

**‘A TANGLED SKEIN’:
LAKE HOROWHENUA, MUAŪPOKO,
AND THE CROWN, 1898-2000**



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WELLINGTON

Paul Hamer

**A report commissioned by the Waitangi Tribunal for the
Porirua ki Manawatū inquiry (Wai 2200)**

June 2015

About the author

Paul Hamer is a Wellington historian. He holds an MA (Distinction) from Victoria University of Wellington and is currently enrolled in a PhD at Monash University in Melbourne. He has worked as a professional historian since 1992, mainly at the Waitangi Tribunal where from 1993 to 1995 he was a research officer and from 1996 until 2004 he was the Senior Report Writer, the manager of the section of Tribunal staff who assist Tribunal members to write their reports. From 2004 until 2007 he worked at Te Puni Kōkiri as a senior analyst and policy manager. Since 2008 he has worked as a contract report writer and contract researcher at the Tribunal (ongoing) and as a contract researcher and project manager for the Institute of Policy Studies at Victoria University (from 2009 to 2011). He has authored a number of articles published in scholarly journals, mainly about the migration of Māori and other New Zealanders to Australia. In 2006 he was a visiting fellow at Griffith University where he researched and wrote a report on Māori in Australia published by Te Puni Kōkiri in 2007. As a report writer he has assisted in the drafting of a number of Tribunal reports, including *Ngai Tahu Ancillaries* (1995), *Whanganui River* (1999), *Ngati Awa Raupatu* (1999), *Pakakohi and Tangahoe Settlement Claims* (2000), *Te Arawa Mandate* (2004), *Mohaka ki Ahuriri* (2004), *Ko Aotearoa Tēnei* (2011), and *He Whakaputanga me Te Tiriti* (2014). He was a senior associate of the Institute of Policy Studies from 2008 to 2012 and since 2012 has been a research associate of Te Kawa a Māui, the School of Māori Studies at Victoria University.

Cover image

Group of local Māori and Hamaria canoe, Lake Horowhenua, 1880s. Photographer – William Williams. Edgar Williams collection, Alexander Turnbull Library, Wellington. Reference No. G 259551/1.

Report title

In 1975 Justice Robin Cooke remarked in a Supreme Court decision on fishing rights in Lake Horowhenua that ‘The modern legal history of the lake and the [Hōkio] stream and the Horowhenua Block is a tangled skein.’*

* Regional Fisheries Officer v Tukapua. Unreported decision, Supreme Court, Palmerston North, 13 June 1975 (M33/75). Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

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Abbreviations

AJHR: *Appendices, Journals of the House of Representatives*

DOC: Department of Conservation

DSIR: Department of Scientific and Industrial Research

HPA: Hokio Progressive Association

MCC: Muaūpoko Claimant Cluster

MOWD: Ministry of Works and Development
MTA: Muaūpoko Tribal Authority
NCC: Nature Conservation Council
NWSCA: National Water and Soil Conservation Authority
NZPD: *New Zealand Parliamentary Debates*
ROLD Act: Reserves and Other Lands Disposal Act
SCRCC: Soil Conservation and Rivers Control Council
WARA: Wellington Amateur Rowing Association
no: number
p and pp: page and pages
vol: volume

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1. Introduction

Project background

At a judicial conference held at Kawiu Marae on 13 July 2011, the Muaūpoko Claimant Cluster (MCC) put forward a proposed research programme for the Muaūpoko claimants in the Porirua ki Manawatū inquiry. This included a Muaūpoko lakes and mana moana report. At the same time, the Muaūpoko Tribal Authority (MTA) advised that it would seek a mandate to enter direct negotiations with the Crown, although it also wished simultaneously to participate in a public hearing of Muaūpoko's grievances. The Tribunal considered, in a direction dated 14 December 2011, that Muaūpoko-specific research reports would be required on oral and traditional history, land and politics, and natural resources. It did not believe that the dispute between the tribal authority and the claimant cluster needed to cause any delay to the commencement of a Muaūpoko research programme.¹

In due course the tribal authority indicated that, if it achieved a mandate to enter negotiations, it would work with Muaūpoko to develop a research programme for that purpose. However, the claimant cluster remained committed to a Tribunal inquiry and, since the mandate had not yet been sought, the Tribunal confirmed in March 2012 that it would continue with a research programme for all Muaūpoko. It considered that there would be three Muaūpoko projects, covering oral and traditional history, historical issues, and local issues.² The Tribunal further confirmed this approach in a direction of 24 December 2012.³ In April 2013 the Tribunal further proposed that a Ngā Kōrero Tuku Iho process commence across the inquiry district, perhaps beginning with Muaūpoko given the impending resolution of the mandating question and the attendant urgency that would bring.⁴ Muaūpoko's Kōrero Tuku Iho hearing was held on 17-18 February 2014.⁵

The tribal authority submitted its deed of mandate in May 2013, and its mandate to negotiate a settlement of all Muaūpoko historical claims was recognised by the Ministers of Treaty of Waitangi Negotiations and Māori Affairs in September 2013. This prompted an application to the Tribunal for an urgent inquiry in November 2013 by Muaūpoko claimants opposed to the tribal authority's mandate. The Tribunal considered this application and issued its decision in June 2014. It proposed that

the real crux of this dispute, the applicants wanting a hearing rather than going through the negotiation and settlement process led by the MTA, can be addressed by a different means. In our

¹ Wai 2200 paper #2.5.39, pp 2, 6, 9, 10

² Wai 2200 paper #2.5.45, pp 2, 4

³ Wai 2200 paper #27.5.58, p 3

⁴ Wai 2200 paper #2.5.59, p 4

⁵ Wai 2200 paper #2.5.86(a)

view, that is by the Wai 2200 – Porirua ki Manawatū District Inquiry Tribunal granting priority to hearing the Muaūpoko claims once the historical research for Muaūpoko is available.⁶

Accordingly, the Tribunal declined the application for urgency but considered that, dependent upon funding, an accelerated research and hearing programme could be held for Muaūpoko, thus enabling the Tribunal to issue a preliminary report on Muaūpoko historical claims in advance of the introduction of any settlement legislation.⁷

A judicial conference to hear submissions on proposals for prioritising Muaūpoko claims was held on 25 August 2014. The Tribunal signalled its intention to commission three Muaūpoko-specific reports, on land and politics, Lake Horowhenua, and oral and traditional history. Drafts were to be made available to parties before the end of June 2015, with final reports submitted by the end of August 2015.⁸ At this point the Tribunal had the benefit of a scoping report on the research required to address Muaūpoko land and politics claim issues, which Jane Luiten had been commissioned to produce in March 2014.⁹ Luiten recommended a substantive Muaūpoko land and politics report covering three phases: the impact on Muaūpoko of tribal migrations and Crown activities before 1870; Muaūpoko's experiences from 1870 to 1900, including the determinations of the Native Land Court and the Horowhenua Commission; and land alienation in the twentieth century.¹⁰ She also recommended a substantive Lake Horowhenua report that would cover

- The extent of Muaupoko's customary interests in the lake and Hokio Stream, and the importance of this eel fishery;
- The history of increasing Crown and local body control of the lake since 1898; and
- The impact of management regimes with respect to the lake, the associated waterways, the fishery, and surrounds.¹¹

The author commenced work on the lake report on 8 October 2014 by attending a meeting with Muaūpoko claimants at Kawiu Marae in Levin. A draft research commission had been prepared which was formalised when signed by the presiding officer on 9 December 2014. That commission – which is attached to this report as appendix 1 – set out that the report would 'provide a study of Muaūpoko's customary interests in Lake Horowhenua and the Hokio Stream, the history of increasing Crown and local body control of the lake since 1898, and the impact of management schemes implemented by the Crown'. More specifically, the commission required discussion of the Crown's understanding of Muaūpoko's traditional relationship with the lake and stream and the significance of the lake to tribal identity; the award of title to the lake to Muaūpoko owners in 1898; the creation in 1905 of a lake domain board; the passage of legislation concerning the lake and its effect on Muaūpoko rights; the

⁶ Wai 2200 paper #2.8.1, p 32

⁷ Wai 2200 paper #2.8.1, p 33

⁸ Wai 2200 paper #2.5.87, p 2

⁹ Wai 2200 paper #2.3.1

¹⁰ Wai 2200 document A55, pp 161-164

¹¹ Wai 2200 document A55, p 164

partial drainage of the lake and the discharge to it from the 1950s of treated effluent; and the extent to which Muaūpoko were consulted on and agreed to these developments.¹²

