OWNERSHIP AND CONTROL OF INLAND WATERWAYS WITHIN PORIRUA KI MANAWATU INQUIRY DISTRICT

David Alexander

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A report commissioned by the Waitangi Tribunal for the Porirua ki Manawatu Inquiry (Wai 2200)

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1. Introduction

My name is DAVID JAMES ALEXANDER. I am an environmental and planning consultant, and historical researcher, of Auckland. I hold a BA (Honours) degree in Geography, and a MSc degree in Conservation. Between 1979 and 2006 I was a full Member of the New Zealand Planning Institute.

From 1975 to 1987 I was a planner in the Department of Lands and Survey. This enabled me to gain a thorough understanding of land status matters and the organisation of Government Departments during that period. In 1987, after a short period working for the Department of Conservation, I established my own consultancy. The following year I prepared my first brief of evidence for the Waitangi Tribunal, which was hearing the Ngai Tahu claim. Since then I have prepared a number of other reports for claim hearings. I have prepared reports (and presented them as evidence in most cases) on the Ngati Rangiteaorere, Pouakani, Te Roroa, Whanganui-a-Orotu, Ngati Awa, Mohaka River, Ika Whenua Rivers, Turangi Township, Ngati Pahauwera, Hauraki, Muriwhenua, Rongowhakaata, Te Tau Ihu, Tuhoe, Central North Island, Tauranga, Northland, East Coast, Whanganui, Te Rohe Potae and Taihape claims.

With respect to the subject matter of this commission, I have provided water and waterways evidence to this Tribunal (and the Taihape Tribunal)[1], and to the Tribunal for the Wai 2358 national water claim[2].

This report was commissioned late in the process of preparing technical evidence for the Porirua ki Manawatu Inquiry, and as such it is seen as a 'gap-filling' report, intended to address matters not considered to have been adequately addressed by already-prepared reports when that body of evidence was looked at as a whole. A requirement of any 'gap-filling' report is that it stays firmly focused on the particular matters that are set out in the commission, thereby avoiding duplication of effort. The Tribunal's memorandum-direction commissioning this research is set out in Appendix One.

The specified issues to be addressed in this report are:

[1] David Alexander, *Rangitikei River and its tributaries historical report*, November 2015, WAI 2200 #A187 and Wai 2180 #A40.
[2] David Alexander, *Historical analysis of the relationship between Crown and iwi regarding the control of water*, and *Commentary on water in the Rangahaua Whanui National Overview report*, July 2012, Wai 2358 #A69(b).
David Alexander, *Poroti Springs: "a spring of celebration, then a spring of conflict since 1973"*, May 2016, Wai 2358 #D2.
David Alexander, *Lake Waikaremaona, a case study of its waters*, September 2016, Wai 2358 #D29.

a) What were Crown and Maori understandings and assumptions concerning ownership and control of waterways of importance (including rivers and lakes, estuaries, springs, wetlands, ground water and other inland waterways), … and how have these changed or become entrenched over time?

b) To what extent were common law presumptions concerning ownership and control of the beds of inland waterways (such as *ad medium filum aquae* presumptions) or legislative provisions (such as the Coal Mines Act 1903 or drainage legislation) applied to waterways of importance in this inquiry district and with what impacts?

c) What were the main mechanisms by which Maori of this district allegedly lost ownership and control of their waterways of importance, (such as by purchase of riparian lands, public works takings, destruction or loss from infrastructure development, roads along river banks, rights to take shingle/gravel) and land purchasing and partitioning where this is not already covered in commissioned reports for this inquiry?

d) What has been the impact of waterways management regimes, including the Resource Management Act 1991 regime, on Maori authority over, use of and enjoyment of their waterways in this inquiry district?

e) To what extent do the records show consultation with them or their consent being obtained and how have they responded or protested to the Crown and/or local authorities regarding issues of rights of control and ownership of waterways (or beds of waterways) in this inquiry district?

f) What are the impacts for them of the application of common law and/or legislative presumptions to waterways of importance to them in this district for the continued exercise of their customary rights in fisheries and other waterways resources?

g) What are the impacts for them over time of the application of common law and/or legislative presumptions concerning ownership and control of their waterways of importance in this inquiry district, including rivers, lakes, estuaries, springs and other inland waterways?

Issue (a) refers to "waterways of importance", which are defined in the commission as those waterways "identified in the CFRT environment and waterways reports" or those waterways identified by claimants in six memoranda filed by counsel during the preparation of the commission.

The four CFRT environment and waterways reports are:

- Helen Potter, Aroha Spinks, Mike Joy, Mahina-a-rangi Baker, Moira Poutama and Derrylea Hardy (for Te Rangitawhia Whakatupu Matauranga Ltd), *Porirua ki Manawatu Inland Waterways Historical Report,* August 2017, and document bank (Wai 2200 # A197 and #A197(a))
- Huhana Smith (for Te Rangitawhia Whakatupu Matauranga Ltd), *Porirua ki Manawatu Inquiry: Inland Waterways Cultural Perspectives Technical Report,* December 2017 (Wai 2200 #A198)
- Moira Poutama, Aroha Spinks and Lynne Raumati (for Te Rangitawhia Whakatupu Matauranga Ltd), *Porirua ki Manawatu Inquiry: Inland Waterways Cultural Perspectives: Collation of Oral Narratives*, 2017 (Wai 2200 #A198 (a))

- Vaughan Wood with Garth Cant, Eileen Barrett-Whitehead, Professor Michael Roche, Dr Terry Hearn, Mark Derby, Bridget Hodgkinson and Greg Pryce, *Porirua ki Manawatu Inquiry District: Environmental and Natural Resource Issues Report*, September 2017, and document bank (Wai 2200 #A196 and #A196 (a) and (b))

In defining the priorities for research for this report, regard was had for the existence of already-completed technical reports on the Rangitikei River[3], Te Atiawa / Ngati Awa ki Kapiti Waterways (in particular the Waikanae River)[4], and Lake Horowhenua[5]. These reports can be regarded as companion reports to this report. To avoid duplication, those waterways were not a priority for research.

One of the CFRT waterways reports usefully provides separate lists of inland waterways of significance to Ngati Raukawa ki te Tonga, to Te Ati Awa ki Whakarongotai, to Ngatiawa, and to Muaupoko, which had been developed as a result of consultation with those claimant groups. The claims of Te Ati Awa and Ngatiawa, and the claims of Muaupoko with respect to Lake Horowhenua and Hokio Stream, have already been heard by the Tribunal. The inland waterways of significance to Ngati Raukawa ki te Tonga[6] and to Muaupoko[7] (other than Lake Horowhenua and Hokio Stream) were therefore taken as the base lists of waterways to be prioritised for research. To these lists were added the most recent information on waterways of importance to claimants for the forthcoming inquiry stage, as set out in the six memoranda filed in response to the opportunity provided to have input into the scope of this gap-filling report[8]. Appendix Two lists the waterways of significance to Ngati Raukawa ki te Tonga and to Muaupoko, and summarises the contents of the six filed memoranda.

As a general comment, the selection process outlined above excluded few if any of the waterways within the tribal rohe of those claimants and claimant groups whose claims are still being heard by the Porirua ki Manawatu Tribunal. Indeed, the process of naming waterways of importance to claimants even included some waterway names not recognised on maps and plans, such as Blind Creek at the mouth of the Ohau River. It might fairly be

[3] David Alexander, *Rangitikei River and its tributaries historical report*, November 2015, and document bank (WAI 2200 #A187 and #A187(a)).
[4] Ross Webb, *Te Atiawa / Ngati Awa ki Kapiti – inland waterways: ownership and control*, September 2018 (Wai 2200 #A205).
[5] Paul Hamer, *'A tangled skein': Lake Horowhenua, Muaupoko and the Crown, 1898-2000*, June 2015 (Wai 2200 #A150).
[6] H Smith, *Porirua ki Manawatu inquiry: inland waterways cultural perspectives technical report*, December 2017, Wai 2200 #A198, at pages 15-25.
[7] H Smith, *Porirua ki Manawatu inquiry: inland waterways cultural perspectives technical report*, December 2017, Wai 2200 #A198, at pages 32-33.
[8] Memoranda of counsel #3.2.153, #3.2.154, #3.2.155, #3.2.156, #3.2.167, and #3.2.171.

argued that each of the claimants view all the waterways in their rohe as an indivisible whole rather than as a series of discrete entities.

An initial analysis of the already-filed technical reports indicated that one of the most significant 'gaps' was the limited reliance on Crown and local authority records as sources of information. Given that it is the task of the Waitangi Tribunal to assess the impact on hapu and on Crown/hapu relations of Crown actions and inactions, it has to know and understand the contemporary reaction of the Crown to the historical circumstances that arose, and the most direct source for this is what was recorded at the time by Crown officials. The research emphasis during the preparation of this report has therefore been on identifying and recording the relevant Crown and local authority records.

The Crown's interest in the treatment of waterways has been a constant since kawanatanga authority was first referred to in Te Tiriti o Waitangi, perhaps not from 1840 in the Porirua ki Manawatu Inquiry District, but certainly from the time of the first Crown land purchases in the district in the late 1840s. Because control or management of waterways was part of the raison d'être of a number of Government Departments, there is no shortage of written material in the Crown files. Similarly, waterways have attracted the attention of local authorities such as County Councils, Drainage Boards, Catchment Boards and Regional Councils, either because of statutory provisions enabling local authorities to take part in waterway activities, or because of empowering delegations of Crown authority to local authorities. The passing of the Resource Management Act in 1991 is the most dramatic and comprehensive example of the latter. The net result is that the historical record held by the Crown is considerable, in fact more considerable than could be dealt with comprehensively in this commission. Some selection of examples, rather than itemising every Crown move, has been necessary. The choice of what examples to write about reflects the purpose of a district inquiry to discover whether what the Crown said and did, or did not do, had an impact in the Porirua ki Manawatu Inquiry District in the same way, more or less, as it had in other parts of New Zealand.

The Crown's intervention could be either direct or indirect. Legislation conferred authority that resulted in the Crown taking actions itself or allowing local authorities to take actions in waterways. However, New Zealand society at large also held views about what was and was not appropriate in waterways. Private landowners had a considerable influence on how waterways were treated, and not all actions affecting waterways can be directly sheeted home to the Crown. However, the Crown could be both unquestioningly accepting and reflective of the attitudes that wider colonial society adopted, most particularly in allowing,

encouraging and enabling a landscape transformation from forest to farming that had as severe an impact on waterways as it had on land. In this social atmosphere Maori were not always listened to or provided for, and the promises and obligations of Te Tiriti became neglected when the Crown failed to enshrine them in statute.

This report addresses each of the seven issues set out in the commission as a separate chapter. This ensures that the focus remains on the issues throughout. Where an overlap develops, with a matter being pertinent to more than one of the issues, this is dealt with by cross-referencing. One change has been made to the ordering of the seven issues. The ordering of issues (b) and (c) has been reversed. The reason is that early Crown purchasing had substantial foundational impacts that set the scene for much of the subsequent consideration, by the Crown in particular, about common law and statute law matters in the Inquiry District. References to the law about waterways that were identified during research for this report all occurred later in time after the era of early Crown purchases.

The research carried out for this report, with its heavy reliance on those Crown and local authority records that have survived and are available for examination, and with the time constraints that were set, has resulted in some patchiness in the coverage of the issues referred to in the commission. The coverage tends to be episodic in nature, addressing some events but probably ignoring many others. For instance, the application of common law and statute law is limited to what happened in Porirua ki Manawatu Inquiry District, and there were undoubtedly precedent-setting interpretations of the law in other parts of the country that have not been researched. It has not been possible, nor has it been the intention of this report, to present a balanced and comprehensive historical account. Reporting on instances and events in the past that can help to shed light on the issues identified in the commission has been treated as the higher priority.

2. Crown and Maori understandings and assumptions

What were Crown and Maori understandings and assumptions concerning ownership and control of waterways of importance (including rivers and lakes, estuaries, springs, wetlands, ground water and other inland waterways), … and how have these changed or become entrenched over time?

2.1 Introduction

With steep hills such as the Tararua and Ruahine Ranges draining quickly to the lowlands, and the lowlands largely a poorly-drained floodplain, the waterways of the Porirua ki Manawatu Inquiry District have always had, and still have, a prominent place in the region. The lowlands could have fairly been described as a waterscape prior to their development as farmland. It is that transformation from waterscape to agricultural landscape that underlies the kaupapa of this report. What were the legal steps and the administrative structures that enabled the transformation, and how did the Crown, local authorities and tangata whenua interact?

This chapter provides a scene-setting national background. It examines in general terms what were the understandings and assumptions that underlay how both the Crown and tangata whenua have dealt with one another at different periods of time. Initially, during the period between 1840 and 1865, any discussion of understandings largely concerns the different perspectives that each Treaty party brought to negotiating hui when waterways were discussed. The law did not enter into the equation with much force in those early years, as direct dealings were dominated by the reality on the ground that Maori held a predominant position, exercising their tino rangatiratanga over their lands and waterways. Legal regimes covering waterways were established during this period, so far as the Crown was concerned, but had little impact until after the New Zealand Wars ended. After 1865 Maori understandings did not alter, instead becoming suppressed as the Crown asserted its authority and developed its understandings with a series of statutory interventions and actions on the ground in response to the statute law.

The detail of the application of these understandings and assumptions to Porirua ki Manawatu Inquiry District are discussed in subsequent chapters.

2.2 Understandings at 1840

2.2.1 Initial Crown understandings

As at 5 February 1840 the Crown understood that it had no rights to either land or waterways in New Zealand. The Treaty of Waitangi, signed the following day, conferred on the Crown an ability to become involved, for the purpose of ensuring good governance and public safety, while acknowledging that hapu retained ownership of their lands and other taonga. By implication ownership or control of lands included ownership or control of waterways passing through those lands.

The Crown believed that its ability to become involved in governance, as initially conferred by the Treaty, was put into a more tangible legal form by the proclamation of territorial sovereignty over New Zealand later in 1840. By this step the Crown became the underlying owner of all land in New Zealand, a right known as dominium ownership, paramount ownership of the Crown's territory, or the Crown's radical title. This underlying ownership was strictly limited in its effect while hapu had guaranteed ownership of their land, effectively all of New Zealand. However, from the earliest days of colonial government, the Crown's rights of ownership of marine waters and seabed were considered to be less fettered because of English common law vesting the foreshore and seabed in the Crown. For the Crown a clear distinction became established between tidal waterways and the sea on the one hand, and non-tidal waterways on the other hand, so far as continued hapu ownership was concerned.

At that stage, in 1840, the only lands that the Crown could become directly involved with were those lands that had already passed out of Maori ownership and into the ownership of Europeans prior to the signing of the Treaty. These were what were known as the Old Land Claims. If Maori agreed that they had parted with their rights to such acquired lands, a matter that was inquired into by the Crown's Old Land Claims Commission (sometimes called the Spain Commission after the name of its chairman), then the Crown could rely on its dominium ownership authority to issue a land title to the European owner.

For the Crown to become more widely involved in land use matters, and to allow European settlers to migrate to New Zealand and occupy the land, hapu ownership had to be extinguished. By necessity this had to be a step-by-step process rather than a wholesale process, and the Crown expended enormous energy in the early years of the colony in overseeing the extinguishment of native title through its confirmation of pre-emption purchases in favour of private purchasers, and through many early purchases of land on its

own account. After 1865 the Native Land Court provided a process to extinguish native title of lands still owned by Maori and replace it with a Crown-governed Court title and/or Land Registry title.

2.2.2 Initial Maori understandings

In 1840 Maori 'owned' and controlled waterways to the same extent that they did land. No one was contesting the authority of their chiefs. European settlers lived on the land on sufferance, and any rights they might have had were very much as junior partners. It was inconceivable to Maori that there could be an 'ownership' regime for waterways that was separate from an 'ownership' regime for land. In general terms a waterway passed through the territory held by a hapu. Where a waterway might be considered to be a territorial boundary as a matter of convenience, the ability to peacefully share the waterway was assured by strategic intermarriages and whakapapa connections. Where certain locations along a waterway, such as pa tuna (eel weirs), might be more closely held than at the hapu level of Maori society, arrangements of this nature were recognised and accommodated.

Likewise with the sea. The control of the land beside the sea gave a hapu authority over inshore waters and the ability to fish and gather resources from those waters.

When Maori signed the Treaty of Waitangi they understood that they would be retaining 'ownership' and control of their fisheries and taonga places as well as their lands for as long as they wished to do so. They believed that they could only be dispossessed of their ownership, whether of land or waterways or fishing places, by explicit actions of the Crown, such as purchase of waterway rights and the passing of laws for the peaceful coexistence of both Maori and Europeans.

Maori consider that waterways from bank to bank are an indivisible entity. For want of a better way of describing it, while the ownership status of a waterway is bonded and intertwined with the ownership of riparian land at a general level, when that bond has to be subdivided the waterway would be thought of as being a separate holding, where different rules from riparian land apply. The rules for waterways have a different kaupapa to the rules for land, because of the wairua and mauri attached to water, because of the taonga nature of many waterways and some of the food species that inhabit the waterways, and because of specifically water-related tikanga and kaitiaki responsibilities. Tangata whenua, of course, are in a better position to express this than can be done in this report.

Potter et al quote from a personal communication provided by Taihakurei Durie:

> In relation to Oroua, Ngāti Kauwhata claims that they owned it, that they have never alienated it and still own it, that the alienation of the riparian land did not affect their ownership of the river, that the Crown has never extinguished those rights by a consensual Treaty process. That they are now in a position of having to appear before local authorities about resource consents for the river as though their interest was merely cultural and when those concerned have no knowledge of their interest and may have commercial interests that are hostile to them.[9]

This quotation should not be taken as an explanation that is shared by all Maori – others may have different ways of expressing their ongoing connection with waterways in general and the Oroua River in particular. However, there is an underlying sense that waterways can be conceived as being still subject to an aboriginal title that has never been extinguished by the Crown. Aboriginal title continues to have a place in British colonial law. However, aboriginal title and customary title are not necessarily the same thing, as the term 'customary land' has a legal meaning, being defined in statute (Maori Affairs Act 1953) as land "being vested in the Crown" that had not passed through the Native Land Court. Aboriginal title is unlikely to recognise any subordination to the Crown's dominium.

2.3 Understandings at the time of the early Crown purchases

2.3.1 Crown understandings of the early Crown purchases

The four early Crown purchases in Porirua ki Manawatu Inquiry District (Rangitikei-Turakina, Ahuaturanga, Awahou and Rangitikei-Manawatu, spanning the period 1849 to 1872) were hugely influential in shaping subsequent events and subsequent understandings. It is therefore appropriate to identify in general terms the understandings and assumptions that prevailed at that time – the purchases themselves are more specifically covered in later chapters.

Because the whole purpose of each purchase was to extinguish native title, the Crown aimed to achieve a form of purchase that was as all-inclusive as possible of the rights held by the hapu and iwi it was negotiating with. It developed a 'language' in the deeds that it considered would achieve this. By talking in this 'language' during multiple negotiating meetings, it believed that its understanding was also understood by the hapu and iwi. The 'language' included the land and the incidents or appurtenances to land such as rivers (awa), lakes (roto), streams (awa ririki), waters (wai) and minerals (kohatu). The Crown understood that it might need to acquire land and appurtenances more than once when more than one hapu or iwi claimed an interest in the land; in those circumstances it bought each claimant's interests individually, until eventually it concluded that the native title (i.e. all interests) could be declared to have been extinguished.

[9] Personal communication, Sir Taihakurei Durie, 22 November 2016, quoted in H Potter et al, *Porirua ki Manawatu inland waterways historical report*, August 2017, Wai 2200 #A197, page 85.

The Crown intended that the land it acquired would be passed on to European settlers, who would clear the forest (by timber cutting and by fire), drain the wetlands and sow grasses. Each settler family would receive a certain number of acres which would be progressively cleared at a pace that the technology of the time and the finances of the settler allowed. Settlers once allotted land could do as they wished with it, and if they wanted to spread their farming operations into swampland and semi-swampland on their properties, that was allowed.

For convenience, and to assist in the more general understandings of both parties, natural features, including waterways, were used to describe the boundaries of purchased land. However, the use of such boundaries has led to speculation at a more specific level subsequently. Did the Crown's purchase extend up to the riverbank only, and not include the river itself and its bed? Did the Crown's purchase extend to the centre of the river? Did the Crown's purchase include the river as a whole, or at least a share of the river? These are questions that have been addressed in other Waitangi Tribunal inquiries (e.g. Ika Whenua Rivers, Mohaka River, Whanganui River), and the relevance of these other inquiry findings to Porirua ki Manawatu Inquiry District is a matter for legal submissions.

It is not clear how well versed the Crown's purchase negotiators were in their understanding of English legal concepts, or in explaining such matters to the sellers. As a minimum, they would have expected that a settler to whom riparian or riverbank land was granted would be entitled to obtain water from the river for human and farm stock needs, and that the Crown's acquisition of rights to a waterway that was a boundary would have extended at least that far. They may have had a greater knowledge of the specifics of English common law (discussed later in this chapter) and expected that rights to riparian land included a wider set of rights to the bounding waterway. There is no indication in the historical records that the Crown purchasing agents consulted lawyers on the subject of rights to waterways. However, if they had they would have been made aware of the common law presumption that owners of riparian lands could claim rights to the centre line of a river. This presumption, known as the ad medium filum aquae presumption, is discussed in more detail later in this chapter, and the application of the presumption in the Inquiry District is discussed in the next chapter.

The Crown negotiators are also likely to have had in mind that a river could be conceived of as being a public highway. However, this could have its own difficulties. In Porirua ki Manawatu Inquiry District the ocean beach was the main highway initially, with ferries

established at each rivermouth crossing. The Crown / Provincial Government negotiated, often before the land purchases, to have these ferries established, with an associated ferry reserve for the ferryman's quarters (which often made it possible for the ferryman to operate an accommodation business and allow travellers' horses to be grazed). Te Wharangi was the ferry reserve on the north bank of the mouth of the Manawatu River, and today's Scott's Ferry settlement is named after the ferryman at the mouth of the Rangitikei River. At the time when the Crown had little other presence in the district, the agreements for the establishment of these ferries and ferry reserves were an acknowledgement of hapu control of both the river and its banks. However, that was expressed in land terms only in the agreements that were drawn up, which referred to occupation and use of the reserve with no mention of any rights relating to the waterway. This left the status of the waterway undiscussed. While the hapu were in effect agreeing to the public traversing their private waterway property, this was never explicitly stated. With the agreements signed, and travellers using the ferries, the Crown could believe that the river-as-a-public-highway was an interpretation accepted by the hapu.

2.3.2 Maori understandings of the early Crown purchases

This subsection does not discuss the inter-iwi rivalries that resulted in different reactions to the purchases by the different parties. That is a matter more comprehensively covered in other evidence. Rather the subsection explores Maori understandings in relation to the understandings held by the Crown.

Prior to the early Crown purchases Maori were aware what European farming meant, at least in its early years. There were already Europeans occupying the land before the Crown purchases, usually under lease arrangements with the Maori owners. Open ground was being used for extensive grazing, and there were usually more intensive activities around homesteads. The European obsession with grassland development at the expense of the forests and the most easily developable semi-swamplands would have been well known. The earliest European settlers also needed access to water for their own and farming needs, and they were often dependent initially on the resources of the land and the waterways for their own sustenance in much the same way as Maori. Maori knowledge of the farming development that had taken place before the purchases would have guided their understanding of some of the changes that might occur if they parted with their land to the Crown. How European settlers acted on a day-to-day basis on the Rangitikei-Turakina lands (purchased in 1849) would have been well understood by Maori as background knowledge during the later purchases.

Many (though not all) Maori welcomed the idea of Europeans living among them and were encouraging of the land purchases that would allow that to happen. They might have been willing to play down any difficulties in pursuit of the greater objective, at least in the initial stages of negotiations. However, the concept of 'non-sellers', or of those less enthusiastic about selling, was ever-present. By way of example, the differing views among tangata whenua are apparent in a letter written to the Wellington Provincial Government by Ngati Raukawa at Otaki in 1866. At issue was whether stones could be provided for a road that was to be constructed. One faction led by Kiharoa appeared to want to be paid for the stones, while another faction were prepared to forego a royalty because the district would benefit from the road, and wrote to Featherston, the Provincial Superintendent:

> Friend Featherston, salutations. Your words concerning the road at Otaki have been related, and the elder men of Ngati Raukawa have agreed that the stones ["nga kohatu"] should be given up to improve the road of the Native. The cause of Kiharoa's withholding the stones is that the Government pay money for the stones, that is their thought concerning the stones, besides the payment for contractor the stones must be paid for. The Government will see the names of those who are against this, as they are sending a letter to you, that is Kiharoa and others. Our thought is we should consider the kindness of Mr Halcombe and the Government that they have sent work to our land, we are thankful to you for the good works and the money that has come near to our roads. Our thought is that the stones be given up to the contractor and no payment, but pay the roadmakers. That is our word.[10]

It is not clear whether the stones would be gathered from the riverbed or from adjoining land.

When Maori willing sellers entered into an early sale they would have been anticipating that both the new settlers and they themselves would be advantaged. They would have believed that the new settlers would bring benefits for Maori, and they could continue to live and prosper on that part of their territory they were not parting with, without being disadvantaged. Maori would have understood that some disruption to their way of life was inevitable; in their traditional food-gathering activities they would have traversed every part of their rohe, and while some of this ability to roam at will would be curtailed as a result of European occupation there were other parts of their lifestyle that could continue unhindered.

That rather rosy picture of the future often tended to be dashed by the practicalities of the negotiations. The Crown officials were intent on maximising the area that they could acquire, and their confidence in their ability to do so increased over time as European settlement became better established in New Zealand and particularly after the outcome of the New Zealand Wars (in the early 1860s in particular) shifted the balance of power heavily

[10] Matene Te Whiwhi and 19 others for "Runanga Kaumatua", Otaki, to Wellington Provincial Superintendent, 21 May 1866. Maori Affairs Head Office folder 13/69A. Supporting Papers #477-478.

in the Crown's favour. What Maori sellers might have wanted, and what they could actually achieve, were two different matters, with the wider political setting having a large influence.

The use of a waterway as a public highway was a different concept to that traditionally held by Maori, who regarded a waterway as under the control of a hapu and requiring prior consent to travel on. However, Maori would have recognised that by allowing Europeans to settle on their hapu lands, they were sharing certain aspects of waterways. Exactly what aspects were being shared is not readily discernible from the purchase deeds, because they were drawn up by the Crown to meet the Crown's needs.

2.4 Post-purchase understandings

2.4.1 Native Land Court titles

The post-purchase era was dominated initially by the advent of the Native Land Court, which issued Court titles that were an extinguishing of native title under another guise. It was the Court's role to identify who under Maori tikanga were the owners of a block of land, and then translate that determination into a title backed by the Crown that defined the ownership in individualistic terms. While a Court-ordered title could be made inalienable if it was still occupied by its owners or if it might be needed by Maori owners, most land that passed through the Court was made alienable or able to be transferred to other owners. It was a fundamental purpose of the Native Land Court that it was a vehicle to enable the acquisition of Maori-owned land by Europeans. It is not the role of this report to identify the multiple failings of the Native Land Court title determination process.

Most small waterways and wetlands were included in Court-ordered titles by virtue of not being surveyed out of the land blocks. There were also some instances where larger waterways were included in Court-ordered titles. Examples in the Inquiry District include the Waikanae River in Ngarara block and the Hokio Stream in Horowhenua block. However, it was more generally the case that a larger waterway became a boundary between Court-ordered land blocks. By defining the riverbank as a title boundary, the status of the adjoining waterway was left undetermined. How such a waterway was treated at law is discussed later in this chapter.

A somewhat more complex situation applied on the Otaki River. In the mountainous country dropping down to the coastal plain, the river was a boundary between the Waihoanga and Wairarapa blocks. However, once out on the coastal plain, immediately above the State highway and railway bridges, and for about half the distance downstream between the

bridges and the sea, a series of small-sized blocks were passed through the Native Land Court where the block boundaries straddled the river, so that the river was included in the titles to those blocks. Then further downstream nearer to the rivermouth, there were no titles at all. The river and the land on either side of it were never taken into the Native Land Court for investigation of title[11].

Where the Otaki River is shown on the survey plans prepared in the mid 19th century for the small-sized blocks, it is shown as passing through titled land. Because the land titles did not have the river as a boundary, there was therefore no opportunity for the ad medium filum aquae presumption (discussed in more detail later in this report) to apply. Over the part of the riverbed further downstream towards the sea that lacks Court titles, the gap between surveyed blocks on the north side of the river and the south side of the river is quite wide. Many of the surveyed blocks have as boundaries surveyed straight lines rather than the more wavy lines that would have been followed if the river was a boundary. If the river is not a titles boundary, and the ad medium filum aquae presumption cannot apply, then it would appear that the owners of titled land on either side of the river can have no claim to ownership of the river bed by virtue of their titles. In that circumstance where no title had ever been issued, the land between the titled blocks on the northern side of the river and the titled blocks on the southern side of the river was regarded by the Crown as still having the status of customary land. This gave the lower Otaki River a unique titles situation in the Inquiry District, which is in contrast to the titles situation along most of the other rivers in the District.

The hapu of Otaki have a memory of their tupuna wanting the Otaki River and its banks to be treated as a fishing reserve. This memory was referred to during the 1910s and 1920s, and again in 1945, when they applied to the Court and petitioned Parliament to have the title to two reserves at the lower end of the Waihoanga and Wairarapa blocks investigated[12]. The applications were dismissed because the Court could find no land on the banks of the Otaki River at that locality that had not already had its title investigated, and in the Court's

[11] Works and Development Head Office plan PWD 127080. Supporting Papers #1543-1546.
Wellington plans SO 22211 and 22212. Supporting Papers #1594 and 1595.

[12] The following inquiries are all discussed on Maori Affairs Head Office file 5/13/180. Wai 2200 #A67(b) Documents 9716-9804:

- Court hearings, 2 March 1915 and 22 October 1915, Maori Land Court minute book 53 OTI 151-155 and 247;
- Petition No 74/1915 to Parliament of Arapata Noki and Heni Te Rei;
- Court hearing 23 January 1923, Maori Land Court minute book 23 WN (Wellington) 332-333;
- Court hearing 25 October 1927, Maori Land Court minute book 58 OTI (Otaki) 180-182;
- Appellate Court hearing 3 August 1928, Maori Land Court minute book 7A WGAP (Wellington Appellate) 55, 65, 75 and 83;
- Petition No 24/1945 to Parliament of Kipa Royal, 18 July 1945.

opinion "if there are in the course of time erosions in some parts and accretions in other parts, it seems the best claims for the latter should come from the adjacent European owners"[13]. However the Court minutes in 1927 record the evidence of Hori Te Waru about the reservation of the banks of the Otaki River:

> I live at Otaki. I know this land, Wairarapa and Waihoanga. Land in parts, see part marked yellow on plan. The part nearest the sea is called Wairarapa, this was sold to the Government, so was Waihoanga. The part marked yellow was reserved out of the sale. I can point out pieces of land used to be Native Kaingas. The Natives cut these pieces off and reserved them as fishing easements. The sides of the river were reserved down to the sea.
>
> Mr Harper said this was European land, but such is not the case. The Natives reserved this so as to get eels for food. All the original owners and vendors are dead. Their descendants prevailed upon the Government to prevent the adjacent owners extending their holdings to the river. The Government agreed to do so. A survey was made and a plan was prepared for the Court. I lived on a strip of this when I was a boy. No Natives lived there since 1881. No previous applications for investigations have been made. The elders named by you were never included in lands about Otaki. I have nothing to say about the parts sold to the Crown.
>
> Ngati Tuara is the hapu entitled to this land [the claimed reserve] because they sold the balance of the land to the Government.[14]

In a petition to Parliament in 1945 Kipa Royal repeated the statements about fishing reserves:

> We claim that the four sections mentioned were set aside as Reserves for the Native owners in the Deeds of Sale to the Crown [in 1874] for the purpose of having a papakainga for them and cultivation near the Otaki River for their fishing easement. It will be found by facts that the Native from here right out to the open sea has always set aside a Reserve on each side of the Otaki River for their fishing purposes, and many of them lived on these reserves up to 1885.[15]

2.4.2 English common law presumptions

As far as the Crown was concerned, British colonial law applied in New Zealand from shortly after Te Tiriti was signed. It is a matter for legal submissions to define what that meant legally and with greater particularity than can be expressed in a report such as this that is not providing a legal interpretation of events. A part of the colonial law was the application of English common law presumptions. These included certain rights, such as a right to use rivers as a highway or for navigation, a right to use water in natural waterways for personal, livestock, firefighting and commercial needs, and a right to fish (in the sea and tidal waters at

[13] Maori Land Court minute book 58 OTI 182, 25 October 1927. Supporting Papers #1285.
[14] Evidence of Hori Te Waru, 25 October 1927. Maori Land Court minute book 58 OTI 180-181. Supporting Papers #1283-1284.
The quotation follows the handwritten version in the minute book. The typed version of the minutes in Crown records (Maori Affairs Head Office file 5/13/180, Wai 2200 #A67(b) Documents 9716-9804) differs from the minute book version.
[15] Petition 24/1945 of Kipa Royal, 18 July 1945, attached to Clerk Native Affairs Committee to Under Secretary, 19 July 1945. Maori Affairs Head Office file 5/13/180. Wai 2200 #A67(b) Documents 9716-9804.

least). In practice te tino rangatiratanga prevailed over the application of colonial law in Maori-dominant districts during the first years of New Zealand colonial history, and it was not until the 1860s and 1870s that the complexity of matters in Porirua ki Manawatu Inquiry District saw a greater reliance on legal interpretations.

R v. Symonds in 1847 is often cited as the premier example of how the British colonial law that was brought to New Zealand recognised aboriginal title. The English Laws Act 1858 was merely a codification in statute of the legal state of affairs in New Zealand, when it declared that English common law would apply in New Zealand "so far as applicable to the circumstances of New Zealand". The difficulty for the law in New Zealand has been that "applicable to the circumstances of New Zealand" has never been adequately defined. Over one hundred years later, in 1965, a Crown inter-departmental committee on water matters stated:

> Bearing in mind the origins of the English systems of ownership of land and water on the one hand, and on the other the Treaty of Waitangi guarantee to the Maoris of the "full, exclusive and undisturbed possession of their lands and estates, forests, fisheries and other properties", it seems difficult to be sure exactly how far the Common Law doctrines as to river-bank boundaries, lake-side boundaries, ownership of highways and rights of passage are "applicable to the circumstances of New Zealand".[16]

The common law provided a basket of established legal principles that cases could be checked against whenever they came before a court. Just what that basket contained with respect to waterways can probably be established from a close study of nineteenth century legal textbooks. One aspect was the protections that downstream users and occupiers were entitled to against damage caused by upstream users and occupiers. Any damage would be a trespass on the rights that the downstream user was entitled to. Two examples of the application of this aspect of the common law are discussed here, one where statute law was passed to overturn the common law, and the other where statute law was proposed but not passed.

The first example is about the passing of the Timber-floating Act 1874, which was most relevant to the kauri logging industry in the Coromandel and Northland[17], and had little impact in Porirua ki Manawatu Inquiry District. The timber industry had thought there was a common law right to float timber down rivers, though this was found not to be the case when floating timber destroyed a Maori eel weir on the Coromandel Peninsula. The owner of the

[16] *NZ Law and Administration in Respect of Water: Report to Cabinet by the Interdepartmental Committee on Water*, March 1965, Paragraph 57(3). Wai 903 #A198, Supporting Papers #287-374, at #311. Supporting Papers #1499-1500.

[17] The introduction of the Timber-floating Act 1874 is covered in more detail in D. Alexander, *Land-based resources, waterways and environmental impacts*, November 2006. Wai 1040 #A007, pages 99-109.

eel weir sought an injunction to prevent him as a downstream rights holder from being adversely affected, and the Supreme Court held the timber floater was liable for the damage and was required to pay compensation. The 1874 legislation made it lawful for licensed operators to float timber down certain approved rivers, and no downstream landowner could interfere with or obstruct such timber floating, though if their lands suffered damage riparian landowners could take a civil case before a Magistrate seeking compensation.

The second example, being more directly relevant to Porirua ki Manawatu Inquiry District, is discussed in greater detail. It concerns the impact of the pollution of water on downstream users. In June 1912, a European farmer on the Oroua River sought an injunction against the owners of four different flax mills operating upstream of his property to prevent the mills from disposing of their refuse into the river. The case was heard by the Supreme Court over four days[18], and the Chief Justice issued the Court's decision the following month[19]. The farmer, who was supported by other riverbank farmers along the Oroua, claimed that the waters became polluted and the channel became choked with waste so that the bed of the river was raised and the river was more liable to overflow during times of flood on to his farmland. The flaxmillers argued, among other things, that the pollution they caused was immaterial, and that "what they did was only a reasonable user of their rights as riparian proprietors". The Court decision, as reported in a local newspaper (the full decision has not been located during research for this report), traversed the common law on the subject:

> That there is some pollution in the river caused by the effluents from the defendants' flaxmills is, in my opinion, proved, and that that pollution may be injurious is also, in my opinion, proved by [the Government Analyst's] evidence…. The fact that the river may be polluted by disease germs from the [Feilding town] septic tank will not, in my opinion, be any defence to an action for pollution, if there is pollution. See Crossley and Sons Ltd v Lightowler (L.R 2 Ch App 478). I am of opinion that the law is that, if what is done by the upper riparian proprietor is sensibly to alter the character of the water, and to render it less suitable for domestic or agricultural purposes than it was before, then an action will lie". His Honour reviewed opinions in "Angell's Law of Watercourses", Coulson and Forbes, Salmond on Torts (2nd ed. pp. 272, 273). The last-named authority said: "Although actual damage need not be proved, actual pollution must be – i.e. it must be shown not merely that the water has been in some way affected in its natural quality, but that by reason of this adulteration it is now less suitable than it was before, for some purpose to which it might be applied". His Honour continued "In my opinion this last quotation correctly summarises the law. In Young & Co v. the Bankier Distillery Co (1893 A.O. 691), the House of Lords held that if pure water is turned into a stream by an upper riparian proprietor that is a different character from that which usually flows in the stream, that is an actionable wrong, and an interdict or injunction would issue. Crossley and Sons Ltd v. Lightowler, already quoted, is a strong case, showing how a lower owner who purchased land knowing

[18] *Manawatu Times*, 18 June 1912, 19 June 1912, 20 June 1912, and 21 June 1912. Supporting Papers #3559-3562, 3563-3565, 3566-3569 and 3570-3573.
[19] *Manawatu Times*, 19 July 1912. Supporting Papers #3574-3577.

> that dye works were sending foul water into a river, was nevertheless entitled to stop the continuance of such fouling. Wood v. Wand (3 Ex 748) is to a similar effect."
>
> "In my opinion, therefore, the plaintiff is entitled to maintain his actions. The defendants cannot put these effluents from their mills into the river and so pollute it. It may be that a considerable industry may be crippled or destroyed if they cannot continue what they have done, and it may be that the plaintiff's loss or damage will be small, and very small compared with the loss the defendants will suffer by an alteration of their present methods of disposing of their effluents, but I cannot consider such results. I am of opinion, however, that none of the defendants are liable for the damage sustained by the overflow of the river on the plaintiff's land, and that there is no other exact damage shown. He is, however, entitled to some general damages, which I fix at £5 in each action."
>
> … Judgment was for the plaintiff accordingly, with £5 damages in each action, [certain specified costs], and an injunction to issue to prevent the effluents going into the river in their present state, mixed with flax fibre, etc.[20]

The Court's decision alarmed flaxmillers and other industries that discharged wastewater into rivers. The flaxmillers were especially aggrieved because they considered that they were doing a better job than they had done previously, having installed grates at each mill to catch much of the green waste before it entered a river. They immediately approached the Government and asked for the passing of statute law that would limit the consequences for them of the Supreme Court's interpretation of the common law. The Government drafted a Pollution of Water Bill, introduced the Bill to Parliament, and sent it to the Agricultural, Pastoral, Stock and Commerce Select Committee for hearings. The minutes of the hearing take up 82 pages of closely-spaced wording in the *Appendices to the Journals of the House of Representatives*[21]. They provide considerable information about the state of the Oroua River at that time, including the pollution caused by Feilding town septic tank effluent, and the actions of the flax mills several kilometres further down the river towards the confluence with the Manawatu River. However, none of the witnesses were Maori, and tangata whenua do not feature at all in any of the discussions that took place during 1912. For the purposes of this report, the principal interest arises from the evidence given to the Committee by Crown Ministers and public servants about the Crown's policies. The first witness was the Minister of Internal Affairs, who explained why the Government had drawn up the Bill:

> Well, the difficulty which has occurred with respect to the flax-mills is only one instance of difficulties which are anticipated and are threatened in respect of the butter-factories and the cheese-factories and the sawmills. With regard to the last, it is not suggested that the sawmill people should be at liberty to throw sawdust into the river. That is already prevented … by the Fisheries Act. These intimations of complaint of the fouling of streams by the butter-factories and the cheese-factories must have reached the last Government, as they have reached the present Government. The position is as was defined in the actions which were recently brought by Mr Pearce in respect of

[20] *Manawatu Times*, 19 July 1912. Supporting Papers #3574-3577
[21] *Appendices to the Journals of the House of Representatives*, 1912, I-12a.

> the flax-mills. Damages – very heavy damages – were claimed in that action. It was shown that the water as it left the flax-mills was very little less usable than as it arrived there, but it was laid down that any diminution in the quality of the water is a trespass under common law – a wrong to the riparian proprietor below…. This is the law – not the common law but the equity which follows the law – that where you have established a common law right, the Court of equity grants an injunction to prevent the continuance of the wrong which has been proved at common law. The reason is this: in the old days, before equity intervened, a man establishing his injury and receiving his damages for past injury, had no right to prevent future injury and had to wait till the future injury had been suffered and then recover further damages; and so on by a series of actions. The equity rule introduced was, by granting after and not before the common law right had been ascertained, to prevent the continuance.[22]

The Bill's provisions were supported by the Government because the far-reaching nature of the Supreme Court's interpretation of the law risked butter and cheese factories also being required to close, and the disruption and economic cost if that was the case was not something that the Government was prepared to accept. The Bill therefore curbed the ability of a downstream riparian owner to gain an injunction, confining it to circumstances where the pollution was greater than that which ordinarily occurred from that particular industry in New Zealand.

> If the Committee and Parliament leave the matter as it stands, I have tried to explain what would be the result – that any mischievous person, who is not really injured but alleges he is injured, can stop the operations of some great factory until that factory has adopted some method which will prevent any effluent from getting into the stream; and in many cases that would be impossible because the factories have been so built as to be on the margin of the stream.[23]

The Minister was open about some of the inconsistencies that would arise. Sawmills would continue to be unable to discharge sawdust into rivers: "we are not going to poison the trout with sawdust, though we may poison them with the effluent". The situation in sparsely-populated New Zealand, he argued, was different to that in densely-populated England where the common law had developed: "It [pollution] would injure the stock and not the people here, while in England it injured the people and not the stock".[24]

The officials were relaxed about the discharge of industrial effluent into rivers as long as there was no overloading of the waterway. Their remarks provide a window into Government thinking at that time. The head of the Dairy Department stated:

> As a general rule, the drainage from dairy factories is discharged into a running stream where it is said to do no harm at all, and we always recommend that be done where it

[22] Evidence of Minister of Internal Affairs, 8 October 1912. *Appendices to the Journals of the House of Representatives*, 1912, I-12a, pages 2-4. Supporting Papers #1408-1418 at 1408-1410.
[23] Evidence of Minister of Internal Affairs, 8 October 1912. *Appendices to the Journals of the House of Representatives*, 1912, I-12a, pages 2-4. Supporting Papers #1408-1418 at 1408-1410.
[24] Evidence of Minister of Internal Affairs, 8 October 1912. *Appendices to the Journals of the House of Representatives*, 1912, I-12a, pages 2-4. Supporting Papers #1408-1418 at 1408-1410.

> is possible; but where there is no such outlet it is a very difficult matter to deal with dairy-factory drainage. It becomes very foul and stagnates.[25]

The Director of the Livestock and Meat Division of the Department of Agriculture, a qualified veterinarian, explained:

> As regards the drainage from a dairy factory which would be put directly into a stream in a perfectly fresh state, I do not think it is likely to do any harm in the way of river-pollution. Dairy factory drainage consists very largely of water. There is only a small amount of solid matter in it. It becomes a nuisance when it is allowed to stand and putrefaction occurs. I would like also to refer to sawdust going into a stream. There has been a great deal stated at times about the injury that is done to trout on account of that, and I am of opinion that it is very detrimental to trout in the streams…. Now, as regards flax refuse, that is a matter which I think will have to be considered very carefully and very seriously. There is an enormous quantity of it which has to be got rid of every day in an ordinary flax mill, and to put the whole of that quantity, day after day, into a running stream is calculated to produce considerable pollution of the water. Naturally, of course, the extent of pollution depends upon the volume of water that is in the river, and also the force of the current in it. In a river like the Manawatu, for instance, in its lower reaches it would probably not cause any serious pollution from the point of view of detrimentally affecting the health of the stock which were drinking the water, so long as they were drinking it from the main current itself. But in a river of smaller volume, or in a river which is running over a bed which is liable to leave deposits in places, or in a river where there are liable to be some backwaters occurring, then trouble may very well happen, because the flax refuse would after getting into the water gradually undergo decomposition and be more liable to sink to the bottom, and become a sediment there; and such collections of decomposing material would be more likely to occur in backwaters of that sort, being carried in probably by eddies and so on. On the other hand, stock drinking from that river would probably find backwaters like that the most handy places for getting at the water. The injury to stock would occur through the poisonous material which is produced as a result of the process of decomposition that goes on…. It does not necessarily follow that this flax-refuse will kill them. It may simply cause a certain amount of disturbance of their digestive organs, a certain amount of indigestion, perhaps a little scouring, or put them into a condition of more or less ill health; and at any rate affect their monetary value and affect their general usefulness.[26]

The Secretary for Marine told the Committee that his principal concern was the effect that flax-mill refuse had on fish and on the silting up of harbours at river mouths:

> This material gets in their nets and clogs them, and prevents the fishermen carrying on their industry in a proper way. We took steps to prevent this by requiring the mills to put in gratings to catch the tow as it went out from the mill into the river. This was done in a good many cases with very good effect, but we find that still some of the material goes into the river and flows down and forms these banks [of refuse, sand and silt where the river meets the tide]. Then we find that the green material from the flax has had an effect upon the fish. I am not able to say that the fish die from it, but our experience is that they forsake that part of the river in which this stuff accumulates,

[25] Evidence of Director Dairy Department, 11 October 1912. *Appendices to the Journals of the House of Representatives*, 1912, I-12a, page 49. Supporting Papers #1408-1418 at 1411.
[26] Evidence of Director Livestock and Meat Division, Department of Agriculture, 15 October 1912. *Appendices to the Journals of the House of Representatives*, 1912, I-12a, page 67. Supporting Papers #1408-1418 at 1413.

> and consequently are not caught there to any extent…. The green matter is more damaging, I think, to the trout than to the sea-fish.[27]

The Chief Inspector of Fisheries had visited some of the Manawatu River flaxmills three years earlier in November 1909, and had reported seeing the effectiveness of the gratings that had been placed on outfalls[28].

The last witness heard by the Select Committee was the Chief Health Officer, the permanent head of the Department of Health. He summed up the legislative proposal as "the Pollution of Rivers Made Easy Bill", because of its lowered environmental protections. Such an approach to water quality would be contrary to his view that the predominant purpose of rivers should be to supply water for human consumption, and potability should underlie all decisions about water use. However, he acknowledged that the needs of industry also had to be recognised, "but the means of polluting [the rivers] should not be made too easy". He explained:

> No, I do not like the Bill. What is wanted: we want to protect our streams and rivers, but in so doing we do not want to unduly hamper our industries. I am of opinion that Sections 63 to 67 of the Public Health Act [1908] provide what is needed. It may be thought by this Committee, however, that some other legal provisions are necessary. There is much to be said in favour of admitting to rivers effluents only of a certain standard. Such standardization should be considered under the following headings, and be proportionate to (1) the possibility of water ever being required for public purposes – a public water supply; (2) the locality and nature of the industry; (3) the volume, velocity and general nature of the stream.

He gave one example about how the Public Health Act was administered:

> We insist upon the drainage into our rivers from public septic tanks and so forth being of a certain standard, but in times of flood we allow the authorities controlling septic tanks to open them in order to dispose of their sludge.[29]

The Bill does not seem to have been considered further after its report back by the Select Committee[30]; the reasons for this have not been researched for this report. The common law about water pollution damage therefore continued to prevail.

Both the examples were concerned with the extraction and processing of New Zealand's natural resources, where it was being argued by the Crown that the particular circumstances

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[27] Evidence of Secretary for Marine, 15 October 1912. *Appendices to the Journals of the House of Representatives*, 1912, I-12a, page 61. Supporting Papers #1408-1418 at 1412.

[28] Chief Inspector of Fisheries to Secretary for Marine, 9 December 1909. Marine Head Office file 2/10/29. Supporting Papers #489-491.

[29] Evidence of Chief Health Officer, 22 October 1912. *Appendices to the Journals of the House of Representatives*, 1912, I-12a, pages 78-82. Supporting Papers #1408-1418 at 1414-1418.

[30] C Knight, *Ravaged beauty: an environmental history of the Manawatu*, Dunmore Publishing Ltd, 2014, pages 156-157.
M Roche, *Land and water: water and soil conservation and central Government in New Zealand 1941-1988*, Historical Branch Department of Internal Affairs, 1994, pages 28-30.

of New Zealand differed from those experienced in Britain, thereby justifying a departure from English law. Statute law tends to be written to override common law when the application of English standards is considered to be inconvenient in the New Zealand context, though another scenario can be where the British have passed a statute overriding the common law and New Zealand then decides to follow suit[31]. The extent of statute law relating to waterways, covered in the next section, shows that New Zealand politicians frequently identified situations where the English common law would be an impediment to the development of the country.

The waterways-related English common law presumption with perhaps the most lasting impact in New Zealand, in that it has never been entirely overturned by statute law, is the ad medium filum aquae presumption about the status of riverbeds and the beds of small lakes. This presumes that a riparian (riverbank / lakeshore) titleholder has rights to the riverbed / lakebed to its centre line[32]. The presumption is a branch of land law, with a riverbed / lakebed being treated as land that happens to be covered by water. The changing and often unstable nature of waterways means that land law in a water-affected environment can be complex. Land law is predicated on certainty, predictability and conformity with established rules. However, the static nature of property boundaries clashes with the concept of a constantly changing physical environment. The common law around erosion, accretion and avulsion has been developed as a response, albeit still rather ponderous, to these dynamic circumstances.

Maori customary law can also recognise fixed boundaries – including the erection of pou, and the identification of significant trees as boundary markers – though often not to the same degree of specificity as has come to be incorporated into the European survey tradition. While Maori were capable of defining a boundary very specifically if required – such as in maara (gardens) – the communal nature of Maori society did not require such detailed boundary-drawing as frequently as does individualistic European society.

The history of European settlement has caused some additional difficulties. The first surveyed boundaries were laid down when both Crown officials (of the Colonial Government and the Provincial Governments) and surveyors were least knowledgeable about local conditions. Yet those first surveyed boundaries, such as defining the location of riverbanks,

[31] This happened with the passing of the Water and Soil Conservation Act 1967 in New Zealand after the Water Resources Act 1963 had been enacted in Britain. This meant there would be no contribution coming from British courts in the further development of case law.

[32] The application of the presumption to lakes is uncertain, with the degree of uncertainty increasing with the size of the lake. The Native Land Court has held that lakes such as Omapere and Waikaremoana have their own title and are not subject to the presumption.

set the benchmark around which further action revolved. Among the earliest surveys were Maori land blocks, where a surveyor was attempting to express in land law terms the rangatiratanga customary authority held over a particular locality.

The ad medium filum aquae presumption can be rebutted or held not to be applicable by particular circumstances, such as navigability of the river, or a clear intention to exclude the rights to the riverbed / lakebed. The riparian title must clearly indicate that the river or lake is the title boundary; a boundary demarcated by a series of surveyed straight lines close to the bank does not constitute a bank of a river. Whether a title has the river bank or lake edge as a boundary was most definitively demonstrated in historical titles when there was a blue wash line alongside the river or lake boundary on the original title document.

Maori custom has some similarities to the English approach. Hapu holding rangatiratanga for riparian land could be expected to be able to exercise that authority on and in the river as well. If there were different hapu on either bank their whakapapa relationships to one another would govern the sharing of the river. Likewise whakapapa links would determine who could navigate up or down the river. Special circumstances such as ownership of or authority over eel weirs would take precedence over more general rangatira authority.

There were few opportunities for Maori custom to be expressed. With the Crown becoming a major riparian landowner at an early date, and with the thrust of the Native Land Court to individualise land ownership to the exclusion of hapu rights of ownership, a collective Maori viewpoint can only rarely be discerned in the historical record.

That does not mean that Maori were unaffected, more that they did not express their concerns in the context of being harmed by the application of the common law. However, harm was done. Maori were the owners of wetlands in the lower Taonui Stream catchment that were of importance to them as a food source. When upstream European landowners wanted to drain their properties in the 1890s, the damage that would be done and the harm that would be caused to downstream Maori was sidestepped by the taking of the downstream Maori Land under the Public Works Act. There was a similar scenario at Lake Kaikokopu in 1909.

2.4.3 Statutory fragmentation

Any analysis looking at the development of statute law for waterways has to start with a look at the mining legislation, as it was gold mining in the early days of the colony that first focused attention on the rights to use water. Water was needed for sluicing, in the stamping

batteries, and to dispose of pollutants. When a 'rush' was on, more water was needed than was available. Regulation of the mining industry was necessary to overcome the anything-goes approach, and this included regulation of the industry's use of water. The Crown took on the regulatory responsibility, thereby breaking with the common law. The mining legislation, starting with the Goldfields Act 1866, made provision for the licensing of water use in areas specified as Mining Districts so that water could be allocated more fairly. The mining legislation was effectively the forerunner for development by the Crown of a belief that it had to be actively involved in the administration of water and waterways.

The development of statute law in New Zealand received a fillip when the Provincial Government tier of governance was abolished in 1876. Instantly much of the legislation that had been developed up to then was no longer fit for purpose, and a new set of statutes was required that would reflect the responsibilities of the new Government Departments that were being created or restructured. This saw the passing of a Public Works Act in 1876 (providing for a Public Works Department), a Land Act in 1877 (providing for a Department of Lands), and a Harbours Act in 1878 (providing for a Marine Department), among others. A Counties Act in 1876 provided for a local tier of governance. The drafting for all these statutes had the benefit of some 20-30 years of administrative practice that could be called upon, and as a result became a foundation framework on which later statutes could build.

Developed in the same era, though in a slightly different timeframe, was the Land Transfer Act 1870, which offered a Government-guaranteed certainty of title ownership and (to a lesser extent[33]) certainty of title boundaries. The titles system, which operated alongside and over time has almost completely replaced the deeds registration system, and the associated survey system that was developed in support, has placed a high degree of reliance on the accuracy of boundary definition. This has impacted on the ad medium filum aquae presumption, with certain criteria required to be met in order to substantiate a claim to accretion. One of these criteria is that an application for inclusion of riverbed accretion in a title has to be accompanied by two affidavits from persons with longstanding knowledge of the locality who can testify that the accretion land has ceased to be an active riverbed by a slow and imperceptible process. If that has not been the case then the former riverbed land would not comply with the definition of accretion and would instead be termed avulsion in titles parlance.

[33] A title could be issued that was "limited as to parcels", meaning the Government guarantee did not extend to guarantee the location of all boundaries. Such titles were intended as interim measures until the limitation could be lifted.

There were two significant impacts of the mid 1870s legislation. The first was the absence of references to Te Tiriti. The courts decided in 1877 that the Treaty was nullity if it was not incorporated into legislation. The rash of new legislation at that time provided the opportunity to include the Treaty, yet the opportunity was not taken up. Only one piece of legislation, recognising Maori fishing rights[34], was passed in that period which offered any specific protection for Maori interests in waterways. The failure to recognise Te Tiriti in New Zealand statute law then became embedded as the norm until the late 1980s.

The other significant impact of the mid 1870s legislation, which had consequences for the next 115 years until the passing of the Resource Management Act 1991, was that the Crown did not apply the waterways-related powers that it was given by statute in an integrated or comprehensive fashion. Instead multiple pieces of legislation were enacted, each of which operated as a complete and autonomous system of governance and management for particular parts of the waterway environment. The silo effect that this created spread to the thinking of Crown officials. They were competing with the views of other officials even as they were administering their own statutory powers and providing a service to the public and the country.

The parts of the waterway environment that became bound by statute varied over time, with a generally increasing spread of legislative powers. In the nineteenth century the emphasis was on the development of road and railway networks, and on making it possible for the new European settlers to make the best and fullest use of the lands they had been granted. So the Public Works Department was concerned with the bridging of waterways while the Marine Department was concerned with the development of ports. Railway development and land development were pushed ahead with simultaneously, as exemplified by the concessions granted to the Wellington and Manawatu Railway Company.

The 1880s saw the development of provisions to allow for the draining of wetlands to create farmland. Initially the new settlers had been left to their own devices to drain their own properties. However, greater benefits for farming could arise if settlers banded together to develop drainage schemes that were spread across all properties in any given locality. The Counties Act 1886[35] provided that County Councils could set up Drainage Districts and impose a special rate for the funding of communal drainage works. The Act was enabling ("the Council may …") rather than requiring ("the Council shall …"), and when it was decided

[34] Fish Protection Act 1877.
[35] Sections 268-277 Counties Act 1886, successively replaced by Sections 166-179 Counties Act 1908, Sections 167-182 Counties Act 1920, and Sections 225-238 Counties Act 1956.

that the County Councils were being too slow to take up the opportunity provided, an alternative was created. The Land Drainage Act 1893 (and its successor the Land Drainage Act 1908) provided for independent Drainage Boards to be established as a separate tier of local government with their own rating powers. Both opportunities (County Council Drainage Districts and independent Drainage Boards) were taken up in Porirua ki Manawatu Inquiry District.

Of equal concern to settlers as the removal of water from their farmlands was the threat that their lands could be inundated by flooding. As with drainage this was initially thought of by central government as being a local government issue. The River Boards Act 1884 (and its successor the River Boards Act 1908) enabled landowners of a river catchment or part of a river catchment to form a River Board for the development of measures such as river cuts and stopbanks that would prevent rivers overtopping their banks and flooding surrounding lands. Notwithstanding the availability of the legislation from an early date, it was not until the 1920s before the Manawatu-Oroua River Board and the Otaki River Board, the two River Boards in the Inquiry District, were established.

The year 1903 saw a two-pronged substitution of statute law for parts of the common law of waterways. First the use of water for hydro-electric power generation was vested in the Crown by the Water-power Act. Second the beds of navigable rivers were vested in the Crown by the Coal-mines Act Amendment Act. This vesting supplanted the ad medium filum aquae common law rights of riparian owners to riverbeds, and has resulted in the Crown closely scrutinising the extent to which rivers can be deemed to be navigable, and their beds thereby asserted to be the property of the Crown.

As the ambitions of landowners gradually grew larger to effect change first at an individual level, then to a local community level, and beyond to a regional level, it was clear that local governance could not keep up. The more money that needed to be raised, the more that arguments developed about who should pay. However, when the local authorities turned to central government for assistance, central government politicians were reluctant to help. A request by Otaki River Board in July 1924 brought the following response from Gordon Coates, the Minister of Public Works at the time, which reflects the political unwillingness to intervene financially:

> I personally am absolutely against anything like river protection. I know the position is very serious, but the moment we accept liabilities for river protection we accept liabilities for about £4,000,000 or £5,000,000. Not so much in the North Island, but the South Island rivers are out of the question…. It would absorb more than any other work, either roads or railways. Where public interests in the direct sense are involved,

> I must act, but where private individuals are concerned I will not accept any liability whatever. The attitude the Government have taken up is this, that if River Boards are formed they must get their own advice and act accordingly, but where public works are affected the Engineers must make their report which we have to act upon.[36]

The standoff between local Boards and central Government continued until the passing of the Soil Conservation and Rivers Control Act 1941. With the election of the Labour Government in 1936, there came a new willingness to provide central government direction and financial support, apparent in practice in the Inquiry District even before 1941 with approval for the construction by central Government of the Whirokino Cut on the lower Manawatu River. The 1941 Act established an administrative structure where a national organisation distributed central government funds, usually on the basis of a subsidy to supplement locally-raised rates. The recipients of the funds and rates were regional Catchment Boards, which were hybrid organisations composed of both central Government members and locally elected representatives.

Thus from the days of the inception of Drainage Boards through to and including the days of the Catchment Boards, waterways were managed with a very limited range of objectives, to be used primarily as drains and flood channels which did not cause flooding of riparian lands. Management was in the hands of engineers who were directed by legislation to respond to the needs of the farming community in particular. In addition the farming community, as ratepayers, had a strong say in what drainage and river control activities were carried out. Where Maori Land was leased, it was the lessee rather than the Maori owners who was the ratepayer. Maori were not present in most districts in the country in sufficient numbers to influence local body election results. With Maori almost locked out for 60-70 years, attitudes became entrenched. Maori believed that there was little that they could do to change things, and administrators and managers became set in their ways, which did not include any requirement to consult with or consider Maori interests.

The next aspect of waterways brought under Crown statutory control was the waters themselves. The Water and Soil Conservation Act 1967 declared that all rights to the use of natural water (with a few minor exceptions) were vested in the Crown. By adopting this approach, it had the effect of sweeping aside whatever might have remained of the common law about water. The only pieces of the common law that continued to be recognised (the minor exceptions), and which were codified in the statute (thereby losing their common law status), were a right to use natural water for personal use, for watering stock, and for

[36] Notes of meeting between Minister of Public Works and Otaki River Board members, 21 July 1924. Works and Development Head Office file 48/106. Supporting Papers #636-638.

firefighting purposes. Maori were not consulted and did not submit on the proposed legislation in 1967, and there was no Treaty-context analysis at the time the legislation was enacted. Administration of the Crown-vested right was delegated to Regional Water Boards, which were the existing Catchment Boards with expanded responsibilities. Because of the wider spread of responsibilities that Catchment Boards had for waterways from 1967 (augmented by additional responsibilities for controlling pollution of waters in 1971), the Boards developed a progressively more integrated approach during the late 1970s and the 1980s, examining water allocation in addition to consenting water users, and recreation use in addition to flood protection. Despite the widened range of values that Catchment Boards were required to address as a result of an amendment to the 1967 Act in 1981, tikanga Maori was not one of those values. It was not until a Court case in 1987[37] that case law established that Maori spiritual values were a relevant consideration in water management and could be taken into account in the process of finding a balance between competing values; this provided an opening for Maori to have an influence.

The era of a multiplicity of laws covering waterways came to an end in 1991, when many of the Crown's statutory responsibilities for waterways were consolidated in the Resource Management Act. In addition a wider range of those responsibilities than previously was delegated to Regional Councils. The Act acknowledges tangata whenua for the first time, establishing that the connection of Maori to their ancestral lands, waters and taonga is a matter of national importance that has to be recognised and provided for, and identifying a kaitiakitanga interest (a lesser concept than tino rangatiratanga) in waterways that requires particular regard. However, as a successor to the earlier legislation, the Crown's assumed authority and control of waterways, built up over some 120 years, has not been altered, and the Act is written as though the Crown, and the local authorities acting under delegation, have sole responsibility and authority. As a result the ability for tangata whenua to become involved in Resource Management Act processes as a partner with the Regional Council has not been successful. Attempts to provide for greater involvement have generally come to nothing, and Maori have tended to be treated as a sub-group of public submitters, consulted during some steps in the resource planning and consenting processes and ignored during others.

[37] *Huakina Development Trust v Waikato Valley Authority*, [1987] 2 NZLR 188.

3. Mechanisms for loss of ownership and control

What were the main mechanisms by which Maori of this district allegedly lost ownership and control of their waterways of importance, (such as by purchase of riparian lands, public works takings, destruction or loss from infrastructure, roads along river banks, rights to take shingle / gravel) and land purchasing and partitioning where this is not covered in commissioned reports for this inquiry?

3.1 Introduction

This chapter looks at:

- The initial large-scale purchases by the Crown
- Further purchasing by the Crown from the 1870s onwards, of land in Native Land Court title rather than in native (or customary) title
- Native Land Court partitioning
- Purchasing by private individuals
- Leasing of Maori Land
- Crown purchasing in the twentieth century.

These are the mechanisms where direct claims to ownership and control of waterways, both large and small, became lost. The mechanisms of loss of authority by Maori, because the Crown assumed that authority by statute without providing for any ongoing partnership or any 'space' for Maori authority to continue to have effect, are covered in the next chapter.

3.2 The early Crown purchases

Four large-scale Crown purchases are discussed:

- Rangitikei-Turakina Purchase, 1849
- Awahou Purchase, 1858
- Te Ahuaturanga Purchase, 1864
- Rangitikei-Manawatu Purchase, 1866

Each of these purchases had rivers as boundaries, each included smaller streams within the purchase boundaries, and some had lakes included within the purchase boundaries.

The early Crown purchases provided ample scope for each party to the negotiations to believe that different things had been discussed and agreed upon. Each party had different starting points, and a different lens through which they viewed the world. As Wood et al have commented:

> Porirua ki Manawatu was resource rich but Maori and Pakeha perceptions of its bounty varied greatly. The Manawatu lowlands, for example, are among the most fertile in Aotearoa New Zealand. For Maori the swamps and forests provided a rich diversity of mahinga kai. For Pakeha the swamps and forest were 'waste lands' which needed human labour to convert them into 'a pastoral landscape stocked with sheep and cattle, or sown with crops, producing meat, wool, milk, and grains.' [quoted from C Knight, *Ravaged beauty: an environmental history of the Manawatu*, 2014]
>
> Lagoons, estuaries, and lakes contained a diversity of flora and fauna. They were seen in positive ways by Maori, another diversity of seasonal mahinga kai. Not until recent decades has their ecology been understood by Pakeha. For most of the period under study, these water bodies were negative things for Pakeha: places that might be drained or reclaimed, rather than used and enjoyed.
>
> Swamps were similarly perceived differently by Maori and Pakeha. Harakeke/flax was valued by both cultures and was cut by Maori as a point of entry into the money economy. The swamps, however, were much more than flax: for Maori they provided a diversity of habitats and a richness of mahinga kai, matched only by the estuaries. For Pakeha, if the economic returns from flax diminished, the swamps could be drained, and the land converted to pasture.
>
> The coastal sand country, from Manawatu to Paekakariki, was important for Maori, and for the first round of Pakeha settlers. For Maori it provided an unrivalled variety of habitats: sandy beaches, swamps, lakes, lagoons, land that could be cleared of forest and cultivated, and a forest margin that attracted large and small birds. The climate was mild and mahinga kai were abundant. By the time the first Pakeha settlers arrived, it was clear of forest and suitable for running sheep and cattle. It was the primary locus of Maori and settler encounter in the 1840s, 1850s, and 1860s.[38]

It is one thing to examine a purchase deed for its references to waterways, which was subsequently the Crown's favoured method for analysing what had been purchased. It is quite another thing to gain an understanding of what matters relevant to waterways were being discussed during purchase negotiations. Purchases were frequently 'sold' to Maori on the basis of gains and benefits that they would receive, such as increased use of a waterway as a highway (in the absence of roads that were yet to be developed), increased trading opportunities, and security of tenure of reserves. The negotiations therefore involved side-arrangements which amplify or put a particular interpretation on the meaning of the deeds. The purchase deed documents were drawn up by the Crown to suit its own needs and were relatively one-dimensional, while the conversations and negotiations between Crown officials and Maori were more multi-dimensional. However, the wording of purchase deeds can be a starting point for consideration of the understandings held by each party, so it is necessary to examine the terms of each deed to determine what it was saying or might be implying about waterways and future waterways control. The key context for such an analysis is that

[38] V Wood et al, *Porirua ki Manawatu Inquiry District: environmental and natural resource issues report*, September 2017, Wai 2200 #A196, pages 46-47.

a purchase deed is not necessarily the full story about what was arranged between the Crown and Maori.

Whether the Crown negotiated with all the hapu 'owners' of the lands it was acquiring, and thereby was entitled to validly assert that it had extinguished native title in its entirety, is a significant matter under claim in the Porirua ki Manawatu Inquiry, and has been discussed by historians in other technical evidence. Such a fundamental issue is not the subject of this report. The purchase negotiations have been examined in greater depth by other historians such as Anderson et al[39] and Husbands[40]. Their opinions and interpretations are deferred to.

3.2.1 Rangitikei-Turakina Purchase

This purchase deed[41], dated May 1849, stated that Ngati Apa

> *Do finally and unreservedly consent … to entirely hand over all these lands of ours*
> O era atu wahi hoki e tino wakaae ana mo matou, mo o matou kia tino tukua rawatia atu nga whenua katoa o matou e tuhituhia nei nga rohe
>
> *The boundaries of the land which we now give up are these. The river of Rangitikei on the one side, the sea on the other, on one of the other sides the river of Turakina*
> [Bounded by] ko te awa o Rangitikei ki tetahi taha, ko te moana ki tetahi taha, ko te awa o Turakina ki tetahi taha haere tonu
>
> *Now we have met in Council, have deliberated upon, bidden farewell to, taken final leave of, and altogether given up the whole of the lands within these boundaries (which have just been recited by Mr McLean, who has conducted all the matters attending this meeting of us and the Europeans), together with all rivers and streams, trees and other productions of said land, to be a permanent possession of the Europeans for ever.*
> Na kua oti i a matou te Komiti, te hurihuri, te poroporoake, te mihi, te tangi, te tino tuku rawa atu i nga whenua katoa kei roto i nga rohe kua oti nei i a Te Makarini te korero, te wakahaere i runga i tenei huihuinga o matou, o nga pakeha hoki, me nga awa, me nga wai, me nga rakau, me nga aha noa iho o aua whenua, hei taonga pumau tonu iho mo nga pakeha ake tonu atu.

Among the reserves provided in the deed were places where fishing could continue:

> *First. Mr McLean consents to our catching eels in the lakes which exist in localities which have not been (are not) drained by the Europeans, that is to say in those large lakes which we have been accustomed to catch eels in formerly.*

[39] R Anderson et al, *Crown action and Maori response, land and politics, 1840-1900*, June 2018, Wai 2200 #A201.
[40] P Husbands, *Maori aspirations, Crown response and reserves, 1840-2000*, November 2018, Wai 2200 #A213.
[41] Crown Purchase Deed Wellington 16. Not included in Supporting Papers.
HH Turton, *Maori deeds of land purchases in the North Island of New Zealand*, Volume 2, 1878, pages 210-214. Supporting Papers #1381-1385.

> Ko te tuatahi o wakaae ana a Te Makarini kia mahia mai e matou nga tuna o nga roto i nga wahi katoa ekore e pakoho i nga pakeha ara i nga roto nunui ano i matau ai matou ki te mahi tuna.

Another reserve was for an eel fishery:

> *Sixth. That piece at Otukapo which was recommended by Te Watarauhia (teacher) to be kept as an eel fishing station containing fifty (50) acres.*
> Ko te tuaono. Ko te wahi i karangatia e te Watarauhia kai wakaako ki Otukapo e rima tekau takitahi (50) nga eka o taua wahi hei nohoanga mahinga tuna mo nga tangata Maori.

It is noteworthy that as part of the earliest Crown purchase in the Inquiry District and in the wider region, there is a recognition that the European settlers would change the countryside, in this case by drainage works at the lakes where eels were caught. By being included in the deed, the matter must have been discussed during the negotiations, though to what extent is unknown. While speculation, it is quite conceivable that the environmental changes that would follow after a purchase would be just as well understood by all parties some 10 to 15 years later when other large-scale purchases in the Inquiry District were being negotiated.

Husbands has remarked how the choice of the Rangitikei River as a boundary of this purchase was a deliberate choice promoted by the Crown's negotiator:

> In his discussions with Ngati Apa, McLean made clear his preference for a reserve that was defined by indisputable natural boundaries. Sketching the Rangitikei and Turakina Rivers on the ground during the Turakina hui of 23 March, he appealed to the tribe 'to let these rivers be our only boundaries from the sea to the interior to preserve peace between us' [quoted from McLean's diary]. As McLean saw it, natural features such as rivers and streams reduced the risk of disputes, not only between Māori and the Crown, but also between Māori and European settlers.[42]

Drawing attention to this particular advantage, however, obscures the perhaps more potent reason that rivalries between iwi also played a part. As Anderson has said:

> At the time, Ngati Raukawa acknowledged Ngati Apa's authority to give land north of the Rangitikei River into the hands of settlers, but not south of it. The existence of Ngati Apa interests south of the river was also acknowledged but not their wider authority to control it. McLean wisely left that matter largely to one side during his negotiations.[43]

Therefore, both Ngati Apa and Ngati Raukawa asserted rights to the lower reaches of the Rangitikei River, though only Ngati Apa's interests in the river had been affected, in some undescribed and inconclusive fashion, by the purchase of land on one bank of the river. The

[42] P Husbands, *Maori aspirations, Crown response and reserves, 1840-2000*, November 2018, Wai 2200 #A213, page 17.
[43] R Anderson et al, *Crown action and Maori response, land and politics, 1840-1900*, June 2018, Wai 2200 #A201, page 118.

rights claimed by Ngati Raukawa to the Rangitikei River could not be said to have been affected by the Rangitikei-Turakina Purchase in 1849.

3.2.2 Awahou Purchase

This purchase involved two purchase deeds, one dated November 1858[44] and a second dated May 1859[45]. The first deed referred to:

> *The binding assent of us the Chiefs and people of Ngatiraukawa … entirely to surrender a certain portion of our land,*
> Tino whakaae pono na matou nga Rangatira me nga tangata o Ngatiraukawa … i muri iho i a matou kia tino tukua rawatia tetahi wahi o to matou kainga,

> *[The waterway part of the boundary proceeds] in a straight line to the inland side of the lake Roto Totara; it comes out again at Pakengahau and falls into the course of the Manawatu, then down the Manawatu to its mouth, where it turns and follows the coast line to Kai Iwi*
> [The waterway part of the boundary proceeds] tika tonu atu ki te taha ki roto o te Roto Ototara ka puta ki Pukengahau ka makere ki roto ki Manawatu ka ahu whakararo i roto o Manawatu, a te puaa katahi ka haere i te tai ka tutaki ki Kai Iwi

The second deed was drawn up after certain reserves were agreed to. It repeated the "binding assent … entirely to surrender" the land, and added:

> *We have deliberately considered this matter, bidden farewell to and finally disposed of this possession of ours – its rivers, streams, lakes, waters, trees, grass, stones, precipices, good and bad places, and everything upon and under the earth together with all its productions, we have finally disposed beneath this sun now shining to be a lasting possession from us to [the Crown].*
> Heoi kua oti i a matou te hurihuri te poroporoake te tino tuku rawa i tenei kainga o matou, me ona awa, me ona manga, me ona roto, me ona wai, me ona rakau, me ona otaota, me ona kohatu, me ona wahi pari, me ona wahi ataahua, me ona wahi kino, me nga mea katoa ki runga ranei o te whenua, ka oti rawa i a matou te tino tuku rawa atu i tenei ra e witi nei he whenua pumau na matou ki [the Crown].

3.2.3 Te Ahuaturanga Purchase

This purchase deed[46], drawn up in July 1864, referred to the sale by Maori of

> *all that piece of our land situated on both sides of the Manawatu River and named Te Ahuaturanga …*
> mo taua wahi whenua katoa kei tetahi taha kei tetahi taha o te awa Manawatu te ingoa ko Te Ahuaturanga …

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[44] Crown Purchase Deed Wellington 14. Not included in Supporting Papers.
HH Turton, *Maori deeds of land purchases in the North Island of New Zealand*, Volume 2, 1878, pages 173-174. Supporting Papers #1374-1375.
[45] Crown Purchase Deed Wellington 14. Not included in Supporting Papers.
HH Turton, *Maori deeds of land purchases in the North Island of New Zealand*, Volume 2, 1878, pages 174-177. Supporting Papers #1375-1378.
[46] Crown Purchase Deed Wellington 13. Not included in Supporting Papers.
HH Turton, *Maori deeds of land purchases in the North Island of New Zealand*, Volume 2, 1878, pages 177-179. Supporting Papers #1378-1380.

with its trees, minerals, waters, rivers, lakes, streams, and all appertaining to the said land or beneath the surface of the said land, and all our right, title, claim and interest whatsoever thereon.
Kei runga i tenei pukapuka tuku whenua e mau ana nga rakau katoa, nga kowhatu, nga wai, nga awa, nga roto, nga awa ririki, me nga mea katoa o taua whenua i runga i raro ranei o te mata o taua whenua me ta matou tikanga take paanga atu ranei ki taua wahi whenua.

These are the boundaries of the land; starting from Te Weki and Rotopiko on the Manawatu River, and going in a south-east direction across the Makurerua Swamp to Mangawharawhara, [then up and along the ridge of the Tararua and Ruahine Ranges] to a gorge on the Pohangina River called Te Anaowiri, thence to the river Oroua to a place called Te Matoi, and thence follows the downward course of the Oroua River to a place called Te Rua Puha, about ten miles by the winding river course above Te Awahuri, the highest native settlement where the Rangitikei and Ahuriri path crosses. From Te Rua Puha the line strikes inland in a southerly direction to Waikuku and on by Te Waiti and Te Puka to the starting point at Te Weki on the River Manawatu.
Ko nga rohe enei o taua whenua, ki timata i Te Weki ka rere Rotopiko ka rere i te awa o Manawatu, ka rere whaka te tonga rawhiti ka whiti te repo Makurerua o Mangawharawhara, [then up and along the ridge of the Tararua and Ruahine Ranges] ki te Apiti i te awa o Pohangina ko te ingoa ko te awa o wiri ka haere tonu te awa o Oroua a Matoi atu ka reretonu whakararo i roto i te awa o Oroua ka rere ki titahi kainga te ingoa kote rua puha tekau pea maero ki te whai haere i nga pikonga o te awa a te Awahuri te kainga tenei o tika ai te ara Rangitikei ki Ahuriri kei Te Rua Puha ki rere te rohe whaka te tonga ki uta ki te Waikuku ki Te Waiti a Te Puka ka ahu atu ki te timatatanga mai o te rohe i Te Weki i te awa o Manawatu.

This description excludes the Aorangi block along the eastern side of the Oroua River from the purchase.

The extinguishment of Native title over the Ahuaturanga block was notified in the *Gazette* in July 1866[47]. The notice referred to "the block of land" over which title had been extinguished, and described "the boundaries of the land" in the same manner as the deed itself. However, the block description was not as detailed as the deed, because the so-called incidents or appurtenances to the land such as water, rivers, lakes and streams were not referred to.

3.2.4 Rangitikei-Manawatu Purchase

This deed[48], dated December 1865, stated that the Maori signatories

Parted with and for ever transferred … all that piece of land
Tino hoko, tino hoatu, tino tuku rawa atu, he whakaoti atu …ko taua wahi whenua katoa

[47] *New Zealand Gazette* 1866 page 291. Supporting Papers #1427.
Wellington Provincial Gazette 1866 page 124. Supporting Papers #1424.
[48] Crown Purchase Deed Wellington 12. Not included in Supporting Papers.
HH Turton, *Maori deeds of land purchases in the North Island of New Zealand*, Volume 2, 1878, pages 214-230. Supporting Papers #1385-1401.

Situated between the Manawatu and Rangitikei Rivers … with its rivers, trees, minerals, lakes, streams, waters, and all appertaining to the said land or beneath the surface of the said land, and all our right, title, claims and interests therein.
I waenganui o nga awa o Manawatu o Rangitikei … ko nga rohe enei e mau i raro i te pukapuka nei, me ona rakau, me ona kowhatu, me ona wai, me ona awanui, me ona roto, me ona awa ririki, me nga mea katoa o taua whenua, o runga ranei o raro ranei i te mata o te whenua, me o matou tikanga, me o matou take, me o matou paanga katoatanga ke taua wahi,

The western boundary is the sea, the northern boundary is the Rangitikei River to the mouth of the Waitapu Creek, and the southern boundary commences at the mouth of the Kai Iwi Creek, and follows the boundary of the land already sold to the Queen till it reaches Takingahau on the Manawatu River. These are the other boundaries, the River Manawatu from Takingahau to the mouth of the Oroua Stream, then the Oroua Stream as far as Te Umutoi, which is the north western boundary of the Upper Manawatu Block already sold to the Queen, thence the boundary runs in a direct line to the mouth of the Waitapu Creek, … along the course of the Rangitikei River to its mouth, and along the sea coast to Kai Iwi the starting point.
Ko nga rohe enei o te whenua kua hokona nei e matou, ko te rohe ki waho ki te hauauru ko te moana nui, ko te rohe ki raro ko Rangitikei kei te puau o Waitapu te mutunga mai. Ko te rohe ki runga, ka timata i te puau o Kai Iwi, ka haere tonu i te rohe o te whenua kua hokona i mua ki a te Kuini, a tae noa ki Takingahau ko te awa tenei o Manawatu. Ko nga rohe ano tenei ka haere i roto o Manawatu a te puau o Oroua, ka tomo i konei, ka rere i roto i te awa a tae noa ki te Umutoi, ko te pito whakamutunga mai tena o te whenua kua riro i a te Kuini (na Rangitane e tuku) ka whati i konei te rohe ka rere tika tonu a te puau o Waitapu, ka tomo i Rangitikei. Heoi ano ka rere tonu i te awa o Rangitikei e ahu ana ki te moana, ka puta ki waho ki te tai, ka rere tonu i te takutai, a tae noa atu ki Kai Iwi.

Compared to the three earlier purchases, this purchase took place after the New Zealand War had been fought elsewhere in the country. Emboldened by its successes in the War, the Crown had sent a message that it would not brook any challenges to its authority. In addition the Home Government in Britain had retreated from its earlier policy of active engagement in New Zealand affairs, and the Colonial Government in Wellington, with a voracious appetite for land for European settlement, was firmly in the driver's seat.

The manner in which land adjacent to inland waterways became reserves reflected the lengthy dealings by a variety of different Crown officials (including Court judges) to define and reach agreement upon suitable reserves. The history of reserves provision is characterised by a parsimonious attitude on the part of the Crown, seeking to minimise the reduction of land available for settlement, and provide as few reserves as it could get away with in order to secure a successful conclusion of the purchase. Not included in the mentions below are reserves on the banks of rivers awarded because they were the sites of kainga; the rivers were a natural attractant for settlement because of the foods they could provide and because the waterways were often highways in the absence of roads:

- February 1867: Featherston agrees to allow Ngati Apa exclusive rights to the eel fishery at Pukepuke and Kaikokopu lakes[49]; no mention is made of any land being provided as reserves at these locations, and Featherston made no similar promises of continuing eel-fishing rights to other sellers.
- 1868: Ngati Tukorehe and Ngati Wehi Wehi (non-sellers) challenge in the Native Land Court the granting of exclusive rights of fishing at Pukepuke and Kaikokopu[50].
- September 1869: the Court rejects the claims of Ngati Tukorehe and Ngati Wehi Wehi and endorses the awards made by Featherston to Ngati Apa[51].
- November 1870: eel fishing reserves feature prominently among additional reserves agreed to by McLean, with land for this purpose provided at Mangawhatu, Rotonuiahau, Tauranganui, Waipunake, Oao, Kaikokopu and Koputara[52].
- March 1872: problems identified with surveying eel reserves[53].
- February 1877: Booth agrees to an enlarged reserve at Koputara[54].

The extinguishment of native title to the Rangitikei-Manawatu Block was notified in October 1869[55], one month after the Native Land Court had completed its inquiry. Specifically excluded from the extinguishment were the four blocks awarded by the Native Land Court. This notice explained the legal status of the purchase, as the Crown perceived it. What the Crown had acquired title to was all of the Rangitikei-Manawatu purchase area except for the lands to which title had been awarded by the Native Land Court. The reserves agreed to in the 1870s were provided out of the Crown's estate, and were given Crown Grant titles. In being granted by the Crown, the reserves were a return of land to specified Maori owners that were granted on the Crown's terms.

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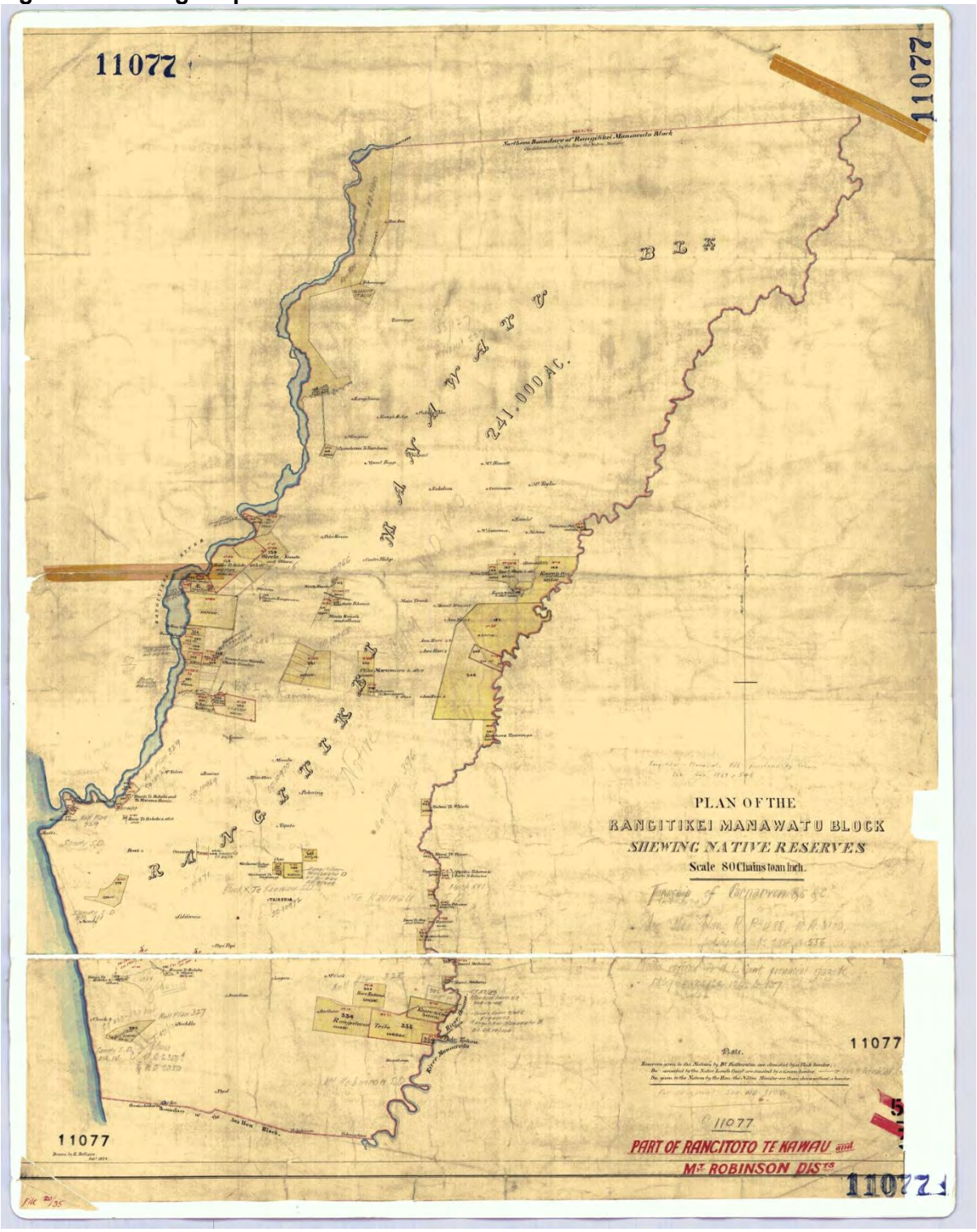
[49] Memorandum of Agreement with the Ngatiapa as to Reserves, 11 February 1867, referred to in P Husbands, *Maori aspirations, Crown response and reserves, 1840-2000*, November 2018, Wai 2200 #A213, page 69.
[50] P Husbands, *Maori aspirations, Crown response and reserves, 1840-2000*, November 2018, Wai 2200 #A213, page 70.
[51] P Husbands, *Maori aspirations, Crown response and reserves, 1840-2000*, November 2018, Wai 2200 #A213, page 70.
[52] P Husbands, *Maori aspirations, Crown response and reserves, 1840-2000*, November 2018, Wai 2200 #A213, pages 107-108.
[53] P Husbands, *Maori aspirations, Crown response and reserves, 1840-2000*, November 2018, Wai 2200 #A213, pages 140-141. Husbands relies on:
(1) District Surveyor to Commissioner of Crown Lands Wellington, 28 March 1872, attached to Commissioner of Crown Lands Wellington to Wellington Provincial Superintendent 4 April 1872. Wai 2200 #A159, Volume 22 MA13/75a, papers 42-58.
(2) A McDonald, Bulls, to Wellington Provincial Superintendent, 25 March 1872. Wai 2200 #A159, Volume 22 MA 13/75a, papers 489-491.
[54] P Husbands, *Maori aspirations, Crown response and reserves, 1840-2000*, November 2018, Wai 2200 #A213, pages 172-174.
[55] *New Zealand Gazette* 1869 pages 544-545. Supporting Papers #1428-1429.
Wellington Provincial Gazette 1869 page 181. Supporting Papers #1425.

Figure 1: Wellington plan SO 11077



3.2.5 Crown understandings of the early large-scale Crown purchases

Given that one of the purposes of the early Crown purchases, before Native Land Court titles had become an established feature for the identification of Maori ownership rights, was to extinguish native title, the Crown would have thought that the wording of its purchase deeds had done a thorough job. The inclusion of incidents or appurtenances to land such as rivers, streams, lakes and water would have seemed to be a comprehensive description for the conveyance[56] of waterway rights as well as the land from Maori to the Crown. Of course, it was only the rights of the iwi and hapu with whom the Crown had negotiated that were conveyed. The larger the scale at which purchasing took place, the more likely it was that the Crown might have failed to negotiate with all iwi or hapu with rights to a part at least of the area being purchased. In some instances additional purchase deeds might have to be prepared and signed in recognition of hapu or iwi who had been left out of initial purchase negotiations.

Both the Awahou and Rangitikei-Manawatu Purchases were complicated by the existence of rights holders whose rights were recognised by the Crown negotiators but who were regarded as 'non-sellers'. Their rights had to be provided for in some way, or the purchases would not be absolute and could not be thought of as completed. In the case of the Awahou purchase the non-sellers were deemed (by agreement between the sellers and the Crown) to have rights to a small part only of the purchase area, which was set aside as a 'reserve' to be covered by future dealings. In the case of the Rangitikei-Manawatu purchase, the non-sellers were accommodated after endless negotiations eventually wore them down, so that they did agree to sell or they were given reserves on a personal and individual basis rather than on a communal basis. The Crown view was that it was a combination of the various purchase deeds, plus the reserves agreed to and provided, plus the confining of some residual Maori-held interests into Native Land Court awards, that in aggregate resulted in the extinguishment of native title over the land covered by each purchase.

Subsequent to each purchase, the Crown was very resistant to Maori protests that it had misinterpreted the purchase agreements or had failed to extinguish all Maori-held rights, because so much was at stake. Once it had formed the view that it had become the sole and absolute owner of each purchased block, the Crown dropped all engagement with the former owners about the acquired land, and issued guaranteed titles to third parties with full rights for those third parties to do as they liked on the land. The titles granted by the Crown

[56] In the deeds registration system applicable at the time, a 'conveyance' from one owner to another was the terminology in use. A 'transfer' from one owner to another only became recognised terminology when the land transfer registration system was established in 1870.

that had river boundaries included ad medium filum aquae presumptive rights to the adjoining riverbed.

3.2.6 Maori understandings of the early large-scale Crown purchases

For Maori, the Crown purchasing process was a frustrating exercise. Sale would be discussed on one occasion, reserves on another occasion. Overall the experience was a disillusioning one, not helped by different groupings having different degrees of enthusiasm for sale. The Crown and the most enthusiastic sellers artfully drove wedges that split tribal harmony. When the pieces were put back together at later stages of the sale negotiations, a majority of the Maori participants did agree to the various sales, though that was just the start of a lengthy and less-than-successful process to arrange how Maori residents of the purchased lands would coexist with their new European settler neighbours. As the negotiations over reserves lengthened out, all Maori participants, both those who had been characterised as sellers and those characterised as non-sellers, became united in their dismay and anger at how little they were able to achieve in their dealings with a parsimonious Crown.

Maori who sold understood that the majority of lands included in a purchase would pass from their ownership and be settled by Europeans. That is why the sufficiency of reserves was so important to them. The Rangitikei-Turakina purchase had provided for one large reserve and a few smaller reserves, and set a standard which Maori could reasonably have expected when further sales were negotiated. The Ahuaturanga purchase seems to have been amicably settled to the satisfaction of the Rangitane sellers, once the Crown had agreed to leave out the Aorangi lands alongside the Oroua River that were so important to Ngati Kauwhata and to Rangitane. The Awahou purchase was smaller in size and the sellers retained other lands, so that agreement was able to be reached about the provision of reserves, once the rights of non-sellers had been accommodated.

Maori who did not sell, despite claiming to be rights holders, lost out completely if the Crown ignored or did not accept their claims. Never having gained a place at the negotiating table, they could never recover from that position.

The Rangitikei-Manawatu purchase was more problematic than the earlier purchases. Some successes for Maori were apparent, with concentrations of reserves where the principal settlements were located along the Oroua River and the lower Rangitikei River. The lower Oroua River could still be considered to be a Maori-dominated river because of the retention of the Aorangi block on the eastern bank, and the extensive reserve holdings

on the western bank. However the nature of the various reserves on the western bank, as a series of grants rather than as a single title, meant the solution was not as cohesive as it could have been, or as it had been in the instance of the single large reserve in the Rangitikei-Turakina purchase between the Whangaehu and Turakina Rivers.

The initial Maori understanding about what benefits had been achieved started to unravel almost as soon as the Rangitikei-Manawatu reserves were decided upon. The so-called eel reserves along the Oroua River relied on the retention of functioning wetlands upstream of the pa tuna sites, usually in the small side-streams, yet much of those wetland areas were to be in different titles that would be granted to European settlers. Husbands has explained how McLean in November 1870 agreed to provide a 50-acre eel fishery reserve to Ngati Kauwhata non-sellers at Rotonuiahau, an eel fishery reserve at the confluence of the Makino and Mangaone Streams, a 10-acre eel fishery reserve to an individual (Te Ara Takana) at Tauranganui[57], and another eel fishery reserve to another individual (Hoani Meihana of Rangitane) at Waipunoke. Then, relying on correspondence between Alexander McDonald, the agent for Ngati Kauwhata, and the Wellington Provincial Superintendent just one and a half years later in March 1872, he has noted:

> The relatively small size of the eel-fishing reserves appears to have [been] based on the assumption – on the part of Ngati Kauwhata and Rangitane at least – that the wetlands that fed their fishing streams would remain intact. Since their agreement with McLean in November 1870, however, the Ngati Kauwhata and Rangitane residents of Rangitikei-Manawatu had become concerned that the 'swamps and lagoons' surrounding their reserves would 'be sold and drained', destroying 'the eel fishing for which the original reserves were made'. As a result, they now insisted that their reserves be expanded to include some of the wetlands that kept their fishing places alive. Most important was the area of 'swamps and lagoons known as Te roto nui a hau' which, according to McDonald, was 'the principal source from which' the 'eel fishing streams flowed'. The Ngati Kauwhata non-sellers wanted their fishing reserve to be increased to include Te Rotonuiahau in its entirety, an area that the surveyors estimated to extend to 1000 acres. Te Ara Takana, too, sought to expand her reserve to include 'some of the swamps and lagoons' to the west of her fishing places.[58]

The response to this request was mixed. There was no enlargement of the Rotonuiahau reserve, the Tauranganui reserve was increased in size to 30 acres (part of which was allocated to Hoeta Te Kahuhui), and additional eel fishery reserves were provided for Areta Pehanui (10 acres), Te Kooro Te One (40 acres), and Ngati Kauwhata at Ruahine (40 acres)[59]. The pattern of minimally sized reserves to protect pa tuna and associated

[57] P Husbands, *Maori aspirations, Crown response and reserves, 1840-2000*, November 2018, Wai 2200 #A213, page 107.
[58] P Husbands, *Maori aspirations, Crown response and reserves, 1840-2000*, November 2018, Wai 2200 #A213, page 141.
[59] P Husbands, *Maori aspirations, Crown response and reserves, 1840-2000*, November 2018, Wai 2200 #A213, page 144.
The reserves as finally surveyed were at Tauranganui (Section 34 Town of Carnarvon), for Areta Pehanui (Section 342 Town of Carnarvon), for Te Kooro Te One (Section 34 Town of Carnarvon), at Ruahine (Section

campsites, rather than extensive reserves to protect tuna fishery ecosystems, was maintained.

Likewise with the dune lakes, where the pa tuna were in Maori reserves, while the catchments of the lakes, and indeed parts of the lakes themselves, were in lands retained by the Crown. This is discussed in a later section of this chapter. The imperfections of this situation quickly became apparent because, relying on the notice of extinguishment of Native title issued in 1869, the Carnarvon town settlement was being surveyed into farm sections during the 1870-1872 period[60], even as the surveys of the Maori reserves were being completed.

3.2.7 The Awahou Purchase - a cautionary tale of differing understandings

This section is only peripherally about inland waterways, in that it concerns a ferry reserve on the edge of the Manawatu River. However, the purpose of including it in this report is to sound a warning about different views that can emerge from purchase negotiations. It reports on a review of the Awahou purchase over 20 years after it occurred, including obtaining the recollections of a number of the people who had participated in the negotiations.

Prior to the purchase of the Awahou block, on the north side of the Manawatu River and including the site of Foxton and the Moutoa Swamp, the Crown had entered into a lease arrangement for Te Wharangi ferry site. The lease was entered into from 1 January 1856 and was for a ten-year term. Donald McLean was the agent for the Crown and Nepia Taratoa was the senior rangatira for the lessors, fourteen of whom signed the lease document. The lease document included the following provisions:

> The ferry and the wooden house now standing, and a piece of land there at Te Wharangi, are entirely given up by us for the ten years, for a sum of £500.
>
> At the end of the ten years a house similar to that now standing at Te Wharangi, and all the fencing, are to revert to us. But if any new buildings are erected by the white people, we will pay for such buildings that they may become our property in case we should wish the ferry to revert to us at the end of the ten years.[61]

The size of “the piece of land there at Te Wharangi” was not referred to in the lease.

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341 Town of Carnarvon), for Hoani Meihana (sections 338 and 339 Town of Carnarvon), and at Rotonuiahau (Section 148 Town of Carnarvon), all shown on Wellington plan SO 11077. Supporting Papers #1583.

[60] Wellington plan SO 10995 (8 Sheets). Not included in Supporting Papers.

[61] Deed of lease dated 22 December 1855. HH Turton, *Maori deeds of land purchases in the North Island of New Zealand*, Volume 2, 1878, pages 172-173. Supporting Papers #1373-1374.

The Awahou purchase was agreed upon in November 1858, nearly three years later. It was for a larger area on the north bank of the Manawatu River. The principal rangatira who sold the block was Ihakara Tukumaru. Nepia Taratoa was not a signatory to the initial deed. William Searancke was the Crown's agent. The purchase deed referred in its English translation to the "binding consent" of the sellers "entirely to surrender" the block whose river boundary was described as from Pakengahau, "then down the Manawatu River to its mouth, where it turns and follows the coast line"[62]. The purchase was made subject to the provision of reserves yet to be defined. Subsequently in May 1959 a second deed was signed which described a number of reserves in the Awahou block not included in the purchase; Te Wharangi was not mentioned. Nepia Taratoa was a signatory of the second deed, and one of the reserves was described as the land "within his fence is for him still", while another piece of land "by the side of Te Awahou" he would have to pay for at the rate of £5 per quarter-acre section.

At issue some twenty years later was whether the Awahou purchase area included Te Wharangi ferry site, or only the land surrounding the ferry site.

In August 1878 Nepia Taratoa (the son of Nepia who had signed the 1856 lease) and Winiata Taratoa wrote to the Premier asking about the ferry site[63]. No particular action by the Crown was requested, and the letter was not followed up. In September 1880 Nepia Taratoa tried again, this time asking for the return of the ferry site because it had been intended that it be given back at the end of the ten-year lease[64]. The request was referred to Alexander McDonald for some background information. He replied:

> Ihakara Tukumaru, the principal seller of the Awahou Block in which Te Wharangi is situated, states that at the time Awahou Block was sold Te Wharangi was already the subject of a lease between Nepia Taratoa (the Elder) and Governor Sir George Grey. Ihakara considers that Te Wharangi had been already dealt with and was not, or ought not to have been, included in the Awahou Purchase. Mr JT Stewart, however, informs me that he was not told to exclude Te Wharangi when he made the survey of Awahou for the purposes of the Purchase.[65]

[62] Awahou Purchase Deed No. 1, dated 12 November 1858. HH Turton, *Maori deeds of land purchases in the North Island of New Zealand*, Volume 2, 1878, pages 173-174. Supporting Papers #1374-1375.
[63] Nepia Taratoa and Winiata Taratoa, Motuiti, to Premier, 22 August 1878. Justice Head Office file 1896/1324. Supporting Papers #168-169.
[64] Nepia Taratoa and others to Native Minister, 17 September 1880. Justice Head Office file 1896/1324. Supporting Papers #170-173.
[65] A McDonald to Under Secretary Native Department, 14 November 1880, on cover sheet to file NO 1880/3508. Supporting Papers #174.

In December 1880 Nepia Taratoa and others wrote again asking for back-rent to cover the 15 years since 1866[66]. A follow-up letter was sent the following year when the Government had still not replied[67]. The Under Secretary advised the Minister that McDonald's report showed that Te Wharangi had been included in the Awahou Purchase and that Nepia had no claim[68]. The Minister agreed and Nepia was informed. However, before Nepia could have received this reply, he had moved on to a further stage of his campaign. The Resident Magistrate in Marton telegraphed in February 1881 that Nepia Taratoa, Hare Reweti and 83 others of Ngati Parewahawaha had given written notice to the Foxton port pilot to leave the signal station and take down the flagstaff located on the ferry site within fourteen days, or they would remove him themselves[69].

When the Resident Magistrate met Foxton Maori later that month he reported in a telegram:

> Met natives today re Te Wharangi. Mr Stewart, District Engineer, had shown me copy of map of Te Awahou block made by him as Provincial Government Surveyor which shows many reserves to natives and others, but not of Te Wharangi which is included in boundaries of said block purchased for Government by Mr Searancke in 1859. Mr Stewart says original certified map is in Survey Office, Wellington. I had long discussion with natives who persisted in saying that they will eject Pilot and remove flagstaff. On 25th inst, after explaining to them law of subjects, I told them at last if they did this they would act unwisely, it would be against the law, and they would do it at their peril. They claim £750, being £50 a year for last fifteen years, and repossession of the land. They say land in question has never been submitted to Native Land Court and they will not do so.[70]

The further response of the Crown was that the Native Minister, accompanied by the Resident Magistrate, met Nepia Taratoa "and another native" (later identified as Wereta Kimata) at Feilding railway station, when the train that the Minister was on made a stop there. Nepia and his colleague told the Minister that William Searancke had stated to them in September 1880 that it had not been intended at the time of the Awahou Purchase that the lease area would be included. The Minister promised a full inquiry, and on the basis of

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[66] Nepia Taratoa and others to Native Minister, 21 December 1880. Justice Head Office file 1896/1324. Supporting Papers #175-177.

[67] Nepia Taratoa and others to Native Minister, 24 January 1881. Justice Head Office file 1896/1324. Supporting Papers #178-179.

[68] Under Secretary Native Department to Native Minister, 10 February 1881, on cover sheet to file NO 1881/295. Supporting Papers #180.

[69] Telegram Resident Magistrate Marton to Under Secretary Native Department, 13 February 1881, and Resident Magistrate Marton to Under Secretary Native Department, 12 February 1881. Justice Head Office file 1896/1324. Supporting Papers #181-182 and 183-189.
New Zealand Times, 17 February 1881. Copy attached to cover sheet to file NO 1881/452. Justice Head Office file 1896/1324. Supporting Papers #190.
These events and the Resident Magistrate's subsequent inquiry, are also discussed by Robyn Anderson from a different perspective, that of the local Manawatu newspaper reports. R Anderson et al, *Crown action and Maori response, land and politics, 1840-1900*, June 2018, Wai 2200 #A201, pages 731-733.

[70] Telegram Resident Magistrate Marton to Under Secretary Native Department, 15 February 1881. Justice Head Office file 1896/1324. Supporting Papers #191-192.

this promise Nepia agreed to withdraw the eviction notice[71]. Nepia confirmed to the Under Secretary after the meeting his firm belief that Te Wharangi had not been included[72]

Meanwhile the Crown contacted William Searancke and asked him if his September 1880 remarks had been correctly quoted, and what were his recollections of the purchase discussions. Searancke replied:

> The Awahou deed as drawn up by me and read out to the Natives is clear in reference to the land sold and reserves made for Europeans and Natives. The lease of the land still occupied as a pilot station was at that time believed to be fully absorbed by the deed of sale, and I distinctly state that all that portion of it within the Awahou Block was included in the sale, and so understood by Nepia Taratoa, and Ihakara Tukuaru [sic] lately deceased, and Nepia Taratoa now deceased some years, and that I have had no conversation either with him or his son Heneri Taratoa on the subject since the purchase of the Awahou Block.[73]

For Crown officials this statement, plus the wording of the purchase deed and the plan of the purchase[74], left no doubt in their minds that Te Wharangi had been included in the purchase[75]. However, the Native Minister decided to give Foxton Maori a right of reply and instructed the Resident Magistrate to obtain that reply and hold a formal inquiry if that was still wanted[76].

When the Magistrate met Nepia at Foxton in March 1881 and showed him the Awahou deed, Nepia continued to insist that Te Wharangi had not been included. The Magistrate telegraphed:

> Nepia says positively he never signed the deed or authorised anyone to do so for him. It purports to be signed by making his mark. He says he could then as well as now read and write, and his practice was to write his own name. Says he was absent on duty as constable at time deed signed. He reiterates what he told Native Minister as to conversation with Mr Searancke at Otaki. They now ask that Government will consent to Native Lands or other court of competent jurisdiction hearing and determining their claim to this land which they assert has been wrongly included in deed. Letter by mail.[77]

Immediate advice to the Native Minister emphasised the difficulties of allowing a court to inquire into the matter:

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[71] File note by Native Minister, 18 February 1881. Justice Head Office file 1896/1324. Supporting Papers #193.
[72] Nepia Taratoa, Wereta Kimata, and "all Ngati Parewahawaha" to Under Secretary Native Department, 25 February 1881. Justice Head Office file 1896/1324. Supporting Papers #194-195.
[73] Telegram William Searancke, Cambridge, to Native Minister, 26 February 1881. Justice Head Office file 1896/1324. Supporting Papers #196-197.
[74] Wellington plan SO 10602. Not included in Supporting Papers.
[75] Under Secretary Native Department to Native Minister, 28 February 1881, on cover sheet to file NO 1881/601. Justice Head Office file 1896/1324. Supporting Papers #198.
[76] Native Minister to Resident Magistrate Marton, 11 March 1881, on cover sheet to file NO 1881/601. Justice Head Office file 1896/1324. Supporting Papers #198.
[77] Telegram Resident Magistrate Marton to Under Secretary Native Department, 11 March 1881. Justice Head Office file 1896/1324. Supporting Papers #199-200.

> I do not see how an old purchase like this purports to be can be brought before the N.L. Court because a native disputes his signature. Possibly he would have a case in the Supreme Court, but I should think if Government considers that the native has a case it had better be settled by compromise and without legal intervention. Speaking generally I think cases of purchase by the Government made many years ago should not be reopened, and to do so in this case would encourage the raising of many similar questions which I fear would be impossible to deal with.[78]

The Minister declined to be rushed into making a decision, given that the Magistrate's further report had not at that stage been received[79]. Meanwhile the Under Secretary for Lands looked at the original deed, confirmed that Nepia Taratoa's name on the deed was supported by his mark, and noted that eight persons had purported to witness the signatures[80].

The Resident Magistrate's report was received in Wellington five days after the Foxton meeting[81]. He confirmed that he had shown the attendees the deed and plan of the Purchase:

> The plan clearly indicates all the reserves mentioned in the deed, and that Te Wharangi was not excepted from the purchase. That the deed covers Te Wharangi the natives could not but admit, but contended it was wrongfully or erroneously included, that it was never intended by Nepia Taratoa the Elder and his people to be included in the purchase, that the said Nepia consented to the sale of certain portions of the block but not of the land lying to the north of a line from a peg at Kai Iwi to Mr F Robinson's corner peg, that the said Nepia the Elder pegged off this line himself as land he considered his own and which he did not wish to sell. These Natives further stated that Nepia owned some land called Omarupapaku within the boundary of the Block sold, lying to the west of the bush of that name, which bush is just outside the block, that Nepia Taratoa the Elder signed the deed as ceding to the Crown his interest in that land only, but not to extend to the land situate to the northward of the line I have mentioned, of which Te Wharangi forms a part, that at the time of the purchase of the Block this land was held by the Government under a ten years lease for which the sum of five hundred pounds (£500) had been paid (lease dated 22nd December 1855, Deed No. 50).
>
> On reading over the names of the vendors of the Block yesterday, Nepia Taratoa the Younger stated with regard to his name that he did not sign the Deed or authorise any person to sign his name for him, he called attention to the Deed purporting to bear his "tohu" or mark, he said he could at that time read and write and can do so now, that he was then a Native Constable, he remembered the time of the sale of the Block, he said His Excellency the Governor Col Gore Browne was present, that he (Nepia) had been acting as an orderly and was sent to Tawhirihoe (at "Scott's Ferry") to lead back some horses His Excellency and suite had been riding, that he was not present when the Deed was signed and did not know that his name had been attached to the Deed as

[78] Under Secretary Native Department to Native Minister, 12 March 1881, on cover sheet to file NO 1881/731. Justice Head Office file 1896/1324. Supporting Papers #201-202.
[79] File note by Native Minister, 13 March 1881, on cover sheet to file NO 1881/731. Justice Head Office file 1896/1324. Supporting Papers #201-202.
[80] Under Secretary for Crown Lands to Under Secretary Native Department, 14 March 1881, on cover sheet to file NO 1881/731. Justice Head Office file 1896/1324. Supporting Papers #201-202.
[81] Resident Magistrate Marton to Native Minister, 11 March 1881. Justice Head Office file 1896/1324. Supporting Papers #203-210.

one of the vendors until it was then (yesterday) read out by my interpreter, he stated it was a false signature.

Seeing the name of Alexander Gray as one of the witnesses to the signatures to the Deed, and learning that Mr Gray was in business in Foxton, I requested his attendance, he came, and in answer to some questions he told me he could not remember whether or not Nepia Taratoa the Younger was present (at the signing of the Deed) but presumed he was as his name was attached to the Deed and he (Mr Gray) felt certain he would not have signed as one of many other witnesses unless each of the natives was present and signed his name or made his mark.

Both Mr JW Stewart, District Engineer, and Mr Morgan Carkeek, surveyor, state positively that it was intended the Purchase would cover Te Wharangi. Ihakara Tukumaru's widow says her late husband had told her that it was to be included in the sale. Hereopa Ihakara's brother, who lives near Foxton, says it was not intended to be included in the sale, but that from Kai Iwi to the corner of Mr Robinson's reserve was to be the northern boundary of the block.

(To make myself clear to you I have ventured to draw this line in pencil on the plan.)

I told Nepia Taratoa what Mr Searancke has telegraphed to the Hon Mr Rolleston, but he reiterated his former statement. He said when Mr Searancke was last in the district some few months since (note: I think Mr Searancke was in the district about July or August last), he (Nepia) and three other natives saw him (Mr Searancke) at Otaki, he said Mr Searancke asked them into the parlour of the Otaki Hotel, when Nepia said "we have come to see you about Te Wharangi", Mr Searancke said yes, that he and the late Sir D McLean had taken it out of the sale, we asked him to write down what he had said, Mr Searancke then said we had better tell it to the Government and mention his name, he again said Te Wharangi was in our hands through Sir Donald McLean. I pressed Nepia as to the truthfulness of this statement, he asserted most positively that this conversation did take place, and he could bring other witnesses to prove it if necessary. (Note: I think Nepia's statement should be received with caution.) As to Nepia the Younger's ability to write at the time, Mr Deighton, Clerk of my Court here, informs me that from 1858 to 1860 he held the appointment of European Constable down this coast and that Nepia Taratoa the Younger was at that time one of the Native Constables under him, that he believed he could read and write, that in fact his duties as Constable required ability to do so. I would also invite your attention to Deed No. 57, page 184, Te Awahou Native Reserves; I find this Deed is signed by Nepia Taratoa, this must be the Younger as his father Nepia Taratoa the Elder died, I am informed, about ten years previously. This would tend to show the present claimant could (at that time at any rate) write his name; looking at the lease and the Deeds of Cession which are signed by Nepia Taratoa the Elder, he appears in all cases to have done so by making his mark.

Before the close of the meeting, Nepia and his people requested me to ask the Government to consent to the Native Lands or other court of competent jurisdiction hearing and determining their claim to the land in question. Permit me here to remark, there is no doubt but that Te Wharangi is included in the purchase of Te Awahou No. 2 Block, and that the Native title over this Block has been extinguished. I cannot therefore see how the Native Lands Court can deal with the subject. I think it would be undesirable to disturb the title to the Block, as it would open the way to Natives repudiating sales completed years ago and otherwise cause much trouble.

> Of course it is open to the claimants to petition the House, when the Committee for native petitions could investigate the whole issue.[82]
> [Underlining in original]

The Minister's response to this report was:

> Tell Nepia that I have looked carefully into this matter as I promised him, and that I do not consider he has made out his claim. I should have been glad that the Native Lands Court should make an inquiry, but it could not legally do so. It is open to him to bring it before the Native Affairs Committee when Parliament meets, if he is dissatisfied with my view.[83]

The Minister's rejection of Nepia Taratoa's claim represents the end of the matter so far as obtaining the recollections of the Awahou Purchase participants is concerned. Ngati Parewahawaha continued to protest the loss of Te Wharangi for a further fifteen years, according to the file examined for this report, with petitions to Parliament and appeals to the Native Minister, all to no avail. Equally strong contradictory views on what had been discussed and agreed to during the purchase negotiations continued to be held by both parties.

The lesson to be taken from this historical account is that the two parties to negotiations can come away with different understandings about what was agreed. If such differences can arise over such a central and vital issue as land, then it is equally likely that they could arise over the status of waterways.

3.2.8 The treatment of lakes in the Crown purchases

There was a question mark raised about the treatment of lakes in the Awahou Purchase, which is touched on only briefly here. In 1909 Hiria Te Huruhuru, Hone Reweti, Kaatene Piringarau and Winiata Pataka wrote to the Native Minister asking that:

> Lands reserved by our fathers from the sale of Manawatu [sic] by Ihakara Tukumaru be handed over to us. The lands are Te Wharangi, Te Whakapuni, Marupapaka. These parts were not included in the sale of Ihakara.[84]

Te Wharangi was the ferry reserve at Foxton. The second of these locations, Te Whakapuni, is a dune lake just north of Foxton (see the fishing chapter of this report). The

[82] Resident Magistrate Marton to Native Minister, 11 March 1881. Justice Head Office file 1896/1324. Supporting Papers #203-210.
[83] Native Minister to Under Secretary Native Department, 16 March 1881, on cover sheet to file NL 1881/791. Justice Head Office file 1896/1324. Supporting Papers #211.
[84] Hiria Te Huruhuru and others to Native Minister, September 1909. Maori Affairs Head Office file 1909/600. Wai 2200 #A197(a) Document H-3-31.

third, Marupapaka, is synonymous with Omarupapaka. The Crown response was that the Awahou Purchase Deed did not show any reserves at these three locations[85].

The rest of this section examines the manner in which reserves were granted at the following four lakes as part of the Rangitikei-Manawatu Purchase:

- Omanuka lagoon
- Pukepuke lake
- Kaikokopu lake
- Koputara lake

The reserve at Omanuka Lagoon is relatively small, being just 20 acres in size[86]. Numbered 44 on the list of reserves provided by the Commissioner of Crown Lands in 1872[87], its appellation is Section 369 Town of Carnarvon[88]. It was awarded to Kawana Hunia Te Hakeke of Ngati Apa. The reserve had a surveyed area of 19 acres 3 roods 12 perches when the surrounding land was surveyed for Crown settlement and the Crown Grant road (today known as Flaxmore Road) was laid off[89]. The existence of the legal road along the reserve's western boundary has meant that the reserve has not suffered the same access problems that have afflicted the other three lake reserves discussed below. The reserve has been the least disturbed in cadastral terms, with its boundaries unchanged since initial survey, and the boundaries of surrounding land still showing signs of the original pattern of Crown granting to European settlers. However, the environmental changes have been just as dramatic as at the other dune lakes, being affected by drainage and farming practices.

The Crown understanding of the situation at Omanuka was that it had granted a reserve to Ngati Apa. This was for the site of the pa tuna, and to cater for seasonal camping (habitations, horse grazing, possibly firewood gathering, etc). However, the Crown retained a part of the lake and lakebed in its own ownership, which it considered it was at liberty to on-grant to European settlers if it wished (and which it then chose to do).

The Maori understanding about Omanuka is not known, beyond Ngati Apa's claim to the lake when negotiating with Featherston. There were no known challenges from other hapu

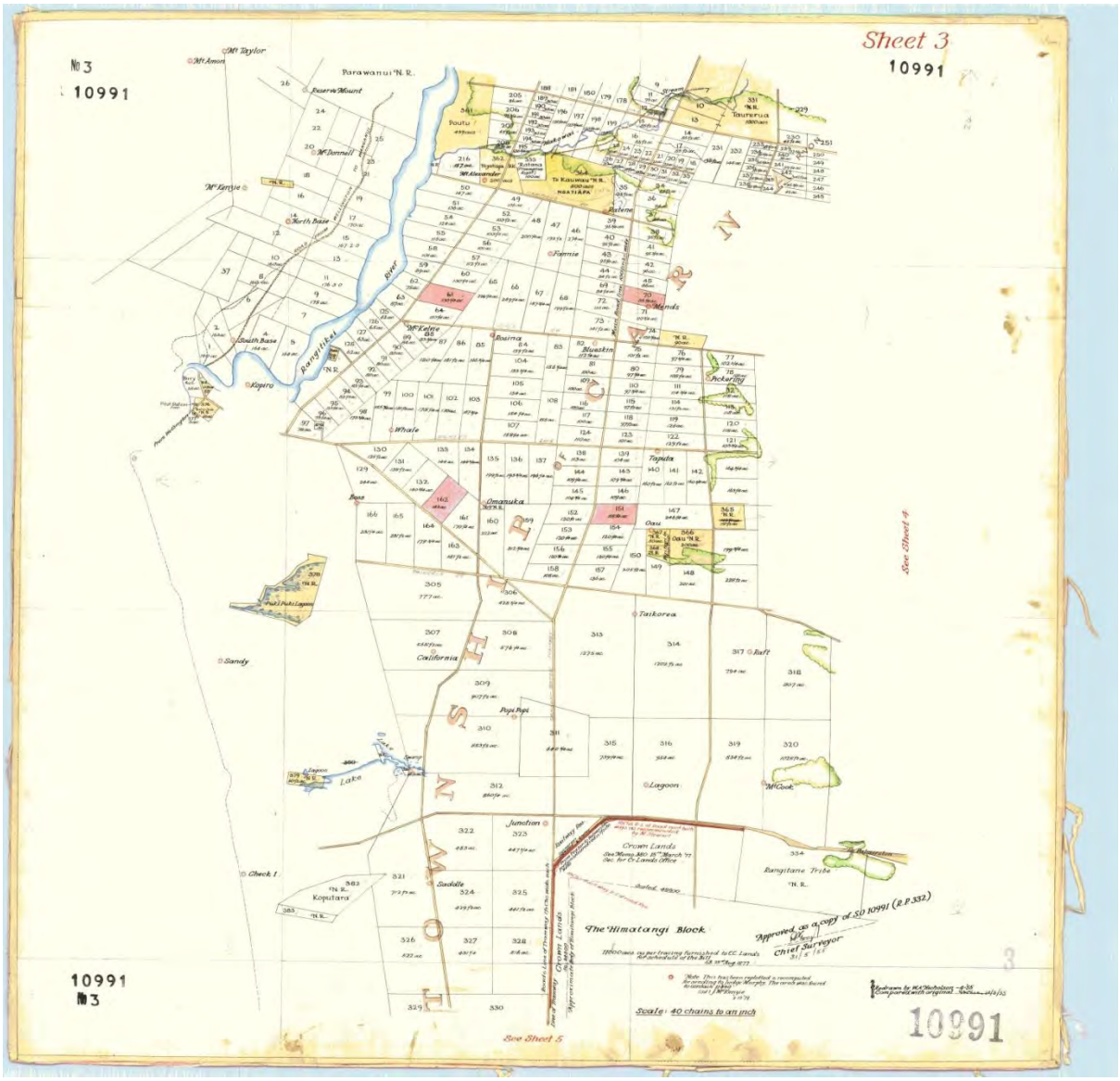
[85] H Potter et al, *Porirua ki Manawatu inland waterways historical report,* August 2017, Wai 2200 #A197, pages 108-109.
[86] Wellington plan SO 10995 (Sheet 6) and SO 11077. Supporting Papers #1582 and 1583.
[87] Schedule of reserves prepared by Commissioner of Crown Lands Wellington, undated, attached to Superintendent Wellington Province to Native Minister, 3 September 1872. *Appendices to Journals of the House of Representatives*, 1872, F-8, pages 4-5. Supporting Papers #1406-1407.
[88] Wellington plan SO 11077. Supporting Papers #1583.
[89] Wellington plan SO 10971, being Roll Plan 330. Supporting Papers #1579.

and iwi to the action taken by the Crown to recognise Ngati Apa's interest in this particular lake. In November 1868 Kawana Hunia and others wrote to the Governor, the Premier and Featherston about a number of local matters, and specifically asking "let my reserves, Pukapukatea and Tawhirikoe be surveyed, and also the eel ponds"[90]. 'Eel ponds' was a translation of the term "waituna" that Kawana Hunia had used in his letter. While it is speculation, this could be taken as meaning that Ngati Apa expected that the awards of fishery reserves at the lakes (Omanuka, Pukepuke and Kaikokopu) would include the whole of the lakes. No areas for each reserve had been defined at that date.

The reserve at Pukepuke Lake, Section 378 Town of Carnarvon of 390 acres[91], was numbered 45 on the list of reserves provided by the Commissioner of Crown Lands in 1872[92]. A re-plotting of the 1872 survey in 1908 calculated its area at 389 acres[93]. The reserve had been awarded exclusively to Ngati Apa by Featherston in 1867[94]; this action on behalf of the Crown seems to have pre-emptively prevented claims to the lake fishery by Ngati Wehi Wehi and Ngati Raukawa being accepted by the Native Land Court or by McLean. When next surveyed in 1929, its area was said to be 389 acres 1 rood 30 perches[95]. The size of this reserve is a step-change greater than the size of the other lake reserves granted by the Crown.

[90] Kawana Hunia and 7 others, Rangitikei, to Governor, Wellington Provincial Superintendent, and Premier, 20 November 1868. Maori Affairs Head Office folder 13/69B. Wai 2200 #A159, Volume 5, MA 13/69b Part 3, Papers 17-20.
[91] Wellington plan SO 11077. Supporting Papers #1583.
[92] Schedule of reserves prepared by Commissioner of Crown Lands Wellington, undated, attached to Superintendent Wellington Province to Native Minister, 3 September 1872. *Appendices to Journals of the House of Representatives*, 1872, F-8, pages 4-5. Supporting Papers #1406-1407.
[93] Wellington plan ML 2039. Supporting Papers #1563.
[94] 'Enclosure 4. Memorandum of Agreement with the Ngatiapa as to Reserves', MA 13/72B, p 121, quoted in P Husbands, *Maori aspirations, Crown response and reserves, 1840 to 2000*, November 2018, Wai 2200 #A213, page 69.
[95] Wellington plan SO 18839, which was the basis for a compiled plan used in the 1930s by the Native Land Court when investigating title to the reserve (Wellington plan ML 4289). Supporting Papers #1590 and 1573.

Figure 2: Wellington plan SO 10991



As surveyed in 1872, Pukepuke reserve was surrounded by Crown Land which had not been subdivided into sections for farm settlement, probably because of its sandy nature[96]. This Crown Land included the greater portion of Pukepuke lagoon itself. Unlike the similar situation further south at Koputara and Kaikokopu, the Crown Land was not included in the title granted to the Wellington and Manawatu Railway Company in 1890, instead retaining its Crown Land status. The Crown Land was leased before being farmed by the Crown itself as part of Tangimoana Farm Settlement. Thus provision of access to the Maori reserve was in the hands of the Crown. At one stage there does seem to have been a public line of road

[96] The clear boundary between Crown Land not subdivided for farm settlement, and Crown Land subdivided into farm sections, is very visible on Wellington plan SO 10991 Sheet 3, which is a modern re-drawing of the original plan. Supporting Papers #1581.

surveyed between Pukepuke reserve and the sea coast, though its status has not been clarified. It was apparently first shown on a sale plan[97], and it is not clear if that qualifies as making the line of road a Crown Grant public road. After the Crown's purchase of the Maori reserve (covered elsewhere in this report), the road, which was never formed, was closed[98]. The road closing documentation did not address how the road had originally been created[99].

The 1929 survey plan is notable for calculating the area of lakebed within the reserve (57 acres 2 roods) and the area of lakebed outside the reserve on Crown Land (65 acres 2 roods). It shows the lakebed extended beyond the Crown Land portion into privately-owned land, though this latter portion was not plotted or its area calculated.

The Crown understanding of the situation at Pukepuke was that it had granted exclusive fishing rights to Ngati Apa, and had followed through on that promise by resisting claims made in the Native Land Court and presented to Donald McLean by Ngati Wehi Wehi and Ngati Raukawa. However, Ngati Apa seems to have been the exclusive holder of fishing rights only vis-a-vis other Maori hapu and iwi, because the Crown retained a part of the lake and lakebed in its ownership, which it considered it was at liberty to on-grant to European settlers if it wished. Any on-granting of the lake to settlers would have implicitly included a right of fishing to that part which was granted unless specifically stated otherwise on the grant.

The Maori understanding about Pukepuke has been that, notwithstanding the Crown's rejection of claims by Ngati Wehi Wehi and Ngati Raukawa in the late 1860s, those hapu and iwi, and others, did not and have not since then given up a belief that they have cultural and traditional interests in the lake that deserve to be recognised by the Crown[100]. Both Ngati Apa and Rangitane have in modern times, as part of their Treaty settlements, received property, a statutory acknowledgement, a deed of recognition, and Crown recognition of a statement of association respecting Pukepuke[101].

At Kaikokopu Lake there are two reserves, one at each end of the lake, Section 379 Town of Carnarvon of 60½ acres at the downstream end of the lake, and Section 381 Town of

[97] Sale Plan C.26, according to Wellington plan SO 15834, approved June 1909. Supporting Papers #1588.
[98] *New Zealand Gazette* 1961 page 778. Supporting Papers #1480.
Wellington plan SO 24697. Supporting Papers #1598.
[99] Works and Development Head Office file 41/880/1.
[100] H Potter et al, *Porirua ki Manawatu inland waterways historical report*, August 2017, Wai 2200 #A197, pages 107-108.
[101] Ngati Apa (North Island) Claims Settlement Act 2010.
Rangitane o Manawatu Claims Settlement Act 2016.

Carnarvon of 26½ acres along the edge of the lake[102]. This smaller reserve separated the lake proper from a wetland area further east, and was probably also a place where eels could be caught. Both reserves are together numbered 41 on the list of reserves provided by the Commissioner of Crown Lands in 1872[103]. The reserves had been awarded exclusively to Ngati Apa by Featherston in 1867[104]; this action on behalf of the Crown seems to have pre-emptively prevented claims to the lake fishery by Ngati Wehi Wehi and Ngati Raukawa being accepted by the Native Land Court or by McLean. The next survey of the reserves, in 1889, shows the areas to be 60 acres 2 roods 37 perches and 36 acres 2 roods respectively[105].

As surveyed in 1872, Section 379 was completely surrounded by Crown Land which had not been subdivided into sections for farm settlement, probably because of its sandy nature[106]. Section 381 was almost completely surrounded by unsubdivided Crown Land, except along a small part of its eastern boundary, where it adjoined Sections 310 and 312 Town of Carnarvon, both sections that had been surveyed for farm settlement. The unsubdivided Crown Land included almost all of Kaikokopu Lake itself. This unsubdivided Crown Land was then included in a title to the coastal sand country issued to the Wellington and Manawatu Railway Company Limited in 1890[107]. Because the Crown had not taken any steps to provide the two Kaikokopu reserves with legal access during the 1872-1890 period, the two reserves became landlocked and incapable of being legally accessed except with the approval of the private landowners of the Railway Company title (or, in the case of Section 381, with the approval of other private landowners to the east).

The Crown understanding of the situation at Kaikokopu was that it had granted the reserve it had promised. However, the Crown retained most of the lake and lakebed in its ownership, which it considered it was at liberty to on-grant to European settlers if it wished. Whether deliberately or not, the Crown in 1890 must have considered that it was entitled to completely ignore the purpose of the reserves it had granted to Maori, and divest itself of the lake and lakebed. So far as access was concerned, the title issued to the Railway Company

[102] Wellington plan SO 11077. Supporting Papers #1583.
[103] Schedule of reserves prepared by Commissioner of Crown Lands Wellington, undated, attached to Superintendent Wellington Province to Native Minister, 3 September 1872. *Appendices to Journals of the House of Representatives*, 1872, F-8, pages 4-5. Supporting Papers #1406-1407.
[104] 'Enclosure 4. Memorandum of Agreement with the Ngatiapa as to Reserves', MA 13/72B, p 121, quoted in P Husbands, *Maori aspirations, Crown response and reserves, 1840 to 2000*, November 2018, Wai 2200 #A213, page 69.
[105] Wellington plans ML 2981 and SO 12963. Supporting Papers #1568 and 1584-1585.
[106] The clear boundary between Crown Land not subdivided for farm settlement, and Crown Land subdivided into farm sections, is very visible on Wellington plan SO 10991 Sheet 3, which is a modern re-drawing of the original plan. Supporting Papers #1581.
[107] Wellington Certificate of Title 55/127, issued 7 June 1890. Not included in Supporting Papers.
Wellington plan SO 12963. Supporting Papers #1584-1585.

included a "right of road"[108], though the Crown did not avail itself of this right to provide legal access to the two Maori reserves.

The Maori understanding about Kaikokopu was probably similar to that expressed about Koputara Lake (see below).

With respect to Koputara Lake there is some evidence that Koputara Stream was seen as being a customary tribal boundary[109]. Demanding a reserve for Ngati Apa in this location during purchase negotiations would therefore have been viewed by Maori as being something of a manawhenua political statement.

There are in fact two reserves adjoining one another at Koputara lake. Section 382 Town of Carnarvon of 276 acres was granted to Ngati Kahoro hapu and Ngati Parewahawaha hapu of Ngati Raukawa, while Section 383 Town of Carnarvon of 68 acres was granted to Matene Te Matuku of Ngati Apa[110]. They are numbers 29 and 38 respectively on the schedule prepared by the Commissioner of Crown Lands in 1872[111]. Other research has shown that both reserves were among those provided by Donald McLean, though in different circumstances[112]. Section 382 was among a series of reserves awarded to non-sellers from those two hapu, while Section 383 was a personal award additional to the awards made to Ngati Apa by Featherston at Kaikokopu and Pukepuke. The two reserves seem to have arisen from the location being awarded twice, a fact only identified when the surveyor went on the ground to mark them out. He found that he was unable to carry out his instructions because there was only one site, along the outlet stream, that was "of any use for catching eels"[113]. How the difficulty was resolved is not known, though what was finally surveyed was that Matene Te Matuku was awarded the land along the outlet stream, while the hapu non-sellers were awarded a larger area (276 acres rather than the 10 acres originally promised) of lake adjacent to the lake but not adjacent to the outlet stream.

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[108] This "right of road" was a provision in the Railways Construction and Land Act 1881, the authority for the issue of the title, whereby the Crown had ten years from the issue of the title to set aside as public road any land forming part of the title.

[109] R Anderson et al, *Crown action and Maori response, land and politics, 1840-1900*, June 2018, Wai 2200 #A201, page 134.

[110] Wellington plan SO 11077. Supporting Papers #1583.

[111] Schedule of reserves prepared by Commissioner of Crown Lands Wellington, undated, attached to Superintendent Wellington Province to Native Minister, 3 September 1872. *Appendices to Journals of the House of Representatives*, 1872, F-8, pages 4-5. Supporting Papers #1406-1407.

[112] P Husbands, *Maori aspirations, Crown response and reserves, 1840 to 2000*, November 2018, Wai 2200 #A213, pages 659-710.

[113] District Surveyor (Alexander Dundas) to Commissioner of Crown Lands Wellington (J G Holdsworth), 28 March 1872, MA 13/75A, p 49, quoted in P Husbands, *Maori aspirations, Crown response and reserves, 1840 to 2000*, November 2018, Wai 2200 #A213, pages 659-660.

On a second survey in 1871, when the surrounding land was being subdivided for settlement, Section 382 had an area of 277 acres 2 roods 24 perches and Section 383 had an area of 67 acres 2 roods 32 perches[114]. This plan shows two streams draining from the lake, the main one (named on the plan Koputara Stream) passing solely through Section 383, and another unnamed stream along the northern edge of Section 382.

As surveyed in 1872, the two Koputara reserves were almost completely surrounded by Crown Land which had not been subdivided into sections for farm settlement, probably because of its sandy nature[115]. Only at its eastern extremity did Section 383 adjoin land subdivided by the Crown for farm settlement, Section 321 Town of Carnarvon. The unsubdivided Crown Land included the greater portion of Koputara Lake itself. As with Kaikokopu, the unsubdivided Crown Land, including the lake, was then included in a title to the sand country issued to the Wellington and Manawatu Railway Company Limited in 1890[116] and became landlocked.

The Crown understanding of the situation at Koputara was that it had granted fishing rights to both Ngati Apa and to Ngati Kahoro and Ngati Parewahawaha. The promise to Ngati Apa was delivered when the reserve for Ngati Apa included the outlet stream of greatest value for eel fishing, while the promise to the two Raukawa hapu had to be altered when they were granted a lesser value reserve (from an eel fishing perspective), albeit with a greatly expanded area, as compared to what the two hapu were originally promised. However, the Crown retained a part of the lake and lakebed in its own ownership, which it considered it was at liberty to on-grant to European settlers if it wished. As with Kaikokopu Lake, whether deliberately or not, the Crown in 1890 must have considered that it was entitled to completely ignore the purpose of the reserves it had granted to Maori, and divest itself of the lake and lakebed. As far as access was concerned, the title issued to the Railway Company included a "right of road"[117], though the Crown did not avail itself of this right to provide legal access to the two Maori reserves.

The Maori understanding about Koputara, as expressed subsequent to the reserve being agreed to, was that the Maori interest in the lake encompassed the whole of the lake. Husbands has identified some examples of this understanding:

[114] Wellington plan SO 10987 (3), being Roll Plan 327. Supporting Papers #1580.
[115] The clear boundary between Crown Land not subdivided for farm settlement, and Crown Land subdivided into farm sections, is very visible on Wellington plan SO 10991 Sheet 3, which is a modern re-drawing of the original plan. Supporting Papers #1581.
[116] Wellington Certificate of Title 55/127, issued 7 June 1890. Not included in Supporting Papers.
Wellington plan SO 12963. Supporting Papers #1584-1585.
[117] This "right of road", noted on the 1890 title which was issued under the authority of the Railways Construction and Land Act 1881, is set out in Section 104 of that Act.

- In 1908 Ngati Kahoro placed advertisements in local newspapers countering assertions by the European owners of the run land surrounding the reserves that the lake was private property, and declaring that they were owners of the lake so far as duck shooting was concerned[118].
- In 1925 Hone Reweti of Ngati Parewahawaha appealed to the Native Minister to restore to the hapu the mana of the lake[119].
- In 1929 there was a further request to the Native Minister by George Gotty of Ngati Parewahawaha to intercede in support of Maori in a dispute with the European neighbours about the lake's ownership because, according to the writer of the request, the lake was included in the reserve and the ability to continue eel fishing was threatened[120].

From a Maori perspective it would be impossible to separate the wellbeing of the eel fishery from the wellbeing of the lake, and if the Crown had promised to provide for continued rights of eel fishing then it also had to ensure the protection of the physical resource and circumstances upon which the eel fishery relied.

A common feature of all four lakes described above is that the reserves encompass part only of each lake or lagoon. These reserve boundaries were defined before the adjoining land that was passing into Crown ownership was subdivided into farming sections. All four reserves are also on the downstream side of each lake, where pa tuna (eel weirs) were most likely to have been located.

The Crown understanding at the time could therefore have been motivated by two factors. First, that the rights to the lakes were not being granted exclusively to the owners of each Maori reserve. It is relatively easy to imagine why the Crown would also want access to the lakes for its own settlement purposes. They could be a source of water for stock grazing the surrounding free-draining sandy lands. In any event the damp soils around the lakes would encourage fresh growth during the drier months, so would naturally attract stock and be beneficial to farming this type of country. The second factor could have been that the Crown imagined that the rights it was granting to Maori were primarily for the purpose of fishing and food gathering only, and it did not envisage that its title would grant to Maori, or would need to grant, the wider and fuller range of rights associated with freehold land title.

[118] P Husbands, *Maori aspirations, Crown response and reserves, 1840 to 2000*, November 2018, Wai 2200 #A213, page 665.
[119] P Husbands, *Maori aspirations, Crown response and reserves, 1840 to 2000*, November 2018, Wai 2200 #A213, page 666.
[120] P Husbands, *Maori aspirations, Crown response and reserves, 1840 to 2000*, November 2018, Wai 2200 #A213, page 666.

The manner in which Maori protested at the subsequent environmental changes suggests that, at the time of the promises made by the Crown to provide reserves at each lake (i.e. before the reserves had been surveyed), they imagined that the lakes would be retained for the traditional foodstuffs (eels, fish, moulting ducks etc) that they provided. They would have expected that the reserves would also include dry land adjacent to the lakes where they could set up camp and allow their horses to graze while gathering the foodstuffs. They may have accepted that the ability to gather these foodstuffs would be shared with the new settlers, though this does not seem to have been discussed in contemporary records. Whether Maori understandings of what might occur post-purchase were influenced by the manner in which pre-purchase European lessees utilised the dunelands and lakes, allowing traditional patterns of food gathering to continue, is not known.

However, whatever the understandings at the time, the reservation of only part of the lake ecosystem was setting up a situation for conflict. Maori and the European settlers had different objectives, which became more apparent as time went on, as Maori interest in maintaining seasonal patterns of movement around food gathering sites declined, and as European interest in intensifying farming increased.

3.3 The differing circumstances of different rivers

Whatever were the understandings and presumptions by the various parties arising out of the purchases, they had a major impact on rights to the various rivers of the Inquiry District. Native title was extinguished over an extensive area, and Maori retained only such reserves as the Crown was willing to provide. The purchases and their associated shift in the balance of power had long-lasting implications for the control and management of the waterways.

The following differing circumstances resulting from the earliest Crown land purchase activity are apparent in the Inquiry District:

- The river was implicitly included in a purchase when land on both banks was purchased and became Crown Land as part of a single transaction: Manawatu River and tributaries upstream of Te Weki and Rotopiko (Te Ahuaturanga Purchase);
- The river formed a boundary to a land purchase, with the Crown purchasing on both banks in two different transactions: Rangitikei River from Waitapu Stream downstream to the sea (Rangitikei-Turakina Purchase on one bank, Rangitikei-Manawatu Purchase on the other bank), Oroua River upstream of Feilding (Rangitikei-Manawatu Purchase on one bank, Te Ahuaturanga Purchase on the other bank);

- The river formed a boundary to a land purchase, but on a particular riverbank within a block of purchased land there was a cluster of reserves provided to Maori on the basis of Crown-granted titles: some parts of Rangitikei River (Te Reureu and downstream of Bulls), Oroua River downstream of Feilding;
- The river formed a boundary to a land purchase, but the Crown purchased on only one bank, while Maori retained ownership of the other bank (Manawatu River downstream of Oroua River confluence (Rangitikei-Manawatu Purchase and Awahou Purchase on the northern bank);
- The river did not feature in any Crown purchase, and instead flowed through a block that was investigated by the Native Land Court, such that the riverbed became part of the Court-ordered title to the block (Waikanae River within Ngarara block, Hokio Stream within Horowhenua block, Tokomaru River and other tributaries on the south bank of the Manawatu River within Manawatu-Kukutauaki block, Otaki River within a number of small blocks);
- The river did not feature in any Crown purchase, and did not become part of any Court-ordered blocks (Otaki River close to rivermouth, Ohau River).

The above list is not intended to be exhaustive; rather it is to illustrate the range of circumstances that can be found in the Inquiry District. It shows the extent to which early land purchasing by the Crown, or early boundary definition by the Native Land Court, would have a bearing on future understandings about the nature of rights associated with waterways.

3.4 Further nineteenth century purchasing by the Crown

The Native Land Court started awarding title to Maori-owned land in the Inquiry District from 1867 onwards. One of the intended purposes of the conversion of native title to Native Land Court title, so far as the Crown was concerned, was to facilitate the sale of Maori land. It was therefore no surprise that the Crown was a keen purchaser of Court-titled land during the 1870s. A number of these purchases had waterways as title boundaries, or had waterways passing through the titles.

Anderson et al have described the Crown's interest, articulated in November 1872, in acquiring all lands between the Tararua range and a roadway traversing the flat lands of the Horowhenua, thereby effectively confining Maori to the lands between this roadway and the

sea[121]. The area of Crown acquisition interest then became more closely defined in December 1974, when a series of Court-ordered titles were proclaimed as under negotiation by the Government[122], in order to prevent private purchasers from competing with the Crown for those lands. In the Manawatu River catchment, the Crown purchases in the 1870s were largely away from the river in the Tararua range up to the ridgeline and in the foothills, avoiding any swamplands or lowlands. A similar pattern was apparent further south on the Horowhenua block and on the Ngati Raukawa blocks south of the Horowhenua block. Webb has shown that the pattern was repeated on the Ngarara block in the headwaters of the Waikanae River[123]. This meant that, while there was little immediate and direct effect on the waterways, the way was being opened up for timber felling and settlement on the Crown-owned land that would dramatically change the catchments of the waterways and therefore indirectly change the waterways in the lowlands.

A concerted effort is apparent among Ngati Raukawa during the 1870s to hold on to the lowlands in general, and the lowland riverbanks in particular. The Crown seems to have accepted this approach.

Manawatu Kukutauaki 4A to 4E blocks were strips of Ngati Wehi Wehi land that stretched from the top of the Tararua range to or almost to the sea. The Crown was only able to acquire the eastern parts of each strip, though this was a large area totalling 13,300 acres, while Ngati Wehi Wehi excluded the western parts of each strip on the lowlands (referred to in aggregate at the time as the Waikawa Reserve of some 4500 acres) from the sale[124]. The bank of the Manawatu River remained in Ngati Wehi Wehi ownership.

The sale of Manawatu Kukutauaki 3 to the Crown excluded what was termed a reserve. The area sold was 7400 acres, while the area retained by Ngati Ngarongo, Ngati Hinemata, and Ngati Takihiku was 4000 acres[125]. This reserved area contained the kainga, the cultivations, and the bank of the Manawatu River.

[121] R Anderson et al, *Crown action and Maori response, land and politics, 1840-1900*, June 2018, Wai 2200 #A201, page 564.
[122] R Anderson et al, *Crown action and Maori response, land and politics, 1840-1900*, June 2018, Wai 2200 #A201, pages 569-570.
[123] R Webb, *Te Atiawa / Ngati Awa ki Kapiti inland waterways; ownership and control*, September 2018, Wai 2200 #A205, pages 34-35.
[124] P Husbands, *Maori aspirations, Crown response and reserves, 1840-2000*, November 2018, Wai 2200 #A213, pages 284-287 with map at page 285.
[125] P Husbands, *Maori aspirations, Crown response and reserves, 1840-2000*, November 2018, Wai 2200 #A213, pages 288-292.

Manawatu Kukutauaki 2A to 2G were Ngati Whakatere lands inland from and north of Shannon. The Crown purchased over 40,000 acres, leaving the Maori owners with some 27,000 acres[126]. With one exception, discussed in the next paragraph, the Crown did not acquire any land along the bank of the Manawatu River.

One Crown purchase during this period that did impinge on a waterway was the acquisition in 1879 of part of Manawatu Kukutauaki 2G, a block of 815 acres with a lengthy frontage on to the Manawatu River. Hoani Taipua, determined by the Native Land Court to be the sole owner, only agreed to sell the Crown 400 acres, retaining 415 acres (in two parcels of 147 acres and 268 acres)[127]. This was a higher proportion of retained land than occurred with other sales at the time, though the Crown's 400 acres did include part of the riverbank. The background to the division of this block into sold land and retained land is a tale of hapu mis-management and Crown reluctance to intervene[128] which is not discussed here because whether or not sold and unsold 2G land had a river frontage does not seem to have been a relevant factor at the time. Having said that, the discussion on the Crown file notes that ancestors were buried on riverbank land, which would have been a good reason for there being a general unwillingness to part with lands adjacent to the Manawatu River.

3.5 Native Land Court partitioning

An aspect that it has been possible to only partially research for this report, and which can therefore only be stated as a strong suspicion, is that the manner in which the Native Land Court operated was more land development friendly than fisheries friendly, and that its actions thereby disadvantaged Maori efforts to protect their waterways.

Many of the initial blocks ordered by the Court on investigation of title adopted rivers as boundaries, in much the same way as the early purchases had done. If both sets of owners on each bank had traditional rights that allowed them to share the resources of the river, then such a boundary might be appropriate. However, that also shared the kaitiaki responsibility into the future, at a time when hapu cohesion was being weakened by individualism. It also ignored the underlying purpose of the Court's existence, to enable land acquisition by non-Maori, and was introducing the prospect of controversy and dispute if land on one bank was sold while land on the other bank was retained by Maori. An adoption of a

[126] P Husbands, *Maori aspirations, Crown response and reserves, 1840-2000*, November 2018, Wai 2200 #A213, page 292-298, with map at page 301.
[127] Crown Purchase Deed Wellington 540. Supporting Papers #1362-1365.
The three areas are shown on Wellington plan ML 494. Supporting Papers #1557.
The Crown's purchase of 400 acres was notified in *New Zealand Gazette* 1881 pages 750-751. Supporting Papers #
[128] The matter is covered in Maori Affairs Head Office file NLP 1888/226.

river boundary, perhaps for ease and cheapness of survey, might have unintended consequences.

Following the definition of the initial blocks came partitioning. The Court placed a high priority on the equitable sharing of the land, whether it be on the basis of acreage or on the basis of land quality. By emphasising the land production capability of the land when determining partition boundaries, the capability of the waterways was downplayed.

Two examples of partitioning behaviour affecting waterways, at Lake Waiorongomai and Lake Tangimate, are set out in the following paragraphs.

The placement of Lake Waiorongomai in a separate partition block when the original Waiorongomai block was partitioned in 1891 has been discussed by Potter et al[129]. The minutes of the partition hearing suggest that some of the Waiorongomai block owners initially proposed that a series of lake reserves be established totalling 100 acres in size[130], but one day later after consulting with a surveyor this figure had become 82 acres, with proposed reserves covering Lake Waiorongomai (20 acres), Lake Huritini (22½ acres), Lake Kopureherehe (30 acres) and Lake Kahuwera (9½ acres)[131]. The partition hearing was characterised by fierce competition between two hapu (Ngati Mawhaki and Ngati Waihurihia) for their respective shares of the block, and when they still failed to agree, it was left to the Court itself to make the decision. The Court ordered only the 20 acres for Lake Waiorongomai, to be owned by all the various hapu, and made no mention of reserves at the other lakes[132]. This meant the other lakes became incorporated into the lands awarded to sections of the various competing hapu, rather than standing alone in common ownership.

On survey the size of the Waiorongomai lake reserve (Waiorongomai 10 block) became 25 acres 2 roods, comprising the lake and a small narrow strip of dry land immediately surrounding the lakeshore[133]. This area probably reflects the water level and the size of the lake on the season and the day that the surveyor visited to mark out the partition boundaries. The surrounding partition blocks crowded up to the edge of the lake, putting Lake Waiorongomai, which still survives, under considerable pressure. Meanwhile the other lakes in the Waiorongomai block, such as Lake Kopureherehe, Lake Kahuwera and Lake Huritini,

[129] H Potter et al, *Porirua ki Manawatu inland waterways historical report*, August 2017, Wai 2200 #A197, pages 115-117.
[130] Maori Land Court minute book 18 OTI (Otaki) 394, 5 November 1891. Supporting Papers #1261.
[131] Maori Land Court minute book 18 OTI 404, 6 November 1891. Supporting Papers #1262.
[132] Maori Land Court minute book 18 OTI 426, 7 November 1891; and 19 OTI 161, 2 December 1891. Supporting Papers #1263 and 1264.
[133] Wellington plan ML 1252. Supporting Papers #1559.

by being incorporated into various partition blocks, seem to have been affected by land leasing where agricultural needs have predominated over ecological needs; these other lakes have largely dried up.

Lake Tangimate, whose whakamate (eel-trapping channels) have been described elsewhere[134], is located on the boundary between Manawatu Kukutauaki 7D1 block and Ngawhakahiamoe block[135]. When these two blocks, which had the same ownership and a combined area of 2905 acres, were together partitioned in September 1892, the owners proposed that there be a small reserve of only 5 acres at the lake[136]. The Court accepted this and ordered the lake reserve as Manawatu Kukutauaki 7D1 Subdivision 12, for whom six trustees were appointed[137]. As with Lake Waiorongomai, the division of the land, probably reflecting pressure from potential lessees, seems to have been regarded as a higher priority than reservation and protection of the lake. An alternative explanation could be that the owners of Subdivision 5, the 440-acre subdivision surrounding Subdivision 12, in some undescribed fashion shared with the trustees for Subdivision 12 the kaitiaki responsibility for protection of the lake. The Block History Narratives report records that Manawatu Kukutauaki 7D1 Subdivision 5 was sold to a European in 1910.

In both these examples, the Court's awards of blocks that were intended to remain in communal ownership amount to the bare minimum form of recognition, and were hopelessly inadequate to protect the ecological functioning of the respective lake and wetland ecosystems. They are reminiscent of the Crown's equally inadequate provision for reserves at the dune lakes as part of the Rangitikei-Manawatu purchase.

Other small lakes and swamplands throughout the Inquiry District were more damagingly treated by the Native Land Court, by not being recognised at all.

3.6 Purchasing by private individuals and organisations

Private individuals and organisations were active purchasers even before the Crown had completed its purchasing programme. Unlike the Crown, they had no qualms about avoiding the lowlands and the lands along the lower reaches of the rivers. They also quickly jumped

[134] H Potter et al, *Porirua ki Manawatu inland waterways historical report*, August 2017, Wai 2200 #A197, pages 307-309.
[135] Wellington plan ML 363. Not included in Supporting Papers.
Diagram attached to GLR Scott, Surveyor, Palmerston North to Assistant Surveyor General, 24 June 1895. Lands and Survey Wellington District Office file 11519. Supporting Papers #1039-1040.
[136] Maori Land Court minute book 20 OTI 356-358, 7 September 1892. Supporting Papers #1265-1267.
[137] Maori Land Court minute book 20 OTI 371-373. Supporting Papers #1268-1270.
Wellington plan ML 1355. Supporting Papers #1561.

in when the Crown had acquired what it wanted and the prohibitions on private purchasing were lifted as a result. The large wave of private purchasing continued for the rest of the nineteenth century. Land blocks with waterway boundaries, or with waterways passing through them, were among those purchased. The loss of management and control of the smaller waterways in particular was enormous.

Among the private purchasers was the Wellington and Manawatu Railway Company, which was anxious to acquire lands on either side of the railway line. Such lands would become more accessible, and more valuable, once the railway line opened. The Company was the main purchaser of much of the remaining Manawatu Kukutauaki 2 lands during the 1880s[138]. These purchases included the Makerua swamp and riparian lands along the lower reaches of the Tokomaru River. The retained lands in Manawatu Kukutauaki 2G became caught up in this wave of private purchasing, being transferred into European ownership in 1893.

That the Makerua swamp had traditionally been a much valued source of eels and plant materials did not prevent those features becoming subordinated to the perceived benefits to be gained from selling the land.

How Maori responded to the pressure from Europeans to purchase their land is a subject in its own right that has been addressed in other evidence. They had competing priorities to contend with. On the one hand was the need for economic survival, as cash increasingly became a significant part of their life. On the other hand was the ancestral connection to the rohe and, in particular with respect to this report, the connection to the waterways. The seasonal patterns of food gathering and movement about the rohe had become less important, and lands close to permanent settlements became more valued while lands further away became less valued. Not all owners were resident in the rohe. For some owners the circumstances they faced at the time made them willing to sell or lease portions of their land that included waterway areas. This was often the background setting behind much block partition activity in the Native Land Court.

It was pressure from the private purchasers of Maori Land and their successors as owners that led to the drainage, flood protection and other waterway alteration schemes along the many stretches of waterway that had not been affected by Crown purchasing activity. This was particularly so in the catchments south of the Manawatu River catchment. Their campaigns for ‘improvements’ to the waterways impacted on the remaining Maori-owned

[138] P Husbands, *Maori aspirations, Crown response and reserves, 1840-2000*, November 2018, Wai 2200 #A213, pages 299-305, with map at page 301.

land and on the environmental quality of the waterways themselves. The shift in land ownership also shifted control of the waterways, either because the rivers had moved outside their surveyed boundaries or because of the ad medium filum aquae presumptive rights to the riverbed attaching to riparian titles.

3.7 Use of the Public Works Act

There have been a large number of compulsory takings of land from Maori by which the Crown acquired parts of various riverbeds, lake beds, and riverbank lands. These are catalogued in the Public Works takings database, and are discussed in a separate Public Works Takings report. Some of the takings by the Crown were at the instigation and on behalf of local authorities such as County Councils, Drainage Boards and Catchment Boards.

From the Crown's perspective, a taking under the Public Works Act extinguished Maori ownership and gave the Crown (or local authority) as new landowner full authority to determine the taken land's use and management. This included all rights to gravel and shingle in the taken land, because gravel management was seen as an integral part of river control works and was therefore included within the purpose for which land was taken (if river control or flood protection was the purpose of taking). Gravel and shingle on or near the surface of the land was not seen as a private mineral that was in some way separated from land ownership. Rights to gravel and shingle passed with title to land, so passed into Crown (or local authority) ownership if any part of the bed of a river was taken under the Public Works Act, or by acquisition or taking of riparian land to which the ad medium filum presumption with respect to adjoining riverbed land was applicable.

3.8 Leasing of Maori Land

Because the remaining Maori-owned land on the lowlands were so suitable for farming, and because of the barriers that Maori owners faced gaining access to capital for development, many partition blocks were leased by their owners to European farmers. Those farmers were intent on developing their leased lands for agricultural purposes, and waterways and wetland protection was a minor or altogether-ignored consideration. Such an approach was encouraged by the terms of the leases, which were usually drawn up by the lessee party rather than the lessor party. Standard clauses in such leases insisted on good husbandry of the land, and generally set expectations that the leased land would be transformed into farmland and then maintained in that condition. It would have required the insertion of specialised clauses in a lease for Maori lessors to have insisted upon the protection of

waterways. That did not happen so far as is known, though it is not inconceivable that a few leases did include protective clauses. Of course, any protective clauses would have encouraged a lessee to seek to pay a lesser amount of rent.

The Crown was actively involved in assisting Maori to lease their lands. The District Maori Land Boards and the Native/Maori Land Court authorised the leasing of Maori land, their minutes generally not referring to the insertion of additional clauses. The Boards and the Native/Maori Trustee acted for Maori owners and drew up and signed leases on their behalf. Standardised documents tended to be drawn up which did not include any clauses designed to provide protection for waterways. The long term nature of leases (21 or 42 year terms, sometimes with right of renewal) meant that the length of time that control was lost by the Maori owners was generational. A lot of landscape transformation could occur during such lengthy time periods. The neglect of waterways was just one aspect of a wider neglect for the recognition and protection of taonga places, fisheries and features in the landscape particularly valued by the Maori owners.

The research for this report did not pursue this particular method of loss of control, and did not conduct any detailed examination of particular lease documents for lands in the Inquiry District.

3.9 Twentieth century purchasing by the Crown

In general the Crown played little part in acquiring additional lands that include waterway interests during the twentieth century. Primarily this is because its ambitions and interests in waterways could be achieved by other means, such as statutory intervention, which are discussed elsewhere in this report.

