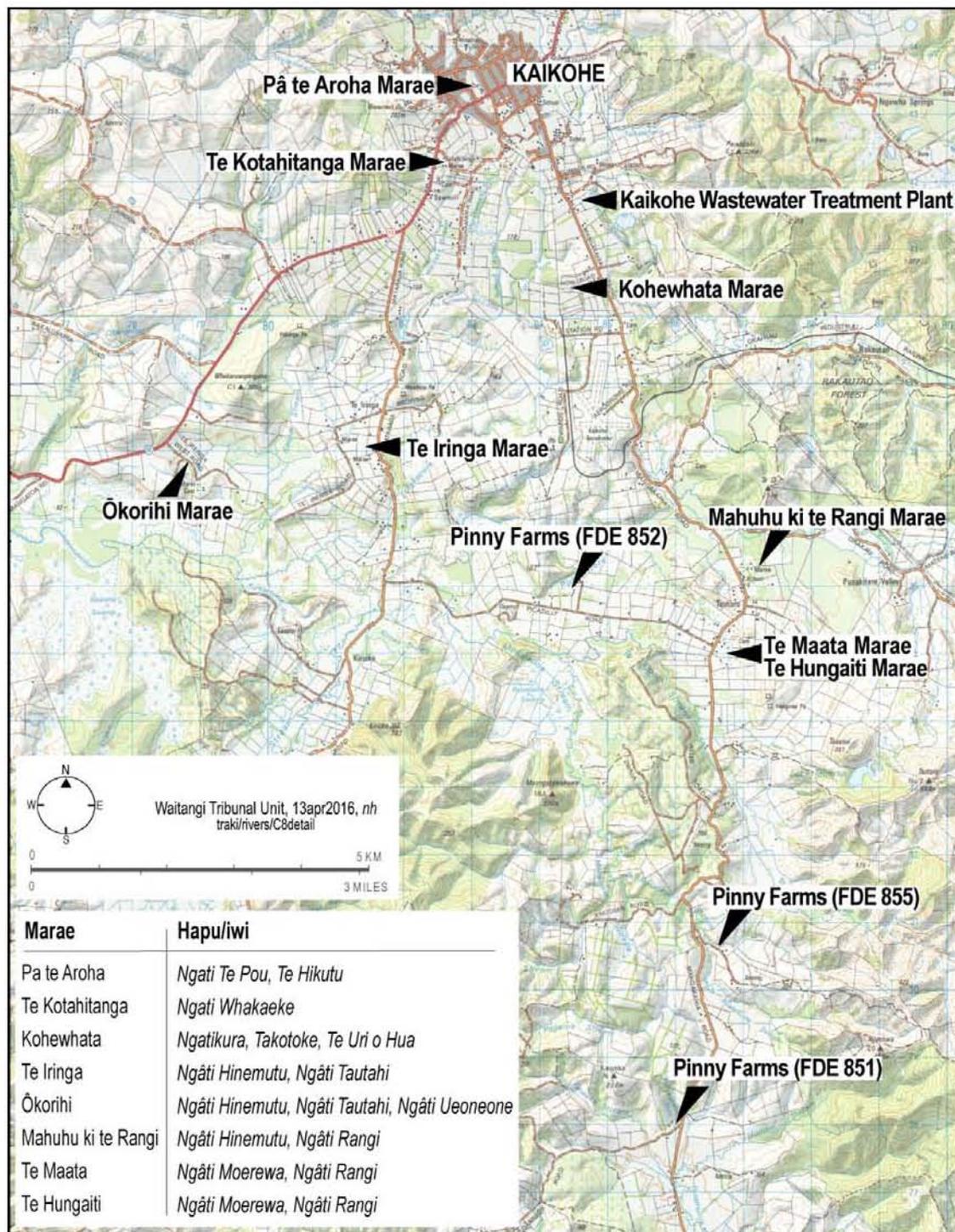
The Punakitere River is 43 kilometres long with a catchment area of approximately 325 square kilometres. The River originates from a large wetland to the southwest of Kaikohe and is a major tributary of the Taheke River, which joins the Waimā River and flows into the upper Hokianga Harbour near Rawene.²⁰⁶⁸ Within this river system, the major environmental concerns are the impacts of agricultural activities, the predominant land use, the Kaikohe township and sale yards, and the Kaikohe Wastewater Treatment Plant.²⁰⁶⁹ As discussed in Chapter Three, the Northland River Water Quality Monitoring Network State and Trends report for 2008-2009 found that the Punakitere River suffered from significant nutrient overloading, while medians for turbidity, dissolved reactive phosphorus and total nitrogen all exceeded their respective

²⁰⁶⁸ LAWA: Land Air Water Aotearoa, 'Punakitere River', <http://www.lawa.org.nz/explore-data/northland-region/river-quality/punakitere-river/> (accessed 21 April 2016)

²⁰⁶⁹ Excerpt from NRC Environmental Monitoring Report, 1998-1999, NRC File 2417, Volume 2; Northland Regional Council, Northland River Water Quality Monitoring Network Report, 2008-2009, p17

trigger values. Run-off from surrounding land-use was the most likely source of nutrient and bacterial contamination in the river, the report suggested.²⁰⁷⁰

Figure 71: Location of key sites and local studies in the Hokianga river system



²⁰⁷⁰ Northland Regional Council, *Northland River Water Quality Monitoring Network Report, 2008-2009*, p17

8.3 *Claim issues*

The main claim relating to the South Hokianga's inland waterways, and in particular to the Punakitere River, is Wai 1957, a claim by Wiremu Reihana, on behalf of himself, his whānau and members of Ngāti Tautahi ki Te Iringa hapū (Maunga Kawakawa Block Claim). The claimant alleges that the Treaty's guarantee of 'full, exclusive and undisturbed possession of their lands' must include:

... respect for the historical and cultural heritage of Maori as enshrined in their respect for their tribal lands, of which they themselves feel a part and in relation to which they are kaitiaki. In breach of this, and in breach of its duty with respect to the Treaty principles of active protection and good faith, and in breach of the affirmation of tino rangatiratanga contained in Article II of te Tiriti o Waitangi, the Crown through its enacted legislation, failed to safeguard the environment to its detriment.²⁰⁷¹

In particular, the claim concerns long term environmental degradation, and the Crown's role in environmental management. The claim outlined the 'significant cultural importance' of the Punakitere River to Ngāti Tautahi:

The Punākitere River used to be a pristine waterbody which provided for the claimants and their whanau, as a result it is referred to frequently in accounts of their histories and the stories of their hapu.

Due to the lack of oversight by the Crown and the increase in farming and milling in the area the Punākitere River has suffered extreme environmental degradation and does not support aquatic life to the extent that it used to.

Both fish supplies and eel supplies have deteriorated during the period of the Claimants' lifetimes and they can no longer rely on the river to supply food and resources in the way that they used to.

Water quality tests reveal high levels of arsenic in Punākitere River.

The Claimants have on occasion been forced to close their marae because of contamination of their water source.²⁰⁷²

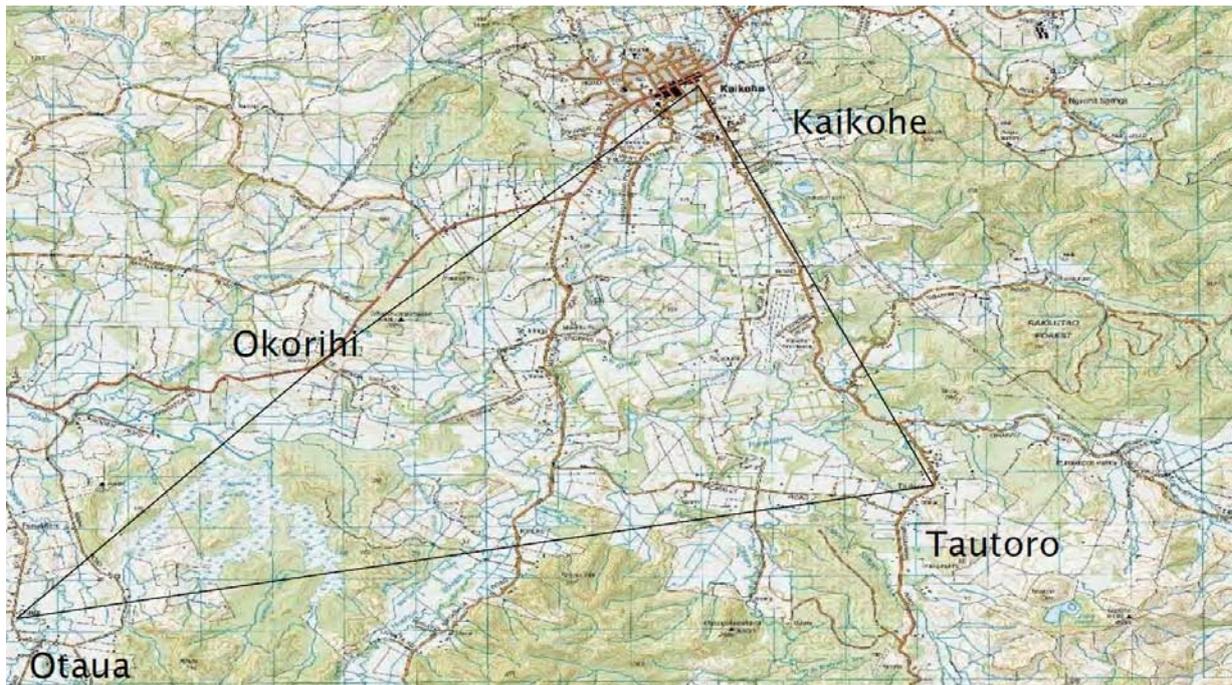
At a research hui in March, 2015 at Te Iringa Marae, Kaikohe, Ngāti Tautahi hapū expressed a range of concerns about water quality and resource management. In particular, members expressed concern about the cultural and health impacts of dairy

²⁰⁷¹ Wai 1957, #1.1.1(a)

²⁰⁷² Wai 1957, #1.1.1(a)

effluent on waterways. Effluent is 'hurting our waterways', one member explained of the hapū, and 'hurting native species... We want it all purified'.²⁰⁷³ At the time of our research hui, hapū members were in the process of organising a kaitiaki group to monitor environmental issues.

Figure 72: The Rohe of Ngāti Tautahi



(Source: PowerPoint presentation filed in support of brief of evidence of Wiremu Reihana, Wai 1040, #T10(c))

In early June 2015, Ngāti Tautahi put a traditional rāhui on hapū boundaries of the Punakitere River, extending to areas of Mataraua Rd, Picadilly Rd, Wharepunga Rd, and Ngapuhi Road, south of Kaikohe. Hapū co-ordinator Mane Pahe said the rāhui was put in place after continual concerns from the hapū about the gradual environmental and spiritual decline in the health and well-being of the awa. Interviewed by the *Northland Advocate*, Pahe said that '[t]his is a traditional rāhui on the awa and some say it's symbolic or superficial but we are serious about this and this initial rahui is about making a statement'. Pahe continued, '[i]t's worrying, especially seeing some of our tamariki in the awa. The food source of the awa is low, namely tuna. The river was full of eel and now there are very few'. Pahe pointed to a number of causes for the declining

²⁰⁷³ Research Hui Field Notes, 14-15 March, 2015.

health of the awa – irrigation, farming, forestry, disposing of cattle carcasses and farming effluent – and claimed that the hapū was undertaking further research and had formed a monitoring group.²⁰⁷⁴

In his evidence to the Waitangi Tribunal in late 2015, Wiremu Reihana reinforced these concerns. Reihana outlined Ngāti Tautahi ki Te Iringa's 'close relationship with our lands and waterways, and with all the things on, in or around our lands and waters'.²⁰⁷⁵ Reihana described the roles of hapū in relation to the environment and pointed to connections between loss of kaitiakitanga and a loss of cultural knowledge:

What little information I have remaining here to give, I have tried to hold on to with all my might. We are forever fighting a battle to gain knowledge, and at the same time hold on to the knowledge that is being handed down. We are trying to enhance the mana of our people, but this is being undermined by our inability to maintain our role as kaitiaki of our environment. The Crown's legislative framework has cut into our kaitiaki role.²⁰⁷⁶

Reihana also described the environmental degradation of the Punakitere and its tributaries. Erosion as a result of stock access to streams and deforestation has increased sedimentation, turning water murky or brown. Reihana claimed that the Punakitere River 'used to be teeming with tuna' and 'used to be navigable'. He continued:

Very few fish and tuna have been caught in this awa for many years now and the water quality has gotten so bad, we do not allow the children to swim there. When they used to swim there, they would come up with sores and rashes, especially during summer...

Now [the Punakitere] is shallow which in turn makes it more difficult for the river flows to push sediment from the mountains downstream and out. The water here also smells. It probably smells worse here because the tributaries emptying into the Punakitere River are loaded with stock effluent.²⁰⁷⁷

²⁰⁷⁴ 'Rahui in Place to Protect Awa', *Northland Advocate*, 27 June 2015, http://m.nzherald.co.nz/northern-advocate/news/article.cfm?c_id=1503450&objectid=11471871

²⁰⁷⁵ Brief of Evidence of Wiremu Reihana, Wai 1040, #T10, para 36

²⁰⁷⁶ Reihana, Wai 1040, #T10, para 44

²⁰⁷⁷ Reihana, Wai 1040, #T10, para 58

Reihana also discussed the resource consent process and what he sees as its inadequacies in resourcing and enabling tangata whenua to play a role in resource management. Reihana explained:

We've never dealt with effluent getting into the creek. We've never dealt with the effect of deforestation and siltation. So when we get faced with these situations, it's all a bit of a mystery and so where do we start? There's no waananga to upskill ourselves about these processes.²⁰⁷⁸

In his evidence, Reihana referred back to the rāhui, discussed above. While the hapū had complied with the rāhui, he explained, there were limits on their ability to 'police and enforce' the rāhui and thus 'it is being violated'.²⁰⁷⁹

8.3.1.1 The Ngawha Geothermal Resource Report 1993

Sections of this river system have already been inquired into by the Waitangi Tribunal in *The Ngawha Geothermal Resource Report 1993*. That claim was brought to the Tribunal by a number of claimants, including Ngāti Hine, Te Hikutu, Te Uri Taniwha, Te Mahurehure, Te Uriohua, Ngāti Rehia, Ngāti Tawake, Ngāti Hau, Ngāti Rangi and Ngāti Tautahi (collectively known as 'Nga hapu o Ngawha'). The report focused on the Crown's acquisition of Parahirahi lands during the 1890s and on the history of the Māori-owned Parahirahi C1 block. The inquiry also looked at the Geothermal Energy Act 1953 and, of most relevance to this report, the Resource Management Act 1991.²⁰⁸⁰

The Ngāwhā Springs remain an issue of contention and the subject of tangata evidence before the Waitangi Tribunal's Te Paparahi o Te Raki Inquiry.²⁰⁸¹ Recently, a resource consent granted for the Ngawha Geothermal power station was appealed by Parahirahi C1 Trust, but the appeal was dropped after the applicant and appellant reached an agreement. As part of the agreement, as the *Northland Advocate* reported in April 2016, the applicant, Top Energy, agreed not to cause or contribute to any adverse effects on the pools, which would require an independent monitoring programme to monitor fluids reinjected into the reservoir, including controls on the contents of that fluid to

²⁰⁷⁸ Reihana, Wai 1040, #T10, para 91

²⁰⁷⁹ Reihana, Wai 1040, #T10, para 118

²⁰⁸⁰ Waitangi Tribunal, *The Ngawha Geothermal Resource Report*, (Wellington: Brooker and Friend Ltd, 1993)

²⁰⁸¹ Amended Brief of Evidence of Paratene Hirini Tane, Wai 1040 #T3(a); Second Brief of Evidence of Diane Ruawhare, Wai 1040, #T6

eliminate waste, and to ensure reinjection procedures reflect best practise. Another condition was the appointment of a kaitiaki advisor who would advise an independent peer review panel and who would be consulted as part of Top Energy's cultural indicators monitoring programme. In addition, Top Energy would also support the trust in undertaking an annual independent scientific audit.²⁰⁸²

While this application and the appeal are not explored as a local study, it is mentioned here to highlight the effectiveness, in this case, of the Māori appealing resource consents. In most cases, however, Māori do not hold the right to appeal, as the majority of consents are processed as non-notified.