Methodology

At the same time as the lake research was commissioned, other researchers were commissioned to examine separate aspects of the Muaūpoko claims, albeit with some potential areas of overlap. On 12 December 2014 Jane Luiten and Kesaia Walker were commissioned to produce a report on Muaūpoko land issues and political engagement. A component of that project is to traverse the relationship between Muaūpoko and the Crown up to the 1870s, including the impact on Muaūpoko of the migration to the district of northern tribes and the Crown's recognition of Muaūpoko customary interests after the signing of te Tiriti o Waitangi. It is also to look at the impact on Muaūpoko of the Native Land Court system, the determination of title to the Horowhenua Block in 1873, the partitioning of Muaūpoko land thereafter, the proceedings and findings of the Horowhenua Commission in 1896, and the new determination of interests by the Native Land Court in 1898.¹³

On 9 February 2015 Lou Chase began a commission to produce an oral and traditional history report that addressed the 'origins, early history and early settlement patterns of Muaūpoko in this inquiry district'; the 'traditional resources and taonga of Muaūpoko within the inquiry district according to Muaūpoko understandings, and Muaūpoko customs and protocols for protecting and managing these sites, resources and taonga'; the '[k]ey whakapapa of Muaūpoko'; the impact on 'Muaūpoko tribal identity' of 'major external impacts' such as warfare with northern tribes; and the impacts on Muaūpoko of land alienation.¹⁴

It will be seen that considerable potential existed for repetition between the three commissioned reports, and particularly so in regard to the customary relationship of Muaūpoko with its territory, the arrival of migrating tribes from the north, and the rights by whakapapa to the resources within the rohe as recognised by the Native Land Court or otherwise. Accordingly, the commissioned researchers and Waitangi Tribunal staff identified a logical division of responsibilities in order to keep such overlap to a minimum. It was decided, for example, that the lake report should not attempt to duplicate the discussion in the land issues and political engagement report of the migration of northern tribes and Crown or Native Land Court recognition of customary rights. Nor, it was decided, should the lake report repeat the oral and traditional history gathered from Muaūpoko claimants about the tribe's relationship with the lake. Instead, it was considered that the lake report should focus on the post-1898 history of the involvement by the Crown and its delegates (that is, the local authorities) in the administration and control of the lake. As such, the principal sources consulted would be Crown and local government archives.

¹² Wai 2200 paper #2.3.5

¹³ Wai 2200 paper #2.3.6

¹⁴ Wai 2200 paper #2.3.10

There are some drawbacks inherent in this approach. To fully comprehend early twentieth-century developments, for example – and the Muaūpoko reaction to them – one would ideally have an in-depth understanding of the Native Land Court wrangling of the previous 30 years, thus providing an insight into who held the rights under custom to assert claims to the lake and Hōkio Stream and their resources. Understanding the Crown’s dealings with the Horowhenua Block in the 1890s would no doubt also help to explain its particular treatment of the lake issue after 1900. On the other hand, however, the time available to the researchers to produce their reports was limited. Time spent in this report on the Native Land Court investigation of title to Horowhenua would have been time that could not be spent – for instance – on the pollution of the lake from the 1950s to the 1980s. The other researchers will have access to this report before submitting their own, as the three reports have somewhat different timeframes. Moreover, the members of the Tribunal and the Muaūpoko claimants will have the benefit of the three separate commissions, and should be able to piece together an overall picture through a sum of those parts.

This report does not, therefore, directly shed light on the contemporary dispute within Muaūpoko that was described by the Tribunal in its decision on urgency as based to some extent in late nineteenth-century events:

In our view we consider that this case is really about mana and that has led to a very clear division between those who affiliate with the Potangotango and the Taueki line or those who want to have their claims heard in the Waitangi Tribunal, and those who affiliate with the Hunia and Kemp lines or those who want direct negotiations. They appear to be divided both geographically (MTA primarily at the southern end and MCC primarily at the northern end of Lake Horowhenua) and by hapū. Granted the applicants and the other claimants appear to be a minority (based upon the MTA definition of the claimant community), but they have very deep rooted concerns which will only ever be laid to rest by the production of high quality research and analysis.¹⁵

Despite the gap in treatment of the lake’s history in this report, it is hoped that the information presented in it does serve to illustrate what the Tribunal in the same decision called ‘the collective experience of the iwi as a whole’,¹⁶ at least as far as the twentieth century is concerned.

Two key sources of information have been used in the writing of this report. The first is the files concerning the lake and Hōkio Stream held by Archives New Zealand in Wellington (and, in one solitary case, by Archives New Zealand in Auckland). At the start of this project, in October 2014, Archives New Zealand listed some 43 files on its ‘Archway’ search tool that contained the words ‘lake’ and ‘Horowhenua’. Within a month or so it had opened access to a further 58, most of which had been previously held by the Department of Conservation’s head office in Wellington. The range of government departments whose records concern the

¹⁵ Wai 2200 paper #2.8.1, pp 30-31

¹⁶ Wai 2200 paper #2.8.1, p 20

lake demonstrates the importance of the lake as an issue of public and government attention in the twentieth century, as well as the Māori, environmental, scientific, administrative, engineering, fishing, wildlife, and public health aspects to its history. Agencies whose records were consulted include the Department of Lands and Survey, the Marine Department, the Department of Internal Affairs, the Health Department, the Commission for the Environment, the Nature Conservation Council, the Ministry of Works and Development, the Department of Conservation, the Department of Scientific and Industrial Research, and the Native Department and its successor, the Department of Maori Affairs.

The second key source of material for the report is the files held by Archives Central in Feilding, the repository for the historical records of the local authorities in the Horizons (Manawatu-Wanganui) Regional Council area. Here, too, a large amount of material was consulted from the records of the Horowhenua County Council, the Levin Borough Council, the Hokino Drainage Board, the Manawatu Catchment Board, the Horowhenua District Council, and the Manawatu-Wanganui Regional Council.

Neither the material held by Archives New Zealand nor Archives Central extended beyond the late 1980s or (in rare cases) the early 1990s. Since the research commission provided for this report to cover the period up until 2000, an attempt was made using the Official Information Act 1982 to gain access to more recent material directly from departments and local bodies. In December 2014 letters were sent requesting access to such material to six agencies: Te Puni Kōkiri, the Ministry for the Environment, the Department of Conservation, the Ministry for Primary Industries, the Horowhenua District Council, and Horizons Regional Council.¹⁷ The two local bodies responded positively and reported that they had considerable amounts of material available to assist with the report's completion.¹⁸ Unfortunately, the limited time available to complete this report did not allow for this opportunity to be taken. Of the Wellington-based agencies, both the Ministry for the Environment and the Department of Conservation made some material available for inspection, although – again – in neither case did this extend beyond the early 1990s. In the case of the Department of Conservation, some material was withheld to maintain legal privilege under section 9(2)(h) of the Official Information Act.¹⁹ The Ministry for Primary Industries identified certain files concerning Muaūpoko fishing interests and indicated that access would be arranged, but did not respond further.²⁰ Te Puni Kōkiri advised that a file dealing with the lake was missing and, beyond that, it had no other relevant information.²¹

¹⁷ Paul Hamer to Director-General, Department of Conservation, 4 December 2014; Paul Hamer to Chief Executive, Ministry for the Environment, 4 December 2014; Paul Hamer to Director-General, Ministry for Primary Industries, 4 December 2014; Paul Hamer to Chief Executive, Te Puni Kōkiri, 4 December 2014; Paul Hamer to Chief Executive, Horowhenua District Council, 4 December 2014; Paul Hamer to Chair, Horizons Regional Council, 8 December 2014

¹⁸ Emails from Ian Tate, Team Leader Land and Information Management, Horowhenua District Council, to Paul Hamer, 8 December 2014 and 16 February 2015; email from Carina Hickey, Horizons Regional Council, to Paul Hamer, 12 December 2014

¹⁹ Reg Kemper, Director Partnerships, Lower North Island, to Paul Hamer, 17 December 2014

²⁰ Email from Brian Addley, Senior Information Analyst, Ministry for Primary Industries, to Paul Hamer, 13 February 2015

²¹ Email from Molly Kino, Senior Information Officer, Te Puni Kōkiri, to Paul Hamer, 22 January 2015

This presented some challenges in writing chapter 7, which covers the period from 1988 to 2000. Necessarily, that chapter relies to a greater extent than others on newspaper sources (and specifically those available in online databases from about 1995). It will be for claimants to point out whether important developments during the 1990s have been omitted from the narrative.

Throughout the report, Ngāti Raukawa perspectives are noted where they are known. However, they were neither in the scope of the commission and nor, in any event, were they capable of being included adequately within the time frame. It seems likely that Ngāti Raukawa hapū will have a perspective on most aspects of the lake's twentieth-century history and will no doubt bring those perspectives to bear in their own evidence to this Tribunal.