A complete list of Crown acquisitions relevant to waterways has not been researched or prepared. Two acquisitions of dune lakes (Lake Pukepuke and Lake Waiwiri/Muhunoa) that have traditionally been eel fishing sites are reported on in the chapter on inland fisheries. One other Crown purchase has been researched and is discussed below.

3.9.1 Proposed Railways ballast pit at Otaki

In November 1908, at about the time that the Crown took over the operation of the Wellington and Manawatu railway from the private company of the same name, the Chief Engineer for New Zealand Government Railways recorded:

> The Engineer of the Manawatu Railway has written offering to sell 80 acres of the Company's land in the Otaki Riverbed … at £2 per acre.

> The land will be valuable as a ballast pit as, although there is not a big face available, there is a great scarcity of ballast in the locality.
>
> Working the ballast will also tend to rectify the course of the Otaki River which is encroaching northwards….
>
> I strongly recommend that the land be purchased at the price named.[139]

The purchase was approved. The land concerned was mostly a part of Te Waha o Te Marangai 1B block, which when first surveyed was located on the south bank of the river above the railway bridge[140], and had been purchased by the Wellington and Manawatu Railway Company in 1885. Various nineteenth and early twentieth century survey plans showed the river channel in differing locations. An 1879 plan shows the river flowing round the northern edge of 1B block, with an "old course of Otaki River" marked along the southern boundary[141]. An 1894 plan shows the "present course of the Otaki River" running through the middle of 1B, with the channels on the northern and southern boundaries of the block each labeled "flood channel"[142]. Both the 1879 and 1894 plans were prepared by the same surveyor (Morgan Carkeek). A 1905 plan by a different surveyor shows river channels around the northern boundary and through the middle of 1B[143]. A further plan prepared in 1908 shows a "branch of the Otaki River" running through the middle of 1B and a "flood channel" along the southern boundary[144]. On the basis of these plans, Te Waha o Te Marangai 1B can probably be characterised as shingle riverbed in a braided channel. So far as NZ Government Railways was concerned, the rights to the shingle went with the title, indeed that was the purpose of the acquisition.

For the acquisition of the land by NZ Government Railways, a further survey plan was prepared. This shows the channel around the northern boundary as "flood channel 1909", and the channel through the middle of 1B as "present course 1909"[145]. The part of 1B being acquired was between the "flood channel" and the "present course", which placed it on the northern bank of the river. The land, plus a small portion of the adjoining Waopukatea 2, was taken under the Public Works Act in April 1910[146]. With the buyer and the seller both apparently willing parties, the use of the Public Works Act and its compulsory acquisition aspects seems to have been a matter of convenience rather than of necessity.

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[139] Chief Engineer to General Manager, 25 November 1908. Railways Head Office file 1908/4777/1. Supporting Papers #929.
[140] Walghan Partners, *Porirua ki Manawatu Inquiry District, block research narratives, Volume III*, November 2017, Wai 2200 #A212, page 404.
[141] Wellington plan ML 431. Supporting Papers #1556.
[142] Wellington plan ML 1296. Supporting Papers #1560.
[143] Wellington plan A3350. Supporting Papers #1547.
[144] Wellington plan DP 3527. Supporting Papers #1549.
[145] Wellington plan SO 16122. Supporting Papers #1589.
[146] *New Zealand Gazette* 1910 page 1227. Supporting Papers #1454.

The historical records examined for this report are not clear on the point, but it would seem that either shingle was already being extracted from the land by the Wellington and Manawatu Railway Company and NZ Government Railways continued the practice, or NZ Government Railways started extracting shingle soon after the purchase had been approved. What is known is that Railways built a railway siding into the river bed, this being completed in May 1909. The new siding got off to an inauspicious start, however, as a flood came down the river later that same month and the river shifted into a new southern channel, in the process washing away part of the siding's embankment and threatening to flood into the ballast excavation site[147]. Later, though in what year is not known, the ballast pit ceased to operate. In 1925 it was said to have "not been used for many years", and the Railways land was being leased for grazing purposes[148].

The correspondence in 1925 concerned an attempt by the recently-formed Otaki River Board to exercise control over shingle extraction in the Otaki River. The Board claimed that "the River Boards Act gives to each Board complete control and jurisdiction of the riverbeds and all material therein in its District, irrespective of any question of ownership"[149]. However the Railways Chief Engineer challenged this interpretation of the statute:

> I can find nothing in the Rivers Board Act giving River Boards power to issue permits to private persons to trespass over railway reserve to obtain ballast, nor to remove ballast from railway land. On the contrary, Sections 84 and 85 of that Act seem to make it clear that River Boards cannot interfere with Government property, nor do anything that will prejudice or affect the authority of this Department.[150]

A legal opinion supported this view, though on slightly different grounds[151], and the Otaki River Board was advised accordingly[152].

The ballast pit was reopened in 1942, when the Chief Engineer wrote:

> The very unsatisfactory situation regarding ballasting on the southern lines of the North Island has caused me great anxiety for some months past….
>
> At the present time we are solely dependent on the Rangitikei County Council's drag-line plant at Kakariki for all our ballasting requirements on the Main Trunk Line

[147] Inspecting Engineer to Chief Engineer, 15 November 1910, attached to Chief Engineer to General Manager, 17 November 1910. Railways Head Office file 1908/4777/1. Supporting Papers #930-934.
[148] Chief Engineer to Railway Board, 28 July 1925. Railways Head Office file 1908/4777/1. Supporting Papers #936-938.
[149] Clerk Otaki River Board to General Manager, 10 July 1925. Railways Head Office file 1908/4777/1. Supporting Papers #935.
[150] Chief Engineer to Railway Board, 28 July 1925. Railways Head Office file 1908/4777/1. Supporting Papers #936-938.
[151] File note by M Dennehy, 16 September 1925. Railways Head Office file 1908/4777/1. Supporting Papers #939-940.
[152] Secretary Railway Board to Clerk Otaki River Board, 16 September 1925. Railways Head Office file 1908/4777/1. Supporting Papers #941-942.

between Wellington and Ohakune, on the Hutt and Wairarapa Lines and the southern portion of the Palmerston North to Napier Line….

Various schemes for obtaining ballast have been investigated, and the one that is undoubtedly the best is a proposal to erect a crushing plant near Otaki to deal with the huge deposits of shingle in the Otaki River. The material is of excellent quality but requires to be crushed. The Department owns about 80 acres of the river bed on the eastern side of the railway line, and the shingle on this railway reserve is almost inexhaustible.

Briefly the scheme is to load tip trucks in the river bed, haul to the crusher plant where the ballast will be stored in bins which in turn would discharge into [rail] wagons…. This proposal obviates the use of a dragline…..

It will be necessary to purchase about 10 acres of private land and take over about 2 acres of Crown Land to provide the site for the plant and give siding access from Otaki Station yard.[153]

In addition to the privately-owned land taken for the siding access[154], 25¼ acres defined as "Part Bed of the Otaki River", being the old course of the river that lay between the northern boundary of Te Waha o Te Marangai block and the southern boundary of Kaingaraki block, both as first laid out in the 1870s, was also taken for railway purposes[155]. As former river bed, no action was taken by the Railways Department to determine whether anyone was entitled to compensation for the taking. The status of this riverbed land prior to its taking is a matter for legal interpretation, given that land downstream and closer to the sea which was in the riverbed was considered by the Crown in 1950 to be Maori customary land whose title had not been investigated (see the section of this report concerned with Catchment Board activities). The status of the riverbed could probably be determined from an examination of the original Native Land Court titles.

3.10 Concluding remarks

The Crown was the author of the purchase deeds, for both its purchases in the days before the Native Land Court and its purchases of Court-ordered titles during the 1870s. The deeds were drawn up by the Crown to satisfy its need for documentary evidence of acquisition. As a minimum, the Crown had a responsibility to communicate its ideas of what rights it wanted to acquire, and obtain sufficient feedback from the Maori sellers to know that its ideas had been received and understood by the sellers. Both parties had to be on the same page.

[153] Chief Engineer to General Manager, 14 September 1942. Railways Head Office file 1908/4777/1. Supporting Papers #945-946.
[154] *New Zealand Gazette* 1943 page 379. Wellington plan SO 20981. Supporting Papers #1467 and 1592.
[155] *New Zealand Gazette* 1943 page 1075. Wellington plan SO 20982. Supporting Papers #1471 and 1593.

The evidence suggests that was not the case. Nowhere was this more so than with the Rangitikei-Manawatu Purchase. This purchase was conducted by multiple Crown agents operating under a variety of different circumstances over a lengthy period of time. The risk that confusion and misunderstanding would creep in was very high in the best of circumstances. The risk was amplified when the Crown was pursuing its own agenda of minimising the area of reserves it would return to Maori, and maximising the amount of land that could be released for farming development. The Crown made promises of reserves for fishing purposes even as much of its attention had already moved on to the task of cutting up its acquired land into farm sections for settlement by immigrant farmers. The dreams and ambitions of those farmers would be in direct competition with any concept of retention of the waterscape or fisheries habitat protection.

The legal status of different waterways as a consequence of land purchase in general, and the Crown's purchases in particular, is unclear, and would need to be the subject of legal submission before any formal determination could be made. The smaller the waterway and the more it is located within land title boundaries, the more likely it is that the status of the waterway goes with the status of the land. The larger the waterway, and especially where a river forms a boundary to a land purchase, the more there is a diversity of views. The Crown asserts that in the first instance the rights to a bounding waterway go with the riparian land, with any split of rights between opposite banks being along a centre line. This assertion is adjustable in the case of a river which is navigable, where the whole width of bed is vested in the Crown. These are matters discussed more fully in the next chapter. Other assertions are that none of a bounding river could have been included in a purchase by the Crown (i.e. it was never alienated), and alternatively that rights to a bounding river are shared across its full width, with no centre line split between opposite banks. Yet another assertion is that the status of the riverbed, as definable by land law, does not determine the status of all other ownership and control rights that attach to a waterway and its waters. These are all matters that in an ideal world would have been talked about and decided upon in the early days of colonial Government, so that there could have been a firm foundation of understanding during the early purchase negotiations.

The extent of early land purchase, whether by the Crown or by private purchasers, had a crippling impact on the ability of Maori to exercise their tino rangatiratanga over waterways. So much control and authority was lost both in law and in day-to-day practice. The loss during that relatively short period of perhaps one generation has never been recovered. It has simultaneously made it easier for kawanatanga, the Crown's authority to extend its breadth and depth in subsequent eras.

4. The application of common law and statute law to the beds of inland waterways

To what extent were common law presumptions concerning ownership and control of the beds of inland waterways (such as ad medium filum aquae presumptions) or legislative provisions (such as the Coal Mines Act 1903 or drainage legislation) applied to waterways of importance in this inquiry district, and with what impacts?

4.1 Introduction

This chapter, when discussing the law relating to waterways, is concerned solely with land law relating to riverbeds. It therefore does not discuss waterways in a holistic sense, as Maori tikanga would adopt, and instead concentrates only on one aspect of waterways. It does not present a legal opinion about the law, as that is a task for counsel rather than an historical researcher. Instead it quotes legal opinions that have historically been provided in response to issues that have arisen in Porirua ki Manawatu Inquiry District. It has to be appreciated that each of these opinions is made in the context of the time in which it is provided. As case law develops over time, those opinions can vary. As an historical account, this report does not discuss the most recent case law on the subject, provided in 2014[156]. Any legal opinion provided by counsel in the present day would have particular regard for that recent Supreme Court decision.

Many of the legal opinions quoted in this chapter were the opinions of lawyers acting for the Crown. The Crown was not impartial, having its own interests that it sought to protect, and its own attitudes that became entrenched by longstanding and constant use. Despite this potential bias, Crown officials were required to work with the law as it was interpreted by the courts. Much of this chapter is concerned with how the Crown applied those interpretations at different points in time.

4.2 The ad medium filum aquae presumption

Over the years a number of legal opinions have been prepared for the Crown about riverbed titles, higher Court decisions have interpreted the law, and the common law has over time been amended or had its application restricted by statute law. This section about the ad medium filum aquae presumption is not intended to be inclusive of all opinions, decisions

[156] Paki v. Attorney General (No. 1), [2012] NZSC 50.
Paki v. Attorney General (No. 2), [2014] NZSC 118.

and law changes, and primarily relies on an examination of a number of cases concerned with the bed of the Manawatu River and other Inquiry District rivers that were identified during research for the report. In general terms, the adoption of the ad medium filum aquae presumption has been the standard setting that has been universally applicable. Only if particular circumstances determine otherwise is the presumption rebuttable or capable of being displaced by an alternative legal principle. The tying of waterway bed ownership rights to the ownership of adjoining land is starkly different to any Maori belief that customary and traditional rights to waterways have never been explicitly extinguished and survive independently of the rights to adjoining land. However in law, where the ad medium filum aquae presumption applies, a riparian owner can claim to have included in their title any riverbed land up to the middle line of the river that has gradually and imperceptibly (i.e. by the process known as accretion) ceased to be riverbed. It was the task of District Land Registrars in Land Registry offices to determine whether the Crown-guaranteed title should have added to it such accretion.

From the Crown's perspective, when seeking a legal opinion, the issue tended to be whether special circumstances applied that might rebut the presumption of riparian rights and as a consequence might advantage or benefit the Crown. While officials acknowledged and respected the rights to adjoining riverbed that riparian owners enjoyed, they were not prepared to allow by neglect the loss of any rights that the Crown might enjoy.

4.2.1 Rebuttal of the presumption: navigable river

Navigability of a river was a feature of English common law. However its impact on the ownership and control of riverbeds in New Zealand was brought into sharp relief by a Court decision in 1900, *Mueller v. Taupiri Coal-Mines Ltd*, which determined that as a matter of common law, the ownership of the bed of a part of the lower Waikato River, a navigable river, was vested in the Crown. The Court decision was a majority verdict and, perhaps fearing that its ownership of the beds of navigable rivers might not always be secure, steps were immediately taken by the Government to embed its findings in New Zealand statute law with the passing of Section 14 Coal-Mines Act Amendment Act 1903.

The Coal-Mines Act Amendment Act 1903 divided non-tidal rivers into two categories, those that were navigable to craft and their beds became vested in the Crown (and thereby displaced the common law to that extent), and those that were not navigable and the common law (including the ad medium filum aquae presumption) continued to prevail undisturbed. While Foxton was a port in the nineteenth and early twentieth centuries, it relied on tidal waters for its navigation needs to and from the sea, and the 1903 Act therefore

did not alter its legal position[157]. It was whether the Manawatu River was navigable upstream of Foxton that was at question.

When the status of a piece of old riverbed of the Manawatu River was being examined in 1929, officials and Crown Law legal officers examined whether the river was navigable. A variety of opinions were proffered, which are discussed below. The reason for the range of opinions was because of the opaqueness of the legislation; the 1903 statute was prepared in haste and was poorly drafted. At one stage the Solicitor General referred in a legal opinion to "the vague terms in which it is drafted", making interpretation "a matter of great difficulty"[158].

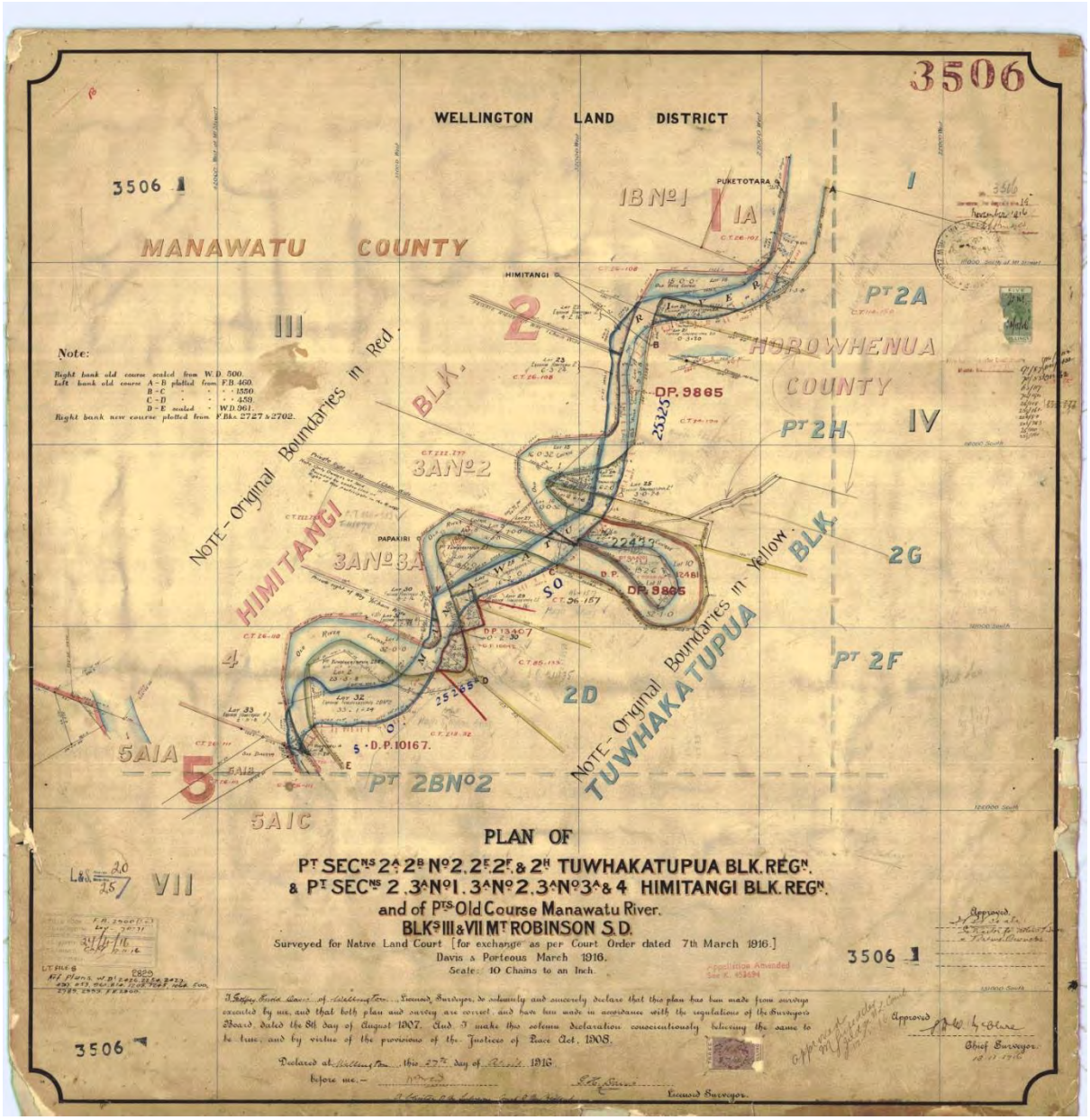
The 1929 case arose because the area of dry riverbed of the Manawatu River that was the subject of an application to the District Lands Registrar for title as a result of accretion was so large (at just over 50 acres)[159], and appeared to be such valuable land, that doubts were held whether the applicants were entitled to succeed with their claim. The bend of the river that had become dry land was located just downstream of the confluence of the Manawatu and Oroua Rivers, where the true right (western) bank was Himatangi 3 Maori block land, and the true left (eastern) bank was Tuwhakatupua 2 Maori block land, both of which had passed into European ownership by this time[160]. Before applying the standard presumptive approach of issuing title to any permanently dry riverbed up to the centre line of the river, the Registrar General of Land sought the opinion of the Solicitor General as to whether there were any factors that rebutted the presumption. In his letter to the Solicitor General, the Registrar General wrote:

> I may say that it has been the practice of the office to give effect to applications such as these, that is to say to include in the adjoining owner's certificate of title the half of a dry riverbed adjoining his property, and also to correct Certificates of Title by including lands formed by gradual and imperceptible accretions, including of course eroded portions where such existed.
>
> In the case of dried up riverbeds, this was done of course only where it appeared probable that the presumption ad medium filum aquae was not rebutted. I am unable to say whether any such cases of dry beds have occurred in native lands, but I presume that cases have occurred.

[157] One interpretation of the effect of the 1903 Act is that it puts navigable non-tidal rivers into the same category as tidal rivers, because the beds of tidal rivers are deemed to be vested in the Crown by virtue of marine law.
[158] Solicitor General to Registrar General of Land, 18 November 1929. Registrar General of Land file 1929/101. Supporting Papers #951-955.
[159] The application was for the inclusion of Lot 10 DP 3506 in the adjoining title. The plan showing the old riverbed had been approved in 1916, but title changes had only been made at that time to old riverbed lands on the true right bank. Supporting Papers #1548.
[160] "True right" and "true left" are terms used when facing downstream.

> The provisions [re beds of navigable rivers] now contained in Section 206 of the Coal Mines Act 1925 have made the question more difficult for District Land Registrars.[161]

Figure 3: Wellington plan DP 3506.



[161] Registrar General of Land to Solicitor General, 15 October 1929. Registrar General of Land file 1929/101. Supporting Papers #947-950.

Section 206 of the 1925 Act was a successor provision to Section 14 Coal Mines Act Amendment Act 1903.

Among the questions asked of the Solicitor General was:

> Whether Section 206 of the Coal Mines Act 1925 ought to be interpreted as applying not only to so much of a navigable river as therein defined as extends from the sea to the highest point at which it is continuously so navigable, or whether it ought to be interpreted as applying also to navigable reaches of water notwithstanding that parts of the river lower down its course are not navigable.[162]

The Solicitor General replied:

> With reference to the particular case under consideration, I find it difficult to advise without a detailed statement as to the history of the title and a statement as to whether the river was navigable over that part of its course, including this point, prior to its change of course. I should be glad if you could obtain from Messrs Jacobs and Grant [applicants' solicitors] as detailed a statement as possible of the history of the title to the land under consideration and the land immediately adjoining it, when I can give the matter further consideration.
>
> [Re Section 206 Coal Mines Acts 1925] according to the literal construction of its terms it applies to the whole bed of the navigable river whether or not the whole of it is navigable. Having regard to its purpose, however, it seems probable that it would be restricted to such portions of a river as were navigable. The only reason for accepting the wider construction would be the necessity for exercising control over the higher reaches of a river in order to improve the navigable reaches. This does not appear to me, however, to be a sufficient reason for giving it the wider meaning, and I think it would be restricted in the way I have suggested.
>
> I think that you should adopt the construction that it confers a right to the bed from where the tidal waters cease to run to the furthest point at which it might be used for the ordinary purposes of navigation. By that I mean for the purpose of getting from point to point as a means of travelling, and not merely such short trips as may be undertaken on pleasure excursions. It is to be noted also that where a Crown Grant has been issued describing or showing land bounded by a river, unless there are some exceptional circumstances there is a prima facie presumption that the bed of the river to its middle line passes. Coulson & Forbes on Water, 4th Edition, p. 91. The presumption applies to the Crown, idem. See also McLaren v The Attorney General for Quebec, 1914 A.C. 258. It would appear, therefore, upon the literal construction of the opening words that the effect of Section 206 is limited to cases where the grant or Certificate of Title of land bounded by a river states the boundary to be the bank of the river. This construction renders the Section almost entirely nugatory and seems negatived by the provisions of subsection 3. The only clear result and effect of the section seems to be that where a river is included in land owned by Natives, and the Native title is determined or ascertained after the 23rd November 1903, the date of the passing of the Coal Mines Amendment Act 1903, and the title to the riverbed is not investigated, it remains vested in the Crown and not in the Natives. This very limited construction narrows the effect of the section so much as to make it fail to achieve its intention.

[162] Registrar General of Land to Solicitor General, 15 October 1929. Registrar General of Land file 1929/101. Supporting Papers #947-950.

> The question is a difficult one owing to the provision on the wider construction interfering with vested rights, and so being subject to the rule of strict construction. On the other hand the legislation was passed just after the decision of the Court of Appeal on Mueller v The Taupiri Coal Coy Ltd, 20 N.Z.L.R. 89, and may be regarded as in some way declaratory. It is remedial and for the public benefit, and as the wider construction is apparently recognised by the terms of subsection 3 of Section 206, I think Section 5(j) of the Acts Interpretation Act 1929 [sic, 1924?] applies and it would be liberally construed so as to vest the beds of navigable rivers in the Crown whether the adjoining land was granted before or after the passing of the Act and notwithstanding that the title states the land is bounded by the river and not by its bank. In any case that is, I think, the construction on which you should act until the Supreme Court rules otherwise.[163]
> [Underlining in original]

The Registrar General of Land then sought fuller information from the applicants' solicitors:

> I shall be obliged, therefore, if you will be so good as to furnish me with the information desired by the Solicitor General, with special reference to the navigability or otherwise of the rivers where it flows through or past Messrs Akers' land. In this connection the term 'navigable' must be understood to mean navigable as defined in Section 206 of the Coal Mines Act 1925, and not to mean 'navigable' according to the more limited common law meaning of the word. For your further guidance I may say that the Solicitor General advises that he thinks that I should adopt the construction that the Section referred to confers a right to the Crown to the bed of a river from where the tidal waters cease to run to the furthest point at which the river might be used for the ordinary purposes of navigation. By that he means for the purpose of getting from point to point as a means of travelling, and not merely such short trips as may be undertaken on pleasure excursions.[164]

The solicitors in their reply relied on the views of the applicant titleholder, which represent a lay-person's view on navigability:

> Mr Akers personally has recollection of upwards of 40 years of the locality and states that the river cut itself [leaving the dry bed] had taken place prior to his earliest recollection of the immediate vicinity…. Mr Akers makes a general statement that the river where it passes the particular point is not navigable, there being too much silt and obstruction in the riverbed. By navigable, he means navigable in terms of the concluding sentence in your letter [being the concluding sentence in the quote above], but certainly not from the point of view of the definition stated in the Coal Mines Act. It can be submitted that the veriest creek could be termed navigable within the terms of this narrow definition. He states further that because of the fact that the Makerua District was absolutely devoid of roads, great efforts have been made from time to time to use punts and barges for transport, particularly of green flax leaf, from point to point for the convenience of the many flax mills that were operating in that particular area. The use of these, however, had to be discontinued. It was never highly successful at all, but on one or two occasions punts got through for fair distances at a time when there was a fresh in the river. Also many trials were made to use boats but these were found to be absolutely impracticable. We think that it will be agreed that the immense value of the river for transport purposes at a time when there were no other means of transport, and the inability of farmers and millers and others to make any use of the

[163] Solicitor General to Registrar General of Land, 18 November 1929. Registrar General of Land file 1929/101. Supporting Papers #951-955.
[164] Registrar General of Land to Jacobs and Grant, Solicitors, Palmerston North, 21 November 1929. Registrar General of Land file 1929/101. Supporting Papers #956-957.

> river for that purpose during the whole time that Mr Akers has had experience with the locality, should indicate that the river never has been navigable within the term at the end of your letter.
>
> We feel that it is fair to inform you that Mr Akers conducted an enquiry himself into the question and was told that a boat did actually, very many years ago, possibly before Mr Akers was on the land, contrive to come inland up the river to a point a little above the point in question. Whether or not this is authentic he cannot now ascertain, but we feel certain that Mr Akers would desire to mention the fact that he has had this passed on to him. Of course at the present time the navigation is more impossible because of the altered circumstances of the river. In ordinary times the bed of the river is still as it was long ago but impassable so far as navigability is concerned. A fresh now has worse effect than formerly because of the fact of huge river protection works that have been effected along the banks.
>
> The only other person of whom we could think who might possess some information regarding the subject matter of our enquiry was Mr Walter Barber, who likewise has been farming in the locality for about the same period as Mr Akers. He too thinks that he has no recollection of the alteration in the course of the river. It had taken place before he arrived. It certainly took place after the ascertainment of Native title, but so far as he is concerned may even have happened before his people obtained the lease from the natives. The writer read to Mr Barber the general notes that we had taken from Mr Akers. He could only say that Mr Akers' recollection was absolutely the same as his own, and that the river to his knowledge had never been navigable in the sense to which we have referred.[165]

When this information was forwarded to the Solicitor General, he gave further consideration to the matter:

> I think that the Manawatu River at this point was navigable within the meaning of the Coal Mines Act, and consequently, if the change did not take place before 1903, the bed was and remains vested in the Crown. It appears, however that the course of the river changed before 1903. In that event it was no longer the bed of a navigable river at the time of the passing of that Act.[166]

Consideration of this particular application therefore rested on other matters that were at issue (see the later section of this chapter relating to Native Land).

The navigability (in a legal sense) or otherwise of the Manawatu River was further considered in the second case that arose in 1934. Confusingly, the applicant seeking title was the same person (Mr Akers) as had sought title in the first case in 1929, though the location was different. The second case concerned a piece of dry riverbed further upstream, beyond the confluence of the Oroua and Manawatu Rivers, near Longburn, with an area of about 115 acres. The Chief Surveyor sought advice from the Under Secretary for Lands

[165] Jacobs and Grant, Solicitors, Palmerston North, to Registrar General of Land, 6 February 1930. Registrar General of Land file 1929/101. Supporting Papers #958-961.
[166] Solicitor General to Registrar General of Land, 4 June 1930. Registrar General of Land file 1929/101. Supporting Papers #962.

because “the ownership apparently hinges on whether the Manawatu is a navigable river as defined in Section 206(2) Coal Mines Act 1925”. He explained:

> In respect to this it is interesting to note that the Manawatu River is marked as “navigable by canoe” up to a point in the Manawatu Gorge on Plan No. 1 annexed to the “Treatise on Practical Surveying as particularly applied to New Zealand and other Colonies” by Arthur Whitehead, Surveyor to the New Zealand Company, published by Longman & Co, London, 1848.
>
> T.L. Buick, in “Old Manawatu” on pages 119, 120, states that one “Jack Duff, who was probably the first European to see the Manawatu Gorge, took a canoe and some native guides and paddled and poled up the river for a distance he reckoned to be fifty miles until he came to the breach in the mountains through which the party pulled the canoe and navigated the upper reaches of the river that flows through Hawke’s Bay”.

He asked that an opinion be sought from Crown Law Office whether the Manawatu River was a navigable river[167].

In a second memorandum, before any opinion had been received from by Crown Law Office, the Commissioner of Crown Lands added that there appeared to be no other factors apart from navigability which might rebut the ad medium filum aquae presumption:

> It seems to me that the Crown’s claim to the land must rest upon the river being or having been navigable at that part.
>
> The Secretary of the Marine Department in his memorandum of 13th October 1924 to you (your papers 1/179)[168] states in the second paragraph thereof “We have established claims to shingle in rivers simply on the evidence that they have been navigated in the past by Native canoes”. I have been unable to obtain a reference to any specific case in which the Crown’s rights have been established as stated, but if such should be obtainable and can be regarded as conclusive, there should be little difficulty in proving the old riverbed now under discussion to be Crown land.
>
> If the Crown Law Office is of opinion that navigability by Native canoes is a sufficient proof of navigability as defined by Section 206(2) Coal Mines Act 1925, then I am prepared to claim the land as Crown Land and take steps for its disposal.[169]

When the matter was referred to Crown Law Office, it was given to a Crown Solicitor named J Prendeville for reply. He had represented the Crown before the Native Land Court in a hearing into the status of old riverbed on the Rangitikei River at Bulls in 1926, and had provided a legal opinion about islands in the Rangitikei River in 1932, so was probably

[167] Commissioner of Crown Lands Wellington to Under Secretary for Lands, 9 October 1934. Lands and Survey Head Office file 22/3293/20. Supporting Papers #309-312.
[168] This particular memorandum (Secretary for Marine to Under Secretary for Lands, 13 October 1924. Lands and Survey Head Office file 1/179) is quoted from in D Alexander, *Rangitikei River and its tributaries historical report*, November 2015, Wai 2200 #A187, pages 100-101. It is included in Supporting Papers to that report, #A187(a) #474.
[169] Commissioner of Crown Lands Wellington to Under Secretary for Lands, 9 November 1934. Lands and Survey Head Office file 22/3293/20. Supporting Papers #313.

regarded at the time as being well-versed in riverbed jurisprudence[170]. He quickly decided that the Marine Department's interpretation of navigation based simply on Native canoe usage was probably a stretch too far:

> The fact that the Marine Department has "established claims" on the evidence of navigation by Maori canoes would not, I think, be conclusive.

Prendeville then asked for more factual information about navigation on the Manawatu River before he was prepared to give an opinion about the status of the dry riverbed at Longburn:

> I think that it will be found in old N.Z. Pilots (Marine Department) that the Manawatu River was navigated up close to or past the bridge between Palmerston and Linton.[171]

The further information on navigability was provided in January 1935. The Commissioner of Crown Lands wrote:

> Evidence of navigability of the Manawatu River is found in Wakefield's Handbook for New Zealand dated 1848. At page 118 re this river it states "any vessel which can cross the bar can ascend the river for 52 miles from its mouth". On page 120 it refers to this point as being "the end of clear navigation".
>
> By measuring the distance of 52 miles on our present-day maps, the limit of "clear navigation" is slightly north of where the south-western boundary of the City of Palmerston North meets the river. The dry riverbed under discussion is some four to six miles downstream of that position.
>
> N.Z. Pilot (1891) page 186 states: "There is a depth of 3 to 4 feet on the bar of the Manawatu at low water springs and vessels drawing seven feet may enter at high water and proceed 30 miles from its mouth".
>
> The attached tracing of Roll Plan 418 shows part of the Manawatu River as surveyed in 1859. A reference is endorsed thereon to the river being navigable to a certain part, Ngawhakarau, by vessels of 25 tons. In the Appendices to the Journals of the House of Representatives, Vol 1, 1871 D-2 page 7, John Stewart, District Engineer, states that "goods traffic between Ngawhakarau and Palmerston is now wholly by canoe transit by river".[172]

This information does not seem to have wholly convinced the Crown Solicitor, who commenced his opinion by stating:

> It is difficult to state with confidence whether the old river bed at this point belongs to the Crown or to the adjoining owners. It is clear, as has been stated in several opinions from this office, that the presumption of ownership ad medium filum is in force in New Zealand: The King v. Joyce (1906) 25 N.Z.L.R. 25. At the same time it is admitted that this presumption may be rebutted by the special facts of a particular case.
> [Underlining in original]

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[170] D Alexander, *Rangitikei River and its tributaries historical report*, November 2015, Wai 2200 #A187, pages 101-107 and 115; and D Alexander, *Response to Tribunal questions*, June 2017, Wai 2200 #A187(d), pages 2-3.
[171] Crown Solicitor to Under Secretary for Lands, 21 November 1934. Lands and Survey Head Office file 22/3293/20. Supporting Papers #314.
[172] Commissioner of Crown Lands Wellington to Under Secretary for Lands, 21 January 1935. Lands and Survey Head Office file 22/3293/20. Supporting Papers #315-316.

However, he considered that a rebuttal of the ad medium filum presumption on the grounds that the river was navigable would be achievable if more research was carried out:

> In the present case I think evidence could be obtained showing that the Manawatu was navigable and was navigated for a very considerable distance from the mouth. The copy of Mr Stewart's plan of 1859 shows navigation for vessels of 25 tons to 38¾ miles, and the report of Mr Stewart states that goods traffic from this point to Palmerston was by canoe. It has to be borne in mind that good roads and fast cheap road transport has taken the place of river transport almost everywhere in recent years, even though the rivers have not actually ceased to be navigable. I think evidence could be obtained that down to the early part of this century flax was transported by the river from the Makerua Swamp and Tokomaru District to the mills at Foxton.

Despite the doubts he had expressed, however, the Crown Solicitor concluded his opinion by stating that, on the basis of a combination of the navigation history, the extinguishment of native title by the Ahuaturanga purchase, and some limitations to the applicability of the riparian Crown Grant, enough evidence existed to allow the Crown to claim the old riverbed as Crown Land[173].

Based on this opinion, though without gathering any further evidence about navigation history, the Crown adopted and asserted the view that the ad medium filum presumption did not apply and the dry riverbed at Longburn was Crown Land; it told the adjoining riparian titleholders that they did not enjoy presumptive rights, and then offered to sell the Crown Land to them. The Crown also sent a surveyor on to the dry riverbed to peg out and survey the land that it considered was Crown Land[174]. The titleholders and their solicitors challenged the Crown's decision and claimed that their presumptive rights should be honoured. They also considered that their longstanding and previously unchallenged possession and enjoyment of the riverbed land in question entitled them to claim ownership. This potentially put the Crown in the position of having to argue its assertion of ownership in court in order to dispossess the occupants of the land[175]. Another Crown Solicitor, not J Prendeville, could only agree with that possibility; he identified two alternative courses of legal action and relief open to the Crown[176]. There is no indication on the file that the Commissioner of Crown Lands made any immediate moves to instigate legal proceedings.

Nearly one year later the Chief Surveyor provided some further information about the case. He had re-read the various opinions and noticed the remarks of the Solicitor General in June

[173] Crown Solicitor to Under Secretary for Lands, 6 March 1935. Lands and Survey Head Office file 22/3293/20. Supporting Papers #317-318.
[174] Wellington plan SO 19613. Supporting Papers #1591.
[175] Commissioner of Crown Lands Wellington to Under Secretary for Lands, 17 July 1935. Lands and Survey Head Office file 22/3293/20. Supporting Papers #319-323.
[176] Crown Solicitor to Under Secretary for Lands, 9 August 1935. Lands and Survey Head Office file 22/3293/20. Supporting Papers #324-325.

1930 which, as he put it, "appears to [legally interpret] that under the Coal Mines Act 1903 the bed of the river that vested in the Crown was the bed of the navigable river as at the time of passing of the Act, November 1903".

> In this particular case, evidence goes to prove that the river changed its course prior to 1903.
>
> If such is the position, the Crown would be deprived of the benefit of Section 206 of the Coal Mines Act 1925 in any Court action, and would have to produce evidence to rebut the presumption, as in the case "Mueller v The Taupiri Coal Mines".

In the Chief Surveyor's view, this did not nullify the Crown's claim in total, though it would probably have a bearing on how much of the riverbed land could be claimed by the Crown. He asked for the opportunity to confer with the Crown Solicitor[177].

The Under Secretary for Lands asked the Solicitor General to consider the matter. However the file does not contain any response from Crown Law Office. The survey plan prepared in April 1935 has a subsequently-added (date unknown) notation "Sectionising of Old Bed of River abandoned. Section number not used."[178]

The next action on the Department of Lands and Survey file about riverbed at Longburn is dated 1959, when the Railways Department wanted to build a new bridge and approaches across the dry riverbed of the Manawatu River as part of a railway deviation. This resurrected the question of riverbed ownership, and whether the Crown still had any claim. A legal officer working in the District Office of the Department of Lands and Survey, presumably a practicing solicitor, prepared an opinion[179]. The main feature of this opinion was that legal thinking about the application of the navigable rivers legislation had moved on from the thinking that had prevailed in the 1930s, primarily as a consequence of a Court of Appeal decision in 1955[180]. This decision, where the judges produced some conflicting opinions as with the 1900 case, is noteworthy in that one of the Appellate Judges was Fair J., who had formerly been Solicitor General and had written the opinions produced in 1929 and 1930 and quoted from earlier in this section.

The legal officer's opinion quoted from the opinions given by Adams J. and Fair J. in the 1955 decision:

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[177] Chief Surveyor Wellington to Under Secretary for Lands, 7 July 1936. Lands and Survey Head Office file 22/3293/20. Supporting Papers #326-327.
[178] Wellington plan SO 19613. Supporting Papers #1591.
[179] Memorandum of Legal Officer Wellington District Office, 11 May 1959, attached to Commissioner of Crown Lands Wellington to Director General of Lands, 13 May 1959. Lands and Survey Head Office file 22/3293/20. Supporting Papers #328-333.
[180] Attorney General and Hutt River Board v. Leighton, [1955] NZLR 750.

> [Adams J. at 787] In my opinion the doctrine of the moveable nature of the freehold in the bed of the river must be applied to Section 206 (of the Coal Mines Act 1925) with the result that the titles of the Crown and of the riparian owners will shift as the position of the bed changes by imperceptible processes of accretion and erosion. In this I am in accord with the learned author of Goodall's Conveyancing in New Zealand, 2nd Ed 720: "it follows that Section 206 is irrelevant in regard to accretion".
>
> [Fair J. at 768] The questions as to the meaning and operation of Section 206 of the Coal Mines Act 1925 and of the word "navigable" therein are, in the context and in the circumstances to which they are applicable, of very considerable difficulty. This is not lessened by the fact that the section is, in effect, a confiscating provision and, in accordance with the ordinary rules of interpretation, it must be confined to such matters as are clearly necessary to enable it to be given effective operation.[181]

The legal officer's opinion took the view that, while the river (i.e. its regularly wetted bed) might be navigable, any dry land which qualified as accretion by gradual and imperceptible change was not part of the river and was not subject to the navigability provision, and so could be treated as being subject to the ad medium filum presumption. Accretion and navigability were two separate issues that did not overlap, because it was legally impossible for riverbed that had become dry land by gradual and imperceptible change to be the bed of a navigable river. The bed of a navigable river vested in the Crown could be, and often is, of a lesser width than the 'bed' between two riverbank title lines surveyed for dry-land definition purposes.

The only circumstances where the Crown could claim ownership of dry riverbed under the navigability provisions was if that portion of riverbed had been a navigable river after 1903, and had ceased to be a navigable river since then by sudden movement of the course of the river (i.e. by avulsion). The suddenness of such change would mean that the common law definition of accretion as having occurred gradually and imperceptibly was not met. Given that the dry-land riverbed at Longburn seemed to have been in that dry state before 1903, most if not all the large area of dry riverbed that was at issue in the 1930s could probably not be claimed by the Crown on navigability grounds. The legal officer added, with respect to the "present river-bed" that "there appear to be sufficient facts to show that the river at least to the point in question is navigable", and therefore was vested in the Crown[182].

The Commissioner of Crown Lands forwarded this legal opinion to his Head Office for comment, and an assessment as to whether the Crown had sufficient grounds to claim

[181] Memorandum of Legal Officer Wellington District Office, 11 May 1959, attached to Commissioner of Crown Lands Wellington to Director General of Lands, 13 May 1959. Lands and Survey Head Office file 22/3293/20. Supporting Papers #328-333.
[182] Memorandum of Legal Officer Wellington District Office, 11 May 1959, attached to Commissioner of Crown Lands Wellington to Director General of Lands, 13 May 1959. Lands and Survey Head Office file 22/3293/20. Supporting Papers #328-333.

ownership of the dry portion of the riverbed over which the new railway line would be constructed[183]. The Office Solicitor in the Department's Head Office then gave his opinion. His first comment was a general one about the Coal Mines legislation:

> Unfortunately the meaning of [Section 206 Coal Mines Act 1925] is very obscure. Reports of decisions in which the section has been discussed have left the meaning completely at large, with the effect that any claim by the Crown based on the section would probably have to be taken at least to the Court of Appeal to be successful. Fortunately in respect of the S.O. 24281 [the plan showing the railway deviation] the Crown will not be a claimant, but will have to consider whether it should resist a claim for compensation for the land proposed to be taken for railway purposes.[184]

In connection with this latter remark, the Office Solicitor pragmatically preferred, as a matter of general priority, that the onus should be on others claiming ownership under right of accretion or right of longstanding occupation to be responsible for proving their case, rather than for the Crown to be required to prove any assertion that it made.

On the subject of the type of interpretation to give to the Coal Mines legislation, he believed the Crown should apply a liberal construction as to what could be vested in the Crown, referring favourably to the remarks of the Solicitor General in the original 1929 opinion that the legislation was declaratory of the pre-1903 state of the common law that underpinned the Mueller v Taupiri Coal Mines judgment, that it was remedial in nature, and that it secured a public benefit; "in any case that is, I think, the construction upon which you should act until the Supreme Court rules otherwise"[185].

Based on the two legal opinions, the Director General of Lands replied to the Commissioner:

1. Ownership of Present Bed of Manawatu River
   It is considered that the present bed of the river is Crown Land. The river could be considered navigable at this point and the titles to the land on both banks are bounded by the river.

2. Ownership of Old Bed of Manawatu River
   The Crown should not claim any of the accretion, but in the event of a claim for compensation being made by the adjoining owners they should be required to prove their title to the areas in question. This could be as accretion and probably by prescription as well.[186]

Two years later when portion of the dry-land riverbed had been taken for the railway deviation, and the occupier claimed compensation for loss of the land that was taken, his

[183] Commissioner of Crown Lands Wellington to Director General of Lands, 13 May 1959. Lands and Survey Head Office file 22/3293/20. Supporting Papers #328-333.
[184] Memorandum by Office Solicitor, 22 July 1959. Lands and Survey Head Office file 22/3293/20. Supporting Papers #334-335.
[185] Memorandum by Office Solicitor, 22 July 1959. Lands and Survey Head Office file 22/3293/20. Supporting Papers #334-335.
[186] Director General of Lands to Commissioner of Crown Lands Wellington, 10 August 1959. Lands and Survey Head Office file 22/3293/20. Supporting Papers #336.

claim to ownership of the dry-land riverbed was based on his longstanding occupation and the absence of legal action by anyone, including the Crown, to remove him from the land (i.e. acquisition by prescription), rather than by virtue of a claim to accretion to his riparian title[187]. The claim to ownership was not challenged by the Crown[188].

A separate instance where the bed of the Manawatu River was claimed by the Crown as being vested in the Crown by virtue of the river being navigable was at the Taupunga Cut. Because this cut was an artificial channel constructed by the Manawatu-Oroua River Board in the early 1930s (see separate section elsewhere in this report about the River Board's activities), the change of course of the river was sudden, and a complex legal situation arose with respect to the old bed of the Manawatu River that was cut off by the new channel. The bed of the course of the river that was in existence immediately before the artificial channel came into operation, known as Coley's Bend, was Crown Land because the river was deemed to be navigable and the law of accretion was not applicable. However that river course was not the course that had been defined by survey of the land on either bank of the Coley's Bend cut-off in the nineteenth century, because during the time between that survey and the early 1930s there had been a change of course so that in some places the original bed had become dry land (and was deemed to be accretion) while in other places riverbank land had been eroded by the river. Some thirty years later, in 1960, land on both banks of the Coley's Bend cut-off was owned by the same person[189], and he sought to bring into one title those riverbank lands, the accretion in the cut-off that he could claim, and the Crown Land navigable riverbed in the cut-off. This required him to approach the Department of Lands and Survey, as the administrator responsible for the Crown Land riverbed, for permission to do so.

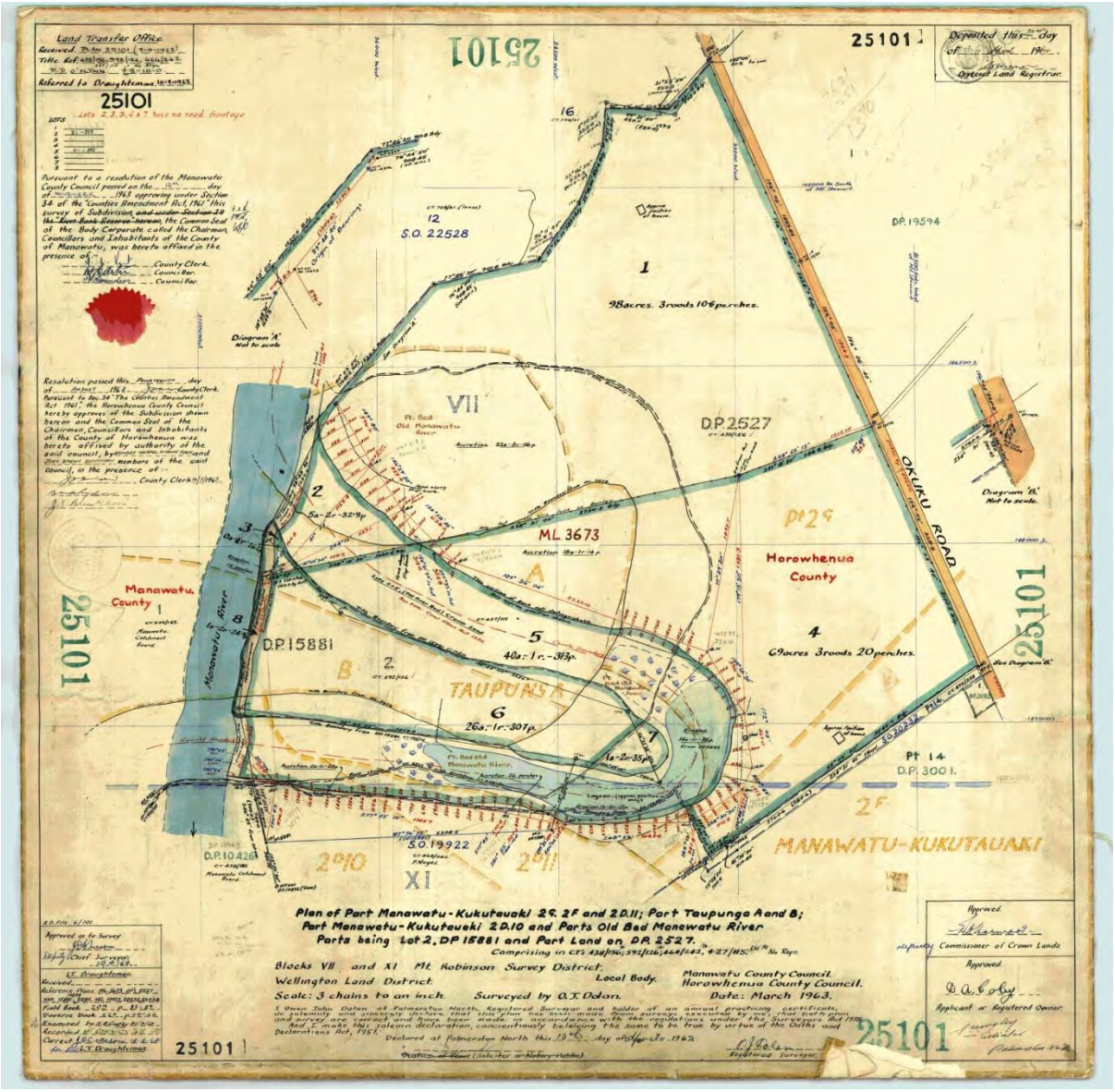
The first approach to Lands and Survey was in June 1960[190]. A status check confirmed the Crown ownership of the riverbed:

> The Manawatu River on diagram is between Foxton and Palmerston North and is considered a navigable river in this locality (see file @ 12 April 1950[191]). The bed of the river is vested in the Crown by Section 206 Coal Mines Act 1925.[192]

[187] Legal Officer Crown Law Office to Director General of Lands, 13 July 1961. Lands and Survey Head Office file 22/3293/20. Supporting Papers #337-338.
[188] Director General of Lands to Legal Officer Crown Law Office, 17 July 1961. Lands and Survey Head Office file 22/3293/20. Supporting Papers #339.
[189] He had acquired the land on the true right bank of the cut-off from the Manawatu Catchment Board whose predecessor the Manawatu-Oroua River Board had acquired it from Maori owners (Taupunga A and B blocks) for the Taupunga Cut river works in the early 1930s.
[190] Ongley, Ongley & Dean, Barristers and Solicitors, Palmerston North, to Commissioner of Crown Lands Wellington. 28 June 1960. Lands and Survey Wellington District Office file 6/101. Supporting Papers #1091.
[191] This reference has not been located. It is believed to be on Lands and Survey Wellington District Office file 3/536, which has more recently been renumbered Lands and Survey Wellington District Office file 3/13/2.

The distinction between old riverbed in the cut-off claimable as accretion and old riverbed in the cut-off that was still Crown Land had been shown on a survey plan prepared in 1951[193]. The results of the status check were relayed to the landowner's solicitors, who were also told that once a survey plan had been prepared showing as one prior lot the portion of riverbed still vested in the Crown by virtue of navigability, then "disposal of the old riverbed to Mr Coley can proceed"[194].

Figure 4: Wellington plan DP 25101



[192] File note by Statutory Branch Draftsman McRae, 17 October 1960. Lands and Survey Wellington District Office file 6/101. Supporting Papers #1092-1094.
[193] Wellington plan DP 15881. Supporting Papers #1552.
[194] Commissioner of Crown Lands Wellington to Ongley, Ongley & Dean, Barristers and Solicitors, Palmerston North, 7 November 1960. Lands and Survey Wellington District Office file 6/101. Supporting Papers #1095-1096.

A field inspection was made of the cut-off in May 1960 (i.e. autumn). This found that the total area was approximately 47 acres, of which 14½ acres was a "permanent lagoon" at the sharpest bend of the cut-off, 10 acres was "permanently boggy next to the lagoon, in rushes and watergrass", 5 acres was "medium quality pasture", 8½ acres was "rough grazing", and 9 acres was "boggy berm outside the stopbank in fescue and lupin with rough grazing". Each type was valued at a different rate per acre, with the total value being £780[195].

In March 1962, before the survey plan became available (and despite the earlier request for survey plan definition), a case was prepared for consideration by the Land Settlement Board (the Crown's land sales decision-maker under the Land Act 1948) to allow "disposal of land without competition"[196]. However, the case was not considered by the Board, instead being returned for the provision of a legal opinion because "this is a case of some complexity"[197]. A three-page report by the Wellington office's District Solicitor was then provided in June 1962 which addressed both navigability and accretion matters as well as some other issues. Of the old riverbed, he wrote:

> It is stated in the submission [to the Land Settlement Board] that the Manawatu River at this point, between Palmerston North and Foxton, is considered navigable, and the bed is vested in the Crown by S.206 of the Coal-Mines Act 1925. As to whether or not a river is navigable within the meaning of this section is a mixed question of fact and law. McLaren v. Attorney General for Quebec (1914) A.C. 258, 278. A.G., Hutt River Board v. Leighton (1955) NZLR 750, 769. It depends largely on the interpretation of S.206. In the present case, however, there appears to be sufficient evidence to prove the assertion that the lower part of the river, at least at this point, is in fact navigable. Consequently the bed of the river "shall remain and shall be deemed to have always been vested in the Crown". As the course of the river changed slowly and imperceptibly, the boundaries of the riverbed (i.e. the banks) shifted and the Crown's title to the bed followed the natural movements of the flow, while at the same time the riparian lands expanded or diminished by accretion and erosion. When, however, the artificial cut diverted the flow of the waters and the bed became dry, the natural and imperceptible shifting of boundaries suddenly came to a stop, freezing the title position as at that time. The dry bed – i.e. the space of land which was covered before the cut by the waters of the river … at its fullest flow without overflowing its banks – remained permanently vested in the Crown – Attorney General of Southern Nigeria v. John Holt & Co (Liverpool) Ltd (1915) A.C. 599.[198]

Turning to the matter of a part of the old riverbed which had previously been in a title and had become riverbed by erosion, the District Solicitor continued:

> The fact … that the area of the erosion is still in the original title, coupled with the other fact that it became dry and re-integrated in the title land, raises the question as to

[195] District Field Officer Palmerston North to Commissioner of Crown Lands Wellington, 12 May 1961. Lands and Survey Wellington District Office file 6/101. Supporting Papers #1097-1098.
[196] Case to Land Settlement Board, prepared 28 March 1962. Lands and Survey Wellington District Office file 6/101. Supporting Papers #1099-1100.
[197] Acting Director General of Lands to Commissioner of Crown Lands Wellington, 12 April 1962. Lands and Survey Wellington District Office file 6/101. Supporting Papers #1101.
[198] District Solicitor to District Administration Officer, 8 July [sic, should be June] 1962. Lands and Survey Wellington District Office file 6/101. Supporting Papers #1102-1104.

> whether or not the original title position will now ipso facto be re-instituted. In other words, does the Certificate of Title prevail against the Crown's right under S.206 of the Coal-Mines Act 1925? The answer already has been substantially given in [the paragraph quoted above]. While the banks of the river following the natural flow of the waters are in the process of gradually shifting, the boundaries change with them. If the process of the erosion turns into accretion, and if the river after eroding it rebuilds the eroded land and at a certain stage of the process the title position exactly coincides with the actual position, a Certificate of Title would be paramount. In the present case, however, the artificial works diverting the flow put an end to the shifting of boundaries. The boundaries became static and the title position remains the same as it was at the time of the artificial cut. The registered proprietor cannot rely on the Certificate of Title as to the part of the land which was covered by the river. The Crown's ownership prevails and the portion of the dry bed which originally formed part of the adjoining land shares the legal character of the balance of the bed.[199]

The District Solicitor's opinion was forwarded to the Head Office of Lands and Survey. Because the opinion had adopted and not overturned the earlier-expressed Crown assertion that the old riverbed was vested in the Crown, and had clarified some other matters, the way was clear for the Land Settlement Board to consider disposal. The Head Office Committee of the Board, which had delegated authority, approved the sale of the old riverbed for £780[200]. The applicant and his surveyor were notified of the decision in December 1962[201]. Because of some other issues that were not related to the navigable river status of the old riverbed, the survey plan was not approved until May 1964. It showed the old bed of the river in two parts (to suit the landowner's subdivision purposes), Lot 2 of 5 acres 2 roods 32.9 perches and Lot 5 of 40 acres 1 rood 31.3 perches, total area 46 acres 0 roods 24.2 perches[202]. Payment for the Crown riverbed was made in June 1964[203].

After the 1955 Leighton case, the next significant piece of case law concerning the application of the ad medium filum presumption was in 1984. Coincidentally it was about the Manawatu River upstream of Palmerston North where there was a dispute about the ownership of shingle in the riverbed. The High Court decided that the ad medium filum presumption did apply to riverbed ownership in that case[204].

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[199] District Solicitor to District Administration Officer, 8 July [sic, should be June] 1962. Lands and Survey Wellington District Office file 6/101. Supporting Papers #1102-1104.
[200] Case 62/244 to Head Office Committee of Land Settlement Board, approved 1 August 1962. Lands and Survey Wellington District Office file 6/101. Supporting Papers #1105-1106.
[201] Acting Commissioner of Crown Lands Wellington to DA Coley, Shannon, 18 December 1962. Lands and Survey Wellington District Office file 6/101. Supporting Papers #1107.
[202] Wellington plan DP 25101. Supporting Papers #1553.
[203] DA Coley, Shannon to Commissioner of Crown Lands Wellington, 2 June 1964. Lands and Survey Wellington District Office file 6/101. Supporting Papers #1108.
[204] *Tait-Jamieson v. G.C. Smith Metal Contractors Ltd*, [1984] NZLR 513.

4.2.2 Rebuttal of the presumption: riverbank land in Native Land title

When the Registrar General of Land referred the case of the dry bed of the Manawatu River to the Solicitor General in 1929, another matter he sought a legal opinion on was whether the native land legislation and the jurisdiction of the Native Land Court might be a special circumstance in New Zealand that rebutted the English common law presumption of ad medium filum aquae. This was because, in the 1929 case, land on both banks of the river had been deliberated upon by the Native Land Court, and in defining partition orders with the bank as a boundary, the gap between the two banks might be construed to be uninvestigated or unpartitioned Native Land, or alternatively land subject to the Native Land Court's jurisdiction by virtue of the existence of riparian rights going with the partition orders.

The land on the true right (western) bank of the Manawatu River as first surveyed was part of the Himatangi 3 block, for which the Crown had issued a Crown Grant in August 1881 pursuant to powers provided in the Himatangi Crown Grants Act 1877. The block then came under the jurisdiction of the Native Land Court, which had ordered successions and partitions, and had confirmed the issue of leases. A partition survey in 1911[205] showed that a part of Himatangi 3 block had been cut through by a new line of the river, with the result that a portion had been cut off from the remainder of the block and was located on the true left (eastern) side of the river. This cut-off portion was ordered by the Court in 1911 to be placed in a separate stand-alone partition block, Himatangi 3A1 of 19 acres 2 roods 10 perches. On the true left (eastern) bank of the original course of the Manawatu River as first surveyed, where it had become a dry channel, was Tuwhakatupua 2 block, whose title had been investigated by the Native Land Court in 1889 and which had been partitioned in 1896 into Tuwhakatupua 2F and 2G (among others).

In March 1916 the Native Land Court had presumed it had jurisdiction to effect an exchange of lands along both banks of the Manawatu River that would reflect the new reality of the altered location of the river. Himatangi 3 lands (including Himatangi 3A1) that had become located on the eastern side of the new river channel were exchanged for Tuwhakatupua 2 lands that had become located on the western side of the new river channel. As part of the exchange dry parts of the originally surveyed riverbed were included in the revised boundaries of various partitions, and the riverbed in existence at that date, where it traversed partition lands, was excluded from revised partition boundaries. The dry riverbed that was the subject of the 1929 application to the Land Registry Office was identified on a survey plan of the 1916 exchange as Lot 10 DP 3506.

[205] Wellington plan ML 2254 Sheet 2. Supporting Papers #1564.

In seeking the Solicitor General's opinion in 1929, the Registrar General of Land was reacting to decisions of the Native Land Court at Lake Omapere and Lake Waikaremoana. If the Court could decide that the beds of such lakes were uninvestigated Native land for which it could order a Court title, and in so doing set aside or override the ad medium filum presumption that lake edge titleholders held rights to the middle point of the lake, then what, he wanted to know, did this mean for presumptive rights to riverbeds where there was Native title to one or both banks? He thought that in the case of lakes:

> The presumption would probably be held to be rebutted and, until it is decided to the contrary, ought to be regarded by Registrars as rebutted where the land is native land, and the title to the dry land has been ascertained by the Native Land Court but the title to the land covered with water has not been ascertained.
>
> Assuming that is the position with regard to still inland waters the question arises whether it is not also the position with regard to the beds of rivers.

He asked whether his opinion about lakes was sound, and whether he should grant title to the dry former bed of the Manawatu River[206].

The Solicitor General noted that both the Omapere and Waikaremoana decisions had been appealed by the Crown, so were not settled law, then added with respect to lakes:

> In view of the uncertainty of the present position, I think your duty and that of the District Land Registrar is to assume that the ownership of the adjoining lands, the title to which has been determined by the Native Land Court, does not give a right ad medium filum aquae.[207]

With respect to rivers, he asked for more details of the Manawatu River case (see the quote from his memorandum set out in the section about navigability). When those further details came to hand, including details of the Native Land Court dealings with the land on both sides of the river, the Solicitor General concluded:

> The adjoining land being Native land, the investigation of it by the Native Land Court did not include an investigation as to the ownership of the bed of the river. Consequently the grant of a Certificate of Title as bounded by the river does not carry the usual presumption that the ownership extends to the middle line of the bed. The same considerations apply with equal force to titles issued under the Himatangi Grants Act 1877. For these reasons I think a certificate of title cannot be issued to Messrs Akers Bros.[208]

The applicants' solicitors were then advised by the District Land Registrar that a title to the old river bed could not be issued:

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[206] Registrar General of Land to Solicitor General, 15 October 1929. Registrar General of Land file 1929/101. Supporting Papers #947-950.
[207] Solicitor General to Registrar General of Land, 18 November 1929. Registrar General of Land file 1929/101. Supporting Papers #951-955.
[208] Solicitor General to Registrar General of Land, 4 June 1930. Registrar General of Land file 1929/101. Supporting Papers #962.

> I am advised by the Solicitor General that having carefully considered this matter he considers the facts do not entitle me to issue a certificate of title for this dry river bed to the owners of adjoining land.
>
> One of his reasons, and I think his principal reason, is that the adjoining land being former Native Land, the investigation of it by the Native Land Court did not include an investigation of the ownership of the bed of the river. Consequently the grant of a certificate of title as bounded by the river does not carry the usual presumption that the ownership extends to the middle line of the bed.[209]

After this 1930 decision by the District Land Registrar, there was a hiatus until 1941 before the matter was raised again. This is discussed in the next and subsequent paragraphs below. Before doing so, and in order to maintain a chronological sequence, a quick comment needs to be made about the second case that commenced in 1934. This case did not require any consideration about whether the Manawatu riverbed might be Native Land, because both banks of the river where the case was located near Longburn, and therefore also the river itself between the two banks, were within the boundaries of the Ahuaturanga Purchase block. The Crown firmly held the view that Native title to both riverbank land and riverbed had been extinguished as a result of the purchase, so no legal opinion was sought about the relevance of this factor as a possible rebuttal of the ad medium filum aquae presumption. The Commissioner of Crown Lands described it thus:

> The Native title to the Manawatu Riverbed was extinguished as notified in the New Zealand Government Gazette (Province of Wellington) 1866 page 124, it being a part of the Ahuaturanga or Upper Manawatu Block, and the particular piece of riverbed under consideration has not been granted to any subject by the Crown unless it is held to be so by presumption.[210]

Returning to the case of the riverbed between the Himatangi 3 and Tuwhakatupua 2 blocks, lawyers for Mr Akers in 1941 wrote to the District Land Registrar about what steps could be taken on behalf of Akers to grant him title to the old riverbed. The lawyers first drew attention to an inconsistency in the District Land Registrar's dealings. The old riverbed and the new course of the Manawatu River had been plotted on a survey plan in 1916[211]. Titles had been adjusted on the Himatangi side of the new course of the river, with parts of the old riverbed dealt with by a land transfer registered by the Registrar in 1919, and parts included in partition block boundaries ordered by the Native Land Court. However, the application to adjust the title on the Tuwhakatupua side of the new course of the river by inclusion of old riverbed shown as Lot 10 on the 1916 plan had been refused by the Registrar in 1930. This had created an "unsatisfactory position":

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[209] District Land Registrar Wellington to Jacobs and Grant, Solicitors, Palmerston North, 10 June 1930. Registrar General of Land file 1929/101. Supporting Papers #963.
[210] Commissioner of Crown Lands Wellington to Under Secretary for Lands, 9 October 1934. Lands and Survey Head Office file 22/3293/20. Supporting Papers #309-312.
[211] Wellington plan DP 3506. Supporting Papers #1548.

> The titles have remained in a state of uncertainty for a considerable time, and we consider that the position should be clarified as soon as possible.

The lawyers suggested special legislation[212].

While the District Land Registrar admitted the inconsistent approach to the matter by his office, he did not support special legislation because he did not think all standard remedies had been exhausted. In particular the Native Land Court appeared to have jurisdiction:

> There is nothing on my files to show that the Native Land Court had been referred to, or that it had any knowledge of the Crown Solicitor's opinion given in 1930….
>
> The Native Land Court, in making the Partition Orders already referred to, appeared to have acted on the assumption that the area of riverbed could properly be regarded as parts of the adjoining Blocks, and not areas for which the Native title had not been investigated….
>
> The Native Land Court should therefore, I think, be approached for a statement as to whether it regards the riverbed as uninvestigated Native land or whether it still maintains the view as expressed in the foregoing paragraph that all questions as to the ownership of the bed were settled when the ownership of the adjoining Blocks was determined, and that the title of the adjoining Blocks included ownership of the bed ad medium filum.
>
> If the Native Land Court gives such a statement, then I could explain the position fully to the Crown Law Office and ask for a reconsideration of the whole matter in the light of the previous action taken both by the Native Land Court and by this office.
>
> I would therefore suggest that you approach the Native Land Court.[213]

The lawyers took up this suggestion and applied to the Native Land Court for a declaration pursuant to Section 36 Native Land Act 1931 that the ad medium filum aquae presumption applied to the riparian Himatangi 3A1 and Tuwhakatupua 2F partition blocks. The application was heard by the Court in June 1941[214]. The solicitor appearing in support of the application submitted that the ownership of Himatangi and Tuwhakatupua was "substantially same hapus" and that the river was "part of tribal land". He also submitted, as recorded in note form in the Court's minute book, that rights to the river went with the rights to the riparian land:

> On sale of Rangitikei-Manawatu Block, which included Himatangi Block, native rights in river affecting that block would no doubt have been included. Deed says bounded by Manawatu River. Crown reps [representatives] would undoubtedly consider usual riparian rights went with land bought. Under Himatangi Crown Grants Act, provided Himatangi blocks be given back to hapus. Therefore submit under that Act everything

[212] Morison, Spratt, Morison and Taylor, Barristers and Solicitors, Wellington, to District Land Registrar Wellington, 17 February 1941. Registrar General of Land file 1929/101. Supporting Papers #964-966.
[213] District Land Registrar Wellington to Morison, Spratt, Morison and Taylor, Barristers and Solicitors, Wellington, 11 March 1941. Registrar General of Land file 1929/101. Supporting Papers #967-968.
[214] Maori Land Court minute book 33 WN (Wellington) 187-192 and 230-234, 25 June 1941 and 2 July 1941. Supporting Papers #1344-1349 and 1350-1354.

obtained by Crown re Himatangi block was given to natives. Hold that if natives sold their interest in river, that interest was to be given back to them. Crown grants to natives for portions returned pursuant to that Act would include interest in river. Nothing on plans attached to plans on grants to rebut presumption as to riparian rights. Investigation by Judge Heaphy under Himatangi Act covered all that Crown had declared should be given back to natives so his investigation covered land and interest in river attaching to Himatangi block originally sold to Crown. Crown grants would carry with them and so include the interests in river. All subsequent P.O.'s for Himatangi would also include the interest in the river. P.O. for Himatangi 3A No. 1 includes ownership of river attaching to 3A No.1, i.e. to middle of river in old course, i.e. course existing at time of Crown Grants as regards frontage to river of 3A No. 1.

As to Tuwhakatupua, submit on investigation of title by Court, was ordinary practice of Court that unless it were shown that separate claims put forward as to ownership of river, investigation would include river as part of block, and Court in putting into effect native customary rights would in case of investigation of customary rights of two blocks on either side of river award one half of river to each block.

At time of investigation [of] Tuwhakatupua No. 2 block in 1885, one half of river would have already been included in grants for Himatangi, and therefore half remaining would on investigation of Tuwhakatupua [be included] as part of block, and therefore would be included in all subsequent partitions, including Tuwhakatupua 2F.

DLR to Jacobs and Grant [the June 1930 letter] – reference to opinion of Crown Law Office. Refers to reason for opinion of Crown Solicitor – no presumption. Submit Crown Solicitor not familiar with Native Land Court practice or native customary rights, and that contention unsound, and that submissions put forward by me are correct.

Crown Solicitor says Native Land Court investigation did not extend to ownership of river – say that implies that the river did not form part of the Himatangi and Tuwhakatupua blocks, and that the river could not be affected by the investigation of title to those blocks. In other words, boundary of what was investigated by Court stopped dead at bank of river and did not go beyond it. If that so, say true that the title to river had never been investigated, and that the river and its bed would today constitute a piece of customary land. Say this contrary to common sense unless the natives preferred some separate claim distinct from the land. Nothing in Court minutes to show that natives put up any separate claim for the river as distinct from the land on its banks either at time of investigation of title or since. If question of ownership of bed of river does rest upon presumption that ownership extends to middle of river. Don't think presumption applies in a Native Land Court investigation, and that ownership of river determined on principles other than that presumption, but if Native Land Court has in fact not included river in blocks on account of a separate claim being made by natives, then obviously river would not be included in either Himatangi 3A1 or Tuwhakatupua 2F, and that if Crown Solicitor were correct in his contention that river not included on investigation, then I agree that the partition order for 3A1 would not carry with it portion of river and that the Land Transfer certificate of title issued upon Himatangi 3A1 would not carry with it the ownership of part of river. Disagree with opinion of Crown Solicitor referred to, where he states investigation of land by Court did not include an investigation of bed of river. Rest of opinion based on that contention, and if that contention unsound rest of his opinion immaterial.

Submit Section 14 of Coal Mines Act 1903 – dated 23/11/1903 – does not apply here. If it applied at all to river, it would apply to course of river at date of its enactment.

Evidence shows as early as 1902 river flowed in its present course, and therefore Act would have no application to old bed.[215]

No Maori owners were present in Court, and there were no objections.

The Court issued its decision in August 1941[216]. It was a thorough investigation that went back in time to the intent behind the issue of the original titles before they were partitioned. In doing so it examined English common law and also the expectations and likely understandings held by Maori at the time. This was necessary because, as the Court said:

> The matter however is complicated by reason of the fact that the lands when dealt with by the Native Land Court which clothed the parent blocks with Titles were Native land, and it becomes a question whether the common law presumption would apply thereto. Much would depend upon the circumstances surrounding the investigations of Title, and whether or not the Native Claimants for the blocks, which were situated opposite one another on either side of the Manawatu River, made any express or implied claims to the ownership or possession of the land covered by the River and its bed, either as constituting a highway for themselves and/or others, or as a source of eels or for the purpose of taking fish therefrom.

The Court found that the original titles for the Tuwhakatupua blocks all "show the land as being bounded on one side to a greater or lesser extent by the Manawatu River", with "the river boundary being marked as is the general practice in plans in this country with a red line". It also found that these original titles referred to the persons named in the titles being "owners according to Native custom" of those lands, "together with all the rights, members, and appurtenances thereunto belonging". It found that on partition the partition block titles perpetuated the position and facts of the original parent title with regard to the river boundary. It then stated:

> There is nothing in the minutes of the Court on the investigation of the Title for Tuwhakatupua No. 2 (Otaki M.B. 7 pages 25 et seq) which would indicate that the Court did not have in its mind at the hearing the rights of the Natives to the water of the river which flowed past the land, which has been called a right ex jure naturae and which is distinct from the right ad medium filum. Neither is there anything in the Court minutes which show that the Court did not have in mind the right of the natives on the Tuwhakatupua side of the river to their proper share of the soil of the bed of the river. Certainly the Native claimants for the ownership of the land made no specific claim to be entitled to one half of the bed of the river where it flowed past the land, but on the other hand there were no rival claimants to the bed of the river or its bed as might easily and reasonably have been the case if any such right existed. The Native mind would not so much conceive the river as the soil lying beneath it, but rather as water and the extent of the space covered or occupied by that water – the result would be the same in effect however as our view of the ownership of the soil of the bed of the river.

[215] Maori Land Court minute book 33 WN (Wellington) 231-233, 2 July 1941. Supporting Papers #1351-1353.
[216] Decision of the Native Land Court, 25 August 1941. Maori Land Court minute book 33 WN 299-303. Supporting Papers #1355-1359.

> It has to be remembered that the individualisation of the ownership of their lands by Natives was a conception of our law of property and was the creation of New Zealand statute law even though the Courts were required to determine who were the owners according to Native custom, and I think it is a fair and reasonable assumption that the Court would in dealing with the application for investigation of title have in its mind at least subconsciously the presumption ad medium filum aquae, notwithstanding that that presumption was part of the English common law brought to this Dominion. But although the presumption was part of the common law of England, the effect of the presumption where it applied actually existed in the Native mind and in Maori custom, as it was not unusual for the Natives to look upon the rivers traversing or bounding their territories as being allied to their possession of the land on their banks as a means of access to the land and as a source of food supplies in the way of fish in much the same way as they viewed their forests as potential sources of food in the shape of birds, rats, etc.[217]

While nothing was explicitly stated at the investigation of title hearing for Tuwhakatupua in 1885 about rights to the river or its bed, nor was there anything said which might argue against a link between land and water. Indeed the Court found some circumstances which suggested the investigating Court did have a link in mind. Backwater channels were included in some of the land titles, according to the survey plans, and one of the original titles, Tuwhakatupua 2E of 6 acres, was a "pa reserve" for all the Tuwhakatupua 2 owners and was located on the river bank with a river frontage of 10 chains and a depth of only six chains.

> The undoubted purpose of this Pa Reserve on the bank of the river was to make available to all the owners of the various subdivisions of the block the benefit and advantages attaching to their ownership of the bed of the river on their own side of the river.

The Court concluded:

> For the reasons stated the Court is of opinion that the Court Order for Tuwhakatupua No. 2 of the first day of August 1885 was intended by the [investigating] Court to include the soil of the river ad medium filum aquae, and that the subsequent partition orders gave effect to that intention, and that the applicant is entitled to the declaration sought.[218]

Himatangi 3 block on the other side of the river had a slightly different provenance, because it was included in Manawatu-Rangitikei Purchase block, which was "purported to be ceded to the Crown", and was then "returned to the Natives" by Crown Grant:

> The land affected by the Manawatu-Rangitikei Purchase Deed … is described as being bounded inter alia by the Manawatu River – it was the land between the Manawatu and Rangitikei Rivers. The Crown representatives would certainly assume that the purchase covered the rights of the Natives to the soil of the river to the middle line thereof, and it is equally certain that they would have the presumption ad medium filum in their minds so far as that presumption might properly apply. That this would be

[217] Decision of the Native Land Court, 25 August 1941. Maori Land Court minute book 33 WN 299-303. Supporting Papers #1355-1359.
[218] Decision of the Native Land Court, 25 August 1941. Maori Land Court minute book 33 WN 299-303. Supporting Papers #1355-1359.

> the case is strengthened by the fact that the lands at this point on both sides of the river were owned by the same Hapus and by substantially the same persons. These persons would therefore own the soil of the river as running through their lands, and it would not be common sense to assume that when the Crown bought, that the land purported to be acquired under the purchase stopped short at the bank of the river.
>
> Now, whatever was acquired by the Crown was returned to them so that, if the Crown acquired the land ad medium filum aquae, as is suggested, then it returned to the Natives everything it had previously obtained from them. That is the land ad medium filum aquae…. If the Crown acquired possession of the soil of the river, then it gave it back to the Natives and it would be included in the Crown Grants issued pursuant to the Himatangi Crown Grants Act 1877. There is nothing in the Crown Grants or in the surrounding circumstances to rebut the presumption that the land ad medium filum aquae was intended to pass by the Grants.

As with the Tuwhakatupua lands, the conclusion was:

> The Court is of opinion that the applicant is entitled to have the declaration sought in respect of Himatangi 3A1 Block.[219]

The effect of the Court's decision was that, in the absence of explicit circumstances to the contrary, original Native Land Court orders to riparian land, and subsequent partition orders with a riparian boundary, were presumed to include ad medium filum rights, in the same manner that riparian Crown Grants enjoyed presumptive rights to a riverbed. However, District Land Registrars, when considering accretion applications, had to be sure they would not be acting contrary to the intent of the Native Land Court when it had issued the riparian land orders.

The case law about the application of the ad medium filum aquae presumption to Native Land Court titles has been developed further since this decision made in 1941, most particularly in connection with the Whanganui River in the early 1960s[220]. Discussion of those matters is beyond the scope of the commission for this report.

4.2.3 Rebuttal of the presumption: exclusion of riverbed from riparian title

When the 1934 Longburn case was being reviewed by Crown Law Office, the Crown Solicitor had an opportunity to examine the nature of the riparian titles. One of the titles distinguished between "shingle bank" and "Manawatu River", and described the boundary with the abutting land in its written description as "bounded by the Manawatu River and by a shingle bank of the Manawatu River". He wrote in his opinion:

> A further point supporting the rebuttal of the presumption is that the grant of Section 22 shows it to be bounded by a shingle bank of the Manawatu, and the grant of Section 87 shows a shingle bank between the edge of the land and the water. These points in

[219] Decision of the Native Land Court, 25 August 1941. Maori Land Court minute book 33 WN (Wellington) 299-303. Supporting Papers #1355-1359.
[220] Covered in Waitangi Tribunal, *The Whanganui River report*, 1999.

> themselves are not conclusive but taken with the evidence of navigation may be sufficient to rebut the presumption.[221]

However, this line of argument does not seem to have been pursued in the cases examined for this report.

For Maori a more significant rebuttal of the presumption due to explicit exclusion from the riparian title was with respect to the fishing reserves that were granted alongside the four dune lakes as a result of the Rangitikei-Manawatu Crown purchase. The lakebed was not able to be claimed ad medium filum aquae because the Crown had included it in another title. This was discussed in the previous chapter.

4.3 Oroua River - changes of course and impact on titles

The Oroua River, more specifically that portion from Feilding downstream to the confluence with the Manawatu River, is a locality where Maori ownership survived the Crown purchasing era of the 1850s and 1860s. On the eastern (true left) bank of the river was the Aorangi block which was excluded from the Ahuaturanga Purchase. On the western (true right) bank were a series of reserves returned to Maori as a result of negotiations during and immediately after the Rangitikei-Manawatu Purchase.

4.3.1 Gravel taking from the riverbed in 1903

In 1903 the Crown Lands Ranger telegraphed to the Commissioner of Crown Lands:

> Gravel is being taken from Oroua River near Section 11 Block II Kairanga [Survey District]. Is said riverbed under our control or under the local authority? There may be danger of river further encroaching on Section 11. Can I stop contractors from taking gravel here?[222]

Section 11 is located just downstream of where the Feilding to Bunnythorpe road and railway cross over the Oroua River, on the true left (eastern) bank (i.e. Feilding golf course lands).

The Ranger was told that Sections 160, 161, 241 and 242 Public Works Act 1894 had the effect of vesting rivers in County Councils.[223]

Inquiries with Kairanga County Council and Manawatu County Council failed to identify who was taking the gravel, and action about the incident petered out. However, a letter sent to Manawatu County Council did comment on one of the legislative provisions:

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[221] Crown Solicitor to Under Secretary for Lands, 6 March 1935. Lands and Survey Head Office file 22/3293/20. Supporting Papers #317-318.
[222] Telegram Crown Lands Ranger Lundius to Commissioner of Crown Lands, 3 August 1903. Lands and Survey Wellington District Office file 23140. Supporting Papers #1041.
[223] Telegram Commissioner of Crown Lands to Crown Lands Ranger Lundius, 3 August 1903. Lands and Survey Wellington District Office file 23140. Supporting Papers #1042.

> I would point out that by Section 161 of the Public Works Act 1894 you are only empowered to remove gravel from a riverbed which impedes the flow of the water, and should any damage occur to the river bank or the Crown Lands your Council will be held responsible and be liable to prosecution.[224]

In any event there may be doubts about whether the sections of the Public Works Act 1894 referred to above amount to the vesting of riverbeds in County Councils, as they could be interpreted as being provisions only concerned with enabling or empowering a local authority to undertake activities in a riverbed. That is a matter for legal interpretation.

4.3.2 Changes to the course of the Oroua River

This section assesses what has happened to the course of the Oroua River where the river intersects Maori lands and the Native Land Court has become involved. The river has not confined itself to the space between the riverbanks as recorded on the riparian land titles dating from the 1870s, instead moving around such that there has been erosion of some titled lands and accretion of riverbed to other titled lands. The manner in which the Native Land Court and the Crown have dealt with these circumstances is examined in this section, relying on four examples:

- Awahuri (Sandon 153) Subdivision 6 “island”
- Awahuri (Sandon 153) Subdivision 5 and Aorangi 1 Section 5A2B
- Awahuri (Sandon 153) Subdivision 6C2 and Aorangi 1 Section 5B1
- Awahuri (Sandon 153) Subdivision 5A and Aorangi 1 Section 4A1

4.3.2.1 Awahuri (Sandon 153) Subdivision 6 “island”

It is not the purpose of this report to describe in detail the events during the early years of the Awahuri reserve, known in title terms as Section 153 Town of Sandon. Suffice it to say that the reserve passed out of Maori ownership, and then in the 1880s the Crown took steps to return it to Maori. The pathway to return was set out in Paragraph 24 of the First Schedule to the Special Powers and Contracts Act 1886 (as amended by Section 3 Native Contracts and Promises Act 1888), where the Public Trustee, legal owner at that time, was authorised to convey the reserve to the Crown with the intent that the Crown would then grant it to certain specified Maori owners.

However, during the intervening years since Section 153 had been first surveyed in 1870[225] the Oroua River had changed its course, cutting into the reserve at one point, and putting

[224] Telegram Commissioner of Crown Lands to County Clerk Manawatu County Council, 18 August 1903 and Commissioner of Crown Lands to County Clerk Manawatu County Council, 18 August 1903. Lands and Survey Wellington District Office file 23140. Supporting Papers #1043 and 1044.
[225] Wellington plan ML 2848. Supporting Papers #1565.

part of the title on the opposite (Aorangi) side of the river. This part became known as "the island". Because of partitioning of Section 153 immediately following its return, the Crown did not issue a single title for the whole reserve, but instead arranged a fresh survey of the partition blocks and issued titles to each partition block. The fresh survey[226] took the riverbank boundary as the edge of the new course of the river, thereby excluding the "island" from the new title to partition block Subdivision 6. Survey data shows that the area of Subdivision 6 of Section 153, as determined by the Court at the time of partitioning, was to be 171 acres, but when surveyed became 147¾ acres due to "land washed away by river in time of flood"[227]. A title for 147¾ acres was granted by the Crown in 1891.

When Subdivision 6 was subsequently partitioned into Subdivisions 6A, 6B and 6C in April 1906[228], the Native Land Court incorrectly assumed that the "island" was included in Subdivision 6B, and ordered accordingly. However, when an attempt was made to register this partition order, the District Land Registrar declined to approve the title change as the "island" was not in the Subdivision 6 title already registered in the Land Registry.

The solicitors for the holder of a mortgage over Subdivision 6B sought the advice of the Commissioner of Crown Lands as to how the impasse between the Court and the Land Registrar could be resolved:

> This title [for Section 6] was issued on Governor's Warrant (2/31), and if there is an error the District Land Registrar informs us it is a question for your office. In conference this morning with a representative of the Survey Branch and the Chief Judge of the Native Land Court, some doubt was expressed as to whether the "Island" should not have been included in the title.[229]

A search disclosed:

> The island in question was a part of the original granted land and was subsequently formed into an island by the river changing its course.
>
> When the Certificates of Title were issued the boundary was only taken up to the new river, thus leaving the island out of the partition.
>
> The island is thus part of the original Grant over which the Special Powers and Contracts Act 1886 powers have not been exercised.

[226] Wellington plans ML 2849(1) and ML 2849(2). Supporting Papers #1566 and 1567.
[227] Schedule of partitions of Te Awahuri Native Reserve, undated (1889), and sketch of partitions, 27 August 1890. Lands and Survey Wellington District Office file 20/259. Supporting Papers #1156 and 1157.
[228] Maori Land Court minute book 15 WN (Wellington) 56 and 56A, 11 April 1906. Supporting Papers #1336 and 1337.
[229] Meek and Von Haast, Barristers and Solicitors, Wellington, to Commissioner of Crown Lands, 8 April 1913. Lands and Survey Wellington District Office file 20/259. Supporting Papers #1158.

> The island does not conflict with the land on the opposite [side of the old course of the river] as granted.[230]

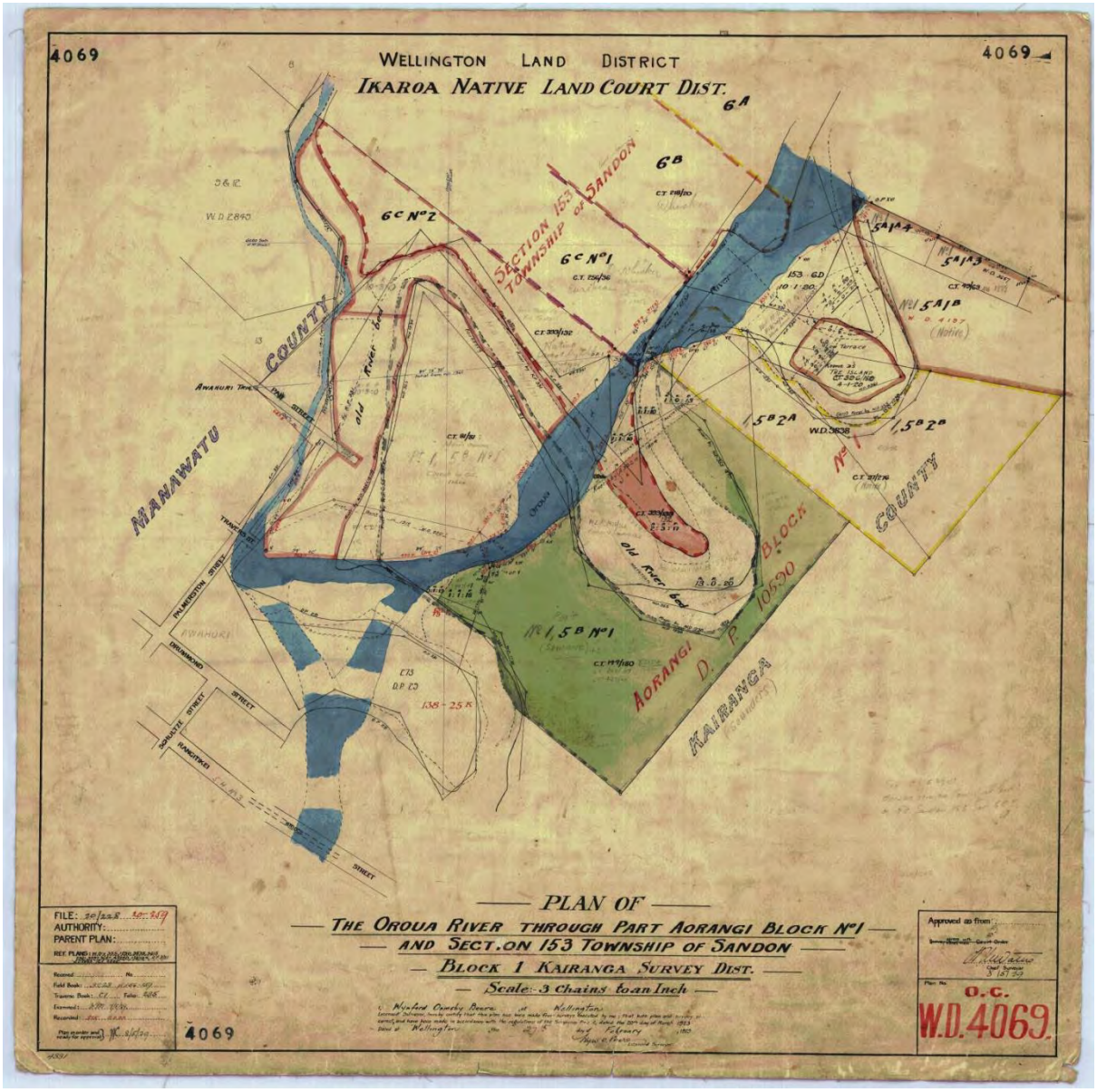
The Chief Surveyor therefore advised the Chief Judge:

> Under the Special Powers and Contracts Act 1886 the Public Trustee transferred [Sandon Section 153] to the Crown, including the island in dispute, but when the survey of the subdivisions was made the island was left out, as the river, having changed its course and produced the island, the new course was accepted as boundary and the titles were issued accordingly. The fee therefore is still in the Crown, and I would suggest that an enquiry be held under Section 11 of the Native Land Amendment Act 1912 to ascertain the names of the native owners who are entitled to the island.[231]

Section 11 Native Land Amendment Act 1912 provided for an inquiry by the Native Land Court, on the application of the Minister of Lands, to determine the owners of any Crown Land set aside or reserved for the benefit of Maori. The Court would forward the results of its inquiry to the Governor.

[230] File note 16 May 1913. Lands and Survey Wellington District Office file 20/259. Supporting Papers #1159.
[231] Chief Surveyor to Chief Judge Native Land Court, 23 May 1913; and sketch plan showing island in relation to original Section 153 Crown Grant boundary and Subdivision 6B Certificate of Title boundary, undated. Lands and Survey Wellington District Office file 20/259. Supporting Papers #1160 and 1161.

Figure 5: Wellington plan ML 4069.



The Minister of Lands applied to the Native Land Court in June 1913 to have the "island" vested in Maori owners. The inquiry was held by Judge Rawson in July 1914[232]. The status of the "island" was not at issue, with a Crown representative at the hearing explaining the background. The issue being inquired into was who should be the beneficial owners of the "island". Was it the sole owner awarded Subdivision 6B in 1906, and who the Court at that time considered should also be awarded the "island"? Or was it all the successors to the original owner of Subdivision 6 as defined at the time of initial partition in 1889?

[232] Maori Land Court minute book 53 OTI (Otaki) 98-101, 24 July 1914. Supporting Papers #1275-1278.

The report by the Judge as a result of his inquiry was issued the following month[233]. The island, he said, "seems ... to be still vested in the Crown, subject to the said Acts", being the Special Powers and Contracts Act 1886 and the Native Contracts and Promises Act 1888. He considered that "it seems certain that the non-inclusion of the island in this Certificate of Title [for Subdivision 6B] is a mere oversight". Notwithstanding the Court's decision in 1906 to award the "island" to the owner of Subdivision 6B, the Judge believed that all successors of the initial owner of Subdivision 6 should share the ownership of the "island", otherwise the owner of Subdivision 6B would end up receiving more land than the owners of the other two subdivisions 6A and 6C, given that the 1906 partition had intended to subdivide the land into three equal portions.

This required special legislation, as the Solicitor General ruled that Section 11 of the 1912 Act did not give any power to the inquiry Judge, the Chief Judge or the Governor to give effect to the inquiry's recommendation and order the issue of a title for the "island"[234]. The statutory authority was given to the Governor by Section 13 Native Land Amendment Act 1914.

By another oversight, it was not until 1929 that a Governor's Warrant for the issue of a Certificate of Title for the "island" was drawn up. This described the "island" as Sandon Part Section 153 (Island)[235].

The inquiry and subsequent title for the "island" addressed the fate of the "island", but did nothing for that part of Section 153 that had title acquired by the Crown in 1888 and lay outside the "island". Part of this titled land was the new course of the Oroua River, and part was dry land on the Aorangi side of the new course. In 1928-9 the Court arranged for the river-affected area around the "island" to be surveyed[236]. This is discussed in the section of this report about Awahuri (Sandon 153) Subdivision 6C2 and Aorangi 1 Section 5B1. The survey plan showed that just over 10 acres was dry land around the "island" on the Aorangi side of the river that could be claimed as accretion to the "island". The Court in April 1931 awarded this dry land to the owners of the "island", the inclusion of this dry land in the title to the island "to be made final at next sitting if cause is not shown to the contrary"[237]. The minutes show that the order was made final in August 1931.

[233] Maori Land Court minute book 19 WN (Wellington) 377-379, 20 August 1914. Supporting Papers #1340-1342.
[234] Assistant Under Secretary for Lands to Commissioner of Crown Lands, 8 September 1914. Lands and Survey Wellington District Office file 20/259. Supporting Papers #1162.
[235] Wellington Certificate of Title 396/180. Not included in Supporting Papers.
[236] Wellington plan ML 4069. Supporting Papers #1572.
[237] Maori Land Court minute book 59 OTI (Otaki) 67, 29 April 1931. Supporting Papers #1288.

4.3.2.2 Awahuri (Sandon 153) Subdivision 5 and Aorangi 1 Section 5A2B

Upstream of Subdivision 6 of Sandon 153 is Subdivision 5, which was also affected by the changing course of the Oroua River[238]. On the opposite eastern bank, as at March 1923 when it was partitioned, was Aorangi 1 Section 5A2B. When the partitions of Aorangi 1 / 5A2B were being surveyed, the shifting of the course of the river on to the western side closer to Awahuri Subdivision 5 meant that the surveyors included the old riverbed as accretion to the Aorangi 1 / 5A2B subdivisions, and adjusted the partition areas on a pro rata basis to reflect the additional area[239]. The changes were quite substantial; there had been erosion of some 4 acres, and accretion of some 16 acres. The Judge of the Native Land Court who had ordered the partitions queried this, believing that the inclusion of all the accretion shown on the survey plan meant there would be some encroachment on to the original Awahuri title on the opposite bank, and also on to Awahuri Subdivision 5 lands:

> The owners of the land into which the river has run object to the loss of part of their land now lying to the south of the river and still being owned by them.
>
> I therefore request that the surveyors follow the Court order and allow 10 acres each for Sections 1, 2 and 3, and 14-1-37 for Section 4. Whatever other acreage there may be to the north of Section 4 is not regarded as belonging to 5A2B.[240]

The Chief Surveyor looked at this and was not convinced:

> An examination of the plans in this office does not support this contention [that Awahuri lands had been included in the proposed Aorangi 1 / 5A2B subdivision titles], and for your information I forward herewith two tracings showing the position of the Oroua River on or about the dates on which the titles to the lands affected were issued.[241]

However the Chief Surveyor's tracings recorded only the boundary of the Awahuri subdivisions as surveyed in 1889, the original boundary of Aorangi 1 / 5A, and the 1923 location of the riverbank on the Aorangi side. They did not show the boundary of the Awahuri title as fixed in 1872 and which the Crown had acquired in 1888 for transferring on to Maori. Because the owners were adamant that including all the accretion would amount to a title being issued to land that already had a title, the Judge decided to take a cautious approach and avoid the inclusion of any accretion:

> [The surveyors] in making the survey took the river (which had changed its course) to be the northern boundary, and hence the area to be about 56 acres, and following the general practice they increased pro rata the area of each subdivision. The owners of

[238] Wellington plan ML 2849(1) and ML 2849(2). Supporting Papers #1566 and 1567.
[239] Wellington plan ML 3685. Supporting Papers #1569.
[240] Judge Gilfedder, Wellington, to Chief Surveyor Wellington, 21 September 1923. Lands and Survey Wellington District Office file 20/228. Supporting Papers #1140.
[241] Chief Surveyor Wellington to Judge Gilfedder, Wellington, 26 September 1923, attached to Judge Gilfedder to Chief Surveyor Wellington, 29 September 1923. Lands and Survey Wellington District Office file 20/228. Supporting Papers #1141-1145.

> 5A2A have objected on the grounds that their block is being encroached upon and I have instructed the surveyors to follow the Court orders as to areas, and the question of accretion if any can be dealt with later. The owners of 5A2B do not I understand make any claim to more than 44 acres odd.[242]

The upshot of the difference of opinion between the Court and the Chief Surveyor was that the partition survey of Aorangi 1 / 5A2B was not completed. This meant that because it had not been resolved the whole matter arose again in 1928.

Awahuri Maori owners were more familiar with their title rights than the Chief Surveyor. In October 1923 M Royal of Kauwhata Pa wrote to the Chief Surveyor on behalf of one of the Awahuri owners Tatiana Wiremu Te Hika, who claimed the area affected by the changed course of the river. Royal's proposed solution was that a survey of the Awahuri side should be made at the same time as the partition survey of Aorangi 1 / 5A2B, as that would show up the extent of any overlap, and allow any such overlap to be avoided[243]. The Chief Surveyor asked that Tatiana's claimed area be marked up on a tracing[244], and this was done[245]. However, no action was taken in response to this exchange of correspondence.

In 1931 the Chief Surveyor started referring in correspondence to a "tongue" of Awahuri land. This was the same land as potentially extended on to the Aorangi side of the river at the point where Aorangi 1 / 5A2B had been partitioned. There had been a review of the situation at this location and it had been concluded that a similar situation to the "island" applied, whereby there was a portion of the original title to Sandon 153 on the Aorangi side of the new course of the river. This part of the original title had not been included in the subdivision for which titles were issued in 1890, so the status of the land was "Crown Land apparently held in trust for the natives"[246]. The Crown-owned titled land had a claim to accretion in the old river bed.

The Chief Surveyor then wrote to the Under Secretary for Lands suggesting an alternative mechanism to deal with those parts of Sandon 153 that had passed into Crown ownership in 1888 and had not been on-granted to Maori. Such lands were Crown Lands that were held for the intended purpose of benefitting Maori. While in 1913 the "island" had been referred

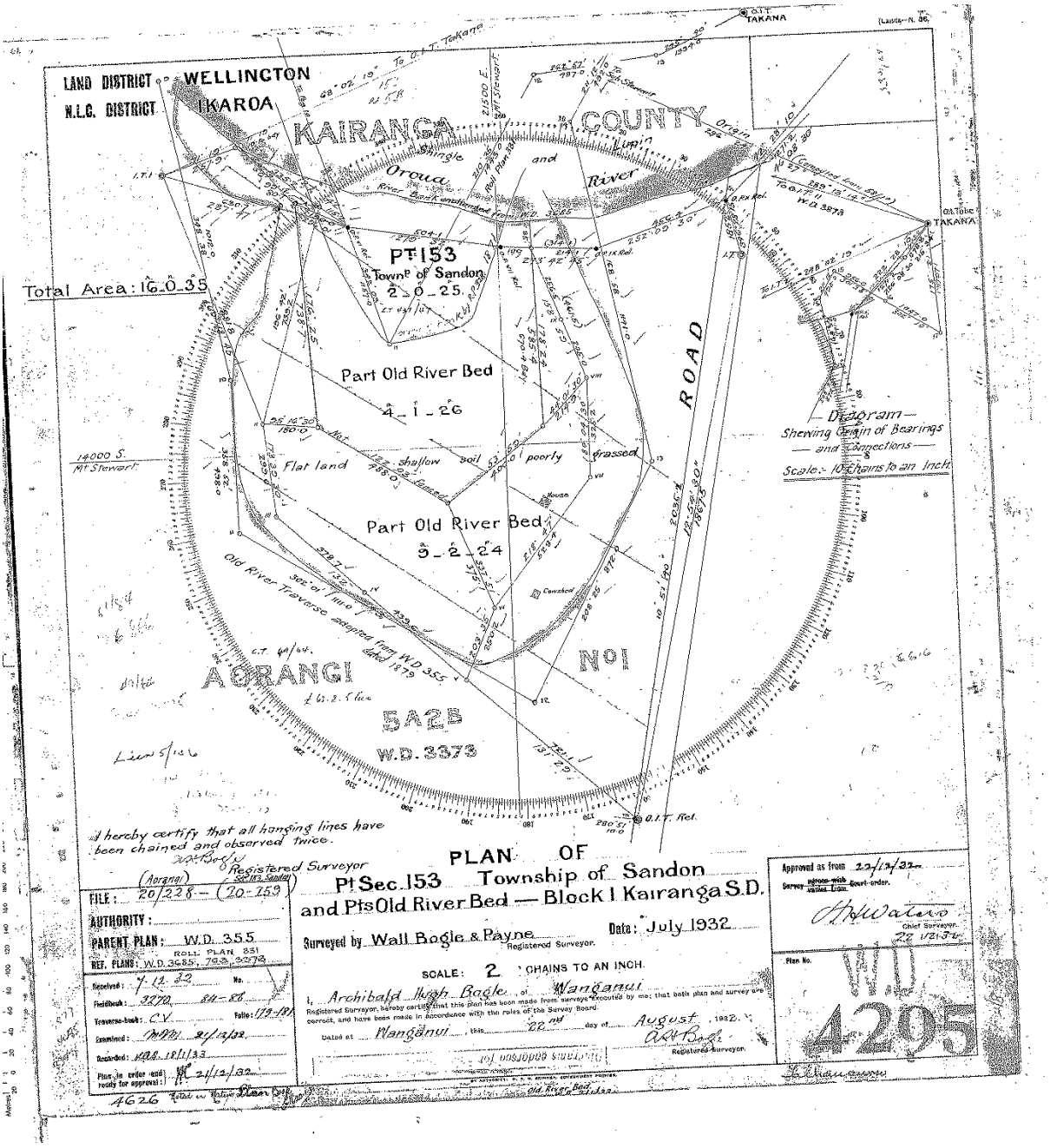
[242] Judge Gilfedder, Wellington, to Chief Surveyor Wellington, 29 September 1923. Lands and Survey Wellington District Office file 20/228. Supporting Papers #1141.
[243] M Royal, Kauwhata Pa, to Surveyor General, 1 October 1923. Lands and Survey Wellington District Office file 20/228. Supporting Papers # Supporting Papers #1146.
[244] Chief Surveyor Wellington to M Royal, Kauwhata Pa, 5 October 1923. Lands and Survey Wellington District Office file 20/228. Supporting Papers #1147.
[245] M Royal, Kauwhata Pa, to Chief Surveyor Wellington, 8 October 1923. Lands and Survey Wellington District Office file 20/228. Supporting Papers #1148.
[246] Title search by Native Branch draughtsman, 9 February 1931. Lands and Survey Wellington District Office file 20/259. Supporting Papers #1163.

to the Native Land Court by the Minister of Lands for it to determine who should be owners, and a Governor's Warrant for the issue of title had then been signed, the Chief Surveyor proposed that the Crown should formally renounce its interest in land for which it nominally held title, advise the Native Land Court accordingly, and allow the Court to determine ownership. In his opinion this would avoid the need for an application by the Minister of Lands and for the issue of a Warrant authorising a Land Registry title, both of which in effect placed a duty on the Crown to act, and thereby potentially involved the Crown in being responsible for the cost of survey. Under a renunciation approach, the cost of survey might be able to be passed to those Maori owners who would benefit by being awarded Court title and title to associated accretion[247].

There was an exchange of correspondence between Lands and Survey Department and the Native Department[248]. A member of the Chief Surveyor's staff and a solicitor acting for the Awahuri owners of the land on the Awahuri side of the river opposite the "tongue" then discussed the issue with the Judge of the Native Land Court in August 1931[249]. As a result the Court cancelled its order for the partition of Aorangi 1 / 5A2B into Subdivisions 1 to 4, and also cancelled the survey plan that showed the partition[250]. This eliminated the overlap with the Sandon 153 land. The Crown then asked that a fresh survey be prepared to show those portions that could be awarded to the Awahuri owners and those portions of accretion that could be awarded to the Aorangi 1 / 5A2B owners. The Court agreed, anticipating that such lands could be awarded to the original owners, with successors to be determined later.

[247] Chief Surveyor Wellington to Under Secretary for Lands, 30 March 1931. Lands and Survey Wellington District Office file 20/259. Supporting Papers #1166-1168.
[248] Under Secretary Native Department to Under Secretary for Lands, 11 June 1931, attached to Under Secretary for Lands to Chief Surveyor Wellington, 7 August 1931. Lands and Survey Wellington District Office file 20/259. Supporting Papers #1169-1170.
[249] Maori Land Court minute book 59 OTI (Otaki) 79-80, 13 August 1931. Supporting Papers #1289-1290.
[250] Wellington plan ML 3685. Supporting Papers #1569.

Figure 6: Wellington plan ML 4295



The plan was completed and approved in December 1932[251]. This showed that the area of Crown-owned Sandon 153 on the Aorangi side of the river was 2 acres 0 roods 25 perches, the area of accretion to the middle line on the Sandon 153 side was 4 acres 1 rood 26 perches, and the area of accretion to the middle line on the Aorangi 1 / 5A2B side was 9 acres 2 roods 24 perches.

[251] Wellington plan ML 4295. Supporting Papers #1574.

A Land Transfer title to the 2 acres of Crown-owned land was issued[252].

Up to the present day neither part of the accretion has been claimed and included in the relevant Court titles.

4.3.2.3 Awahuri (Sandon 153) Subdivision 6C2 and Aorangi 1 Section 5B1

By contrast to the situation of the "island" which had not been included in the Awahuri Subdivision 6B title and had become isolated on the opposite (Aorangi) side of the river, there was another piece of Awahuri land which had also become isolated on the opposite side of the river but which had been included in a title (to Subdivision 6C2). Close to this title was a parcel of Aorangi 1 land (Part Aorangi 1 Section 5B1) part of which was isolated on the Awahuri side of the new course of the river. The remainder of Part Aorangi 1 Section 5B1, being that portion on the Aorangi side of the river[253], had recently been purchased by a European, while the portion on the Awahuri side of the river continued to be Maori-owned.

These differing and rather complicated circumstances prompted the Judge in March 1928 to issue a requisition for a survey of the various titles, the old riverbed which might be a candidate for accretion claims, and the new river course which had eroded some titled lands. The lands concerned were Aorangi 1 Sections 5A1A-B, 5B2A-B, and 5B1, and Sandon 153 Section 6C2. In issuing the requisition the Judge wrote:

> The recent surveys of these blocks show a considerable area of "accretion", but as the Court is not satisfied that this is legal accretion to the Native Land, it is considered that a survey should be made defining the present banks of the river. As some of the blocks on the opposite bank to the Aorangi Blocks are now freehold, under Land Transfer title, these titles must be respected, but it is only proposed that the Court on completion of this survey shall deal with Native Lands only.
>
> Regarding Subdivision 6C No. 2 of Sandon 153, the original survey appears to be a very old one, and the Court is of opinion that the new survey should correctly fix both banks of the river, showing all erosions and accretions.[254]

When giving instructions to the surveyors, the Chief Surveyor wrote:

> From an examination of plans in this office, it appears that the river has changed its course considerably and it will be necessary for you to properly define both banks so that it may be determined what lands are accretion to the native-owned property.
>
> In order that no existing titles may be affected, I am of opinion that you should, first of all, define the "middle line" of the river between the old banks on which the blocks had

[252] Wellington Certificate of Title 437/47. Not included in Supporting Papers.
[253] Shown on Wellington plan DP 10590. Supporting Papers #1550.
[254] Judge Gilfedder, Wellington, to Chief Surveyor Wellington, 22 March 1928. Lands and Survey Wellington District Office file 20/228. Supporting Papers #1150.

> frontage. This, in my opinion, might be done by right lines from a correctly plotted plan, and these points could then be pegged on the ground.
>
> Your completed plan would then show (1) the old bed of the river with the middle line defined, (2) the present course of the river, and (3) all areas of erosion and accretion.
>
> I would particularly draw your attention to the Court's minute re existing titles, and would advise you to make yourself thoroughly conversant with these before going on the ground.
>
> Any evidence as to whether the change in the course of the river has been gradual and imperceptible, or caused by a sudden breakthrough, should be noted as this is a most important point.[255]

Three months later, the surveyors provided a preliminary tracing of the work they had carried out and sought some additional guidance. The tracing does not survive in survey records, but the survey plan that was produced later and was based on the tracing still exists[256], and allows some understanding about what was being referred to. The subsequent plan covers the length of the Oroua River between Awahuri Subdivision 6C2 and the "island" that had been inquired into in 1914:

> We have now traversed part of the Oroua River as shown on the enclosed tracing.
>
> We are not quite clear as to what land is to be deemed accretion and as to the extent of the survey required, and we should esteem it a favour if you would indicate on the tracing what is intended.
>
> The land shown yellow on tracing is usable land apparently not now in any title.
>
> The tongue of land, being part of land in C.T. 61/85 [original title for Sandon 153] and part of 6C No. 2, has we think been cut off by the river in the following way. In high floods the whole of this tongue has been under water. As the water would run fastest along the shortest route to the point of discharge, an erosion has taken place along such shortest route to the point of discharge, and the erosion has started at the downstream side and gradually worked up. How many floods it has taken to make the definite channel now existing we are unable to say.
>
> We take it that this tongue remains part of 6C No. 2. The 18 acres 3 roods 24 perches [of the old course of the river] then become accretion to 6C No. 2 and 5B No. 1.
>
> The area to the north [at the "island"] shown as 15 acres 0 roods 04 perches probably had a similar tongue of land which was cut off in the same way, but as this land was never in any title and the process had apparently started at the time of the original survey, we think this should be considered as accretion.
>
> With reference to area on the north [Awahuri] side of river, cut off from 5B No. 1 by the river, we think this also has been cut off by the same process and should be deemed to be still part of 5B No. 1.

[255] Chief Surveyor Wellington to Beere and Seddon, Surveyors, Wellington, 24 March 1928. Lands and Survey Wellington District Office file 20/228. Supporting Papers #1151.
[256] Wellington plan ML 4069. Supporting Papers #1572.

> The 27 acres [of old river bed on the Awahuri side of the new river course] we take to be accretion to 6C No. 2 and 5B No. 1.[257]

After consulting with the District Land Registrar, the Chief Surveyor referred the whole matter to the Native Land Court for further consideration[258]. With respect to the island, the District Land Registrar felt that portion should be clothed with a title as recommended by the 1914 inquiry but never completed since then. That would then ensure that titles on each side of the old river course could claim that old course to the middle line as accretion. The other portion of Awahuri to the east of the new course of the river was the tongue of Subdivision 6C2, which already had a title. After allowing for this title, plus the title to Aorangi 1 / 5B1, there was some 27 acres of old riverbed on the Awahuri side of the river that could be "dealt with" by the Court:

> I am of opinion, after consulting with the District Land Registrar, that the owners of the above blocks [Aorangi 1 / 5B1 and Sandon 153 Subdivision 6C2] are entitled to this area, and would suggest that an application for investigation of title be set down for a sitting of the Native Land Court.[259]

It was this activity during 1928 that resulted in the "island" receiving a title the following year.

The Court considered the matter at the end of October 1928, but adjourned the hearing sine die because there was a claim to the accretion by a European owner of part of Aorangi 1 / 5B1[260]. The surveyors were then instructed to complete their survey, which was lodged and approved in February 1929[261].

The next consideration given to this stretch of the Oroua River was in April 1931[262]. The minutes record that a solicitor told the Native Land Court with respect to Awahuri Subdivision 6C2:

> The question of title to 2-3-17 [portion of Awahuri Subdivision 6C2 on the Aorangi side of the river] has now been disposed of because the Supreme Court decided the owners of 6C2 never sold the land to G Saunders…. It seems that Saunders purchased up to a defined boundary and his title includes land amounting to 43-2-36 only, and he has no right to accretion as his purchased land was never in contact with the flow of the river and the deposit of soil or debris, and the Supreme Court decided that he did not buy the tongue of land (2-3-17) shown on plan W.D. 4069.

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[257] Beere and Seddon, Surveyors, Wellington, to Chief Surveyor Wellington, 5 June 1928. Lands and Survey Wellington District Office file 20/228. Supporting Papers #1152-1153.
[258] Chief Surveyor Wellington to Registrar Native Land Court Wellington, 8 August 1928. Lands and Survey Wellington District Office file 20/228. Supporting Papers #1154-1155.
[259] Chief Surveyor Wellington to Registrar Native Land Court Wellington, 8 August 1928. Lands and Survey Wellington District Office file 20/228. Supporting Papers #1154-1155.
[260] Maori Land Court minute book 26 WN (Wellington) 33, 31 October 1928. Supporting Papers #1343.
[261] Wellington plan ML 4069. Supporting Papers #1572.
[262] Maori Land Court minute book 59 OTI (Otaki) 66-67, 29 April 1931. Supporting Papers #1286-1288.

Saunders had been the purchaser of the portion of Aorangi 1 / 5B1 on the Aorangi side of the river[263]. While this court case[264] has not been researched for this report as the Supreme Court's decision effectively excluded the contested land from being relevant to the legal status of the Oroua River, it was noteworthy in that the Maori owners of 6C2 had to be the plaintiffs seeking to avoid having their land included in the title to 5B1. The solicitor continued that "there are no competing claimants [to the accretion on the Aorangi side of the river] besides the Native owners of 6C2". There were no objections and the Court awarded to the Subdivision 6C2 owners all the accretion in the old bed of the river around the portion of 6C2 on the Aorangi side of the new course of the river[265].

The Court then turned its attention to the old river bed on the Awahuri side of the river. The solicitor contended that the Maori owners on either side of this old river bed, being Awahuri Subdivision 6C2 and Aorangi 1 / 5B1, were each entitled to claim it as accretion. This was agreed to by the Court, with each set of owners being awarded 13¾ acres[266]. At the same Court hearing in April 1931 the accretion around the "island" was dealt with (see earlier section of this report).

The division of the old river bed between the two blocks was not surveyed until 1967[267]. This showed that the old bed had not been treated by the Court as though it was accretion land, with awards to the lands on either side up to a middle line. Instead the two portions awarded extended across the whole width of separate portions of the old river bed; the equality between the two awards was maintained. This different approach appears to have been determined by the Court in December 1966[268].

4.3.2.4 Awahuri (Sandon 153) Subdivision 5A and Aorangi 1 Section 4A1

In 1925 a survey plan showing partitions of Awahuri Subdivision 5 into Subdivisions 5A and 5B was prepared[269]. Orders were made for the two partition blocks in August 1926[270]. However, the Court's orders were annulled by the Appellate Court the following year on the grounds (relying on *Marsh v. Taranaki Education Board*, 1918 Gaz L.R. 122) that the Court

[263] Shown on Wellington plan DP 10590. Supporting Papers #1550.
[264] Possibly *Karepa and Another v. Saunders and Others and the DLR*, [1930] NZLR 242.
This case is discussed in *NZ Surveyor*, Volume XIV(8), December 1930, pages 399-402. Copy on Lands and Survey Wellington District Office file 3/826/11. Supporting Papers #1087-1090.
[265] Maori Land Court minute book 59 OTI 66-67, 29 April 1931. Supporting Papers #1286-1288.
[266] Maori Land Court minute book 59 OTI 67, 29 April 1931. Supporting Papers #1288.
[267] Wellington plan ML 5157. Supporting Papers #1576.
[268] Maori Land Court minute book 73 OTI 103. Supporting Papers #1332.
[269] Wellington plan ML 3873. Supporting Papers #1571.
[270] Maori Land Court minute book 58 OTI 43-44, 18 August 1926. Supporting Papers #1281-1282.

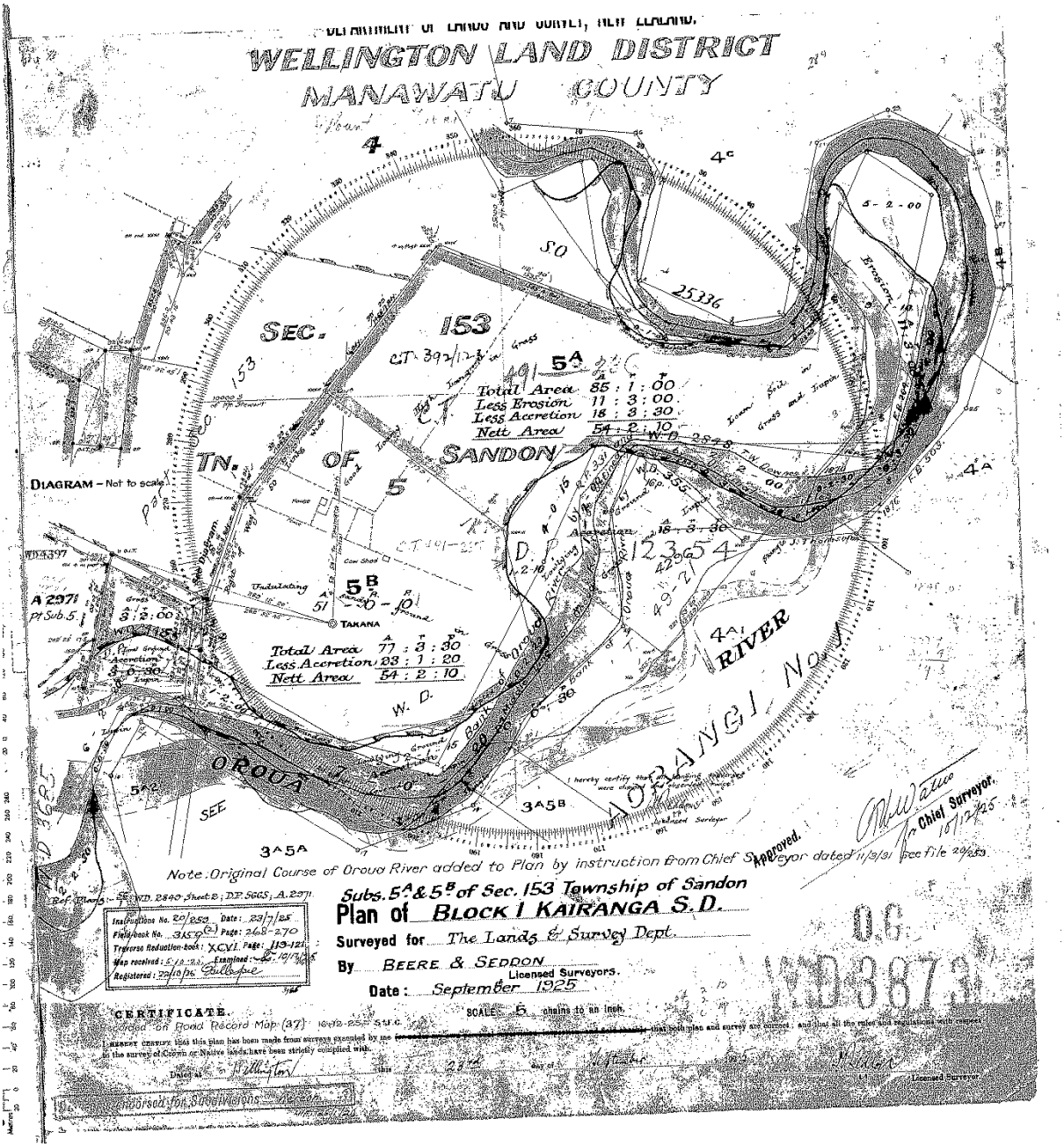
had no jurisdiction[271]. In 1932 a solicitor appearing before Native Land Court challenged this annulment, remarking that the Appellate Court's decision was

> on the extraordinary grounds that the Native Land Court had no jurisdiction. This is Native Land pure and simple and the native title had never been extinguished. The Appellate Court had proceeded on the assumption that the land had ceased to be Native Land. This was quite erroneous.[272]

Apparently the Appellate Court considered that it was the District Land Registrar who had the jurisdiction to determine accretion claims, not the Native Land Court.

[271] Maori Land Court minute book 6 APWN (Wellington Appellate) 21. 4 August 1927. Supporting Papers #1189-1190.
[272] Maori Land Court minute book 59 OTI 116, 27 April 1932. Supporting Papers #1291.

Figure 7: Wellington plan ML 3873.



In 1931 the already-approved 1925 plan showing the partition of Sandon 153 Subdivision 5 into Subdivisions 5A and 5B[273] was referred to the Judge for guidance, because of potential overlap with some Aorangi titled land. It was recorded that:

> [The Judge] agrees that the above plan should define the south and south-eastern side of the old course of Oroua River, and also the tongue of land west of the present

[273] Wellington plan ML 3873. Supporting Papers #1571.

course of the river, being part of 4A Aorangi No. 1 Block [Aorangi 1 / 4A] (plan W.D. 773).

The centre of the old river should also be shown so that the equitable allocation of accretion up to this common law line could be considered by the Court.

Notwithstanding that the Courts had adjusted on the assumption that the whole of the areas, 18 acres 3 roods 30 perches and 20 acres 30 perches, were accretion, Judge Gilfedder, who approved the plan, agrees to this addition being made.

The contention is that the owners of Aorangi 4A1, who hold an indefeasible certificate of title (C.T. 49/21) were never dispossessed of this tongue, and it certainly seems difficult to reconcile the tongue with accreted land. This is the matter Mr Upham (Bell Gully) and I discussed with you. Up to this stage we have no evidence as to the character of this accretion, whether gradual and imperceptible, sudden or otherwise. This will affect final decision.[274]

In April 1932 the matter was brought before the Native Land Court in an attempt to have the partition orders made afresh[275]. The Crown supported the fresh orders being made, though with a slight variation:

> That an area of 2 ½ acres which is already in the 5A title need not be included in the area of the accretion awarded to the 5A Subdivision. Therefore the area of accretion now added to 5A is 16-1-30 instead of 18-3-30 and the balance 23-1-20 goes to 5B. The area of accretion dealt with today is 39-3-10 instead of 42-1-10 dealt with in 1926. (This is accounted for by the 2 ½ acres included in the title for 5A.) Both 5A and 5B now belong to one person as remainder-man.[276]

These areas were surveyed on a fresh plan[277]. During the checking of the survey data on the plan, it was stated with respect to the absence of any evidence on the plan that accretion had been gradual and imperceptible that "this is a matter for the D.L.R. when he issues title (if he does)"[278]. The history of this matter has not been followed through in its entirety, though it would appear that the District Land Registrar did accept that there had been accretion to the titles for Subdivisions 5A and 5B when he approved another survey plan in April 1942[279]. This particular plan has a pencil note in its lower left corner:

> ? W.D. 4296. Appellate Court considered Judge Gilfedder did not have jurisdiction and matter was for DLR to determine. See memo Chief Judge NLC dated 28/6/39 on file.

Because application files of the Lands and Deeds Registry for approval of Deposited Plans are not publicly available, it is hard to know how to advance understanding of this particular accretion case.

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[274] Native Branch Draftsman to Chief Surveyor Wellington, 11 March 1931. Lands and Survey Wellington District Office file 20/259. Supporting Papers #1164-1165.
[275] Native Branch Draftsman to Chief Surveyor Wellington, 11 March 1931. Lands and Survey Wellington District Office file 20/259. Supporting Papers #1164-1165.
[276] Maori Land Court minute book 59 OTI 125, 3 May 1932. Supporting Papers #1293.
[277] Wellington plan ML 4296. Supporting Papers #1575.
[278] Note by Native Branch Computer to Native Branch Draughtsman, 28 October 1932. Lands and Survey Wellington District Office file 20/259. Supporting Papers #1171.
[279] Wellington plan DP 12354. Supporting Papers #1551.

4.3.3 Navigability investigation on the Oroua River

The application of the ad medium filum aquae presumption in the Oroua River was the subject of a court case in 1951[280]. However, navigability was apparently not an issue in the case, and the court's decision has not been examined for this report.

As a direct consequence of the case law established by the 1955 decision of *Attorney General and Hutt River Board v. Leighton*[281], it became the practice of District Land Registrars to notify the Department of Lands and Survey when an application was received from a riparian landowner for the issue of a title to accretion. This notification would allow the Department to decide whether the application affected Crown rights to riverbed, where it was asserted that the river was navigable and the riverbed was vested in the Crown. The new procedure in turn required the Department to determine which rivers were to be regarded as navigable for the purposes of the Coal Mines Act. In February 1956 the Chief Surveyor made a quick inspection of the Oroua River, and made a one-page file note of the river conditions he had observed:

1. At Rangiotu the river is in steep side banks with 24 ft width of deep water.
2. Hoihere Road, ditto.
3. Puawai Road, ditto.
4. Kaimatarau Road, similar to above but signs of sand bars below and above bridge.
5. Kopane on Rongotea Road, stretches of deep water but many gravel bars.

> Conclusions. The river is navigable from its mouth at the Manawatu River to the Kaimatarau Road. From Rongotea Road to its source the river is not navigable. From Kaimatarau Road to Rongotea Road, the question of navigability is doubtful and claims for accretion on this stretch would require an inspection.
>
> Below Kaimatarau Road I consider that craft of 6 to 8 ft beam and drawing up to 3 ft of water could operate commercially if it were economical to do so[282]

The Chief Surveyor's opinion can be thought of as a form of preliminary triaging, where the assertion of navigability either clearly applied, clearly did not apply, or required further investigation. In the event all subsequent accretion claims in the Oroua riverbed between 1956 and 1987 were considered to fit into the clearly non-navigable category, because they were all for portions of the riverbed upstream of Kopane, and the Chief Surveyor's opinion was therefore never put to the test[283].

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[280] *Humphrey v. Burnell*, [1951] NZLR 262.
[281] [1955] NZLR 750.
[282] File note by Chief Surveyor Wellington, 7 February 1956. Lands and Survey Wellington District Office file 3/826/11. Supporting Papers #1086.
[283] The file discloses the following survey plans in connection with which accretion was being claimed: DP 18608 (1956), DP 18804 (1957), DP 19096 (1958), DP 19968 (1958), DP 22038 (1960), DP 22513 (1960), DP 26508 (1965), DP 28477 (1967), DP 30329 (1969), DP 31729 (1970), DP 31573 (1971), DP 42676 (1976), DP 42682 (1976), DP 44598 (1976), DP 47017 (1977), LT 50548 (1981). Not included in Supporting Papers.

4.4 Manawatu River, proposed riverbed vesting in Manawatu Catchment Board

The concept of reserving the bed of the Manawatu River and vesting it in Manawatu Catchment Board was an attractive one to the Board, which looked rather enviously at how its neighbour the Rangitikei Catchment Board had managed to achieve that outcome on the Rangitikei River[284]. Vesting of the riverbed was a prize worth fighting for, because the ownership and control of the gravel in the riverbed went with the title to the riverbed. Where the ad medium filum aquae presumption applied, the Catchment Board only had regulatory control; it could apply a small supervision fee, but not collect any royalty fees. The pre-condition for vesting was that the ad medium filum presumption was rebutted and the riverbed was Crown-owned; only if the riverbed was Crown property could the Crown vest its property in the Catchment Board.

Just as with the bed of the Rangitikei River, the Crown's assertion that the Manawatu River was a navigable river meant that reservation and vesting of the riverbed in the Catchment Board was potentially achievable. The matter seems to have arisen in 1962[285], a timing that placed it shortly after the Court of Appeal had issued its decision on the Whanganui River case[286]. The Court of Appeal's finding was summarised in departmental correspondence as:

> Prior to the passing of Section 14 Coal Mines Act Amendment Act 1903, the titles issued in respect of the riparian blocks included in each case a title ad medium filum aquae.

This raised the question:

> Does this render Section 206 [Coal Mines Act 1925] nugatory in respect of any parts of a navigable river where the adjoining riparian land is described as being bounded by the Manawatu River in any Crown Grants issued prior to 1903?

A fresh legal opinion about the powers of the Crown was required[287].

The District Solicitor in the Lands and Survey Department's Wellington District Office considered that the Court of Appeal's Whanganui River decision had nothing to do with the 1903 Coal Mines legislation. While acknowledging some divergence of legal opinion, he

[284] This is covered in D Alexander, *Rangitikei River and its tributaries historical report*, November 2015, Wai 2200 #A187.
[285] The original request has not been located, but a follow-up letter refers to a request dated 27 February 1962 about vesting "the Manawatu and Mangatainoka Rivers in the Board so that the shingle removed from the rivers could be the subject of a royalty". Secretary Manawatu Catchment Board to Commissioner of Crown Lands Wellington. 30 October 1962. Lands and Survey Wellington District Office file 3/13/2. Supporting Papers #1051.
[286] *In re the bed of the Whanganui River*, [1962] NZLR 600.
The legal history of the Whanganui River is covered in Waitangi Tribunal, *The Whanganui River report*, 1999.
[287] File note by Statutory Land Draughtsman, 8 May 1962. Lands and Survey Wellington District Office file 3/13/2. Supporting Papers #1045.

relied on the Solicitor General's opinion in 1929, and on the 1955 *Hutt River v. Leighton* decision, to conclude that the vesting of the bed of a navigable river in the Crown could only be blocked ('negatived') where the Crown had already expressly granted title to the riverbed. The issue of a title with an incidental ad medium filum right was the application of a general rule of law and did not meet the definition of being an expressly granted title to a riverbed. The Crown's claim to the bed of the Manawatu River because it was a navigable river was therefore, in his opinion, still secure and had not been thrown into doubt by the Court of Appeal's decision in the Whanganui River case[288].

The District Office Solicitor's opinion was supported by the Department's Head Office:

> The decision in the Wanganui River case is of no assistance in interpreting Section 206 of the Coal Mines Act, nor, as is the opinion of the District Solicitor, is this section rendered nugatory by the application of the ad medium filum aquae rule.
>
> The varying judgements on the meaning of Section 206 are conflicting, and it is not considered desirable to place any reliance on this provision.
>
> River Boards have complete control of rivers (Section 73 River Boards Act 1908). Catchment Boards may in certain circumstances act as River Boards (Section 130 Soil Conservation and Rivers Control Act 1941). It is suggested that the Board's problem could be solved under the Soil Conservation and Rivers Control Act. Indeed there is the possibility that the Board has already been vested with these powers.[289]

This was a more cautious stance than had been relied on three years earlier when the Department had actively developed an assertion of Crown rights to the bed of the Rangitikei River.

As the question of reserving and vesting the riverbed in the Catchment Board was looked at more closely, one potential difficulty, and one potential alternative solution, were identified. The difficulty arose from the changing course of the Manawatu River:

> The river has been deviated in several places and subsequent surveys have shown considerable change in course in places…. To reserve and vest a river bed would raise some awkward questions as how to describe the actual bed reserved and vested, unless a plan was prepared to show what was actually reserved and vested. If the reserving and vesting is in terms of a prepared plan, the river may no longer be considered peripatetic (this is the Crown Law opinion in regard to the bed of Tongariro River declared Crown Land).

[288] District Solicitor Wellington to Assistant Commissioner of Crown Lands Wellington, 29 June 1962. Lands and Survey Wellington District Office file 3/13/2. Supporting Papers #1046-1049.
[289] Director General of Lands to Commissioner of Crown Lands Wellington, 6 August 1962. Lands and Survey Wellington District Office file 3/13/2. Supporting Papers #1050.

> It seems to me that any attempts to reserve and vest river beds would probably give us more headaches than we have at present by considering each case on its merits when the question arises.[290]

The possible solution was based on alternative land ownership activities of the Catchment Board;

> The Catchment Board have plans in the office for the purpose of taking considerable lengths of land on each side for presumably soil conservation and river control purposes and/or diversions.[291]

By using the Public Works Act, the Board would become undisputed owner of substantial lengths of riverbed, from which it could extract gravel supplies.

Whether the bed of the Manawatu River was vested in the Crown was revisited in March 1964, after a further Catchment Board inquiry. The Commissioner of Crown Lands replied:

> Before control could be given to your Board this Department would have to be satisfied that the beds of these rivers were in Crown ownership so that they could be reserved for river control purposes. It was at first thought that the beds of these rivers, as far as they are navigable, could be treated as Crown Land under Section 206 of the Coal Mines Act 1925. A recent legal opinion, however, advises the Department that the various judgments on the meaning of Section 206 are conflicting and it is not considered desirable to place any reliance on this provision. The decision in the Wanganui river case is of no assistance in interpreting Section 206. For the above reason I regret your Board request that it be given control of the Manawatu and Mangatainoka Rivers must be declined.[292]

A third approach by Manawatu Catchment Board in 1967[293] elicited the same response[294]. A difficulty that the Catchment Board was labouring under was that the Hawke's Bay District Office of Lands and Survey seemed to have a different interpretation of navigability to the Wellington District Office. The two District Offices had communicated with one another in 1963, when the Wellington office had set out its belief that the Manawatu River was navigable up as far as Palmerston North and possibly to the Manawatu Gorge. It had added that there were records of waka navigation through the Gorge[295]. In reply the Hawke's Bay office had referred to navigable use upstream of the Gorge as far as Puketai Pa, located somewhere between Kumeroa and Oringi[296]. Four years later, in August 1967, the Hawke's

[290] File note by Statutory Land Draughtsman, 16 November 1962. Lands and Survey Wellington District Office file 3/13/2. Supporting Papers #1054-1055.
[291] File note by Statutory Land Draughtsman, 16 November 1962. Lands and Survey Wellington District Office file 3/13/2. Supporting Papers #1054-1055.
[292] Commissioner of Crown Lands Wellington to Secretary Manawatu Catchment Board, 8 April 1964. Lands and Survey Wellington District Office file 3/13/2. Supporting Papers #1056-1057.
[293] Secretary Manawatu Catchment Board to Commissioner of Crown Lands Wellington, 27 June 1967. Lands and Survey Wellington District Office file 3/13/2. Supporting Papers #1058.
[294] Commissioner of Crown Lands Wellington to Secretary Manawatu Catchment Board, 30 June 1967. Lands and Survey Wellington District Office file 3/13/2. Supporting Papers #1059.
[295] Acting Commissioner of Crown Lands Wellington to Commissioner of Crown Lands Napier, 21 March 1963. Lands and Survey Wellington District Office file 3/13/2. Supporting Papers #1052.
[296] Chief Surveyor Napier to Chief Surveyor Wellington, 30 August 1963. Lands and Survey Wellington District Office file 3/13/2. Supporting Papers #1053.

Bay office set out its opinion that the bed of the Manawatu River above the Gorge was navigable, and asked the Wellington office why it had seemingly backed away from the position it had expressed in 1963[297]. The Wellington office responded that there was a difference between determining navigability and legally interpreting the rights set out in the Coal Mines Act:

> Investigations into this matter do not leave doubts as to the validity of the contention that this river is navigable, but there are doubts that as such the river can be treated as Crown Land under Section 206 Coal Mines Act 1925. Various judgments given on the meaning of Section 206 are conflicting and it is not considered desirable to place any reliance on this provision.

In the same month the Catchment Board's Chief Engineer had a meeting with the Wellington office's Chief Surveyor, and recorded the topics that had been discussed:

> We discussed the question of accretion, erosion and avulsion in the rivers in this area. It was agreed that the present law on this situation is not entirely suitable to the events which occur in New Zealand rivers and that some revision could be justified in the method of dealing with these questions. This could be tied up with the provision of suitable reserves along rivers for the use of Catchment Boards in the control of river work.
>
> In particular, in a river where there is a scheme of control and it was more likely to remain in a permanent location due to the work of the Catchment Board, it would seem advisable at this stage to establish wherever possible a permanent reserve along the banks of the rivers. This would fix property boundaries and give reserves to Catchment Boards for the necessary work of planting and fencing to keep stock out. Any alteration to boundaries after this may mean the taking of land by the Board.
>
> One of the questions of great importance in the Lower Manawatu area is the question of navigability of the river, and it was understood that there have been some previous opinions on this matter, and we would be pleased if we could have copies of these opinions for our information.
>
> In the Lower Manawatu there are considerable areas of land which are not in anybody's title at present and these areas were shown in red on the plans which were given to you.
>
> I would reiterate that this Board will be happy to do anything that is possible in obtaining information in order that a more satisfactory method could be evolved of fixing the boundaries of properties where they adjoin rivers which are liable to erosion.[298]

The Chief Surveyor commented in a file note:

> The bed of a navigable river is Crown Land.

[297] Commissioner of Crown Lands Napier to Commissioner of Crown Lands Wellington, 21 August 1967. Lands and Survey Wellington District Office file 3/13/2. Supporting Papers #1060.
[298] Chief Engineer Manawatu Catchment Board to Chief Surveyor Wellington, 29 August 1967. Lands and Survey Wellington District Office file 3/13/2. Supporting Papers #1061.

1. There are titles to the banks of such navigable rivers, and the doctrine of accretion and erosion applies to these titles, so that the boundaries of the titles would alter to contain 'accretion' and lose the 'erosion'.
2. The altered bed of the river (in its new position) would be Crown Land.
3. Where the boundaries had been altered, where land was added to or taken away by 'avulsion' – a sudden breakthrough or other sudden alteration – the position is different. The old bed would remain Crown Land and the C.T. boundary would not be altered.
4. The adjoining owners then would have a claim to the riverbank under the doctrine of 'accretion' and 'erosion', but not to the bed. They would have no claim in the case of an 'avulsion'.
5. I can see no reason why the beds of the rivers cannot be vested in the Catchment Boards, provided:
   (a). That the Catchment Board is in control of the course of the river and is in fact controlling it.
   (b). That the boundaries of the river/titles are fixed at the time they effectively control the river (when by their actions of control any change of the riverbank is no longer under the doctrine of 'accretion' and 'erosion').

   The fix of the boundaries at this time when the Catchment Boards effectively control the river, and the time when they do so, are most important.

   The responsibility of so fixing the river is entirely with the Catchment Boards, and should be done definitely and completely. If delayed until, by the Catchment Board's actions in controlling the river, the boundaries cannot be fixed because the evidence is destroyed, there could be chaos. It is sure that some of this chaos exists now, because of Catchment Board activity in controlling the flow of rivers by straightening, channelling and protecting.

   I cannot see that there is onus on the owners along these riverbanks to have their boundaries fixed by re-survey. I consider the onus is on the Catchment Boards.

6. The land between the stopbanks and the riverbanks, on both sides of the river, will be the land affected by the control works and subject to the actions of the Catchment Boards. It seems reasonable that this land should be fully under the control of the Boards, as owners, in addition to the beds of the rivers, so that complications regarding riverbanks, ponding, flooding etc can be avoided.

   My main interest is in the legal boundaries of the rivers and of the titles along the rivers. There is an urgent need to now determine and finalise those boundaries before this becomes an impossibility. If those boundaries were fixed there would remain no doubt about what areas could be vested in the Catchment Boards, and I would think there would be little reason why the beds of the rivers so fixed should not be vested.[299]

However, having made these comments on the departmental file, the Chief Surveyor failed to take the next step of writing them up in a letter to the Catchment Board's Chief Engineer. That did not occur until one year later, after the Chief Engineer had sent a reminder[300]. The

[299] File note by Chief Surveyor Wellington, undated (August 1967). Lands and Survey Wellington District Office file 3/13/2. Supporting Papers #1062.
[300] Chief Engineer Manawatu Catchment Board to Chief Surveyor Wellington, 15 July 1968. Lands and Survey Wellington District Office file 3/13/2. Supporting Papers #1063.

Chief Surveyor then wrote to the Chief Engineer, providing a fuller explanation than his file note had set out:

> Generally, where the areas shown in red [on the plans provided] are not in the titles of private persons, they must be considered Crown Land, the bed of the navigable Manawatu River. There is much correspondence and many opinions regarding the navigability of the Manawatu River, and I am of the opinion that the Manawatu River must be considered navigable firstly, as far as and into the Manawatu Gorge, and secondly, from the Gorge to the position of the old Puketai Pa, between Kumeroa and Orini in Hawke's Bay.
>
> The position of the navigable river would be subject to the doctrine of accretion and erosion, and would alter under that doctrine unless limited by legal road or by reserves along the banks. Where the river altered course suddenly by break-through or by unnatural action, the old bed would remain Crown Land.
>
> I do not think it would, at this stage, be wise to give you copies of all the opinions on the navigability of the river – a considerable amount of work.
>
> Without complete evidence as to the reasons and effect of changes progressively to the banks of the Manawatu River, it would be difficult to now define the true legal position of the river, and to determine the extent of the ownership by the Crown of the present riverbed and adjoining land.
>
> You mention … the advisability of establishing permanent reserves along the banks of the rivers permanently stabilised in their courses – these reserves to permanently fix property boundaries, and provide areas for Catchment Boards to carry out planting, fencing etc. It does seem to me that these matters are adequately covered by Sections 126-138 Soil Conservation and Rivers Control Act 1941.
>
> Circular 1956/7[301] – a joint circular issued by the Soil Conservation Council and this Department concerning river control schemes – dealt with the acquisition and control of lands by Catchment Boards, and endeavoured to establish a uniform policy under which Boards should operate. From the Act and the intention of Joint Circular 1956/7, it would appear that the Boards should acquire all lands required for their operations and the carrying out of their functions. Section 145 of the Act, while confirming the necessity of such action, recognises the rights of private owners affected, without limiting or hindering the rights and functions of the Boards.
>
> My main interest, and the District Land Registrar's interest, is the true legal position of the boundaries of the rivers and of the private owners along the rivers. It is a matter of continuing concern and considerable complication that the final legal position of those boundaries has not been fixed satisfactorily, for title purposes, before the Catchment Boards have destroyed the evidence of their positions. There is an urgent and increasing need to determine and finalise the position of these boundaries, before this becomes an impossibility.
>
> If these boundaries had been or could now be fixed in their final legal position, there would remain no doubt as to what areas would be vested in the Catchment Boards, and I would think there would be no reason why the beds of the rivers, and the areas permanently required for the Catchment Board's operations should not be vested in the Boards.

[301] Circular 1956/7 of Department of Lands and Survey and Soil Conservation and Rivers Control Council, 22 August 1956. Copy on Lands and Survey Wellington District Office file 3/13/2. Supporting Papers #1066-1071.

> Successive aerial photographs of the Manawatu River since around 1940 give valuable information as to the changes in the riverbanks due to accretion, erosion and avulsion, and so to the true position of title boundaries. If the final legal position of riverbanks and abutting boundaries were marked by a surveyor on the pertinent photographs, the photographs or copies of the photographs lodged as a document would be an acceptable record for the resolution of ownership boundaries before the operations of your Board destroyed the evidence on the ground of the position of those boundaries.
>
> I consider that where your Catchment Board operations will affect ownership boundaries in any way, those boundaries should be fixed before they are affected, and the responsibility for such fixing remains with your Board.[302]

Following receipt of this letter from the Chief Surveyor, a meeting was held in November 1968 between the Board's Chief Engineer and Secretary, the Commissioner of Crown Lands and the Chief Surveyor, and the District Land Registrar[303]. The Chief Surveyor and the District Land Registrar were both anxious to avoid the case-by-case approach where a short stretch of riverbank and river course might be defined by one survey, but not adjoining stretches at the same time. The plotting of the river course on a more comprehensive basis by use of aerial photographs would overcome this problem. The Catchment Board was primarily interested in identifying the outer boundaries of the lands it wanted to have under its control on a continuing basis, and was less interested in any internal boundaries within those lands. It considered that the taking procedures under the Public Works Act met its needs. When the Board's Chief Engineer suggested that it was a Crown responsibility to define those portions claimed as Crown Land by virtue of being the bed of a navigable river, this was denied by the Commissioner of Crown Lands, who went on to accuse the Catchment Board of wanting to get the lands of interest to it "on the cheap". At this point the Chief Engineer was recorded as saying that "the need for prior definition [of river course] had not been appreciated by the Board, but that the Board didn't want to face the cost of survey". The 'cheap' jibe seems to have been a reference to the Board's pursuit of obtaining land by reservation and vesting of Crown property, rather than by purchase. However, the Chief Surveyor explained that reservation and vesting required survey of the boundaries of any Crown Land, which was an impossibility if the Board's operations had changed the course of the river. When the Catchment Board queried why it had been possible to vest the bed of the Rangitikei River, though not the bed of the Manawatu River, the Chief Surveyor responded:

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[302] Chief Surveyor Wellington to Chief Engineer Manawatu Catchment Board, 6 September 1968. Lands and Survey Wellington District Office file 3/13/2. Supporting Papers #1064-1065.
[303] Notes of meeting, 25 November 1968. Lands and Survey Wellington District Office file 3/13/2. Supporting Papers #1072-1075.

> Surveys had been carried out, but title ownerships had not been settled. Some accretions still had not been claimed by rightful owners. It wasn't a satisfactory position, and didn't want the situation repeated for Manawatu.

When the Chief Engineer asked if the riverbed (i.e. Crown Land) could be "vested subject to claims of adjoining owners", the Commissioner of Crown Lands and the Chief Surveyor were both adamant that this was not possible. The Chief Engineer then asked for advice on how to proceed in future "without too much cost", and was firmly told that the provisions of the Public Works Act for taking land should be followed. He was also told that, notwithstanding any desire the Board might have to avoid the additional expense of engaging a registered surveyor, any marking up of aerial photographs would have to be undertaken by a registered surveyor if such marking-up was to be used and accepted as a basis for subsequent title definition. This was because the matter might end up in a disputed hearing in court that required expert witness evidence[304].

The 1968 meeting seems to have laid to rest all possibility of the Crown-owned bed of the Manawatu River being reserved and vested in Manawatu Catchment Board. However, a portion of the bed of the river, with uncertain boundaries, still remained with the status of Crown Land, so far as the Crown was concerned, on account of the Crown's assertion that the river was navigable. Joint Circular 1956/7 had defined a process for allowing the removal of shingle from such Crown-owned beds. It set out how the Crown Land was subject to the Land Act 1948, and Section 165 of that Act allowed the Land Settlement Board (serviced by the Department of Lands and Survey) to issue a licence to a Catchment Board for shingle removal, with power to the Board as licensee to sublet its rights to individual shingle operators. The rationale for this was set out in the Joint Circular:

> It is considered that there will be a number of instances where Catchment Boards, although not carrying out major river control works requiring full control of lands affected, will be vitally interested in the proper maintenance of river channels.
>
> Where it is established that a Catchment Board is doing work on a river designed to maintain the channel in good order, and the bed of such river is held in Crown ownership, it has been decided that such Board will be permitted to remove shingle or sand without charge provided the royalties it so derives are used on river maintenance.[305]

The issue of a licence for the removal of shingle from Crown-owned land was first applied with respect to the Otaki River only in 1969[306], before being expanded to cover all rivers within the Manawatu Catchment Board's district in 1972[307].

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[304] Notes of meeting, 25 November 1968. Lands and Survey Wellington District Office file 3/13/2. Supporting Papers #1072-1075.
[305] Circular 1956/7 of Department of Lands and Survey and Soil Conservation and Rivers Control Council, 22 August 1956. Copy on Lands and Survey Wellington District Office file 3/13/2. Supporting Papers #1066-1071.
[306] Commissioner of Crown Lands Wellington to Secretary Manawatu Catchment Board, 29 October 1969. Lands and Survey Wellington District Office file 3/13/2. Supporting Papers #1076-1077.

4.5 Manawatu River, a recent assertion of navigability

In 1978 the issue of the Manawatu River's navigable status was raised again. While it had been very much a topical issue during the period from 1930 to the mid 1950s, interest had declined after that. Those portions of the river most likely to be capable of being regarded as navigable had been dealt with under a different framework, whereby the use of the Public Works Act to take both riverbed and adjoining riparian land for river control purposes had brought a wide and stopbanked flood channel into public ownership. However, when the concept of Manawatu Regional Water Board being issued with a grant of control for the regulation of boating activities on the Manawatu River was being discussed, the status of the riverbed was also discussed. The Ministry of Transport, with whom the Regional Water Board was investigating the issue of a grant of control, wrote to the Department of Lands and Survey:

> Under our legislation we can only delegate the control of the bed of any river, lake, etc, if it is owned by the Crown. I understand that there has been some confusion over the ownership of the bed of the Manawatu River, and before further discussing this aspect of a grant of control with the Board, could you please advise us on the ownership of the bed of the Manawatu River.[308]

The Department provided an interim reply indicating that the Manawatu River up to the gorge was deemed to be navigable, and the riverbed was therefore vested in the Crown[309]. A fuller reply confirmed this:

> This Department holds the view that those portions (by far and away the greatest extent) of the Manawatu Riverbed that are not held in titles by private persons are Crown Land by virtue of the river being navigable up to the Gorge. As part of this claim by the Crown, it should be noted that in some areas of the riverbed whilst the underlying ownership remains with the Crown, action has been taken under Reserves legislation to reserve defined portions of the riverbed for soil conservation and river protection purposes, and as a consequence the Manawatu Catchment Board has been appointed to control and manage such reserves[310].
>
> In making the above claim, however, it must be borne in mind that the position of the navigable river would be subject to the doctrine of accretion and erosion, and would alter under that doctrine unless limited by legal road or by reserves along the banks. Where the river has altered course suddenly by breakthrough or by unnatural action, the Crown land bed remains in the position of the original river flow and the bed of the

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[307] Commissioner of Crown Lands Wellington to Secretary Manawatu Catchment Board, 7 November 1972. Lands and Survey Wellington District Office file 3/13/2. Supporting Papers #1078-1079.

[308] Secretary for Transport to Commissioner of Crown Lands Wellington, 5 December 1978. Transport Head Office file 54/14/84. Supporting Papers #988.

[309] Commissioner of Crown Lands Wellington to Secretary for Transport, 3 May 1979. Transport Head Office file 54/14/84. Supporting Papers #988A.

[310] The reserves had initially come into public ownership by being taken under the Public Works Act (*New Zealand Gazette* 1959 pages 129 and 1180), before then being declared to be Crown Land (*New Zealand Gazette* 1959 page 1347), reserved for soil conservation and rivers control (*New Zealand Gazette* 1962 page 562), and vested in Manawatu Catchment Board (*New Zealand Gazette* 1962 page 557). The reasons for this convoluted procedure have not been researched for this report.

new course would remain in the ownership of the person whose land was currently hosting the river.

Carrying on from the previous paragraph, then, the result of successive river control actions by the Catchment Board over the years without final legal boundaries being defined in some way beforehand by the Board, has been that it has become unclear as to the true extent of the ownership by the Crown of the present riverbed. Without complete evidence as to the reasons and effect of changes progressively to the banks of the Manawatu River, it is now difficult for this Department to define the true legal position of the river in a hard and fast manner.

In view of the above comments, you can see that a considerable "grey area" exists at the present time, and in the circumstances I would suggest that it would be unwise for you to proceed with any grant of control until such time as the true legal position of the river has been defined and a definitive statement can be made as to the extent of the Crown's interest in the riverbed.

In conclusion, I should mention that it is the view of this Department that, where Catchment Board operations have in any way affected ownership boundaries, the responsibility for fixing those boundaries are the responsibility of the board concerned.[311]

The earlier investigations into navigability were therefore still considered by the Crown to be applicable in the late 1970s, though with some weighty qualifications.

However, the Department of Lands and Survey's assertion that the river was navigable up to Palmerston North and beyond to the Gorge was living in an historical time-capsule and flew in the face of modern reality because the character of the river had changed so much over the years. Nearly 30 years earlier in 1951 Manawatu Catchment Board had reported on its efforts to recover a punt that had been used in the widening of the cut at Taupunga:

On completion of the work, the punt was used by the Manawatu County in repairs to the Shannon – Foxton bridge [just downstream from Taupunga] and by the Ministry of Works in building the bridge to take the flax effluent across the old branch of the Manawatu River.

It was returned to the Palmerston North River Board area last summer. From Shannon Bridge to about a mile above the Suspension Bridge to Opiki it was brought back by a launch hired from a fisherman from Foxton. Great difficulty was experienced in this work owing to the extremely low level of the rivers, and sand banks which were not known to exist previously. The launch was damaged to some extent and the charges were high, however the Board decided to pay the full account of this fisherman. From here the punt was finally brought back by removing it from the river and bringing it back in pieces and re-launching it near our depot.[312]

[311] Commissioner of Crown Lands Wellington to Secretary for Transport, 16 August 1979. Transport Head Office file 54/14/84. Supporting Papers #989-990.
[312] Chief Engineer Manawatu Catchment Board to Chairman Soil Conservation and Rivers Control Council, 24 September 1951. Works and Development Head Office file 48/270. Supporting Papers #901.

4.6 Manawatu Estuary

Where a river discharges into the sea, it undergoes a legal shift in its status. The English common law principles establishing the law governing freshwater waterways give way to the law of the sea. The spot at which this happens – and the law requires that it be a defined spot rather than a transition – is the limit of tidal influence. Tidal waters are deemed to be part of the sea, and an estuary is regarded as an arm of the sea. There are English common law rights of public fishing and public navigation that apply in tidal waters below high water mark.

River outlets to the sea are very dynamic environments, where there are opposing influences of water moving downstream, in varying quantities dependent on weather and the seasons, meeting a greater body of water that is subject to tidal movement, storm surges and coastal currents. Each tidal cycle generates changed conditions.

At the mouth of the Manawatu River, surveyors established a survey line between land and estuary on the northern bank in 1858 (with the Awahou purchase)[313], and on the southern bank in 1891 (with the definition of Papangaio block)[314]. They based their boundaries on the state of the river at those dates. The first dealing with this land-water legal boundary was in the context of a ferry crossing of the river, with Section 268 Town of Foxton, also known as Te Wharangi, reserved for ferry purposes by the Wellington Provincial Government in 1869[315]. Later, with the development of the port of Foxton, there was constant European and Crown interest in the state of the rivermouth, and the many plans that survive show how constantly changing was the rivermouth, and how little was the respect accorded by the river and the sea to the surveyors' boundary lines.

Some of this movement was addressed in a Maori Land Court decision in 1962, of which more later:

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[313] Plan of Awahou Purchase, numbered W36. Department of Lands and Survey Head Office. Not included in Supporting Papers.
Wellington plan SO 10602 is a photostat copy. Not included in Supporting Papers.

[314] Wellington plan ML 1195. Supporting Papers #1558.
It was not particularly hospitable land, particularly for a surveyor seeking to establish firm title boundaries. An inspecting surveyor reported in April 1892, less than six months after the block had been surveyed, that "Papangaio consists wholly of shifting sand hills". He found some survey pegs in the water below high tide level, and others lying on the ground where the sand around them had been blown away by the wind. Still more could not be found at all: "after losing nearly the whole of the day searching for the pegs, we could not find any. Bad weather set in, and I determined not to waste any more time over this work". District Surveyor Masterton to Chief Surveyor Wellington, 23 April 1892. Lands and Survey Wellington District Office file 20/268. Supporting Papers #1172-1173.

[315] *Wellington Provincial Gazette* 1869 page 207. Supporting Papers #1426.
Section 269 Town of Foxton, located inland of Section 268, was also reserved.

> It was accepted by all (and borne out by the Surveyors) that the Manawatu River in 1881 entered the sea slightly to the north of where it is when the 1891 survey was made [of Papangaio, plan ML 1195], that by 1888 it had moved to a new mouth considerably to the north[316], and that by 1891 it had returned to its earlier mouth though slightly south. It has also been established and admitted that in 1900 the river broke through to the south across Papangaio Block, leaving a small tip (some 8 acres) to the north of the new mouth.[317]

The consequences for the Maori owners of Papangaio of the encroachment of the estuary on to their titled land in about 1900 was to affect them for the next 60 years, and ultimately result in part of their land being acquired by the Crown. This section of the report is the story of the legal dispute and their land loss.

4.6.1 Establishment of Foxton Harbour Board, 1908

The Manawatu River was used as a point of entry to the region from the earliest days of European settlement.

When a railway line was laid down between Foxton and the Manawatu-Wellington line at Longburn, a port was developed at Foxton by New Zealand Railways. Among the consequences were:

- A signal station was established on the north (Foxton Beach) side of the estuary.
- Some 463 acres of coastal land on the north side of the estuary, which was in Crown ownership as a result of the Awahou Purchase, was reserved for harbour improvements in 1892[318].
- Whether the river up as far as Foxton port was legally an arm of the sea or a navigable river, after the passing of the Coal Mines Amendment Act in 1903 the bed of that part of the river was indisputably Crown Land.

The operation of the port was handed over to the newly established Foxton Harbour Board in 1908.

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[316] A survey plan dated 1889 (Wellington plan SO 12963 – Supporting Papers #1584-1585) records the "present bar" at about the most northerly point that it reached.

[317] Maori Land Court, decision dated 15 May 1962. Maori Land Court minute book 69 OTI (Otaki) 291-301, at 293. Supporting Papers #1321-1331 at 1323.