8.4 Local Study #1: Kaikohe wastewater treatment plant

8.4.1 Introduction

The Kaikohe wastewater treatment plant (WWTP) is located approximately 3 kilometres south east of the Kaikohe town centre and is accessed off Mangakahia Road. The WWTP discharges treated wastewater to the Wairoro Stream, which flows into the Punakitere River after passing through both farmland and the township of Kaikohe. Wiremu Reihana claimed that in heavy rain, the Kaikohe wastewater treatment oxidation ponds overflow and run straight into the Wairoro Stream, which in turn runs into the Punakitere River. 'They won't tell you they are letting go the oxidation ponds', Reihana explained. 'They do it without letting anyone know'. According to Reihana, the Far North District Council are not only 'failing to manage our awa effectively, they are also contributing to the problem'.²⁰⁸³ Dianne Ruawhare also commented on the Kaikohe wastewater treatment oxidation ponds in her evidence to the Tribunal. 'When we get any significant rainfall', she said, '[the sewerage ponds] overflow into the Wairoro

²⁰⁸² 'Power plants get green light', *Northland Advocate*, 5 April, 2016, http://www.nzherald.co.nz/northern-advocate/news/article.cfm?c_id=1503450&objectid=11616987 (accessed 5 April 2016) For a description of the activity and the Decision Report for the consent see, Northland Regional Council, 'Decision Report Ngawha Generation Limited's Resource Consent Application to the NRC and the Far North District Council and Top Energy's Limited's Notice of Requirement to the Far North District Council. 11 September, 2015. Available here: <http://www.nrc.govt.nz/contentassets/9592bb4bcb2e476a9278142d0a0c3eec/ngawha-geothermal-expansion-project---joint-hearing-decision.pdf>

²⁰⁸³ Reihana, Wai 1040, #T10, pp25-26

Stream. Quite aside from the negative effects of this overflow on our waterways we need to cross the stream to get our urupa Te Kukune'.²⁰⁸⁴

Before commencing this local study, a few points on wastewater treatment management and Māori need to be reiterated. As discussed previously in this report, the general preference of Māori is for wastewater to be discharged by land rather than to waterways. Māori consider it culturally inappropriate for wastewater to be discharged directly to waterways, as water must pass through land, to allow the healing and cleansing qualities of Papatūānuku to be utilised, in order that the mauri of the water can be restored.²⁰⁸⁵ While historically, neither the Crown nor local authorities have shared this view, land disposal is now accepted as a valid option that needs to be assessed when sewage treatment upgrades are contemplated.²⁰⁸⁶

As discussed in Chapter Two, the NRC has recognised this issue in the current Regional Policy Statement (RPS) and Regional Water and Soil Plan (RWSP). The RPS that was active until 2015 required the following under its 'Effluent Treatment and Disposal Systems Policies' section:

To require that all new discharges of organic contaminants, particularly sewage and animal wastes, either be onto or into land, or be the best practicable option when compared to land disposal. Discharges shall be considered to have been disposed onto land or into land where they have been passed through soil, or a constructed wetland where there is no discharge to surface water.

To require that all existing discharges with high organic content, particularly sewage and animal wastes, be upgraded to meet the requirements in policy 17.4(b)1, based on the actual and potential effects of the discharge by the year 2004, or according to an upgrading programme established as part of the conditions of a discharge permit.²⁰⁸⁷

The following explanation for the policy is provided:

²⁰⁸⁴ Ruawhare, Wai 1040, #T6

²⁰⁸⁵ Matthew Cunningham, *The environmental management of the Waipa River and its Tributaries*, (Waitangi Tribunal, 2014), Wai 898, #A150, p102

²⁰⁸⁶ David Alexander, *Rangitikei River and its Tributaries Historical Report*, (CFRT, 2015), Wai 2180, #A40 p529

²⁰⁸⁷ <http://resources.nrc.govt.nz/upload/1643/Part%20IV%20Resource%20Policy.pdf>

The discharge of sewage and animal wastes to natural water bodies and coastal waters is offensive to Tangata Whenua and many others in the Northland community. When poorly treated, such discharges can have a significant adverse effect on aquatic life and contain disease-causing micro-organisms which render the receiving waters unsuitable for swimming or food gathering. Such discharges are therefore to be avoided by requiring either land disposal, (including to specially designed artificial wetlands) or, where land disposal is not practicable, tertiary treatment (i.e. three stages of treatment) will be required.

A discharge from a treatment and disposal system which does not utilise the treatment mechanisms provided by effective passage through unsaturated soils, or the adsorption, entrapment and absorption abilities of plants, will not be considered a discharge to land. This excludes the direct injection of effluent into the groundwater table and discharges which only pass very quickly over or through soils before entering surface waters (e.g. discharges from high rate/flood overland flow systems, which will be considered as discharges to land and water). Existing discharges to water, such as the many discharges of cowshed effluent to streams and a number of older community sewage schemes, will be required to be upgraded by the year 2004.²⁰⁸⁸

However, as David Alexander has argued, because many WWTP were constructed before this change of attitude and policy, the sewerage (the piped network of sewers) drains to a treatment site invariably located on the edge of a waterway. Thus, Alexander writes, it tends to mean that during WWTP upgrades 'the disposal of wastewater to waterways continues to be the first option to be considered, Māori are placed at an inherent disadvantage if they seek to turn the tide and promote alternatives to disposal to waterways'.²⁰⁸⁹ The Kaikohe WWTP is one such example of this.

8.4.2 Pre-RMA management of Kaikohe wastewater treatment plant

Prior to the late 1980s local government reforms, the Kaikohe Borough Council managed the Kaikohe Wastewater Treatment Plant. In 1957, the Council installed sewer mains and constructed an oxidation pond just south of the Kaikohe Township. The pond covers 12 acres (the total land owned and vested in the Council was 72 acres, according to a 1969 Council report).²⁰⁹⁰ In late 1970, the Council applied for permits (under Section 21(3) of the Water and Soil Conservation Act 1967) to discharge excess water

²⁰⁸⁸ <http://resources.nrc.govt.nz/upload/1643/Part%20IV%20Resource%20Policy.pdf>

²⁰⁸⁹ Alexander, *Rangitikei River*, Wai 2180, A40, p529

²⁰⁹⁰ Report on Sewer Reticulation and Oxidation Pond, 12 September, 1969, NRC File 2417, Volume 1.

from existing oxidation ponds and to discharge emergency overflow sewerage from a proposed sewage pumping station.²⁰⁹¹ In May, 1972, the Northland Catchment Commission issued their decision, granting the Kaikohe Borough Council the right to 'discharge sewage from oxidation ponds at the rate of 300,000 gallons per day to the Wairoro Stream for a period expiring 31 March 1982'.²⁰⁹² The Water Right (2417) was replaced in 1982, and was set to expire again on 31 March, 1990. In 1989, the newly constituted Far North District Council (FNDC) re-applied for water right 2417, set to expire in March 1990.²⁰⁹³ In May 1990, the NRC granted the application to 'discharge up to 1362 cubic metres of domestic sewage per day from Kaikohe Township after treatment in an oxidation pond followed by a constructed marshland and natural riparian marsh system', to expire in March 2000.

Throughout this time, and following the granting of the 2417 consent, monitoring by local government showed that the WWTP was having an adverse impact on the environment and the FNDC was occasionally in breach of consent conditions. In 1986, monitoring found that the standards of effluent from the oxidation pond were 'unsatisfactory in terms of faecal coliform levels' and that the receiving waters, the Wairoro Stream, were being 'affected'. 'The discharge results in undesirable levels of faecal coliform in the Wairoro Stream below the discharge', a 1986 monitoring report found.²⁰⁹⁴ Follow-up reporting (later in the same month, and again in March, 1987) found that faecal coliform levels in the Wairoro Stream remained at an 'unacceptable level'.²⁰⁹⁵ Monitoring staff found evidence of algal blooms in the Wairoro stream and explained that the combination of the 'blue green algae bloom coupled with low stream flows accentuate a problem which could have serious repercussions to downstream

²⁰⁹¹ 'Water & Soil Conservation Act 1967 Application for Right in Respect of Natural Water', October 23, 1970, NRC File 2417, Volume 1.

²⁰⁹² Northland Catchment Commission, 'Decision on Application for Right in Respect of Natural Water', May 18, 1972, NRC File 2417, Volume 1.

²⁰⁹³ 'Application for Right to Discharge Waste to Water or to the Ground', received December 5, 1989, NRC File 2417, Volume 1.

²⁰⁹⁴ Northland Catchment Commission and Regional Water Board, 'Monitoring Programme – Water Right 2417', July 2, 1986. NRC File 2417, Volume 1.

²⁰⁹⁵ Northland Catchment Commission and Regional Water Board, 'Monitoring Programme – Water Right 2417', July 25, 1986. NRC File 2417, Volume 1; Northland Catchment Commission and Regional Water Board, 'Monitoring Programme – Water Right 2417', March 4, 1987. NRC File 2417, Volume 1.

users'.²⁰⁹⁶ Staff also noted that there appeared to be ample land available adjacent to the oxidation pond to allow for the construction of a marsh system for tertiary treatment before discharge – such a marsh system could reduce faecal coliform by 90 per cent, while algae could be almost totally removed.²⁰⁹⁷ The Kaikohe Borough Council replied later in the month expressing interest in the construction of a marsh system.²⁰⁹⁸ By November 1987, the Northland Catchment Commission & Regional Water Board found that while chlorophyll 'a', dissolved oxygen and pH levels were 'satisfactory', faecal coliform levels remained high.²⁰⁹⁹

Figure 73: NRC Staff monitoring Kaikohe ponds during algal bloom



(Source: NRC File 2417, Vol. 2)

In March, 1994, the NRC (NRC) wrote to the FNDC signalling their failure to comply with consent conditions set in 1990 relating to the keeping of records of discharges and to supply records to the NRC.²¹⁰⁰ In September, 1994, NRC Monitoring Manager wrote to the FNDC explaining that while monitoring indicated that the Kaikohe sewage treatment system was 'only likely to have minor impacts on the Punakitere River', the sewage

²⁰⁹⁶ Northland Catchment Commission and Regional Water Board, 'Monitoring Programme – Water Right 2417', March 4, 1987. NRC File 2417, Volume 1.

²⁰⁹⁷ Northland Catchment Commission and Regional Water Board, 'Monitoring Programme – Water Right 2417', March 4, 1987. NRC File 2417, Volume 1.

²⁰⁹⁸ Kaikohe Borough Council to Northland Catchment Commission and Regional Water Board, 'Re: Monitoring/Water Right 4217', March 24, 1987, NRC File 2417, Volume 1.

²⁰⁹⁹ Northland Catchment Commission and Regional Water Board, 'Monitoring Kaikohe Oxidation Pond System', November 10, 1987, NRC File 2417, Volume 1.

²¹⁰⁰ Monitoring Manager, Northland Regional Council, to Far North District Council, 'Compliance with Water Consent Conditions Wairoro Stream: Treated Effluent', 15 March, 1994, NRC File 2417, Volume 1.

discharge, in combination with many other small point source and diffuse discharges within the catchment may cause some significant reduction in water quality at times.²¹⁰¹ In February, 1995, the NRC explained that discharges from the treatment system contained excessive quantities of algae which have been ‘conspicuously discolouring the Wairoro Stream after reasonable mixing since at least 1 December 1994’. The NRC claimed that the excessive quantities of algae made clear that the constructed marsh component of the treatment plant was not working ‘efficiently’ and requested work on the constructed marsh to ‘eliminate effluent short circuiting’.²¹⁰²

Figure 74: NRC photograph of blue-green algal bloom, 22 February, 2000



(Source: NRC File 2417, Vol. 2)

²¹⁰¹ Northland Regional Council, ‘Kaikohe Sewage Discharge: Effects on the Punakitere River’, 6 September, 1994, NRC File 2417, Volume 1.

²¹⁰² Environmental Quality Officer, Northland Regional Council, to Far North District Council, ‘Discharge Permit 2417: Kaikohe Sewage’, 2 February, 1995, NRC File 2417, Volume 1.

In February 1995, the NRC found that discharges from the treatment system contained 'excessive quantities of algae, which have been conspicuously discolouring the Wairoro Stream after reasonable mixing since at least 1 December, 1994'. As a result, the NRC again called on the FNDC to undertake remedial work to alleviate the environmental impacts.²¹⁰³ In September of the same year, the NRC once again called on the FNDC to undertake remedial work after monitoring showed that discharges continued to have 'an adverse effect on receiving waters'.²¹⁰⁴ In 1999 a further monitoring report found that 'the effects of the discharge on the receiving waters (Wairoro River) when checked are generally considered to be minor. Nevertheless, given the concentration of the ammonium nitrogen (NH₄-N) measures in the discharge, it is considered that the discharge is likely to be having a 'localised adverse effect on aquatic life'.²¹⁰⁵

However, the algae problem remained. In early 2000, NRC monitoring found that discharges from the WWTP contained a 'substantial amount of algae'; that algae was 'sufficient to... cause a significant colour change in the stream'. Pursuant of Section 17 of the RMA, the Monitoring Manager for NRC requested that the FNDC take steps to 'substantially reduce the discharge of blue/green algae from the Kaikohe sewage treatment system'. It also requested that the council notify users of the Wairoro Stream and to contact the Northland Public Health Unit to discuss the potential need for a sign to warn those who might swim in the river further downstream.²¹⁰⁶ A sign was erected, a local radio broadcast was arranged to warn the local public against using the river for drinking, swimming or other recreational purposes, and the FNDC's operations consultant, Duffill Watts and King, were requested to 'remedy the situation

²¹⁰³ Environmental Quality Officer, Northland Regional Council, to Far North District Council, 'Discharge Permit 2417: Kaikohe Sewage', 2 February, 1995, NRC File 2417, Volume 1.

²¹⁰⁴ Environmental Quality Officer, Northland Regional Council, to Far North District Council, 'Kaikohe Oxidation Pond – March Discharge Permit 2417, 18 September, 1995, NRC File 2417, Volume 1.

²¹⁰⁵ Monitoring Officer, Northland Regional Council, 'Monitoring Results for Resource Consent 2417 – Kaikohe Sewage Treatment System', 2 July 1999, NRC File 2417, Volume 1.

²¹⁰⁶ Monitoring Manager, Northland Regional Council, to The General Manager, Far North District Council, 'Kaikohe Sewage Treatment System Discharge (Resource Consent 2417) – Blue Green Algal Bloom'. 29 February, 2000, NRC File 2417, Volume 2.

urgently.²¹⁰⁷ NRC monitoring in late March 2000 showed that, because of this remedial action, the discharge 'has improved significantly in respect of the Blue/Green Algae'.²¹⁰⁸

During the algal bloom incident, Mervyn O'Connor, a local, attempted to send the NRC water samples, which were rejected. Following a letter explaining the reasons for rejection, O'Connor wrote to the Council expressing his disappointment:

Disappointed that you could not test our water samples. I was at the sewage ponds on both the 18th and 19th of March. Accompanied by Ron Wihongi, Bruce Thom, and Roger Henwood. We were dismayed at the sight we beheld... the Wairoro Stream was a hell of a mess from discharge point to as far as the eye could see. The water quality above the discharge point looked sparkling clean. One did not need to take samples to know the difference.

You asked for my opinion. The solution is to take the discharge out of the Wairoro Stream. The river water should be at least suitable for swimming. I would like to think my grandchildren and other people's children, living along the Wairoro Stream, can swim safely in these waters. As you know, the Wairoro Stream has an effect on the Punakitere River.²¹⁰⁹

8.4.3 Renewal of resource consent 2417

In June, 1999, the NRC wrote to the FNDC advising the Council that their resource consent (2417) was to expire on 31 March, 2000. In its renewing application, the FNDC sought to increase the discharge volume to 2,900 cubic metres per day ('to allow for future population growth'), as well as to provide upgrades to the plant.²¹¹⁰ The application for renewal sought to 'discharge 2,900 cubic metres per day (average wet weather flow) of treated wastewater to the Wairoro Stream and discharge to ground and air, from activities associated with the receipt treatment and discharge of wastewater from Kaikohe and its environs'.²¹¹¹ In its application (produced by VK Consulting Environmental Engineers Ltd), the FNDC cited aspects of the Regional

²¹⁰⁷ Far North District Council to Northland Regional Council, 'RE: Kaikohe Wastewater Treatment Discharge – Blue / Green Algal Bloom', 1 March, 2000, NRC File 2417, Volume 2.

²¹⁰⁸ Water Quality Officer, Northland Regional Council, 'Kaikohe Sewerage', 27 March, 2000, NRC File 2417, Volume 2.

²¹⁰⁹ Mervyn O'Connor to Water Quality Officer, 'Kaikohe Sewage: re your fax 27/03/00', NRC, 7 April 2000, NRC File 2417, Volume 2

²¹¹⁰ VK Consulting Environmental Engineers Ltd, 'Far North District Council – Kaikohe Wastewater Treatment System Application for Renewal of Resource Consent No. 2417', 28 September, 1999, NRC File 2417, Volume 2

²¹¹¹ Far North District Council to Northland Regional Council, 'Application for Resource Consent', undated, NRC File 2417, Volume 2

Council's proposed policy statement for Northland as they related to managing water quality. The policies included:

1. Ensure that the discharge meets the required water quality standards after reasonable mixing;
2. Impose conditions on consents which achieve the above and also have regard to potential effects on the gathering of kaimoana and kaiawa ...
3. To require that all new discharges of organic contaminants, particularly sewage and animal wastes, either to be onto or into land or into land or the best practicable option when compared to land disposal;
4. For existing discharges, this shall be by the year 2004, based on actual and potential effects of the discharge, or according to an upgrading programme, established as part of the conditions of the discharge permit.