Despite the reliance on official, archival sources of information, the Muaūpoko perspective is by no means absent from this report. That is because Muaūpoko voices permeate the archives, both through the tribe's participation on the Horowhenua Lake Domain Board and from its long history of protest over Crown or local body action or inaction over the lake and Hōkio Stream. The tribe's perspective on the lake is also available from the transcript of the aforementioned Kōrero Tuku Iho hearing held in February 2014. The author also undertook a field trip to Levin on 30 November 2014 and met with Charles Rudd, Philip Taueki, Anne Hunt, Mark Stevens, and Eugene Henare.

Throughout the report use is made of newspaper clippings placed on central and local government files, particularly those of Levin's principal daily newspaper, the *Chronicle*. This paper began as the *Manawatu Farmer and Horowhenua County Chronicle* and has since had numerous name changes, including the *Horowhenua Chronicle*, the *Chronicle*, the *Levin Chronicle*, the *Daily Chronicle*, the *Levin Daily Chronicle*, and the *Horowhenua-Kapiti Chronicle*. Reference made to it in footnotes is simply to the '*Chronicle*'. Another frequent source of clippings in the files is the *Manawatu Evening Standard*, which also has been through a number of name changes. The sheer number of clippings filed by local and central government agencies precluded the need for research in microfilmed newspapers, although what is referenced in this report will represent only a proportion of the material written about the lake in newspapers during the twentieth century. Only the years 1910-1920 of the *Chronicle* have been digitised for the National Library's 'Papers Past' website, while no Manawatū newspaper has been digitised beyond 1920.

There is no definitive agreement on the spelling of the tribal name 'Muaūpoko'. That form is chosen in this report while recognising that some prefer other versions, such as 'Mua Upoko', for example. That form of the name was preferred by the Muaūpoko members of the domain board in 1960 when a name for Muaūpoko Park was being chosen.²² Since the name is also frequently misspelled, 'sic' is not used at every instance of a misspelling in a quotation. The

²² 'Name of lake domain to be spelled "Mua Upoko"', *Chronicle*, 27 April 1960. Clipping on Archives Central file HDC 00010: 6: 10/11

name used for the lake itself in this report is ‘Horowhenua’, although it is recognised that other traditional names exist for it, such as Waipunahau. This name was used to refer to the lake at the Kōrero Tuku Iho hearing by both Henry Williams and Charles Rudd. Marokopa Wiremu-Matakatea also referred to it as ‘Punahau Lake’.²³

Macrons on Māori vowels are used in this report where known but not in the titles of organisations or offices that existed in the past where it would be anachronistic to do so. Thus the ‘Manawatu Catchment Board’ and ‘Hokio Drainage Board’ carry no macrons. Where macron use became the norm during the life of a particular organisation or office – say with the Minister of Māori Affairs – an arbitrary division has been made, with macrons used for the period after 1990 and not for the period before, unless there is evidence that macrons were used before that date.

Claims concerning Lake Horowhenua

There are five historical Muaūpoko claims that raise specific issues with regard to Lake Horowhenua. The earliest of these, Wai 108, was filed by Tama-i-uia Ruru in 1989. In it he asked for the waters of the lake to be declared to be ‘part and [parcel] of the lakebed’. He also ‘hoped that the cleaning up of the Lake be the responsibility solely of the Crown and local authorities who took it upon themselves to discharge effluent in the same Lake’.²⁴ In 1991 Ron and William Taueki filed Wai 237 for the descendants of Taueki and members of Muaūpoko. As amended in 2009, they claimed tino rangatiratanga over Lake Horowhenua and its tributaries, the Hōkio Stream. They alleged that the Crown had breached its duties under the treaty by inadequately defining the lake’s ownership, depriving Muaūpoko of their kaitiakitanga, and failing to protect the lake’s waters from pollution. They argued that Muaūpoko had been ‘forced to contend with a confused and confusing management system for their waterways, especially the conflicting Trust Board and Domain Board systems in relation to Lake Horowhenua and the Hokio Stream’.²⁵

The other three historical claims were all filed shortly before the September 2008 cut-off for registration of such claims. Wai 1621, in the name of Mark Stevens, was filed on behalf of the Lake Horowhenua Trust. It alleged similar grievances to those set out when the Wai 237 claim was amended the following year. It also stated that the Crown had delegated its responsibilities for environmental management to local government agencies, and asserted that these agencies had then ‘usurped and undermined the kaitiakitanga by Muaupoko over the environment and marginalised Muaupoko from effective participation in management of Lake Horowhenua’. The trustees and Muaūpoko generally suffered from a loss of use of the lake and a loss of mana, and the lake had been degraded through pollution and its permanent lowering.²⁶ Wai 1629, filed on behalf of the descendants of Taueki and members of Muaūpoko by Vivienne Taueki, raised similar concerns to Wai 1621 and the amended claim

²³ Wai 2200 paper #2.5.86(a), pp 31-32, 54, 97-98. The transcript records ‘Punahau’ incorrectly as ‘Punahou’.

²⁴ Wai 108 claim #1.1

²⁵ Wai 237 claim#1.1(a), pp 4, 17-18, 20

²⁶ Wai 1621, claim #1.1.1, pp 3-5

for Wai 237, noting also the impact of the activities of the Hokio Drainage Board. She contended that the ‘current management structure of the Lake does not represent customary rights to the Lake’ and that local bodies continued to discharge harmful substances to its waters.²⁷ Wai 1631 was lodged by Charles Rudd on behalf of the beneficial owners of the lake. He complained of a loss of rights over the lake, and ongoing pollution of it either by the Crown’s agents or as permitted by those agents.²⁸

A contemporary claim, Wai 2306, was filed by Philip Taueki in 2010, focusing on the ongoing pollution of the lake and the Arawhata Stream.²⁹ In 2011 he amended the claim following his arrest on a charge of trespassing for occupying the former lake trust plant nursery building adjacent to Muaūpoko Park (where he had lived for a number of years). He called upon the Tribunal to urgently commission historical research on the lake’s management and control, including the roles of the lake trustees and the Horowhenua Lake Domain Board.³⁰

Lake Horowhenua before 1900

Lake Horowhenua is a small, shallow dune lake. It has a relatively contained catchment of around 6,000 hectares but receives a considerable amount of inflow – about half the annual intake of water – from groundwater.³¹ It is part of a system of dune lakes and lagoons in the west coast of the lower North Island. Horowhenua geologist and local historian G L (Leslie) Adkin estimated that there were 72 such lagoons known to Māori between the Manawatū and Ōtaki rivers before Pākehā settlement, with a number lost since then to sand encroachment or drainage.³² The lakes and lagoons were formed – and continue to be shaped – by the movement of the sand, carried westward to the coast by rivers and pushed southward along the coast by the prevailing winds. Some are categorised as basin lakes and others as valley lakes, with Horowhenua being of the former variety. It is the largest of five dune lakes between the Manawatū and Ōtaki, the others being Papaitonga (or Waiwiri) and the three so-called ‘Forest Lakes’ of Waitawa, Kopureherehe, and Rotopotakataka. They all lie along the boundary between the dune belt that stretches north and south and the older geological formations to its east. Each lake has an ‘impounding barrier ... [of] blown sand’.³³ The name ‘Horowhenua’ itself means ‘the great landslide’, and seems to refer to the gravel plain that slopes from Levin to the Ōhau River.³⁴

²⁷ Wai 1629, claim #1.1.1, pp 8-10

²⁸ Wai 1631, claim #1.1.1, pp 1-4

²⁹ Wai 2306, claim #1.1.1, pp 2-3

³⁰ Wai 2306, claim #1.1.1(a), pp 3-6, 15-16

³¹ Max Gibbs, *Lake Horowhenua Review: Assessment of opportunities to address water quality issues in lake Horowhenua*, NIWA client report for Horizons Regional Council, National Institute of Water and Atmospheric Research, June 2011, p 17

³² G L Adkin, *Horowhenua: Its Maori place-names & their topographic & historical background* (Wellington: Department of Internal Affairs, 1948), p 17

³³ Adkin, *Horowhenua*, pp 18-19

³⁴ Adkin, *Horowhenua*, p 157

Before the arrival of Europeans in New Zealand, Lake Horowhenua is agreed to have been a remarkably bountiful and nurturing environment. Adkin summed up this conclusion as follows:

In pre-pakeha times Lake Horowhenua was of surpassing beauty . . . , being largely surrounded by virgin forest, dotted with fortified islands, bordered by native villages, and enlivened by canoes travelling hither and thither, while numerous flocks of waterfowl flew overhead or floated on its surface. As a source of food-supply this lake was far-famed; important fisheries of the eel (tuna), the flounder (patiki), the inanga and ngaore (adult and immature whitebait), and the shell-fish (kakahi) were centred here, and supplied a large local population as well as exciting the dangerous envy not only of neighbouring tribes but also of those occupying territory far distant.³⁵