[318] *New Zealand Gazette* 1892 page 1491. Supporting Papers #1439.
Sections 268 and 270 Town of Foxton. Wellington plan SO 12963. Supporting Papers #1584-1585.
Section 268, the ferry reserve of 1869, was subsequently found to have been mistakenly endowed in the Harbour Board. It had already been vested in Manawatu County Council in 1882 (*New Zealand Gazette* 1882 page 1860) but this vesting had been ignored in both 1892 and 1908 because the 1869 reservation had become lost sight of. The matter was only rectified in 1954, by revocation of the reservation (*New Zealand Gazette* 1954 page 338), when steps were underway to wind up the Harbour Board. Submission to Head Office Committee of Management, 8 December 1953, Director General of Lands to Minister of Lands, 11 December 1953. Lands and Survey Head Office file 22/2843. Supporting Papers #238.

Figure 8: Wellington plan SO 15679.

The Foxton Harbour Board Act 1908 declared that the signal station and the harbour improvements reserve became endowment lands of the Harbour Board. It also endowed the Board with:

> All the foreshore on both banks of the Manawatu River commencing at the southeastern corner of Whirokino No. 2, McGregors Bend, and extending thence to the mouth of the said river as far as high-water mark.

Just what this meant, having regard for the law of the sea, and the difficulty of defining the "mouth of the river", is impossible to determine without having regard to a survey plan

prepared at the time[319]. This plan, despite being approved by someone acting for the Chief Surveyor, is more of a diagrammatic representation rather than showing the foreshore as having surveyed boundaries. It shows a pink line of "foreshore" within the bounds of the Manawatu River, this pink line widening downstream as the river gets closer to the sea. The plan has had superimposed on it some more information added in 1923-24, which is discussed below. Despite the diagrammatic nature of the plan, the legislation had the effect of preventing private landowners on the banks of the river, including the Papangaio block owners, from claiming accretion where the accreted land had the prior legal status of being foreshore vested in Foxton Harbour Board.

4.6.2 Additional land vested in Foxton Harbour Board, 1924

The legal complexity of the situation at the mouth of the Manawatu River came to a head in 1923, and formed the basis of a request by the Chief Surveyor for help from his Head Office in determining what could legally be done. After the river mouth had moved to a location in 1900 where it cut through the tip of Papangaio block on the southern side, it had tended to remain in that location, and the old course of the river on the northern side had silted up. Foxton Harbour Board, as owner of the land on the north bank of the old river and as owner of the foreshore of the river, felt that it had a right to claim the old river bed, now dry land, as accretion to its landholdings. It had already taken steps to stabilise the old river bed by planting marram grass and trees, because the then-existing mouth of the river was well-suited to navigation by ships entering and leaving the port, and its ambition was to establish a settlement of seaside cottages on this accretion land[320]. The Chief Surveyor wrote:

> Accretion has taken place at the mouth of the Manawatu River to a considerable extent and [the solicitors] acting on behalf of the Harbour Board have applied to have the area shown on the accompanying tracing vested in the Board as an addition to its endowment land.
>
> The Manawatu being a navigable river, the bed thereof is vested in the Crown and it therefore appears impossible for the District Land Registrar to issue a title to the area in question as an accretion to the Harbour Board's title.
>
> Moreover, as the tracing shows portion of the area applied for is part of the native block known as Papangaio, and being now cut off from the balance of the block by the shifting of the Manawatu River, the legal status thereof, as to title, is very doubtful, but it is certainly not in the same position as the remainder of the area in question.
>
> There are no recent surveys of the locality in this office, but there is sufficient information to show that the accretion has been gradual and not the result of a sudden shifting of the river. The date of the latest survey of Sections 268 and 270 is 1889 and that of Papangaio is 1891. A survey, for leasing purposes, was made in [illegible] of

[319] Wellington plan SO 15679. Supporting Papers #1587.
[320] Commissioner of Crown Lands Wellington to Under Secretary for Lands, 14 December 1923. Lands and Survey Head Office file 22/2843. Supporting Papers #236-237.

> Section 268 by the Harbour Master and is recorded in the Marine Department. This plan has a note on it to the effect that the river-bed is "rapidly rising".
>
> The Crown Lands Ranger reports that the land is flat and nothing but pure sand, the value of it being 10/- per acre. He is of opinion that the land should be given to the Harbour Board as an additional endowment.
>
> I shall be glad therefore if you will advise me as to the procedure to be followed in order that the Harbour Board may acquire a title to the land.[321]

The initial response in Head Office was to seek the opinion of the Solicitor General[322], and one of the Crown Solicitors in Crown Law Office replied:

> The ownership of the foreshore of the sea and navigable rivers belongs to the Crown. Foreshore is usually defined as that part of the realm lying between the high water mark and low water mark. The Crown may grant the foreshore to a subject.
>
> By the Foxton Harbour Board Act 1908 the Board was endowed inter alia with the foreshore of the Manawatu River. The bed of the river remained in the Crown. There has been accretion to the foreshore, and also the river has altered its course, now flowing across the Papangaio block cutting off 18 acres of that block and adding it to the accretion.
>
> The law of accretion is stated as follows:
>
> > Where the water recedes gradually and imperceptibly from the land, the accretion belongs to the owner of the foreshore. Where, however, the change is not imperceptible or gradual, but sudden, or where the boundaries of the land are well known and defined, this principle does not apply and no change occurs in the ownership of the land or foreshore.
>
> Applying these principles, it would appear therefore that the ownership of the present mouth of the river and the part cut off still remains with the owners of the Papangaio block, and it is questionable whether the owner of the foreshore has obtained any right to the former river bed – shown green on the small plan.
>
> I should like fuller information as to the change in the course of the river before expressing a definite opinion. Is it not possible that the river might revert to its old course?[323]

The further information requested by the Crown Solicitor turned out to be an admission by the Harbour Board's solicitors that an accretion claim could not succeed as the change of river course had not been gradual and imperceptible, accompanied by two affidavits arguing that the change of course though sudden was sufficiently permanent to justify the Crown, in

[321] Chief Surveyor Wellington to Under Secretary for Lands, 8 March 1923. Lands and Survey Head Office file 22/2843. Supporting Papers #222-223.
[322] Under Secretary for Lands to Solicitor General, 12 March 1923, on Chief Surveyor Wellington to Under Secretary for Lands, 8 March 1923. Lands and Survey Head Office file 22/2843. Supporting Papers #222-223.
[323] Crown Solicitor to Under Secretary for Lands, 28 March 1923. Lands and Survey Head Office file 22/2843. Supporting Papers #224-225.

whom the bed of the river was vested, granting title to the Harbour Board[324]. On receipt of the further information the Crown Solicitor advised:

> I have considered the further information supplied. The solicitors for the Board admit that the change was not gradual or imperceptible, and this admission is I think borne out by the fact that part of Papangaio Block was cut off en bloc by the change in the course of the river.
>
> The law applicable is laid down in *The Mayor of Carlisle v Graham*, LR 4 Ex.361: "All authorities ancient and modern are agreed that if by the irruption of the waters of a tidal river an entirely new channel is formed in the land of a subject, although the rights of the Crown and of the public may come into existence … the right to the soil remains in the owner, so that if at any time thereafter the waters should recede and the river again change its course leaving the new channel dry, the soil becomes again the exclusive property of the owner free from all rights whatsoever in the Crown or in the public."
>
> I think therefore that the old bed of the river was, and still is, vested in the Crown, and that the 18 acres cut off from the Papangaio Block is still vested in the owners of that Block. Following the decision quoted above it seems to me that the ownership of the present bed of the river is still vested in the owners of the Papangaio Block.[325]

On the basis of this decision, the way was clear, so far as Crown officials were concerned, for the former bed of the river that had become dry land to have title granted to the Foxton Harbour Board, because its status was deemed to be Crown Land. This was despite survey plans prepared by the Board still mistakenly showing the dry riverbed as "accretion". Meanwhile any attempt to acquire title to the part of Papangaio Block to the north of the rivermouth was abandoned.

Section 120 Reserves and Other Lands Disposal and Public Bodies Empowering Act 1924 was passed to endow the Crown Land that was the old river bed in Foxton Harbour Board.

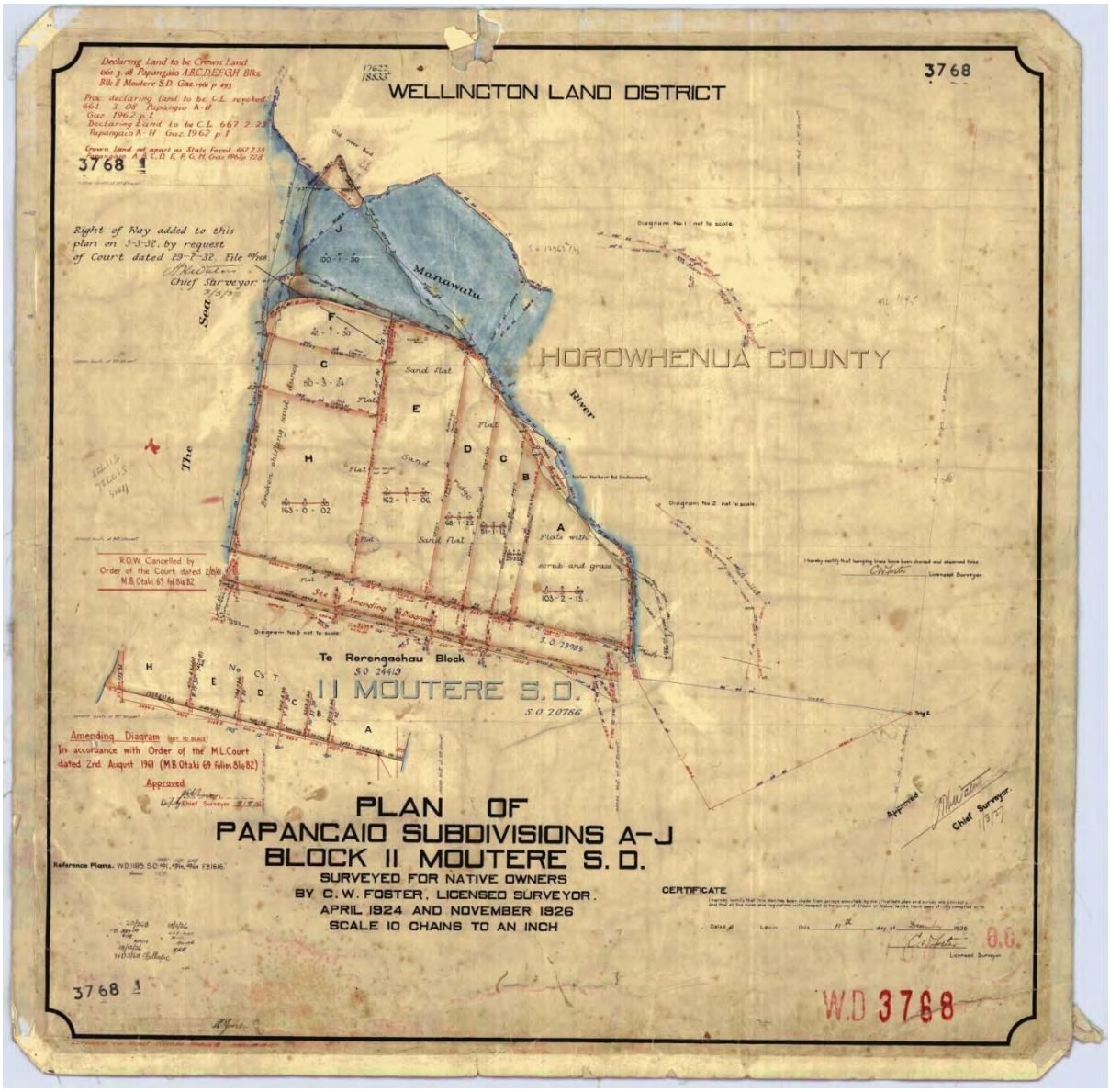
As an aside, an issue that the legal opinions and the legislation sidestepped is the status of 'foreshore' in legal terms. Is it a moveable entity that can change its location as the sea coast alters, or does it remain in a fixed position as defined by survey at the time of vesting in a Harbour Board?

Independently of the arrangements being made between the Crown and the Foxton Harbour Board, Papangaio Block was partitioned by the Native Land Court. The block was

[324] R Moore and Bergin, Barristers and Solicitors, Foxton, 18 July 1923, attached to Commissioner of Crown Lands Wellington to Under Secretary for Lands, 26 July 1923. Lands and Survey Head Office file 22/2843. Supporting Papers #226-234.
[325] Crown Solicitor to Under Secretary for Lands, 11 September 1923. Lands and Survey Head Office file 22/2843. Supporting Papers #235.

partitioned into subdivisions A to H in May 1923[326]. However, when efforts were made to survey the partitions[327], it was found that the changes caused by the river made the partitioning arrangement impracticable, and the matter had to be returned to the Court for further consideration[328]. The Court considered the matter at a hearing attended by owners, and then placed the tip of the block to the north of the river, plus the part of the block underwater in the river, in a separate partition block, Papangaio J with an intended area of 85 acres 0 roods 32 perches, awarded to all the Papangaio owners. The other nine partition blocks, A to H as ordered in May 1923, were then all located to the south of the river in the same general layout as originally ordered but with proportionate area reductions[329]. On survey Papangaio J had an area of 100 acres 1 rood 03 perches[330].

[326] Maori Land Court minute book 57 OTI (Otaki) 77, 3 May 1923. Supporting Papers #1279.
[327] Requisition for survey of partitions ordered on 3 May 1923, undated (received 23 November 1923). Lands and Survey Wellington District Office file 20/268. Supporting Papers #1174-1175.
[328] Chief Surveyor Wellington to Registrar Native Land Court Wellington, 17 June 1924. Lands and Survey Wellington District Office file 20/268. Supporting Papers #1176-1177.
[329] Maori Land Court minute book 57 OTI 280, 31 August 1925. Supporting Papers #1280.
[330] Wellington plan ML 3768. Supporting Papers #1570.

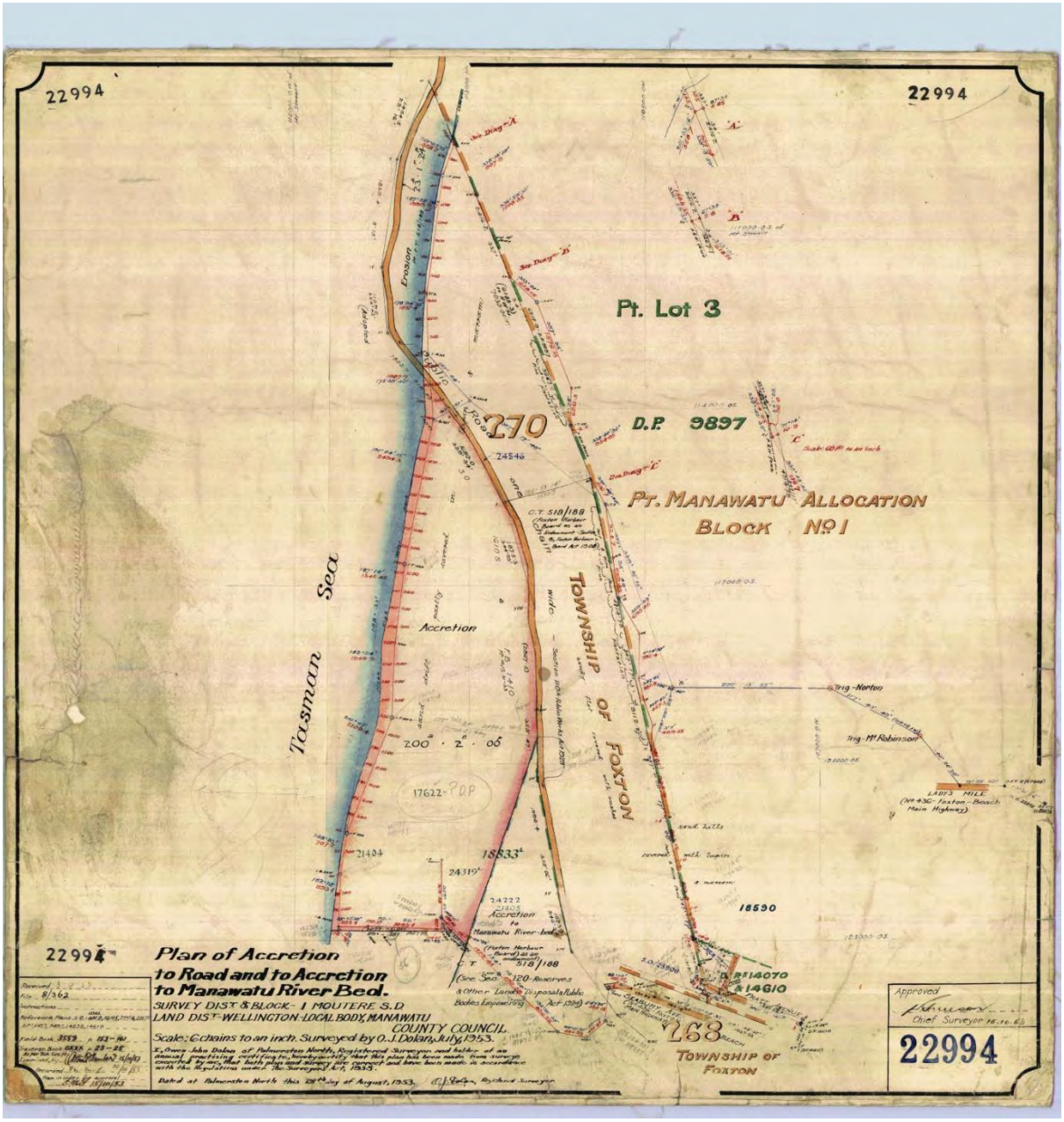


4.6.3 Abolition of Foxton Harbour Board, 1956

In 1954 Foxton Harbour Board decided it wanted to obtain title to land to the north of the old river bed that it had been endowed with in 1924. It regarded this land to the north as accretion to the old river bed, though investigation by the Chief Surveyor established that only part of the proposed land could be claimed as accretion to the old river bed, while the other part would be accretion to a legal road that fronted the Board's Section 270 title[331]. The reason the Harbour Board wanted to obtain title was that it had already informally leased out portions of the proposed accretion to seaside cottage holders, and it wanted to be able to regularise the situation.

[331] Wellington plan SO 22994. Supporting Papers #1596.

Figure 9: Wellington plan SO 22994.



This approach prompted a review of the position of the Harbour Board. Foxton had many years earlier ceased to be a working port, and the main continuing function of the Harbour Board was as a lessor of holiday cottage sites and farmland on the endowment lands. Officials considered that continuation of a Harbour Board was unnecessary, and that the leasing function could quite easily be carried out in the future by the Crown if the Harbour Board was dissolved. The only reason matters had been allowed to carry on as long as they had was that the Harbour Board had taken out loans and it was considered reasonable to allow the Board to continue in existence until the loans were repaid at the end of their

term[332]. Because of these circumstances, and because any accretion title, if obtained from the District Land Registrar, would accrue to the Crown on dissolution of the Board, the Harbour Board was told that the Crown had no objection to it continuing with its accretion claim[333].

Further investigation during 1954 disclosed that the seaside cottage sites leased out by the Harbour Board included some sites that were actually located on Papangaio J land rather than on the Harbour Board's endowment land. The Assistant Commissioner of Crown Lands reported in November 1954:

> It transpires that that up to 12 houses have been built on Part Subdivision J Block II Moutere S.D., W.D 3768, with the consent of the Foxton Harbour Board, which body is collecting the section rents. There seems to be no alternative but to acquire the Maori holding whether voluntarily or by proclamation.
>
> Mr Simpson of Morison, Spratt and Taylor, Solicitors, Wellington, acts for the Maori owners, and it seems to me that the position should be discussed with him before moving towards acquisition.
>
> The holding is hatched blue on plan. Part of the accreted area lying to the west will accrue to the Maoris. The Harbour Board has in the past planted trees on this Maori land.[334]

However, in Head Office of Lands and Survey, the proposed acquisition of the Maori Land was not supported, with the comment being made that "thought could be given to handing the area over to Maori Affairs Department for administration"[335]. The probable reason for a lack of interest in acquiring the Maori Land was because officials were aware that if the Crown became involved as administrator of the Foxton Beach settlement, as would be the case if the Harbour Board was abolished and the endowment land reverted to the Crown, it would have to spend a substantial amount of money on upgrading substandard roading servicing the settlement. Seeking to avoid such an expense, the officials preferred that the settlement become a Manawatu County Council responsibility[336]. This is how negotiations between the Crown, the Harbour Board and the County Council proceeded. These negotiations reached a successful conclusion, from the Crown's perspective, in 1956.

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[332] Director General of Lands to Secretary for Marine, 15 March 1954, and Secretary for Marine to Director General of Lands, 17 March 1954. Lands and Survey Head Office file 22/2843. Supporting Papers #239 and 240.

[333] Chief Surveyor Wellington to Burgin and Cleary, Barristers and Solicitors, Foxton, 2 April 1954. Lands and Survey Head Office file 22/2843. Supporting Papers #241.

[334] Assistant Commissioner of Crown Lands Wellington to Director General of Lands, 17 November 1954. Lands and Survey Head Office file 22/2843. Supporting Papers #245-250.

[335] Draft submission to Head Office Committee, undated. Lands and Survey Head Office file 22/2843. Supporting Papers #251-252.

[336] Secretary for Marine to Minister of Marine, 6 October 1954, and Minister of Internal Affairs to Minister of Marine, undated (received 16 November 1954). Lands and Survey Head Office file 22/2843. Supporting Papers #242-243 and 244.

While the negotiations were going on, the concept of the Crown purchasing the tip of Papangaio J on the northern side of the Manawatu River, in order to bring that Maori-owned land into the same status as the rest of the land on the northern side that had been developed with beach cottage sections, remained the Crown's preference. However, no action was taken while the future of the beach settlement was still under negotiation.

When agreement between the Crown and the local authorities was reached, special legislation was quickly drafted. This provided for the abolition of the Harbour Board on 16 November 1956, the cancellation of all the vestings of land and foreshore in the Harbour Board, the vesting of the foreshore and a farm holding in the Crown, and the vesting of the Foxton Beach settlement lands (referred to as "the endowment area"[337]) in Manawatu County Council. In taking over the settlement lands, the Council had to pay the Crown not more than £40,000 for the land, could issue new 21-year leases with perpetual right of renewal, and had to spend at least £69,000 on roading improvements and survey work that would allow the leasehold titles to be registerable. With the Crown acquisition of the Papangaio J land in mind, provision was made to add further Crown-owned land to the area that would be vested in the County Council.

The explanatory note prepared to accompany the draft legislation when it was introduced stated:

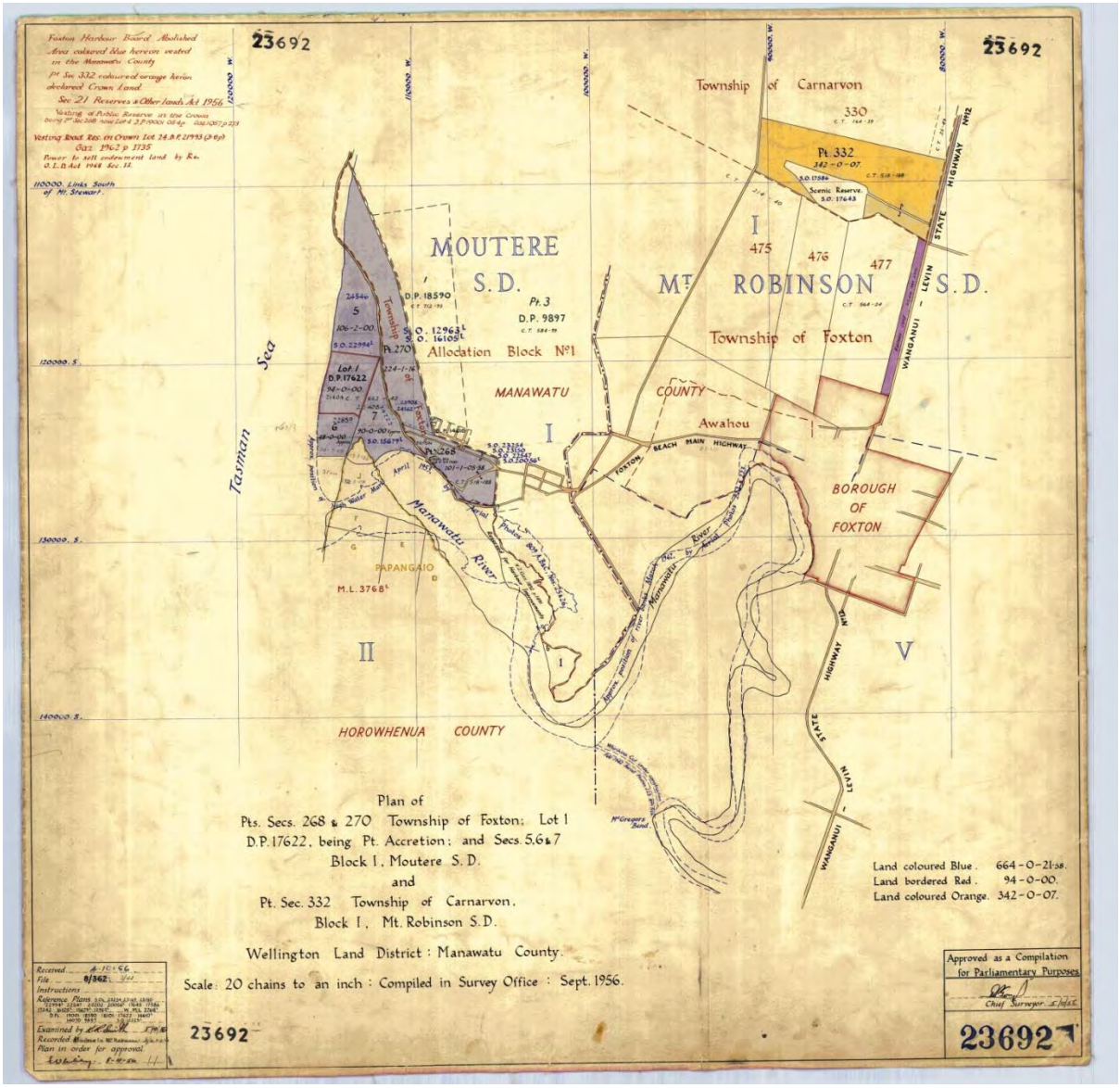
> The gradual change of the course of the Manawatu River over the years accreted additional land to the Board's endowment lands, and erosion by the sea has reduced the original endowment area. Today the Board has a total endowment area of approximately 875 acres, of which 184 acres is accretion. 533 acres is situated at the Foxton Beach Township and the balance, 342 acres, which is situated some 3 miles away, is being farmed under lease which has some 11 years to run.[338]

The explanatory note referred to the Papangaio Maori-owned land that had been developed as cottage sections, though was silent about any accretion to that land:

> An area of approximately 12 acres Maori land, which encroaches into the beach endowments, has been partly subdivided by the Foxton Harbour Board and houses have been erected on the land. The Crown recognises that for proper administration this Maori Land should be included with the other beach lands to be taken over, and it has undertaken to endeavour to purchase the 12 acres from the Maori owners and add it to the endowment at no cost to the Council provided the land can be purchased at a reasonable figure.[339]

[337] Wellington plan SO 23692. Supporting Papers #1597.
[338] Explanatory note for Clause 21 Reserves and Other Lands Disposal Bill 1956. Supporting Papers #253.
[339] Explanatory note for Clause 21 Reserves and Other Lands Disposal Bill 1956. Supporting Papers #253.

Figure 10: Wellington plan SO 23692



Prior to the legislation being introduced to Parliament, the Papangaio owners had engaged legal counsel. They do not seem to have been opposed to the sale to the Crown of the area of Maori Land on which cottage sites had been illegally leased out. However, the owners' lawyers were acutely aware that the sale price would heavily depend upon whether or not the Papangaio owners were entitled to claim the dry land immediately adjoining Papangaio J on the northern side of the river as accretion to that partition block. During the lead-up to the introduction of the special legislation, they had written to the Department of Lands and Survey:

> Our clients require that their title to the land [that part of Papangaio J to the north of the river] be confirmed and a Certificate of Title issued to them in respect thereof. It is realised that it may be unreasonable for them to expect to resume possession of the

> land which has already been disposed of to private individuals and upon which buildings have been erected, and that it will probably be necessary for them to accept compensation in lieu of taking over the same.
>
> We shall be glad if you will advise us whether the Crown is prepared to negotiate a settlement in respect of the claim of the Maori owners of this block. It will be realised that by virtue of the accretion earlier referred to they claim title not only to the block as originally defined but also to all the land lying between the western boundary of the block and the present mean high water mark.[340]

The Department responded:

> I wish to confirm that the Crown desires to negotiate for the purchase of the above block [Papangaio J].
>
> It is understood that resulting from your discussions with your clients, there is some possibility of their claiming additional lands as being in their ownership.
>
> When your investigations in this connection are completed, no doubt you will discuss your findings with the Chief Surveyor so that some understanding can be reached on this aspect.
>
> Until this angle has been cleared up, it would appear to be inappropriate to discuss compensation for Papangaio J acquisition.[341]

With the introduction of the legislation to Parliament, the Maori owners of Papangaio increased their efforts to protect their interests, by lobbying the Minister of Lands, who also happened to be the Minister of Maori Affairs. What was said at the meeting with the Minister is not recorded on the Lands and Survey file, apart from a single reference:

> Maori owners of Papangaio J Block had called on Minister of Lands and had stated they were claiming through Maori Land Court extensive areas accreted to their lands, including part of the endowment area. The Minister proposed inserting a clause in the Bill saving any rights the Maoris might have and making provision for adjusting the terms and conditions of the transfer to Manawatu Co Co provided the Manawatu Co Co had no objection.[342]

However Hansard, the record of Parliamentary debates, records what the Minister of Lands told the House of Representatives during the Bill's Introduction and First Reading statement on 18 October, the same date as the note recorded on the Departmental file:

> This morning a strong deputation of beneficial owners of Papangaio J Block, a Maori block adjoining the endowment area, called on me and made certain claims to portions of the area which are accretions by river and sea. I have given them an undertaking that their claim will be immediately investigated and, if necessary, a saving clause to protect their rights will be inserted in the Bill when it is being further considered.[343]

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[340] Morison, Spratt, Taylor & Co, Barristers and Solicitors, Wellington to Commissioner of Crown Lands Wellington, 21 June 1956. Lands and Survey Wellington District Office file 20/268. Supporting Papers #1178-1179.
[341] Commissioner of Crown Lands Wellington to Morison, Spratt, Taylor & Co, Barristers and Solicitors, Wellington, 12 October 1956. Lands and Survey Wellington District Office file 20/268. Supporting Papers #1180.
[342] File note by Assistant Director General of Lands, 18 October 1956. Lands and Survey Head Office file 22/2843. Supporting Papers #254.
[343] *New Zealand Parliamentary Debates*, Volume 310, page 2580, 18 October 1956. Supporting Papers #1402.

Five days later during the Second Reading debate the Minister told the House:

> At a late hour there arose a position that we had not contemplated. There is an area of land, claimed to be accretion to Papangaio J Block, that was the subject of a deputation led by Mr Pei Jones on behalf of the owners of the Papangaio J Block which met me in my office and advised me that they had in preparation a claim for some of the accretion included in the endowment area. They asked that their rights should be preserved so that they could prosecute that claim in the Maori Land Court. A saving clause was therefore introduced when the Bill was before the Maori Affairs Committee of the House to protect the rights of the Maoris in respect of that claim. While the problem is not entirely settled, the provisions of the Bill, especially those relating to the payment of £40,000 by the Manawatu County Council to the Crown, are wide enough to allow for such adjustments as are just and reasonable if the claim by the Maoris is upheld.[344]

Eru Tirikatene, the Member for Southern Maori, confirmed what had occurred:

> About a fortnight ago I was approached as Member for the district to see whether it was possible to get in touch with the Minister with a view to arranging a deputation concerning the matters covered in Clause 21. The Minister readily made time available to receive the deputation, which was led by Mr Pei Jones, who acted not as an agent but on behalf of his wife who is a beneficial owner in the Papangaio lands. After certain explanations had been made and maps examined, it was found that there had been accretions and, through the Manawatu River having changed its course, a certain area was affected. The Foxton Harbour Board arranged subdivisions, and areas were leased in the belief that the Board had authority to lease all of them. However, involved in the allotments were certain parcels of Maori property evidently unknown to the Harbour Board.
>
> Fortunately the Minister, upon examining the matter as late as Thursday morning last, could see that an injustice might be done to the Maori owners of Papangaio J Block. Accordingly we have the provision that has been inserted in the Bill as a safeguard. The Minister intends to see that the Maori people are not deprived of any of their natural rights, and to that end we have this safeguard…. The deputation was grateful and pleased that an endeavour was made by the Minister to protect the interests of these people.[345]

The relevant subsection was added to the Bill at the Committee stage of consideration:

> (5A) If any portion of the endowment land is found by the Maori Land Court to be accretion to Papangaio J Block over which title should be granted to the owners of that Block, that portion shall thereupon cease to be subject to the provisions of this section, and the Minister of Lands may vary, in such manner as appears to him to be just and reasonable in the circumstances of the case, the terms and conditions set out in subsection (5) of this section.

Subsection (5A) became subsection (6) of Section 21 Reserves and Other Lands Disposal Act 1956 when the Bill was passed into law in November 1956.

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[344] *New Zealand Parliamentary Debates*, Volume 310, page 2712, 23 October 1956. Supporting Papers #1404.
[345] *New Zealand Parliamentary Debates*, Volume 310, pages 2712-2713, 23 October 1956. Supporting Papers #1404.

4.6.4 Papangaio J Accretion Claim, 1961-1965

The lawyers for the Papangaio owners let Crown officials know that it would be a lengthy process for them to gather the evidence together for their application to the Maori Land Court about what accretion rights the owners had. In the meantime the Crown had made arrangements with Manawatu County Council that all rents obtained from the properties on Papangaio J (but not any possible accretion land) would be separately identified from the other rents and held in a special trust account[346].

It was not until April 1958 that the lawyers advised that they had completed their investigation. Their surveyor had calculated the area of Papangaio J north of the river to be 31 acres, and seaward accretion to that area to have an area of 57 acres. They also argued that the 90-acre area of old river bed vested in Foxton Harbour Board in 1924 included some land that was properly accretion to Papangaio rather than accretion to Crown land:

> The Maori owners are prepared to sell to the Crown the whole of the land north of the river to which claim is made, but have not yet considered the question of compensation. There is another factor to be taken into account in this connection, namely compensation for the use of the land over a long period of years during which our clients have been kept out of occupation. It is suggested that if you agree that our clients are entitled to claim on the foregoing basis, the Crown may be prepared to make an offer.[347]

On receipt of this proposal the Wellington District Office of the Department of Lands and Survey prepared a case for approval to enter into negotiations for the acquisition of the land. The relevant areas had been recalculated, with the area within Papangaio J located north of the river being 39½ acres and the accretion to the west being 38 acres. However, a complication had arisen:

> The owners of J Block claim that an area of 1.75 acres shown edged yellow on the plan, and 24 acres shown edged red, rightly belong to them. The area edged yellow became Crown Land being foreshore accretion due to the sudden change of course of the river in 1907, and is included in the Certificate of Title formerly in the name of the Foxton Harbour Board. The Maori owners claim that this area should have been accretion to J Block and that the subsequent accretion 24 acres is therefore also accretion to J Block. Both these areas are part of the endowment vested in the County Council by virtue of the Reserves and Other Lands Disposal Act 1956 and no claim by the owners of J Block can be recognised by the Crown. If however the Maori owners rightly or wrongly feel that the Crown has taken title to land which is rightly theirs, negotiations for the purchase of J Block and accretion area 39.5 acres may prove difficult.[348]

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[346] Commissioner of Crown Lands Wellington to Director General of Lands, 27 November 1956. Lands and Survey Head Office file 22/2843. Supporting Papers #255-257.

[347] Morison, Spratt, Taylor & Co, Barristers and Solicitors, Wellington, to Commissioner of Crown Lands Wellington, 16 April 1958. Lands and Survey Wellington District Office file 20/268. Supporting Papers #1181-1182.

[348] Draft Case to Head Office Committee Land Settlement Board, undated (received 4 November 1958). Lands and Survey Head Office file 22/2843. Supporting Papers #258-260.

The reaction in Head Office of the Department, on receipt of the draft case, was to identify that the 1.75 acres had been included in the endowment to Foxton Harbour Board in 1924 because Crown Law Office at that time had determined that it was Crown Land; the Maori claim was therefore "questionable"[349]. The Department's Head Office solicitor was asked for his opinion, and he identified that the lawyers for the Papangaio owners regarded the 1.75 acres as accretion to the foreshore, while in 1924 this area was part of an area identified as "accretion to Manawatu River bed". At that time "the surveyors preparing the plan had to decide what constituted the bed of the river at its mouth when it met the sea". However in his opinion the law was clear:

> No person has any title to accretion until the right to the ownership has been proved. In this case a title under the Land Transfer Act has been issued incorporating accretion. There can be no question of the owners of Papangaio Block claiming ownership to accretion to that land transfer title…. I suggest that the Crown deny any claim of the owners to the area of 1.75 acres and accretion thereto.

He then commented on the low value of the land involved, remarked that "litigation over a low-lying bend in a muddy foreshore incapable of being accurately defined would be purposeless", and suggested that the Crown "if necessary agree to make some concession by an increase in the overall price"[350].

The case for approval to negotiate the purchase of the Maori land was then rewritten. The proposed acquisition was changed from just the area to the north of the river and its associated accretion of 38 acres, to be all of Papangaio J block, including that part in the bed of the river. The reason for this was because the Crown was separately negotiating to acquire the rest of Papangaio block, subdivisions A to H, for addition to the Waitarere sand reclamation and pine planting scheme being developed by New Zealand Forest Service (this Crown purchase is not discussed in this report). While the Crown was not contesting the claim to accretion of 38 acres, it was explained that "no claim by the owners of Papangaio J Block can be recognised by the Crown" to the 1.75 acres already in the Crown's title and its associated accretion of 24 acres. It was therefore proposed that the Crown acquire the 39½ acres of Papangaio J north of the river, the 38 acres of associated riverbed, and the 60 acres of riverbed, for which "up to £4000 plus proportion of accrued rents accruing up to date of purchase" would be offered. The proposal was approved by the Land Settlement Board and the Minister of Lands in October 1959[351].

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[349] File note, 6 November 1958. Lands and Survey Head Office file 22/2843. Supporting Papers #261-262.
[350] File note by Solicitor Head Office, 13 August 1959. Lands and Survey Head Office file 22/2843. Supporting Papers #263-264.
[351] Case 6030 to Land Settlement Board, approved 7 October 1959, and Director General of Lands to Minister of Lands, 19 October 1959, approved 21 October 1959. Lands and Survey Head Office file 22/2843. Supporting Papers #265-267 and 268.

When the Crown discussed its offer with the lawyers acting for the owners, it emerged that valuations obtained by each party differed to a substantial degree. Each party was also at odds with respect to the ownership of the 1.75 acres and its associated accretion to the westward[352]. The 1956 legislation gave the owners the option to take this ownership claim before the Maori Land Court for a decision, and this is what they chose to do in October 1960.

The application was heard in April 1961[353]. Just one week prior to the hearing, Crown officials considered increasing the Crown's offer, which might then have avoided the litigation, but did not go through with this proposal. When the proposal reached the decision-making Land Settlement Board, the Director General of Lands suggested that a legal opinion from Crown Law Office should first be sought and it was therefore "deferred for further investigation"[354]. The proposal never reached the desk of the Minister of Lands.

By the time of the hearing, the claims by the Maori owners had broadened. Two solicitors appeared, with one (Mr Simpson of Morison, Spratt, Taylor & Co) arguing the accretion claim on the seaward side and at the tip of Papangaio J, and the other (Mr Bergin of Bergin and Cleary) arguing a claim to accretion on the eastern (river) side of Papangaio J. Mr Bergin had acted for the Papangaio A to H owners in the separate negotiations for the purchase by the Crown of those subdivisions.

The solicitors for the Maori owners argued that while the change of river outlet had been sudden, the silting up of the former channel alongside Papangaio J, and to seaward of Papangaio J, had been gradual and imperceptible, so that treating it as accretion was the logical legal outcome, and the onus was on the Crown to prove otherwise. They argued that the Crown had issued title to itself in 1923 for the 90 acre area of former riverbed based on "flimsy evidence and without any notice to owners of adjoining land"[355]. The existence of the Crown title was not a fait accompli that the Court was obliged to accept, instead it was given sufficient authority by the 1956 statute to look behind the issue of the title and assess the legality of the Crown's action. Three witnesses gave evidence of their recollections of the

[352] Morison, Spratt, Taylor & Co, Barristers and Solicitors, Wellington, to Commissioner of Crown Lands Wellington, 13 September 1960, attached to Commissioner of Crown Lands Wellington to Director General of Lands, 29 September 1960; and Director General of Lands to Commissioner of Crown Lands Wellington, 3 October 1960. Lands and Survey Head Office file 22/2843. Supporting Papers #269-273 and 274.
[353] Maori Land Court minute book 68 OTI 349-372, 19 April 1961. Supporting Papers #1294-1317.
[354] Case 6490 to Land Settlement Board, and excerpt from Minutes of Land Settlement Board meeting, 12 April 1961. Lands and Survey Head Office file 22/2843. Supporting Papers #275-278 and 279.
[355] Maori Land Court minute book 68 OTI 355, 19 April 1961. Supporting Papers #1300.

old river bed to the north of the breakthrough outlet through Papangaio J land being a ponding area that gradually infilled and became dry land[356].

The solicitor for the Crown argued that the old river channel which had been bypassed by the outlet through Papangaio J had become foreshore (i.e. exposed at low tide), and the Ninety Mile Beach decision had determined that the Maori Land Court had no jurisdiction to investigate foreshore lands. He in turn argued that the 1956 Act put the onus on the Maori owners to establish their case for ownership of any land other than that located within the surveyed boundaries of Papangaio J. He called one witness, a survey draughtsman from the Department of Lands and Survey, who talked the Court through the various survey plans it had before it[357].

The solicitor acting for the Crown provided a report on proceedings immediately after the hearing had concluded[358].

After the hearing had concluded, the Court decided to make some inquiries of its own. This included holding a further hearing to hear the evidence of the surveyor who had surveyed the Papangaio partitions in 1924[359]; the Court in its decision described him as "the only surveyor who appeared to the Court to have gone on the ground at the crucial time".

The Court did not give its decision until one year later, in May 1962[360]. It rejected Crown submissions that the old river bed was inviolable and could not be inquired into because a Certificate of Title had already been issued; the Court saw its role as testing the validity of all actions taken by the Crown concerning the river bed prior to the 1956 legislation. It also expressed its disappointment that the plan prepared in 1924 to show the 90 acres of old river bed vested in the Harbour Board that year appeared to be only a sketch, with no new survey data to support those boundaries not previously surveyed; it felt that this survey plan, and any later survey work based on this plan, could not be relied upon. The Court felt that the 1924 sketch plan gave a wholly incorrect impression of where the coastline was and the state of the old river bed. The conclusion the Court drew from the historical evidence presented to it was:

> The view taken by the Court is that in 1900 the river broke through Papangaio in flood, and that for some time thereafter water passed down the old channel and the sea

[356] Maori Land Court minute book 68 OTI 359-362, 19 April 1961. Supporting Papers #1304-1307.
[357] Maori Land Court minute book 68 OTI 365-368, 19 April 1961. Supporting Papers #1310-1313.
[358] Solicitor Wellington District Office to Assistant Commissioner of Crown Lands Wellington, 20 April 1961. Lands and Survey Head Office file 22/2843. Supporting Papers #280-281.
[359] Maori Land Court minute book 69 OTI 155-157, 17 November 1961. Supporting Papers #1318-1320.
[360] Maori Land Court minute book 69 OTI 291-301, 15 May 1962. Supporting Papers #1321-1331.

> entered at high tide, and flowed out at low tide without emptying until finally the old river bed was left high and dry.[361]

The legal significance of this finding, in the Court's view, was that the old river bed remained tidal and navigable for a period after the change of course in about 1900. As tidal water the bed was the property of the Crown. But when the flow ceased gradually and imperceptibly as the depth of water was progressively reduced, and the old bed eventually became dry land, navigability transferred from the old river course to the new course through Papangaio J and the law of accretion became applicable in the old river bed. This made one half of the old river bed accretion to Papangaio J. In essence the Court had accepted Bergin's arguments.

The Department of Lands and Survey's Head Office solicitor reported on the day after the decision was given:

> [The Judge's] reasons are lengthy, but the main point is that he disregarded completely a plan prepared by the Chief Surveyor for the purposes of the Foxton Harbour Board Act 1908. This was a compiled plan. Serious consideration must be given to an appeal, as the consequential effect on the Crown financially may be great.[362]

The following month he provided an eight-page opinion on why the decision should be appealed[363]. He thought that the Maori Land Court had overstepped the bounds of its jurisdiction in determining something that was normally a matter for the District Land Registrar to determine, and felt that the jurisdictional boundaries had been established in the Ninety Mile Beach decision with respect to tidal lands below high water mark. In presenting its case the Crown had thought that the case revolved around the treatment given historically to the 1.75 acre portion of Crown title located on the seaward side and south-west of the tip of Papangaio J. This was on the basis of the Crown's discussions with Simpson, the lawyer for the Papangaio J owners, and it was a surprise to the Crown when Bergin appeared and argued that accretion on the river bed side could be claimed. The Court, in the Head Office solicitor's opinion, had misinterpreted the law by failing to appreciate the distinction between avulsion and accretion, and by imagining that navigability of the river was a relevant issue. He concluded:

> If my views are correct, the whole finding of the Court is wrong. There remains the question of what action should now be taken. Is the Order made a final Order within the meaning of Section 42(1) Maori Affairs Act 1953? If so, an appeal must be made before 15 July. On the other hand, if Judge Jeune has exceeded his jurisdiction, action in the Supreme Court may be more appropriate. In accordance with Rule 10,

[361] Maori Land Court minute book 69 OTI 291-301, 15 May 1962. Supporting Papers #1321-1331.
[362] File note by Solicitor Head Office, 16 May 1962. Lands and Survey Head Office file 22/2843. Supporting Papers #282.
[363] File note by Solicitor Head Office, undated (June 1962). Lands and Survey Head Office file 22/2843. Supporting Papers #283-290.

> Cabinet Rules for the Conduct of Crown Legal Business 1958, the matter should be referred to the Solicitor-General for his directions.[364]

The case was then referred to the Solicitor General, with the comment:

> If the decision of the Court is left unchallenged, the owners of Papangaio J appear to have rights to a considerable area of endowment land which is the subject of a number of leases from the Foxton Harbour Board, and on which many residences have been erected. It is considered that the finding of the Court is wrong in fact and in law. The matter is referred for your authority to appeal against the decision, if you consider that an appeal is justified, or such other action as may be appropriate to retain the land covered by the Court's finding and which is considered to be Crown Land.[365]

An appeal was lodged in July 1962[366]. The Chief Judge made a note addressed to two other judges just before the appeal was heard:

> On going into this appeal, it appears to me that it is a major one on the law of accretion which will involve many interests and a valuable area of land with numerous dwellings etc on it, and that it is of the importance of say the appeal on Lake Omapere which had all the judges except the Chief Judge who felt himself disqualified. I have accordingly seen whether I could arrange a bench of five instead of three Judges. This is simply not possible, and I have done the next best thing by adding Judge Davis to the panel.[367]

This made a bench of four judges, Chief Judge Prichard and Judges Smith, Sheehan and Davis.

The appeal was heard by the Maori Appellate Court in September 1962[368]. The Crown was represented by a solicitor from Crown Law Office as well as the Department of Lands and Survey solicitor who had appeared before the lower Court. No further evidence from witnesses was accepted, though the Crown did make an attempt to be allowed to do so. The hearing was therefore taken up by arguments about the extent to which the survey plans accurately reflected the state of the district at the time the plans were prepared; in being prepared for a particular purpose they would not need to and therefore might not include some information (e.g. about accretion or the state of the old river bed) that was not relevant to their purpose. A substantial amount of legal argument was also heard.

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[364] File note by Solicitor Head Office, undated (June 1962). Lands and Survey Head Office file 22/2843. Supporting Papers #283-290.

[365] Acting Director General of Lands to Solicitor General, 18 June 1962. Lands and Survey Head Office file 22/2843. Supporting Papers #291-292.

[366] Notice of appeal, undated (filed 13 July 1962). Lands and Survey Head Office file 22/2843. Supporting Papers #293-294.

[367] Chief Judge to Judges Smith and Sheehan, 11 September 1962. Maori Affairs Head Office file 5/13/255. Supporting Papers #470.

[368] Crown Counsel to Director General of Lands, 28 September 1962. Lands and Survey Head Office file 22/2843. Supporting Papers #295.
Maori Land Court minute book 8 APT (Takitimu Appellate) 281-316, 25-27 September 1962. Supporting Papers #1191-1226.

The Appellate Court's decision[369] was a majority one, with one of the four Judges (Judge Sheehan) issuing a dissenting decision. The majority of the Appellate Court panel (Chief Judge Prichard and Judges Smith and Davis) determined that what could be claimed by Papangaio J as accretion was that part of the "endowment area" (as that terminology was used in the 1956 statute) that was the titled 1.75 acres, plus its associated 24 acres; no accretion on the river side of Papangaio J could be claimed.

All four Judges agreed that whether there had been accretion or not was to be established on the facts pertaining to the change of the river's course in about 1900. It was therefore a matter of the evidence presented to the lower Court and to the Appellate Court as to what the facts were. The Judges all agreed that the available facts of the circumstances at the mouth of the Manawatu River did not match the facts that had applied to situations where there had been previous court decisions in England or elsewhere around the world, so that previous decisions could not be applied in their entirety. While the change of location of the rivermouth in about 1900 had been sudden, it was whether or not conditions in the old river bed had also changed suddenly that was at issue. If the change at the mouth of the Manawatu River had been sudden, with the new course of the river through the Papangaio title land resulting in the old course of the river quickly ceasing to be tidal waters, then that constituted avulsion in the old river bed rather than accretion. If there had been avulsion, then the dry land created in the old river bed could not be claimed by the owners of riparian land such as Papangaio J under the ad medium filum presumption. However, if the old course continued to be affected by the ebb and flow of the tide after the change of course, and slowly became less affected by the tide, then the change of the old bed to dry land had been gradual and imperceptible and constituted accretion, which could be claimed by the owners of Papangaio J.

Because there was insufficient contemporary evidence to determine this matter with absolute certainty, the Judges of the Appellate Court were obliged to make their own interpretations and draw their own conclusions based on those facts that were available to them. These incomplete facts included survey plans of various dates, and affidavit evidence of elderly persons who had witnessed the change of course or had witnessed the old bed after the change of course. Therefore, despite an effort to rely on the facts and by doing so

[369] Maori Land Court minute book 8 APT 317-347 and 9 APT 1-4, 13 December 1962. Supporting Papers #1227-1256 and 1257-1260.
(N.B. Page 29 of the decision (8 APT 345) is missing)
Order of the Maori Appellate Court, 13 December 1962. Copy on Lands and Survey Head Office file 22/2843. Supporting Papers #297-298.

remove potential bias, the Court's decision came down to which of the facts that were available most struck a chord with each Judge.

The majority placed an emphasis on a plan produced by Hay for the Public Works Department in 1907 that showed no water in the old river bed, and concluded that the change of circumstances in the old river bed had therefore been sudden, with the old mouth of the river closing almost immediately and the old bed drying out very rapidly, such that no accretion could be claimed. The dissenting Judge, while accepting that the change of river mouth had been sudden, placed an emphasis on the evidence of one of the witnesses to the lower Court that there was still water to be found in the old river bed up to 1916, and concluded that the old river bed had changed gradually and imperceptibly so that the bed to the centre line could be claimed as accretion. He was therefore in agreement with the lower Court's decision.

The majority of the Court, having determined that there was no accretion to Papangaio J in the old bed of the river, did accept that there was accretion to the block on its seaward side, where mean high water mark had migrated westwards. The Judges noted that a plan of the old river bed in 1923, on which the extent of the "endowment area" was based, had taken the area of old river bed round the end of the tip of Papangaio J and down the seaward side of Papangaio J. This area facing towards the sea was the area of 1.75 acres for which title had been issued, and associated with it was a further 24 acres where the migration westward of mean high water mark had continued from 1923 to the early 1960s. The majority felt that this extension of the so-called old river bed on to the seaward side of the tip was wrong, and that any dry land south of the tip of Papangaio J on the seaward side was more properly accretion to Papangaio J. In terms of the Court's authority under the 1956 legislation, the majority found that this accretion on the seaward side should not be part of the endowment area. In terms of the appeal, the majority found that the Crown's appeal with respect to the river bed was successful, and failed with respect to the seaward accretion.

The dissenting Judge found that the lower Court had not erred in law or in fact when determining that accretion to Papangaio J extended to the centre line of the old river bed, the Crown's appeal had therefore failed, and the lower Court's decision could stand.

There are a couple of matters in the Appellate Court decision that are peripheral to the matters on which the Court was asked to make findings, yet are nevertheless worth noting. All the judges understood that while plans produced in 1923-24 for the Harbour Board legislation at that time referred to the old river bed having become dry land by accretion, this

was an incorrect use of the word and was not the basis on which the land had been claimed by the Crown and vested in the Harbour Board. Secondly, the dissenting Judge recorded his opinion that the foreshore that was vested in the Harbour Board in the 1908 legislation had moveable boundaries.

The Lands and Survey Head Office solicitor discussed the decision with Crown Counsel (who declared himself satisfied with the decision), and stated that he personally had "previously arrived at the view which the Court now holds, although of course it was for the Maori owners to establish their case before the Maori Land Court"[370].

With the areal extent of accretion to Papangaio J resolved, the way was clear for negotiations to purchase the block to re-start. The owners had not changed their previously-advised willingness to sell. The sale of Papangaio J to the Crown is not strictly a waterways ownership and control matter, and is explained only in summary here. In the first instance fresh valuations were required. Then consideration had to be given to the mechanism by which the Crown acquired the land. Would it be by proclamation taking the land with the prior agreement of the owners? Would it be by a resolution passed at a meeting of owners and ratified by the Maori Land Court? Would special legislation be required? Eventually it was decided to first reach agreement with the Papangaio J owners on an overall settlement of all matters including sale of the land and compensation for all claims the owners might have against the Crown, the former Foxton Harbour Board and Manawatu County Council, and then to ratify that agreement by special legislation[371]. The solicitor for the owners organised the arrangements whereby a series of owner meetings in different locations were held, and then was followed by one final meeting. This final meeting in September or October 1964 unanimously authorised an offer to settle with the Crown for £20,000 (plus legal costs) being made[372]. The statements made by the solicitor for the owners about owner consent having been given were taken at face value, and the Crown accepted the offer to sell[373]. The special legislation, Section 9 Reserves and Other Lands Disposal Act 1965, extinguished the Maori owners' title, thereby giving Papangaio J and all its accretion[374] the status of Crown Land, and provided for that part of the 1956 legislation's "endowment

[370] Solicitor Head Office to Commissioner of Crown Lands Wellington, 20 December 1962. Lands and Survey Head Office file 22/2843. Supporting Papers #296.
[371] Director General of Lands to Secretary for Maori Affairs, 28 November 1963. Lands and Survey Head Office file 22/2843. Supporting Papers #299-301.
[372] Morison, Taylor & Co, Barristers and Solicitors, Wellington, to Commissioner of Crown Lands Wellington, 9 October 1964, attached to Commissioner of Crown Lands Wellington to Director General of Lands, 10 November 1964. Lands and Survey Head Office file 22/2843. Supporting Papers #302-303.
[373] Director General of Lands to Minister of Lands, 14 December 1964, approved by the Minister 22 December 1964; and Director General of Lands to Commissioner of Crown Lands Wellington, 4 February 1965. Lands and Survey Head Office file 22/2843. Supporting Papers #304-306 and 307.
[374] Shown on Wellington plan SO 26064. Supporting Papers #1600.

area" that had been determined by the Appellate Court to be accretion to Papangaio J to be vested in Manawatu County Council. No dissension was expressed as the legislation passed through the House of Representatives. The remaining land acquired by the Crown that was located on the north bank of the Manawatu River (i.e. the purchase area excluding the riverbed and the contested part of the "endowment area") was given the appellation Section 3 Block II Moutere Survey District[375], and was vested in Manawatu County Council as an addition to the "endowment area" in October 1966[376].

4.7 Concluding remarks

The concept of ad medium filum aquae is firmly embedded in New Zealand land law as a result of its continuous use over a long period of time. Within Porirua ki Manawatu Inquiry District, only an assertion of navigability seems to have provided a reason to rebut the presumption.

There has also been a long history of the presumption being relied upon and endorsed in the Native / Maori Land Court. The historical evidence gathered in this chapter, relying on Court records from the 1910s, 1920s, 1941 and 1962, shows that the presumption has been found by the Court to be appropriate to circumstances encountered on the Manawatu and Oroua Rivers. The 1941 inquiry by the Court referenced the validity of the presumption back to customary and traditional ownership.

Whether the Coal-Mines Act Amendment Act 1903 was declaratory of prior-existing common law rights, as was argued by the Crown Law Office and the Solicitor General in the early decades of the 20th century, or whether it went beyond the prior-existing common law rights and was confiscatory of riparian owners' rights, is a matter for legal submissions. The greater issue, though, is the approach taken by the Crown and the public statements it made. Crown lawyers have always acknowledged among themselves that the 1903 legislation was poorly drafted, unclear, and therefore uncertain in its application. However, Crown officials have not been so reticent. They have been quite prepared to assert navigability and therefore the Crown's claim to the ownership of the beds of navigable rivers. In Porirua ki Manawatu Inquiry District this has meant the Rangitikei River, the Manawatu River at least as far upstream as Palmerston North, and the lower reaches of the Oroua River (below Kaimatarau Road).

[375] Plan of Section 3 Block II Moutere Survey District. Copy on Lands and Survey Head Office file 22/2843. Supporting Papers #308.
[376] *New Zealand Gazette* 1966 page 1680. Supporting Papers #1484.

However, while officials have played up the Crown's claims, they have tended to shy away from putting the Crown in a position where it would have to uphold and prove its claims before a court. Given the lack of clarity in the legislation, that is unsurprising. However, it points to two features. First, that the Crown's approach relied on a level of bombast to gain advantage. Second, that the gains for the Crown from taking the approach that it did were strictly limited and do not deserve to be over-emphasised.

In one instance where the Crown asserted ownership, and its assertion was not challenged, the sole outcome was that the assertion became a revenue-generating exercise, with the Crown selling the riverbed land to a riparian owner.

5. The impact of waterways management regimes

What has been the impact of waterways management regimes, including the Resource Management Act 1991 regime, on Maori authority over, use of and enjoyment of their waterways in this inquiry district?

5.1 Introduction

The previous chapters have concentrated on the ownership aspects of waterways, and how Crown and local authority ownership of lands, and private European settler ownership of lands, played a progressively greater part in the inability for tino rangatiratanga to be expressed. These ownership changes simultaneously enabled kawanatanga, the Crown's authority, to more easily extend its depth and breadth. Kawanatanga actions by the Crown, and by local authorities acting under delegated authority from the Crown, had their own impacts on the character of the waterways and on the ability of tangata whenua to have a say on those impacts. The Crown's actions operated in multiple layers across waterways. This chapter is of necessity a lengthy one because of the substantial number of different pieces of legislation which have been passed over the years and which have impinged on waterways and the manner in which tangata whenua interact with waterways. Associated with the broadening availability of legislative authority has been increasing reliance on and use of that authority.

The Crown-initiated waterways management regimes discussed in this chapter are:

- Nineteenth century removal of snags impeding navigation use
- Land drainage
- Crown-managed and Crown-assisted river control and flood protection before the establishment of catchment boards (in the mid 1940s), including the activities of the Manawatu-Oroua River Board
- Catchment Board river control activities in waterways
- Pollution control activities
- Regulation of the use of water by Regional Water Boards
- Control of waters and navigation under the Harbours Act
- Aggregation of the various waterway management regimes into the Resource Management Act

Another layer of Crown involvement with inland waterways, fisheries management, is covered in Chapter 7.

The above list is not a complete list of the Crown's management control regimes over water and waterways. There were other regimes that the Crown set up, though they are not covered in this report because their impact in Porirua ki Manawatu Inquiry District was minimal or non-existent. They include

- Legislating for the use of water by the gold mining industry
- The timber-floating legislation
- Legislating for Crown control of the use of water for hydro-electric power
- Legislating for Crown control of the use of geothermal (super-heated groundwater) resources
- Management of underground water prior to incorporation of that topic in the Water and Soil Conservation Act 1967 by amendment in 1973

It should come as no surprise that the word "control" features frequently. This was at the core of the Crown's attitude, that it needed to have sole charge and overwhelming legal authority in order to ensure the 'best' use of the waterways and their waters.

The many legislative regimes prior to 1991 did not make any reference to the Treaty of Waitangi, and were so all-encompassing that they did not provide any 'space' for Maori authority over waterways to survive. Because the Crown's regimes were dominated by European officials and by European-centred local authorities, Maori authority was denied and effectively had to go underground. There was no concept of sharing authority, so that rangatira could only have authority over their own people, and even that was frequently undermined by the individualistic approach championed in the Native/Maori Land Court, by the impact of the Crown's legislation, and by the interpretations of legislation decided by the courts. While rangatira could impose a rahui over waters, or could determine the use to which certain waters could be put, the all-pervasive influence of Crown authority meant that such exercises of rangatira authority were largely ineffective or had very limited impact.

The result has been that Maori were almost completely invisible in the historical record kept by the Crown and local authorities about waterways matters. This was not just with respect to tangata whenua from the Inquiry District, it was applicable nationally. It has meant that the revival of Maori involvement since the passing of the Resource Management Act in 1991 has had to be developed from a standing start.

5.2 Nineteenth century removal of snags impeding navigation

While the Harbours Act 1878 was principally concerned with coastal ports and seafaring, it extended the authority of the Crown, via the Marine Department, to navigable rivers. The principal river in the Inquiry District used for navigation was the Manawatu River, though the Rangitikei River was also an accessway into the interior of the island.

The Manawatu River was an especially important route prior to the building of a network of roads. Stewart in 1860 recorded that the river was navigable for vessels of up to 20 tons to a point just upstream of the confluence with the Oroua River[377], while river craft could travel up to Papaioea, the site of Palmerston North. Once roads and railways were built, the flax industry along the banks of the lower Manawatu River ensured that there was still a significant amount of boat traffic in the lower reaches of the river, as cut flax was transported from loading stages along the river to the flax mills using a fleet of launches and punts.

While records are scanty, there are indications that the Marine Department, with technical support from local engineers of the Public Works Department, undertook some works to clear obstacles to navigation along the lower Manawatu during the nineteenth century. This was described as "snags clearance" at the time. A number of plans prepared to show the location of snags which were to be removed as part of annual contracts for clearance have been located during research for this report. They are for snagging contracts dated 1884[378] and 1900[379]. The occasional nature of these contracts may be related to the changing economic fortunes of the flax milling industry.

The reaction of the Maori community to these clearance works on the river is not known.

5.3 Land drainage

As Wood et al have noted, drainage of water from their properties was part of the agenda for European settlers from the earliest years[380]. While at first such works occurred at the individual settler level, it was quickly realised that cooperative effort by a number of settlers working together would achieve better results for all concerned. Drains for public purposes, such as alongside roads, were provided for in the Public Works Act 1876. The Wellington

[377] Wellington plan SO 10604(3). Supporting Papers #1577.
[378] PWD plan 11258, 26 February 1884. Supporting Papers #1536.
[379] PWD plan 18913, undated (1900), and PWD plan 18921, undated (1900). Supporting Papers #1537 and 1538.
[380] V Wood et al, *Porirua ki Manawatu Inquiry District: environmental and natural resource issues report*, September 2017, Wai 2200 #A196, pages 197-203.

and Manawatu Railway Company Drainage Empowering Act 1889 opened the way for drainage of the Railway Company's land in the Makerua Swamp.

Cooperative efforts were organized in two ways, by Country Councils declaring parts of their district to be Drainage Districts, and by the establishment of Drainage Boards as a separate form of local authority.

5.3.1 County Council Drainage Districts

County Councils were authorised to declare parts of their county to be Drainage Districts by the Counties Act in 1886. With the establishment of a Drainage District, the Council could undertake drainage works, and charge rates to the owners or occupiers of land in proportion to the benefit they would obtain from the drainage works[381]. This was the method adopted by Manawatu County Council to establish five Drainage Districts:

- Oroua Downs Drainage District, by which drains were dug that affected Omanuka, Pukepuke and Kaikokopu dune lakes
- Makowhai Drainage District
- Bainesse Drainage District
- Maire Drainage District
- Oroua Drainage District

The origins of Oroua Downs Drainage District were not discovered during research for this report, though the District is believed to date from about 1909, based on Holcroft's history of Manawatu County Council:

> Major Wilson [part-owner of the sand dune country surrounding the Kaikokopu Maori reserves] describes in detail what was done to convert sandhill country into productive dairy farms, particularly through the planting of marram grass, spinifex and lupin, and later a generous application of fertilizer. The rains were swallowed quickly by thirsty sand; but water in the lower lakes had no defined outlets and poured wastefully out to sea when it rose in winter and made a temporary channel through the sandhills. The main lake was Kaikokopu, and the first improvement was to lower it so that a sump could be made for internal drainage. At the edge of the lake, however, were two Maori reserves; and Wirihana Hunia, head of the principal family would not allow a drain to be dug through them, though he was offered £300 in compensation. By this time the Oroua Downs Estate had been subdivided and sold, and all its sections adjoining the Wilson - Dalrymple block lay in winter under several feet of water, backing up from the lake. The new settlers wanted the lake to be lowered, and this was done eventually with the aid of the Oroua Downs Drainage District Committee.
>
> The Manawatu County was at first reluctant to become involved, fearing a claim for the loss of eel fisheries, but was finally persuaded to take land for a drain under the

[381] Sections 268-277 Counties Act 1886.

> Public Works Act. Maori owners had the right to seek compensation within five years, but neglected to do so. According to Major Wilson, a loan of £1,160 was raised in 1909. The Council minutes give a different figure. At a special meeting in February 1909 the Council authorised a loan of £600 "for construction of drainage works in the Oroua Downs Estate and the Wellington - Manawatu Railway Company's endowment, with an additional loan of £300 for works on Block I Sandy Survey District". There are, however, indications that earlier work had been done at "the Kaikokopu lakes" and that the 1909 loans were needed to complete the project. It is clear that in 1909 the Wilson - Dalrymple enterprise and settlers at Oroua Downs gained a common advantage. The lake, originally about 150 acres, was reduced to 30; and Major Wilson and his partner, who both liked to shoot ducks and black teal, had to make a dam by putting a plank on concrete foundations. They also planted raupo, "and the shooting improved".[382]

The takings under the Public Works Act from the Kaikokopu Maori reserves for drain purposes were in November 1907[383]. The Drainage District is likely to have been established shortly after as a means whereby the County Council could obtain repayment of the loan by the levying of special rates.

The drainage system of the Oroua Downs Drainage District was based around lowering the water table during the winter months, and this required lowering of the lowest points in the groundwater system, which were the lakes. Three of the four lakes where Maori reserves were located became affected by drainage works. Perhaps half the Drainage District was serviced by drains feeing into a main drain that ran through Lake Kaikokopu and down Kaikokopu Stream to the sea. Another large part of the Drainage District was drained through Lake Pukepuke and thence down the outlet stream to the sea. Thirdly, drains were cut leading into and out of Omanuka lagoon[384]. The integral part the lakes played in the drainage system ensured that conditions at the lakes were altered, with Maori food gathering becoming subordinated to land drainage. In 1942 the County Council explained how the drains were interconnected:

> The other drains besides the Pukipuki outlet collect water before it leaves Pukipuki lake and takes it through Kaikokopu lake to the sea. If these drains were not operating, about double the amount of water would run into Pukipuki lake and have to pass through the outlet.[385]

The construction of the drains also resulted in weir control structures at lake outlets to maintain particular water levels in the lakes, measures to prevent scouring in the outlet

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[382] M Holcroft, *The line of the road: a history of Manawatu County, 1876-1976*, Manawatu County Council and John McIndoe, 1977, page 103.
Holcroft relied for much of his information in this quote on RA Wilson, *Fifty years farming on sand country*, self-published, 1959.

[383] *New Zealand Gazette* 1907 page 3376. Not included in Supporting Papers.

[384] Plan of Oroua Downs Drainage District showing drain layout. Rangitikei-Wanganui Catchment Board file 326000. Supporting Papers #1658-1658A.
The area shown as the Drainage District is that re-defined in 1954 with an area of 19,000 acres. Prior to 1954 the District had an area of 5,160 acres.

[385] County Clerk to Commissioner of Crown Lands Wellington, 2 March 1942. Manawatu County Council file for Oroua Downs Drainage District. Supporting Papers #1653.

streams, and regular cleaning out of the drains, all of which had their own environmental effects.

Prior to the 1958 acquisition of the Pukupuke fishing reserve by the Crown (covered in the chapter on inland fisheries), the Department of Lands and Survey, as owner of the sand dune country around the lake, supported and contributed financially to the drainage works[386], without any discussion with its Maori neighbours. The Soil Conservation and Rivers Control Council also contributed a subsidy towards works undertaken in 1953 and 1956[387], without having any regard for the Maori ownership of Pukepuke reserve. After 1958 the Crown was closely involved in a decision to reroute the drain from the main lake to a smaller lake and thence to the outlet stream. At a meeting to discuss the new route, the Commissioner of Crown Lands stated:

> The Maoris still retained fishing rights over the lakes and it was essential that such rights should not be unduly interfered with. His Department was also concerned that their land should not be over-drained, but the proposal as explained by Mr Harris [of Rangitikei Catchment Board] appeared to be an amicable solution to the drainage problem and no objection would be forthcoming from his Department.[388]

The Department did not consult with the Maori fishing rights holders before agreeing to the rerouting. The transfer of responsibility for Lake Pukepuke to Wildlife Service as a proposed wildlife management reserve added another layer of complexity, as the Service's wildlife enhancement focus (which included a desire for stable water levels between August and December each year) had to be integrated with the needs of farming and tuna harvesting.

The Makowahai Drainage District was established in 1917[389]. By then the land had long been cleared of its forest cover[390] and was farmed grassland, probably of poor quality and with further development held back by the high water table. A 1931 report refers to the benefits of the drainage scheme for both the settlers and their lands, and for the County

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[386] See for instance Commissioner of Crown Lands Wellington to County Clerk, 14 April 1939 and 31 March 1952. Manawatu County Council file for Oroua Downs Drainage District. Supporting Papers #1655 and 1656.

[387] Commissioner of Works to District Commissioner of Works Wanganui, 3 June 1953, and Chairman Soil Conservation and Rivers Control Council to Chief Engineer Rangitikei Catchment Board, 23 February 1956. Rangitikei Catchment Board file 326000. Supporting Papers #1657A and 1657B.

[388] Notes of meeting, 5 November 1958, and Commissioner of Crown Lands Wellington to County Clerk, 5 November 1958. Manawatu County Council file for Oroua Downs Drainage District. Supporting Papers #1657.

[389] Special Order of Manawatu County Council, adopted 6 October 1917. Manawatu County Council file for Makowhai Drainage District. Supporting Papers #1647.
It is possible that the Drainage District became defunct fairly shortly thereafter, and a new Drainage District had to be established in 1939, though this had not been researched for this report. A report was located that showed that the Council expended £437 ("loan £350, contributions £87") in 1912, and £424 ("contributions Lands Department")in 1920, then nothing further until 1934. Statement of accounts expended by Manawatu County Council, undated (1944 or 1945). Manawatu County Council file for Makowhai Drainage District. Supporting Papers #1652.

[390] See the painting dated 1872 in D Alexander, *Rangitikei River and its tributaries historical report*, Wai 2200 #A187, November 2015, page 45.

Council in keeping its roads free from flooding and damage[391]. The purpose of this report was to promote improvements of the drainage scheme, and propose that the Council seek Government support for this work by declaring it to be an unemployment work scheme. The proposal was endorsed by the affected settlers at a public meeting in February 1932, the Council applied to the Crown the following month[392], and the project was approved[393]. The Crown paid the costs of labour and established a single men's camp which could accommodate 100 men, while the County Council was responsible for provision of construction materials and a share of the engineering survey cost. The camp was built in April 1932, and work started the following month. The greatest difficulty, as recorded on the County Council's file, was how hard it was for the Council to find funds for its local contribution during the depression years. Crown support for the works ceased in January 1936, though was restored in 1939 to take account of the effect of the new Ohakea Aerodrome on the drainage of the district. Subsidies became available from the Soil Conservation and Rivers Control Council once that Council became operative in the mid 1940s. Through all these events, and up to the present day, there was no consultation with tangata whenua, who (so far as is known) had ceased to be landowners in the drainage district.

Bainesse Drainage District was established to serve the needs of landowners of the Puketotara block. Before the Drainage District was declared in 1957[394], the drainage needs of the block had been discussed on a number of occasions. One such meeting was held in March 1949, at which the European landowners and the European lessees of Maori-owned land agreed to clean out the drains themselves, and asked Manawatu County Council to ensure this happened by serving notice under the Land Drainage Act requiring cleaning. Such notice would set out that a failure to clean by any landowner would result in the Council doing the work and charging the landowner for the cost of the work. This was because if one landowner did not cooperate, the effectiveness of the drain cleaning would be compromised. However, this then raised an issue for the County Council about how it could enforce payment, with the Chairman of the Council asking the meeting "whether, if the work was undertaken on Native occupied lands, the settlers in the area would guarantee payment of the cost involved". The implication was that the non-payment of rates by Maori owners was a known and problematic issue for the Council. The settlers at the meeting gave a

[391] County Engineer to Chairman and Councillors, 7 September 1931. Manawatu County Council file for Makowhai Drainage District. Supporting Papers #1648.
[392] County Clerk to Minister of Unemployment, 11 March 1932. Manawatu County Council file for Makowhai Drainage District. Supporting Papers #1649-1650.
[393] District Engineer Wellington to County Clerk, 15 March 1932. Manawatu County Council file for Makowhai Drainage District. Supporting Papers #1651.
[394] Notice of special order passed by resolution, 10 September 1957. Manawatu County Council file for Bainesse Drainage District. Supporting Papers #1644.

"definite assurance" that they would guarantee payment[395]. Just how much Maori-owned land was affected by these discussions is not known. At some unknown date after the Drainage District was declared in 1957, a schedule of occupiers shows Inia Te Rangi as the only recognisably Maori name - he was the occupier of Puketotara 3B2B and 6A2[396]. A comparison of this schedule with the block narratives research report[397] shows that some of the European occupiers listed in the schedule were not landowners but were lessees of Maori-owned land.

Horowhenua County Council seems to have been less involved in drainage work. Only two Drainage Districts under Council auspices have been identified during research for this report. The first was for the district served by Pahiko Drain on the Ngakaroro block, which drained into the Otaki River. As early as 1917 the County Council had issued notices to land occupiers under Section 62 Land Drainage Act and Section 7 Land Drainage Amendment Act 1913 requiring them to remove "all obstructions of any kind calculated to impede the free flow of water"[398]. Such notices seem to have been a sufficient use of the Council's statutory powers up until 1940. In 1934 a drain-cleaning notice of this type was issued to Epiha (Bishop) Hawea, who occupied a part of Ngakaroro 3B[399]. He replied:

> I don't see why I should clean it [the drain], although it runs through my property and it don't affect me, for it [is] only a strip 5 chains in length from fence to fence. There are several neighbours above me, they are getting the benefit of it.[400]

The outcome of this exchange is not recorded on the Council file. In 1940, following receipt of a report from the County Engineer that the drain needed to be widened to prevent the peak flows of water that were being experienced from overflowing the drain and flooding adjoining farmland[401], the County Council by special resolution established the Pahiko Drainage District[402]. The formation of the Drainage District provided surety for the Council that it could recover the cost of the widening works through setting a special rate payable by the District's land occupiers. Whether there were any Maori owners or occupiers in the Pahiko Drainage District has not been determined by the research carried out for this report.

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[395] Minutes of meeting, 2 March 1949. Manawatu County Council file for Bainesse Drainage District. Supporting Papers #1643.
[396] Schedule of occupiers, undated. Manawatu County Council file for Bainesse Drainage District. Supporting Papers #1645-1646.
[397] Walghan Partners, *Porirua ki Manawatu Inquiry District: block research narratives*, Part III, November 2017, Wai 2200 #A211, pages 253-257.
[398] County Engineer Horowhenua County Council to 13 land occupiers, 28 February 1917. Horowhenua County Council file 4/1/2. Supporting Papers #1611.
[399] County Clerk Horowhenua County Council to Bishop Hawea, Otaki, 13 August 1934. Horowhenua County Council file 4/1/2. Supporting Papers #1612.
[400] Epiha Hawea, Otaki , to County Clerk Horowhenua County Council, 4 September 1934. Horowhenua County Council file 4/1/2. Supporting Papers #1613.
[401] File note by County Engineer Horowhenua County Council, 3 October 1939. Horowhenua County Council file 4/1/2. Supporting Papers #1614.
[402] Resolution of Council, 12 July 1940, confirmed 9 August 1940. Horowhenua County Council file 4/1/2. Supporting Papers #1615.

The Pahiko Drainage District was abolished in 1950 when Manawatu Catchment Board offered to take over responsibility by incorporating most of the drainage work, principally annual and seasonal maintenance cleaning, into the Board's Otaki River protection scheme.

The second known Drainage District in Horowhenua County was the Mangaone Drainage District. Its history has not been researched for this report.

5.3.2 Drainage Boards

The Land Drainage Act 1893 was a response to perceived County Council inaction, and allowed settlers to band together under a separate Board independent of any County Council, and pay through rates for the drains to be dug that would allow for water runoff from their private lands[403]. The opportunities provided by the land drainage legislation were quickly adopted by settlers in the Manawatu and Oroua catchments, with the Manawatu, Aorangi, Sluggish River and Horseshoe Drainage Boards all established during the 1890s[404].

Drainage Boards were autonomous local government organisations established by central Government by Order in Council. In each case a group of settlers (invariably Europeans) would petition for the formation of a Drainage Board, and a poll would be held to see if a majority of the ratepayers in a defined district would agree to being rated for drainage works.

Among the earliest Drainage Board operations impinging on Maori were actions taken by the Aorangi Drainage Board in 1895 and the Manawatu Drainage Board in 1897 to cut drains through Lower Aorangi (Aorangi 3) block land, the part of Aorangi awarded to Rangitane, in order to transform the lower reaches of Taonui Stream into a drainage ditch. This entailed the taking of Maori-owned land under the Public Works Act, and the assessment of compensation by the Native Land Court, matters covered by Bassett and Kay[405], and Wood et al[406]. The early concentration by Drainage Boards on the Taonui Stream was because of the large area of settler-occupied land to the east and north of the Aorangi lands that would benefit if flood waters could easily pass through the Taonui swamp area into the Manawatu

[403] V Wood et al, *Porirua ki Manawatu Inquiry District: environmental and natural resource issues report*, September 2017, Wai 2200 #A196, pages 207-211.
[404] H Bassett and R Kay, *Porirua ki Manawatu Inquiry District: public works issues*, November 2018, Wai 2200 #A211, pages 211-212.
V Wood et al, *Porirua ki Manawatu Inquiry District: environmental and natural resource issues report*, September 2017, Wai 2200 #A196, pages 213-216.
[405] H Bassett and R Kay, *Porirua ki Manawatu Inquiry District: public works issues*, November 2018, Wai 2200 #A211, pages 211-212.
V Wood et al, *Porirua ki Manawatu Inquiry District: environmental and natural resource issues report*, September 2017, Wai 2200 #A196, pages 305-317.
[406] V Wood et al, *Porirua ki Manawatu Inquiry District: environmental and natural resource issues report*, September 2017, Wai 2200 #A196, pages 213-216.

River. The use of the Public Works Act appears to have allowed the Crown and the Drainage Boards to sidestep any need to consult with or obtain consent from the Maori owners of the land that was taken; they were only involved after the taking when the amount of compensation was being assessed.

A more modern use of the Land Drainage Act was the establishment of Kuku Drainage Board in July 1926[407]. The setting up of the Board was not without controversy, as there were objections to the proposal and a commission of inquiry under the Land Drainage Act 1922 had to be held before the go-ahead was given. Hay, the engineer who spent many years analysing the flood conditions on the Manawatu River (see the next section in this chapter), prepared a scheme for river improvements for the Drainage Board during the year following the Board's establishment. A copy of Hay's report to the Kuku Drainage Board was not located during research for this report. However, the work he apparently proposed seems to have been beyond the resources of such a small drainage authority, which decided instead on some less extensive works such as the lowering of the riverbed at a shingle ford in order to increase the gradient of the channel. This reduced scope of the work, however, provided benefit to only six European settlers[408]. The rather grandiose establishment procedures and administrative structure were not matched by any significant impact on the ground.

5.4 Crown-managed river control and flood protection before the formation of catchment boards

Floods and freshes made life perilous for settlers along the banks of the rivers. Their homes could be threatened, and their lands could be eroded away. At first the individual settlers did what they could to control the rivers passing their properties. This was consistent with the common law, where a riparian landowner was allowed to take what steps were necessary to prevent their lands being eroded. It was not an offence under common law if one landowner's protection works resulted in erosion of another landowner's lands, as each owner was responsible for only their own stretch of riverbank[409]. However, there could be serious consequences for other settlers once one landowner started to reinforce his part of the riverbank. Every landowner had to be on guard against the actions of their neighbours.

[407] *New Zealand Gazette* 1926 pages 2359-2360. Not included in Supporting Papers.
[408] Chief Drainage Engineer Department of Lands and Survey, to Under Secretary for Lands, 26 March 1930, attached to Minister of Lands to Minister of Public Works, 7 May 1930. Works and Development Head Office file 96/321000. Supporting Papers #902-904.
[409] This thinking is also referred to in H Potter et al, *Porirua ki Manawatu inland waterways historical report*, August 2017, Wai 2200 #A197, pages 176-177 and 178-179.

It was not just stopbanks or riverbank reinforcement that exercised the minds of settlers. Bigger ambitions included river diversions and new channels cutting a more direct path to the sea for floodwaters. Two of the rivers in the Inquiry District were affected by flood protection schemes during the era before catchment boards were created in the 1940s. The Manawatu River (and its tributaries) and the Otaki River are examined separately below.

5.4.1 Manawatu River control and flood protection

In 1906 deputations waited on the Ministers of Lands and Public Works, "relative to the overflow of the Manawatu River, and the necessity of cutting a channel to relieve the surplus water which is now spreading over a large area of valuable agricultural land"[410]. It was decided that a comprehensive engineering report should be prepared by a Public Works Department engineer[411]. This was a major undertaking, requiring the taking of levels in the lower Manawatu and Oroua Rivers to determine how much fall there was.

The Public Works Department engineer, Frank Hay, produced a preliminary report in December 1906[412]. He examined the experience of particularly high floods in March 1880, April 1897 and June 1902, though noted that every year had a series of peaks of flow which caused flooding in the lower part of the catchment. The riverbed tended to be higher than the surrounding countryside in the lower reaches, so that when the banks overflowed there was extensive flooding in the Taonui, Makerua and Moutoa districts. Flooding was made worse when the river channel was "partially choked with sediment from previous floods". Floodwaters took from 3 days to a fortnight to drain away.

Hay's report is particularly interesting for the light it sheds on changes to the waterways that had occurred in the nineteenth century, during the first 30-40 years of farm settlement:

> Shingle is being brought down Oroua and Pohangina Rivers in large quantities. It is not clear whether the Manawatu carries much through the gorge at present. In the Oroua the shingle has reached to some distance below Awahuri, but it is hard to say the probable rate except that the toe is advancing comparatively rapidly and quicker than the present rate in the Manawatu, which is said to be about 1 chain per year…. Fine shingle has advanced in the Manawatu to a little distance below the Jackytown Road [margin note: "Tiakitahuna"]. The effect of the shingle on the original channels of both rivers – which are relatively narrow deep cuts in sandy soil – is to raise the beds and widen channels. Thus in the Oroua at Awahuri a 10' [feet] or 12' deep channel is

[410] Under Secretary for Lands to Under Secretary for Public Works, 19 October 1906. Works and Development Head Office file 48/270. Supporting Papers #718.
[411] Under Secretary for Public Works to Under Secretary for Lands, 24 October 1906. Works and Development Head Office file 48/270. Supporting Papers #719.
Engineer in Chief to Assistant Engineer FC Hay, 27 November 1906. Works and Development Head Office file 48/270. Supporting Papers #720-723.
[412] Assistant Engineer FC Hay to Engineer in Chief, 20 December 1906. Works and Development Head Office file 48/270. Supporting Papers #724-730.

now about 18 feet deep and much wider than formerly – at Palmerston the Manawatu flows over a shingle riverbed and the side erosion and tendency to overtop banks has to be counteracted by stopbanks and planting, and at many other places on the Oroua and Manawatu the natural tendency of a shingle river to widen its channel, as the shingle accumulates, is being felt.

A flood coming down the Manawatu first affects the Taonui valley by backing up the Oroua and running up the drains just above the junction of the two rivers at lower end of Taonui Valley. The flood increasing, the lower places in the banks are overtopped and the water begins to spread over the Makerua, the country above Oroua Bridge and the Motua [sic]. The maximum flood overtops banks near beginning of flooded area and water flows down on all sides to meet the previous flood waters entering from points lower down. In the lower reaches of the river from the junction down, the river channel is too small to carry anything above perhaps a half flood and it seems as if the channel here is tending to get smaller and the bed higher. At any rate the tide is said to have been felt formerly several miles above the junction of the Oroua and Manawatu, but now is said to only reach a little above Shannon. At the Oroua Railway Bridge, where the banks of Oroua are protected from natural scour by willows and where a flax mill throws its refuse into the bed, the channel is certainly too small to discharge a moderate flood in the Oroua itself. The part of the channel of the Manawatu that carries floodwaters best is between junction of Oroua and a point a mile or two up. The scour of the drain from the Taonui may have a beneficial effect and keep up the scour when river is falling. Banks of Oroua above junction are lower than the banks of the Manawatu for some distance upstream in each case.

A little distance below the junction of the Oroua and Manawatu the channel is said to be shoaling from the sand hills on the right bank, but it would not entail much work to prevent drift here as most of the sand is firmly held by grass and vegetation. Just below the Whirokino Bridge the river runs along bare sand hills and shoaling takes place here – a fact which probably has a big effect in retarding flood discharge – and from here to mouth of river the sand hills are bare and shifting. The refuse from the flax mills caused considerable shoaling at one time by forming a nucleus for deposit of sediment. But there is very little of the waste of the flax finding its way into the river right now….

Facilitating discharge of either river will probably hasten the travel of the shingle which may be coming down in increasing quantities owing to more rapid denudation on the cleared parts of the drainage basin.[413]

Because funding was curtailed, Hay did not produce a final written report. Instead his final contribution was a series of plans produced in August 1907[414].

In 1908 the Government set up a commission of inquiry, the Manawatu Land Drainage Commission, pursuant to the Land Drainage Act 1904, to report on how best to drain the lower Manawatu area, and to investigate whether the four Drainage Boards in existence at

[413] Assistant Engineer FC Hay to Engineer in Chief, 20 December 1906. Works and Development Head Office file 48/270. Supporting Papers #724-730.
[414] Assistant Engineer FC Hay to Engineer in Chief, 19 August 1907. Works and Development Head Office file 48/270. Supporting Papers #731.
PWD Plans 22965. Supporting Papers #1540-1542.

that time should be amalgamated[415]. Hay was the principal witness, and what is recorded in the Commission's report[416] (phrased as the Commission's findings) can be taken as being the results of Hay's investigations. The volumes of water that any flood relief scheme would have to cope with were colossal. In flood the Manawatu River at the gorge contributed 150,000 cubic feet per second (cusecs), the Pohangina River 15,000 cusecs, the Oroua River 20,000 cusecs, and tributaries below the Oroua 20,000 cusecs, meaning that a combined volume of some 200,000 cusecs needed to be designed for. The only realistic flood relief scheme was a new channel that bypassed the narrow, winding and flat river channel downstream of the Oroua River and cut a straight path to the sea. That would require a 10 to 12 mile (16 to 19 km) channel with a capacity of between 2100 and 2900 feet (640 – 880 metres) width and 12 to 16 feet (3.6 – 4.9 metres) depth, a monumental undertaking in the days of horse and cart and rudimentary steam shovels.

After rejecting an overflow channel to divert only the peak flows during large floods along a route known as the 'Himatangi Cut' from Puketotara due west through the sand country to the sea near the dune lakes north of Foxton, the Commission identified three options. The routes and estimated costs had been provided to the Commission by Hay[417]:

- Option One. A cut starting at Hartleys Bend through the Whirokino neck, crossing the river then through Moutoa swamp to midway between Moutoa Maori Church and Shannon Bridge, crossing the river again then through Makerua swamp to Tiakitahuna; the most costly (£500,000) but most comprehensive; however, the extra cost compared with the two alternatives referred to below was, the Commission said, not warranted.
- Option Two. A cut starting at Hartleys Bend through the Whirokino neck, crossing the river then through Moutoa swamp to Moutoa Maori Church, then straightening works along the course of the river channel upstream to Longburn Bridge, plus similar straightening works along the Oroua River channel; cost £350,000.
- Option Three. A cut starting at Fisherman's Point below Foxton and providing a more direct route to Foxton port, then running through Moutoa swamp to Moutoa Maori Church, with similar straightening of the Manawatu and Oroua Rivers upstream as for the previous option; cost £350,000.

[415] *New Zealand Gazette* 1908 pages 1919-1920. Supporting Papers #1449-1450.
The four Drainage Boards were the Manawatu, Sluggish River, Aorangi and Horseshoe Boards.
[416] Report of Manawatu Land Drainage Commission, 2 November 1908. Works and Development Head Office file 48/270. Supporting Papers #734-741.
[417] Assistant Engineer FC Hay to Engineer in Chief, 25 September 1908. Works and Development Head Office file 48/270. Supporting Papers #732-733.

The third option was recommended by the Commission because of its benefit to Foxton port as well as providing flood relief[418].

Following the Commission's report there was some thirty years of debate, dispute and political vacillation. Opinion among the settler community was divided, and every initiative by one set of proponents attracted local opposition from another set of settlers or river users who felt they might be disadvantaged. The Crown file on lower Manawatu flooding issues is full of records of a series of deputations to Wellington, when central government Ministers, wary of committing to a large Government financial contribution, insisted that local politicians had to first come up with a scheme that would attract widespread local support.

The Manawatu community thought an answer had been found when the Crown agreed to the establishment of the Manawatu-Oroua River Board in 1923[419]. While drainage boards dealt with on-farm drainage and the drains that took water to the main rivers, the function of a river board was to control the flows in the rivers at times of flood, and stop the rivers from overflowing on to the drained farmlands. The Manawatu-Oroua River District Act 1923 was "an Act to make provision for the improvement of waterways of the Manawatu River and the Oroua River, and for the protection from damage by water of certain lands in the Wellington District". The Board was given a general power to "execute all such works and do all such things as may, in its opinion, be necessary to effectively prevent or minimise the flooding of the district either from surface water, or by floods and freshes in the Manawatu and Oroua Rivers, or any of their tributaries"

As a River Board, the Manawatu-Oroua Board also gained some powers under the River Boards Act 1908 giving it a prescribed amount of legal authority over riverbeds notwithstanding the ad medium filum aquae common law rights that riparian owners enjoyed. Sections 73(1) and 78 of the 1908 Act vested in a River Board those property rights in a riverbed that were necessary to the carrying out of its duties as a River Board.

The coordination between the new River Board and the well-established Drainage Boards was not perfect. During the period 1920-1927, before the River Board had got fully operational, the Makerua Drainage Board built a stopbank about 22 miles (35 km) long along the river frontage of its district. While protecting the Makerua Board's lands from river flooding, this stopbank was viewed by the settlers on the opposite Moutoa bank as

[418] Report of Manawatu Land Drainage Commission, 2 November 1908. Works and Development Head Office file 48/270. Supporting Papers #734-741.
[419] There had been a flawed establishment process during 1922, which had to be undone and replaced by new legislation in 1923.

increasing the threat of flooding that they faced, and by the wider community as preventing the Makerua swamplands and former flax harvesting lands from acting as a ponding area for floodwaters. The effect was described thus by one engineer:

> It is not putting it too strongly to say that under the conditions imposed by the existing Makerua Drainage Board's levees, freshes become medium floods, medium floods become high ones, and high floods become disasters in their effect on the rest of the River Board District. This is the condition of affairs which prompts "bank" wars, involving great waste of money and culminating in disaster[420]

Frank Hay, by then in private practice, became the Engineer for the new River Board. In 1924 he produced a revised (and slimmed down) version of the option that the 1908 Commission had recommended[421].

> Briefly the Scheme as numbered from the mouth of the river provides for:
> (1) A navigable channel 100 feet wide and 13 feet deep across Rush Flat, serving immediately the Port of Foxton and later becoming the main channel of the river.
> (2) A relief cut through the Manawatu – Kuku Block (7E) between Moutoa and the Rush Flat 40 feet wide and 33 feet deep, acting immediately to relieve the Moutoa and later scouring out to the full size required by the river.
> (3) An overflow channel consisting of parallel levees 12 feet high and 20 chains apart, graded to accord with existing levees and running through the Moutoa and across the river east of Poplar mill to join the river at Opui Bend. This will act primarily as an overflow channel, but will also later become the main river.
> (4) A pilot channel midway between levees throughout the whole length of the overflow channel to facilitate the erosion of the main channel.
> (5) A diversion channel from the existing river at Karikari to the overflow channel south of Mohaka, acting as a bypass for small floods, and ultimately to become a permanent tributary taking the whole of the flow of the Tokomaru, Otauru and Koputuroa Streams.
> (6) Consequent upon these works it will be found necessary to effect several minor works, including a new traffic bridge at the Whirokino Road.
>
> Above the Opui Bend the work will consist of levees and cut offs, but the new channel will follow as closely as possible the present course of the river. The distance from the Opui Bend to the sea by the river is 33¼ miles, and the distance by the proposed channel 11¼ miles, a shortening of the distance by 21 miles.[422]

The design flow for the overflow channel, and for straightening and widening works involving levees and cut offs along the river's course upstream of Opui Bend, was 100,000 cusecs, and scouring was expected to increase the channel capacity subsequently. Land required for levees and between the levees would be acquired by the River Board. The estimated cost of this scheme had risen to £450,000, of which it was considered the river district could

[420] FC Hay, Foxton, to Engineer in Chief, 11 March 1924. Works and Development Head Office file 48/270. Supporting Papers #742-752.
[421] FC Hay, Foxton, to Engineer in Chief, 11 March 1924 and 23 April 1924. Works and Development Head Office file 48/270. Supporting Papers #742-752 and 753-755.
Manawatu Daily Times, 16 February 1924. Copy on Works and Development Head Office file 48/270. Supporting Papers #756.
[422] *Manawatu Daily Times*, 16 February 1924. Copy on Works and Development Head Office file 48/270. Supporting Papers #756.

fund a local contribution of £265,000, requiring the River Board to seek the balance of £185,000 from the Government.

When Hay's scheme received a lukewarm response from central Government, on the grounds that there was little national benefit, and private benefit should be paid for by private interests, a modified scheme costing £174,000 and to be paid for solely from local funds was prepared. However, this proposal too ran into problems due to local opposition. The River Board then prevailed on the Government to appoint a special commission of inquiry to examine the manner in which settlers would be charged for the river control work, and whether there should be a central Government contribution.

The Commission reported in October 1926, recommending a scheme estimated to cost just over £572,000, of which central Government should provide just over £201,000. Again the Government baulked at the cost it would face, and the Commission's proposal that other local bodies besides the River Board should also contribute was opposed by those local bodies. Meanwhile it was left to the settlers to protect themselves, section by section.

In 1927 the River Board asked Hay to revise the scheme yet again. This time he moved away from a comprehensive scheme and came up with a series of works, each one of which could be undertaken independently of the others, yet which in aggregate were steps along the way towards the dreamed-of comprehensive scheme. The series of works was:

- Job No 1. Rush Flat cut downstream of Foxton to give a more direct route to the port and allow any sediment from Job No 2 to pass through the river system out to sea rather than deposit in the navigation channel.
- Job No 2. Manawatu – Kuku cut through the Whirokino lands, which would not impede floodwater outflow round the Foxton Loop and would allow the Moutoa channel to scour out.
- Job No 3. The main Moutoa cut from Poplar flax mill to just upstream of Foxton opposite the Manawatu – Kuku cut.
- Job No 4. A flood spillway from Opui Bend to the Poplar flax mill. This could only be developed once the Moutoa cut had been completed. A spillway would handle a lesser volume of water than a cut designed to take all the river's water.
- Job No 5. Tributary channel taking water from Tokomaru, Mangaore and Koputuroa Rivers to the Moutoa cut.
- Job No 6. Stopbanking between the lower end of the Moutoa cut and Foxton.
- Job No 7. Stopbanking the Manawatu River upstream of the Moutoa cut.

- Job No 8. Deepening and stopbanking the Koputuroa River.
- Job No 9. Cutting off a bend in the Manawatu River opposite the Koputuroa River.
- Job No 10. Cutting off a double bend in the Manawatu River near Moutoa Hall.
- Job No 11. Cutting a channel across a narrow neck of land at Paki's Point (upstream of Opui Bend).
- Job No 12. Cutting a channel across a narrow neck of land at Page's Point (upstream of Opui Bend).
- Job No 13. Stopbanking near Tiakitahuna Road (upstream of Opui Bend).
- Job No 14. A cut at Rangiotu to divert the Oroua River into the Manawatu River at a different point.
- Job No 15. Straightening the Oroua River above Mangawhata.
- Job No 16. Stopbanking and snagging the Oroua River below Rangiotu (as an alternative to Job No 14).
- Job No 17. Stopbanking the Oroua River from Rangiotu to Mangawhata.
- Job No 18. Installing a flood gate at the outlet from the Sluggish River Drainage Board's main drain.

The combined cost of these works was £205,000[423].

An amendment to the Manawatu-Oroua River Board Act 1923 in 1929 gave the Board more flexibility, allowing loans to be raised in separate parts of the Board's district that benefitted only that part. The splitting of the scheme into a series of smaller projects seems to have finally persuaded central Government to become more accommodating, and this became more acceptable still when some of the River Board projects became accepted as unemployment relief scheme works during the depression years of the early 1930s.

The extended negotiations between local authorities and the Crown between 1906 and 1929 were conducted without any indication on the Crown file that tangata whenua in the Manawatu catchment were consulted at all. Indeed, only one reference was located on the file, in a newspaper report about a Chamber of Commerce meeting in Palmerston North in 1926:

> Mr Thomas asked if there was any Maori land in the area of the scheme [i.e. the River Board's District].
> Mr Carter [Manawatu-Oroua River Board Chairman] stated that there was a few hundred acres, but no area big enough to make any difference.[424]

[423] FC Hay, Foxton, to Chairman Manawatu-Oroua River Board, 1 June 1927, attached to Inspecting Engineer to Engineer in Chief, 1 October 1928. Works and Development Head Office file 48/270. Supporting Papers #760-769.
Manawatu Times, 3 June 1927. Copy on Works and Development Head Office file 48/270. Supporting Papers #758-759.

Most Maori ownership had by this time been squeezed out of the best agricultural lands in the district.

Notwithstanding, Maori land was not untouched. When the River Board decided to proceed with Job No 10, cutting off a double bend in the Manawatu River near Moutoa Hall (also known at the time as Coley's Bend), the line of the proposed cut, and the land on the inside of the bend that would be severed by the cut, was Maori land, being Taupunga A and B blocks. Because Taupunga (also referred to in the historical record as Rural Section 69 Moutoa District) is missing from the Block Research Narratives report, a digression is worthwhile to explain how the block came to be Maori-owned.

Featherston, the Wellington Provincial Superintendent, had agreed in 1867 to sell a portion of the Awahou purchase land at Taupunga to a group of Ngati Whakatere. That Maori were willing to purchase land that had so recently been sold to the Crown is an indication of the high importance attached to riverside land because it fitted in so easily to the way of life they practised at the time. Featherston's sale agreement was not recorded in Crown records, and its existence only became known to the Crown when complaints were made by those who had paid over money for the purchase that they had not received a Crown Grant. These complaints were made to the Chief Surveyor in 1880[425] and to the Commissioner of Crown Lands in 1880-1881[426]. The particular area that Ngati Whakatere had purchased at Taupunga was occupied by them. Because of the absence of any Crown record of the purchase, the claim by the owners was initially denied by the Crown[427] or not responded to. In 1885 Taupunga, with an area of 70 acres, was reserved as a ferry reserve[428]. It was only in 1896, when the original receipts issued by Featherston in 1867 were sighted by a Palmerston North solicitor and he made copies for transmission to the Crown[429], that the claim was taken seriously. Because the receipts were for a total of £38 and specified an upset price of £1 per acre, the Crown initially accepted an obligation to provide the Maori

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[424] *Manawatu Times*, 27 August 1926. Copy on Works and Development Head Office file 48/270. Supporting Papers #757.
[425] Wirehana Teahuta, Moutoa, to Chief Surveyor Wellington, 13 April 1880. Lands and Survey Wellington District Office survey file 537. Supporting Papers #1018.
[426] G Newman Wood, Foxton, to Commissioner of Crown Lands Wellington, 3 June 1880; and G Newman Wood, Foxton, to Commissioner of Crown Lands Wellington, 14 June 1881. Lands and Survey Wellington District Office lands file 1881/311. Supporting Papers #1014-1016 and 1017.
[427] Chief Surveyor Wellington to Mr Wright, 22 April 1880, on cover sheet to file to file 537; and Chief Surveyor Wellington to Wirihana Teahuta, Moutoa, 24 April 1880. Lands and Survey Wellington District Office file 537. Supporting Papers #1019 and 1020.
[428] *New Zealand Gazette* 1885 page 196. Not included in Supporting Papers.
Tracing of Taupunga Ferry Reserve, 20 February 1891. Lands and Survey Wellington District Office file 3144. Supporting Papers #1021.
[429] TB Crump, Barrister and Solicitor, Palmerston North, to Commissioner of Crown Lands Wellington, 5 June 1896. Lands and Survey Wellington District Office file 3144. Supporting Papers #1023-1027.

owners with 38 acres of the 70 acre ferry reserve[430], until it was told that the owners regarded the £38 as a deposit towards the purchase of the full extent of the ferry reserve[431]. It was then decided that the Maori owners could have the whole reserve except for 5 acres to be retained as ferry reserve, subject to the owners paying at the same rate for the additional acreage[432]. This decision was statutorily authorised by Section 9 Reserves and Crown Lands Disposal and Enabling Act 1896. Follow-up action required was a survey to subdivide the reserve, identification of the names of the owners to be put in the Crown Grant, and receipt of the additional payment[433]. While the need for a subdivision survey was rendered redundant when Manawatu County Council advised that there was no need for a ferry at Taupunga[434], a survey plan of the whole reserve was still prepared[435], showing how the up-to-date location of the riverbank differed from the riverbank as shown on the first survey plans prepared in 1866-67[436]. Erosion of part of the ferry reserve due to the river changing its course suggested that the land available to be granted to the Taupunga owners had an area of only 52 acres[437]. Determining the ownership of the land required the issue of an Order in Council in 1902 giving the Native Land Court the jurisdiction to consider the matter[438]. The Court decided in November 1902 that the owners would be all 19 persons whose names were listed in the 1867 receipts, with their relative shareholdings in accordance with the amounts set out in the receipts against their names[439]. This was an interim decision, subject to receipt and approval of a plan showing the land to be granted; it also left undetermined the possibility that further payments might be made to the Crown. The Court considered the matter further in November 1909[440] and January 1910[441], when

[430] Chief Surveyor Wellington to Surveyor General, 4 June 1891, Assistant Surveyor General to Surveyor General, 23 June 1896, and Surveyor General to Assistant Surveyor General, 9 July 1896. Lands and Survey Wellington District Office file 3144. Supporting Papers #1022, 1028 and 1029.
[431] Assistant Surveyor General to Surveyor General, 21 July 1896. Lands and Survey Wellington District Office file 3144. Supporting Papers #1030.
[432] Surveyor General to Commissioner of Crown Lands Wellington, 20 August 1896. Lands and Survey Wellington District Office file 3144. Supporting Papers #1031.
[433] File note, 17 August 1899. Lands and Survey Wellington District Office file 3144. Supporting Papers #1032.
[434] County Clerk Manawatu County Council, to Chief Surveyor Wellington, 18 October 1900. Lands and Survey Wellington District Office file 3144. Supporting Papers #1033.
[435] Wellington plan SO 14705. Supporting Papers #1586.
[436] Wellington plan SO 10800(2). Supporting Papers #1578.
[437] District Surveyor Palmerston North to Chief Surveyor Wellington, 20 April 1901. Lands and Survey Wellington District Office file 3144. Supporting Papers #1034.
There is a long and technically involved discussion on Lands and Survey Wellington District Office file 3144 (not recorded here) about the true area of the ferry reserve and the status of the parts of the reserve that had eroded away or had become isolated on the opposite bank of the river as a result of the river changing its course, which precedes the decision that the reserve's new area was 52 acres.
[438] *New Zealand Gazette* 1902 page 1703. Supporting Papers #1442.
Wellington plan ML 1725. Supporting Papers #1562.
[439] Maori Land Court minute book 38 OTI (Otaki) 79-81 and 174. 21 November 1902. Supporting Papers #1271-1273 and 1274.
Order of the Court, 2 November 1902. Copy on Lands and Survey Wellington District Office file 3144. Supporting Papers #1035-1036.
[440] Maori Land Court minute book 60 WG (Whanganui) 256-258. 26 November 1909. Supporting Papers #1333-1335.
[441] Maori Land Court minute book 17 WN (Wellington) 62-63. 19 January 1910. Supporting Papers #1338-1339.

four of the owners agreed to pay the Crown a total of an additional £32 (£8 each) to allow the full area of the reserve to be granted to Maori. No Court order was issued, and instead the Judge wrote to the Commissioner of Crown Lands explaining what had been agreed[442]. The Crown Grant was then able to be issued in June 1911[443]. It was for the full area of 70 acres[444], for which the owners had paid, notwithstanding that the amount of land they were actually able to occupy had been reduced by river erosion to 52 acres. In 1914 Taupunga was partitioned into Taupunga A and Taupunga B[445].

To return to the proposed river cut to be undertaken at Taupunga by the Manawatu-Oroua River Board. In March 1930 one of the owners of Taupunga B, Takerei Wi Kohika, wrote to the Minister of Public Works:

> The Manawatu-Oroua River Board, in accordance with its scheme, is going to put a cut through the above land which is native. Some of the owners are willing to sell, but I and others are not. The non-seller owners tonight met members of the Board, but the result was very unsatisfactory to us. We were told that the cut had to go through whether we wanted to or not, I presume under the Public Works Act. We suggested to them another line for the cut, but they would not hear of it. Our objection to their line of cut is for the following reasons:
>
> 1. That the cut goes right through our homes.
> 2. That the balance of acres left to the non-sellers is not enough to represent their shares.
> 3. That our cemetery on Whakawehi 113 Reserve (at the bottom end of the cut) is likely to be eroded, although the Board guarantees that it will put in protection works to effectively stop that. Well, sir, we doubt its ability to do so with all of its guarantees. Imagine our feelings if the Board fails to stop the erosion.
>
> The line for the cut suggested by us obviates all the points mentioned above.[446]

After the Minister acknowledged receipt, Takerei sent a further letter:

> I have been awaiting further communication from you and would not have written this letter only for the reasons.
>
> The tender for the cut closed on the 31st ult, and the successful contractor is today beginning the job.
>
> We have not since the occasion mentioned in my last letter met or been approached by the River Board, or even notified by the Maori Land Board, and we, living in the houses right in the line of the cut feel that we have been unfairly treated to have to move out without the matter first being settled to the satisfaction of all parties concerned. Being native land, we were under the impression that any proceedings

[442] Native Land Court Judge Rawson to Commissioner of Crown Lands Wellington, 19 January 1910. Lands and Survey Wellington District Office file 3144. Supporting Papers #1037-1038.
[443] Because the Crown Grant was antevested to 1867 (i.e. before the Land Transfer Act title system came into operation in 1870), the District Lands Registrar refused to issue a Certificate of Title and instead required that the Grant was entered in the Deeds Registry.
[444] Actually 71 acres 0 roods 20 perches.
[445] Maori Land Court minute book 53 OTI (Otaki) 104-105 and 136, 10 August 1914, subsequently amended as to area of partitions by Maori Land Court minute book 57 OTI 43-44. Not included in Supporting Papers.
[446] Takerei Wi Kohika, Moutoa, to Minister of Public Works, 21 March 1930. Works and Development Head Office file 48/270. Supporting Papers #770-771.

affecting the land would have to be dealt with by the Maori Land Board or Native Land Court.

I might mention that the owners in this block are also the owners of Manawatu-Kukutauaki 7E [at Matakarapa], which land is to be cut some time or other in accordance with the River Board's scheme. It is situated near Foxton, and mostly sand hills, and the River Board is quite welcome to it as far as we are concerned rather than lose Taupunga block, a much more valuable land. It appears, therefore, that our only two blocks of freehold land by the Manawatu River are right in the line of fire. The scheme is going to make quite a lot of the owners practically landless.

Another point, sir, is I wonder whether the River Board's scheme will be fully carried out. I presume the scheme has yet to be confirmed by those concerned, and the money required obtained. It may turn out that the cut through our land would be the only one done, the expenses of which I understand is to be borne by the Makerua Drainage Board.

We fail to see the national benefit unless the whole scheme is carried out.[447]

The Minister asked the Public Works Department for its views, and the engineer who reported on the matter, probably after seeking Hay's opinion, was generally unsympathetic:

Alignment. The line [of the proposed cut] adopted by the Board is the cheapest and most satisfactory from an engineering point of view, and the houses that will have to be removed cannot be classified as modern.

Disturbance. It necessitates the purchase from the natives of Lots marked 2A and 2B on enclosed plan, and the moving of the cottage and whare shown to Lot 1A. Lots 1A and 1B and the houses do not require to be purchased unless the natives insist. Takerei is interested only in Taupunga A. He and one or two others occupy the houses and use the whole of both blocks. Owners of Block B cannot use their block because there is no protected portion on which to build a house. All the land is floodable and of very little value, except that protected and shown in pencil on the plan. The owners of B are thus all willing to sell. The total actual protected area required by the Board is shown cross-hatched, and comprises 7 acres. The River Board could, and I feel sure would, be willing to be party to an arrangement thereby, when all necessary adjustments have been made, Takerei and the present occupiers could be left with 6½ acres of protected land, 3½ acres of unprotected land, and the houses.

Danger to Cemetery. There is no danger of erosion to this cemetery. Mr Hay personally went over the ground with Takerei and it was pointed out to him that the cemetery could not be endangered as a result of putting in the cut. Takerei was told that the River Board would put in any necessary protective works if it was found that the unexpected should happen.

The greater portion of the land now held by the natives is subject to flood. The land is good, but has a mass of rushes, fescue, blackberry and other useless growth, in other words it is not worked.

[447] Takerei Wi Kohika, Moutoa, to Minister of Public Works, 9 April 1930. Works and Development Head Office file 48/270. Supporting Papers #772-774.

> Personally, I do not think that the objection raised by the portion of the Natives concerned need be given very serious consideration.[448]

A reply from the Minister to Takerei Wi Kohika was not located during research for this report.

In a separate stream of correspondence, Takerei Wi Kohika wrote to the Native Minister in the same vein as he had written to the Minister of Public Works. He explained:

> The Board is still proceeding with the works. It has invited the Maoris to quit their houses so that they [the houses] can be removed. The houses are situated on the land to be taken for the channel. This place is one of our ancient homes. We were born and grew up here. If the line for the channel is taken in that place where we have suggested, no trouble will arise because there would then be left to us a big portion of land.[449]

The Under Secretary for the Native Department advised the Native Minister:

> Apparently the River Board has full power to do what it proposes to do after giving a month's notice to the owner, but the omission to give notice does not make the act illegal. Apparently the Board does not acquire the freehold but simply a right in the nature of an easement. The Act does not in terms provide for payment of compensation, but it has been assumed that compensation will be payable. The only way the Natives could stop the matter would be by proceeding for injunction in the Supreme Court.[450]

This advice, without any further comment, was provided by the Minister to Takerei[451]. It misunderstands the situation at Taupunga where a permanent change of river course was planned, rather than, for instance, the building of a stopbank where the landowner could continue to graze stock. It was because of the permanency of the proposal that the River Board accepted that it had to acquire the freehold of the land required for the cut.

The Deeds Registry records that all of Taupunga was acquired by the Manawatu-Oroua River Board by means of resolutions passed unanimously at separate meetings of the owners of Taupunga A and Taupunga B held on 9 May 1930[452] (i.e. within six weeks of the correspondence initiated by Takerei Wi Kohika), and confirmed by the Ikaroa District Maori Land Board in October 1930[453]. By successfully negotiating a purchase through a meeting of owners, albeit under threat of compulsory acquisition, the use of the Public Works Act was

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[448] District Engineer Wellington to Under Secretary for Public Works, 3 May 1930. Works and Development Head Office file 48/270. Supporting Papers #775-776.
[449] Takerei Wi Kohika, Moutoa, to Native Minister, 14 April 1930. Maori Affairs Head Office file 1930/200. Supporting Papers #434-438.
[450] Under Secretary Native Department to Native Minister, 2 May 1930, on Takerei Wi Kohika, Moutoa, to Native Minister, 14 April 1930. Maori Affairs Head Office file 1930/200. Supporting Papers #434-438.
[451] Native Minister to Takerei Wi Kohika, Moutoa, 13 May 1930. Maori Affairs Head Office file 1930/200. Supporting Papers #439-440.
[452] Wellington Lands Registry Deeds Index 22 page 649.
Wellington Land Registry Deeds Record Book 286 pages 547-548. Supporting Papers #1602-1603.
[453] Maori Land Court minute book 10 IKMLB (Ikaroa District Maori Land Board) 321-322, 29 October 1930. Supporting Papers #1360-1361.

avoided. The purchase price was £1040 for Taupunga A and £383-6-6d for Taupunga B, a total of £1423-6-6d (approximately £20 per acre), which was paid to the Ikaroa District Maori Land Board for distribution. Ngati Whakatere were dispossessed of one of their few landholdings along the banks of the Manawatu River to make way for river works that would primarily benefit European settlers rather than themselves.

At the same time as the engineer's report about Takerei's objections was prepared, the Crown was asked to consider providing a subsidy for Job No 10. Hay's application for this subsidy explained the reasons for this particular cut:

> The principal and immediate object of diverting the river is to relieve the pressure of Coley's Bend on the Makerua side of the River…. The history of the erosion at Coley's Bend is as follows:
>
> After the original stopbank was erected some time in 1924, erosion took place necessitating in 1927 the shifting back of the stopbank at a cost of £1,000. The stopbank as re-erected in 1927 was 5 chains from the edge of the river. In 1929 the river was again close into the stopbank and in the flood of May 1929 the stopbank was undermined by erosion and a breach of five chains made in it. Temporary repairs were put in hand but owing to excessive floods causing further erosion repairs necessitated a bank of 13 chains length with protection work along the river edge, costing £700. While the temporary repairs were being put in hand the question of some permanent means of safeguarding Coley's Bend was considered, and it was finally decided that the best solution was to construct Job 10 of the River Board's modified scheme. It was not, however, possible to do this work until the recent amendment to the Manawatu-Oroua River Board Act was passed last session, and it is under the powers created by this amendment that the River Board is now proceeding. In the meanwhile the position at Coley's Bend is causing grave concern….
>
> The Board is applying for subsidy of £2000 from the Government, and has defined an area – called No 3 Separate Area – which is to be rated to provide the balance of the money (£2500) required to do the work.[454]

Included in the costing was £1525 to cover land purchase and associated compensation, plus a further £540 for severed land. This was explained in the application:

> The item £1,525 is the amount it is estimated will be required for land actually taken for river purposes. The item for severed land is the estimate of the cost of land severed, which will probably have to be purchased outright by the Board.[455]

These figures were effectively the cost for the purchase of all of Taupunga A and Taupunga B. They show that the Maori owners of Taupunga received less than the River Board had expected in advance that it would have to pay. In considering the application for Crown subsidy, the Engineer in Chief discounted what he considered to be the high proportion of

[454] FC Hay, Palmerston North, to District Engineer Wellington, 28 February 1930, attached to District Engineer Wellington to Under Secretary for Public Works, 3 May 1930. Works and Development Head Office file 48/270. Supporting Papers #777-780.
[455] FC Hay, Palmerston North, to District Engineer Wellington, 28 February 1930, attached to District Engineer Wellington to Under Secretary for Public Works, 3 May 1930. Works and Development Head Office file 48/270. Supporting Papers #777-780.

the cost attributable to land purchase, and recommended a subsidy of £1500[456]. Cabinet initially declined to agree to this lesser amount[457], before wrapping the Crown contribution into a more comprehensive agreement to provide a general subsidy to the River Board of up to £100,000 spread over five years on the basis of £1 of Crown money for every £2 raised locally or via loan[458]. This was the first promise of public money made to the River Board since its establishment in 1922. However, it came at the time of the depression when the local community was least able to find its share of the funds for the works.

During the 1930s the Moutoa cut and associated downstream cuts as set out in the River Board's earlier comprehensive plans were beyond the ability of the local community to proceed with. If there was no Moutoa cut in place, then floodwaters would continue to flow down the Manawatu River channel, before turning north around the Foxton loop when meeting the barrier of the sand hills at Whirokino. The concept of pushing ahead with a cut through the Whirokino sandhills, to bypass the loop, therefore emerged during this time. This Whirokino Cut would be on a different line to the River Board's earlier Manawatu – Kuku Cut located further to the north across the Matakarapa lands. When this latter cut was being discussed as an unemployment relief project in 1932, it was explained thus:

> When the question of making this cut was before the Unemployment Board some considerable time ago, I verbally advised the promoters, and also informed the Commissioner of Unemployment, that I would not be able to give the necessary certificate that the work would not be or tend to the injury of navigation, because I felt sure that when the cut was made silting would probably take place at both ends of the cut in the loop which had been cut off.
>
> The [River] Board talked of guaranteeing to dredge if this occurred, but after going into the matter with their own Engineer later they put forward another proposal, and that was that they should make a cut through what is known as Rush Flat; in other words, across the bend on the seaward side of the proposed cut. This cut was to be deep enough and wide enough for the class of shipping frequenting the Foxton wharf to proceed to the wharf clear of the shoal which the Board's Engineer agreed with me was likely to form.
>
> The flax interests then raised the question of barges for up the river, and on being referred to the same cut as a means whereby flax barges could proceed up river, albeit circuitously, they objected, and in order to meet their objection the River Board agreed to make a further cut across McGregor's Bend big enough for flax barges and the craft towing them.
>
> This second cut will also provide a certain amount of circulation round the short-circuited bend, and will to that extent meet the objections of the Foxton Borough, who

[456] Engineer in Chief to Minister of Public Works, 23 June 1930. Works and Development Head Office file 48/270. Supporting Papers #781.
[457] Decision by Cabinet that matter should "stand over", 7 July 1930, on Engineer in Chief to Minister of Public Works, 23 June 1930. Works and Development Head Office file 48/270. Supporting Papers #781.
[458] Prime Minister to J Linklater MP, 1 August 1930. Works and Development Head Office file 48/270. Supporting Papers #782.

> were afraid that the water might become entirely stagnant and affect their sewage outfall.
>
> It is of course almost a certainty that without artificial aid the abandoned loop would become a lake, in the same way that many other similar ones have been formed on this river, but with the two subsidiary cuts now under discussion in addition to the main cut, I think it can be said that the interests of such navigation as there is have been reasonably well catered for.[459]

While it is beyond the scope of this report to analyse the changes of viewpoint among local authority members when elections are held and membership changes, the 1932 election seems to have elected members to the River Board who were less enthusiastic about a cut through the Whirokino sandhills. In any event, no progress was made on a proposed Whirokino Cut until the idea was revived in 1936, by which time the first Labour Government was in power in Wellington. The Minister of Public Works, Bob Semple, was an enthusiast for larger scale public works projects, though his enthusiasm had its limits, as displayed during a site visit to Whirokino in February 1936 that had been arranged by the River Board:

> After plans of the cut were displayed and explained, a discussion ensued on the merits or otherwise of the cut, which threatened to develop into an argument between certain interested parties. The Minister thereupon lost interest in the scheme, appearing to devote his attention to a rather large locust which Mr J Hodgens, MP for Palmerston N, had captured.[460]

Yet again, however, the expected cost proved daunting. Rather than make a decision, a further large-scale engineering report was commissioned, to be carried out by a Public Works Department engineer named AP Grant[461]. His report was completed in September 1937[462].

Grant's report closely examined the impact of the four largest floods since the arrival of European settlers (in 1880, 1897, 1902 and 1907, all of which had peak runoffs of about 150,000 cusecs), plus the largest flood since 1907 (in 1936 of about 105,000 cusecs). He concluded that the flood protection scheme should have a design capacity of "180,000 cusecs together with the usual freeboard of stopbanks". He also described the progressive spread of shingle deposition downstream in the Manawatu River:

> The [Manawatu] river channel is wide and shallow, with much accumulated shingle down to a point near Hamilton Line, a distance of 8 or 9 miles by river from the Fitzherbert Bridge.

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[459] Marine Engineer to Secretary for Marine, 7 July 1932. Works and Development Head Office file 48/270. Supporting Papers #783-784.

[460] *Manawatu Herald*, 27 February 1936. Copy on Works and Development Head Office file 48/270. Supporting Papers #785.

[461] He was also instructed to report separately on the Rangitikei River at this time. D Alexander, *Rangitikei River and its tributaries historical report*, November 2015, Wai 2200 #A187, pages 370-372.

[462] Report on the Manawatu River, 1937, undated (September 1937), attached to Assistant Engineer Grant, Palmerston North, to District Engineer Wellington, 20 September 1937. Works and Development Head Office file 48/270. Supporting Papers #786-815.

> At this point the river channel changes. It commences to meander, the slope to flatten sharply and the heavy accumulations of shingle cease abruptly. Shingle, in decreasing sizes and quantities, can be found nearly as far as the Oroua Stream outfall. Beyond this point the detritus is small beaches of sand and silt.…
>
> Observations have been made of the distribution of shingle in the river bed and the increase in sizes over a period of years. This matter is most important as the presence of shingle has a profound effect on the river channel.
>
> … Above [Hamilton Line] there are great accumulations of shingle distributed over a wide river bed, the average diameter of particles decreasing slowly down stream.
>
> At Hamilton's Line the river encounters the first heavy meander, and below this point the average size of shingle decreases sharply. This point coincides also with a flattening of the slope, a narrowing of the channel and a sudden reduction in the quantity of shingle accumulated….
>
> The river has originally had a meandering course with narrow deep channel (as at Rangitane today) but the onslaught of shingle has widened and straightened the course. There are no exact figures of the growth of shingle down the bed, but about 1880-1890 shingle at Jackaytown Road was up to 1 1/2 " diameter. This was at the time of the last heavy cutoff – the Karere Bend in the flood of 1880.
>
> At this date the shingle accumulation stopped quickly a little below Jackaytown Road, with a flattening of slope and narrowing of bed – similar to the point now at Hamilton's Line. This point is shown in 1907 as about 1 mile below Jackaytown.
>
> The ancient meanders of the river above this point e.g. at Fitzherbert, Karere, etc, show an original channel comparable with the narrower type of channel now at Rangitane and would point to the fact that the growth of shingle has progressed steadily for a very long period.[463]

Grant continued that the effects of the shingle to encourage the river to cut a wider channel through bends had just (in September 1937) resulted in it naturally cutting a new line through the bend at Page's Point, which in 1927 had been one of Hay's proposed work projects (Job No 12):

> It is considered that shingle conditions can be expected at least as far as the Oroua outfall. The time to be taken is uncertain and depends on the speed of scour of cutoffs by the river.
>
> With artificial assistance to the river to straighten its course, by the excavation of cutoffs, it is considered that the river would very quickly widen and straighten its bed down to the Oroua Stream. The grade of the river is such that cutoffs would be successful and scour would be rapid. This would be accelerated also by the concentration of flow in the river by stopbanking.[464]

[463] Report on the Manawatu River, 1937, undated (September 1937), attached to Assistant Engineer Grant, Palmerston North, to District Engineer Wellington, 20 September 1937. Works and Development Head Office file 48/270. Supporting Papers #786-815.

[464] Report on the Manawatu River, 1937, undated (September 1937), attached to Assistant Engineer Grant, Palmerston North, to District Engineer Wellington, 20 September 1937. Works and Development Head Office file 48/270. Supporting Papers #786-815.

Below the confluence of the Manawatu and Oroua Rivers the fall to the Manawatu Heads was so small that it would not be practical to divert all the water through a new channel on a more direct route to the sea, as there would not be sufficient scouring out of the new course. Stopbanking was needed along the river, though these stopbanks would not need to be so high, and therefore would be more financially feasible, if ponding and overflow areas were available during high floods. Grant identified five options for these ponding and overflow areas:

- Moderate ponding in the Moutoa Swamp, plus straightening cutoffs at meander bends;
- Extensive ponding in the Moutoa Swamp and a lesser number of straightening cutoffs;
- An overflow channel through Moutoa Swamp;
- Major ponding in the Moutoa Swamp, plus by-passes at Moutoa Hall and Makerua Swamp;
- An enlarged Makerua by-pass.

Under all of these options, the Whirikino Cut was "essential", because the meander there (i.e. the Foxton loop) "impedes the outflow of Manawatu River floods as it occurs at a point where the slope is very small and where tidal influence is a big factor in water levels". The main benefit of the cut in allowing waters to drain more easily would be to reduce the length of time of flooding upstream[465].

After submitting his September 1937 report, Grant was apparently asked whether the costs of his scheme of works could be reduced. His response identified savings if stopbanks were reshaped to require less fill and take up less berm width, and if a smaller flood capacity was designed for. He then added a note of caution:

> In my judgment it is unsound and hazardous to adopt a protection scheme representing partial protection over a complete area. If modification is to be carried out, it should be rather by reducing the area to be protected than by lowering the degree of protection – particularly when high flood stages are being considered, i.e. rather give part of the area assured protection than the whole area partial protection.
>
> My recommendation is therefore not to adopt any modification of degree of flood protection but to adopt a modified stopbank [cross] section.[466]

[465] Report on the Manawatu River, 1937, undated (September 1937), attached to Assistant Engineer Grant, Palmerston North, to District Engineer Wellington, 20 September 1937. Works and Development Head Office file 48/270. Supporting Papers #786-815.
[466] Assistant Engineer Grant, Palmerston North, to District Engineer Wellington, 15 October 1937. Works and Development Head Office file 48/270. Supporting Papers #816-817.

Grant submitted a further report on a Lower Manawatu Flood Protection Scheme in January 1938[467]. His recommended scheme had three broad components:

(1) A complete system of stopbanking on both banks (except where high ground intervenes) from Karere to the Whirokino Bridge. This involves also higher stopbanks on 3 main tributaries, the Oroua, Tokomaru and Mangaore Streams.
(2) Improvements to the channel itself by the excavation of certain short cut-offs to straighten the course; in certain cases bends could be eased by groyne work and willow planting.
(3) The utilisation of a wide area for ponding on the Moutoa swamp.[468]

The stopbanks had to be located to account for channel widening as the shingle-dominated type of river bed naturally extended further downstream. High ground on the true right bank between the Oroua River confluence and Opui did not require stopbanking. Downstream of Opui as far as the Koputaroa Stream confluence, stopbanks had to be far enough apart to cheapen banking costs and lower flood levels, but not so far apart that unnecessary land was included in the river channel, and the cost of reconstructing the Shannon Bridge was unnecessarily increased; a 1600 feet (490 metres) width between the stopbanks was proposed. Below the Koputaroa Stream would be a wider flood channel which could include areas available for flax cultivation.

Of the Whirokino Cut, Grant stated:

> This represents in itself one of the most important single items and will effect an improvement up as far as Shannon.
>
> The meander is at present over 6 miles in length and can be eliminated by a cut 1 mile long – the shortening being 5M 30 Chs. The present meander occurs at a point where the river slope is small – being inside tidal limits – and also has several bends of sharp radius. The net effect of these losses is a very serious blockage to high water flow. It is computed that in 1902, whereas the river had a maximum discharge of 160,000 cusecs, at no time did more than 50,000 cusecs flow in the meander at Foxton – resulting in a great accumulation of water ponded on the Moutoa Swamp. Similar conditions apply to a lesser extent on smaller floods, accounting for the long period that flood waters lie on the ground above Whirokino. The construction of the Whirokino Cut can be strongly recommended and should be undertaken as one of the first works of the river improvement scheme. Its greatest effect will be in the quick dewatering of the Moutoa Swamp after floods have passed, and of lowering flood levels of short floods. It will not exert much influence on levels of floods of long duration.

He noted that:

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[467] Manawatu River Flood Protection Scheme, undated (January 1938), attached to District Engineer Wellington to Under Secretary for Public Works, 12 January 1938. Works and Development Head Office file 48/270. Supporting Papers #818-840.
This version of Grant's report has been seriously degraded by poor file management (torn and part-missing pages, etc). Some missing portions can be reinstated by reference to the September 1938 version of Grant's report (see below).

[468] Manawatu River Flood Protection Scheme, undated (January 1938), attached to District Engineer Wellington to Under Secretary for Public Works, 12 January 1938. Works and Development Head Office file 48/270. Supporting Papers #818-840.

> The cut will sever an area of 950 acres. Of this the northern portion, being Sections 1/6 Matakarapa, Block V Mt Robinson SD, is the only developed area and is in Native occupation. The present access is by water across the river at Foxton, and no alternative access will be required. The balance of the area is sandhills of only nominal value.[469]

Of the Oroua River, Grant said:

> This stream has a watershed of 350 sq miles; the character of its flood channel alters in a manner similar to that of the Manawatu River by the effect of shingle travel. The river bed is wide and shallow, with accumulations of shingle down to a point near the Rongotea Bridge; below this point the channel is narrow and deeper and more tortuous.
>
> The improvement of the lower channel by straightening and increased stopbanks will accelerate the travel of shingle downstream and ultimately this will reach the Manawatu River itself. The alteration so caused will be of dimensions much smaller than in the Manawatu River, and does not call for particular attention.
>
> The works proposed are designed primarily (a) to accelerate the flood, thus to ensure that the main volume of flood flow is passed before the arrival of the Manawatu peak, and (b) to protect against overflow from a maximum discharge of 15,000 cusecs.

The proposed works in the Oroua were:

> (1) A new outfall into the Manawatu River below Rangiotu….
> (2) The straightening of the worse bends between Rangiotu and the Rongotea Bridge – cuts aggregating 90 chains in length.
> (3) A moderate amount of clearing and snagging of the stream.
> (4) Raising stopbanks.[470]

Elsewhere, existing stopbanks along the Tokomaru Stream and Mangaore Stream needed to be raised, improvements made to the existing floodgate at the mouth of the Koputaroa Stream, and additional floodgates added at the outlets of other drains provided and maintained by the various Drainage Boards. All buildings, apart from existing flax mills and buildings in the Moutoa ponding area needed to be removed from the flood channels. Willows provided protection of the riverbanks from erosion, and more planting was proposed, together with groynes where reinforcing of the banks was required. All proposed works had a combined cost of £620,000[471].

Grant also examined the legislative requirements for the proposed scheme and the inter-relationship of the flood protection scheme with the activities of the five Drainage Boards

[469] Manawatu River Flood Protection Scheme, undated (January 1938), attached to District Engineer Wellington to Under Secretary for Public Works, 12 January 1938. Works and Development Head Office file 48/270. Supporting Papers #818-840.
[470] Manawatu River Flood Protection Scheme, undated (January 1938), attached to District Engineer Wellington to Under Secretary for Public Works, 12 January 1938. Works and Development Head Office file 48/270. Supporting Papers #818-840.
[471] Manawatu River Flood Protection Scheme, undated (January 1938), attached to District Engineer Wellington to Under Secretary for Public Works, 12 January 1938. Works and Development Head Office file 48/270. Supporting Papers #818-840.

(Manawatu, Sluggish River, Moutoa, Makerua and Buckley) in existence. He anticipated that the Crown would in whole or part provide the capital funds to implement the scheme, and then pass the works to the Manawatu-Oroua River Board for ongoing maintenance to be funded from local rates. This arrangement needed to be provided for by statute, as did management arrangements for the ponding areas, and the ability for the new scheme to alter existing works such as stopbanks:

> The drainage boards are actively engaged in the maintenance of their respective systems of internal drainage, and also carry out construction and maintenance of certain works of river protection itself. The topographical boundaries between the areas of the various Boards generally enable the Boards to operate independently and without overlapping of interest.
>
> The maintenance and control of the river itself is a work properly to be undertaken by one local body – the River Board – and unless supervision is to be resumed by the State such a body should continue in existence. There is thus sufficient justification for the existence of all powers exercised by the six local authorities.
>
> It is suggested, however, that the whole area is compact enough, the problems and types of work similar enough, and the common interest between river protection and land drainage strong enough, for one local authority to operate over the entire area.
>
> It is therefore recommended that a reconstituted River Board be the one and only body to possess and exercise the whole powers of the combined six boards.[472]

This January 1938 report was not the version that was publicly released to the Manawatu-Oroua River Board[473]. That came in March 1939, after:

(1) Deletion of all reference to the effect of the Whirokino Cut on Foxton.
(2) Deletion of references to legislation, valuation, betterment, compensation.
(3) The estimate has been increased to £703,000 gross by alteration of unit cost of earthwork in stopbank to 1/3d per cubic yard.[474]

A further amendment occurred in August 1939 when Grant identified a route for the Whirokino Cut that was not only likely to be more effective, but was also shorter and involved a lesser amount of earthworks so was therefore cheaper to construct[475].

Having been recommended by a Public Works Department official, that Department became supportive of central Government monies being spent on the proposed flood protection

[472] Manawatu River Flood Protection Scheme, undated (January 1938), attached to District Engineer Wellington to Under Secretary for Public Works, 12 January 1938. Works and Development Head Office file 48/270. Supporting Papers #818-840.
[473] Manawatu River Flood Protection Scheme (for presentation to Manawatu-Oroua River Board), undated (March 1939), attached to District Engineer Wellington to Under Secretary for Public Works, 8 March 1939. Works and Development Head Office file 48/270. Supporting Papers #841-849.
[474] District Engineer Wellington to Under Secretary for Public Works, 8 March 1939. Works and Development Head Office file 48/270. Supporting Papers #841.
[475] Resident Engineer Palmerston North to District Engineer Wellington, 8 August 1939, attached to District Engineer Wellington to Under Secretary for Public Works, 10 August 1939. Works and Development Head Office file 48/270. Supporting Papers #850-852.

scheme, though the various parts of the scheme had to be prioritised to make it more politically palatable. Advice to the Minister of Public Works in February 1940 was:

> The scheme now proposed provides primarily for the excavation of cuts at Whirokino, Koputaroa, Taupunga and Paki Point, and the provision of a new outfall for the Oroua Stream and the improvement of the Oroua Stream itself.
>
> The principal work, of course, is the excavation of the Whirikino Cut, and it is considered that if these cuts are made a very considerable improvement in the get-away of the floods will be attained, and the question of banking, which has always been a rather debatable and expensive matter, can be carried out at a later date if found necessary and desirable.
>
> It is considered that these cuts, and the necessary changes they will cause in the regime of the river, will take some years to become fully effective, and I agree with Mr Grant's view that it is better that the work should be carried out in this order rather than that very large expenditure should be incurred and the whole scheme of banking and improvement carried through in a comparatively short period.[476]

However, Treasury still had to be persuaded, which in wartime was not an easy task, and it was not until May 1940 that its reluctance was broken down and it supported the cut, subject to the Manawatu-Oroua River Board contributing a quarter of the estimated cost of £100,000[477]. What finally persuaded Treasury to get behind the scheme was the benefits that the Whirokino Cut would provide to the Crown's own flax-growing operations on the Moutoa Estate[478]; when the Crown itself had a vested interest in the outcome, the balance was tipped in favour of approval. Even then, Cabinet declined to approve the full £100,000 programme of works, giving the go-ahead only for expenditure of £31,500 on the Whirokino Cut alone[479].

The Public Works Department Head Office file about Manawatu River flood protection and drainage operations contains no discussion with or consideration given by the Crown for any Maori interest in the matter between 1927 and 1940, with the sole exception of the dealings with the Taupunga Cut, which have been described above. The predominant sense from a reading of the file is that the Crown discussed the matter only with the various local authorities that were actively involved, such as the Manawatu-Oroua River Board.

The Whirokino Cut, like the Taupunga Cut, was another part of the scheme that would affect the low proportion of Maori Land in the scheme area, and that would therefore directly

[476] Engineer in Chief to Minister of Public Works, 12 February 1940. Works and Development Head Office file 48/270. Supporting Papers #859.
[477] Secretary to the Treasury to Minister of Finance, 28 May 1940, approved in Cabinet, 22 June 1940. Works and Development Head Office file 48/270. Supporting Papers #864.
[478] Engineer in Chief to Minister of Public Works, 1 May 1940. Works and Development Head Office file 48/270. Supporting Papers #860-863
[479] Secretary to the Treasury to Minister of Finance, 24 July 1940. Works and Development Head Office file 48/270. Supporting Papers #865.

impact on Maori. The new work would cut off land access to three Maori blocks, Matakarapa, Manawatu-Kukutauaki 7E (both Maori-owned and managed by the Native Department as a land development scheme farm), and Rerengaohau (Maori-owned). Henceforth access could only be by boat across the Foxton loop part of the Manawatu River. In addition to the cutting off of the Matakarapa peninsula, the cut itself required land that was European-owned (Whirokino 1) and Maori-owned (Rerengaohau 2 and 3, and Whirokino 3).

To enable construction works to commence required obtaining the consent of the owners of the lands affected:

> Pt Whirokino No. 1 (owners Grace Bros & Willoughby) … is managed by Mr SL Jackson, which is the occupier and I presume part-owner. He has given verbal consent for us to enter upon the property and construct the works, and also for use through his property of 1½ miles of riverbank below the Whirokino Bridge for construction and use as a temporary access road.
>
> The second property is Rerengaohau No. 2, 1226 acres. This is shown as owned by Karaitiana Te Ahu, but is occupied by Mr Hone Macmillan of Koputaroa. Mr Macmillan informs me that the above-mentioned owner is his deceased wife, and he is the occupier and trustee for her child. He consents to us to enter upon and construct provided he is ultimately compensated.[480]

For the other two parcels of Maori-owned land, Rerengaohau 3 and Whirokino 3, there is no evidence of authorities to enter being obtained from the owners beforehand.

The manner in which the Crown subsequently relied on the Public Works Act to take parts of the Maori-owned lands for the Cut has been described elsewhere by Bassett and Kay[481].

5.4.2 Otaki River control and flood protection

Another River Board established in the Inquiry District was for the Otaki River. Different circumstances applied compared with those found in the Manawatu River and its tributaries, and the Otaki Board's jurisdiction was more limited in scope than that for the Manawatu River.

Like other Horowhenua rivers, the Otaki River is a short steep watercourse that when in flood quickly discharges a large volume of water from the Tararua Range through the Otaki Gorge and out on to an area of shingle and silt that has accumulated close to sea level. This characteristic became exaggerated when forest cover on the upper catchment lands

[480] Resident Engineer Palmerston North to District Engineer Wellington, 30 July 1940, attached to District Engineer Wellington to Under Secretary for Public Works, 2 August 1940. Works and Development Head Office 48/270. Supporting Papers #866-868.
[481] H Bassett and R Kay, *Porirua ki Manawatu Inquiry District: public works issues*, November 2018, Wai 2200 #A211, pages 276-285.

purchased by the Crown in the 1870s was cleared for farming during the 1890s. During rainstorms, peaks of flow happened more quickly and were of greater volume, and greater quantities of shingle and silt accumulated in the lowlands such that the river was able to more easily overflow its banks. This process of bed material accumulation in a riverbed is known as aggradation, while its opposite of a bed being cut down and into by the erosive powers of water is known as degradation. Both processes can be unhelpful for successful control of floodwaters because they upset the relationship between a channel and its banks.

The river is prone to wander across this lower and flatter land, carving fresh watercourses. However, the existence of the railway has meant that all parties have been keen that the river should make its way through the barrier that is the railway line only at the point where the river was already bridged.

It was a request from the Public Trustee to the Public Works Department in 1918 that initially instigated the formation of the Otaki River Board. The Public Trustee was concerned about riverbank erosion on a property it was managing on behalf of the estate of a deceased owner, and sought the advice of the Department. The District Engineer reported that the erosion could be contained by the construction of groynes to interrupt the flow that was pressing against the bank and to trap some of the shingle travelling down the river. However, he then went further, arguing that such measures would not be a cure if the wider problem was not addressed:

> The question of whether the heavy expenditure on preventive measures to stop encroachment of the Otaki River on private property would be warranted is one in which I am not prepared to advise on.
>
> Half measures might be worse than useless, as unless a comprehensive scheme for dealing with the river as a whole is carried out it might be better not to incur any expenditure. Effective river protection would be better carried out by a River Board, properly constituted, than by private owners working separately.[482]

The Engineer in Chief commented:

> It appears to be the case for the formation of a River Board, as Mr Gavin Read's estate should not be saddled with the expense of protecting other lands in the vicinity.
>
> In connection with this matter, attention is drawn to the fact that since settlement took place in this district the river used to follow a course through the properties of Messrs Bradley and Read, and it is into this old course that it is endeavouring to break at the present time. If it does break through, a considerable area of property right down to the railway line, and the railway line itself, will be affected.[483]

[482] District Engineer Wellington to Engineer in Chief, 23 July 1918. Works and Development Head Office file 48/106. Supporting Papers #601-603.
[483] Engineer in Chief to Under Secretary for Public Works, 31 July 1918. Works and Development Head Office file 48/106. Supporting Papers #604.

However, no action was taken on the wider question at that time.

The reason for the lack of action was because Government policy at the time was not to interfere in the protection of private property, instead leaving protection as a matter for the property owners to deal with. This was explained to the Minister of Public Works by officials three years later:

> The position along this [Otaki] river is such that the formation of a River Board seems called for.
>
> In the past the Department has not supported the principle of Government assistance in the protection of private interests, and although occasionally Government officers have reported on such proposals, this appears to be rather trenching [sic] on the field of operations of the Engineers in private practice. To deal with the whole river comprehensively requires a considerable amount of survey in order to ascertain the present position and probably future trend.
>
> I would strongly recommend that Mr Field [local Member of Parliament] endeavour to get the settlers to unite in forming a river district, and that they have the question of the river's control investigated by a qualified Engineer.[484]

The suggestion was conveyed to Field, with the added comment from the Minister that the involvement of central Government in the "considerable amount of survey" required was "a course to which I could not agree"[485].

The Otaki River Board was established in January 1923 after a poll of ratepayers had agreed to it[486]. Its district was generally the length of river between the gorge and the railway bridge. One of its first actions was to print copies of a permit for shingle removal[487]. This was because under the provisions of the River Boards Act 1908 the removal of any shingle or metal from a riverbed within a river district required the consent of the particular River Board. The River Board was allowed to charge a royalty.

The Otaki River Board sought advice from an engineer who was an adviser to the Hutt River Board, and he produced a first report on the Otaki River in May 1923, recommending some immediate works that could be undertaken[488]. This was before a survey had been done

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[484] Under Secretary for Public Works to Minister of Public Works, 23 March 1921. Works and Development Head Office file 48/106. Supporting Papers #605.
[485] Minister of Public Works to WH Field MP, 1 April 1921. Works and Development Head Office file 48/106. Supporting Papers #606.
[486] *New Zealand Gazette* 1923 pages 131-132. Supporting Papers #1458-1459.
[487] Otaki River Board, Special permit for removal of shingle, boulders and sand, issued to Horowhenua County Council 25 October 1923. Horowhenua County Council inwards correspondence item 1924/1/13A. Supporting Papers #1610.
[488] G Laing Meeson, Wellington, to Chairman Otaki River Board, 14 May 1923, attached to Chairman Otaki River Board to Minister of Public Works, 14 August 1923. Works and Development Head Office file 48/106. Supporting Papers #607-619.

showing the contours and grade of the waterway. He described the character of the river between the gorge and the railway bridge:

> The banks of the Otaki River are, generally, composed of loose and unstable material. In the upper part there is a much greater percentage of large boulders than further downstream, and as a consequence the liability to erosion is more pronounced in the lower river because, as you will know, the smaller stones are more easily moved and washed out. This is demonstrated by comparing the width of the riverbed proper in the first mile and a half from the eastern boundary [of the Board's district], the average width of river washed away was comparatively inconsiderable and probably does not represent the loss of more than half a dozen acres of soil, whereas below that stretch an area of 20 acres has been entirely destroyed on a frontage of less than half a mile. It follows that the protection of the riverbank upstream is not of so much urgency as it is further downstream, notwithstanding the much greater velocity of the current in the upper than in the lower river. On the other hand the overflows of "breaks" which have taken place in the first mile and a half of the river are of the most serious nature and should be checked without unnecessary delay. There are three of these breaks in this reach which constitute a most serious danger, not only to the land through which they pass but also to the country below.

At these spots much more extensive stopbanking was required than had been able to be completed by the riparian landowner acting on his own. He also proposed deepening an old channel that he wanted the river to follow in the future; the boulders taken out of the channel could go into the stopbanks. Groynes would be needed to direct the flow into the old channel.

The engineer for the River Board died before he could make a further contribution, and another engineer was engaged to prepare a scheme of protection works. His description of the water explained:

> The river bed is wide between the limits of good or of stable land, and consists of shingle beds, lupin-clad islands, and flood channels, each succeeding flood altering the actual river channel, through piling up accumulations of shingle and causing the water to divert at sharp angles with the general direction on steep grades frequently causing a direct attack on the opposite bank with consequent erosion of valuable first class land. While the bush existed, it afforded a natural protection to the banks from erosion and preserved the channel within reasonable bounds in a sinuous course, with a more or less even velocity and consequently fairly even travel of the shingle.
>
> To restore this condition is of course the aim of the Board, and it can be achieved gradually through artificial works [such] as groynes and weirs, closely followed by willow planting till eventually the whole course has a belt of willows down each side. The artificial works are merely a means to this end.

He proposed an "Ultimate Improved Channel" which had gentle bends, aligned well under the railway and highway bridges, and would be scoured through the existing maze of smaller channels running between shingle islands[489].

[489] Seaton, Sladden and Pavitt, Engineers, Wellington, to Chairman Otaki River Board, 25 August 1924. Works and Development Head Office file 48/106. Supporting Papers #620-635.

The Otaki River Board sought a Government grant, but faced a negative response from the Minister of Public Works, Gordon Coates. At a meeting with the River Board in July 1924 (i.e. before the second engineering report was completed), the Minister was reported as stating:

> I personally am absolutely against anything like river protection. I know the position is very serious, but the moment we accept liabilities for river protection we accept liabilities for about £4,000,000 or £5,000,000. No so much in the North Island, but the South Island rivers are out of the question…. It would absorb more than any other work, either roads or railways. Where public interests in the direct sense are involved, I must act, but where private individuals are concerned I will not accept any liability whatever. The attitude the Government have taken up is this, that if River Boards are formed they must get their own advice and act accordingly, but where public works are affected the Engineers must make their report which we have to act upon.[490]

This statement of Crown policy demonstrates how hard it was for the Otaki River Board and the Manawatu-Oroua River Board to obtain Government support during the 1920s.

No Crown support was provided to the River Board until the Government's own assets, the railway bridge and the main highway bridge, were threatened by a flood in 1931. The Chief Engineer for NZ Government Railways recorded:

> This flood was the only one on record which has stopped the railway traffic since the line was taken over from the Manawatu Railway Co in 1908 – no other flood since that date has caused even train delays.
>
> The most serious result from the flood from the railways point of view is that the protective works on a bend of the river about 1½ miles above the bridge have been swept away and a portion of the river has broken through to the creek bed beside the racecourse, resulting in the flooding of the railway line and the township.
>
> Unless prompt steps are taken to prevent it, there is a danger of the main river stream breaking through to the depression behind the racecourse and causing considerable damage to the road and railway, and flooding the township….
>
> While recognising the Department is interested in the prevention of the river from changing its course above the railway bridge, the Main Highways Board, Otaki Borough Council, Horowhenua County Council, and all the property owners along the course of the river are quite as much interested in the necessary protective works as the Department.[491]

Besides threatening the railway line, the floodwaters also overtopped the river banks and flooded part of Otaki town.

The Crown promptly had a re-think of its hands-off policy. The Public Works Department's inspecting engineer reported:

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[490] Notes of meeting between Minister of Public Works and Otaki River Board members, 21 July 1924. Works and Development Head Office file 48/106. Supporting Papers #636-638.

[491] Chief Engineer to General Manager, 20 April 1931. Railways Head Office file 1908/4777/1. Supporting Papers #943-944.

> I find … that there is, at a point 1½ miles above the Highway Bridge, serious erosion of the river bank, and a distinct danger of the river altering its course at this point unless protective measures are taken….
>
> The Railways Department propose to hold the river here by means of a few short groynes and a strong stopbank across the channel that a portion of flood waters took towards the Otaki Railway Station in the recent flood.
>
> While I consider it very necessary that flood waters must be prevented from again taking this course … I would prefer to see the construction of works that would tend to throw the river away from this bend and give it a better alignment.
>
> For this purpose I would suggest one groyne about 2½ chains long…. This would tend to throw out the flood waters and cut away the shingle spit on the opposite bank, formed by the erosion on the right bank just above and opposite to it.
>
> To prevent flood waters after passing this groyne from escaping down the new flood channel, and also to act as another groyne, I would propose a stopbank 23 chains long from the terrace above flood level…. This bank, which would be above flood level, could be made of shingle and clay from the terrace and strengthened by gabions at the end and at the lowest places. The water would be slack along the greater part of its length and there should be little danger of its being damaged if not overtopped by flood waters. The end of this bank would be on the line of curvature for the proposed controlled channel, on which line there is at present a row of willows below the end of the proposed bank.

While the proposed work had been precipitated by the threat to the railway bridge and the highway bridge, the inspecting engineer still thought that "local interests" should contribute £300 of the £1600 cost:

> While I place the local interests at only £300, I only do so on account of their inability to pay more, or probably even this much. In reality the lands below the erosion and the township of Otaki are in more grave danger of considerable financial loss than either the Railways or the Highway Board, and will get off very lightly with such a contribution as proposed.[492]

In the end the Otaki River Board and Otaki Borough Council between them contributed £350[493].

In 1932 the Otaki River Board's district was increased in size[494]. One of the reasons for the increase was that a larger area benefitted from the works carried out by the Government the previous year, the maintenance of which was considered by the Crown to be a River Board responsibility. The Otaki Borough therefore became included in the Board's district[495], and this had the effect of shifting the weight of voting strength on the Board from the rural

[492] Inspecting Engineer to Chairman Main Highways Board, 18 May 1931. Works and Development Head Office file 48/106. Supporting Papers #639-640.
[493] Chief Engineer NZ Government Railways to Inspecting Engineer, 5 June 1931. Works and Development Head Office file 48/106. Supporting Papers #641.
[494] *New Zealand Gazette* 1932 pages 2508-2509. Supporting Papers #1463-1464.
[495] None of the Otaki Borough had been included in the Otaki River Board's district in 1923 because the legislation at that time did not allow for part only of a Town District to be included in a River Board district.

community to town interests. The result was an unwillingness on the part of the Board to contribute towards the protection needs of individual riverbank settlers[496]. With the Government also unwilling to provide monies for the protection of private property[497], the farmers were left in an invidious position. However, unemployment relief funds were available to pay for the labour costs of protection works, provided the affected farmers or the River Board contributed the materials and transport costs.

Because of these changes the condition of the river deteriorated from a flood protection perspective, with shingle accumulating in the waterway, and additional flood channels developing that were not consistent with the "Ultimate Improved Channel". No contributions could be collected from local residents, and the Otaki River Board became defunct. In 1937 AP Grant, the same engineer who was working on Rangitikei and Manawatu flood protection, was called in to report on the Otaki River[498]. Because priority was given to these other rivers, Grant's report on the Otaki was not completed until June 1941. He explained that the largest flood in recent times had been in 1931, when some 40,000 cusecs flowed down the river:

> This flood overflowed all the low lying riverine land and also the high level terrace on the right bank near the Racecourse about ½ mile above the railway. From this point it flooded extensively across the State Highway and Otaki Railway Station and thence into the thickly populated area of Otaki Borough. More frequent high floods of lower discharge rarely go into the main part of the Borough, but overflow the Railway and State Highway at the northern end of the State Highway bridge, and such water finds its way into the well-defined river courses across Rangiuru Road into the semi-urban farmlands of Rangiuru. This represents the largest portion of damage resulting from floods….

Grant did not recommend any new works on the true left bank upstream of the Railway and Highway bridges, even though some flooding did occur there, instead concentrating his attention on the waterway downstream of the bridges:

> On the [true] left bank below the State Highway, the river flats proper are of very small extent and are farmed in conjunction with high ground. At a point ¾ mile below the State Highway the high level terrace turns away to the south along the western edge of Addington Road and there is an extensive peat swamp of about 1200 acres between this terrace and the coastal sand dunes. This swamp is for the most part of poor quality peat and with very little fall, and drainage improvement would result in considerable subsidence and the emergence of buried timber. A small portion of land fringing this swamp at the northern and at the southern end is rather higher and carries grass. I do not anticipate much development of this area for very many years and [a] protection scheme which would cost about £2,600 is not recommended for the present but may be considered at a later date.

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[496] District Engineer Wellington to Under Secretary for Public Works, 10 March 1933. Works and Development Head Office file 48/106. Supporting Papers #642-644.
[497] Minister of Public Works to JA Tattle, Otaki, 3 May 1933. Works and Development Head Office file 48/106. Supporting Papers #645.
[498] Engineer in Chief to District Engineer Wellington, 29 April 1937. Works and Development Head Office file 48/106. Supporting Papers #646.

> Summing up, the only area that warrants protection is on the lower right bank including Otaki Borough.[499]

A 2½ mile long stopbank was proposed, which would "in addition require a tidal bank connection near the mouth". Protecting the stopbank from erosion would require willow planting, removal of shingle from the flood channel, and some groyne construction. However, none of this should be constructed until the responsibility for maintenance had been decided upon. Grant explained:

> The Otaki River floods very rapidly and can be very active in bank erosion. If maintenance is neglected the stopbank system could be very quickly cut, leaving the situation far worse than it is today. On the other hand, the values protected are sufficient to warrant the carrying out of the work.
>
> The Otaki River Board is no longer operating, and the responsibility now rests with the Horowhenua County, but as far as I can see no active maintenance of any kind is carried out. I would therefore urge that the first step be to ensure that some local authority accepts the full responsibility for maintenance.[500]

Grant followed up his June 1941 report with a supplementary report in October that year, after he had spent time on a field inspection with Otaki Borough and Horowhenua County councillors and staff:

> The river has broken through the north bank and has scoured the channel near Ryder's cowshed into a deep depression. This is now carrying a considerable stream of water (at least 1500 cusecs) with a rip of about 6 feet per second. The opening has now scoured deep enough that I think it will continue to carry water even under dry summer flow conditions. This new stream leads north-west towards the Borough over grassed farmlands and returns to the Otaki River about 1 mile further down. In between these two points it cuts off about 120 acres of first class land including one dwelling, and floods over Rangiuru Road, although normally not deep enough to stop traffic. Whenever the river rises in flood, a considerable amount of flooding occurs over this road and Settlement and the outskirts of Otaki Borough. This development is quite serious, as it is likely to develop, in which case a large part of the Otaki River would be diverted and cause a considerable amount of damage. At the lower end of the new stream there is a tremendous rip, the ground is scouring heavily and there is every sign that this new channel may develop.

He urged immediate action to close the entrance into the new channel using "stone gabions, trees, weighted drums, etc", and once closed to construct an embankment to keep out floodwaters. Grant also reported that the 1931 works put in to protect the railway and highway bridges had sustained some recent damage, and that there had been another break in protection further upstream from the 1931 works. He concluded:

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[499] Resident Engineer Palmerston North to District Engineer Wellington, 10 June 1941, attached to District Engineer Wellington to Under Secretary for Public Works, 12 November 1941. Works and Development Head Office file 48/106. Supporting Papers #647-652.

[500] Resident Engineer Palmerston North to District Engineer Wellington, 10 June 1941, attached to District Engineer Wellington to Under Secretary for Public Works, 12 November 1941. Works and Development Head Office file 48/106. Supporting Papers #647-652.