In explaining the intended transition to land disposal, the report repeated the Policy Statement:

The discharge of sewage and animal waste to natural water bodies and coastal water is offensive to Tangata Whenua and many others in Northland community... Such discharges are therefore to be avoided by requiring land disposal ...²¹¹²

Despite these statements, the FNDC's application also stated that while the phasing out of wastewater discharges to water was encouraged by the Regional Council, 'alternative disposal methods need to be weighed up when deciding on the appropriate methods'.²¹¹³

The application also acknowledged the cultural value of the Wairoro Stream. 'The Wairoro Stream is a tributary of rivers with high cultural value', the application read, 'and submitters to previous applications have referred to the presence of waahi-tapu (sacred places under ceremonial restriction) burial caves, rakau whakairi tupaku (trees from which corpses were hung), among others'. This particular issue, the report stated, has a significant bearing on the acceptability of the types of treatment from the Kaikohe

²¹¹² FNDC, 'Kaikohe Wastewater Treatment System Resource Consent Application 2417, Supporting Information', September 1999, p11, NRC File 2417, Volume 2

²¹¹³ FNDC, 'Kaikohe Wastewater Treatment System Resource Consent Application 2417, Supporting Information', September 1999, p12, NRC File 2417, Volume 2

Wastewater Treatment System.²¹¹⁴ In terms of environmental impacts, the report quoted NRC monitoring from July 1999 that stated that ‘the effects of the discharge on the receiving waters (Wairoro River) when checked, are generally considered to be minor’.²¹¹⁵ The application stated that the plant had been operating within consent conditions since 1990, and despite adverse environmental effects experienced in the past, the report explained that this was no longer the case.²¹¹⁶

However, in late 2000, the Compliance Monitoring Co-ordinator for the NRC produced a report on environmental impacts, field observation, and consent compliance data for the 1999/2000 financial year. The report found that the discharge had significant adverse environmental effects around the time of the blue-green algal bloom. It also found that the discharge ‘may, at times, adversely affect aquatic life’, and concluded that:

the actual and potential environmental effects of the discharge evident from the water quality monitoring results indicate that the existing treatment and disposal system needs to be upgraded, particularly given that wastewater flows from the area served by the Kaikohe Sewage Scheme are likely to increase in future.²¹¹⁷

8.4.3.1 Notification and submissions

The application was publicly notified on 8-9 November, 1999 with submissions on the application due by 7 December.²¹¹⁸ However, consultation with Māori started earlier in the process. In September 1999, VK Consulting Environmental Engineers Ltd (on behalf of the FNDC) wrote to various hapū/iwi groups in Northland about the resource consent application. The hapū/iwi contact list was provided by the NRC and prepared by Whitianga Peehikuru. The list included the Chairperson of Ngā Puhī Ki Te Hauauru Takiwā; Mitta Webster of Te Kotahitanga Marae; Rudy Taylor, the Chairperson for Te

²¹¹⁴ FNDC, ‘Kaikohe Wastewater Treatment System Resource Consent Application 2417, Supporting Information’, September 1999, p16, NRC File 2417, Volume 2

²¹¹⁵ FNDC, ‘Kaikohe Wastewater Treatment System Resource Consent Application 2417, Supporting Information’, September 1999, p21, NRC File 2417, Volume 2

²¹¹⁶ FNDC, ‘Kaikohe Wastewater Treatment System Resource Consent Application 2417, Supporting Information’, September 1999, p26, NRC File 2417, Volume 2

²¹¹⁷ Compliance Monitoring Co-ordinator, to FNDC, ‘Resource Consent 2417: Kaikohe Sewage Treatment and Disposal System’, ‘Kaikohe Sewage Treatment and Disposal System: Resource Consent 2417’, no date, NRC File 2417, Volume 2

²¹¹⁸ Consents Manager, NRC, ‘Notification of Application for a Resource Consent Under Section 93(2) of the Resource Management Act 1991’, 8 November, 1999, NRC File 2417, Volume 2

Runganga-a-Iwi O Ngā Puhi; Taoka Wihongi, Chairperson for Puhimoanaariki Marae; Hoana Rapatini, Kohewhata Marae; and Ron Wihongi, a 'Kaikohe Kaitiaki'.²¹¹⁹

Kevin O'Connor, 'Kaitiaki Advisor for Kaikohe area', opposed the application. Among the reasons O'Connor gave for his opposition were that the existing discharge 'does not have particular regard for Kaitiakitanga' and that the NRC 'have not properly monitored the previous consent effectively'.²¹²⁰ Submissions were also received from the Director General of Conservation, the Northland Branch of the Green Party, and Mervyn James O'Connor. The Director General of Conservation raised several concerns about the application, including that fact that the proposal did not include a programme to convert to land disposal by 2004, as outlined in the Regional Statement for Northland.²¹²¹ They also suggested that remedial measures to address operational issues—including the upgrading of the wetland system—were 'inadequate and/or have not been undertaken in a timely fashion'. The Northland Branch of the Green Party also raised the issue of discharge to water, requesting that the application only be granted for three years, giving the FDNC 'time to investigate and instigate a land-based system of effluent treatment that will cater for increased population'.²¹²² Mervyn James O'Connor opposed the application, expressing concerns about the pollution of the Wairoro Stream and Punakitere River, and the smell that the discharge generates at certain times.²¹²³

On 24 February, 2000, all four submitters were invited to a pre-hearing meeting for the purpose of discussing their submissions and to 'hopefully gain agreement on consent conditions that would address the issues raised'.²¹²⁴ At the meeting, held in mid-March, Mervyn O'Connor offered apologies for Ron Wihongi, who could not attend due to commitments with the hearing for the new Northland Region Corrections Facility

²¹¹⁹ 'Iwi Contacts Distribution List', 10 September, 1999, NRC File 2417, Volume 2.

²¹²⁰ Kevin O'Connor, Kaitiaki Advisor for Kaikohe area, 'Submission to an application for Resource Consent', 6 December, 1999, NRC File 2417, Volume 2

²¹²¹ 'Submission by Director General of Conservation', 7 December, 1999. NRC File 2417, Volume 2

²¹²² Northland Branch Green Party of Aotearoa, 'Re: Application by Far North Council For Consent 2417 to discharge waste water to the Wairoro Stream', 5 December, 1999, NRC File 2417, Volume 2

²¹²³ Mervyn James O'Connor, 'Submission to a Resource Consent Under Section 93(2) of the Resource Management Act 1991', 6 December, 1999, NRC File 2417, Volume 2

²¹²⁴ 'Pre-hearing Meeting Far North District Council Application to Replace Consent for Kaikohe Sewerage', 24 February 2000, NRC File 2417, Volume 2

(Ngawha) prison. O'Connor explained that he had discussed the issue with Wihongi who 'indicated that the discharge from the treatment plant to the Wairoro Stream was offensive to iwi and that they would prefer the discharge to go to land'.²¹²⁵ O'Connor also asked whether the FNCD had seriously considered land application, explained that people used the downstream water for their everyday needs and that 'these needed to be protected'. O'Connor also expressed concern about odours from the treatment system. Bruce Thom presented a letter from Kevin O'Connor, 'Kaitiaki Advisor', who was also unable to attend the pre-hearing meeting. The letter was addressed to the FDNC requesting two 'key urgent actions'. There were: to 'classify' Wairoro stream and Punakitere River' (that is, to use Section 69 and Schedule 3 to provide a 'bottom line' below which water quality should not fall) and to 'undertake a study of the stream bed growth upstream and downstream of the Kaikohe sewer discharge'. O'Connor provided the following explanations for these requests:

I believe that the monitoring currently being carried out is farcical in terms of value because there is no official classification for the water quality in the stream. If there was classification then I am sure that the negative impact of the wastewater would have incurred NRC driven prosecution on many occasions over the last few years.

The classification we will insist on is for Maori traditional use as guaranteed under the Treaty of Waitangi. Traditionally and to this day the stream downstream of the outlet has been used for swimming, drinking water, food-gathering & spiritual renewal (please note when eeling you are in the water a lot of the time up to your waist or even over your head so contact recreation is part of food gathering).

... why should Maori have to take eel caught in our river to other ponds so that they can clean themselves to make them acceptable for eating. This stream is a huge resource for Maori and they are being hugely disadvantaged in terms of loss of quality eel resources.²¹²⁶

O'Connor also questioned the NRC monitoring, explaining that results presented were 'at variance with our own observance'.²¹²⁷ In response to requests regarding water classification, the Water Quality Officer for the NRC replied later in the same month

²¹²⁵ 'Minutes of Pre-Hearing Meeting: 2417 Kaikohe Sewerage, Council Chambers, FNDC Service Centre Kaikohe, 15 March, 2000', 28 March, 2000, NRC File 2417, Volume 2

²¹²⁶ Kevin O'Connor, to Water Quality Officer, "Re Kaikohe sewer wastewater treatment discharge", 15 May 2000, NRC File 2417, Volume 2.

²¹²⁷ Kevin O'Connor, to Water Quality Officer, "Re Kaikohe sewer wastewater treatment discharge", 15 May 2000, NRC File 2417, Volume 2.

explaining that in order for the Water Quality Classification of the Wairoro Stream and Punakitere River to have legal status, it would need to follow the statutory process set down in the RMA—a process that could take years and could be ‘unreasonable’ in terms of Section 21 of the Act (Avoiding Unreasonable Delay). The Officer suggested that the Kaitiaki group take the matter up with the NRC’s Planning and Policy Department.²¹²⁸ It is unclear if this ever occurred.

As a result of the pre-hearing meeting, the NRC requested further information from the FNDC (pursuant of Section 92(1) of the RMA), including a detailed assessment of alternatives such as the land disposal option.²¹²⁹ In early 2001, VK Consulting (on behalf of the FNDC) produced a report on land disposal options, concluding that based on preliminary investigations, land disposal of treated effluent is ‘not considered to be warranted or feasible option’ and that the ‘existing effluent discharge to water, with the inclusion of treatment system upgrades is considered to be the best practicable option when compared with the land disposal options’.²¹³⁰

On 26 July 2001, submitters were invited to a second pre-hearing meeting scheduled for late August.²¹³¹ Unfortunately, no minutes of this meeting have been located, but in late August 2001 the NRC informed the FNDC that the processing of the consent application would be delayed following the pre-hearing meeting ‘to allow further investigations into alternative treatment options, and negotiate with submitters’.²¹³² Until 2004, the Far North District Council did not provide any new information; thus the application processing stalled. In the middle of 2004, the FNDC requested that the NRC provide draft consent conditions so that they could be taken into account in making decisions on upgrades to the Plant. The NRC drafted conditions and these were sent to the FNDC in October 2004.

²¹²⁸ NRC Water Quality Officer to Kevin O’Connor, ‘Kaikohe Sewerage Application 2417’, 31 May 2000, NRC File 2417, Volume 2

²¹²⁹ Water Quality Officer, NRC, to VK Consulting Environmental Engineers Ltd., ‘Application 2417 for Replacement of Consents for Kaikohe Sewerage’, 28 March, 2000, NRC File 2417, Volume 2

²¹³⁰ VK Consulting Environmental Engineers Ltd, ‘Investigation into Land Disposal Options, Prepared for the Far North District Council’, February, 2001, p28, NRC File 2417, Volume 3

²¹³¹ Water Quality Officer, NRC, ‘Pre-Hearing Meeting – Far North District Council – Application to Replace Consents for Kaikohe Sewerage’, 26 July, 2001, NRC File 2417, Volume 2

²¹³² Water Quality Officer, NRC, ‘Application for Resource Consents (NO 2417 – Kaikohe Sewerage): Notice of Extension of Time Limit’, 27 August 2001, NRC File 2417, Volume 3

Around the same time, Ron Wihongi expressed concern about the environmental impacts of the WWTP. Wihongi requested access to the site and suggested that partnership and kaitiaki was the solution to restoring the water quality of the Wairoro and Punakitere rivers. On 4 October 2004, Wihongi wrote to the Council:

Water is one of the most precious commodities (sic) we have, and it needs our care. As kaitiaki for Te-Uri-O-Hua within the boundaries of Taimai, we would like to have access to the Kaikohe Sewerage Ponds from time to time to make periodic checks to make sure that the no raw sewerage will escape into the Wairoro stream

The Wairoro and Punakitere Rivers are but remnants of taonga tukuiho from our Tuupuna

We are the keepers of these waters like Ngawha Waiariki we will protect them from further exploitation of the Pakeha who is hell bent to bring the mighty dollar and destroy perhaps one of the only healing springs known in the world.

For the sake of silver and gold the Pakeha and its big business consortiums would continue to destroy our beautiful environment ...

We do not want a repeat of four years ago, when the Council allowed its contractors to open up the side of the sewerage pond and let raw sewerage flow out directly into the Waioro Stream, which continued to do so for 2 months until the Water Care Group made up of members like Merve O'Connor, Hetaraka, Hohaia, Beercraft, Bruce Thom, and myself laid a complaint with the F.N.D.C. It's not good enough.

We promote the keeping of our environment clean and green, but sometimes I wonder. We are now deprived of the eels from these waters, because of contamination from leakage from the sewerage pond. We want to work towards ensuring that the quality of water is restored and maintained.

The only way we can see to do [this]: No 1. Partnership with the Councils and Kaitiaki

That is why it is imperative that we maintain access to these ponds, and together further develop monitoring systems to maintain that these waters be kept in good quality.²¹³³

The NRC's Environmental Monitoring Officer replied to Wihongi advising that the oxidation ponds were inspected by the NRC six times per year and that if Wihongi wished to gain access to the site, he would need to contact the FNDC.²¹³⁴

²¹³³ Ron Wihongi to NRC, handwritten letter, 4 October, 2004, NRC File 2417, Volume 3

Following the drafting of consent conditions, a third pre-hearing meeting was held in April of 2005, where submitters debated the land disposal option, with some suggesting that the investigations undertaken by VK Consulting were inadequate. NRC staff replied that the reports were adequate and were accepted by the NRC. Sam Wihongi, Tamaiti Wihongi and Phillip Grimshaw all reiterated the importance of the streams to overall health of the rivers they feed; according to the notes from the meeting: 'The stream also travels for a long distance eventually flowing into the Punakitere River, the Waimā River, and ultimately into the Hokianga Harbour'.²¹³⁵

8.4.3.2 Hearing and decision

The NRC's 'staff report' on the application was produced before the final hearing (discussed below).²¹³⁶ The staff report outlined the nature of the application, provided a summary of consultation and pre-hearing meetings, an assessment of effects and, weighed the application against the relevant statutory planning instruments (specifically, the RMA and the RWSP). In relation to the environmental effects and ecological values of the Wairoro Stream, the report stated that

It is clear from the monitoring data presented ... that the Kaikohe WWTP discharge is having a major influence on the ammoniacal nitrogen concentrations downstream of the discharge point.

Northland Regional Council staff consider that the ecological values of the Wairoro Stream at, and downstream, of the Kaikohe WTS discharge points are moderate. The river is expected to support populations of a number of native fish species, and a moderate diversity of aquatic plants and invertebrates. On the basis of comments by submitters there could be a marked seasonal variation in the abundance of aquatic macrophytes downstream of the discharge point, but this has not been well documented.²¹³⁷

In its assessment of statutory planning instruments, the report stated that the application was in accordance with Sections 6, 7 and 8 of the RMA ('[t]hrough the consultation process... the applicant and the Northland Regional Council have met their responsibilities under Section 8 of the RMA') as well as Section 6 (Recognition of and

²¹³⁴ Environmental Monitoring Officer, NRC, to Ronald Wihongi, 'Far North Council Kaikohe Oxidation Ponds', 22 October, 2004. NRC File 2417, Volume 3

²¹³⁵ 'Pre-hearing meeting to discuss the renewal of Resource Consent 2417 for the Kaikohe Wastewater Treatment Plant', 15 April 2005. NRC File 2417, Volume 3

²¹³⁶ 'NRC Staff Report', 20 May, 2005, NRC File 2417, Volume 3

²¹³⁷ 'NRC Staff Report', 20 May, 2005, NRC File 2417, Volume 3

Provision of Māori and their Culture and Traditions) of the Regional Water and Soil Plan for Northland, including Policy 6.4.2 of the RWSP: 'Provide for the concerns of tangata whenua in regard to the disposal of waste into water'.²¹³⁸ In summary, the report stated that the 'concerns of iwi have been considered in making recommendation on this application, and it is considered that the above objectives and policies have been met with regard to the application under consideration'.²¹³⁹ But the report came with a caveat:

The Regional Water and Soil Plan requires the Northland Regional Council to recognise and, as far as is practical, provide for the cultural and spiritual values held by Tangata Whenua. This would suggest that in considering this application, while it is necessary to recognise the cultural and spiritual values of Tangata Whenua, *those values are not given any greater weight than any other matters which the Northland Regional Council needs to consider when making a decision.*²¹⁴⁰ [emphasis in original]

The report concluded that the application would contribute to the social and economic well being of the community, and the environmental impacts would be no less than minor. The 'staff report' also outlined consultation undertaken to date and noted that although there was a general agreement with most of the draft conditions by parties who attended the third pre-hearing meeting, there were some matter with which a number of submitters were not satisfied. Thus, the NRC determined that a hearing should be held 'so that all parties could present their arguments to a hearing Committee'.²¹⁴¹ The hearing for the application took place on Monday, 23 May, 2005.²¹⁴² The applicant, FNDC, was represented by legal counsel, staff and a technical consultant. None of those opposed appeared to speak in support of their submissions, but the Department of Conservation did provide a short written statement.²¹⁴³ The Consent was granted on 4 August 2005, to expire on 30 November 2021.