The early Pākeha settler, R A (Rod) McDonald, recalled in later life that, ‘of the lakes along the coast, the gem of all was Horowhenua’:

Horowhenua remains, and even now can only be fully appreciated when viewed from the hills on the seaward side, with sweeping flat on its eastern shore, and the Tararuas forming a background which limits the view and completes the picture. But no person seeing the lake now, even though gifted with the most sympathetic imagination, can conjure up its beauty as it appeared in those days. Papaitonga is rightly esteemed as the beauty-spot of the Manawatu, but in the days I speak of it was not even considered as challenging Horowhenua's claim to preeminence. Where Papaitonga is supremely beautiful, from one or two angles, Horowhenua merely revealed new beauties to the beholder with each change of location.³⁶

As a teenager, perhaps in the 1870s, McDonald had taken a visiting Englishman up a hill that commanded the best vantage point for surveying the lake. He remembered the occasion vividly, including the impression the scene made upon the traveller:

With scarce a ripple on its surface to dim the reflections of the fleecy clouds floating overhead, the lake lay clasped in the emerald arms of the bush which surrounded it on every side save immediately about where we stood. Mile after mile the bush stretched across the flat on which the town of Levin now stands, and swept up the mountain-side to the relief of the white snowcap. Straight and tall the timber grew to the water's edge, fringed with flax and nodding *manuka*, and over the bush, flashing their white breasts as they circled and wheeled in the sunshine, pigeons flew literally in thousands, singly drifting from tree to tree, rising in flocks of half a hundred or so, with a whirring of wings plainly to be heard across the calm waters; circling round in a wide sweep with characteristic rise and dip of flight, skimming the crystal-clear surface of the lake as they passed over, to rise and sweep back over the bush and settle on some other tree which caught their errant fancy. No other sound was in the air, nor sight of life was visible, save where the smoke curled slowly upwards from the stockaded *pa* of Raia te Karaka. Across at Te Hou and Kouturoa, some Maoris called musically one to another: in front of us was only the lake, the unspoiled bush, and the mountains beyond, and

³⁵ Adkin, *Horowhenua*, p 18

³⁶ E O'Donnell (ed), *Te Hekenga: Early Days in Horowhenua, being the reminiscences of Mr. Rod. McDonald*, (Palmerston North: G H Bennett and Co, 1929), pp 24-25

the young Englishman – he was only in the twenties, and dying of consumption – lay there in the sunshine and gazed on it for a very long time.

‘I have been all over the world, boy,’ he said, ‘and nowhere, I think, does it hold anything so beautiful as your Horowhenua.’³⁷

Another early settler, Helen Wilson, took up a 20-acre block near the future town of Levin in 1888. She recalled in her autobiography the denseness of the bush at that time, the benignity of the climate, and the beauty of the lake:

We had now reached only May of our first autumn, 1889, a particularly beautiful season. Day after day and week after week were so warm and still and sunny that we were tempted to believe we had come to a land of perpetual summer. My mother suggested that, as it was my birthday, we should take a walk to Lake Horowhenua which lay about two miles to the west of us. We crossed the railway and entered the bush beyond it, and found without difficulty a surveyor's line, clearly defined, that was the northern boundary of Levin Block. It was not too bad walking in single file if we lifted our ankle-length skirts to prevent their catching on the supplejacks and small growth that had been cut some six inches from the ground. Presently, from the dim bush shadows, we came out into blazing sunshine on a grassy sand-dune overlooking the lovely lake. It was wonderful to look at the open sky and wide horizon after our enclosed existence in the bush clearing. We enjoyed watching the sun exhibit his brilliant, age-old box of tricks as he set over the low sand-hills.³⁸

Eels were the primary food source for Muaūpoko, the district's inhabitants at the time of first European contact. According to Adkin,

In Horowhenua the lakes and lagoons and many of the streams and watercourses teemed with eels, of which there were at least two species and many local varieties. The sorts favoured for food were taken in vast numbers in due season, either for immediate use or for drying and storing for future consumption. Storage alive in artificial ponds or tanks was also practised.³⁹

The key fishing ground for eels was not so much the lake itself, however, as the lake's outlet, the Hōkio Stream. Adkin named 24 past or present pā-tuna or eel weirs along its length, ‘several’ of which remained in use. These were ‘jealously guarded family or individual property’, and in that regard eeling in the stream was unlike the lake, where eel traps known as rau-matangi ‘could be erected and operated at pleasure by anyone so desiring’. Adkin reasoned that the sheer number of named pā-tuna on the short length of the Hōkio was ‘an impressive indication of the magnitude of the old-time eel-supply of Lake Horowhenua’. He noted that the Waiwiri Stream – which drains Lake Papaitonga – had a similar concentration of pā-tuna in its upper reaches.⁴⁰

³⁷ O'Donnell, *Te Hekenga*, p 25

³⁸ Helen Wilson, *My First Eighty Years* (Hamilton: Paul's Book Arcade, 1951), pp 115-115

³⁹ Adkin, *Horowhenua*, p 19

⁴⁰ Adkin, *Horowhenua*, pp 19-24

A significant feature of Lake Horowhenua was its seven man-made islands, built as defensive structures either in the lakebed itself or at the lake margins alongside an adjoining swamp. The largest, Waikiēkie, was 100 yards long and 40 yards across. Today only remnants of these islands remain, despite the lowering of the lake, which suggests that much effort may have gone not only into their construction but also their maintenance. Most of the islands appear to have been constructed by Muaūpoko, although at least one is of more ancient origin.⁴¹

Image 1.1 Waipata island pā, Lake Horowhenua, no date⁴²



Adkin mapped the place names of the lake and its environs: pā tuna, canoe landing places, swamps, ridges, bush tracks and clearings. As the ecologist Geoff Park observed, the names were ‘packed in so tight that his map could barely contain them’. While some were Ngāti Raukawa names, most were Muaūpoko.⁴³ Altogether, Muaūpoko inhabited a landscape covered by thick bush interspersed with numerous watercourses ranging from rivers and lakes to swamps. As a people, they must have been as at home on land as on water. Park suggested that their island pā ‘might have been the perfect expression of their intimacy’ with ‘their resource-rich environment of eel stream, lakes and forest edges’.⁴⁴ In a similar vein, Horowhenua historian Anthony Dreaver remarked that ‘Muaupoko were virtually an amphibious tribe, relying on sea, river, lagoon and swamp for eels, inanga, kakahi, and a great range of bird life.’⁴⁵

⁴¹ Adkin, *Horowhenua*, pp 32-35

⁴² Adkin Collection Alexander Turnbull Library, Wellington, New Zealand. Reference No. G70081 ½. <http://horowhenua.kete.net.nz/en/site/images/5388-waipata-artificial-island-lake-horowhenua>

⁴³ Geoff Park, *Ngā Ururoa: The Groves of Life: Ecology and History in a New Zealand Landscape* (Wellington: Victoria University Press, 1995), p 181

⁴⁴ Park, *Ngā Ururoa*, p 188

⁴⁵ Anthony Dreaver, *Horowhenua County and Its People: A Centennial History* (Levin: Dunmore Press on behalf of the Horowhenua County Council, 1984), p 23

Figure 1.1: Leslie Adkin's sketch map of Lake Horowhenua and its place names⁴⁶

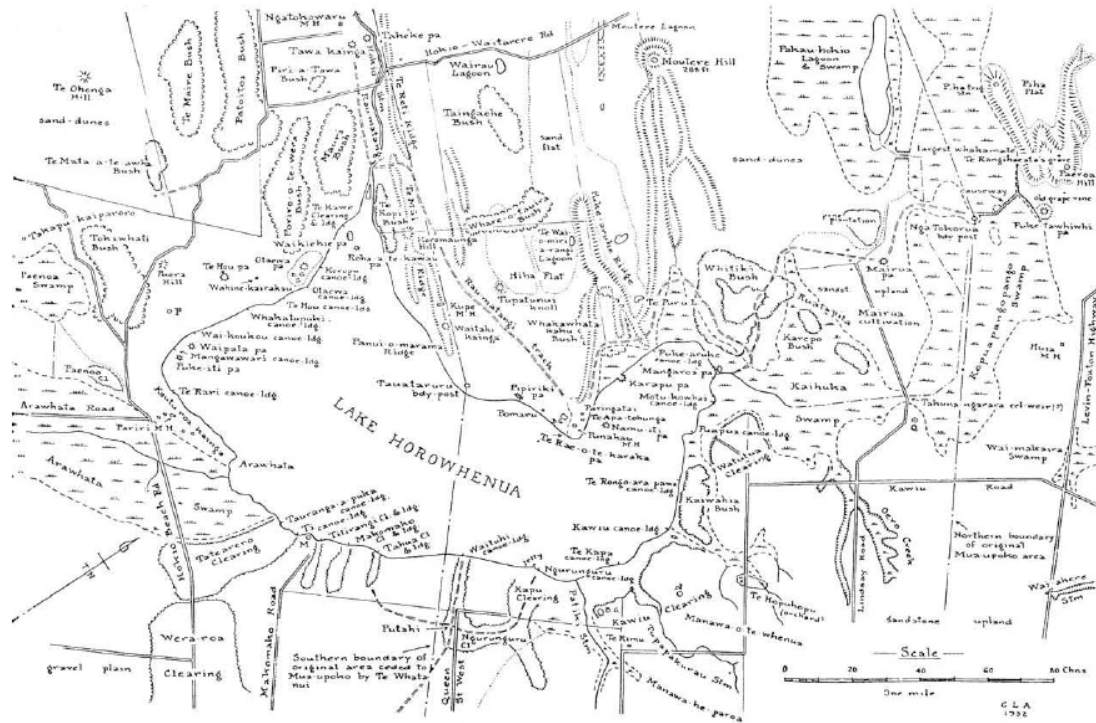


Fig. 119. Lake Horowhenua and environs showing place-names and sites.