> The present position of lack of any control or responsibility makes the position very difficult, and no heavy financial assistance from local interests is likely. I would particularly urge that the County and Borough be approached to contribute towards [the closing of the new channel].[501]

Cabinet approval was necessary for any Government contribution. In the papers for Cabinet, the Public Works Department proposed a £2 for £1 local contribution for the closing of the new channel[502], while Treasury argued for the standard subsidy for flood damage of £1 for £1[503]. The Treasury recommendation was approved[504]. However, very little was immediately done, and when the Minister of Public Works visited Otaki in May 1942 he was lobbied hard to do something that would demonstrate that the Government cared for the residents of the Borough and for the settlers[505]. Some remedial works were then carried out.

In 1943 Grant provided a further report on the state of the Otaki River:

> It was generally agreed that the diversion cuts constructed through Ryder's and Lethbridge's properties were working reasonably satisfactorily and that the groynes constructed by Mr Ryder above the upper cut were rather helping than hindering development of that cut.

However, the changes that had been made were having consequences further downstream:

> At the bottom end of the lower cut and below the stopbank, the water divides, some passing down the old channel on the southern bank, and the remainder into a channel on the northern bank. At the present time the greater part of the water is flowing along the northern bank adjacent to the township and particularly affecting the Rangiouru settlement. During the period that I have been associated with work on this river, the river has more often than not been flowing along the northern bank, but has on occasions been largely diverted to the southern bank.
>
> Serious erosion has taken place from Ryder's cowshed down to the Rangiouru settlement over a period of years…. At the same time the banks here are quite low, and during a flood overflow occurs in the direction of the town and the Rangiouru settlement. It is certainly desirable to check this erosion, and with this end in view I made an inspection of the river bed from Ryder's down to near the mouth, in company with several old settlers, and suggestions were made to endeavour to deviate the river from a point opposite Ryder's cowshed into old channels running down the centre of the river bed, which is very wide between there and the sea. From the inspection it appeared that there was good chance of diverting a fair portion of the river down one of these old channels and thus giving relief to the northern bank. As the diversion cuts

[501] Resident Engineer Palmerston North to District Engineer Wellington, 9 October 1941, attached to District Engineer Wellington to Under Secretary for Public Works, 12 November 1941. Works and Development Head Office file 48/106. Supporting Papers #647-652.
[502] Engineer in Chief to Minister of Public Works, 20 November 1941. Works and Development Head Office file 48/106. Supporting Papers #653.
[503] Secretary for the Treasury to Minister of Finance, 2 December 1941. Works and Development Head Office file 48/106. Supporting Papers #654-655.
[504] Decision of Cabinet, 19 December 1941, on Secretary for the Treasury to Minister of Finance, 2 December 1941. Works and Development Head Office file 48/106. Supporting Papers #654-655.
[505] Minister of Public Works to Under Secretary for Public Works, 28 May 1942. Works and Development Head Office file 48/106. Supporting Papers #656-657.
Unknown newspaper (illegible), 28 May 1942. Copy on Works and Development Head Office file 48/106. Supporting Papers #658.

> put in the river above have possibly affected the river lower down to some extent, it seems reasonable that most of the cost should be borne by the Government from the existing [financial] authority, and I accordingly agreed to carry out the diversion work to an estimated maximum expenditure of £150….
>
> I advised the settlers that in the event of any further work being required below Ryder's, that they would have to be prepared to make a further contribution, as it did not appear to me to be reasonable to expect the Government to put in diversion cuts all the way from Ryder's down to the mouth.[506]

The continuing problems with the Otaki River, and the threat the river posed to Otaki Borough and its surrounds, resulted in a major decision made by the Crown in February 1945. This was that a new mechanical excavator, known as a tower excavator, would be imported from the United States of America, and given an extensive performance trial in the lower Otaki River:

> It is proposed that this trial would comprise the excavation of about 500,000 cubic yards in the lower Otaki River bed at a cost of about £10,000. Some of this work would not be profitable, some would be used for training operators and testing methods of works. For these reasons a substantial proportion of the cost would be borne by the PW fund direct, but for the balance the Soil Conservation and Rivers Control Council would subsidise the Manawatu Catchment Board on a £2 for £1 basis….
>
> It is generally envisaged … that the greater part of the work would comprise the excavation of a large central channel carved boldly though the islands and channels. This channel could be at least 200 ft wide and as deep as the present channel or deeper, and extending for about 2½ miles downstream below the highway bridge. There would have to be some additional works such as bell-mouthing at the upper end to gather all flow from under the Otaki River bridge, also embankments to prevent overflow returning to the old channel. The [excavator] unit can dump on one bank only, which in this case would probably be the northern bank; an embankment should be built on the southern side to protect the area in the vicinity of Lethbridge's house, and it is proposed then that this should be done with the excavator itself, by trying out what is involved in turning the unit round on the job.[507]

The use of this large-scale excavator would represent a step-change up in terms of what could be accomplished in a cost effective manner.

The Minister of Works, Bob Semple, took the credit for the decision to conduct the trial on the Otaki River. Writing to the local Member of Parliament, he explained:

> This is to confirm that I have given instructions for the commencement of the control works on the Otaki River between the Railway Bridge and the sea….
>
> I have decided that the first of these machines to go into operation will commence work on the Otaki River where conditions are not only urgently requiring attention but

[506] Resident Engineer Palmerston North to District Engineer Wellington, 6 July 1943. Works and Development Head Office file 48/106. Supporting Papers #659.
[507] Chairman Soil Conservation and Rivers Control Council to District Engineer Wellington, 22 February 1945. Works and Development Head Office file 48/106. Supporting Papers #660.

> appear to be eminently suitable for execution by machines of the tower excavator type….
>
> The decision has been made to commence at the upper end of the training works and to proceed downstream….
>
> The machine is designed to produce one very high stopbank and is incapable of forming double banks, i.e. one on each side of the river, except when the machine is reversed and traversed back along the other side. In the case of the Otaki River, and this fortunately applies to many other shingle-carrying streams in New Zealand where river training works have to be carried out, high natural ground on one side makes it practicable to carry out the works with one passing of the machine forming an artificial bank on one side only. It is probable that with a bulldozer or two and perhaps certain other auxiliary equipment we may be able to obtain ideal results.[508]

The Public Works Department's Head Office file for the Otaki River flood works contains no mention at any time up to 1945 that Maori or Maori Land might be affected by the changes occurring to the Otaki River. The engineers were engaged in discussing the river only with Horowhenua County Council, Otaki Borough Council, Otaki River Board (while it operated) and European settlers whose riverbank lands were being cut into or threatened by the river.

Because the excavation of the new channel was a joint exercise between the Public Works Department and the Manawatu Catchment Board, albeit with the Department driving the project, its implementation is discussed in the next section of this report governing Crown and local authority activities during the Catchment Board era (1944-1988).

5.5 Catchment Board river control activities in waterways

With the passing of the Soil Conservation and Rivers Control Act 1941, the Crown committed to a greater degree of involvement in flood protection works than it had been prepared to countenance in the 1920s and 1930s.

While the change in thinking was not apparent at the time the Labour Government came to power in 1935, a momentum for change did develop over the next five years. A committee in 1939 proposed the new legislation, which was predicated on a catchment wide perspective to rivers management rather than the individual property perspective that had dominated the common law prior to then.

Grant had been involved in the development of the policy change away from a laissez faire approach of letting private landowners or drainage boards be responsible in the first instance

[508] Minister of Works to LG Lowry MP, undated (February 1945). Works and Development Head Office file 48/106. Supporting Papers #661-662.

for stopbanking, to instead viewing such flood protection measures as a community asset. The Government had decided in Cabinet in 1939, when flood damage on the Manawatu River occurred that year, that:

> The circumstances of individual landowners in the various areas should be taken into account. It is understood that some of the farmers are well able to contribute the whole of the cost of the remedial measures proposed on their land, and in those cases they will be expected to find the full cost.[509]

This is a policy that might have appealed to a Labour Government, as it had an element of progression similar to higher rates of general income taxation to be paid by higher earners with a greater ability to contribute. However, Grant favoured a re-think of that approach:

> A stopbank is essentially a community defence against a common enemy and the cost of construction and repairs should be borne by the community receiving benefit. In this case the stopbank should be deemed the property of the Manawatu-Oroua River Board, and the finances of this body, and not of the individuals, should be taken into account in assessing the measure of State assistance.
>
> If a uniform subsidy of £2 for £1 is considered too generous, it would be preferable to grant a uniform subsidy of a smaller amount.
>
> Generally any one public work, whether a road or a bridge or a stopbank, receives a subsidy uniform for the whole job irrespective of the varying financial resources of the landowners concerned.
>
> The policy to be written into the proposed Rivers legislation would be to consider the works as a whole, and any subsidy would be to the Controlling Authority only….
>
> In view of the district value of the work, it would be more equitable for the cost to be borne by the district in proportion to the rates paid.[510]

The Engineer in Chief then replied to the Minister:

> I have examined the matter carefully with a view to giving effect to the principles set forth [in the Government policy]. I am afraid it is going to be very difficult to arrange payment on this basis. The work consists almost wholly of the renovation of various stopbanks, which are essentially a community defence against flooding, and it would seem reasonable that the cost of construction and repairs should be borne by the community receiving benefit. In some cases settlers who are adjacent to the river and whose land is directly affected would, if they were in a financial position be called on to pay for the cost of renovating the bank from which settlers in the lower country actually derived more benefit than they did themselves. It would be readily understood that since in the majority of instances land adjacent to the river bank is higher than that more remote the water reaching a stopbank will recede from properties adjacent to the river itself more quickly than from the further away and more low lying portions….
>
> To ascertain the exact financial position and ability to pay of every settler concerned, together with the degree of benefit he was receiving, and to ensure reasonable equity, will be very difficult. We have previously provided assistance in this area, and similarly in other parts of New Zealand, on the basis of subsidies to the local authority, and the

[509] Minister of Public Works to Under Secretary for Public Works, 21 September 1939. Works and Development Head Office file 48/270. Supporting Papers #853.
[510] Resident Engineer Palmerston North to District Engineer Wellington, 12 October 1939. Works and Development Head Office file 48/270. Supporting Papers #854-856.

> legislation proposed for dealing with rivers would under present conditions be to consider the works as a whole and to subsidise the controlling authority only, who in turn would distribute the cost among the various individuals comprising the River District on the basis of the relative classification of the land involved….
>
> Under the circumstances I shall be glad if you will reconsider this matter, with a view to treating it as a direct subsidy to the River Board.[511]

The 1941 Act provided for the setting up of regional Catchment Boards. These can be thought of as a 'half-way house' between direct action by central Government, and action by local authorities such as County Councils and River and Drainage Boards. This is because territorially the area controlled by a Catchment Board was greater than the areas controlled by existing local authorities. In addition, the membership of Catchment Boards was a mix of locally elected representatives and central Government officials.

Manawatu Catchment Board was constituted in August 1943 when the Manawatu Catchment District was defined[512] and it was declared that the Board would consist of ten locally-elected members and five members appointed by central Government[513]. The first election was held in May 1944[514], non-elected members were appointed in June 1944[515], and the first Board meeting was held in July 1944[516]. The appointed members were officials holding the following positions:

- Conservator of Forests, State Forest Service, Palmerston North
- Director, Grasslands Division, Department of Scientific and Industrial Research, Palmerston North
- District Field Inspector, Department of Lands and Survey, Feilding
- Fields Superintendent, Department of Agriculture, Palmerston North
- District Engineer, Public Works Department, Wellington

The Rangitikei Catchment Board was appointed at a similar time, being established during 1944-1945[517].

At the national level, the 1941 legislation established a Soil Conservation and Rivers Control Council. The Council reported to and was responsible to the Minister of Public Works, and

[511] Engineer in Chief to Minister of Public Works, 13 November 1939. Works and Development Head Office file 48/270. Supporting Papers #857-858.
[512] *New Zealand Gazette* 1943 pages 973-974. Supporting Papers #1468-1469.
[513] *New Zealand Gazette* 1943 page 975. Supporting Papers #1470.
[514] *New Zealand Gazette* 1944 page 275. Supporting Papers #1472.
[515] *New Zealand Gazette* 1944 page 689. Supporting Papers #1473.
[516] *New Zealand Gazette* 1944 page 839. Supporting Papers #1474.
[517] D Alexander, *Rangitikei River and its tributaries historical report*, November 2015, Wai 2200 #A187, pages 377-378.

administration services were provided by Public Works Department staff. Its membership was a mix of outside representatives of various interest groups and senior Government officials. There were six members:

- The Engineer in Chief of the Public Works Department
- One other official from the Public Works Department
- The Under Secretary for Lands (head of the Department of Lands and Survey)
- One representative of "agricultural and pastoral interests"
- Two representatives of "local authorities, River Boards, Land Drainage Boards and Catchment Boards"

The first Chairman was the Engineer in Chief of the Public Works Department[518]. The first two representatives of local authorities and Boards both lived in the Inquiry District; they were Johannes (John) Callesen, chairman of the Manawatu-Oroua River Board, and George Alexander Monk of Reikorangi, mayor of Horowhenua County Council[519].

From the above outline, it is clear that the Government would be maintaining a very strong Crown influence on proceedings. The beneficiaries of the new administrative structure were readily apparent, being the local authorities with an interest in waterway management, and "agricultural and pastoral interests". No place was provided in the new structure for any Maori "interests". Nor was there any statutory requirement that Maori were to be consulted.

The effect of the new structure was to strengthen both the Crown contribution and local community involvement. Local involvement had been a weakness prior to the legislation, with the specialised River and Drainage Boards often too small and under-resourced to meet the needs created by regular flooding, and County Councils often unwilling to get involved while waterway boards existed. The Crown had shifted its thinking and become more amenable to providing subsidies. The establishment of Catchment Boards gave the local community involvement a greater professionalism and more heft to prepared flood protection schemes, while the national Council had the resources to vet and approve the quality of locally-developed schemes. However, the result was that engineers usually conversed at a technical level only with engineers, river control for drainage and flood protection became the predominant purpose for waterways in the Crown's mindset, and there were no checks and balances to incorporate other purposes and values of rivers.

In the immediate aftermath of the passing of the 1941 legislation, there was a plethora of local organisations, and much potential for overlap. There was even an additional

[518] *New Zealand Gazette* 1942 page 1629. Supporting Papers #1466.
[519] *New Zealand Gazette* 1942 page 1575. Supporting Papers #1465.

administrative option provided, with Section 11 of the 1941 Act allowing for the establishment of Drainage Districts under the direct control of Catchment Boards. The Soil Conservation and River Control Council's policy was to encourage amalgamation, effectively wanting the old River Boards and Drainage Boards to be folded into the new Catchment Boards. Not unsurprisingly the Manawatu Catchment Board agreed. In one of his first reports concerned with a flood protection scheme for the lower Manawatu River (discussed below), the Board's engineer wrote:

> The river at present is controlled by the Manawatu-Oroua River Board from the mouth as far as Longburn Railway Bridge, and the Palmerston North-Kairanga River Board controls a length of eight miles through the city of Palmerston North. The Makerua Drainage Board controls 28 miles of stopbanks on its side of the river, an anomaly which the passage of time only makes more ridiculous.
>
> If the Manawatu Catchment Board is to adopt a policy of flood control from the mouth to Ashhurst, and carry out a scheme of work, then it must assume full control. The Manawatu-Oroua River Board and the Palmerston North-Kairanga River Board should be abolished, and the Makerua banks removed from the control of the Makerua Drainage Board…. The [Catchment] Board has already affirmed the principle of abolishing the internal drainage boards….[520]

However, while the Palmerston North-Kairanga River Board stayed silent, the Manawatu-Oroua River Board strenuously and publicly disagreed with the idea of being abolished. Local politics and sensibilities tended to mean that change could not occur in a hurry. The Manawatu-Oroua River Board continued in existence until 1953[521].

5.5.1 Manawatu River

When the Manawatu Catchment Board was formed in 1944, the Crown had to all intents and purposes finished the construction of its Whirokino Cut project, and was amenable to moving on to other components of Grant's scheme. However, local opinion was not entirely supportive. In 1944 Alfred Seifert wrote an influential assessment for two local newspapers that compared Hay's "comprehensive" 1925 scheme (which had been formulated around diversion of the river through a Moutoa channel) and Grant's 1937 scheme (which was formulated around continued use of the existing river's course, albeit straightened and stopbanked, with Moutoa as a ponding area during times of flood). While stating that he believed that Hay's approach provided the greater community benefit, his greater concern was that the Manawatu-Oroua River Board had vacillated between the two, had not asked

[520] Preliminary report on a flood control scheme for the Lower Manawatu River, 9 July 1945, attached to Chairman Manawatu Catchment Board to Minister of Works, 23 July 1945. Works and Development Head Office file 48/270. Supporting Papers #874-884.
[521] *New Zealand Gazette* 1953 page 467. Supporting Papers #1475.

hard questions of Grant's scheme, and was being ineffectual[522]. An editorial in one of the newspapers shared his concerns[523].

It was left to the newly-appointed Catchment Board to pass judgment. In July 1945 the Board supplied the Minister of Works with "a preliminary report on a flood control scheme for the lower Manawatu River"[524]. This report had been prepared by the Catchment Board's engineer, DJB Halley. He argued that the stopbanks that already existed offered protection against only medium-sized floods, and that further intensive development of the district's farmland was hampered by lack of protection against larger floods. Any scheme had to achieve the following:

1. It should cause the minimum interference with farming operations.
2. Flood levels should be kept down to the minimum.
3. Duration of flooding should be reduced by rapid discharge.
4. Ponding should be confined to areas useless for grassland farming.
5. The cost should be reasonable having regard to the value of the benefits received.
6. The scheme should have the general support of the local bodies and settlers concerned.
7. It should be designed for the maximum flood.

A future scheme of works would benefit from the existence of the Whirokino Cut and the greater working capacity of modern excavation and earthmoving machinery[525].

Halley favoured adoption of Hay's scheme, with some amendments:

> It would be most unwise and uneconomical to carry out any scheme that does not aim at giving full and complete flood protection. Therefore I would not recommend the adoption of Hay's scheme exactly as he proposed. I do think, however – in fact I am certain of it – that Hay had the right idea when he proposed a major river diversion through the Moutoa. There can be no question about the fact that the main essential in the lower Manawatu is to shorten the river's course to the sea, and a short cut through the Moutoa is the only feasible way of doing it.

He proposed a five year programme of works split into three stages:

> Stage One … is the construction of a major river diversion through the Moutoa, with the necessary stopbanking, together with a realignment of the river through the Opui bends.

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[522] *Manawatu Evening Standard*, 14 April 1944 and 15 April 1944. Copy on Works and Development Head Office file 48/270. Supporting Papers #869 and 870.
Manawatu Times, 15 April 1944 and 17 April 1944. Copy on Works and Development Head Office file 48/270. Supporting Papers #871 and 872.

[523] *Manawatu Times*, 19 April 1944. Copy on Works and Development Head Office file 48/270. Supporting Papers #873.

[524] Preliminary report on a flood control scheme for the Lower Manawatu River, 9 July 1945, attached to Chairman Manawatu Catchment Board to Minister of Works, 23 July 1945. Works and Development Head Office file 48/270. Supporting Papers #874-884.

[525] Preliminary report on a flood control scheme for the Lower Manawatu River, 9 July 1945, attached to Chairman Manawatu Catchment Board to Minister of Works, 23 July 1945. Works and Development Head Office file 48/270. Supporting Papers #874-884.

Stage Two would be the completion of stopbanking as far as Longburn, to carry the maximum flood, the excavation of a new outfall for the Oroua River, and necessary extra stopbanking to give protection to the Taonui Basin.

Stage Three would be completion of stopbanking from Palmerston North to Ashhurst and the elimination of the main bends in the river by major cut-offs.

While it is true to say that river control is more of an art form than a science, there are nevertheless the following fundamental points that cannot be ignored:

1. There is practically no alteration which can be made to any part of a river which does not cause an alteration in the river's regimen above and below the alteration.
2. In general, works which increase the rate of discharge should not be undertaken until the river below is capable of carrying the new discharge – that is to say, the proper place to commence a scheme of control is at the mouth.
3. The effect of a cut-off is to benefit the land above the cut-off, and most of the land along the cut-off. The land at the lower end and below the cut-off will generally be subject to increased flooding and damage if measures are not taken to prevent this.
4. The effect of confining floodwaters below stopbanks is: (a) to increase the rate at which a flood wave travels downstream, (b) to increase water levels during floods, (c) to increase the maximum discharge at all points downstream, (d) to decrease the surface slope, and thereby increase flood levels upstream.

The above facts are mentioned to show that flood control works must proceed in an orderly fashion, commencing from the mouth.[526]

The scheme Halley proposed would have to cater for a flood of 180,000 cubic feet per second, plus a further 2 feet height on the stopbanks referred to as 'freeboard'. Once the new Moutoa diversion channel had been excavated, the whole of the river would be turned into it by the construction of a stopbank across the old channel. This would mean the old channel only had to carry the flood waters from below that diversion point. The diverted waters would help to scour out the Moutoa channel deeper. The Stage One cost would be £278,000[527].

Halley had bracketed abolition of the existing River Boards with his proposed scheme of works, which naturally offended the Manawatu-Oroua River Board in particular, and this Board chose to express opposition to the proposed scheme[528]. His scheme also had to get past Grant, who by then held the position in the public service of being the principal engineering advisor to the Soil Conservation and Rivers Control Council; the Council was

[526] Preliminary report on a flood control scheme for the Lower Manawatu River, 9 July 1945, attached to Chairman Manawatu Catchment Board to Minister of Works, 23 July 1945. Works and Development Head Office file 48/270. Supporting Papers #874-884.
[527] Preliminary report on a flood control scheme for the Lower Manawatu River, 9 July 1945, attached to Chairman Manawatu Catchment Board to Minister of Works, 23 July 1945. Works and Development Head Office file 48/270. Supporting Papers #874-884.
[528] Clerk Manawatu-Oroua River Board to Chairman Soil Conservation and Rivers Control Council, 25 August 1945. Works and Development Head Office file 48/270. Supporting Papers #885-886.

effectively the gatekeeper for the issuing of Crown subsidy monies. Grant, however, was not opposed in principle to what Halley had designed. He reported to the Council:

> I recommend that this scheme be approved in general outline, with the important modification that the main cut [does] not extend beyond about the 4 mile peg….
>
> The scheme is designed for 180,000 cusecs, which is satisfactory, and the layout is generally adequate to cope with this flow.
>
> Degrading of the riverbed above the cut … is the most serious feature and warrants the alteration abovementioned, and most of the comment is about this feature. If the main cut were excavated for the full length proposed, there would serious degrading of the bed of the river immediately upstream. The extent of this is difficult to determine, but I would say that the bed would be lowered by an amount of the order of 10 ft. This would be dangerous and have serious consequences, and the river may be very difficult to hold, particularly with the experience of bank erosion in this locality during the last few years. Extensive protection works would be necessary, and therefore this development should be avoided until such protection works are completed and consolidated.
>
> It is fairly obvious that the upper end of the cut would deepen rapidly…. [The depth and velocity of water during a flood] would undoubtedly cause scour, and as such floods are so frequent the lowering of the lip [i.e. the bed of the river at the point of entrance into the cut] would be very rapid….
>
> To avoid this it is recommended that the scheme be modified by allowing the cut to go up only to about the 4 mile peg. This would provide quick getaway for floodwater overflowing from the Manawatu River upstream, and would be generally on the lines proposed in Mr Hay's scheme….
>
> The Catchment Board scheme, or as amended by the alteration above, would give undoubted advantages in the lower river by lower flood levels and quicker dewatering effect. The Catchment Board scheme would give greater low water benefit in the lower river as the main Manawatu River would be eliminated from Poplar down to below Piaka.[529]

Grant's comments were forwarded to the Catchment Board, with the additional note that "the Council is unable to make any commitment as to subsidy until further information is available"[530].

It took a further eight months of local discussions before a meeting of local and drainage authorities convened by the Catchment Board in July 1946 passed a resolution of support for Halley's scheme as modified by Grant's amendments[531]. This decision meant that more detailed surveys and design work could proceed. However, that work took over four years,

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[529] Engineer to the Council to Chairman Soil Conservation and Rivers Control Council, undated (September or October 1945). Works and Development Head Office file 48/270. Supporting Papers #887-88.

[530] Chairman Soil Conservation and Rivers Control Council to Chairman Manawatu Catchment Board, 8 October 1945. Works and Development Head Office file 48/270. Supporting Papers #889-890.
Manawatu Daily Times, 17 October 1945. Copy on Works and Development Head Office file 48/270. Supporting Papers #891.

[531] *Manawatu Daily Times*, 26 July 1946 and 27 July 1946. Copy on Works and Development Head Office file 48/270. Supporting Papers #892 and 893.

during which minor floods and local disputes continued. Only in November 1950 was a new scheme of work sent by Manawatu Catchment Board to the Soil Conservation and Rivers Control Council[532].

The scheme was designed to accommodate floods of 150,000 cusecs in the Manawatu above the Oroua River, and 25,000 cusecs in the Oroua River; these flows were the calculated 100 year frequency. Any excess would be diverted into the Taonui Basin ponding area. The Moutoa channel had become a spillway with a lesser capacity (though still large at 115,000 cusecs), the entrance to which would be controlled by floodgates. This meant that the Manawatu River downstream of the spillway entrance would not be blocked off and would continue to carry floodwaters. The control by the floodgates of the amount of water allowed into the Moutoa spillway would allow irrigation of the Government flax plantation. The scheme would take fifteen years to complete at an estimated cost £1.13 million. The Catchment Board sought a £3 (Crown contribution) for £1 (local contribution) subsidy[533].

The Soil Conservation and Rivers Control Council responded in December 1950, approving the scheme "in principle as to technical details, subject to comments made hereunder and the modifications that may be required after further investigation of details". The comments concerned the need for a higher stopbank between the Oroua River and the spillway entrance, the need for further work on the spillway entrance design, allowing additional water to flow round the Foxton Loop, and the production of an economic report showing the economic benefits that would result from the scheme[534].

Even then it took a further two years before the Crown eventually agreed to provide a subsidy for the scheme. It was only when a major flood, subsequently calculated to be 152,000 cusecs in size, occurred in January 1953 that minds were concentrated enough for Cabinet to approve a £3 for £1 subsidy.

There is no indication in the historical records that tangata whenua took part, or were invited to take part, in the discussions over many years leading up to the decisions to go ahead with the lower Manawatu flood protection scheme. They had no voice, and were given no opportunity to express an opinion.

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[532] Chief Engineer Manawatu Catchment Board to Chairman Soil Conservation and Rivers Control Council, 9 November 1950. Works and Development Head Office file 48/270. Supporting Papers #894.
[533] Synopsis of Catchment Board's proposal, prepared for Soil Conservation and Rivers Control Council, undated (October 1951). Works and Development Head Office file 48/270. Supporting Papers #895-897.
[534] Chairman Soil Conservation and Rivers Control Council to Chairman Manawatu Catchment Board, 15 December 1950. Works and Development Head Office file 48/270. Supporting Papers #898-900.

5.5.2 Oroua River

In 1973 a paper was prepared setting out what flood protection works had been constructed along the Oroua River, and what further works could be undertaken. Because the river rises in the Ruahine Range and its catchment also includes eroding greywacke slopes, it carries a large amount of silt, shingle and other material down on to the lowlands. At about Awahuri the gradient of the river flattens, shingle is deposited in greater quantities, and the river starts to meander more:

> Stopbanks were constructed in the early 1950s based on a design discharge of 25,000 cusecs before spillway discharge, using as a basis the very sparse and skimpy data available at the time.
>
> Partly as an economy the stopbanks over the reach in question (Kopane - Awahuri) were built along old meander terraces and above old lagoons, thus obviating the need for a large number of channel blocks and reducing the height of the stopbanks required. This meant, however, that the distance between the banks had to vary between 3.5 chains at Kopane Bridge to about 32 chains upstream of the spillway, and with considerable variation in width between these two values.

Furthermore, there was a tendency during small to medium floods for shingle to be deposited, which had reduced the capacity of the channel between the stopbanks. The proposed solution was to construct some low internal stopbanks between the existing stopbanks so that small floods could be confined to a narrower channel, rather than spread out across the full width between the existing stopbanks. These internal banks would provide for a flood capacity of 10,000 cusecs (return period of approximately 5 years), before being overtopped, in which case the existing stopbanks with 20,000 cusecs capacity (return period of approximately 25 years) would then provide the protection against flooding of farmland:

> [Within the proposed inner stopbanks] the existing river channel is to be left intact. The river banks are well established with plantings of willow trees which have recently been layered to further propagate and establish them. Any interference with these banks can only introduce weaknesses in the protection with possibly serious results in view of the extra loading which will be placed on these river banks by containing the flow to the extent proposed.[535]

The case for inner stopbanking between Awahuri and Kopane was put to the Soil Conservation and Rivers Control Council, which agreed to provide a 2:1 subsidy. The Council added:

> While the proposal will improve the efficiency of the channel over that reach and reduce the tendency for aggradation, the silt load carried by the river will persistently trouble the whole river system until erosion of the upper catchment is reduced.

[535] Chief Engineer to Chairman, 3 August 1973. Manawatu Catchment Board file 1/16. Supporting Papers #1663-1669.

> Council's attention was drawn to the worthwhile achievements of the Pohangina-Oroua catchment scheme, and that it was desirable to extend its coverage.[536]

5.5.3 Waiwiri Stream

Waiwiri Stream drains from the lake that is variously known as Waiwiri, Muhunoa and Papaitonga. The Stream passed through a large wetland area, and was the site of many pa tuna. In late 1946, the first lobbying by settlers for drainage works to be carried out in the Waiwiri catchment began with an approach to a local officer of the Public Works Department. He reported:

> From the walk-over inspection which I made it appeared to be quite evident that the stream was in need of either a complete cleaning out or cleaning out combined with a regrading in order to give more effective drainage to some of the adjacent areas of swampy land.
>
> In previous years I understand that the stream was cleaned out by local Maoris under the supervision of the Native Department, this work being mainly carried out during the depression.
>
> From the information supplied by Mr McFarlane it did not appear that there was much Native land affected at the present time, most of the property abutting the stream appearing to be of European ownership. I understand that Natives still have definite rights over the Papaitonga Lake, and that they would not be agreeable to the outlet of the lake being lowered to affect the lake level.
>
> From the flow in the stream, it appeared that a regrading from the sea would be possible but it would not be necessary to carry out this regrading up to the outlet in order to give improved drainage to a considerable area of swampy country.
>
> Although I did not walk over the whole length of stream, it was evident that there would be considerable difficulty in carrying out improvements with mechanical plant even during the summer months. There are no roads leading into the stream, only tracks, and these are very rough in places so that it possibly might be necessary to take plant down the beach from Hokio. In any event it would be necessary to commence at the beach in order to be able to carry out the regrading work effectively. Over a considerable portion of this length the stream has swampy banks and there would probably be considerable difficulty on some sections in working a dragline close enough to the stream to be effective. There is no doubt that the job would be of considerable magnitude, but it would be impossible to give an even approximate estimate without carrying out a survey of the whole stream….
>
> The total area of swampy land affected is approximately 600 acres, but it is difficult to say how great an improvement could be affected until the survey is completed.[537]

Just what were the "rights" that Maori held at Lake Papaitonga were not explained by the Resident Engineer, and have not been discovered during research for this report. On considering this official's report, the Soil Conservation and Rivers Control Council decided

[536] Director of Water and Soil Conservation to Chief Engineer, 23 November 1973. Manawatu Catchment Board file 1/16. Supporting Papers #1670-1671.
[537] Resident Engineer Palmerston North to Clerk, 12 December 1946. Manawatu Catchment Board file 19/11. Supporting Papers #1857-1859.

that the matter was "not of great urgency" and its merits were a matter for Manawatu Catchment Board to determine[538].

No action seems to have been taken by the Catchment Board until it received advice from Horowhenua County Council in 1949 that settlers had signed a petition calling for the establishment of a Waiwiri Drainage District, to be administered by the County Council in terms of the Counties Act[539]. This drew attention to the duplication with the provisions in the Soil Conservation and Rivers Control Act 1941, where a drainage district could be established and administered by a Catchment Board. The Board sought the advice of the Soil Conservation and Rivers Control Council:

> I should be pleased to receive the comments of the Council on the whole question of the formation of drainage districts under the Counties Act. The area of the proposed drainage district is 7,700 acres.
>
> This Board has hitherto placed no obstacle in the way of the formation of these drainage districts, as the Board considered that the administration of some could very well be left in the hands of County Councils. Also this Board, at the present time, is not in a position to supply the necessary engineering service to carry out the work itself.
>
> However, the position has arisen with the number of drainage districts in existence or proposed that this Board could consider setting up the requisite staff to deal with drainage throughout its district.[540]

The national Council replied:

> The Council would prefer that any new drainage districts should be formed under the direct control of the Catchment Board, but if this is likely to be strongly objected to by the County Council then there is no objection to the formation of a drainage district under the County, as proposed.[541]

The Catchment Board then decided that it "would be prepared" to form a drainage district under Section 11 of the 1941 Act[542]. This resulted in the County Council calling a meeting of the petitioners, where the settlers and the Council jointly agreed to the establishment of a drainage district under the 1941 Act[543]. Nine settlers, all Europeans who said they were "owners or occupiers", signed the request for a drainage district.

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[538] Resident Engineer Palmerston North to Clerk, 12 December 1946. Manawatu Catchment Board file 19/11. Supporting Papers #1857-1859.
[539] County Clerk Horowhenua County Council to Clerk, 22 March 1949. Manawatu Catchment Board file 19/11. Supporting Papers #1860.
[540] Secretary to Chairman Soil Conservation and Rivers Control Council, 30 March 1949. Manawatu Catchment Board file 19/11. Supporting Papers #1861.
[541] Chairman Soil Conservation and Rivers Control Council to Secretary, 14 April 1949. Manawatu Catchment Board file 19/11. Supporting Papers #1862.
[542] Secretary to County Clerk Horowhenua County Council, 18 May 1949. Manawatu Catchment Board file 19/11. Supporting Papers #1863.
[543] County Clerk Horowhenua County Council to Secretary, 19 September 1949. Manawatu Catchment Board file 19/11. Supporting Papers #1864.

Prior to a meeting with the settlers concerned, an Assistant Engineer for the Catchment Board prepared a report:

> The Waiwiri Stream drains Lake Papaitonga and a large area of swamp between the lake and the sea. The area of swamp to the south of the Waiwiri drains partly into the Ohau River. An old settler, Mr Rant, states that the original outlet from Lake Papaitonga was by means of an old watercourse through his property and into the Ohau. Since the opening of the Waiwiri Stream the flow to the Ohau is much reduced and at present is being carried by 800 feet of 9" pipe laid along the watercourse on Mr Rant's property together with a small open drain about 5 chains to the east on Mr Burnell's property. There would thus appear to be a definite connection between the two watersheds with the possibility that in time of flood a direct flow from the Waiwiri to the Ohau takes place. No levels have been taken, but I consider there is a slight fall from the Waiwiri to the Ohau.
>
> The evidence seems to be in favour of a combined scheme. The Ohau scheme will receive direct benefit from any improvements carried out at Waiwiri, and the land between the two channels will receive approximately equal drainage benefits from each scheme …. The setting up of a separate scheme seems rather unwarranted as, apart from the 3 mile length of the Waiwiri Stream only a small portion of drain could be classed as public, say half to one mile, and only … eight property owners are affected.[544]

At the meeting, however, the settlers said they preferred a separate drainage district, and this was accepted by the Catchment Board[545].

The work required was the deepening and widening of the Waiwiri Stream, with straightening where necessary, which would allow a flood discharge of 180 cusecs. This was "more than is necessary for drainage purposes, but the main advantage is a lowered water table". Ground water levels could be lowered by three feet, and so "improve over 1,000 acres" of swamp land. The total estimated cost was £1350, and a 1:1 subsidy was sought from the Soil Conservation and Rivers Control Council[546]. The application was approved[547].

Although the details are sketchy, it would seem that 11 properties were affected and would be rated for a contribution. Of these 11, six were owner-occupied by Europeans, one was occupied by a Crown lessee, and four were Maori Land occupied by European lessees[548]. There is no evidence that the owners of the four Maori-owned properties were consulted about inclusion in the Drainage District; all discussions the Catchment Board had were with the European owners or occupiers.

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[544] Assistant Engineer Mansell to Chief Engineer, 2 October 1949. Manawatu Catchment Board file 19/11. Supporting Papers #1865-1866.
[545] Notes of meeting, 31 October 1949. Manawatu Catchment Board file 19/11. Supporting Papers #1867.
[546] Chief Engineer to Chairman Soil Conservation and Rivers Control Council, 15 August 1950. Manawatu Catchment Board file 19/11. Supporting Papers #1868-1869.
[547] Chairman Soil Conservation and Rivers Control Council to Chief Engineer, 15 November 1950. Manawatu Catchment Board file 19/11. Supporting Papers #1871.
[548] Schedule of rateable properties for Waiwiri Drainage District, undated (1950). Manawatu Catchment Board file 19/11. Supporting Papers #1870.

Throughout the 1950s cleaning out maintenance of the Waiwiri Stream continued. In 1959 a small weir was constructed to prevent any lowering of the water level of Lake Papaitonga[549].

5.5.4 Ohau River[550]

As with the Otaki River, some of the problems experienced by landowners on the banks of the Ohau River were a consequence of changes in the steeplands in the upper part of the catchment. A soil conservator writing in 1949 explained:

1) The 1936 storm caused significant deterioration in the condition of certain portions of the catchment, as apparent by (a) numerous rock slides, (b) flash floods, (c) moving shingle, dirtier water.
2) The steeper slopes have the most frequent and extensive slips and the poorest ground cover. A large portion of steep slopes drain into the portion of the catchment from which Levin draws its water.
3) The less steep portions of the catchment appear to have a good ground cover.
4) The slips are slowly colonising, but the rate of slippage appears to almost equal that of colonising under present conditions.
5) While there are deer in the area the numbers have been kept down by deer stalkers. There are goats in the south-western portion of the catchment, and there is a small wild pig population. While all of these must contribute to decreasing the rate of colonisation under present conditions, their damage is not of great direct significance. There are reports of, and I saw plenty of evidence of, opossum damage. This area is reported to be severely opossum infested, and opossums feeding as they do on adult and juvenile foliage must [be] of significance in slowing down colonisation of both new and old slips.[551]

It is likely that this is also a fair description of the state of the adjoining upper catchment of the Otaki River at that time. The downstream consequences of these upper catchment changes included higher flood peaks as water drained more quickly off the steeplands, and increased movement of shingle.

The first flood protection efforts in the Ohau catchment were put in by individual settlers, and in 1943 the Crown provided a small amount of direct assistance which the Minister of Works described as “only a preliminary scheme to give a certain amount of protection until the Catchment Board commenced to function”. Once the Board was up and running, he promised, “major schemes would be carried out under its supervision and control”[552].

[549] Excerpt from report of Chief Engineer for October 1959. Manawatu Catchment Board file 19/11. Supporting Papers #1872.
[550] This section on the Ohau River complements the coverage of the Ohau Scheme in H Potter et al, *Porirua ki Manawatu inland waterways historical report*, August 2017, Wai 2200 #A197, pages 164-168.
[551] District Soil Conservator Palmerston North to Secretary Manawatu Catchment Board, 14 December 1949. Works and Development Wanganui District Office file 96/321000. Supporting Papers #1188.
[552] Minister of Works to Under Secretary for Public Works, 21 October 1943. Works and Development Head Office file 96/321000. Supporting Papers #905.

When the Catchment Board did commence operations, the first works it wanted to construct in the Ohau River were for the protection of the railway line and bridge. The Board explained that the upper reaches of the river had a steep gradient, and this reduced just above the bridge, resulting in shingle deposition which filled the channel. This not only allowed the river to threaten to overtop its banks and flow in a different direction, but also diverted the water flow towards the banks and caused erosion. Work was required to turn the river back towards its usual channel, together with the construction of stopbanks and groynes to keep it in that channel[553].

In November 1947 the Catchment Board's Chief Engineer advised:

> The Ohau River mouth has recently moved considerably south of its normal outlet position. The river is also attacking its east bank near the end of Ohau West Road and has passed its normal extreme limit here. In doing this it has passed the old clay bank area and is now in a sandy area. The houses near the end of the road are thus in some danger from the erosion. The fact that the mouth is now in a southerly position causes extra flooding on farmland up the river, and in particular Mr JW Richardson's property is affected.
>
> It will be necessary to prepare, as soon as staff can be spared, a complete plan for the Ohau, but in the meantime temporary relief can be given by opening up a mouth about 1 mile to the north of the present mouth.[554]

A few months later the Chief Engineer advised that another member of the Richardson family, EA Richardson, was seeking the Board's help to combat saltwater encroachment on to his farmland[555]. EA Richardson was not in fact the owner of the land that was subject to saltwater inundation. He was a lessee of Maori Land. This indicates a feature of Catchment Board records that any reader of those records needs to be conscious of, where the Board was primarily concerned with the occupier of land (who was usually the ratepayer), and less so with whoever might be the owner. European occupiers of Maori-owned land were very willing to lobby the Board for assistance, and the Board discussed river control works directly with them. The extent to which there was an obligation for the Board and the Maori lessors to have direct discussions, especially when control works might be constructed on Maori-owned land, would be a matter for legal interpretation of the terms of any lease. On the basis of the Board records examined for this report, discovery of the terms and conditions of any lease, and consultation with Maori owners of leased land, was not a standard part of Manawatu Catchment Board's operating procedures.

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[553] Clerk Manawatu Catchment Board to Chairman Soil Conservation and Rivers Control Council, 26 July 1946. Works and Development Head Office file 96/321000. Supporting Papers #906.
Manawatu Catchment Board plan PN757, July 1946. Copy on Works and Development Head Office file 96/321000. Supporting Papers #907.

[554] Chief Engineer Manawatu Catchment Board to District Engineer Wellington, 7 November 1947. Works and Development Head Office file 96/321000. Supporting Papers #908.

[555] Chief Engineer Manawatu Catchment Board to District Engineer Wellington, 11 June 1948. Works and Development Head Office file 96/321000. Supporting Papers #909-911.

A control scheme for the 14 mile length of the lower Ohau River was produced by Manawatu Catchment Board in May 1950[556]. It was summarised in the following terms when subsequently submitted to the Soil Conservation and Rivers Control Council for approval:

> River works consist of stopbanking, the cutting off of some meanders, and bank protection from the sea to near the Horowhenua County Council's water race intake. Improvement of the Kuku Stream consists of enlarging and regrading of approximately 1½ miles of minor streams.[557]

When it was examined by Public Works Department engineers, they queried the scheme's statement that a flood in February 1950, with a flow of 15,000 cusecs, was the highest experienced. Departmental records showed that a flood in May of 1940 or 1941 had an estimated flow of 20,000 cusecs, and the height of the State Highway 1 bridge over the river had been based on that flow. One engineer went further, and said that "the possibility of a 30,000 cusec flood cannot be ruled out", as that figure was "in line with conclusions reached for the neighbouring Otaki catchment". Nevertheless the engineers considered that, given the low standard of the proposed works, a design flood of 15,000 cusecs was probably justifiable.

> The scheme generally will co-ordinate the previous attempts of settlers to provide protection on their own properties, and will also incorporate recent works carried out under the minor river works scheme. I recommend that it be approved.[558]

This approval was for the scheme's technical feasibility only. Because it was pitched as a flood protection scheme, rather than as a drainage scheme, it would have to be approved by Treasury and the Cabinet, and therefore required an assessment of its economic feasibility to demonstrate that farming intensification and improvements in farm production would justify the Crown and local ratepayer expenditure[559]. Once the economic report was provided, the Soil Conservation and Rivers Control Council recommended a £2 for £1 subsidy on capital works, and a £1 for £1 subsidy on maintenance works[560]. This was less than the 3:1 subsidy sought by the Catchment Board, which the Council rejected because:

(a). Relatively few property owners are seriously affected by flooding.
(b). Benefits to railways and highways are small.
(c). The scheme does not provide complete protection against flooding.

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[556] Chief Engineer to Chairman, 27 April 1950. Manawatu Catchment Board file 9/3. Supporting Papers #1682-1689.
Secretary Manawatu Catchment Board to Chairman Soil Conservation and Rivers Control Council, 30 May 1950. Works and Development Head Office file 96/321000. Supporting Papers #912.
[557] Soil Conservation Engineer to Soil Conservation and Rivers Control Council, 28 November 1951, approved 1 December 1951. Works and Development Head Office file 96/321000. Supporting Papers #916-922.
[558] Resident Engineer Porirua to District Engineer Wellington, 18 October 1950. Works and Development Head Office file 96/321000. Supporting Papers #913-914.
[559] Chairman Soil Conservation and Rivers Control Council to Chief Engineer, 9 November 1950. Manawatu Catchment Board file 9/3. Supporting Papers #915.
[560] Soil Conservation Engineer to Soil Conservation and Rivers Control Council, 28 November 1951, approved 1 December 1951. Works and Development Head Office file 96/321000. Supporting Papers #916-922.

(d). The ultimate increase in production will be substantial.[561]

It took nearly a year before Treasury provided its advice for Cabinet, supporting the recommended subsidy on capital works, though not any subsidy on maintenance works[562]. The scheme was approved by Cabinet in March 1953[563].

The lower rate of subsidy than hoped for was a major blow for the Catchment Board and for local ratepayers. Subsequently it was explained:

> Because of the lower subsidy there was not much enthusiasm for the scheme among the Ohau farmers, and the Catchment Board was unable to press ahead with it.
>
> The scheme was reconsidered by the Catchment Board in 1965 and on August 12th a revised scheme and land classification was presented to the farmers who voted against the scheme proceeding.[564]

The intention of the 1950s proposed scheme that the Kuku Drainage Board's works would be fully incorporated into the scheme had to be abandoned. The Kuku Drainage Board itself was disbanded, and the Drainage District abolished, in 1961[565]. From this date drainage in the Kuku catchment became the responsibility of Manawatu Catchment Board.

In November 1966 a petition was presented to the Catchment Board asking for a new scheme to be prepared[566]. The petition was signed by 18 persons, only one of whom (W Kuiti) had a recognisably Maori name; whether the signatories were owner/occupiers of European land or were lessees or owners of Maori-owned land is not known and has not been researched. By this time the Ohau River was the only major river in the Catchment Board's district that did not have a flood protection scheme. The request was endorsed at a public meeting of 34 "ratepayers" in June 1967[567], and the new scheme was produced in September 1968[568]. Because of the greater intensity of land development alongside the river, a higher standard of flood protection than had been provided in the 1950 proposed scheme was required. In the absence of protection works some 1200 acres would be

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[561] Chairman Soil Conservation and Rivers Control Council to Secretary to the Treasury, 20 December 1951. Works and Development Head Office file 96/321000. Supporting Papers #923-924.
[562] Secretary to the Treasury to Chairman Soil Conservation and Rivers Control Council, 27 November 1952. Works and Development Head Office file 96/321000. Supporting Papers #925.
[563] Chairman Soil Conservation and Rivers Control Council to Minister of Works, 22 December 1952, approved by Cabinet 4 March 1953, and Secretary of the Cabinet to Minister of Works, 4 March 1953. Works and Development Head Office file 96/321000. Supporting Papers #926 and 927.
Chairman Soil Conservation and Rivers Control Council to Chief Engineer, 20 March 1953. Manawatu Catchment Board file 9/3. Supporting Papers #928.
[564] Report on a scheme of control for the Ohau River (1968), September 1968. Horowhenua County Council file C/F 1641. Supporting Papers #1616-1642.
[565] *New Zealand Gazette* 1961 page 1482. Supporting Papers #1481.
[566] FA Catley and 17 others, Ohau, to Secretary, November 1966. Manawatu Catchment Board file 9/3. Supporting Papers #1692.
[567] Notes of meeting, 13 June 1967. Manawatu Catchment Board file 9/3. Supporting Papers #1693.
[568] Report on a scheme of control for the Ohau River (1968), September 1968. Horowhenua County Council file C/F 1641. Supporting Papers #1616-1642.

flooded by a flow of 20,000 cusecs (which would have a return period of 20 years). Upstream of the State Highway bridge, the problem was the unstable nature of the river channel moving around and causing bank erosion, rather than the incidence of flooding. Close to the rivermouth the problem was tidal flooding of saltwater onto the river flats[569].

The proposed scheme would involve intervention to prevent the rivermouth migrating too far southward:

> The river approaches the sea around the base of high coastal sand dunes, and on reaching the beach swings south to run parallel to the beach before reaching the mouth. The mouth moves southwards and the coastal reach of the river lengthens, at a rate varying up to ¼ mile per year. When the coastal reach is between 2 and 3 miles long, a large flood in the river can cause the river to break out and form a new mouth with a very short coastal reach. The effect of this migration on flood flows is to progressively reduce discharge and raise water levels as the mouth moves southwards. At lower flows the water barrier between the beach and the farmland prevents the encroachment of windblown sand; a serious problem on nearby stretches of coast not protected in this way. It is intended to achieve a balance between these two factors by relocating the mouth approximately 1 mile south of the bend and maintaining it in this position as far as practicable.

Stopbanks would then be built between the rivermouth bend and the State Highway:

> Tidal flats – 70 acres of flats near the river mouth … are to be protected from both floods and high tides by a bank which joins on to an existing formation of coastal sand dunes. The area will be drained through a flood gate in the stopbank with only a few minor improvements being necessary to the existing drainage pattern.
>
> Tidal flats to S.H. No. 1 – … the river is to be stopbanked where required to the State Highway. Sandhills will be used wherever possible as natural banks, and existing lengths of stopbank will be used where practicable. In places existing stopbanks will be removed and the material used in the new banks. Flood gate outlets will be provided for all drains running into the river except for the Kuku Stream, which is to be stopbanked for a distance of about 60 chains to prevent river water from causing the stream to overflow.[570]

Two loops of the river would be cut off by straightening of the new channel between stopbanks. Erosion of the natural banks and the stopbanks would be reduced as much as possible by grassing, tree planting, and removal of shingle bars.

The scheme report concluded:

> The economic report shows that the scheme is a financially sound proposition which will result in a significant increase in production in the short term without requiring excessive capital development by the farmers. In the long term the benefits will be even more pronounced if the expected development takes place in dairy farming and market gardening.

[569] Report on a scheme of control for the Ohau River (1968), September 1968. Horowhenua County Council file C/F 1641. Supporting Papers #1616-1642.
[570] Report on a scheme of control for the Ohau River (1968), September 1968. Horowhenua County Council file C/F 1641. Supporting Papers #1616-1642.

> However, the farmers will need to spend further amounts of money to improve pastures, internal drainage and subdivision, in order to achieve worthwhile results. In view of this, the economic situation, and the history of the scheme it is clear that a 3:1 subsidy on capital work must be granted to make this scheme justifiable to the farmers and to gain their support.
>
> The scheme is recommended to the Board for submission to the Soil Conservation and Rivers Control Council, and for the necessary steps to implement the work when approval has been received.[571]

The Soil Conservation and Rivers Control Council queried the request for a 3:1 subsidy, and the Catchment Board had to identify a series of special reasons to justify that rate. These reasons included the conservative nature of farmers in the district who had on three occasions in the past rejected a scheme, an income cap those farmers experienced because most were supplying town milk to Wellington, the likely boost to farm production (and changed type of farming) the lands would receive if there was greater confidence that flooding could be reduced, the fact that neighbouring schemes to the north and south (Manawatu and Otaki respectively) had received 3:1 subsidies, and the considerable impact of flood flows from the steeplands of the Tararua range, much of which was Crown-owned and would not be rated to contribute to flood protection on the lowlands[572]. Approval to a 3:1 subsidy was given in September 1969 for a scheme whose works would be spread over a ten-year period[573].

In January 1972 the Catchment Board advised of some design changes. New flood flow calculations showed that the design flood of 20,000 cusecs recurring once in 20 years was high, and that 15,000 cusecs was a more accurate figure. Accommodating this lesser volume of water meant that "it is not intended to construct stopbanks downstream of the cut at this stage":

> The costly construction of these banks with poor material near the foreshore to reclaim a small area of lowlying tidal mudflats cannot be justified at present and would be somewhat premature.
>
> Most of these flats will be flooded only by backwater during major floods and will collect much silt, and towards the end of the scheme the condition and possible reclamation could be reconsidered.[574]

The tidal mudflats, and the land across which the cut would be dug, were Maori-owned. The land below the cut which would no longer receive stopbank protection was also Maori-

[571] Report on a scheme of control for the Ohau River (1968), September 1968. Horowhenua County Council file C/F 1641. Supporting Papers #1616-1642.
[572] Chief Engineer to Director National Water and Soil Conservation Organisation, 29 May 1969. Manawatu Catchment Board file 9/3. Supporting Papers #1694-1697.
[573] Director of Water and Soil Conservation to Chief Engineer, 26 September 1969. Manawatu Catchment Board file 9/3. Supporting Papers #1698.
[574] Chief Engineer to Director National Water and Soil Conservation Organisation, 11 January 1972. Manawatu Catchment Board file 9/3. Supporting Papers #1699-1700.

owned. The owners, Ngati Tukorehe, via their Tribal Committee, were consulted about the reduced stopbank length and other Ohau Scheme matters at a meeting in February 1972 (see below).

In April 1972 the Catchment Board served notice on landowners, including the solicitor for Ngati Tukorehe Tribal Committee, that construction work on the scheme was about to commence on their land, and seeking consent to enter and undertake the work[575]. The solicitor replied:

> We have received instructions from the Secretary of the Committee, whence we are to advise you that the Committee has no objection to the Board proceeding with the proposed work. Would you please accordingly treat this letter as confirming that the above Committee has no objection to the work.[576]

However, not all of Ngati Tukorehe were in agreement with the diversion cut across tribal land. Once the construction work had commenced, the Board received a letter from Matt Patuaka, a local Maori resident who described himself as a "trustee and committee member Ngati Tukorehe Marae":

> Could you supply me information regarding the involvement of rights as to fishing for whitebait in the Ohau River. I would like to know how much power your Board has regarding this river through the Maori Land of which it travels to the sea. Our rights through Parliament, set many years ago, gives us the centre of the river as our boundary, whichever course it takes. Does the cut your Board is making at present change any of these laws today? Work has been going the past few weeks out here, and our people are concerned just now. We wish to establish trespass notices and are not quite sure where we stand.
>
> I would like to table a reply from your office at our next committee meeting set for 26th June 72 (Monday), if you would oblige [with] information.
>
> Our land is being opened up and we have no access to at least 10 acres of our 86 acres of which we own it maybe, and is inconvenient for our tribe to establish a reasonable lease agreement as it stands now. Are there any compensations being made available by your Board for our loss of property where the river is now being channelled? Please clarify your position to us.[577]

A Catchment Board engineer provided a comprehensive report about the effect of the scheme on the 86 acres of Ngati Tukorehe tribal land affected by the diversion cut (Ohau 1 Section 4 block) that despite its length deserves to be quoted in full because it is so relevant to the issues of waterway ownership and control arising from Catchment Board activities:

> <u>History</u>

[575] Secretary to R Steele, Solicitor, Levin, 20 April 1972. Manawatu Catchment Board file 9/3. Supporting Papers #1702.
[576] Harper, Thomson and Steele, Barristers and Solicitors, Levin, to Secretary, 26 April 1972. Manawatu Catchment Board file 9/3. Supporting Papers #1703.
[577] M Patuaka, Ohau, to Secretary, 1 June 1972. Manawatu Catchment Board file 9/3. Supporting Papers #1704-1705.

The property in question was previously under a number of separate titles with individual Maori owners belonging to the Ngati Tukorehe tribe. These titles have been amalgamated to form one Certificate of Title administered by the Ngati Tukorehe Tribal Committee.

A special meeting was arranged with members of the Tribal Committee on Saturday 19th February 1972 [i.e. before the construction works for the scheme were to commence], and the Ohau scheme was explained to those present by Board staff (Mr AG Leenards, DM Brown and E O'Connor) and Board member Mr Law.

Those members of the Tribal Committee present seemed very much in favour of diversion channel through their property, and of the scheme as a whole. Mention was made by Board staff of compensation, but those present thought that they were gaining a large amount of benefit which more than compensated for the small amount of land lost.

A ratepayers' meeting was held on the evening of the 4th May 1972, and a number of the Tribal Committee attended. No criticism of the scheme was made by those committee members present, and no request for compensation was made. (The only person to raise the question of compensation was Mrs Kidd.)

At a later date a meeting with Mr Steele (solicitor for the Ngati Tukorehe Tribal Committee) was attended, and he signed a letter, drawn up by Mr AT Brown, which gave the Board's permission to proceed with the work on the tribal property at Ohau. (This letter is on file 9/3.)

Definition of boundaries

According to our records the river forms the boundary of the tribal property on all sides except the north (which has a slightly disputed boundary with Mr SP Easton), and the total area is 86 acres, though some accretion and erosion has taken place since the survey of 1926.

Diverting the Ohau River down the new channel in no way affects these old boundaries. The stopbank that will join the tribal property to that of Mr N Candy shall be on the existing titles up to the surveyed boundaries. The small section of bank, or channel block, between the two boundaries, i.e. the present river channel, will be Crown Land[578]. It is possible that either owner could claim it as an accretion (with the Board's permission).

The Ngati Tukorehe tribe has no legal access at present to this channel block across the river.

Ownership of diversion channel

The Board is at present constructing a river diversion on the tribal property, and as permission was freely given by the Tribal Committee to carry out this work (the Board did not have to buy the land covered by the diversion or carry out the work under the Public Works Act) the land is still legally theirs. This means that the riverbed in the diversion channel is still part of the original title, and thus the owners could quite legally put a fence across the river at upstream and downstream ends of the diversion (the Ohau River is not defined as a "navigable river").

Compensation

[578] This statement of the status of the old riverbed as Crown Land is questionable, and may only be correct if the river at the location in question is tidal.

1) Preamble. There will be approximately 10 acres of land remaining on the right bank of the new diversion, and access to this land shall be the same as that to the whole 86 acres in the past. A total of 20 acres will be fenced off temporarily as the "contract area", and shall need to remain fenced for another six months.
2) Compensation for loss of farm income. Compensation could be claimed for loss of income on the 20 acres of land which has been fenced off to allow the construction of the floodway and diversion. It would be the prerogative of the leaseholder to claim 'loss of income' compensation, unless of course he has negotiated a reduced lease for the property because of the construction work being carried out. In this case the Tribal Committee would be entitled to claim.
3) Compensation for loss of land. A total of 3 acres of land shall be lost by the construction of the diversion channel, and compensation could be claimed. Of this 3 acres, 1 acre was raw sand (with some lupin cover), 1 acre was a sandy ridge (suitable only for light grazing), ½ acre was swamp (not farmable), and ½ acre was good silt land with pasture of poor quality. The compensation thus given for this loss of land would not be a very large amount.
4) Compensation for loss of access. It is possible that a claim would be made for loss of access to the remaining 10 acres of the title on the right bank of the river. As stated in the Preamble, the access to this 10 acres would be same as in the past and slightly better as the bed of the new diversion channel is composed of harder material than the old channel crossings. Thus compensation for access should be ignored.

Effect of the scheme on the property

The tribal property should benefit greatly from the scheme, and the benefits derived are listed below:

i. The diversion floodway and stopbanks being constructed at present shall prevent moderate floods entering on the property.
ii. 50% of the floodway was formerly moving sandhills which have now been excavated to within 2 feet of high tide. After topsoiling and grassing, this floodway land shall be excellent pasture where before it was unusable.
iii. Complete all-weather access is available to 73 acres of the property, where before all stock had to be swum across the river and access was by boat.
iv. As direct flooding from the river across the property shall be prevented, cropping could be carried out without fear of losing the finer silts when they have been cultivated.
v. As later stages of the Ohau Scheme are carried out, more benefits by way of drainage and protection from back-flooding shall accrue.

Trespass, fishing rights, and scheme maintenance

1) Trespass. The tribal property is covered by the same laws of trespass as all property is, and notices can be erected at any point on the property informing people that they are trespassing.
2) Fishing rights. The laws on this are rather nebulous, and the Ohau River is not defined in the same way as say the Hokio Stream or Wanganui River. It would be thus advisable for the Tribal Committee to make their fishing rights on the property as part of the conditions of lease.
3) Scheme maintenance. After the contract at present being worked on is completed, the Manawatu Catchment Board shall require access to the diversion area, while the Ohau Scheme is operating, to carry out maintenance of the river channel and/or repair flood damage. Permission to do this work shall be obtained from the Tribal Committee or, if the land has been leased, the leaseholder.

Conclusions

> The letter from the tribal trustee, received by the Board, is rather vague, and thus a letter in reply which would appear to cover the questions asked could add to the confusion or be misunderstood, thereby causing an impasse between the Board and the Ngati Tukorehe tribe.
>
> To prevent this it would be advisable to arrange a special meeting with the Tribal Committee to
>
> - Listen to their problems and various claims;
> - Give a full explanation of the scheme and its benefits with an attempt to answer some of the more emotive questions like fishing rights and boundaries.
>
> If the question of compensation becomes a point of contention, the suggestion could be put forward that if the Ngati Tukorehe tribe were willing to supply suitable pipes (36" diameter minimum – approx cost $300) and peg the legal access from the Ohau West Road to their property, the Board would install the pipes and construct a road through the legal accessway and across the old Ohau channel.
>
> The Ngati Tukorehe tribe would obtain more by agreeing to this move than they would by compensation.
>
> A decision by them, and the placing of the pipes on the site of the legal access, would be required by the end of July, as the earthmoving equipment working on the contract could be finished by early August.[579]

The reply sent by the Secretary of the Catchment Board to Matt Patuaka was:

> The actual points raised by you I do not find particularly clear, and feel that if necessary a meeting with the tribal committee would be of advantage to all parties.
>
> You will see from the enclosed photocopy, a letter from the Ngati Tukorehe Tribal Committee, that approval for the Board to undertake the necessary work was granted some short time ago.
>
> If the question of putting up trespass notices to prevent trespassing taking whitebait, and this has been done in the past, then there appears to be nothing to prevent you putting up the same type of notice in the future.
>
> If there are any further points that you wish to discuss, please do not hesitate to get in touch with me, but it could be easier for these matters to be channelled through the Tribal Committee rather than each member writing individually.[580]

The Board's Secretary also wrote to the Tribal Committee's solicitor, explaining that "the Board would prefer that any difficulties that might be in the minds of the Committee should be discussed preferably with the Committee as a whole". He added:

> So far as the question of access is concerned, assistance could be given if a contribution is received towards the cost of material, but as I have already stated it would be better if the Committee would in general discuss their problems and then present them to the Board as a Tribal Committee request.

[579] Unsigned memorandum to Secretary, 20 June 1972. Manawatu Catchment Board file 9/3. Supporting Papers #1706-1711.
[580] Secretary to M Patuaka, Ohau, 23 June 1972. Manawatu Catchment Board file 9/3. Supporting Papers #1712.

> You are assured that the Board will sympathetically consider any reasonable matters submitted.[581]

There is no record on the Catchment Board's file of any response from Matt Patuaka or the Tribal Committee until five months later in November 1972, when a claim for compensation from Ngati Tukorehe Tribal Committee was received:

> During our normal meeting of committee, we were discussing the land situation at Ohau Beach, from where a diversion of the river course was changed, and some of our members of committee have given direct attention to the matter and visited the area to find that a large proportion of the land is slowly but surely disappearing into the river. We are concerned at the rate of its erosion due to swift currents etc, and not much protection covering areas concerned from the original course cut by the contractors.
>
> We in turn would seek compensation for lost property, as our case agreement becomes a problem due to area of acreage diminishing weekly or monthly, it is becoming serious.
>
> We would prefer from your office that something is to be done immediately, or an agreement be forthcoming in writing which we could consider to be satisfactory.[582]

The use of the term 'compensation' made this request a legal claim, so far as the Board was concerned, and its immediate reaction was to formally deny any legal liability[583]. However, in the same response it offered to meet the Tribal Committee at the site of the erosion. The offer was not taken up.

The next event was that the Catchment Board prosecuted at least one Ngati Tukorehe ratepayer for non-payment of rates. This was revealed in a letter sent by Matehaere Patuaka to the Board. He wrote:

> [I have] received an order for the assessment of the rates owing for the Ohau River scheme by a Magistrate's order.
>
> I'm disappointed to find this situation facing the Maori people of Ngati Tukorehe tribe in this area, having to pay for the course of water through their land by your scheme, which we the tribe locally are not in favour of and I feel should be exempt from paying. Our endeavours to date are to partition [sic] the scheme over this matter with the Ministers concerned at Government level – in meantime, try to imagine the cost to us. Our land is still disappearing with the flooding and speed of the river which is very evident. Where are we to draw the line in compensation toward our loss since the diversion cut? I will ask you make time available for consultation.… I'm sure a

[581] Secretary to Harper, Thomson and Steele, Barristers and Solicitors, Levin, 23 June 1972. Manawatu Catchment Board file 9/3. Supporting Papers #1713.
[582] Secretary Ngati Tukorehe Tribal Committee, Ohau, to Secretary, 24 November 1972. Manawatu Catchment Board file 9/3. Supporting Papers #1714.
[583] Secretary to Secretary Ngati Tukorehe Tribal Committee, Ohau, 2 February 1973. Manawatu Catchment Board file 9/3. Supporting Papers #1715.

> solution is readily available without you trying to jail me for non-payment of an unjust debt.[584]

It turned out that the debt that Matehaere had been prosecuted for was just over $1. The Board Secretary's response was:

> I … note your comments, but I do not consider anything would be gained by a deputation to see me.
>
> The Ohau Scheme was long in preparation and was fully discussed on a number of occasions at public meetings to which all ratepayers were specifically invited so that the whole project could be explained.
>
> I regret that legal action was necessary as in your case you have two sections on which 55 cents are payable on each section, consequently I cannot believe that $1.10 per annum is a sum that would financially embarrass you. If this rate had been paid promptly, legal proceedings would not have been necessary, but it is the Board's policy to sue all outstanding ratepayers without distinction.
>
> I do appreciate your views on the Scheme, but I am sure that both the tribal committee, tribal lands and individual Maori land is and will materially benefit as a result of the work.[585]

Matt Patuaka was not impressed by this reply:

> I am still very much put out if you think an interview is fruitless with you. I will now make an appointment to the Minister of Lands at Government level. It seems it might be our best [sic] at this awkward stage.[586]

To which the Board's Secretary replied:

> I am sorry that we appear at cross purposes regarding a meeting, as I am happy to discuss the Ohau Scheme with you at any time, but as the Scheme is in operation it is difficult if not impossible to put the clock back. Furthermore the Board did not rush the Scheme as it took many years to convince the farmers in the area of the benefits of having the area flood free.
>
> It is understood that tribal land marginally farmable before the Scheme can now be fully developed as an economic proposition, which must be a considerable benefit to your tribal members.[587]

One month later, in August 1973, Ngati Tukorehe Tribal Committee applied for "a subsidy to put a crossing across the old bed of the Ohau River". This application followed discussion with Catchment Board engineering staff where it was estimated that the cost of the work

[584] Matehaere Patuaka, Ohau, to Secretary, 20 June 1973. Manawatu Catchment Board file 9/3. Supporting Papers #1719-1720
[585] Secretary to Matehaere Patuaka, Ohau, 27 June 1973. Manawatu Catchment Board file 9/3. Supporting Papers #1721.
[586] Matt Patuaka, Ohau, to Secretary, 28 June 1973. Manawatu Catchment Board file 9/3. Supporting Papers #1722.
[587] Secretary to Matt Patuaka, Ohau, 12 July 1973. Manawatu Catchment Board file 9/3. Supporting Papers #1723.

would be $800-1000. The Tribal Committee contributed $250 towards this cost[588]. Given that such a crossing had been contemplated earlier by Catchment Board staff as a form of compensation for the disruption caused during constructing the diversion cut, and given that there is no record of further claims for compensation after this application was received, it seems likely that the installation of the crossing was a compensation matter rather than a subsidy matter. However, this interpretation of the circumstances cannot be confirmed. A pencil note on the letter states: "To be charged to Ohau Scheme, $250 to be used as 'private contribution' to scheme account"[589]. The Tribal Committee was advised that "the work in question will be undertaken as soon as convenient"[590]. Two months later the Tribal Committee sent the Board a "cordial invitation" to meet on site and "have a look at the river and a crossing installed by your Board"[591].

In July 1977 Ngati Tukorehe's Proprietors of Tahamata Incorporation sought a meeting with the Catchment Board. The request identified four matters that needed discussion, being effluent disposal, rates classification, "the effect of the river cut on the property", and some work the Board had offered to do but which had not been commenced[592]. The meeting was held in September 1977. The effluent problem was from a cowshed, and disposal methods discussed were to an oxidation pond before discharge into the old course of the river, or on to land. At the lower end of this old course was tidal water, and there were drainage problems during heavy seas. A stopbank across the lower end of the old course was discussed, and it was noted that the location of the stopbank would still leave some of the Maori Land unprotected. In the unprotected area there were issues with sea encroachment and sand drift. The Board representatives promised that the Board would investigate and report[593]. The Incorporation's farm management advisor wrote after the meeting to set out the Incorporation's concerns:

> The effluent disposal is the main problem which has to be resolved. The owners have pointed out to the Board that a drain which at present discharges into the old river bed could be diverted into an old loop of the river. The owners are not happy about this proposal to build a new drain out to sea in the vicinity of the hay barn (the owners call this the blind creek). Therefore if the stopbank were to be constructed on the line discussed, and a flood gate built in the stopbank, this would give the old river loop access to the present river. Under these circumstances the area of the river upstream

[588] Secretary Ngati Tukorehe Tribal Committee to D Brown, 19 August 1973. Manawatu Catchment Board file 9/3. Supporting Papers #1724.
[589] File note, undated, on Secretary Ngati Tukorehe Tribal Committee to D Brown, 19 August 1973. Manawatu Catchment Board file 9/3. Supporting Papers #1724.
[590] Secretary to Secretary Ngati Tukorehe Tribal Committee, 13 September 1973. Manawatu Catchment Board file 9/3. Supporting Papers #1726.
[591] Secretary Ngati Tukorehe Tribal Committee to D Brown, undated (November 1973). Manawatu Catchment Board file 9/3. Supporting Papers #1727.
[592] Secretary Manawatu Farm Management Consultants (Inc), Palmerston North, to Secretary. 25 July 1977. Manawatu Catchment Board file 9/3. Supporting Papers #1728.
[593] Notes of meeting, 8 September 1977. Manawatu Catchment Board file 9/3. Supporting Papers #1729-1730.

> of the river crossing near the shed (if blocked at that point) would be able to be used by the owners for any purpose without restriction imposed by your Board.
>
> Under these circumstances it would be possible to have oxidation ponds built in the river downstream from the dairy shed. I would like this point to be discussed by the Board.[594]

However, the Board replied that diversion of drainage waters from the old channel into the river was "not practical"[595].

The Board's response to Ngati Tukorehe was sent just after it had completed a review of the Ohau Scheme, and sent it to the Soil Conservation and Rivers Control Council for approval in November 1977. According to the covering letter, "the review details all works considered necessary to complete the Scheme which was originally approved in 1972". A 3:1 subsidy on the additional expenditure identified by the review was requested[596]. It was not until December 1978 that the Control Council gave conditional approval, including a 3:1 subsidy, to the reviewed scheme[597], and not until May 1979 that a more substantive approval was given[598].

The notes of the on-site meeting in September 1977 did not refer to "the effect of the river cut on the property", which had been identified as one of the agenda items when the Incorporation sought the meeting. However it was a matter that seriously concerned the Maori owners. The new cut was working well in one sense, allowing water to drain to the sea without being slowed down by the meander pattern and flat channel gradient of the old river course. However, the faster-flowing waters through the cut were also scouring the banks, with the erosion widening the channel and eating into the Incorporation's farmland. In September 1978 the Incorporation's farm management consultant repeated some concerns that had been expressed earlier about bank erosion in the cut through the Ngati Tukorehe land:

> I inspected the cut of the river … and noted that the bank is scouring in places upstream and downstream of where the river bank has had rocks. I am of the opinion that the whole south bank of this cut will have to be rocked to keep it secure. Can you tell me if this work can be done in the near future.[599]

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[594] IM Joll, Farm Management Consultant, Palmerston North, to Secretary, 13 September 1977. Manawatu Catchment Board file 9/3. Supporting Papers #1731.
[595] Chief Engineer to IM Joll, Farm Management Consultant, Palmerston North, 28 November 1977. Manawatu Catchment Board file 9/3. Supporting Papers #1732.
[596] Chief Engineer to Director National Water and Soil Conservation Organisation, 18 November 1977. Manawatu Catchment Board file 9/3. Supporting Papers #1733.
[597] Director of Water and Soil Conservation to Secretary, 19 December 1978. Manawatu Catchment Board file 9/3. Supporting Papers #1740-1741.
[598] Director of Water and Soil Conservation to Secretary, 3 May 1979. Manawatu Catchment Board file 9/3. Supporting Papers #1742.
[599] IM Joll, Farm Management Consultant, Palmerston North, to Chief Engineer, 11 September 1978. Manawatu Catchment Board file 9/3. Supporting Papers #1735.

No written reply from the Board was located during research for this report.

Late in 1978 the engineering staff of the Catchment Board produced a file note on "Proposal by Tahamata Trust [sic] to divert the Katihiku Drain and infill a substantial length of former Ohau River channel". This note was a technical explanation why the "not practical" conclusion had been communicated in November 1977. Channel gradients and deposition of infill in the channels had changed since the new cut was made, as the river adjusted to the new circumstances, making drainage flow as proposed by the Incorporation difficult. It was noted that:

> The bed of the diversion cut has still not achieved a stable condition, and is subject to the formation of shingle bars which could adversely affect drainage into the top end of the cut.

The Board wanted to keep the capacity of the old course of the river as a "storage and buffer facility", given that high tides could effectively block the downstream flow of drainage waters:

> In 1972 the Ohau River formed a new mouth, as shown, thus shortening its course to the sea. This resulted in a larger tidal variation than previously (i.e. lower low tides) which has tended to improve drainage in the area. The mouth has now moved south again, and will continue to do so. The low tide conditions which have been available in recent years at the drain outlet will then be transferred further downstream, slowing the release of drainage waters held back by the tides.

The file note concluded:

> It is considered that the infilling of the loop is an expensive and impractical suggestion. Some form of drain would still be required to cater for the local water. The drainage improvements already achieved should not be jeopardised especially if proposed reclamation of the old river bed does not eventuate. In any case the proposed diversion and infilling would require a Water Right. This would be subject to objections from the Catchment Board and upstream landowners.[600]

In October 1981 the Incorporation's farm management consultant felt the need to write again:

> I have been involved with this property for 7 years, and have seen the work done in controlling the flooding in the Ohau and have had several discussions in the past with the proposed plan to extend the stopbank [downstream of the diversion cut] to the coast. From memory I was informed that the stopbank to the coast is likely to be carried within the 5 years, however it is now 7 years since the stopbank was completed alongside this property. I have seen several floods which are still giving problems to the land alongside the river and the old river bed which extends up to the cowshed. I also am aware of the extra stopbank for flood control that is needed on the coastal strip where there is a tidal inlet.
>
> Can you please inform me when the Catchment Board proposes to carry out the flood programme by extending the protection to the coast and then along the coast so that

[600] File note, undated (after September 1978 and before December 1978). Manawatu Catchment Board 9/3. Supporting Papers #1736-1739.

> the Incorporation's land is protected from flooding. I would also like to hear where the stopbank line is to be….[601]

He was told that "the Board is awaiting approval for further subsidy funds [which] will enable the bulk of the proposed works still outstanding to be completed over the next two construction seasons". However there might need to be a further deferral until after the next scheduled review in 1983[602]. What the Board was effectively saying was that the Incorporation had been significantly affected by the original scheme in 1972 when the diversion cut and associated stopbank had been constructed in order to benefit upstream landowners. While the Incorporation's land had received a limited amount of benefit from that work, any further benefit would have to await further stopbanking to be constructed either as part of the first review, or possibly as part of the second review. However, the possibility of further benefit evaporated when the Catchment Board advised in October 1982:

> Staff from this Board have inspected this erosion, and I wish to inform you that we can't contemplate any work between the diversion cut and the river mouth.
>
> The island building up at the lower end of the cut does cause some concern, but funds are not available to do any work there at this stage. We will continue to watch this situation. The erosion about halfway along the cut is not of concern apart from its interference with the gateway. If the Trust is willing to contribute the local share of the cost, some work could be done there but it is likely to be more expensive than would be warranted. In the meantime some willow planting will be tried there.[603]

The Incorporation's farm management consultant asked for another on-site meeting to discuss downstream extension of the stopbank, plus some erosion and accretion issues[604]. A pencil note written on this request asks: "classification changed to exclude benefits of stopbanking?", and in a different handwriting the response "correct". There is no record on the Catchment Board's file that any meeting was held.

In August 1983 the farm management consultant asked again what were "the plans to build stopbanks to the sea coast"[605]. Again no reply is recorded on the Board's file. However, in February 1984 the Board sought a meeting with the Incorporation to finalise the location of "drainage and stopbanking works"[606]. Just what those works involved is not revealed on the

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[601] IM Joll, Farm Management Consultant, Palmerston North, to Chief Engineer, 9 October 1981. Manawatu Catchment Board file 9/3. Supporting Papers #1743.
[602] Chief Engineer to IM Joll, Farm Management Consultant, Palmerston North, 16 October 1981. Manawatu Catchment Board file 9/3. Supporting Papers #1744.
[603] Chief Engineer to IM Joll, Farm Management Consultant, Palmerston North, 27 October 1982. Manawatu Catchment Board file 9/3. Supporting Papers #1745.
[604] IM Joll, Farm Management Consultant, Palmerston North, to Chairman, 23 December 1982. Manawatu Catchment Board file 9/3. Supporting Papers #1746.
[605] IM Joll, Farm Management Consultant, Palmerston North, to Secretary, 1 August 1983. Manawatu Catchment Board file 9/3. Supporting Papers #1747.
[606] Chief Engineer to A Price, Levin, 13 February 1984. Manawatu Catchment Board file 9/3. Supporting Papers #1748.

file, indeed the correspondence with respect to dealings between the Catchment Board and the Incorporation ceases at this point.

5.5.5 Waikawa and Manakau Streams

In 1945, almost as soon as the Manawatu Catchment Board was established, the Board's engineer produced a flood protection scheme for the Waikawa and Manakau Streams[607]. The steepness of the upper catchment and the clearing of the forest had resulted in an increase of flooding in the lower reaches of the two streams. The Waikawa Stream had built up a cone of shingle where it emerged from the steeplands on to the flatter land; the shingle deposits of this cone were continually being reworked by bank erosion and then deposition in the channel further downstream. Flooding was a constant hazard:

> The most recent flood occurred when the Manakau was discharging roughly one-third of its design maximum. During even a medium flood, such as the recent one, over 1½ miles of county road are flooded, some 300 acres of highly productive flats are inundated, and the drainage of 400 acres of swamp flats to the south of the junction of the two streams are blocked. Over 1,500 acres of good land to the north of the junction is completely cut off during a flood…. In addition the Waikawa … overflows into the rich Kuku flats. As might be expected, the flooding is most serious where the cones down which the streams flow run into the alluvial flats…. Below these points the channels have neither the capacity or alignment to carry even small freshes.

The proposed solution was shortening of the stream by digging cut-offs and thereby encouraging a faster discharge, stopbanking and digging a deeper channel through the shingle deposits, and a diversion of the lower Manakau Stream through a new channel so that there was a change of location where it joined the Waikawa Stream. The estimated cost was £13,750[608].

By the time the scheme together with a description of the manner in which the local contribution would be funded (known as a "classification scheme") had been presented to the Soil Conservation and Rivers Control Council, the cost had crept up to £16,300[609]. The Council in November 1947 approved a £3 for £1 Crown subsidy[610]. However, opinion was divided among ratepayers as to the worth of the scheme, with ratepayers directly along the riverbank in favour and those farming further away from the streams not so enthusiastic. Eventually a reduced scheme estimated to cost £9,850 was put forward for subsidy, and the Chairman of the national Council advised in February 1953:

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[607] Report on a proposed flood control scheme for the lower Waikawa and Manakau Streams, 9 October 1945. Manawatu Catchment Board file 9/4. Supporting Papers #1753-1756.
[608] Report on a proposed flood control scheme for the lower Waikawa and Manakau Streams, 9 October 1945. Manawatu Catchment Board file 9/4. Supporting Papers #1753-1756.
[609] Chief Engineer to Chairman Soil Conservation and Rivers Control Council, 8 September 1947. Manawatu Catchment Board file 9/4. Supporting Papers #1757-1758.
[610] Chairman Soil Conservation and Rivers Control Council to Secretary, 20 November 1947. Manawatu Catchment Board file 9/4. Supporting Papers #1759.

> When schemes are radically amended the rate of subsidy is also reviewed and sometimes reduced. In the present instance you have had considerable trouble in meeting the wishes of ratepayers and the revised scheme will provide substantially the same benefits. It is therefore agreed that the £3 for £1 subsidy will remain, but this must not be regarded as a precedent.[611]

The scheme still required a poll of ratepayers to agree to the raising of a loan to finance the local contribution, and the information letter sent to ratepayers in advance of the poll explained:

> The objectives of the scheme may be summarised as follows:
> 1. The shortening of the main stream at the end near the sea to take away the flood water more quickly.
> 2. Stopbanking to prevent overflows from the Waikawa and the Manakau.
> 3. Improvements to the Waikawa in its shingle reach.
> 4. Protection and planting work in the upper part of the Waikawa.
>
> (Note: The alteration to the Bridge has been deleted from the Scheme and other alterations made, reducing the estimated cost to £9,850)[612]

However, the ratepayers rejected the raising of the loan, and therefore the scheme could not commence.

In September 1955 the Catchment Board decided it could wait no longer, and tried a new tack, notifying all owners and occupiers individually that it would enter their lands to construct the scheme, and calling for objections[613]. One objection was received[614]. The Chief Engineer provided a personalised explanation of the scheme to the objector's solicitors[615], and the objection was withdrawn[616]. This then allowed the scheme of works to be constructed during 1956-58.

In September 1957 John Miratana, through the European manager of his property, objected to the work that was underway:

> Now in this property the engineers made a big cutting and cut off three river loops. This in itself is all right, but in so doing this land is hacked up into little bits and pieces. What was one block of land on either side of the river is now half a dozen small blocks broken up by the old river course, with no properly workable access between blocks. I am of the opinion that the banks of the old course should be dozed down to make this land at least workable as some kind of a block. Also water should be piped out under the crossings, as other properties drain onto this one. I really think Miratana is entitled

[611] Chairman Soil Conservation and Rivers Control Council to Chief Engineer, 4 February 1953. Manawatu Catchment Board file 9/4. Supporting Papers #1760.
[612] Secretary to all ratepayers re Waikawa-Manakau Rivers Scheme Loan, undated (November 1953). Manawatu Catchment Board file 9/4. Supporting Papers #1761.
[613] Secretary to all owners and all occupiers in Waikawa-Manakau scheme of control area, 1 September 1955. Manawatu Catchment Board file 9/4. Supporting Papers #1762.
[614] Blenkhorn & Todd, Barristers, Solicitors and Notary Public, Levin, to Secretary, 28 September 1955. Manawatu Catchment Board file 9/4. Supporting Papers #1763.
[615] Chief Engineer to Blenkhorn & Todd, Solicitors, Levin, 6 December 1955. Manawatu Catchment Board file 9/4. Supporting Papers #1764.
[616] Blenkhorn & Todd, Barristers, Solicitors and Notary Public, Levin, to Secretary, 9 February 1956. Manawatu Catchment Board file 9/4. Supporting Papers #1765.

to some consideration here, either that or compensation, for if he were to straighten this mess out himself by having contractors to do it, the cost would be heavy. I have enclosed a rough sketch of the area in question. Would you see if anything can be done in this matter, and thereby greatly oblige.[617]

A Board engineer reported to the Chief Engineer:

> Two cut-offs were made on this property….
> (1) The uppermost portion of the upstream loop was filled in to land level, giving a good stock crossing at all times.
> (2) The outlet to this loop has been left open in order to take drainage out from the mid-point of the old loop where a road drain is fed in. In order that stock might cross over, the banks were ramped down on both sides.
> (3) The upper end of the lower loop has been filled in with a good stock crossing.
>
> The outlet of the lower loop has not been filled in or ramped down. Access to the land on the left bank of the Waikawa below the loop has always been cut off in the past before work was carried out.
>
> I gather Mr de Simas expects the banks all round the loops to be dozed down. I do not consider this a part of the scheme.
>
> There is now more land accessible than before work commenced and Mr de Simas has had every consideration possible during the progress of the work.[618]

Based on this report the Catchment Board resolved that "it was not considered necessary to expend any further money on this property, as the Board is of the opinion that it is much improved by this Board's operations"[619].

In 1959 a flood occurred in the Waikawa River that was said to be the largest since the scheme was carried out. The Board reported that "the results have been most pleasing and it is noteworthy that the local property owners did not notify the officer of this Board until a week after the flood, when [a minor amount of] damage was brought to our attention"[620].

In 1962 a Maori owner of land on the north bank of the Waikawa River sought the Board's assistance to combat bank erosion and flooding:

> In a fresh [the Waikawa] overflows on to Mr [Taru] Gardiner's freehold property (Manawatu-Kukutauaki 4E2B1) and causes flooding in the locality of his residence and cowbail.
>
> Further upstream there is serious erosion into blocks owned by Hare Wallace (Hatete) and leased to Mr Gardiner (4E3/1C2, 1C1 and 1D1). Valuable land has already been lost here.

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[617] JF de Simas, Manakau, "for John Miratana", to Chairman, 19 September 1957. Manawatu Catchment Board file 9/4. Supporting Papers #1766-1768.
[618] Assistant Engineer Fancourt to Chief Engineer, 1 November 1957. Manawatu Catchment Board file 9/4. Supporting Papers #1769.
[619] Secretary to JF de Simas, Manakau, 21 November 1957. Manawatu Catchment Board file 9/4. Supporting Papers #1770.
[620] Chief Engineer to Secretary Soil Conservation and Rivers Control Council, 12 November 1959. Manawatu Catchment Board file 9/4. Supporting Papers #1771.

> Mr Gardiner thinks groynes and stopbanking are the remedy.[621]

The Board in response decided:

> That Mr Gardiner be interviewed by the Chief Engineer and advised that the Board by stopbanking can protect his hayshed and house. The estimated cost would be about £300, with a 2:1 subsidy, but Mr Gardiner would be required to contribute £75, and the Waikawa-Manakau scheme £25, or alternatively stopbank to the cowshed followed by a suitable wall. As this could cause flooding on neighbour's property, Mr Gardiner to be responsible for the obtaining of neighbour's approval to this proposal.[622]

There was no response from Taru Gardiner, though one year later in February 1967 he returned with what amounted to a continuation of his earlier concerns:

> In the recent flood the river overflowed on to [Mr Gardiner's] property, and it is apparent that there is a likelihood of very serious damage in the future to his property unless action is taken now.
>
> We therefore ask your Board to take urgent action to prevent future flooding of Mr Gardiner's property.
>
> Mr Gardiner has recently laid out substantial capital in providing for "tanker" delivery from his farm, and the new work is right in the course of the recent flood.[623]

The Board repeated its earlier response, including the need to obtain consent "from the owners on the opposite side of the Waikawa Stream"[624]. Gardiner obtain the signed consent of one owner of Manawatu-Kukutauaki 4E2A1, who stated that he was acting on behalf of the other owners of that block, to "erection of new stopbank on Mr Taru Gardiner's land south of the Waikawa Stream for prevention of flooding"[625], which was handed in to the Board at one of its monthly meetings. The Board minutes record:

> Mr Park conveyed the appreciation of Mr T Gardiner to the Board for the expeditious handling of the work, and handed in a letter from the Maori Elder who farms the adjoining area consenting to the work being carried out on Mr Gardiner's property.[626]

In 1969 Taru Gardiner heard about plans to plant trees on his property[627]. He was told:

> The Board has no intention of setting up plantations on Mr Gardiner's property, but to carry out river work in accordance with the Waikawa-Manakau flood control scheme. This work consists of planting the river bank and top edge with poplar and willow

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[621] Blenkhorn, Todd & Whitehouse, Barristers, Solicitors and Notary Public, Levin, to Secretary, 8 November 1965. Manawatu Catchment Board file 9/4. Supporting Papers #1772.
[622] Excerpt from Minutes of Manawatu Catchment Board Works and Machinery Committee meeting, 8 February 1966. Manawatu Catchment Board file 9/4. Supporting Papers #1773.
[623] Blenkhorn, Todd & Whitehouse, Barristers, Solicitors and Notary Public, Levin, to Secretary, 7 February 1967. Manawatu Catchment Board file 9/4. Supporting Papers #1774.
[624] Secretary to Blenkhorn, Todd & Whitehouse, Barristers, Solicitors and Notary Public, Levin, 21 February 1967. Manawatu Catchment Board file 9/4. Supporting Papers #1775.
[625] Consent of Johnson Davis "and others", 15 May 1967. Manawatu Catchment Board file 9/4. Supporting Papers #1776.
[626] Excerpt from Minutes of Manawatu Catchment Board meeting, 16 May 1967. Manawatu Catchment Board file 9/4. Supporting Papers #1777.
[627] Blenkhorn, Todd, Whitehouse and Comber, Barristers and Solicitors, Levin, to Secretary, 5 August 1969. Manawatu Catchment Board file 9/4. Supporting Papers #1778.

poles, and it is necessary to fence the poles off against damage by stock. Very little grazing land will be lost, and this is only temporary as the fence will be removed after two to three seasons.

This work is necessary scheme work, and should cause little inconvenience, however if Mr Gardiner desires arrangements could be made to meet on his property and discuss the actual extent of the proposed work.[628]

There is no record on the Board's file about any further discussions, and so far as is known the poplar and willow planting went ahead.

5.5.6 Otaki River

While it was the Crown that set up the excavation project in 1945 to provide a new channel for the Otaki River between the railway bridge and the sea, it was envisaged from the outset that the Manawatu Catchment Board would be involved as a partner with the Crown. The Catchment Board was given the opportunity to comment on the first plan showing the proposed work that was prepared by the Public Works Department, and its reply in June 1945 shows that it had not been involved in the planning for the project prior to then. In particular the Board had not been involved in the decision to start the excavation work at the upstream end, or in the decision that the upstream end would be the railway bridge. The Board's engineer commented:

I understand that the Department has decided to commence the excavation of a channel at the highway bridge and work downstream towards the sea. This decision apparently was made because of flooding difficulties in assembling the plant at the bottom of the cut as proposed by your Department. To say the least, the procedure of commencing a river cut at a point and working downstream is unusual, and particularly so with a river like the Otaki which is fast, wild and heavily burdened with shingle during floods. It is fair to say that there is every chance of having a channel so excavated filled up with shingle during the progress of the work. There is so much to be said against your proposal to work downstream from the bridge that an alternative location for the channel should be sought which would not have the same construction hazards….

I am strongly of the opinion that it would be a great mistake not to continue the channel improvements above the bridge. If the channel is not continued upstream from the bridge, the effect of the sudden deepening below the bridge would cause a marked drop-down curve on the flood gradient, and the river would erode back upstream very rapidly. As this erosion would almost certainly follow the present course of the river, it would result in the river becoming deeply embedded in its present course and so threaten more seriously the southern approach to the railway bridge….

Having spent such a large sum on the excavation of the channel, I think it would be folly to leave the banks unprotected, and give the river free reign to start meanders within the channel. I therefore think that consideration should be given to ways and means of holding the channel with open and gabion groynes, etc, and I also think that

[628] Chief Engineer to Blenkhorn, Todd, Whitehouse and Comber, Solicitors, Levin, 19 August 1969. Manawatu Catchment Board file 9/4. Supporting Papers #1779.

> methods of warping the delta land south of the channel should be considered with the idea of ultimately stopbanking the low-lying land south of the channel.

Having regard for the potential need to re-work parts of the channel that might become shingle-filled or might be eroded, the engineer asked for a commitment that the Board's proposed contribution of £2,000 would be the maximum that could be requested[629].

The Public Works Department engineers then got together with the Catchment Board engineer, after which the Resident Engineer advised his superiors:

> The alternatives of working down versus working up have already been well thrashed out. The desirability of working up is generally admitted, but there is no doubt that the initial [assembly of the excavator] can be more economically carried out in its present position.

The discussions had also been over the location of the excavated channel, with the Public Works preference being for one further away from the northern bank and providing a straight run out to sea but involving the moving of a greater volume of riverbed material, while the Catchment Board preferred a route that followed the existing channel more closely and therefore required less material to be moved. A flood discharge of 40,000 cubic feet per second was being designed for. The need for further bank protection and training works was acknowledged. As to continuing the excavation above the bridge:

> The work now proposed is designed with a view to fitting in with a new channel above the bridge, but this matter could be left for decision at a later date. The plant would have to be practically completely dismantled in order to get into the upper side of the bridges.[630]

At the conclusion of the engineering discussions[631], the Chairman of the Soil Conservation and Rivers Control Council told the Catchment Board what had been decided:

> The Council is now prepared, however, to extend the scope of this work to give a more complete scheme of work in the lower river at a cost of £27,000 … conditional on your Board agreeing to find the sum of £4,000 towards the cost.

The centre line of the new channel would follow "boldly down the centre of the river" (i.e. the more-excavation alternative), and the excavator would do a more thorough job of creating stopbanks. It would progress down the river by cutting a pilot channel and mounding the excavated material as a stopbank on the northern side, then turn around and dig a more substantial channel using the material to make a stopbank on the southern side. The stopbank on the northern side would connect to the railway bridge embankment and on the southern side to high ground at Lethbridge's. A pilot channel would be dug above the

[629] Engineer Manawatu Catchment Board to Resident Engineer Palmerston North, 1 June 1945. Works and Development Head Office file 48/106. Supporting Papers #663-664.
[630] Resident Engineer Palmerston North to District Engineer Wellington, 13 June 1945. Works and Development Head Office file 48/106. Supporting Papers #665-666.
[631] Resident Engineer Wellington to Chairman Soil Conservation and Rivers Control Council, 10 July 1945. Works and Development Head Office file 48/106. Supporting Papers #667-668.

excavated channel and above the bridges to set up a good line for the river when entering the excavated channel[632].

After these fundamental decisions had been taken, an inquiry was received from the Maori Affairs Department about the effect the project was having on one of the Department's Manawatu Development Scheme farmers. In the course of preparation for the assembly of the excavator, a "bank jutting into the river bed from the north bank" had been built:

> After this embankment was made the Public Works Department altered their minds, and are having the dredge assembled on a different site alongside the main road and traffic bridge, the other [initial] site being a mile or two further down.

The bank that was left at the initial site was forcing the flow of the river towards the southern bank, and causing flooding of Tamati Hawea's property[633].

Investigations showed Tamati Hawea owned 45 acres on 'the low-lying swamp land" on the south side of the Otaki River, and that the flooding occurred when the flow in the river prevented backed-up water in a drain from emptying into the river. The Resident Engineer was at a loss to suggest a solution, as when the excavator moved down the river to opposite the drain outlet, the same problem would arise, so that any shifting of the river back towards the north bank could be only temporary. He explained that the Public Works Department's intervention to shift the river towards the south bank had been "quite successful from our point of view, but I realised at the time that there would probably be some complaint from property owners on the south bank". Since the complaint had been made the river had shifted of its own accord more towards the north bank channels, and "it therefore appears that to some considerable extent at least the position will right itself and relieve the property owners on the south bank"[634]. On that basis, "no action for time being" was deemed necessary when the complaint reached the Department's Head Office[635]. Six months later, when the Resident Engineer next reported, he confirmed that only a small proportion of the river's volume was flowing in a southern channel, and the mouth of the drain from Hawea's property was clear and running freely[636].

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[632] Chairman Soil Conservation and Rivers Control Council to Chairman Manawatu Catchment Board, 10 September 1945. Works and Development Head Office file 48/106. Supporting Papers #669-670.
[633] Registrar Maori Land Board Wellington to District Engineer Wellington, 29 August 1945, attached to District Engineer Wellington to Under Secretary for Public Works, 4 October 1945. Works and Development Head Office file 48/106. Supporting Papers #671-673.
[634] Resident Engineer Palmerston North to District Engineer Wellington, 25 September 1945, attached to District Engineer Wellington to Under Secretary for Public Works, 4 October 1945. Works and Development Head Office file 48/106. Supporting Papers #671-673.
[635] File note, 8 November 1945, on District Engineer Wellington to Under Secretary for Public Works, 4 October 1945. Works and Development Head Office file 48/106. Supporting Papers #671-673.
[636] Resident Engineer Palmerston North to District Engineer Wellington, 18 April 1946, attached to District Engineer Wellington to Under Secretary for Public Works, 10 May 1946. Works and Development Head Office file 48/106. Supporting Papers #678-679.

The new channel and associate stopbanks, plus the set-back distance for the tower excavator away from the proposed channel on the landward side of the north stopbank, required the Crown to have access to a wide swathe of land between the highway bridge and the sea. The land required encroached on to privately-owned lands on both sides, and the Crown needed to obtain access agreements from the occupiers of those lands. The legal requirements came under consideration in November 1945 when the Resident Engineer wrote:

> Interference with land will extend approximately 5 chains [100 metres] either side of centre line.
>
> [I have obtained] an agreement to enter signed by FJN Ryder, and I assume that similar agreements will be necessary for [other owners]….
>
> Of the remainder of the land involved, the western portion below Tuahiwi and Elliott's has no title, and Tuahiwi 2 and Moutere Tahuna No. 2 are native-owned.
>
> Please advise me of the procedures to be followed in order to obtain access, particularly in regard to the two native-owned sections. Moutere Tahuna 2 has some small value where crossed, but Tuahiwi 2 is riverbed within 5 chains of centre line.[637]

The District Engineer forwarded the request to his Head Office:

> As the Government by agreement with the Manawatu Catchment Board is to carry out this work, it would seem that authority for same is contained in Section 22 of the Soil Conservation and Rivers Control Act 1941.
>
> Authority to enter for construction purposes upon any private land – including native land – would appear to be conferred by Section 23 of that Act, by service of notice twenty-four hours before entry.
>
> I assume it would be preferable for an attempt to be made to obtain owners' consents to entry, but in the case of Native land consent cannot be obtained if there are several Natives concerned in any one property. In view of this you may consider it desirable to issue notices to all owners in terms of Section 23 abovementioned. Will you kindly let me have your instructions in this respect as soon as possible.[638]

He was told in reply:

> If there is no title, the land will be either Crown Land or Native owned. If the former case the Commissioner of Crown Lands should be advised and particulars of alienations should be obtained from him. If the land is Native owned particulars as to owners and occupiers and their addresses should be obtained from the Native Land Court.
>
> The notices should contain as near as can be estimated the date on which entry will be made and also give details of the purpose for which entry is necessary. It is also desirable to obtain agreement wherever possible.

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[637] Resident Engineer Palmerston North to District Engineer Wellington, 16 November 1945, attached to District Engineer Wellington to Under Secretary for Public Works, 19 November 1945. Works and Development Head Office file 48/106. Supporting Papers #674-676A.

[638] Resident Engineer Palmerston North to District Engineer Wellington, 16 November 1945, attached to District Engineer Wellington to Under Secretary for Public Works, 19 November 1945. Works and Development Head Office file 48/106. Supporting Papers #674-676A.

> Regarding the land to be taken, it is proposed generally that all land required for river purposes would be taken, i.e. all land occupied by stopbanks, berms and riverbed. There may be special cases where this requirement may be waived, e.g. opposite the Maori meeting house at Lethbridge's.[639]

The intention was to survey and then take under the Public Works Act what land was required for river purposes after the construction works had been completed.

When the Aotea District Maori Land Board was approached for names and addresses, the inadequacy of the Native Land Court's records was exposed. The Registrar explained:

> I find that the Native Land Court title positions of the parts concerned are not clear, and that to clarify the matter of ownership an intensive search of the Land Transfer and Deeds titles would be necessary, very few plans are available on my records. However, the search attached shows the ownership of the various lands according to my records….
>
> You will note that very few addresses are given, and it would appear that most of the persons shown are dead.[640]

Faced with such incomplete records, the Resident Engineer advised that he intended to "serve notice on the District Maori Land Board itself under Section 23 of the Rivers Control Act"[641]. However, the files examined for this report are silent as to whether this is what actually occurred. Nor is it known what efforts were made by the District Maori Land Board to contact owners.

By the end of 1947 the new channel from the highway bridge to the sea had been excavated. Although not recorded in the Public Works Department files, there had been some adjustments to the construction plans. The tower excavator had only worked from the northern side of the river, hauling material out of the new bed and piling it up as the northern stopbank, while other machinery had constructed the stopbank along the southern side of the river. This southern stopbank on the true left side of the river had been stopped short of the sea:

> The left stopbank is stopped short near the mouth, as indicated, as the land on the south bank is not sufficiently developed to be seriously affected by back flooding from the mouth.[642]

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[639] Chairman Soil Conservation and Rivers Control Council to District Engineer Wellington, 18 December 1945. Works and Development Head Office file 48/106. Supporting Papers #677.

[640] Registrar Maori Land Board Wellington to Resident Engineer Palmerston North, 18 October 1946, attached to District Engineer Wellington to Under Secretary for Public Works, 13 November 1946. Works and Development Head Office file 48/106. Supporting Papers #680-684.

[641] Resident Engineer Palmerston North to District Engineer Wellington, 5 November 1946, attached to District Engineer Wellington to Under Secretary for Public Works, 13 November 1946. Works and Development Head Office file 48/106. Supporting Papers #680-684.

[642] AR Acheson, 'Operation of tower excavator – Otaki River' in *Proceedings of the New Zealand Institute of Engineers*, Volume XXXV, 1949, pages 486-519, at page 492. Supporting Papers #3580-3601 at 3584.

> The left stopbank was stopped at Section 1000m, permitting a back flow of floodwater into the Mangahanene Swamp at Katihiku. It was considered that this would allow silt build-up and possible reclamation of the swamp land at a later date.[643]

The land that was left unprotected by the stopbanks was Maori Land in Katihiku block. It was deemed to be insufficiently valuable to deserve protective works, unlike European farmed land and Otaki town lands. The Katihiku Maori community was doubly affected, as not only were the protective benefits they might have received from the scheme reduced by the shortening of the stopbank, but they also became incapable of crossing the modified river channel to reach Otaki town and ultimately had to abandon their settlement.

By September 1948 the project had been completed and handed over to Manawatu Catchment Board, which would be responsible for future maintenance of the works. Even before this time Manawatu Catchment Board had revived its efforts to get the Crown to commit to a scheme which would provide flood protection for all of the Otaki River lands from the gorge to the sea. In February 1947 it stated that it would be necessary to extend the stopbank on the northern side "above the Railway Bridge up to the bluff on Mr Chrystall's property".

> An inspection of the river up to the Gorge and some distance above was made, and it appears to me that there is not now an excessive amount of shingle coming down the Gorge, but that most of the movement of shingle is caused by bank erosion. For this reason it is considered that to make the scheme a complete success it will be necessary to stabilise the river bed as much as possible…. Willow and poplar work should be able to protect the banks from most erosion, provided they can be established in this shingle river.
>
> Would the Council consider including in the scheme bank protection as above, and alignment work right up to the Gorge? If this work were carried out, then maintenance of the scheme should not be too high for the area to bear….
>
> To give protection to [the Rangiouru Stream], it appears necessary to build a stopbank up the Rangiouru Stream and to install flood gates at or near the road bridge….
>
> The Board wish to know also the position with regard to maintenance on the completion of the scheme. Would the area be eligible for a subsidy on the rate raised for maintenance purposes?[644]

Public Works Department engineers were sympathetic to this extension of the scheme and prepared costings. There was also general agreement that stopbanking on the northern side should provide protection for Otaki racecourse as well as for the borough. Additional works

[643] Manawatu Catchment Board, *Report on the Otaki River Scheme, bed surveys and shingle resources 1975*, November 1975, pages 2-3. Supporting Papers #3288-3345 at 3298-3299.
[644] Chief Engineer Manawatu Catchment Board to Chairman Soil Conservation and Rivers Control Council, 10 February 1947. Works and Development Head Office file 48/106. Supporting Papers #685.

were agreed to, though these provided for only a partial extension of the northern stopbank upstream, and were carried out during 1948.

At about this time Tamati Hawea approached the Chairman of the Soil Conservation and Rivers Control Council, during a visit the Chairman was making to the Otaki River, seeking assistance with drainage of his land on the southern side of the river. He put his request in writing:

> My farm is on the south bank and touches the river channel recently completed. The farmers on the opposite side had work done by the P.W. machinery in lieu of compensation. What is my position as regards getting work done? I would like to state now or in future if the occasion may arise, we the Maori owners on our side of the channel will not at any time claim compensation as the channel has saved our land. The job I have in my mind will take 1 machine with the blade maybe 1 day and certainly less than 2 days.[645]

The Chairman asked the District Engineer for his comments, noting that:

> As you are aware a considerable amount of work was carried out on the north bank for Pakeha owners in lieu of compensation, and it is therefore reasonable that a limited amount of work should be done for the Native owners on the south bank, even though the land in that area is of relatively poor quality.[646]

He replied that "the work requested should not exceed £80", which he recommended[647].

Concurrent with the additional work to extend the lower Otaki scheme into a whole-of-river scheme, the first steps were being taken to bring into Crown ownership the land that was occupied by the lower Otaki scheme works. The initial task was to understand the cadastral pattern of titles and ownership, something which had not been done by the Public Works Department with any precision or any apparent understanding during all the earlier years of working on the river. In December 1947 the Chief Surveyor was asked to prepare a plan at a scale of 3 chains to an inch showing "the subdivisions, titles and owners etc of land to a minimum depth of say 15 chains" on either side of the centre line of the proposed cut between the State Highway and the sea[648]. At this large scale, the plan that was produced was some 8 feet (2.4 metres) long by 3½ feet (1 metre) wide[649]. The plan shows the cadastral pattern overlaid on the pattern of braided river channels derived from an aerial

[645] T Hawea, Te Horo, to Chairman Soil Conservation and Rivers Control Council, 6 October 1948. Works and Development Head Office file 48/106. Supporting Papers #687-688.
[646] Chairman Soil Conservation and Rivers Control Council to District Engineer Wellington, 19 October 1948. Works and Development Head Office file 48/106. Supporting Papers #689.
[647] District Engineer Wellington to Chairman Soil Conservation and Rivers Control Council, 29 October 1948. Works and Development Head Office file 48/106. Supporting Papers #706.
[648] District Engineer Wellington to Chief Surveyor Wellington, 30 December 1947. Lands and Survey Wellington District Office file 9/860. Supporting Papers #1120-1121.
[649] Chief Surveyor Wellington to District Engineer Wellington, 16 April 1948. Lands and Survey Wellington District Office file 9/860. Supporting Papers #1122.
District Engineer Wellington to Chairman Soil Conservation and Rivers Control Council, 22 April 1948. Works and Development Head Office file 48/106. Supporting Papers #686.
Works and Development Head Office plan PWD 127080. Supporting Papers #1543-1546.

photograph taken in December 1946. The approximate centre line of the excavated channel is also shown. It shows the spread of small-sized titles across the riverbed in the upper half of the stretch of river between the State Highway bridge and the sea, and the absence of titles in the riverbed in the lower half of that stretch, which has been referred to earlier in this report as making the ownership of the Otaki River bed unique in the Inquiry District.

Following the preparation of the cadastral boundaries plan, a surveyor was commissioned to prepare survey plans sufficient for taking proclamations. The survey plans[650] adopted the cadastral pattern prepared by Department of Lands and Survey, and added the boundaries and areas of the land to be taken. The untitled land in the lower part of the Otaki River was referred to as "Ungranted Land" on the survey plans. The plans were not approved until October 1951, and it was only after this that the process of taking land under the Public Works Act, followed by assessment of compensation, could commence. This process has been covered in other evidence[651].

In September 1948, as it was about to take over responsibility for Otaki River flood protection works from the Public Works Department, Manawatu Catchment Board prepared its own flood protection scheme for the river and for the adjacent Waitohu Stream catchment[652]. The Board explained that:

> The work already carried out by the Soil Conservation and Rivers Control Council extends from the 3½ mile point, that is 1 mile above the Otaki Bridge, to the sea. This work is directly affected by the river upstream of it, and it is considered essential to continue the work in the river to the lower end of the Otaki Gorge. There are large quantities of shingle moving down the river bed, but it is considered that most of this shingle is coming from the banks of the river itself and not down the Gorge. For this reason no work is proposed above the Gorge, but it will be necessary to see that the bush is not cleared and that pests are controlled.
>
> The extent of the scheme north and south of the Otaki is not so clearly defined as the extent to the east. The Waitohu and Mangaone Streams are linked to the Otaki because it is possible in flood conditions for these streams to overflow into the Otaki, or the Otaki to overflow into them. For this reason meetings have been held with the settlers concerned to find their wishes.[653]

[650] Wellington plans SO 22211 and SO 22212. Supporting Papers #1594 and 1595.
[651] H Bassett and R Kay, *Porirua ki Manawatu Inquiry District: public works issues*, November 2018, Wai 2200 #A211, pages 265-271.
[652] Report on proposed river control and drainage scheme: Otaki area, attached to Clerk Manawatu Catchment Board to Chairman Soil Conservation and Rivers Control Council, 23 September 1948. Works and Development Head Office file 48/106. Supporting Papers #692-704.
[653] Report on proposed river control and drainage scheme: Otaki area, attached to Clerk Manawatu Catchment Board to Chairman Soil Conservation and Rivers Control Council, 23 September 1948. Works and Development Head Office file 48/106. Supporting Papers #692-704.

The Mangaone Stream settlers opted not to join the scheme, while those along the Waitohu Stream did decide to join. Maori would have been consulted to the extent that they fitted within the definition of "settlers".

Upstream to the Gorge, the new work proposed consisted of "training the river to an ultimate improved course", using a bulldozer on an occasional basis together with the construction of further groynes on bends. The river bed between existing fences would be taken over by the Board and planted up. On the southern side of the Otaki River, the new channel allowed farm drains to be deepened and widened, thereby improving land drainage. The Waitohu Stream would be improved by the removal of willows that were blocking the river channel, dredging and straightening the channel, and planting poplars and willows along the riverbank for bank protection. The works were designed to reduce flooding by allowing water to drain to the sea more quickly, and reduce riverbank erosion[654].

The works for the Otaki Scheme were described as "essential" when Treasury approval was sought by the Soil Conservation and Rivers Control Council in October 1948[655]. Treasury support for the Catchment Board's Otaki Scheme was obtained in February 1949[656], and the Catchment Board was advised of the Government's approval the following month; the construction works attracted a 3:1 subsidy, though Treasury cut back the maintenance work subsidy to 1:1, reviewable after five years[657].

Before the Government's approval had been obtained to the scheme of work, the Catchment Board applied for permission to include further work in the proposal. This involved an extension of the scheme area to include the Waiorongomai Stream, to the north of the Waitohu Stream:

> I am forwarding [a plan] showing proposals for further work under the Otaki Scheme…. The plan shows the proposed deepening and improving of the outlet to Waiorongomai Lake, and also the deepening of the communal drain running south from the lake.

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[654] Report on proposed river control and drainage scheme: Otaki area, attached to Clerk Manawatu Catchment Board to Chairman Soil Conservation and Rivers Control Council, 23 September 1948. Works and Development Head Office file 48/106. Supporting Papers #692-704.

[655] Chairman Soil Conservation and Rivers Control Council to Secretary to the Treasury, 12 October 1948. Works and Development Head Office file 48/106. Supporting Papers #705.

[656] Secretary to the Treasury to Chairman Soil Conservation and Rivers Control Council, 28 February 1949. Works and Development Head Office file 48/106. Supporting Papers #710.

[657] Chairman Soil Conservation and Rivers Control Council to Chief Engineer Manawatu Catchment Board, 16 March 1949. Works and Development Head Office file 48/106. Supporting Papers #711.
The approval also provided for the Catchment Board to raise a loan to fund its local contribution. As some of the loan would be funding its contribution to work already completed during 1945-47 on the lower Otaki Scheme, this required special legal authorisation pursuant to Section 31 Finance (No. 3) Act 1944. Chairman Soil Conservation and Rivers Control Council to Minister of Works, 9 June 1949, approved in Cabinet 22 June 1949, and Secretary to the Treasury to Minister of Finance, 1 July 1949. Works and Development Head Office file 48/106. Supporting Papers #712-713 and 714.

> The cost of the work would be … £250.0.0.
>
> In the course of carrying out the classification of the Otaki Scheme, this area, which receives an indirect benefit from the Scheme as the roads to this area will be made passable in flood periods, was inspected, and it was found that considerable improvement could be given to the area by carrying out the work proposed above.
>
> The owners of the property are very keen for this work to be done, and are quite prepared to be rated in a higher class if it is done and maintained.
>
> As far as the economics of the Otaki Scheme are concerned, it is definitely a benefit, and I would like permission to add this work to that already proposed….
>
> If this is included in the Otaki Scheme, it means that this Scheme joins directly to the Waikawa – Manakau Scheme.[658]

There was no mention in this application that the owners of Lake Waiorongomai and its surrounding titles were Maori. While the reference to discussion with "the owners" suggests they were supportive of drainage and channel improvement work, this has not been confirmed during research for this report. The Native Department was another stakeholder with interests in land use around Lake Waiorongomai at the time, through its Manawatu Development Scheme, and there is evidence from a later date (see below) that it wanted this type of work to be carried out. It is therefore possible that the Catchment Board was in discussion with the Native Department rather than directly with individual owners.

The extension of the Otaki Scheme to include Lake Waiorongomai and the expenditure there was quickly approved by the Soil Conservation and Rivers Control Council in January 1949[659]. Just three months later a Maori Affairs Department official (possibly an engineer/surveyor) wrote to the Under Secretary (the head) of that Department about the outlet stream becoming obstructed by sand drift. He was acting on a request from a departmental staff member who had told him:

> The settlers in the area of the Wairongomai [sic] Lake near Otaki are at present very concerned by the fact that a sand drift has completely blocked the outlet of the lake at the beach. At the moment the drain between the lake and the sea is partially blocked and the sand drift is not the cause of the present high level of the lake, but unless removed before the winter rains this blockage will hold the lake at an unusually high level and considerably affect the adjoining farm land. The removal of the blockage is not a great difficulty; it can be removed for £100, but unless the sand dunes adjoining which have been recently stripped by the wind of vegetation are thatched and planted the removal of the blockage will provide only temporary relief…. There is only one farm controlled by the Department in this area, a small area of which is low lying and is drained to the lake; a considerable rise in the lake level will be required to affect this drainage.

[658] Chief Engineer Manawatu Catchment Board to Chairman Soil Conservation and Rivers Control Council, 7 December 1948. Works and Development Head Office file 48/106. Supporting Papers #707-708.
[659] Chairman Soil Conservation and Rivers Control Council to Chief Engineer Manawatu Catchment Board, 21 January 1949. Works and Development Head Office file 48/106. Supporting Papers #709.

> There is however a considerable area of Maori land, about 400 acres, affected. The area is at present not intensively farmed; it would however if the lake could be lowered come in as excellent land. It is most probable that the lowering of the lake level has been previously investigated; if not it should be. With regards to the immediate consideration, the drift at the outlet, the question of finance has been discussed and Hemi Hakaraia is going to ascertain from the owners to what extent they are prepared to contribute and advise the amount. There is some European land affected, about 50 acres, the balance of the land is Maori, a considerable portion of which is leased at small rental, and the balance with the exception of the area under control of the Department is not farmed to advantage. The contribution by the owners and occupiers is not likely to be considerable.[660]

A margin note records that "Hema [sic] Hakaraia, Rangiuru Road, Otaki, offered to get owners to contribute ¼ of the cost up to £100, that is a max of £25", and that the Under Secretary had contacted the Public Works Department's District Engineer about getting the blockage cleared[661]. The Under Secretary then formally authorised the District Engineer to go ahead with the clearance. It was perhaps just as well that Maori Affairs money was available to clear the outlet stream before the winter of 1949, as the Catchment Board advised in May 1949 that it was unable to come up with the ¼ local share of the £250 approved by the Soil Conservation and Rivers Control Council, though it would find the money "in a few months time"[662].

The involvement of the Native Department, with its land development emphasis reflected in its Manawatu Development Scheme, meant that the objectives of the Catchment Board were aligned with those of all relevant branches of central Government. It would have been hard for Waiorongomai Maori to have developed and articulated an independent voice. It is also apparent that some Maori at least shared the Native Department's enthusiasm for land development and the use of waterways in furtherance of land development. The fewer restrictions there were on land development, the higher could be the return from farming and from lease rentals.

In July 1967 the Catchment Board's Chief Engineer wrote to the Soil Conservation and Rivers Control Council with his assessment of the Otaki River scheme:

> The Otaki River was, as you are aware, considerably shortened when the Tower dredger worked from the railway bridge to the sea and we endeavoured to stabilise the river into a single course from the road bridge up to the Gorge. This has not been successful, and the aerial photographs illustrate that the river is still unstable. It is considered that rather than shortening the river, it would be necessary to lengthen it in

[660] GD Turnbull, Wellington, to Under Secretary for Maori Affairs, 11 April 1949. Maori Affairs Head Office file 5/14/4. Supporting Papers #471.
[661] Margin note by Director of Native Land Settlement, 12 April 1949, on GD Turnbull, Wellington, to Under Secretary Native Department, 11 April 1949. Maori Affairs Head Office file 5/14/4. Supporting Papers #471.
[662] District Engineer Wellington to Chairman Soil Conservation and Rivers Control Council, 9 May 1949. Works and Development Head Office file 48/106. Supporting Papers #715.

order to obtain a single thread river course. Although we have not succeeded in making the Otaki River into a single thread stream, a great deal of success has been achieved by the stream by in particular preventing the river from extending over the full area that it did before, and by preventing a considerable amount of flooding with stopbanks, also the establishment of considerable growths of trees in the river have reduced very markedly the amount of flood damage occurring.

It does appear therefore reasonable to confine a river of this nature within certain limits, and within the area where it is to be confined to plant up material to prevent lateral erosion. In order however to obtain results as cheaply as possible the stability of this river should be studied, and it appears that the river should be allowed to meander considerably within the limits, and that when a choice can be made it is better to tend to lengthen the river than to shorten it. Any work which is planned to keep the river in a straight course is doomed to failure unless it is very costly and it would appear that this method of endeavouring to control a river is not sound.[663]

5.5.7 Gravel extraction

The removal of shingle from riverbeds was an activity that was monitored by Manawatu Catchment Board, because it could be either beneficial or harmful to river control works depending on the circumstances. Where shingle was transported down a river and then deposited in the lower reaches as the velocity of the water decreased, the channel could become filled up and no longer have the capacity to accommodate flood volumes; in these circumstances shingle removal assisted the Catchment Board engineers in their task of allowing floodwaters to quickly get away downstream. However, too much shingle removal in any one spot could create a hole in the riverbed, which increased water velocities and encouraged scour upstream that might threaten stopbanks and other protection works.

The extent to which the Catchment Board became involved depended on the ownership of the bed and therefore the shingle. If the bed was Crown-owned or owned by the Catchment Board, then the Board had a greater ability to regulate the rate and location of shingle removal for the benefit of its river control responsibilities.

In 1972, shingle extraction by Ohau Shingle Co Ltd upstream of the State Highway 1 and railway bridges was of concern to the Catchment Board. The company owned land near the bank of the Ohau River on which its crushing and washing works were located, and hauled shingle out of the riverbed to its works. However the shingle removal was having a detrimental effect on the river, encouraging it to meander and attack the riverbank. The Board decided to order the company to change its methods of operation forthwith, to only remove shingle as directed by the Board, and to be on notice that non-compliance in future

[663] Chief Engineer to Secretary Soil Conservation and Rivers Control Council, 21 July 1967. Manawatu Catchment Board file 10/5. Supporting Papers #1780-1781.

would render it liable to prosecution[664]. The company may have then challenged the Board's right to act in that manner, as the next reference to that stretch of the Ohau River on the Board's file was to ask the Department of Lands and Survey about the legal ownership of the riverbed upstream of the road and railway bridges[665]. The departmental advice was that riverbank owners had presumptive rights to the centre line of the river (the ad medium filum presumption), because "I do not think this river could be deemed to be a navigable one"[666]. Ohau Shingle Co Ltd had an easement to extract shingle granted by a European riverbank owner who happened to own land on both sides of the river - Ohau 3 Section 11C on the south bank of the river, and Muhunoa 1B2E on the north bank. The easement on the title was a modern instrument, a plan showing it having been approved in 1971[667].

In a follow up three months later, the Department declined to give an opinion on whether or not the rules of accretion and erosion applied. This was because they could only apply if the changes to the riverbed were gradual and imperceptible, and would not have effect if the change had been sudden or by artificial means; "only a declaration by one who has known the river for many years would be satisfactory evidence of a case of accretion and erosion, and preferably two declarations should be obtained"[668].

In March 1984 Levin Borough Council, which owned some land on the bank of the Ohau River that had been the site of a gravel extraction operation in the past[669], sought the Catchment Board's advice as to whether it would be advisable to issue a further lease for gravel extraction[670]. The Board replied:

> The Ohau River is at present heavily over-extracted and considerable degradation has taken place especially near and below the State Highway.
>
> Two major extractors remain, Speirs Concrete Ltd and Colliers Contractors, and the Board has asked both for a cut in their extraction rates.
>
> The Board is also not now issuing any further licences to extract shingle in the Ohau River.

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[664] File note, undated (March 1972). Manawatu Catchment Board file 9/3. Supporting Papers #1701.
[665] Secretary to Commissioner of Crown Lands Wellington, 9 March 1973. Manawatu Catchment Board file 9/3. Supporting Papers #1716-1717.
[666] Commissioner of Crown Lands Wellington to Secretary, 23 May 1973. Manawatu Catchment Board file 9/3. Supporting Papers #1718.
[667] Wellington plan DP 32524. Not included in Supporting Papers.
Wellington Land Registry Transfer T.876747. Not included in Supporting Papers.
[668] Commissioner of Crown Lands Wellington to Secretary, 17 August 1973. Manawatu Catchment Board file 9/3. Supporting Papers #1725.
[669] Part Horowhenua 3E2 Sections 11-13, Lot 1 DP 10440, and Part Lots 3 & 5 DP 2127, all in Block XI Waiopehu SD, combined area 38-3-00.3, CT B2/736.
[670] Borough Engineer Levin Borough Council to Secretary, 28 March 1984. Manawatu Catchment Board file 9/3. Supporting Papers #1749.

> Your Council could lease the area but no licence would be granted by the Board to extract from the river….
>
> The gravel resource of the Ohau River is now a very scarce and valuable commodity.[671]

In 1984 Speirs Concrete Ltd was granted a one-year licence to extract between 20,000 and 30,000 cubic metres of gravel. The company's actual take was 22,100 cubic metres. For the following year the company sought between 30,000 and 40,000 cubic metres, which was described by the Catchment Board's Chief Engineer as "completely unacceptable". He recommended, and the Board approved, that in line with the Second Review the company should be given a licence to take a maximum of 11,000 cubic metres[672]. Clearly the gravel resource of the Ohau River had been worked beyond its sustainable capacity while under the Catchment Board's regulatory control.

The rest of this section of the report is a case study about gravel extraction from the bed of the Otaki River. It was not possible in the time available to examine the history of gravel extraction from the beds of other rivers.

In 1950, before the lands comprising the Otaki River channel were taken under the Public Works Act and became Crown-owned, a private operator approached the Board for permission to establish a metal crushing plant on the north bank and for the rights to take shingle from the channel between the bridge and the sea. The Board asked the Soil Conservation and Rivers Control Council for its opinion[673]. The Chairman of the Council explained that there were "several difficulties":

> (1) Mr Higgett asks for sole rights from the bridge to the sea. It would be most undesirable to create a monopoly….
> (2) Land titles in this area are confused and have not been clarified by the Lands and Survey Department. There is native land, and occupied land that has not been previously surveyed. Titles extend into the river bed. The Ministry of Works entered into the land to do a river work under the appropriate clause of the Act. Until compensation has been paid and title acquired, neither the Department nor your Board has power to grant permission for other people to enter onto the land.
> (3) If Mr Higgett obtained permission from one of the present title holders, such permission would terminate when the land was acquired by the Crown, though a fresh permission might be granted. Also, before taking shingle from the river, the consent of your Board would be necessary, even though the property owner agreed….

[671] Chief Engineer to Borough Engineer Levin Borough Council, 8 May 1984. Manawatu Catchment Board file 9/3. Supporting Papers #1750-1751.
[672] Paper for Works Committee meeting, 16 July 1985. Manawatu Catchment Board file 9/3. Supporting Papers #1752.
[673] Chief Engineer Manawatu Catchment Board to Chairman Soil Conservation and Rivers Control Council, 30 June 1950. Works and Development Head Office file 48/106. Supporting Papers #716.

> It would seem that Mr Higgett's application is rather premature, and that the matter should be re-opened when the land has been acquired by the Crown.[674]

Once the Crown took ownership of the bed of the Otaki River via the Public Works Act in 1954, however, the way was opened for the issue of gravel extraction authorisations downstream of the railway and highway bridges. Authority for the Crown-owned land was transferred from central Government to the Manawatu Catchment Board by it being set apart as a soil conservation reserve established under Section 16 Soil Conservation and Rivers Control Act 1941 in 1955-56[675], and the Catchment Board could then issue licences for shingle removal. The main gravel extractor on the lower Otaki River was Golden Bay Cement Ltd, which took over a licence originally granted to K Douglas Ltd in 1967 and established a shingle screening and washing plant on Riverbank Road. The other major extractor was New Zealand Railways, upstream of the road and rail bridges. These two extractors monopolised gravel extraction on the river.

By 1972 Board staff were becoming concerned about the effect of the Railways gravel extraction, and the Catchment Board sent a 'please explain' letter:

> The effect of excavation upstream of the Railway Bridge by your Department … is having a detrimental effect upon the river.
>
> The bed has degraded probably due to two main causes, these being recent low periodicity of floods and the increased demand of the new ballast plant….
>
> I should like to review the present situation from a long term point of view.
>
> [In 1966 you] stated satisfaction regarding quality and availability of the proposed quantity 200,000 cubic yards per annum, and the Board in its reply generally agreed but with the provision that if an adverse effect was evident then the quantity would be reduced.
>
> The rate of extraction of the JCB excavator used recently was at the rate of 1200-1500 cubic yards per day, corresponding to an annual quantity of 300,000 to 375,000 cubic yards, which is far in excess of the original request.[676]

The District Engineer for Railways replied that the JCB excavation had been a trial only for a short term, and the annual extraction figures for the years 1966-72 were of the order of 70,000 to 100,000 cubic years (of which only half would have been exported from the site as railway ballast), with similar volumes expected to be required over the next five years. Railways was anxious to work in with the Catchment Board so that gravel extraction was

[674] Chairman Soil Conservation and Rivers Control Council to Chief Engineer Manawatu Catchment Board, 25 September 1950. Works and Development Head Office file 48/106. Supporting Papers #717.
[675] *New Zealand Gazette* 1955 page 920, and 1956 pages 369 and 370. Supporting Papers #1476 and 1477-1478.
[676] Chief Engineer to District Engineer NZ Railways, 15 November 1972. Manawatu Catchment Board file 10/5. Supporting Papers #1782.

advantageous to river control, and to this end it had cooperated with Golden Bay Cement on a sharing of by-products, and was taking gravel from an area known as Crystals Bend under the supervision of the Board[677].

In April 1973 the Catchment Board asked Railways for a payment for gravel that was being taken from Board-owned land, because Railways had ceased taking gravel from its own property, and any revenue from gravel extraction would be put towards Otaki River control work[678]. Railways replied that if this payment was phrased as being an inspection fee, then it would pay a fee of 1 cent per cubic yard (1.3 cents per cubic metre)[679]; the Board accepted[680]. The difference between an inspection fee and a royalty fee is apparent from the following information contained in a 1983 report:

> Over a four year period (1977-81) the Railways Department paid the Catchment Board $8,218.42 in extraction inspection fees, whereas Golden Bay paid approximately $28,400 in royalty and licence fees during the same period. Neither organisation currently pays Otaki Scheme rates.[681]

Railways sensitivity to the terminology to be used, besides the financial distinction, was because it took a different legal view of its right to operate, which it did not consider derived from the Catchment Board's powers of control over riverbeds. This is explained in another quote from the 1983 report:

> In March 1974 Manawatu Catchment Board advised NZ Railways Department that the Board was charged with the control of all waterways in the Board's district under the Soil Conservation and Rivers Control Act 1941 and the Water and Soil Conservation Act 1967. The Board was therefore charged with control of shingle extraction from the river bed and banks, and bylaws required every extractor to apply for and obtain an annual permit. Permits were issued subject to extraction operations having no detrimental effect on the river bed, banks and berms.
>
> In June 1974 the NZ Railways Department replied that, although the Department recognised shingle was a valuable and limited resource and there was a need for river control and shingle management, it did not recognise the right of the Board to grant long term shingle rights as the Department considered it had a prior claim to any metal extracted from the river. This claim was derived from Railways' position as a Department of the Crown, from legislation, from land ownership, from being the longest-standing operator on the river, and from the national importance of the aggregate to the Government Railways system.[682]

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[677] District Engineer Wellington NZ Railways to Chief Engineer, 23 January 1973. Manawatu Catchment Board file 10/5. Supporting Papers #1783-1785.
[678] Secretary to Chief Civil Engineer NZ Railways, 2 April 1973. Manawatu Catchment Board file 10/5. Supporting Papers #1786.
[679] Chief Civil Engineer NZ Railways to Secretary, 17 August 1973. Manawatu Catchment Board file 10/5. Supporting Papers #1787.
[680] Secretary to Chief Civil Engineer NZ Railways, 28 September 1973. Manawatu Catchment Board file 10/5. Supporting Papers #1788.
[681] Manawatu Catchment Board, *Otaki River channel change and gravel resources*, December 1983, page 33. Supporting Papers #3377-3432 at 3412.
[682] Manawatu Catchment Board, *Otaki River channel change and gravel resources*, December 1983, pages 29-30. Supporting Papers #3377-3432 at 3408-3409.

The unease felt by Catchment Board engineers about the effects of the substantial gravel extraction that was occurring continued to grow. Both channel degradation and gravel extraction were increasing, while movement downstream of replacement material into the reaches where the extractors were operating was slow. However, they lacked enough information to convert that unease into policy prescriptions. Therefore during 1973-1975, and with active encouragement from Golden Bay Cement, which wanted to know how much gravel would be available in the future to help with its investment planning[683], the Catchment Board undertook a shingle resource study as part of wider scheme review. This examined how much shingle was in the river, how much was being brought down by the river into the lower reaches, and how much could be safely extracted without degrading or lowering the bed of the river such that the river control works on the banks were placed in jeopardy.

The 1975 resource study[684] found that shingle resources in the lower part of the Otaki River were of a high and valued quality in part because the journey of material through the gorge had abraded the softer materials into suspended sediment, leaving only the harder materials to be deposited in the lowlands. There was little replenishment from much of the upper catchment, most material moving downstream being sourced from the banks of the river. Of the mid 1970s state of the river channel, the report stated:

> Most of the work since the excavation of the channel by the Tower dredger in 1948 has been piecemeal, under-financed, overwhelmed by floods, or has simply become obsolete….
>
> [In 1948] the Otaki was a wide braided river, virtually unfenced and almost totally lacking in vegetation or trees. Over 27 years a gradual change has taken place and now the Otaki River has a single thread channel with only two braided reaches remaining…. All banks now have considerable areas of vegetation, and willows and poplars are prolific.
>
> For a period 1968-70 the Otaki River was reasonably stable, and when the Scheme was revised in 1969-70 it was probably not apparent that the river would deteriorate.
>
> As a single thread channel develops, it degrades and training works are undermined, and thus slumping occurs. A large proportion of works carried out in the Otaki have been of a type termed heavy tree protection, and undermining simply allows the river to move behind this type of protection and tear it away.
>
> This has created the situation, especially upstream of the Highway bridge, where flood damage has been excessive for what are relatively low floods. Since late 1974 the protective work built up over 10 years has simply been lost.

[683] Manager Golden Bay Cement (Douglas Metal Division) to Secretary, 5 March 1975. Manawatu Catchment Board file 10/5. Supporting Papers #1789.
[684] Manawatu Catchment Board, *Report on the Otaki River Scheme, bed surveys and shingle resources 1975*, November 1975. Supporting Papers #3288-3345.

> Bed degradation and lateral erosion has created banks of exposed shingle … and the channel [in parts] has become unstable….
>
> The channel downstream of the Highway and railway bridges, i.e. 0 to 4000 metres [from the sea to the bridges 4 kms upstream], has had considerable stability over a period of years. Movement of material, however, has increased in the last two years [in the 700 metre stretch immediately below the bridges]. It is probable that bed starvation caused by the metal extraction of NZ Railways, immediately upstream from [the bridges], has resulted in greater stress being placed on those sections downstream.
>
> A number of islands have appeared over the last 11 years in the lower channel, after spraying operations ceased in 1963 there has been a rapid build-up of material on them…. The islands with their heavy vegetative cover have caused a severe reduction in channel capacity, and floods above 570 m³/sec (20,000 cusecs) now top the left bank stopbank from 2080 metres to its end at 940 metres [upstream of the mouth].
>
> The mouth of the Otaki has moved progressively north since 1950 assisted in part by the extensive erosion on the left bank between 520 and 940 metres [i.e. the Katihiku land unprotected by the left stopbank]. This left bank erosion has removed 3 ha of medium to poor pasture land.[685]

Surveys of the riverbed showed that replenishment of gravels in the lower reaches only happened during large floods of long duration:

> A number of theories on shingle movement in the Otaki will have to be discarded. There is no such thing as a fixed annual quantity of material entering the river. It is now obvious that large quantities of material have only been moved in catastrophic events, and that the river moves the resultant material slowly over the years between such events.[686]

Gravel extraction returns showed that between 1968 and 1975 approximately 863,880 cubic metres had been removed by the two extractors, and over the two years April 1973 to March 1975 the rate had been close to 168,300 cubic metres per year. At this rate, and with slow movement of bed material, "a depletion of shingle resources in the river is imminent". There was "approximately 7-10 years of available resources". This assessment had variables, and could be extended or decreased depending on how the river channel developed and how frequent were large floods that increased gravel movement downstream.

The Catchment Board followed up its resource study with an environmental assessment looking at both shingle availability and water availability. Of the effects of metal extraction, the assessment stated:

> As supplies diminish, greater care will be required in extraction procedures. For this reason the Board has requested a report for a shingle management policy for the Otaki

[685] Manawatu Catchment Board, *Report on the Otaki River Scheme, bed surveys and shingle resources 1975*, November 1975, pages 19-20. Supporting Papers #3288-3345 at 3315-3316.
[686] Manawatu Catchment Board, *Report on the Otaki River Scheme, bed surveys and shingle resources 1975*, November 1975, page 22. Supporting Papers #3288-3345 at 3318.

River. It is possible that stress could be placed on biotic life by poor extraction methods.

It is essential however that the islands in the channel downstream of the highway are kept clear of vegetation, and that future build-up of shingle is removed. Present methods of extraction in that area appear suitable, though concern has been expressed by whitebaiters at the crossing of the river by heavy machinery at frequent intervals. It does appear that when plant works close to the mouth on the left bank, and uses the river channel to cross to the extraction site, whitebait disperse rapidly when a machine enters the water. No direct effect on the whitebait has been established, but it could be frustrating for those endeavouring to catch them.

For this reason metal extraction will not be carried out in that region during the whitebait season.

The mouth of the Waimanu Stream is also similarly affected by heavy machinery crossing it. Once metal extraction is concentrated upstream from it, and crossings become frequent, a large culvert will be needed for the road across the outlet. The lower reaches of this stream are an excellent habitat for trout, and it is used by them during high floods in the Otaki.

Trout fishermen have also been troubled with the possible release of silt and sediment by metal extraction methods. This visually is not always apparent, but trout are fairly sensitive to dissolved oxygen levels and fine sediment. A series of water quality tests have been taken in low flow conditions, and these up to the present time have not indicated the presence of fine sediment.[687]

In its conclusions the environmental assessment stated:

It should be recognised that the shingle resources of the river are vital to Otaki. It has been found that nearly 200 people are employed in either direct metal extraction or with firms relying on the availability of good aggregate from the river.

With Otaki's present population of nearly 4000, and a workforce of approximately 800, the importance of the river to existing employment and future job opportunities cannot be minimised. The river is thus also a natural and important resource for the region.

It is now obvious that the river cannot supply all the shingle needs of the region, and it is felt that its remaining supplies should be rationed in a manner that would provide the greatest benefit to Otaki.

It is possible that quarries or judicious use of the old terraces could supplement the river supplies and thus extend their life.

There are a number of Government Departments, local bodies and organisations concerned with the Otaki River and its catchment, and thus cooperation and understanding will be required by all to consider the problems and planning to utilise the river to benefit the region.[688]

[687] Manawatu Catchment Board, *Environmental assessment of the Otaki River Scheme and shingle resources*, undated (January 1976), page 10. Supporting Papers #3346-3370 at 3360.
[688] Manawatu Catchment Board, *Environmental assessment of the Otaki River Scheme and shingle resources*, undated (January 1976), page 12. Supporting Papers #3346-3370 at 3363.

The Catchment Board took the two major extractors into its confidence in January 1976, providing each with a copy of the resources report and the environmental assessment, and explaining that:

> Perusal of these reports will reveal that reserves of shingle have a probable life expectancy of 7-10 years at present rates of extraction. The replenishment of these shingle deposits to match present extraction rates does not appear to be possible.
>
> Local degradation due to shingle extraction has accentuated from time to time the effects of flood damage. Both the management and depletion of shingle resources have the increasing concern of this Board.
>
> Since this investigation commenced, greater pressure has been brought to bear on the resources of the Otaki River.
>
> Under discussion or preparation are plans of urban and rural water supplies, irrigation schemes and a power generation scheme. At least 200 people are employed directly or indirectly in the manufacture of aggregate pre-cast concrete products and servicing industries in the Otaki Region.
>
> Those involved in the exploitation of the resources of the Otaki River include companies, local bodies and government departments. National Water and Soil Conservation Organisation has, because of the foregoing, requested that a comprehensive control scheme be brought down.[689]

The following month the proposed shingle management policy referred to in the environmental assessment was presented to the Board[690]. It proposed that no further licences for shingle extraction would be granted, and that the following 'restricted areas' would be recognised:

1) From 1000 metres [upstream from the mouth] to the sea no extraction shall be carried out during the whitebait season.
2) The area from 2920 metres upstream to 4600 metres is completely restricted because of the road and rail bridges. (It is sometimes difficult to impress on shingle operators the dangerous effects of shingle extraction close to bridges.)
3) The area from 9400 metres to 12160 metres (Tuapaka Gorge) is restricted because it is contended that it has a direct effect on the water supply to Waimanu Springs.

Extraction caused problems for the river protection operations of the Board because it starved the reaches of the river immediately below the extraction sites of bed material, thereby requiring protection works to compensate for that loss of moving material:

> If deposits cannot be supplemented by importing from other areas, excavating terrace deposits or opening quarries, then shingle extraction will need to be restricted within 12 months.

[689] Chief Engineer to General Manager NZ Railways, 21 January 1976. Manawatu Catchment Board file 10/5. Supporting Papers #1790-1791.
[690] Manawatu Catchment Board, *Shingle management report on the Otaki River*, 20 January 1976. Supporting Papers # Supporting Papers #3371-3376.

> Allocation would be on a percentage of the total taken from the river, and the initial reduction would be in the order of 50%....
>
> It appears that the present extraction can continue for 12 months while plans for future use are formulated between all parties. It is realised that alternatives could be more expensive and thus increased costs on the final product.
>
> Both Golden Bay and New Zealand Railways will now realise that great responsibility rests in their hands to protect a dwindling resource yet still assist in development and preserve employment in the region.

The draft policy recommended that extraction in the 'restricted areas' be immediately prohibited, that the level of extraction be cut by at least 50% in 12 months time, and that the Catchment Board work closely with the extractors to achieve the change[691].

The Catchment Board adopted the recommendations[692]. The severe measures taken are an indication of the extent to which matters had been allowed to develop without any earlier response by the Board. There had been no consultation with Otaki hapu, nor do the contemporary records indicate that there was any consideration at all of hapu interests in the river.

At a meeting with the two major extractors after this policy decision was made, they were told they would both be equally affected. Neither took the news well, with Railways arguing its national interest and Golden Bay pointing to the strong market for shingle. Talk turned to spreading extraction over the whole river, taking gravel from dryland river terraces, and cooperation between the two extractors to eke out the resource over longer period. The parties agreed to meet again in three months time.

In June 1976 the two extractors came back with their counter-proposals:

> The NZ Railways are prepared to reduce their extraction rate from the Otaki River as from 1 June 1976 to conserve the remaining resources to last for at least 10 years. On the basis of the figures quoted in the Shingle Management Report, this would reduce the average extraction rate over this period from the present rate by approximately one third.
>
> Golden Bay Cement on its part will confine its activities over the next two year period from 1 June 1976 to the extraction of shingle from the Otaki River mouth area. The shingle involved in his extraction (approximately 240,000 cubic metres) is not included as resources in the Otaki Shingle Management Report. In addition Golden Bay would work such beaches below the SH1 road bridge as required by the Catchment Board for river management purposes. At the end of this period Golden Bay plans to move

[691] Manawatu Catchment Board, *Shingle management report on the Otaki River*, 20 January 1976. Supporting Papers #3371-3376.
[692] Minutes of Works and Machinery Committee, 3 February 1975 [sic, should be 1976], approved by the full Board 17 February 1975 [sic, should be 1976]. Manawatu Catchment Board file 10/5. Supporting Papers #1792.

its extraction operations to shingle terraces. Negotiations are in hand to obtain prospecting rights under the Mining Act 1971 from the owner of suitable land.

The NZ Railways and Golden Bay will enter into an exchange agreement with a three year term to obtain the most efficient use of the high quality aggregates of the Otaki River.[693]

The arrangement seemed to work to the satisfaction of all parties over the next four years. In February 1980 the Catchment Board's Chief Engineer provided the following assessment:

> The sediment yield of the Otaki River is variable and is dependent on flood frequency, but the present long-term rate of coarse sediment (particle size 2mm) production from the headwater catchment is approximately 25,000 m³/year.
>
> Between January 1976 and January 1980 approximately 120,000 m³ of coarse sediment has accreted to the channel downstream of the Tuapaka Gorge.
>
> The shingle extraction rate of both NZ Railways and Golden Bay Cement has reduced substantially over the same period and it would appear, allowing for shingle extracted and sediment deposited, that the available estimated resource is now 880,000 m³.
>
> This indicates that the present extraction rate could continue for a period beyond 1985, possibly till 1990….
>
> It would now appear that even after extraction of the remaining deposits, the Otaki River could support continued annual extraction, albeit at a substantially reduced rate. It is possible, with careful river management and good extraction practices, that a value close to the long-term rate of coarse sediment input would be available for extraction after the exhaustion of present deposits.
>
> Again I must add a cautionary note that if extraction rates increase substantially above their present values, then the available deposits will be exhausted within the previous estimated time period.[694]

The next report on shingle resources of the Otaki River was produced in December 1983[695], and was markedly different in tone from that displayed in the Chief Engineer's 1980 assessment. Bed surveys showed an overwhelming predominance of degradation of the river channel rather than aggradation, which was blamed on high velocities of water in the channel and on gravel extraction (which exceeded the natural bed load supply and replenishment rate). The belief that the extraction rate had been reduced by 50% was not supported by more recent calculations, which showed that extraction averaged 153,000 m³/year during the period 1968-77, and had declined to 125,000 m³/year in 1978-82. The report recommended some drastic changes:

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[693] Manager Golden Bay Cement (on behalf of Golden Bay Cement and NZ Railways) to Chief Engineer, 11 June 1976. Manawatu Catchment Board file 10/5. Supporting Papers #1793-1794.
[694] Chief Engineer to Chief Civil Engineer NZ Railways, 5 February 1980. Manawatu Catchment Board 10/5. Supporting Papers #1795-1796.
[695] Manawatu Catchment Board, *Otaki River channel change and gravel resources*, December 1983. Supporting Papers #3377-3432.

(1) A total ban on commercial aggregate extraction and extraction by the NZ Railways is recommended, and a 3 year phase-out programme is considered necessary.
(2) Some extraction may be necessary for river management purposes, particularly near the river mouth….
(3) Meetings between representatives of the Manawatu Catchment Board, Otaki Borough Council, NZ Railways Department and the Golden Bay Cement Group are recommended to discuss aggregate extraction, aggregate end-use and the phase-out programme.
(4) Consideration should be given to flood detention ponds, bed stabilisation structures, meander control, and widening the river (flood) channel as future Scheme works in the next Review. [696]

When the recommendations were put before the Catchment Board members, there was some reluctance to agree to an end to gravel extraction. Presumably the economic implications were front of mind among the elected representatives and Crown officials. The Board did, however, support a meeting with the gravel extractors. Both extractors prepared statements of their position prior to the meeting[697]. There was no opportunity provided for Otaki hapu to become involved, in fact the December 1983 report and the subsequent discussions discussed below were kept confidential until September 1984.

The meeting was held in February 1984, and agreed to the formation of a sub-committee consisting of two representatives from the Catchment Board, the two extractors and Otaki Borough Council to go into the response to the report in more detail[698]. The sub-committee met the following month[699]. The extractors were willing to make major cuts to their extraction rates from the river, and look to riverbank terraces as a source of material rather than the riverbed. Views coalesced around no reduction during 1984 (allowing a total extraction of 135,000 m³), a 25% reduction in 1985 (to 102,000 m³) and a further 25% reduction in 1986 (to 80,000 m³). Of these totals Railways would be allocated 68% and Golden Bay 32%. There was also agreement that because gravel extraction caused harm to the river control works, it was appropriate that the extractors paid a levy to the Otaki river control Scheme for extra river protection work; this would primarily have an impact on Railways which was not paying any royalties[700]. When the December 1983 report and the subsequent agreement

[696] Manawatu Catchment Board, *Otaki River channel change and gravel resources*, December 1983, page 51. Supporting Papers #3377-3432 at 3430.
[697] Statement on Otaki River gravel resources by Distribution Manager The Golden Bay Cement Group, 19 December 1983, and Acting Chief Civil Engineer NZ Railways to Chief Engineer, 16 January 1984. Manawatu Catchment Board file 10/5. Supporting Papers #1797-1800 and 1801-1804.
[698] Notes of meeting, 2 February 1984. Manawatu Catchment Board file 10/5. Supporting Papers #1805-1807.
[699] Notes of meeting, 13 March 1984. Manawatu Catchment Board file 10/5. Supporting Papers #1808-1811.
[700] Chief Engineer to Sub-Committee participating organisations, 28 March 1984. Manawatu Catchment Board file 10/5. Supporting Papers #1812-1813.

were made public in September 1984, both extractors were quoted as grudgingly accepting the reductions[701].

However, the agreement did not last for long, as the following year, in February 1985, the Catchment Board held another meeting with the extractors and asked that the 1986 extraction figure be reduced still further to 60,000 m³ total[702]. This brought strong complaints from the extractors[703]. In response the Chief Engineer prepared another report on aggregate extraction and presented it to the Board members in July 1985; like the December 1983 report it was a confidential report. He explained:

> Numerous efforts have been made by Manawatu Catchment Board staff and members to achieve reduced aggregate extraction from the Otaki River since 1983. The Board has little to show for its efforts. River channel degradation continues and the Otaki River Control Scheme continues to show river erosion control and capital replacement expenditure. At present Scheme expenditure is met by the local ratepayers, and government (NWASCA) provides a 60% grant. NWASCA has threatened to withdraw grant assistance unless extraction is reduced to the natural aggradation (bedload supply) rate or the extractors contribute for Scheme damage.
>
> Otaki River bedload supply has been estimated in previous MCB reports at between 6,000 m³/year and 25,000 m³/year; and extractors to date have shown little inclination to contribute to erosion control funds…. Otaki Scheme works are a statutory responsibility of the MCB even though early Otaki Scheme design and construction was undertaken by the Public Works Department. The involvement of numerous agencies in Otaki river erosion control is only likely to lead to bureaucratic wrangling and delay, to the locals' disadvantage.
>
> Despite various reports and discussions, Otaki River aggregate extraction control has yet to be achieved. Because the Board's efforts have been ineffectual, NWASCA and the two extraction companies have attempted to dictate river aggregate extraction terms….
>
> The December 1983 MCB report … indicated a clear relationship between river erosion and river aggregate extraction, and at that stage the Board decided to negotiate with the extractors and affected local bodies rather than totally restrict commercial extraction. From an engineering viewpoint it would be preferable to prohibit commercial river aggregate extraction and only permit river-control extraction. This viewpoint is based not only on the correlation between extraction and degradation, and the level of erosion control expenditure, but also the fact that Otaki stopbanks are constructed of relatively weak material, the river has been confined to an unnaturally straight and narrow channel, and the Otaki Scheme currently offers relatively little (i.e. 20 year recurrence) flood protection to the local township. Excessive river aggregate extraction can only reduce the Scheme's effectiveness by increasing the likelihood of stopbank undermining and increasing river control costs.

[701] *Levin Chronicle*, 25 and 27 September 1984. Copt on Manawatu Catchment Board file 10/5. Supporting Papers #1814 and 1815.
[702] Notes of meeting, 12 February 1985. Manawatu Catchment Board file 10/5. Supporting Papers #1816-1820.
[703] Distribution Manager The Golden Bay Cement Group, 19 February 1985. Manawatu Catchment Board file 10/5. Supporting Papers #1821.

> Scheme ratepayers should be fully informed of Otaki Scheme weaknesses and the Board's effort to reduce river aggregate removal. If the local ratepayers wish the Otaki River to be mined, then their elected representatives should set the level of compensatory extraction payment (and the ratepayers informed). Failing any satisfactory agreement being reached on compensatory payment, the Board should reconsider the MCB officers' original recommendations. Further procrastination and weakening of the Otaki Scheme could however leave the Board liable in the event of stopbank failure and flood damage.[704]

In an addendum to the report, it was stated that the risk of liability had been discussed with the Board's lawyer and "there is a very definite liability on both the Board and its members in the event of river erosion and flooding caused by excessive gravel extraction". It was therefore recommended that all commercial extraction be phased out by March 1987, leaving the only extraction permitted that required to achieve river control objectives, which might amount to 20,000 m³/year[705]. The Chief Engineer was clearly expressing his frustration with events, and was throwing down a challenge to the Board members to make some decisions.

The Board's Works Committee considered the reports in committee. They agreed "in principle" to cessation of commercial extraction by March 1987, with a phase-down programme in the two years before then, and wanted discussions and negotiations to take place with the extractors immediately[706].

During the remainder of 1985 and 1986 extraction continued under reduced permitted volumes while discussions continued at both the local and the national level. During that time, the threat hung over events that central government funding for the Otaki Scheme would cease in March 1987 unless a settlement was reached locally. Eventually in July 1986 agreement was reached on an extraction regime for the period 1987-93. After 1993 extraction for commercial purposes would cease, and only extraction for river control purposes would be permitted. The amounts that could be taken by each extractor were tied in with the amounts that had to be paid to the Ohau Scheme funds as compensation for damage. NZ Railways could take 40,000 m³ in 1987-88, 30,000 m³ in 1988-89, and 20,000 m³ in the following four years, paying compensation rising over that time from $1 per m³ to $2 per m³ and then to $3 per m³. Golden Bay Cement could take 28,000 m³ in 1987-88, and 20,000 m³ in the following five years, paying $1 per m³ rising to $2 per m³. Any over-extraction above those permitted volumes would result in the operator being banned from

[704] Confidential report by Chief Engineer on Otaki River aggregate extraction, undated (July 1985). Manawatu Catchment Board file 10/5. Supporting Papers #1822-1843.
[705] Report to Works Committee, 16 July 1985. Manawatu Catchment Board file 10/5. Supporting Papers #1844.
[706] Minutes of Works Committee meeting, 16 July 1985. Manawatu Catchment Board file 10/5. Supporting Papers #1845.

the river[707]. It is worth noting, however, that the agreement itself embedded over-extraction for six years, when measured by comparing the rate of extraction against the rate of natural bedload increase. It was later clarified that the 20,000 m³/year that Golden Bay Cement could extract in years 1988-93 would be comprised of 13,000 m³ drawn from the Scheme area of the Otaki River channel, and 7,000 m³ (with no attached compensation levy requirement) drawn from outside the Scheme area at the rivermouth.

As with previous reductions, the two extractors reluctantly agreed to the settlement[708]. Documents were drawn up whereby the Board and each extractor could record their agreement to the new extraction regime, and Golden Bay signed in December 1987. At the last moment NZ Railways decided it did not want to sign the proposed agreement, as that might imply that Railways was submitting itself to Catchment Board jurisdiction, which was contrary to its long-held position that as a Crown agency it was not bound by Catchment Board requirements. It therefore submitted a 'letter of commitment', which said the same thing as the proposed agreement document but did not require countersigning by the Catchment Board[709]. In a separate letter the Board accepted the commitment in the spirit in which it was given[710].

5.6 Pollution control activities

The Crown's control of pollutants in waterways was limited during the early twentieth century, being confined to a regulation made in March 1904 under the Fisheries Conservation Act 1884 that stated that:

> No person shall cast or throw into any stream in which trout or salmon exist or have been liberated, or shall allow to flow into or place near the bank or margin of any such stream, any sawdust or sawmill refuse, lime, sheep-dip, flax-mill refuse, or any other matter or liquid that is noxious, poisonous or injurious to fish; provided that nothing herein contained shall extend to prohibit the depositing in such stream of debris from any mining claim.[711]

The proviso was a reflection of the powerful status of the Mining Act at that time. Under mining legislation it was possible to declare some waterways to be "sludge channels". That

[707] Notes of meeting, 25 July 1986. Manawatu Catchment Board file 10/5. Supporting Papers #1846-1849.
[708] General Manager Golden Bay Concrete & Gravel Ltd to Technical Officer, 5 August 1986, and Chief Civil Engineer NZ Railways to Chief Engineer, 20 August 1986. Manawatu Catchment Board file 10/5. Supporting Papers #1850 and 1851-1852.
[709] Chief Civil Engineer NZ Railways to Chief Engineer, 18 February 1987. Manawatu Catchment Board file 10/5. Supporting Papers #1853-1855.
[710] Chief Engineer to Chief Civil Engineer NZ Railways, 24 February 1987. Manawatu Catchment Board file 10/5. Supporting Papers #1856.
[711] *New Zealand Gazette* 1904 page 933. Supporting Papers #1443.
The making of a regulation on this subject matter had been authorised by Section 3(c) Fisheries Conservation Amendment Act 1903.
The provision was repeated in General Regulations for Fishing in 1907 (*New Zealand Gazette* 1907 pages 2685-2686 – not included in Supporting Papers).

the regulation had been made for the benefit of introduced trout and salmon, rather than for any other purpose, would have been galling for Maori. However, indigenous fish would have gained some benefit from the existence of the regulation. That is if the regulation was effective in its wording and was effectively policed. Neither could be guaranteed, though. For a prosecution to succeed, the material tipped into the waterway had to be shown to be injurious to fish, generally after mixing and dilution rather than as measured at or close to the point of discharge[712]. Secondly, the Marine Department, which administered the legislation, had limited representation in the regions, so that the gathering of evidence was difficult.

Another constraint on the scope of the regulation was identified soon after its passing in a Manawatu River court case heard in July 1904. According to Knight:

> In 1904 the Police laid charges under the Fisheries Conservation Act 1903 [sic] against a Foxton flaxmiller, O. [Oliver] Austin, for draining flax refuse into the Manawatu River to the detriment of trout. Fortunately for the flaxmiller, the Court dismissed the charges because the relevant provisions of the Act applied only to non-navigable rivers.[713]

The legal argument revolved around the use of the word "stream" in the regulation, having regard for the 1884 Act and it amendments (in 1902 and 1903) variously referring to "waters", "rivers", "streams", "bays", "springs", "navigable rivers", and "single rivers". The Magistrate concluded that a "stream" was a smaller watercourse than a "river" such as the Manawatu at Foxton.

The Fisheries Conservation Act and its amendments, plus other fisheries-related legislation, was consolidated in the Fisheries Act 1908. Existing regulations were carried over.

Notwithstanding the potential limitations of the statute law in the early twentieth century, the case taken against Oroua River flaxmillers in 1912, which has been discussed in a previous chapter, shows that the common law had some teeth in protecting downstream users of water from upstream pollution.

The Chief Inspector of Fisheries referred to the various limitations on effectiveness of the anti-pollution regulation in some comments in 1928 that showed his frustration about the legal position:

> I appreciate and have frequently referred to the difficulty … arising out of the elementary fact that a poisonous substance may be diluted so that it loses its toxicity.

[712] M Gresson, Solicitor, Christchurch, to Secretary North Canterbury Acclimatisation Society, 16 February 1928, attached to Secretary North Canterbury Acclimatisation Society to Chief Inspector of Fisheries, 24 March 1928. Marine Head Office file 2/12/299. Supporting Papers #567-568.
[713] C Knight, *Ravaged beauty: an environmental history of the Manawatu*, Dunmore Publishing Ltd, 2014, pages 155-156, relying on a newspaper article in *Manawatu Standard*, 6 July 1904.