²¹³⁸ Quoted in 'NRC Staff Report', 20 May, 2005, NRC File 2417, Volume 3

²¹³⁹ 'NRC Staff Report', 20 May, 2005, NRC File 2417, Volume 3

²¹⁴⁰ 'NRC Staff Report', 20 May, 2005, NRC File 2417, Volume 3

²¹⁴¹ 'NRC Staff Report', 20 May, 2005, NRC File 2417, Volume 3

²¹⁴² Letter from Administration Team Leader, NRC to Applicant and Heard Submitters, 'Resource Consent Application CON19990241701 – Far North District Council – Kaikohe wastewater treatment plant – Notification of Hearing, 20 April, 2005, NRC File 2417, Volume 3.

²¹⁴³ Northland Regional Council, 'Report and Decision of Council, through its Hearing Committee held in the Conference Room, Mid North Inn, Upper Broadway, Kaikohe on Monday 23 May 2005'. NRC File 2417, Volume 3

Over the following years, monitoring of the plant revealed variations in the degree of consent compliance. The non-compliance related largely to levels of ammoniacal nitrogen.²¹⁴⁴ One of the consent conditions required the FNDC to upgrade the plant within two years of being granted consent and include a disinfection system. However, in 2010 the FNDC applied, under Section 127 of the RMA ('change or cancellation of consent condition on application by consent holder'), to remove that condition. The application to amend the consent was processed as non-notified and was not circulated to hapū/iwi. The Notification Decision Report, produced for the NRC stated the following reason: 'the application has not been circulated to Iwi as the discharge is already consented and the proposed change to conditions will only result in no greater adverse effects than what has been occurring to date'.²¹⁴⁵

It is impossible to know why tangata whenua submitters did not attend the May hearing, but in any case, the Council appears to have interpreted this as approval (or at least as a sign of there being no opposition) to the application, and thus the subsequent application was non-notified and not circulated to Māori.

8.5 Local Study #2: M. J. Pinny - farm dairy effluent

8.5.1 Introduction

As discussed above, claimants have expressed concerns about both the discharge of farm dairy effluent into waterways and the resource consent process. In his evidence to the Tribunal, Wiremu Reihana stated that '[i]n combination with the other effluent, the animal effluent adds to the nitrogen levels in the water and this feeds the bacteria, algae and weeds'.²¹⁴⁶ Reihana continued:

For Ngāti Tautahi, the discharge of animal effluent into the awa is disrespectful to us and to the awa. The awa have their own mauri. The discharge of so much effluent desecrates the mauri.²¹⁴⁷

²¹⁴⁴ NRC, 'Monitoring Report for Resource Consent MCO241701: Kaikohe WWTP', 12 March, 2010, NRC File 2417, Volume 4

²¹⁴⁵ NRC, 'Notification Decision Report', 11 April, 2011, NRC File 2417, Volume 4

²¹⁴⁶ Reihana, Wai 1040, #T10

²¹⁴⁷ Reihana, Wai 1040, #T10

In his brief of evidence, Reihana identified a particular consent to discharge effluent into the Punakitere River and claimed that while the local council consulted Ngāti Rangi and Ngāti Moerewa, ‘they failed to consult with anyone else along the river’. ‘The river must be looked at holistically’, Reihana explained. ‘What happens in one section of the river is going to affect not just those within the immediate vicinity, but it will affect those down river’.²¹⁴⁸ During a research hui/site visit in March 2015 with Ngāti Tautahi ki Te Iringa hapū and a follow up phone conversation with Wiremu Reihana in April 2015, Pinny farms was suggested as a site to research for this report.

In the mid- to late-2000s, M. J. Pinny bought farms across the Kaikohe area. In 2006, Pinny purchased the Ngatitara Farm, south of Kaikohe, which became the ‘core of his Mangakahia Rd Farms’, according to the *Northern Advocate*.²¹⁴⁹ The *Advocate* explained that from 2006 onwards, Pinny ‘started buying up neighbouring farms and converting them to dairy, eventually owning 10 contiguous farms stretching more than 40km’. Until recently, M. J. Pinny owned seven dairy farms in the Kerikeri/Kaikohe area. For each, Pinny held resource consent to discharge treated farm dairy effluent to water (556, 849, 851, 852, 853, 854, and 855). This section focuses on four of these consents: 851, 852, 854, and 855. Dairy Shed 851 is located on Gammons Road, 15 kilometres south of Kaikohe. Farm dairy wastewater is discharged to land within 20m of a watercourse and occasionally to a watercourse.²¹⁵⁰ Dairy Shed 852 is located on Picadilly Road, Tautoro and farm dairy wastewater is discharged to a channel leading into the Punakitere River.²¹⁵¹ Dairy Shed 854 discharges to an unnamed tributary of the Te Ruakokopu Stream. These locations are provided in Figure 71 with the exception of FDE 854, location of which could not be identified from the resource consent files.

8.5.2 Monitoring and consent compliance

The NRC files for these farm dairy effluent resource consents are replete with notices of non-compliance, and infringement and abatement notices. In one of the first monitoring reports provided in the NRC file for FDE 851, the results indicated that discharges were

²¹⁴⁸ Reihana, Wai 1040, #T10

²¹⁴⁹ Captain Cooke Nominee Ltd, letter to NRC, ‘Ref FDE 851, MC0934001 and FDE 855 MC0933901’, 20 July, 2006, NRC FDE File 851 (‘Pinny’), Vol 1.

²¹⁵⁰ NRC, ‘Staff Report for Permit Application’, no date, 2009, NRC FDE File 851 (‘Pinny’), Vol 1.

²¹⁵¹ ‘Staff Report for Permit Application’, NRC FDE File 851 (‘Pinny’), Vol 2

'having significant adverse effects on the quality of the receiving water at the time of sampling'. In particular, sampling indicated that discharge was causing a decrease in dissolved oxygen level of the receiving waters, and an increase in the levels of ammonium-nitrogen and faecal coliform. The report concluded that the owner was in breach of conditions of the consent and the system needed upgrading.²¹⁵²

Around the same time, monitoring of FDE 852 also showed that 'the discharge was having a marked localised adverse effect on the quality of the receiving water at the time of sampling, which showed a significant increase in the levels of Ammonium-nitrogen and faecal coliform'.²¹⁵³ A follow up inspection for FDE 851 in April 2002 found that there was no evidence of a spray irrigation system being used to spray the effluent onto pasture; the ponds were too small to provide any real treatment; the ponds were discharging a substantial flow to the unnamed tributary of the Paramarua Stream; the wetland downstream of the discharge contained large amount of effluent solids, and there was evidence of effluent solids in, and downstream of, the Mangakahia Road culvert. It called on the owner to use spray irrigation consistently to avoid contamination of the unnamed tributary or that additional pond treatment be provided to enable the discharge to comply with the condition of the resource consent. The Council warned that future breaches of consent would require enforcement action.²¹⁵⁴ Eventually, an infringement notice was delivered to the owners. On 29 July 2003, the NRC wrote to the farm owners following an inspection that found that discharge of farm dairy effluent had made its way into water and was thus an offence against section 338(1)(a) of the RMA and Rule 16.1 of the Revised Proposed Regional Water and Soil Plan for Northland. This does not permit 'the discharge of animal effluent within 20 metres of the farm boundary' or the runoff of effluent to water'.²¹⁵⁵ The fine was for \$750.

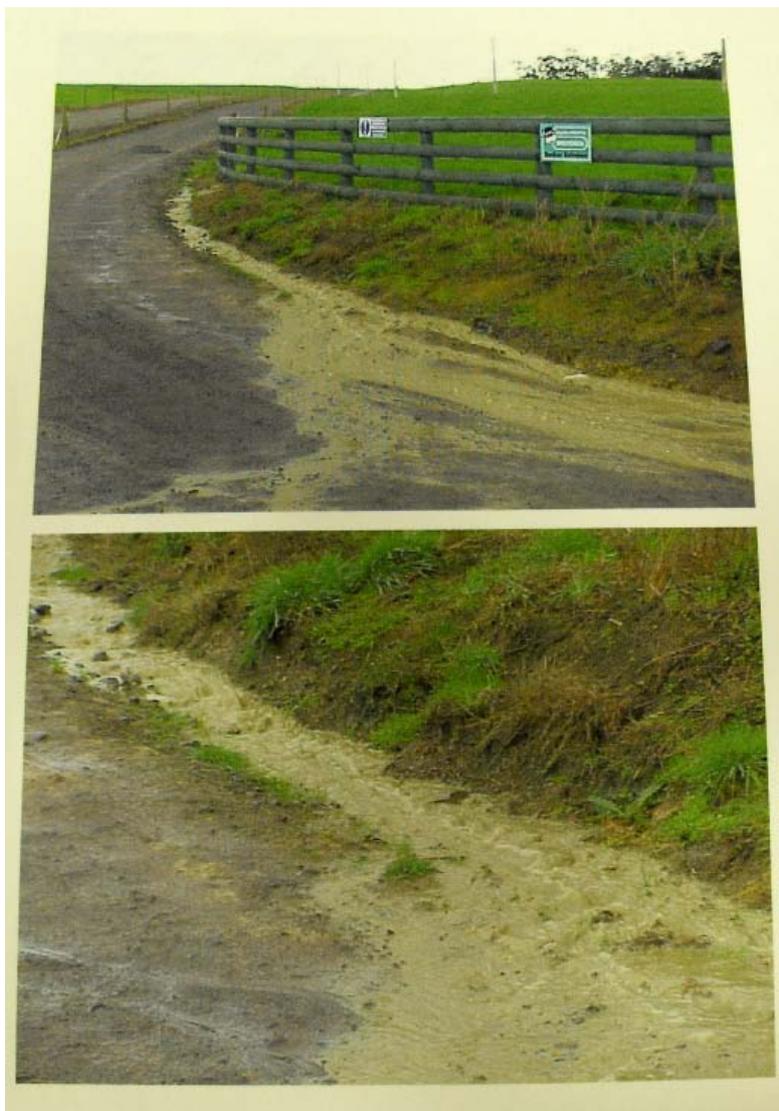
²¹⁵² NRC 'Discharge & Receiving Water Quality Testing Results: FDE 851 associated with Resource Consent 9340', no date, but possible in late 2001, NRC FDE File 851 ('Pinny'), Vol 1

²¹⁵³ NRC, '2001/02 Monitoring of Resource Consent 8797', 22 October, 2001, NRC FDE File 852 ('Pinny'), Vol 2

²¹⁵⁴ Letter from Environmental Monitoring Officer (Farm Waste) to owners, 4 April, 2002, NRC FDE File 852 ('Pinny'), Vol 1.

²¹⁵⁵ Letter from Environmental Monitoring Officer (Farm Waste) to owners, 'Discharge of Farm Dairy Effluent to Gammons Road', 29 July, 2003, NRC FDE File 851 ('Pinny'), Vol 1.

Figure 75: Photographs taken during NRC inspection of effluent discharge to Gammons Road, Kaikohe



(Source: NRC FDE File 851, Vol. 1)

On 31 May, 2006, Merv Pinny purchased the Ngatitara Farm.²¹⁵⁶ But despite the change of ownership, non-compliance and issuing of abatement notices continued in the following years. On the 29 September 2006, the NRC served Pinny with an abatement notice, giving notice that he must operate the farm dairy effluent treatment/disposal system to comply with conditions of the resource consent before 31 October or face prosecution. The reason given was that the discharge of farm dairy effluent has occurred ‘in such a way that it has contaminated or was likely to contaminate water and

²¹⁵⁶ Captain Cooke Nominee Ltd, letter to NRC, ‘Ref FDE 851, MC0934001 and FDE 855 MC0933901’, 20 July, 2006, NRC FDE File 851 (‘Pinny’), Vol 1.

is not allowed by a rule, regulation or resource consent'. This action contravened Section 15(1)(b) of the RMA.²¹⁵⁷ The letter cited occurrences of 'significant consent non-compliance'. A fine of \$750 was once again levied. In the following year, another abatement and infringement notice was delivered, citing a sample at Gammons Road which showed 'grossly elevated faecal coliform count and ammonium nitrogen concentrations, despite the fact that there was a lot of fresh water in the drain'.²¹⁵⁸

In a compliance history report for all of Pinny's FDE consents (851, 852, 855, 8091, 8083), the NRC found that there was significant non-compliance in many areas. For consent 852, for example, the Council noted pond overloading and 'copious discharge of poorly treated effluent to the Punakitere River'.²¹⁵⁹ Indeed, an abatement notice was served on Pinny in September 2007 in relation to 852 for discharges to the Punakitere River that were 'likely to contaminate water'.²¹⁶⁰ In early July 2009, the NRC received a complaint via its environmental hotline about effluent flowing down Gammons Road for Farm Dairy Shed 851 and on 29 July, Pinny was once again served with an abatement and infringement notice.²¹⁶¹

8.5.3 Consent applications

8.5.3.1 FDE 852 resource consent application, 1999

In 1999, the owners of the farm on Picadilly Road (FDE 852) applied for consent to discharge effluent to water. The non-notified application was sent to iwi with a direction that submitters 'focus your response on any *cultural* concerns that may relate to this proposal', as 'matters of a technical nature are addressed by the Consents Officer'. It also noted that if no reply was received before the deadline (just over two

²¹⁵⁷ Section 15(1)(b) of the RMA states that 'no person may discharge any— contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water'. Resource Management Act 1991, sections 15(1)(b); NRC, to M. J. Pinny, 'Abatement Notice Under Section 322 of the Resource Management Act 1991', 29 September, 2006. NRC FDE File 851 ('Pinny'), Vol 1.

²¹⁵⁸ NRC, to M. J. Pinny, 'Monitoring Report for Resource Consent MC0934001', 27 September, 2007, NRC FDE File 851 ('Pinny'), Vol 1; NRC, to M. J. Pinny, 'Abatement Notice Under Section 322 of the Resource Management Act 1991', 26 September, 2007, NRC FDE File 851 ('Pinny'), Vol 1.

²¹⁵⁹ 'NRC Compliance History for Fonterra', no date (possibly late 2007), NRC FDE File 851 ('Pinny'), Vol 1.

²¹⁶⁰ NRC to Pinny, 'Abatement Notice under Section 324 of the Resource Management Act 1991', 27 September, 2007, NRC FDE File 852 ('Pinny'), Vol 1.

²¹⁶¹ NRC, to M. J. Pinny, 'Abatement Farm Dairy Effluent (FDE851) MCO 934001, Gammon Road', 29 July, 2009. NRC FDE File 851 ('Pinny'), Vol 1.

weeks later) 'it will be assumed there are no concerns held regarding the proposal'.²¹⁶² The application was sent to Hare Perana of Hungaiti Marae, Ron Wihongi, Kaikohe kaitiaki, Mr Joe Matene, chairman of Mahuhu-ki-te-Rangi Marae, the chairperson of Ngāpuhi Ki Te Hauauru Takiwā and Rudy Taylor, Chairman of Te Rūnanga-Ā-Iwi o Ngāpuhi.²¹⁶³

The 'staff report', produced for the NRC, explained that they had received a verbal response from Ron Wihongi, a kaitiaki of Kaikohe. He opposed the discharge of effluent to water, regardless of the level of treatment and asked for an upgrade to land-based discharge. However, following a meeting, attended by Wihongi, and advice given that the applicant would upgrade to spray irrigation, Wihongi 'did not follow-up his concerns with the discharge after the meeting'.²¹⁶⁴ NRC got in touch with Wihongi following the meeting. Staff 'discussed the proposed terms of consent and monitoring regime, which would be linked to a review of the consent in 2003. These met with Mr Wihongi's approval', the staff report explained.²¹⁶⁵ The report also claimed that there were 'no known water-users downstream of the discharge' and thus it was concluded that 'there are no parties adversely affected by the proposal'.²¹⁶⁶ Four years later, in 2003, the Council wrote to the applicant:

During the consent processing procedure local Iwi representatives were concerned that the treated effluent was discharged to water and suggested that land disposal would be preferable. As the contour and soil types appear to be suitable for spray irrigation, serious consideration should be given to this option.²¹⁶⁷

The applicant did not, therefore, follow through with the upgrade to spray irrigation, which was a condition of Wihongi's approval of the consent. It is not clear if the upgrade has taken place subsequently.

²¹⁶² D L Roke to Iwi Distribution List, 'Non-Notified Application to Discharge Treated Dairy Farm Waterwater to Water, 20 August 1999, NRC FDE File 851 ('Pinny'), Vol 1.

²¹⁶³ Iwi Distribution List, NRC FDE File 852 ('Pinny'), Vol 1.

²¹⁶⁴ 'NRC, 'Staff Report for Permit Application', date unknown, NRC FDE File 852 ('Pinny'), Vol 1.

²¹⁶⁵ 'NRC, 'Staff Report for Permit Application', date unknown, NRC FDE File 852 ('Pinny'), Vol 1.

²¹⁶⁶ 'NRC, 'Staff Report for Permit Application', date unknown, NRC FDE File 852 ('Pinny'), Vol 1.

²¹⁶⁷ NRC to A J Becroft, 'Farm Dairy Effluent (FDE) Treatment System, FDE 852', 14 May, 2003, NRC FDE File 852 ('Pinny'), Vol 1.