As noted, this report traverses neither the traditional history of the district nor the migration of northern tribes into Horowhenua from around 1820, including the subsequent accommodations made between these newcomers and Muaūpoko. It must be noted, however – in the context of understanding the importance to Muaūpoko of the lake and Hōkio Stream – that Muaūpoko were attacked on their island pā by Te Rauparaha with some loss of life, regarded by Ngāti Toa sources to have been considerable. For example, W L T Travers recorded the deaths of many of the defenders of the island pā, Waipata, and the subsequent killing of 200 Muaūpoko at Waikeikie.⁴⁷ After this defeat, Muaūpoko were reinstated on a strip of land by the Ngāti Raukawa rangatira Te Whatanui that encompassed only the northern corner of the lake and excluded, notably, the Hōkio Stream with its prized eel fishery.⁴⁸ Keepa Te Rangihwinui's claim for Muaūpoko, considered and awarded to him by the Native Land Court in 1873, included both the entirety of the lake and the Hōkio Stream.⁴⁹ In Park's opinion, Major Kemp 'understood that the genius of the sand country – which his Mua-upoko could no more allow other Māori to possess than trade to the Pākehā – lay in its eely lakes, swamp forests and streams.'⁵⁰

⁴⁶ Adkin, *Horowhenua*, figure 119 opposite p 160

⁴⁷ W L T Travers, 'On the Life and Times of Te Rauparaha', *Transactions of the New Zealand Institute*, 5, 1872, p 64. Adkin noted that Travers 'is said to have received his information from Tamehana, second son of Te Rauparaha by his fifth wife, Akau'. Adkin, *Horowhenua*, p 391

⁴⁸ Robyn Anderson and Keith Pickens, , *Wellington District: Port Nicholson, Hutt Valley, Porirua, Rangitikei, and Manawatu*, Rangahaua Whānui District 12 (Wellington: Waitangi Tribunal, 1996), pp 145-146

⁴⁹ Anderson and Pickens, *Wellington*, pp 160, 214-216

⁵⁰ Park, *Ngā Ururoa*, p 212

The transformation of the lake and its environment

All lakes are subject to a natural process of ageing called eutrophication. Slowly, they fill with sediment and nutrients from the surrounding catchment and, as the nutrients feed the growth of weeds and algae, dry ground and swamps form. Eventually, the lake fills in. This process, however, can be vastly accelerated by the activities of human beings, and it has certainly been in the case of Horowhenua.⁵¹ The lake's mean depth today is 1.3 m, with a maximum depth of about 1.8 m,⁵² a great reduction on the lake's water volume of a century ago.

There are two main reasons for this transformation. First, following Pākehā settlement, and particularly after 1950, the lake received a substantial load of sediment from its catchment – so much, in fact, that in 1978 it was estimated that about 1.5 m of sediment sat on the lakebed.⁵³ The depth of silt was also greater in the vicinity of the concrete weir installed to control the lake level in 1966, with a Horowhenua Boating Club survey finding up to 3.4 metres of silt in that part of the lake in 1971.⁵⁴ Secondly, the water level was reduced by about four feet through drainage in the 1920s. Whereas the lake's area was surveyed as 901 acres or 365 hectares at the turn of the twentieth century (see chapter 2), today it is thought to cover just 717 acres or 290 hectares.⁵⁵ The story of Lake Horowhenua in the twentieth century is as much one of the struggle by Māori for retention of control over a taonga of transcendent importance as it is a man-made ecological disaster.

To understand the changes that have befallen the lake it is necessary to appreciate the sheer scale and rapidity of the transformation of the Horowhenua landscape following Pākehā settlement. As the Wellington-Manawatū railway line was pushed through a 'trench' of cleared bush in the 1880s, settlers – like Helen Wilson – arrived to take up and clear their allotted bush blocks. The uninterrupted expanse of thick and luxuriant forest that prevailed until the advent of the railway was rapidly transformed into a landscape of stumps and charred, intersected by the straight lines of fenced allotments and roadways. According to Park, 'Never before or since has a New Zealand landscape been so quickly and ruthlessly "cleared".' Some trees were milled for their timber but such was the demand from Britain for New Zealand's farm produce that, as Park put it, 'thousands and thousands of acres were

⁵¹ Ken [sic – Kevin] Currie, 'Lake Horowhenua steadily worsening', *Soil and Water*, February 1978, p 16

⁵² Gibbs, *Lake Horowhenua Review*, p 17; H R Hughes, for Director-General, Department of Scientific and Industrial Research, to Commissioner for the Environment, 12 August 1975. Archives New Zealand file AAUM W4043 Box 221 NRS 3/6/Z part 1

⁵³ Ken [sic – Kevin] Currie, 'Lake Horowhenua steadily worsening', *Soil and Water*, February 1978, p 16

⁵⁴ Lake Horowhenua Technical Committee, *Lake Horowhenua: Current Condition, Nutrient Budget and Future Management*, March 1978, p 35

⁵⁵ Gibbs, *Lake Horowhenua Review*, p 17. The geologist Leslie Adkin thought its maximum depth in 1948 perhaps 30 feet, which appears to have been an overestimate: Adkin, *Horowhenua*, p 160. The contemporary area of 717 acres is, at least, somewhat larger than a 1950 estimate of 640 acres (albeit with a maximum depth of two metres); see B T Cunningham, N T Moar, A W Torrie, and P J Parr, 'A Survey of the Western Coastal Dune Lakes of the North Island', *Australasian Journal of Marine and Freshwater Research*, v 4 n 2, 1953, p 356

simply incinerated in the rush'. Even where patches of bush remained the bird-life diminished or disappeared, as many species relied on the corridor of bush from mountains to the lowlands for their seasonal feeding.⁵⁶

Image 1.2: Adkin farm, 1899⁵⁷



Image 1.3: P Bartholomew's sawmill at Weraroa, 1906⁵⁸



Drainage activities followed hard on the heels of bush clearance, denuding the Horowhenua landscape of its swamps just as surely as it had been of its forests. Then came the artesian

⁵⁶ Park, *Ngā Ururoa*, pp 167-168, 175

⁵⁷ 'Establishing an orchard (apples, pears, plums) at Cheslyn Rise, Queen Street East, Levin', 1899. Image by Frank Denton. Alexander Turnbull Library, Wellington, New Zealand. Reference No. G65717 ½.