> There are in fact numerous cases of liquids, in which no fish could possibly live, which are allowed to flow into rivers without apparently doing any harm. When matter deleterious in itself is introduced in such a limited quantity that because of its immediate dilution it causes no harm, there is on the face of it no damage to fisheries and therefore no ground for charging anyone with an offence against the pollution regulations in such a case. But there comes a point at which the concentration of the toxic material does become deleterious to fish life. This may happen only occasionally, for instance there are times of drought where the river becomes so low that an effluent, which because of considerable dilution is usually harmless, becomes so concentrated as to be deadly.
>
> Furthermore, an effluent may become suddenly increased by many times its usual volume or concentration and the result produced is a sudden mortality among the fishes in that part of the river…. In practice it is extremely difficult to prove this because the poisoning is sudden, and by the time anyone can collect material evidence, by collecting samples of the river water or of the effluent, all the trouble is over and the conditions are back to normal, except that the damage has been done.[714]

He also discussed the cumulative effect of multiple discharges of toxic effluent, suggesting that "surely the object of the legislation" was "to prevent the possibility of such conditions coming about", and was "not to wait until definite injury has been caused". He argued that while the intent of the legislation was to prevent pollution, in practice magistrates only acted when provided with evidence of actual damage and loss of fish life:

> I think it is wrong. For instance the discharge of firearms in the street is forbidden by law. But is it necessary that someone should be killed or injured before anyone offending in this way could be convicted? The law relating to river pollution should be regarded as analogous. If magistrates cannot be educated to take that view in administering the law as it stands, then some attempt should I think be made to stiffen up the law.[715]

The opinion of the Solicitor General was sought on whether an amendment to the law should be contemplated[716]. He remarked that "the regulation as it stands at present does not appear to me to be unreasonable":

> I assume that the only discharge which the Department desires to prevent is one which is harmful or injurious to fish. The onus of proving that any particular discharge is injurious should obviously lie on the prosecution.
>
> If however the Department is of opinion that it requires further powers for the purpose of dealing with pollution, no doubt the Fisheries Act could be amended by a section providing that if in the opinion of the Minister any person is polluting any river by placing therein or discharging thereinto anything in the Minister's opinion injurious or harmful to fish, the Minister should have power to order such person to cease such pollution. The section could also provide for a penalty for failure to comply with any such order of the Minister.

[714] Chief Inspector of Fisheries to Secretary for Marine, 26 March 1928. Marine Head Office file 2/12/299. Supporting Papers #569-571.
[715] Chief Inspector of Fisheries to Secretary for Marine, 26 March 1928. Marine Head Office file 2/12/299. Supporting Papers #569-571.
[716] Secretary for Marine to Solicitor General, 5 June 1928. Marine Head Office file 2/12/299. Supporting Papers #572.

> No doubt such a section might be objected to on the ground that it would place in the hands of the Minister the power of deciding whether pollution was taking place. If however the Department finds it difficult to obtain conviction under the present regulations, it may be considered desirable to obtain the greater powers suggested above.[717]

5.6.1 Pollution threat to whitebait, 1931

The Marine Department's research into whitebait fishing at the mouth of the Manawatu River is discussed in a later chapter about fisheries. In 1931 the Department changed tack and established a research programme into whitebait in 1930, which discovered a number of new facts about inanga and spawning. In May 1931 the Marine Department scientist conducting the research discovered that many of the eggs of inanga attached to riparian vegetation had died. He reported:

> On my last visit to Foxton when I spent four days from 19th to 22nd May … I was concerned to find that practically all the eggs spawned during the full moon were dead.
>
> I do not think the eggs had been dead very long since the embryos were discernible in a great many instances. After first finding dead eggs in quantities all along the raupo, a thorough inspection was made all along the grounds.
>
> It was discovered that all the eggs of the full moon spawning were dead on the Raupo, Robinsons, Totara, Taylors, and on two new grounds, namely (1) a continuation for 40 yards from the top end of Robinsons, and (2) beginning from 10 yards above Single Beacon above Robinsons Bend and extending for 50 yards upstream.
>
> Enquiries were at once made from Mr Harry McGregor (who had not seen these dead eggs before) if he knew any cause of possible pollution, whereupon Mr Aaron McGregor who was with us during this inspection immediately suggested that the new process of bleaching flax recently introduced at the Huia flax mill, Foxton (owned by Mrs Hedgeburg), contained a tank which was emptied into the river each day. He also stated that very few people are allowed anywhere near this mill, but he thinks he knows a small boy who could obtain a sample of the preparation used in this tank if required.
>
> While discussing the subject of possible pollution later with Mr Kelly, an old resident fisherman of Foxton, he informed me that the Moutoa Drainage Board was killing swan-grass (Glyceria aquatica) in certain drains on the Moutoa Estate which he did not know, by means of spraying with tar.
>
> I do not know the country in this vicinity, and having already stayed in Foxton one day longer than I intended, I did not visit the locality, but inquired from the office of the "Manawatu Herald" if any articles had appeared in their local paper on the subject of the Moutoa Drainage Board's operations.
>
> I obtained the article attached hereto[718] which corroborates Mr Kelly's information. Mr Kelly also informed me that this tar spraying was carried out two years ago, when

[717] Crown Solicitor to Secretary for Marine, 7 June 1928. Marine Head Office file 2/12/299. Supporting Papers #573-574.
[718] *Manawatu Herald*, 9 May 1931. Copy attached to Fisheries Officer Hayes to Chief Inspector of Fisheries, 26 May 1931. Marine Head Office file 2/12/299. Supporting Papers #575-577.

> marketable river flounder and other fish were found in great numbers dead and dying upon the mud beaches of the lower estuary of the Manawatu.[719]

The Chief Inspector of Fisheries felt that the tar spraying was the more probable cause of the deaths; he noted that there had been no spraying the previous year, and no loss of whitebait spawn had been reported then[720].

Harry McGregor was a local Maori who was one of the research scientist's assistants. The following month McGregor had second thoughts about the source of the pollution, and wrote to the fisheries scientist:

> Tena koe. I think I know what's killing the whitebait eggs. It's a spray they are using in the drain in the Moutoa Swamp for killing swan grass. It's killing all the eels in the drain. All the flax in our swamp at the back of my place where the water backs up in are all dying, some of the cabbage tree also…. Kia ora.[721]

The Wellington Acclimatisation Society was also alerted, and its local ranger investigated:

> As instructed I made an inspection of drains about the Moutoa district emptying into the Manawatu River. I found that about 10 chains of one drain running through Mr Easton's property had been treated with a chemical, the object being to kill the swan grass growing along the edges.
>
> This chemical is undoubtedly injurious to all forms of fish life and if its use is allowed to continue it will mean the end of whitebait as far as Foxton is concerned. I am assured by eyewitnesses that hundreds of eels were killed in this one application. The effects will not of course be only local, for this chemical is of an oily tarry nature and will cover large areas of tidal water leaving a thin film over anything it comes in contact with. Weeks after its application its presence is still very apparent and I feel confident it will even have a detrimental effect on water fowl. This chemical is a by-product from the Foxton Gas Company, and is being used by the Moutoa Drainage Board for the purpose stated….
>
> This matter is very serious and I would suggest that Mr Fraser [Secretary of Moutoa Drainage Board] be written to immediately requesting a discontinuation of the use of this chemical.[722]

The fisheries scientist then reported on a meeting he had with the Drainage Board's Secretary. Two side drains had been sprayed with a tar weedkiller supplied by Palmerston North (not Foxton) gasworks. The weedkiller was only supposed to be sprayed on grasses and other spoil that had been raked out of the drain on to the adjacent bank:

> The following day I visited and inspected all the work in the vicinity previously mentioned. It was quite obvious that in addition to the spray having been directed on

[719] Fisheries Officer Hayes to Chief Inspector of Fisheries, 26 May 1931. Marine Head Office file 2/12/299. Supporting Papers #575-577.
[720] Chief Inspector of Fisheries to Secretary for Marine, 26 May 1931. Marine Head Office file 2/12/299. Supporting Papers #578.
[721] H McGregor, Foxton, to Fisheries Officer Hayes, 12 June 1931. Marine Head Office file 2/12/299. Supporting Papers #579.
[722] Report by Ranger Andrews, undated, attached to Secretary Wellington Acclimatisation Society to Chief Inspector of Fisheries, 18 June 1931. Marine Head Office file 2/12/299. Supporting Papers #580-581.

> to the spoil, the whole surface of the banks had been subjected to spraying, and although operations had ceased several weeks previously, the ground still reeked with a smell resembling that of tar.
>
> Mr Harry McGregor and a friend, who accompanied me on this occasion, stated that they had been told by eye-witnesses (men employed by the Board) that numbers of frogs, worms, inanga, and great numbers of eels of all sizes, came out of the mud, obviously in distress, dying or appearing to die very shortly after….
>
> There is not the slightest doubt that the liquid contains chemicals highly injurious to all organic life, and therefore to any fish that come in contact with it.[723]

Another possible source of pollution that he looked at was the Awahou Drain that skirted around the Foxton gasworks:

> The outlet of this drain, which is for the most part an open one, when first visited at about half tide appeared to be in a really serious condition, the whole surface of the water in the drain between the Gas Works and the river being covered with an oily, tarry film. Its existence can be very easily overlooked, but it is nevertheless easy of access with the exception of that portion which runs under the High Street and the Railway.
>
> [I asked the Town Clerk] if any changes had taken place recently in the amount of gas produced in Foxton. He stated no changes had taken place…. Gas I understand has been manufactured in Foxton for the last 17 years.
>
> … although local opinion varies, it has been stated that the Gas Works drain runs very low if not almost dry during long periods of dry weather. In such an instance the Gas Works' effluent would probably accumulate on the bed of the drain itself. After a heavy flood the possibilities are that a considerable volume of highly deleterious substances would be washed into the river, which may have been responsible for a great deal of damage to fish life in the past.[724]

A third possibility was decomposition of vegetation in the swamps, because "statements have frequently been made to me from time to time since March 1930 to the effect that dead flounder, mullet, trout and kahawai have been seen in the river, usually after heavy floods following upon protracted dry weather conditions". The fourth possibility was the bleaching operations at the Huia flax mill that had been referred to in the original report[725].

The fisheries scientist than concluded with some general remarks:

> It is impossible to discover definitely what form of pollution probably killed the eggs, but the incident does stress the possible importance of the inanga spawning grounds as delicate pollution indicators, that is of course when all regular grounds in all localities become well known to the whitebait fishing inhabitants at least….

[723] Fisheries Officer Hayes to Secretary for Marine, 23 June 1931. Marine Head Office file 2/12/299. Supporting Papers #582-587.
[724] Fisheries Officer Hayes to Secretary for Marine, 23 June 1931. Marine Head Office file 2/12/299. Supporting Papers #582-587.
[725] Fisheries Officer Hayes to Secretary for Marine, 23 June 1931. Marine Head Office file 2/12/299. Supporting Papers #582-587.

> For the first time in the history of New Zealand fisheries, eggs of *Galaxias attenuatus*, the adult of the commercial whitebait, have been found dead, although fertilized, in literally what must have amounted to millions. In fact the whole effort of reproduction which took place during the May full moon tides had been nullified. Possibly many of the spent fish themselves have also died, since it is quite possible that many of the inanga seen to die from the effect of spraying had recently returned from the spawning grounds to these drains, which do normally form admirable sanctuaries. The wiping out of the whole result of one seasonal incidence of spawning is in itself serious. Should this occur frequently, it would be nothing short of real disaster, and these possibilities stress how important it is that the spawning grounds all over the country should be closely watched each year during the period when eggs lie in quantities upon the banks of rivers.
>
> There would be a chance of the spawning grounds becoming, it might be said, automatically inspected if more publicity were given to the facts recorded by the Department relating to the life-history, including of course the spawning habits of this fish and the exceptional opportunity offered to mankind to keep the grounds under regular observation, and if action was taken when and where necessary to husband and expand a fishery which it must be admitted will most probably respond readily to simple treatment of the right nature.[726]

Samples collected by the fisheries scientist were analysed by the Dominion Laboratory. These backed up what had been described in earlier reports, though failed to provide conclusive evidence about the source of pollution that had killed the eggs[727]. After the extensive recording of events by the fisheries scientist, the investigation rather fizzled out, with the Chief Inspector of Fisheries merely recommending that Moutoa Drainage Board be written to pointing out the polluting effect of their weed spraying, drawing attention to this being an offence under fisheries legislation, and seeking an assurance that the event would not be repeated[728].

5.6.2 Inter-departmental Committee on Pollution

The next initiative taken by the Crown was in 1937 when an inter-departmental committee on pollution was established. While no record of the committee investigating the situation in Porirua ki Manawatu Inquiry District was identified during research for this report, the appointment of the committee may have created a suitably encouraging environment for some work to be undertaken by the Marine Department. In 1938 the District Inspector of Fisheries for the Wellington District provided a short report on river pollution sources around Foxton to the Chief Inspector. These included a rubbish tip at the northern extremity of the

[726] Fisheries Officer Hayes to Secretary for Marine, 23 June 1931. Marine Head Office file 2/12/299. Supporting Papers #582-587.
[727] Dominion Analyst to Secretary for Marine, 18 September 1931. Marine Head Office file 2/12/299. Supporting Papers #588-589.
[728] Chief Inspector of Fisheries to Secretary for Marine, 6 October 1931. Marine Head Office file 2/12/299. Supporting Papers #590.

loop, four flax mills, and the effluent from the town's communal septic tank[729]. He was instructed to interview the polluters[730], and replied after doing so that "an official letter has the effect of speeding up preventive measures"[731]. Letters were therefore sent which advised the recipients:

> The pollution of rivers throughout the Dominion by both timber and flax mills has reached such serious proportions that it has been decided to take action in all cases reported and to press for the maximum penalty.
>
> I therefore trust that on the next visit of an Inspector to your district there will be no grounds for complaint or prosecution, and that this Department can rely on your cooperation in seeing that the provisions of the law are observed.[732]

However in 1940 the District Inspector was reporting the same problems, because "the flaxmills at Foxton are again causing trouble by polluting the Manawatu with flax refuse". He compared the situation at two of the mills: Berry's where the waste shute deposited refuse into "quiet water where conditions are favourable for accumulation", and Ross, Rough & Co where the waste shute carried the waste "well out into the river"[733]. Berry was written to in the same vein as the letters sent two years earlier[734]. Later in 1940 the Crown took over Ross, Rough & Co's mill and expanded it. This provided an opportunity for an improvement of the mill's waste disposal system, and the Marine Department made a point of writing to the Public Works Department (which was designing the mill expansion on behalf of the Agriculture Department) about this[735]; in a follow-up telephone conversation the Chief Inspector of Fisheries "stressed the importance of a Government Department setting a good example to private concerns, and I gather that the P.W.D. are in concord with us"[736].

Separately there was an investigation of pollution in the Oroua River by the Health Department in 1938-39. This investigation was initiated because "the undue pollution of this stream has recently been freely ventilated in the press, and has also been inspected by the

[729] District Inspector of Fisheries Wellington to Chief Inspector of Fisheries, 11 March 1938. Marine Head Office file 2/12/299. Supporting Papers #591-594.
[730] Secretary for Marine to Chief Inspector of Fisheries, 4 April 1938, on District Inspector of Fisheries Wellington to Chief Inspector of Fisheries, 11 March 1938. Marine Head Office file 2/12/299. Supporting Papers #591-594.
[731] District Inspector of Fisheries Wellington to Chief Inspector of Fisheries, 22 April 1938, on District Inspector of Fisheries Wellington to Chief Inspector of Fisheries, 11 March 1938. Marine Head Office file 2/12/299. Supporting Papers #591-594.
[732] Secretary for Marine to Ross, Rough & Co, Flaxmillers, Foxton, and others, 18 May 1938. Marine Head Office file 2/12/299. Supporting Papers #595.
[733] District Inspector of Fisheries Wellington to Chief Inspector of Fisheries, 30 January 1940. Marine Head Office file 2/12/299. Supporting Papers #596-597.
[734] Chief Inspector of Fisheries to H Berry, Flaxmiller, Foxton, 12 February 1940. Marine Head Office file 2/12/299. Supporting Papers #598.
[735] Chief Inspector of Fisheries to Engineer in Chief, 17 July 1940. Marine Head Office file 2/12/299. Supporting Papers #599.
[736] File note by Chief Inspector of Fisheries, 26 July 1940. Marine Head Office file 2/12/299. Supporting Papers #600.

local Member of Parliament"[737]. The river was said to be polluted by five main sources entering the river at two different points:

(1) Borthwick's freezing works, Feilding.
(2) Combined effluents from Feilding septic tanks, wool scour, Feilding abattoirs, and the California boiling-down works.

The freezing works effluent was "very noxious", and could not be improved without "some form of biological purification with or without chemical precipitation". The second discharge point was an open ditch, with very limited pre-treatment prior to entering the ditch:

> It is thus obvious that the Oroua River is receiving an unduly large amount of pollution, and this is evident from the chemical analyses. From sanitary inspection of the stream, it is definitely offensive in dry weather at the Awahuri bridge and even as far as the Kopane bridge, and complaints have been received from farmers in the neighbourhood. As this is about nine miles below Feilding it gives an indication of the very high degree of pollution of this river in the summer months.
>
> Further pollution is evidenced by the experience of the Acclimatisation Society, whose ranger reports that there are no new trout in this river below Feilding. Mr Carberry [sic] of the Marine Department has also been interested in the problem, and I believe that he intends to interview the Director of Public Hygiene on the subject.
>
> Everything possible in the way of improving effluents has been undertaken as a result of representations from this District Office, but short of closing works it is obvious that nothing further can be done without some real power under the Health or other Act of Parliament. I have, therefore, to suggest that these facts as submitted be placed before the Rivers Pollution Committee which, I understand, is representative of the various departments concerned in the problem.[738]

However in July 1939, shortly after completion of the Oroua River report, the inter-departmental committee went into recess. The Health Department asked that the committee be revived[739], and this was agreed to by the Under Secretary for Internal Affairs, though he noted "the utter impossibility of having any legislation on the subject this Session"[740]. Further action, if any, was not identified during research for this report.

5.6.3 Pollution Advisory Council

In general, there seems to have been little political will to change the legal situation and pass some statute law to control water pollution[741]. No doubt the prospect of economically important producers being threatened with closure was not a palatable solution. Even when

[737] Medical Officer of Health Palmerston North to Director General of Health, 9 March 1938. Health Head Office file 125/189. Supporting Papers #146.
[738] Medical Officer of Health Palmerston North to Director General of Health, 25 May 1939. Health Head Office file 125/189. Supporting Papers #147-149.
[739] Director General of Health to Under Secretary for Internal Affairs, 10 July 1939. Health Head Office file 125/189. Supporting Papers #150.
[740] Under Secretary for Internal Affairs to Director General of Health, 4 August 1939. Health Head Office file 125/189. Supporting Papers #151.
[741] M Roche, *Land and water: water and soil conservation and central Government in New Zealand 1941-1988*, Historical Branch Department of Internal Affairs, 1994, pages 119-120.

a Waters Pollution Act was passed in 1953, its immediate effect was limited, though it did open up a pathway for greater intervention. The Act upgraded the former inter-departmental committee to become the Pollution Advisory Council, still dominated by senior central Government officials though with a slight leavening of local body representation. As its name implies the new Council had few regulatory powers, and was expected to report on the state of affairs with regard to pollution, and make recommendations, rather than implement specific anti-pollution standards. Among the recommendations expected of it were the identification of methods to control and reduce pollution, including what regulations should be made. The Council's recommendations did not emerge till the early 1960s, and the resulting regulations were not made until 1963 (see below).

In 1957 a committee of the Pollution Advisory Council prepared a report on pollution in the Manawatu River[742]. The report itemised in a factual fashion all the sources of pollution along the Oroua and lower Manawatu Rivers, generally from Feilding and Palmerston North to the sea, and recorded the results of biochemical and bacteriological tests of the river waters. By this time all but one flax mill had ceased operating, but had been replaced by a number of other effluent-producing industries, so that the nature of the pollution had changed from earlier years. However the pattern of water-side siting of industries that required clean water and produced liquid wastes had become well-established.

One feature of note is that the Marine Department representative on the committee was the fisheries scientist (Derisley Hobbs) who had undertaken whitebait research on the lower Manawatu in the early 1930s (see the chapter on fisheries).

Of the Oroua River, which was a Maori-dominated waterway in the aftermath of the early Crown purchases, only vestiges of uses from earlier years remained. The report noted as one use of the river:

> Swimming is done in the Oroua River at several points. Inhabitants of the Kai Iwi Pa swim in the river at Boness Road all the year round. In November women and children were seen swimming near the Awahuri Bridge. Until a warning was issued by the Health Inspector, children of the Kopane School swam in the river near the Kopane Bridge [on Rongotea Road]. This is still a popular picnic place.

However, grossly polluted water was the norm. Wellington Acclimatisation Society only occasionally stocked the river below Feilding with trout, because "in the past there has been

[742] Pollution Advisory Council, *Pollution in the Lower Manawatu and Oroua Rivers*, 1957. Health Head Office file 125/50/5. Supporting Papers #58-136.

high mortality of fish in the lower reaches primarily due to pollution during periods of low summer flow"[743].

Pollution in the Oroua was sourced from:

- Feilding Borough's communal septic tank, at which point was also discharged the waste water from the Feilding abattoir, wool scour and boiling down works, and from the Feilding saleyards
- Cheltenham dairy factory
- Borthwick's freezing works
- Feilding By-products Co's boiling down works
- Kawa Wool Co's wool scour
- Rongotea dairy factory
- Tui Dairy Co's cheese factory at Glen Oroua
- Taikorea dairy factory
- Mangawhata dairy factory
- Rangiotu dairy factory

These industrial plants trapped only what were referred to as "gross solids" before discharge to the river. Thus the liquid that was discharged still contained a substantial amount of solids, fats, blood and whey, all accompanied by strong smells. The river was discoloured, its stony bed was covered with sewage fungus, algae and periphyton growth, and there was sludge build-up in places. Pollution-sensitive caddis flies and mayflies were absent, and there were high counts of coliform bacteria. In summary, the report stated, the Oroua River "is used, in effect, as an open sewer". Measures to clean up the pollution were "urgently required", and until then "a warning should be given that swimming in the river from Feilding down is dangerous"[744].

The Manawatu River was heavily affected by discharges of sewage, rubbish tip seepage and industrial wastes in Palmerston North, and by septic tank discharges from Massey Agricultural College and Linton military camp. This pollution was added to at Longburn by wastes from a dairy factory and the CWS freezing works. Similar conditions to those found in the Oroua were present downstream of Longburn, though there was some improvement when further away from Longburn with the natural shingle and silt bed gradually reappearing and no visible signs of pollution. Dairy factories discharged into one of the Taonui drains

[743] Pollution Advisory Council, *Pollution in the Lower Manawatu and Oroua Rivers*, 1957, pages 4-5. Health Head Office file 125/50/5. Supporting Papers #58-136 at 67-68.
[744] Pollution Advisory Council, *Pollution in the Lower Manawatu and Oroua Rivers*, 1957, page 51. Health Head Office file 125/50/5. Supporting Papers #58-136 at 116.

near the junction with the Oroua River, into the Tokomaru River, and into the Mangaore Stream at Shannon. The wastes discharged furthest downstream were at Foxton, where there was a gasworks, one flax stripping mill, and the town's communal septic tank. The combined effect of these sources of pollution was felt in the river's lower reaches:

> The high bacterial counts found in the water of the estuary of the Manawatu River suggests that there may be danger to the commercial whitebait fishing which is carried out there. The fact that whitebait are only lightly cooked and are consumed whole makes bacterial contamination of their fishing grounds more serious than it would be for most edible fish.
>
> The Foxton River Beach in the Manawatu estuary is a very popular swimming and boating place, and was found to be subject to considerable contamination by bacteria of faecal origin, on some occasions well beyond the Pollution Council's bathing water limit, and this pollution is a threat to health.
>
> Although, as far as is known, the loop or oxbow of the Manawatu River near Foxton is not used for swimming, the pollution of the water by the discharge from the Foxton Borough septic tank does cause a nuisance by producing surface scum and smell.[745]

Because the length of the river from Palmerston North to Whirokino did not receive much public use for bathing and recreation, it was the health dangers at the estuary which were considered to be the most problematic. The Foxton septic tank was considered to be the most significant contributor to the problem[746]:

> It is understood that Foxton Borough is having prepared a scheme for sewage treatment, probably incorporating an oxidation pond. Because of its proximity to the popular bathing beach in the estuary a high degree of treatment appears essential. If a pond is practicable in this locality it would be the best form of secondary treatment from the pollution control angle.[747]

As a follow-up to the 1957 pollution report, two supplementary reports were prepared which recorded the results of further bacterial and chemical testing in 1958 and 1959[748]. It was not until April 1960 that the report, the supplementary reports, and the results of additional water quality testing carried out by Palmerston North City Council, were presented to the full Pollution Advisory Council. Some of the delay had been caused by a rather defensive reaction from the Palmerston North City Engineer to the draft report's criticism of the City Council's discharge of sewage to the river. The Advisory Council was told in a briefing paper that because of its interest in stream classification, whereby different stretches of a river

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[745] Pollution Advisory Council, *Pollution in the Lower Manawatu and Oroua Rivers*, 1957, page 48. Health Head Office file 125/50/5. Supporting Papers #58-136 at 111.
[746] Pollution Advisory Council, *Pollution in the Lower Manawatu and Oroua Rivers*, 1957, page 54. Health Head Office file 125/50/5. Supporting Papers #58-136 at 119.
[747] Pollution Advisory Council, *Pollution in the Lower Manawatu and Oroua Rivers*, 1957, page 55. Health Head Office file 125/50/5. Supporting Papers #58-136 at 120.
[748] Supplement No. 1 to *Pollution in the Lower Manawatu and Oroua Rivers*: chemical and bacteriological analyses, June-December 1958. Not included in Supporting Papers.
Supplement No. 2 to *Pollution in the Lower Manawatu and Oroua Rivers*: chemical and bacteriological analyses, June-December 1959. Not included in Supporting Papers.

were made subject to different water quality standards, two choices seemed to be available with respect to the Manawatu River (no comment was made about the Oroua River):

(a). Taking account of the fact that bathing and recreation take place to varying extent over most of the river from the mouth to the Gorge, classify the whole of this length of river to bathing water standard. This would necessitate the provision of a high degree of treatment by Palmerston North, by Longburn meat works and other sources of pollution.

(b). Rule out the present uses of the river for bathing and recreation from Longburn down to Shannon. Classify the river from the Gorge down to Fitzherbert Bridge, and from Shannon to the mouth as bathing water standard, and the reach from Longburn down to Shannon, or at least to the Oroua junction, as basic standard. The river for a considerable distance below Palmerston North cannot now meet the basic standard. To bring it up to the basic standard would require at least efficient primary treatment by Palmerston North, Linton Camp, and equivalent by Longburn meat works, the dairy factory and other sources of pollution. This is in line with the conclusion in the preliminary report on the river. Foxton requires to provide full treatment and has plans for this being prepared now. Any other polluting source on the two bathing water reaches and possibly for some miles upstream from Shannon would require to provide full treatment.[749]

At its meeting at the end of April 1960, the Pollution Advisory Council must have found both of these alternatives too hard to contemplate, as it decided that it would "not, at this stage, propose to classify the Manawatu River"[750].

The Pollution Advisory Council was given its first legal teeth in 1963, when the Waters Pollution Regulations were made[751]. These contained a power for the Council to classify waters by the water quality standard they were expected to maintain, and for the licensing of discharges into classified waters. The Regulations identified four different classification categories for freshwater:

- Class A, water supply areas in a controlled catchment area;
- Class B, water supply areas in an uncontrolled catchment area;
- Class C, waters to which the public have ready access and are used regularly for bathing;
- Class D, waters in classified areas not included in any of the above classes; also referred to as a "basic standard" classification.

There were also categories for saltwater and tidal waters, being:

[749] Report by Public Health Engineer Thomas, Ministry of Works, to Pollution Advisory Council, 14 April 1960, attached to Commissioner of Works to Director General of Health, 23 April 1960. Health Head Office file 125/50/5. Supporting Papers #137-144.
[750] Secretary Pollution Advisory Council to Town Clerk Palmerston North City Council, 23 May 1960. Health Head Office file 125/50/5. Supporting Papers #145.
[751] Waters Pollution Regulations 1963. Statutory Regulations 1963/30.

- Class SA, waters from which edible shellfish are regularly taken for human consumption;
- Class SB, waters to which the public have ready access and are used regularly for bathing;
- Class SC, coastal waters to which particular requirements are applicable;
- Class SD, coastal waters to which particular requirements are applicable.

Once the Regulations were made, the Pollution Advisory Council was quick off the mark with a proposed classification for the lower Manawatu River (below the Gorge) and its tributaries; the Regulations were made in February 1963, and the proposed classification was published in April 1963. It proposed:

- Class A: Turitea Stream headwaters (Palmerston North water supply);
- Class B: Oroua River at Feilding water supply extraction point, Oroua River at Feilding town, Kahuterawa Stream headwaters (Palmerston North water supply);
- Class C: Manawatu River at Palmerston North, at Ashhurst and at Shannon, swimming holes in Pohangina River, swimming holes in Oroua River upstream of Feilding, swimming hole in Tokomaru River;
- Class D: Manawatu River and all tributaries not classified A, B or C;
- Class SB: Manawatu estuary at Foxton Beach;
- Class SC: Manawatu estuary at Foxton loop and Whirokino cut.[752]

When published, objections to the proposed classification scheme were invited. While how many objections were received has not been ascertained, the principal objectors, whose concerns were given the greatest consideration, were Feilding Borough Council, Palmerston North City Council, Kairanga County Council and Oroua County Council (on behalf of Ashhurst Town Committee). Feilding Borough Council successfully sought the Class B classification at Feilding amended to Class C because of the considerable amount of recreation use made of that stretch of the river. Palmerston North City Council asked for its Turitea water supply area to be reclassified from Class A to Class B because private land enclaves meant the catchment was not fully controlled for water supply purposes. It also asked for the Class C classification to be extended upstream, but this was objected to by Kairanga County Council; a shorter additional length of river was agreed upon. Both Feilding and Palmerston North Councils objected to the proposed swimming area (Class C classification) at Shannon Bridge, as the existence of this classification might be a

[752] Manawatu River preliminary classification, publicly notified 26 April 1963. Health Head Office file 126/2/5. Supporting Papers #152.

determining factor for the required quality of their discharges. The Advisory Council agreed to remove the classified area altogether, thereby reducing the 'teeth' that the classification scheme as a whole might have had on polluters. The Council of its own accord added in classifications for Shannon and Mangahao water supply areas, which had been omitted in error in the proposed scheme.

The final classification was approved by the Pollution Advisory Council in December 1963[753]. There were no appeals against the classification. From the final layout of the classes, it is apparent that the intention of the regulations was primarily to protect the quality of public water supplies, to retain water quality at those sites still in use for bathing and recreation, and to maintain the quality of water at shellfish gathering sites. For all other stretches of waterways a minimum or basic standard was established below which water quality could not fall; this minimum standard was applied nationwide. The actions taken by the Pollution Advisory Council were aimed at not frightening the local authorities and impressing on industrial dischargers that upgrading of discharge sites was inevitable though not immediately required (unless the discharge was considered noxious).

Tangata whenua in the Manawatu catchment were not contacted during the 1957 survey, with the only recognition of Maori use being the use of parts of the Oroua River for bathing. While the preliminary classification was publicly advertised in April 1963, there was no notification given to Maori authorities, and no submissions or objections were received from Maori organisations. The Maori reaction to the activities of the Pollution Advisory Council is therefore unknown.

With the final classification in place, the next step was for the Pollution Advisory Council to issue permits to discharge effluent. The issue of these permits was undertaken by the Health Department, with the Medical Officer of Health in Palmerston North playing a prominent role. The intention of the permits was to oblige each permit holder to ensure that their discharge met the relevant water classification standard set out in the 1963 Regulations, and to upgrade their discharge to meet that standard where it did not do so.
In 1965 the Feilding meat works had the dubious honour of being the subject of the first prosecution in the country for failing to abide by the water quality standards set out in its discharge permit[754].

[753] Lower Manawatu River final classification and illustrative plan, approved 23 December 1963. Health Head Office file 126/2/5. Supporting Papers #153-159
[754] C Knight, *Ravaged beauty: an environmental history of the Manawatu*, Dunmore Publishing Ltd, 2014, page 185.

The Pollution Advisory Council continued in existence until 1971, when its legislation and its functions were absorbed into the Water and Soil Conservation Act.

5.6.4 Case studies

The permits issued by the Advisory Council for the operation of the sewage treatment plants at Feilding, Shannon and Foxton are discussed below; this discussion is the first of a series of three sections examining the evolution of regulation of activities at these three treatment plants; the second section later in this chapter examines what happened during the Regional Water Board era of the Water and Soil Conservation Act (1971-1991), and the third section later in this chapter examines the Resource Management Act era (post 1991). By splitting the discussion in this manner, it will be possible to follow through the effect of the Crown's different kawanatanga actions.

The report on the Rangitikei River included case studies of the regulation by Rangitikei-Wanganui Regional Water Board and Manawatu-Wanganui Regional Council of the discharges of treated human sewage at Taihape, Mangaweka and Hunterville (all in Taihape Inquiry District), together with less complete coverage of such discharges at Ohakea and Bulls (in Porirua ki Manawatu Inquiry District). Examining similar discharges at Feilding, Shannon and Foxton will enable some comparisons to be made and allow for a more comprehensive assessment of the success or otherwise of the Crown's regulatory processes. That assessment is carried in concluding remarks at the end of this chapter.

During the first two eras, of the Pollution Advisory Council and the Regional Water Board, the discharge permits were not the only Crown involvement. For local authorities dealing with sewage treatment and discharge there was an element of 'carrot and stick', with the discharge permits being the 'stick' to require that discharges met the water classification standards. The 'carrot' elements were a subsidy for treatment facility improvements administered by the Health Department, availability of loan finance through the Local Authorities Loans Board administered by Treasury, and access to use of the Public Works Act to acquire treatment plant sites. The use of these 'carrots' is referred to where appropriate in the three case studies.

5.6.4.1 Feilding sewage treatment plant discharge

The need for further treatment of Feilding's sewage, to replace the communal septic tank that had been in operation since the early 1900s (and was best-practice treatment when installed), came to a head in the late 1950s. The concerns at that time that were exposed in

the Pollution Advisory Council's 1957 draft report on the Oroua River and lower Manawatu River have been set out earlier in this report. In 1959 Feilding Borough Council sought professional engineering advice about how best to treat its sewage and industrial wastes. Best practice of the day was to screen out large solids at the entrance to a treatment plant, allow smaller solids to settle out and the resulting sludge to be removed, and then to rely on either oxidation ponds or trickling filters to control the breakdown of bacterial contaminants which had the effect of lifting biological oxygen demand and that would be damaging to rivers and river life. Sludge from settling tanks would be passed through digestion tanks before being dried out and disposed of on land. However, each of these the two final treatment options still produced a large volume of liquid that had to be disposed of, and the thinking of the time was that it was best that this liquid be mixed into a source of fresh water so that its impact could be diluted. Therefore land adjacent to rivers was the best location for an oxidation pond or trickling filter. Allied to this was the ability of gravity to allow sewage to flow through pipes to a treatment plant located downstream of the sewage source, and riverbanks were usually the lowest-lying land in a locality. At Feilding the engineers were uncertain whether the discharge from the treatment plant should be to the Makino Stream or to the Oroua River[755].

A complication at Feilding was the industrial waste component, which meant that though the population of the town was only about 7,000, the population equivalent of the wastes that the plant had to be designed for was about 20,000, and provision for expansion of the town had to be made on top of that. It was accepted that the industries would pay a levy to the Borough Council proportional to their wastes contribution.

A preliminary loan was sanctioned in 1959, and a 20% subsidy towards the cost of constructing the treatment plant was approved in 1960[756]. Later in 1960 another loan was sanctioned to improve the sewerage system so that there would be less infiltration of stormwater into the sewers and less likelihood that the treatment plant would become overloaded during rainfall events.

The preliminary classification of the Oroua and Manawatu Rivers in 1963 prompted a meeting between Crown officials and the Borough Council. Why, the Crown engineers asked, should there be tertiary treatment of Feilding's wastewater to provide for bacterial

[755] Babbage, Shores & Andrell, Consulting Engineers, Auckland, to Borough Engineer Feilding Borough Council, 20 October 1959, attached to file note by Director of Public Hygiene, 24 October 1959. Health Head Office file 32/219. Supporting Papers #25-30.
[756] Minister of Health to Cabinet Works Committee, 11 July 1960. Health Head Office file 32/219. Supporting Papers #31-32.
Approval of Cabinet Works Committee 13 July 1960. Health Head Office file 32/219. Supporting Papers #33-34.

reduction when the classification for the waters down to the Manawatu rivermouth was the basic Class D standard, which did not impose any bacterial quality requirements? Would a lesser standard of treatment not suffice and thereby avoid unnecessary expenditure?[757] This way of thinking was a warning that the water classification process being embarked upon by the Pollution Advisory Council had a political dimension, and the costs it would impose on the Government might be a determining factor. The Borough Council's engineers were encouraged to factor the Crown's thinking into their calculations.

In choosing a riverbank site, it should not be a site that was at risk of flooding, as that would nullify the treatment operation. With this in mind the engineering firm designing the Feilding works wrote to Manawatu Catchment Board in October 1964:

> The design of the plant has now been completed…. We have included in the contract as provisional items the construction of a new stopbank through the Borough's property and for raising the height of the existing stopbank in the adjoining property….
>
> Could you please let us know whether our proposals for stopbanks are acceptable to your Board.
>
> We understand from our previous discussions that your Board intends to carry out river improvement and stopbanking work on the Oroua River in the near future and that it is possible that your Board would be prepared to construct the required stopbanks through the Feilding Treatment Plant site as part of your overall scheme for the Oroua.
>
> It would be preferable to the Borough if your stopbank construction could be carried out by your Board, and we would be pleased if you could let us know as soon as possible if this could be done.[758]

The design of the stopbanks prepared by the Borough Council's consulting engineers was "generally acceptable" to the Catchment Board, which added:

> The Board is planning to build stopbanks in this area this season, and providing additional costs to provide a bank as required for the sewage plant are met, I would be agreeable to the work being done as part of the Board's scheme.[759]

The difference in standards between a stopbank protecting rural land and a stopbank protecting a major asset like a sewage treatment plant was made apparent early in 1965, when the Catchment Board's Chief Engineer wrote:

> It appears that a stopbank following the line shown on our original Lower Manawatu Scheme proposals will be quite satisfactory to prevent flooding on the adjoining farm land. This stopbank would be quite low, about 2 feet high, except where it crosses a few depressions, and cost of the stopbank would not be very great.

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[757] Chief Public Health Engineer Ministry of Works to Chief Design Engineer Ministry of Works, 3 December 1963. Health Head Office file 32/219. Supporting Papers #35-39.
[758] Babbage, Shores & Andrell, Consulting Engineers, Auckland, to Chief Engineer, 21 October 1964. Manawatu Catchment Board file 1/16. Supporting Papers #1659-1660.
[759] Chief Engineer to Babbage, Shores & Andrell, Consulting Engineers, Auckland, 16 November 1964. Manawatu Catchment Board file 1/16. Supporting Papers #1661.

> The stopbank as proposed for the Treatment Plant contains much more material and is therefore much more costly, and it would not achieve any further protection as far as farm land is concerned. Unless it is necessary for the protection of your own work, I would consider it would be best not built.
>
> From the Treatment Plant up to the Feilding-Bunnythorpe Road we propose to build some stopbanks and will carry out this work later on to our own requirements, and in my opinion again it would be best to leave the existing work unless you require to alter it to construct your Treatment works.
>
> Under these circumstances, it appears best for you to carry out any stopbanking you wish for your own purpose without a contribution from us, and to leave any work not required for the Catchment Board to carry out.[760]

The Public Works taking report shows that the Crown took land alongside the Oroua River under the Public Works Act for a sewage treatment plant in December 1963 and vested it in Feilding Borough Council[761]. Approximately half the land taken was from Maori owners. By way of an aside, it should be noted that the survey plan prepared for the taking shows further evidence of changes to the course of the Oroua River – a matter that elsewhere on the river had required intervention by the Native Land Court as discussed in an earlier chapter of this report – with old river bed having become dry land, and land in the Aorangi block originally located on the true left side of the river having become located on the true right side of the river.

In February 1964 Feilding Borough Council applied to the Pollution Advisory Council for a permit to discharge wastes into classified waters[762]. This permit would be for the discharge of wastes from the town's communal septic tank. A temporary permit was issued by the Advisory Council four months later, subject to the following conditions:

> A sewage treatment plant is required to be constructed which will treat the sewage and industrial waste from the Borough in order to protect downstream water uses. A copy of the final classification is attached. The quality of the final waste discharging into the Oroua River [from the proposed treatment plant] should not exceed the following conditions:
>
> 5 day BOD[763] at 20°C: 1350 lbs per day and 80 lbs in any one hour.
> Suspended solids: 2000 lbs per day and 120 lbs in any one hour.
> And a daily flow: 1.7 mgd [million gallons per day]
>
> The layout plans of the proposed works are to be submitted to the Council by 30 August 1964.[764]

[760] Chief Engineer to Borough Engineer Feilding Borough Council, 15 January 1965. Manawatu Catchment Board file 1/16. Supporting Papers #1662.
[761] H Bassett and R Kay, *Porirua ki Manawatu Inquiry District: public works issues*, November 2018, Wai 2200 #A211, attached Excel spreadsheet.
New Zealand Gazette 1964 pages 1-2. Wellington plan SO 25336. Supporting Papers #1482-1483 and 1599.
[762] Application for registration of an outfall and permit to discharge wastes into classified waters, 13 February 1964. Manawatu Catchment Board and Regional Water Board water right file 1150. Supporting Papers #1873.
[763] BOD (biochemical oxygen demand) is a measurement of the amount of oxygen required by organisms to break down organic material in water. This makes it a gauge of the impact of organic nutrients on a receiving water.

Thus the permit allowed discharge from the septic tank, and also signalled what quality standards would have to be met when the treatment plant started discharging into the Oroua River. These were the standards for Class D waters set out in the Waters Pollution Regulations 1963. The permit was due to expire at the end of August 1964, and subsequently a series of further temporary permits for continued discharge from the septic tank were issued until the treatment plant became operational[765].

In 1966, by which time construction of the treatment plant on the recently-acquired site was underway, a fresh subsidy application was made – the 1960 approval had lapsed in 1963 without any construction work having been done[766]. No decision had been made on application before the treatment plant opened in March 1967. The Council had opted for trickling filters as the tertiary treatment stage[767]. The need for tertiary treatment came up again during consideration of the application, with the Commissioner of Works advising the Health Department:

> At the time of the first subsidy application, tertiary treatment was thought to be necessary. Subsequent investigations by the Ministry of Works on behalf of the Pollution Advisory Council, however, revealed that such a high degree of treatment is in fact unnecessary, and that the degree of treatment provided by the plant described above is quite adequate for present loadings. Provision has been made in the plant design and layout for the future duplication of present units and for the addition of tertiary treatment by oxidation pond, should this become necessary.[768]

The application was eventually approved by Cabinet in February 1968. The subsidy level had been reduced to 15% because of an increase in the number of rateable properties in the intervening period since 1960, and was calculated on the domestic sewage component only, with all costs associated with trade and industrial wastes chargeable to industry[769].

The permit to discharge from the new treatment plant was issued by the Pollution Advisory Council in August 1967[770]. As foreshadowed in the 1964 temporary permit, the same BOD, suspended solids and daily flow criteria were set out in the permanent permit.

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[764] Temporary permit to discharge No. 325/8T, 8 June 1964. Manawatu Catchment Board and Regional Water Board water right file 1150. Supporting Papers #1874.
[765] Temporary permits to discharge, 8 October 1964 (expiring 31 October 1965), 1 November 1965 (expiring 31 August 1966), 13 October 1966 (expiring 1 February 1967). Manawatu Catchment Board and Regional Water Board water right file 1150. Not included in Supporting Papers.
[766] Director of Public Health to Medical Officer of Health Palmerston North, 1 April 1966. Health Head Office file 32/219. Supporting Papers #40.
[767] *The Dominion*, 8 March 1967. Copy on Health Head Office file 32/219. Supporting Papers # Supporting Papers #41.
[768] Commissioner of Works to Director of Public Health, 28 August 1967. Health Head Office file 32/219. Supporting Papers #42-45.
[769] Minister of Health to Cabinet Works Committee, 2 February 1968, and Director of Public Health to Town Clerk Feilding Borough Council, 13 February 1968. Health Head Office file 32/219. Supporting Papers #46-47 and 48.
[770] Permit to discharge No. 325/8, 3 August 1967. Manawatu Catchment Board and Regional Water Board water right file 1150. Supporting Papers #1875.

Almost from the start of the operation of the treatment plant, the water quality standards were not met. In September 1969 the Medical Officer of Health advised the Borough Council:

> The information to hand indicates the effluent discharge is at times exceeding the maximum B.O.D. levels permitted under the full permit conditions. Apart from the excess of lbs of B.O.D. per day, another undesirable aspect is the fact that this high level of loading in less than half of the maximum permitted daily flow figures. This indicates that the maximum loading of 80 lbs of B.O.D. in any one hour is no doubt being exceeded, especially during the peak operation periods.[771]

Thus the plant was operating at only half capacity or less, yet the amount of bacterial contamination was already excessive.

Just how good was the supervision of the discharge by the local Medical Officer of Health acting on behalf of the Pollution Advisory Council is questionable. In a report in April 1970 are a number of revealing comments:

> Flows [from industrial sources] which was stated by [those sources] to be 6,100 gals per day, is now in fact closer to 30,000 gallons per day, and load on the plant was equivalent to that from 35,000 people. In fact it has reached the previously estimated loading for 20 years hence, now.
>
> The plant was designed as a re-circulating one with secondary effluent mixed with primary wastes before discharge into the river. (One wonders why this type of treatment, having its discharge into a watercourse such as the Oroua, was permitted.) ….
>
> The possibility of proceeding with secondary oxidation pond treatment may have to be faced up to ….
>
> [The Borough Engineer] admitted that B.O.D. figures over the 8 hour period were "close to the borderline", however he was certain that on the 24 hour operation the permit condition of 1350 lbs/day would be met. The last 24 hour sample for B.O.D. was taken in 1968 [i.e. two years earlier] and at that time was 928 lbs for the period.[772]

The monitoring of the permit for compliance remained the responsibility of the Medical Officer of Health until it passed to the Manawatu Catchment Board and Regional Water Board on 1 April 1972. The Regional Water Board era of administration is covered later in this chapter.

5.6.4.2 Shannon sewage treatment plant discharge

The treatment of Shannon's sewage effluent was triggered by problems with four houses built by the Maori Affairs Department in Stafford Street. The septic tanks attached to each

[771] Medical Officer of Health Palmerston North to Town Clerk Feilding Borough Council, 1 September 1969. Manawatu Catchment Board and Regional Water Board water right file 1150. Supporting Papers #1876.
[772] File note by Supervising Inspector of Health Palmerston North, date not known (April 1970). Manawatu Catchment Board and Regional Water Board water right file 1150. Supporting Papers #1877.

house were not operating properly because of a high water table and impeded drainage. As a result in 1960 the Health Department decreed that an improved system was required. Maori Affairs insisted that a cheap solution had to be found, because that was all that the occupants, by then Maori owners with mortgages to the Maori Affairs Department, would be able to afford. The two cheapest options identified by the Ministry of Works were "collect the septic tank effluent and pump direct to the river [Mangaore Stream]", and "collect the septic tank effluent and pump through a small stone-filled trickling filter to the river"[773]. Initially the solution that was adopted was direct discharge to the stream, but later when the Pollution Advisory Council classified the Manawatu catchment waters it became necessary to get Maori Affairs to apply some filtration treatment before the effluent entered the waterway[774].

The problems with the septic systems of the Maori Affairs houses encouraged the Health Department to look more closely at the situation in Shannon, and led to the Department telling Shannon Borough Council in January 1961 that a sewerage scheme was required[775]. At that time the best practice treatment method was to pass effluent through an oxidation pond before allowing discharge to a waterway. This tended to result in the oxidation pond being located downhill from the urban area (so flows could take advantage of gravity) and close to the waterway. This thinking was applied at Shannon, with sites being looked at that were located to the west of the urban area and close to the Mangaore Stream or one of its small tributaries[776]. Officials from the Health Department assisted with site selection, looking particularly at the lower end of Johnston Street. They described the area to the south-west of this road as preferred for a Pasveer Ditch system, while to the north-east of the road was preferred for an oxidation pond[777]. In the end the site to the south-west of Johnston Street was chosen by Horowhenua County Council (which took over the town in 1965). Here it was proposed that a single oxidation pond would be constructed, divided into two cells by a dividing wall to provide for two-stage treatment. Discharge would then be to a tributary of Mangaore Stream.

[773] Commissioner of Works to Director General of Health, 7 July 1960. Health Head Office file 32/9. Supporting Papers #6-9.
[774] Medical Officer of Health to Director General of Health, 23 July 1968. Health Head Office file 32/9. Supporting Papers #17-18.
[775] *Levin Chronicle*, 31 January 1961. Copy on Health Head Office file 32/9. Supporting Papers #10.
[776] Medical Officer of Health Palmerston North to Director General of Health, 7 July 1964. Health Head Office file 32/9. Supporting Papers #11.
[777] File note by Supervising Inspector of Health, 20 July 1964. Health Head Office file 32/9. Supporting Papers #12-13.

A subsidy was approved by Cabinet in February 1968[778], and following a supportive informal poll of ratepayers a loan was authorised to pay for the capital cost of the plant. In March 1969 Horowhenua County Council applied to the Pollution Advisory Council for a permit to discharge wastes from the oxidation pond into classified waters. The volume of wastes would be 120,000 gallons per day[779]. No action was immediately taken to grant the permit.

In 1970, when oxidation pond construction had been completed, a new development arose when a firm wishing to establish a wool scour in the town asked to be allowed to discharge its wastes via the County Council's scheme. This was an option that had been encouraged by the Pollution Advisory Council[780].

It was not until after a wool scour proposal had been raised that the permit authorising discharge into Class D waters was granted. It was issued by the Pollution Advisory Council in June 1970, fifteen months after being applied for, and was made subject to the following conditions which accommodated the potential for the industrial development:

> The two-stage oxidation treatment plant is to be continuously operated and adequately maintained at all times to produce a stable effluent. Any industrial wastes proposed to be treated will require an extension to the pond system proportional to the pollution loading of these wastes.
>
> Primary pond loading not to exceed 75 lbs BOD/acre. Secondary pond not less than 20 days retention. If the waste load increases, a further permit application is to be made.[781]

Three months after issue of the permit, an Inspector of Health reported:

> Plant not yet functioning. Oxidation ponds filled with stormwater. Estimated commencement of operations, one month from visit.[782]

Shortly after the granting of the permit, the Pollution Advisory Council's responsibilities for effluent disposal into waterways was wrapped into the administrative structures set out in the Water and Soil Conservation Act 1967, and became the responsibility of the Manawatu Catchment Board and Regional Water Board. This subsequent era of administration is examined in a later section of this chapter.

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[778] Minister of Health to Cabinet Works Committee, 2 February 1968, approved 7 February 1968, and Director General of Health to County Clerk Horowhenua County Council, 13 February 1968. Health Head Office file 32/9. Supporting Papers #14-15 and 16.

[779] Application for registration of an outfall and permit to discharge wastes into classified waters, 4 March 1969. Manawatu Catchment Board and Regional Water Board water right file 1670. Supporting Papers #1933-1935.

[780] Secretary Pollution Advisory Council to Cullinane and Cullinane, Barristers and Solicitors, Feilding, 23 February 1970, attached to Medical Officer of Health Palmerston North to Director General of Health, 26 February 1970; and Medical Officer of Health Palmerston North to County Engineer Horowhenua County Council, 4 May 1970. Health Head Office file 32/9. Supporting Papers #19-22 and 23-24.

[781] Permit to discharge No. 325/51, 18 June 1970. Manawatu Catchment Board and Regional Water Board water right file 1670. Supporting Papers #1936.

[782] Inspector of Health Palmerston North to Medical Officer of Health Palmerston North, 21 September 1970. Manawatu Catchment Board and Regional Water Board water right file 1670. Supporting Papers #1937.

5.6.4.3 Foxton sewage treatment plant discharge

Application was made to the Pollution Advisory Council for a permit to discharge wastes into classified waters in February 1964[783]. This was for permission to discharge up to 1400 gallons per minute of wastes from the communal septic tank in Foxton town. In May 1964 the first of a series of temporary permits was granted for this discharge. The permit granted was conditional on the construction of a sewage treatment plant, hence its temporary nature:

> A sewage treatment plant is required to be constructed which will treat the sewage and industrial waste from the borough in order to protect downstream water uses. A copy of the final classification is attached. The quality of any final waste discharging into the Foxton Loop should not exceed the following conditions:
>
> 5 day BOD at 20°C: 180 lbs per day and 10 lbs in any one hour.
> Suspended solids: 100 lbs per day and 6 lbs in any one hour.
> Coliform bacteria: 200,000 / 100 ml
> And a daily flow: 120,000 g/d [gallons per day] D.W.F.
>
> The layout plans of the proposed works are to be submitted to the Council by 31 October 1964.[784]

There was then a series of temporary permits for the discharge from the communal septic tank through until 1972[785], at which time permits issued by the Water Pollution Council ceased as responsibility had been passed to Manawatu Regional Water Board under the Water and Soil Conservation Act 1967. The result of the Pollution Advisory Council's oversight of the Foxton discharge was that for 8 years there was no improvement in effluent quality, and gross pollution of the Foxton Loop was allowed to continued unhindered.

5.7 Regulation of the use of water by Regional Water Boards

In 1967 the Manawatu Catchment Board was given additional functions when the Water and Soil Conservation Act was passed. This declared the Catchment Board to be a Regional Water Board as well.

The Water and Soil Conservation Act 1967 had its genesis in a decision by Government in 1963 to set up an inter-departmental committee on water. The committee, known as the Wakelin Committee after the name of its chairman, who was also the senior Office Solicitor in the Ministry of Works, examined the then-current state of the law surrounding water and

[783] Application for registration of an outfall and permit to discharge wastes into classified waters, 25 February 1964. Manawatu Catchment Board and Regional Water Board water right file 1672. Supporting Papers #1940.
[784] Temporary permit to discharge No. 325/2T, 8 May 1964. Manawatu Catchment Board and Regional Water Board water right file 1672. Supporting Papers #1941.
[785] Temporary permits to discharge, 17 December 1964 (expiring 1 March 1965), 25 March 1965 (expiring 31 July 1965), 1 August 1965 (expiring 31 December 1965), 1 January 1966 (expiring 31 December 1966), 1 January 1967 (expiring 31 October 1967), 1 November 1967 (expiring 31 March 1969). 1 April 1969 (expiring 31 March 1970), 1 April 1970 (expiring 31 December 1970), 1 January 1971 (expiring 31 December 1971), and 1 January 1972 (expiring 30 September 1972). Manawatu Catchment Board and Regional Water Board water right file 1672. Not included in Supporting Papers.

the inadequacies of the English common law in an era when there were competing demands to use natural water and the situation was only likely to get worse. The committee came to the conclusion that the law on water needed a thorough overhaul, which in effect meant that new statute law would be introduced to override common law presumptions. It was only when Cabinet agreed to this in principle, and the law draftsmen began work on drafting the new legislation, that a radical legal change was introduced. This change was to vest in the Crown the right to the use of water. This vesting would be near to total with only some basic common law rights (the right to use water for domestic human needs, for stock and for firefighting purposes) still enduring and not requiring Crown approval. The lead-up to the passing of the 1967 Act has been covered in evidence given to other Tribunal inquiries[786], and in historical publications[787].

The vesting in the Crown of the right to the use of water was probably seen by the law draftsmen as an administratively simple and straightforward mechanism to unambiguously sweep aside the common law and start afresh. In the process, however, it was a form of expropriation of any Maori rights to water and waterways that might be deemed to have survived up to that time. What those rights might have been, and how they were affected by the vesting, is a matter for legal interpretation, and possibly for consideration by the national water claim Wai 2358 Tribunal, and is not addressed in this report. Be that as it may, no Treaty of Waitangi lens was applied during the lead-up to the 1967 Act, Maori were not consulted, and their consent was not sought for the legislation.

The 1967 Act was seen as foundation legislation for a new start to water law. It was relatively simple and focused in its approach, declaring the purposes for which water could be used, setting up a national administrative structure, implementing the vesting in the Crown, and requiring that users of water obtain permits from regional water boards. The intention at the time was that other facets of water use would be added to the foundation legislation by later statutes. This did occur in part, with the pollution control activities of the Pollution Advisory Council added by the Water and Soil Conservation Amendment Act 1971, and management of underground water added by the Water and Soil Conservation Amendment Act 1973. However, there was no follow through of legislative amendments to incorporate other facets such as soil conservation and river control, hydro-electric

[786] D Alexander, *Some aspects of Crown involvement with waterways in Whanganui Inquiry District*, August 2008, Wai 903 #A158, pages 17-25.
D Alexander, *Historical analysis of the relationship between Crown and iwi regarding the control of water*, June 2012, Wai 2358 #A69(b), pages 3-13.
[787] M Roche, *Land and water: water and soil conservation and central Government in New Zealand, 1941-1988*, Historical Branch Department of Internal Affairs, 1994, pages 98-107.

generation, or navigation; such matters remained separately dealt with in other statutes until the introduction of the Resource Management Act 1991.

The long title to the 1967 Act set out the purpose of the Act and the uses of water that would be accommodated by the issue of water permits. It is quite a complex statement of purpose, and is set out below in a bullet-point format that differs from that used in the Act, though with the same wording:

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 flooding and erosion, and
- For promoting and controlling multiple uses for natural water and the drainage of land, and
- For ensuring that adequate account is taken of the needs of primary and secondary industries, and water supplies of local authorities.

This listing of purposes for the use of water demonstrates that it was to largely be business as usual after the Act was passed. The only difference was that there was to be a more comprehensive licensing regime. The last bullet-point above was amended in 1981 to read

- For ensuring that adequate account is taken of the needs of primary and secondary industries, community water supplies, all forms of water-based recreation, fisheries, and wildlife habitats and of the preservation and protection of the wild, scenic and other natural characteristics of rivers, streams and lakes.

This amendment draws attention to how the more intrinsic values of water, and the worth to society of leaving some natural waters undisturbed for the benefit of non-consumptive uses not previously recognised, had been missing from the purpose of the legislation 14 years earlier. The 1981 amendment was introduced at a time of considerable public discussion about the need to protect wild and scenic rivers, and made provision for the issue of national water conservation orders and local water conservation notices. Missing from both the 1967 Act and the 1981 amendment was any incorporation of a Maori ethos about how water use should be viewed and managed.

The administrative structure established a National Water and Soil Conservation Authority, sitting above a second tier consisting of three national Councils: a new Water Allocation Council, the existing Soil Conservation and Rivers Control Council (whose 1941 legislation was left untouched), and the Pollution Advisory Council (whose 1953 legislation was left untouched). At the regional level Catchment Boards took on additional responsibilities by also being appointed as Regional Water Boards to undertake the new water use and allocation tasks.

The vesting in the Crown of the right to use water was set out in Section 21(1) of the Act:

> 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:
>
> Provided that nothing in this section shall restrict the right to take, divert or use sea water:
>
> Provided also that it shall be lawful for any person to take or use any natural water that is reasonably required for his domestic needs and the needs of animals for which he has responsibility and for or in connection with fire-fighting purposes.

The practical effect of the passing of the Act was that Catchment Boards continued to have just as much responsibility as before for river control and flood protection matters (i.e. waterway management), because the 1941 legislation continued unaltered. This continued to be a single-minded focus for those Boards. The additional powers granted to Regional Water Boards concerned the water in the waterways, how much could be taken out, how much could be discharged in, and how the taken water was allocated among competing users. As time went on, the twin strands became more closely intertwined, with management strategy documents covering in a comprehensive fashion both sets of powers and both sets of issues.

When it came to licensing the use of water, the Regional Water Boards commenced on a 'first come – first served' basis. This was because existing extractors of water or dischargers to water as at the time the Act came into effect could register their water use with the Regional Water Board. These registrations were known as general authorisations. An example of an existing use of water that was registered with the Regional Water Board was the notice provided by the lessee of Ngati Tukorehe land in the lower Ohau valley about the water bores he relied on[788]. There was no opportunity provided for the Regional Water Boards to challenge or alter these authorisations; they were a 'given' around which the Boards had to work when allocating further water rights.

The greater emphasis on licensing of water uses saw more concentrated attention paid to takes and discharges. Under the Pollution Advisory Council farm discharges from cowsheds and piggery operations were licensed, though with very little follow-up; it was the larger industrial dischargers that were in the sights of the regulators. Under the Regional Water

[788] Notice of existing use of water by NW & GC Candy, Ohau, 31 March 1969. Manawatu-Wanganui Catchment Board and Regional Water Board water right file 3523. Supporting Papers #2036.

Boards, farm dischargers were expected to upgrade their operations, principally by installing settling ponds and oxidation ponds, and then discharging treated effluent to land using spray irrigation. Gravel extractors were expected to pass their gravel washings through settling ponds so that there were fewer suspended solids and less water discolouration in their discharges.

Maori received no special place in the administration of the Water and Soil Conservation Act. Te Tiriti was not mentioned, no provision for specifically Maori consultation or consent was made, and there was no reference to Maori spiritual and cultural values of water. Indeed, it was not until a 1983 amendment to the Act that the word 'Maori' got included, when provision was made for an appointee on the National Water and Soil Conservation Authority to "represent the interests of the Maori people"[789].

The only involvement that Maori could have were as members of the public who supported or objected to the granting of water rights, or who made submissions to Regional Water Boards when the Board provided an opportunity of that nature. Because of the limited opportunities available, Maori society was generally not well organised to take part in public debates about waterways. Compared with today there were fewer administrative organisations at the hapu or iwi level to manage their affairs, and even fewer such organisations dedicated to promoting Maori environmental concerns and interests. It was left to individuals to take action to protect their own interests. The issue of a water right for the Kuku dairy factory is used as a case study for the involvement of certain individuals, who affiliate to Ngati Tukorehe or Ngati Wehi Wehi or both, in procedures under the 1967 Act. Another case study concerns a proposal to alter the water level of Lake Tangimate, a taonga of Ngati Hui ki Poroutawhao.

5.7.1 Water classification

The Water Pollution Council had classified the waters of the Manawatu catchment in 1963. When the Wellington-based functions of the Water Pollution Council were absorbed into the functions of the Water Resources Council in 1971, the Resources Council became responsible for classifying waters. In 1973 it published a preliminary classification of all waters in the Manawatu Catchment Board's District[790]. This was effectively an extension of the Manawatu catchment water classification that had been adopted by the Pollution

[789] Section 5(1)(c)(iv) Water and Soil Conservation Act 1967, as amended by Section 3 Water and Soil Conservation Amendment Act 1983.
[790] Preliminary Classification of Manawatu Waters, attached to covering letter from Director of Water and Soil Conservation, 9 February 1973. Lands and Survey Wellington District Office file 3/13/2. Supporting Papers #1080-1085.

Advisory Council in 1963, spread out further across the whole of the Manawatu Regional Water Board District. Provision was made the waterways upstream of public water supply intakes for Levin (on the Ohau River) and Otaki (on the Waitohu Stream) to be Class B waters. Class C waters suitable for swimming included a number of the Horowhenua district lakes, including Lake Horowhenua, Lake Papaitonga, Lake Kahuera, Lake Huritini, Lake Waiorongomai, Lake Kopureherehe and Lake Waitawa. The majority of the waterways would be Class D waters where a basic water quality standard would apply.

5.7.2 Case studies

5.7.2.1 Kuku dairy factory – active Maori involvement in a water right application

Once the Water Resources Council had classified the waters of the Manawatu Catchment Board's district in 1973, it became necessary for Manawatu Catchment Board to advise organisations and individuals taking or discharging water that they would need to obtain water rights for existing takes and discharges. Among those to whom the notification was sent was the Wellington Dairy Farmers Cooperative Association Inc, which operated a dairy factory on the banks of the Kuku Stream. The Cooperative replied:

> I would respectfully request information regarding our factory which is situated on the Main Highway at Ohau, south of Levin. The Kuku Stream passes through our property, and for many years water from the factory has been channelled into this stream. At present water from our condensing units is discharged into the stream at approximately 110ºF. Our factory manager has advised me that this discharge is clean water and has a maximum of 3000 gallons per hour during a short peak period.
>
> Would you please advise any action required and the classification of the stream.[791]

In reply the Cooperative was told:

> The classification of the Kuku Stream below your factory is Class D. This requires that the river water after "reasonable mixing" of any discharge does not drop below certain standards (a copy of which is enclosed)….
>
> On the administrative side the recent classification cancels all existing discharge rights which have been notified some years previously, and reapplication for such rights is now required. This is designed so that any rights granted now can include conditions or effluent standards which will ensure the maintenance of the classification.[792]

The Cooperative applied for a water right in April 1974. It sought to discharge up to 14,736 litres per hour of water from pipe evaporation, condensing, wash-down and boiler blowdown

[791] Secretary/Manager, Wellington Dairy Farmers Cooperative Association Ltd, Wellington, to Secretary, 3 September 1973. Manawatu Catchment Board and Regional Water Board water right file 3705. Supporting Papers #2037.
[792] Water Resources Officer to Secretary Wellington Dairy Farmers Cooperative Association Ltd, Wellington, 6 December 1973. Manawatu Catchment Board and Regional Water Board water right file 3705. Supporting Papers #2038.

processes, and from stormwater, that flowed out of a 9 inch pipe into the Kuku Stream[793]. When the application was publicly notified, it attracted a number of objections, in particular from Maori who lived or had land downstream of the dairy factory. Those objections are itemised below.

Pirihira Lewis stated:

> The Kuku Stream runs directly through the properly that I and my sister own.
>
> The stream itself is less than one hundred yards from the house, and for a number of years now we have had to suffer the polluting effects and the stench that is caused by the effluent that is periodically discharged into the stream from the Wellington Dairy Farmers Co-op Association's pig farm, which is the adjacent property to ours. This effluent has promoted a growth of weed that has all but choked the stream, and is one of the major factors in the flooding of our property that occurs every winter. The proposed discharge from the milk factory can only make this problem far worse.
>
> Apart from the problem that is likely to be caused in the winter months, we also have the problem of the creek drying out in the summer months. This invariably occurs between the months of December and February. To use the water causeway as an open sewer during these months would, we are sure, be little short of disastrous.[794]

Rangi Lewis, Pirihira's sister, added her voice:

> I am strongly opposed to the Kuku Stream being used as an open drain, especially when the stream is so close to our houses.
>
> During the winter months it is often necessary to wade through flood water to enter our property and, as often happens, the Kuku Stream will run at full spate unexpectedly, we find we have to wade through some sixty yards of flood water bare-footed. The idea of wading through factory waste is totally abhorrent.[795]

An "emphatic objection" by Mr J Poutama, Mrs H Poutama, Mrs A Poutama, Mr E Duncan, Mr G Poutama, Mrs R Governor and Mrs M Mita stated:

> The Kuku Stream … runs through our property and is the source of drinking water for our stock. This stream has been drying up the last few seasons and we feel that effluent will make it into stinking bog-holes. Up to now the creek has received effluent periodically, and in dry weather can be smelled a mile off. This stream contains the best eating migration eels in the Wellington province, and we feel that the effluent will kill them out. This stream also runs into the Ohau River which contains trout and flounders, and will be a danger to them also.[796]

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[793] Application for water right, 19 December 1973, attached to Secretary/Manager, Wellington Dairy Farmers Cooperative Association Ltd, Wellington, to Water Resources Officer, 23 April 1974. Manawatu Catchment Board and Regional Water Board water right file 3705. Supporting Papers #2039-2043.
[794] P Lewis, Ohau, to Secretary, 19 June 1974. Manawatu Catchment Board and Regional Water Board water right file 3705. Supporting Papers #2044.
[795] R Lewis, Ohau, to Secretary, 19 June 1974. Manawatu Catchment Board and Regional Water Board water right file 3705. Supporting Papers #2045.
[796] J Poutama and 6 others, Ohau, to Secretary, 20 June 1974. Manawatu Catchment Board and Regional Water Board water right file 3705. Supporting Papers #2046-2047.

Joseph Poutama explained:

> The stream runs through my farm property, and my dairy stock are dependent on the stream for drinking water. Also, when I so desire I like to be able to fish the stream for eels for eating. The Kuku Stream is well known for having the best eating eels in the district, and has been a popular one for eel catching. I fear that if the application is granted, the stream will become polluted, and my stock will be deprived of their drinking water, and the eels will die.[797]

Edward Lewis added (in the same handwriting as Joseph Poutama's objection):

> My bedroom is forty yards from the Kuku Stream, and on summer nights in dry weather the stream is reduced to putrid pools of effluent containing masses of microbes. I would like to express my view that this is definitely a health hazard, both to humans and stock. The stench at times is unbearable, because both factory and their piggery have been running effluent into the Kuku Stream periodically.[798]

The Ransfield whanau (Mrs Te Mate Apiti Ransfield, Mr J Ransfield, Master Joseph Simon Ransfield 10 years 4 months, and Master Keelan Michael Ransfield 3 years 8 months) listed five reasons for their objection:

1. Pollution of the water by this application.
2. My husband catches eels (these eels are a well known delicacy especially from the creek and other people from the locality are also keen fishermen for this particular eel). These eels are used for his own consumption, and also other people's consumption, you can surely [realise] that this food would be affected if you allowed this application to go through.
3. My husband also gathers watercress for our table, and so do other people of this area for their own tables. This food also would be affected if you allowed this application to go through.
4. Freshwater crayfish and mussels are also available from this creek, and as my husband comes from here he eats them when they're available. This food would die altogether if you let this application go through.
5. There would also be a smell problem, if not now then most certainly later. This would cause health hazards.[799]

Other members of the local community also objected, equally concerned about the pollution that the stream already suffered and might suffer to a greater degree in the future. Farmers were also upset that while they were being required to cease discharging into waterways from their cowsheds, the dairy factory might be allowed to continue its discharge unhindered. In all there were 12 written objections, 6 of them from tangata whenua. Each of the objections described above reveals a little bit more about the special significance that Kuku Stream had for local Maori in the early 1970s. All 12 objectors were told that the Catchment Board would appoint a Tribunal to hear and consider the application and their objections:

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[797] J Poutama, Ohau, to Secretary, undated (received 21 June 1974). Manawatu Catchment Board and Regional Water Board water right file 3705. Supporting Papers #2048-2049.
[798] E Lewis, Ohau, to Secretary, undated (received 21 June 1974). Manawatu Catchment Board and Regional Water Board water right file 3705. Supporting Papers #2050-2051.
[799] TMA Ransfield and 3 others, Ohau, to Secretary, 21 June 1974. Manawatu Catchment Board and Regional Water Board water right file 3705. Supporting Papers #2052-2053.

> However, in view of the points raised in the objections, it has been decided that the Board's technical officers should inspect the area and report to the Board before the formation of a Tribunal is proceeded with.[800]

The Water Resources Officer's report to the Water Committee in August 1974 contained no references to the Maori values applicable to the Kuku Stream, instead discussing only the dairy factory's needs and water quality matters:

> This factory is basically a 'balance station' for the Wellington town milk supply, and thus has variable production. At present the majority of wastes are pumped across to the company piggery, combined with the piggery wastes, and spray irrigated. It seems that many of the objectors regard the application as for a new discharge, although clearly wastes have reached the stream in the past.
>
> Discharges. There are three aspects of the present disposal system:
>
> 1) As mentioned the majority of wastes are collected in a single drainage system and spray irrigated, although there is a bypass to the stream at the piggery sump. It is maintained this is used only under very high local rainfall conditions when the stream is high.
> 2) Discharges at the factory. These are the subject of the application and consist of evaporator condensing water and boiler blow down, the former being the main consistent discharge, which is hot and will be deoxygenated. Again it is maintained that organic wastes are not discharged, although the temperature is recognised as a problem, and there are certain salts in the boiler blow down.
> 3) The drainage system as shown on inspection can be abused, as exemplified by the discharge to the stream of tanker wash water during the inspection. The manager agreed that discharges have occurred in the past, and the possibility of spillages exists, particularly in tanker filling and off-loading.
>
> Effect of discharges on the stream. Again we have little information, although the objections would indicate marked effects in the summer. One limited test and observation in summer 1972 indicated low dissolved oxygen in the stream and modified stream biota. Even if no further organic discharges occur, the condenser discharge will affect the stream in summer low flows to some extent. Before any standards for discharge can be defined, testing will have to be done this summer.

He recommended that a hearing be held without waiting for summer testing results, in order to clear up as soon as possible any misapprehensions that the application was for new discharges, to clarify the company's intentions, and to better understand the effects of past and present discharges[801].

The Tribunal hearing was in November 1974 in the Horowhenua County Council chambers in Levin, and was followed by a site visit. Joseph Poutama and Mrs Ransfield seem to have been the most active Maori objectors, appearing on behalf of the others. The Cooperative explained that it had polluted in the past, especially when there had been emergencies. The

[800] Secretary to All Submitters, 10 July 1974. Manawatu Catchment Board and Regional Water Board water right file 3705. Supporting Papers #2054.
[801] Report of Water Resources Officer to Water Committee, 8 August 1974. Manawatu Catchment Board and Regional Water Board water right file 3705. Supporting Papers #2055.

application was to cover existing discharges, and no additional effluent discharges were planned. It intended to make some improvements:

> (a). The installation of a tank within 12 months in which the discharge from the boilers can be held for periods of 24 hours to enable cooling to take place.
> (b). The installation of a water cooling tower within approximately 2 years which will enable the water discharge from the evaporator to be re-used indefinitely for the process.
> (c). The diversion of water used for tanker rinsing from the stormwater into the effluent drain….
>
> The intention to install a standby unit to pump the effluent to the pig farm was also noted, and it is recommended that this be made operational within 6 months.

Because of this improvement programme, the Tribunal recommended that any water right be for two years to cover the transitional period only until discharges had become "very moderate":

> It is the opinion of the Tribunal that when this programme of work is fully carried out, the problem of pollution from this source is likely to be abated.

The Tribunal added:

> The Tribunal did note the incidence of pollution upstream of the factory, and that the whole stream seems to be polluted. As this stream is a source of food supply to the objectors, the Tribunal recommends that the Board's Water Resources Officer be instructed to conduct an investigation and survey of the whole stream.[802]

The Tribunal recommended that the water right be granted for a two year period during which an "investigation and survey of the whole stream" could be undertaken by Catchment Board staff. The right was for the volume sought, 14,700 litres per hour, discharged 8 hours per day, 7 days per week, and 52 weeks per year. Conditions required the installation of the improvements that had been discussed at the hearing[803]. The Tribunal's recommendation was adopted by the Regional Water Board[804].

In April 1975 the Cooperative applied for a second water right, to discharge effluent from the piggery into Kuku Stream in emergencies, notwithstanding that "our present facilities will give us several hours storage capacity which should enable any breakdowns to be repaired or

[802] Decision of Tribunal, 13 November 1974. Manawatu Catchment Board and Regional Water Board water right file 3705. Supporting Papers #2056-2059.
[803] Decision of Tribunal, 13 November 1974. Manawatu Catchment Board and Regional Water Board water right file 3705. Supporting Papers #2056-2059.
[804] Excerpt from minutes of Manawatu Catchment Board and Regional Water Board, 17 December 1974. Manawatu Catchment Board and Regional Water Board water right file 3705. Supporting Papers #2060-2061. Right in respect of natural water No. 740039 [aka 74/39], issued 17 December 1974 and expiring 17 December 1976. Manawatu Catchment Board and Regional Water Board water right file 3705. Supporting Papers #2062-2063.

alternate action taken[805]. The application was publicly notified, and again attracted objections.

Pirihira Lewis asked that the term 'emergencies' should be clearly defined, otherwise "once again we shall find that the Kuku Stream is being used as a rubbish tip for both the milk factory and the pig farm":

> I would also request that certain conditions exist before any discharge be made into the stream. Living as I do on the adjoining property to the pig farm, I suffer the full effect of the foul stench that arises each time effluent is discharged into the stream. This stench is markedly increased when the water level drops as it does in the summertime, or when the stream bed is dry and all that flows down the creek is factory effluent.[806]

Mr and Mrs J Hogg, Mr and Mrs J Ransfield, Mrs P Bailey, Mrs M Johns, Mr R Burnell, Mr J Poutama, Misses P and R Lewis, and Miss M Karauti put in a joint objection. The Maori and European members of the lower Ohau community had combined their resources. They objected that "the discharging of any piggery or factory effluent into the Kuku Stream would be detrimental to our interests and the interests of the community generally, due to pollution"[807].

The Water Committee considered that:

> If a discharge of the entire factory and piggery wastes occurs, it is likely to reduce the quality of the natural water below classification standards. To grant a right which allows this situation to occur is contrary to the Act.

Its recommendation, that was endorsed and adopted by the Regional Water Board, was therefore that the application should be declined, and that "the applicant be informed that any discharge other than that for which a right is held, is illegal and would have to be justified by the applicant in the light of circumstances pertaining to the emergency"[808].

In January 1977, a petition was sent to Horowhenua County Council about the smells and insects from the piggery operation, including from water that was ponding in the irrigated area. Both European and Maori residents of the lower Ohau had signed the petition. While not specifically a matter to do with Kuku Stream, the petition was forwarded to Manawatu

[805] Application for water right, 2 April 1975, attached to Secretary/Manager, Wellington Dairy Farmers Cooperative Association Ltd, Wellington, to Secretary, 2 April 1975. Manawatu Catchment Board and Regional Water Board water right file 3705. Supporting Papers #2064-2069.
[806] P Lewis, Ohau, to Secretary, 5 May 1975. Manawatu Catchment Board and Regional Water Board water right file 3705. Supporting Papers #2070-2071.
[807] M Karauti on behalf of 11 persons, Ohau, to Secretary, 24 May 1975. Manawatu Catchment Board and Regional Water Board water right file 3705. Supporting Papers #2072-2075.
[808] Recommendation of Water Committee, 5 June 1975, approved by Regional Water Board 18 June 1975. Manawatu Catchment Board and Regional Water Board water right file 3705. Supporting Papers #2076.

Catchment Board for its consideration[809] Water quality samples at a single point in time were taken above and below the piggery that showed no pollution impact from the piggery on the stream[810], and the Catchment Board replied to the County Council about the inspection that had been made:

> It was found that the Association had not been using their spray disposal system since last August, and there was no evidence of effluent having been sprayed on the paddocks. The petitioners' claim that effluent was accumulating in ponds on the paddocks could not be substantiated.
>
> The Water Resources Officer inspected an anaerobic effluent treatment pond behind the piggery, in the old bed of the Ohau River. This pond, estimated to be about 25 m x 60 m, is reported to be about 5 m deep and receives waste from the factory and the piggery. It was observed to be operating well and there was no discharge. It was the pond which appeared in the photographs supplied. At the time of inspection there was a slight odour. The nearest house is some 300-350 m away.
>
> The pig farm manager stated that the pond was commissioned last August and was operating well. There was sufficient room available to construct one or two aerobic ponds if a discharge was imminent. The effluent from such a system, if properly designed, would be acceptable in most waters.
>
> Considering the above, the Board feels that the problem is one of odour rather than water pollution, and hence is not within its jurisdiction. If necessary, the Council might find relief in the Health Act or Town and Country Planning Act. As far as the Board is concerned, the Association's apparent attitude towards water pollution control is admirable.[811]

Not mentioned in this reply was that the Cooperative's water right had expired two months earlier and had not been renewed.

The expiry of the water right was drawn to the Cooperative's attention in May 1977[812], and an application for an extension of its water right was immediately received[813]. The application was publicly notified, and fresh objections were made by lower Ohau residents, both Maori and European. There were five written objections in all, three from Maori.

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[809] Petition of T Eagle and 60 others, Ohau, 10 January 1977, attached to County Clerk Horowhenua County Council to Secretary, 1 February 1977. Manawatu Catchment Board and Regional Water Board water right file 3705. Supporting Papers #2077-2079.

[810] Water quality survey, 3 February 1977. Manawatu Catchment Board and Regional Water Board water right file 3705. Supporting Papers #2080.

[811] Secretary to County Clerk Horowhenua County Council, 22 February 1974. Manawatu Catchment Board and Regional Water Board water right file 3705. Supporting Papers #2081-2082.

[812] Water Resources Officer to Secretary Wellington Dairy Farmers Cooperative Association Ltd, Wellington, to Secretary, 24 May 1977. Manawatu Catchment Board and Regional Water Board water right file 3705. Supporting Papers #2083.
The expiry of the water right seems to have come to light during the preparation by the Catchment Board of a 16-page report on "Water uses at dairy factories within the Manawatu Catchment District", May 1977.

[813] Application for water right, 25 May 1977, attached to General Manager Wellington Dairy Farmers Cooperative Association Ltd, Wellington, 31 May 1977. Manawatu Catchment Board and Regional Water Board water right file 3705. Supporting Papers #2084-2087.

James Poutama, Mrs E Duncan, Joseph Poutama, Mrs R Governor and George Poutama did not provide any specific reasons for their objection[814]. Nor did Miss M Karauti in her own objection[815].

Pirihira Lewis on behalf of herself, her sister (Rangi Lewis) and her brother (Edward Lewis) were pleased that conditions in the Kuku Stream had improved, though were fearful that the old conditions might return:

> When in 1975 [sic] we protested about the application for discharge right 74/39 into the Kuku Stream, our major objection consisted of evidence of pollution. We based our case on the fact that once the Kuku Stream had been the source of some of our basic food in the form of eels, kakahi, freshwater crayfish and watercress. With the factory spilling its wastage into the stream, all this had disappeared; farmers in the area complained that the water was too foul to use as a drinking supply for their stock and alternative sources of water had to be found. Our own complaint was that the effluent in the stream promoted the growth of weed that was a major contributing factor in the flooding of our property that occurred every winter. Not least of our complaints was the stench that arose from the stream in the summer.
>
> In the past two years the life of the stream has returned, the eels are abundant again, watercress grows, small trout are occasionally seen, and there are many signs of healthy stream life such as water snails, frogs and dragonflies, in themselves evidence of the low pollution rate of the stream. Our property is still flooded on occasions, but with the creek cleared of excess trees, and the weed removed and burnt, we now find the flood waters recede in a matter of hours where once it was a matter of days. I personally have not lost one day's work due to flooding in the past two years, whereas in the winter of 1974/75 I can recall being flooded in some five times.
>
> We now object to application No. 77/49 on the grounds that it will be a retrograde step in our attempts to retain some type of environmental cleanliness; our desire to keep our stream clean and alive stems not only from a modern concern with our immediate environment but also from our own deep-seated belief that the land will support the people if the people support the land.
>
> We feel sure that if the application is approved, the dreadful condition that the stream was in two years ago will return very quickly, and all the gains that have been made since 1975 will probably be lost forever.[816]

Pirihira may have misunderstood that the application was to renew the old water right, and was not for permission to discharge more effluent from the dairy factory. Her observations demonstrate that the interventions imposed by the operation of the Water and Soil Conservation Act had brought about an improvement in the waterway affected by this particular point-source discharge.

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[814] J Poutama and 4 others, Ohau, to Secretary, undated (July 1977). Manawatu Catchment Board and Regional Water Board water right file 3705. Supporting Papers #2088.
[815] M Karauti, Ohau to Secretary, 20 July 1977. Manawatu Catchment Board and Regional Water Board water right file 3705. Supporting Papers #2089.
[816] P Lewis, Ohau, to Secretary, 20 July 1977. Manawatu Catchment Board and Regional Water Board water right file 3705. Supporting Papers #2090-2091.

The Catchment Board held a hearing at Ohau (on Tukorehe Marae) in September 1977. The limits of the application, that it was only for discharge of evaporation condensing water, were explained:

> The question was asked of vehicle washing water adjacent to the main road running into the stream. The Company was asked to ensure that this problem was not allowed to occur.
>
> The Water Resources Officer considered the temperature of the discharge would meet the required standards.
>
> The objectors asked what action should be taken in the event of problems arising in the steam generally.
>
> Mr Currie commented on other areas of the stream, and advised that either the Board staff or their local Board Member should be contacted if problems occurred.
>
> The objectors indicated their agreement to the amended form of water right application.[817]

Later that month the Regional Water Board approved the granting of consent for the same volume of water as for the 1974 consent, for a term of five years[818].

Application to renew the water right was made at the end of its term in 1982[819]. This attracted just one objection, from Mary Karauti:

> The Dairy Company owns land adjoining their factory where the water could surely be discharged onto it, instead of into the Kuku Stream. The food which has appeared is very gratifying and I am concerned of the possible pollution of our very valuable asset – the Kuku Stream.[820]

Rather than hold a hearing, a staff member of the Catchment Board had a discussion with Mary Karauti about possible conditions to attach to a new water right. These conditions would change the volume of the discharge to not more than 90 cubic metres per day, "except on abnormal occasions when a maximum discharge of up to 120 m³ in any 24 hr period will be allowed, but only after having notified Regional Water Board staff". Other conditions (including the five year term) were unchanged from the previous right. Mary Karauti signed her consent to the proposed conditions:

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[817] Attendance list, and Report of meeting, 8 September 1977. Manawatu Catchment Board and Regional Water Board water right file 3705. Supporting Papers #2092 and 2093-2094.
[818] Excerpt from minutes of Regional Water Board, 20 September 1977, and Water right 770049, issued 20 October 1977. Manawatu Catchment Board and Regional Water Board water right file 3705. Supporting Papers #2095 and 2096-2098.
[819] Application for water right, 4 August 1982. Manawatu Catchment Board and Regional Water Board water right file 3705. Supporting Papers #2099-2101.
[820] M Karauti, Ohau, to Secretary, 13 September 1982. Manawatu Catchment Board and Regional Water Board water right file 3705. Supporting Papers #2102-2103.

> Without prejudice for future objections, and because of the discussions and explanations I have had with Mr Goodwin, I feel these recommendations are in order.[821]

This avoided the need for a hearing, and the right was then approved[822].

After the right had expired in December 1987, the dairy factory operators were written to advising that they should apply for a new right[823]. They responded that they no longer needed the discharge right "as the condensate and condensing water is handled in the effluent stream and by cooling tower recirculation"[824].

5.7.2.2 Lake Tangimate consent for alteration of water levels

The great significance of Lake Tangimate to Ngati Huia ki Poroutawhao has been addressed in other reports[825]. Those reports relied on information provided by Ngati Huia claimants, and refer to an alteration of the lake's water level in 1981. This section reports on the same alteration event, though relying on the information held by Manawatu Catchment Board and Regional Water Board. The intention is that, together, the two sources of information will provide the Tribunal with more comprehensive coverage of the matter.

While the whole locality in which Lake Tangimate is located had been affected by drainage works over a lengthy period from the days of early European settlement, a new drainage proposal affecting the lake first came to the attention of Manawatu Catchment Board and Regional Water Board in 1980, when the Historic Places Trust drew attention to the damage to the whakamate (eel catching ditches) that could occur. The whakamate were historic sites under the definition in the Historic Places Act 1975[826]. The Trust was told that "Mr JN Turnbull, on whose property the greater part of Tangimate Lagoon is situated, has approached this office for assistance to lower the water level of the lake". The implication of the request for 'assistance' is that the approach was to the Catchment Board for drainage works under the Soil Conservation and Rivers Control Act 1941, rather than to the Regional

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[821] Consent of M Karauti, 3 October 1982. Manawatu Catchment Board and Regional Water Board water right file 3705. Supporting Papers #2104.
[822] Excerpt from minutes of Water Committee, 2 November 1982. Manawatu Catchment Board and Regional Water Board water right file 3705. Supporting Papers #2105.
Water right 820080, issued 16 November 1982. Manawatu Catchment Board and Regional Water Board water right file 3705. Supporting Papers #2106-2107.
[823] Water Resources Officer to Secretary Milk Processing (PN) Ltd, 23 February 1988. Manawatu Catchment Board and Regional Water Board water right file 3705. Supporting Papers #2108.
[824] Technical Services Manager Manawatu Cooperative Dairy Company Ltd to Secretary, 19 April 1988. Manawatu Catchment Board and Regional Water Board water right file 3705. Supporting Papers #2109.
[825] H Potter et al, *Porirua ki Manawatu inland waterways historical report*, August 2017, Wai 2200 #A197, pages 307-312.
Huhana Smith, *Porirua ki Manawatu inquiry: inland waterways cultural perspectives technical report*, December 2017, Wai 2200 #A198, pages 84-87.
[826] Staff Archaeologist Historic Places Trust to Engineer, 4 November 1980. Manawatu Catchment Board and Regional Water Board water right file 3714. Supporting Papers #2110.

Water Board for a water right consent under the Water and Soil Conservation Act 1967. The Board continued in its reply:

> Officers of the Board have investigated alternative proposals to enable some control over water levels to be exercised. The proposal to construct a drain from the north-west arm of the lake through Mr McLennan's property to an existing drainage system is the only economically viable solution. Apart from a short section of relatively higher ground, presumably due to encroachment of sand hills in the past, the route provides a natural outlet for the lake. Mr Turnbull is currently attempting to obtain agreement to this proposal from Mr McLennan and other landowners involved.
>
> We are concerned on Mr Turnbull's behalf that you have indicated opposition to this scheme, and we would be grateful for some indication from you of the extent of the area in which you are interested, the nature of your interest, and the importance of the site bearing in mind that Mr Turnbull is faced with a possible 30% loss of income.[827]

The Trust provided a copy of a report that had been prepared about the whakamate at Tangimate[828]. In response the Catchment Board replied:

> The most recent advice we have received regarding this situation is that the Acclimatisation Society is negotiating to buy the portion of Mr Turnbull's property affected by the lagoon, subject to Mr Turnbull finding suitable land as replacement. This would of course obviate the need for any drainage improvements.[829]

Nothing came of the Acclimatisation Society's interest, and in April 1981 Mr Turnbull applied for a water right "to control the lake level by digging a channel through an existing watercourse and erecting a weir for controlling the level and the flow". This would "prevent Lake Tangimati [sic] from overflowing its natural bed on to valuable productive dairy farmland"[830].

When the application was publicly notified, two objections were received. One was from Taiawhio Tatana, in his capacity as chairman and spokesperson for the Tangimate Lake Trustees, the trustees of the 5-acre reserve at the lake. He believed that Turnbull wished to lower the lake by one metre:

> Any attempt to lower the lake, without serious forethought, would have irreversible effects on the wildlife, e.g. ducks, swans, pukeko, dabchicks, teals, ducks, plus our right to fish the eels, which would feel the full effect of the lowering. This is something that the people concerned, nor the trustees, will accept lightly, so we must say most

[827] Chief Engineer to Staff Archaeologist Historic Places Trust, 22 December 1980. Manawatu Catchment Board and Regional Water Board water right file 3714. Supporting Papers #2111.
[828] Report on site N152/46, eel ditches (whakamate), northern Horowhenua, 4 November 1980, attached to Staff Archaeologist Historic Places Trust to Engineer, 24 February 1981. Manawatu Catchment Board and Regional Water Board water right file 3714. Supporting Papers #2112-2115.
[829] Chief Engineer to Staff Archaeologist Historic Places Trust, 12 March 1981. Manawatu Catchment Board and Regional Water Board water right file 3714. Supporting Papers #2116.
[830] Application for right in respect of natural water, 7 April 1981. Manawatu Catchment Board and Regional Water Board water right file 3714. Supporting Papers #2117-2119.

> strongly that we object to any form of lowering the lake, which will have serious consequences to one and all.[831]

The second objection was also from Taiawhio Tatana, in his own right. He explained that the water from the lake would be channelled "to an existing drain that runs through Mr McLean [sic] leasehold property, which is owned by myself and family". He objected "because I think the drain is too small for this amount of water", and because "during the winter month that it overflow here and there, and the cost will be too great for the farmers to maintain"[832]. There had been no suggestion in the letter written by the Chief Engineer of the Catchment Board in the previous year that Mr McLennan was a lessee of Maori Land; it had been enough that he paid the rates for the Board to consider that the land he occupied was his own property.

Both objections were forwarded to Mr Turnbull, and he was given the opportunity to decide whether to call for a Special Tribunal to consider and decide on his application, or whether he wished to take part in informal discussions with the objections to see if the objections could be resolved. He chose the latter, and an on-site meeting was held in July 1981. Wellington Acclimatisation Society, which had lodged a late submission, was also invited. The Society was not against a lowering of the lake "to approximately its natural or average size over a period of years", though was keen that a minimum lake level should be set[833].

At the on-site meeting Taiawhio Tatana was the only member of the local hapu present, and he was heavily outnumbered by the applicant, Catchment Board staff, and representatives from the Historic Places Trust, Wellington Acclimatisation Society, Wildlife Service and Ministry of Agriculture and Fisheries. Mr Turnbull explained that his intention was not to drain the lake, but to control it so that it would not flood part of his property, still leaving a lagoon of 6-8 hectares. The Catchment Board's Chief Engineer, clearly wearing his flood control 'hat', said that the method of control had not been decided upon, as it would depend on what water level was chosen, though some type of weir was likely. Whatever control measure was decided upon could attract a 50% Crown subsidy for its construction, with the beneficiary agreeing to be responsible for ongoing maintenance[834]. One of the Board

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[831] Taiawhio Tatana, Levin, to Secretary, 16 May 1981. Manawatu Catchment Board water right 3714. Supporting Papers #2120-2121.

[832] Taiawhio Tatana, Levin, to Secretary, 16 May 1981. Manawatu Catchment Board water right 3714. Supporting Papers #2122.

[833] Senior Field Officer Wellington Acclimatisation Society to Secretary, 3 June 1981. Manawatu Catchment Board and Regional Water Board water right file 3714. Supporting Papers #2123.

[834] The Board's Deputy Chief Engineer, in written notes prepared prior to the on-site meeting, had said as much: "The weir and the outlet channel is to be constructed as a Board work. The weir and channel will be designed by Catchment Board staff and constructed under Catchment Board supervision". Notes for informal discussion on 28 July 1981, undated (July 1981). Manawatu Catchment Board and Regional Water Board water right file 3714. Supporting Papers #2124-2125.

members told the meeting that it was the duty of the Board to "aid production, [and] ensure no infringement of rights of others, re the Lake Trustees".

Taiawhio Tatana's contribution to the discussion that took place was recorded in the notes of meting in the following terms:

> Mr Tatana noted that the main concern of the Trustees' objection was to preserve the lake in its original state, and the secondary consideration was his own personal objection concerning the size of the channel and the volume of flow that could affect his property immediately adjacent to the lake.
>
> Mr Law [Board member] pointed out that the Trustees' objection could only be concerned with their own property of 2.03 ha, not the flooded area of Mr Turnbull's property….
>
> Mr Tatana queried who would be responsible for controlling the operation of the weir.
>
> Mr Brougham [Board Chief Engineer] advises a nominee would be responsible under Board jurisdiction for the usage of the weir. Minimum lake level to be set as the weir minimum height.
>
> Mr Tatana – What would happen to excess runoff during extremely wet conditions?
>
> Mr Turnbull [applicant] – The weir would be blocked off to avoid excessive flows in the downstream drainage system, and excess storage released when drain capacity permitted.
>
> Mr Law – How would the flow be turned off during excess wet?
>
> Mr Turnbull – Probably via a piped discharge with some kind of valve, although the final design is yet to be settled….
>
> Mr Tatana wanted to know the fate of existing eel stocks (artificially introduced by Mr Tatana Senior in 1978-79) when the lake, as existing, is reduced from 32 ha to 6 or 8 ha.
>
> Mr Turnbull doubted that stocks were very large, pointed out that more eels were likely to come up the drain when installed.
>
> Mr Croad [Acclimatisation Society representative] suggested weir as proposed would prevent this.
>
> Mr Buchanan [Acclimatisation Society representative] said that weir would be no obstruction as eels will bypass hydro dams quite readily, and agreed that the drain is more likely to increase eel stocks rather than deplete them.[835]

The Crown officials were not recorded in the notes of meeting as expressing any opinions. The Historic Places Trust representatives, who included the staff archaeologist who had written about the whakamate the previous year, wanted any drain to avoid the actual

[835] Notes of meeting, 28 July 1981. Manawatu Catchment Board and Regional Water Board water right file 3714. Supporting Papers #2126-2129.

whakamate, and appeared reassured that this was achievable. Wider transformation of the historical landscape, or protection of the whakamate as an interconnected set of historic sites in one holistic environmental setting, did not appear to be part of their brief.

During the meeting the Board's Chief Engineer explained that one purpose of the meeting was to decide what level a weir or similar control structure should be, and opined that "the proposal to reduce existing levels by 1 metre seems reasonable". The 'existing levels', whose measured height by reference to a particular datum was not stated, were higher than normal at that time. No contrary views were reported in the notes of meeting.

After the meeting Wellington Acclimatisation Society wrote that it was not sure what would be the size of the lake if a level one metre below 'existing levels' was set, and asked that the water level be set such that a lake of around 10 hectares remained[836]. Mr Turnbull clarified that his application was to lower the level of the lake such that a lake of between 4 and 6 hectares would remain, with water level control by means of a weir at which point the flow could be cut off if required, and to construct a drain along a route that would "bypass the Maori drains"[837]. Taiawhio Tatana also provided written comment:

> I have discussed the proposal with the Trustees, and also the owners of our land where the water is to be drained, and we are not wholly satisfied with the explanation that has been given to date. Firstly, we object to the lake being drained, but if this is allowed we consider we considered that 20 to 25 acres should be left as the present lake, which is estimated to be about 80-90 acres. We are also concerned at the effect it would have on the eels and wildlife, especially the eels. Secondly, we considered that the Board should control the weir and the level of the lake, and not Mr Turnbull as suggested. We are also concerned down further, where this amount of water will run through our property and what guarantees to damages from either party. We suggest that the Board should inspect this drain yearly, and take action accordingly. We are not withdrawing our objection, but I understand there will be a meeting between all parties and we will leave our final decision till then.[838]

Separately the New Zealand Historic Places Trust considered an application by Mr Turnbull to modify an archaeological site, namely one of the whakamate. This was the digging of the drain which had been discussed at the on-site meeting, and which it had been agreed would be on a line that did not cause physical damage to the ditch. It granted the consent subject to supervision of the drain digging and the excavation work being under the overall control of

[836] Senior Field Officer Wellington Acclimatisation Society to Secretary, 31 July 1981. Manawatu Catchment Board and Regional Water Board water right file 3714. Supporting Papers #2130.
[837] JN Turnbull, Levin, to Secretary, 1 August 1981. Manawatu Catchment Board and Regional Water Board water right file 3714. Supporting Papers #2131.
[838] Taiawhio Tatana, Levin, to Secretary, 7 August 1981. Manawatu Catchment Board and Regional Water Board water right file 3714. Supporting Papers #2132-2133.

the Manawatu Catchment Board[839]. Only a visual inspection would be able to determine if this decision was sound or reckless.

The application for the water right was considered by the Regional Water Board's Water Committee in September 1981. The staff report recommended:

> That subject to a further meeting with representatives of the Board, Mr Tatana and the applicant, the Board grant the right for a term of 2 years, and thereafter at the pleasure of the Board, with the following special conditions:
>
> 1) The operating level is set to ensure that the constant open water surface area remains at about 10 ha under climatic conditions which sustain this area.
> 2) That the siting and construction of the weir be to the satisfaction of the Board's Chief Engineer.
> 3) That the level and control of the weir be under the jurisdiction of the Board's Chief Engineer.
> 4) The Board officers be permitted access to the weir at all reasonable times for the purpose of carrying out inspections and any adjustments that may be necessary.
> 5) That the outfall and channel in Mr Turnbull's property be maintained to the satisfaction of the Board's Chief Engineer.
> 6) This right may be cancelled by 6 months' notice in writing given by the Manawatu Regional Water Board to the grantee if in the opinion of the Manawatu Regional Water Board the exercise of this right is adversely affecting the downstream drainage, and the public interest requires such cancellation, but without prejudice to the right of the grantee to apply for a further right in respect of the same matter.[840]

The Water Committee approved the recommendation, with an amendment to Condition 2 that the weir, the outfall and the downstream channel had to be constructed to the Chief Engineer's satisfaction. It also varied the further meeting proposal, replacing it with an instruction that "a letter be sent to Mr T Tatana giving him a full explanation and advising that the Board has conceded to his request"[841]. Taiawhio Tatana was told of the special conditions, and advised that the Board had agreed to his request that the lake be 20-25 acres in area (as set out in Condition 1), with the Board controlling the weir and lake level (Condition 2), and inspecting the drain annually (Condition 3)[842].

The Regional Water Board's water right file is silent about any supervision of construction and any annual inspections. It is not possible to say whether there was any Board

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[839] Senior Archaeologist Historic Places Trust to JN Turnbull, Levin, 7 August 1981, attached to Senior Archaeologist Historic Places Trust to Secretary, 7 August 1981. Manawatu Catchment Board and Regional Water Board water right file 3714. Supporting Papers #2134-2135.

[840] Staff report to Regional Water Board Water Committee, 1 September 1981. Manawatu Catchment Board and Regional Water Board water right file 3714. Supporting Papers #2136-2138.

[841] Minutes of Water Committee, 1 September 1981, approved by Board 13 September 1981. Manawatu Catchment Board and Regional Water Board water right file 3714. Supporting Papers #2139.
Right in respect of natural water No. 810007, commencing 23 September 1981. Manawatu Catchment Board and Regional Water Board water right file 3714. Supporting Papers #2140-2141.

[842] Secretary to Taiawhio Tatana, Levin, 15 October 1981. Manawatu Catchment Board and Regional Water Board water right file 3714. Supporting Papers #2142.

monitoring at all. There is also no indication that the Board made any contact with the Lake Trustees after the granting of the water right.

In May 1987 the Board revoked its pleasure and asked that a new application be lodged[843]. Mr and Mrs Turnbull applied to "maintain the weir and channel for controlling the level and flow from Lake Tangimate" the following month[844]. The application was publicly notified in a local newspaper, though the Lake Trustees were not individually notified. No objections were received, and the Regional Water Board issued a replacement water right in August 1987. Conditions were generally the same as had been in the 1981 right, with the term being for five years expiring at the end of September 1992[845].

The first report on the water right file about an inspection of the weir and drainage channel is dated November 1988:

> Because at past visits the water level had been well below the discharge point agreed when the Turnbulls were originally granted water right No. 810007, [two staff members] decided to visit and ascertain the current water level in the Tangimate lagoon. The decision was taken following one of the wettest three and a half month periods ever recorded in our area.
>
> The lagoon level was still below the height required to spill over. From our observations the water level would need to rise between 1 and 2 metres.
>
> There was much wildlife on the lagoon, with many swans and their offspring, many ducks including some spoonbills, herons, etc.[846]

Notwithstanding that the water right was not due to expire until September 1992, a renewal application was lodged in June 1991[847]. There is no known reason why this should be, though it may have been opportunistically tied in with the need for a renewal of a cowshed effluent discharge water right that the Turnbulls also had to obtain. The staff report recorded:

> This is the second renewal of the right. The first application saw a number of objections including local Maori groups and the Historic Places people. These were eventually settled and a right granted. The first renewal did not draw any objections, and the issues seemed to have died a happy death. There are no ongoing problems

[843] Senior Water Use Officer to JN Turnbull, Levin, 29 May 1987. Manawatu Catchment Board and Regional Water Board water right file 3714. Supporting Papers #2143.
[844] Application for right in respect of natural water, 1 June 1987. Manawatu Catchment Board and Regional Water Board water right file 3714. Supporting Papers #2144-2145.
[845] Right in respect of natural water No. 870070, commencing 18 August 1987. Manawatu Catchment Board and Regional Water Board water right file 3714. Supporting Papers #2146-2147.
[846] File note, 8 November 1988. Manawatu Catchment Board and Regional Water Board water right file 3714. Supporting Papers #2148.
[847] Application for right in respect of natural water, 10 June 1991. Manawatu Catchment Board and Regional Water Board water right file 3714. Supporting Papers #2149-2151.

> here that I know of. Tangimate has more water in than previously and is almost up to the outlet.[848]

The water right was granted for a 10 year term, expiring at the end of September 2001[849]. As with the previous renewal, there is no record that the Lake Trustees had been individually notified about receipt of the application, and asked for their comments or objections.

5.7.2.3 Feilding sewage treatment plant discharge

Manawatu Catchment Board and Regional Water Board became responsible for administering all the Pollution Advisory Council's permits to discharge to waterways in its Board district on 1 April 1972. It was also made responsible for ensuring compliance with the new water classifications approved in 1973. At the outset the Board had to admit that it had little knowledge of the condition of the Oroua River in the context of the quality standards set out in the classification:

> Although the machinery is not clearly laid out in the law, it is intended that the conditions on these permits (now rights) and any future granted rights will define the quality and quantity of discharges so that all the discharges into any one stretch of river will not reduce the quality of the receiving water below that defined by the Classification Standards. This involves detailed knowledge of the hydrology and biological dynamics of the river, which will determine the recovery rate of the river under serious waste loads. This information is simply not available at present and involves extensive water quality sampling and hydrological investigation.[850]

While the Catchment Board was of the view that each of the three major discharges into the Oroua River (Borthworks meat works, Kawa wool scour, and Feilding sewage treatment plant) were individually exceeding the levels of contaminants set out in their permit conditions, it felt that if the river as a consequence of the collective impact of discharges was meeting the measurable classification standards then that was a reflection on the low standards set by the Class D classification rather than a reflection on the condition of the river. Visually and aesthetically the river was polluted[851].

In September 1974 the Regional Water Board served notice on Feilding Borough Council that it intended to review the sewage treatment plant discharge permit issued under the Waters Pollution Act 1953 and see whether it should be revoked, or whether revised or additional conditions of consent were required to ensure that the water classification standards were met. To do so it had to follow a procedure set out in Section 15 Water and

[848] Consents report, 5 July 1991. Manawatu Catchment Board and Regional Water Board water right file 3714. Supporting Papers #2152.
[849] Right in respect of natural water No. MWC912438, commencing 17 September 1991. Manawatu Catchment Board and Regional Water Board water right file 3714. Supporting Papers #2153.
[850] Chief Engineer to Commissioner for the Environment, 14 May 1973. Manawatu Catchment Board and Regional Water Board water right file 1150. Supporting Papers #1878-1879.
[851] Chief Engineer to Commissioner for the Environment, 14 May 1973. Manawatu Catchment Board and Regional Water Board water right file 1150. Supporting Papers #1878-1879.

Soil Conservation Amendment Act (No. 2) 1971, which included a three-month opportunity for the Borough Council to appeal the Board's decision[852]. At the end of the three month period, the Water Board advised that the permit would be revoked once it had approved a water right under the Water and Soil Conservation Act 1967, and instructed the Council to make an application for the new water right. There was a sting in the tail of this instruction:

> As the Board intends to reduce the permissible discharge loads [in any new water right], it may be wise to discuss this matter with the Board before plans for your treatment plant extensions become finalised.[853]

The Borough Council's application was made in February 1975[854]. It was to discharge up to 62,500 gallons per hour (280,000 litres per hour) of treated wastewater into the Oroua River. The character of the wastewater was described as "1210 lbs BOD/day". The Regional Water Board file does not record any of the steps taken to consider the application, moving straight to the recommendation presented to the Board for approval:

> The application is for a right to replace the WPCC permit No. 325/8 which the Board has indicated it will revoke. The Borough are currently designing extensions to their treatment plant and it is necessary to apply more appropriate discharge conditions to ensure that a satisfactory receiving water standard is maintained. Construction of the plant is expected to take two years.
>
> It is impractical to grant a right whose conditions cannot be met for a number of years, so it is suggested that an interim right be granted to allow for development of the treatment plant.
>
> As with Borthwick's freezing works, it may be desirable to adjust the times during which the maximum organic load is discharged to coincide with the period in which the river's recuperative capacity is greatest. The practicality of this will depend on the treatment system employed, but requires investigation. It is therefore recommended that the right be issued for a term of three years.
>
> Recommended conditions 1 & 2 below reflect the permit conditions. Conditions 3 & 4 ensure that proper records are kept and that investigation of the effluent is undertaken. Condition 5 represents the desired effluent and will result in the addition of a little over 3 mg/l BOD to the river. Allowing for about 1 mg/l upstream of this discharge, it is considered that an acceptable river quality standard will be maintained.
>
> Recommended: That a Right be granted for a term of three years subject to the Board's general conditions and the following special conditions:
>
> 1. The organic loading, as assessed by the 5-day BOD test incubated at 20°C, is not to exceed 614 kg per day.
> 2. No more than 910 kg of suspended solids (as assessed using Whatman G.F.C. paper or equivalent) is to be discharged per day.

[852] Chief Engineer to Borough Engineer Feilding Borough Council, 16 September 1974. Manawatu Catchment Board and Regional Water Board water right file 1150. Supporting Papers #1881-1882.
[853] Water Resources Officer to Borough Engineer Feilding Borough Council, 10 January 1975. Manawatu Catchment Board and Regional Water Board water right file 1150. Supporting Papers #1883.
[854] Application for right in respect of natural water, 27 February 1975. Manawatu Catchment Board and Regional Water Board water right file 1150. Supporting Papers #1884-1888.

3. The grantee is to supply the Board with the results of analyses of the effluent, specifying hourly and daily total flows, the pH of the effluent, the hourly and daily loads of BOD and suspended solids. These analyses are to be performed weekly and not at the weekends.
4. The grantee is to perform such other testing as may from time to time be required by Board officers.
5. By the expiry time of this Right, the organic load discharged is not to exceed 17.0 kg in any one hour.[855]

The Board approved the recommendation[856].

Having being granted the water right, Feilding Borough Council sought approval from the Local Authorities Loans Board for a loan to undertake the proposed plant upgrade. In commenting on the application, the Medical Officer of Health explained:

> It is estimated that the sewage treatment plant at Feilding has operated above the designed load since about 1970, and over the past two or three years has consistently exceeded the water right BOD condition of 1350 lbs per day being discharged in the final effluent into the Oroua River.[857]

The amount of industrial wastes, in particular due to the opening of an abattoir in the town, had been greater than anticipated when the plant had been designed in the early 1960s. The proposed upgrade included two additional trickling filters, and greater recirculation through the plant so that waste which had only received primary treatment (gross solids removal) would not continue to be discharged into the river. While the Medical Officer of Health supported the application in order to allow the quality of the discharged effluent to be improved, the Ministry of Works and Development was doubtful about the worth of the application. Because the need for the upgrade was trade wastes related, it queried whether scarce local authority loans money should be spent on meeting an industrial need, arguing that the alternative of increased fees for trade wastes would have "the salutary effect of inducing industry to improve its own housekeeping". Pre-treatment by the industrial dischargers prior to discharge through the sewers to the treatment plant would be a better approach[858]. Despite these reservations, the Local Authorities Loans Board sanctioned the raising of the loan, subject among other things to the "design basis for the proposed works" being agreed to between the District Commissioner of Works and the Council's consulting engineers[859].

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[855] Report to Regional Water Board, undated (May 1975). Manawatu Catchment Board and Regional Water Board water right file 1150. Supporting Papers #1889.
[856] Right in respect of natural water No. 750027, 20 May 1975, attached to Secretary to Borough Engineer Feilding Borough Council, 21 May 1975. Manawatu Catchment Board and Regional Water Board water right file 1150. Supporting Papers #1890-1892.
[857] Medical Officer of Health Palmerston North to Director General of Health, 13 May 1976. Health Head Office file 32/219. Supporting Papers #49-51.
[858] Commissioner of Works to Babbage and Partners, Consulting Engineers, Auckland, 21 June 1976. Health Head Office file 32/219. Supporting Papers #52-53.
[859] Secretary Local Authorities Loans Board to Town Clerk Feilding Borough Council, 14 July 1976. Health Head Office file 32/219. Supporting Papers #54-55.

Before the upgrade was in place, the Regional Water Board's Water Resources Officer told the Borough Council in February 1977 that the effluent quality was not complying with the standards set out in the water right:

> Recent tests in the Oroua River have shown a disturbingly low water quality below your sewage treatment plant, and we have measured BOD levels in sewage effluent of 6-900 mg/l.
>
> It seems that the overloading of your treatment plant is accentuated by the trade wastes you receive, and the recent establishment of a pea processing plant cannot help this.[860]

Later that year he added:

> Under the Water and Soil Conservation Act a discharger is responsible to the Board for the quality of effluent it discharges, not for the type of treatment it uses to achieve this quality. Consequently we have no objections to the plans for sewage treatment plant extensions subject to the achievement of the effluent standards as laid down in the Water Right. We do not wish to see the situation arise where the Borough outlays considerable sums of money on the treatment plant and still fail to meet the effluent standards.[861]

The three year water right was due to expire in May 1978. In April 1978 an application was made by the Borough Council for a replacement right. The application was for the same volume of water as in the 1975 application, 280,000 litres per hour on a continuous basis, though the character of the wastes was for a lesser amount of BOD (309 m/l) and suspended solids (177 m/l)[862]. When the application was publicly notified, no objections were received. As in 1975, the Board file does not explain what type of consideration was given to the application, and contains only the recommendation made to the Board:

> The Oroua River was the first area where the Board undertook water quality work in 1973. This work culminated in May 1975 with the granting of Water Rights to the Feilding Borough Council and Borthwick's Freezing Works. Both Rights were for a limited term (3 years for the Borough) and conditions were imposed so as to authorise the existing discharge and to require improvements to the effluent by the expiry of the Right.
>
> The Freezing Works has complied with these requirements and the improvement in river conditions agrees with expectation.
>
> The Borough Council is in the process of installing its treatment plant.
>
> The present sewage treatment system has been inadequate for the previous effluent conditions, due mainly to the large quantities of trade waste received from the abattoir, wool scour, food processing factories etc. BOD concentrations in the effluent of over

[860] Water Resources Officer to Borough Engineer Feilding Borough Council, 22 February 1977. Manawatu Catchment Board and Regional Water Board water right file 1150. Supporting Papers #1893.
[861] Water Resources Officer to Borough Engineer Feilding Borough Council, 11 July 1977. Manawatu Catchment Board and Regional Water Board water right file 1150. Supporting Papers #1894.
[862] Application for right in respect of natural water, 27 April 1978. Manawatu Catchment Board and Regional Water Board water right file 1150. Supporting Papers #1895-1896.

1000 mg/l have been measured (c.f. BOD of raw domestic sewage = 250 mg/l) and this has a marked effect on the river, including excessive deoxygenation at night. Classification standards are being well exceeded in spite of the relatively high accumulative capacity of the river.

The "interim" Water Right referred to earlier required that by May 1978 the BOD discharged was not to exceed 17.0 kg in any one hour. This effluent , in combination with residual contamination from the Freezing Works, should produce an acceptable river condition at flows of at least 1.5 m^3/sec (the 4% flow in the river).

This level is still appropriate.

A suspended solids discharge of 30 kg/hr should preclude conspicuous visual effects in the river or undesirable deposits. Such a level should be achievable by a plant capable of meeting the B.O.D. standard.

To enable the Board to keep a check on the effluent and to ensure that the Borough is kept aware of plant performance, it is desirable that the Borough be required to monitor the effluent at regular intervals. A single outfall is also required to enable policing of the right.

Recommended: that the Right be granted for a term of 10 years and thereafter at the pleasure of the Board, subject to the Board's general conditions and the following special conditions:

1. That the quantity of Biological Oxygen Demand discharged not exceed 17.0 kg BOD_5 in any one hour.
2. That the quantity of suspended solids discharged, as measured using Whatman G.F.C. paper or equivalent, not exceed 30.0 kg in any one hour.
3. That the grantee undertake the following tests and measurements:
    a. Hourly rates and the daily quantity of effluent discharged.
    b. The hourly concentrations, hourly loads, and daily load of BOD_5 in the effluent.
    c. The hourly concentrations, hourly loads, and daily load of suspended solids in the effluent.

    These analyses are to be performed weekly and forwarded to the Board.
4. The grantee shall perform such other tests and measurements as the Board's Chief Engineer may require.
5. The discharge shall be by one outfall only.[863]

The recommendation was approved, with the water right commencing on 18 July 1978[864].

In 1978 application was made for a Crown subsidy on the upgrade. One new trickling filter would be installed, and the capacity of the two existing filters would be increased. The application was approved[865].

[863] Staff report to Water Committee, 4 July 1978. Manawatu Catchment Board and Regionnal Water Board water right file 1150. Supporting Papers #1897-1899.
[864] Right in respect of natural water No. 780044, 18 July 1978. Manawatu Catchment Board and Regional Water Board water right file 1150. Supporting Papers #1900-1902.
[865] Director of Public Health to Minister of Health, 11 August 1978, approved by the Minister 16 August 1978. Health Head Office file 32/219. Supporting Papers #56-57.

Two years later, in June 1980, a staff report to the Regional Water Board disclosed that the effluent discharged from the recently-extended treatment plant was not compliant with the standards set in the water right. BOD was above the upper limit for 80% of the time of a 24-hour test, and during two of those hours was over four times greater than the limit. This was despite assurances given before the water right had been issued in 1978 that the standards would be able to be met. Not only was exceeding the limits illegal, but "water quality below the Borough [outfall] is by far the worst example of continuous pollution remaining in the Board's area". A meeting with the Borough Council was recommended, at which "the seriousness and urgency of the situation" could be conveyed. The Board should set a time limit for improvements to be made[866].

The Borough Council's consulting engineer responded that the extensions to the plant had been cut back because of expectations that increased efforts would be made to pre-treat the industrial wastes from the abattoir and the wool scour before discharge into the sewers. This course had been pushed by the Crown engineers in the Ministry of Works and Development at the time of consideration of loan and subsidy applications. As a result proposed design improvements of two additional trickling filters, increased depth in the two existing filters, and construction of a third settling tank had been reduced to one additional trickling filter and additional pumping to re-circulate the effluent through the plant. However, 'housekeeping' at the abattoir in particular was poor by meat industry standards, and contributed more than half of the BOD load to the plant. He supported the implementation of trade waste bylaws to force industrial dischargers to better comply with standards of effluent to be discharged from their works into the sewers[867].

It would seem that the 'carrots' of subsidy funding and access to loan monies provided by the Crown could have perverse unintended consequences.

Pressure for the Regional Water Board to take action was building when an outside agency, the Wellington Acclimatisation Society, added its concerns in February 1981:

> A preliminary investigation has shown that the oxygen levels decrease downstream from the discharge to a low of 2.8 ppm approximately 12 km downstream.
>
> The riverbed below the discharge at the time of the investigation was coated with 'sewage fungus' organisms and had an unpleasant odour. Invertebrate fauna in the area above the discharge appeared 'normal' for unpolluted water with a diversity of

[866] Assistant Water Resources Officer to Water Committee, 24 June 1980. Manawatu Catchment Board and Regional Water Board water right file 1150. Supporting Papers #1903-1905.
[867] Babbage and Partners to Borough Engineer Feilding Borough Council, 20 August 1980. Manawatu Catchment Board and Regional Water Board water right file 1150. Supporting Papers #1906-1910.

> fauna present. This however changes completely to a 'pollution fauna' below the discharge.
>
> It appears that the river's condition is caused by the Feilding Borough Council's sewage discharge, the BOD loadings of which we suspect are similar to those recorded by the Board in its report of the summer of 1978/79, that is to say well in excess of the limits laid down in their water right.
>
> The Society refrained from objecting to the water right when it was first applied for in June 1978 because of assurances that proposed improvements to the sewage treatment system would clean up the river. Even though improvements have now been made, the river is still badly polluted, adversely affecting the fisheries and recreational value of the river below Feilding.
>
> It is the feeling of this Society that the condition of the Oroua River below Feilding can no longer be tolerated and that the Board must take some positive action to rectify this situation as soon as possible.[868]

The Society's description of aquatic life in the Oroua River, and references to fisheries and recreational values, are the first such references to appear in the Regional Water Board's file for the Feilding Borough Council's discharge. Such assessments of river quality do not appear to have been matters that the Board collected data about. Interestingly, the Acclimatisation Society's intervention came at about the same time that the preamble or long title to the Water and Soil Conservation Act was amended to recognise a wider range of values associated with waterways.

Yet again the Borough Council argued that the Crown had to share some of the blame:

> In 1974 the consultants Babbage and Partners were retained to design extensions to the overloaded plant. Of the two alternatives, augmentation of existing processes together with sludge heating, and oxidation ponds, the former appeared the more economic.
>
> The Ministry of Works examined the proposal on behalf of the Loans Board, and considered it of an unnecessarily high standard. A revised scheme was established in late 1976. Contracts worth $200,000 were let in October 1977 and completed 18 months later.
>
> The desired efficiency was not achieved, and with the reduced capacity the plant was still overloaded.[869]

It had identified and was in the middle of implementing some measures that would provide some improvements in the short term.

Despite this response the Regional Water Board expressed strong concern at the state of affairs:

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[868] Fisheries Officer Wellington Acclimatisation Society to Secretary, 18 February 1981. Manawatu Catchment Board and Regional Water Board water right file 1150. Supporting Papers #1911.
[869] Borough Engineer Feilding Borough Council to Secretary, 16 March 1981. Manawatu Catchment Board and Regional Water Board water right file 1150. Supporting Papers #1912.

> The Board are very concerned that every effort must be made to complete [remedial measures] immediately, and will then be seeking the information on whether the conditions of the water right are being met.
>
> If the water right conditions are still being breached, the Board will take whatever action is considered necessary. The Loans Board could also be asked what criteria were used to arrive at the decision to reduce the capacity of the original proposal.

The Borough Council was told that it was not helping its own case by failing to have in place trade waste bylaws that could be used to force the industrial dischargers to improve their operations.

> The Board views the matter of the breach of water right conditions very seriously, and would request the Borough Council treat the matter with urgency to ensure that all water right conditions are met before the onset of summer flows in September this year.[870]

A meeting between members of the Borough Council and the Regional Water Board in August 1981 disclosed that some quick (and cheap) temporary measures had been implemented, and that more expensive works would require Loans Board funding, a lengthy approval process. Board support for the loan approval would assist the Council's case to the Loans Board. A bylaw was being prepared, and "the Borough agreed that remedial action was a top priority"[871]. Two months later the Borough Engineer provided assurances that draft bylaws were being examined by the Borough Council's solicitor, that industrial dischargers had upped their game, and that the effluent quality at that point in time was meeting the water right conditions[872]. However, the response about the bylaws did not mollify the Regional Water Board, which replied:

> The Board was very disturbed to learn that the bylaws relating to trade wastes had not been passed by your Council. I would remind you that when representatives of your Council and the Board met on 17 August 1981 a promise was made to have the bylaw adopted by your Council in September 1981.
>
> The Board's concern relates to the bylaws not being operative before the low flow situation in the Oroua River, which can now be expected as we enter the summer months. It is your Council's responsibility to comply with the special conditions set in Water Right 780044, which if not met puts the Council in breach of the Water and Soil Conservation Act 1967 – Section 34 refers.
>
> It is the Board's opinion that without trade waste bylaws to give your Council certain control of the situation, it will be difficult if not impossible to conform to the water right conditions: accordingly the Board urges your Council to pursue the adoption of the trade waste bylaws urgently, so that they could still have some effect in late summer

[870] Deputy Chief Engineer to Borough Engineer Feilding Borough Council, 23 March 1981. Manawatu Catchment Board and Regional Water Board water right file 1150. Supporting Papers #1913-1914

[871] Notes of meeting, 17 August 1981. Manawatu Catchment Board and Regional Water Board water right file 1150. Supporting Papers #1915.

[872] Borough Engineer Feilding Borough Council to Secretary, 14 October 1981. Manawatu Catchment Board and Regional Water Board water right file 1150. Supporting Papers #1916.

> and during the difficult period of high trade production which coincides with low river flows.[873]

However, compliance with the effluent quality standards of the water right could not be maintained, and Wellington Acclimatisation Society wrote again to urge that some more emphatic action be taken by the Regional Water Board because "communication and cooperation attempts [between the Board and the Borough Council] in the past six years indicate no improvement of this problem". The Society added that the concern it had expressed in the past "has had little or no effect, and it would appear our patience in this matter is being taken for granted"[874]. The Board's response was to pass a resolution at its December 1981 meeting that "unless definite improvement is made by the Board's February 1982 meeting, prosecution must be considered"[875]. The six year period referred to by the Acclimatisation Society was correct – the BOD loading that had to be complied with had first been set out in the 1975 water right.

By February 1982 testing during the summer showed BOD loadings 6 to 12 times greater than allowable by the water right conditions. In one 24 hour period, the loading had exceeded the allowable amount in 20 of those hours, so was near-continuous rather than an occasional spike. A visual check of the Oroua River showed no signs of pollution in the 4 kilometres above the discharge site, and gross pollution below "as in previous years", with highly turbid water and prolific growth of sewage fungus. The Borough Council had committed to treatment plant improvements costing about $700,000, for which a loan needed to be raised:

> Experience has shown that such moves are likely to be the precursor of protracted negotiations and lengthy delays before any tangible results in terms of improved effluent quality occur. The Board must take action to expedite this process.

The Deputy Chief Engineer drew attention to the December 1981 decision to consider prosecution, urged a meeting with the Borough Council to talk through the effectiveness of the proposed improvements, and reiterated the need for trade waste bylaws[876].

When the Board's Water Committee considered the Deputy Chief Engineer's report at a meeting at the beginning of February 1982, a motion was put to proceed with a prosecution against Feilding Borough Council. The motion was passed, with one member asking that his

[873] Secretary to Town Clerk Feilding Borough Council, 22 October 1981. Manawatu Catchment Board and Regional Water Board water right file 1150. Supporting Papers #1917.
[874] Fisheries Officer Wellington Acclimatisation Society to Secretary, 30 November 1981. Manawatu Catchment Board and Regional Water Board water right file 1150. Supporting Papers #1918.
[875] Deputy Chief Engineer to Catchment Board Water Committee, 27 January 1982. Manawatu Catchment Board and Regional Water Board water right file 1150. Supporting Papers #1919-1921.
[876] Deputy Chief Engineer to Catchment Board Water Committee, 27 January 1982. Manawatu Catchment Board and Regional Water Board water right file 1150. Supporting Papers #1919-1921.

vote against be recorded[877]. The Committee's resolution still had to be confirmed by the full Board later that month, and in the intervening days there was considerable fightback by the Borough Council in local newspapers[878], and no doubt much lobbying behind the scenes of the Board members. At the full Board meeting the Water Committee's resolution was amended to allow for one month's grace period before the prosecution would be taken, during which time a meeting would be held with the Borough Council to discuss the matter fully. The mover of the amendment was one of the Crown appointees on the Board, the District Commissioner of Works[879].

The meeting was held on 1 March 1982. Besides the Regional Water Board and Feilding Borough Council members and staff, representatives of the Health Department and the Ministry of Works and Development attended. It was agreed to appoint a technical committee, with power to act, to go into the matter in more detail[880]. On that basis the decision to prosecute was put on hold[881]. The District Commissioner of Works was appointed the chairman of the technical committee at its first meeting.

While the Regional Water Board might have decided not to proceed with a prosecution, the same could not be said for Wellington Acclimatisation Society, which was prepared to test the law itself. The Society had asked to be represented on the technical committee, but had been rebuffed, with the chairman of the committee telling a local newspaper:

> It is a joint committee consisting of the Feilding Borough Council and the Manawatu Catchment Board, set up to study a specific problem….
>
> Although they have an interest in the outcome, we will not accept them as participants in the committee.
>
> It was these two bodies who were charged with solving the problem, and if we admitted the Acclimatisation Society it would open the way for a whole of other river users and interested parties.[882]

The Acclimatisation Society did charge Feilding Borough Council with "discharging a substance into waters to such an extent as to cause the waters to be (a) poisonous to the

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[877] Minutes of Catchment Board Water Committee, 2 February 1982. Manawatu Catchment Board and Regional Water Board water right file 1150. Supporting Papers #1922.
[878] *Manawatu Evening Standard*, 12 February 1982 and 13 February 1982, plus another unreferenced newspaper clipping (possibly *Feilding Herald*), undated. Copies on Manawatu Catchment Board and Regional Water Board water right file 1150. Supporting Papers #1923 and 1924.
[879] Minutes of full Catchment Board and Regional Water Board meeting, 16 February 1982, and *Manawatu Evening Standard*, 17 February 1982. Manawatu Catchment Board and Regional Water Board water right file 1150. Supporting Papers #1925 and 1926.
[880] Notes of meeting, 1 March 1982. Manawatu Catchment Board and Regional Water Board water right file 1150. Supporting Papers #1927-1929.
[881] Minutes of Catchment Board Water Committee, 2 March 1982. Manawatu Catchment Board and Regional Water Board water right file 1150. Supporting Papers #1930.
[882] *Manawatu Evening Standard*, 22 April 1982. Copy on Manawatu Catchment Board and Regional Water Board water right file 1150. Supporting Papers #1931.

food of fish, (b) injurious to the food of fish, (c) poisonous to fish, or (d) injurious to fish"[883]. The charges were laid under the Freshwater Fisheries Regulations 1951. At a hearing in September 1982 Feilding Borough Council was convicted on all four counts, though the matter of penalties was deferred[884]. The Acclimatisation Society had been able to make its point.

In August 1982 Feilding Borough Council applied to vary the conditions of its 1978 water right so that effluent quality levels could change as the flow in the river changed[885]. The immediate reaction of Board staff, in a note prepared for consideration by the technical committee, was:

> The main cause for concern is that a flow-related discharge requires a substantial degree of cooperation on the part of the discharger. At this stage we feel that the Feilding Borough Council has in the past shown a degree of reluctance to cooperate in improving the quality of the effluent discharged from the treatment plant. Consequently we treat the flow-related discharge proposal with caution, and would prefer to have positive evidence of the Borough's good intentions, i.e. we would prefer to see the "trial" spray disposal scheme in operation first.
>
> Our recommended conditions are tentative only and obviously are open to alteration by the Board. We wish to point out that the conditions on the existing water right have not been adequately tested in practice because the water right has so often been exceeded….
>
> It should be noted that a flow-related discharge will still require some form of additional treatment of effluent during periods of low flow. A flow-related discharge is therefore not a panacea to solve the problems in the Oroua River.[886]

The technical committee produced an interim report (also referred to as a progress report) in November 1982. Among other matters it recorded what it had been told by a Ministry of Works and Development representative:

> Mr Cameron, Chief Public Health Officer, head office, Ministry of Works and Development, after a general review of the situation dating back to 1959 … conceded that the Borough Council's extension proposals were reduced at the loan proposal evaluation stage in 1976 due to economic restraint at that time and the firm conviction by Ministry of Works and Development as advisors to the Loans Board that scaled-down proposals with the addition of pre-treatment by industrial users would meet the then problem.[887]

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[883] Summons to witness issued to Secretary Manawatu Catchment Board, 11 August 1982. Manawatu Catchment Board and Regional Water Board water right file 1150. Supporting Papers #1932.

[884] *Feilding Herald*, 21 September 1982. Copy on Manawatu Catchment Board and Regional Water Board water right file 2346. Supporting Papers #2007.

[885] Application for right in respect of natural water, 23 August 1982. Manawatu Catchment Board and Regional Water Board water right file 2346. Supporting Papers #2002-2004.

[886] File note prepared for technical committee, undated (August 1982). Manawatu Catchment Board and Regional Water Board water right file 2346. Supporting Papers #2005-2006.

[887] Interim report of the Feilding Borough – Manawatu Regional Water Board joint technical committee established to investigate the Feilding sewage treatment plant Oroua River pollution problem, November 1982, at

Just as with the level of water quality standard in the Water Pollution Regulations, the decisions about loan approvals were matters that the Crown had control over, and could choose to apply liberally or restrictively.

New information supplied to the committee suggested that the biggest problem overloading the treatment plant originated from the wool scour rather than from the abattoir, because the greases in the wool made its effluent less biodegradable. When wool scour effluent was removed from the plant, its performance improved and the resulting effects on the river were "dramatic" with a drop in BOD levels and less turbidity. It was therefore decided to remove wool scour effluent from the treatment plant and deal with it independently, albeit still on the treatment plant site, by passing it through an aerobic lagoon prior to irrigation on to land. While these changes were only conducted as a trial solution because of their experimental nature, they looked promising. The committee did not believe, however, that the wool scour trial was the only change necessary, because the treatment plant would still have difficulty meeting the effluent quality standards in the river on a seasonal basis, and the flow-related discharge that had been applied for in August still had to be assessed thoroughly. Another option identified by the committee was the installation of a suitably large oxidation pond which could detain water for a period and reduce BOD loadings prior to discharge. The work undertaken by the committee meant that the earlier proposals for the Borough Council to spend up to $750,000 on an extension of the treatment plant would not be necessary. The chairman exercised some hindsight when he stated in the report that the results of the committee's findings validated the Ministry's mid-1970s opinion that pre-treatment (or in this case separate treatment) of industrial wastes meant that a less complex treatment plant would suffice[888].

While the trial had shown the benefits of treating the wool scour wastes separately, the treatment plant still faced the variable seasonal inflows. These were described in a September 1984 report as "occasional daily peak discharge rates" and "discharge of Watties corn processing wastewater". Expansion of the facilities in the treatment plant were proposed "to smooth out peak inflows … and provide some additional treatment of BOD". This would allow the Council to meet its water right conditions all the time[889].

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page 2. Manawatu Catchment Board and Regional Water Board water right file 2346. Supporting Papers #2008-2019 at 2010.

[888] Interim report of the Feilding Borough – Manawatu Regional Water Board joint technical committee established to investigate the Feilding sewage treatment plant Oroua River pollution problem, November 1982. Manawatu Catchment Board and Regional Water Board water right file 2346. Supporting Papers #2008-2019.

[889] Water Resources Officer to Water Committee, 6 September 1984. Manawatu Catchment Board and Regional Water Board water right file 2346. Supporting Papers #2020-2021.

However, all did not turn out as satisfactorily as this 1984 report might suggest or had hoped for. In 1985 there were fish deaths in the Oroua River below the discharge site, caused by non-compliance with the water right conditions. Corn processing wastes were identified as the cause. Despite assurances given to the Regional Water Board that the problem would not recur, the same overloading by corn processing wastes happened in 1986. Further assurances were given during the 1986 corn processing season, but turned out to be over-optimistic with overloading continuing. A report to the Board's Water Committee stated:

> Our approach to the situation has been to advise the Borough that they should make every attempt to meet their water right as often and as soon as practicable. However, in reality and because of circumstances, the Board is placed in the delicate position of tactfully agreeing to the Borough exceeding its water right on a temporary basis, so long as river quality doesn't suffer too much.

Continued monitoring or prosecution were among the options available[890]. Prosecution was not adopted and the Board's regulation of the discharge continued to be quiet and cautious. All a meeting with Feilding Borough Council and Watties in March 1986, all the Board did was express its disappointment and remind the Council that its water right was due for review in two years time[891].

The review of the water right did not occur during 1988, but one year later. At that time the Borough Council was told to apply for a new water right, and that the existing right would continue "at the pleasure of the Board" until the new right was granted[892]. The application was submitted in May 1989[893]. It sought a right to discharge up to 360,000 litres/hour of treated sewage effluent on a continuous basis into the Oroua River. When the application was publicly notified, three objections were received, from Wellington Acclimatisation Society, Minister of Conservation, and a downstream (European) resident (who subsequently withdrew his objection). The application was not immediately processed further while the Board prepared a water resources report on the Oroua River.

In 1991 the processing of the application was resumed, and in August that year a water right was granted to discharge up to 8,640 cubic metres per day of treated effluent into the Oroua River. Conditions included:

- The biochemical oxygen demand was not to exceed 17.0 kg BOD_5 in any one hour.
- Suspended solids were not to exceed 30.0 kg in any one hour.

[890] Water Resources Officer to Water Committee, 19 March 1986. Manawatu Catchment Board and Regional Water Board water right file 2346. Supporting Papers #2022-2025.
[891] Notes of meeting, 26 March 1986. Manawatu Catchment Board and Regional Water Board water right file 2346. Supporting Papers #2026-2028.
[892] Water Quality Officer to Borough Engineer Feilding Borough Council, 20 February 1989. Manawatu Catchment Board and Regional Water Board water right file 2346. Supporting Papers #2029.
[893] Application for right in respect of natural water, 11 May 1989. Manawatu Catchment Board and Regional Water Board water right file 2346. Supporting Papers #2030-2032.

- Six monthly reports on progress with upgrading were required.
- The six monthly report due in June 1992 was to cover "options of land based treatment and storage systems to address the goal of meeting water quality classification standards in the Oroua River by 30 June 1994".

The right was for three years and would expire in June 1994[894]. The water quality standards were unchanged from the 1978 right.

5.7.2.4 Shannon sewage treatment plant discharge

The discharge permit issued by the Pollution Advisory Council in June 1970[895], shortly before its activities were wrapped into the administrative structures set out in the Water and Soil Conservation Act 1967, was treated as an existing authorisation that was allowed to continue in existence when the Regional Water Board took over responsibility for administration from the Advisory Council on 1 April 1972. For the next 19 years the Manawatu Catchment Board and Regional Water Board file on the discharge shows that supervision and monitoring of the permit was minimal to non-existent. It was not until 1989 that Horowhenua County Council was advised that the permit and its conditions were not fit for purpose:

> The discharge from your Shannon oxidation lagoon is currently authorised under the Water Pollution Regulations 1963 (permit number 325/51). We consider the permit deficient in some areas, for examples no quantities or quality specified, and no specification of discharge point.
>
> The permit has little merit as a means of managing effluent quality nor receiving water quality, and we consider the best course of action would be to revoke the permit completely once the Board grants a water right to replace it….
>
> Section 241 of the Water and Soil Conservation Act 1967 empowers the Board to revoke or amend these permits for the purpose of maintaining minimum standards of quality of the receiving water. The Board is required to give three months notice in writing of its intention to exercise this power.
>
> We therefore give formal notice of the Board's intention to revoke … and ask that you make application for a right to discharge treated sewage effluent into Stansell's Drain on the enclosed forms.[896]

There was no response from Horowhenua County Council or its successor Horowhenua District Council before the passing of the Resource Management Act 1991.

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[894] Right in respect of natural water No. 891310, 20 August 1991. Manawatu Catchment Board and Regional Water Board water right file 2346. Supporting Papers #2033-2035.
[895] Permit to discharge No. 325/51, 18 June 1970. Manawatu Catchment Board and Regional Water Board water right file 1670. Supporting Papers #1936.
[896] Director of Resources to County Engineer Horowhenua County Council, 7 July 1989. Manawatu Catchment Board and Regional Water Board water right file 1670. Supporting Papers #1938-1939.

5.7.2.5 Foxton sewage treatment plant discharge

Foxton's communal septic tank continued in operation as the only treatment facility for the town's sewage during the period immediately after the Pollution Advisory Council was disbanded and its responsibilities were assumed by Manawatu Regional Water Board on 1 April 1972. In February 1973 Foxton Borough Council applied for a water right to take the place of the temporary permits issued by the Advisory Council[897]. This was intended as a further temporary measure until the treatment plant, which was under construction, became operational. No objections were received when the application was publicly notified, and the staff report to the Regional Water Board explained:

> There appear to be two courses of action for the Board.
>
> 1. Grant a short-term right for say 18 months with appropriate conditions specifying a rapid start to the scheme once loan approval is received. This would require Water Resources Council consent as the Loop is classified.
> 2. Decline to grant the right.
>
> The latter course may be appropriate as granting of a short-term right is again in effect continuing the "temporary permit" system and is open to the same criticism – that is, being a licence to pollute.
>
> Despite the lack of objections there is widespread local interest in the state of the Loop, and legalising of the present virtually untreated discharge may be injudicious. Refusal of the right seems justifiable on aesthetic grounds, as well as those of water quality, even though we have no water quality analyses at present. If the application is declined, the discharge remains illegal and has the added advantage that the consent of the Water Resources Council is no required. The Borough has a right of appeal in either case.
>
> Recommended: That the Board seek further information from the Foxton Borough Council, and the Water Resources Officer to report back; that the Board meet the Foxton Borough Council within the next two months.[898]

The Board approved the recommendation, and the application was noted on the Regional Water Board's file as "deferred indefinitely".

Because there was no discharge from the new sewage treatment plant prior to April 1972, Foxton Borough Council had to apply for a water right to discharge waste from the plant into the Manawatu River under the Water and Soil Conservation Act 1967. The right was applied for in July 1973, and was for the discharge of up to 182,000 litres per hour on a continuous basis[899]. The volume applied for provided a factor of 6 for stormwater infiltration because the sewerage system in the town was of such poor quality. However, the application seems to have been somewhat premature, as the new treatment plant was not capable of becoming

[897] Application for right in respect of natural water, 8 February 1973. Manawatu Catchment Board and Regional Water Board water right file 1672. Supporting Papers #1942-1943.
[898] Report to Board Works Committee, 7 June 1973. Manawatu Catchment Board and Regional Water Board water right file 1672. Supporting Papers #1944.
[899] Application for right in respect of natural water, undated (received 5 July 1973). Manawatu Catchment Board and Regional Water Board water right file 1672. Supporting Papers #1945-1947.

operational until 1975. Processing was deferred, and the application was not publicly notified and objections invited until July 1974.

No objections were received, and a staff report on the application was considered by the Regional Water Board in October 1974:

> [Water] right conditions must be related to design criteria. The receiving water at the proposed outfall is Class SC, and there is SB (contact recreational class) in the Foxton estuary. Again, the effects of existing wastes are not known.
>
> Recommended: That the right be granted for the above quantity for a period of two years from the date of completed commissioning of the ponds, subject to the Board's general conditions and the following special conditions:
>
> 1. Flow not to exceed 182,000 litres (40,000 gallons) per hour.
> 2. Influent organic load not to exceed 244 kilograms BOD per day (based on a tributary population equivalent of 3,600 person at 0.068 kilograms BOD per head per day).
> 3. Loading in primary pond not to exceed 84 kilograms BOD/hectare/day.
> 4. Detention time in the secondary pond to be not less than 20 days.
> 5. The ponds and all other works to be adequately maintained, and the Board is to be notified immediately if any breakdown occurs.
> 6. The Council is to cooperate with the Board in any testing deemed necessary, and is to undertake flow recording and quality analysis as directed by the Board's officers.[900]

The recommendation was approved, and the water right was granted[901].

During the two year period of the water right there does not seem to have been any monitoring action. Indeed the water right was effectively still-born, because it was supposed to take effect from the date the sewage treatment plant was commissioned, yet that did not happen straightaway. The Borough Council applied for a replacement right in March 1977, in its application stating that an expansion of the oxidation pond would commence in one month and was estimated to take six months[902]. The expansion was required to properly cater for the carpet factory's effluent. The application was publicly notified, though no objections were received. The staff report explained:

> The ponds are to be enlarged to allow for the increased load. The extent on enlargements will depend on the degree of pre-treatment of the effluent at the factory. This is not settled….
>
> The moderate quantity of water involved, and the generous quantities allowed in the Borough's right to discharge, mean that no variation to the quantity discharged is required.

[900] Staff report on application, 3 October 1974. Manawatu Catchment Board and Regional Water Board water right file 1672. Supporting Papers #1948.
[901] Right in respect of natural water No. 740073, 14 October 1974. Manawatu Catchment Board and Regional Water Board water right file 1672. Supporting Papers #1949-1951.
[902] Application for right in respect of natural water, 7 March 1977. Manawatu Catchment Board and Regional Water Board water right file 1672. Supporting Papers #1951-1953.

> By removing Condition 2 [of the 1974 water right], the Borough can enlarge the ponds to suit the volume and strength of the inflow, but must retain the specified degree of treatment and have a limit on the volume allowed to be discharged.[903]

The report's recommendation to renew the water right, subject to removal of Condition 2, was adopted by the Board[904]. There was no fixed term, and the right remained operative "at the pleasure of the Board".

The first intimation that something might be wrong with the operation of the oxidation pond came in June 1979, when testing showed elevated but "not abnormally high" BOD levels, dissolved oxygen levels that were "well below that required for efficient operation", and a reported odour problem. These were all symptoms of the ponds being overloaded with excessive organic matter, and the Borough Council was advised to obtain some technical advice[905]. Overloading of the ponds was again a problem in 1986, by which time a potato processing plant was contributing additional effluent, and this time the Regional Water Board decided to act:

> The recent widely publicised problems experienced with a build up of sludge in your oxidation lagoon can be viewed as simply one symptom of its generally overloaded condition….
>
> Clearly from [the results of recent testing] the oxidation pond is being overloaded, in fact it was already overloaded prior to the potato factory starting operations. The question remains as to what to do about the problem?
>
> It is imperative that the Borough urgently begin to assess and institute a set of trade waste bylaws. Such bylaws would allow the Borough to make such restrictions on trade wastes as considered necessary (before discharge to the sewer) and would provide a basis for revenue collection to offset expenditure required over and above that necessary for the domestic population….
>
> [A sample taken at the pond outlet in May 1986 showed] that effluent quality is twice as bad as that measured [in 1979], and also lies outside the range we would expect from an oxidation lagoon operating in the proper manner.
>
> The Borough currently holds a water right (No. 770030) which authorises the discharge of 182,000 litres per hour of treated domestic sewage to the Foxton Loop at map reference N148 780200. The right is held for a term at the pleasure of the Board and is due to be reviewed in 1987. It is important that the current overloading of the lagoon is sorted out before the review, which will involve the Borough in reapplication for the right to discharge.
>
> As the water right is to be reviewed and because of lagoon overloading, the Board proposes to monitor effluent quality at the outfall. Initially we will sample the effluent

[903] Staff report on application, undated (May 1977). Manawatu Catchment Board and Regional Water Board water right file 1672. Supporting Papers #1954.
[904] Right in respect of natural water No. 770030, 17 May 1977. Manawatu Catchment Board and Regional Water Board water right file 1672. Supporting Papers #1955-1956.
[905] Water Resources Officer to Town Clerk Foxton Borough Council, 5 June 1979. Manawatu Catchment Board and Regional Water Board water right file 1672. Supporting Papers #1957-1958.

> fortnightly to characterise current effluent quality and this may be reduced to monthly samples at a later date, once the trade waste problem has been resolved….
>
> It is proposed that the full cost of effluent monitoring will be recovered from the Foxton Borough Council as holder of water right No. 770030. However, before any final decision is made regarding this matter, we would like to receive any comments you may have regarding the programme.
>
> A prerequisite of monitoring is a means of estimating the flow of effluent from the lagoon. We consider the best way of achieving this is to affix a staff gauge in the effluent well. We can supply a suitable staff gauge if the Borough can attach it to the effluent well.[906]

This letter is revealing for showing what was not happening beforehand. Testing of the effluent quality was sporadic and occasional, the letter disclosing results from tests done in May 1979, April 1980, January 1983 and May 1986. The 1980 and 1983 testing was of the quality of the effluent produced by industrial dischargers prior to discharge into the town sewers and was commissioned by those dischargers. Thus there was no testing of the quality of the effluent discharged into the river prior to 1986. Overloading was a longstanding problem that had not been rectified, and there was no way of measuring the volume of the effluent discharged into the river. The issuing of the 1977 water right was therefore effectively a superficial action unsupported by any substance to ensure its conditions were being observed. Only in the lead-up to a review which would require a new water right application were the problems being formally drawn to the attention of the Borough Council.

The monitoring programme that was carried out by the Regional Water Board after 1986 letter showed a steady worsening of conditions in the oxidation pond. For some reason, the results were not communicated back to the Borough Council, and instead were the basis of a newspaper report in early January 1987 critical of the Borough Council's operation of the pond. A very upset Mayor of Foxton wrote to the Chairman of the Catchment Board and Regional Water Board accusing the Board of being "dilatory and irresponsible", "highly unethical" and "of no practical assistance to my Council in trying to bring the problem under control"[907]. The Board Chairman responded that problems with the Borough's sewage disposal were longstanding, well-known to the Borough Council, and not something for which the Regional Water Board would accept any responsibility. He proposed a meeting of

[906] Water Resources Officer to Town Clerk Foxton Borough Council, 6 June 1986. Manawatu Catchment Board and Regional Water Board water right file 1672. Supporting Papers #1959-1961.
[907] Mayor of Foxton to Chairman, 16 January 1987. Manawatu Catchment Board and Regional Water Board water right file 1672. Supporting Papers #1962-1963.

the respective local body politicians[908]. The meeting was held in late February 1987, and seems to have assisted with some repair of relations, though not before the Mayor had another swipe:

> [Your Board had] a moral responsibility to warn the Borough of dangerous developments with the ponds at the time they are noted. Related to this I must personally express amazement at your officers' statements that, having noted a highly critical condition in January 1983, they did not deem it necessary to check the ponds' discharge at all over a following three year period.[909]

In July 1987 the Regional Water Board formally advised the Borough Council that it would revoke its pleasure with respect to the 1977 water right, that it required a new application for continued discharge into the Manawatu River, and that the 1977 water right could continue to have effect only until a new water right was approved[910]. The application was received in September 1987, and sought approval to discharge up to 120,000 litres per hour (2880 m^3/day) of treated sewage effluent on a continuous basis[911]. No action was immediately taken to process the application while the Regional Water Board undertook some testing of the receiving waters, in particular seeking to determine how much dilution was available[912]. In fact it was not until 1991 that application was publicly notified. There seems to have been no sense of urgency about arranging a new water right until the Government's environmental restructuring that would result in the passing of the Resource Management Act 1991 had reached an advanced stage. By the time it did come to be processed Foxton Borough had been absorbed into the new Horowhenua District, and the Manawatu Catchment Board and Regional Water Board had transitionally been included in the Central Districts Catchment Board and Regional Water Board, and had then become a part of the new Manawatu-Wanganui Regional Council.

Given the bad publicity that the Foxton sewage treatment plant had received, it is not surprising that there were some objections. Thirteen objections and one submission were received, with one of the objections being from Te Runanga o Ngati Apa. The Runanga was concerned that the public notification did not provide sufficient detail about the effect of the discharge on the receiving waters of the Manawatu River and what impact it might have on

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[908] Chairman to Mayor of Foxton, 9 February 1987, and report by Water Resources Officer, 17 February 1987. Manawatu Catchment Board and Regional Water Board water right file 1672. Supporting Papers #1964-1965 and 1966-1967.

[909] Mayor of Foxton to Chairman, 25 February 1987. Manawatu Catchment Board and Regional Water Board water right file 1672. Supporting Papers #1968.

[910] Water Resources Officer to Town Clerk Foxton Borough Council, 10 June 1987. Manawatu Catchment Board and Regional Water Board water right file 1672. Supporting Papers #1969-1970.

[911] Application for right in respect of natural water, 10 July 1987. Manawatu Catchment Board and Regional Water Board water right file 1672. Supporting Papers #1971-1973.

[912] Water Resources Officer to Town Clerk Foxton Borough Council, 23 December 1987. Manawatu Catchment Board and Regional Water Board water right file 1672. Supporting Papers #1974.

aquatic life, including eels and whitebait. While objecting, the Runanga qualified its concerns by adding:

> If these and other questions of this nature could be answered satisfactorily, the Runanga may well change its stance.[913]

Following receipt of objections a report was made to the Regional Council's February 1991 meeting:

> Re-advertisement has been successful in highlighting concerns that local people have about the Foxton Loop and Manawatu River Estuary. I believe that such concerns [in the objections] are somewhat overstated. There is little reliable data to support this assertion, however.
>
> The main concerns centre on algal proliferations and bacteriological quality in the Manawatu River Estuary. The algae have been identified as those that characteristically inhabit estuarine mudflats. The proliferation may be due to a lack of major floods in the last 18 months. A study of bacteriological quality of the estuary over a tidal cycle is planned for 19 February 1991 and will be carried out jointly with the Manawatu-Wanganui Area Health Board.
>
> I am optimistic that a compromise proposal can be prepared that will grant the District Council short-term water rights while they investigate options for upgrading sewage treatment.[914]

Meanwhile Horowhenua District Council was considering its options. The general conclusion was that the treatment plant was of a sufficient size for most discharge volumes, but became overloaded occasionally when there were high volumes of trade wastes. When overloaded the oxidation pond became anaerobic, with lowered oxygen levels in the water, the most telling symptom of this being a bad smell. The easiest solutions to these situations were mechanical aeration in the pond, or an insistence on higher quality pre-treatment of industrial effluent. More environmentally sensitive disposal methods that were identified for the treated effluent included land disposal, disposal into managed wetlands, ocean outfall, or injecting into a deep bore[915].

The Regional Council, the District Council, and a community meeting attended by objectors that was held at the end of May 1991, all agreed that the way forward was a short-term water right with conditions that ensured an improved quality effluent, and a requirement that the Council investigate an environmentally acceptable long-term disposal method.

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[913] Secretary Te Runanga o Ngati Apa to General Manager, 8 January 1991. Manawatu Catchment Board and Regional Water Board water right file 1672. Supporting Papers #1975-1977.
[914] Report to Manawatu-Wanganui Regional Council, undated (February 1991). Manawatu Catchment Board and Regional Water Board water right file 1672. Supporting Papers #1978.
[915] Report MO 184 to Foxton Community Board, 21 February 1991. Manawatu Catchment Board and Regional Water Board water right file 1672. Supporting Papers #1979-1987.

Conditions were drafted that were acceptable to the District Council[916]. The granting of a water right expiring at the end of 1993 and subject to the proposed conditions was approved by the Regional Council in July 1991. The water right allowed the discharge of up to 2880 cubic metres of treated effluent per day which met the following water quality measures:

- Dissolved oxygen content in the oxidation pond to be at least 2 grams per cubic metre at all times.
- Organic matter (BOD_5) in the effluent leaving the pond not to exceed 65 grams per cubic metre.
- Suspended solids in the effluent leaving the pond not to exceed 115 grams per cubic metre.

Horowhenua District Council had to report six-monthly on its compliance with the conditions and on its "planning for an environmentally acceptable long term solution to Foxton's effluent disposal problems". In addition the water right stated that:

> The report due by 30 June 1992 must make a firm recommendation on options for future treatment of Foxton's wastewater. The study leading to the recommendations is to take into account cultural, environmental, health, social, recreational and economic issues. The grantee shall consult with interested parties (including the objectors) in forming the recommendation. Public consultation, selection of an option and commitment to implementation shall be made by 30 June 1993.[917]

5.8 Control of waters and navigation under the Harbours Act

While the Harbours Act had statutorily controlled navigation and boating use of rivers since 1878, and ensured that the Marine Department maintained responsibility on behalf of the Crown, it was only in the 1970s and 1980s that consideration was given to delegating some navigation responsibilities to local authorities. Prior to this time, the only action akin to a delegation of Crown authority had been the operations of the Foxton Harbour Board, established in 1908 and abolished in 1956.

Bylaws with nationwide application for the control of boating on inland waters that were not within Harbour Board limits were first introduced by the Marine Department in 1934[918], and were updated as regulations in 1959, 1962 and 1979[919]. One of the features of these

[916] Report on community meeting held on 30 May 1991, and Manager Operations Horowhenua District Council to General Manager, 28 June 1991. Manawatu Catchment Board and Regional Water Board water right file 1672. Supporting Papers #1988-1994 and 1995-1996.
[917] Director of Environment and Planning to Regional Council, undated (July 1991), and Right in respect of natural water No. 870118. Manawatu Catchment Board and Regional Water Board water right file 1672. Supporting Papers #1997-1999 and 2000-2001.
[918] General Harbour Motor-Launch Bylaws, issued pursuant to Section 234 Harbours Act 1923. *New Zealand Gazette* 1934 page 2744. Not included in Supporting Papers.
[919] Motor Launch Regulations 1958. Statutory Regulations 1958/64. Not included in Supporting Papers.
Motor Launch Regulations 1962. Statutory Regulations 1962/180. Not included in Supporting Papers.
Water Recreation Regulations 1979. Statutory Regulations 1979/30. Not included in Supporting Papers.

national regulations was a speed limit on water craft, preventing them from operating above 5 knots within 200 yards (updated to 200 metres at the time of metrication) of the riverbank or lakeshore.

The first regulation specifically applying only to the Manawatu River was the Motor Launch (Manawatu River) Notice 1966, which declared that the speed limit did not apply in the stretch of the river from the Whirokino trestle bridge for one mile downstream[920]. This provision was introduced to allow for water-skiing to take place. The 1966 Notice was replaced by a new Notice in 1970, which redefined the water-skiing area as the one mile stretch of river upstream of the Whirokino trestle bridge; the speed limits were exempted for a period of two years[921]. The parts of the river exempted from the speed limits were amended again in 1973, to cover the estuary area from the downstream end of the Whirokino Cut to the sea, and the stretch of river for 1½ miles upstream of the Whirokino bridge (of which the stretch for ¾ mile upstream of the bridge was reserved for water-skiing); the exemption was for one year[922]. The 1973 exemption areas were repeated in a Notice issued in 1975 for a further one-year period[923].

However, the exemption of the speed limit on limited stretches of waterway became an anachronism with the development of jet boats. The Ministry of Transport (which absorbed the Marine Department in 1973) got around this by agreeing to grant more widespread exemptions of the speed limit on those rivers valued by jet boat users.