8.5.3.2 FDE 851 Pinny Farms resource consent applications, 2009-2011

On July, 2009, the NRC acknowledged M. J. Pinny's resource consent application and wrote to Pinny explaining that the application was expected to be processed on a non-notified basis, but, as per the Council's policy on non-notified consents (discussed in previous chapters), the application was circulated to iwi groups 'having an interest in the applications in the area'. Comments on the application from these iwi groups have been invited'.²¹⁶⁸ The application was sent to Te Rūnanga-Ā-Iwi O Ngāpuhi and Te Takiwā O Ngāpuhi Ki Te Hauauru.²¹⁶⁹ There would be no formal submission process the letter explained but the Council 'would welcome comment on concerns relating to how the proposal may impact on your relationship, culture and traditions with the area, including sites, waahi tapu and other taonga'.²¹⁷⁰ The staff report for the application claimed that Māori organisations 'with interest in the area' were sent the application, though none replied and it was 'considered that there are no parties adversely affected by this proposal'.²¹⁷¹ The NRC delivered its decision to grant the consent on the 2 May, 2012, for FDE 851 and set the expiry date of the consent as 31 August, 2025.²¹⁷² In the first compliance monitoring report, produced five months after the consent was granted, the NRC once again found 'significant non-compliance' with consent conditions.²¹⁷³ In May 2010, Pinny applied for resource consent for its Farm Dairy Effluent shed 852. Once again, the application was processed as non-notified and sent to Te Rūnanga-Ā-Iwi O Ngāpuhi and Te Takiwā O Ngāpuhi Ki Te Hauauru.²¹⁷⁴ No

²¹⁶⁸ NRC to M. J. Pinny, 'Acknowledgment of Resource Consent Application, 6 July, 2009, NRC FDE File 851 ('Pinny'), Vol 1.

²¹⁶⁹ NRC to Te Rūnanga-Ā-Iwi O Ngāpuhi, 'Non-Notified Resource Consent Application CON20090934001 – M. J. Pinny – FDE 851 Discharge of Farm Dairy Effluent at Gammon Road, Kaikohe', 8 July, 2009, NRC FDE File 852 ('Pinny'), Vol 1.

²¹⁷⁰ NRC to e Rūnanga-Ā-Iwi O Ngāpuhi, 'Non-Notified Resource Consent Application CON20090934001 – M. J. Pinny – FDE 851 Discharge of Farm Dairy Effluent at Gammon Road, Kaikohe', 8 July, 2009, NRC FDE File 851 ('Pinny'), Vol 1

²¹⁷¹ NRC, 'Staff Report for Permit Application', no date, 2009, NRC FDE File 851 ('Pinny'), Vol 1.

²¹⁷² 'NRC, 'Application Number: CON20090934001', 2 May 2012, NRC FDE File 851 ('Pinny'), Vol 1.; 'Resource Consent, CON20090934001, FDE 851', NRC FDE File 851 ('Pinny'), Vol 1.

²¹⁷³ NRC, to M. J. Pinny, 'Compliance Monitoring Report for Resource Consent MCO934001', 25 October, 2012, NRC FDE File 851 ('Pinny'), Vol 1.

²¹⁷⁴ NRC, 'Circulation Iwi Groups, 'Non-Notified Resource Consent Application – CON20100879701 – MR M. J. Pinny – Farm Dairy Effluent at 212 Picadilly Road, Kaikohe'. 24 May, 2010, NRC FDE File 852 ('Pinny'), Vol 1.

comments were received from those on the iwi distribution list. The consent was granted in May of 2012 to expire in 2025.²¹⁷⁵

In August 2011, the NRC received an application for resource consent from Pinny, for its Farm Dairy Effluent shed 854 to discharge effluent from a dairy shed to an unnamed tributary of the Te Ruakokopu Stream.²¹⁷⁶ The non-notified application was sent to Te Hungaiti Marae (Ngāti Rangi and Ngāti Moerewa), located approximately 10 km southwest of Kaikohe on Mangakahia Road, and to Te Rūnanga-Ā-Iwi O Ngāpuhi.²¹⁷⁷ This is potentially the application Reihana mentioned above, where a consent application was sent to Ngāti Rangi and Ngāti Moerewa, 'they failed to consult with anyone else along the river'.²¹⁷⁸ No comments were received and the consent was granted in May 2012.²¹⁷⁹ On 24 November, 2014, the NRC served another abatement notice to Pinny for breaches of consent and of the RMA.²¹⁸⁰

8.5.4 Prosecutions at Whāngārei District Court

In December 2010 and January 2011, the NRC took M. J. Pinny to the Whāngārei District Court for unlawful discharge of dairy effluent. Pinny was fined \$54,000 on 16 charges of discharging effluent to streams and land. His farm manager was fined \$10,000. In their decision, Judge R G Whiting noted that 'history of non-compliance' was taken into account. 'For some years', the decision read, 'you have been receiving letters, abatement notices and infringement notices from the Council regarding the problems you were experiencing... it was a lack of action on your part which I am satisfied was part of the cause of this matter'. Attached to the decision was an assessment of the effects of farm dairy effluent discharge. The assessment found the following:

²¹⁷⁵ NRC to M. J. Pinny, 'Decision on Application Number CON20100879701', 2 May, 2012, NRC FDE File 852 ('Pinny'), Vol 1.

²¹⁷⁶ NRC to M. J. Pinny, 'Acknowledgement of Resource Consent Application CON20112920201 – Farm Dairy Effluent FDE 854', 12 August, 2011. NRC FDE File 854 ('Pinny'), Vol 1.

²¹⁷⁷ NRC to Hungaiti Marae, 'Non-Notified Resource Consent Application', 15 August, 2011, NRC FDE File 854 ('Pinny'), Vol 1.

²¹⁷⁸ Wai 1040 #T10, p24

²¹⁷⁹ NRC to M. J. Pinny, 'Decision on Application Number CON201129220201', 2 May, 2012, NRC FDE File 854 ('Pinny'), Vol 1.

²¹⁸⁰ NRC, to M. J. Pinny, 'Abatement Notice Under Section 324 of the Resource Management Act 1991', 24 November, 2014, NRC FDE File 851 ('Pinny'), Vol 1.

Based on the analytical data, it is my opinion that the discharge of farm dairy effluent on the Pinny farms resulted in significant adverse effects on the environment. It would have rendered the conditions in the tributaries and wetland below the points of discharge for the most part toxic, and at the very best significantly impacted. This was due to the very high loading of organic matter which was beyond the short-term assimilative capacity of the small receiving waters.²¹⁸¹

The Judge also commented on the RMA and the degradation of water as a result of intensive farming:

I think it is important to note that a large portion of our wetland, streams and rivers have been degraded as a result of intensive farming. The direction under the Resource Management Act 1991 is to turn the tide. This can only be done by each individual accepting his or her responsibility.²¹⁸²

8.6 Conclusion

This chapter has addressed issues of consent notification, Māori involvement in resource management, and the management of wastewater and farm dairy effluent, and their impact on waterways. The two local studies provide examples of some of the adverse effects on the environment caused by discharges to water. In both cases, adverse effects on the environment have received fines and reproach from the NRC. In terms of consultation and participation, Māori do not have a significant presence in this chapter. As discussed in the introduction, there appears to be no overarching response by Te Raki Māori in the Punakitere rohe to environmental concerns, though a newly established kaitiaki group aims to monitor the rivers in the area and has recently placed a rāhui on the Punakitere river within traditional hapū boundaries. Nevertheless, a number of individuals have expressed concern about the impact of pollution on customary resources in the catchment. Unlike previous river catchments discussed, the Punakitere does not appear to have been the subject of any reports examining tuna populations, but Kevin O'Connor, Ron Wihongi, and more recently, Wiremu Reihana, have all on different occasions suggested that tuna have declined. As in other chapters,

²¹⁸¹ T G Dacre, 'Assessment of the Effects of Farm Dairy Effluent Discharge from the Pinny Farms in October 2009', 14 October, 2010, Information provided by email by NRC Compliance Monitoring Manager, Tess Dacre, 18 March, 2016.

²¹⁸² NRCv Mervyn James Pinny and Hugh Raymond Bolton, [27 April 2011] Whāngārei District Court. Information provided by email by NRC Compliance Monitoring Manager, Tess Dacre, 18 March, 2016.

Māori have expressed concern about monitoring and who is notified in consent applications.

Indeed, Māori have used their submissions on the Kaikohe WWTP resource consent application to address broader concerns about water management and customary resources. In particular, those submissions addressed the depletion of tuna, the prioritising of economic interests over cultural and environmental concerns, concerns about monitoring, calls for discharge of waste to land rather than waterways and even calls for partnership and recognition of 'traditional use as guaranteed under the Treaty of Waitangi'. Māori played a role in the application stage of the consent, but none of their concerns were addressed in the final consent. Discharge of waste to land was investigated, but rejected as unfeasible; and the cultural and spiritual values of tangata whenua were 'not given any greater weight than any other matter' that the Council needed to consider. Nevertheless, the NRC staff report produced suggested that requirements of Sections 6, 7, and 8 of the RMA were met. This demonstrates the low threshold for passing such requirements.

Although some Māori received the consent applications for the Pinny Farms and were asked to comment it appears that few did. Ron Wihongi did express concern about discharge of effluent to water, but ultimately the spray irrigation option offered to gain Wihongi's acceptance was not installed. Moreover, it is difficult to discern exactly how the Council came to the conclusion that there were 'no known water-users downstream of the discharge' and therefore 'there are no parties adversely affected by the proposal'.²¹⁸³ Otherwise, Māori do not have a significant presence in this local study. However, while this case study may seem like a story of a non-compliant farmer in conflict with the NRC, it does raise issues about farm dairy effluent disposal, its impact on waterways, and the lack of engagement with Māori. As Chapter Two and Three demonstrated, the non-compliance at Pinny farms described in this chapter is relatively common and the contribution of farm dairy effluent has a significant impact on the health of waterways. In October, 2010 there were 950 dairy farms in Northland,

²¹⁸³ NRC, 'Staff Report for Permit Application', date unknown, NRC FDE File 852 ('Pinny'), Vol 1.

producing over 11 million litres of dairy effluent (dung, urine, and wastewater).²¹⁸⁴ Moreover, farm dairy effluent consents form a major part of NRC consent monitoring activities. In 2015, a *Northland Advocate* article found that half of Northland's 965 dairy farms did not meet consent conditions for effluent management in the previous year and that 'one in five farms chalked up significant breaches'.²¹⁸⁵ This chapter has highlighted a local example of what is a much broader regional and even national issue.

²¹⁸⁴ 'Assessment of the Effects of Farm Dairy Effluent Discharge from the Pinny Farms in October 2009', 14 October, 2010, Information provided by email by NRC Compliance Monitoring Manager, Tess Dacre, 18 March, 2016.

²¹⁸⁵ 'One in five farms polluting', *Northland Advocate*, May 1, 2015, http://www.nzherald.co.nz/business-around-newzealand/news/article.cfm?c_id=1503701&objectid=11441603 (accessed 31 March, 2016)

Conclusion

This report has examined the central and local government regimes established by the Crown to manage rural rivers in the Te Raki inquiry district and the extent to which these regimes have recognised and protected the kaitiakitanga responsibilities of Te Raki Māori over their traditional waterways and customary resources. It has done so through a combination of the general and the specific. Part One of this report, which comprised Chapters One through Three, provided an overview of environmental management legislation in the post-1991 period, examined how that legislation has been applied in the Northland region, and summarised the scientific and environmental monitoring legislation pertaining to the state of Northland's waterways and customary resources. Part Two, which comprised Chapters Four through Eight, analysed these issues in greater depth through five rural river systems. This included eleven local studies relating to how resource management processes have unfolded and what that has meant for Māori at specific sites within those river systems.

The Resource Management Act 1991 and the ways it has been implemented by central and local government bodies has had the greatest impact on Māori kaitiakitanga and customary resources in the Northland region. The Act was designed to 'promote the sustainable management of natural and physical resources' including the nation's rivers and lakes. A broad swathe of powers are delegated to regional councils to carry this out, including for managing sources of pollution, controlling the use of freshwater, and maintaining indigenous freshwater biological diversity. While the Act does not deal specifically with the preservation of customary river resources such as fisheries, it is responsible for managing fish habitats. Consequently, the RMA is central to our report. However, our report should not be viewed as merely an audit of the performance of central and local government bodies. Our commission required us to examine how the RMA works on the ground in relation to the ability of Te Raki Māori to exercise kaitiakitanga. We were guided by tangata whenua in defining what kaitiakitanga meant across different aspects of resource management in the Northland region but a common theme was that Māori had deep connections to their environmental taonga and should play a role in making decisions regarding them. In the case of rural rivers management

such taonga included the rivers themselves and their tributaries as well as the customary resources nourished by them.

An important question that arises from our report is whether the five rural river systems we were commissioned to examine and the eleven local studies we chose to expand upon, are representative of broader resource management trends across the entire Northland region. This would require thorough examination of a much wider sample of local studies. While we may not be able to conclude that the examples provided are representative, they clearly show deficiencies in the legislative policy and administrative regime for monitoring, managing, and protecting the selected rivers and water bodies and for ensuring the continued ability of Māori to exercise kaitiakitanga over the rivers. They also demonstrate the general concerns raised by tangata whenua regarding resource management in the Northland region, examined in Chapter Two.

This conclusion brings together material discussed in the eight chapters and traces several key themes that emerge from the material and the commission questions. It is designed to complement the conclusions to each chapter, which are—in the case of the five rural river chapters—quite detailed and specific. This conclusion synthesises specific conclusions and draws out the broader areas of similarity and difference.

9.1 The Crown's management of Northland's rural rivers and lakes

Local and central government management of freshwater involves intertwined layers of authority and control. At the lowest level, the Northland Regional Council exercises the powers delegated to it by the Crown under the RMA through a series of plans, policies and rules designed to manage environmental resources. On a day-to-day basis, Te Raki Māori seeking to engage in resource management processes deal largely with the Northland Regional Council. However, the management of Northland's rivers and lakes is not quite as simple as Parliament establishing a legislative framework which local authorities then adhere to. Central government remains involved through its ability to issue binding policies and decisions, audit aspects of local government activity, and to monitor environmental performance. The Ministry for the Environment can regulate local government activity by issuing binding national environmental standards, national

policy statements, and water conservation orders. Other central government agencies that can regulate resource management at a national level include the Environmental Protection Authority, which makes decisions on resource consent applications of national significance, and the Ministry for Primary Industries, which sets and oversees customary fishing regulations. The relationship between central and local government continues through a range of ongoing forums and monitoring initiatives which inform national policies, including the Land and Water Forum, the Regional Council Forum, and the National Water Quality Monitoring Network.

9.2 Recognition of Māori customary authority and ownership

Te Raki Māori are largely limited to an advisory role in the management of Northland's waterways and lakes from the provisions of the RMA itself through the National Policy Statements and the NRC's own statutory planning documents created under the legislation. This role includes resource consent applications, reserved seats for Māori on standing committees, a specific Māori advisory committee, and financial support for Māori environmental monitoring initiatives. Too often, however, consultation appears to be local government informing Māori of resource management activity, rather than making genuine efforts to hear Māori perspectives. Yet Māori have sought more authority in decision making, and a relationship with the Crown and its delegates that is closer to a partnership. This report has detailed countless instances of Māori requesting hui, making efforts to formulate relationships, requesting to actively participate, and requesting processes that fit with tikanga Māori.

The resource consent process, which is by far the most common form of resource management engagement between the NRC and tangata whenua under the RMA, relegates Māori to the position of an enhanced stakeholder. Consultation generally occurs only at specific points in the consent application process, and is of fixed duration and limited scope. At times, Te Raki Māori have been deliberately limited by local government, with the Council specifically requesting that they focus on cultural concerns rather than on environmental matters, such as in the application for renewal of irrigation consents for the Mangakāhia River (Chapter Seven). Similarly, in Chapter Eight, a non-notified application for a consent relating to the Pinny Farms was sent to iwi with a direction that submitters 'focus your response on any *cultural* [emphasis in

original] concerns that may relate to this proposal’, as ‘matters of a technical nature are addressed by the Consents Officer’.²¹⁸⁶ The most that Māori can typically achieve through this process is having their concerns addressed through resource consent conditions. Despite these limitations, this report contains several examples where Māori concerns were addressed during the consent application process. For example, the AFFCO meat processing plant agreed in the 1990s to shift its wastewater treatment to a predominantly land-based disposal system to meet the cultural concerns of Te Rūnanga o Taumārere and Te Awa Tapu o Taumārere. Similarly, the tangata whenua group Wai Care was able to participate extensively in the upgrade of the Kaeo wastewater treatment plant in the 2000s. In other cases, land application was either not considered or deemed impractical, despite tangata whenua expressing concerns about discharges to waterways.

Another common theme in this report and in other environmental reports produced in this inquiry is the narrow scope of Sections 6, 7 and 8 of the RMA. In his Rangitikei River report for the Taihape inquiry David Alexander argued that kaitiakitanga is ‘not given its full tikanga meaning’ in the RMA, ‘because it has largely become narrowed down to an advisory role to be exercised when tangata whenua are consulted about proposals requiring RMA approval’.²¹⁸⁷ Moreover, as evident in many of the local studies in this report, there appears to be a very low threshold for meeting the requirements to consult with Māori under the RMA. The most minimal consultation often passes the NRC requirements for meeting Sections 6, 7 and 8 of the RMA. This was the case with the AFFCO processing plant consent applications heard in 2008 and 2010 where, despite a large number of opposing submissions from Māori, the relevant sections of the RMA and the RWSPN were only considered in a once-over-lightly fashion. Similarly, in cases where no objections are raised by Māori this is often interpreted as meeting the requirements of Sections 6, 7 and 8. In other cases resource consent conditions have made efforts to address Māori concerns and have sometimes involved Māori in programmes to monitor the effects of consented activities. However, some Māori have expressed doubts about monitoring and a reluctance to be involved without also being

²¹⁸⁶ D L Roke to Iwi Distribution List, ‘Non-Notified Application to Discharge Treated Dairy Farm Wastewater to Water, 20 August 1999, NRC FDE File 851 (‘Pinny’), Vol 1.