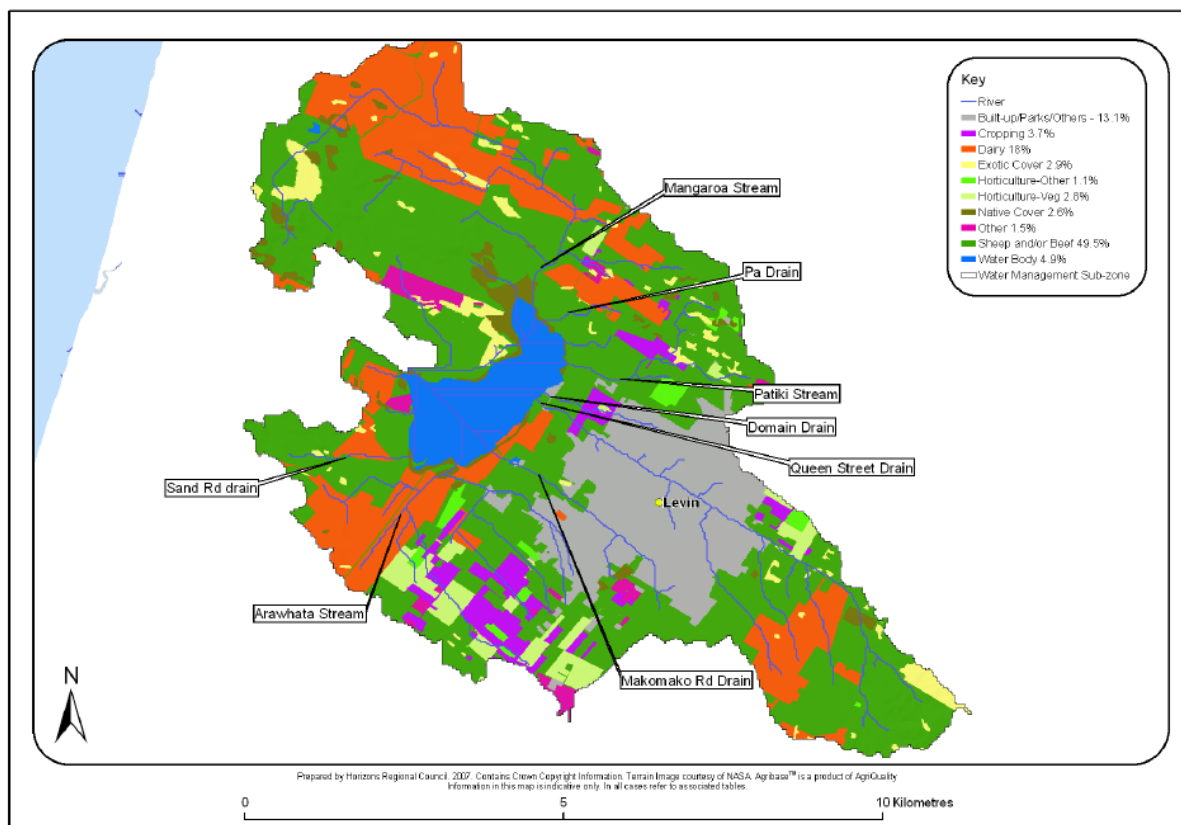
⁵⁸ Horowhenua Historical Society Inc. <http://horowhenua.kete.net.nz/en/site/images/2403-bartholomews-sawmill-weraroa-1906>

bores in the 1940s to support market gardens, ‘sucking water’ from the ‘life support system of the lakes’. Again, as Park commented:

In water’s terms, the whole Horowhenua – from mountains to sea – is one ecosystem. There is only so much water circulating in it, and every artesian bore means less reaches the sand lakes.⁵⁹

From the 1950s to the late 1980s, Lake Horowhenua received Levin’s treated sewage, and occasionally the raw variety. While this effluent no longer flows to the lake, the market gardens in its catchment have been joined by intensified dairy farming.⁶⁰ The transformation of the landscape, therefore, and the attendant consequences for the groundwater and dune lakes, continues into the present.

Figure 1.2: Land-use in the Lake Horowhenua catchment, 2007⁶¹



The title to the lake and ownership of the water

In September 1898 the Native Appellate Court determined the ownership of Horowhenua Block XI, which encompassed the lake and the Hōkio Stream. On account of the large number of individuals found to be entitled as owners, Muaūpoko requested that the lake, a

⁵⁹ Park, *Ngā Ururoa*, pp 179, 220

⁶⁰ Gibbs, *Lake Horowhenua Review*, pp 9-11

⁶¹ Gibbs, *Lake Horowhenua Review*, p 19

one chain strip around the lake's margin, the Hōkio Stream from the lake's outlet to the sea, and a one chain strip along the northern bank of the stream be vested in trustees as a fishing easement for the owners. To this end Muaūpoko provided Judge Alexander Mackay with a list of ten names: Makere Te Rou, Hema Henare, Himiona Kowhai, Haare Taueki, Taare Porotene, Ariki Raorao, Kerehi Tomo, Waata Muruahi, Rhipeti Tamaki, and Rewi Wirihana. Te Rangimairehau, Hoani Puihi, and Raniera Te Whata objected on the basis that there should be representation from each hapū and 'some of the older men should be chosen as well'.⁶²

The principal objection was made by Wirihana Hunia. He claimed to have been unaware of meetings that had been held to select the trustees and felt that the omission of his name 'was intended as a slight to him by Muaupoko'. Others contended that Hunia had been well aware of the meetings but had 'held aloof from the proceedings'. John Broughton, however, proposed that four additional names be added to the Muaūpoko list: Wirihana Hunia, Te Rangimairehau, Hoani Puihi, and Raniera Te Whata. The judge agreed and, on 19 October 1898, appointed the 14 persons as trustees for the areas to be reserved.⁶³

According to Ben White, this vesting of the lake in Māori owners 'stands out as something of an aberration in the context of the Crown's attitudes to Maori claims to lakes around this time'. He speculated that this may have been because the Crown owned no riparian land, and could thus not assert a claim to the title of the bed through the rule of *ad medium filum aquae* (see below). Alternatively, he thought that the Crown might have placed little value on the lake, especially since some farmers at the time favoured swamp retention because of the commercial value of flax. He also wondered whether retention of the lake by Muaūpoko was accepted by the Crown since potentially it meant the tribe was more likely to sell other lands. Ultimately, however, he felt it was 'a peculiarity that the Crown, with apparent alacrity, simply admitted the existence of a Maori title to the lake and established what could become an important precedent'.⁶⁴ The Crown's actions stand somewhat in contrast to its treatment of the Wairarapa lakes (Wairarapa and Ōnoke), where – after the Native Land Court awarded title to them in 1883 – the Government embarked on a determined quest to have the beds secured to the Crown.⁶⁵

According to English common law, where the bed of a lake is included within a single block of land, ownership of the lakebed is regarded as the same as ownership of the surrounding land. If, however, there are several owners of riparian land, each owner owns a proportion of the lakebed (or riverbed) to its centre point. This is the aforementioned maxim of *ad medium filum aquae*. As White noted, the application of this rule in New Zealand was standard for rivers but not lakes. In colonial New Zealand the Crown rather tended to assert that it owned lakebeds, since under the Māori cession of sovereignty it held the radical title to all land in

⁶² Native Land Court Ōtaki Minute Book 37 fols 10-15

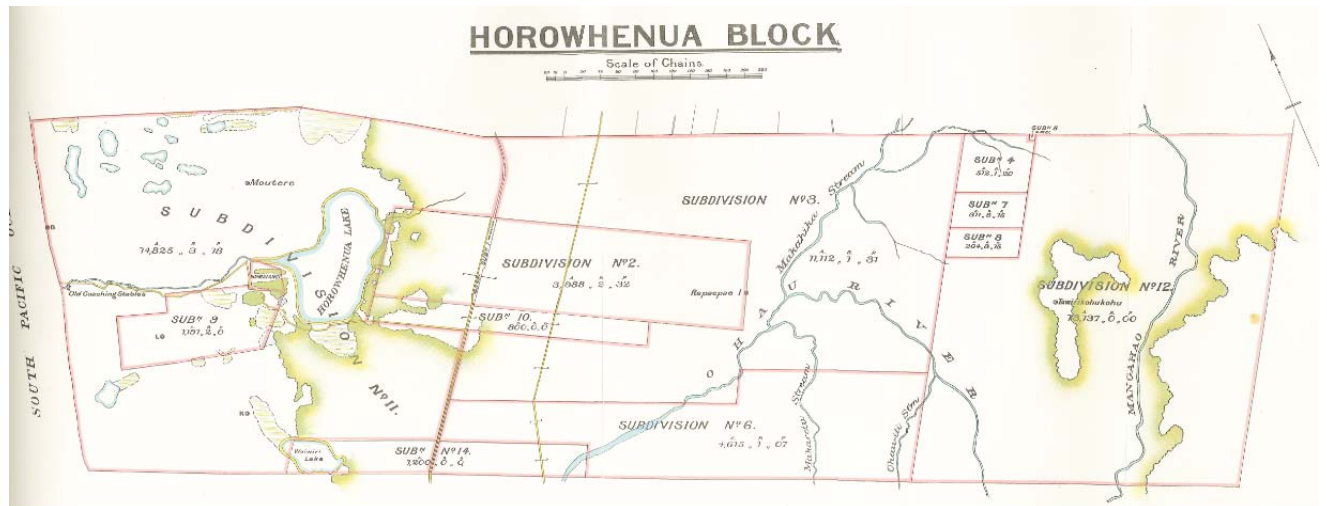
⁶³ Native Land Court Ōtaki Minute Book 37 fols 10-15

⁶⁴ Ben White, *Inland Waterways: Lakes*, Rangahaua Whanui National Theme Q (Wellington: Waitangi Tribunal, 1998), pp 67-68

⁶⁵ See White, *Inland Waterways: Lakes*, chapter 2, pp 29-61

New Zealand subject (in the case of waterways) only to Māori customary rights such as fishing. The Native Land Court, however, was quite prepared to award title to lakebeds to customary Māori owners, thus forcing the Crown to negotiate with those owners to secure what it deemed to be essential public rights.⁶⁶