On the lower Manawatu River, however, the ambitions of jet boat enthusiasts clashed with the interests of the other boaters who had been catered for in the earlier limited-area exemptions, and with the interests of other river users (including fishers). It was left to the Manawatu Catchment Board to find a solution which satisfied all parties.

The Board established a consultative body named the Manawatu River Users Committee in April 1973. According to a later summary of its activities:

> [Its purpose was] to provide a medium by which those using the river for different purposes, namely jet boaters and trout fishermen, could get around a table and air their differences under the chairmanship of an independent person.
>
> At that stage some rather violent and stupid statements were being made in he press by one party, and the initial meetings were rather fiery, and did seem to bog down a

[920] *New Zealand Gazette* 1966 page 2090. Supporting Papers #1485.
[921] *New Zealand Gazette* 1970 page 2491. Supporting Papers #1486.
[922] *New Zealand Gazette* 1973 page 2693. Supporting Papers #1487.
[923] *New Zealand Gazette* 1975 page 2888. Supporting Papers #1488.

> little. Several of these, then weekly, meetings went into the very small hours of the morning.
>
> However … a compromise was agreed on in October 1974.
>
> By this time some twenty organisations were represented on the River Users Association and a very wide range of subjects came up in what has become a very well-conducted committee.[924]

The list of 26 organisations that had taken part in some or most committee discussions did not include any bodies specifically representing the Maori community.

In December 1977 the Ministry of Transport lifted the nationwide speed limits from three stretches of the Manawatu River:

- Downstream of the Whirokino cut
- 6.4 kilometres immediately upstream of Whirokino trestle bridge
- Between a point 7.7 kilometres upstream of Whirokino trestle bridge, and Shannon bridge

It also agreed to allow water skiing on two other stretches of the river:

- 1.2 kilometres immediately downstream of Whirokino trestle bridge
- Between points 6.4 kilometres and 7.7 kilometres upstream of Whirokino trestle bridge[925]

However, a further round of discussions was necessary after the notice of these new limits was published, because disputes were still arising. In March 1978 the Director of the Ministry's Marine Division wrote to the National President of the New Zealand Jet Boat Association:

> I am satisfied that the final result [as set out in the December 1977 Notice] is probably as good as could be expected. By all accounts the Catchment Board did a good job of bringing the various interests together and trying to get acceptance. However, your Association was represented at the meetings, and no doubt the persons concerned have reported back on the problems encountered and the compromises that had to be made for agreement to be reached. Obviously the Manawatu with its multi-user pressures is quite different to some of the South Island rivers.
>
> I think that you will appreciate that when statements are reported in the Press about matters such as stringing barbed wire across the river to stop speeding boaties, so as not to upset fishermen, this gives some measure of the feelings that were generated. More recently, within a signposted area, a boat at speed collided with another, and the Ministry was able to lay charges because of the definition of user-areas….

[924] "Manawatu River Users Association", in Wellington Acclimatisation Society annual report for 1980, page 12. Copy on Transport Head Office file 43/86/10. Supporting Papers #971.
[925] *New Zealand Gazette* 1977 pages 3211-3212. Supporting Papers #1489-1490.

> You mention that you feel that your Association has been badly treated in respect of your request for "legal access to the river course". I assume you refer to your request to have your members use all of the river at speeds in excess of those laid down in the Motor Launch Regulations. It seems to the Ministry that the difficulties experienced in getting agreement for the uplifting of the speed restrictions in the Manawatu are indicative of the number of different groups of interested parties and that it would be premature to try to make any changes to the agreement which has been hammered out over such a long period of time.[926]

The 1977 Notice was replaced by a new Notice in October 1978 which added in stretches of water in the Manawatu Gorge and on the Mangahao River that were also exempt from the regular speed restrictions[927].

In 1979 the Jet Boat Association asked that the speed limits on the Otaki River, "from source to sea", be lifted[928]. The proposal was circulated to local authorities, the local acclimatisation society and the local Regional Water Board for comment[929]. No Maori organisation was asked to comment. The Manawatu Catchment Board and Regional Water Board was not in favour, because "there are erosion problems on sections of the river". It also reported that the local branch of the Jet Boat Association had been surprised to learn that the national office of the Association had made the request, because the local knowledge was that there was insufficient water in the Otaki River even for jet boating[930]. Nor did the Wellington Acclimatisation Society support the proposal, describing the Otaki River as "a relatively narrow shallow river" that had "a high fisheries value". It made some general comments applicable to the Otaki and other rivers:

> To use [such a river] in normal flow conditions could only be done by jet boats travelling at speed because of the shallow nature of the river. A jet boat operator who encounters fishermen or swimmers in this position is faced with the dilemma of either slowing down and running aground, or continuing at a higher speed and annoying or endangering other river users.[931]

The Ministry of Transport avoided replying to the Jet Boat Association until after the responsibility for control of boating activity in the Otaki River had been passed to Manawatu Catchment Board and Regional Water Board, and the Board had drawn up and approved

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[926] Director Marine Division to National President NZ Jet Boat Association Inc, 22 March 1978. Transport Head Office file 43/86/10. Supporting Papers #969-970.
[927] *New Zealand Gazette* 1978 page 2775. Supporting Papers #1491.
[928] Chairman Rivers Committee New Zealand Jet Boat Association Inc to Regional Marine Officer Wellington, 5 May 1979, attached to Regional Marine Officer Wellington to Harbours Section Head Office, 8 May 1979. Transport Head Office file 43/162/10. Supporting Papers #975-976.
[929] Secretary for Transport to Regional Secretary Wellington, 11 June 1979. Transport Head Office file 43/162/10. Supporting Papers #977-980.
[930] Secretary Manawatu Catchment Board to County Clerk Horowhenua County Council, 27 August 1979, attached to Secretary Manawatu Catchment Board to Regional Marine Officer Wellington, 27 August 1979. Transport Head Office file 43/162/10. Supporting Papers #981-983.
[931] Secretary Wellington Acclimatisation Society to Secretary for Transport, 21 September 1979. Transport Head Office file 43/162/10. Supporting Papers #984-985.

bylaws (see below). At that point the Association was told to contact the Regional Water Board[932].

After these Notices had been issued, and with the introduction of the nationwide Water Recreation Regulations 1979, jet boat users were placed on notice that in having the privilege of exceeding the speed limits, they were expected to use their boats responsibly, having regard for the safety of other river users in all circumstances, and not use their boats in any manner that would be likely to endanger or unduly annoy any other user or fisher. This policy was spelled out in an article in the jet boaters' national magazine:

> The Ministry has approached catchment boards, acclimatisation societies and local authorities (whom we take to be the principal parties) whose territory includes rivers for which the Jet Boat Association would like to see the speed limit uplifted.
>
> The approach has been to ask if there are any specific reasons why the speed limit should not be uplifted, given that there is a definite responsibility for jet boaties to operate safely when they encounter other users.
>
> Some rivers are quite unsuitable for any uplifting of speed limits. They are too narrow, or have unstable river banks, or are important breeding areas for fish and/or wildlife.
>
> In other cases the spawning areas can be protected by imposing the speed limits from May to August as well as asking the Jet Boat Association to keep all boats (speeding or not) off the river during those months. We have already received submissions from interested parties on rivers which we invited comment on and in some cases we have decided that the speed limits will remain.
>
> Other rivers are still under consideration and where we get agreement from the principal parties for uplifting we will be advertising locally for an expression of views.
>
> There seems to be a measure of misunderstanding over the Ministry's policy and approach in this matter, and we welcome this opportunity of explaining the position.
>
> The policy is that if either a catchment board or an acclimatisation society has a valid reason for requesting that there be no uplifting of the speed limit then the Ministry does not uplift – it is as simple as that. Valid reasons include causing erosion, or the existing of an established spawning or wildlife breeding area. Experience has shown that existence of other water users (e.g. swimmers or picnickers) is not a reason for precluding boating, provided the boating organisation concerned is prepared to nominate some of its members for appointment as honorary launch wardens and ensure that all boaties behave responsibly.[933]

It is noteworthy that Maori organisations were not deemed by the Ministry of Transport to be among the "principal parties" that it felt obliged to consult when considering uplifting speed limits.

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[932] Secretary for Transport to National Secretary New Zealand Jet Boat Association, 8 October 1980. Transport Head Office file 43/162/10. Supporting Papers #986.

[933] "Official view of Ministry on speed limits", in *Jet Boating*, May 1981. Copy on Transport Head Office file 43/86/10. Supporting Papers #972-974.

The ability to delegate some of the Crown's control functions under the Harbours Act 1950 was provided for by Sections 8A and 165 of that Act. Section 8A allowed grants of control of waters, while Section 165 allowed grants of control of foreshore and of the beds of navigable lakes and rivers in Crown ownership, "navigable" being as defined for Harbours Act purposes rather than as defined for purposes of the common law or the Coal Mines Act. The control would be over structures, anchorages and mooring areas, jetties, vehicles, boating, water skiing and swimming. This would leave out certain other activities such as shingle removal and reclamations (which remained with the Ministry of Transport), and fishing (which was managed by acclimatisation societies).

The Ministry of Transport actively encouraged delegations to local councils and regional water boards[934]. However, the delegation could only be applicable if the bed of the river was in Crown ownership. In 1978 there were discussions between the Ministry and Manawatu Regional Water Board about issuing the Board with a grant of control of boating activities on the Manawatu River. These discussions prompted the query to and reply from the Department of Lands and Survey which has been referred to in the earlier chapter about navigability. The Department's reply, while asserting that the river was navigable and the bed was Crown-owned, was also heavily hedged with qualifications about the difficulties of backing up any such assertion. The Ministry of Transport therefore tried to pass the responsibility for determining which portions of the bed of the then-existing river were Crown Land on to the Regional Water Board, by forwarding the Lands and Survey reply to the Board. The Ministry also suggested an alternative, that the Board could apply only for control of waters, and not for control of the more complex matter which was the beds of waterways[935].

This latter approach was adopted when the Regional Water Board applied six months later to be granted control of all waters within its district; specifically mentioned were the Manawatu River and all its tributaries, the Otaki River and the Ohau River[936]. When recommending the grant of control, the Minister of Transport was told:

> For some years the Manawatu Catchment Board has recognised its responsibilities in being involved in the recreational activity on the waters of the rivers in the Board's district. The Board set up the Manawatu River Users Committee which included representatives of all the recreation and business groups that had an interest in the use of the Manawatu River. This Committee arranged the programme of events held

[934] The Harbours Amendment Act 1977 extended the definition of "public bodies" to include Regional Water Boards, and thereby made them eligible to apply for grants of control.
[935] Secretary for Transport to Secretary Manawatu Catchment Board, 29 August 1979. Transport Head Office file 54/14/84. Supporting Papers #991.
[936] Secretary Manawatu Catchment Board and Regional Water Board to Secretary for Transport, 25 February 1980. Transport Head Office file 54/14/84. Supporting Papers #992.

> in the waters of the Manawatu River to avoid conflicts of interest and to advise the Board of the views of the river users.
>
> In November 1979 the Manawatu Catchment Board held a public meeting which heard submissions on the use of all rivers in the Board's district, and it is on the basis of these submissions that the Board has developed its policies on the recreational use of the rivers under application. It is intended that the Manawatu River Users Committee will continue to advise the Board on such matters of recreational use of waters as are referred to it.
>
> The Ministry supports the application by the Manawatu Catchment Board and Regional Water Board for grant of control of the named rivers within the Board's district. The Board is seen as the best body to assume control as it has the resources and procedures to operate to the benefit of all users.[937]

The Minister agreed, and the grant of control, more properly known as the Manawatu Catchment Board Waters Control Order 1980, was issued in July 1980[938]. The Order was for a term of 21 years.

The issue of the grant of control allowed the speed limits on the rivers to be incorporated in the Regional Water Board's Water Control Bylaws[939]. Once these bylaws had been approved by the Ministry of Transport as complying with the authority set out in the Harbours Act[940], it was possible to revoke the 1978 regulation[941].

In 1983, when the Catchment Board and Regional Water Board's southern boundary was moved southwards to include the Waikanae River catchment, the Board applied for this additional waterway to be included in its grant of control[942]. The Ministry of Transport had no objection to this, provided agreement could be reached with the Department of Lands and Survey which had a strong interest in the Waikanae estuary[943]. The Commissioner of Crown Lands gave his approval, and the Board explained that its interest was in the river waters while the Lands and Survey interest was in the estuary and foreshore, so there was no clash[944]. The amendment to the Waters Control Order was approved in 1986[945].

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[937] Secretary for Transport to Minister of Transport, 25 June 1980. Transport Head Office file 54/14/84. Supporting Papers #993-994.
[938] *New Zealand Gazette* 1980 pages 2181-2182. Supporting Papers #1492-1493.
Marine Department plan MD 16010. Copy on Transport Wellington Regional Office file 54/14/25. Supporting Papers #987.
[939] The Manawatu Regional Water Board Waters Control Bylaws1980, approved by the Board on 19 August 1980, attached to Secretary Manawatu Catchment Board and Regional Water Board to Secretary for Transport, 18 September 1980. Transport Head Office file 54/14/84. Supporting Papers #995-1008.
[940] *New Zealand Gazette* 1980 page 2851. Supporting Papers #1494.
[941] *New Zealand Gazette* 1984 page 501. Supporting Papers #1496.
[942] Secretary Manawatu Catchment Board and Regional Water Board to Secretary for Transport, 24 January 1983. Transport Head Office file 54/14/84. Supporting Papers #1009.
[943] Secretary for Transport to Secretary Manawatu Catchment Board and Regional Water Board, 31 January 1984. Transport Head Office file 54/14/84. Supporting Papers #1010.
[944] Secretary Manawatu Catchment Board and Regional Water Board to Secretary for Transport, 29 July 1985. Transport Head Office file 54/14/84. Supporting Papers #1011-1012.

5.9 Aggregation of the various waterway management regimes into the Resource Management Act

The Resource Management Act 1991 (RMA) finally achieved what the authors of the Water and Soil Conservation Act 1967 had contemplated but not been able to complete. This was the bringing together into a single statute of most of the various pieces of statute law whereby the Crown exercised control and management over water and waterways. The vesting of the right to the use of water was carried over and retained as the basis for the Crown's authority[946]. A key difference between the 1991 Act and earlier legislation was that virtually all of that authority was delegated to regional councils. Central government retains only a few functions such as the optional ability to prepare national policy statements and the ability to issue national water conservation orders. None of these centrally-held optional residual functions were used by the Government during the next 15 or so years with respect to Porirua ki Manawatu Inquiry District waterways, as a matter of policy.

Another key difference was that the Crown's approach to water use and management was no longer so overtly pro-development. Industry, including farming, had largely led a charmed life during the era of the Catchment Boards and Regional Water Boards, because those bodies saw their role as unlocking the economic potential of land, either by preventing flooding or by making water available (albeit under controlled conditions). The Resource Management Act is not so concerned with allowing particular activities, but rather is focused on the effects of all activities, and with avoiding, remedying or mitigating those effects which have a negative impact. This potentially allows environmental effects to be given a higher profile. However, the effects recognised by the Act include economic and social effects as well, so that if these types of effect were to be given a high weighting as compared to environmental effects then the Act could become pro-development under a different guise. By its consideration of effects the Act has thrown a greater spotlight on rural land activities (farming and forestry) which had previously enjoyed a privileged position of being subject only to light-handed regulation. Such activities can have a significant effect on water and waterways.

A third key difference between the Resource Management Act and the various statutes that it replaced is the provision made for tangata whenua involvement. This involvement is not

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[945] Secretary for Transport to Minister of Transport, 27 March 1986, approved by the Minister 7 April 1986. Transport Head Office file 54/14/84. Supporting Papers #1013.
New Zealand Gazette 1986 page 1653. Supporting Papers #1497.
[946] Section 354(2) Resource Management Act 1991.

anywhere near a recognition of tino rangatiratanga (or full authority) for waterways, because the Crown was not prepared to give up any of its own exclusive authority, nor does the legislation contemplate any sharing of the Crown's delegated exclusive authority by local authorities. Instead provision is made for lesser levels of Maori involvement, with the introduction into the statute of the term kaitiakitanga as a matter to be given particular regard (Section 7(a) of the Act). Another provision (Section 6(e) of the Act) refers to "the relationship of Maori, their cultures and traditions, with their ancestral lands, water, sites of wahi tapu and other taonga" having to be recognised and provided for. These provisions have implicitly embedded at least some consultation with tangata whenua into the manner in which RMA procedures operate, because what those two provisions mean in any particular circumstance cannot be known except by asking tangata whenua.

Within Porirua ki Manawatu Inquiry District, the regulation of water and waterways under the RMA is the responsibility of two Regional Councils. Manawatu-Wanganui Regional Council[947] is responsible for waterways in the northern part of the Inquiry District extending southwards down to and including the Ohau River catchment. Greater Wellington Regional Council is responsible for all waterways further south including the Waitohu and Otaki River catchments. The principal features of the RMA with respect to water and waterways, and the approach taken by Manawatu-Wanganui Regional Council in its planning documents prepared in connection with the Act, have been described elsewhere[948]. The early success but ultimate failure of the Regional Council's Maori consultative committee during the 1990s, Te Roopu Awhina, has also been described elsewhere[949].

There are some features of the Manawatu-Wanganui Regional Council's RMA activities that have not been covered in other evidence, and that deserve to be discussed in this report, in order to provide a more balanced view of what has been occurring over the last 28 years since 1991.

One such activity was the Regional Council's preparation of a Manawatu Catchment Water Quality Regional Plan during the 1990s. This was in recognition of the unsatisfactory water quality in the lower Manawatu, caused by a range of industrial and sewage treatment discharges into the Manawatu and Oroua Rivers downstream of Palmerston North and Feilding. The Regional Plan was prepared as an implementation plan (with policies and

[947] The Regional Council has adopted a trading name of Horizons Regional Council, though is referred to in this report by its initially-constituted name of Manawatu-Wanganui Regional Council.
[948] D Alexander, *Rangitikei River and its tributaries historical report*, November 2015, Wai 2200 #A187, pages 662-672.
[949] D Alexander, *Environmental issues and resource management (land) in Taihape Inquiry District, 1970s-2010*, July 2015, Wai 2180 #A38, pages 100-114.

rules) after the Regional Policy Statement had laid down a broader policy foundation that included a Part Four concerned with the recognition of tangata whenua values and practices. Part Four included objectives to take into account the responsibilities that the Regional Council had under Sections 6(d), 7(e) and 8 of the RMA. It interpreted these as responsibilities to

- protect tangata whenua management interests
- provide for participation in resource consent decisions
- protect mauri, a spiritual link to water, wahi tapu, tikanga Maori, and resources of cultural and spiritual significance
- provide for kaitiakitanga and recognise the mana of tangata whenua

The Water Quality Regional Plan, which became operative in 1998, then promoted the protection and enhancement of the mauri of water and waterways, in doing so recording that discharges of human waste and other uses degrading water quality seriously affected the mauri and were inconsistent with values held by tangata whenua. It identified measurable water quality standards that had to be met, including that the waters had to be suitable for contact recreation. It took a staged approach to some of the changes required, setting a target of January 2009 by which there would be no discharge of untreated sewage, or untreated agricultural waste, or that would breach the measurable standards. The only allowable exception to this cut-off date was for exceptional circumstances or for temporary discharges.

The most disappointing feature of the extra effort put into the science and into a more thorough assessment of environmental effects following the passing of the RMA has been the absence of benefits. In fact, between 1991 and 2004 water quality in the lower Oroua and the lower Manawatu Rivers actually declined. Measurements of dissolved reactive phosphorus, nitrate and turbidity all showed increases, pointing to nutrient enrichment and physical stress in the water[950]. This decline in water quality was attributable to increasingly intensive use of agricultural land, and was the prompt for the Regional Council to introduce tougher standards in its One Plan. These standards turned out to be politically contentious and delayed final approval of the Plan until 2014.

5.9.1 Case studies

The remainder of this section about the RMA examines how four of the case studies that were looked at in an earlier section about the Water and Soil Conservation Act era (1967-1991) have fared since then in the RMA era. The four case studies are:

[950] Manawatu-Wanganui Regional Council, *Water quality trends in the Manawatu-Wanganui region, 1989-2004*, March 2006. Supporting Papers #3533-3558.

- Alteration of water levels at Lake Tangimate
- Feilding sewage treatment plant discharge into the Oroua River
- Shannon sewage treatment plant discharge into a tributary of the Manwatu River
- Foxton sewage treatment plant discharge into the Manawatu River

5.9.1.1 Lake Tangimate consent for alteration of water levels

Alteration of the water levels at Lake Tangimate had been authorised by Manawatu Catchment Board pursuant to the Water and Soil Conservation Act 1967. After an initial authorisation in 1981 there had been two cursory reviews and extensions had been granted, with the second replacement water right set to expire in 2001. The potential need for another replacement consent in 2001, pursuant to the RMA, opened up the possibility that with the different criteria under the RMA about recognition of Maori interests there might be a different outcome.

Just how rigorous had been the compliance checking under the Water and Soil Conservation Act became a matter of conjecture in 1995, when Wellington Fish and Game Council (successor to Wellington Acclimatisation Society) made a visit to the lake, and reported:

> [Under the water right] 10 ha of open water are meant to be impounded before water should flow over the weir. On 20 July [1995] water was flowing through the outlet culverts and my Chairman and I estimated that around 4-5 ha of open water existed.
>
> We believe the culverts have been placed too low and therefore Mr Turnbull is in breach of his consent. We therefore request the Regional Council take levels and peg the area at the 10 ha mark, and see how this relates to the height of the outlet culvert.
>
> We would like this done as soon as possible for two reasons. Firstly, if the culverts are too low, then we would want remedial action taken quickly to take advantage of late winter / spring rainfall to fill the lake prior to summer. Secondly, Mr Turnbull wants to lower the current level of the lake and negotiations cannot proceed without this information.[951]

A lake level survey had been carried out in August 1981 (which was not on the Manawatu Catchment Board file examined for this report). This had showed that (with 1995 recalculations) a lake of 10 hectares in area would have to have had a water level at an assumed datum level of 18.20 metres. However, when a new survey was carried out in August 1995 by the Regional Council, the culvert invert was found to be at level 17.83 metres. At that invert level a lake of only 5.1933 hectares would be impounded. The Regional Council wrote to the water right holder, incorrectly quoting a required datum level of 18.00 metres rather than 18.20 metres, that a new consent application was required "if you

[951] Field Officer Wellington Fish and Game Council to Director of Resources, 10 August 1995. Manawatu-Wanganui Regional Council file 1/6/TFT 101740-101741. Supporting Papers #2154.

wish to put in a new weir at a lower level". The holder was not required to remedy the mistake in the culvert invert level. The reason for this was explained to the Fish and Game Council that the replacement rights had not specified that the lake had to have a minimum area of 10 hectares[952].

The Fish and Game Council was unhappy with this interpretation of the Council's rights:

> The conditions of his permit both concern the weir. Condition 1 states that the weir be maintained to the satisfaction of the Council, and Condition 2 that the weir be under the jurisdiction of your Council. It appears that there is every opportunity for the Council to correct the mistake of the weir being too low and thus not retaining about 10 ha of surface water when climatic conditions suit.
>
> Your Council have erred in not monitoring this permit. The absence of monitoring allowed a mistake to occur: that is, the requirement of the weir to maintain about 10 ha of surface water which was the agreement reached between the interested parties in 1981. The mistake was compounded when in 1987 and 1991 the permit was renewed and the original conditions of a minimum surface area not carried forward. It has become obvious that your Council did not check the level of the weir prior to issuing the 1987 and 1991 permits.
>
> Condition 2 of the 1991 permit puts the responsibility of the level of the weir in your Council's hands, accordingly, my Council want your Council to rectify the error caused and have the level of the weir raised.[953]

However, the Regional Council ducked the issue, claiming that "the problem with the conditions on Mr Turnbull's consent is that they are ultra vires and not able to be enforced in Court", and that the absence of adequate monitoring was "unfortunate"[954].

A Regional Council staff member then had a phone call with Mr Turnbull, and wrote:

> He knew that F&G were going on about this. He told me also the MCB surveyed the site and oversaw the contractor installing the present culvert outlet. He also wondered why nothing had been done or said until now. He said if he was forced to 'do something', who would pay. He also told me the area discharges very seldom as it is, and wondered what would be gained. He also said the bull farmer next door would need to be involved also, as the boundary fence spanned the present outfall.[955]

The phone call was to arrange a visit to the lake, and following that visit the officer reported:

> Neville Turnbull outlined to me the "hassles" originally encountered when the first water right was applied for. As a result of all those hassles he asked the then Manawatu Catchment Board to oversee the culvert's installation, which they did. He has a number of photos showing various stages of progress, and showed me the guy

[952] Manager Resource Monitoring to Field Officer Wellington Fish and Game Council, 6 November 1995. Manawatu-Wanganui Regional Council file 1/6/TFT 101740-101741. Supporting Papers #2155-2156.
[953] Field Officer Wellington Fish and Game Council to Director of Resources, 12 January 1996. Manawatu-Wanganui Regional Council file 1/6/TFT 101740-101741. Supporting Papers #2157.
[954] Manager Resource Monitoring to Field Officer Wellington Fish and Game Council, 13 February 1996. Manawatu-Wanganui Regional Council file 1/6/TFT 101740-101741. Supporting Papers #2158.
[955] File note, 15 February 1996, on Manager Resource Monitoring to Field Officer Wellington Fish and Game Council, 13 February 1996. Manawatu-Wanganui Regional Council file 1/6/TFT 101740-101741. Supporting Papers #2158.

> he said was the MCB man in charge, Howard Schuppen [the surveyor]. He commented that he thought if the MCB had got it wrong, then perhaps in fairness it was really their responsibility to put it all right.
>
> The culvert is set under an accessway beside the boundary fence, and then the outfall flows through an excavated drain through the neighbour's place which is sand country. This drain is double fenced for about the first 300 metres and then is open. It has a very flat gradient and eventually flows into the Manawatu River at Whirokino.
>
> The lake only discharges during very wet times, and discharged during this spring. It was not discharging today, the level being well back down the drain leading to the culvert. The Turnbulls claim the lake only reaches 10 ha when it is extremely wet, and the culvert and high drain bed levels restrict the outflow.
>
> [At a subsequent meeting] I will show the Turnbulls the [1981] survey showing where the 10 ha contour lines are, and I will ask them to place a board across the front of the culvert to raise the outlet to the required height.[956]

The Fish and Game Council was still trying to get the Regional Council to accept some responsibility in June 1996, even offering to meet the cost of installation of a weir at the correct height[957]. However, their continuing agitation prompted the Turnbulls to approach their local Regional Council member and their local Member of Parliament. The Council member (who had attended the on-site inspection as a Catchment Board member in 1981) strongly expressed his personal view that the 1981 water right was no longer a 'live' consent, and the current water right did not specify any level, so that should be the end of the matter[958]. This was the approach adopted by the Regional Council when the Fish and Game Council made another attempt at gaining redress in August 1996; the holder of the 1991 water right had a legitimate expectation that he could benefit from the right until it expired, and it would be contrary to the principles of natural justice to interfere[959]. Only at that point did the Fish and Game Council accept the position, making one last comment as it did so:

> If there are two obvious lessons here, they strike me as these: firstly, do not assume consent conditions will be carried over (our lesson). Secondly, good conditions [should be] properly enforced (Regional Council lesson). You fairly mention Mr Turnbull's "legitimate expectation": we had a legitimate expectation too – until at least 1987 a potential of 10 ha of surface water. Since day one of the 1981 agreement, that was never a possibility.[960]

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[956] File note, 16 February 1996. Manawatu-Wanganui Regional Council file 1/6/TFT 101740-101741. Supporting Papers #2159-2160.
[957] File note, 5 June 1996. Manawatu-Wanganui Regional Council file 1/6/TFT 101740-101741. Supporting Papers #2161.
[958] LM Speirs, Foxton, to J Keall MP, 6 June 1996. Manawatu-Wanganui Regional Council file 1/6/TFT 101740-101741. Supporting Papers #2162-2165.
[959] Field Officer Wellington Fish and Game Council to Director of Resources, 12 August 1996, and Director of Resources to Field Officer Wellington Fish and Game Council, 23 August 1996. Manawatu-Wanganui Regional Council file 1/6/TFT 101740-101741. Supporting Papers #2166-2167 and 2168.
[960] Field Officer Wellington Fish and Game Council to Director of Resources, 23 September 1996. Manawatu-Wanganui Regional Council file 1/6/TFT 101740-101741. Supporting Papers #2169.

Throughout all the correspondence during 1995-96, there was no recognition of the Tangimate Lake Trustees as an interested party – in fact they were not mentioned at all. They too had been misled by the Catchment Board's actions which the Regional Council had declined to remedy.

In 2000, shortly before the water right was due to expire, the situation at Lake Tangimate attracted the attention of the Green Party Member of Parliament Nandor Tanczos. He wrote to the Regional Council about the difficulties that Ngati Huia ki Poroutawhao had in accessing and using the lake because of the ownership of much of the lake and its surrounding land by the Turnbulls[961]. The response from the Council acknowledged that the RMA would put a different complexion on matters when the new consent was applied for:

> The conditions for any ongoing consent will have to be agreed with the Maori landowners involved. We have explained to the consent holder that the current consent provides no future rights for what has taken place in the past, and that the process will follow the requirements of the Resource Management Act in an area of significance to Maori. This may mean that no new consent to continue current drainage is granted.[962]

When it came time to renew the consent the Lake Trustees were ready. They responded to an approach to them by a resource management consultant working for the Turnbull Family Trust by expressing their opposition:

> On behalf of the Roto Tangimate Trustees, a meeting with owners was held on 12 March 2001 at Huia Marae.
>
> The outcome of that meeting is as follows:
> (a). The owners felt that their rights were not being recognised according to the 1981 resource consent agreement.
> (b). The owners / trustees were not advised of any changes in the 1981 resource consent agreement, but changes have occurred in 1987, 1991, 1992 and so on, again with no regard to the legal owners.
> (c). The owners also feel their rights of access have been denied to Roto Tangimate and the access way unless permission was sought from the farmer.

They therefore objected to any extension of the right to drain their lake. Past conditions of consent had not been adhered to, Manawatu Catchment Board had failed to properly supervise initial installation of the culvert, and Manawatu-Wanganui Regional Council had "at no time contacted the owners". Because of loss of access, the Trustees were unable to take care of the values associated with the lake, including tuna, historic significance, ancestral ties, spiritual taonga, environmental habitat, whakamate and koiwi. "Maaku e ringiringi ki

[961] N Tanczos MP to Chief Executive Officer, 28 July 2000. Manawatu-Wanganui Regional Council file 1/6/TFT 101740-101741. Supporting Papers #2170-2171.
[962] Chief Executive Officer to N Tanczos MP, 8 August 2000. Manawatu-Wanganui Regional Council file 1/6/TFT 101740-101741. Supporting Papers #2172-2173.

aku roimata nga ara e ahu ana ki te kaainga – I will water with my tears the trails that lead to home":

> The consensus of the owners is to protect and preserve our taonga, Roto Tangimate, to restore vegetation and all environmental habitats including our whakamate sites, reintroduce native species to Tangimate, and [get] the Lake area back to the agreed size as in the 1981 consent.[963]

The identification of the lake as a taonga to its kaitiaki lifts its significance under Section 6(e) RMA.

The application was made in March 2001. It was to "continue to divert water from Lake Tangimate by way of an existing culvert" for a period of 15 years. The application was accompanied by an assessment of environmental effects, which argued that the effect if consent was granted would be minimal because the culvert was already in place and its management would stay the same. Letters of support from the farming community, and the letter of objection from the Lake Trustees, were attached[964]. The Regional Council, on receipt of the application, decided it was for two consents, a land use consent to maintain and continue to use the culvert for the purpose of diverting water at the outlet of Lake Tangimate, and a water permit for the diversion of water and associated partial drainage of Lake Tangimate. The application was publicly notified in those terms[965]. Besides the Lake Trustees, the Muaupoko Tribal Authority was notified[966].

A total of 39 submissions were received, all objecting to the granting of consent. The high number was in part because Green Party members around the country had been encouraged to express an opinion. The other reason for the high numbers was the support for the Lake Trustees provided by Maori organisations. From within the tangata whenua came objections from the Chairman of Ngati Huia ki Poroutawhao (Don Tamihana)[967], Te Kahurangi Management Committee (Cindy Tamihana)[968], and the Lake Trustees themselves (Hirama Tamihana and Taiawhio Tatana)[969]. From the wider Maori community came

[963] Justin Tamihana for Roto Tangimate Trustees to C Barton, Resource Management Consultant, Palmerston North, 22 March 2001. Manawatu-Wanganui Regional Council file 1/6/TFT 101740-101741. Supporting Papers #2174-2175.
[964] Application for resource consent and assessment of environmental effects, 28 March 2001. Manawatu-Wanganui Regional Council file 1/6/TFT 101740-101741. Supporting Papers #2176-2193.
[965] Consents Administrator to Interested parties and adjacent owners and occupiers, 5 April 2001. Manawatu-Wanganui Regional Council file 1/6/TFT 101740-101741. Supporting Papers #2194-2196.
[966] Consents Administrator to Muaupoko Tribal Authority, 9 April 2001. Manawatu-Wanganui Regional Council file 1/6/TFT 101740-101741. Supporting Papers #2197-2198.
[967] Chairman Ngati Huia ki Poroutawhao to Chief Executive, 6 May 2001. Manawatu-Wanganui Regional Council file 1/6/TFT 101740-101741. Supporting Papers #2201.
[968] Te Kahurangi Management Committee Coordinator to Chief Executive, 6 May 2001. Manawatu-Wanganui Regional Council file 1/6/TFT 101740-101741. Supporting Papers #2202.
[969] Tom Bennion, Barrister, Wellington, for Hirama Tamihana, Taiawhio Tatana, Justin Tamihana, and Trustees of Roto Tangimate, to the Regional Council, 8 May 2001. Manawatu-Wanganui Regional Council file 1/6/TFT 101740-101741. Supporting Papers #2203-2206.

objections from Ngati Tukorehe Tribal/Marae Komiti (Yvone Wehipeihana-Wilson)[970], Te Iwi o Ngati Tukorehe Charitable Trust (Huhana Smith)[971] and Paul Hirini[972]. Other objectors were the Department of Conservation and Wellington Fish and Game Council.

An on-site meeting at the lake was held at the beginning of August 2001, attended by about 25 people. A staff member of the Regional Council wrote up some notes of the meeting. He described the 1981 agreement (a word he put in inverted commas) between the applicant, the Acclimatisation Society, the Lake Trustees and the Catchment Board in rather dismissive terms – "four blokes standing on the side of a dune as far as I could make out". He played up the fluctuating water levels of the lake, highlighting how it had dried up completely on occasions. The lake had been fenced in the mid 1980s and this clearly separated the area of wetland vegetation from improved pastures; the exclusion of cattle had assisted wetland species recovery. He concluded his notes by postulating some draft conditions of consent, including setting varying minimum levels of the lake at different times of the year, and moving fencelines so they (rather than the lake level) closely reflected the 10 ha area. His final remark was "Can we do anything about joint management? I think that's for a side agreement, as is access"[973].

Following the meeting, the applicant proposed what it thought might meet the concerns of the Department of Conservation, Wellington Fish and Game Council and Ngati Huia:

> [We] are proposing the following as a possible condition of consent (or wording to similar effect):
>
> > "Install a weir to maintain a height of 18.20 metres in relation to the existing culvert arrangement."
>
> The proposed 18.20 metre height will provide for a lake level of approximately 9.847 hectares (9.5765 hectares excluding islands) subject to climatic conditions. This falls slightly short of the 10 hectares sought by the submitters, but it is hoped that all parties may agree that a positive outcome is being proposed.
>
> As a result of raising the height of the culvert through the installation of a weir, there will be an impact on the farming operations being undertaken by the Turnbull Family Trust. In order to achieve a positive outcome for all parties, it is proposed that the parties agree to the proposed consent condition on the understanding there will be no alteration to the line of the fences.[974]

[970] Ngati Tukorehe Tribal/Marae Komiti to Consents Administrator, 3 May 2001. Manawatu-Wanganui Regional Council file 1/6/TFT 101740-101741. Supporting Papers #2199-2200.
[971] Te Iwi o Ngati Tukorehe Charitable Trust to Chief Executive, 10 May 2001. Manawatu-Wanganui Regional Council file 1/6/TFT 101740-101741. Supporting Papers #2209-2210.
[972] Paul Hirini, Palmerston North, to Consents Administrator, 9 April [sic, should be May] 2001. Manawatu-Wanganui Regional Council file 1/6/TFT 101740-101741. Supporting Papers #2207-2208.
[973] Notes of pre-hearing meeting, 2 August 2001. Manawatu-Wanganui Regional Council file 1/6/TFT 101740-101741. Supporting Papers #2211-2212.
[974] C Barton, Resource Management Consultant, Palmerston North, to Consents Planner, 5 November 2001. Manawatu-Wanganui Regional Council file 1/6/TFT 101740-101741. Supporting Papers #2213-2214.

The proposal was circulated to the three parties. The Lake Trustees were not satisfied, their concerns being:

- The justification for a weir level resulting in a lake of less than 10 hectares – which they regard as an absolute minimum.
- The suggestion that the effect on the applicant's farming operations mean that no adjustment would be made to fence lines.
- The apparent lack of appreciation of cultural concerns, and the fact that part of the lake bank and bed is in the ownership of the Lake Trustees.[975]

Their counter-proposal was that the weir should only operate when the lake was more than 10 hectares in size, that there should be a buffer area of 10 metres around the 10 hectare lake, and that fences should be moved to the outer surround of the buffer area. There should be no discharge of contaminants into the lake, water quality monitoring should be undertaken twice-yearly, the applicant and the Lake Trustees should jointly prepare a lake management plan and a riparian management plan, and the owners of the Maori Land should be able to access the lake "at any reasonable time … after notifying the consent holder in advance"[976]. Fish and Game also sought a fenced buffer strip around the lake[977].

There was a four month delay before the applicant got back in touch with the Regional Council, and asked to withdraw its application. While no reason was given, it is likely that the loss of land and the movement of fence lines to create a 10 hectare lake and surrounding buffer strip was greater in its impact on farm operations than could be gained by reducing the level of the lake during the few occasions when its level was higher than 17.83 metres. The Regional Council was told:

> The existing culvert has now been blocked to ensure there is no continued diversion of water. The culvert has been blocked using a mix of materials. The area of the culvert that is blocked is approximately 2 metres in depth and 3 metres in length. The Turnbull family is aware that the culvert will need to remain blocked.[978]

An inspection confirmed the blocking[979].

To the extent that the ability to drain Lake Tangimate when it was at higher levels was abandoned, the outcome was a success for Ngati Huia ki Poroutawhao. They had been encouraged by the references to Maori values of lakes and water in the RMA that had not

[975] Tom Bennion, Barrister, Wellington, to Consents Planner, 5 December 2001. Manawatu-Wanganui Regional Council file 1/6/TFT 101740-101741. Supporting Papers #2215.
[976] T Bennion, Barrister, Wellington, to Consents Planner, 14 December 2001. Manawatu-Wanganui Regional Council file 1/6/TFT 101740-101741. Supporting Papers #2216-2218.
[977] Resource Officer Fish and Game NZ, Palmerston North, to Consents Planner, 17 December 2001. Manawatu-Wanganui Regional Council file 1/6/TFT 101740-101741. Supporting Papers #2219.
[978] C Barton, Resource Management Consultant, Palmerston North, to Senior Consents Planner, 30 April 2002. Manawatu-Wanganui Regional Council file 1/6/TFT 101740-101741. Supporting Papers #2220.
[979] Senior Consents Planner to All submitters, 21 May 2002. Manawatu-Wanganui Regional Council file 1/6/TFT 101740-101741. Supporting Papers #2221.

existed in previous legislation. However, this particular case did not proceed to the hearing and decision stage where a clearer indication of the impact of those references to Maori values on the regulatory agency would have been provided. And a potential opportunity for the development of a more inclusive relationship between the interested parties at Lake Tangimate was lost.

5.9.1.2 Feilding sewage treatment plant discharge

The water right issued under the Water and Soil Conservation Act in August 1991 became the responsibility of Manawatu-Wanganui Regional Council when the Resource Management Act 1991 came into effect. The Regional Council was required to administer the existing water right in terms of the old legislation until its expiry in 1994, when the 1991 legislation would take full effect.

In June 1992 Manawatu-Wanganui Regional Council felt obliged to write to the District Council about breaches of the 1989 water right:

> Over the past summer [1991-92] compliance with your discharge permit conditions from the Feilding STP to the Oroua River has been very poor. Permit conditions have frequently been breached, often quite grossly. I have no doubt that the Regional Council could have successfully prosecuted the District council for its illegal discharge.
>
> I have chosen not to pursue that action for two main reasons. First, I consider that it would be counterproductive. It would promote conflict and put your Council in a difficult position in the short term, which I believe could impede progress to rectify the problems in the medium term. It would also focus media attention on the present problems.
>
> Second, I believe that the District Council very much recognises the problems that it has with disposal of effluent from Feilding, and that progress is being made to rectify these problems….
>
> I must stress how important it is that the STP complies with its permit conditions next summer. There is already considerable pressure on this Council to more strongly enforce compliance, particularly given the recent Audit Office report. A repeat of this summer's problems with the STP discharge over the 1992/93 summer could lead to enforcement action being undertaken by this Council.[980]

The scolding continued later that year:

> I have been willing to tolerate recent poor discharge permit compliance because you have been making very good progress toward solving the problem and river flows have been relatively high. This is not a licence to carry on in this manner until the upgrade is commissioned. Your Council's legal obligation is to meet permit conditions as soon as practicable. In this context, I recommend that you take steps to restrict trade waste

[980] Director of Environment and Planning to General Manager Manawatu District Council, 11 June 1992. Manawatu-Wanganui Regional Council file 2/2/MDC/A. Supporting Papers #2222-2223.

> discharges to the sewer if this proves necessary prior to the Stage 1 upgrade being completed.[981]

However, the state of affairs during the 1992/93 summer was little better:

> Obviously I am disappointed that you have not been able to consistently comply with your discharge permit while upgrading has been taking place. I recognise that this is due in no small part to the failure of trade waste dischargers to comply with discharge restrictions to the sewer. I also note that these trade waste dischargers appear to have finally realised that non-compliance could have a major impact on their businesses, even to the point of closing them down if your Council so determined. I hope this will result in better cooperation from them in the future.
>
> The Regional Council has refrained from enforcement action primarily because you are actively pursuing a solution to non-compliance, and it is apparent that you have worked hard, although unsuccessfully, at trying to meet permit criteria in the interim by restricting trade waste discharge. I believe that enforcement action at this stage will not get the new plant operating any faster and would serve no useful purpose in ensuring immediate compliance.
>
> In the meantime I will continue to monitor progress closely, and wait with anticipation for the time when permit compliance at the Feilding plant is a routine event.[982]

The water right expired in June 1994. In October that year the Regional Council expressed its concern that no application had been received for a new resource consent:

> This means that the discharge from that plant is presently illegal under the Resource Management Act. The application was granted for a period of three years in 1991. The Act provides for a rollover of consents provided new applications are made in advance of the old consents expiring. I would have expected your Council to have taken advantage of this. Enforcement action is warranted if this situation recurs.[983]

In December 1994, six months after the previous consent had expired, Manawatu District Council lodged an application for a new discharge permit. This sought the ability to discharge up to 9,000 cubic metres per day. The application explained that the treatment plant had "recently been upgraded and effluent is now treated by screening, aeration, sedimentation, biofiltration, solids contact and a clarifier":

> Now that the upgraded plant has been commissioned and initial operating problems have been resolved, there has been a significant improvement in the quality of the discharge from the STP. A number of other mitigation measures are proposed to further improve the quality of the discharge, and the quality of water in the Oroua River downstream of the discharge, to the standard required by the Proposed Manawatu Catchment Water Quality Regional Plan.[984]

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[981] Director of Resources to General Manager Manawatu District Council, 3 August 1992. Manawatu-Wanganui Regional Council file 2/2/MDC/A. Supporting Papers #2224-2225.
[982] Director of Resources to Utility Services Manager Manawatu District Council, 21 April 1993. Manawatu-Wanganui Regional Council file 2/2/MDC/A. Supporting Papers #2226.
[983] Director of Resources to General Manager Manawatu District Council, 18 October 1994. Manawatu-Wanganui Regional Council file 2/2/MDC/A. Supporting Papers #2227-2228.
[984] Application for Discharge Permit, 21 December 1994, attached to Worley Consultants Ltd, Palmerston North to Resource Consents Manager, 21 December 1994. Manawatu-Wanganui Regional Council file 2/2/MDC 4929A. Supporting Papers #2231-2259.

A key feature of the Feilding discharge was the extent to which industrial dischargers relied on the municipal treatment plant for the treatment of their effluent. These included Watties, Venison Packers, NZ Woolspinners, Ratanui Bacon, and Feilding Saleyards. These increased the seasonal variation of effluent volumes, which the design of the treatment plant had to accommodate and still operate effectively[985]. Upgrading of the treatment facilities had been identified as the best practicable option for improving environmental performance, as compared to alternatives such as relocating or discharge to land:

> One alternative method of discharge which has been considered by the Manawatu District Council is the possibility of introducing further land-based (wetland) treatment of effluent from the STP. Such wetland treatment of effluent would enable further improvements in the colour, suspended solids, BOD and enteroccci bacteria levels of the discharge prior to reaching the river. The Council's Utilities and Services Manager has suggested that such a "wetland area" could also be developed into a wildlife refuge. The Council has expressed an interest in leasing or buying land adjacent to the 44 hectares that it already owns. The owners of the adjacent land have yet to respond to the expression of interest and, accordingly, there has been no negotiation and no design or investigative work done at this stage. It is simply an idea which the Council wishes to investigate further, assuming an agreement can be reached with the landowners concerned.[986]

Persons and organisations interested in the application, as assessed by the District Council, included Kauwhata Marae Committee, Aorangi Marae Committee, and Te Rangimarie Marae Committee in Palmerston North. There had been some brief consultation with these three marae committees in the immediate period prior to lodging the application:

> Mr EH Lawton, Chairman, Kauwhata Marae Committee
> In a telephone conversation between Andrew Collins (Worley Consultants) and Mr Lawton on 7 December 1994, the nature of this resource consent application was explained, and the opportunity for consultation was offered. Mr Lawton appreciated the effort to consult and asked to be sent a copy of the resource consent application. It is recommended that the Kauwhata Marae Committee be formally notified of the application as part of the First Schedule RMA process. In addition, the applicant will send a copy of the full application to Mr Lawton prior to lodging the application.
>
> Mr Ra Durie, Chairman Aorangi Marae Committee
> In a telephone conversation between Andrew Collins (Worley Consultants) and Mr Durie on 7 December 1994, the nature of this resource consent application was explained, and the opportunity for consultation was offered. Mr Durie noted that the Marae Committee had recently met and would not meet again until February 1995. On that basis, it was agreed that the Manawatu District Council would proceed to lodge the application and the Marae Committee would be formally notified during the

[985] While the situation in 1997 is not known, in 2001 the industrial sources contributed about 30% of the effluent and about 60% of the suspended solids and BOD loading. Application to discharge treated sewage to the Oroua River, May 2001, attached to Wastes Manager Manawatu District Council to General Manager, 30 May 2001. Manawatu-Wanganui Regional Council file 2001-009351. Supporting Papers #2335-2368 at 2344.

[986] Assessment of Environmental Effects, December 1994, pages 5-6, attached to Worley Consultants Ltd, Palmerston North to Resource Consents Manager, 21 December 1994. Manawatu-Wanganui Regional Council file 2/2/MDC 4929A. Supporting Papers #2231-2259 at 2242-2243.

statutory submissions process of the Resource Management Act 1991. Mr Durie remarked that there had been continuing improvements in the quality of the Oroua River and he was generally supportive of the Council's efforts in this regard.

Ms B Larkins, Secretary, Te Rangimarie Marae Committee
In a telephone conversation between Andrew Collins (Worley Consultants) and Ms Larkins (Secretary of the Marae Committee) on 7 December 1994, and in a subsequent telephone conversation between Andrew Collins and Alan Horsfall on 16 December 1994, the nature of this resource consent application was explained, and the opportunity for consultation was offered. Mr Horsfall lives by the marae and the river. Mr Horsfall noted that at this time of year (summer period) when the Oroua River has low flows, there are some foams and scums evident on occasions. He wanted the river cleaned up but he appreciated that it would have to be a staged matter as it could not be done "overnight". Mr Horsfall supported the concept of wetland treatment of the effluent. It is recommended that the Te Rangimarie Marae Committee be formally notified in the statutory process to give them an opportunity to comment if they so wish.[987]

Upon receipt by Manawatu-Wanganui Regional Council, the application, along with the applications of some other large dischargers, was put on hold pending the finalisation of the Manawatu Catchment Water Quality Regional Plan. Once this was completed in March 1995, Manawatu District Council was given a chance to make updating changes to its application[988].

The application for a new water right for the Feilding treatment plant was advertised in April 1995. Simultaneously the Regional Council publicly notified seven other water discharge applications:

- KW Thurston, applicant, discharge from meat processing plant at Longburn (formerly the Affco meatworks)
- Richmond Ltd, applicant, discharge manufacturing waste from fellmongery and tannery at Shannon
- Richmond Ltd, applicant, discharge stormwater from fellmongery and tannery at Shannon
- Tui Milk Products Ltd, applicant, discharge from dairy processing plant at Longburn
- New Zealand Pharmaceuticals, applicant, discharge from manufacturing plant at Linton
- Horowhenua District Council, applicant, discharge from sewage treatment plant at Foxton

[987] Assessment of Environmental Effects, December 1994, pages 18-19, attached to Worley Consultants Ltd, Palmerston North to Resource Consents Manager, 21 December 1994. Manawatu-Wanganui Regional Council file 2/2/MDC 4929A. Supporting Papers #2231-2259 at 2255-2256.
[988] Director of Resources to General Manager Manawatu District Council, 17 March 1995. Manawatu-Wanganui Regional Council file 2/2/MDC 4929A. Supporting Papers #2260.

- Palmerston North City Council, applicant, discharge from sewage treatment plant at Palmerston North

The public notification of the Feilding application attracted 15 submissions, four from Maori organisations. Three of the submissions from Maori organisations were primarily concerned with the absence of consultation. These submissions, directed at all seven applications, were from Te Runanga o Raukawa, Te Rangimarie Marae Committee in Palmerston North, and Te Roopu Awhina o Te Kaunihera Kaumatua o Rangitane ki Manawatu. The Runanga's submission argued that Section 8 RMA imposed an obligation on the Regional Council to consult with tangata whenua, and until it had heard from tangata whenua what their values and opinions were it could not satisfy Sections 6(e) and 7(a) requirements to demonstrate that it had taken account of those values[989]. The Marae Committee's submission set out its views about consultation:

> In order for adequate consultation to take place, we would expect to meet with each applicant, through the Council, in order that we might have matters of significance to us as Maori addressed. We would also need to visit the physical site of each discharge and inspect the various processes any wastage goes through prior to being discharged into the waterways. Of particular concern to us is to what level wastage is treated and what effect that wastage will have on the quality of the water.
>
> Naturally, water quality impacts on many things of significance to us, and we would be seeking assurances from those who discharge wastage into the waters about these matters. We would also want to know what other less polluting methods of disposal have been looked at, and if they have been looked at why they are not being implemented.
>
> Therefore we respectfully request that the Council and applicants enter into proper and full consultation with us over these applications prior to any consents being granted.[990]

The Rangitane Kaunihera submission expressed concern with lack of consultation, and asked for "full and complete" consultation.

The fourth submission was from Tanenuiarangi Manawatu Inc on behalf of Rangitane, which registered its concern over findings made in the application documentation about the Manawatu River.

Thus it was the absence of consultation that was of greatest concern to the Maori submitters. Because consultation in a culturally appropriate setting had not occurred, none of the organisations had addressed the environmental effects of the applications.

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[989] Submission by Te Runanga o Raukawa, 2 May 1995. Manawatu-Wanganui Regional Council file 1/4/HDC 3926A. Supporting Papers #2966-2967.

[990] Submission by Te Rangimarie Marae Committee, 1 May 1995. Manawatu-Wanganui Regional Council file 1/4/HDC 3926A. Supporting Papers #2968-2969.

Having received the submissions for all seven applications, the Regional Council decided in May 1995 to put consideration of them on hold while two reports were prepared which could address them all. These were a Technical Report and a Cultural Report. In the event two further reports were also prepared specifically for the Feilding discharge application, one written by a water quality scientist and the second written by a resource management planner. All four staff reports, plus the applicant's evidence and the public submissions were considered at a hearing specifically about the Feilding application two years later in June 1997.

The Technical Report was an assessment of the cumulative environmental effects of all the discharges to the lower Manawatu River and its tributaries[991]. It found that water quality below the suite of Palmerston North and Longburn discharges on the Manawatu River, after reasonable mixing, had a significant effect on water quality, and that the Oroua River was even more severely degraded in quality than the Manawatu River. This was because the natural flows of the Oroua did not provide the same degree of assimilative capacity. Indeed, there were doubts whether any discharge to the Oroua during periods of low flow would allow the water quality standards set out in the Proposed Manawatu Catchment Water Quality Regional Plan (PMCWQRP) to be met. The Oroua below the Feilding discharge failed all five of the measurable standards set out in the Plan – biochemical oxygen demand (BOD), ammonia, particulate organic matter, enterococci, and dissolved reactive phosphorus.

The Cultural Report was prepared by Gerrard Albert of Whanganui iwi, who was employed by the Regional Council at that time as its Iwi Liaison Officer[992]. It had been requested as a solution to the general absence of consultation with Maori by the various applicants. The background to this report was explained in a memorandum by the senior planner who would be responsible for the eight applications as they passed through the consenting process:

> The applicants have a clear statutory obligation to consult with affected parties and Maori. The Regional Council too has an obligation to consult with Maori on a resource consent where there are issues of cultural significance. It is in my opinion reasonable to conclude that the proposed discharges have significant cultural implications….
>
> The matter of Maori consultation can be dealt with in two ways. One option is to formally request the applicants to further consult with relevant groups. This could result in consultation overload on iwi groups as each applicant will endeavour to

[991] Manawatu-Wanganui Regional Council, *Discharges to the Lower Manawatu River – assessment of environmental effects*, November 1995. Supporting Papers #3433-3498.
[992] Manawatu-Wanganui Regional Council, *Discharges to the Lower Manawatu River – cultural report*, December 1996. Supporting Papers #3499-3532.

consult the same groups to discuss similar issues. This method could be quite messy and time consuming.

The second option, supported by myself and Council's Iwi Liaison Officer, is to commission a Cultural Impact Report of all the applications. The report, to be prepared by an independent person, would serve to satisfy the [Regional] Council's obligation to consult as has been emphasised in recent case law, and would serve to effectively gather together the cultural issues associated with the applications. The findings from the report could also be useful to other consent applications made for discharges into the Manawatu River catchment. This approach would also avoid consultation overload on iwi groups as discussion and meetings for all applications would be held at one time.[993]

The Cultural Report gave a short description of the tangata whenua groupings in the Manawatu catchment, examined the submissions that had been lodged, and looked at statutory obligations set out in the RMA and in the Regional Policy Statement and the Proposed Manawatu Catchment Water Quality Plan. It identified that the submissions had been overly concerned with an absence of consultation, because the applicants had failed to consult prior to submitting their assessments of environmental effects accompanying their applications. There had been minimal progress in this regard since the assessments of environmental effects had been submitted. The report also identified that the planning documents explicitly stated that discharges of human sewage into waterways, when inadequately treated, were offensive to tangata whenua and were an activity that seriously affected the mauri of the water. Only Maori could determine what was the impact on mauri, so they needed to be given a continuing role in monitoring the discharges[994].

The hearing of the Feilding treatment plant discharge application was notable for the participation of Ngati Kauwhata, even though the iwi had not been a submitter in 1995. There were no procedural objections from any party to Ngati Kauwhata presenting written submissions[995], and Ngati Kauwhata's late involvement was not commented upon in the Hearing Committee's decision. The decision recorded what Ngati Kauwhata representatives told the Committee:

Stephen Bray, Te Komiti Marae o Kauwhata
Mr Bray informed the Hearing Committee that Te Komiti Marae o Kauwhata and Nga Kaitiaki o Kauwhata objected strongly to the discharge.

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[993] Senior Planner Resources to Consents Manager, 13 April 1995. Manawatu-Wanganui Regional Council file 2/2/MDC/A. Supporting Papers #2229-2230.
[994] Manawatu-Wanganui Regional Council, *Discharges to the Lower Manawatu River – cultural report*, December 1996.3499-3532.
[995] Submission by Stephen Bray on behalf of Te Komiti Marae o Kauwhata, undated (June 1997). Supporting Papers #2298-2299.
Submission by MH Durie, Secretary Nga Kaitiaki o Ngati Kauwhata, 27 June 1997. Supporting Papers #2300-2301.
Submission by Jean Kipa, 27 June 1997. Supporting Papers #2302.
All on Manawatu-Wanganui Regional Council file 2/2/MDC 4929A.

Water carries the Taha Wairua (spiritual) and Taha Tinana (physical) which is significant to the needs of the Maori people.

Te Komiti Marae o Kauwhata has a strong mauri or interconnectedness to the Oroua River to which MDC wishes to discharge treated effluent.

Mr Bray informed the Hearing Committee that MDC draws water from the upper reaches of the river to quench the thirst of those in Feilding, to allow them to bathe, to wash their cars and water their gardens, and then returns it to the river with all kinds of additives, indicating their total disregard of "our whanaunga".

Pearl Lawton [speaking to Mason Durie's written submission], Nga Kaitiaki o Ngati Kauwhata
Mrs Lawton presented to the Hearing Committee a submission on behalf of Nga Kaitiaki o Ngati Kauwhata.

Mrs Lawton informed the Hearing Committee that since settlement in 1831, Ngati Kauwhata had a traditional relationship with the Oroua River. Nga Kaitiaki o Ngati Kauwhata is an incorporated society, mandated by the hapu of Ngati Kauwhata as an Iwi Authority. Nga Kaitaki o Ngati Kauwhata has a close association with Te Runanga o Raukawa, and has manawhenua over the area bordering the Oroua River north of Rangitane interests.

Mrs Lawton told the Hearing Committee that for 160 years the river has been important taonga for the iwi. It has been a source of food, provided opportunities for spiritual renewal, and not infrequently the waters of the Oroua have been used for healing and cleansing activities.

Over the years the uses have been seriously compromised.

Mrs Lawton informed the Hearing Committee that the mauri of the river had been threatened to the point its sustainability is now no longer assured. The relationship of the river to the tribe is such that if the river is in any way diminished, then the people are similarly diminished.

Mrs Lawton described to the Hearing Committee how the state of the mauri of the river can be measured and the application of MDC fails these measurements. MDC will need to consult with Nga Kaitiaki o Ngati Kauwhata.

The view of Nga Kaitiaki o Ngati Kauwhata is that the discharge should not continue and that alternative means of disposal must be considered.

Mrs Jean Kipa, Ngati Kauwhata
Mrs Kipa informed the Hearing Committee that she and Mrs Pearl Lawton are owners of Aorangi No. 4C6 Block, part of which has been taken under the Public Works Act for the Feilding STP.

She informed the Hearing Committee that in Maoridom it could be said that water dominated life. It has many uses and carries an equal amount of taha wairua (spiritual) as well as taha tinana (physical) significance. Maori is a culture that still uses water for both spiritual and physical needs.

> As Ngati Kauwhata descendants, the adjacent landowners strongly opposed the application to discharge into the Oroua River.[996]

The Hearing Committee was also addressed by Gerrard Albert, author of the Cultural Report:

> Mr Albert informed the Hearing Committee that consultation had identified one key Treaty of Waitangi principle, and this was the principle of active protection, which relates to the Article II guarantee of the Treaty.
>
> He informed the Hearing Committee that tangata whenua are adamant that the Regional Council's promotion of mauri by Policy 9 of the PMCWQRP obligated the Regional Council to ensure that its decision making is consistent with its protection. It is also important that the Hearing committee realise that tangata whenua had emphasised that no matter if discharges comply with the standards of the PMCWQRP, discharges of any nature will have a negative impact on mauri.[997]

The water quality scientist explained that the Feilding treatment plant discharge did not comply with the visibility, ammonia and particulate organic matter rules in the Proposed Manawatu Catchment Water Quality Regional Plan. He suggested that short term consent be granted during which the applicant should be required to demonstrate that it could comply with the rules. The applicant should also investigate the mixing characteristics downstream of the discharge, which would enable a better assessment of an appropriate size for the mixing zone at the discharge[998].

The resource management planner explained that because the discharge was a non-complying activity under the regional plan, consent could only be granted if it was on the basis that the discharge would be temporary in nature.

The Hearing Committee decided that the environmental effects were more than minor. This had been proved by Ngati Kauwhata's statements that for them the life supporting capacity of the water had been affected. The Committee attached "extreme importance" to the requirements of Section 6(e) concerning recognition and provision for the relationship of Maori with ancestral water. The brief consultation that had been carried out by the District Council was not enough, and "far more consultation" was required in order to involve Ngati Kauwhata in future decisions about improving the treatment plant; it was appropriate to make this continuing consultation a condition of consent. The committee therefore decided to grant a consent for three years (expiring 29 July 2000), subject to the effluent meeting

[996] Decision of the Hearing Committee, 29 July 1997. Manawatu-Wanganui Regional Council file 2/2/MDC 4929A. Supporting Papers #2261-2282.
[997] Decision of the Hearing Committee, 29 July 1997. Manawatu-Wanganui Regional Council file 2/2/MDC 4929A. Supporting Papers #2261-2282.
[998] Staff report by Environmental Scientist (Water Quality), undated (June 1997). Manawatu-Wanganui Regional Council file 2/2/MDC 4929A. Supporting Papers #2283-2297.

certain quality standards for ammonia-nitrogen and suspended solids, the receiving waters downstream of a 200 metre long mixing zone meeting certain standards, and the District Council investigating and implementing whatever was necessary to ensure the discharge became compliant with the regional plan. There was a requirement to report every six months on the improvement programme, and on the consultation carried out with Ngati Raukawa and Ngati Kauwhata[999].

Manawatu District Council appealed the Regional Council's decision to the Environment Court, as it regarded a three year term as inadequate having regard to the amount of investigation, design and construction work the Council would have to do. It sought a lengthening of the term to five years[1000]. The appeal was resolved by consent, when Court approved an agreement between the Regional Council and the District Council that the term would be four years, expiring on 30 November 2001[1001].

Independently of the Feilding treatment plant resource consent, Ngati Kauwhata wrote to the Regional Council in September 1997 about their "great concern as to the state of the Oroua River and the river banks":

> The area around the Aorangi Bridge is in such a condition that if an abnormal or exceptional large downfall in the upper reaches was to occur, causing higher than normal river flow, it would cause severe harm to the bridge and surrounding industrial estate.
>
> The stopbank in this area is being eroded away by continued moto-cross bikes using this area, and disturbing and undermining all vegetation and stability.
>
> Our water samples in this area show a higher than normal silicon content which we relate to the cement processing plant operating in this area.
>
> At Boness Road there appears to be work being done alongside the existing track to the river, and what has been removed "dump" [sic] along the exposed bank of the river.
>
> The extraction of metal in this area needs to be more monitored because of the poor work practices of those operating there.
>
> If this is how the Council monitors our taonga, then it makes a mockery of the Regional Plan for Beds of Rivers and Lakes.

[999] Decision of the Hearing Committee, 29 July 1997. Manawatu-Wanganui Regional Council file 2/2/MDC 4929A. Supporting Papers #2261-2282.
[1000] Notice of appeal, 19 August 1997. Manawatu-Wanganui Regional Council file 2/2/MDC 4929A. Supporting Papers #2303-2307.
[1001] Consent Order of the Environment Court, 3 December 1997. Manawatu-Wanganui Regional Council file 2/2/MDC 4929A. Supporting Papers #2309-2310.

We are prepared to meet with your staff and discuss these issues with you.[1002]

A response from the Regional Council to this approach was not located during research for this report.

The investigative work over the next 18 months was extensive, including:

- *Tertiary Treatment Options Evaluation and System Performance Review*, May 1998
- *Treated Wastewater Discharge River Mixing Study*, June 1998, and *Addendum*, September 1998
- *Infiltration/Inflow Study*, April 1999
- Public consultation and feedback opportunity, May 1999
- *Final Options Evaluation Report*, May 1999
- *Further Issues regarding the Future Treatment and Disposal of Feilding's Wastewater*, October 1999

Copies of the first report in the above list were provided to Ngati Kauwhata and Ngati Raukawa[1003], and a presentation was made to the District Council's Marae Consultative Standing Committee in February 1999[1004]; the matter remained on the Standing Committee's agenda for subsequent meetings. When discussing the options available to the Council in the public discussion document, it was acknowledged that continued discharge to the Oroua River was "culturally offensive", so that irrigation on to land (which was "more culturally acceptable") was among the options being considered[1005].

While the public feedback was not large enough to be considered representative of the views of the community as a whole, the overwhelming majority (61%) of those who took part chose the option that provided for all-season irrigation to land and no discharge of effluent to the Oroua River. Meanwhile, discussion at the Marae Consultative Standing Committee had included the following points:

- Kauwhata Marae were opposed to any discharge to the river regardless of extra treatment.
- That there was desire by tangata whenua for pristine water in the river now and in the future, not only for Maori but for all the community.
- That the Sewerage Treatment Plant was not the only activity discharging to the river, but the list included stormwater, farming and industry discharges.

[1002] Te Komiti Marae o Kauwhata to General Manager, 11 September 1997. Manawatu-Wanganui Regional Council file 2/2/MDC 4929A. Supporting Papers #2308.
[1003] Wastes Manager Manawatu District Council to Manawatu-Wanganui Regional Council, 29 June 1998. Manawatu-Wanganui Regional Council file 2/2/MDC 4929A. Supporting Papers #2311-2313.
[1004] Wastes Manager Manawatu District Council to Manawatu-Wanganui Regional Council, 22 December 1998. Manawatu-Wanganui Regional Council file 2/2/MDC 4929A. Supporting Papers #2318.
[1005] Public discussion document, undated (May 1999). Manawatu-Wanganui Regional Council file 2/2/MDC 4929A. Supporting Papers #2314-2317.

- That upgrades, if any, take place as soon as possible.
- A concern about what level of treatment plant upgrade would take place in the short term if Option 4 [all-season irrigation] was the preferred option.
- A concern about the length of time to process the necessary consents if Option 4 was to be further developed.
- That investigations would continue on the possibility of discharging treated water to farmland near to the treatment plant, especially in the light of the dry summer, but the high winter water table meant that suitable land would need to be more accessed during winter.[1006]

In November 1999 Manawatu District Council decided that its preferred option was ultraviolet disinfection of the oxidation pond outflow followed by discharge on to land during the dry summer months when the river level was low. The principal reason why all-season irrigation throughout the year was not adopted was that the Council would need to obtain a greater area of land for irrigation with its associated costs[1007].

Seven months later the District Council approved construction of Stage 1 of the chosen option. This involved installing the ultraviolet disinfection and setting up an irrigation system over 17 hectares of land adjoining the treatment plant. The full irrigation area for the chosen option would ultimately have to be 195 acres, so the initial irrigated area was to test the system and prove its performance. The irrigation of treated effluent on to land would require a resource consent from the Regional Council[1008]. The Marae Consultative Committee had been briefed about the irrigation trial[1009].

As a result of a public inquiry, the extent to which the 1997 consent was non-compliant was analysed in 2005. The figures for "non-complying events" each year was 1997, 0; 1998, 2; 1999, 5; 2000, 4; 2001, 3; 2002, 4; 2003, 2; 2004, 2; 2005, 8. The commentary attached to this data stated:

> Our records indicate that the Manawatu District Council's Feilding Sewage Treatment Plant has non-complied 31 times from the time this consent commenced. Most of these non-compliances were during storm events when the plant capacity is unable to

[1006] Staff report to Manawatu District Council, 20 July 1999, attached to Wastes Manager Manawatu District Council to Manawatu-Wanganui Regional Council, 17 December 1999. Manawatu-Wanganui Regional Council file 2/2/MDC 4929A. Supporting Papers #2319-2325.
[1007] Staff report to Manawatu District Council, 12 October 1999, attached to Wastes Manager Manawatu District Council to Manawatu-Wanganui Regional Council, 17 December 1999. Manawatu-Wanganui Regional Council file 2/2/MDC 4929A. Supporting Papers #2319-2325.
[1008] Staff report to Manawatu District Council, 18 May 2000, attached to Wastes Manager Manawatu District Council to Manawatu-Wanganui Regional Council, 19 June 2000. Manawatu-Wanganui Regional Council file 2/2/MDC 4929A. Supporting Papers #2326-2333.
[1009] Excerpt from minutes of Marae Consultative Standing Committee, 11 April 2000, attached to Wastes Manager Manawatu District Council to Manawatu-Wanganui Regional Council, 19 June 2000. Manawatu-Wanganui Regional Council file 2/2/MDC 4929A. Supporting Papers #2326-2333.

> cope with increased loads during heavy rainfall. The Manawatu District Council is working on stormwater systems at present.[1010]

The new applications for resource consent to allow the 17 hectare trial area to be irrigated at a rate of 1,000 cubic metres per day were lodged in September 2000. Two applications were involved, to discharge treated effluent to land, and to discharge odours to air. Both applications were publicly notified, and the consents were granted in November 2000[1011]. Both consents were for five year terms. The consenting process for these two applications has not been researched for this report.

A fresh application to continue discharging treated effluent to the Oroua River was lodged in May 2001[1012]. By being lodged within six months of the 1997 consent expiring, the existing consent could legally continue to operate until the fresh application was decided upon (Section 124(2) RMA). The covering letter to which the application was attached sought to have the application placed on hold rather than processed:

> Local iwi have recommended that a 'land passage working party' be set up to further discuss options in this area. It is requested that the application is put on hold until further discussions have taken place.[1013]

The 'land passage' to be discussed was some form of further treatment for the effluent that was not irrigated on to land and instead was discharged direct to the Oroua River from the treatment plant. Consent until 2009 was sought, as that was the year that more stringent water quality standards for dissolved reactive phosphate and periphyton were due to come into force under the rules set out in the Manawatu Catchment Water Quality Regional Plan.

Consultation with tangata whenua was discussed in the application documentation:

> The District Council's Marae Consultative Committee has been kept informed throughout the development and selection of treatment and disposal options. Feedback from the Committee has been used in the formation of the final upgrade option and the development of the land disposal trial. Following a report to Council's Marae Consultative Standing Committee in April, the District Council met in early May week with a number of iwi representatives at Aorangi marae to discuss this application. An outcome of that meeting was a proposal to set up a Land Passage Working Party. This working party, to include members of the Council's Marae Consultative Standing

[1010] Compliance Support Officer to M Joy, Massey University, 7 September 2005. Manawatu-Wanganui Regional Council file 2/2/MDC 4929A. Supporting Papers #2334.
[1011] Decision on Applications 101404 and 101405, 21 November 2000, being Appendix 5 to Application to discharge treated sewage to the Oroua River, May 2001, attached to Wastes Manager Manawatu District Council to General Manager, 30 May 2001. Manawatu-Wanganui Regional Council file Application 2001-009351. Supporting Papers #2335-2368 at 2360-2368.
[1012] Application to discharge treated sewage to the Oroua River, May 2001, attached to Wastes Manager Manawatu District Council to General Manager, 30 May 2001. Manawatu-Wanganui Regional Council file Application 2001-009351. Supporting Papers #2335-2368.
[1013] Wastes Manager Manawatu District Council to General Manager, 30 May 2001. Manawatu-Wanganui Regional Council file Application 2001-009351. Supporting Papers #2335.

> Committee, will investigate the options for creating a land passage for the sewage treatment plant discharge to the Oroua River.
>
> The outcome of this further work will be forwarded to horizons.mw in due course. To allow time for the investigations to be undertaken, a delay in notifying the application is requested.[1014]

Manawatu-Wanganui Regional Council was willing to wait until 2004 before restarting the consenting process. It was Manawatu District Council as applicant that requested the restart, when it advised the Regional Council that "land passage consultation with iwi is now completed"[1015]. In seeking the restart the District Council updated its information about the treatment upgrade[1016]. The preferred land passage treatment was described as "a combination of a multi-discharge system and riverbank gallery", which would mitigate a single-point discharge to the Oroua River.

Public notification of the application occurred in September 2004, and two submissions were received, neither of them in opposition to the proposal, and neither from tangata whenua. The extent of consultation with iwi had clearly been a positive step. A staff technical report by a water quality scientist explained that the discharge was a non-complying activity under the Manawatu Catchment water Quality Regional Plan. However, Manawatu District Council was "in the process of significantly improving the discharge":

> MDC's intention, which Horizons supports, is to operate the discharge on both land and water: discharge to land most of the time, and into the river only when the soils are too wet to receive the effluent.

Approval of the consent was recommended[1017]. A companion technical report by a staff planner stated:

> This activity is considered to be a matter of significance to iwi in this particular area, and the relevant tangata whenua were directly notified of the application. No submission was received, and therefore no further consultation is required.[1018]

The decision was to grant the consent that had been applied for. The reasoning behind the approval was that the permitted baseline approach, where the intended discharge was to be measured against the situation that applied before the start of the consent period, meant that

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[1014] Application to discharge treated sewage to the Oroua River, May 2001, attached to Wastes Manager Manawatu District Council to General Manager, 30 May 2001. Manawatu-Wanganui Regional Council file Application 2001-009351. Supporting Papers #2335-2368.
[1015] Acting Wastes Manager Manawatu District Council to Manawatu-Wanganui Regional Council, 31 August 2004. Manawatu-Wanganui Regional Council file Application 2001-009351. Supporting Papers #2369-2373.
[1016] Update information on Option 2, undated (August 2004), attached to Acting Wastes Manager Manawatu District Council to Manawatu-Wanganui Regional Council, 31 August 2004. Manawatu-Wanganui Regional Council file Application 2001-009351. Supporting Papers #2369-2373.
[1017] Staff technical report on Application 101840, 20 September 2005. Manawatu-Wanganui Regional Council file Application 2001-009351. Supporting Papers #2374-2384.
[1018] File note by Senior Consents Planner, 22 September 2005. Manawatu-Wanganui Regional Council file Application 2001-009351. Supporting Papers #2385.

there were likely to be improvements in the quality of the receiving waters during the consent period, which would make any environmental effects no more than minor. The volume of effluent that could be discharged was up to 12,000 cubic metres per day "when the Oroua River is at or below half median levels" (i.e. when some of the discharge would be to the irrigation trial plots), and up to 24,000 cubic metres per day "when the Oroua River is above half median flows" (i.e. when the irrigation trial would not be operating). Effluent and receiving water (after mixing) quality standards were set as prescribed by the Regional Plan. Progress reports on further land disposal were required. The permit would expire on 1 June 2009, being the date that the more stringent water quality standards would come into force[1019].

As with the previous consent, Manawatu District Council appealed the decision to the Environment Court[1020]. The District Council did not think that the water quality standards to be met by the discharge were appropriate to the situation when the river flow was above half median. The Regional Council and District Council had discussions which resulted in the standards being rewritten; the revised water quality condition was then approved by the Court by consent order[1021].

By 2006, it was becoming apparent that the improvements in effluent quality required from 2009 onwards would be hard to achieve. A treatment plant upgrade options report assessed the "effluent quality likely to be required for continued discharge to the Oroua River", in particular at times of low flow in the river, and identified three improvements that would be required:

> Introduce a nitrogen removal process to reduce both ammoniacal nitrogen and nitrate-nitrogen concentrations,
> Introduce a phosphorus removal process to reduce the phosphorus concentration to below 0.15 g/m³,
> Improve the performance of the disinfection stage to reduce the existing concentrations of E. coli by 90%.

A number of options for achieving this additional level of treatment were identified[1022].

The options report also discussed "cultural expectations":

> One of the main obstacles to a continued discharge of effluent to the Oroua River is likely to be the opposition of local iwi, who are usually opposed to the discharge of

[1019] Decision on Application 101840, 26 September 2005. Manawatu-Wanganui Regional Council file Application 2001-009351. Supporting Papers #2386-2400
[1020] Wastes Manager to Registrar Environment Court, 14 October 2005. Manawatu-Wanganui Regional Council file Application 2001-009351. Supporting Papers #2401-2402.
[1021] Consent Order of the Environment Court, 28 February 2006. Manawatu-Wanganui Regional Council file Application 2001-009351. Supporting Papers #2403-2404.
[1022] *Assessment of options for upgrading Feilding wastewater treatment facility*, June 2006. Copy on Manawatu-Wanganui Regional Council file Application 2001-009351. Supporting Papers #2405-2428.

wastewater containing human sewage into water, no matter how well the effluent is treated. The strong preference of iwi is usually for discharge to land, or at least that the treatment process incorporates an element of treatment by the land or land passage.

A form of treatment or land passage could be incorporated into an upgraded treatment process at the Feilding Wastewater Treatment Facility. However it would be essential that any land treatment or passage scheme did not degrade the high quality of the effluent from the clarifier.

An overland flow scheme or rock bed, grassed and planted with species such as flax, would probably be the most suitable form of land treatment/passage. Overland flow can further reduce the phosphorus content of effluent through absorption onto soil particles, and by maintaining a grassed and planted surface erosion and uptake of suspended solids into the effluent can be avoided. Such a scheme would need to incorporate a rock lined bypass channel to carry high wet weather flows to the river and ensure they did not cause scouring of the overland flow area.

The discharge from such a land treatment/passage scheme could be diffused along the river bank, but if the discharge were still into a side stream of the river this would probably not greatly improve mixing and dilution.[1023]

Manawatu District Council was looking at three options for the disposal of effluent from the treatment plant. These were expanded land disposal, pumping to Palmerston North's sewage treatment plant, and continuing to discharge to the Oroua River:

Option 1, Land disposal during low river flow
This option would involve disposal of all effluent to land during periods of low river flow.

The existing trial land disposal system, covering an area of around 10 ha, would be used and the additional 60 ha of land purchased by Council would also be set for irrigation. However, based on the land disposal trial to date, Council would need to purchase a further 45 ha of land. The total land disposal area would then be 115 ha.

The area of land required is based on information from the trial land disposal system operation to date, which has shown that an average application of 8 mm/day has been sustainable, at least in the short term. Further and ongoing assessments of trial data is necessary to confirm the exact land area requirements for a full scale land disposal system during low river flows. It is possible that a larger area may be required for sustainable land disposal.

Option 2, Pump effluent to Palmerston North during low river flow
Under this option about 800 m³/day of effluent would be irrigated onto the 10 ha block. The remainder of the effluent (up to 7,500 m³/day) would be pumped to the Palmerston North sewerage system for further treatment and disposal along with the wastewater from Palmerston North.

A storage lagoon would be constructed to facilitate management of pumping rates and to even out peak effluent flows.

Option 3, Continued river discharge during low river flows

[1023] *Assessment of options for upgrading Feilding wastewater treatment facility*, June 2006. Copy on Manawatu-Wanganui Regional Council file Application 2001-009351. Supporting Papers #2405-2428.

> Under this option, about 800 m³/day of effluent would be irrigated onto 10 ha land disposal block, and the remainder of effluent (up to 7,500 m³/day) would be discharged to the Oroua River after being treated to a high standard by an upgraded treatment facility.[1024]

In August 2007 a report on these three options, plus a fourth option of infiltration and artificial wetland, was completed. This date was later than the deadlines of 1 May 2007 set in the 2005 consent for completion of investigations for improving the quality of the effluent discharged to the river and for determining the potential of various land disposal methods, and 30 June 2007 for the provision of the investigations report to the Regional Council. This meant that Manawatu District Council was falling behind the timeline anticipated for obtaining a further consent for the period beyond 2009. All options assumed that there would be continued discharge to the Oroua River at times of high river flow. They were therefore based on reducing direct discharge to the Oroua River rather than eliminating it altogether.

The options report provided further findings from the land disposal trial, which in part contradicted what had been said in the previous year's summary about the sustainability of application:

- There have been a number of operational problems in keeping the irrigation system running continuously throughout the operating period (November to May). This indicates the complexity of operation and labour demands of the system.
- Pasture growth has been variable and the ongoing requirements for weed removal and pasture establishment in areas adjacent to the river (subject to flooding in 2004) has been difficult. However the other irrigation areas (wastewater plant side of stopbank) have generally performed well.
- The irrigation volumes of around 800 m³/day have been absorbed by the irrigation areas over the last two years of irrigation, but the lucerne area (SDI) has expired due to apparently excessive irrigation and water-logging of soil.
- No significant adverse effects of discharge to air (odour or aerosols) have resulted.
- Soil investigations indicate limited nutrient capture or treatment within the soil with a high proportion of applied wastewater lost directly to drainage to groundwater at the application rates used in the trial.
- Groundwater monitoring has shown a localised impact on groundwater, especially elevated nitrate levels.
- An application rate of 8 mm/day does not appear to be sustainable.
- Additional land will be required for sustainable land disposal for 8,000 m³/day.[1025]

The conclusion drawn about the trial was:

[1024] Wastes Manager Manawatu District Council to Manawatu-Wanganui Regional Council, 26 October 2006. Manawatu-Wanganui Regional Council file Application 2001-009351. Supporting Papers #2429-2431.

[1025] *Feilding wastewater treatment plant land disposal assessment*, August 2007, at section 6.7. Copy on Manawatu-Wanganui Regional Council file Application 2001-009351. Supporting Papers #2432-2464 at 2458.

> The trials were not continued consistently for a long enough period to determine what is a sustainable hydraulic rate. For much of the time the rates were very low, and while high rates were applied these were not for a full season and some ponding was encountered. Thus it is not clear what hydraulic rate would be sustainable.
>
> The trials did show the demands of managing an irrigation system. While a full scale system would be automated and require less operation, the required continuous operation would impose more stringent demands on overall management and maintenance of the land to ensure that pasture/crop/soil remained healthy.[1026]

It was these operational problems that had encouraged the identification of a fourth option. This was the passing of water (after biomechanical treatment in the treatment plant) through an artificial wetland which would allow some evaporation and some soakage into the ground which would reach and affect the groundwater. This could reduce further the volume of effluent that might have to be discharged into the Oroua River, though was unlikely to completely eliminate the need to discharge to the river. However, while identified, the infiltration/wetland option was not investigated to the same extent as the other options, beyond some general identification of impacts:

> Significant earthworks may be required to form the [wetland] cells, and planting will be extensive. Maintenance planting is needed every few years. The capital cost is likely to be less than for an irrigation system, partly because the land area will be less [than irrigation]. It will also be much simpler and cheaper to operate, and relatively risk-free. The main potential nuisance would be insects and perhaps odour. Acceptability to the community might be high, while the immediate neighbours might prefer other solutions.[1027]

The overall conclusions of the report were:

1. Irrigation on the Council-owned lands provides little environmental benefit.
2. Sustainable irrigation and irrigation which renovates the effluent appear far too costly to be feasible.
3. The most feasible land disposal would utilise infiltration to some degree in order to prevent (or sufficiently reduce) a direct discharge to the Oroua.
4. The three main options which remain are infiltration/wetland, upgrade treatment plant, pump to Palmerston North.
5. The level of investigation on infiltration/wetland is sufficient to select it as the preferred option. On the other hand there may be sound reasons to rule it out now.
6. The implications of the proposed One Plan will need to be addressed.[1028]

In November 2008 Manawatu District Council submitted an application for renewal of the discharge consent for a term of 19 years[1029]. In being lodged during the six month period

[1026] *Feilding wastewater treatment plant land disposal assessment*, August 2007, at section 8.1. Copy on Manawatu-Wanganui Regional Council file Application 2001-009351. Supporting Papers #2432-2464 at 2460.
[1027] *Feilding wastewater treatment plant land disposal assessment*, August 2007, at section 9. Copy on Manawatu-Wanganui Regional Council file Application 2001-009351. Supporting Papers #2432-2464 at 2461-2462.
[1028] *Feilding wastewater treatment plant land disposal assessment*, August 2007, at section 11. Copy on Manawatu-Wanganui Regional Council file Application 2001-009351. Supporting Papers #2432-2464 at 2463-2464.

prior to expiry of the 2005 consent, the District Council imagined that it would allow the 2005 consent to lawfully continue in operation until the new application was decided upon. However, this was not to be. Because the application was for long-term continuation of the existing discharge, albeit with some variation of discharge location, then as forewarned in 2005 it would not comply with the new water quality standards coming into force in July 2009. Indeed, by not complying, the discharge assumed the status of being a prohibited activity in terms of the regional plan rules. As a prohibited activity, the Regional Council was not allowed to accept the application. Accordingly it was immediately returned to the District Council[1030].

When this action was queried[1031] the Regional Council explained:

> This comes as a consequence of careful consideration by Horizons, a series of attempts to work matters through with the District Council, and a direction from the District Council that we undertake our functions.
>
> While your examination of the Water Quality Plan and the One Plan provide useful observations, and you usefully swing weight towards the One Plan, we are unable to escape the conclusion that we are dealing with a prohibited activity for which your client has not seriously attempted to avoid, remedy or mitigate effects. Of equal concern is the fact that your client's application does not analyse the prohibited activity rule, identifies in a number of places that the One Plan is of limited assistance in any decision-making, and that these problematic rules are only identified as ultra vires at the point that it makes an application for an ongoing activity difficult.
>
> I am once again returning your application and cheque, and am entirely comfortable that you seek a declaratory judgment on the matters for which you hold concerns. At the point that the courts have determined the important matters you raise, and should you have your opinions confirmed, we are very happy to receive and process the application.
>
> I think it is only fair and responsible that Horizons Regional Council processes applications in line with the plans which have been comprehensively and publicly developed over a long period of time, and that applicants looking to undertake activities in environments influenced by those plans do the forward planning and consultation that allows them to comply with the provisions of those plans.[1032]

The consequence was that Manawatu District Council ceased to have consent under the RMA to discharge water into the Oroua River from 1 July 2009.

[1029] Application for resource consent (discharge to water), 27 November 2008. Manawatu-Wanganui Regional Council file Application 2008-013460. Supporting Papers #2465-2468.
[1030] Group Manager Regional Planning and Regulatory to MWH New Zealand Ltd, 28 November 2008. Manawatu-Wanganui Regional Council file Application 2008-013460. Supporting Papers #2469.
[1031] Project Manager MWH New Zealand Ltd to Group Manager Regional Planning and Regulatory, 1 December 2008. Manawatu-Wanganui Regional Council file Application 2008-013460. Supporting Papers #2470.
[1032] Group Manager Regional Planning and Regulatory to MWH New Zealand Ltd, 2 December 2008. Manawatu-Wanganui Regional Council file Application 2008-013460. Supporting Papers #2471-2472.

However, two months later, and still before the existing consent was due to expire, the Regional Council had a change of heart. There had been discussions with Manawatu District Council about the Council using the application as a basis for explaining its longer term plans. The Regional Council's Policy and Consents Manger wrote:

> The discharge is not meeting the Manawatu Catchment Water Quality Plan standards, particularly DRP. As such, with the term sought, we cannot accept the application in its current form due to the reasons outlined in … December 2008.
>
> However I see a way in which we can receive the application and progress the matter, as discussed at our meeting of 13 February 2009. Policy 2 of the MCWMQP allows for discharges of a 'temporary' nature. If the application can be amended to reflect a temporary duration, say four years, the application can be accepted under this clause. Then by working through the consent process, better solutions will present themselves allowing for a longer duration.
>
> This may seem as a deviation from our earlier discussions, However I wish to reassure you that it is merely a way to allow us to accept the application thereby ensuring a transparent process.[1033]

The Regional Council's Chief Executive also got involved, explaining to the District Council's Chief Executive:

> I have a very strong desire to work with Manawatu District Council on solutions for effluent discharge which are sustainable, both environmentally and economically. Unfortunately for whatever reason Horizons has been omitted from the issues and options consideration that has led to the proposal your Council has confirmed. Had we been party to those discussions / investigations, we would have highlighted the legal and environmental issues that would cause us concern.
>
> Despite these legal planning and environmental obstacles, I am willing to entertain doing so simply to get these matters in the public domain. This approach is questionable in law and counter to good practice. Of concern to me is the potential cost this process may incur to you as applicant. There is a risk that the matter progresses a considerable way through the process only to be rejected on the grounds the application is a prohibited activity. I have expressed this risk to you and your staff on several occasions. Notwithstanding the risk, you clearly still wish to proceed, and in recognition of that desire I am willing to process the application. I maintain, however, that an application for a short (temporary) duration would be the most constructive and legal way forward, and ask that you give this option careful consideration.[1034]

Notwithstanding the high risk that its application might be rejected as being ultra vires the Manawatu Catchment Water Quality Regional Plan, Manawatu District Council chose to stick with its application for a 19 year term. In turn, notwithstanding a risk that the Regional Plan's rule making a long term discharge a prohibited activity might itself be challenged as being ultra vires, the Regional Council agreed to accept the application:

[1033] Policy and Consents Manager to Assets Group Manager Manawatu District Council, 11 March 2008. Manawatu-Wanganui Regional Council file Application 2008-013460. Supporting Papers #2473.

[1034] Chief Executive to Chief Executive Manawatu District Council, 1 April 2009. Manawatu-Wanganui Regional Council file Application 2008-013460. Supporting Papers #2474-2475.

> We have lodged your application as at 28 November 2008, and confirm that pursuant to Section 124 you may continue to operate under the existing consent until a decision on his application is made.[1035]

The discharge application and other applications associated with running the sewage treatment plant were publicly notified later in April 2009.

Te Marae Komiti o Kauwhata Trust lodged an objection, claiming that they had been sidelined in the District Council's consultation processes, that Kauwhata values in the Oroua River had not been respected, and that to grant the applications would be contrary to the provisions of the RMA[1036].

Tanenuiarangi Manawatu Incorporated, the Rangitane iwi authority, also objected on the grounds that Rangitane mana whenua rights were being ignored, that it would be contrary to Section 6(e) RMA to allow a discharge into the Oroua River, and that no mitigation, avoidance or remedy was being offered by the applicant[1037]. However, this objection was incorrectly sent to the District Council rather than to the Regional Council.

In May 2009 Manawatu District Council realised that the river discharge and sludge disposal to land applications needed to be amended and re-notified. Those particular applications were therefore placed on hold. When amended applications were received, the Regional Council's Policy and Consents Manger sought clarification:

> Many aspects of the resource consent application now differ from the application as previously notified on 18-23 April 2009. I seek confirmation as to how your client wishes to proceed with regards to the notification of the resource consent application, in particular:
>
> a. Whether the previous applications as notified are being withdrawn and the July 2009 applications are to be notified as new applications, replacing the previously notified applications. This is perhaps the simplest option from a notification perspective; or
> b. Whether these applications are partial replacements, in which case the public notification will need to reference precisely the changes to the previously notified applications and outline which the new applications are.[1038]

However, the applications as lodged in November 2008 and publicly notified in April 2009 were the only thing making the discharge into the Oroua River legally permissible by virtue of the carryover provisions of Section 124 RMA. The District Council got around the mire it

[1035] Consents Administrator to Manawatu District Council, 7 April 2009. Manawatu-Wanganui Regional Council file Application 2008-013460. Supporting Papers #2476.
[1036] Objection by Te Marae Komiti o Kauwhata Trust, undated (received 5 May 2009). Manawatu-Wanganui Regional Council file Application 2008-013460. Supporting Papers #2477-2483.
[1037] Environmental Officer Tanenuiarangi o Manawatu Inc to Manawatu District Council, 5 May 2009. Manawatu-Wanganui Regional Council file Application 2008-013460. Supporting Papers #2484-2488.
[1038] Policy and Consents Manager to Manawatu District Council, 31 July 2009. Manawatu-Wanganui Regional Council file Application 2008-013460. Supporting Papers #2489.

was landing itself in by lodging completely fresh applications, not proceeding with the November 2008 applications, and not withdrawing them either. The effect was that the objections that had been lodged had become worthless and were never going to be considered.

The fresh applications were made in November 2009[1039]. Yet again a 19 year term was sought. The applications explained that upgrades were being made to the treatment plant which would result in improved effluent quality and reduce volumes being discharged into the Oroua River. Even so, the discharge (certainly in the early years of the consent) would not meet the standards in the Manawatu Catchment Water Quality Regional Plan, and the District Council sought a dispensation from the standards because of "exceptional circumstances" and an absence of practical alternatives, something allowed by the Regional Plan. If this was accepted the discharge would be a non-complying activity rather than a prohibited activity. There was case law allowing an application to be accepted and processed rather than determining at the beginning of the application consideration process whether it was or was not a prohibited activity[1040]. The Regional Council therefore accepted the proposed discharge as a non-complying activity, and in doing so accepted the application for processing, with the proviso that later in the consideration process it might be found to be a prohibited activity. The likely effects on the environment were more than minor, and full public notification was required[1041].

The applications were publicly notified, and the submitters to the 2008 application were told that they would have to lodge fresh submissions on the new applications[1042]. Among the 31 submissions received were objections from five Maori organisations and two individuals.

Te Marae Komiti o Kauwhata Trust provided an historical perspective setting out the changes that had occurred to the Oroua River, resulting in its present-day degraded state, and repeated the concerns they had expressed in 2008 about an absence of consultation, a failure to protect Ngati Kauwhata values with respect to the river, and a failure to comply with the RMA[1043].

[1039] Application for resource consent (discharge to water), 17 November 2009. Manawatu-Wanganui Regional Water Board file Application 2009-013697. Supporting Papers #2490-2492.
[1040] Court of Appeal decision on *Coromandel Watchdog of Hauraki Inc v. Chief Executive of the Ministry of Economic Development*, 2008.
[1041] Decision on notification, 20 November 2009. Manawatu-Wanganui Regional Water Board file Application 2009-013697. Supporting Papers #2493-2499.
[1042] Senior Consents Planner to All 2008 submitters, 25 November 2009. Manawatu-Wanganui Regional Water Board file Application 2009-013697. Supporting Papers #2500-2502.
[1043] Objection by Te Marae Komiti o Kauwhata Trust, 13 December 2009. Manawatu-Wanganui Regional Water Board file Application 2009-013697. Supporting Papers #2503-2518.

Tanenuiarangi Manawatu Incorporated (Rangitane iwi authority) objected that alternatives to discharge to the Oroua River had not been fully explored, that impacts on the receiving environment were increasing rather than declining, and that the applications did not meet the standards set out in the RMA and the Regional Plans:

> This application is an outmoded and unwanted activity on our cultural resource, and MDC have been too flippant in not considering land-based disposal options. This application does not meet any of the regional or national directives or guidelines on waste management or minimisation, and this application and consultative process is flawed in that [Rangitane o Manawatu] has not been included at the appropriate level of discussions over this activity.[1044]

Taiao Raukawa, the Ngati Raukawa Environmental Resource Unit, objected to any discharges to waterways that altered their mauri in general, and to the discharge of human effluent into the Oroua River in particular. They expressed concern about the long-running nature of the series of 'interim' consents granted for the Feilding treatment plant discharge[1045].

Nga Hapu o Himatangi (Ngati Rakau, Ngati Turanga and Ngati Teau) objected that "discharge as per this application, added to farm runoff, treated industrial effluent (wastewater), sediment, and river modification (stopbanking) will give us our river of shame". They also referred to environmental and cultural grounds for objection[1046].

Nga Kaitiaki o Ngati Kauwhata Inc, in a submission prepared for them by Rauhuia Environmental Services, objected that the discharge was contrary to tikanga Maori, that the iwi could not compromise on protection of the mauri of the waterway, that the Oroua River was integral to the cultural wellbeing of Ngati Kauwhata, and that continuing degradation of the waterway was unacceptable. Consultation had been inadequate, and should have included the commissioning of a cultural impact assessment[1047].

Peter Te Rangi of Rangitane objected to further pollution of an already polluted river, as well as on cultural and social ecological grounds[1048].

[1044] Submission by Tanenuiarangi o Manawatu Inc, 6 January 2010. Manawatu-Wanganui Regional Water Board file Application 2009-013697. Supporting Papers #2519-2521.
[1045] Submission by Taiao Raukawa – Environmental Resource Unit, 13 January 2010. Manawatu-Wanganui Regional Water Board file Application 2009-013697. Supporting Papers #2522-2523.
[1046] Submission by Nga Hapu o Himatangi, 13 January 2010. Manawatu-Wanganui Regional Water Board file Application 2009-013697. Supporting Papers #2524-2525.
[1047] Submission by Nga Kaitiaki o Ngati Kauwhata Inc, 14 January 2010. Manawatu-Wanganui Regional Water Board file Application 2009-013697. Supporting Papers #2526-2528.
[1048] Submission by Peter Te Rangi, undated (received 11 January 2010). Manawatu-Wanganui Regional Water Board file Application 2009-013697. Supporting Papers #2529-2530.

Charles Rudd objected that discharge to the Oroua River would add to the pollution of the Manawatu River, and would create further accumulative and compounding effects to the food chain and to flora and fauna[1049].

The Regional Council seems to have then sat on the applications for six months, following receipt of submissions, while awaiting further information from Manawatu District Council. Most of this further information was about how disposal of effluent to land would operate. In July 2010 Manawatu District Council was written to about what the Regional Council considered to be an unsatisfactory state of affairs;

> Prior to the current applications being lodged Horizons Regional Council had communicated to Manawatu District Council the need to apply for consent that will meet the standards in the Operative and Proposed plans. It is clear to us also that this was the intention of the previous consent which was granted in 2005 for four years, specifically to ensure that the standards which came into force in 2009 were not breached. The 2005 consent had specific conditions requiring investigation of alternative disposal methods.
>
> Despite these clear signals, we are faced with an application which largely continues with the status quo. Two years have passed since the existing consents expired, and it is our view that only recently has the true and full nature of the activity been described. This is especially true of the discharge to water component during low flows. Notwithstanding this, there remains uncertainty of the land application part of the proposal, the details of which are still yet to be finalised.
>
> Given the time which has elapsed, and due to the uncertainty that remains, the applications must be progressed to the next stage, which in our view is a hearing. We do not share the view that a pre-hearing meeting is the next stage, as it is clear we are in two very different places as to how the applications should be determined. This is mainly over the legal argument that exists around Rule 6 of the Manawatu Catchment Water Quality Plan, but also, as discussed below, on whether the effects are minor and whether there are any practical alternatives.
>
> Further to this point, staff from both organisations have been working in a mostly constructive manner. However after completing our initial assessment of the applications now that all outstanding information has been provided, it is our view that the applications do not meet the overall purpose of the Act and that there are practical alternatives to achieve the purpose of the Act in the long term.

The Regional Council signalled that it would be running a comprehensive case at any hearings arguing that the purpose of the Act would not be achieved, that the application was contrary to Plan policies, that the proposal was a prohibited activity, and that exceptional

[1049] Submission by Charles Rudd, 10 January 2010. Manawatu-Wanganui Regional Water Board file Application 2009-013697. Supporting Papers #2531-2532.

circumstances allowing the application to be treated as a non-complying activity were not proved[1050].

This ultimatum from the Regional Council was followed by a meeting with council members of Manawatu District Council, where the legal and technical risks were fully laid out. It must have been a tense meeting, but one that was salutary for the District Councillors. At the conclusion, according to the Regional Council's report on the meeting:

> [The Mayor] then stated quite categorically to the Councillors that they need a once and for all solution. He did not want a $6m band-aid job, then 3 years later another $6m band-aid job. If they needed the "Rolls Royce" version, then so be it. He said they needed to go to land, which he admitted he hadn't previously understood. He said they needed to be very mindful of community and submitter opinion, and could not be seen to be going against the tide. When he canvassed the rest of the Councillors for their views, there was consensus for his view. [The Mayor] then said to [the District Council's Assets Group Manager] (in an apologetic tone) that he appreciated that this stance was different to their previous stance, and that there would be no trouble at the financial planning end for the shift.[1051]

The meeting at the political level does seem to have cleared the air and moved matters along. What that meant, however, was that the 2009 applications were no longer fit for purpose. They were put on hold, with no progress being made towards holding a hearing, while the District Council examined more thoroughly the alternative of discharge to land. The Regional Council took no enforcement action on the continuing sub-standard state of the discharge into the Oroua River.

The further work being done by Manawatu District Council dragged on into the second half of 2011, by which time the Regional Council was getting increasingly restless about what it saw as an unsatisfactory situation, because "the discharge to the Oroua River has the single most largest impact in terms of change to the river system of any discharge in Manawatu, and levels of ammonia being released ... are directly toxic to aquatic life"[1052]. A series of exchanges between the Regional Council and the District Council reflected the Regional Council's unease[1053].

[1050] Group Manager Regional Planning and Regulatory to Assets Group Manger Manawatu District Council, 21 July 2010. Manawatu-Wanganui Regional Water Board file Application 2009-013697. Supporting Papers #2533-2534.

[1051] Notes of meeting by Coordinator Plan Implementation, 3 August 2010. Manawatu-Wanganui Regional Water Board file Application 2009-013697. Supporting Papers #2535.

[1052] Email Group Manager Regional Planning and Regulatory to Chief Executive Manawatu District Council, 17 June 2011. Manawatu-Wanganui Regional Water Board file Application 2009-013697. Supporting Papers #2536-2537.

[1053] Email Group Manager Regional Planning and Regulatory to Chief Executive Manawatu District Council, 17 June 2011; email Group Manager Regional Planning and Regulatory to Chief Executive Manawatu District Council, 21 June 2011; Group Manager Regional Planning and Regulatory to Chief Executive Manawatu District Council, 21 June 2011; Chairman to Mayor of Manawatu District, 6 September 2011; and Mayor of Manawatu

It must have seemed like a relief for the Regional Council when fresh applications were received from Manawatu District Council in December 2011[1054]. As had occurred previously, the 2009 submissions were rendered worthless, yet the 2008 and 2009 applications were not withdrawn.

Again the applications were publicly notified, and again there were submissions. 35 submissions were made, three of them from Maori organisations,

Te Marae Komiti o Ngati Kauwhata filed the same objection as it had done in December 2009.

Nga Kaitiaki o Ngati Kauwhata objected to "any discharge whatsoever into the Oroua River, which was culturally and environmentally offensive to iwi Maori, though indicated that they were prepared to work with Manawatu District Council on long term sustainable methods to achieve this[1055].

Taiao Raukawa Environmental Trust supported Ngati Kauwhata and opposed any discharge into the river, wanting meaningful consultation, and long term effective and sustainable actions to get rid of all discharges[1056].

A pre-hearing meeting of the Regional Council, the applicant and the submitters was held in July 2012, attended by representatives of all three Maori organisations. This meeting seemed to be more concerned with speakers stating their positions and improving their overall understanding rather than with furthering the process and getting agreement on how to simplify the hearing. Perhaps the most interesting piece of information was that the District Council had commissioned a cultural impact assessment from Nga Kaitiaki o Ngati Kauwhata, which was being prepared for them by Rauhuia Environmental Services. After the meeting the Regional Council provided a long list of items that it considered further information was needed about before the hearing could be scheduled; one of the items was the Cultural Impact Assessment report.

District to Chairperson, 3 October 2011. Manawatu-Wanganui Regional Water Board file Application 2009-013697. Supporting Papers #2536-2537, 2538, 2539, 2540-2541 and 2542-2543.

[1054] Application for resource consent, 16 December 2011. Manawatu-Wanganui Regional Council file Application 2012-015276. Supporting Papers #2544-2547.

[1055] Submission by Nga Kaitiaki o Ngati Kauwhata Inc, 22 March 2012. Manawatu-Wanganui Regional Council file Application 2012-015276. Supporting Papers #2548-2549.

[1056] Submission by Taiao Raukawa Environmental Trust, 28 March 2012. Manawatu-Wanganui Regional Council file Application 2012-015276. Supporting Papers #2550-2551.

A hearing was scheduled for February 2013. However, one month beforehand, it became apparent that Manawatu District Council's plans were still a work in progress. The applications had been for long term discharge to land, though the area of land was too small to accept all the treatment plant's effluent at times of the year when the Oroua River had low flows, and discharge into the river at times of low flow had the most severe environmental effects. So the District Council was negotiating to acquire more land, which if successful would change the nature of the applications that had been received and publicly notified. These potential changes were slowing down the supply of additional information to the Regional Council. The proposed hearing in February had to be deferred and a new date in April 2013 was set.

As one example of this slowdown, the Cultural Impact Assessment report was completed in November 2012, though not forwarded to Manawatu-Wanganui Regional Council until March 2013[1057]. The report explained the central importance of the Oroua River to Ngati Kauwhata, and how the river's wellbeing was an integral part of the people's own wellbeing and mana. Yet since at least the 1940s Ngati Kauwhata had been taught by their elders to avoid the river because it had become so polluted. Having become disconnected from the river in that way, the people's own personal mana had suffered. A questionnaire circulated among Ngati Kauwhata members produced 63 responses. All without exception stated that "the continued discharge of wastewater containing human bodily wastes, no matter how minute, to the Oroua River will always be offensive". For them to agree to continued discharge would be to "continue to degrade the man and the mauri" of the river, reduce their own mana which is derived from the river, and negate their kaitiakitanga responsibilities. It is perhaps worthy of note that none of the responses to the questionnaire came from persons identifiable as being involved with Te Marae Komiti o Ngati Kauwhata; the reasons for this are not known.

One day after dispatching the Cultural Impact Assessment report to the Regional Council, Manawatu District Council advised that, as the purchase of additional land was likely to be successful, it would be preparing new applications and a new assessment of environmental effects report[1058]. The hearing was abandoned.

[1057] Cultural Impact Assessment report, 9 November 2012, and Consents Administrator to All submitters (advising the CIA report had been received on 18 March 2013), 19 March 2013. Manawatu-Wanganui Regional Council file Application 2012-015276. Supporting Papers #2552-2608 and 2609.
[1058] Support Services and Environment Group Manager Manawatu District Council to Manawatu-Wanganui Regional Council, 19 March 2013. Manawatu-Wanganui Regional Council file Application 2012-015276. Supporting Papers # 2610-2611.

It should be noted that 2012 marked the centenary of the prosecution of the Oroua River flax millers and the introduction to Parliament of the Pollution of Waters Bill in 1912, referred to earlier in this report. The type of pollution may have changed, but its consequences for the river had remained the same.

Fresh applications were made by Manawatu District Council in October 2013[1059]. Again this meant that as had occurred previously, the 2012 submissions were rendered worthless, yet the 2008, 2009 and 2011 applications were not withdrawn. The whole process was getting more complex and administratively messy.

The applications were for a suite of consents to operate the treatment plant. All treated effluent would be discharged to the Oroua River for the first three years while the plant upgrade was constructed. Once the expanded plant was operational the principal method of discharge of treated effluent and digested sludge would be to land, and discharge to the Oroua River would be limited to two circumstances:

- When the Oroua River was running at half-median flow or more (defined as 3.49 m³/sec as measured at Kawa Wools site), and any discharge of up to 9,500 m³/day could not exceed 2% of the river flow.
- When discharge to land was not possible, there could be a discharge of up to 25,000 m³/day to the river even when it was running at less than half-median; this was effectively the emergency back-stop option to cater for what were referred to as 'outlier' circumstances.

The overall intent was to minimise discharges to the Oroua River during low flows. The consents for operation of the upgraded plant were sought for a term of 35 years.

The executive summary in the assessment of environmental effects document explained that the adverse effects on the environment of the treatment plant's operation had been "recognised for some time". Alternatives to discharge to the river had been examined, though "these studies have been complicated by changing community expectations about surface water (river) quality and the resulting and ongoing changes to legislation since the investigations began".

> Changes have markedly improved the quality of wastewater discharged, but it is now considered that further spending on WWTP processes will not achieve the improvements to the quality required to allow continued unlimited discharge to the Oroua River.

[1059] Application for resource consent, 17 October 2013, attached to Infrastructure Group Manager Manawatu District Council to Consents Planner, 18 October 2013. Manawatu-Wanganui Regional Council file Application 2013-016413. Supporting Papers #2612-2630.

The adverse effects on the river are more significant at times of low river flows (summer), which is also when recreational use of the river typically occurs. Conversely, during rainfall, when the highest volumes of treated wastewater are discharged, the river is also high and is not unduly affected by the discharge of treated wastewater.

Accordingly, MDC has purchased an additional 174 ha of land (two farms) adjacent to the WWTP to allow the land application of secondary treated wastewater, particularly at times when the river is experiencing low flows. This will enable a dual discharge regime to be adopted and will address the environmental and cultural concerns of the community.

Thus it is proposed to:

- Divert a proportion of the treated wastewater discharge from the river to surrounding land, particularly when the river is below half median flow and weather conditions are favourable.
- Provide 2 x 25,000 m³ on-site storage ponds for treated wastewater.
- Complete the programme of upgrades to the WWTP currently in progress.

Note: There is a view in the wider community hat all wastewater should be disposed to land. It has been estimated that to remove 90% of all wastewater from the river at all flows will require 680 ha of irrigated land (970 ha gross) and cost approximately $51 million (net present value over 20 years). In practical terms this option is not economically sustainable, is not a responsible use of MDC ratepayer money or of high quality soils, and is therefore not a viable option.

The proposal contained in these applications represents what MDC considers ids the best practicable option (BPO).[1060]

On the subject of consultation, the executive summary stated:

MDC has been acutely aware of the interest in this application and its forerunners by tangata whenua, the wider community, key stakeholders and various statutory bodies.

Accordingly, MDC has engaged in and continues to engage with a variety of different parties. Where possible the proposal has been designed and/or modified to take into account the various concerns raised.

However the polarised nature of the support and opposition to this proposal, where one group supports the land component of the dual discharge and the other supports the river component, places the applicant in an untenable position. It cannot satisfy everyone.

To address this dichotomy, the applicant has made considerable effort to identify the best practicable option which combines both land and river discharge, with the objective of achieving the best possible outcome for all parts of the environment, but particularly the quality of the Oroua River (and thus the lower Manawatu River), thus partially satisfying the demands of all interest groups.[1061]

[1060] Executive summary of Assessment of Environmental Effects report, June 2013, pages ii-iii, attached to Infrastructure Group Manager Manawatu District Council to Consents Planner, 18 October 2013. Manawatu-Wanganui Regional Council file Application 2013-016413. Supporting Papers #2612-2630 at 2620-2621.

[1061] Executive summary of Assessment of Environmental Effects report, June 2013, pages vii-viii, attached to Infrastructure Group Manager Manawatu District Council to Consents Planner, 18 October 2013. Manawatu-Wanganui Regional Council file Application 2013-016413. Supporting Papers #2612-2630 at 2625-2626.

The summary was silent on how partial satisfaction for all and complete satisfaction for none can be said to achieve the purpose of the RMA of promoting sustainable management.

By now the potential submitters could be forgiven for suffering from submission fatigue or disillusionment, or both. This was not a problem for the Regional Council or the District Council and their staffs and consultants, who could have no empathy for or experience of the many difficulties that voluntary work to protect the environment created.

When the applications were publicly notified in April 2014, there were 24 submissions, the only one from a Maori organisation being from Nga Kaitiaki o Ngati Kauwhata (a late submission that was accepted by the applicant and the regulatory organisations). Nga Kaitiaki remained "totally opposed to any discharges into our traditional and iconic awa or waterway known as the Oroua River". Continued pollution of the awa would mean cultural and environmental losses, inability to practice kaitiakitanga, loss of mana, impact on mauri and wairua of the waters of the river, and loss of credibility and respect for the iwi[1062].

Additionally Ngati Whakatere subsequently sought and were granted speaking rights at the hearings. They claimed an interest because of the impact of the treatment plant's discharge downstream, and because "we are the final recipients of all the combined discharges to the Manawatu River and its tributaries"[1063].

A hearing panel heard the applications at a hearing in August 2014. For Nga Kaitiaki o Ngati Kauwhata written submissions were made by Dennis Emery and Mason Durie. Dennis Emery provided a Maori world view about the importance of the Oroua River to Ngati Kauwhata, and how the only truly sustainable solution from that perspective was to cease all discharges to the river and work instead on seeking other alternatives including discharge to land. He referred to a goal of the Manawatu River Leaders Accord to return the Manawatu catchment waterways to a healthy condition that was suitable for recreation and was in balance with social, cultural and economic needs of the community[1064]. Mason Durie described how the Oroua River had been a "vital marker of the Ngati Kauwhata identity". The river was integral to history, health, culture and economy for the iwi. Equally important

[1062] Submission by Nga Kaitiaki o Ngati Kauwhata Inc, 30 May 2014. Manawatu-Wanganui Regional Council file Application 2013-016413. Supporting Papers #2631-2633.
[1063] Te Roopu Taiao o Ngati Whakatere to Hearing Panel chairperson, 4 August 2014. Manawatu-Wanganui Regional Council file Application 2013-016413. Supporting Papers #2634-2635.
[1064] Statement of evidence of Dennis Bruce Emery, 25 August 2014. Manawatu-Wanganui Regional Council file Application 2013-016413. Supporting Papers #2636-2642.

was ensuring its significance for the future. There was no wish to restrain development, but nor did the iwi wish to see any fundamental shift in the iwi-river relationship[1065].

The Hearing Panel issued its decision to grant the consents in January 2015[1066]. A copy of the decision only became available at a very late stage in the preparation of this report, and it has not been possible to analyse its details. The term of the consents was cut back to 10 years from the 35 years that were sought.

Both Nga Kaitiaki o Ngati Kauwhata and Te Roopu Taiao o Ngati Whakatere were among the eight parties that appealed the decision to the Environment Court. Nga Kaitiaki's grounds of appeal were that Maori kaupapa had not been fully recognised in the decision, that Ngati Kauwhata would be put in a disadvantageous position relative to settlements by the Crown with other iwi, and that economic and financial consideration had been given excessive weight over the cultural and environmental aspirations of Ngati Kauwhata[1067]. Te Roopu Taiao's grounds of appeal were that the decision was contrary to the RMA and operative planning documents, that discharge to the river was culturally offensive and unacceptable to Ngati Whakatere, that environmental effects would be more than minor, that there would be losses of habitat, biodiversity and ecological capital, and that consultation had been lacking[1068].

The Regional Council file covering the period during which the appeals were heard and decided upon was not available for perusal during the research for this report. The Environment Court's decision shows that the appeals were heard in February 2016, and the decision, an interim one, was issued in March 2016[1069]. Consent was confirmed, with the term of ten years unchanged, though with variations to the wording of the conditions.

Equally as interesting as the granting of the consents were some remarks made by the Court about the longstanding and sorry process leading up to that stage:

> While we accept that the case involves many complex and inter-related matters, the Court is seriously concerned at the time it has taken to bring this matter to application. We consider that the use of Section 124 to enable wastewater treatment plants to

[1065] Statement of evidence of Mason Durie, 25 August 2014. Manawatu-Wanganui Regional Council file Application 2013-016413. Supporting Papers #2643-2649.
[1066] Decision of Hearing Commissioners, 20 January 2015. Supporting Papers #2697-2792.
[1067] Notice of appeal, 10 February 2015, attached to Chairperson Nga Kaitiaki o Ngati Kauwhata Inc to Chief Executive Officer, 12 February 2015. Manawatu-Wanganui Regional Council file Application 2013-016413. Supporting Papers #2650-2654.
[1068] Notice of appeal by Te Roopu Taiao o Ngati Whakatere, 23 February 2015. Manawatu-Wanganui Regional Council file Application 2013-016413. Supporting Papers #2655-2659.
[1069] Decision of the Environment Court, 22 March 2016, Decision No. [2016] NZEnvC 53. Available on nzlii website, www.nzlii.org/cases/NZEnvC/

> continue operating for long periods under outdated management regimes (as has happened both at Feilding and Shannon) is an abuse of RMA which brings no credit on either the territorial authorities involved or the Regional Council. (Paragraph [14])
>
> The Applicant acknowledged in evidence that the WWTP has had a varied record of compliance and does not dispute the effects that the WWTP has had in the past. However the Applicant provided no indication of the extent of non-compliances that had occurred. (Paragraph [25])
>
> While there has clearly been significant non-compliance it has been mainly limited to nitrogen and we recognise that for a long time the plant was simply incapable of meeting the consent limits. However we would have expected that with the new aeration systems commissioned in both aerated lagoons, there would have been opportunities to reduce both ammonia and soluble inorganic nitrogen (SIN) levels using temporary controls to manage air supply to both nitrify and denitrify, even if that did not fully meet consent limits. This is clearly an operational issue for the Applicant, but failure to take steps that could have reduced or eliminated non-compliance once opportunities existed raises further questions in our minds as to the reliance we can place on the Applicant's commitment and ability to reliably and consistently meet consent limits in the future. (Paragraph [33])
>
> With a history of upgrading works not always meeting expectations and other factors outlined in this decision, we consider there is a significant level of uncertainty that the predicted nitrogen limits will be consistently met in the treated wastewater. We consider there could be at least a moderate risk that compliance will not be consistently achieved over a 10-year consent term as granted by the Regional Council and a somewhat higher risk if the term was longer. If that risk came to fruition we would not want there to be a further long period of investigations, design, construction and commissioning of additional treatment, during which compliance was not achieved on an ongoing basis. (Paragraph [54])
>
> From the way the evidence was presented, our site visit, the information included in the AEE and other documentation provided to the Court, it appears that the WWTP was and is being designed over time as a series of individual components each intended to meet a specific purpose. It appears that not every aspect was thought through as part of an overall integrated design concept, such as the availability of carbon and desludging the anaerobic lagoon, to name but two aspects. While that is the Applicant's choice, it can give rise to issues of incompatibility, inefficiency and increased risk, including a heightened risk of non-compliance at times. That is a concern the Court must take into account. (Paragraph [58])

The Environment Court's consideration was primarily focussed on the proposed discharge to the Oroua River once the upgrade of the treatment plant had been completed, as that was the matter that had not been able to be resolved during pre-hearing mediation. It was conscious that it had to assess Manawatu District Council argument that some discharge of treated effluent was the best practicable option and therefore had to be allowed, against the impact of the One Plan's Policy 5-11 which related to the removal of all treated human wastewater from waterways. It was mollified by the District Council's planning consultant stating that complete removal from the waterway was a longer term objective, and the

Council "has a will to drive in that direction – to do as well as it can"; this could most likely be achieved by acquiring and using more land for irrigation. The Court believed that the Oroua River Declaration signed between Ngati Kauwhata and Manawatu District Council was a concrete expression of this longer term direction[1070].

The Court had to address the grounds of appeal stated by Nga Kaitiaki o Ngati Kauwhata that the consent given by the hearing panel had failed to provide for complete removal of treated effluent from the Oroua River. In the following excerpts it stated:

> [125] It is clear … that there have been serious adverse effects on the mauri of the River since the discharge started approximately 50 years ago. From a Tangata Whenua perspective the effects are unacceptable. While Ngati Kauwhata is willing to work with the Council to try to find a workable solution for both parties, it considers that there is a limit to how long resolution should take and indicated that should be 10 years….
>
> [133] There is no obvious way in which the Applicant can satisfy the aspirations of Ngati Kauwhata and Ngati Whakatere relating to mauri, at least in the short term and perhaps not fully in the longer term. We see the agreement reached between Ngati Kauwhata and the Council through the Oroua River Declaration as a major positive step towards finding a way forward that will satisfy the interests of both organisations through a collaborative approach….
>
> [135] While the application before us goes some way to satisfying Policy 5-11, it falls well short of what Ngati Kauwhata considers necessary to address its concerns about effects on the mauri of the River….
>
> [138] We are satisfied that the Applicant has met the requirements of the Act in terms of its consideration of alternative methods of discharge generally, and has given some consideration to methods that might be expected to go some way towards meeting Tangata Whenua expectations as to ultimate removal of direct discharge from the River. However we consider this is an important area where the Applicant needs to do ongoing work.
>
> [139] The Applicant should consult with relevant parties to develop an appropriate condition for consideration by the Court in order to provide a comprehensive understanding of the effects of these current discharges and assessment of alternatives to address the requirements of Policy 5-11 of the One Plan on termination of these current consents and application for any replacement consents. The work should take into account the findings of the irrigation review report required by a new condition requiring the preparation of a future directions report and separate consideration of additional storage, wetland and overland flow and any other alternatives that could be considered to meet the requirements of the Policy. The work should be undertaken in consultation with Ngati Kauwhata and opportunities should be explored to provide for their direct involvement. An assessment of affordability of alternatives must be included….

[1070] Decision of the Environment Court, 22 March 2016, at paragraphs [89] and [94] – [96], Decision No. [2016] NZEnvC 53. Available on nzlii website, www.nzlii.org/cases/NZEnvC/

> [149] We were greatly encouraged by the commitment by the Council and Ngati Kauwhata in the Oroua River Declaration to develop a strategic plan for the preservation and restoration of the River and to foster an integrated system of management that reflects cultural, scientific and ecological measures. We observe that the Regional Council will also have a significant contribution to make and it would be beneficial if it also participated in the process, although we acknowledge that the Court has no authority to impose such a requirement.

However, the Court added a warning about unrealistic expectations:

> [150] In terms of these consents, we have clearly signalled our view to the parties that a cooperative and well informed approach offers the best opportunity to determine the most appropriate long-term solution for Feilding. We also consider it important that all parties have realistic expectations of what might be possible to avoid later frustrations. In our view complete avoidance of the treated wastewater discharges to surface water is unlikely to be a realistic expectation for practical, affordability and overall sustainability reasons. Similarly we see there being very limited potential for significant further step change improvements in treatment plant performance although there may be some potential to further reduction nitrogen concentrations in the treated wastewater.

The Court explained in its decision that it had initially thought of allowing a consent term of longer than 10 years. However, by the conclusion of the appeal hearing it had altered its initial views, and decided that a term of 10 years was appropriate in the circumstances. One of the reasons it gave for this change of heart was the Ngati Kauwhata view that treatment work should continue to improve, to the extent that no discharge to the river was required:

> [166] [A compelling argument] in our view is the position of Ngati Kauwhata, who hold themselves responsible for failing to maintain the mauri of the River. While it reluctantly accepts current realities and is prepared to wait a further 10 years, it considers that should be long enough to find a solution. Its position in this matter is one to which considerable weight must be attached having regard to the provisions of Section 6(e) RMA. We note the consistency of Ngati Kauwhata's position with the third factor we have identified, namely Policy 5-11 of One Plan….

> [184] … There are no obvious options open to the Applicant to avoid adverse effects on the mauri of the river or to mitigate them in a way that will satisfy Tangata Whenua concerns. This is a significant shortcoming and while we accept it is largely beyond the Applicant's control at the present time, it again leads us firmly in the direction of a shorter-term consent.

The Environment Court left it to the applicant to draft up the conditions to incorporate the views expressed by the Court in its interim decision. It then commented on the drafted up conditions in July 2016[1071], before issuing a final decision (which included a final version of the consent conditions) in November 2016[1072].

[1071] Decision of the Environment Court, 14 July 2016, Decision No. [2016] NZEnvC 132. Available on nzlii website, www.nzlii.org/cases/NZEnvC/
[1072] Decision of the Environment Court, 24 November 2016, Decision No. [2016] NZEnvC 230. Available on nzlii website, www.nzlii.org/cases/NZEnvC/

The moist recent consent compliance monitoring report for the Feilding treatment plant discharges was completed in January 2019. This was only shortly after irrigation to land had commenced in November 2018. The report found that there was "significant non-compliance" with the discharge to the Oroua River, which it summarised as:

- Failure to report non-compliances.
- Exceeding consented discharge quality limits.
- Breach of allowable exceedances in soluble inorganic nitrogen, E. coli, and ammoniacal nitrogen.
- Failure to provide Performance Report and Operational Management Plan within required timeframes.[1073]

There is no indication on the Regional Council file that this state of affairs was made publicly known to tangata whenua or to the wider community.

5.9.1.3 Shannon sewage treatment plant discharge

The discharge permit issued by the Pollution Advisory Council in June 1970, shortly before its activities were wrapped into the administrative structures set out in the Water and Soil Conservation Act 1967, continued in existence throughout the era of the Regional Water Board and into the Resource Management Act era. In 1991 the law was changed to require that all existing authorisations which had no expiry date had a dispensation to continue for a further ten years until 1 July 2001, from which date resource consents (discharge permits) under the RMA were required in order to be able to legally discharge to natural water. This meant that the conditions set out in the Pollution Advisory Council's permit were the only requirements that Horowhenua County (later District) Council had to meet for the 31 year period from 1970 to 2001. There was no obligation to upgrade discharge quality or meet more modern standards during that period.

No steps were taken by Horowhenua District Council to obtain a resource consent effective from 1 July 2001 onwards until March 2001, when it sent in an application for consent to the Manawatu-Wanganui Regional Council. It was able to delay any action until then because a provision of the Resource Management Act (Section 124(2)(a)) stated that if a new application was made within the six month period immediately prior to a consent expiring, the old consent could run on and the discharge could continue unchanged until the new consent application had been decided upon.

The 1970 permit's conditions, still the only regulatory requirements applying 30 years later, were:

[1073] Compliance report, Feilding wastewater treatment plant, for the period 1 July 2017 to 1 December 2108, January 2019, attached to Consents Monitoring Officer to Manawatu District Council, 13 February 2019. Manawatu-Wanganui Regional Council file Application 2013-016413. Supporting Papers #2660-2696.

1. [It was] to discharge sewage treatment plant effluent into Stansell's Drain …

2. The classification(s) of the receiving waters is Class D.

3. The Council's assessment of the effluent quality and quantity necessary to maintain this water quality in company with other adjacent discharges is:

   The two-stage oxidation treatment plant is to be continuously operated and adequately maintained at all times to produce a stable effluent. Any industrial wastes proposed to be treated will require an extension to the pond system proportional to the pollution loading of these wastes.

   Primary pond loading not to exceed 75 lbs BOD/acre. Secondary pond not less than 20 days retention. If the waste load increases, a further permit application is to be made.

4. For the purpose of Regulation 16(2), the terms and conditions of this permit will be complied with if either (a) the quality of the receiving water(s) is/are maintained at equal or better than the quality required by the classification(s) at all times, or (b) the quality of the discharge is not inferior to, and the quality does not exceed the limits given in paragraph 3 above.

5. Provided that the Council may deem the conditions to have been complied with if treatment or disposal works are provided and operated by the Council and, in such case, additional works will not be called for within a period of three years from the date of issue of this permit.[1074]

To illustrate the system's absurdity, the Regional Council completed a compliance monitoring report in February 2012, because the Pollution Advisory Council's permit was still the operative authorisation at that time (see below). This report confirmed that

- Discharge was indeed into Stansell's Drain[1075],
- Class D standard was satisfied because the principal biological standard for this classification was that the receiving water (Stansell's Drain) could sustain fish life and "fish were seen to rise within the sewage treatment ponds",
- The plant did provide for two-stage oxidation and was indeed operated and in good working order, and "it is my opinion that the Shannon STP ponds have been constructed to the required standards",
- The operation of the ponds "does not exceed the limits given in Paragraph 3",
- Paragraph 4(b) condition was "satisfied", as also was 4(a) because "aquatic life was seen in the ponds" so "the water quality downstream of the discharge [was not] unsuitable for aquatic life".

As a result, all conditions of the 1970 consent were given a condition compliance status of 'comply', with an overall consent status of 'complying'[1076]. So far as the Regional Council's

[1074] Pollution Advisory Council Permit No. PAC 325/51, issued 18 June 1970. Copy on Manawatu-Wanganui Regional Council file 1/6/HDC/A 104238-104247. Supporting Papers #2842.
[1075] Stansell's Drain is an artificially straightened section of the Otauru Stream.

consent compliance metrics were concerned, the Shannon ponds were operating satisfactorily and as required by the regulatory authority. That they were not at all satisfactory environmentally (see below), nor were they satisfactory in terms of the Council's own Regional Plan water quality standards, were not relevant considerations.

The March 2001 application for resource consent was publicly notified and attracted four submissions, one of which was from "the Ngati Whakatere people of Poutu Marae". This submission has not been located during research for this report. There was apparently a pre-hearing meeting between the submitters, the District Council and the Regional Council, which failed to come to an agreement on what conditions should be attached to any consent.

There the matter rested, with the application treated as being in abeyance for the next five years. An Environment Court Judge later commented that "it is difficult to determine anything other than that this state of affairs has been allowed to continue as a device to keep the existing authority granted in 1970 alive"[1077]. By allowing the March 2001 application to sit un-progressed for such a length of time, the Regional Council was neglecting its responsibilities and obligations. There was, however, some activity on the part of Horowhenua District Council, which established a Shannon Sewage Working Party to consider what improvements to the treatment plant might be made. Ngati Whakatere was represented on this Working Party.

In October 2006 Horowhenua District Council submitted a fresh application for resource consents. The Regional Council did not cancel the March 2001 application at that time, thereby retaining it as a legal fig-leaf that would allow the then-existing discharge of treated effluent in the waterway to lawfully continue. It is also worth noting that the March 2001 application had been for a consent to discharge for a five-year term, so that Horowhenua District Council had been able to continue unimpeded (and at minimal cost) with its strategy of discharging in the interim while working on a design for an upgrade of its treatment plant that would meet modern best practice standards.

The application was to continue to discharge to Stansell's Drain, though with an additional pre-discharge step of an algal filter which would separate algae (both scum and floating as

[1076] Compliance inspection report for Shannon oxidation lagoons, 12 July 2011. Manawatu-Wanganui Regional Council file 1/6/HDC/A 104238-104247. Supporting Papers #2911-2914.
[1077] Decision of the Environment Court on preliminary points of law, Decision No. W080/2009, issued 16 October 2009, at paragraph [8]. Copy on Manawatu-Wanganui Regional Council file 1/6/HDC/A 104238-104247. Supporting Papers #2889-2908 at 2891.

filaments) from the oxidation pond outflow and redirect it back into the pond. Consent was also sought for a land disposal trial.

The October 2006 application suffered from the same deficiencies as the 2001 application, and was regarded by the Regional Council as being incomplete. This time, however, rather than do nothing, the Regional Council continually requested further information, and when that was not forthcoming made a decision in June 2007 to decline the application. Horowhenua District Council appealed that decision. The appeal then lay unprosecuted by either the appellant or the respondent, because an agreement was made between the two parties that yet another application would be lodged.

The next application, which subsequently did go through the full process of public notification and decision making by the Regional Council, was submitted in November 2007. Yet again, the 2001 application was not cancelled or treated as having been withdrawn. The 2007 application is examined most closely in this report as it represented the first time that tangata whenua in the wider district (other than Ngati Whakatere) took the opportunity to have a say on the matter. That opportunity came 17 years after the RMA had come into force.

In its application the District Council admitted that the oxidation pond was not operating to its full potential. The effectiveness of oxidation ponds is based on their retention of effluent while it is broken down by natural biological action. Retention requires that flows in the pond between inlet and outlet take a circuitous rather than a direct route. This was part of the reason for the pond that had been constructed in 1970 having two cells. However, two factors at Shannon were limiting the retention time. Firstly, the inlet pipe discharged some distance towards the middle of the first cell, closer to the partition wall between the two cells than was either necessary or operationally desirable. Secondly, the wall between the two cells had broken down and had not been repaired[1078]. The consequence was high bacteria levels in the effluent flowing out of the pond[1079].

The design that the District Council proposed in the application was to retain the existing oxidation pond, and then make improvements in stages. For the first 2 years of the applied-for consents the discharge from the pond would continue to be to Stansell's Drain. For the next 3 years the discharge would be pumped to Mangaore Stream, thereby bypassing

[1078] Resource consent application for Shannon wastewater discharge, November 2007, AEE page 21. Manawatu-Wanganui Regional Council file 1/6/HDC/A 104238-104247. Supporting Papers #2793-2823 at 2812.
[1079] Resource consent application for Shannon wastewater discharge, November 2007, AEE pages 23-24. Manawatu-Wanganui Regional Council file 1/6/HDC/A 104238-104247. Supporting Papers #2793-2823 at 2814-2815.

Stansell's Drain. By the end of that period an artificial wetland would have been constructed through which the pond discharge would first pass, and after which it would be discharged by irrigation onto nearby land. However, it was acknowledged that weather and the state of the land disposal field might not make the land disposal option possible at all times. When that was the case, the discharge would be to the Mangaore Stream. If neither of those options was possible discharge would be direct to the Manawatu River; this was described in the paperwork accompanying the applications as an "unlikely event [that] may never be required'[1080]. A suite of ten consents for water discharge, discharge of odours to air and land use was sought to enable this design to be operated. Consent for the new design that was to be in place by year 5 would be for the following 20 years. A separate land use consent application for the operation of the irrigation system would be made to Horowhenua District Council.

That for the first two years of the proposed consents the discharge of treated effluent would be no different than it had been for the previous 38 years demonstrates that Horowhenua District Council had put little or no practical effort into making improvements and raising effluent quality standards during the lead up to the expiry of the 1970 permit in 2001, nor during the period between 2001 and 2008. While there might have been financial savings because capital expenditure was deferred, the cost was borne by the environment, specifically the Stansell's Drain / Mangaore Stream / Manawatu River receiving waters. With its laissez-faire attitude, Manawatu-Wanganui Regional Council had become complicit in the District Council's approach.

The resource consent applications were accompanied by an Assessment of the Environmental Effects[1081]. In this assessment it was stated:

> As part of the consenting process, Horizons requested that a cultural impact assessment (CIA) of wastewater discharges be undertaken. The CIA is to be completed by Te Ao Turoa, the Environmental Advisory Office of Tanenuiarangi Manawatu Inc, which represents Rangitane Iwi. This CIA will be available early in 2008.[1082]

Why Rangitane was chosen to undertake a cultural assessment, and not Ngati Whakatere or any other iwi, was not explained and is not known. Further statements made were:

> Tangata whenua may have concerns about cultural and spiritual aspects of any discharges of wastewater to the Mangaore Stream irrespective of treatment levels, however the preference for land disposal will be accommodated whenever conditions

[1080] Resource consent application for Shannon wastewater discharge, November 2007, AEE page 4. Manawatu-Wanganui Regional Council file 1/6/HDC/A 104238-104247. Supporting Papers #2793-2823 at 2807.
[1081] Resource consent application for Shannon wastewater discharge, November 2007. Manawatu-Wanganui Regional Council file 1/6/HDC/A 104238-104247. Supporting Papers #2793-2823.
[1082] Resource consent application for Shannon wastewater discharge, November 2007, AEE page 4. Manawatu-Wanganui Regional Council file 1/6/HDC/A 104238-104247. Supporting Papers #2793-2823 at 2807.

> allow. The impact of the proposal on the 'mauri' of receiving systems is unknown at this stage. No wahi tapu or other sites having sensitive tangata whenua values are known in the vicinity of the proposal, however it is possible that 'silent' files may exist in relation to these. A cultural impact assessment has been commissioned by HDC to consider these matters and its findings will be reported in due course….[1083]
>
> Tangata whenua values in respect of Mangaore Stream and oxbow wetland are yet to be determined, however consideration of these matters will be informed by a pending cultural impact assessment.[1084]

It was not until the end of August 2008 that the applications were publicly notified. An Environment Court Judge has discussed the period between filing and notification:

> (20) The 2007 Application … was apparently the source of considerable debate between officers of the Regional Council and HDC. Although it was lodged in November 2007, it had still not been publicly notified by mid-2008.
>
> (21) On 8 August 2008 (unaware of the history of the Shannon Wastewater Treatment Plant) I held a telephone conference in respect of the appeal then currently before the Court arising out of the Regional Council's decline of the 2006 Application which appeared to be *going nowhere*. I was advised that another application (the 2007 Application) intended to replace the 2006 Application was close to being ready to proceed and that this would be attended to promptly.
>
> (22) This telephone conference apparently led to a flurry of activity between HDC and the Regional Council. The outcome of that activity was that the Regional Council took steps to notify the 2007 Application on the basis of assurances from HDC that various refinements would shortly be to hand in respect of that application and that it would be ready to proceed.[1085]
> [italics in original]

The "various refinements" were not received by the Regional Council until 4 days after the public notice had been published. They contained one significant difference from the proposals included in the initial application and publicly notified. Instead of being the backstop option, discharge to the Manawatu River after passing through the artificial wetland had become the preferred long term solution from year 3 onwards. Discharge to the Mangaore Stream and to land had both been rejected, while discharge to Stansell's Drain would continue for an extra year. While cost seems to have been the principal factor behind the District Council's change in thinking, the Council believed that it could still successfully

[1083] Resource consent application for Shannon wastewater discharge, November 2007, AEE pages 11-12. Manawatu-Wanganui Regional Council file 1/6/HDC/A 104238-104247. Supporting Papers #2793-2823 at 2809-2810.
[1084] Resource consent application for Shannon wastewater discharge, November 2007, AEE page 16. Manawatu-Wanganui Regional Council file 1/6/HDC/A 104238-104247. Supporting Papers #2793-2823 at 2811A.
[1085] Decision of the Environment Court, Decision No. W080/2009, issued 16 October 2009, at paragraphs [20]-[22]. Copy on Manawatu-Wanganui Regional Council file 1/6/HDC/A 104238-104247. Supporting Papers #2889-2908 at 2893-2894.

argue that discharge to the Manawatu River on a fulltime basis would satisfy the requirements set out in the Act and the regional planning documents.

Rather than concluding that this substantially altered what was being applied for, the Regional Council treated the new document as "supplementary information", which it distributed only to those persons and organisations who had been on a circulation list for the public notice, but did not take any steps to explain to other potential submitters. Nor did the Regional Council pursue the option of re-advertising the applications. This stance was to have consequences later. The circulation list[1086] included five Maori organisations:

- Tanenuiarangi Manawatu Inc
- Ngati Whakatere, incorrectly named Ngati Whakateke
- Raukawa District Maori Council
- Muaupoko Tribal Authority Inc
- Muaupoko Co-operative Society, incorrectly named Muaopoko

That the Regional Council could get the names of some of the iwi in its district wrong after 17 years of administering the Resource Management Act does not reflect well on the Council.

Upon receipt of the "supplementary information", Tanenuiarangi Manawatu (TMI) wrote to Horowhenua District Council's engineering and resource management consultants:

> 1. TMI have noted the main change to the application is moving from the option of discharging the treated wastewater to the Mangaore Stream to the discharging of treated wastewater to the Manawatu River. The iwi authority are concerned that the cultural impact assessment (CIA) that was completed in June 2008 was for the November 2007 Resource Consent Application for Shannon Wastewater Discharge, and the proposal as it stands in the 2007 report. There is huge concern that the CIA will now (in parts) have an inaccurate assessment of the effects that will now result from the discharge of treated wastewater directly to the Manawatu River.
>
> 2. TMI are aware that Section 1.3 of the 2008 application still considers the other options such as the Mangaore Stream discharge and the Land Discharge Option. TMI acknowledge that the applicant supports the discharge to the Manawatu River as the main direction for the wastewater treatment plant upgrade.
>
> TMI are confused to some extent … why the applicant has failed to inform the iwi authority of these changes earlier on – which may have allowed for alterations being made to the cultural impact assessment. This would have allowed for an accurate assessment of the final application to be undertaken by the iwi. The focus for TMI

[1086] Circulation list, undated. Manawatu-Wanganui Regional Council file 1/6/HDC/A 104238-104247. Supporting Papers #2824.

would have been on measuring the impacts that may arise from the discharge of treated wastewater to the Manawatu River rather than the Mangaore Stream.[1087]

Tanenuiarangi Manawatu also contacted the Regional Council about the iwi needing to reassess its position[1088].

Seventeen submissions (plus two late submissions) were received. Seven of the submissions (and one of the late submissions) were from tangata whenua, all in opposition. This high proportion shows how much Maori had become energised by the District Council's proposals. Because in most instances their opposition to discharge to the Manawatu River was absolute rather than variable depending on the frequency of discharge, it is not possible to form a judgment whether the tangata whenua objections were to the proposals as set out in the original applications, or to the revised proposals in the supplementary information.

Nga Kaitiaki o Ngati Kauwhata were "opposed in principle to any activity that has the potential to continue to degrade the Manawatu River catchment" and held concerns over "lack of consultation by the applicant with all of the locally based hapu who are directly affected by the activity", and over "potential cultural, environmental and economic impacts of the activity". They sought "consultation with locally based hapu before the hearing of the consent applications"[1089].

Caleb Royal of Te Wananga o Raukawa was opposed to "the discharge of sewage to any water body, particularly the Manawatu River and its tributaries", because of "the degraded state of the Manawatu River and its tributaries, the degraded and depleted condition of our fisheries, the continued neglect of cultural and spiritual values associated with the Manawatu River catchment", and "a lack of trust that HDC will honour any resource consent conditions and act responsibly toward preserving the environment". He sought that "all consent applications are declined and representatives of HDC meet with submitters, Maori (particularly Ngati Raukawa) and the Shannon community to plan a more sustainable and environmentally appropriate method of disposal"[1090].

[1087] Environmental Officer Te Ao Turoa Tanenuiarangi Manawatu Inc to MWH New Zealand Ltd, Palmerston North, 18 September 2008. Manawatu-Wanganui Regional Council file 1/6/HDC/A 104238-104247. Supporting Papers #2825-2826.
The Cultural Impact Assessment report is a confidential document.

[1088] Email Hollei Gabrielsen (of TMI) to C Barton (of MWRC), 22 September 2008. Manawatu-Wanganui Regional Council file 1/6/HDC/A 104238-104247. Supporting Papers #2827.

[1089] Submission by Resource Management Officer Rauhuia Environmental Services, on behalf of Nga Kaitiaki o Ngati Kauwhata, 14 October 2008. Manawatu-Wanganui Regional Council file 1/6/HDC/A 104238-104247. Supporting Papers #2828.

[1090] Submission by C Royal, Otaki, 13 October 2008. Manawatu-Wanganui Regional Council file 1/6/HDC/A 104238-104247. Supporting Papers #2829-2830.

Pataka Moore was opposed to the impact of the proposals on the Manawatu River, believing that "it will further degrade the natural environment", and wanting "HDC to consider alternatives to discharging to rivers". He added that "I own land that borders the Manawatu River at Porokaiaia and on that basis I do not want the river further polluted". He further added that "I also have a whakapapa connection to Poutu Marae at Shannon and I do not think it is fair to pollute their water source any further"[1091].

Ngati Whakatere opposed the applications for discharge to the Mangaore Stream and the Manawatu River. While prepared to accept a 3-5 year term, they were against a 25 year term for these applications[1092].

Monique Lagan, who referred to her affiliations to Ngati Raukawa and to Poutu marae, opposed "this proposed resource consent" because granting the applications would "contribute to a further degradation of the Manawatu River", and was "concerned that lands and waterways within my iwi's boundaries are being mistreated". She sought the taking of measures "to terminate the disposal of waste water to water bodies, and considerable effort put into a system that leaves little / no effect on waterways and the land"[1093].

Charles Rudd opposed all the applications because of "Treaty of Waitangi 1840, RMA Sections 6-7-8, cultural, spiritual, environmental, recreational and social impacts, health and safety issues, risks and threats, pollution contaminants and cumulative effects, affects and effects to the food chain, native fauna, flora and their habitats within the environment". He asked for the applications to be declined "because the HDC has a proven track record of breaching resource consent conditions in the district, and will continue to do so regardless of the consequences". He recommended that "all sewage treatment plants be land based, well away from waterways"[1094].

Ted Devonshire on behalf of Nga Hapu o Himatangi (Ngati Rakau, Ngati Turanga and Ngati Te Au) opposed granting consent because the treatment plant was "an activity that will further degrade the Manawatu River and the general Shannon area". He wanted measures

[1091] Submission by P Moore, Otaki, 7 October 2008. Manawatu-Wanganui Regional Council file 1/6/HDC/A 104238-104247. Supporting Papers #2831.
[1092] Submission by Ngati Whakatere, 14 October 2008. Manawatu-Wanganui Regional Council file 1/6/HDC/A 104238-104247. Supporting Papers #2832-2833.
[1093] Submission by M Lagan, Otaki Beach, 7 October 2008. Manawatu-Wanganui Regional Council file 1/6/HDC/A 104238-104247. Supporting Papers #2834-2835.
[1094] Submission by C Rudd, Levin, 8 October 2008. Manawatu-Wanganui Regional Council file 1/6/HDC/A 104238-104247. Supporting Papers #2836-2837.

taken "to terminate the disposal of waste water to water bodies and considerable effort put toward a system that leaves little or no effect on waterways and the land"[1095].

Muaupoko Co-operative Society opposed all the applications because:

> The proposed activities will have a negative impact on the relationship of Maori with their ancestral lands, sites, waters, wahi tapu and other taonga, and will affect the ability of the tangata whenua to carry out the role and responsibility of being kaitiaki over the resources, as guaranteed by the Treaty of Waitangi 1840….
>
> The proposed activities are in breach of the tikanga of Muaupoko and will result in adverse cultural effects.

The submission explained that Muaupoko Cooperative Society had not been consulted "to discuss these matters or to seek resolution to the concerns we have as to whether the applicant is able to avoid, remedy or mitigate the adverse cultural effects"[1096].

The late submission from Te Hinakinui o Kapiti Customary Fisheries Forum was in opposition because of the significant impact on fisheries, not just those in the Manawatu river and around Shannon, but also the beach fisheries (and shellfish gathering) north and south of the Manawatu estuary. The Forum sought disposal of wastewater to other than waterways, and a solution that left little or no effect on waterways and the land. The cost of such a solution now would be less than any costs of future restoration.

Manawatu-Wanganui Regional Council processed the applications, via the reports its staff and consultants prepared for the information of the Hearing Committee, and via the approach taken by the Hearing Committee itself, as though the supplementary information provided after the public notification date was a 'refinement' of the original applications made in November 2007. Discharge to Mangaore Stream was therefore still considered, even though it no longer formed a part of the District Council's intentions as set out in the supplementary information. Discharge of the outflow from the oxidation pond and artificial wetland into the Manawatu River was assessed on the basis that it would an everyday occurrence and was the applicant's 'preferred option' rather than a very occasional and abnormal event. It was considered that the combined effect of the November 2007 applications and the September 2008 supplementary information meant that all options (including everyday discharge to the Manawatu River) were on the table for consideration as to whether they should be consented or declined.

[1095] Submission by EW Devonshire, Otaki, 13 October 2008. Manawatu-Wanganui Regional Council file 1/6/HDC/A 104238-104247. Supporting Papers #2838.
[1096] Submission by Muaupoko Co-operative Society, 14 October 2008. Manawatu-Wanganui Regional Council file 1/6/HDC/A 104238-104247. Supporting Papers #2839-2841.

Because of its greater water volumes (and therefore greater dilution capacity) the Manawatu River was regarded as biophysically and biochemically the least sensitive receiving water available, as compared to Stansell's Drain or the Mangaore Stream. However, the biochemistry, while important, was not necessarily uppermost in the minds of tangata whenua. The weight of their submissions, as outlined above, was that discharge of treated sewage to any waterway, whether it be Stansell's Drain, Mangaore Stream or Manawatu River, was equally repugnant from a cultural and spiritual perspective. And the Manawatu River had a special place in their thinking because of its standing as part of the identity of local iwi, being the awa they associated with when defining who they were.

In a reflection of the preponderance of emphasis in the Act and the regional plans on environmental parameters, the staff reports canvassed extensively the effects on the biophysical and biochemical properties of the receiving waters. Cultural and spiritual matters were barely addressed, being confined to a reiteration without comment of the statements in Chapter 4 of the Proposed One Plan about environmental issues of concern to hapu and iwi. There was no consideration, as there was for biophysical and biochemical matters, of whether the cultural and spiritual impact would be minor or more than minor. Section 6(e) of the RMA was briefly considered, though not in a weighing-up fashion against other statutory provisions:

> With respect to 6(e) a number of submissions received have raised cultural concerns with respect to the continued discharge of wastewater to water. Submitters oppose the discharge of wastewater on the grounds it is culturally offensive to Maori to mix wastewater that contains human waste with river waste, and because of the lack of consultation. Of critical importance to tangata whenua is the mauri of the river, which is degraded through pollution, particularly human waste.[1097]

However, to all intents and purposes, kaitiakitanga, the principles of the Treaty of Waitangi, and cultural and spiritual matters of significance to Maori were not assessed or given any consideration when the various strands of the RMA provisions and the Regional Council planning document provisions were brought together into the recommendations being made by staff to the Hearing Committee.

The staff view was that discharge to Stansell's Drain and to Mangaore Stream would not comply with the water quality requirements of the regional planning documents and could only be permissible if it was a short-term temporary measure, while discharge to the Manawatu River would be acceptable (and would be more acceptable if it occurred in combination with land disposal). With respect to the Manawatu River discharge application, rather than agree to the District Council's entire request, the staff recommendation was that

[1097] Excerpts from staff report by Senior Consultant Planner, undated (November 2008), at paragraph 179. Manawatu-Wanganui Regional Council file 1/6/HDC/A 104238-104247. Supporting Papers #2843-2849 at 2844.

discharge not be allowed during the fish-migration period from mid-August to the beginning of December each year or during low flow conditions (defined as half or less of the median flow). As such a lengthy period of time would probably not be able to be accommodated by storage, the staff recommendation was in effect that land disposal had to be a component of the treatment solution.

The Hearing Committee held its public hearing in November 2008. One of the three members of the Committee was Che Wilson of Te Atihaunui a Paparangi (a Whanganui iwi). The Committee issued an interim decision the following month. In some initial comments, the Committee accepted that there was "some scope for confusion" between the original applications in November 2007 and the matters that it had considered at its hearing, because of the September 2008 supplementary information that had altered the preferred options set out in the applications. It felt that all parties who appeared before the Committee understood and were not disadvantaged by the changes that had taken place in September 2008, and therefore did not consider that re-notification of the applications was necessary. The Committee then considered the various options that had been presented to it. It accepted that the Stansell's Drain discharge needed to continue in the short term, and consented to this for a 3 year term. It rejected the use of Mangaore Stream as a receiving water, and declined that option. It supported discharge to the Manawatu River because of the technical and planning evidence that the proposed discharge would not be breaching water quality standards in the regional planning documents and because it felt that there were no compelling Maori cultural and spiritual reasons why disposal to land via irrigators had to be insisted upon. It explained its reasoning in this regard in the following terms:

> We accept that Maori have a strong and well proven relationship with the Manawatu River generally and at the Manawatu Wastewater Treatment Plant site specifically. The evidence of Moetatua Turoa [speaking to Ted Devonshire's submission] usefully summarises that relationship. He advised us:
>
> > "Whakatere and Takihiku were children of Raukawa. Ngati Rakau and Ngati Turanga Ngati Te Au [sic] descend from Takihiku. Ngati Turanga's wife Hinewaha was Ngarongo's daughter. We are not only linked by whakapapa but also by the Manawatu River. The above Hapu shared jointly in the abundance of the river, such as fish, eels, shellfish, waterfowl and edible flora. Raupo for house building. Totara and other timbers that float down from time to time. The river was also the highway of our tupuna, it linked them to our whanaunga who married into Rangitane upstream. Going downstream the mouth of the river formed the crossroads at Te Wharangi that controlled foot traffic north and south along the beach. Tracks leading up the sides of the Mangaore River were favourite bird-snaring areas, and they eventually lead across the Tararua Ranges to our whanaunga in the Wairarapa who married into Ngati Kahungungu and Rangitane."
>
> We also acknowledge that the discharge of human wastewater into waterways is abhorrent to Maori if it has not firstly been treated by land in some form.

> However, we acknowledge that in this case not all of the Maori submitters were adamant that a full discharge to land was required to meet their concerns. For example, Moetatua Turoa and Pataka Moore advised that a well-functioning wetland treatment system might meet their concerns. Pataka Moore stated that while a land based system was preferred, a wetland treatment system could lend itself to a reasonable compromise.
>
> We acknowledge that some Maori submitters were less compromising in their views. For example Mr Rudd sought that we "decline these proposal applications in favour of any future land based operations, away from waterways".
>
> We are also mindful that Section 6 matters, including Section 6(e) cannot create a veto over an application being considered under Section 5 of the Act. As we have already noted, the overall goal to be achieved is that of sustainable management in the context of the actual circumstances that prevail in each case. In that regard, we note that full or partial land disposal at the Shannon site is technically problematic and it could impose a substantial cost on the Shannon community, which according to the uncontested evidence of Mr Nana [an economist] is in the most deprived 10% of communities in New Zealand.
>
> Therefore, as at least some Maori seem to consider a wetland treatment system to be a form of acceptable compromise, on balance we do not consider that Section 6(e) considerations provide a compelling effects-based reason to require a discharge to land.[1098]

The Committee therefore granted the Manawatu River disposal application, bracketed with consent for the artificial wetland. Provision for land irrigation was not granted, since the applicant had backed away from that option because of concerns it had about poor soil conditions for intensive irrigation, the large area of land that would be required, the high land purchase costs and the consequential high financial burden on the Shannon community. The Committee decided:

> We see no need to grant a consent to discharge to land with wastewater irrigators. Any such future proposal would need to be the subject of a fresh application and assessment of effects.

The Stansell's Drain discharge consent would expire on 30 November 2011, while the Manawatu River discharge consent would expire on 31 December 2018. Both consents would allow discharge volumes up to 2,592 cubic metres per day.

All the consents were subject to conditions, which the Hearing Committee set out in draft form in its interim decision, and invited submissions on within 10 working days before it issued a final decision with approved conditions. The Committee regarded this as only an opportunity to clarify and improve the workability of the draft conditions, and not as an opportunity to relitigate them. The principal draft conditions were that the wetland had to be constructed by 30 November 2011, the discharge point on the Manawatu River had to be in

[1098] Interim Decision of the Hearing Committee, 11 December 2008. Manawatu-Wanganui Regional Council file 1/6/HDC/A 104238-104247. Supporting Papers #2850-2868.

the middle of the river and upstream of the Mangaore Stream confluence at a specific point to be chosen after consultation with community and iwi groups, discharge to the river could only occur between 7pm and 7am, certain biophysical and biochemical water quality standards were set that the waters of the river had to meet below the discharge point and after reasonable mixing, and there was to be a cultural monitoring programme which "shall include, but need not be limited to, the monitoring of native fish species" in the vicinity of the Manawatu River discharge point.

When the final decision of the Hearing Committee was issued three months later in March 2009, there was some tidying up of the draft conditions, but no substantive change to them[1099]. In its decision, the Committee stated:

> We … clarify that these permits relate to a discharge to the Manawatu River that will only be allowed to occur once the engineered wetland is commissioned. We wish to make it clear that there should be no discharge directly to the Manawatu River before then….
>
> The provision of the wetland is the principal means of mitigation for cultural and other concerns.[1100]

The Regional Council's decision on the applications was appealed to the Environment Court by Horowhenua District Council (the applicant), and by three of the submitters, none of them tangata whenua individuals or organisations. The appeals of two of the submitters were to prove the most crucial, because among their grounds for appeal were challenges to the procedure adopted by the Regional Council in publicly notifying the applications before the receipt of the applicant's revised proposal which chose direct discharge to the Manawatu River as the first choice rather than the last choice, and in choosing to proceed with processing the applications under these circumstances. They submitted that if the Regional Council had not followed correct procedure, then as a consequence it lacked the jurisdiction to lawfully grant the consents. The Environment Court accepted that it was necessary to decide these points of law as a first step in its consideration of the appeals.

In a decision in October 2009, the Court found that the process adopted by the Regional Council had been "fatally flawed", because the effluent disposal proposal explained in the September 2008 supplementary information was "substantively different" from the proposal applied for in November 2007 and publicly notified in August 2008. The Council had gone ahead and considered the applications on the basis of everyday discharge to the river as the

[1099] Final Decision of the Hearing Committee, March 2009. Manawatu-Wanganui Regional Council file 1/6/HDC/A 104238-104247. Supporting Papers #2869-2888.
[1100] Final Decision of the Hearing Committee, March 2009, at paragraphs 15 and 18. Manawatu-Wanganui Regional Council file 1/6/HDC/A 104238-104247. Supporting Papers #2869-2888 at 2871-2872.

applicant's preferred option, and there could have been persons who might have wished to submit about that but who were not clearly informed by the public notification of the applicant's revised intention in that regard and so had been deprived of an opportunity to submit:

> The failure to give adequate and accurate notice of what was proposed by the application in this instance is more than just a technical failure. It is a substantial and substantive failure which means that the notice requirements of s93(2) RMA have not been met….
>
> Accordingly, I determine that the Regional Council had no jurisdiction to grant the proposal described in the 2008 Explanatory Document and advanced at the hearing before it.[1101]

The decision that the Regional Council's processes had been procedurally deficient meant that it was as if all the RMA activity between November 2007 and October 2009 had never occurred. By choosing to rush ahead to the hearings stage and failing to re-advertise the applications in a manner that reflected the changed circumstances set out in the 2008 supplementary information, decisions which were in part made because it had promised the Environment Court that progress was being made with the 2007 applications, the Regional Council had incurred significant unnecessary financial cost itself, and subjected the applicant and submitters to their own costs of time, money and stress. The only positive that could be taken from the preceding two years was that Horowhenua District Council now had a clearer understanding of what the Regional Council would be prepared to accept, and this might simplify and improve the new applications that it would have to submit. With the 2001 RMA application as legal cover, the Pollution Advisory Council's 1970 permit continued in existence as the authority allowing the Shannon sewage treatment plant to continue operating.