²¹⁸⁷ David Alexander, *Rangitikei River and its Tributaries Historical Report*, 2015, Wai 2180 #A40, p 666

involved in the decision making process. Monitoring the effects of pollution on the environment is viewed as futile if Māori do not also have a say in how to prevent or address it. For example, with the approval of the Mangakāhia irrigation scheme water takes (discussed in Chapter Seven), the NRC set a condition that a Monitoring Community Liaison Panel was to be established. While some local Māori may have been in favour of working with the Council to monitor performance, others saw it as a token gesture.

The publicly notified cases examined in this report are comparatively rare, with less than six per cent of resource consent applications nationally being notified. While the NRC has a policy of circulating all non-notified consents applications to Māori, this serves a limited consultative role and can be incredibly time-consuming. There is no right of appeal as there is for notified consent applications and concerns raised by Māori do not appear to have any legal status (although they may be taken into account via resource consent conditions). In the case of the Fonterra Kauri Dairy Plant (Chapter Six) this added increasing confusion to an already complex and lengthy process. Māori are asked or invited to participate with no guarantees of how their views will affect outcomes nor any financial compensation for their efforts.

Outside of the resource consent process the NRC has pursued or responded to a number of initiatives to involve tangata whenua in resource management: for example, through Māori-led environmental monitoring activities, iwi management plans, Māori positions on standing committees, and a dedicated Māori Advisory Committee. However, these opportunities to participate are either infrequent or involve only a small number of Māori representatives. In addition, the power to make decisions still resides largely with the Council. There is some capacity for Māori decision making in the customary fisheries regulations managed by the Ministry for Primary Industries; however, the limited information we have gathered on this subject suggests that some of these options, such as for mātaimai and taiāpure, are under-utilised and not well resourced. In addition these regulations are largely limited to non-commercial fishing, and do not extend to the management of the environment upon which the fish depend.

The NRC has chosen not to pursue other avenues currently available under the RMA that would arguably provide a greater recognition of kaitiakitanga and customary authority and ownership. These include the introduction of Māori wards, the transfer of part of the Council's powers to an iwi authority (under Section 33 of the RMA), or the negotiation of a co- or joint-management agreement with an iwi authority (under Sections 36B-36E of the RMA). Their reluctance is shared by most other regional councils in New Zealand; however, where opportunities for joint management have been identified by either local government or tangata whenua in Northland they have been declined. For example, in the Hikurangi Swamp Scheme local study, Te Raki Māori continually requested involvement in the management of the scheme and in some cases demanded co-management but the Council continued to view them merely as stakeholders. Similarly, Lake Ōwhareiti was identified by a Far North District Council Hearings Committee as a suitable area for the transfer of resource management powers to iwi. This suggestion does not appear to have been followed up on by any central or local government body. Thus, Māori continue to play a role as an interested party rather than in the decision making and management of resources.

9.3 Impact on the exercise of tino rangatiratanga and kaitiakitanga

The Crown's resource management regime has created a situation whereby, in order for Te Raki Māori to exercise their tino rangatiratanga and kaitiakitanga duties, they are generally required to engage with central and local government. This places the Crown and delegated local authorities such as the NRC in a dominant position. The interconnected web of central and local government bodies described above set the legal and policy framework which, among other things, defines how tino rangatiratanga and kaitiakitanga will be recognised through the practice of resource management. While Māori have had some input into the development of this framework (in particular the NRC's Regional Policy Statement and Regional Water and Soil Plan), the power to decide on and approve the framework still resides with the Crown and its delegated authorities. This leads to a situation where Māori are consulted about, but not ultimately able to decide upon, how their tino rangatiratanga and kaitiakitanga responsibilities will be recognised or provided for under the Crown's resource management regime.

Te Raki Māori generally envisage kaitiakitanga as involving some role in decision making. While the RMA provides for the delegation of powers to iwi authorities or co- or joint-management of environmental assets, the NRC has chosen not to implement these. Instead, it has provided a number of avenues for Te Raki Māori to play a consultative or advisory role on environmental matters. While this does not necessarily prevent Te Raki Māori from exercising their tino rangatiratanga and kaitiakitanga through means outside the Crown's official resource management regime, it does limit the amount of support and recognition they will receive for such actions. For example, the rāhui placed on the Punakitere River by Ngāti Tautahi ki te Iringa in 2015 was largely unenforceable given the lack of recognition it received from local government (see Chapter Eight). Exercising tino rangatiratanga and kaitiakitanga can also expose Māori to legal consequences if their actions lie outside the legal and policy framework for resource management. Chapter Five discussed Ngāti Hine evidence which suggested that several customary fishing regulations had impacted on their ability to legally carry out their traditional tuna harvesting activities. Similarly, Māori resource management can be impacted by financial consequences. The provisions of the permit required for the tuna trap and transfer scheme discussed in Chapter Six include a fine of up to \$100,000 for contravening its terms or conditions. The lack of real decision making power and the subsequent risk of various legal and financial consequences clearly impacts upon the extent to which Te Raki Māori can exercise their tino rangatiratanga and kaitiakitanga.

9.4 Māori-led resource management initiatives

In addition to the avenues provided by the NRC, Te Raki Māori have initiated their own resource management programmes in order to meet their kaitiaki responsibilities. Some iwi and hapū have formed Resource Management Units (RMUs) to pool their expertise on resource management and to provide a single point of contact for central and local government. These groups largely run on a voluntary basis, although some have managed to generate limited revenue by undertaking contracts that are aimed at capturing a tangata whenua perspective, such as Cultural Impact Assessments for consent applications. NIWA have also contributed resources to RMUs to assist on reports relating to customary fisheries. Pan-iwi/hapū initiatives such as Ngā Kaitiaki o Ngā Wai Māori have been formed by tangata whenua to coordinate their efforts to protect Northland's waterways, although these groups do not receive any funding from

central or local government. In addition, the Natural Resource Management team of Te Rūnanga-Ā-Iwi-O-Ngāpuhi provide support and training for Māori seeking to participate in resource management activities. The extent to which local government bodies have responded to or recognised these initiatives depends on the extent to which they accord with the Council's own resource management priorities and regulatory activities. For example, Millan Ruka's reports, which have been largely ignored, have exposed stock access to waterways, an issue not well regulated by the NRC or managed under the RMA.

9.5 The role accorded to Māori expertise and knowledge

The Crown's interpretation of the RMA, as laid out in the introduction to this report, involves a 'balancing of interests'. However, despite the Crown's obligations to Māori, tangata whenua concerns do not appear to be given any greater weight than concerns of other sectors of society. As several local studies in this report demonstrate, Māori interests (such as the mauri of waterways) are often not so easily quantified. The Cultural Impacts Assessment produced in 2009 as part of the Hikurangi Swamp Scheme application (discussed in Chapter Six) is worth repeating here:

Such matters as the impact of an activity on the mauri of a place or on the mana of a people are not easily described or quantified in a modern planning context – mana, or the effects of activities on it, cannot be measured with a ruler and manaakitanga cannot be calculated as a percentage. However, with the ambit of "environment" given in the [RMA] they cannot be considered any less real or relevant than biophysical and ecological issues that might appear more tangible or visible to the untrained eye. For tangata whenua it must be assumed that effects on such matters are at least as real as any other type of effect and, where identified, need to be addressed as such.²¹⁸⁸

This has resulted in situations where Māori knowledge or values were either dismissed or outweighed by other factors that were possibly seen as more tangible. More effective local government consultation with Māori has been seen in places where tangata whenua interests are more overt, such as with the presence of a pā site, as seen in Chapter Four. By contrast, as seen in Chapter Five, Māori customary knowledge about

²¹⁸⁸ Repo Consultancy Ltd., *cultural effects assessment Report: Hikurangi Swamp Scheme*, October 2009, p14

tuna migration and habitats in and around Lake Ōwhareiti was not considered reliable. In Chapter Seven the multiple attempts by the Mangakāhia Māori Komiti to preserve the natural character of the Mangakāhia River for spiritual, social, and environmental reasons ultimately lost out to economic demands. Tangata whenua emphasised that the river was a taonga, not just for the sustenance it provided, but also for ancestral and cultural connections with the river. Yet when the Crown and its delegates came to assess Māori connections and concerns regarding the river, Māori knowledge and concerns were not recognised as important enough to curb agricultural or economic development. This lack of recognition is impacted by the weight given to ‘expert’ testimony in the resource management process. Māori traditional knowledge keepers are not considered experts by local authorities, except perhaps where they have been commissioned to provide evidence. In Chapter Six, Māori repeatedly raised concerns about tuna fatalities caused by the Hikurangi Swamp Scheme; however, it was not until expert evidence was produced by NIWA that their concerns were taken into account.

The NRC’s commitment to shifting all existing effluent discharges to water to land-based disposal alternatives is one notable exception to this general reluctance regarding the adoption of Māori expertise and knowledge. This commitment, which is set out in the Regional Policy Statement, is due in part to the cultural preference of Māori that human and animal waste be cleansed by Papatūānuku so that the mauri of the wastewater can be retained or restored. The results of this shift in policy appear to be mixed. Most of the local studies we have examined where wastewater discharges occur have resulted in decisions against land-based disposal alternatives, with the exception of the AFFCO meat processing plant’s introduction of partial land treatment in the 1990s.

Māori holistic approaches to the environment and customary resources tend to be disregarded as a result of the resource management framework. For example, local government authorities deal with resource consent applications individually, assessing applications against very specific criteria, and are not required to consider the water quality as a whole, or the cumulative impacts of historic and ongoing activities. As many of the case studies in this report show, Māori have used the resource consent process to make broader critiques of the management of waterways and customary resources. In the Hikurangi Swamp Scheme local study, Māori submissions addressed the historical

and cumulative impact of the swamp and claimed that the Council was addressing only the immediate effects of the upgrade.

9.6 *Financial and technical resourcing for Māori*

In his environmental overview report Alexander argued that the RMA was a 'long-winded obstacle course involving a different language, complex interactions between a variety of different documents operating at different levels and often years of effort required between the start and the finish of a consultation and appeals process'.²¹⁸⁹ This 'obstacle course' aspect is evident in this report, which has demonstrated the financial, time and technical constraints that Te Raki Māori face when attempting to engage in the Crown's resource management regime. To put it simply, Māori currently lack the capacity and resources to fully participate in environmental management and resource consent processes. Efforts at consultation have suffered as a result: Māori are having to engage on a largely voluntary basis, often without RMA expertise and in unfamiliar processes, in a relatively short time frame. This was particularly evident in the attempts of the Mangakāhia Māori Komiti to preserve the Mangakāhia River in the 1990s. As the Komiti's Secretary Sharon Kaipo wrote at the time, '[w]e are having to take part in processes not fully understood by our people, and being disadvantaged by way of inadequate resources, funding and people'.²¹⁹⁰ The difficulties faced by the Komiti were acknowledged by the Ministry for the Environment, but no financial or technical resources were offered. In the end the Komiti's financial situation, coupled with disappointment in the decision making system, led them to give up proceedings against the irrigation scheme. Taumatamakuku resident Toko Tipene had a similar experience when considering appealing the granting of resource consents to the AFFCO meat processing plant. When faced with a well-resourced AFFCO (armed with proposed expert witnesses) and a request from the Environment Court for security for costs in the amount of \$20,000, he simply stopped participating in the process. A lack of resourcing may have also contributed to the many examples throughout this report where Māori did not respond to resource consent applications.

²¹⁸⁹ Alexander, *Land-based Resources, Waterways, and Environmental Impacts*, p 35

²¹⁹⁰ S. Kaipo to Simon Upton, Minister for the Environment, 'Re. 04-3-15 Conservation order', 20 February 1996, p 1, MfE file NPR(A) 6/2

The physical and legislative environments have changed enormously and kaitiaki must respond to changes to customary resources. As these changes are largely a product of decisions made by the Crown and its delegates, it does not seem unreasonable that the Crown provide resourcing for kaitiaki in this context. The NRC has established several sources of contestable funding to assist Māori in participating in resource management activities. It provides an annual \$20,000 fund to assist iwi in developing environmental management plans which the Council must take into account when preparing or reviewing its statutory policies and plans. The Council has also identified environmental monitoring as an avenue for Māori to practice kaitiakitanga and it provides an annual \$15,000 fund for Māori environmental monitoring projects as well as its 'Environment Fund' which is available to the general public. However, the stringent criteria for these funds are linked closely to technical and/or scientific proficiency and do not appear to recognise many kaupapa Māori projects that fall outside the Council's own priorities and overall work programme such as the work of the Environmental River Patrol-Aotearoa and the establishment of rāhui.

9.7 The pollution and/or degradation of waterways

Not only has Crown regulation and delegation of powers impacted upon the ability of Māori to exercise tino rangatiratanga and kaitiakitanga, the actions and inactions of Crown and local delegates have also played a role in the pollution and degradation of waterways. Our report has focused on the period since 1991, but as Alexander has argued, the Northland environment has experienced the cumulative impact of past decision-making. Long-term practises, such as deforestation and swamp drainage to transform land for pasture, have clearly played a major role in this environmental change.²¹⁹¹ This report has addressed ongoing environmental issues as well as more recent issues, including water quality degradation, agricultural run-off, erosion, discharges into waterways, and the depletion of customary resources (particularly tuna) due to habitat degradation or migration barriers.

This pollution and degradation has, in turn, had an impact on the cultural use and enjoyment of waterways and the ability of Māori to exercise kaitiakitanga. In particular,

²¹⁹¹ Alexander, *Land-based Resources*, Wai 1040 #A7

it has impacted on the habitat of an important dietary taonga, tuna. This report provides a number of examples where Te Raki Māori have been affected by the degradation of waterways: water quality issues have impacted marae supply and access to swimming areas; there have been health impacts from contamination to availability of kai traditionally accessed from these waterways; reduced ability to practice manaakitanga by offering customary resources such as tuna; and impacts of odour on the community. In the NRC records on resource consents Māori submitters have described that they no longer feel safe using waterways for 'swimming, drinking water, food-gathering & spiritual renewal'.²¹⁹² Moreover, many have expressed concerns that customary resources such as tuna have not been given adequate consideration in decision making. While local government has at times been proactive in protecting tuna, by including fish passage as a resource consent condition for the Wairua Power Station upgrade and including monitoring of fish fatalities in the Hikurangi Swamp, this report has demonstrated the limits of such initiatives, the lack of enforcement and the continued concerns of Māori.

While many of these activities have become more controlled under the RMA, one of the major environmental impacts identified by central and local government monitoring is not subject to such controls: non-point pollution. In line with national trends, monitoring has found that Northland's lowland waterways are degraded, especially those with surrounding agricultural land-use. This is largely as a result of diffuse or non-point source pollution from pastoral agriculture, which makes up approximately 53 per cent of land in Northland. Major contaminants from non-point source pollution include pathogens (disease-causing organisms sourced from dung and urine), sediment (as a result of deforested slopes converted to pasture and bare land), and nutrients (sourced from dung and urine, and excess fertiliser). The river systems examined in this report are in areas where the predominant land-use is agricultural. Thus, while there is increasing statutory recognition of Māori rights in the RMA, this has occurred against the backdrop of increasing demands for intensive use of water. As outlined above, pollution from non-point sources has led to the degradation of waterways and despite an effort to manage point source pollution, the RMA is less equipped to address non-

²¹⁹² Kevin O'Connor, to Water Quality Officer, "Re Kaikohe sewer wastewater treatment discharge", 15 May 2000, NRC File 2417, Volume 2.

point. Non-point pollution, which has the hazard of leaching out gradually over time, is also not subject to the same scrutiny in terms of resource consents which of course affects the main avenue for Māori involvement and consultation. As a result, it is very difficult for Māori to be involved in the management and decision making of a major source of pollution in the region.