Figure 1.3: Horowhenua Block subdivisions, 1896⁶⁷



Despite this impediment, Parliament still tended to regard lakes (and other waterways) in New Zealand as if the Crown owned them, passing legislation that provided for drainage schemes, irrigation, flood controls, power generation, and fisheries management. To that extent, Māori ownership of lakes counted for relatively little.⁶⁸ It will be seen that, in the early part of the twentieth century, this was certainly true in the case of Lake Horowhenua, although the situation was complicated there by the Crown’s erroneous assumption that it owned the bed of the lake in any event. Moreover, the Crown has steadfastly applied the common law presumption in New Zealand that a lake’s waters are common property and belong to no-one. This position was rejected by Native Land Court judge Frank Acheson in 1929, when he argued that:

The bed of any lake is merely a part of that lake and no juggling with words or ideas will ever make it other than part of the lake. The Maori was and still is a direct thinker and he would see no more reason for separating a lake from its bed (as to the ownership thereof) than he would see for separating the rocks and the soils that comprise a mountain.⁶⁹

The Waitangi Tribunal found in 2012 that the Māori proprietary right in water guaranteed by the treaty was ‘the exclusive right to control access to and use of the water while it was in their rohe’.⁷⁰ The Crown, however, has been unwavering in its position that natural water is

⁶⁶ White, *Inland Waterways: Lakes*, pp 2-7

⁶⁷ AJHR, G-2, 1896, following p 344

⁶⁸ White, *Inland Waterways: Lakes*, pp 8-23, 265

⁶⁹ Quoted in Waitangi Tribunal, *The Stage 1 Report on the National Freshwater and Geothermal Resources Claim* (Wellington: Legislation Direct, 2012), p 39

⁷⁰ Waitangi Tribunal, *The Stage 1 Report on the National Freshwater and Geothermal Resources Claim*, p 81

incapable of ownership. As it explains in its current settlement negotiations guide for treaty claimants,

the Crown acknowledges that Māori have traditionally viewed a river or lake as a single entity, and have not separated it into bed, banks and water. As a result, Māori consider that the river or lake as a whole can be owned by iwi or hapū, in the sense of having tribal authority over it. However, while under New Zealand law the banks and bed of a river can be legally owned, the water cannot. This reflects the common law position that water, until contained (for example, put in a tank or bottled), cannot be owned by anybody. For this reason, it is not possible for the Crown to offer claimant groups legal ownership of an entire river or lake – including the water – in a settlement.⁷¹

Māori cultural perspectives

Needless to say, the Māori perspective on lakes encompasses more than just a perception of them as indivisible wholes, inseparable into the component parts of bed and waters (or indeed the water surface as opposed to the water column). Again, while his judgment related to Lake Ōmapere, Acheson's 1929 remarks on the subject are a useful summary. As he put it:

To the spiritually-minded and mentally-gifted Maori of every rangatira tribe, a lake was something that stirred the hidden forces in him. It was (and, it is hoped, always will be) something much more grand and noble than a mere sheet of water covering a muddy bed. To him it was a striking landscape feature possessed of a 'mauri' or 'indwelling life principle' which bound it closely to the fortunes and destiny of his tribe. Gazed upon from childhood days, it grew into his affections and his whole life until he felt it to be a vital part of himself and his people. ...To the Maori, also, a lake was something that added rank, and dignity, and an intangible mana, or prestige to his tribe and to himself. On that account alone it would be highly prized, and defended.⁷²

The authority Māori hold over such a resource – their rangatiratanga or mana – has a concurrent responsibility, of kaitiakitanga. As the Waitangi Tribunal explained in its report on the Wai 262 claim,

Kaitiakitanga is the obligation, arising from the kin relationship, to nurture or care for a person or thing. ... In the human realm, those who have mana (or, to use Treaty terminology, rangatiratanga) must exercise it in accordance with the values of kaitiakitanga – to act unselfishly, with right mind and heart, and with proper procedure. Mana and kaitiakitanga go together as right and responsibility, and that kaitiakitanga responsibility can be understood not only as a cultural principle but as a system of law.⁷³

⁷¹ Office of Treaty Settlements, *Ka Tika ā Muri, Ka Tika ā Mua: Healing the Past, Building a Future* (Wellington: Office of Treaty Settlements, no date), p 111. Cited also in *The New Zealand Maori Council v The Attorney-General* [2013] NZSC6, para 99.

⁷² Quoted in Waitangi Tribunal, *The Stage 1 Report on the National Freshwater and Geothermal Resources Claim*, p 39

⁷³ Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity: Te Taumata Tuatahi* (Wellington: Legislation Direct, 2011), p 23

As kaitiaki of Lake Horowhenua, Muaūpoko's responsibility was (and is) to ensure the lake's health. In this regard it is important to appreciate the Māori attitude towards fresh water. As Mason Durie explained, 'Māori were conscious of the links between water and health, and avoided cross-contamination by separating clean from unclean'. Water was classified into different categories according to its purity. Waiora, or rainwater, was seen as most pure and used not only for drinking and cooking but also in rituals. Waipuna, from springs, had a similar standing, while waimāori – normal running water found in streams – was also acceptable for drinking. But waimate or waikino – stagnant or impure waters – were not fit for human consumption.⁷⁴

Human waste was regarded as tapu and disposed of carefully. Latrines were often located on clifftops and allowed for waste to fall away into tapu areas that were not used for human habitation. The strong Māori preference is for human waste to be disposed of to land, and not to water, thus – in Durie's words – 'affirming the land, Papatūānuku, as an appropriate filter for impure water and, at the same time, wishing to underline the importance of maintaining the integrity of the mauri of each water mass'. Where land or water became contaminated, a rāhui would usually be placed banning access until the danger had passed and the area had returned to a state of noa or safety.⁷⁵

As Durie observed, several early claims were brought to the Waitangi Tribunal about the contamination of waterways through sewage disposal.⁷⁶ In its *Kaituna River Report*, for example, the Tribunal explained that

Witness after witness came forward to support the claimants in their assertion that to mix waters that had been contaminated by human waste with waters that were used for gathering food was deeply objectionable on Maori spiritual grounds. We were told of Maori custom that requires water used for the preparation of food to be kept strictly separate from any kind for other purposes. We were given examples at length of the cultural traditions that illustrate long-standing rules governing the preparation and consumption of food. Of our own knowledge we knew that these rules are projected to a far-reaching degree, even to the point that it is extremely bad manners in Maori terms for anyone even to sit on a table that is used for eating food. And it is quite unacceptable for anyone to wash clothing, even tea towels, in a sink or basin that is used for preparation of food.⁷⁷

In the Motunui-Waitara case, the Tribunal was told by claimant Moke Couch that he

considered that no remnants from the human body, from washing or excreta, should pass into waters associated with food – 'if we eat food that has particles of mortuary waste of possibly

⁷⁴ Mason Durie, *Whaiora: Māori Health Development* (Auckland: Oxford University Press, 1998 (first published 1994)), pp 10, 12

⁷⁵ Durie, *Whaiora*, pp 9-14

⁷⁶ Durie, *Whaiora*, p 12

⁷⁷ Waitangi Tribunal, *Report of the Waitangi Tribunal on the Kaituna River Claim* (Wellington: Department of Justice, 1984), p 9

people we know – we are presenting a kind of insult.’ So strong is this feeling that others considered the eating of fish following the placing of a rahui was in some cases tantamount to cannibalism.

Accordingly, in the traditional Maori conception of life, it is irrelevant to consider whether effluent and human waste can be so treated as to be virtually pure before it is discharged into the river or sea.⁷⁸

It is likely that the effluent disposal to Lake Horowhenua could have been the subject of a Tribunal inquiry along the lines of Motunui-Waitara and the Kaituna River if application had been made at the time. So, no doubt, could other examples of this kind of waste disposal around New Zealand. It suffices to note that, while Māori have ever held a strong aversion to the discharge of human waste (treated or otherwise) to waterways, this means of disposal was completely standard in New Zealand for some time. A 1962-1963 survey by the Ministry of Works and Development found that around 85 per cent of New Zealand’s population in cities and boroughs was served by the disposal of sewage to water.⁷⁹

Contents of this report

For the reasons set out above, this report addresses the nineteenth-century history of the lake only in passing. Its detailed historical narrative does not begin until close to 1900. Chapter 2 addresses the arrangements made with representatives of Muaūpoko in the late 1890s and early 1900s for use by Levin’s Pākehā settlers of the lake for recreation, and the way that Muaūpoko rights over the lake were steadily ‘whittled down’ – to use the expression of the tribe’s solicitor – from 1905 to 1934. Chapter 3 traverses the drawn-out process of negotiating a settlement of Muaūpoko’s grievances after the Crown accepted, in 1934, that its assumptions of ownership of the lake and its marginal strip had been unjustified. This protracted negotiation culminated in the passage of legislation in 1956. Chapter 4 discusses the various ways in which the 1956 settlement was put into effect in the decade that followed.