Despite the knowledge and experience gained from the aborted processing of the 2007 applications, it is clear from a letter written in September 2010 that matters between the District Council and the Regional Council did not run smoothly during 2009-2010. The Chief Executive of the Regional Council felt obliged to write to his counterpart at the District Council:

> In relation to Shannon, I must admit that I am a little dismayed at where our conversation got to on Monday. Our teams have worked very constructively over this last six months and I am pleased to see the right sort of spirit being demonstrated. However, I am very concerned that the outcome will not be achieved with the current approach being adopted by Horowhenua District Council. We have run very fine on time in order that we could see whether there was common ground to support an

[1101] Decision of the Environment Court, Decision No. W80/2009 on Preliminary Points of Law, 16 October 2009, at paragraphs [76] and [81]. Copy on Manawatu-Wanganui Regional Council file 1/6/HDC/A 104238-104247. Supporting Papers #2889-2908 at 2906-2907.

application by Horowhenua District Council for its ongoing discharge to Shannon. In order for this to have occurred, the District would have needed to demonstrate significant improvement in effluent quality and have committed to trials (if not, low flow discharges to land). In the event we now have an application for a pipeline to the Manawatu River which will not be built for two years, we have no land treatment proposed, we have no proposals for the management of faecal matter, we have no agreed management on phosphorus, and we have the potential for some nutrient stripping via the floating wetlands.

Our team are on record in writing, in meetings with asset managers regionally, and in the public domain at your Council meetings and workshops, saying that the floating wetlands were a positive step but were an unproved technology with unquantified benefits, and that in the event our agreement was that the wetlands would be developed in concert with other approaches.

It is my view now that your application and the still-in-play application from 2001 needs to proceed to a hearing. I have instructed the team to prepare cost estimates and a programme for hearing this matter. You have my assurance that will occur in a professional and constructive manner, but I must continue to affirm the Regional Council's view that unless substantive improvements are made, the proposal you have is for a prohibited activity, and accordingly it makes the granting or favourable consideration of a consent somewhat problematic.[1102]

The Regional Council file relating to the consenting since 2010 of discharges from the Shannon treatment plant was not available for perusal as part of the research for this report. The following features of the further consenting process have been gleaned from the Environment Court's decision by which consents were eventually granted in 2015[1103]:

- New application made in 2011
- Consent to discharge to the Manawatu River granted by hearing commissioners in July 2012, for a term of 4 years and subject to a range of assessments being undertaken within that period to determine a best practical option for disposal
- Two appeals lodged, but one appeal withdrawn and the second not proceeded with when fresh applications were promised and were made, so that the consents granted in 2012 would not be exercised and made use of
- Further application made in late 2013
- Application referred directly to the Environment Court at the request of Horowhenua District Council
- 11 submitters became Section 274 parties participating in Environment Court proceedings
- Court-led mediation resulted in agreement between the parties for a five year trial to discharge a greater proportion of the treated effluent on to land over a larger area

[1102] Chief Executive to Chief Executive Horowhenua District Council, 1 September 2010. Manawatu-Wanganui Regional Council file 1/6/HDC/A 104238-104247. Supporting Papers #2909-2910.
[1103] Decision of the Environment Court, Decision No. [2015] NZEnvC 45, 20 March 2015. Available on nzlii website, www.nzlii.org/cases/NZEnvC/

and at higher volumes, for discharge not to occur on land nearest the Manawatu River, and for ongoing oversight by a Shannon Wastewater Working Party

- Purchase of a larger area of land for effluent disposal was made possible in part by a grant from a Ministry for the Environment fund
- At the Environment Court hearing, evidence given about computer modelling which suggested that, with the addition of 10,000 m^3 of extra storage capacity at the treatment plant, the effluent could be satisfactorily disposed of to land on all but 10 days a year on average, when discharge to the Manawatu River would be necessary; effluent would still need to be discharged direct to the river during the first two years of any consent while the land disposal facilities were being constructed
- Decision given by the Environment Court in March 2015 to grant the consents sought, with modifications as set out in the decision
- In its decision the Court said that it was clear from the evidence that consultation with Ngati Whakatere in the past "can fairly be described as having had a number of shortcomings", but had "improved considerably" during the period of the current application (paragraph [74] of the decision)
- The Court determined that it had addressed Ngati Whakatere's abhorrence for river discharge "to the extent we are able" (paragraph [77])
- The Court considered that the representation of Ngati Whakatere and Rangitane on the Shannon Wastewater Working Party would "allow for effective management of cultural affects of the discharges" (paragraph [79])
- The Court concluded that the application as amended during mediation, and as made subject to conditions that it was setting, would meet the statutory tests and its environmental effects would be no more than minor
- The term of any consent was contested by parties at the hearing. The Court determined that it was appropriate to grant a term of 34 years, based on the One Plan's requirement that there would be a review of all Manawatu River catchment consents in 2018 and every ten years thereafter, so that the consent would be subject to three reviews during its lifetime
- The Working Party was to be given three-monthly progress reports about the performance of the treatment works, and was to meet six-monthly
- A protocol for the accidental discovery of archaeological remains or koiwi was included in the conditions of consent
- Within the first two years of the consents Ngati Whakatere and Rangitane were to be given the opportunity to prepare their own Cultural Health Index Monitoring reports

There was a formal opening of the new Shannon sewage treatment plant in April 2016.

5.9.1.4 Foxton sewage treatment plant discharge

The issue of a water right under the Water and Soil Conservation 1967 in July 1991 was conveniently for both Horowhenua District Council and Manawatu-Wanganui Regional Council just before the RMA came into force; this meant the Foxton water right would not be an issue during the initial bedding-down period of the new legislation.

Water quality testing found that the conditions of consent were met from late 1990 to 1993, except the standard for suspended solids, which was exceeded during the height of summer because of algal growth. The improvement in late 1990 was because one industrial contributor to the town's effluent closed down, and another installed pre-treatment facilities that improved the standard of effluent that it fed into the town's drains.

Prior to the expiry of the water right Horowhenua District Council applied for a resource consent to continue to discharge treated oxidation pond effluent into the Manawatu River[1104]. By sending in the application during the six-month period before expiry the District Council was legally allowed to continue its discharge activity in accordance with its expiring water right until the new application was decided upon.

The application was to discharge up to 3000 cubic metres per day. It was accompanied by a report on land treatment options dated November 1992[1105]. However, this was largely a theoretical discussion of the options between different types of land treatment, rather than the identification of a preferred option for use on the Matakarapa land that adjoined the oxidation pond site. It did not demonstrate any multi-disciplinary analysis (clearly having been prepared by public health engineers acting alone), and it did not incorporate any public consultation. Nor did it demonstrate that landowner consents for land treatment had been obtained. On the evidence presented with the application, the Council was in no position to go ahead immediately with the treatment upgrade. In that respect, the District Council had fallen behind the timetable envisaged when the expiring water right was drawn up.

At this point the Regional Council took a unilateral decision to put the application, and some other applications by large water dischargers, on hold. This was because it was part-way

[1104] Manager Operations Horowhenua District Council to Director of Resources, 27 August 1993. Manawatu-Wanganui Regional Council file 1/4/HDC 3926A. Supporting Papers #2915-2955.
[1105] Report on land treatment options for Foxton township oxidation pond effluent, November 1992, attached to Manager Operations Horowhenua District Council to Director of Resources, 27 August 1993. Manawatu-Wanganui Regional Council file 1/4/HDC 3926A. Supporting Papers #2915-2955 at 2920-2955.

through the preparation and approval process for the Manawatu Catchment Water Quality Regional Plan, which would define some overarching standards to be met in the river, and which would therefore represent some environmental bottom lines that dischargers would have to comply with. Compliance with an approved regional plan would be an integral part of how discharge applications in the Manawatu catchment were assessed. The hold period came to an end in 1995 when Horowhenua District Council and other dischargers were given an opportunity "to reassess your application in terms of the Manawatu Catchment Water Quality Plan, and to add any further information"[1106]. Horowhenua District Council took up the opportunity and provided "an amended and updated assessment of effects on the environment"[1107]. This did not alter the direction that the District Council had committed to in its 1993 application, though it did add further detail about what was planned and what consultation had taken place in the intervening period.

According to the new information provided by the Council, consultation with the local Foxton community had resulted in unanimous agreement to upgrade the treatment plant in stages, starting with the construction of two maturation ponds downstream of the existing oxidation ponds, and then working towards land-based effluent disposal "as finances permit". The maturation ponds were necessary to reduce bacterial contamination in the effluent to a level that would meet Health Department guidelines about the spread of effluent on pasture grazed by sheep and cattle. Construction of the additional ponds had been chosen as a better solution than upgrading the capacity of the existing oxidation pond. Once disposal was to land there would be no need to discharge treated effluent into the Foxton Loop. Persons and organisations interested or affected included two tangata whenua groups, Ngati Apa and Paranui Marae.

The application for a new water right for the Foxton treatment plant was advertised in April 1995. Simultaneously the Regional Council publicly notified seven other water discharge applications:

- KW Thurston, applicant, discharge from meat processing plant at Longburn (formerly the Affco meatworks)
- Richmond Ltd, applicant, discharge manufacturing waste from fellmongery and tannery at Shannon
- Richmond Ltd, applicant, discharge stormwater from fellmongery and tannery at Shannon

[1106] Director of Resources to Manager – Operations Horowhenua District Council, 17 March 1995. Manawatu-Wanganui Regional Council file 1/4/HDC 3926A. Supporting Papers #2956.
[1107] Manager – Operations Horowhenua District Council to Director of Resources, 29 March 1995. Manawatu-Wanganui Regional Council file 1/4/HDC 3926A. Supporting Papers #2957-2963.

- Tui Milk Products Ltd, applicant, discharge from dairy processing plant at Longburn,
- New Zealand Pharmaceuticals, applicant, discharge from manufacturing plant at Linton
- Manawatu District Council, applicant, discharge from sewage treatment plant at Feilding
- Palmerston North City Council, applicant, discharge from sewage treatment plant at Palmerston North

The public notification of the Foxton application attracted 13 submissions, four of which were from Maori organisations or individuals. Three submissions from Maori organisations were primarily concerned with the absence of consultation. These submissions, directed at all seven applications, were from Te Runanga o Raukawa, Te Rangimarie Marae Committee in Palmerston North, and Te Roopu Awhina o Te Kaunihera Kaumatua o Rangitane ki Manawatu.

The fourth submission by Charles Rudd opposed the application because "preventative pollution safeguards have not been identified nor actioned". He sought to force the District Council "to implement preventative pollution safeguards to ensure the community at large, animals, fish/plant life are not at risk"[1108].

In May 1995, having received the submissions for all seven applications, the Regional Council decided to put consideration of them on hold while two reports were prepared which could address them all, including their cumulative impact. These were a Technical Report and a Cultural Impact Report[1109], which have been discussed in the case study of the Feidling sewage treatment plant. In the event two further reports were also prepared specifically for the Foxton discharge application, one written by a water quality scientist and the second written by a resource management planner. All four staff reports, plus the applicant's evidence and the public submissions, were considered at a hearing specifically about the Foxton application two years later in June 1997.

The water quality scientist's report noted that the District Council's application was effectively for a continuation of the treated effluent discharge to the Foxton Loop that had been occurring since 1972, even though the two maturation ponds had been built by the time of the hearing and that enabled a better quality of effluent to be discharged. While the

[1108] Submission by C Rudd, Levin, 2 May 1995. Manawatu-Wanganui Regional Council file 1/4/HDC 3926A. Supporting Papers #2964.
[1109] Director of Resources to C Rudd, Levin, 10 May 1995. Manawatu-Horowhenua Regional Council file 1/4/HDC 3926A. Supporting Papers #2965.

alternative of disposal to land was being talked about as something that would happen at some time in the future, it did not form part of the application. He reported that the dilution factor of the Foxton Loop plus the impact of tidal movements did not result in any build up of contaminants in the Loop that would breach the standards in the Proposed Manawatu Catchment Water Quality Regional Plan. Although water sampling had been limited, and analysis of data was made more complex by tidal movements, the effluent discharged into the Loop was not having any adverse effect on receiving waters. Of greater concern to him, however, was the absence of a commitment by the District Council to progress the land disposal of effluent. He recommended that consent be granted for only a three year period, rather than the 10 year period sought by the District Council, and that land disposal be implemented prior to the expiry of the consent[1110].

The staff resource management planning report was about all seven discharge applications; only the matters in the report relating to the Foxton application are discussed here. It identified that the environmental impact of the discharges, and the cultural sensitivity of the discharges, were the two factors most at issue in deciding whether it was appropriate to use the river as a receiving environment for contaminants. Because water quality standards in the proposed regional plan were being met, the Foxton discharge was deemed to be a discretionary activity, so that its assessment was not as complex as if it was failing to meet the standards. There was no recommendation in the report whether or not the consent should be granted[1111].

The Hearing Committee held a hearing of the Foxton application in June 1997. One of the three Committee members was Lorraine Stephenson, the liaison regional councillor on the Council's Te Roopu Awhina. Horowhenua District Council's evidence was that because of its commitment to change to land discharge, the significant cost implications for a small community of doing so, and the "insignificant effect" of the discharge on the tidal Foxton Loop receiving water, it was appropriate to give the Council time to make the change over a 10 year term. On the other hand, the Regional Council staff evidence was that if no change was made to the effluent, the rising water quality standards in the proposed regional plan designed to force an improvement of the river's water quality would at some stage make the discharge non-compliant, making a short term consent more suitable than a longer term consent that would require the inclusion of complex conditions to mitigate the effects of contamination. The Committee decided that a 10 year term would be acceptable, because

[1110] Staff report of Environmental Scientist (Water Quality), undated (June 1997). Manawatu-Wanganui Regional Council file 1/4/HDC 3926A. Supporting Papers #2970-2974.
[1111] Staff report of Senior Planner (Resources), undated (June 1997). Manawatu-Wanganui Regional Council file 1/4/HDC 3926A. Supporting Papers #2975-2994.

of the determination of the District Council and the local community to change to land disposal, and in recognition that a small community needed time to make an expensive change. Consent was granted to discharge up to 3,000 cubic metres per day of treated effluent into the tidal Foxton Loop, subject to meeting certain biophysical and biochemical measurements after reasonable mixing that would progressively increase in their stringency in 1999 and 2004. In addition, the District Council was required to report annually "on progress with investigating and implementing a land-based sewage disposal system". The consent would expire on 31 May 2007[1112].

In 2003 the pump that transferred sewage from the town's communal septic tank to the oxidation pond started failing. It was subsequently discovered to be blocked by carpet fragments and towelling (a carpet manufacturer was at the time a trade waste discharger to the town's sewerage system). The consequence was that a new pump had to be installed, and during installation sewage had to be transported by tanker to Foxton Beach sewage treatment plant. The Regional Council decided that no infringement action was necessary because of the emergency nature of the cause and the quick response by the District Council[1113].

With respect to the annual reporting requirement, that particular condition of consent was commented on after the event by the Hearing Committee which in 2008 considered the next consent in the sequence:

> We note that Condition 3 of the previous [i.e. 1997] consent stated:
>
> > The Consent Holder shall report annually in the month of June to the Regional Council on progress with investigating and implementing a land-based disposal system.
>
> That condition was, in our view, rather vague and in any case it appears that the Regional Council did not take any enforcement action to require the HDC to comply with it during the term of the previous consent….
>
> [However] it is not our role to second guess the intention of Condition 3 of the previous consent…[1114].

In July 2006, nearly one year before the 1997 consent expired, Horowhenua District Council wrote to the Manawatu-Wanganui Regional Council:

[1112] Decision of the Hearing Committee, 29 July 1997. Manawatu-Wanganui Regional Council file 1/4/HDC 3926A. Supporting Papers #2995-3012.

[1113] Chief Executive Horowhenua District Council to Team Leader Compliance, 1 July 2003, and Team Leader Compliance to Chief Executive Horowhenua District Council, 8 July 2003. Manawatu-Wanganui Regional Council file 1/4/HDC 3926A. Supporting Papers #3013 and 3014.

[1114] Interim Decision of the Hearing Committee, 16 December 2008, at paragraphs 36-38. Copy attached to Final Decision of the Hearing Committee, 19 February 2009. Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3083-3103 at 3093-3103.

> I regret to advise that progress on this matter has been disappointing. We have been in touch with owners of all land in the vicinity of the treatment plant, on both sides of the river loop, and none of them is willing to sell us the land necessary for the proposed irrigation scheme. Council is therefore unable to implement a land disposal scheme under our direct control.
>
> Our proposed way forward is to develop an offer made to us by one of the landowners who is willing to have his land irrigated. This leaves us exposed to a risk that the arrangement would be curtailed at some point in the future, or at certain times of the year.
>
> Our intention is therefore to apply for a renewal of the discharge consent, but with algae removal by filtration (as is proposed for the Shannon oxidation pond). We will also work with Mr Jarvis [the landowner receptive to irrigation] and assist him to apply for a consent to discharge onto his land. At those times when he is unable to take all or part of the effluent, we would exercise the proposed new discharge right [to the river].[1115]

The District Council followed this up with a renewal application in November 2006, for the discharge of 2,000 cubic metres per day of treated sewage into the Foxton Loop, rather than the 3,000 cubic metres per day previously consented. It also submitted a second application to allow discharge to land of seepage waters from the unlined bed of the oxidation ponds. As the new applications were made during the six months prior to expiry of the 1997 consent, discharge was lawfully allowed to continue until the new applications had been decided upon. However, the new consent would be a departure from the commitment made by the District Council in 1997 to pursue land disposal, which was the basis on which that consent had been granted.

The Regional Council decided that it had sufficient information to allow the applications to be publicly notified, which occurred in September 2007. The intended next stage of going to hearing was deferred, because staff of the Regional Council decided that they would be unable to write expert witness reports without knowing more about how groundwater would be affected, how mixing would occur in the tidal reach of the Manawatu River, and what were the constituents of the effluent (in particular the effluent from industrial sources). Information on these matters was provided in a report prepared for Horowhenua District Council by consultants in July 2008, and in a recreation survey. A revised Assessment of Environmental Effects report was prepared in October 2008. Included in this Assessment the District Council set out a proposed programme of implementation:

> The programme includes a temporary continuation of the existing discharge while land disposal trials (with concurrent environmental monitoring) are undertaken (a 15 year 'temporary' timeframe is proposed). The Applicant states that based on the findings of

[1115] Special Projects Engineer Horowhenua District Council to Environmental Management Adviser, 5 July 2006. Manawatu-Wanganui Regional Council file 1/4/HDC 3926A. Supporting Papers #3015.

the trials, a decision will be made between continuing with land disposal on Matakarapa Island or development of a combined scheme with land disposal at a different site.

Additionally HDC have proposed to change the existing discharge regime to allow a discharge of treated wastewater only on the outgoing phase of the tidal cycle.[1116]

A further implementation matter was that the District Council intended to discharge the effluent through a rock filter before it reached the river. This was no grand engineering measure as it could be achieved by filling in a 100 metre length of the open drain, down which the effluent travelled from the ponds to the river, with coarse rock. However, it was promoted as a measure to satisfy cultural concerns by allowing discharge to land before reaching water.

As a result of the public notification in September 2007 a total of 26 submissions (plus one late submission) were received. All the submitters were sent the October 2008 revised Assessment of Environmental Effects report. The Regional Council seems to have concluded that the new implementation matters in the 2008 report fitted within the parameters of the applications as advertised the previous year, and re-advertising was not necessary. Many of the submitters were concerned about the impact of the discharge on the Manawatu Estuary, a significant site for aquatic and marine bird life which had been recognised as of international importance under the Ramsar convention. A number of other submitters were recreational users of the lower reaches of the Manawatu River. Ten of the submitters (including the one late submitter) were Maori organisations or individuals. The summary of the Maori submissions set out below relies on the Regional Council's planning report[1117].

Ted Devonshire opposed the proposed discharge into the Foxton Loop on environmental and cultural grounds. He sought consultation with local hapu Ngati Te Au, Ngati Rakau and Ngati Turanga.

Michael Keepa was opposed to discharge which would result in degradation of the Foxton (or Manawatu) Estuary and would have adverse effects on bird life, fish and papanaia. He sought to have the discharge application declined.

[1116] Staff report by Senior Consultant Planner, undated (October 2008). Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3016-3068.
[1117] Staff report by Senior Consultant Planner, undated (October 2008). Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3016-3068.

Ngatokowaru Maori Committee, representing Ngati Pareraukawa hapu with land on the banks of the Manawatu River, opposed the applications because the hapu had longstanding connections with the river that would be adversely affected by the discharge.

Pataka Moore, of Ngati Raukawa and Ngati Pareraukawa descent, was concerned at the lack of assessment of cultural effects in the applications and objected that Ngati Raukawa had not been asked to prepare a Cultural Impact Assessment. He asked that such an Assessment be prepared.

Caleb Royal was opposed because the discharge compromised cultural activity related to the river, and would further degrade a Maori taonga and an internationally recognised ecosystem.

Whakawehi Marae Committee, representing Ngati Whakatere, was opposed because the iwi's long connection with the river was being adversely affected by many acts including this discharge at Foxton. The iwi's opposition was on cultural, environmental, social and economic grounds.

Tanenuiarangi Manawatu Inc and Te Mauri o Rangitane o Manawatu, on behalf of Rangitane iwi, opposed the discharge because it would have a negative impact on the river environment, impact the mauri of the river, and adversely affect the Rangitane connection to the area. There had been a lack of consultation, and inadequate analysis of the cultural impact.

Charles Rudd opposed the discharge which he considered would compound the contamination and pollution of the Manawatu River, and would have adverse effects on natural habitat, flora, fauna, fish life, bird life and the food chain. He asked that the application be declined.

Pariri Rautahi was opposed to the discharge because it would have undesirable effects on fish species and the life force of the river and its kaitiaki.

Muaupoko Cooperative Society put in a late submission opposing the discharge because the area in which the proposal was situated is part of Muaupoko ancient wahi tapu and taonga tapu, and because the activity was a breach of Muaupoko tikanga by breaching customary protocols relating to the use, management and protection of the taonga and wahi tapu. It considered that the past, current and ongoing effects, including cumulative effects, had not

been addressed and would continue to have serious negative effects contrary to Sections 6(e), 7(a) and 8 of the RMA.

The staff reports concluded that the environmental impact on the Manawatu Estuary and the Foxton Loop (the receiving waters) was no more than minor, that discharge only on an outgoing tide was an appropriate mitigating measure, and that the discharge, although not complying with the water quality standards of the Manawatu Catchment Water Quality Regional Plan, was not disbarred from being allowed if it was treated as being a temporary measure pending disposal of the effluent to land as promised (albeit some years in the future) by the applicant. That still left some consideration of the cultural and spiritual acceptability of the proposal to be factored in.

By the time of the hearing the Proposed One Plan had been publicly notified, and as a relevant planning document had become part of the mix of factors to be considered. Chapter 4 in the Regional Policy Statement section of the One Plan identified resource management issues of concern to hapu and iwi, which included among other things preservation of the mauri of water, and the abhorrent nature of human waste disposal in natural water:

> Human activities, application of impure agents, loss of water capacity and contamination all affect the ability of mauri to perform its role effectively, therefore resulting in a standard of water not suitable for hapu and iwi to perform their relevant tikanga or cultural activities associated with the use….
>
> There are serious physical and spiritual considerations to hapu and iwi associated with human sewage discharge to waterways. The act of doing so intentionally is, in itself, regarded as poke – an act of spiritual and physical uncleanliness. The physical and spiritual effects on hapu and iwi can be wide ranging. The best method of avoiding these effects is the prevention of direct discharge.

The resource management planning staff report examined these matters in the context of the obligation to recognise and provide for the matters of national importance in Section 6(e):

> A number of submissions received have raised cultural concerns with respect to the continued discharge of wastewater to water. All Maori submitters oppose the discharge of wastewater into the Foxton Loop on the grounds that it is culturally offensive to Maori to mix wastewater that contains human waste with river waste, and because of the lack of consultation. Of critical importance to tangata whenua is the mauri of the river, which is degraded through pollution, particularly human waste.
>
> The Applicant has commissioned a Cultural Impact Assessment, prepared by Tanenuiarangi Manawatu Incorporated (TMI) which describes in detail the cultural context of the proposal and the values that the Foxton Loop and wider area holds for tangata whenua. This report has been released to the Regional Council on the understanding that it remains confidential, and has therefore not been released to submitters. It is noted, however, that the CIA was prepared by TMI based on the AEE

dated November 2006 and in respect to the more recent studies undertaken and the revised AEE dated October 2008.

TMI does not support the application as they do not consider that the proposal considers how the activity will impact on the cultural, spiritual and intrinsic values associated with the river, its inhabitants and significant sites. The Applicant in Section 7.5 and Table 7-10 of the revised AEE responds to some of the cultural concerns raised.

In order to obtain a broader understanding of the cultural issues associated with this discharge, the Regional Council has commissioned Mr Rau Kirikiri to prepare an independent Cultural Impact Assessment.

Rau Kirikiri's report identifies that the Foxton WWTP site is located adjacent to a waterway that is a significant taonga (treasure) for all iwi in the rohe (region), particularly as it feeds into the Manawatu River. The river itself is an important reference point for iwi as a source of drinking water, a mahinga kai, a transport and communication network, and a font of cultural and spiritual sustenance. The major concern of the iwi is the health of the Manawatu River if continued wastewater discharge into the Manawatu River is permitted.[1118]

With respect to the relevance of Section 8 RMA, the staff resource management report listed the principles of the Treaty of Waitangi that had been identified by the Court of Appeal in the New Zealand Maori Council case in 1987, noted that no iwi or hapu other than Rangitane had been consulted by the applicant prior to the application being lodged, and quoted from Rau Kirikiri's conclusions:

- The cultural issues identified to date in respect of this resource consent application have not all been adequately addressed, but they can be.
- The opposition to the discharge of human waste into the Manawatu River can potentially be answered by reverting to a land-based disposal system.
- Concerns about consultation can partly be addressed through ensuring that all tangata whenua are involved in forward planning in a much more inclusive and meaningful manner.
- Future monitoring and management of the treatment plant on a partnership basis is feasible with the tools that are now available to assist with this process, and if the parties concerned show a willingness to cooperate.
- From a Maori cultural perspective, therefore, the shortcomings identified in this assessment would be an impediment to the application being approved. However, the Applicant's apparent willingness to find solutions to the difficulties that Maori submitters have with the proposal (as expressed in the CIA) is encouraging.[1119]

Of the proposed rock filter, the resource management report stated:

> No assessment has been made in the revised AEE or by Horizons technical staff on the benefits or otherwise of installing a rock filter in the discharge channel. I have had verbal discussions with technical staff regarding this proposal, and staff have advised

[1118] Staff report by Senior Consultant Planner, undated (October 2008). Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3016-3068.
[1119] Staff report by Senior Consultant Planner, undated (October 2008) at paragraph 176. Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3016-3068 at 3059.

> that a rock filter would not provide any real improvements to the quality of the wastewater discharge, could potentially create an odour source and would require significant ongoing maintenance, and its installation is therefore not supported.[1120]

Even though the 1997 consent had been granted on the basis of District Council promises that land disposal would be designed and implemented during the 10 year term of that consent, the staff recommendation was that a further 'short-term' consent be granted, short-term in this instance being a three year term rather than the 15 years sought by the applicant[1121].

The independent Cultural Impact Assessment prepared by Rauru Kirikiri of Te Whanau a Apanui discussed the issue of failure by an applicant to consult with tangata whenua:

> There is no evidence of consultation with any of the iwi identified (apart from Rangitane who were invited to prepare a CIA), and therefore no indication of their respective positions on the application prior to, or during, its preparation.
>
> Nor were there any attempts by HDC to consult with other iwi, even though it could be argued that there was no statutory compulsion to do so.
>
> Under the RMA consultation (or the lack of it) is not an issue upon which a resource consent hearing might ultimately stand or fall. In other words an Applicant is not obliged to have to consult with any party in relation to a resource consent application, though local authorities and applicants are encouraged to consider how they might facilitate tangata whenua engagement in the consultation process.
>
> Consultation nevertheless remains a matter of concern for Maori across a range of issues in light of continued and persistent oversight on the part of authorities (both nationwide and locally) to consult on issues of critical importance to Maori, such as this one.
>
> The only comment from Maori has been through submissions following the release of the application, apart from Rangitane.
>
> All Maori submissions oppose the discharge of wastewater into the Foxton Loop on the grounds that it is culturally offensive to Maori to mix wastewater that contains human waste with river water, and because of the lack of consultation.[1122]

Rauru Kirikiri also made some general comments about Maori spiritual concerns:

> There is a strong Maori belief that the discharge of human waste into water (regardless of whether or not it has been treated) is an act of spiritual and cultural uncleanliness. Most Maori would view such action as abhorrent.

[1120] Staff report by Senior Consultant Planner, undated (October 2008) at paragraph 76. Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3016-3068 at 3042-3043.
[1121] Staff report by Senior Consultant Planner, undated (October 2008). Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3016-3068.
[1122] R Kirikiri, Independent Cultural Impact Assessment, October 2008, paragraphs 29-34. Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3069-3082 at 3074-3075.

> It is expected that this will be the refrain of most, if not all, of the Maori submitters, bearing in mind the comment made earlier that the majority of the submissions have so far identified cultural concerns in general terms only as a reason for opposing the application.
>
> It is ironical that wastewater containing treated human waste has been discharged into the Foxton Loop since the late 1990s with apparently little resistance from Maori.
>
> That this application is being so vehemently challenged by Maori submitters today is arguably reflective of a society considerably more concerned about environmental management matters than was the case even as short a time ago as the late 90s.[1123]

A hearing was held in November 2008, and the following month the Hearing Committee issued an Interim Decision[1124]. One of the three members of the Hearing Committee was Che Wilson of Te Atihaunui a Paparangi (a Whanganui iwi). In its decision the Committee recorded that Horowhenua District Council and representatives of Manawatu-Wanganui Regional Council had separately reached an agreement on consent duration and the general form of some consent conditions, and then presented that agreement to the Hearing Committee. The Committee still felt it had to satisfy itself that the agreement would be appropriate to the circumstances and would comply with the legislation. In that regard it had a problem with the agreed-upon duration of the proposed consent, describing it as "overly generous". Instead the Hearing Committee proposed a regime where Horowhenua District Council would have three years to decide whether or not it would proceed with land disposal. If it did not propose to proceed with land disposal, it would then have one further year to develop and lodge a fresh application for continuing discharge to the Foxton Loop. If it did decide to proceed with land disposal, it would have three years to design and implement that option. The total consent duration would, in those circumstances, be six years. During the term of the consent, whether four years or six years, the discharge to the Manawatu River would be allowed on the basis that it was a temporary measure. As such it would fall within the parameters set in the regional planning documents. The Committee felt that it also fitted within the overall thrust of the views expressed by submitters, who had sought cessation of discharge to the river and discharge to land in its place. This particular consent would be for the phase-out period, and a fresh application would be needed for discharge to the river over any greater time period.

In its Interim Decision, the Hearing Committee made some comments about consultation:

[1123] R Kirikiri, Independent Cultural Impact Assessment, October 2008, paragraphs 80-83. Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3069-3082 at 3082.

[1124] Interim Decision of the Hearing Committee, 16 December 2008. Copy attached to Final Decision of the Hearing Committee, 19 February 2009. Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3083-3103 at 3093-3103.

> A number of the Maori submitters considered that the applicant's consultation had been deficient. In that regard we record that under Section 36A of the Act the applicant has no duty to consult any person about the application.
>
> We also note that the purpose of consultation is to identify the concerns of interested parties. We have no doubt that all relevant issues, including those relevant to Section 6(e) and 7(b) [sic] of the Act are on the table before us as demonstrated by the number of Maori submitters who presented evidence to us. We also note that the purpose of consultation is not to reach agreement with interested parties regarding their concerns, however if that occurs then that is obviously beneficial.[1125]

The Committee also briefly discussed and dismissed the rock filter proposal:

> The applicant withdrew their support for a rock filter during the hearing, and none of the Maori submitters sought it as a means of cultural mitigation. We have therefore not imposed it [as a condition].[1126]

The consent allowed a discharge of up to 2,000 cubic metres per day into the Foxton Loop for a term of six years expiring on 1 December 2014. During the lifetime of the consent, the applicant had to follow a timetable for completion of certain steps:

- By March 2009 provide a timeline setting out what was required to plan and design for land disposal
- By December 2010 complete a "reasonable (in terms of sufficient scope) and expert analysis of the technical and economic feasibility" of discharging to land
- By August 2011 carry out consultation as a preliminary to making a decision to proceed with land disposal
- If the report to be prepared by December 2010 had not identified a feasible land disposal site, then a further report which did disclose how the applicant would achieve land disposal had to be completed by December 2011 (and the follow-up consultation had to be completed by August 2012)
- In July each year provide a progress report to the Regional Council

The Hearing Committee issued its final decision in February 2009, after considering submissions on the draft conditions of consent. While some minor changes were made, the term of the consent and the timetabling requirements relating to work on a land disposal future were unchanged[1127].

[1125] Interim Decision of the Hearing Committee, 16 December 2008, at paragraphs 33-34. Copy attached to Final Decision of the Hearing Committee, 19 February 2009. Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3083-3103 at 3100.

[1126] Interim Decision of the Hearing Committee, 16 December 2008, at paragraph 43. Copy attached to Final Decision of the Hearing Committee, 19 February 2009. Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3083-3103 at 3101.

[1127] Final Decision of the Hearing Committee, 19 February 2009. Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3083-3103 at 3083-3092.

Horowhenua District Council appealed the terms of the consent. Three of the non-Maori submitters, but none of the Maori submitters, applied to take part in the appeal proceedings under Section 274 RMA. The appeal was never heard because the Regional Council and the District Council, with the approval of the Section 274 parties, came to an agreement in October 2009 that resolved their differences. The Environment Court issued a consent order in December 2009 that approved the agreement the two Councils had reached[1128].

By December 2010 Horowhenua District Council considered that it would be possible to dispose of Foxton's treated sewage to land, though it needed extra time to complete the analysis. However, by December 2011 this had changed and the further analysis that had been undertaken was pointing the District Council towards jointly treating the sewage from both Foxton and Foxton Beach at a new treatment plant, and then decommissioning the treatment plant and discharge at Matakarapa / Foxton Loop. The problems associated with land discharge at Matakarapa were principally the high groundwater levels and the varying terrain, which limited the capacity of the disposal area and precluded year-round disposal of all of Foxton's treated effluent. During this further analysis (i.e. before December 2011) consultation had endorsed the approach that was being taken. Two individuals representing Maori groups had been involved in the consultation, Jonathon Proctor for Rangitane and Muaupoko, and Richard Orzecki for Wehi Wehi Marae.

However, by the time of the July 2014 annual report, it was clear that progress had faltered during 2012 and 2013. Early in 2014 Horowhenua District Council established a focus group which had identified "important values" and "options", and assessed the options against the important values, resulting in two options being identified for further analysis. Both options had "legal, social and cultural issues that must be worked through before a final option can be concluded on"[1129]. The District Council was therefore nowhere near the stage of designing and implementing a land disposal system by the end of the consent term.

In August 2014 Horowhenua District Council applied for resource consent to replace the consents that would expire in December that year[1130]. By being lodged during the six months prior to expiry of the then-current consents issued in 2009, it was possible (with the Regional Council's permission) for the existing consent to be preserved and to continue in force until new consents were decided upon. The application was for "a short term renewal"

[1128] Consent Order of the Environment Court, 3 December 2009. Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3104-3112.
[1129] Water Services Engineer Horowhenua District Council to Environmental Protection Officer, 28 July 2014. Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3113-3115.
[1130] Planning Associate, Beca Ltd, Wellington, to Manawatu-Wanganui Regional Council, 29 August 2014. Manawatu-Wanganui Regional Council file 1/4/HDC 107277-107278. Supporting Papers #3278-3282.

of 19 months because consultation had taken longer than anticipated and had not been concluded, and "a preferred long-term option is yet to be identified". According to the District Council's consultant planner:

> The lodgement of this consent will facilitate the development of a long-term discharge option for Foxton in consultation with its community, inclusive of iwi and hapu. HDC is committed to removing, or at least significantly reducing, the volume of treated wastewater discharged to the Foxton Loop.
>
> A long term consent, which will be reflective of the best practicable option will be lodged within 16 months of the lodgement of this application. The enclosed application provides a timeline for the completion of the option selection, detailed development and consent lodgement processes.
>
> HDC requests that this application be placed on hold prior to a decision on notification, … because:
>
> - HDC (as the applicant) agrees to the extension.
> - The interests of any person directly affected, and the community in achieving adequate assessment of the effects, are well known and can readily be taken into account:
>   - HDC has been, and continues to, consult with neighbouring landowners, its community and iwi (both directly and through the Foxton Focus Group) over the location and type of a sustainable long term solution for Foxton; the Foxton Focus Group members support the proposal for a short term consent being sought (to retain the status quo) while meaningful consultation continues on a long term option; and,
>   - if the application is put on hold, HDC will report that outcome back to the Foxton Focus Group and iwi so that they are updated as to the progress being made in accordance with what has been agreed.
> - HDC will provide quarterly updates to Horizons as to its progress with the long term consents and the consent term sought is not an unreasonable delay.
> - As the long term consents will totally replace the short term consents, completing a notification and hearing process for the short term consents would:
>   - be an inefficient use of HDC's, the Council's and the community's time, resources and money; and
>   - divert limited time and resources away from resolving the long term consents.[1131]

The power to permit the putting of an application on hold was set out in Sections 37 and 37A(5) RMA.

The following month the Regional Council agreed to allow the application to be placed on hold. Because of that decision, and because the application was replaced by a new set of application documentation the following year, the 2014 application is not discussed in this report.

[1131] Planning Associate, Beca Ltd, Wellington, to Manawatu-Wanganui Regional Council, 29 August 2014. Manawatu-Wanganui Regional Council file 1/4/HDC 107277-107278. Supporting Papers #3278-3282.

During 2015 a revised application was discussed in draft form with Manawatu-Wanganui Regional Council staff. It was finally lodged in October 2015. The Regional Council then requested further information[1132], which was provided in December 2015[1133]. The further information that was received allowed the Regional Council to conclude that the application was in an acceptable state for public notification[1134]. Meanwhile the August 2014 application remained on hold (being neither withdrawn nor declined) to preserve the legal status of the District Council's discharge to the Manawatu River.

The key feature of the investigation process that had been followed during the period between the lodging of the 2014 renewal application and the lodging of the 2015 new application was that a best practicable option study had recommended land on Matakarapa Island as the preferred site for land discharge. Other options had been examined, including linking up the Foxton and Foxton Beach effluent streams and discharging the combined flow inland of Foxton. The study's recommendation had been adopted by Horowhenua District Council, and design work had proceeded for the Matakarapa site.

The new application was for a suite of consents which would allow the District Council to continue to discharge up to 2,000 cubic metres per day of treated effluent to the Foxton Loop for a further 3 years, to upgrade the treatment ponds by increasing storage capacity during that 3-year period, to then discharge treated effluent on to adjoining land by irrigation for the remaining period of a 35 year consent term, to allow intensive beef farming on the irrigated land[1135], and to discharge treatment odours to the air. As part of the work undertaken by the District Council in preparation for the application, it had commissioned a Cultural Impact Assessment from Te Roopu Taiao o Ngati Whakatere. This Statement was based on draft concept designs, parts of which changed before the applications were submitted.

The applications were advertised in January 2016. The public notification was a joint exercise, with Manawatu-Wanganui Regional Council notifying that it had received a total of six applications and Horowhenua District Council notifying that it had received one land use consent application (for the irrigation network and its structures). Maori organisations that had been identified by the two Councils as potentially affected and were individually notified were Te Roopu Taiao o Ngati Whakatere, Rangitane, Tanenuiarangi o Manawatu, Te

[1132] Regulatory Manager to Horowhenua District Council, 25 November 2015. Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3116-3118.
[1133] Group Manager Infrastructural Services Horowhenua District Council to Regulatory Manager, 15 December 2015. Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3119-3135.
[1134] Consultant Planner to Manawatu-Wanganui Regional Council, 22 December 2015, approved 11 January 2016. Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3136-3142.
[1135] The high intensity of the proposed stock rearing at the Foxton treatment plant distinguishes it from the lower intensity grass production for baleage at the Shannon and Feilding treatment plants.

Runanga o Ngati Raukawa Inc and Te Tunanga o Ngati Toa Rangatira Inc[1136]. Muaupoko and the Himatangi hapu (Ngati Te Au, Ngati Rakau and Ngati Turanga), both of whom had made a submission on the 2007 application, were not on the list.

A total of 66 submissions were received by the Regional Council, many from Maori organisations and individuals. One feature of the submissions received was that Te Roopu Taiao o Ngati Whakatere made a submission early in the piece, and 12 individuals, presumably of Ngati Whakatere, subsequently made their own individual submissions, each relying on the same statement of objection reasons and relief sought as had been originally prepared by Te Roopu Taiao.

The reasons for opposition to all six regional consent applications given by Te Roopu Taiao o Ngati Whakatere were "the application's proven inadequacies and failure to provide proper assurances to the iwi, the community and the environment". The District Council had failed to acknowledge and implement Ngati Whakatere's legitimate mana whenua and tangata whenua over Matakarapa, and had failed to account for concerns expressed in the Cultural Impact Assessment, both of which were actions that had caused significant cultural offence. There was also criticism of the Regional Council's "readiness to be a party to and publicise" the District Council's approach. Although the specific phrase was not used in the submission, the overall thrust of the objection was that the District Council had already 'ridden roughshod' over the interests of the tangata whenua of Matakarapa Island, and would continue to do so further if the applications were approved. It was either ignoring their Cultural Impact Assessment concerns altogether or was incorrectly understanding those concerns. There had been no peer review of the engineering proposals[1137].

The objections and concerns expressed by Te Roopu Taiao o Ngati Whakatere were endorsed in submissions by Maurice Manihera[1138], Diana Manihera[1139], Keturah Manihera[1140], Mahaki Akauola[1141], Lani Ketu[1142], William McGregor[1143], Raymonde

[1136] Consultant Planner to Manawatu-Wanganui Regional Council, 22 December 2015, approved 11 January 2016. Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3136-3142.
[1137] Submission by Te Roopu Taiao o Ngati Whakatere, 11 February 2016. Submission #5 on Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3149-3153.
[1138] Submission by ML Manihera, Palmerston North, 17 February 2016. Submission #15 on Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3157-3161.
[1139] Submission by D Manihera, Palmerston North, 17 February 2016. Submission #16 on Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3162-3166.
[1140] Submission by K Manihera, Palmerston North, 17 February 2016. Submission #17 on Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3167-3172.
[1141] Submission by M Akauola, Palmerston North, 17 February 2016. Submission #18 on Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3173-3177.
[1142] Submission by LTR Ketu, Shannon, 17 February 2016. Submission #34 on Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3192-3197.

Houston[1144], Juane Houston[1145], Claudia Houston[1146], Mae Houston[1147], Tyrone Ketu[1148], and Jacob Ketu[1149].

Tanenuiarangi Manawatu Inc on behalf of Rangitane o Manawatu were not opposed to the District Council's proposals in principle, but did seek a number of cultural conditions that would mitigate the effects, provide ongoing Cultural Health Monitoring and incorporate archaeological site protocols. A Cultural Impact Assessment had been provided to the District Council which had expressed Rangitane's abhorrence at the discharge of human waste to waterbodies. An additional safeguard that was sought was the seeding of the irrigation area with dung beetles to better break down the contaminants in the effluent. Rangitane continued to have concerns that intensive beef farming as a land use would have as much or more cultural impact as the irrigation discharge of effluent[1150].

Pataka Moore on behalf of Ngati Pareraukawa restated the objections he had made in earlier submission rounds. He believed that the District Council was "prolonging these applications to ride the system and avoid investment in well-planned and sustainable solutions". The District Council was ignoring the advice it had received in the Cultural Impact Statement prepared by Te Roopu Taiao o Ngati Whakatere, which was concerned about the effects of the proposal on sites of significance to iwi. He was also critical of the Regional Council's performance, believing it should "force HDC into committing to a sustainable iwi-acceptable solution", as one Treaty partner "must not make decisions that have negative effects on the other"[1151].

Ted Devonshire on behalf of Ngati Te Au objected to "all that leads to discharge of wastewater to the area/whenua known as Matakarapa" because no respect was being shown for mana whenua, and because of a failure to acknowledge the Cultural Impact

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[1143] Submission by W McGregor, Whanganui, 15 February 2016. Submission #37 on Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3202-3207.
[1144] Submission by R Houston, Springfield Lakes (Queensland), 17 February 2016. Submission #46 on Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3210-3215.
[1145] Submission by J Houston, Springfield Lakes (Queensland), 17 February 2016. Submission #47 on Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3216-3220.
[1146] Submission by C Houston, Springfield Lakes (Queensland), 17 February 2016. Submission #49 on Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3221-3226.
[1147] Submission by M Houston, Springfield Lakes (Queensland), 17 February 2016. Submission #50 on Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3227-3232.
[1148] Submission by T Ketu, Springfield Lakes (Queensland), 17 February 2016. Submission #51 on Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3233-3238.
[1149] Submission by JP Ketu, Springfield Lakes (Queensland), 18 February 2016. Submission #57 on Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3241-3246.
[1150] Submission by Tanenuiarangi Manawatu Inc, 21 January 2016. Submission #2 on Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3143-3144.
[1151] Submission by Pataka Moore on behalf of Ngati Pareraukawa, 10 February 2016. Submission #4 on Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3145-3148.

Assessment. Withdrawal of the application and a direction to look at alternative solutions was sought[1152].

The submission of Karen MacDonald of Raukawa and Muaupoko descent was short and to the point:

> I fully object to any irrigation treatment of effluent at Matakarapa and wish this to be recorded.
>
> I am absolutely disgusted that Council has allowed this to happen where there is a Maori urupa and my ancestors are buried.
>
> I want it stopped immediately.[1153]

Hayley Bell on behalf of Nga Hapu o Himatangi opposed the applications because:

> The series of events that led to the Matakarapa being considered as a possible discharge site now, and an actual discharge site in the early 1970s, breached the Treaty of Waitangi – Te Tiriti o Waitangi".
>
> The southern bank of the river was the home of Ihakara Tukumaru, a rangatira of the same hapu as our tupuna Te Au and Turanga's wife Hinewaha. He was an advocate for British settlers in this area and welcomed settlers from Britain to Te Awahou, enabling land for them on the northern bank. With his death, the whole community – settlers and Maori – mourned respectfully in 1871. In 1943 his people lost their land to the [Whirokino] Cut, no apology was given and through legislation the families of Ihakara Tukumaru had to leave their home. The community needs to find other alternatives, and look authentically for them, even if they cost more. Voting on something like this will never be just or fair because Maori are a minority population. Only one third will ever vote against the Matakarapa option.
>
> We support the submissions made on our behalf by Te Roopu Taiao o Ngati Whakatere … and oppose the application. We offer another piece to the Te Roopu Taiao o Ngati Whakatere submission by asking that the Horowhenua District Council withdraw their application except for that to allow for one year a Discharge Permit to discharge treated wastewater to water. This will give time, with a changed attitude, for the Council and their "independent" consultants to seek another solution even if it costs more. Horowhenua District Council must approach this sincerely and show effort to look at other options, not just another piece of land. Matakarapa is not available and its use will breach the Treaty of Waitangi, and will/has result in a Treaty of Waitangi claim.[1154]

Cheryl-Rose Ngawai Mihaka opposed the applications because "proper assurances" had not been given to iwi, the community and the environment:

> As tangata whenua and mana whenua, how dare you desecrate the land, air and water. My ancestors are there! This is all about greed and filling someone's pockets

[1152] Submission by T Devonshire on behalf of Ngati Te Au, 17 February 2016. Submission #10 on Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3154-3155.
[1153] Submission by K MacDonald, Foxton, 17 February 2016. Submission #14 on Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3156.
[1154] Submission by HS Bell on behalf of Nga Hapu o Himatangi, 17 February 2016. Submission #19 on Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3178-3183.

> up. STOP IT NOW! Clean your shit up and put it somewhere else! Work with us to supply our future generations with clean and nutritious water, clean pastures for growth, and fresh air for everyone.

She sought withdrawal of the application[1155].

Rhea Hyde opposed the applications because they would allow wastewater to be spread over Matakarapa, the Foxton Loop to be polluted, and significant urupa to be desecrated. The spreading of human effluent on land, urupa and sites of significance was "offensive to my hapu and whanau hapu". She sought discharge on an alternative site such as Target Reserve[1156].

Amina Wikohika was opposed to the discharge of wastewater on Matakarapa, because it would be "pollution of the whenua tapu/sacred to my culture". Her relief sought was "go elsewhere"[1157].

Dylan Taiaroa opposed the spreading of effluent wastewater "onto my Nana's birth place, ancestral lands", which was "disrespectful to my whanau, iwi, culture". He too said "go elsewhere"[1158].

Virginia Kohika opposed discharge of effluent on Matakarapa, which were ancestral/tipuna lands. She wanted the discharge moved to Target Reserve or elsewhere[1159].

Claude Ketu opposed the discharge of treated effluent on to ancestral lands, because it was "disrespectful to have any effluent discharge spread on, near my wife's family's graves and place of birth and home. Instead he wanted irrigation of Target Reserve and a stop to "the desecration of our ancestral lands, heritage sites, urupa"[1160].

Huataki Whareaitu opposed the irrigation of treated effluent on to Matakarapa Island lands, as it would disturb ancestors who "are resting peacefully on our traditional lands". She

[1155] Submission by CN Mihaka, Rotorua, 18 February 2016. Submission #29 on Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3184-3185.
[1156] Submission by RL Hyde, Shannon, 17 February 2016. Submission #30 on Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3186-3187.
[1157] Submission by ALT Wikohika, Shannon, 17 February 2016. Submission #31 on Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3188-3189.
[1158] Submission by D Taiaroa, Shannon, 17 February 2016. Submission #32 on Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3190-3191.
[1159] Submission by V Kohika, Shannon, 17 February 2016. Submission #35 on Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3198-3199.
[1160] Submission by CL Ketu, Shannon, 17 February 2016. Submission #36 on Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3200-3201.

wanted the Regional Council to "not think with fixed attitudes" because "what may seem the most economical is not always the best"[1161].

Muaupoko Tribal Authority made a submission that it had "not provided a CIA and we should have been asked to do so". It sought that it be commissioned to provide a CIA, noting that "land based is best"[1162].

Taiao o Raukawa opposed the applications because of their impact on Matakarapa Pa, "which was a significant settlement containing some 500 members reported at the time of the Matakarapa floods" that had been caused by the Whirokino Cut flood protection works:

> Matakarapa was a settlement because it was rich in food sources from an abundant environment, fish, tuna, birds, pingao and other flora and fauna. The environment has been heavily modified and continues to be polluted by current wastewater treatment.
>
> The assessment fails to acknowledge the extensiveness of the Matakarapa settlement, minimizing the concerns raised in the Cultural Impact Report….
>
> The scale and significance of the effects that the activity may have on the significant historical and ecologically frail environment has not been adequately assessed, lacking an in-depth archaeological, cultural and conservation evidence/reports.
>
> The weight given to a consult with an urban-based authority referred to as TMI on behalf of neighbouring iwi Rangitane (now located in the interior city of Palmerston North) is illogical. The TMI body (representing the five hapu of Rangitane) are located in Palmerston North and are not affected directly by the proposed works. Yet the assessment identifies it will respond to TMI's culturally significant site of Rerenga Hau, and not to the concerns raised by the nine hapu located on the coast line who are direct beneficiaries of any work proposed about Matakarapa.
>
> Those nine iwi are not named once in the assessment response, those iwi all have marae located along the coastline. TMI do not have any marae that are affected, they are an entity based some miles away centrally.
>
> The tension unnecessarily created by the submitted assessment process of the applicant, that appears to play off one iwi against another, has long-lasting negative effects, and continues to undermine community peace and goodwill, which we are trying to build through such projects as Te Mana o te Wai.
>
> The Taiao o Raukawa also support the Manawatu River Accord of clean water, and do not approve of discharge to waterways, however there has been historic injustice at Matakarapa and discharging to this site is not the answer to what has to be a long term sustainable solution.

The iwi sought the declining of the application, and land based treatment at a new location "that is not a Pa site"[1163].

[1161] Submission by H Whareaitu, Palmerston North, 18 February 2016. Submission #43 on Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3208-3209.
[1162] Submission by Muaupoko Tribal Authority Inc, 18 February 2016. Submission #56 on Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3239-3240.

The listing of submissions above is only of those from Maori organisations and individuals. There were other submissions from non-Maori and from other organisations. An analysis of the 66 submissions received showed 23 in support of the applications, 37 opposed, 3 both supporting and opposing, 2 neutral and 1 not stated[1164]. After considering the nature of the submissions, the District Council determined that the proposal it had applied for would not necessarily be approved, and that there was high likelihood of an appeal whatever the Regional Council's decision was. It therefore decided that it wanted the applications to be referred directly to the Environment Court, in which case there would be only one hearing and one decision (apart from the possibility of appeals on points of law to the High Court). In its reasoning that there was a high likelihood of an appeal, it cited the following reasons:

- There is significant local public interest in the applications and in wastewater treatment within the Manawatu River catchment more broadly.
- HDC is aware, due to extensive pre-lodgement consultation, through a focus group of key interested parties, that the applications are likely to be contentious and that a number of parties are opposed to wastewater treatment at the application site. Ngati Whakatere, a local iwi, has expressed strong opposition to the applications in a cultural impact assessment and in their submission.
- Previous applications relating to the [Foxton] WWTP, as well as other applications relating to wastewater treatment within the Manawatu River catchment, have been contentious. Resource consent applications by HDC relating to the Shannon Wastewater Treatment Plant were appealed to the Environment Court in 2008 and 2011, and further applications relating to the same plant were subsequently directly referred to the Environment Court in 2014. The Feilding wastewater discharge consents have also recently been heard in the Environment Court. A number of the parties involved in those Environment Court proceedings are involved in the current applications.

> The direct referral process enables effective participation by submitters and no parties will be unduly prejudiced by the direct referral process. A number of likely submitters have previous experience in the direct referral process through the Shannon wastewater Treatment Plant applications.
>
> To enable HD to implement the best practicable option for wastewater at the [Foxton] WWTP in a timely, efficient and cost effective manner, direct referral [is] justified in these circumstances.[1165]

Taking an application down the direct referral route required the approval of Manawatu-Wanganui Regional Council with respect to the regional applications, and Horowhenua District Council with respect to the district land use consent application. These approvals

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[1163] Submission by Taiao o Raukawa, 18 February 2016. Submission #60 on Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3247-3249.
[1164] Recommendation to Manawatu-Wanganui Regional Council on request for direct referral, 15 March 2016, approved 15 March 2016, at paragraph 3.2. Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3251-3263.
[1165] Chief Executive Horowhenua District Council to Regulatory Manager, 22 February 2015. Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3250.

were forthcoming[1166]. The next step was that the two regulatory agencies had to provide their staff reports and recommendations to the applicant. These were provided in mid June 2016. After this the applicant had the option, if it still wished to do so, to file a notice of motion with the Environment Court seeking to have the applications decided upon by the Court. That triggering step was taken by Horowhenua District Council at the end of June 2016. Thereafter the consenting process was solely in the hands of the Environment Court.

A feature of any consideration of the applications, discussed in the staff reports, was that the proposals would be measured against the regulatory provisions in the operative One Plan. This set some high and technically complex parameters for the discharge to land of nitrogen and phosphorus nutrients in particular.

One feature of the direct referral process was that all submitters had to go through an extra step. Although they had previously indicated whether or not they wished to attend and speak at a hearing of the applications, they had to apply to the Environment Court for permission to be involved in the Court's proceedings, known as applying to become a Section 274 party. While all written submissions made at the time of public notification were automatically to be considered by the Environment Court, only Section 274 parties could present further written and oral submissions to the Court. Only three Maori organisations (Te Roopu o Whakatere, Tanenuiarangi Manawatu Inc and Te Taiao o Ngati Raukawa) and one Maori individual (William McGregor) registered and were accepted as Section 274 parties.

The Environment Court's procedure was to first see what could be achieved by mediation assisted by one of the Court's Hearing Commissioners. Even if full agreement could not be obtained between opposing parties, it might be possible to narrow down the areas of contention and thereby save the Court's time at a hearing. Mediation was set down for October 2016, and a hearing was set down for December 2016.

The Court accepted that cultural issues were a matter that required their own discrete mediation meeting. When this was held a timetable was agreed for provision of an archaeological site visit and joint report by three archaeologist representatives of the various parties. It was also agreed that a Cultural Impact Assessment that had been prepared by

[1166] Recommendation to Manawatu-Wanganui Regional Council on request for direct referral, 15 March 2016, approved 15 March 2016. Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3251-3263.
Recommendation to Horowhenua District Council on request for direct referral, 15 March 2016, approved 15 March 2016. Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3264-3269.

Muaupoko would be circulated to all cultural mediation parties. Both Te Roopu Taiao o Ngati Whakatere (representing 9 hapu of Ngati Raukawa) and Te Taiao o Raukawa (representing 25 hapu) advised that they would be working closely together, and would be arranging a joint hui on a marae[1167].

The Regional Council file containing papers relating to the period of the Environment Court's consideration of the appeals was not available for perusal during research for this report. What occurred has been gleaned from a reading of the Environment Court's decisions. The Court hearing was actually held at the end of March 2017, and there was a further hearing in December 2017. A notable feature during the period between the two hearings was that in September 2017 the Maori cultural issues were apparently resolved by agreement and at that point the Maori Section 274 parties (other than Tanenuiarangi Manawatu Inc) withdrew from the proceedings[1168]. Tanenuiarangi Manawatu Inc reached its own agreement in April 2018[1169]. The consequence of the withdrawals and the agreement was that the Court's eventual decisions did not discuss Maori cultural issues. The agreements that had been reached provided for protection of culturally significant sites, preparation of an archaeological management plan covering accidental discovery of artefacts and koiwi during construction, and ensuring an opportunity to be commissioned to undertake cultural health index monitoring.

The Environment Court issued its decision on the applications in August 2018, in which it indicated that it was appropriate to grant the consents sought[1170]. The decision was an interim one, and identified further work to be undertaken by the regulatory Councils on the wording of certain conditions. Those changes to the conditions were approved by the Court and a final decision was issued in February 2019[1171].

The Court approved the consent for the discharge of up to 2,000 m³/day of treated wastewater into the Foxton Loop for the three year period that it would take to get the on-land irrigation discharge up and running. In being granted in February 2019, the river discharge consent will expire in February 2022. Biochemical standards were set for the

[1167] Memorandum of mediation agreement, 13-14 October 2016. Manawatu-Wanganui Regional Council file Application 2006-012045. Supporting Papers #3270-3277.
[1168] Interim decision of the Environment Court, Decision No. [2018] NZEnvC 163, 31 August 2018, at paragraphs [35], [263] – [264] and [281]. Available on nzlii website, www.nzlii.org/cases/NZEnvC/
[1169] Interim decision of the Environment Court, Decision No. [2018] NZEnvC 163, 31 August 2018, at paragraph [130]. Available on nzlii website, www.nzlii.org/cases/NZEnvC/
[1170] Interim decision of the Environment Court, Decision No. [2018] NZEnvC 163, 31 August 2018. Available on nzlii website, www.nzlii.org/cases/NZEnvC/
[1171] Final decision of the Environment Court, Decision No. [2019] NZEnvC 13, 4 February 2019. Available on nzlii website, www.nzlii.org/cases/NZEnvC/

quality of the discharge, and there was a requirement for an annual report to be prepared by Horowhenua District Council setting out the results of monitoring and testing of the biochemical standards, and an assessment of whether the standards had been complied with. The first annual report is due in October 2020. There are no specifically Maori cultural conditions of this short-term discharge consent.

The consents for long term operation of the treatment plant and its associated irrigation of treated effluent to land were issued for a term expiring in 2048.

5.10 Concluding remarks

The purpose of this chapter has been to demonstrate the wide-ranging nature of the Crown's interest in water and waterways. Few aspects were untouched as it accumulated statutory powers that placed its own role centre stage.

There was no such thing as quiet reflection about water or waterways, or water's spiritual quality. Instead, the Crown was mercilessly utilitarian. Water and waterways were there to serve a purpose, and if they did not, then they should make way for a use that could be valued more highly. For most of colonial history that greater purpose was agricultural production, so that wetlands were shrunk and waterways were converted into drainage channels, large and small.

From at least the 1880s onwards the Crown intervened and provided kawanatanga support for land drainage and river control. There was no comparable support for fisheries protection, and when some small crumbs of support were offered along these lines, they were couched as being for the benefit of trout and salmon. When the Crown's historical record is examined, the most striking feature is how much was recorded by Crown officials about communal drainage schemes and treating rivers as flood channels, and how little was recorded about eels or Maori spiritual values. If the purpose of giving the Crown a kawanatanga authority in Te Tiriti was to regulate the relationship between Maori and the new settlers for the benefit of all, then it clearly failed. The Crown took rather than gave.

However, the Crown's initial intervention was small-scale, and it would be easy to over-estimate the actual environmental change it generated, and especially the additional change it caused over and above what individual landowners were already allowed to do on their own properties. Forest clearance and wetland drainage were normalised behaviours that altered waterways long before the Crown came along with its own sponsored alterations.

The greater issue is that the Crown did nothing to regulate such settler-initiated changes, because it was impolitic to do so.

The early years of the twentieth century saw this laissez-faire attitude continue. The Crown may have enabled intervention regimes such as drainage boards and river boards, or setting up commissions of inquiry, but it was remarkably hesitant about intervening itself. It was also quite selective. The Department of Lands and Survey had a Land Drainage Branch, and got heavily involved in land drainage schemes on the Hauraki Plains and in the Rangitaiki Swamp, but there was no carry-over of this activity on to the Manawatu or Horowhenua Plains, because those lands had already been privatised. The Crown considered that if the private landowners wanted drainage schemes they should pay for them as they were the ones who would benefit.

The more substantial intervention by the Crown with respect to waterways began in the 1930s. Unemployment relief schemes showed the benefits of Crown funding of works, and resulted in Crown financial contributions for land drainage (e.g. Makowhai work camp) and the digging of cuts along the Manawatu River (e.g. Taupunga). Native Department unemployment funds were also available for drainage works as part of wider projects for the development of Maori Land (such as the Manawatu Development Scheme). When the Whirokino Cut was subsidised in the late 1930s it was at first an exception to the norm then prevailing, though it quickly became the norm once the Soil Conservation and Rivers Control Act 1941 was passed. This created a new administrative structure of hybrid Crown / local authority Catchment Boards, which developed and channelled requests for Crown subsidy funding through to a national Soil Conservation and Rivers Control Council. Both the Catchment Boards and the national Council were given engineering staff whose task was to develop and supervise large-scale catchment-centric projects. More powerful earthmoving machinery gave them the ability to achieve their ambitions.

This uptick in Crown intervention under the 1941 Act came at a time (the 1940s to 1960s) when Maori tribal authority was at a low ebb. Rangatira authority had long ago by then been hit by large scale Crown purchases of land, private purchasing, leasing by European farmers, and absentee ownership, among many other negative influences. The greater ability to modify waterways, because Crown funding, technologies and expertise had become more accessible, was yet another blow to an already marginalised Maori population.

The period from 1941 to 1967 was an era when Crown departments and the local government agencies that the Crown had created adopted an almost single-minded focus in

the way they looked at waterways. That was because the most directly relevant statutes that were in force (Land Drainage Act, River Boards Act, Soil Conservation and Rivers Control Act) told them to do so. Waterways were subordinated to farmland development priorities, so they became channels for the removal of drainage waters, they had to be controlled to avoid farmland being flooded, and they had to be 'tamed' to carry the larger flood flows that resulted from vegetation clearance and upper catchment development. Other values, such as kai awa, wetlands protection, and cultural associations were swept aside and ignored.

Once waterways were modified for drainage or flood control purposes, it became essential to maintain that altered condition, or the gains for farmland development would be lost. Yet the erosive power of water was carrying out its own alterations, undercutting stopbanks or tearing away vegetation barriers. The waterways then became semi-permanent construction sites as annual maintenance and flood repairs continued to be required. If shingle became deposited in a flood channel, it needed to be removed to maintain the channel's flood flow capacity. None of this continuing activity would be conducive to aquatic life.

The activities of Manawatu Catchment Board, and other Catchment Boards, were all-pervasive, affecting almost every catchment and waterway in the Board's district. This egalitarian spread was because every ratepayer in the district contributed, and therefore expected to see some local activity for that contribution. The consequence was that every Maori community would have been affected to one degree or another. None were more affected than those communities located downstream of farmland, who could expect to be impacted by any scheme works upstream. Where a community might be located beside a river close to the coast, such as Katihiku on the Otaki River, or Ngati Tukorehe on the Ohau River, it ran the risk of experiencing all the consequences and few of the benefits.

One example can illustrate the disjunct that the Crown's single-minded approach produced. While not a Maori-related event, it did occur in the Inquiry District. In 1974 a European landowner with land on a bank of the Mangaone Stream, a tributary of the Oroua River, planted some native trees along the riverbank, and sought the support of Manawatu County Council for their protection in the County's district planning scheme as a Place of Historical or Scientific Interest or Natural Beauty. The Council agreed, "provided that the Manawatu Catchment Board has no objection"[1172]. However, the Catchment Board's Works and Machinery Committee did have an objection, and recommended to the Board that the County Council be advised that "the Board is not agreeable to the Mangaone Stream

[1172] County Clerk Manawatu County Council to HC McKellar, Feilding, 9 July 1974, attached to H McKellar, Feilding, to Secretary, 14 July 1974. Manawatu Catchment Board file 1/16. Supporting Papers #1672-1673.

through Mr McKellar's property being declared a National Reserve [sic] because it precludes the Board from carrying out its work and maintenance as provided by the Act"[1173]. While this recommendation was agreed to by the full Board at its November 1974 meeting, some members were clearly uneasy about the decision, as at the following month's full Board meeting it was decided to hold the matter over, and in the meantime obtain a legal opinion[1174]. A report was prepared for the Board's May 1975 meeting. It was explained as background that the bank of the Mangaone Stream was subject to erosion, and the planting had been done to protect it from further erosion. The legal advice was:

> To comply with the relevant provisions of the Soil Conservation and Rivers Control Act 1941, the Board should consider carefully permission for any action which would cause an obstruction to the free flow of water or impede the proper drainage of properties.
>
> Under the Manawatu Catchment Board Bylaw 1967, Clause 10 provides that no trees can be grown or planted within one chain [20 metres] from a watercourse without the Board's consent.

The resulting staff advice was then:

> It would be difficult for the Board to carry out maintenance work on the Mangaone Stream in this area without some damage to the bush, and as paragraph (2) [of the County's district planning scheme provisions for protected Places] states, written consent of the County Council shall be obtained.
>
> Although paragraph (2) provides for written consent, and paragraph (3) for cancellation, the control is placed in the hands of the County Council and not the Board.
>
> It is certain that the Board is sympathetic to Mr McKellar's efforts to protect the native flora, and will cooperate fully to this end. However, as such registration may jeopardise any future plans and drainage interests which could arise in the area, it is recommended that the Board does not agree to Mr McKellar's proposals.[1175]

The recommendation was approved by the Board[1176]. The letter sent to Manawatu County Council repeated the last paragraph above, and added:

> It is realised that this area was planted long before the Board's current bylaws, but should any extension of this area be now considered, Clause 10 of the Manawatu Catchment Board Bylaw should be followed. This provides that no tree can be grown or planted within one chain from a watercourse without the Board's consent.[1177]

[1173] Extract from minutes of Works and Machinery Committee meeting, 7 November 1974, confirmed by the Board, 19 November 1974. Manawatu Catchment Board file 1/16. Supporting Papers #1674.
[1174] Extract from minutes of Works and Machinery Committee meeting, 5 December 1974, confirmed by the Board, 17 December 1974. Manawatu Catchment Board file 1/16. Supporting Papers #1675.
[1175] Secretary to Chairman, 19 May 1975. Manawatu Catchment Board file 1/16. Supporting Papers #1676-1677.
[1176] Extract from minutes of Board meeting, 20 May 1975. Manawatu Catchment Board file 1/16. Supporting Papers #1678.
[1177] Secretary to County Clerk Manawatu County Council, 30 June 1975. Manawatu Catchment Board file 1/16. Supporting Papers #1679.

When the landowner received a copy of the letter sent to the County Council, he was upset and replied;

> I am surprised that you have come to any decision without inspecting the area concerned, as the area suggested for registration was not specified in detail….
>
> This is one of the few streams in your area which, apart from one section on our eastern boundary, is still flowing on the pre-European stream bed, and it is to protect this micro-system of surviving aquatic flora and fauna that it is so important to avoid the use of machinery or chemicals within the waterway.
>
> Another reason is that this is one the few surviving sources of plant material from which species can be re-introduced to Kitchener Park to replace those lost over the last 50 years, any sources other than that upstream of the park is genetically suspect.
>
> You should be aware that registration of listed indigenous species does not preclude the removal from stream bed of exotic species such as the Salix which have caused trouble in the past and are not entirely removed from the stream bed.
>
> Finally I wish to commend to your Board the concept of growing trees and shrubs along stream banks to control erosion and suppress light-demanding weed species such as watercress, gorse and blackberry, which have not caused any trouble in this length of the stream which has a closed canopy, and no native species grow into water so as to obstruct its flow under a closed canopy.[1178]

The Board merely received this letter[1179], and did not respond to it. The Board had, of course, planted many willows along banks in its district, which were perfectly capable of growing into waterway obstructions.

The other main waterway activity that the Crown has been heavily involved with has been pollution control. This has largely been a case of the horse having bolted before the Crown sought to close the stable door. The Crown took a largely hands-off approach until the 1960s, wringing its hands but achieving little. By then flax mills, freezing works, dairy factories, all manner of other industries and communal septic tanks had become located alongside rivers specifically for the advantages such locations offered to get rid of their wastes into a waterway. Cowsheds and piggeries allowed their wastes to eventually get into waterways. The Crown's response in 1912 was to encourage local authorities to safeguard their public water supply intakes, and to tip their septic tank sludge wastes into a river only when it was in flood. The Crown's response in 1963, when it introduced the first anti-pollution regulations, was to safeguard the catchments of public water supply intakes, maintain those bathing waters that were popular because they were not polluted, and place

1680.[1178] HC McKellar, Feilding, to Secretary, 15 July 1975. Manawatu Catchment Board file 1/16. Supporting Papers #

[1179] Extract from minutes of Works and Machinery Committee meeting, 7 August 1975, confirmed by the Board, 19 August 1975. Manawatu Catchment Board file 1/16. Supporting Papers #1681.

all other rivers in a basic grade category where minimal water quality standards were specified.

Since then the Crown has appreciated that waterways are a finite resource that deserve better treatment. Knight, in her environmental history of the Manawatu region, has identified three phases of the pollution problem that has faced waterways:

> The earliest phase was characterized by the appearance of pollution created by solid or other visible materials, known as "gross pollution", from specific discharge points such as sewage treatment plants or freezing works. This was at its most acute in the 1950s. With gross pollution largely dealt with through primary treatment, the second phase of pollution, also from specific point sources such as factories and sewage treatment plants, was less visible but no less pernicious in its effects. This pollution began to alter the chemical state of the rivers it affected, particularly in terms of oxygen depletion, and was at its most severe in the 1970s and 1980s. The third phase dates from the 1990s, just as the effects from point source discharges were diminishing as a result of better management. This phase was characterised by the growing prominence of diffuse discharges, primarily from farming. These discharges, dominated by nitrogen and phosphorus, cause excess nutrients to enter waterways, affecting their ecological health.[1180]

Knight's first phase of gross pollution was what was discovered by the Pollution Advisory Council's 1957 survey of the lower Manawatu catchment. Her second phase of tackling the effects of point source discharges has been a struggle since the 1970s. On the basis of the evidence shown in the sewage treatment plant case studies, it is still ongoing. Her third phase of nutrient enrichment in runoff from farmland is only now being tackled by Manawatu-Wanganui Regional Council's One Plan, which became operative and able to be implemented in 2014.

Manawatu Regional Water Board developed an unhealthy willingness to tread lightly when dealing with the discharge of human wastes into waterways by other local authorities. It showed a reluctance to prosecute territorial local authorities whose treatment plants were feeling what were fairly basic water quality standards, it consistently encouraged progress by offering to work alongside local authorities whose treatment plants were not working properly, and it allowed deadlines for upgrades to be ignored. Local politician collegiality and local political sensitivities prevailed over the regulator / operator split of responsibilities. Those patterns of behaviour all transferred to the Manawatu-Wanganui Regional Council with the passing of the RMA in 1991. Between them the Regional Council and the local Councils have cooperated to 'game' the system that allows existing consents with set expiry dates to be carried over and continue to have force and effect while awaiting the approval of new consents. Rather than being a demonstration of sound and seamless administrative

[1180] C Knight, *Ravaged beauty: an environmental history of the Manawatu*, Dunmore Publishing Ltd, 2014, page 181.

practice, such carryovers have become tools enabling inaction, with long delays apparent before the new consents are issued and with no penalties imposed for those delays.

How else to explain the gap between the treatment plant discharge consent at Shannon expiring in 2001 and its replacement not being issued until 2015, or all of Feilding's treatment plant waste still being discharged into the Oroua River nearly 30 years after the passing of the RMA, even though that state of affairs was clearly signalled to be unsatisfactory by the regulator agency 40 years ago.

It is hard to avoid an overall conclusion that the Crown's approach to water pollution control has been a case of multi-generational regulatory failure.

In November 2017 Manawatu-Wanganui Regional Council produced a table showing the compliance status of all human waste discharges in the region (which covers a wider area than Porirua ki Manawatu Inquiry District)[1181]. This identified a total of 46 discharges, of which just 16 complied with the terms and conditions of their consent, 12 received a 'non comply' rating, 17 received a 'significant non comply' rating, and 1 was not rated. The 'significant non comply' ratings tended to be for operational reasons such as exceeding allowable discharge volumes or failing to meet water quality standards, while the non comply ratings tended to be for procedural reasons such as failing to produce a report on time. The table demonstrates that it is one thing to grant a consent with a series of carefully-crafted conditions, and quite another to see those conditions adhered to. For these reasons it is not possible to state that the failures of the past are necessarily being overcome by more recent actions.

The apparent difficulties highlighted by the treatment plant discharge case studies, with their emphasis on reports, inquiries, scientific measurements, and conditions of consent, are contrasted by the simplicity of the Maori viewpoint. This holds that human wastes should not be discharged into waterways. That approach would promote sustainable management and therefore meet the purpose of the RMA. Of the three case studies only the Foxton treatment plant looks likely to achieve this outcome, in 2022. Elsewhere, tangata whenua objectors have had to accept that there have been some gains, bank them, and know that they have to still keep working before the kaupapa will be achieved.

[1181] Schedule of municipal wastewater reporting, undated (November 2017). Available on www.horizons.govt.nz website. Supporting Papers #3283-3287.

If the purpose of ceding kawanatanga to the Crown in article 1 of Te Tiriti was to allow the Crown to regulate all its citizens for the good of the country and at the same time actively protect interests of the Treaty partner (including fisheries and taonga among other things), then the difficulties encountered to protect the quality of waters in natural waterways show that the Crown has failed in its governance task not just at the general level. It has also failed to respond to the Maori kaupapa and institute measures that are of central importance to the tikanga of tangata whenua.

6. Consultation, consent or protest – interactions between the Crown, local authorities and Maori

> *To what extent do the records show consultation with them or their consent being obtained, and how have they responded or protested to the Crown and/or local authorities regarding issues of rights of control and ownership of waterways (or beds of waterways) in this inquiry district?*

6.1 Introduction

Just as the chapter on Crown management regimes is very lengthy, so is this chapter very short. That is the nature of the colonial and post-colonial history of the extent of Maori involvement in environmental management. Given the large amount of waterscape transformation, the records show comparatively few consultations, consents or protests with or by tangata whenua.

6.2 Consultation and consent

Consultation and the obtaining of consent was a regular feature of life for Government administrators when Maori held a dominant position in Porirua ki Manawatu life. That was before the large-scale Crown purchases, both those prior to the introduction of the Native Land Court and those in the period immediately after the Native Land Court had investigated title to the initial blocks. Matters such as the ferry reserves at the rivermouths were arranged by negotiation and consent.

It was as a result of consultation (which included protest by Maori) that waterways related reserves were agreed to by McLean and others as part of the Rangitikei-Manawatu Purchase negotiations. It is generally accepted that those negotiations were a flawed process that lacked a sound structure, were in some respects incomplete, and did not ensure that informed consent was obtained. How could they be consented to when waterway reserves were still being sorted out some six or seven years after settlers had

been granted land. The negotiations exhibited instances of consultation, of consent, and of protest at varying stages. This report defers to other historical reports that have examined the purchase negotiations in greater detail.

After the New Zealand Wars in the early 1860s the balance of power in New Zealand had shifted, and Government administrators felt more emboldened to exert a kawanatanga authority. They already held the view that what was to be done with the lands acquired by the Crown was to be regarded as solely a Crown matter over which Maori were not entitled to have a say. That instantly precluded any consultation or need for consent about the granting of land, the layout of roads, or access to waterways. This sole decision-making prerogative adopted by the Crown was also apparent in terms of what it did with later purchases of Native Land Court titles, and what obligations private purchasers had toward the Maori sellers. Maori were precluded from having to be consulted or having to give their consent.

Once the European population had built up on the acquired land, and had developed its own governing institutions (such as county councils or drainage boards), the consent of Maori was no longer so necessary. Maori became a minority in their own rohe, many Maori owners were absent in other parts of the country, and lessees who paid the local authority rates on Maori-owned land were treated as the more relevant party to be listened to. Maori effectively became sidelined. This was also happening on the national stage, with legislation imposing no obligations on Ministers or government departments to consult with tangata whenua or obtain their consent before making decisions. Maori ceased to get noticed in the Crown's written record.

All these steps cut back the obligations felt by the Crown and local authorities to consult or obtain consent from tangata whenua to not very much at all. Maori ceased to get noticed in the Crown's written record or in the records of local authorities. That was a pattern that developed early in colonial history and continued largely unchanged until recent times.

Some minor engagements with Maori were identified in local authority records with respect to access to metal and shingle deposits. The ownership of such deposits went with the ownership of land, and local authorities that needed metal for roading works had to negotiate with Maori owners. In 1889 the owners of Muhunoa 1, through two representatives (Honi Taipua and Ropata Te Ao), allowed Horowhenua County Council to "remove and take away" 2398 cubic yards of gravel upon payment of a royalty of 3½ pence per cubic yard, or a lump sum of £34:19:5d. Additional amounts could be taken from the same site by

Horowhenua County Council or Wirokino Road Board on payment of the same royalty rate (or at a royalty rate of 4 pence per cubic yard for smaller amounts of less than 300 cubic yards). The Council also agreed to erect a fence around the shingle pit[1182]. While the site of the proposed pit on Muhunoa 1 was at a road junction near Ohau railway station and was not in a riverbed, the principle of obtaining consent from whoever were the titled landowners was at the core of the agreement.

In a separate instance in 1920, solicitors for Hema Te Ao wrote to Horowhenua County Council that shingle had been taken from the bed of the Ohau River adjoining Muhunoa 1B, and asking for information about the volume that had been taken[1183]. The outcome of this inquiry is not known. Under the Crown's legal principles, however, any claim by the Muhunoa owners to shingle in the riverbed had to be based on an ad medium filum presumptive claim to the riverbed to its centre line.

6.3 Protest

From the 1880s onward Maori residents had become outnumbered in many Porirua ki Manawatu localities. They were a minority of landowners in Drainage Board districts. As minority ratepayers they had difficulty achieving election to local authorities. Their voice became lost from the seats of authority where decisions were made, and from the columns of opinion-forming newspapers. This was a general feature of New Zealand society, and not an aberration only applicable to water and waterways decision making or only applicable to Porirua ki Manawatu district. Coupled with becoming ignored by wider society was a withering away of Maori organisations that could speak with a collective voice for Maori. It was left to individuals to do what they could on their own.

In these circumstances, protest became virtually the only choice available. One example of unsuccessful protest at this time was the unwillingness of Maori to see a swamp at Kairanga drained in 1880. It required firm words by the Resident Magistrate and the threat of prosecutions and fines to overcome "the native obstruction"[1184].

In the post 1880s era, Maori show up most in the historical record by virtue of their protests rather than by virtue of consultation and consent. They were no longer pro-actively involved,

[1182] Agreement for removal of shingle dated 10 December 1889. Horowhenua County Council inwards correspondence item 1889/5. Supporting Papers #1604-1608.
[1183] Harper and Atmore, Barristers and Solicitors, Otaki, to County Clerk Horowhenua County Council, 1 October 1920. Horowhenua County Council inwards correspondence item 1920/10/10. Supporting Papers #1609.
[1184] R Anderson et al, *Crown action and Maori response, land and politics, 1840-1900*, June 2018, Wai 2200 #A201, page 726.

and instead had been forced into becoming reactive to circumstances not of their making. Appeals to Ministers for assistance, and petitions to Parliament, were where Maori were most visible in the Crown's own records.

References such as these were sought out as a matter of course during research for this report, and have been referred to in other chapters alongside the discussion of the actions of the Crown and local authorities that were the reason in the first place for Maori approaching the Crown directly. With the exception of fisheries protests at the mouth of the Manawatu River, discussed in the next chapter, the protests can be characterised as being few and far between and not particularly successful.

Such appeals and protests were not a level playing field. Crown officials became adept at handling them, isolating responses to the particular circumstances of the matter at issue, and not being receptive to or encouraging reviews of policy. Sometimes letters from Maori were simply ignored, with no response made. While Parliament was meticulous in cataloguing and determining a response to all petitions it received, the Native Affairs Committee's written record shows that the outcome of a petition was never communicated back to the petitioner.

After the Second World War petitions and appeals to Ministers became less frequent than they had been in earlier years. Even if there had been more protests about water and waterways, they might have received less attention, because the Maori Affairs Department was by then heavily invested in developing Maori-owned land, and encouraging an economic and productive return on land assets. This meant it was fully supportive of the drainage of wetlands and the leasing of land to development-oriented European farmers.

The Native Land Court was not effective as a forum for protest. The 1941 decision about the validity of the ad medium filum aquae presumption to Court-derived and Crown-granted titles was not initiated by Maori but was taken by a European landowner who had purchased land held in a Court title. It is highly unlikely that any Maori were in the courtroom when the case was being heard. Its relevance to Maori had limited application, as so much riparian land had already gone out of Maori ownership, and what ownership did exist was in the hands of individual owners rather than held by hapu. The application of the ad medium filum

presumption to land held in Court-derived title was generally accepted by the early 1960s when the Papangaio J case was determined[1185].

There is some evidence that while Maori control or authority over waterways had long disappeared, the situation on the ground was not as bad in practice as that loss of control would suggest. The Tribunal has heard claimant evidence that Maori still gathered considerable food and plant resources from waterways during the 1940s and 1950s when those claimants were young people. The Kuku dairy factory water right tribunals heard from Maori in the early 1970s how the Kuku Stream, which passed through dairy farms, had been a source of food in earlier years, had seen the food resources decline with dairy factory pollution, and had seen the food resources recover when the pollution was halted. This suggests a certain degree of overhang where Maori were able to continue their traditional gathering activities for many years after the land and landscape surrounding waterways had become European-owned or European-dominated. If this overhang did indeed exist, then protest would have been less necessary. The nuances of this situation were probably many and varied.

While protest concerning waterways, as expressed to the Crown and local authorities, might have appeared to have subsided during the twentieth century, that was not in fact the case; it had just gone underground. While strong views about the wrong direction that waterways matters were heading were still being expressed by Maori, to their leaders and among themselves, there had been a loss of belief that protesting to the Crown would bring about redress or make a difference. When opportunities to express concerns in an appropriate cultural setting are provided, as for instance to resource management hearings or to this Tribunal, there is no shortage of expressions of concern and resentment about what has been happening to waterways, which have clearly been festering below the surface unnoticed by wider society.

6.4 Consultation under the Resource Management Act

The 1980s and 1990s saw the development of organisations that were mandated to speak for iwi and hapu. Concern for the environment generally, and for water and waterways in particular, was an issue they spoke out about. This trend has increased as opportunities for involvement have opened up under the Resource Management Act 1991 (RMA). Those opportunities have in the main been threefold. First there has been consultation with

[1185] Wider case law than that emanating from Porirua ki Manawatu Inquiry District is not part of the brief for this report, though it is worth noting that the Maori Land Court had decided in the case of the Whanganui River that the ad medium filum presumption would have applied if it were not for that river being a navigable river.

resource management regulators about measures to be included in their policy and plan documents. Second there has been consultation with consent applicants. Third there has been a greater use of submissions objecting to any particular proposal requiring consent, because the Act includes provisions that ensure that Maori viewpoints will receive a better reception.

Each of these opportunities tends to arise out of others setting the agenda. The resource management regulators decide when their policies and plans need to be drawn up, and when they would like to have Maori input. Likewise with consent applications, where applicants are working to their own timetables. In these circumstances consultation can be occasional rather than ongoing.

Consultation under RMA prcesses is patchy and constrained by parameters set out in legislation, and seems underwhelming when the national conversation has moved on to talk in terms of Maori seeking a partnership relationship with the likes of Regional Councils, and an ongoing community relationship with consent holders.

6.4.1 Otaki River and Catchment Iwi Management Plan – a modern intervention

The RMA provides an opportunity for tangata whenua to become involved in management of activities through the provision of iwi management plans. There are limitations in this process, including the retention by local authorities of their exclusive regulatory power as delegated to them by the Crown. Although iwi management plans will still be subordinate to the local authorities' own RMA authority, they are intended to give iwi an ability to manage their own affairs to a certain extent.

There was a burgeoning growth of iwi organisations during the 1990s, and some iwi groups took up the challenge provided in the RMA to develop iwi management plans. One such grouping was the five Ngati Raukawa hapu at Otaki (Nga Hapu o Otaki), which is perhaps not surprising given their close relationship with the professional resources on hand at Te Wananga o Raukawa. In 2000 they produced a Proposed Ngati Raukawa Otaki River and Catchment Iwi Management Plan. They had received financial support from the Ministry for the Environment, Greater Wellington Regional Council and Kapiti Coast District Council. The hapu saw the purpose of the Plan as being "to empower kaitiakitanga" to:

- Document Ngati Raukawa relationship with the Otaki River and Catchment.
- Establish a vision for future management of the Otaki River and under a Treaty partnership.
- Establish an action plan for Ngati Raukawa for achieving that vision.

- Provide a base framework for advancing Ngati Raukawa participation in the management of natural and physical resources.[1186]

In some introductory remarks in the Plan, the hapu explained that the Plan was a response to the unsatisfactory position that they as kaitiaki found themselves in after 10 years of operation of the RMA:

> Changes in attitudes and approaches to resource management in recent years at global, national and local levels have created opportunity in legislation and practice for Ngati Raukawa to now begin to resume active practice of their responsibilities in regard to the Otaki River in partnership with the Crown. Affirmation that kaitiakitanga is an essential ingredient of a pathway to sustainable management is to be found at all levels of the resource management industry….
>
> Despite this affirmation, a decade after the passage of the RMA, Nga Hapu o Otaki still feel relatively powerless to ensure the long term health of our environment and community. In the past this powerlessness has, on occasion, translated to frustration.
>
> [Experience of RMA procedures] has highlighted the overall inability of the tangata whenua to be proactively involved in the overall management of the catchment.[1187]

Because the hapu saw their Plan as a statement "prepared by the iwi for the iwi", with Ngati Raukawa ki te Tonga Whanui as its primary audience, its coverage and its kaupapa was wider than that envisaged by the RMA. Nevertheless, there were elements of the Plan that were directly relevant to RMA resource management activities and processes. Those elements relevant to the RMA would become matters that Greater Wellington Regional Council and Kapiti District Council were obliged to have regard for, once the Plan had been adopted by the iwi. Left unsaid in the legislation was which iwi organisation should take 'ownership' of the Plan by adopting it, thereby triggering the commencement of the statutory duty imposed on the local authorities, which aspects of the Plan became subject to the statutory duty, and whether a Proposed Plan had any standing in these circumstances.

The Plan eloquently described the hurts that had been inflicted on the Otaki River over a longer period of time than just the 10 years of the RMA, placing those hurts in the wider context of environmental change in the catchment as a whole:

> With the coming of the Pakeha, our ability to fulfil our ancient responsibilities has been greatly diminished. Although our Tupuna considered they were safeguarding our rights and responsibilities to our environment in signing the Treaty of Waitangi, the reality is that we have been virtually excluded from any management role by policy design, decision-making, implementation and monitoring to the current day.

[1186] Proposed Ngati Raukawa Otaki River and Catchment Iwi Management Plan 2000, page 12. Supporting Papers #3602-3665 at 3613.
[1187] Proposed Ngati Raukawa Otaki River and Catchment Iwi Management Plan 2000, page 12. Supporting Papers #3602-3665 at 3613.

> As new philosophies and concepts have supplanted those of tikanga, we have watched and wept as the Otaki River has been all but destroyed. Initially, extractive policies were applied to gut the riches from the waters, beaches, bush and rocks, quickly followed by extensive agriculture to mine the fertility of the land itself. New plants and animals were introduced which have almost totally overwhelmed the indigenous coverings of Papatuanuku placed there by Tane Mahuta. Gravel extraction industries have been established that has altered our waterways almost beyond recognition.
>
> As the forest cover was removed for farmland and the rivers mined for their stone, the health of our waters have declined. Once plentiful mahinga kai and kai moana have all but disappeared. And the health of our communities has diminished accordingly. Excluded from the management processes and unable to fulfil our Kaitiaki responsibilities, the mana of our marae will suffer accordingly.[1188]

A comprehensive list of actions was identified by which tangata whenua could become more heavily involved under a partnership arrangement, and the mana of the river could be restored.

So far as is known, the Proposed Iwi Management Plan has not been upgraded to an Approved Iwi Management Plan since being first produced in 2000. This means it has not received any statutory recognition under the RMA. On the website of Greater Wellington Regional Council (as at June 2019), Nga Hapu o Otaki are identified as a "manawhenua partner", but there is no mention of the Iwi Management Plan.

There are other initiatives that have been taken by hapu. Referred to in the sewage treatment plant discharge case studies are the production of Cultural Impact Assessments, and involvement with Cultural Health Monitoring.

[1188] Proposed Ngati Raukawa Otaki River and Catchment Iwi Management Plan 2000, page 17. Supporting Papers #3602-3665 at 3618.

7. Inland Fisheries

What are the impacts for them of the application of common law and/or legislative presumptions to waterways of importance to them in this district for the continued exercise of their customary rights in fisheries and other waterways resources?

7.1 Introduction

The Crown approach has been that fisheries law is distinct from land law. Whether a riverbed is Crown-owned or not, and whether or not ad medium filum presumptive rights exist, has no bearing on the existence or otherwise of fishing rights. Fisheries law operates independently of land titles law or rivers management and water usage law. The Crown acknowledges a potential for overlap, however, with respect to rights of access to waterways for fishing purposes or for gathering plant materials for food, medicines or shelter. Non-Maori ownership of riverbank or lake edge land can deny Maori fishers and gatherers the ability to access traditionally-used waterways.

The Crown's approach could be challenged in Porirua ki Manawatu Inquiry District. The inclusion of lakes in Crown grants turned them into private lands, and severely compromised the concept that the fishery reserves at those lakes actively protected Maori rights of fishing. The ability to utterly transform waterway habitats in the name of land drainage or river control, and thereby have major consequences for fishlife and other aquatic life, was made possible by the private land ownership of smaller waterways, by the issue of legislative authority, and by the use of the Public Works Act to take the land beneath the river control works. Destruction of fisheries, rather than their active protection, has been a by-product of the primacy given by the Crown to land development, and to the use of waterways as drainage channels to be developed in the service of land development. The impact on fisheries has tended not to be referred to in the earlier chapters on the Crown's land dealings or its statutory interventions, because it does not get referred to in contemporary writings, but for almost every reference to drainage or river control, it is possible to substitute the phrases fisheries damage or fisheries destruction. The Crown was wilfully blind to what was happening, and failed to actively protect Maori for whom kai awa was an integral part of life from the consequences of its lack of intervention.

A significant issue concerns the impact on eel fisheries of the rights of private landowners to drain their lands. Wood et al have drawn attention to the clash of common law principles

where Maori had a right to harvest eels, while European landowners had a right to drain their lands[1189], using the actions of the Kawa Drainage Board in Te Rohe Potae as an example. Research for this report did not discover an example of a similar clash of legal principles in Porirua ki Manawatu Inquiry District, though the competing values were ever-present in the activities of the County Councils and the Drainage Boards.

Other evidence concerning the Rangitikei River has discussed the overall impacts that Crown activities have had on the ability for Maori to exercise the rights of fishing guaranteed to them by Te Tiriti o Waitangi[1190].

This chapter records some discrete issues relating to fisheries. The matters discovered during research were not sufficient to allow any overall themes to be developed.

7.2 Aputa Ihakara's petition

Before examining specifically Inquiry District matters, mention must be made about a petition presented to Parliament in 1931 by Aputa Ihakara and others of Foxton. This petition queried the national regulations that the Crown had set up around the harvesting of shellfish and fish in estuaries and rivers, as being contrary to the interests of Maori. Although the Treaty of Waitangi was not specifically mentioned, the petition could be interpreted, and indeed was so interpreted by the Crown, as a request for the honouring of the Treaty rights of Maori with respect to fisheries.

The petition stated:

1. That your Honourable Assembly will exempt our shellfish, viz, pipi taiawa, tairaki, kokota, tuangi, toheroa and other kinds of shellfish from the control of any or that Act which makes it illegal for us to obtain same without a licence.
2. That your Honourable Assembly will grant exemption from those Acts to kukus, pauas, tunas, inangas and other Maori food. We do not sell them for a livelihood. They are our stable [sic] food.[1191]

The Under Secretary of the Native Department, responding to the petition, stated:

[1189] V Wood et al, *Porirua ki Manawatu Inquiry District: environmental and natural resource issues report*, September 2017, Wai 2200 #A196, pages 229-230 and 236.
[1190] D Alexander, *Rangitikei River and its tributaries historical report*, November 2015, Wai 2200 #A187, pages 143-145.
[1191] Petition 178/1931 of Aputa Ihakara and 29 others, 12 October 1931, attached to Clerk Native Affairs Committee to Under Secretary Native Department, 16 October 1931. Maori Affairs Head Office file 1931/436. Supporting Papers #447-448.
The original version of the petition, handwritten in Maori and with the names of all the petitioners, is held on Legislative Head Office papers for Petition 178/1931. Supporting Papers #423-425.

> This is the question raised in all the petitions based upon the promise that their fisheries would be guaranteed. In other petitions I have explained the limits of the operation of the Treaty of Waitangi.[1192]

This response has required further research to determine what the Crown's policy position was with respect to the "other petitions". This further research identified four other petitions that were sent to Parliament in the same year or thereabouts seeking changes to the laws and rights of fishing in inland waterways. They are summarised in the next four paragraphs.

In 1929 Te Puea Herangi and others petitioned Parliament for the return of Maori authority over Waikato Tainui's fishing rights in the Waikato River[1193]. Specifically they did not wish to see their people required to obtain fishing licences from a non-Maori agency. The Under Secretary to the Native Department responded:

> This refers to a very vexed question. The Natives claim that they were confirmed in their rights of fishing in the lakes or rivers of New Zealand. The Supreme Court, however, has held that they have no greater right than Europeans owning property have, and that they are subject to the regulations affecting the necessity of obtaining licences to fish for imported fish. There is no licence required for eel fishing. The matter of granting such rights is one of policy.[1194]

The file is silent about which particular Supreme Court decision is being referred to.

In 1931 Te Korerehu Mihaka and others of Ngai Tahu petitioned Parliament asking for exclusive fishing rights in Lake Wainono and the Waihao and Waitaki Rivers, all in South Canterbury, without being disturbed by Waimate Acclimatisation Society[1195]. The Under Secretary responded:

> The Natives are probably basing their claim on the Treaty of Waitangi which sought to preserve the original fishing rights, but the Supreme Court has held that they have got no more rights than a European landholder adjacent to the stream or lake would have.[1196]

In the same year Tame Kerei and others petitioned Parliament about the fishing rights of Ngati Toa, Ngati Rarua and Rangitane in the Wairau and Opawa Rivers in Marlborough[1197]. The Under Secretary responded:

[1192] Under Secretary to Clerk Native Affairs Committee, 6 November 1931. Legislative Head Office papers for Petition 178/1931. Supporting Papers #426.
[1193] Petition 395/1929 of Te Puea Herangi and 18 others, Tuakau, 16 September 1929. Maori Affairs Head Office file 1929/601. Supporting Papers #431-432.
[1194] Under Secretary to Clerk Native Affairs Committee, 26 October 1929. Maori Affairs Head Office file 1929/601. Supporting Papers #433.
[1195] Petition 26/1931 of Te Korerehu Mihaka and others, attached to Clerk Native Affairs Committee to Under Secretary Native Department, 15 July 1931. Maori Affairs Head Office file 1931/292. Supporting Papers #441-442.
[1196] Under Secretary to Clerk Native Affairs Committee, 30 July 1931. Maori Affairs Head Office file 1931/292. Supporting Papers #443.
[1197] Petition 72/1931 of Tame Kerei and others, attached to Clerk Native Affairs Committee to Under Secretary, 31 July 1931. Maori Affairs Head Office file 1931/327. Supporting Papers #444-445.

> They partly found this claim upon the Treaty of Waitangi, but the Supreme Court has held that they have no greater fishing rights than ordinary Europeans have.[1198]

Yet again in 1931 EM Te Aika and others petitioned Parliament about restoration of Ngai Tahu's fishing rights in accordance with the provisions of Kemp's Deed[1199]. The Under Secretary's response was that Kemp's Deed as a whole was a matter that was still being considered by the Government.

> With regard to fishing rights, an error has crept into the petition in assuming that the Fish Protection Act 1877 is still unrepealed. It was disposed of by the Repeals Act 1907. In Nireaha Tamaki v. Baker (1901 A.C. 561) the Privy Council said that the Treaty of Waitangi would not of itself be sufficient to create a right in the Native occupier of land cognisable in a Court of law, and the Supreme Court has held that in the absence of legislation that the Maoris have no greater fishing privileges than Europeans. In tidal waters no fisheries can be reserved for individuals. A Maori in lawful occupation of land adjoining a non-tidal river can apparently fish from his own property without a licence, but it must be within the period and subject to the conditions laid down in the Fishing Regulations.[1200]

None of the Under Secretary's replies during 1931 identified which Supreme Court decision was being relied upon. The only guidance that was identified during research for this report comes from a newspaper article about a court case in Otago in May 1927. A charge of illegal fishing was defended on the grounds that the Treaty of Waitangi retained Maori fishing rights. In his decision the Magistrate stated:

> The defendant contended that, being a half caste Maori, he was entitled to so fish, and quoted the Treaty of Waitangi in support of his contention. It has been decided in Nereaha Tamaki v. Butler [sic] (1901 A.C. 561) that the Treaty confers no rights cognisable in a court of law. In Waipapakura v. Hempton (17 G.L.R. 82) the Chief Justice said: "It may be … that the Treaty of Waitangi meant to give such an exclusive right to the Maoris, but if it meant to do so, no legislation has been passed conferring the right, and in the absence of such, both Parata v. the Bishop of Wellington and Nereaha Tamaki v. Butler are authorities for saying that until given by Statute no such right can be enforced. An Act alone can confer such a right."

The defence failed when the Magistrate decided that the defendant had failed to prove that he was Maori, defined by law at the time as a half caste "habitually living with Maoris according to their customs". Interestingly there is one further matter of interest referred to at the end of the newspaper article:

> Ranger Pellett asked for a ruling on the rights of Maori to fish….
>
> Ranger Pellett said the Marine Department, under whose regulations one of the informations was laid, had no desire to harass the Maoris, but wanted a definite ruling

[1198] Under Secretary to Clerk Native Affairs Committee, 6 August 1931. Maori Affairs Head Office file 1931/327. Supporting Papers #446.
[1199] Petition 143/1931 of EM Te Aika and others. Legislative Head Office papers for Petition 143/1931. Supporting Papers #410-421.
[1200] Under Secretary Native Department to Clerk Native Affairs Committee, 7 October 1931. Legislative Head Office papers for Petition 143/1931. Supporting Papers #422.

as to the Maoris' fishing rights beyond prescribed limits. There was a Maori settlement in the vicinity of Henley.

His Worship did not express an opinion on the point raised.[1201]

On the basis of this newspaper report, it is believed that the court decision the Native Department relied on when rejecting petitions about Treaty fishing rights was *Waipapakura v. Hempton*[1202].

The Native Affairs Committee decided that Aputa Ihakara's petition should be "referred to the Government for consideration"[1203]. Just what consideration was then given to it by the Government is unclear; the only record located is a report dated May 1936, three and half years later, that "the Internal Affairs Department sent [Parliament's response to the petition] to the Marine Department, and no direction was sought by that Department from the Minister"[1204]. This suggests that the petition did not prompt any review of the Crown policy that was set out in the Native Department's various responses supplied to the Native Affairs Committee. The Crown policy was therefore to abide by and not overturn by legislation the Supreme Court's decision.

7.3 Introduced fish

While the ability to introduce imported fish species into New Zealand was first provided by the Salmon and Trout Act 1867, it was perhaps 20 years later before trout were introduced into the Inquiry District. It was a function of Acclimatisation Societies to undertake the introductions, and while a Manawatu Acclimatisation Society operated from the late 1870s, its activities seem to have been confined solely to introduced land birds such as pheasants, quail and partridges.

[1201] *Otago Daily Times*, 25 May 1927. Supporting Papers #3578-3579.
[1202] 33 (1914) NZLR 1065.
[1203] Report of Native Affairs Committee on Petition 178/1931 of Aputa Ihakara and 29 others, 16 November 1932. *Appendices to the Journals of the House of Representatives*, 1932-33, I-3, page 4. Supporting Papers #1422.
The other four petitions also received a similar recommendation of referral to the Government for "inquiry":

- Report of Native Affairs Committee on Petition 395/1929 of Te Puea Herangi and 34 others, 7 November 1929. *Appendices to the Journals of the House of Representatives*, 1929, I-3, page 19. Not included in Supporting Papers.
- Report of Native Affairs Committee on Petition 26/1931 of Te Korerehu Mihaka and 65 others, 2 March 1933. *Appendices to the Journals of the House of Representatives*, 1932-33, I-3, page 14. Not included in Supporting Papers.
- Report of Native Affairs Committee on Petition 72/1931 of Tame Kerei and 34 others, 2 March 1933. *Appendices to the Journals of the House of Representatives*, 1932-33, I-3, page 14. Not included in Supporting Papers.
- Report of Native Affairs Committee on Petition 143/1931 of EM Te Aika and 104 others, 2 March 1933. *Appendices to the Journals of the House of Representatives*, 1932-33, I-3, page 14. Not included in Supporting Papers.

[1204] File note, undated (received May 1936). Maori Affairs Head Office file 1931/436. Supporting Papers #449.

In September 1887 the Wellington and Wairarapa Acclimatisation Society[1205] expanded into the Inquiry District by the addition of Horowhenua County to its district; it also changed its name to the Wellington Acclimatisation Society. This meant that Wellington district's northern boundary, east of the Tararua Range, was described as being from "the mouth of the Manawatu River, and following the course of that river to the Manawatu Gorge"[1206].

By 1889 the Manawatu Acclimatisation Society had either become inactive or had ceased to exist, and settlers north of the Manawatu River petitioned the Governor seeking to have their district included in the Wellington Acclimatisation Society's district, because "the game in it is not being protected, and its rivers and streams are not being stocked with salmon and trout"[1207]. Having a major river as a district boundary was hardly conducive to the promotion or management of fishing, and the Wellington Society saw benefits in extending its district further northwards into the district to the north of the Manawatu River. It wrote to the Colonial Secretary in January 1890 that it agreed to the northward extension of its district, adding:

> They [the Society] believe that the work of stocking our rivers can be carried on more effectively and economically on a large than on a small scale.[1208]

In October 1890 the fisheries regulations for the Wellington Society were amended so that they applied also in the counties of Manawatu and Oroua[1209], and in November the following year the northward extension of the Society's district was gazetted[1210]. This meant that the Wellington Acclimatisation District included the counties of Horowhenua, Manawatu and Oroua, plus the municipalities of Feilding, Foxton and Palmerston North. The Wellington Society then shared a common boundary with the Manchester and Kiwitea Acclimatisation Society to the north. It seems to have been from about this date (the early 1890s) that trout were introduced into the Manawatu catchment.

There was no consultation with or consent sought from Maori for the introduction of trout. Once introduced, the common law provided that trout became a food source available to Maori as much as any other wild species such as tuna, inanga and sea fish, because wild species had no owner. However, statute law placed restrictions on that general fishing principle, requiring that a fisher of trout had to have first obtained a licence to do so from an

[1205] Formed in September 1884. *New Zealand Gazette* 1884 page 1432. Supporting Papers #1432.
[1206] *New Zealand Gazette* 1887 page 1196. Supporting Papers #1433.
[1207] Petition of AE Russell and 20 others, undated (received 1 July 1889). Internal Affairs Head Office file 1890/164. Supporting Papers #160161.
[1208] Honorary Secretary Wellington Acclimatisation Society to Colonial Secretary, 18 January 1890. Internal Affairs Head Office file 1890/164. Supporting Papers #162.
[1209] *New Zealand Gazette* 1890 pages 985-986, as amended by *New Zealand Gazette* 1890 page 1182. Supporting Papers #1434-1435 and 1436.
[1210] *New Zealand Gazette* 1891 page 1329. Supporting Papers #1438.

acclimatisation society, had to abide by fishing season regulations, and had to use prescribed fishing methods.

In 1898 a complaint was made by Foxton fishers that a ranger from Wellington Acclimatisation Society had stopped them from fishing. They sent a petition to the Colonial Secretary:

> We the undersigned have been prohibited from fishing in the Manawatu River by a Ranger of an Acclimatisation Society acting under the authority of an Order in Council. We respectfully ask that this authority may be cancelled, as at present we are prevented from earning our living, and the reason assigned is not sufficient for such harsh measures.
>
> We contend that salmon trout are hardly ever interfered with by our nets when they are placed under water and below the Foxton wharf, as salmon trout swim on top of the water and go direct to the sea without swimming about to feed….
>
> Trusting you will act promptly in this matter, as every day's delay means loss of our daily earnings.[1211]

Of the ten signatories on the petition four were recognisably Maori names. They were Haretini Reweti, Kereopa Makirika, John Makirika, and Puka Puka. The Order in Council regulating fishing in the Wellington Acclimatisation District that was the subject of the complaint had been in existence since 1891[1212].

The petition was sent to Wellington on the same day that a long article, largely an opinion piece, had appeared in the *Manawatu Herald* about the over-zealousness of the Acclimatisation Society. According to the article, the Acclimatisation Society had introduced animals, birds and fishes "more for the purpose of sport for its members than for the real advancement of the settler", and "from a weak government they obtain power to preserve" these introductions, which amounted to a burden on landowners:

> The Society, not content with putting every landowner under contribution for their amusement, have advanced another step and claimed a right over the rivers and seas of this island. A good many years ago some trout were liberated in the streams running into the Manawatu River, chiefly in order that the subscribers to the cost of stocking the streams might presently enjoy the pastime of fly fishing. A very pretty sport is such fishing, and as this importation was confined within certain areas, the members were able to enjoy their fun at no one else's cost. At least so it was thought, but on Saturday a Mr Moorhouse, a ranger of the Society, descended upon the fishermen by the beach and directed them to set no nets in the river further than a quarter of a mile of the mouth because, so he told them, there had been salmon-trout caught in those nets and sold.

[1211] J Wilson and 9 others, Foxton, to Colonial Secretary, 11 January 1898. Internal Affairs Head Office file 1898/99. Supporting Papers #163-164.
[1212] *New Zealand Gazette* 1891 page 1044. Supporting Papers #1437.

It was the clash of rules, where introduced fish could only be caught by rod and line and could not be sold, while indigenous fish could be caught by net and sold, that was at the crux of the complaint. The commercial fishers at Foxton Heads who were affected were four married men with families and seven single men. There were also others who fished, though not on a fulltime basis:

> Just now shoals of kahawai are swimming about, and presently there will be the schnapper, whilst flounders and soles are daily caught. These have been sent away by train every morning, and secured to those resident inland a suitable and healthy diet during the summer. By stopping the setting of the nets, the fish supply is stopped just because there may be a trout or two more in the upper reaches of the river!
>
> … There is good proof that trout have increased and multiplied exceedingly. Mr Walden, who has known the river for the last thirty years, asserts that at Moutoa the river is alive with trout. It must be nine or ten years since the first trout were liberated in this river, and we remember recording the catch of one near the beach some eight years ago, and as there have been set nets used in the river all this time it is evident that the nets have not interfered with the increase in these fish in the upper waters, so that such drastic measures now appear most surprising and most unnecessary….
>
> The fishermen do not fish for trout, they fish for thousands of other fish, but they cannot help a trout running his head into a trap.[1213]

Wellington Acclimatisation Society was asked to explain its actions, and replied:

> Our Council have been aware for some time that fishermen have been netting in the Manawatu River at and below Foxton, and technically committing a breach of the regulations, but so long as they left the trout alone we did not deem it our duty to interfere. Recently, however, one of the fishermen placed a net across the river at a distance several miles from the mouth and netted a quantity of trout which he sold in Palmerston. Upon this the Rangers were instructed to visit the locality and warn the fishermen that such a practice must not be continued or repeated. It was pointed out that the Society would be within its rights in prohibiting fishing with nets in the river altogether, but that so long as the fishermen did not interfere with the trout the Society had no desire to exercise their rights.[1214]

A copy of this reply was sent to the petitioners, with the advice that "the catching of trout is illegal, and that the Acclimatisation Society appears to have acted considerately in allowing you to use nets so long as trout are not taken"[1215].

As explained elsewhere with respect to the Rangitikei River[1216], the Wellington Acclimatisation Society actively sought to eliminate eels from waterways in its district, on the grounds that they ate young trout. Wood et al have identified instances where this general

[1213] *Manawatu Herald*, 11 January 1898, attached to J Wilson and 9 others, Foxton, to Colonial Secretary, 11 January 1898. Internal Affairs Head Office file 1898/99. Supporting Papers #163-164.
[1214] Honorary Secretary Wellington Acclimatisation Society to Colonial Secretary, 28 January 1898. Internal Affairs Head Office file 1898/99. Supporting Papers #165-166.
[1215] Colonial Secretary to J Wilson and others, Foxton, 1 February 1898. Internal Affairs Head Office 1898/99. Supporting Papers #167.
[1216] D Alexander, *Rangitikei River and its tributaries historical report*, November 2015, Wai 2200 #A187, pages 153-154.

policy was applied in that part of the Inquiry District covered by this report, specifically in the Ohau River[1217].

7.4 Whitebaiting, Manawatu River

Of all the inland fisheries, whitebaiting has traditionally had the greatest crossover among its fishers between the Maori and the Pakeha population. Fishing for introduced fish was largely a Pakeha pastime, while fishing for eels and many other indigenous species was largely a Maori pursuit. Whitebaiting, however, has always had its enthusiasts drawn from all sectors of the population. It is perhaps because of this spread of users that it features more than any other indigenous species in surviving Marine Department records, certainly so far as Porirua ki Manawatu Inquiry District is concerned.

Prior to 1908, whitebaiting had been covered by clauses in general fishing regulations. The 1906 version of these general regulations set a general limit of one net per fisher, with an opening of five square feet, though this was varied in Canterbury, including the Waitaki River, where nine square feet openings were permitted[1218].

In July 1908 the variation was extended to Otago rivers, where nets with seven square feet openings were permitted[1219]. If such arrangements could be made for other parts of the country, reasoned Foxton whitebaiters, why not for the mouth of the Manawatu River? So in October 1908 a petition was signed by 45 Foxton fishers complaining that the five square feet limitation on the size of opening of whitebaiting nets, as set out in the 1906 regulations, was "quite useless to us [as] this is a slow tidal river". They sought the ability to set two nets, each with nine square feet openings[1220].

While most of the petitioners seem to have been Europeans, two had recognisably Maori names. This indicates that by the turn of the century there was no locally-held conception of exclusive hapu sovereignty over estuarine fisheries. The Manawatu estuary fishery was shared, and had become subject to Crown exercise of kawanatanga authority.

[1217] V Wood et al, *Porirua ki Manawatu Inquiry District: environmental and natural resource issues report*, September 2017, Wai 2200 #A196, pages 615-616.
[1218] *New Zealand Gazette* 1906 pages 1381-1385. Supporting Papers #1444-1448.
[1219] *New Zealand Gazette* 1908 page 2028. Supporting Papers #1451.
[1220] Petition signed by 45 "Foxton fishermen", undated (October 1908). Marine Head Office file 2/10/29. Supporting Papers #479-482.

The response of the Secretary of Marine, in his advice to the Minister of Marine, was that officials' thinking had moved from the stance set out in the 1906 regulations, and they were now willing to allow a whitebait net with a wider opening:

> I see no objection to the general regulation being made to give seven feet openings for the whole of the Dominion except Canterbury and the Waitaki River where nets with nine feet openings should continue to be allowed. I have drafted the attached regulations to provide for this, and recommend that they be made.[1221]

The Minister agreed[1222], and new regulations were issued later that month[1223]. These regulations replaced the whitebaiting-related provisions of the 1906 general fisheries regulations. Henceforth throughout the twentieth century (with the exception of one three-month period in 1932) the whitebaiting regulations were separated and stood alone from other fisheries regulations.

The seven square foot net opening provided for in the October 1908 regulations did not satisfy the Foxton fishers' request for a nine square foot opening, and they tried again with another petition one year later, i.e. at the start of the 1909 whitebaiting season. In addition to a net with a nine square feet opening, the petitioners asked to be allowed to have one set net in addition to a hand net. While the petition was signed by 62 persons, none had recognisably Maori names[1224].

The Secretary for Marine was willing to allow the increased net size, but was more cautious about allowing set nets, recommending that this matter be held over until after the Chief Inspector of Fisheries had visited the Manawatu River[1225]. The Minister gave his approval to the increased net size, though the issue of a regulation to this effect was deferred while awaiting the results of the Chief Inspector's visit to Foxton.

The Chief Inspector of Fisheries' report on his visit is repeated here in detail as it represents one of the few occasions where a Wellington-based official visited the district.

> I have the honour to report having visited Foxton on the 10th and 11th November [1909] for the purpose of conferring with fishermen about the kind and size of whitebait nets which should be allowed to be used in the Manawatu River.

[1221] Secretary of Marine to Minister of Marine, 21 October 1908. Marine Head Office file 2/10/29. Supporting Papers #483.
[1222] Approval of Minister of Marine, 28 October 1908, on Secretary of Marine to Minister of Marine, 21 October 1908. Marine Head Office file 2/10/29. Supporting Papers #483.
[1223] *New Zealand Gazette* 1908 page 2583. Supporting Papers #1452.
There was an amendment to the general whitebaiting regulations in July 1910. *New Zealand Gazette* 1910 page 1915. Supporting Papers #1455.
[1224] Petition, undated, attached to Lawrence and Reade, Solicitors, Foxton, to Minister of Marine, 4 October 1909. Marine Head Office file 2/10/29. Supporting Papers #484-487.
[1225] Secretary for Marine to Minister of Marine, 14 October 1909, approved by the Minister 18 October 1909. Marine Head Office file 2/10/29. Supporting Papers #488.

> Before my arrival Constable Wood [certain police officers also held appointments as local Inspectors of Fisheries] had arranged for the fishermen to meet me at the Courthouse in the evening of the 10th. About 20 fishermen attended and the matter was discussed for an hour and a half. They were unanimous that set nets should be allowed. They stated that along the best fishing part of the river the water shoaled gradually, and for that reason and because of the muddy condition of the river hand nets could not be used to advantage. In some parts of the river higher up hand nets could be used.
>
> I inspected the river next morning with a number of fishermen and was shown the nets and method of using them. The net in general use is what might be called a hand set-net…. The frame is made of supplejack with a short handle at one end. The net is worked from the water's edge, and is generally held in position by the fisherman and lifted at intervals to empty the fish out.
>
> After an inspection of the river I came to the conclusion that the ordinary hand net cannot be used to advantage in the most accessible part of the Manawatu River and that set nets should be allowed; and considering the size and character of the river that the size of these set nets should be allowed to be 9ft by 1 ft, or equal to 9 square feet.
>
> I do not think, however, that a person should be allowed to use a set net and a hand net at the same time (as is asked for in the petition sent down by Mr Reade), i.e. a person must [be] either hand-net fishing or set-net fishing; and no person should be allowed to use more than one set net. The hand net allowed to be the same size as is specified in the regulation made on the 18th November….
>
> There are between 30 and 40 persons employed whitebait fishing in the season at Foxton. The permanent fishermen number about 10. I measured all the nets at the fishing station near the Heads and found them alright….
>
> As complaints were made by the fishermen with regard to the pollution of the river by the flax mills, I visited the mills up the river from Foxton. I found that these mills all had screens fixed to prevent refuse from getting into the river. I tested these screens and found that they were quite effective in preventing tow and other refuse from getting through. Constable Wood stated that some mills about 15 miles higher up the river were allowing all refuse to flow into the river, and said that he would make further enquiry into the matter.[1226]

The Chief Inspector was silent about whether any of the fishers he spoke to were Maori.

The Secretary for Marine reported to the Minister on the Chief Inspector's visit. He explained that the Chief Inspector's recommendation was to allow nets of the same opening size but of a different shape to those currently permitted under the regulations. He supported an amendment, applicable only to the Manawatu River, to allow for the differently-shaped nets, plus another provision that there must be a distance of at least 2 chains between nets[1227]. The Minister gave his approval, and the regulation amending the size of

[1226] Chief Inspector of Fisheries to Secretary for Marine, 9 December 1909. Marine Head Office file 2/10/29. Supporting Papers #489-491.
[1227] Secretary for Marine to Minister of Marine, 20 December 1909, approved by the Minister 21 December 1909. Marine Head Office file 2/10/29. Supporting Papers #492.

allowable nets when whitebaiting in the Manawatu River was issued in December 1909[1228]. The regulation also prohibited the use of both a set net and hand net together.

This appeared to accommodate the needs of whitebait fishers at Foxton until 1922, when the regulations specifically for the Manawatu River were replaced by new regulations[1229]. These amplified and clarified what had been set out in the 1909 regulations, rather than introducing any new measures.

That same year, another request about the Manawatu River was received in Wellington. This was a petition sent by Maori fishers who had held a meeting and resolved:

1. We want all creeks running from lakes into the Manawatu River to be closed. Names of such lakes are Tewhakapu, Koputara and Kaikokopu.
2. We also want drains or creeks running from swamp into the Manawatu to be closed, for in such places whitebait are free to grow into mother-fish without being eaten by other fishes.[1230]

The local police officer in his capacity as a Fisheries Inspector reported favourably on the petition:

> The drain (or creek) of most importance in this district so far as whitebait is concerned is the one running from the three lakes mentioned in the petition, with its confluence with the Manawatu River at Manawatu Heads about a mile from the bar.
>
> In a good season large numbers of whitebait go up this drain into the lakes, and the Maori theory is that in the autumn they return to the sea to spawn. Whether this is correct or not is beyond my knowledge, but what is certain is that the whitebait in the Manawatu River have been gradually getting less each year until last season which was the poorest on record. This being so, I can only say that if this drain were closed it would be seen in the course of a year or two whether the whitebait increased or not, and if it did increase it might be reasonable to assume that the theories of the Maoris are correct.
>
> The request of the Maoris is quite a reasonable one and no hardship would be inflicted on anyone, as those few persons who have monopolised the drain referred to above in the past could take up positions in the river the same as the other whitebaiters do. There is ample room for all of them. I would certainly recommend that the petition be given effect to insofar as this one drain is concerned.
>
> The other drains referred to are above Foxton and there is no need whatever to have them declared closed as there are floodgates across each of them near their junction with the river. These gates, or rather doors, open when the water in the drain becomes higher than the river, and close when the river is higher than the drain. When the gates are closed the whitebait cannot get into the drain and very little go up them when the gates are open, consequently they are not fished for whitebait at all

[1228] *New Zealand Gazette* 1910 page 10. Supporting Papers #1453.
[1229] *New Zealand Gazette* 1922 page 1744. Supporting Papers #1456.
[1230] Petition of Hokowhitu Makirika, Pape Teira, Potaka Hotereni and Haretini Makarika, "etc", Foxton, 20 May 1922. Marine Head Office file 2/10/29. Supporting Papers #493.

> except occasionally with an odd scoop net, and all that was caught by this means last season would only amount to a few pounds, which makes practically no difference.[1231]

The Chief Inspector added to this report when forwarding it to the Secretary for Marine:

> One of the drains mentioned has been the cause of a lot of trouble for some years, as the person who gets their net in near the mouth can block the drain and get all the whitebait which comes in from the river. It would require an Inspector on the spot all the time to prevent this. I agree with Constable Owen that the request of the Natives seems reasonable, and would recommend that it should be given effect to.[1232]

The initial response of the Secretary was to query whether whitebaiting some distance either side of the mouth of the drain should also be prohibited[1233]. The Chief Inspector replied that in his opinion this would not be necessary as the river was tidal, was an estuary, and had no defined channel[1234].

The matter was then put to the Minister of Marine, who approved the issue of a regulation closing the drain to whitebaiting[1235]. This regulation, an amendment to the July 1922 regulations by adding a further proviso, was issued in August 1922:

> And provided also that no nets of any description shall be used for taking whitebait in any of the tributaries or drains flowing from the lakes known as Tewhakapu, Koputara and Kaikokopu into the Manawatu River.[1236]

That Lake Koputara and Lake Kaikokopu both drain directly into the sea, rather than via the Manawatu River estuary, was ignored; presumably the Wellington-based officials did not know this.

There was a further petition from Foxton Maori in April 1924. This concerned both whitebait and flounder fishing. With respect to whitebait, the petitioners asked:

1. A man is only entitled to a scoop and a set net.
2. A scoop and a set net should have a licence of 10/- for each net a year.
3. Drains leading to lakes and swamp should never be allowed to whitebaiters to fish within three chains of the mouth of such drains.[1237]

There is no record on the Marine Department file concerned with Manawatu River whitebaiting of any consideration given or response made to this petition.

[1231] Inspector of Fisheries Owen, Foxton, to Chief Inspector of Fisheries, 6 June 1922. Marine Head Office file 2/10/29. Supporting Papers #494-495.
[1232] Chief Inspector of Fisheries to Secretary for Marine, 19 June 1922. Marine Head Office file 2/10/29. Supporting Papers #496.
[1233] Secretary for Marine to Chief Inspector of Fisheries, 6 July 1922. Marine Head Office file 2/10/29. Supporting Papers #497.
[1234] Chief Inspector of Fisheries to Secretary for Marine, 25 July 1922, on Secretary for Marine to Chief Inspector of Fisheries, 6 July 1922. Marine Head Office file 2/10/29. Supporting Papers #497.
[1235] Secretary for Marine to Minister of Marine, 31 July 1922, approved by the Minister 1 August 1922. Marine Head Office file 2/10/29. Supporting Papers #498.
[1236] *New Zealand Gazette* 1922 page 2212. Supporting Papers #1457.
[1237] Petition of WE Mahuariki and 11 others, 11 April 1924. Marine Head Office file 2/10/29. Supporting Papers #499-500.

7.4.1 Whakapuni Drain

In 1926 the drain that had been closed to whitebaiting by the August 1922 amending regulation became the subject of a grievance at Foxton that would last for many years. Whitebaiters considered it to be the most productive Manawatu River site for whitebaiting, yet they were prevented from fishing there.

The matter commenced with a letter to the Marine Department from Major Robert Wilson, son of a pioneer lower Rangitikei settler and part-owner of the land through which the drain passed:

> Mr R Dalrymple and myself are joint owners of a property near Foxton comprising 2000 acres or so. Some years ago we cut a drain through the property which debouches near the mouth of the Manawatu River.
>
> I was down at Foxton lately and observed some whitebait in the drain, and asked a resident there to obtain some for me. He replied however that the Police at Foxton refused to allow any whitebait fishing in it, and had prevented and obtained convictions and fines against several people so doing.
>
> The [Fisheries] Act, however, distinctly says that the regulations shall not apply to private waters, and this drain is undoubtedly private water. I do not wish however a clash with your Department or be involved in litigation unnecessarily, so am writing to ask your view of the matter before proceeding further.[1238]

Wilson was referring to Section 78 Fisheries Act 1908, which defined "private waters" as "any waters wholly contained within the land of one private owner, but does not include the water of any permanent river or stream or lake which passes or extends from the land of one owner to that of another, nor any water not wholly contained within the land of one private owner".

In the first instance Wilson was sent a copy of the regulations. He replied:

> I think the drain I refer to must be intended to be described in the Gazette notice, though there are no drains from Koputara and Kaikokopu into the Manawatu River as they flow direct into the sea, and I do not know any lake called Te Whakapu.

He queried the legality of regulations affecting private waters, which in this case was a drain "constructed through our property the whole way", and added:

> I cannot see what is the object of this regulation. If it is to preserve the breeding grounds of a fish, this is quite unnecessary as the lakes the drain comes from are very small and the whitebait going up the drain only provide food for eels in the lake.
>
> In any case I do not see why we as owners shall not be allowed to take whitebait on our own property the same as in other parts of New Zealand.[1239]

[1238] RA Wilson, Bulls, to Chief Inspector of Fisheries, 10 September 1926. Marine Head Office file 2/10/29. Supporting Papers #501-502.
[1239] RA Wilson, Bulls, to Secretary for Marine, 25 September 1926. Marine Head Office file 2/10/29. Supporting Papers #503-504.

The initial Crown response to Wilson's complaint seems to have been to ignore it. There is no record on the Marine Department file of any reply, or of any correspondence between the Department and Wilson between September 1926 and May 1929, of which more below.

In 1927 a petition was presented to Parliament by Te Aputa Ihakara and others, which was the first reference on the file to the name Whakapuni, being referred to by Te Aputa as the lake from which water flowed into the drain that had been cut by Wilson. The petition was framed in the context of the Crown's Treaty of Waitangi obligations, asserting that Maori had fished the waterway that drained Lake Whakapuni from time immemorial, that they had been prevented from continuing to freely do so by the Crown's regulations, that the regulations should be effective against Europeans only, and that Maori should be allowed to continue fishing the waterway "for our own use and maintenance". The reasons for the petition were:

1. This lake namely Whakapuni has been the life-water of our ancestors, and has also been mine and my peoples today. The fish which we obtain from this lake are eels, flounders, whitebait and other freshwater fish, and also a shellfish named kakahi.
2. When Ihakara Tukumaru was living, he reserved this lake from his sale of Rangitikei-Manawatu to the Crown, for life-water for me, Te Aputa-ki-Wairau Ihakara and my people, and from that time to this I have fished in that lake.[1240]

As a side note, the petition had been received by the Native Affairs Committee of the House of Representatives in September 1927, and had initially been referred by the Committee to the Native Department which had consulted with the Department of Lands and Survey. Those two departments had incorrectly reached a conclusion that Lake Whakapuni was near the mouth of the Rangitikei River, rather than near the mouth of the Manawatu River. Their involvement with the petition therefore went off on an invalid tangent, and is not discussed in this report[1241].

In response to Te Aputa Ihakara's petition, the Secretary for Marine explained that the August 1922 regulation arose from a request by Maori asking for the drain to be closed to whitebaiting, and provided details about the Chief Inspector's report at that time about the

[1240] Petition 260/1927 of Te Aputa Ihakara and others, undated (September 1927), attached to Clerk Native Affairs Committee to Secretary for Marine, 5 September 1928. Marine Head Office file 2/10/29. Supporting Papers #505-506.
The original version of the petition, handwritten in Maori and with the names of all the petitioners, is held on Legislative Head Office papers for Petition 246/1929. Supporting Papers #406.
[1241] Maori Affairs Head Office file 1927/352. Wai 2200 #A67(b), documents 9428-9442.
Lands and Survey Head Office file 22/5127.
The incorrect inquiries made by these two departments are discussed in H Potter et al, *Porirua ki Manawatu inland waterways historical report*, August 2017, Wai 2200 #A197, pages 109-112.

request[1242]. The Native Affairs Committee reported on the petition in September 1928, recommending that it be referred to the Government for consideration[1243]. There is no record on the Marine Department file concerned with Manawatu River whitebaiting that the contents of the petition were considered further by the Government.

In November 1928 the Crown received information that the drain was being fished illegally. Independently the local Inspector of Fisheries was also expressing concern:

> As it has now become impossible to detect all persons fishing for whitebait in this particular drain, the regulations are practically useless.
>
> The drain referred to extends from certain lakes to the Manawatu River, approximately two miles, through sand dunes which are more or less covered with lupins and other scrub.
>
> A system of scouting is used by poachers which renders it almost impossible to approach them without being seen, which is clearly shown by the number of visits made to this drain before daybreak and after dark, as well as in daytime.
>
> So far this season only one offender has been brought before the Court, whereas poaching is going on almost every day and sometimes at night according to the quantity of whitebait running.
>
> The whole situation is now quite unsatisfactory and has reached a stage when some alteration will require to be made, as it is most unfair to the law-abiding fishermen that poachers should catch large quantities of whitebait almost without fear of detection under present conditions.
>
> Knowing the local conditions as I do, I am doubtful that any regulations could be made which would prevent poaching, which at present is being carried out on a comparatively large scale.
>
> Several suggestions concerning this drain have been made to me by local residents and fishermen, but it is difficult to recommend any of them at present, and I am of the opinion that an officer should be sent here from Wellington to make the necessary inquiries and furnish a comprehensive report on the whole position.[1244]

It was agreed that the Chief Inspector of Fisheries should visit Foxton at some indeterminate date in the future. His other duties prevented him doing so, and it was the Secretary for Marine himself who finally made the visit, in August 1929. By then, there had been more fractious activity about the drain.

[1242] Secretary for Marine to Clerk Native Affairs Committee, 6 September 1928. Marine Head Office file 2/10/29. Supporting Papers #507.
[1243] Report of Native Affairs Committee on Petition 260/1927, 18 September 1928. *Appendices to the Journals of the House of Representatives*, 1928, I-3, pages 5-6. Supporting Papers #1419-1420.
[1244] Inspector of Fisheries Foxton to Superintendent of Mercantile Marine Wellington, 6 October 1928, attached to Superintendent of Mercantile Marine Wellington to Secretary for Marine, 7 November 1928. Marine Head Office file 2/10/29. Supporting Papers #508-510.

In May 1929 a petition was sent to the Marine Department asking for the drain to be opened to whitebaiting. The petition stated:

> The closing of a well-known drain at Foxton Beach for the purpose of fishing whitebait, has proved a great mistake.
>
> It has caused a scarcity of the delicate fish, besides a mass of trouble. Therefore we pray that the said drain be reopened, under the rules and regulations of the Manawatu River.[1245]

Of the ten petitioners, one (Hakaraia) had a recognisably Maori name.

However, the following month a letter was sent to the Chief Inspector of Fisheries asking for the ban on whitebaiting to remain:

> On Saturday 15th June there was a meeting held in the Court-house, Foxton, to remove the restriction on the Whakapuni drain, and we the undersigned want it to remain as it is. Our reason is that when the whitebait go up the stream into the lake, the next year they come out as mother-bait, and spawn out at sea. During the restriction there is a gradual increase in the amount of whitebait caught each year….
>
> We are greatly in need of a ranger for river and Whakapuni drain because the constables have got very little time to look into the matter; poaching in the Whakapuni drain is done very often.[1246]

Perhaps half the 62 signatories to this letter had recognisably Maori names. Their request had been prompted by a public meeting held two days before the letter was sent. A newspaper report of the meeting showed that opinions were divided, with some speakers saying the closing of the drain to fishing just allowed whitebait to travel up to the lakes and there be eaten by eels, while other speakers explained the life cycle of whitebait moving back downstream in autumn to spawn and generate the following year's crop of whitebait. One Maori speaker, urging that the restrictions on fishing be lifted, explained that "the catching of whitebait was a big factor in the income of the natives in the river area". Another Maori speaker bemoaned the loss of whitebait habitat in other creeks and streams further up the Manawatu River, where flood gates on drain outlets prevented passage by fish; it was these changed circumstances that made Whakapuni Drain the best whitebait creek in the Manawatu district[1247]. The Drainage Boards and the Manawatu-Oroua River Board, responsible for drainage matters, did not have any obligations imposed on them by their legislation to consider the impact of their works on fisheries.

[1245] E Boyle and 9 others, Manawatu Heads, to Secretary for Marine, 11 May 1929. Marine Head Office file 2/10/29. Supporting Papers #511.
[1246] Hokowhitu Makirika and 61 others, Foxton, to Chief Inspector of Fisheries, 17 June 1929. Marine Head Office file 2/10/29. Supporting Papers #513-519.
[1247] *Manawatu Herald*, 18 June 1929, and *Manawatu Daily Times*, 20 June 1929. Copy on Marine Head Office file 2/10/29. Supporting Papers #520-521 and 522.

As the controversy over Whakapuni Drain increased, the Marine Department decided it needed to know more about the drain. It asked the local Inspector of Fisheries for a full report[1248]. He provided a plan showing the location of the drain, and some facts about its condition[1249]. The Department's questions, and the Inspector's replies were:

> Q. The width of the drain at outlet to the river, and whether it becomes narrower near the lagoon.
> A. The drain is 6 ft wide at and near the outlet, but otherwise is about 4 ft wide up to the lagoon, a distance of 116 chains.
>
> Q. The average depth of water in the drain.
> A. The average depth of water in the drain is about 1 ft 6 ins.
>
> Q. If the drain is tidal, the approximate rise and fall at ordinary tides.
> A. Neap tides do not reach or affect the drain proper, but spring tides back up the drain about 3 chains causing a rise and fall of about 1 ft 6 ins.
>
> Q. Does the drain become dry at any period of the year?
> A. Dries up almost its full length in a dry summer.
>
> Q. Particulars of number of culverts or bridges over the drain.
> A. [Plan shows] the approximate position of the only bridge over the drain, and there are no culverts over it.

Into the controversy stepped Robert Wilson again. As owner of the property through which the drain passed, he still wanted the whitebaiting ban removed, as he had unsuccessfully urged nearly three years earlier. When he wrote in to the Marine Department in May 1929 (with a follow-up letter in July 1929)[1250], the Department replied that it was checking the legal status of the drain, in case the outlet or a part of the drain was Foxton Harbour Board endowment[1251]. Wilson promptly provided evidence that the drain was on his and Dalrymple's land[1252].

Another person who joined the debate, by writing to the Minister of Marine, was Tuiti Makitanara, MP for Southern Maori. He had been provided with a copy of some proposed new whitebaiting regulations, and had also been approached by those Foxton Maori who were in favour of the whitebaiting ban being retained and had prepared a petition on the subject:

[1248] Chief Inspector of Fisheries to Constable Owen, Foxton, 25 June 1929. Marine Head Office file 2/10/29. Supporting Papers #523.
[1249] Constable Owen, Foxton, to Chief Inspector of Fisheries, 27 June 1929. Marine Head Office file 2/10/29. Supporting Papers #524.
[1250] RA Wilson, Bulls, to Secretary for Marine, 20 May 1929 and 1 July 1929. Marine Head Office file 2/10/29. Supporting Papers #512 and 525.
[1251] Secretary for Marine to RA Wilson, Bulls, 16 July 1929. Marine Head Office file 2/10/29. Supporting Papers #526.
[1252] RA Wilson, Bulls, to Secretary for Marine, 1 August 1929. Marine Head Office file 2/10/29. Supporting Papers #527-530.

> With regard to [proposed] regulation No. 6, I would suggest that instead of limiting the sizes of the nets to be used for fishing in the Whakapuni Drain, that the Drain should be absolutely and permanently closed for the catching of whitebait. This course is recommended to me by a number of petitioners from Foxton, and I am presenting their petition to Parliament. The grounds the petitioners give for the course suggested by them are as follows:
>
> (1) At present the Whakapuni Stream is closed by an Act of Parliament.
> (2) The Whakapuni Stream is the outlet of two lakes to the sea, Whakapuni and Tewahaotengarara.
> (3) These two are the only lakes that supply the Manawatu River with the inanga, mother of the whitebait.
> (4) In the month of March and April the inanga from the above lakes goes to sea to spawn, and in July, August and September the inanga returns as whitebait up the river.
> (5) If the catching of the whitebait is strictly prohibited (as at present by law) in the Whakapuni Stream, there would be no fear of the whitebait being exterminated.
> (6) It may be noted since the Whakapuni Stream has been closed (5 years) the whitebait has increased by 70%.
>
> The petitioners also urge that rangers be provided to guard the stream from poachers, and that the penalty be increased.[1253]

The petition was presented to Parliament later in August 1929, and used the reasoning set out above for the prayer that the prohibition should remain in force[1254]. The majority of the petitioners had recognisably Maori names.

The political pressure was building, to the extent that the Secretary for Marine decided not to wait for the Chief Inspector to visit Foxton, but instead to go there and see things first-hand for himself. He reported to the Minister on his visit at the end of August 1929, including in his report his advice on the next steps the Government should take:

> I have to advise you that last weekend I took the opportunity, accompanied by Captain Hayes of the Fisheries Branch, to visit the locality and look at the whole position from the shore on the Manawatu River right up the course of the Whakapuni Drain to the Whakapuni Lake.
>
> The drain was cut some twelve years ago, and practically its entire length is through the property jointly owned by Major Wilson and K Dalrymple, although its waters discharge through a naturally-eroded channel across the land between high and low water mark, the title to which is vested in the Foxton Harbour Board.
>
> The width of the drain varies from a distance which takes a full jump to clear, down to places where one can step from one side to the other. This irregularity arises from the banks, which are of sand, falling in. The channel across the foreshore we found to be 288 yards from the mouth of the drain to the Manawatu River.

[1253] T Makitanara MHR to Minister of Marine, 15 August 1929. Marine Head Office file 2/10/29. Supporting Papers #531.
[1254] Petition 246/1929 of Pakete Raata and 26 others, 9 July 1929, attached to Clerk Native Affairs Committee to Secretary for Marine, 17 August 1929. Marine Head Office file 2/10/29. Supporting Papers #532-534.
The original version of the petition, with the names of all the petitioners, is held on Legislative Head Office papers for Petition 246/1929. Supporting Papers #407-409.

Although fishing in the drain has been prohibited since 1922, it has nevertheless been pursued by poachers to a considerable extent, and I understand there has been a good deal of fighting amongst the men concerned. We have succeeded with a few prosecutions, but the scout system which has been developed is so effective that it has now become practically impossible to catch the men.

I think there is little doubt that we never had any legal right to impose prohibition, for the reason that the drain itself is almost entirely within Major Wilson's property, and except for a chain or so is not tidal.

What we now propose should be done is

1. Repeal the prohibition regulation.
2. Arbitrarily define where the constructed drain ends and the channel across the foreshore commences.

I say "arbitrarily define" because we could enforce a prohibition for a chain or so up the drain, for the reason that the tide runs so far. At the point where the drain emerges on to the foreshore a post has been driven in, and this point, to all intents and purposes, coincides with the boundary between Major Wilson's property and the Harbour Board foreshore and the tidal flow.

I have discussed the matter with Major Wilson here in Wellington and with Mr Linklater [local Member of the House of Representatives] over the telephone, and they both agree that the most satisfactory way to define the position is by placing a permanent post at the point indicated.

The position then would be, if prohibition on the drain were lifted, that fishing in the drain would be entirely within Major Wilson's property, and it would be permissible for him to grant authority to any person or persons, as he may desire, to fish within the drain, and anybody else who comes on the property without his permission could be proceeded against by him for trespass. This should stop all the fighting that has been going on, and avoid any necessity for surveillance by the Department.

On the inspection that I made I found that the nets which were being used were of a very flat oval shape generally, and of such a dimension that they could be placed across the drain and absolutely block the travel of the whitebait. This is obviously a most undesirable state of affairs, as it must mean a too intensive killing of reproductive stock.

I asked Major Wilson if he would agree that in any permits which he may give to fish in the drain, he would impose a condition that only hand scoop nets of not more than 2 ft 6 ins at the greatest diameter would be used, and also to see that the general spirit of the regulations was observed, and he readily agreed to do so.

With regard to the channel across the foreshore, it is proposed to reserve this for persons who fish for whitebait for their own use and to prohibit fishing there by men who are catching for sale. We should also put in pegs so as to keep professional fishermen well away from the channel and the foreshore on either side of it.

With regard to the Manawatu River itself, it is proposed that all the commercial fishing be done in the main river, that the fishermen be allowed to use "set" nets, that these nets be not allowed to be placed nearer to one another than two chains, and that no scoop net fishermen, whether private or fishing for sale, be allowed to approach the "set" net nearer than one chain from its mouth. This is necessary as otherwise a scoop net man could take all the whitebait away from the "set" net.

> One other question has been raised, and that is whether we should not prohibit or restrict the taking of the inanga, which is a mature whitebait which comes downstream in the shape of a fish from 4½ ins to 6 ins to spawn. It has been the practice of the Maoris to take these fish for food, and their method is to block the stream. If the unrestricted taking is allowed to go on, it may mean, in such narrow waters, that the reproduction of whitebait would be most seriously affected, even to the point of extinction.
>
> As the Maoris have so long enjoyed the taking of inanga for food, I think we could not reasonably impose a total prohibition, but I do think we should restrict the taking for a certain period when the fish are running downstream, say a month or two months. I believe that in the olden days the Maoris did, of their own volition, place restrictive periods on the taking of the inanga so that the reproduction would go on, but the position has altered very materially during recent years with the intensive taking of whitebait for sale, so that there are a considerably reduced number of whitebait left to mature.
>
> We have had petitions from two sections of the Maoris, one asking for prohibition of the taking of whitebait in the drain, and the other asking for the lifting of the prohibition, so that they are evidently divided among themselves.
>
> On this question I think it would be wise if you would consult Sir Apirana Ngata. I suggest this course not only from his knowledge of and influence with the Maori, but because, under the Fisheries Act, we cannot prosecute a Maori for a breach of the Fisheries Act and regulations without the consent of the Native Minister.
>
> As the general whitebait regulations, which are now in draft form and under consideration of those concerned, will take some time to authorise, I think it advisable that we should now make a special regulation for Foxton which could later be incorporated in the general regulations.[1255]

The Minister accepted the advice to consult Ngata, who wrote margin notes on the submission to the Minister in which he agreed with the placing of a post at the mouth to distinguish the different proposed management regimes on either side of the post, with the proposal that whitebaiting in the drain across the foreshore should be for personal use only, and with the proposed spacing of nets between one another. He preferred only a one month prohibition on the taking of mature inanga[1256].

There is no note on file by the Minister of Marine approving the courses of action proposed by the Secretary for Marine. However, the subsequent actions of the Department indicate that the return of the submission with Ngata's comments was taken as Governmental approval. By this change of Crown policy, the most valuable whitebaiting waterway in the Manawatu River catchment had become accepted as being private property, which neither

[1255] Secretary for Marine to Minister of Marine, 29 August 1929. Marine Head Office file 2/10/29. Supporting Papers #535-540.
[1256] Margin notes by Native Minister, 6 September 1929, on Secretary for Marine to Minister of Marine, 29 August 1929. Marine Head Office file 2/10/29. Supporting Papers #535-540.

the Crown nor whitebaiters could touch without the property owners' approval. The law may not have been framed with this instance in mind, but it was clear that as written it did apply. To have changed the law would have been a trespass upon or confiscation of a private property right, so was never contemplated as a solution.

The Assistant Secretary for Marine was instructed to incorporate the proposals in the draft whitebait regulations[1257], and the Native Affairs Committee was told about the new policy approach as the Departmental response to Pakete Raata's petition:

> The position at date of petition [mid August 1929] is as described in the Department's report of 6th September 1928 [to the 1927 petition of Te Aputa Ihakara].
>
> The serious trouble which has occurred from time to time in past years between men poaching in the Drain, and the fact that the scout system of the poachers is such that it is almost impossible to detect them, led to an investigation in August last.
>
> The drain in question was cut through the property of Major Wilson for keeping down the level of the Whakapuni Lake. It is wholly within private property, and it is very questionable whether there exists any authority for prohibiting the taking of whitebait, at any rate the prohibition was quite ineffective.
>
> As a result of the inspection it was decided to lift the prohibition, and allow the owner of the property, who is fully with the Department in the desire to protect the fishery, to regulate the fishing in the Drain by taking action for trespass against those who fish there without permission.
>
> It is also proposed to regulate the use of nets in the channel across the foreshore, and further to prohibit the taking of the mature inanga during one month of the run.[1258]

The Native Affairs Committee decided that "as this petition refers to a question of policy, the Committee has no recommendation to make"[1259].

It was not until June 1932 that new whitebaiting regulations were issued (and all existing whitebaiting regulations were revoked). They were included in the general fisheries regulations, as clauses 141 to 153 of the Fisheries Regulations 1932, made under the Fisheries Act 1908[1260]. However, these clauses are not quoted in this report as they were revoked and replaced by amended regulations just three months later[1261]. The Whitebait Regulations 1932 made in September 1932 established general rules for whitebaiting throughout the country, together with some specific provisions for particular rivers. Under the First Schedule, set nets could be used on "the Manawatu River and its tributaries, but

[1257] Secretary for Marine to Assistant Secretary for Marine, 6 September 1929, on Secretary for Marine to Minister of Marine, 29 August 1929. Marine Head Office file 2/10/29. Supporting Papers #535-540.
[1258] Secretary for Marine to Clerk Native Affairs Committee, 30 September 1929. Marine Head Office file 2/10/29. Supporting Papers #541.
[1259] Report of Native Affairs Committee on Petition 246/1929 of Pakete Raata and 36 others, 3 October 1929. *Appendices to the Journals of the House of Representatives*, 1929, I-3, page 10. Supporting Papers #1421.
[1260] *New Zealand Gazette* 1932 pages 1598-1610 at 1608. Not included in Supporting Papers.
[1261] N*ew Zealand Gazette* 1932 pages 2086-2088. Supporting Papers #1460-1462.

excluding any artificial drains flowing thereinto". Regulation 24 identified just two waterways in New Zealand where whitebait fishing was absolutely prohibited:

> 24. No person shall take or fish for whitebait with any kind of net or trap whatsoever in the waters named hereunder:
> (1) The drain or stream known as Amon's Drain[1262] ….
> (2) The drain or stream known as Whakapuni Drain, which flows into the Manawatu River on the north side near its mouth, and the Manawatu River within one chain on either side of its confluence with the said drain.

These provisions, when read together, broadly though not absolutely interpreted the new policy formulated by the Secretary for Marine in August 1929. Because private waters were not covered by the regulations, the prohibition on whitebaiting in Regulation 24 was limited to the tidal part of Whakapuni Drain, largely across the foreshore of the Manawatu River and possibly a short distance into Wilson and Dalrymple's property. Whitebaiters fishing the drain with the permission of Wilson, effectively only his employees, had to abide by the regulation not allowing set nets and other generally applicable regulations. The public was totally excluded, more by the landowners' policy than by the Government's policy.

From this time onwards, inquiries to the Marine Department about whitebaiting in Whakapuni drain were met by a standard response:

> The position is that the drain is private water and wholly in private property, and it is not, therefore, within the function of the Department to say whether fishing for whitebait in this drain should be allowed or not.[1263]

The hands-off approach by the Government to whitebaiting in Whakapuni Drain did not extend to the Manawatu River whitebait fishery as a whole. Captain Hayes, the Marine Department official who had accompanied the Secretary for Marine to Foxton in August 1929, continued his association with the river by conducting some research into whitebait spawning areas. This showed how laying eggs on the highest spring tide protected the eggs from predation by other fish, but did not protect them from cattle and horse trampling[1264]. During the early 1930s some areas were fenced off, including some riverbanks of the Maori-owned Matakarapa loop, with the permission of the riparian owners[1265]. There was a potential clash of values when the Matakarapa Maori lands were included in a Native Department land development scheme, though the farming supervisor advised in 1940 that a

[1262] This is covered in D Alexander, *Rangitikei River and its tributaries historical report*, November 2015, Wai 2200 #A187, pages 167-172.
[1263] Secretary for Marine to JR Reay, Manawatu Heads, 19 August 1931. Marine Head Office file 2/10/29. Supporting Papers #544.
[1264] Chief Inspector of Fisheries to Secretary for Marine, 3 July 1931. Marine Head Office file 2/10/29. Supporting Papers #542-543.
Levin Chronicle, 7 November 1931. Copy on Marine Head Office file 2/10/29. Supporting Papers #545.
[1265] Chief Inspector of Fisheries to Secretary for Marine, 3 July 1931, and *Levin Chronicle*, 7 November 1931. Marine Head Office file 2/10/29. Supporting Papers #542-543 and 545.

fence around a spawning area was "quite all right and is in no way an inconvenience to us"[1266].

There were some other interactions between Maori and the Crown over whitebaiting in the Manawatu River during the 1930s. In November 1932 the Assistant Secretary for Marine, in briefing the Minister of Marine about a request to extend the whitebaiting season, made some further comments that perhaps reflect the receipt of Aputa Ihakara's petition the previous year (discussed at the beginning of this chapter):

> There is another aspect of the matter, and that is that it has been reported in the paper that the Natives are claiming, under the Treaty of Waitangi, the right to take whitebait at all times without restriction, and that they intend to do so and test the case.
>
> I should very much like to see a test case, as the question of what are the actual rights of the Natives under the Treaty, in respect of fisheries, is a most complicated one, and I would like to see some authoritative decision.
>
> If we extend the season, no offence could be committed, and we could not have a test case taken.[1267]

The Assistant Secretary's comments show that after the Otago court case in 1927 that had failed to provide any definitive case law about Treaty fishing rights, the Marine Department had been unable to get the matter resolved in any other court.

In November 1935 Harry McGregor[1268] asked "if the Maori on the Manawatu can catch whitebait out of season for [their own] eating purposes"[1269]. He was told that "the law is the same for Maori and Pakeha alike, and fish cannot be taken out of season by Pakehas or Maoris"[1270].

In August 1936 the indefatigable Aputa Ihakara petitioned the Minister of Marine for the rights of Maori to catch whitebait from Whakapuni drain to be restored:

> Previous to the advent of the Pakeha, [Lake Whakapuni] had a natural outlet to the river, and through the ages it was used as a means of securing fish. Later my father, paramount chief of our tribe, had Whakapuni and other adjacent lakes set aside as a communal reserve. Since my father Ihakara died the land surrounding our reserves has been acquired by Pakehas. Major Wilson, through whose property the drain flows, diverted the stream from its original course to its present location. The Government

[1266] Native Supervisor Levin to Chief Inspector of Fisheries, 18 July 1940. Marine Head Office file 2/10/29. Supporting Papers #563.
[1267] Assistant Secretary for Marine to Minister of Marine, 17 November 1932. Marine Head Office file 2/10/29. Supporting Papers #546-547.
[1268] Harry McGregor had been a signatory to the 1929 petition, and had been one of Captain Hayes' research assistants. He was also referred to in a report by Hayes about water pollution at Foxton (see elsewhere in this report).
[1269] Harry McGregor, Foxton, to Superintendent of Mercantile Marine Wellington, 16 November 1935. Marine Head Office file 2/10/29. Supporting Papers #548.
[1270] Secretary for Marine to Harry McGregor, Foxton, 19 November 1935. Marine Head Office file 2/10/29. Supporting Papers #549.

> passed a law prohibiting fish being caught there. However Mr Wilson and his employees are not debarred, and they not only catch all the whitebait that travel up the drain, but they sell what they cannot eat. Last year I had the pleasure of seeing as much as seven kerosene tins of whitebait caught in the one day. Now I contend that under the Treaty of Waitangi I am being deprived of my rights. This being further emphasised by the fact that we are forbidden from fishing in that part of the drain that is affected by the tide and that is in reality the property of the Crown. That has the effect of conserving to Major Wilson and his associates the sole and undisputed right to take all or as many as they desire. Therefore, honourable sir, I pray that you hearken to my petition for the right to catch whitebait for myself and members of my race.[1271]

The Chief Inspector of Fisheries noted that "there is quite a lot in this man's petition, but unfortunately for him Major Wilson is legally in an unassailable position". He added:

> The drain is so small that with the present fishing population if the prohibition is removed practically no whitebait will get up the drain to grow and reproduce their species….
>
> If we allow fishing on this short [tidal] reach we will have renewal of the endless fights and trouble over the fishing positions. There was so much law-breaking in the past that it was practically a whole-time job for the local constable to deal with complaints and assault cases which arose over the fishing positions, when the whole of the drain was open. With only the short reach across the foreshore open, the position would be more acute.
>
> It is certainly annoying for the fishermen who are prohibited from fishing in that portion of the drain under our control, to see Mr Wilson's men catching the whitebait when they reach the private waters of the drain, but in the interests of conservation we must allow the whitebait past our portion of the drain, even though Wilson's men levy a toll higher up. One thing, it is not likely that Wilson's people, having a monopoly of the fishing in the drain, will fish so consistently or with such effect as would be the case if we removed the general prohibition, and therefore a fair percentage of the whitebait must get past under the present system, whereas if we allow fishing in the drain where it crosses the foreshore practically no whitebait would ever reach the private waters. To reopen this portion of the drain would certainly dispose of Mr Wilson's monopoly, but it would also dispose of the fishery in a very short time, and of the two evils I am of the opinion that we must accept the lesser, and retain our prohibition over fishing for whitebait in the Whakapuni Drain where it crosses the foreshore.
>
> Last season we unofficially allowed the whitebaiters a certain amount of latitude with regard to fishing in or near the portion of the drain over which we have control. This was done for three reasons:
>
> (1) Constable Owen, the local inspector, was away on extended leave during the season, and his reliefs could not spare the time to give the fishing of this drain the amount of supervision it requires.
> (2) The Manawatu was in almost continuous flood throughout the season and many of the usual fishing positions were untenable.
> (3) As the people in the locality had been exceptionally hard hit by the depression and by the effect of the continued bad weather on the flax industry, it would not have been of any use prosecuting the offenders as they were all existing on relief or charity of one form or another, and in most cases had dependents. No

[1271] Aputa Ihakara, Manawatu Heads, to Minister of Marine, 6 July 1936, attached to HT Ratana MP to Minister of Marine, 18 August 1936. Marine Head Office file 2/10/29. Supporting Papers #550-552.

magistrate would have fined them adequately, and if he had it would have been impossible to collect the fines.

These three reasons together justify the action, but with Constable Owen's return to duty and the better time ahead it is now our duty to protect the fishery as much as possible, and therefore this year we will be insisting on the observance of the regulations as far as possible.[1272]

There is no record on the Marine Department file about Manawatu whitebaiting of any reply being sent to Aputa Ihakara.

In July 1938 an employee of Major Wilson's, with his permission to do so, was found whitebaiting in the private drain. He was using three set nets, a practice that was not allowed under the whitebait regulations. The question, though, was whether the whitebait regulations applied to fishing in private water[1273]. It was put to Crown Law Office for an opinion[1274], and a Crown Solicitor responded that on the facts the drain was private water:

This being so, Section 88 of the Fisheries Act 1908 would apply, which section states that Part II of the Act and the Regulations thereunder do not apply to (d) any person taking fish in private waters of which he is the owner, (e) any person taking fish in such waters when authorised by such owner. No regulations can override this express statutory provision, and I accordingly advise that the General Regulations do not apply.[1275]

A newspaper article in 1945 recorded the following:

"I was in conversation with the Inspector of Fisheries this week", said Mr EA Field, President of the Foxton Chamber of Commerce, at last night's meeting, "and when I asked him what was the matter with Foxton whitebait he said very little would be caught here now and in years to come practically none. This was the legacy of the new river cut and other drainage schemes, together with the more intensive stocking of surrounding land interfering with spawning beds. Commercially, said the Inspector, Foxton whitebait can be counted out and so it did not matter if shops from one end of the Dominion to the other displayed signs advertising 'Fresh Foxton Whitebait' for sale".

The comment was in response to a request sponsored by Mr GF Smith from local Maoris for an extension of the whitebait season. They were of the opinion, he said, that the season would be a late one and its closing on November 15th would be detrimental. Very little bait had been caught this year. An extension of four weeks was urged.

[1272] Chief Inspector of Fisheries to Secretary for Marine, 26 August 1936. Marine Head Office file 2/10/29. Supporting Papers #553-555.
[1273] District Inspector of Fisheries Wellington to Chief Inspector of Fisheries, 19 July 1938, attached to Senior Fisheries Officer to Secretary for Marine, 20 July 1938. Marine Head Office file 2/10/29. Supporting Papers #556-559.
[1274] Secretary for Marine to Crown Law Office, 1 September 1938. Marine Head Office file 2/10/29. Supporting Papers #560.
[1275] Crown Solicitor to Secretary for Marine, 12 September 1938. Marine Head Office file 2/10/29. Supporting Papers #561.

Varied opinions were expressed, and it was decided to write to the Minister of Marine asking him to consider the matter[1276]. What became of the request is not known, though as a matter of policy the Marine Department resisted all efforts to change fishing seasons, for fear that allowing an extension in one location would set a precedent and encourage applications from other locations elsewhere in New Zealand.