9.8 Epilogue: 'Next Steps for Fresh Water' and the NRC response

In February 2016, the Ministry for the Environment released a consultation document relating to a proposal to improve the management of fresh water in New Zealand. The proposals in the document, entitled 'Next steps for fresh water', will be refined into amendments to the RMA and the National Policy Statement for Freshwater, as well as new national regulations. In the introduction the Government concedes that the pressure on New Zealand's fresh water 'is becoming increasingly evident'. In particular, the report suggested that water quality has been declining; water is over-allocated in some places; decision making can be litigious, resource intensive, and create uncertainty; there has been a lack of robust information on the impacts and outcomes of management decisions; water is not always used or available for its highest value; and iwi, hapū, and whānau interests and values are not adequately considered in planning and resource management decision-making.²¹⁹³ The report comments on the improvements in point source discharges under the RMA, but claims that the system 'has not been working in dealing with the more difficult problem of diffuse pollution. This includes nutrients, pathogens, and sediment from intensive farming and from stormwater in towns'.²¹⁹⁴ In response to these problems, the Government is proposing to introduce a requirement for farmers to ensure that their stock cannot enter streams, rivers, lakes and wetlands.²¹⁹⁵

The report reiterated the Government's position that 'no-one owns fresh water—it is a resource that we must look after for the benefit of all New Zealanders'.²¹⁹⁶ At the same time, it suggested that the freshwater management system could be improved 'to

²¹⁹³ Ministry for the Environment, 'Next steps for freshwater: Consultation Document', (Wellington: MfE, 2016), p7

²¹⁹⁴ MfE, 'Next steps for freshwater', p4

²¹⁹⁵ MfE, 'Next steps for freshwater', pp19-21

²¹⁹⁶ MfE, 'Next steps for freshwater', p27

recognise and provide for iwi and hapū rights and interests'. It claimed that the Government 'is committed to addressing iwi and hapū rights and interests in fresh water and recognises the relationship of Māori with water'.²¹⁹⁷ The Government has put forward a number of proposals regarding iwi rights and interests in fresh water, under the concept 'Te Mana o te Wai'.²¹⁹⁸

While the proposals are only in their consultation stage, the Northland Regional Council's dismissive response is telling. In the lead up to the document being released, NRC chair Bill Shepherd claimed that he and others were uneasy 'that democratically-elected regional councils could lose authority to iwi, as the government tried to accommodate Maori interests in water'. National Radio reported that Millan Ruka responded to Shepherd's comments, saying it was ironic that the council was nervous about Maori gaining a greater say in the management of freshwater when it had such a poor track record in stopping pollution. 'We have very few swimmable rivers here in Northland', Ruka claimed, 'and for years we've seen ongoing, regular breaches of resource consent involving farm effluent - which the council seems unable to control'.²¹⁹⁹ When the consultation document was published in February 2016, Shepherd responded to the proposals, saying his councillors were not averse to Māori involvement but they were adamant that decision making was the job of elected councillors. He said the council had created a Māori Advisory Committee, and took advice from it 'as a part of the community'. But there were 'many other members of the community' and the ultimate authority must remain with elected members, he said.²²⁰⁰

The Northland Regional Council's response to the proposals reinforces one of the key conclusions found in this report: that is, that avenues for Māori participation in resource management for Northland's rivers and lakes are largely consultative or advisory, with no real decision-making power. This is far from the seemingly unanimous Te Raki Māori

²¹⁹⁷ MfE, 'Next steps for freshwater', p27

²¹⁹⁸ MfE, 'Next steps for freshwater', p28

²¹⁹⁹ 'Council calls for clarity on Maori water rights', *Radio New Zealand*, 1 February, 2016, <http://www.radionz.co.nz/news/regional/295431/council-calls-for-clarity-on-maori-water-rights> (accessed 11 May)

²²⁰⁰ 'Council wary of planned Māori freshwater role', *Radio New Zealand*, 3 April, 2016, <http://www.radionz.co.nz/news/regional/300534/council-wary-of-planned-maori-freshwater-role> (accessed 11 May)

position that kaitiakitanga principles require that tangata whenua have a real say in how environmental and customary resources are managed. As the local studies in this report have demonstrated, the ability to implement tikanga Māori and greater tangata whenua involvement in planning, managing, and monitoring the region's environmental and customary resources would surely lead to a more holistic understanding and management of the resources.

Appendix 1: Summary of claims

The claim summaries which we have prepared in this Appendix are based on our reading of the claims as they relate to this project, and may not reflect the key emphases of the claimants themselves. We have attempted to be as comprehensive as possible in our identification of relevant claims, although we may not have identified all claims which relate to the five river systems. Our summaries only highlight the portions of the claims which are of relevance to the five river systems.

Wai No.	Name	Waterways mentioned	Key issues
49	Taumarere River and Te Moana o Pikopiko-I-whiti Claim	Taumarere/Kawakawa River Veronica Channel Karetu River Whangai River Waikino Creek Waikare Inlet	Traditional relationship with the awa Kaitiakitanga Gateway Marina (Opuia) reclamation
58	Whangaroa Lands and Fisheries Claim	Whangaroa rivers, streams, lakes and other water resources	Consultation and participation in environmental management Legislation over the management, ownership and use of waterways Deforestation and erosion Discharges to waterways Resource consent process Customary resources Siltng of Whangaroa rivers, streams, lakes and other water resources

Wai No.	Name	Waterways mentioned	Key issues
246	Puhipuhi State Forest Claim	Whakapara River Wairua River Waiotu River Hikurangi Swamp	Loss of ownership and tino rangatiratanga Swamp drainage Impact of mining Deforestation and erosion Customary resources Legislation over the management, ownership and use of waterways Water quality Wairua Falls Hydroelectric Scheme
620	Te Waiariki/Ngati Korora Hapu Land and Resources claim		Customary title over the rivers Water quality Legislation over the management, ownership and use of waterways
682	Ngati Hine Lands, Forests and Resources claim		Water quality Customary resources Kaitiakitanga Legislation over the management, ownership and use of waterways
688	Ngā Hapū o Whāngārei Lands, Waters, Forests and Resources claim		Customary use and resources
919	Ngatitupango Lands and Resources (Bay of Islands) claim	Pupuke River Kaeo River and catchment Waihapa Stream Omaunu River	Customary title Water quality Legislation over the management, ownership and use of waterways Customary resources

Wai No.	Name	Waterways mentioned	Key issues
			Deforestation and erosion Resource consent process
990	Te Awa o Mangakāhia claim	Mangakāhia River	Kaitiakitanga Water quality Legislation over the management, ownership and use of waterways
1312	Whakaki claim	Whangaroa Harbour Kaeo River Te Touwai Stream Matangirau River	Consultation and participation in environmental management Commercial fisheries and overfishing Customary resources Deforestation and erosion Water quality Flooding Resource consent process Siltation of Whangaroa rivers, streams, lakes and other water resources
1333	Ngati Uru and Te Whanau Pani claim		Customary use and resources
1467	Pakotai School and Village claim	Wairoa River Mangakāhia River	Customary use and resources Wairua Falls Hydroelectric Scheme Legislation over the management, ownership and use of waterways Kaitiakitanga Deforestation and erosion Water quality and flow Discharges to waterways

Wai No.	Name	Waterways mentioned	Key issues
			Mangakāhia irrigation scheme Customary title
1613	Wainui D Block Claim		Pollution Flooding Erosion Environmental destruction of waterways
1661	Ngati Rua (Wood, Smith and Wood) Claim	Whangaroa Harbour Kaeo River	Customary use and resources Commercial fisheries and overfishing Pollution caused by Lane's Mill in Totara North Pollution caused by boat owners
1666	Ngati Hone, Ngati Kawau, Ngati Kawhiti and Nga Uri o Te Pona (Taniwha) Claim		Customary use and resources Legislation over the management, ownership and use of waterways
1673	Ngati Kawau (Taniwha, Collier and Dargavill) Claim		Customary use and resources Legislation over the management, ownership and use of waterways
1684	Puru, Torckler and Katene Whanau Claim	Whangaroa Harbour	Customary use and resources
1838	Ngati Ruamahoe Hapu (Hikuwai Whanau) Claim	Whangaroa Harbour	Kaitiakitanga Legislation over the management, ownership and use of waterways Discharges to waterways Customary resources
1843	Te Aeto Hapu Claim	Whangaroa Harbour	Customary use and resources

Wai No.	Name	Waterways mentioned	Key issues
		Kaeo River Pupuke River Wainui River	Agricultural runoff Pollution from septic tanks Pollution caused by Lane's Mill in Totara North Flooding Consultation and participation in environmental management Deforestation and erosion Commercial fisheries and overfishing.
1846	Ngati Ruamahoe and Ngati Kahu ki Whangaroa (Sailor Morgan) Claim	Whangaroa Harbour Wainui River Kaeo River	Flooding Shallowing Water quality Customary resources Commercial fishing Pollution Consultation and participation in environmental management
1957	Maunga Kawakawa Block Claim	Punakitere River Waima River	Legislation over the management, ownership and use of waterways Discharges to waterways Customary resources Agricultural runoff Erosion
1959	Descendants of Sylvia Jones Claim		Discharges to waterways Customary uses and resources
2027	Ngāti Hine and Ngāti Manu (Mahanga) Lands and Resources Claim	Kawakawa River	Discharges to waterways Water quality Customary resources

Wai No.	Name	Waterways mentioned	Key issues
2149	Nga Uri o Te Pona Waahi Tapu (Taniwha) Claim	Touwai Stream Whakaari Stream	Kaitiakitanga Legislation over the management, ownership and use of waterways Customary resources
2355	Te Taumata o Te Parawhau (Tuhiwai. Tito and Nepia) claim	Whāngārei Harbour Omiru/Wairua Falls	Customary use and resources Legislation over the management, ownership and use of waterways Kaitiakitanga Water quality Discharges to waterways Resourcing resource management
2376	Te Whānau o Rataroa (Aldridge) Claim	Whangaroa Harbour Rataroa River Wharera River Komutu River	Drainage Customary resources

Appendix 2: Summary of claimant briefs of evidence

The briefs of evidence which we have summarised in this Appendix are based on our reading of the briefs as they relate to this project, and may not reflect the key emphases of the claimants themselves. We have attempted to be as comprehensive as possible in our identification of relevant briefs, although we may not have identified all briefs which relate to the five river systems. Our summaries only highlight the portions of the briefs which are of relevance to the five river systems.

In Whangaroa: The Kaeo River and its tributaries, and Whangaroa Harbour in respect of river discharge impacts	
Brief	Evidence presented
Supplementary Submission in Support of the Whariki (Opening) Statement for Whangaroa Taiwhenua (Wai 1040, #E57)	Tikanga and matauranga over Whangaroa Harbour. Degradation of the environment. Deforestation, siltation and reclamation. Impact of pollution on manakitanga. Oyster farming in Whangaroa Harbour.
Brief of evidence of Ani Taniwha (Wai 1040, #G3)	Oyster farming in Whangaroa Harbour. Aquaculture Marine Areas. Lack of recognition of Maori under the Resource Management Act.
Brief of Evidence of Rawiri Timoti (Wai 1040, #G4)	Overfishing by recreational fishermen.
Brief of evidence of William Grant Douglas Hori (Wai 1040, #G5)	Inability to collect the same size/amount of kaimoana (snapper, paua, kina, piper, kokopu, eel, frogs and watercress). Pacific oyster farms blocking the tidal current and causing the build up of silt; also blocking the outflow from the Kaeo River. Pacific oysters suffocating native Tio. Purity of water.

	<p>Silting up of streams caused by deforestation, drainage of swamplands and intensified livestock farming practices.</p> <p>Agricultural run-off such as fertilisers and insecticides poisoning waterways.</p> <p>Drainage of natural filter systems such as swamps.</p> <p>Introduction of commercial fisheries and quota system has put pressure on fish stocks.</p> <p>Extensive flooding in Whangaroa.</p> <p>No resourcing, training or guidance on carrying out Ngati Kawau cultural assessments for resource consents.</p>
Brief of evidence of Tarzan Brown Hori (Wai 1040, #G6)	<p>Loss of kaimoana (kahawai, crayfish, koura, eels, pipi, shark, crayfish).</p> <p>Pollution of Whangaroa Harbour from sawmills.</p> <p>Introduction of commercial fisheries and quota system has put pressure on fish stocks.</p> <p>Deforestation leading to flooding in Matangirau and Kaeo.</p> <p>“Flood wall” formed by the road to Tauranga.</p> <p>Various effects of floods such as cutting people off for 3 days, putting people off living in these areas, need to shift the marae.</p>
Affidavit of Karanga Pourewa (Wai 1040, #G7)	<p>Depletion of coastal food basket (shellfish, crayfish, cockles, pipi, kina, paua, crayfish, eels).</p> <p>Overfishing by recreational fishermen and commercial fishermen.</p> <p>Negative impact of forestry and farming on waterways. Includes pollution by agricultural run-off.</p> <p>Flooding of Matangirau due to deforestation, the location of the bridge across Te Touwai stream, and siltation.</p> <p>Various effects of floods such as cutting people off for 3 days and putting people off living in these areas.</p> <p>Quota and permit system is an imposition of a Pakeha system which undermines Maori tikanga.</p> <p>Pacific oysters have taken over the habitat of native oysters and squeezed them out.</p> <p>Lack of Maori representation on local bodies.</p>
Brief of evidence of Isabella Kathleen Urlich (Wai 1040, #G8)	<p>Diminished river and sea resources.</p> <p>Pacific oyster suffocating native oyster.</p> <p>Commercial fisherman and introduction of quota system excluded iwi from exercising their customary</p>

	fishing rights.
Brief of evidence of Terence Wirihana Tauroa (Wai 1040, #N1)	<p>Maori conservation and management practices have been sidelined by the Crown.</p> <p>Pollution of timber industry.</p> <p>Silting of rivers and Whangaroa Harbour due to deforestation.</p> <p>Dead vegetation washing into rivers and causing blockages.</p> <p>Overstocking of farmlands.</p> <p>Agricultural run-off into streams from farms (particularly superphosphate and effluent).</p> <p>Lack of fencing to prevent stock from damaging stream banks and defecating in the water.</p> <p>Removal of swamplands – natural filter systems – along riverways.</p> <p>Dumping of rubbish in the rivers.</p> <p>Commercialisation of eeling leading to decimation of local food sources.</p> <p>Oyster farms blocking flow of silt out of rivers and out of the Harbour.</p> <p>A lot harder to catch fish (parore, mullet, eels, pipi, kina, paua, kokopu, whitebait and pupu).</p> <p>Native oyster smothered by Pacific Oyster.</p> <p>More mangroves around the Harbour's edge.</p> <p>Lack of consultation with the Whangaroa Runanga.</p> <p>Clearing by Council of riverways to prevent flooding also destroys natural food development such as watercress and tuna spawning.</p> <p>Leaking of private septic tanks into the Wainui river.</p> <p>Flooding is more frequent and more severe.</p>
Brief of Evidence of Louie June Elizabeth Katene (Wai 1040, #N2)	<p>Drying up of streams due to siltation.</p> <p>Destruction of habitat of eels and other kaimoana.</p>
Brief of evidence of Deborah Annie Hill (Wai 1040, #N3)	<p>Loss of kaimoana (kaeo, tuna, and freshwater kai).</p> <p>Agricultural run-off into streams.</p> <p>Deforestation causing the accumulation of silt in waterways (using example of fenceposts buried under silt)</p>

	<p>Flooding now a constant problem. Frogs, skinks and geckos have disappeared.</p>
Brief of evidence of Rusty Poata (Wai 1040, #N6)	Oyster farming in Whangaroa Harbour.
Joint brief of evidence of Mataroria Lyndon and Ruiha Te Matekino Collier (Wai 1040, #N7)	<p>Oyster farming in Whangaroa Harbour, and the customary significance of the oyster. Establishment of Te Rohe Potae o Matangirau Trust to take responsibility for environmental issues. Local study on an Environment Court hearing regarding the Trust's opposition to the establishment of a Marine Farm at Te Touwai Bay.</p>
Joint brief of evidence of Moana Woods and Harry Brown (Wai 1040, #N8)	<p>Customary significance of Whangaroa Harbour. Alleged lack of Crown recognition of customary relationship and kaitiakitanga duties. Significance of oysters in the harbour. Impact of commercial fisheries.</p>
Brief of evidence of Darryl Gene Hape (Wai 1040, #N10)	Environmental impact of Lane's Timber Mill.
Brief of evidence of Patricia Tauroa (Wai 1040, #N12)	Deforestation and reclamation in Whangaroa.
Brief of evidence of Sonny Edward Hape (Wai 1040, #N14)	<p>Impact of chemical runoff, sewerage and the intrusion of cattle on Pupuke Creek. Loss of kaimoana (whitebait, eels and mullet). Sewerage overflow from private septic tanks leaking into rivers, made worse by flooding. Agricultural run-off from farms and cattle going into creeks and destroying the banks. Pollution from Lane's Mill in Totara North. Timber milling leading to deforestation and siltation of waterways.</p>
Brief of evidence of Owen Hape Kingi (Wai 1040, #N15)	<p>Flooding in Whangaroa. Impact of the replacement of native bush with pine forest and oyster beds (which block drainage) on flooding.</p>
Brief of evidence of Iris Niha	Impact of environmental damage on customary resources in Whangaroa Harbour.

(Wai 1040, #N16)	
Brief of evidence of Ngaronoa Renata (Wai 1040, #N17)	Impact of flooding at Mangaiti on hapu initiatives.
Brief of evidence of Kura Irirangi Te Waru-Rewiri (Wai 1040, #N18)	Describes annual severe flooding at Mangaiti and the need for greater controls from local or central government.
Brief of Evidence of Kawhena Paul (Wai 1040, #S1)	<p>Pollution of waterways due to agricultural run-off including pesticides and effluent.</p> <p>Deforestation for the purposes of arming causing flooding.</p> <p>Severe flooding destroys food sources such as watercress, taros and tuna.</p> <p>Culverts along Wainui road drain without control into paddocks causing erosion.</p> <p>Disappearance of kaimoana (paua, kina, pupu, parore and flounder).</p> <p>Overfishing by recreational fishermen.</p> <p>Destruction of Mahinepua Bay due to erosion and land slips.</p>
Brief of evidence of Rihari Dargaville (Wai 1040, #S5)	Discusses the decline of native kauri forest, the alleged failure of Crown policy, the impacts on Māori and the alleged lack of Crown engagement with and involvement of Māori in environmental management.
Brief of evidence of Anaru Paratene Kira (Wai 1040, #S7)	<p>Discusses the significance of fishing, including areas of interest, trading methods and obligations and rahui.</p> <p>Impact of the quota management system.</p>
Brief of Evidence of William Hikuwai (Wai 1040, #S9(a))	<p>Loss of eels, herrings, kahawai, flounders and watercress due to pollution from papakainga housing and septic tanks.</p> <p>Pesticides from farms poisoning the waterways.</p> <p>No control over recreational fishing.</p> <p>Exploitation of the Whangaroa environment by foreign companies.</p>
Brief of evidence of Raiha Hikuwai Fredricsen (Wai 1040, #S10)	<p>Discusses historical food gathering and resource management on Motu Eka Iti.</p> <p>Describes traditional customary fishing practices and the alleged impact of commercial fishing and the quota management system.</p>

Brief of Evidence of Moana Nui A Kiwa Wood (Wai 1040, #S11(b))	Depletion of resources due to overfishing by recreational fishermen. Pakirikiri is a fish that is now scarce.
Brief of evidence of Waitangi Annette Wood (Wai 1040, #S12)	Pollution from Lane's Mill in Totara North. Disappearance of kaimoana such as toheroa, piper, pipi, cockles and sprats. Increased siltation caused by forestry and agriculture, aquaculture in the inner harbour and aggressive flood management by local authorities. Unregulated recreational fishing has decimated fish stocks. Pacific oyster has suffocated native oyster. Disappearance of mahinga kai areas. Worsening flooding due to deforestation. Drainage of swamps by council affecting the mauri of the rohe. Mud, debris and pine needles wash into the Harbour. Boat owners flushing their toilets directly into the Harbour and littering. Little or no consultation with Ngatirua in respect of their traditional waterways.
Brief of evidence of Sailor Morgan (Wai 1040, #S13)	Negative impact of commercial fishing in the rohe. Overfishing by recreational fishermen and divers. Significant depletion of kina. Increased pollution brought by increased number of visitors. Quality of Ngamoko waterway – polluted with stock faeces. Severity and regularity of flooding. Lack of engagement by the Far North District Council with local Maori.
Brief of Evidence of Abraham Jordan Davis Bent (Wai 1040, #S14)	Shallowing and narrowing of Ngamoko waterway.
Brief of evidence of Tepau Pomana (Wai 1040, #S16)	Describes the kaitiaki role that his father exercised when he was a child and the significant changes to the fishing industry since then.

	Seeks the return of control over some natural resources to Whangaroa hapū.
Brief of evidence of Nau Epiha and Hohepa Epiha (Wai 1040, #S25)	Describes ongoing changes to the environment (trees and plants used for rongoa)
Brief of evidence of Toka Wiremu (Wai 1040, #S27)	Historical flushing of timber through Te Ngaere Valley. Declining state of the Kaeo River and kaimoana stocks. Alleges that local government have not done enough to address the health of the waterway.
Brief of evidence of Terry Smith (Wai 1040, #S31)	Construction of the Kaeo sewerage scheme across Mangaiti Marae. Siltng up of major waterways near Kahoe and the Kaeo river due to deforestation. Disappearance of kaimoana (huia, tuangi, kokota, pupu, koheru, pakiri, kanae, patiki, tamure, porae, karati and karahu). Can no longer drink from rivers because of pollution from farming and poor effluent systems.
In the Bay of Islands: The Taumārere (or Kawakawa) River and its tributaries including Ōtiria, Waiharakeke, Orauta, Hawera, Taikirau, Waiomio and Tirohanga, and Lake Owhareiti	
Brief	Evidence presented
Amended brief of evidence of Emma Gibbs-Smith (Wai 1040, #B18(a))	Overview of kaitiakitanga, customary fishing practices. The two underground tributaries that connect to Lake Owhareiti.
Brief of evidence of Harry Mahanga (Wai 1040, #F1(d))	Loss of rangatiratanga and kaitiakitanga in relation to environment. Environmental issues - unbalanced ecosystem, pollution of waterways and sea, damage to fisheries, forestry and erosion, farming and roading run-off. Inadequate monitoring of environment by Crown or Northland Regional Council. Pollution from Kawakawa sewage treatment plant and AFFCO meat works. Opua Marina, including dredging of the rivermouth.
Brief of Evidence of Kitty Mahanga-Nisbet (Wai 1040, #F3)	Pollution damage to waterways by farming. Pollution from AFFCO meat works and Kawakawa sewage treatment plant.

Brief of evidence of Te Kapotai Hapū (Wai 1040, #F27)	Oyster fisheries/farming in Opuia Harbour. Fish depletion/settlement. Opuia Marina. Establishment of Taiapure and Takutai Moana.
Brief of evidence of Maiki Marks (Wai 1040, #M3)	The use of Walls Bay Esplanade Reserve in Opuia by a boat building business. Inadequate monitoring or enforcement by Northland Regional Council and Far North District Council. Lack of consultation with Māori.
Brief of evidence of Season Mary-Downs for Ngati Hine (Wai 1040, #M26)	Crown actions, policy and legislation relating to forestry, freshwater, commercial fisheries, draining of wetlands, threats to customary resources such as tuna, indigenous biodiversity, ownership of water, and air quality. There is alleged to be a lack of regard from the Crown for Ngati Hine kaitiakitanga and traditional knowledge. Alleged lack of recognition of/consultation with Māori by local government (regional/district councils) and central government (Department of Conservation, Ministry for the Environment, Ministry of Primary Industries, Historic Places Trust).
Brief of evidence of Te Awa Tapu o Taumarere and Te Moana o Pikopiko I Whiti (Wai 1040, #M30 (a))	Opuia Marina – its history, responses by Māori, environmental impacts. Description of the boundaries and significance of Taumarere. Environmental exploitation of Te Awa Tapu o Taumarere (especially the Kawakawa river), including drainage works on nearby land.
In Southern Bay of Islands/northern Whāngārei: The Whakapara, Waiariki and Waiotu Rivers in the upper catchment of the Wairua River, and their tributaries (including Mokotuna, Waipuna, Kaimamaku, Taparahaia)	
Brief	Evidence presented
Brief of evidence of George Davies/Vilma Sutherland (Wai 1040, #I8)	The impact on waterways of mining at Puhipuhi (especially the Waiariki and Waiotu Rivers).

Brief of evidence of Allan Keith Halliday (Wai 1040, #P2)	Concerns with the resource consent process and adequate recognition of kaitiakitanga responsibilities. Discusses Māori-initiated environment groups (Ngāti Hau Resource Management Unit and Nga Kaitiaki o Nga Wai Māori): their involvement with local and central government bodies, their aspirations for co-governance. Depletion of tuna resources and collaboration with central government on elver trap and transfer programs. General issues of environmental concern: pump stations, Wairua Falls Hydro Scheme, pollution caused by erosion, mining and farming, loss of birdlife and protection of wāhi tapu.
Joint brief of evidence of Eru Edwards and Doreen Anderson (Wai 1040, #P5)	Diversion of waterways (including Whakapara River) and impact on Māori. Waterway pollution caused by damming, agricultural and forestry run-off, siltation, and mining. Flooding of Hikurangi Swamp. Decline of eel population.
Brief of evidence of Te Raa Nehua (Wai 1040, #P6)	Environmental damage of mining at Puhipuhi.
Brief of evidence of Carmen Hetaraka (Wai 1040, #P17)	Access to and management of oyster and mussel resources.
Brief of evidence of Hineamaru Lyndon (Wai 1040, #P30)	Alleged lack of protection of waterways by the Crown.
Brief of evidence of Benjamin Pittman (Wai 1040, #P38)	Drainage and diversion of Waiotu river. Environmental damage through pollution and sedimentation and impact on tuna.
Brief of Evidence of Lorraine Norris (Wai 1040, #U31)	Alleged local government exclusion of iwi from kaitiakitanga of water resources.
Brief of Evidence of Millan Ruka (Wai 1040, #U34)	Historical processes which have caused environmental damage: timber logging, gum digging; harakeke harvesting, farming, lack of riparian fencing. The work of the Environmental River Patrol. Alleged lack of waterways monitoring by Northland Regional Council.

	<p>Hikurangi Swamp: effects of the drainage scheme and farm pollution.</p> <p>Wairua power station: effect on tuna population, alleged inadequacy of consultation around elver transfer.</p> <p>Agricultural pollution of the Mangere River, the Okoihu Stream, and the Poroti Springs (aka Waipao Stream).</p>
Brief of Evidence of Marie Tautari (Wai 1040, #U48)	<p>Loss of riparian rights through the loss of land.</p> <p>Alleged lack of respect for wāhi tapu.</p> <p>Loss of customary river resources through pollution and erosion caused by deforestation.</p>
In inland Whāngārei/Mangakāhia: The Hikurangi and Kaikou rivers north of the junction with the Mangakāhia River and their tributaries including Pipiwai, Te Hoanga, Kahuwera, Patutahi, Papatahora and Moengawahine	
Brief	Evidence presented
Brief of evidence of Aorewa Whetu Marama Nahi (Wai 1040, #J3(a))	<p>Loss of kaitiakitanga.</p> <p>Loss of local resources.</p> <p>General issues of environmental concern: irrigation scheme, clearing of riparian strips, water quality and its impact on customary resources such as tuna, farming, and effects on pollution on recreation.</p> <p>Local government RMA obligations.</p> <p>Long-term impacts of Crown decisions on environment.</p>
Brief of evidence of Kaile Kaya Nahi-Taihia (Wai 1040, #J4(a))	<p>Engagement with Crown and its delegates over resource management.</p>
Brief of evidence of Sharon Kaipō (Wai 1040, #J6)	<p>Impacts of forestry on community.</p> <p>Pollution of waterways.</p>
Brief of evidence of Te Ruihana Nepia (Wai 1040, #J14)	<p>Decline in tuna quality, numbers, and size.</p> <p>Effects of lack of access to traditional fishing areas.</p>

Amended brief of evidence of Joseph Rapana (Wai 1040, #J15(a))	Effects of RMA on tangata whenua ability to exercise kaitiakitanga. General issues of environmental concern: water redirection, pollution, and health impacts.
Brief of evidence of Richard Nathan (Wai 1040, #J19)	Forestry and its impacts on waterways, including on customary food sources from waterways.
Joint brief of evidence of Eru Edwards and Doreen Anderson (Wai 1040, #P5)	Diversion of waterways (including Whakapara River) and impact on Māori. Waterway pollution caused by damming, agricultural and forestry run-off, siltation, and mining. Flooding of Hikurangi Swamp. Decline of eel population.
Brief of evidence of George Davies (Wai 1040, #P27)	Depletion of tuna in Marua River. Depletion of tuna in Hikurangi Swamp after installation of pump station in the 1970s.
In Hokianga: The Punakitere River upstream of Taheke, and its tributaries including Mangatoa, Huehue, Mangaone and Te Opou	
Brief	Evidence presented
Brief of evidence of Wiremu Kire (Wai 1040, #Q12(a))	Importance of water (in particular Taheke Falls and Punakitere River) for spiritual reasons and as a source of customary resources (tuna, koura, mullet, and pipi). Alleged Crown failure to protect these waterways. Desire to regain ability to manage river and exercise kaitiakitanga.
Brief of evidence of Diane Ruawhare (Wai 1040, #T6)	The allegedly poor state of the sewage ponds at Kaikohe wastewater treatment plant
Brief of Evidence of Wiremu Reihana (Wai 1040, #T10)	Alleged failure of the Far North District Council to protect the Punakitere River and its many tributaries. Decline of water quality due to mass deforestation and erosion, effluent discharges, the Kaikohe wastewater treatment plant, and a local sawmill.

Appendix 3: Research commission

OFFICIAL

Wai 1040, #2.3.26

Wai 1040

WAITANGI TRIBUNAL

CONCERNING the Treaty of Waitangi Act 1975

AND the Te Paparahi o Te Raki regional inquiry

DIRECTION COMMISSIONING RESEARCH

1. Pursuant to clause 5A of the second schedule to the Treaty of Waitangi Act 1975, the Tribunal commissions Matthew Cunningham and Ross Webb, Tribunal staff members, to prepare a report on rural river environmental management and the impact of pollution on customary river resources and kaitiakitanga since 1991 as part of the Local Issues Research Programme for the Te Paparahi o Te Raki inquiry.
2. In exploring this topic the report will focus on specific rivers (and their tributaries) and lakes in five Te Raki sub-regions.
3. These waterways are:
 - a) The Kaeo River and its tributaries, and Whangaroa Harbour in respect of river discharge impacts
 - b) In the Bay of Islands: The Taumarere (or Kawakawa) River and its tributaries including Otiria, Waiharakeke, Orauta, Hawera, Taikirau, Waiomio and Tirohanga, and Lake Owhareiti
 - c) In Southern Bay of Islands/northern Whangarei: The Whakapara, Waiariki and Waiotu Rivers in the upper catchment of the Wairua River, and their tributaries (including Mokotuna, Waipuna, Kaimamaku, Taparahaia)
 - d) In inland Whangarei/Mangakahia: The Hukurangi and Kaikou rivers north of the junction with the Mangakahia River and their tributaries including Pipiwai, Te Hoanga, Kahuwera, Patutahi, Papatahora and Moengawahine
 - e) In Hokianga: The Punakitere River upstream of Taheke, and its tributaries including Mangatoa, Huehue, Mangaone, Te Opou.
4. In relation to these waterways the report will address the following questions:
 - a) In what ways and to what extent have the Crown and local bodies it delegated power to under the Resource Management Act 1991 recognised and protected the customary authority and ownership of Te Raki Māori in these rivers and lakes?
 - b) In what ways and to what extent has this regulation and delegation impacted upon on whanau and hapu and their exercise of tino rangatiratanga and kaitiakitanga over and cultural use and enjoyment of these rivers and lakes?

- c) How have Te Raki Māori sought to be included in the resource management of these rivers and lakes, under local government planning and zoning regimes or under the Resource Management Act 1991? How successful have they been?
 - d) In what ways and to what extent have the Crown and its delegates consulted with Te Raki Māori and/or provided for their representation and/or participation in environmental planning, decision-making and management regimes concerning these rivers and lakes since 1991?
 - e) What provision has the Crown and its delegates made to ensure that Te Raki Māori have been and are resourced to cope with the demands of dealing with local government and Resource Management Act activities?
 - f) To what extent (if at all) have these rivers and lakes been polluted and/or degraded and what factors have contributed to these changes?
 - g) What role have the actions or inactions of the Crown and/or local body delegates generally and under the Resource Management Act 1991 played in those changes?
 - h) Any other related issues the researchers consider to be relevant
5. The commission will commence on 4 May 2015. A complete draft of the report is to be submitted by 1 February 2016 and will be distributed to all parties.
 6. The commission ends on 13 May 2016 at which time one copy of the final report must be submitted for filing in unbound form, together with indexed copies of any supporting documents or transcripts. An electronic copy of the report should also be provided in Word or Adobe Acrobat format. The report and any subsequent evidential material based on it must be filed through the Registrar.
 7. The report may be received as evidence and the author may be cross-examined on it.
 8. The Registrar is to send copies of this direction to:

Matthew Cunningham and Ross Webb
 Claimant counsel and unrepresented claimants in the Te Paparahi o Te Raki inquiry (Wai 1040)
 Chief Historian, Waitangi Tribunal Unit
 Principal Research Analyst, Waitangi Tribunal Unit
 Manager – Research and Inquiry Facilitation Services, Waitangi Tribunal Unit
 Inquiry Supervisor, Waitangi Tribunal Unit
 Local Issues Research Programme Supervisor, Waitangi Tribunal Unit
 Inquiry Facilitator(s), Waitangi Tribunal Unit
 Solicitor-General, Crown Law Office
 Director, Office of Treaty Settlements
 Chief Executive, Crown Forestry Rental Trust
 Chief Executive, Te Puni Kōkiri

DATED at Wellington this 26th day of May 2015

A handwritten signature in black ink, appearing to read 'C. T. Coxhead', written in a cursive style.

Judge C T Coxhead
Presiding Officer
WAITANGI TRIBUNAL

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Arapeta Hamilton (not yet filed, dated 20 June 2016)

Daniel Kaipo (not yet filed)

Darryl Gene Hape (Wai 1040, #N10)

Deborah Annie Hill (Wai 1040, #N3)

Diane Ruawhare (Wai 1040, #T6)

Dr Jacques Alain Teva Boubée (Wai 1040, #U19, #U19(a))

Dr Shane Kelly (not yet filed, dated 13 June 2016)

Dr Neale Alan Hudson, (Wai 1040 #U20)

Emma Gibbs-Smith (Wai 1040, #B18(a))

Eru Edwards and Doreen Anderson (Wai 1040, #P5)

George Davies (Wai 1040, #P27)

Harry Mahanga (Wai 1040, #F1(d))

Hōri Tuhiwai (Wai 1040, #E54(d), #J8(c))

Iris Niha (Wai 1040, #N16)

Isabella Kathleen Urlich (Wai 1040, #G8)

Joseph Rapana (Wai 1040, #J15(a))

Kaile Kaya Nahi-Taihia (Wai 1040, #E54(c), #J4(a))

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