The unique position of Whakapuni Drain came to an end in 1946, when Major Wilson sold a part of his property. This meant the drain did not flow only through his property from its lake source to the Manawatu River, and therefore did not come within the definition of private water in the Fisheries Act. It took a while for these changed circumstances to be appreciated, and it was not until 1951 that the Marine Department realised what had happened[1277]. However, by then the Whitebait Regulations had been rewritten[1278] and the reference to Whakapuni Drain had been removed. Major Wilson still held some controlling cards, however, as a member of the public would be trespassing if he or she did not have permission to enter the Major's property. From the Marine Department's point of view, the main feature of the change was that anyone whitebaiting in the drain had to comply with the whitebait regulations.

7.5 Customary tuna harvesting in the era of commercial eeling

Commercial eeling has been practised since the 1960s. Some background to tuna harvesting and commercial eeling is provided in the companion report about the Rangitikei River[1279]. The changes that claimants have encountered during their lifetimes are set out in their evidence to the Tribunal. The pressure on tuna populations has come not just from the rise of commercial eeling, but also from habitat change in the waterways and from pollution.

Some hapu in New Zealand have identified tuna as a taonga. It is for each individual hapu in Porirua ki Manawatu Inquiry District to decide for itself whether the tuna within its rohe are a taonga.

Just as the traditional availability of tuna in Porirua ki Manawatu Inquiry District meant that the hapu were renowned for being able to serve up of tuna to manuhiri, so the waterways of

[1276] *Manawatu Herald*, 26 October 1945. Copy on Marine Head Office file 2/10/29. Supporting Papers #564.
[1277] Senior Sergeant of Police Foxton to Inspector of Fisheries Wellington, 15 September 1951, and Acting District Inspector of Fisheries Wellington to Senior Sergeant of Police Foxton, 21 September 1951. Marine Head Office file 2/10/29. Supporting Papers #565 and 566.
[1278] Whitebait Fishing Regulations 1947. Statutory Regulations 1947/103. Not included in Supporting Papers. Whitebait Fishing Regulations 1951. Statutory Regulations 1951/198. Not included in Supporting Papers.
[1279] D Alexander, *Rangitikei River and its tributaries historical report*, November 2015, Wai 2200 #A187, pages 178-181.

the District have been relied upon as an important source of eels by commercial fishers. The Manawatu River Recreation Management Plan in 1985 noted that:

> There are usually 3-4 eel fishermen licensed by the MAF in the Manawatu each year, and these fishermen generally operate between the end of September and the beginning of April.[1280]

It is no accident that today one of the surviving eel processing factories is located in Levin.

With respect to commercial eeling under the quota management system, which has applied since 2004, the Rangitikei River catchment is located in quota management areas LFE23 for longfinned eel and SFE23 for shortfinned eel. These areas extend westwards to cover the Whanganui and Taranaki regions. The remainder of the Porirua ki Manawatu Inquiry District is located in quota management areas LFE22 for longfinned eel and SFE22 for shortfinned eel. These areas cover all of the southern North Island from the catchment boundary between the Rangitikei and Manawatu Rivers southwards through Wellington and then northwards through Wairarapa to and including Hawke's Bay.

In the tables below, the annual catch data for areas LFE23 and SFE23 have been updated – in the Rangitikei River report they covered the years up to 2015 only – and a similar analysis of annual catch data has been undertaken for areas LFE22 and SFE22. The methodology for all the tables remains the same as for the Rangitikei River report, while relying on slightly different reference sources that are currently available[1281]. The new total allowable catches for the year ended 30 September 2019 and for subsequent years were set by the Minister of Fisheries in September 2018 following a sustainability review (discussed in the text below the tables).

[1280] Manawatu Catchment Board and Regional Water Board, *A Manawatu River recreation management plan*, Report No. 67, November 1985, page 83. Not included in Supporting Papers.

[1281] A combination of:

- Ministry of Fisheries, *Freshwater eels (SFE, LFE, ANG)*, a chapter in *Fisheries New Zealand, Fisheries assessment plenary: stock assessments and stock status,* Volume 1, May 2018, pages 333-411, Tables 5 and 6 (at page 336). Supporting Papers #1501-1502.
- NZ Fisheries InfoSite (search under fish stock status), www.fs.fish.govt.nz.

Data expressed in tons (2004-2009) or kilograms (2009-2019). 1000 kg = 1 ton.

Table 1: Longfinned eel fishery in management area LFE23 (tons/kg)

Year to 30 Sept	TAC*	Customary Allowance*	Recreational Allowance*	Other*	TACC*	Actual Commercial
2004	66	14	9	2	-	-
2005	66	14	9	2	41	24.5
2006	66	14	9	2	41	24.2
2007	66	14	9	2	41	14.5
2008	34	14	9	2	9	6.5
2009	34	14	9	2	9	2.5
2010	34000	14000	9000	2000	9000	5833
2011	34000	14000	9000	2000	9000	6163
2012	34000	14000	9000	2000	9000	6691
2013	34000	14000	9000	2000	9000	5558
2014	34000	14000	9000	2000	9000	4424
2015	34000	14000	9000	2000	9000	3342
2016	34000	14000	9000	2000	9000	1465
2017	34000	14000	9000	2000	9000	3907
2018	34000	14000	9000	2000	9000	4519
2019	30000	14000	9000	2000	5000	

* TAC (Total Allowable Catch) = Customary Allowance + Recreational Allowance + Other (for “fishing related mortality”) + TACC (Total Allowable Commercial Catch)

Table 2: Shortfinned eel fishery in management area SFE23 (tons/kg)

Year to 30 Sept	TAC*	Customary Allowance*	Recreational Allowance*	Other*	TACC*	Actual Commercial
2004	50	6	5	2	-	-
2005	50	6	5	2	37	15.0
2006	50	6	5	2	37	31.5
2007	50	6	5	2	37	30.2
2008	36	6	5	2	23	15.8
2009	36	6	5	2	23	10.3
2010	36000	6000	5000	2000	23000	17519
2011	36000	6000	5000	2000	23000	16123
2012	36000	6000	5000	2000	23000	18774
2013	36000	6000	5000	2000	23000	14735
2014	36000	6000	5000	2000	23000	14490
2015	36000	6000	5000	2000	23000	13666
2016	36000	6000	5000	2000	23000	10399
2017	36000	6000	5000	2000	23000	13040
2018	36000	6000	5000	2000	23000	10004
2019	36000	6000	5000	2000	23000	

* TAC (Total Allowable Catch) = Customary Allowance + Recreational Allowance + Other (for “fishing related mortality”) + TACC (Total Allowable Commercial Catch)

Table 3: Longfinned eel fishery in management area LFE22 (tons/kg)

Year to 30 Sept	TAC*	Customary Allowance*	Recreational Allowance*	Other*	TACC*	Actual Commercial
2004	54	6	5	2	-	-
2005	54	6	5	2	41	23.9
2006	54	6	5	2	41	31.6
2007	54	6	5	2	41	25.9
2008	34	6	5	2	21	17.7
2009	34	6	5	2	21	7.7
2010	34000	6000	5000	2000	21000	10600
2011	34000	6000	5000	2000	21000	5700
2012	34000	6000	5000	2000	21000	18600
2013	34000	6000	5000	2000	21000	15100
2014	34000	6000	5000	2000	21000	14700
2015	34000	6000	5000	2000	21000	11977
2016	34000	6000	5000	2000	21000	4072
2017	34000	6000	5000	2000	21000	7419
2018	34000	6000	5000	2000	21000	9534
2109	26000	6000	5000	2000	13000	

* TAC (Total Allowable Catch) = Customary Allowance + Recreational Allowance + Other (for “fishing related mortality”) + TACC (Total Allowable Commercial Catch)

Table 4: Shortfinned eel fishery in management area SFE22 (tons/kg)

Year to 30 Sept	TAC*	Customary Allowance*	Recreational Allowance*	Other*	TACC*	Actual Commercial
2004	135	14	11	2	-	-
2005	135	14	11	2	108	80.5
2006	135	14	11	2	108	106.9
2007	135	14	11	2	108	91.3
2008	121	14	11	2	94	82.5
2009	121	14	11	2	94	70.9
2010	121000	14000	11000	2000	94000	68500
2011	121000	14000	11000	2000	94000	58800
2012	121000	14000	11000	2000	94000	95700
2013	121000	14000	11000	2000	94000	82000
2014	121000	14000	11000	2000	94000	82145
2015	121000	14000	11000	2000	94000	73317
2016	121000	14000	11000	2000	94000	49202
2017	121000	14000	11000	2000	94000	81275
2018	121000	14000	11000	2000	94000	67066
2019	121000	14000	11000	2000	94000	

* TAC (Total Allowable Catch) = Customary Allowance + Recreational Allowance + Other (for “fishing related mortality”) + TACC (Total Allowable Commercial Catch)

Unfortunately, the published figures are not capable of being split into individual catchments, so that the contribution from the Porirua ki Manawatu Inquiry District to these totals of catches for each quota management system area is not known. However, Fisheries New Zealand (a unit of the Ministry of Primary Industries) does distinguish eel statistical areas (ESA) within the quota management system areas, requires fishers to report in terms of ESA, and assembles data for each ESA; this data is not published. In the sustainability review document in 2018, the following trends in the two ESA in the Inquiry District were noted:

- In LFE 23 and SFE 23, there is ESA AH covering "Wanganui-Rangitikei". For longfinned eels, the review stated "AH: No comment due to lack of data". For shortfinned eels, the review stated "AH: CPUE [catch per unit effort] declined until 2004, then increased steeply until 2012, and then declined through to 2015".
- In LFE22 and SFE22, there is ESA AK covering "Manawatu". For longfinned eels, the review stated "AK: CPUE declined steeply until 2003, increased in 2004, and has fluctuated without trend since then". For shortfinned eels, the review stated "AK: CPUE dropped markedly from 1992 to 1994, was stable until an increase in 2004, and has fluctuated without trend since then".

The sustainability review carried out in 2018 arose from longstanding and slowly-building concern that all was not well with the tuna populations around the country, and that commercial fishing was a part of the cause. The Parliamentary Commissioner for the Environment had expressed her concerns in a report about longfinned eels in 2013[1282]. To quote from the sustainability review public discussion document:

> In 2013, the Parliamentary Commissioner for the Environment released a report outlining the status of longfin eel populations in New Zealand. In this report, the Commissioner made the following recommendations aimed at improving the abundance of longfin eels in New Zealand:
>
> - That the Minister suspends the commercial catch of longfin eels until longfin eel stocks are shown to have recovered; and
> - That the Minister directs his 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.
>
> Subsequently, an independent scientific review of the information available on the status of eels was carried out by a panel of international experts in November 2013. The independent panel concluded that while there was a trend of decline from the early 1990s to the late 2000s, there has been a relatively stable, and in some cases increasing, abundance in recent years.

[1282] Parliamentary Commissioner for the Environment, *On a pathway to extinction? An investigation into the status and management of the longfin eel*, April 2013.

> Based on the panel's report, and after consideration of the relevant scientific evidence, the previous Minister for Primary Industries decided that the information available was not sufficient to support a complete closure of the longfin eel fishery.
>
> As an alternative, the Minister decided to progress a package of management measures to ensure an increase in the number of longfin eels and their long-term sustainability. These management measures include:
>
> - A review of catch limits for North and South Island longfin eels to ensure that they will support/promote an increase in longfin eel abundance;
> - A review to consider the separation of South Island longfin and shortfin stocks to support improved management of each species;
> - The introduction of abundance target levels to support assessment of the status of the longfin eel population and rate of rebuild; and
> - Improved information from the commercial longfin eel fishery to better inform stock assessment.[1283]

The sustainability review tried to assess the impact that commercial fishing was having on tuna populations. Once young elvers have migrated into inland waterways, they tend to remain in a fairly confined home territory during their adult stage; tagging has suggested a home range of just 10 metres of waterway for longfinned eel and 30 metres of waterway for shortfinned eel[1284]. Data collected from the returns provided by commercial fishers suggest – how robustly is not known – that they confine their activities to only 22% of available longfinned eel habitat, leaving 78% not fished by commercial operators; "these unfished areas are a refuge from commercial fishing and play a significant role in ensuring protection and long term sustainable management of the species"[1285]. Those percentages are national figures. Less visible in the review's appendices is the data that shows that in ESA AH ("Wanganui / Rangitikei") the percentage of commercially fished habitat is 25%[1286], and in ESA AK ("Manawatu") it is 36%. The data was also analysed for the area impacted as opposed to the area actually fished, with the following results: 29% of available habitat impacted nationally, 30% impacted in ESA AH and 40% impacted in ESA AK[1287]. These figures are all quite different to the headline figures highlighted in the review of 22% fished and 78% refuge. All the above figures are for longfinned eels which "prefer fast flowing stony rivers and are dominant in high country lakes". There has been no comparable

[1283] Excerpts from Fisheries New Zealand, *Review of North Island eel sustainability measures for 2018/19: consultation document*, Discussion paper No. 2018/04, June 2018, Appendix 1. Supporting Papers #1503-1511 at 1510.
[1284] Excerpts from Fisheries New Zealand, *Review of North Island eel sustainability measures for 2018/19: consultation document*, Discussion paper No. 2018/04, June 2018, paragraph 39. Supporting Papers #1503-1511 at 1508.
[1285] Excerpts from Fisheries New Zealand, *Review of North Island eel sustainability measures for 2018/19: consultation document*, Discussion paper No. 2018/04, June 2018, paragraph 76. Supporting Papers #1503-1511 at 1509.
[1286] It should be noted that in ESA AH a part (how much is not stated) of the Whanganui River catchment is closed to commercial eeling, so that the fished area will therefore be more concentrated in other catchments such as the Rangitikei.
[1287] Excerpts from Fisheries New Zealand, *Review of North Island eel sustainability measures for 2018/19: consultation document*, Discussion paper No. 2018/04, June 2018, Appendix 2, page 38. Supporting Papers #1503-1511 at 1511.

analysis of fished and unfished habitat of shortfinned eels, which "prefer lowland lakes and slow moving soft bottom rivers and streams and are predominant in coastal areas" (i.e. more accessible areas)[1288].

The quota management system as a whole is based on a scientific philosophy of biomass harvesting that has an in-built acceptance that the numbers or volume of fish (and in this case eels) are less than occurred naturally in the past when the species was not fished, but are an 'optimum' for sustainable harvesting purposes. The Crown and the fishing industry (including Te Ohu Kaimoana) are heavily invested in the correctness of this philosophy. A Plenary of "a range of experts" has set the following standards for eel harvesting:

- Interim sustainable harvesting target: "a biomass level that management actions are designed to achieve with at least 50% probability"; 40% of the unfished biomass
- Sustainable harvesting soft limit: "a biomass limit for which the requirement for a formal time-constrained rebuilding plan is triggered"; 20% of unfished biomass
- Sustainable harvesting hard limit: "a biomass limit below which fisheries should be considered for closure; 10% of unfished biomass[1289].

It is therefore no wonder that hapu will have noticed a decline in the presence of tuna in their waterways since commercial eeling began – it was actively intended by the Crown.

The discussion document explains what the unfished biomass means in the case of eels in inland waterways:

> It is important to note that when discussing other fish species, [unfished biomass] usually refers to the biomass that existed prior to human impacts on the environment (i.e. fishing). But in the case of eels, a large proportion of their habitat has undergone largely irreversible modification, such as drainage of marshland to make way for farmland, and so it is more appropriate to think of it as the biomass that would exist with no fishing given the current amount of suitable habitat still available.[1290]

With this understanding, and on re-reading the Fisheries New Zealand response to the Parliamentary Commissioner for the Environment's report, it is clear that closure was not considered to be necessary because the 10% hard limit had not been breached.

[1288] Excerpts from Fisheries New Zealand, *Review of North Island eel sustainability measures for 2018/19: consultation document*, Discussion paper No. 2018/04, June 2018, paragraph 39. Supporting Papers #1503-1511 at 1508.

[1289] Excerpts from Fisheries New Zealand, *Review of North Island eel sustainability measures for 2018/19: consultation document*, Discussion paper No. 2018/04, June 2018, paragraph 11. Supporting Papers #1503-1511 at 1505.

[1290] Excerpts from Fisheries New Zealand, *Review of North Island eel sustainability measures for 2018/19: consultation document*, Discussion paper No. 2018/04, June 2018, paragraph 12. Supporting Papers #1503-1511 at 1505.

The public discussion document suggested two options for the Total Allowable Catch of longfinned eels. The first was to continue the status quo, retaining the Catch volume that had been allowed since 2009. The second option was to reduce the Total Allowable Catch, with the whole of the reduction achieved by a lowering of the Total Allowable Commercial Catch (i.e. customary and recreation allowances would not be altered). Under this second option the Total Allowable Catch in LFE 23 would be reduced from 34,000 kgs to 30,000 kgs, and in LFE 22 would be reduced from 34,000 kgs to 26,000 kgs.

The public discussion document suggested only one option for the Total Allowable Catch of shortfinned eels. This was to continue the status quo. Thus, for both species, the status quo was an acceptable option and no remedial measures were necessary, meaning that the soft limit of 20% had also not been breached. Indeed, the view was held, based on catch per unit effort data supplied by commercial fishers, that the abundance of both longfinned and shortfinned eels was on a slow increase. This national-level view is not so clearly apparent when the trends in abundance at the ESA regional level (for "Wanganui / Rangitikei" and "Manawatu"), described earlier in this report, are examined.

While the Crown still retained confidence in its scientific modelling, it nevertheless recognised that politically there was a desire for change, hence the identification of the reduced-catch option for longfinned eels. And it was this reduced-catch option that was recommended for adoption in the public discussion document. The rationale for reducing the catch of longfinned eels was:

> Under Option 2 there is more likelihood that abundance will increase because the TACs would reduce by 15% and the TACCs would reduce by 32% on average across all North Island stocks. This represents a 72% TACC reduction from the original 2004 QMS settings. As occurred when the fishery was reviewed in 2008, the TACC for each longfin stock would be reduced to the average annual commercial catch (in this case since 2008).
>
> Option 2 takes into account that some QMAs are not showing a clear increasing trend in CPUE and acknowledges concerns raised during pre-engagement by some tangata whenua about a perceived decline in abundance compared to historic experience. It also takes into account that there is some level of uncertainty with the science relating to longfin eels, and the difficulty of determining the unfished biomass for eels and the potential carrying capacity of the remaining eel habitat.
>
> Many iwi are also concerned that fishing is only one of many factors influencing eel abundance and that habitat destruction, drain clearing, flood and hydro turbines are having a significant negative impact. Under these circumstances, managing the longfin eel fishery to a higher abundance target than 40% [unfished biomass] – which would be closer to historic unfished levels - may be appropriate. Option 2 takes this into account by setting a TAC that moves such stocks above the default sustainability target of 40% recommended in the Fisheries New Zealand Harvest Strategy Standard.

> For all shortfin stocks the only proposed option is the *status quo* (no change to the current catch limits and allowances). Based on the best available information, the current TACs allow for sustainable utilisation and are allowing the abundance of shortfin eels to increase.

A further factor that the Crown was relying on to increase the abundance of eels was that some of the quota for commercial eeling was held by iwi, who had consciously decided not to harvest their quota, or in fisheries management parlance had decided to 'shelve' their quota:

> Many iwi choose to shelve (not fish) their annual catch entitlement (ACE). This is particularly true for longfin eels and reflects the concern that iwi have for the resource, the desire of many iwi to increase the abundance of longfin eels, and their preference that eels are caught for customary rather than commercial purposes.

Among the submissions received on the proposals in the public discussion document were two from Ngati Raukawa, submitted by Te Runanga o Raukawa, and by Caleb Royal for Nga Hapu o Otaki. Te Runanga wanted a total ban on commercial harvesting of longfinned eel, and a substantial increase in the abundance of shortfinned eel:

> Te Runanga o Raukawa view is informed by collective submissions and oral histories collected over the last 14 years across 25 hapu.
>
> Our views of the eels, both short and longfin, are informed by our assessment based on:
>
> - Feedback from marae on the availability of tuna at marae held events
> - The availability of tuna as part of customary fishing activities
> - The amount of eel habitat commercially fished
>
> Shortfin eels (SFE 20 to SFE 23)
> We do not want shortfin eels harvested, as we our local fishermen are unable to provide kai for elders and gifting to marae in any great quantity. Interviews undertaken provide evidence that eels were abundant some 50 years ago, and this is simply not witnessed in our lifetime. The current sustainability controls need to ensure shortfin increase to the point of abundance and ability to feed our 25 communal marae.
>
> Longfin eels (LFE 20 to LFE 23)
> We would like a total commercial ban on longfin tuna. If this is done we would support our local people putting a rahui on commercial fishing and ensure commercial fishing people were included in that rahui.
>
> Eel boxes once plentiful along this coastline are no longer in use. The environment is too degraded for the flourishing of eels, especially in the Manawatu river/estuary.
>
> Hapu values are paramount, and have informed this submission, as they are the first to see the impact of the degradation of eel habitat located in their rivers and streams, and the subsequent decline of kai available for hui.
>
> In 2004 Iwikatea Nicholson, Whatahoro Kiriona and Justin Tamihana wrote to the Fisheries Ministry stating the following: "NO COMMERCIAL FISHING WITHIN THE ROHE OF NGATI RAUKAWA KI TE TONGA". In 2018 we retain that position.

> In 2004 Ngati Raukawa identified that the original establishment of the Quota Management System by the MoF failed to properly consult with all iwi/hapu/Maori on the introduction of a commercial eel fishery in our respective areas. It was proposed, and this is still maintained, that there is a "failure by the MoF to recognise that as Tangata Whenua we have exceptional rights to our Taonga and its future management under our Tikanga, our customs according to the Treaty of Waitangi. We hold this to be true in 2018.
>
> There continues to be a lack of research on the impact of a commercial fishery on the customary needs of Iwi Maori. As noted above our marae are no longer fed with plentiful tuna (2018)….
>
> Our assessment over time has noted the continual decline of eel on our tables, eels for gifting, and eel habitat pollution. The state of our rivers has worsened since 2004, with Rangitikei showing additional degradation from cumulative waste management discharges.
>
> Ngati Raukawa ki Te Tonga oppose all commercial activity of eel fishing within our rohe.
>
> Ngati Raukawa ki Te Tonga support any iwi/hapu/whanau or individuals who seek to stand against continued commercial eeling operations in their respective areas.
>
> Ngati Raukawa ki Te Tonga support that Iwi Maori be able to manage their own resources for the betterment of their iwi/hapu/whanau, by their customs or tikanga, without any interference from the MoF or any other Crown agent.[1291]
> [Capitals in original]

Caleb Royal, writing for Nga Hapu o Otaki, being "five of the twenty five hapu of Ngati Raukawa te au ki te tonga", was opposed to commercial eel fishing, and wanted the commercial fisheries in quota management areas 22 and 23 for both longfinned eel and shortfinned eel to be closed immediately.

> Our objections to commercial fishing for eel [are] for the following reasons:
>
> 1. The Quota Management Areas described with the review document do not recognise iwi boundaries and therefore compromise the ability of mana whenua iwi and hapu to manage customary eel fisheries. An example of this is QMA 22 where numerous iwi reside. Eel quota issued to Ngati Raukawa could be shelved to help in the regeneration of our local stocks, but other iwi within QMA 22 can legally enter into our local waterways and exploit the local fishery. This is a serious transgression of Maori tikanga that is being provided for with the current sustainability review.
> 2. The TACC totally undermines the customary and recreational fishing quota. The current sustainability review and quota system allows for the commercial take of eels over 220g and less than 4kg. [Paragraph] 61 of the review acknowledges that customary fishers prefer a size over 750mm long and 1kg in size. Our experience within the Nga Hapu o Otaki and Ngati Raukawa rohe is that we struggle to catch eels of an appropriate size to support traditional preparation techniques. Our fishing data and experience is that over 90% of the shortfin eel captured do not support traditional preparation. This also

[1291] Submission by Te Runanga o Ngati Raukawa, undated (July 2018), in Fisheries New Zealand, *Review of sustainability measures for the October 2018/19 fishing year, Appendix 2: submissions received*, August 2018. Supporting Papers #1520-1522.

applies to recreational catches that mana whenua undertake to feed their guests and family. The use of escape tubes in commercial nets does not remedy the issue that commercial fishing removes significant fish stocks before they get to an appropriate size class for customary and recreational fishers. A series of interviews with customary fishers in the NHoO and Ngati Raukawa has revealed that a shortfin eel less than 700g is not suitable for pawhara or raurekau tuna, our local preparation techniques. In this way the proposed commercial fishery undermines the customary practices, knowledge transmission through practice, and the ability to Manaaki guests with our local eel dishes. It is undermining the practice of Maori culture.

3. The proposed options for management in the review will continue to perpetuate the Tragedy of the Commons. The philosophy of 'the tragedy of the commons' postulates the concept that 'if I don't do it, someone else will, so I will beat them to it'. The review has identified that numerous iwi have shelved their quota in an effort to improve the local fishery. However, as alluded to in point 1 of this submission, iwi boundaries have been ignored in the creation of QMAs. This has led to our iwi, Ngati Raukawa, who had previously shelved our quota, leasing the quota to a third party. This is due to the tragedy that quota holders from outside our tribal area are legally able to fish out of our local waters, thus emptying our local cupboard. This has prompted a Tragedy of the Commons reaction, because if we don't fish our quota someone else will come and fish out our waterways, so we may as well 'do it before someone else does'.
4. NHoO have been a significant contributor of the Proposed Natural Resources Plan (pNRP) for the Wellington Regional Council (WRC). Our partnered approach to the development of this document has led to the creation of shared value statements and objectives for the management of our fresh and coastal waters. Within the pNRP we have developed objectives to manage fresh and coastal waters for mahinga kai and Māori customary use. This is a shared objective for the six mana whenua Iwi within the Wellington Regional Council's area. All six Iwi agree that mahinga kai and Māori customary use are critical measures of how the waters within the region are managed. All six Iwi have identified tuna (eel) as taonga species, and have a collective vision of restoring this fishery for customary use. All Iwi have agreed that the availability of tuna does not meet their needs for mahinga kai and Māori customary use. NHoO assert that the continued commercial harvest of eel from our area and the Wellington Regional Council's territory, absolutely undermines our collective ability to achieve and practice cultural traditions. Commercial fishing for eel in the WRC area compromises our ability to achieve the collective objectives of Iwi with our Treaty partner WRC.
5. The uncertainty of the data used in the Review document is sketchy, at best! An example of this is the use of unfished bio-mass. The use of unfished biomass is a poor method to assess Tuna fisheries. This is essentially due to the size class of the 'unfished' biomass (see point 2 above) and the fact that Tuna only breed at the end of their lifecycle. Furthermore, the percentages of unfished biomass only provide a 50% probability of achieving sustainable management given the management actions (footnote 2, 3, and 4 of report). The idea that sustainability of our taonga is given a 50:50 chance of being successful is totally unacceptable…. [quote from discussion document not repeated]

   We also call into question that biomass is a hopeless standard for shortfin eel when the review states that essentially 100% of the commercial shortfin eel take are female. The residual biomass of male shortfin eel does not satisfy the sustainability measures used by NHoO.

   The use of two elver recruitment monitoring sites on dammed rivers in the North and South islands also provides no certainty for NHoO. These sites do

not represent our local waterways, where we have witnessed a decline in elver numbers emigrating back into our streams and rivers.
The use of CPUE is also acknowledged as flawed in the review document. There are no records for recreational and customary catches in the review document. This all leads to a conclusion that there is a level of uncertainty that we cannot accept. We do not believe there is sufficient data or evidence to demonstrate that the quantum of eel proposed to be allocated to the QMS for eel is sustainable.

6. Another factor that flows across the QMS for eel is the degraded state of our waterways. The report acknowledges the degradation of the environment in section 12, Pg 3 of their report when they state "…in the case of eels, a large proportion of their habitat has undergone largely irreversible modification, such as drainage of marshland to make way for farmland." While this effect is not attributable to commercial fishing, it does present a challenge for setting sustainable catch limits. It is simply another pressure that our taonga species must overcome. It presents another uncertainty factor, or risk factor that NHoO cannot accept, especially on top of the points raised earlier.
7. NHoO are experiencing issues with eel accessibility and size classes. The report states that "…the observation that 78% of available longfin habitat in the North Island is not currently subject to commercial fishing…", and goes on to say that this is due to the land being under the management of DoC and being inaccessible. NHoO contend that the reason these areas are unfished, present the same rationale as to why we do not fish these areas. However, this area of exclusion results in intense fishing pressure on the 22% of available fishing habitat for NHoO. The combined commercial and recreational fishing pressure on the accessible 22% of fisheries area mean that our local Tuna are small in size, abundance, and quality. The minimum size class for longfin Tuna, and commercial fishing pressure results in culturally appropriate size classes of Tuna becoming increasingly hard to catch. The illusion that 78% of unfished longfin habitat is resulting in fishery improvement has not been experienced by NHoO.

Nga Hapu o Otaki sought "a 10 year moratorium on commercial fishing in QMAs 22 and 23 for shortfin and longfin eel", and "an eel fishery research programme developed in collaboration with the WRC mana whenua iwi from this region, and commercial fishers".[1292]

Mahinarangi Hakaraia made a submission endorsing the submission prepared by Calbeb Royal for Nga Hapu o Otaki[1293].

The submission by Nga Hapu o Otaki draws attention to the overlap between resource management and fisheries management. Fish are part of the aquatic fauna that are the subject of natural resources planning undertaken by Regional Councils, and are included in the natural resources for which policies and rules are drawn up in Regional Policy Statements and Regional Plans under the RMA. Yet Fisheries New Zealand does not have

[1292] Submission by Caleb Royal for Nga Hapu o Otaki, undated (July 2018), in Fisheries New Zealand, *Review of sustainability measures for the October 2018/19 fishing year, Appendix 2: submissions received*, August 2018. Supporting Papers #1513-1517.
[1293] Submission by Mahinarangi Hakaraia, undated (July 2018), in Fisheries New Zealand, *Review of sustainability measures for the October 2018/19 fishing year, Appendix 2: submissions received*, August 2018. Supporting Papers #1518-1519.

much of a history of engaging with RMA processes. Likewise Regional Councils have little engagement with Fisheries New Zealand freshwater fishing management activities. It is as if two management and administrative processes are discreet entities even though they are concerned with the same natural resources.

Following receipt of submissions, Fisheries New Zealand recommended to the Minister of Fisheries that the proposals it had set out in the public discussion document should be adopted[1294]. Accompanying its recommendations were the following comments:

> Fisheries New Zealand acknowledges the submissions advocating for complete closure of commercial harvesting of eels, particularly longfin eels. Fisheries New Zealand notes that a ban on fishing of eels (or just longfin eels) is outside the scope of the options that were consulted on. It is also not justified by the scientific assessment, which suggests that eel abundance is above sustainability targets and is stable or increasing in most areas. As only 22% of longfin habitat is currently fished, fishing of longfin eels at the cautious catch limits proposed under Option 2 is unlikely to be a significant driver of future longfin eel abundance. No new information was provided during consultation to challenge these underlying scientific assessments.
>
> We consider a ban on commercial fishing is not an option you should consider in the context of the current review. However, Fisheries New Zealand could provide you with separate advice on options for implementing further restrictions on commercial fishing in the future, including a ban and the costs and benefits of doing so. This advice would preferably be developed jointly with the Department of Conservation and the Ministry for the Environment, as it may involve changes to the legislated status of longfin eels, and would ideally be part of a more focused effort to address issues such as water quality and waterway barriers (i.e. hydro-dams and flood pump stations), as these are the key factors that are likely to influence longfin eel abundance into the future.
>
> As part of a wider package of enhancements to the assessment process, Fisheries New Zealand will: commission advice on estimating recreational eel catch as an input into ongoing assessments; continue to work with iwi intending to utilise customary tools, such as mātaitai, to manage eels in areas of importance in their rohe; and consider the adoption of spatial or temporal closures where there is evidence to suggest a sustainability concern.[1295]

The Minister was told that the following points arose from the consultation with and feedback from tangata whenua:

- Commercial fishing is not the biggest impact on Tuna populations - they are severely impacted by loss of habitat, barriers to migration and high levels of mortality caused by flood control pumps and drain clearing, etc.
- The CPUE for some stocks (especially longfin) is flat, and iwi are concerned that small changes to current environmental conditions could lead to a drop in abundance.

[1294] Excerpts from Fisheries New Zealand, *Review of sustainability measures for the October 2018/19 fishing year*, August 2018, paragraphs 749-757, pages 135-136. Supporting Papers #1523-1530 at 1526-1527.
[1295] Excerpts from Fisheries New Zealand, *Review of sustainability measures for the October 2018/19 fishing year*, August 2018, paragraphs 758-760, pages 136-137. Supporting Papers #1523-1530 at 1527-1528.

- There is 'less Tuna on the table when compared to the past'. Iwi directly relate the abundance of Tuna within their rohe to the frequency of which they see it on the table.
- Some iwi believe that Tuna are more than taonga (treasured) - some iwi believe they are connected through Whakapapa (genealogy/ancestry), i.e. without Tuna some iwi wouldn't be here today.
- Iwi own large amounts of quota (up to 60% in some QMAs). They are aware if the commercial harvest of Tuna is banned it may not be reinstated, and this has the potential to remove future income from their mokopuna (descendants).
- The fact that iwi are shelving ACE and forgoing income from the quota they own, highlights the fact that iwi/hapu/tangata whenua place a higher value on eels than the commercial fishery. Therefore, when making decisions regarding eels, a standard cost benefit analysis that uses port-price should not be used to assess the impact of the decision on tangata whenua. Tangata whenua use a different currency (customary/cultural – which is not equal to monetary value) to measure the value of their Tuna fishery.
- Customary and recreational allowances should be left the same to ensure Māori can continue to access to Tuna.
- Matauranga Māori (Māori knowledge/worldview) hasn't been included in the CPUE assessment.
- Many iwi shelve their ACE to improve eel abundance and believe CPUE increases are probably due to shelved ACE. If the TACC were raised, this would defeat the purpose of Māori shelving their ACE in the first place.
- Hapu put a lot of time and money into local waterway clean-up and restoration and this should be recognised in Fisheries New Zealand decision-making.
- Research needs to be targeted at the rohe (local area) level.
- Iwi/hapu require assistance and resourcing to undertake iwi/hapu-led research, surveys and independent assessment of their Tuna stocks.
- The percentage of habitat fished should be calculated for shortfin.
- More frequent monitoring of elver recruitment could influence results.
- The TACC needs to be reduced if the goal is to increase Tuna abundance.
- A rahui (moratorium) on the commercial harvest of eels (in particular longfin) should be considered for at least five years, until all iwi have had their rohe gazetted.
- The generic target set under the Fisheries New Zealand Harvest Strategy of 40% is too low - it needs to be higher to allow more breeding stock to migrate.
- Fisheries New Zealand should track Tuna harvest throughout the year and ban it during the downstream migration.
- Concerns were raised about people outside the QMA fishing within a QMA they do not live in and depleting the 'food basket' of the local hapu from that area.
- The QMAs are too large, management needs to be undertaken at the catchment level or sub-catchment level.
- Concerns were raised around the inadequate length of the consultation period. Iwi prefer to meet face-to-face to discuss important issues. After meeting with the Crown they require more time to meet with their respective hapu and whanau prior to writing a submission. Iwi feel that the 6 weeks consultation time was inadequate to prepare meaningful submissions.[1296]

The Minister adopted the recommendations of Fisheries New Zealand to reduce the Total Allowable Catch for longfinned eels in the North Island and maintain the Total Allowable

[1296] Excerpts from Fisheries New Zealand, *Review of sustainability measures for the October 2018/19 fishing year*, August 2018, paragraph 813, pages 146-147. Supporting Papers #1523-1530 at 1529-1530.

Catch for shortfinned eels. Explaining his reasons for reducing the Catch of longfinned eels, he stated:

> Longfin eel abundance is currently considered to be at, or above, the target levels that were defined during the scientific assessment process. However, longfin eels have suffered a significant decline in abundance, when compared to historic levels, as a result of habitat reduction, drain clearing, flood and hydro turbines, as well as fishing. The biology and habitat preferences of longfin eel mean that they remain vulnerable to these activities. I would like to take a more cautious approach to management of this fishery.
>
> More generally I consider there are aspects of the management of longfin eels that require further consideration. In particular I note that the current assessment of status of the stock is driven by an abundance target determined during the stock assessment process which may not reflect the broader needs and aspirations of all stakeholders and tangata whenua. I note that customary fishers could well consider that levels of abundance much higher than the maximum sustainable yield may better provide for their needs. I am also aware that there is ongoing debate about the appropriateness of continued commercial utilisation of longfin eels, given their customary importance and unique characteristics.
>
> I have asked Fisheries New Zealand to undertake a further review of longfin stocks over the coming year. I am interested in views on future management of his species, in particular views on desired levels of abundance and how we might best achieve those levels.
>
> In the interim I would like to take a cautious approach to manage and ensure as much as possible that all of the populations have the best opportunity to increase in size. I note that, combined with TACC reductions that occurred in 2008, TACCs for North Island longfin eels will have been reduced by 74% since introduction of the Quota Management System in 2004.
>
> I am acutely aware that this species is also, and perhaps more significantly, impacted by a range of non-fishing related factors not under the purview of Fisheries New Zealand. I have asked my officials to prepare a briefing paper on possible scope of a risk assessment of longfin eels which would seek to examine the nature and extent of all of the human impacts on the eel population, what could be done to mitigate those impacts, and prioritise management action. Such a process would clearly need to be cross-agency, with multi-stakeholder and iwi engagement, and involvement. I recognise the process will likely be time-consuming and resource intensive, but I am keen, if we are going to look at the long term management of this taonga, that we do so comprehensively and effectively.[1297]

In its discussion document Fisheries New Zealand argued that there were opportunities in legislation for iwi and hapu to "undertake management at a finer scale than those set at the QMA level". These would "enable restrictions to be placed on the harvesting of eels at a rohe (local) level to assist in addressing the concerns of tangata whenua and communities over localised utilisation of a fishery". The measures identified were the establishment of

[1297] Excerpts from Decisions on 2018 October sustainability round, at pages 12-13, attached to Minister of Fisheries to Stakeholders, undated (September 2018). Supporting Papers #1531-1533 at 1532-1533.

mataitai reserves, and the closure of certain catchments to commercial fishing. Fisheries New Zealand would "continue to work with iwi who wish to apply these tools in their rohe".

Mataitai reserves recognise and provide for the special relationship between tangata whenua and their traditional fishing grounds. Commercial fishing is usually prohibited within a mataitai reserve, while other matters such as landowner rights and RMA resource consents are unaffected. They are more commonly established for marine fisheries, and mataitai reserves for freshwater fisheries waters are a rarity. There are none in the North Island, and eight in the South Island[1298].

The creation of any mataitai reserve in the North Island is governed by Regulation 23 of the Fisheries (Kaimoana Customary Fisheries) Regulations 1998, which requires that the following criteria are met:

(a). There is a special relationship between tangata whenua and the proposed mātaitai reserve; and
(b). The general aims of management in the application under Regulation 18 are consistent with the sustainable utilisation of the fishery to which the application applies; and
(c). The proposed mataitai reserve is an identified traditional fishing ground and is of a size appropriate to effective management by tangata whenua; and
(d). The Minister and the tangata whenua are able to agree on suitable conditions (if any) to address issues raised by submissions for the proposed mataitai reserve; and
(e). The mataitai reserve will not:
    i. Unreasonably affect the ability of the local community to take fish, aquatic life, or seaweed for non-commercial purposes; or
    ii. Prevent persons with a commercial interest in a species taking their quota entitlement or annual catch entitlement where applicable within the quota management area for that species; or
    iii. Unreasonably prevent persons with a commercial fishing permit for a non-quota management species exercising their right to take fisheries resources under their permit within the area for which that permit has been issued; or
    iv. Unreasonably prevent persons taking fish, aquatic life or seaweed for non-commercial purposes within the fisheries management area or quota management area to which the mataitai reserve relates; and
(f). The proposed mataitai reserve is not a marine reserve under the Marine Reserves Act 1971.

Three of the South Island freshwater mataitai are at Kaikoura. When they were proposed, it was necessary for Ngai Kuri to consult with the South Island Eel Industry Association and exclude an area in the proposed Kahutara reserve that was important to commercial eel fishers. This amendment to the intended application then meant that five eel quota holders

[1298] Part of the Mataura River (established 2006), part of the Waikawa River (established 2008), Wairewa (Lake Forsyth) (established 2010), Okarito Lagoon (established 2012), Waihao River and Wainono Lagoon (established 2012), and three mataitai established as a group in 2018 in the Kaikoura district (Kahutara, Oaro and Tutaepatupatu). All were applied for by hapu of Ngai Tahu.

provided a letter of support for the application. A mataitai reserve therefore requires an application to the Crown for consent, the revealing of traditional knowledge about the connection with a fishing area, and some willingness to make compromises if necessary. It is not known if it is significant that the only freshwater mataitai reserves are in the rohe of Ngai Tahu, an iwi with a more mature partnership relationship with the Crown as a result of an early Treaty settlement, and with more substantial financial resources than many other iwi.

Of closed catchments, the discussion document stated:

> In the North Island, a number of areas have been set aside under fisheries regulations as non-commercial areas to allow only customary and recreational fishing of Tuna, including Mohaka River, Whakaki Lagoon and Lake Poukawa (all in Hawke's Bay); Pencarrow Lakes and associated catchments (Wairarapa); Whanganui River, and Motu River (Bay of Plenty).

None of these areas are in Porirua ki Manawatu Inquiry District. The closures of the Mohaka River, the Motu River, and part of the Whanganui River catchment had occurred in 2005, though the process by which these locations and the other locations came to be closed is not known. Nor is it clear how new locations can be added to the closed catchments list.

The statutory opportunity to create freshwater mataitai reserves has been available for 20 years, with zero results in the North Island and meagre results nationally, while the closed catchments list may have been in existence and largely unchanged for 15 years. It would seem that there has been no clear pathway established for local hapu initiatives which might restore hapu identity and connection with particular fishing waters, and which might remedy or mitigate some of the problems attached to national and regional level operational practices.

Ngati Raukawa ki Te Tonga has engaged in a research programme into the declining state of the local tuna population in a collaboration with Te Wananga o Raukawa. A summary of this research published by the Ministry of Agriculture and Forestry in June 2011 stated:

> Over many years the iwi (tribe) of Ngati Raukawa ki te tonga have noticed a decline in one of their most highly regarded taonga, the tuna. Anecdotal evidence, coupled with a decrease in quantity and quality, encouraged the hapu to initiate an in-depth research programme into the health and habitat of the tuna population. It is now apparent that climate change is having an impact on the tuna's sensitive life cycle.
>
> The aim of the iwi of Ngati Raukawa ki te tonga is to better understand all the effects of climate change and support their people to adapt through initiatives such as the revitalisation of tuna stocks in their own iwi rohe. The implementation of a research programme with their iwi educational institution, Te Wananga o Raukawa, has enabled the iwi to work co-operatively to address the tuna decline.

THE RELATIONSHIP BETWEEN TUNA AND NGĀTI RAUKAWA KI TE TONGA

Māori have a special relationship with the natural environment which underpins their understanding of the health and wellbeing of taonga. The hapu correlate the decline in tuna numbers with a decline in the health and wellbeing of the natural environment. They also recognise that changes in climate and other factors have impacted on tuna quantity and quality, which has a flow-on effect to the people.

Matauranga Māori (Māori intrinsic knowledge) is essential to the survival of Ngati Raukawa tikanga and kawa. Through iwi oral history and the ongoing revitalisation of Te Reo Maori, Ngati Raukawa will continue to thrive. Furthermore, being effective kaitiaki is integral to iwi identity and to achieve success means learning about the tuna, understanding what impacts are taking place, mitigating these factors and monitoring the health of tuna over time.

The important transfer of matauranga between members of the hapu regarding tuna harvesting, life cycles and stream information is affected by the changing climate. The impact of losing the tuna reaches far beyond losing a significant food source – it includes the loss of the matauranga related to the taonga, as well as the interaction between generations to share the matauranga, be together as an iwi and strengthen their interwhanau connections.

As a result of these issues, tuna is a key focus for the iwi. A collective research program was considered the most appropriate way to begin the adaptation to climate change impacts and the re-vitalisation of their taonga species for the iwi.

RESEARCH PROGRAMME

The iwi have become more aware of the tuna life cycle and recognise that climatic changes have played an important role in altering aspects of the natural cycle of the tuna population.

One aspect of the research programme was to note the age and sex of the tuna. Caleb Royal, a researcher on the project says: “There was a significant decline in the number, size and type of tuna with their iwi data showing that 17 out of 18 sites measured had starving tuna. The one site where this was not the case could be explained by the intensive restoration of wetlands alongside the rivers and streams, which had profound impacts on the numbers and growth of tuna in this area.”

Another aspect of the programme was a focus on matauranga Māori and kaumatua interviews. These interviews discussed how the kaumatua viewed the changes in their taonga and how their historical stories relate to this species. This knowledge was then collated and transferred to the wider whanau, hapu and iwi.

Seventeen oral history interviews were conducted in 2005. From this korero (oral history) it became clear that habitats had changed and this was impacting on the future of the tuna.

The information embodied in the interviews will contribute significantly toward the development of a Tuna Management Plan. This plan will be used by hapu to promote and protect the fishery and be utilised within wider advocacy and education in the region and while having scope and flexibility to be trialed and used nationwide.

The result is that participants can better monitor change to the fishery and adapt earlier and more appropriately. The information also provides a means of assessing which adaptation methods are most effective in reducing the negative impacts of climate change on tuna.

ADAPTATION

Part of ongoing adaptation is for hapu to continue to educate land owners as to how they can promote the fishery through more effective management.

Recommendations from the research included advocating for limiting access of cattle and other stock to waterways to reduce effluent pollution, restoring wetlands and restocking the rivers and streams with tuna, controlling weed growth and also opening flood gates at particular times of the year to support the migration breeding cycles for tuna and for their food source.

Another way the iwi believe they could support tuna was through developing Kaupapa Māori Environmental Indicators. These indicators are seen as being essential to preparing and developing further adaptation methods to help tuna thrive. This is an inter-generational scheme with ongoing monitoring planned.

Ngati Raukawa may not be able to duplicate interventions in the oceans, however, through effective monitoring and re-vitalisation programmes within the iwi rohe, the iwi can better support the species to survive, adapt and thrive for their migration to the oceans.

PROGRAMME BENEFITS AND OUTCOMES

Some of the key achievements since initiating the project in November 2004 include the training of fourteen Ngati Raukawa hapu representatives in oral history recording techniques, and twelve in the tuna ageing and sexing workshop.

The information gathered through matauranga Māori and kaumatua interviews has built capability within hapu that has enabled them to deliver environmental benchmarks through narratives.

As a result of wider views, environmental restoration has been adopted by the iwi and action being taken includes looking at the restoration of water ways and the use of rahui (moratorium) for commercial fishing of the longfin tuna to replenish stocks. This may also provide an opportunity for a Treaty-based approach to the management of tuna.

The longfin tuna are on the endangered species list alongside the great spotted kiwi and kereru. The iwi believe that inappropriate management of the Quota Management System in their rivers and streams and subsequent over-fishing is hugely degrading the stocks.

They believe that a moratorium on commercial fishing of the longfin tuna is a key way to support the species. A rahui is being put forward by the iwi with support from key scientists. They are now garnering support for this from other hapu and iwi in the country which, to date, has been strong.

Ngati Raukawa takes a long-term view of environmental restoration of tuna and understands that all facets of the tuna life cycle are connected. The iwi will continue to incorporate planning for climate change within this kaitiaki programme to grow and sustain the tuna stocks in their tupuna awa (ancestral rivers and streams).[1299]

[1299] Factsheet on *Managing impacts on tuna (eel) using a kaupapa Maori approach – Ngati Raukawa ki Te Tonga and Te Wananga o Raukawa: adapting to a changing climate: case study 17*, June 2011. Supporting Papers #1534-1535.

7.6 Crown ownership of fishing sites

7.6.1 Crown acquisition of Lake Pukepuke fishing reserve

The establishment of Pukepuke fishing reserve has been covered in an earlier chapter of this report. Although it was intended that a Crown grant would be issued to Ngati Apa individuals, this did not immediately occur, in fact in was not until 1953 that the grant was issued.

After the survey of the Pukepuke reserve in 1871[1300], very little activity is recorded about the reserve and the surrounding land for nearly 70 years. The surrounding Crown Land was given the appellation Run 24 by the Department of Lands and Survey. A road, which may or may not have been legal, was laid off, but not formed, between the coast and the Maori reserve.

> Between 1921 and 1929 the Forest Service undertook the reclamation and afforestation of about 3000 acres of the northern portion of the block. The coastal dunes were planted in marram grass and scattered plantings of pines, mostly radiata, were made over a total of about 650 acres.
>
> In 1931 the Government decided that funds for any further work should be found from the Lands and Survey Vote and this Department took over, the Forest Service continuing to act in an advisory capacity in the management of the plantations….
>
> Portions of the [Maori] reserve were inadvertently planted in trees in the course of the plantation operations. In fact some of the best trees in the whole of the plantations are growing on the Maori land.[1301]

The reserve's ownership was investigated by Commissioner Mackay in 1884; this investigation was incomplete, with ten potential trustees being identified but only four attending the hearing and handing in lists of members of Ngati Apa who they would represent. In 1933 those names referred to in the lists in 1884 were declared to be owners of the reserve[1302], and succession orders followed. The injustices caused by the actions of the Native Land Court were the subject of a petition to Parliament in 1939, with the petitioners asking for the whole matter to be reconsidered. In their petition they stated the reasons why the reserve had been identified during the purchase negotiations in the late 1860s:

1. The eels found in the lake. This was their diet at that time, as it was also with our parents and still is with some of us.
2. In the time of our grandparents and our parents, gatherings were held within the boundaries of the Ngati Apa tribe, and eels were taken from the said Roto-

[1300] Wellington plan SO 11077. Supporting Papers #1583.
[1301] Director General of Lands to Minister of Lands, 14 April 1950. Lands and Survey Head Office file 36/1411. Supporting Papers #341-344.
[1302] Maori Land Court minute book 27 WN 301, 20 March 1933. Not included in Supporting Papers.

o-Pukepuke lake so they should have a food supply for parties attending gatherings there in those days.

3. Prior to the partition of the said Carnarvon Block and the issue of Crown Grant to the hapus of Ngati Apa, the Roto-o-Pukepuke reserve was set apart as our elders were apprehensive lest the ownership of the lake should become vested solely in one man, one family or one hapu to the serious detriment of the tribe owning the lake. It was, therefore, reserved for all the hapus of Ngati Apa interested in the Carnarvon Block.[1303]

The Native Department's response to the petition was:

> The Native Land Court purported to make a freehold order in respect of the reserve, and this it had no power to do, the Native customary title thereto having been extinguished by the Proclamation [in 1869 declaring that the Rangitikei-Manawatu Block had been purchased]. The freehold order can, therefore be treated as a nullity on the grounds that it was made without jurisdiction, and it seems that it is open to the petitioners to request the Minister of Lands to apply to the Court under Section 527 Native Land Act 1931 to ascertain the persons to be included in any instrument of title to the land.[1304]

This clarifies that the Crown view was that the reserves forming part of the Rangitikei Manawatu Purchase were not excluded from the purchase, and instead were lands that were purchased by the Crown and whose Native title had been extinguished. This gave the reserves the status of being Crown Land held or reserved for the benefit of Maori. It was then up to the Crown to make the appropriate legal moves to grant title to those persons who were identified as owners during the purchase negotiations, and in most cases Crown Grants were issued. With respect to Pukepuke reserve, however, the Crown had not progressed such legal moves through to a conclusion during the 70 year period since the 1869 Proclamation that Native title had been extinguished.

The Native Affairs Committee then reported to Parliament that "the petitioners have not exhausted their legal remedy", and made no recommendation for further action[1305].

It was not until 1948 that the Crown made a move to remedy the legal ownership of Pukepuke reserve. Section 32 Reserves and Other Lands Disposal Act 1948 authorised the application of Section 527 of the 1931 Act in the case of this reserve. The explanatory note prepared when the Bill was going through Parliament stated:

> The Pukepuke Lagoon contains 390 acres of land. It was originally part of the Rangitikei-Manawatu Block, purchased from the Maoris in 1869. Shortly after that it

[1303] Petition 46/1939 of Erima Whakarau and 87 others, undated (August 1939), attached to Clerk Native Affairs Committee to Under Secretary Native Department, 17 August 1939. Maori Affairs Head Office file 5/13/133. Supporting Papers #450-452.

[1304] Under Secretary Native Department to Clerk Native Affairs Committee, 29 August 1939. Maori Affairs Head Office file 5/13/133. Supporting Papers #453.

[1305] Report of Native Affairs Committee on Petition 46/1939 of Erima Whakarau and 87 others, 5 September 1939. *Appendices to the Journals of the House of Representatives*, 1939, I-3, page 4. Supporting Papers #1423.

> was agreed with the Maoris that certain areas in the Block be set apart as Maori reserves. These areas included Pukepuke. This recommendation was given legal effect by the Rangitikei-Manawatu Crown Grants Act 1873, which authorised the Governor to fulfill the agreements with the Maori to reserve certain lands and issue grants to the persons who were entitled to them. In 1882 a Royal Commissioner, Judge Mackay, was appointed to inquire into the claims of the Maoris to reserves in the Wellington District. As a result he duly reported recommending the names of Ratana Nehana and twenty four others as owners of Pukepuke, and further recommended that a grant be issued to four of them who were to sign a deed of trust in favour of all. Nothing was ever done to give effect to the Commissioner's recommendations, although by the Native Reserves Titles Grant Empowering Act 1886 the Governor was authorised to issue warrants for titles to any persons found entitled to certain reserves including Pukepuke. In recent years the question of title was revived, and the Chief Judge of the Maori Land Court, although in no doubt that the grantees ascertained by Commissioner Mackay were the persons properly entitled, is of the opinion that as a freehold order has since been made by the Maori Land Court in 1933 a clear direction to issue the title to the persons named by the Commissioner should be conferred by legislation. The clause, therefore, empowers the Governor-General to issue such title after the Maori Land Court has determined what Maoris are beneficially entitled and their relative shares.[1306]

A Section 527 application was made by the Minister of Lands in June 1949. One year later the application had still not been heard by the Maori Land Court, and the assistance of the Member of Parliament for Western Maori, Mrs Iriaka Ratana, was sought[1307]. Separate to this request, the Department of Lands and Survey brought the application on for hearing in Levin in August 1950, where the Court determined that there were 27 owners[1308], who were the same persons who had been identified by the Court in 1933 or their successors. No one from Ngati Apa attended the hearing, and the iwi was upset that the Court had decided the matter without the people's involvement. Because the Court's determination was in fact a recommendation to the Governor General as to who should be entered on a title, the Under Secretary for Maori Affairs advised his Minister not to accept the recommendation, and to refer the matter back to the Court for a rehearing[1309].

The rehearing was held two years later, in August 1952. The Court again adopted the list of owners identified in 1933, awarding each adult on the list one share and each child one-half share[1310]. It was then over to the Crown to issue the title. However, the Department of Lands and Survey was slow to proceed, advising in May 1953 that the matter was "at

[1306] Explanatory note for Clause 32 Reserves and Other Lands Disposal Bill 1948. Copy on Maori Affairs Head Office file 5/13/133. Supporting Papers #454-455.
[1307] Under Secretary for Maori Affairs to I Ratana MHR, Ratana Pa, 20 June 1950. Maori Affairs Head Office file 5/13/133. Supporting Papers #458.
[1308] Maori Land Court minute book 64 OTI 106, 1 August 1950, and Order of the Court, 1 August 1950. Copy on Maori Affairs Head Office file 5/13/133. Supporting Papers #460 and 461-462.
[1309] Under Secretary for Maori Affairs to Minister of Maori Affairs, 16 July 1951, approved by the Minister 17 July 1951. Maori Affairs Head Office file 5/13/133. Supporting Papers #463.
[1310] Maori Land Court minute book 108 WH 261. Not included in Supporting Papers.
Judge Dykes to Chief Judge Maori Land Court, 14 October 1952, attached to Chief Judge Maori Land Court to Governor General, 15 December 1952. Maori Affairs Head Office file 5/13/133. Supporting Papers #464-465.

present held up while an investigation into what reservation of drainage rights should be included on the title is completed"[1311]. This investigation involved discussions with Manawatu County Council, because "a committee of the Council controls the Oroua Downs drainage scheme" and the Crown was waiting for a decision from the Council as to "what drainage rights, if any, it considers should be reserved" on the title[1312]. It was not until October 1953 that "a suitable reservation" of drainage rights had been included in the warrant for the issue of title[1313], and the warrant could be put before the Governor General for his signature[1314]. The wording of the reservation on the title was:

> Reserving nevertheless to Her Majesty the Queen and her assigns the full and free right and liberty forever without liability for compensation or damages to drain and discharge water whether rain, tempest, spring, soakage or seepage in any quantities and at all times for the purpose of the Oroua Drainage District over, upon, through, into and out of the said land and the portion of the Pukepuke Lagoon situated thereon, together with the further right to grant to any body corporate responsible for the administration of the said Drainage District or any part thereof drainage rights by way of easement on such terms and conditions as may be deemed fit for the purpose of giving greater effect to the rights herein reserved.[1315]

These events demonstrate how it was entirely in the hands of the Crown how the title to the Maori reserve would be defined, and what limitations might be included. Just as some titles to Maori reserves issued in the 1870s had reserved to the Crown a right of road, or the power to lay off a public road though the reserve, so the Pukepuke reserve was made a Maori reserve subject to the right of the Crown to allow drainage operations within and through it. The Crown acted in a neglectful manner towards the purpose that the land had been reserved for Maori during Featherston's negotiations with Maori in 1868.

Even before the title to Pukepuke reserve had been resolved, the Crown had indicated that it wanted to acquire the reserve. Run 24 surrounding the reserve was being developed by the Department of Lands and Survey as the Tangimoana Farm Settlement, and the reserve as an enclave of privately-owned land within the Farm Settlement boundaries was an inconvenience. The Crown's acquisition ambitions first surfaced in March 1949, when the Director General of Lands wrote to the Under Secretary for Maori Affairs:

> The Commissioner [of Crown Lands] has put before me certain further facts which in my opinion render the purchase of Pukepuke by the Crown to be necessary. The present position briefly is that the Land Settlement Board has approved a development

[1311] Director General of Lands to Under Secretary for Maori Affairs, 11 May 1953. Maori Affairs Head Office file 5/13/133. Supporting Papers #466.
[1312] Director General of Lands to Secretary for Maori Affairs, 30 June 1953. Maori Affairs Head Office file 5/13/133. Supporting Papers #467.
[1313] Director General of Lands to Secretary for Maori Affairs, 22 October 1953. Maori Affairs Head Office file 5/13/133. Supporting Papers #468.
[1314] Wellington certificate of title WN604/113. Not included in Supporting Papers.
[1315] Commissioner of Crown Lands Wellington to Director General of Lands, 28 August 1953. Lands and Survey Head Office file 36/1411. Supporting Papers #347.

> programme in the locality which affects approximately 600 acres. This necessitates the planting and developing of practically the whole of Pukepuke. This lagoon at the present time is approximately one-fifth water and swamp, balance dry land. Development operations which took place some years ago in an endeavour to consolidate the surrounding area by afforestation resulted in Pukepuke, or rather a good part of it, being planted in trees which are now flourishing and over which the Department legally has no milling rights. The northern part of the lagoon area falls within the area which is set down for immediate development, and this will result in its being grassed and in a productive state.
>
> If the Crown cannot obtain title to Pukepuke, this very desirable development project will be considerably hampered as the programme will be revised to cut out Pukepuke. Access will have to be provided and the rights of adjoining owners will require protection. While this presents a considerable difficulty, it is not the most important one. The main objection to granting a title to Maoris, in so far as Pukepuke is concerned, is that the lagoon is so situated that through its area runs the main drainage system of the locality, and unless the Department has free access to the land for drainage and improvement work, the surrounding development area must necessarily suffer.
>
> It is almost imperative in the interests of the general development of the locality that the Crown obtain title.[1316]

The following year, when the application for determination of beneficial owners was heard, the Court was told in papers filed by the Department of Lands and Survey that:

> After the owners of this land have been ascertained by the Court, the Crown proposes to negotiate with the owners to purchase the land from them. The Land Settlement Board has approved a development programme in the locality which affects approximately 600 acres. This necessitates the planting and developing of practically the whole of Pukepuke.[1317]

However, there were no owners present in the Land Court to hear this statement of the Crown's intent.

In 1950 the Minister of Lands was told about a grassing and land development programme approved by the Land Settlement Board. This programme was in the locality of Pukepuke reserve:

> Within the [Crown] block and gravely hindering development is a Maori reserve of 398 acres known as Section 378 Township of Carnarvon, Block III Sandy Survey District. This area is shown bordered yellow on plan A. The plan indicates that the Maori reserve is mostly water. That is not so, the real position being that only about one-fifth of the reserve is water and swamp….
>
> The northern portion of the Maori reserve falls within an area scheduled for early development. The reserve is also the key to the main drainage system for the locality. Its early acquisition by the Crown is therefore most desirable…. As soon as the

[1316] Director General of Lands to Under Secretary for Maori Affairs, 4 March 1949. Maori Affairs Head Office file 5/13/133. Supporting Papers #456-457.
[1317] Statement in support of application to Maori Land Court, undated (1950). Lands and Survey Head Office file 36/1411. Supporting Papers #340.

> owners have been ascertained and the title put in order, it is proposed to negotiate through the Maori Affairs Department for the purchase of Section 378.[1318]

The Minister minuted the briefing paper:

> Urgent steps should be taken to acquire the Maori reserve in the centre of the block as the presence of this 400 acres is detrimental to economic development of the block. Please commence negotiations immediately with the Maori Affairs Department. If an outright purchase of the area cannot be arranged due to title difficulties, I would like the Maori owners to consider an exchange of the reserve for an equivalent area say in the southern corner of the block.[1319]

One year later, the Department's Farm Development Supervisor and the local District Field Office wrote a paper about the development prospects for the Tangimoana Farm Settlement. They made several references to the land around Pukepuke lake:

> At the south-eastern end of the property is an area adjoining the Pukepuke lagoon now growing a very fine crop of flax. This has been the subject of recent reports, and it is recommended that the area be retained for flax growing for at least a period of five years. In any case it is doubtful whether this area can be sufficiently drained without having to have the level of the Pukepuke lake lowered. Whether this is a wise course to take is a moot point, as the lowering of the levels of the lake may adversely affect the water table through the whole of this area. Possibly at some later date stopbanking and control of outlets may allow a lowering of the lake during the winter and the retention of waters in the lake during the summer months. However, the intention at present is to leave this area for the growing of flax, the matter to be kept under constant review….
>
> Section 378 is Maori owned land completely surrounded by the Tangimoana Block. Negotiations are proceeding for the acquisition of this area, which is vital to the successful settlement of at least portion of the Tangimoana area. As you are aware a portion of this land was planted in trees when Tangimoana was planted, it apparently not being known that this area was not Crown Land also. Some of the best trees on the Block are situated on this area….
>
> When the Maori area is acquired, the Pukepuke Lake will require re-surveying owing to its changed level and it should be created into a reserve.

A six-point development programme was proposed. The sixth point was "the acquisition of the Maori land[1320].

However, any progress towards acquiring the reserve was stymied by the absence of title. Even when the Maori Land Court determined who would be the owners, the list of owners it relied on was nearly 20 years old, and it was necessary to determine successions before any meeting of owners could be called to consider alienation. It was not until April 1954 that

[1318] Director General of Lands to Minister of Lands, 14 April 1950. Lands and Survey Head Office file 36/1411. Supporting Papers #341-344.
[1319] Minister of Lands to Director General of Lands, 25 May 1950, on Director General of Lands to Minister of Lands, 14 April 1950. Lands and Survey Head Office file 36/1411. Supporting Papers #341-344.
[1320] Excerpts from Development Supervisor and District Field Officer Palmerston North to Commissioner of Crown Lands Wellington, 21 November 1951. Lands and Survey Head Office file 36/1411. Supporting Papers #345-346.

the District Officer for the Maori Affairs Department advised that "it is considered that there are now a sufficient number of owners in the Title whose addresses are known"[1321]. The Land Settlement Board approved the purchase of Pukepuke reserve in September 1954[1322], the Minister of Lands gave his approval later that month[1323], and the Board of Maori Affairs the following month approved of negotiations being entered into with the owners to acquire the reserve[1324]. However, the District Officer's advice proved to be incorrect; 16 of the 23 owners were deceased, and more effort had to be put into arranging successions[1325]. It was not until March 1957 that Maori Affairs would agree to a meeting of owners being held[1326].

By then there was another offer to purchase on the table; a member of the Carter family of sawmillers wanted to buy the land and the trees, and was offering £5,600, though this offer was modified to £1600 to purchase the timber only when it became known that the Crown was interested in the land (though not the trees). In July 1957 the Maori Land Court approved the placing of both offers before the owners at a meeting to be held in Whanganui[1327].

The meeting of owners was held in October 1957[1328]. After both offers were presented, the applicants were excluded from the meeting while the owners discussed them. They then decided to adjourn the meeting for 14 days. The Crown representative at the meeting was told:

> The owners were considering selling to the Crown, but wished to retain the waters of the lagoon and a margin of two chains for the fishing rights. The owners had come to no firm decision and their ideas were still vague.[1329]

In response to this proposal the local Field Officers responsible for the farming development of the Tangimoana land stated:

[1321] District Officer Maori Affairs Wellington to Director General of Lands, 9 April 1954. Lands and Survey Head Office file 36/1411. Supporting Papers #348.
[1322] Case 4274 to Land Settlement Board, approved 8 September 1954. Lands and Survey Head Office file 36/1411. Supporting Papers #349.
[1323] Director General of Lands to Minister of Lands, 14 September 1954, approved 15 September 1954. Lands and Survey Head Office file 36/1411. Supporting Papers #350.
[1324] Submission to Board of Maori Affairs, approved 27 October 1954. Maori Affairs Head Office file 5/13/133. Supporting Papers #469.
[1325] Secretary for Maori Affairs to Director General of Lands, 21 February 1955. Lands and Survey Head Office file 36/1411. Supporting Papers #351.
[1326] Secretary for Maori Affairs to Director General of Lands, 29 March 1957. Lands and Survey Head Office file 36/1411. Supporting Papers #352.
[1327] Commissioner of Crown Lands Wellington to Director General of Lands, 30 July 1957. Lands and Survey Head Office file 36/1411. Supporting Papers #353.
[1328] Statement of proceedings of meeting of assembled owners, 4 October 1957. Maori Affairs Whanganui file 2/292. Supporting Papers #1183-1184.
[1329] Commissioner of Crown Lands Wellington to Director General of Lands, 16 October 1957. Lands and Survey Head Office file 36/1411. Supporting Papers #354-356.

> It is known that the Lagoon area included in the Maori section has dried up on two occasions during the last 25 years. In addition, should the Department extend its development programme, the increased drainage facilities are likely to lower or even completely discharge the fishing lagoon. In view of these points, it is difficult to see what advantage the Maoris will hold if the fishing rights are retained.
>
> In order to effect a sale, however, it may be necessary to retain the fishing rights, but under no circumstances should the Crown covenant to maintain the fishing grounds which are likely to disappear as development proceeds.
>
> In view of the necessity for fishing parties to cross the Farm Settlement, with every likelihood of disturbing stock and leaving gates open, Field Officer Dempsey does not favour the retention of the fishing rights. He agrees, however, that should it be necessary to retain them, then they should be subject to each and every party obtaining the permission of the Farm Manager before proceeding with fishing operations.[1330]

The matter was put to Head Office with the recommendation that the purchase price offered by the Crown be increased to match the offer made by the sawmiller, and that with respect to fishing rights:

> If the owners persist in their desire to protect their fishing rights, that they be advised that the Crown will grant them fishing rights over the waters of the lagoon situated in Crown Land with the right of access thereto, but would not guarantee to preserve the existence of the waters, and that if necessary special legislation will be passed to protect such interest.[1331]

The Minister of Lands then approved an increase in the Crown's offer to £5,600, "and also to the Maoris being granted fishing rights as proposed"[1332].

At the resumed meeting[1333] the owners remained keen to protect a right of fishing in the part of Pukepuke Lake within the reserve boundaries and also in the part that was outside the reserve boundaries in Crown ownership. They attached considerable importance to this and if the fishing rights were preserved they indicated that they would be willing to sell the reserve to the Crown for £5,600:

> The owners had apparently fished in the locality as recently as December of last year and obtained a lorryload of eels. They were then not aware that the main waters of the lagoon were no longer situated within their land. It appears that the owners fish the area periodically and would not be constantly in the locality.
>
> … it was pointed out to the owners that the Crown could not guarantee the continued existence of the lagoon, that by reason of the natural trend in the locality and also the

[1330] Assistant Field Officer Ashworth and Senior Field Officer Beable, Palmerston North, to Commissioner of Crown Lands Wellington, 11 October 1957, attached to Commissioner of Crown Lands Wellington to Director General of Lands, 16 October 1957. Lands and Survey Head Office file 36/1411. Supporting Papers #354-356.
[1331] Commissioner of Crown Lands Wellington to Director General of Lands, 16 October 1957. Lands and Survey Head Office file 36/1411. Supporting Papers #354-356.
[1332] Director General of Lands to Minister of Lands, 16 October 1957, approved by the Minister 16 October 1957. Lands and Survey Head Office file 36/1411. Supporting Papers #357-358.
[1333] Statement of proceedings of meeting of assembled owners, 18 October 1957. Maori Affairs Whanganui file 2/292. Supporting Papers #1185-1187.

implementing of the drainage system by the Lands and Survey Department the lagoon would appreciably diminish. They were told however, that the Crown would not deliberately endeavour to drain all the waters. The owners also indicated that to fish the waters as they had been accustomed to do they would require vehicular access. Some discussion followed as to possible routes. It was, however, explained to them that with the development of the Crown land in the vicinity further roading would probably take place and until this had been done it would be neither desirable nor practicable to define any access route.[1334]

After hearing this explanation the owners passed a resolution:

> That Pukepuke Block, being Rural Section 378 Carnarvon, and all timber trees thereon, be sold to the Crown for the sum of £5,600, and that the Crown grant to the vendors a right to fish in waters on Pukepuke block and on Crown Land adjoining thereto, with a right of vehicular access thereto to and from a public road.[1335]

The Crown confirmed it was satisfied with the terms of the resolution[1336], and the Maori Land Court confirmed the alienation in April 1958, subject to the conditions of sale being set out in a Deed attached to the Memorandum of Transfer document. The Deed stated:

> In consideration of the premises and of the covenants and conditions herein contained, the Grantor doth hereby give and grant to the Grantees the full and free right and liberty from time to time and at all times hereafter at their will and pleasure to fish in the waters on the said land more particularly shown and marked "Water" and "Open Water" on the plan annexed hereto and therein outlined in yellow, and the Grantor doth hereby give and grant to the Grantees the full and free right and liberty from time to time and at all times hereafter at their will and pleasure to go, pass and re-pass on foot and with or without vehicles of every description loaded or unloaded by night as well as by day over and along that part of the said land shown and coloured red in the aforesaid plan for the purpose of giving access to the aforesaid waters from the public road known as Whale Line in order that the Grantees may enjoy the fishing rights hereinbefore granted.
>
> Provided however that nothing herein contained or implied shall derogate from the drainage rights reserved to Her Majesty the Queen and her assigns over the said Section 378 Township of Carnarvon, and provided further that nothing herein contained or implied shall be deemed on the part of the Grantor to guarantee the continued existence of the aforesaid waters nor to impose any liability whatsoever on the Grantor to compensate the Grantees in the event of the waters diminishing in extent or ceasing to be.
>
> And the Grantees for the consideration aforesaid do hereby covenant and agree with the Grantor as follows:
> (1) That the Grantees in the exercise of the rights herein conferred will cause as little interference as possible to stock depasturing on the said land and will close and keep closed any gates which may be erected across the strip of land coloured red as aforesaid.
> (2) The Grantor shall be at liberty at any time and from time to time to dedicate as a public road the whole or any part of the said strip of land coloured red as aforesaid

[1334] Commissioner of Crown Lands Wellington to Director General of Lands, 22 October 1957. Lands and Survey Head Office file 36/1411. Supporting Papers #359-360.
[1335] Statement of proceedings of meeting of assembled owners, 18 October 1957. Maori Affairs Whanganui file 2/292. Supporting Papers #1185-1187.
[1336] Director General of Lands to Secretary for Maori Affairs, 1 November 1957. Lands and Survey Head Office file 36/1411. Supporting Papers #361.

or to substitute for any part of the said strip a public road, and if at any time the Grantor shall desire so to dedicate the same or any part thereof the Grantees shall consent to such dedication and will when required by the Grantor execute any consent surrender (total or partial) or other instrument which may be necessary to complete such dedication by the Grantor and release such part of the said strip of land as may no longer be necessary to give the Grantees access to the said waters.

(3) The Grantor shall not be called upon to execute any grant of the rights herein conferred up on the Grantees in registerable form unless and until the Grantor may decide to alienate the said land from the Crown.

(4) The rights herein conferred upon the Grantees shall not be capable of assignment.[1337]

The reserve was declared to be Crown Land in January 1961[1338].

In 1971, when a European applied to fish for eels from Pukepuke lake, he was told that "the sole fishing rights over this lake are reserved to the Ratana Maoris and accordingly permission cannot be granted by this office to fish in the lake as it does not have the authority to grant such application"[1339]. While the Deed had not explicitly specified that the right to fish the lake was an exclusive right, this appears to have been the understanding of Crown officials at the time, certainly as far as eels were concerned.

The concept of Pukepuke lake and its margins becoming a Crown reserve, which had been first referred to in 1951, continued to hold currency after the purchase of the Maori reserve, and became refined into a proposal that it should be a wildlife management reserve administered by the Wildlife Branch of Department of Internal Affairs. In 1971 the Department of Internal Affairs formally applied for the lake to become a wildlife management reserve; by then farm development fences had been erected around the lake and they would be the boundary of the proposed reserve[1340]. This was eventually approved in August 1976, after lengthy investigation including whether the transfer of responsibility from one Government department to another required a financial transfer of the land's current market value, and whether the future use of Pukepuke Lake might be bound up in a wider proposal to declare the whole of Tangimoana Farm Settlement a regional reserve; both matters were resolved in the negative. While the water level, and therefore the extent, of the lake varied throughout the year, the submission to the Minister of Lands was categorical about the size of the lake, based on a plan prepared for farm development purposes:

> The proposed reserve contains two lakes, one of approximately 16.2 hectares and the other approximately 2.8 hectares. The balance of the area [of the proposed reserve of

[1337] Crown Purchase Deed Wellington 1717. Supporting Papers #1366-1372.
[1338] *New Zealand Gazette* 1961 page 175. Supporting Papers #1479.
[1339] Commissioner of Crown Lands Wellington to EP Bevan, Bulls, 12 March 1971. Lands and Survey Wellington District Office file 8/5/520/4. Supporting Papers #1109.
[1340] Acting Secretary for Internal Affairs to Commissioner of Crown Lands Wellington, 13 September 1971. Lands and Survey Wellington Head Office file REW-0111. Supporting Papers #386.

> 82.1541 hectares] is in flax and raupo swamp. There are no noxious weeds and the whole complex is a natural breeding ground, with a high proportion of water fowl.
>
> Some fifty species of birds have been recorded in the proposed reserve, including mallard, grey and shoveller ducks, swan and pukeko. Already the area has been the subject of a number of ecological studies, and once reserved further studies will be undertaken. The lakes are ideal for game bird shooting, and if reserved this will be allowed to continue. To provide control of the reserve, and to administer the shooting, a caretaker will be provided by Wildlife Division of Internal Affairs.[1341]

The submission made no mention of the fishing and access rights held by the former Maori owners.

Approval of the reservation was subject to the preparation of a management plan. The responsibility for the management plan was a joint one of the Department of Lands and Survey and Wildlife Service. When a draft of the plan was produced in May 1978[1342] it contained no mention of the fishing rights held by Ngati Apa sellers, and had not been developed in conjunction with them. This particular obligation of the Crown had become lost from view by the staff involved (though the Farm Manager continued to be fully aware and continued to have dealings with Ngati Apa visitors).

Maori Affairs Department drew attention to the fishing and access rights one month after the draft management plan was prepared[1343]. This seems to have been a coincidence of timing[1344], as the draft plan had not been circulated for comment. The failure to remember that the Maori fishing rights existed was a cause of some consternation among officials, as a number of wider ramifications were identified. These included concerns that the Department or the farm manager could not be expected to effectively police who were descendants of the former owners and who were not, the access route from Whale Line referred to in the deed was no longer suitable as written because of road closings and relocations, and the access route passed through some sand dune country that was being transferred to New Zealand Forest Service. A legal opinion held that the purchase deed was between the former owners and the Crown, so that all government departments were obliged to abide by its obligations. It also considered that the Maori Trustee, as signatory to the deed on behalf of the former owners, was and continued to be the statutory agent for the rights-holders, responsible for seeing that their rights were protected. The Maori Trustee would need to be

[1341] Director General of Lands to Minister of Lands, 11 August 1976, approved by the Minister 10 August 1976. Lands and Survey Head Office file REW-0111. Supporting Papers #387-391.
[1342] Commissioner of Crown Lands Wellington to Director General of Lands, 31 May 1978. Lands and Survey Head Office file REW-0111. Supporting Papers #392.
[1343] Secretary for Maori Affairs to Director General of Lands, 20 June 1978 and 14 July 1978. Lands and Survey Head Office file REW-0111. Supporting Papers #393 and 394.
[1344] It is possible the Maori Affairs letter to Lands and Survey arose from a party of Maori, who were not descendants of the owners determined by the Court in 1952 and therefore did not have fishing rights, catching eels in Pukepuke lake.

satisfied that changes of administration such as from Lands and Survey to Wildlife Service or to New Zealand Forest Service, and changes to access provisions, did not result in lesser protections for the rights-holders than were set out in the purchase deed[1345]. The legal situation was explained to Maori Affairs, Forest Service and Wildlife Service[1346].

In August 1980, a further twist was added when the Chairman of Puke Puke Lagoon Committee, stating that he was speaking on behalf of the rights-holders, advised that in exercising their exclusive fishing rights, they were going to allow commercial eeling[1347]. This was a development extension of a right beyond sustenance gathering and into the commercial arena. However, it contradicted the prohibition on commercial fishing in reserves set out in Section 50 Reserves Act 1977. Officials took the view that commercial fishing was outside the scope of the original intent of the parties to the purchase negotiation when requesting and being granted the fishing rights. Writing to the Secretary for Internal Affairs, the Director General stated:

> This Department endorses your own view that commercial fishing is outside the scope of the rights granted under the Deed and beyond that which was contemplated by either party at the time the transaction was entered into – namely the preservation of "traditional" fishing rights. I am of the opinion, therefore, that the Crown is under no obligation, legal or moral, to permit fishing on a commercial basis. Furthermore, other persons entitled as grantees under the Deed may be as opposed as your Department is to commercial fishing, if for no other reason than the detrimental effect which it could be presumed this would have on the resources of the Lagoon.[1348]

In an effort to clear the air, there was a high-level meeting in Wellington in November 1980 between representatives of the Department of Maori Affairs, Department of Lands and Survey, Wildlife Service, New Zealand Forest Service and Ministry of Defence, all of whom had interests in Tangimoana Farm Settlement to one degree or another. The meeting recorded agreement with four propositions in relation to the fishing and access rights:

a) The undertaking was entered into by the Department of Lands and Survey, which still has an obligation to protect the interests of the Maori beneficiaries when allowing the utilisation of the former Maori land for particular Crown purposes, i.e. farming, wildlife management, forestry and defence.
b) The Maori rights retained under the agreement take precedence over any subsequent rights granted by status change to other agencies of the Crown.
c) Any decisions made affecting the rights should be taken after consultation with the Maori beneficiaries.

[1345] Office Solicitor Head Office to Reserves Section Head Office, 27 September 1978. Lands and Survey Head Office file REW-0111. Supporting Papers #395-397.
[1346] Director General of Lands to Secretary for Maori Affairs (copied to Director Wildlife Service), 12 October 1978, and Director General of Lands to Director General of Forests, 12 October 1978. Lands and Survey Head Office file REW-0111. Supporting Papers #398-399 and 400.
[1347] Chairman Puke Puke Lagoon Committee to Secretary for Maori Affairs, 13 August 1980. Lands and Survey Head Office file REW-0111. Supporting Papers #401.
[1348] Director General of Lands to Secretary for Internal Affairs, 22 September 1980. Lands and Survey Head Office file REW-0111. Supporting Papers #402-403.

d) The Maori beneficiaries need to be satisfied with any action taken to protect and guarantee their rights in any land status change and are dubious about the adequacy of administrative procedures and would be concerned at the need to deal with more than one agency over access.[1349]

To this end, it was proposed that in the first instance the access strip (adjustable to accommodate road closings and realignments) be retained as Crown Land under Lands and Survey administration; all the affected Government departments as well as the Maori rights-holders would be able to use this access strip, Wildlife Service would supervise fishing in the lagoon with Lands and Survey arbitrating any disputes, and in the longer term the access route to the lake would be investigated to see if State Forest areas could be avoided.

Because the meeting had agreed that the Maori rights-holders should be consulted on any changes that might impact on their fishing and access rights, the next step was to establish links with the rights-holders that would enable consultation to occur. This proved to be difficult. It was left to the Whanganui office of the Department of Maori Affairs to arrange a meeting, and it was not until April 1983 that Maori Affairs reported on a meeting that its staff had with the rights-holders:

> Somewhat belatedly, our Whanganui office has had further discussions with the Maori people affected by your propositions.
>
> Although there is an element of general agreement with your proposals, some of the Maori people have some reservations:
>
> (a). Some assurance would be appreciated that the water level of the lagoon will be maintained in order to protect the eel life there.
> (b). That the long term rights of the Maori people to gather eels are safeguarded.
> (c). There are evidently still some doubts on the question of legal access.
>
> Although a meeting was held more than 2 years ago with a number of Government officials, this Department's representative has since retired – and evidently there was no proper representation of the Maori people themselves.

An on-site meeting between the rights-holders and officials from the relevant Departments was proposed[1350].

The Commissioner of Crown Lands did not reply to this proposal, and it was almost three years later before the Secretary for Maori Affairs raised the matter again[1351]. The Commissioner blamed "other work commitments" for the failure to reply[1352]. When he did finally respond to the substance of the rights-holders' concerns, it was just two months

[1349] Note for file by Commissioner of Crown Lands Wellington, 2 December 1980. Lands and Survey Head Office file REW-0111. Supporting Papers #404-405.
[1350] Secretary for Maori Affairs to Commissioner of Crown Lands Wellington, 22 April 1983. Lands and Survey Wellington District Office file 8/5/520/4. Supporting Papers #1110.
[1351] Secretary for Maori Affairs to Commissioner of Crown Lands Wellington, 27 February 1986. Lands and Survey Wellington District Office file 8/5/520/4. Supporting Papers #1111.
[1352] Commissioner of Crown Lands Wellington to Secretary for Maori Affairs, 7 March 1986. Lands and Survey Wellington file 8/5/520/4. Supporting Papers #1112.

before the Department of Lands and Survey was scheduled to go out of existence on 30 March 1987, and the wildlife management reserve (still not reserved despite the Ministerial approval given in 1976) would become the responsibility of the new Department of Conservation. The Commissioner advised that the access route was being surveyed, and that questions about water levels should be left for the Department of Conservation to answer[1353].

The on-site meeting that had been proposed in 1983 eventually took place in August 1987, attended by officials of the Department of Conservation, two representatives of the rights-holders (Nakata Taiaroa and Reuben Ashford), and the Deputy Registrar of the Maori Land Court in Whanganui. The Deputy Registrar recorded what was discussed:

> The Deed of 1958 is not in dispute, but discussion took place as to the rights of the owners and the requirements of the Department of Conservation.
>
> Eels are a good source of food at large gatherings of people such as at tangis, and no person can predict when these unfortunate events will occur. The breeding season falls between August and November and the Department of Conservation, while agreeing that eels may be required during that period, requests that as little disturbance as is possible be made during that time, but are prepared to allot a certain part of the lake for eeling which is away from the main breeding areas. Otherwise eeling during December to April will be unrestricted.
>
> This met with approval of Mr Taiaroa and Mr Ashford. It was, however, the wish of the Department of Conservation that two persons be nominated from the Pukepuke Lagoon Committee to issue written authorities to those persons wishing to eel, and that a key to the gate will be issued to either of those two persons. As a matter of courtesy the Farm Manager is to be notified beforehand of people proceeding to eel and they should report to him before proceeding to the lake. Mr Taiaroa and Mr Ashford will report to their committee.
>
> The question of access was discussed, and the need for re-negotiation of the legal and practical access as currently used is to be considered as opposed to the old Whale Line access. This also met with the approval of Mr Taiaroa and Mr Ashford, who will again refer the matter to their committee.
>
> Officers of the Department of Conservation will prepare and forward to this office a plan of the lake highlighting the area set aside for eeling during the breeding season, together with the main breeding areas, as well as other information, e.g. boundary of adjoining owners' property. If the Deed is to be amended in any form (say, because of change of access), this is to be done to the mutual benefit of both parties.
>
> Any proposed Gazette setting the land apart as a reserve is to cite that the land is subject to the Deed.[1354]

[1353] Commissioner of Crown Lands Wellington to Secretary for Maori Affairs, 13 January 1987. Lands and Survey Wellington file 8/5/520/4. Supporting Papers #1113.
[1354] File note by Deputy Registrar Maori Land Court Whanganui, 11 August 1987, attached to Registrar Maori Land Court Whanganui to District Conservator Palmerston North, 25 August 1987. Conservation Palmerston North file 8/5/520/4. Supporting Papers #1114-1115.

The rights-holders then held their own meeting in October 1987, had a site inspection of the access route and the lake the following month, and had a further meeting at Ratana Pa in December 1987. There was some concern expressed that the Department's proposed seasonal restrictions and zoning of the lake were contrary to the Deed's lack of any restrictions on the right of fishing. They unanimously passed a resolution:

> That there be no amendment to the Deed of 1958, and in view of the restriction regarding access application be made to the Maori Land Court for a roadway order to the lagoon.[1355]

In March 1988 an officer of the Department of Conservation gave a fellow staff member permission to fish in the lake. While this was contrary to the spirit of the Deed, it was made worse by the staff member, who was fishing in his own time, eeling on a commercial basis. The staff member was very open about what he had done, thinking nothing was amiss, when he reported after his time at Pukepuke:

> I spent several days fishing the above lagoon on a commercial basis. Catches overall totalled approx 2,200 kilos of eels and approx 6 common carp. There were no other fish species landed, i.e. perch, galaxias, etc.
>
> Short-finned eels were common with perhaps 99.9% of the catch being of that species. Several "resident" female long-finned were landed….
>
> I would like to thank you for giving me the opportunity to be able to fish at Pukepuke, and would gratefully accept the opportunity to fish there again at some later date.[1356]

The file is silent about whether this breach of Crown obligations had any consequences. It is also silent about whether the Ngati Apa rights-holders ever got to hear about what had occurred.

The research for this report could only cover the period up to the late 1980s. It would be for the Crown (Department of Conservation) to report on events up to the present day, including such matters as the ongoing relationship with the Maori rights-holders, the provisions made for access, and the reservation status of the lake.

This particular case study can prompt a "what-if" question relating to other dune lakes. What might have happened if the Crown had not granted the land surrounding the Koputara and Kaikokopu reserves to private owners in 1890? Might continued Crown involvement as the neighbouring landowner have allowed the access and environmental change issues affecting the reserves at those two lakes to have been resolved? The experience at

[1355] Minutes of meeting, 12 December 1987, attached to Deputy Registrar Maori Land Court Whanganui to District Conservator Palmerston North, 18 January 1988. Conservation Palmerston North file 8/5/520/4. Supporting Papers #1116-1117.
[1356] Personnel Officer Whanganui to Regional Conservator Palmerston North, 29 March 1988. Conservation Palmerston North file 8/5/520/4. Supporting Papers #1118-1119.

Pukepuke lake reserve suggests that the Koputara and Kaikokopu reserve owners could not have been able to place any confidence in the effectiveness of the Crown's protection obligations towards Maori. Those obligations could have been ignored for long periods of time, become side-tracked while the Crown pursued other objectives for its own benefit, and be quickly forgotten again only a short period after being officially acknowledged. The Crown would have been a fair-weather friend at best.

7.6.2 Crown acquisition of Lake Waiwiri / Muhunoa / Papaitonga

This lake is known to Ngati Raukawa as Waiwiri, to Muaupoko as Muhunoa, and to Europeans as Lake Papaitonga. It is located principally within the boundaries of the Horowhenua block, though the lands along its southern edge are in the Waiwiri block. In terms of the Native Land Court's contentious decisions on ownership of Horowhenua block, the lake was principally awarded to Muaupoko, while Waiwiri was awarded to Ngati Raukawa. On partition, the lake was principally in Horowhenua 14, while the Ngati Raukawa partitions with a lake shore boundary were Part Waiwiri East, and Waiwiri East 1A, 3A and 3B. The lake (with the exception of that part in Waiwiri East 1A) was acquired by Walter Buller from the Horowhenua and Waiwiri East owners in the 1890s and in the year 1900.

Acquisition of this lake by the Crown has been placed in this fisheries chapter because the lake is a renowned eel fishery. The outlet stream from the lake, Waiwiri Stream, had 20 pa tuna along it in traditional times[1357].

The Crown had gained a toe-hold in the lake when a 20 metre strip around a large part of it was taken under the Public Works Act for a public road in 1896[1358]. In 1905 it was proposed that the Crown acquire the Buller estate as a whole[1359]. By 1908, however, this had been reduced to the acquisition of land on the forested northern edge of the lake only, comprising 14 acres of Buller's land and 34½ acres of Native Land[1360]. There is no evidence that the Maori owners of the Native Land (part of Horowhenua 11B block) were aware of this Crown interest in their property. While Cabinet was not supportive at that time, the concept of acquiring the lake and its surrounds did not go away, and in 1911 an offer was received from

[1357] H Potter et al, *Porirua ki Manawatu inland waterways historical report,* August 2017, Wai 2200 #A197, page 103, relying on GL Adkin, *Horowhenua*, 1949.
[1358] *New Zealand Gazette* 1897 pages 33-34. Supporting Papers #1440-1441.
[1359] File note by WW Smith, 26 August 1905. Lands and Survey Head Office file 4/301. Supporting Papers #212.
[1360] Under Secretary for Lands to Minister of Lands, 6 October 1908. Lands and Survey Head Office file 4/301. Supporting Papers #213-214.

the Buller estate[1361] to sell 313 acres to the Crown for £10,000. This prompted a request to the Solicitor General:

> The point now brought before you is, "Has the Buller Estate the sole legal ownership in the lake area?", or does the Crown own any portion of the area?
>
> … a road line was taken round the greater portion of the lake in 1897 [sic], and I shall be glad to receive your opinion as to whether the taking of the road carried with it the riparian rights over that portion of the lake adjoining the road line, or if the ownership of the lake still remains in the Estate, and will have to be purchased if the Crown desires to acquire the lake for scenic purposes.[1362]

An Assistant Law Officer was in no doubt about the Buller Estate's continuing ownership of the lake.

> There has been no reservation of the land forming the bed of the lake (Papaitonga) in question from out of the titles issued by the Crown to the Native owners of Horowhenua No. 14 and subsequently vested in Sir W Buller, and the fact that land for a road has been taken by the Crown round the margin of the lake does not alter the ownership of the land remaining. The land for a road was taken under the powers in that behalf contained in Section 92 of the Public Works Act 1894 and this section only enabled the Governor to take one-twentieth of the whole land in the title and that only for the purpose of a road. There can therefore be no question of riparian rights being acquired as indicated in your memo by reason of such road being taken and laid out.[1363]

Before any decision on the acquisition was made, Cabinet asked for an engineering survey, because of concerns expressed that if retained in private ownership the lake might be drained for farming purposes. A Government surveyor reported on this subject:

> I find that the lake fills a large depression in the old raised sea bed which has been blocked at its western end by blown sand from the coast, now grassed and become pasture lands.
>
> The possible height of the lake surface is governed by the existence of a very low saddle on the south side between it and the Ohau River which is only six feet above the present level. It is possible, therefore, by cutting through this saddle to drain a great part of the lake into the river, but as the river bottom is higher than the lake bottom this direction of drainage will not empty the whole of the depression occupied by the lake; it would in fact if used to its full capacity lower the lake about ten feet. A drain is already in existence across this saddle but is not deep enough to alter the present conditions.

The lake itself was just the open-water portion of a larger water-filled basin covered by peat and swamp vegetation:

> The natural outlet of the lake is by the Waiwiri Stream, which is practically lost in the swamp a few chains from the open water, but reappears upon the coast with a considerable flow. It is obvious that dredging operations on the line of this stream

[1361] Walter Buller had died and his estate was being administered by a brother domiciled in England.
[1362] Under Secretary for Lands to Solicitor General, 15 August 1911. Lands and Survey Head Office file 4/301. Supporting Papers #215.
[1363] Assistant Law Officer to Under Secretary for Lands, 8 September 1911. Lands and Survey Head Office file 4/301. Supporting Papers #216.

> would empty the depression completely to the bottom, and cause the lake to wholly disappear, laying the peat covering upon the sandy bottom.

The surveyor reported that either the whole depression (including the Waiwiri swamp) would need to be purchased, or a dyke would need to be built across the swamp to retain the height of the water in the lake. Both options would be costly.

> [While preserving either all or just the open-water part of the depression] is, it appears to me, a desirable national undertaking, yet its full value for those purposes is, I think, so far in the future that the necessary expenditure could not at present be justified while other less costly sanctuaries can be obtained, and I regret therefore to have to report against the proposed acquirement of the lake.
>
> With regard to the acquirement and preservation of portion of the forest on the northern slope of the present lake, this appears to me is most desirable…. I recommend the acquirement of an area of about 64 acres….[1364]

Based largely on this recommendation, Cabinet decided to decline the Buller Estate's offer, though remained interested in acquiring from the Estate some 14 acres of forested land to the north of the lake[1365]. The remaining 50 acres of interest was Native Land. However, the Estate declined to consider selling this smaller area[1366], and the prospect of acquiring the Maori-owned land also disappeared with the collapse of negotiations with the Estate. The only Crown-owned reserve in the locality was a 68 acre portion of the Weraroa State Farm closest to the lake that was reserved for the preservation of native bush in 1901[1367].

After the negotiations collapsed, the Buller Estate sold the lake and the land surrounding it to DH Murray. The Native Land that the Crown had shown an interest in also passed out of Maori ownership.

It seems likely that while the lake was still owned by the Buller Estate, Maori were in the habit of catching eels there. In 1920 Hoani Kuiti (or Kuti) of Otaki wrote to Maui Pomare:

> This is to inform you and your Government that us Maori have been blocked from going over the land which adjoins the Buller Lake (? Papaitonga) when we wish to do so to get eels and kakahi (freshwater shellfish).
>
> This is therefore an appeal to you and your Government to find a solution to our difficulty, by providing means for us to gain access to the lake when we need the foods (above referred to).

[1364] Chief Draughtsman and Surveyor Wellington to Under Secretary for Lands, 10 May 1912. Lands and Survey Head Office file 4/301. Supporting Papers #217-219.
[1365] Under Secretary for Lands to Chapman, Skerrett, Wylie and Tripp, Barristers and Solicitors, Wellington, 29 June 1912. Lands and Survey Head Office file 4/301. Supporting Papers #220.
[1366] Chapman, Skerrett, Wylie and Tripp, Barristers and Solicitors, Wellington, to Under Secretary for Lands, 1 November 1912. Lands and Survey Head Office file 4/301. Supporting Papers #221.
[1367] *New Zealand Gazette* 1901 page 161. Not included in Supporting Papers.
The reservation of part of this reserve was cancelled, and the balance area's reserved purpose was changed to scenic reserve in 1930 (*New Zealand Gazette* 1930 pages 3579 – not included in Supporting Papers).

Kuiti explained that though there was a public road along the lake edge, there was no public road connecting that road to other roads in the district. He had unsuccessfully sought the assistance of Horowhenua County Council, but had been told that "the man who holds the lake and the adjoining lands would not agree to what we ask".

> That being so … we Maoris are at present deprived of the lake foods, and of its waters in seasons of drought.
>
> Therefore this appeal to you and your Government that your exercise your prerogative – which no doubt you have – by instructing the Horowhenua Council to use its powers of roading rights hereon, we the Maoris being prepared to make the road ourselves.[1368]

Failing to get a reply, Kuiti wrote again 16 months later that "the lessee of the lake has closed the road and prevented us from using it, and also from catching eels in the lake". He asked whether the Native Land Court had jurisdiction to lay off a right of way[1369].

However, the Crown response was not encouraging:

> The owners are within their rights in refusing permission to local Natives to fish on the lake. The greater portion of the lake is owned by the trustees of the late Sir Walter Buller's Estate, a small portion is on the Harper Settlement, and the balance is part of what formerly Horowhenua B41G6 (south portion) but which has now been sold to a European. The Crown took a strip of land round the margin of the lake for a road under Section 92 of the Public Works Act 1894. Waiwiri East 1A block, which is still Native land, has access to this road, and there is legal access to the lake from the main road and various cross roads, as shown on the attached tracing and coloured brown.
>
> The road referred to by Hoani Kuti as having been closed apparently is the road shown on the tracing and coloured red. It was proposed to take this line as a road at one time but this was later withdrawn and the present road taken instead. This abandoned road passes in part through Muhunoa 3A1E5A which is now European land, and the Native Land Court would not have jurisdiction in the matter. However, the attached tracing will show that the local natives and public generally have access to the lake. Hoani Kuti apparently wishes to take a short cut, and there is nothing to prevent him applying to the Native Land Court to lay off a right of way to the lake provided it will be wholly on Native land. Of course he will require to prove to the Court that a right of way is necessary in the public interest before the Court would grant his application.[1370]

Maui Pomare was sent a copy of this advice.

There was a further approach to the Crown in 1945 by Peter Kuiti. He wrote:

> Over the period of years since the land around and about the Papaitonga Lake had been occupied by Europeans, the Maoris had always enjoyed access to their fishing rights on the lake, which until a few years ago they have been deprived of by the

[1368] Hoani Kuiti, Otaki, to Maui Pomare MP, 21 February 1920. Maori Affairs Head Office file 1920/76. Supporting Papers #427-428.
[1369] Hoani Kuti, Otaki, to Maui Pomare MP, 27 June 1921. Maori Affairs Head Office file 1920/76. Supporting Papers #429.
[1370] CB Jordan to Native Minister, 23 September 1921. Maori Affairs Head Office file 1920/76. Supporting Papers #430.

> present lessee, who went as far as to destroy canoes and boats that the Maoris used for eeling purposes.
>
> I have been residing in the Hawke's Bay for several years and is now on leave here, and on hearing the complaints of the affected natives decided to make an appeal to you or the Native Minister to help these natives if possible to recover their principal means of obtaining one of their most staple foods, eels.[1371]

The Registrar of the Maori Land Court was asked to investigate, and replied that all land comprising the lake and its immediate surrounds had passed out of Maori ownership, "and it would appear that the Natives when they disposed of their lands divested themselves of any fishing rights in the lake".

> There is nothing in the records of this Office or the Land Transfer Office to indicate that any right of access was reserved to the Natives, but it is clear that the former Native owners when they sold their blocks parted company with the portions of the lake within their boundaries.[1372]

Peter Kuiti was told that "it is clear that the lake is now private property", and people wishing to visit the lake had to do so by following one of the public roads or crossing private land with the permission of the owner[1373].

The Crown's interest in acquiring the lake re-emerged during the late 1970s. The trigger-point was Horowhenua County Council's district planning scheme review. The Council designated the lake and surrounds as a proposed scenic reserve, signifying an intention that it would be acquired as a reserve sometime during the 20-year planning period of the scheme. The landowner, a descendant of DH Murray, objected, but his objection was rejected, even though the Council had some concerns about whether it or the Crown would become responsible for financing the purchase. At this point Mr Murray became willing to consider selling the property, though excluding his house and some land adjoining his house located on the south side of the lake[1374]. However, the Crown did not have any uncommitted funds for purchase, so was potentially caught short by Murray's willingness to sell. Eventually an exchange deal was worked out. Murray would transfer Lake Waiwiri and surrounds to the Crown, and the Crown would transfer the former Wellington Nurses' Hostel and another Wellington property to Murray, together with a small amount of cash to provide

[1371] Peter R Kuiti, Ohau, to Under Secretary Native Department, 18 January 1945. Maori Affairs Head Office file 43/1/1. Supporting Papers #472-473.
[1372] Registrar Native Land Court Wellington to Under Secretary Native Department, 29 January 1945. Maori Affairs Head Office file 43/1/1. Supporting Papers #474-475.
[1373] Under Secretary Native Department to Peter R Kuiti, Ohau, 23 February 1945. Maori Affairs Head Office file 43/1/1. Supporting Papers #476.
[1374] Commissioner of Crown Lands Wellington to Director General of Lands, 17 August 1978 and 1 November 1978. Lands and Survey Head Office file RES 7/3/43. Supporting Papers #362 and 363.

an equality of exchange. In addition, Murray imposed a couple of conditions of sale, that he could retain commercial eeling rights and duck shooting rights, both for a limited period[1375].

On the matter of eeling rights, this had come up in the first discussions with Murray. A file note reported:

> It became obvious that Mr Murray placed considerable value on eeling. He said he had an arrangement with a firm to take 50 tonne of eels over five years (12½ tonne have so far been taken). He envisaged plans of capturing small eels and then raising them in small pens along lake shore. This he maintained could be a lucrative business. Following discussions with Assistant Commissioner of Crown Lands earlier in day, he was seeking eeling rights for 10 years plus 1st option if they were to be let subsequently. After discussion he indicated agreement to seeing out 50 tonne arrangement (about 5 years) plus extra compensation (A/CCL had mentioned $12,000).[1376]

This was explained more fully four days later by the Commissioner of Crown Lands:

> Murray prefers to keep fishing access rights in perpetuity but is prepared to negotiate for their surrender to the Crown. He has a "contract" with the Levin Eel Processing Factory for a further 38 tonnes to be taken from the lake (no time limit). Fishermen generally are being paid up to $1 per kilo ($1,000 per tonne) currently for eels. Mr Murray has been paid $20,000 for the fishing access rights and would be able to contract out of the arrangement on refund of that amount. Accordingly he would sell the fishing access rights to the Crown for an additional $20,000.
>
> The MAF Eel Specialist Mr Walter Skrzynski has been contacted and says that the sustainable yield of the lake is about 3 to 4 tonnes followed by a 2 to 3 year rest period while smaller eels grow to fishable size when a similar amount can be taken again. Quite some years ago the lake was fished out but naturally replenished. With proper conservation measures, including catch limits, there is therefore a sustainable yield of eel in the lake. Having regard to the existing commitments and general principles of conservation, I think it would be wisest to take the long term view that rather than paying the $20,000 now we look at the fact that after a further 38 tonnes have been removed we have the full fishing rights in perpetuity, which is a bonus in acquiring this scenic reserve. Making a contract with Murray on that basis is legitimate under the proviso of Section 50(1) Reserves Act. It is accordingly recommended that fishing continue on condition that the annual catch limit is fixed by the CCL on the advice of the Fisheries Division, and that fishing ceases once a total of 38 tonnes has been taken. Murray then gives up any continuing fishing access gratis to the Crown.[1377]

He added the following month:

> Extended fishing rights – again a contingency which will not arise while lake is scenic reserve. Fishing is not under this Department's control, and we cannot promise any option to fishing licences.[1378]

[1375] Case 80/171 to Head Office Committees, approved 29 May 1980, and Director General of Lands to Minister of Lands, 10 July 1980, approved 15 July 1980. Lands and Survey Head Office file RES 7/3/43. Supporting Papers #364-368.

[1376] File note by Executive Officer Land Administration, 6 June 1980. Lands and Survey Head Office file RES 7/3/43. Supporting Papers #369-370.

[1377] Commissioner of Crown Lands Wellington to Director General of Lands, 10 June 1980. Lands and Survey Head Office file RES 7/3/43. Supporting Papers #371-372.

[1378] Commissioner of Crown Lands Wellington to Director General of Lands, 2 July 1980. Lands and Survey Head Office file RES 7/3/43. Supporting Papers #373.

To which a handwritten note added by a Head Office staff member stated "I disagree, as landowner we can and will prohibit"[1379].

On the matter of duck shooting rights, the note on negotiations with Murray recorded:

> [Murray] currently lets about 14-16 guns in. He wished to have rights to shoot for 35 years as this would provide for family in future. Was happy to limit it to 6 guns.[1380]

The Commissioner then followed up:

> Duck shooting – to be on the basis of 6 guns limit per season, on lake frontage of land retained by Murray, for a period of 35 years, personal to himself or family nominee.[1381]

He added the following month:

> Additional shooting rights – this contingency is unlikely to arise as the lake will become a scenic reserve and duck shooting will be prohibited except for Murray's retained rights. There is however no harm that I can see in giving him the undertaking he seeks for the 35 years that he has exclusive shooting.[1382]

The sale and purchase agreement between Murray and the Crown was not discovered during the research for this report, so the exact wording of the conditions is not known. The following, perhaps a summary rather than a repetition of the agreement, is taken from a management plan subsequently prepared for the reserve:

> Vendor to have exclusive access rights for commercial eeling for a period of 10 years from 1 September 1980, with no more than 38 tonne to be taken in that period (Section 50(1) Reserves Act and the Fisheries Act apply).
>
> Vendor to have exclusive duck shooting rights for a period of 35 years from 1 September 1980, but to be exercised only over part of the lakeshore (see plan) and with a 6 gun limit. This right to cease if vendor dies or sells his land adjoining the reserve. The Wildlife Act 1953 applies.
>
> Vendor to have exclusive possession by lease-back of part of the southern shoreline (see plan) for a term of 21 years from 1 September 1980. This licence to be personal to the vendor and to terminate in the event of the adjoining land changing hands or on the vendor's death.
>
> The unformed northward leg of Papaitonga Lake Road to remain as road, and a right of way be granted by the Crown over part of the acquisition area to preserve legal access between two parts of the vendor's farm (see plan).

Tangata whenua were not consulted, nor their interests considered, during the negotiations to acquire the lake as a scenic reserve. There was a limited level of Crown understanding of

[1379] Handwritten margin note, undated, on Commissioner of Crown Lands Wellington to Director General of Lands, 2 July 1980. Lands and Survey Head Office file RES 7/3/43. Supporting Papers #373.
[1380] File note by Executive Officer Land Administration, 6 June 1980. Lands and Survey Head Office file RES 7/3/43. Supporting Papers #369-370.
[1381] Commissioner of Crown Lands Wellington to Director General of Lands, 10 June 1980. Lands and Survey Head Office file RES 7/3/43. Supporting Papers #371-372.
[1382] Commissioner of Crown Lands Wellington to Director General of Lands, 2 July 1980. Lands and Survey Head Office file RES 7/3/43. Supporting Papers #373.

the Maori history of the lake, described in one of the submissions seeking approval of the transaction as:

> Motu Ngarara … has an area of 3000m², is apparently man-made, and was the site of a fortified pa of the Muaupoko Tribe which was sacked during an invasion by Te Rauparaha in 1819.[1383]

Within a year of the acquisition of the lake from Murray, the owner of a small portion of the lake edge in its north-east corner offered his swampland and bush frontage to the Crown as an addition to the scenic reserve[1384]. This was land referred to in earlier years as being part of Harper Settlement. Agreement was quickly reached and the acquisition of an estimated 7.28 hectares was approved by the Minister of Lands[1385].

Both acquisitions were of only part of each seller's properties, so subdivision surveys were necessary to define the areas being acquired by the Crown. These surveys were not completed and approved until 1986[1386]. Meanwhile the unformed legal road around the lake edge was resumed and became Crown Land[1387]. The two acquisitions and the former road were then re-defined and given a fresh appellation (Sections 3 and 4 Block II Waitohu Survey District) on a new survey plan[1388], before being reserved for scenic purposes[1389]. It became known in Crown records as Lake Papaitonga Scenic Reserve.

Once acquired, the Department of Lands and Survey was keen to understand what archaeological sites it had become responsible for, and commissioned an archaeological site survey. The request for approval explained:

> Lake Papaitonga was an important centre of Maori habitation by the Muaupoko people, with their unique system of artificial islands. Decisive events took place there in the stormy relationship between the Muaupoko and Te Rauparaha.
>
> GL Adkin identified some archaeological sites round the lake in 1948, and his work needs to be updated and completed. The Department has an obligation in terms of Section 19 Reserves Act to protect these archaeological features to the extent compatible with scenery preservation. Some sites have been fossicked in the past

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[1383] Case 80/171 to Head Office Committees, approved 29 May 1980, and Director General of Lands to Minister of Lands, 10 July 1980, approved 15 July 1980. Lands and Survey Head Office file RES 7/3/43. Supporting Papers #364-368 and 374-378.
[1384] Commissioner of Crown Lands Wellington to Director General of Lands, 6 August 1981. Lands and Survey Head Office file RES 7/3/43. Supporting Papers #379-380.
[1385] Director General of Lands to Minister of Lands, undated, approved 5 October 1981. Lands and Survey Head Office file RES 7/3/43. Supporting Papers #381-384.
[1386] Wellington plan DP 53534 (for acquisition from DH Murray). Supporting Papers #1554.
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[1387] Director General of Lands to Minister of Lands, undated, approved 22 June 1982. Conservation Head Office file RES – 0701. Supporting Papers #1-5.
New Zealand Gazette 1982 page 3398. Supporting Papers #1495.
[1388] Wellington plan SO 34145. Supporting Papers #1601.
[1389] *New Zealand Gazette* 1991 page 1967. Supporting Papers #1498.

> and a good archaeological record will be important in making management decisions.[1390]

The survey was undertaken over three days in January 1982. It found that the whole surface of the two islands in the lake was of such high archaeological significance that maximum protection was required and public access should be by permit only. Four middens were also identified:

> I regard the Island Pa as the most important sites in the scenic reserve and that their preservation is paramount. Other sites recorded may well have significant contents and they are protected by the Historic Places Act 1980. Any modification of any site in Appendix One would require the permission of the Archaeology Section of the Historic Places Trust. Having said this, I also feel that in order for a balance to be reached between the preservation of the archaeological sites and providing public access to the Scenic Reserve it would be advisable to provide clearly defined tracks into areas where sites exist if this is desirable in order to satisfy other objectives in the reserve. It would, however be advisable to avoid putting a track into the area of N152/52 since this is a named site and some oral tradition is associated with it.
>
> I would also recommend that the Maori people of the area be consulted and asked to advise on their attitude to public access to the reserve, particularly the two Pa and N152/52 (Korupu).[1391]

Another of the first steps to be made by the Department was the preparation of a management plan. The statements made in such a plan can indicate the level of the Department's understanding about the significance of the lake to tangata whenua, even though at that time (being pre-1987) there was no statutory obligation to provide for the principles of the Treaty of Waitangi. It is known that in the lead-up to the drafting of the plan, a submission was made in November 1981 by the Kikopiri Marae Committee, though this submission was not located during research for this report. The first draft of the management plan, produced in January 1982 for internal circulation only, described the Maori history:

> Lake Waiwiri was an important centre of Maori habitation by the Muaupoko people, with their unique system of artificial islands. The Muaupoko established Papaitonga Pa in the early 1800s on the larger natural island in the lake and it held over 500 people. As a further measure of protection, they later constructed Papawhaerangi, an artificial island Pa reputedly of the same age as similar pa in Lake Horowhenua.
>
> In the 1820s, under their chiefs Te Rauparaha and Te Rangihaeata, the Ngati Toa migrated from Kawhia to Horowhenua, and settled initially on the Ohau River. An assassination attempt was made on Te Rauparaha's life by a force from Papaitonga when he was a guest at Te Wi near Ohau, about 1822. As a result the Muaupoko were vanquished and driven out, although later allowed to return to Lake Horowhenua.

[1390] Commissioner of Crown Lands Wellington to Director General of Lands, 20 October 1981. Lands and Survey Head Office file RES 7/3/43. Supporting Papers #385.
[1391] Assistant Director Manawatu Museum to Commissioner of Crown Lands Wellington, 31 January 1982. Lands and Survey Wellington District Office file 13/102c. Supporting Papers #1124-1133.

> They reoccupied Papaitonga about 1827, and in retaliation Te Rauparaha stormed the Pa and massacred the inhabitants.[1392]

A further piece of information recorded on the management plan preparation file states that:

> In a discussion with DH Murray over the management plan, he mentioned that in the 1920s the Maoris removed all Maori skeletons (victims of Te Rauparaha) from Papaitonga Island and buried them on the headland to the east of the island which is the next one past the headland which is the proposed destination of the schemed track.
>
> Mr Murray said the only person he knew that might have further details was Simon Kuiti, who could be contacted care of his son Jim Broughton of McKenzie St, Levin.[1393]

This information has not been verified during research for this report.

Of the issues that needed to be addressed by the management plan, water levels in the lake were seen as being critical:

> One of the essential management requirements is to maintain lake levels which do not affect land snail populations or archaeological sites detrimentally, but nevertheless allow a suitable habitat for waterbird populations and fish (especially indigenous species). These levels must also not detract from the exceptional scenic qualities of the reserve, nor the use of surrounding private land.[1394]

When the management plan was publicly notified in August 1986, and comments were invited, two submissions were received, one from New Zealand Forest Service and one from a Royal Forest and Bird Protection Society member. There were no submissions from any Maori organisations or individuals. Some minor amendments were made in light of the submissions received, and the plan was approved in December 1986.

Since 1991 the Crown has acquired additional lands around the edge of the lake for scenic reserve purposes. One of these acquisitions allowed the Crown to block off a small drain through the acquired land and thereby assist with restoration of the swampland vegetation. The scenic reserve now has a total area of 153 hectares.

Today the only part of the lake that is not in Crown ownership is a small part of the Maori freehold block Waiwiri East 1A. This block is the whenua of the Perawhiti and Kuiti whanau. However, the Murray family are the largest shareholders in the block, holding 8939 shares

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[1392] Excerpts from Lake Papaitonga Scenic Reserve Management Plan, draft (January 1982). Lands and Survey Wellington District Office file 13/102c. Supporting Papers #1134-1139.

[1393] Note for file, 18 January 1982. Lands and Survey Wellington District Office file 13/102c. Supporting Papers #1123.
The koiwi present on the island prior to 1920 are recorded in W Buller, 'The story of Papaitonga, or a page of Maori history', in *Transactions and Proceedings of the New Zealand Institute*, Volume 26, 1893, pages 572-584.

[1394] Excerpts from Lake Papaitonga Scenic Reserve Management Plan, draft (January 1982). Lands and Survey Wellington District Office file 13/102c. Supporting Papers #1134-1139.

(38.9%) out of the total of 22984 shares, and the family have farmed the land under a series of leases since at least the early 1950s.

7.7 Concluding remarks

With respect to the Rangitikei-Manawatu Purchase, the Crown had made available some of its acquired land for granting as fishery reserves. At that point, however, any duty of active protection seems to have been treated as having been discharged, as there is no sense of obligation apparent in the Crown records, other than the steps needed to issue a Crown Grant. For Pukepuke fishery reserve, that took over 80 years.

Elsewhere, outside the Crown purchased lands, the Crown's protection generally involved no more than was provided by the standardised fisheries regulatory regime. This treated Maori and Europeans equally rather than recognising and responding to any Treaty obligation. The only exception was when Maori sought the closure to whitebait fishing of the Whakapuni Drain at the mouth of the Manawatu River. The Crown responded positively to this request, only for the protection to be turned on its head seven years later when the Crown discovered that its actions had been ultra vires because the drain passed through private property and had the status of being a private water. The landowner was then able to whitebait with impunity what had previously been a protected water.

When the depression hit, and whitebait became an important resource because it could be easily and freely gathered, the Marine Department had a presence at the Manawatu estuary with a research project into the biology of the species. However, other agencies were not so helpful, with drainage boards constructing flood gates that closed off waterways, or poisoning fishlife when targeting weed species. The environmental changes to the waterways would have had a dramatic effect on fishlife, though that was never investigated by the Crown, or considered by the Crown to be a matter that it had to respond to.

It is appreciated that the Tribunal is subject to some statutory limits on its powers of inquiry when it comes to investigating commercial fisheries issues. Those limits are a matter for legal submissions, and for the Tribunal's own judgment. However, there is a high degree of overlap between discussing the place that tuna hold in determining hapu identity, hapu manaakitanga, and the relationship that hapu have with their rohe, and the practice of commercial eel fishing. Tuna are integral to cultural health and wellbeing. It seems difficult to discuss the impacts experienced by Porirua ki Manawatu hapu without acknowledging or making reference to the impact that commercial eel fishing has had.

Given the significance of tuna to Maori, it is surprising that there are no waterways in Porirua ki Manawatu Inquiry District (with the possible exception of Hokio Stream) where commercial eel fishers cannot go. How does that demonstrate that the Crown is actively protecting Maori rights to harvest tuna? At Kaikoura one hapu of Ngai Tahu has been successful in having three mataitai reserves established where commercial eeling is not allowed. It is tempting to wonder what would happen if the 25 hapu of Ngati Raukawa ki te Tonga each applied for three mataitai reserves, and if Muaupoko, Rangitane and Ngati Apa also lodged their own applications. Would the applications be deemed to clash with Regulation 23(e) of the Fisheries (Kaimoana Customary Fisheries) Regulations 1998, which prevent a mataitai unreasonably interfering with existing commercial fishing practices? If so, is the fisheries management model broken or unsustainable?

The Crown ownership of reserves that cover the tuna fishing grounds at Pukepuke and at Waiwiri / Muhunoa / Papaitonga places significant obligations on the Crown to sensitively manage the relationships that Maori have always had with those lakes. Those relationships are being brought into the modern world by the settlements that the Crown enters into with iwi. At Pukepuke settlements with Ngati Apa and Rangitane have already acknowledged the cultural associations those parties have with the lake, and it is not unreasonable to imagine that hapu of Ngati Raukawa will wish to see their associations with the lake recognised in the same manner. Another party with distinct rights are those who have an exclusive right to catch tuna there. That party is comprised of those who descend from the grantees recognised in the Crown grant. They are of Ngati Apa, but are a branch of Ngati Apa rather than the whole iwi.

There are similar multi-iwi interests at Waiwiri / Muhunoa / Papaitonga. Both Ngati Rukawa and Muaupoko could reasonably expect to see their cultural associations recognised in settlements with the Crown. Past practice by the Crown (Department of Lands and Survey, Department of Conservation) has shown varying favouritism of Ngati Raukawa and Muaupoko when describing the Maori history of the lake. A more even-handed approach will be necessary in the future, because in multi-iwi situations all parties deserve to be treated with equal measures of respect, and with equally transparent engagement.

8. The impact over time of waterways law for tangata whenua

What are the impacts for them over time of the application of common law and/or legislative presumptions concerning ownership and control of their waterways of importance in this inquiry district, including rivers, lakes, estuaries, springs and other inland waterways?

Maori developed a working model of authority, control, spiritual understanding and personal relationships prior to the arrival of Europeans, which allowed them to access, use, live alongside and respect waterways. It is an open question whether those matters are still applicable for some of the rivers that form the boundaries of early Crown purchases, or that form the boundaries of initial blocks whose title was investigated at an early date by the Native / Maori Land Court. However, the influence and relevance of aboriginal law to the ownership and control of waterways has been treated as being a matter beyond the scope of this report.

English common law recognises some public rights that apply to waterways, such as a right to navigate by boat along the waterway and treat it as a form of highway. Even at that level, the common law was in conflict with Maori tikanga, which expected that passing through the rohe of a hapu required the consent of the hapu (as given by the rangatira). If consent was not sought, that was a trespass and akin to an act of war. So from the earliest days of European exploration matters were being set up for a clash of philosophies and different understandings of authority. Wisely for them, those earliest explorers did not rely on whatever understandings of English common law they had, and accepted that they needed the approval of the tangata whenua for their wanderings. Their local guides were the intermediaries who negotiated a right of passage on their behalf.

The biggest change in the earliest years of European settlement was undoubtedly brought about by the large-scale Crown purchases of land. The Crown land purchasers would not have had a lawyer's specialised understanding of the common law and its application in New Zealand. They would, however, have almost certainly had some general understandings about both English and New Zealand law that would have guided their thinking. They would have believed that ownership of riparian land conferred some rights to use of adjoining waterways. They would have considered that when the Crown owned land to the riverbank on a large scale, it would no longer be necessary in the future to obtain the consent of Maori

to navigate along the waterway or to take water from the river for household and farm purposes. The majority of Maori they engaged with negotiated with them as willing sellers.

The ad medium filum presumption of English common law perhaps ties riparian land and its adjoining riverbed more tightly together than either the Crown purchasers or the Maori sellers probably appreciated at the time of the large-scale purchases. Nevertheless, the link between riparian land and its waterway was a concept that would have been understandable to Maori.

However, the manner in which the ad medium filum presumption has been subsequently applied would have been beyond the comprehension of both parties at the time of the purchases. The concepts of accretion and erosion, and the common law principles associated with them, are arcane and highly specialised. The common law presumption was, however, relied on by the Native Land Court on behalf of Ngati Kauwhata landowners to make sense and bring order to the chaos created on the Oroua River by the changes of the river's course.

While statute law is ubiquitous today, it was not always so. English common law had to be well-rounded enough that it could provide both opportunities and protections, and its principles had to be capable of surviving multiple generations. The writing of a statute can sometimes be a codification of the common law. However, a statute can also be passed when a solution that could be derived from common law principles was not deemed to be politically acceptable to the majority of the legislature. The latter has been the case in New Zealand on many occasions, and especially so with waterways. Much of the statute law on waterways has been single purpose, establishing management regimes which gave a priority to mining, or land drainage, or farmland flood protection. Such laws were passed when the common law was deemed to be inadequate in the circumstances applying in New Zealand.

Where Maori continue to own riverbank land, they continue to enjoy benefits from the English common law as interpreted by the New Zealand courts to fit New Zealand conditions. Those benefits have, however, been modified by statute law. For instance a Maori owner of presumptive rights to the centre line of a river has ownership and control of the gravel and shingle in that part of the riverbed, though would have to obtain resource consent from local authorities under statute law to be able to extract it. As additional layers of statute law have been added, the modifications of the common law have become greater.

The cumulative impact of 180 years of law-making has been far reaching. At a simplistic level the waterways are no longer “their waterways” as referred to in the introductory question to this chapter. Yes, they are the waterways of the hapu. But by the actions of the Crown they have become other people’s waterways too. The RMA encapsulates a need to provide for Maori interests in waterways, then goes on to also recognise and require provision for other values of waterways that have never been discussed with Maori.

At a more specific level the legal framework has failed Maori in the past and continues to do so today, because it has not been built upon Treaty obligations. Those obligations with respect to waterways are readily visible, being a duty to actively protect fisheries and taonga. Any departure from those obligations results in the law getting progressively more out of kilter over time.

Some recent efforts at remedial action are apparent in the acts arising from Treaty settlements affecting the Waikato River, the Waipa River and the Whanganui River. These represent a grafting on to the legal framework of additional measures. However, changing the more significant statutes to be more consistent with Treaty obligations will perhaps be a greater help. The hope is that the Tribunal’s national water inquiry, and the Crown’s water review can develop some beneficial amendments of the law.

For the hapu, their silence in former years, while understandable, has required them to do some catch up. They are currently on a treadmill of submission and objection. What they really want, of course, is to get to the stage where they can enjoy their waterways.

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1860-1869	1427-1429
1880-1889	1430-1433
1890-1899	1434-1441
1900-1909	1442-1452
1910-1919	1453-1455
1920-1929	1456-1459
1930-1939	1460-1464
1940-1949	1465-1474
1950-1959	1475-1478
1960-1969	1479-1485
1970-1979	1486-1491
1980-1989	1492-1497
1990-1999	1498

Ministry of Works Report

	Supporting Papers #
Excerpts from *NZ law and administration in respect to water: report to Cabinet by the Interdepartmental Committee on Water*, March 1965	1499-1500

Fisheries New Zealand documents (www.fs.govt.nz)

	Supporting Papers #
Excerpts from *Fisheries Assessment Plenary*, May 2018	1501-1502
Excerpts from *Review of North Island eel sustainability measures for 2018/19*, June 2018	1503-1511
Excerpts from *Review of sustainability measures for the October 2018/19 fishing year, Appendix 2: submissions received*, August 2018	1512-1522
Excerpts from *Review of sustainability measures for the October 2018/19 fishing year*, August 2018	1523-1530
Excerpts from *Decision of Minister of Fisheries*, September 2018	1531-1533
Managing impacts on tuna (eel) using a kaupapa Maori approach: Ngati Raukawa ki te Tonga me Te Wananga o Raukawa, June 2011	1534-1535

Survey plans

	Supporting Papers #
Ministry of Works and Development Head Office PWD series plans	1536-1546
Wellington Land District DP (Deposited Plan) plans	1547-1555
Wellington Land District ML (Maori Land) plans	1556-1576
Wellington Land District SO (Survey Office) plans	1577-1601

Wellington Land Registry

	Supporting Papers #
Deeds Record Book 286	1602-1603

Horowhenua County Council

File	Location	Supporting Papers #
Inwards Correspondence 1889/5	AC (Ref HDC 00314 Box 1)	1604-1608
Inwards Correspondence 1920/10/10	AC (Ref HDC 00315 Box 3)	1609
Inwards Correspondence 1924/1/13A	AC (Ref HDC 00315 Box 4)	1610
4/1/2	AC (Ref HDC 00018 Box 122 Item 183)	1611-1615
C/F 1641	AC (Ref HDC 00018 Box 30)	1616-1642

Manawatu County Council

File	Location	Supporting Papers #
Bainesse Drainage District	AC (Ref MDC 00024 Box 10 Item 5)	1643-1646
Makowhai Drainage District	AC (Ref MDC 00024 Box 10 Item 7)	1647-1652
Oroua Downs Drainage District Volume 1	AC (Ref MDC 00024 Box 10 Item 11)	1653-1656
Oroua Downs Drainage District Volume 2	AC (Ref MDC 00024 Box 10 Item 12)	1657

Rangitikei-Wanganui Catchment Board

File	Location	Supporting Papers #
326000 Volume 1	AC (Ref HRC 00050 Box 1)	1657A-1657B
326000 Volume 2	AC (Ref HRC 00050 Box 1)	1658-1658A

Manawatu Catchment Board

File	Location	Supporting Papers #
1/16 Volume 2	AC (Ref HRC 00024 Box 11)	1659-1662
1/16 Volume 3	AC (Ref HRC 00024 Box 11)	1663-1681
9/3 Volume 1	AC (Ref HRC 00024 Box 31)	1682-1693
9/3 Volume 2	AC (Ref HRC 00024 Box 31)	1694-1703
9/3 Volume 3	AC (Ref HRC 00024 Box 31)	1704-1732
9/3 Volume 4	AC (Ref HRC 00024 Box 31)	1733-1752
9/4 Volume 1	AC (Ref HRC 00024 Box 32)	1753-1779
10/5 Volume 1	Greater Wellington Regional Council	1780-1845
10/5 Volume 2	Greater Wellington Regional Council	1846-1856
19/11 Volume 1	AC (Ref HRC 00024 Box 57)	1857-1872

Manawatu Catchment Board and Regional Water Board

Water right files

File	Location	Supporting Papers #
1150	AC (Ref HRC 00027 Box 28)	1873-1932
1670	AC (Ref HRC 00027 Box 41)	1933-1939
1672	AC (Ref HRC 00027 Box 41)	1940-2001
2346	AC (Ref HRC 00027 Box 59)	2002-2035
3523	AC (Ref HRC 00027 Box 91)	2036
3705	AC (Ref HRC 00027 Box 97)	2037-2109
3714	AC (Ref HRC 00027 Box 98)	2110-2153

Manawatu-Wanganui Regional Council

Lake Tangimate

File	Location	Supporting Papers #
1/6/TFT 101740-101741 Volume 1	Manawatu-Wanganui Regional Council	2154-2208
1/6/TFT 101740-101741 Volume 2	Manawatu-Wanganui Regional Council	2209-2221

Feilding wastewater treatment plant discharge

File	Location	Supporting Papers #
2/2/MDC/A Volume 1	Manawatu-Wanganui Regional Council	2222-2230
2/2/MDC 4929A Volume 1	Manawatu-Wanganui Regional Council	2231-2282
2/2/MDC 4929A Volume 2	Manawatu-Wanganui Regional Council	2283-2310
2/2/MDC 4929A Volume 3	Manawatu-Wanganui Regional Council	2311-2325
2/2/MDC 4929A Volume 4	Manawatu-Wanganui Regional Council	2326-2333
2/2/MDC 4929A Volume 5	Manawatu-Wanganui Regional Council	2334
Application 2001-009351 Volume 1	Manawatu-Wanganui Regional Council	2335-2402
Application 2001-009351 Volume 2	Manawatu-Wanganui Regional Council	2403-2464
Application 2008-013460 Volume 1	Manawatu-Wanganui Regional Council	2465-2489
Application 2009-013697 Volume 2	Manawatu-Wanganui Regional Council	2490-2532
Application 2009-013697 Volume 3	Manawatu-Wanganui Regional Council	2533-2543
Application 2012-01527 Volume 1	Manawatu-Wanganui Regional Council	2544-2547
Application 2012-01527 Volume 2	Manawatu-Wanganui Regional Council	2548-2551
Application 2012-01527 Volume 3	Manawatu-Wanganui Regional Council	2552-2611

Application 2013-016413 Volume 1	Manawatu-Wanganui Regional Council	2612-2630
Application 2013-016413 Volume 2	Manawatu-Wanganui Regional Council	2631-2635
Application 2013-016413 Vol 6 Pt 2	Manawatu-Wanganui Regional Council	2636-2649
Application 2013-016413 Volume 12	Manawatu-Wanganui Regional Council	2650-2696
Decision of Commissioners 20 January 2015	Manawatu-Wanganui Regional Council	2697-2792

Shannon wastewater treatment plant discharge

File	Location	Supporting Papers #
1/6/HDC/A 104238-104247 Volume 1	Manawatu-Wanganui Regional Council	2793-2841
1/6/HDC/A 104238-104247 Volume 2	Manawatu-Wanganui Regional Council	2842-2849
1/6/HDC/A 104238-104247 Volume 3	Manawatu-Wanganui Regional Council	2850-2888
1/6/HDC/A 104238-104247 Volume 4	Manawatu-Wanganui Regional Council	2889-2914

Foxton wastewater treatment plant discharge

File	Location	Supporting Papers #
1/4/HDC 3926A Volume 1	Manawatu-Wanganui Regional Council	2915-2969
1/4/HDC 3926A Volume 2	Manawatu-Wanganui Regional Council	2970-3015
Application 2006-012045 Volume 6	Manawatu-Wanganui Regional Council	3016-3115
Application 2006-012045 Volume 7	Manawatu-Wanganui Regional Council	3116-3269
Application 2006-012045 Volume 8	Manawatu-Wanganui Regional Council	3270-3277
1/4/HDC 107277-107278	Manawatu-Wanganui Regional Council	3278-3282

All wastewater treatment plants

File	Location	Supporting Papers #
Municipal Wastewater Reporting, November 2017	Website www.horizons.govt.nz	3283-3287

Miscellaneous Documents

	Supporting Papers #
Manawatu Catchment Board, *Report on the Otaki River Scheme, bed survey, and shingle resources*, 1975	3288-3345
Manawatu Catchment Board, *Environmental assessment of the Otaki River scheme and shingle resources*, 1976	3346-3370
Manawatu Catchment Board, *Shingle management report on the Otaki River*, August 1976	3371-3376
Manawatu Catchment Board, *Otaki River channel change and gravel resources*, December 1983	3377-3432
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Manawatu-Wanganui Regional Council, *Discharges to the lower Manawatu River – cultural report*, 1997	3499-3532
Manawatu-Wanganui Regional Council, *Water quality trends in the Manawatu-Wanganui region, 1989-2004*, March 2006	3533-3558
Manawatu Times, June and July 1912 (various dates)	3559-3577
Otago Daily Times, 25 May 1927	3578-3579
AR Acheson, 'Operation of tower excavator – Otaki River' in *Proceedings of NZ Institution of Engineers*, Volume XXXV, 1949, pages 486-519	3580-3601
Nga Hapu o Otaki / Te Runanga o Raukawa, *Proposed Ngati Raukawa Otaki river and catchment iwi management plan 2000*, 2000	3602-3665

2. Waitangi Tribunal Technical Evidence

D. Alexander, *Land-based resources, waterways and environmental impacts*, November 2006. Wai 1040 #A007.

D Alexander, *Some aspects of Crown involvement with waterways in Whanganui Inquiry District*, August 2008, Wai 903 #A158.

D Alexander, *Environmental issues and resource management (land) in Taihape Inquiry District, 1970s-2010*, July 2015, Wai 2180 #A38.

D Alexander, *Rangitikei River and its tributaries historical report*, November 2015, Wai 2200 #A187.

R Anderson et al, *Crown action and Maori response, land and politics, 1840-1900*, June 2018, Wai 2200 #A201.

H Bassett and R Kay, *Porirua ki Manawatu Inquiry District: public works issues*, November 2018, Wai 2200 #A211.

P Husbands, *Maori aspirations, Crown response and reserves, 1840-2000*, November 2018, Wai 2200 #A213.

H Potter et al, *Porirua ki Manawatu inland waterways historical report*, August 2017, Wai 2200 #A197.

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Walghan Partners, *Porirua ki Manawatu Inquiry District, block research narratives, Volume III*, November 2017, Wai 2200 #A212.

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V Wood et al, *Porirua ki Manawatu Inquiry District: environmental and natural resource issues report*, September 2017, Wai 2200 #A196.

3. Other Published Sources

M Holcroft, *The line of the road: a history of Manawatu County, 1876-1976*, Manawatu County Council and John McIndoe, 1977.

C Knight, *Ravaged beauty: an environmental history of the Manawatu*, Dunmore Publishing Ltd, 2014.

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M Roche, *Land and water: water and soil conservation and central Government in New Zealand, 1941-1988*, Historical Branch Department of Internal Affairs, 1994.

HH Turton, *Maori deeds of land purchases in the North Island of New Zealand*, Volume 2, 1878.

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Appendix One – Waitangi Tribunal commission

OFFICIAL

Wai 2200, #2.3.35

WAITANGI TRIBUNAL

Wai 2200

CONCERNING the Treaty of Waitangi Act 1975

AND the Porirua ki Manawatū District Inquiry

DIRECTION COMMISSIONING RESEARCH

1. On 12 April 2018, I issued a memorandum-directions advising parties that I intended to commission additional research on ownership and control of inland waterways of importance to claimants in this inquiry district. I advised that this project would begin with a focus on the Waikanae River and associated waterways and then move on to the wider inquiry district rivers and waterways, including the Manawatū River (Wai 2200, #2.5.175).

2. On 18 May 2018, the Tribunal commissioned Ross Webb to prepare a report on ownership and control of inland waterways of importance to Te Ātiawa/Ngāti Awa ki Kapiti (Wai 2200, #2.3.30). Mr Webb's final report was released on 17 September 2018 (Wai 2200, #A205).

3. On 10 September 2018, I invited Ngāti Raukawa, Ngāti Kauwhata, and other remaining claimants to make submissions on any further issues they wished to have covered in respect of inland waterways (Wai 2200, #2.6.27). Six memoranda were filed in response (Wai 2200, #3.2.153 – #3.2.156, #3.2.167 and #3.2.171). The researcher will take these memoranda into account when scoping the report to identify relevant sources and prioritise relevant issues.

4. Pursuant to clause 5A of the second schedule of the Treaty of Waitangi Act 1975, the Tribunal commissions David Alexander, historian, to prepare a research report on ownership and control of inland waterways of importance to claimants in this inquiry district.

5. The researcher should address the following for iwi and hapū other than Te Ātiawa/Ngāti Awa ki Kapiti in this inquiry district:

    a) What were Crown and Māori understandings and assumptions concerning ownership and control of waterways of importance (including rivers and lakes, estuaries, springs, wetlands, ground water and other inland waterways) as identified in the CFRT environment and waterways reports or by claimants in the six memoranda cited above, and how have these changed or become entrenched over time?

    b) To what extent were common law presumptions concerning ownership and control of the beds of inland waterways (such as *ad medium filum aquae* presumptions) or legislative provisions (such as the Coal Mines Act 1903 or drainage legislation) applied to waterways of importance in this inquiry district and with what impacts?

    c) What were the main mechanisms by which Māori of this district allegedly lost ownership and control of their waterways of importance, (such as by purchase of

riparian lands, public works takings, destruction or loss from infrastructure development, roads along river banks, rights to take shingle/gravel) and land purchasing and partitioning where this is not already covered in commissioned reports for this inquiry?

d) What has been the impact of waterways management regimes, including the Resource Management Act 1991 regime, on Māori authority over, use of and enjoyment of their waterways in this inquiry district?

e) To what extent do the records show consultation with them or their consent being obtained and how have they responded or protested to the Crown and/or local authorities regarding issues of rights of control and ownership of waterways (or beds of waterways) in this inquiry district?

f) What are the impacts for them of the application of common law and/or legislative presumptions to waterways of importance to them in this district for the continued exercise of their customary rights in fisheries and other waterways resources?

g) What are the impacts for them over time of the application of common law and/or legislative presumptions concerning ownership and control of their waterways of importance in this inquiry district, including rivers, lakes, estuaries, springs and other inland waterways?

6. The commission ends on 28 June 2019, at which time an electronic copy of the final report must be submitted to the Registrar for filing, together with indexed copies of any supporting documents or transcripts. The electronic copy of the report and supporting documentation should be provided in Word or PDF file format.

7. The report may be received as evidence and the author may be cross-examined on it.

The Registrar is to send copies of this direction to:

David Alexander;
Claimant counsel and unrepresented claimants in the Porirua ki Manawatū district inquiry;
Chief Historian, Waitangi Tribunal Unit;
Principal Research Analysts, Waitangi Tribunal Unit;
Manager – Inquiry Facilitation, Waitangi Tribunal Unit;
Manager – Research Services, Waitangi Tribunal Unit;
Solicitor General, Crown Law Office;
Director, Office of Treaty Settlements;
Chief Executive, Crown Forestry Rental Trust; and
Chief Executive, Te Puni Kōkiri.

DATED at Gisborne this 17th day of October 2018

C L Fox

Deputy Chief Judge C L Fox
Presiding Officer
WAITANGI TRIBUNAL

Appendix Two – Waterways of Significance to Ngati Raukawa and to Muaupoko, and Summary of Filed Memoranda

Table 1: Ngāti Raukawa ki te Tonga inland waterways of significance and their cultural values

Significant inland waterways	**Values**
Rangitikei River	Baptismal, tohi, kai/food source, ancestral travelling stream, swimming, nourishes whenua (land)
Rangitikei Tributary – Mahakikaroa	Wai ora, wai whāngai, eeling, fishing
Rangitikei Tributary – Makowhai	Pātaka kai species (tuna/eels, kākahi/freshwater mussel, kōura or kōura and freshwater crayfish, watercress), swimming, bathing
Karariki	
Rangitawa Stream	Historical/ancestral pā (e.g. Miria te Kakara)
Waitohi	
Kaikokopu Dune Lakes	
Turakina River	
Ratana Wetlands	
Kairanga Wetlands	
Mangahao	Kōura and freshwater crayfish, – including kōura gathering as a recreational past time activity for the tamariki or children
Rongotea Wetlands	Waterfowl
Waitapu stream	Glow worms, Tawhirihoe scenic reserve (white coprosma, katipō spider, pheasant bird)
Waituna stream	Tuna/eels
Pourewa	
Harurunui puna	Taniwha, collection of watercress
Koputara Lake	Mahinga kai (tuna/eels, kākahi/freshwater mussels, rakiraki/ducks), harakeke (NZ flax) for weaving, tī kōuka for rongoā, weaving, kai
Manawatū River	Pā (Te Ahitara Pā, Moutoa Pā, Puketōtara), papakāinga (Te Maire Kāinga o Manawatū, Otini, Tokomaru kāinga, Tutunanui kāinga, Whirokino kāinga, Pakingahau), wai ora, waimate, swimming, eeling, fishing (kōkopu/native trout, kahawai, grey

Significant inland waterways	Values
	mullet, flounder), kayaking, whitebait, he wāhi whakawhanaunga, Papangaio, Peketahi kōura and ika.
Historical note from hapū and iwi representatives at the Mapping Sites of Significance Wānanga on 28 May 2016. The Manawatū River commences at the junction of the Tokomaru River and Ōroua River. Hence the Manawatū River is only from the Ōroua River to the sea. Prior to that the river was historically called Tokomaru River.	
Tokomaru River	Mahinga kai (kākahi, whitebait, watercress, fish, eeling, ducks, kanga pirau), swimming.
Manawatū Estuary	Customary fisheries/mahinga kai: abundance of kai species (kahawai, mullet, lemon fish, grey mullet, eels, whitebait, herrings, toheroa or tohemanga, pipi, cockles, tuatua, kuaka, variety of manu, seagull eggs); harakeke; flesh-eating snail
Manawatū Tributary – Awahou	
Manawatū Tributary – Ōroua River	Swimming
Manawatū Tributary – Ōroua River Hoununi Spring	Eels, native fish, waterfowl, freshwater mussels, kōura and freshwater crayfish
Manawatū Tributary – Ōroua River, northern wetlands	Eels, native fish, waterfowl, freshwater mussels, kōura and freshwater crayfish
Manawatū Tributary – Ōroua River, Ahuatanga Taonui Wetlands near fielding	Eels, native fish, waterfowl, freshwater mussels, kōura and freshwater crayfish
Manawatū Tributary – Tokomaru Stream/Makarua River	Swimming, whānau gathering, ngā wāhi 'free' mō ngā whānau o Ngāti Whakatere ki te whakawhanaunga, takano he wāhi kai hoki
Makurerua/Makarua Wetlands/Makerua Swamp	Eels, native fish, waterfowl, harakeke, raranga plants
Manawatū Tributary – Mangaore Stream	Mahinga kai (trout, eels), swimming, recreation (rafting), tourism
Manawatū Tributary – Ōtauru then Mangaore tributary – Pohatu stream	Kōura and freshwater crayfish

Significant inland waterways	Values
Ngakuta Lagoon	
Oneroa Lagoon	
Oporau Lagoon	
Otāniko Lagoon	
Te Kunanui	
Parekawau Swamp	
Maiaua/Kopuapangopango Swamp	Mahinga kai (eels, freshwater mussel, fish), pā tuna (at Ngatokorua), peace track (Muaūpoko and Ngāti Huia), harakeke
Ohiao	
Wetlands in the Waitarere Forest	
Lake Waipunahou/ Lake Horowhenua	Rongoa, variety of fish, sport (racing on the lake), kōiwi, hoe waka, wāhi tūpuna, kauhoe, battle ground, rongoā
Hōkio Stream	Mahinga kai – Te Rama Tuna, eel/tuna (puhi), pā-tuna (for trapping tuna), storage of tuna, inanga, whitebait, kōkopu, kākahi, kōura, watercress, harakeke rongoā, wāhi horoi, papakāinga (Winiata), swimming, waka (for various purposes), rongoā, water for marae uses.
Hōkio Stream tributaries	Mahinga kai
Pukemātawai Spring (in the Tararua ranges)	Sacred source of wai ora
Otawhaowhao Lagoon and Swamp	Mahinga kai
Paenoa	Mahinga kai
Reporoa Swamp	Mahinga kai
Waiwiri/Papaitonga Lake	Pā, whakamate/pā-tuna/eel weirs, mahinga kai
Waiwiri Stream	Mahinga kai, papakāinga (Pipikāinga)
Waiwiri Stream tributaries	Mahinga kai
Lagoons around Lake Waiwiri/Papaitonga	Mahinga kai
Swamps at Mahoenui	Mahinga kai
Ōrotokare	Papakāinga, mahinga kai

Significant inland waterways	Values
Manawatū Tributary – Pohangina River	
Manawatū Tributary – Tokanui/Otauru Stream	Wāhi karakia, wāhi whakanoa, wāhi whakawātea, mahinga kai (trout, eels, kōura and freshwater crayfish, access to watercress)
Manawatū Tributary – Kōputōroa Stream	Mahinga kai, tuna, whitebait, hauhau, kākahi, and giant kōkopu. Particular places were used for baptismal purposes and collecting fresh water for healing
Te Maire Lagoon	Papakāinga (Te Maire kāinga)
Manawatū tributary – Otauru tributary – Opapa Stream	Mahinga kai
Manawatū Tributary – Te Awa a Īhakara	Mahinga kai
Manawatū Tributary – Piriharakuki	Mahinga kai
Manawatū Tributary – Hakapurua	
Manawatū Tributary – Karaa Stream	Mahinga kai
Manawatū Tributary – Kaihinau	Mahinga kai
Manawatū Tributary – Buckley	Mahinga kai
Miranui Swamp	
Moutoa Swamp	
Swamp between Shannon and Poutu Marae – name unknown	Preservation of waka
Arapeti Stream	
Te Awa a Te Tau Stream	Mahinga kai (eels, kōura and freshwater crayfish, freshwater mussel)
Te Kai o te Kapukapu	
Po-a-rangi	
Whirokino (waterway to get from Matakarapa to the mainland)	Boating, fishing
Koputara Lake and Stream	Pā (former Kererū Pā/Īhakara's Reserve)
Paewai Wetlands	

Significant inland waterways	Values
Mikihi Stream/Whitebait Creek	Mahinga kai, whitebait spawning grounds, tuna, mohoau (freshwater flat fish), huangi (freshwater cockles), and tuangi. Particular places were used for baptismal purposes and collecting fresh water for healing
Te Awahau Stream	Mahinga kai, whitebait spawning grounds, fisheries, tuna, mohoau (freshwater flat fish), huangi (freshwater cockles), and tuangi. Particular places were used for baptismal purposes and collecting fresh water for healing
Kiwitea Stream	
Mangakino Stream /Makino Stream	Mahinga kai (kōura and freshwater crayfish, eels, watercress, bullies, kōkopu or native fish
Taonui Stream	Mahinga kai (eels)
Aorangi	Flora, fauna, tītoki, raurēkau
Maewa Stream (Feilding)	
Matahika (Bunnuthorpe)	
Ōtoko (Aorangi, Feilding)	
Onepū Lagoons (x2)	Mahinga kai (eels, kākahi)
Tangimate Lagoon	Mahinga kai (tuna/eels, kākahi, whitebait, watercress, puha), eel weirs, waka (preserved and found 30 years ago)
Wairarawa Strean	Mahinga kai (eels, whitebait)
Waimakaira spring	
Ngawhakahiamoe	Hoe waka
Aratangata Stream	
Kōuranui Swamp	Mahinga kai (kōura and freshwater crayfish)
Tepunanui	
Parawaiwai	
Oaio Lagoon	Pā (Rangihaeata Pā)
Wawa Lake	
Ngawhakahau Lake	
Kaikai Lagoon	

Significant inland waterways	Values
Waitaha	Mahinga kai, wetland resources
Waimarama	Mahinga kai
'Blue Lakes'[3]	Paru (natural dye for puipui), puna wai, taniwha and kaitiaki
Ōhau River	Pā, papakāinga, mahinga kai, kokita/salt and freshwater river pipi, bubu/periwinkles, kākahi/freshwater mussels, piraroa/soft shelled oyster, tītiko, flounders/pātiki, kahawai, herrings, mullet, lemon fish, snapper, Tohemaro (Raukawa name for eel large male long fin with a green tinge on them), yellow eyes mullet. Swimming, recreational places, whakawhānaungatanga
Ōhau Estuary/Ōhau Backwash	Paru (natural dye used in weaving)
Ōhau Estuary Tributary – Blind Creek	Piraroa/soft shelled oyster
Ōhau Tributary – Patumakuku Stream/Kuku Stream	Mahinga kai (eels/tuna, eel boxes, kōura and freshwater crayfish/kōura, watercress, kangapirau/rotten corn, duck eels collected nearby), a kaitiaki present in a pool, swimming
Ōhau Tributaries – Kuku Stream Tributory – Waikōkopu Stream	Mahinga kai (kōkopu/native trout, tuna/eels, kākahi/freshwater mussels),
Ōhau Tributaries – Manganaonao Stream	Kōkopu/native trout giant kōkopu, kōura and kōura and freshwater crayfish, tuna/eels, watercress
Manganaonao Spring	
Ōhau Tributaries – Manganaonao Stream tributaries – Tikorangi Stream and tributaries	Eels
Te Awa a Tamati/Tikorangi Spring	Wai ora, hauora, healing
Springs by Soldiers Road and Hoggs Road	Watercress
Dune wetlands – Te Hākari	Mahinga kai (tuna /eels, whitebait up stream, mud

[3] This is a whanau name for the Tumeke Wehipeihana block of land with waterways, located on eastern side of Ōtararere foothill, Kuku

Significant inland waterways	Values
	fish)
Dune wetlands – Ransfield's	Mahinga kai (tuna /eels, whitebait up stream, mud fish)
Dune wetlands – Pekapeka Taratoa	Mahinga kai (tuna /eels, whitebait up stream, mud fish)
Waikawa River	Mahinga kai (tuna/eels, piharau/blind eel, inanga/whitebait, kākahi/freshwater mussel, kōkopu/native trout, watercress), drinking water, swimming.
Waikawa River tributary – Mangahuia	Mahinga kai (adult kōkopu/native trout, flounder, mullet, herrings, kahawai, kākahi, tuna/eels, kōura, watercress, puha), spiritual values, recreational places, whakawhānaungatanga
Manakau Stream	Kōkopu/native trout
Whakahoro Swamps	Whitebait, kōura and kōura and freshwater crayfish, watercress, tuna
Karuwha Lake	
Mangahuia Stream	kōura and freshwater crayfish, watercress, tuna
Waiauti/Waiaute Stream	Whitebait, kōura and freshwater crayfish, watercress, tuna
Waimarie Lake	Named by representatives from Wehiwehi for Stratnaver Drive coastal development
Te Puna a te Ora Lake	Named by representatives from Wehiwehi for Stratnaver Drive coastal development
Huratini Repo/Lake	Former Mahinga kai (tuna), puna rāranga (harakeke) and other resources
Kahuwera Lake	Former Mahinga kai (tuna), puna rāranga (harakeke)
Waiorongomai Lake and Stream	Mahinga kai (tuna), tanga i te kawa, puna rāranga (harakeke), puna rongoā (Mānuka), papakāinga, pā tohu ahurea, wāhi whakawātea, wāhi whakarite
Waitawa Lake (Forest Lakes)	Wāhi tapu, urupā, tohu ahurea, wai ora, puna rāranga, hoe waka, waka ama

Significant inland waterways	Values
Ngatōtara Lake and Stream (Forest Lakes)	Wai ora, mahinga kai, puna rāranga, puna rongoā, papakāinga, wāhi tapu, tohu ahurea, wāhi whakawātea, wāhi whakarite
Waiorangi (Pukehou)	
Waikato Stream	
O-te-pua wetland	Papakāinga, mahinga kai, puna rāranga, puna rongoā, puna uku, wai ora
Waitohu Stream	Ara waka, kauhoe waka, kaukau, mahinga kai, ngā mahi parekareka, pā, papakāinga, puna rāranga, puna rongoā, tohu ahurea, urupā, wāhi tapu, wai ora
Kōwhai Stream	Mahinga kai, ara waka, papakāinga, puna rāranga, tohu ahurea, kauhoe, wai ora, wai tai, wāhi whakawātea, wāhi whakarite
Haruātai Stream	Papakāinga, mahinga kai, tohu ahurea, urupā, wāhi tapu, puna uku, wāhi whakawātea, wāhi whakarite, waiora, kauhoe, puna rongoā, worms for bobbing
Mangapouri	Papakāinga, ara waka, mahinga kai – pā tuna, kangapirau, kōura, eels, wai ora, kauhoe, wāhi whakawātea, wāhi whakarite
Mangapouri spring (behind Ōtaki race course)	
Paruauku	
Mangahānene Stream	Mahinga kai, wai ora, ara waka, papakāinga, puna rāranga, puna rongoā, pā, tohu ahurea, kauhoe, wāhi whakawātea, wāhi whakarite
Maringiawai Stream	Papakāinga, mahinga kai, wai ora, wāhi whakawātea, wāhi whakarite, ara waka
Ngātoko Spring	Wai ora, mahinga kai, wāhi whakawātea, wāhi whakarite
Ngātoko Stream	Wai ora, papakāinga, pā, mahinga kai, ara waka, puna rāranga, kauhoe, tohu ahurea, wāhi whakawātea, wāhi whakarite
Rangiuru Stream	Ara waka, kauhoe, mahinga kai, pā, papakāinga,

Significant inland waterways	Values
	puna rāranga, tauranga waka, tohu ahurea, wai ora, wāhi whakarite, wāhi whakawātea, wai ora
Waiariki Stream	Papakāinga, mahinga kai, puna rongoā, tohi, wāhi whakarite, wāhi whakawātea, wai ora
Ōtaki River	Urupā, wai ora, wai tai, papakāinga, mahinga kai (tuna, inanga, kahawai, herrings, mullet), puna rāranga, puna rongoā, ara waka, tohu ahurea, kauhoe, kaukau, ngā mahi pārekareka i/ke te wai
Waimanu (upper reaches)	
Mangaone Stream	Swimming, wai ora, ara waka, mahinga kai, puna rongoā, puna rāranga, wāhi whakawātea, wāhi whakarite
Ngawhakangutu Wetland (Te Hapua Wetland)	Mahinga kai, ara waka, papakāinga, puna rāranga, pā, tohu ahurea, kauhoe, wai ora, puna rongoā, wāhi tapu, wāhi whakawātea, wāhi whakarite
Kukutauaki Stream	Boundary marker between Te Ātiawa and Ngāti Raukawa ki te Tonga
Kāpiti – Okupe lagoon	Wāhi tapu, rich bird biodiversity
Kāpiti – Tarere Stream	Tuna, pā tuna, drinking water
Kāpiti – Kahikatea Stream	Tuna, pā tuna, drinking water
Kāpiti – Taiharau Stream	Tuna, pā tuna, drinking water

Table 4: Muaūpoko inland waterways of significance and their cultural values

Significant inland waterways	**Values**
Lake Horowhenua/Te Waipunahau	Mahinga kai (tuna, kākahi, kōura, flounder, whitebait, and birdlife such as whio); live tuna pātaka storehouses; surrounding pā sites and also island pā sites; travel across lake to different pā sites; wāhi tapu including urupā
Hōkio Stream	Mahinga kai (tuna, kākahi, kōura, flounder, whitebait, kōkopu, koaro, flounder, and birdlife such as whio); pā tuna along the stream; transport to the moana
Lake Horowhenua and Hōkio Stream – adjacent wetlands, swamp and marshlands	
Pātiki Stream (Kawiu Stream)	Mahinga kai (flounder, tuna, giant kōkopu), puha, watercress
Arawhata Stream	
Poupou Stream (Mangaroa Stream)	
Tūpāpakurau Stream	
Roto Hapuakorari	Muaūpoko headwater. A sacred lake up in the Tararua ranges.
Lake Waiwiri (Lake Papaitonga)	
Waiwiri Stream	Mahinga kai (tuna)
Ōhau River	
Lake Waitawa	
Lake Waiorongomai	

Waterways of importance identified in Filed Memoranda

#3.2.153, Crown

Will not be filing any research on the topic of inland waterways

#3.2.154, Morison Kent for Wai 972 (Ngati Kauwhata claimants)

Kiwitea Stream

Waituna Stream

Pohangina Awa

Makino Stream

Taonui Stream

Turakina Awa

Burkes Drain

Kairanga wetland

Roto nui a hau

#3.2.155, Woodward Law for Wai 113 (Ngati Parewahawaha claimants), Wai 1461 (Ngati Kauwhata claimants) and Wai 1623 (Ngati Rangatahi claimants)

Rangiuru

Maungapare (Mangapouri?)

Waitohu

Ngatotara

Waitura (Waitawa?)

Paruauku

Pahiko

Mangaone

Ngatoko

Waimanu

Otaki

Lake Waiorongomai

Haruatai

Hokio Stream

Waiwiri Stream

Lake Koputara

Manawatu River

Taonui Stream and swamp

Rangitikei

Oroua

Manawatu

#3.2.156, Te Haa Legal for Wai 1729, Wai 1815, Wai 1936, Wai 2032, and Wai 2199 (all Ngati Kauwhata claimants)

Endorses and adopts Morison Kent's submissions

#3.2.167, H Te Nahu for Wai 1640 (Ngati Whakatere claimants)

Manawatu

Mangaore

Tokomaru

Mangahou

Makurerua swamp

#3.2.171, H Te Nahu for Wai 1944 (Nga Hapu o Kereru claimants)

All streams and tributaries flowing off Tararua ranges

Otaki River

Manawatu and its tributaries