Chapter 5 deals with the pollution of the lake in the period from 1952 to 1987, principally by the discharge to it of Levin’s treated sewage, but also by farm run-off and unfiltered stormwater. Chapter 6 looks at the administration and control of the lake from 1964 to 1988, a period which saw relations between Muaūpoko, on the one hand, and the Crown and local bodies, on the other, worsen to the extent that Muaūpoko quit their participation with the lake domain board in 1982. Chapter 7 discusses the period from 1988 to 2000, in which disputes continued to simmer but some focus was turned to the restoration of the lake. This chapter includes a brief epilogue that touches on the principal developments in the period since 2000.

⁷⁸ Waitangi Tribunal, *Report of the Waitangi Tribunal on the Motunui-Waitara Claim* (Wellington, Department of Justice, 1983), pp 9-10

⁷⁹ Denis Ferrier, ‘Treatment of Waterborne Wastes’, from *An Encyclopaedia of New Zealand*, edited by A. H. McLintock, originally published in 1966.

Te Ara - the Encyclopedia of New Zealand, updated 23-Apr-09

URL: <http://www.TeAra.govt.nz/en/1966/waterborne-wastes-disposal-of/page-3>

Finally, chapter 8 concludes the report by recapping on the key findings and attempting to bring the different strands of the lake's history together.

2. The ‘whittling down’ of Muaūpoko’s rights, 1905-1934

Introduction

The previous chapter briefly described Lake Horowhenua itself and the human occupation of the lands around it. It touched upon the traditional Muaūpoko relationship with the lake and the recognition of that by the Native Land Court in the late nineteenth century, and considered the Pākehā transformation of the Horowhenua landscape that took place at the same time. It also noted the customary Māori conception of use rights over and ownership of fresh water, and contrasted these with Pākehā legal constructs.

This chapter traverses the advent of Pākehā settlement in Levin in the late nineteenth century and the events of the following decades, during which settler pressure was brought to bear on Muaūpoko to share or even relinquish its rights over Lake Horowhenua and the Hōkio Stream. The particular focus is on the period after 1905, the year in which Muaūpoko came to some agreement with the Crown over Pākehā access to and use of the lake, but the chapter also describes the growing Pākehā desire to control the lake, its scenic surrounds, or both, in the decade before that. The chapter concludes in 1934. By this point, almost all of Muaūpoko’s rights over the lake and its surrounds had been ‘whittled’ down, an expression used by the tribe’s counsel in protest, as noted in the following chapter, and the long process of negotiating redress had begun.

The chapter addresses questions 2(b), 2(c), and 2(d) of the research commission, concerning the Crown’s and Muaūpoko’s expectations and understandings of the 1905 agreement and advent of the domain board; the extent to which Muaūpoko participated in the board; the extent to which the Crown consulted with Muaūpoko over legislation that affected the lake; the circumstances surrounding the establishment of the Hokio Drainage Board and the impact of its activities on Muaūpoko; the actions of the Crown and local bodies to extend their control over the lake and its surrounds; the nature of any Muaūpoko opposition to these measures; and the Crown’s oversight of the various powers it had delegated.

Early Pākehā use of and access to the lake

After the opening of the Wellington and Manawatu Railway in 1886, and the sale of the first Levin town sections in 1889, settler interest in making use of Lake Horowhenua for recreation steadily grew. By around 1896 a rowing club was formed,⁸⁰ with its inaugural meeting held that December. There seems to have been a significant Muaūpoko presence not only at this gathering but also on the initial committee. The *Chronicle* reported in 1919 that

of the large number who attended the meeting no less than 60 were natives, for whom Mr Rangimairehau acted as spokesman concerning their interest in the Lake, and Mr John McDonald as interpreter. Mr Syms was chairman and a provisional committee was formed as follows: Messrs Syms, Fosella, J. R. McDonald, J. Broughton, Gower, Wilson Hunia, Hanita

⁸⁰ ‘Local and general news’, *Feilding Star*, 6 August 1896, p 2

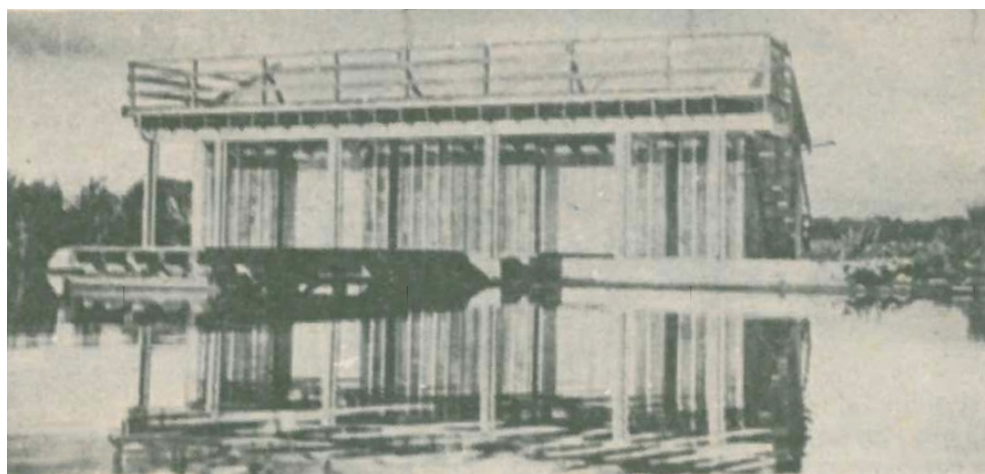
Hanahanu, Hema Heneri, Rangimairehau with Mr J. W. Bowen as hon. secretary and Mr F. Garland as treasurer.⁸¹

In January 1897 it was reported that an agreement had been reached ‘with the natives as regards the use of the Horowhenua Lake for boating purposes, and sufficient ground has been obtained from them for the erection of a grandstand and boatsheds’.⁸² According to Dreaver, the arrangement was for the payment of £2 per year to Te Rangimairehau for the use of 13 acres beside the lake, on which a jetty, a slipway, and a boatshed with rooftop seating for 200 spectators were erected (see image 2.1).⁸³ It appears that Te Rangimairehau renewed the lease in September 1899 for a further ten years. This agreement read, in English:

I te Rangimairehau of Horowhenua Aboriginal Native do hereby agree to Lease to the Horowhenua Boating Club the whole of my Section near the Lake Containing about nine Acres more or less (9) for the term of Ten years (10) at a yearly rental of Five Pounds Per annum Payable half yearly on the 1st of January 1900 and the 1st of July in each and every year until the end of the term. And when I am in a Position to Sell I hereby agree to give the above Club the first refusal. Should I die in the meantime my Successors Shall carry out all in this Lease.⁸⁴ [Emphasis in original.]

There were clearly other aspects to this financial arrangement, as half the proceeds from a regatta held on the lake in December 1901 were given to Muaūpoko.⁸⁵

Image 2.1: First boatshed at Lake Horowhenua, c. late 1890s⁸⁶



There were early signs, however, that local Pākehā were not content merely to have access to and use of the lake at the indulgence of Muaūpoko. In November 1897 (before, as Keith

⁸¹ ‘Early boating club days. Some interesting documents’, *Chronicle*, 20 November 1919, p 1

⁸² ‘Manawatu Herald’, *Manawatu Herald*, 19 January 1897, p 2

⁸³ Anthony Dreaver, *Levin: The Making of a Town* (Levin: Horowhenua District Council, 2006), p 156

⁸⁴ The lease was dated 25 September 1899. It was translated and witnessed by Hector Hugh McDonald, a licensed interpreter, and signed by Te Rangimairehau, John R McDonald, Marco Fosella, and Robert Smart. Copy of document supplied to the author by Anne Hunt.

⁸⁵ ‘The wave of retrenchment’, *Manawatu Times*, 5 December 1901, p 2

⁸⁶ <http://horowhenua.kete.net.nz/en/site/images/17171-first-boatshed-at-lake-horowhenua>

Pickens noted, the certificate of title for the lake had even been issued⁸⁷) the Member for Manawatu, John Stevens, asked the Minister of Lands in the House

If he will, so soon as the title there to has been ascertained, acquire by purchase from the Native owners the whole of the Horowhenua Lake, together with a suitable area of land around its shores, for the purpose of a public park, reserving to the Native owners and their descendants the right to their eel and other fisheries, and dedicate the lake and land so to be acquired to the local body within whose boundaries they are situate?⁸⁸

Stevens warned that steps should be taken to acquire the lake promptly, lest the same difficulties occurred as in Wairarapa (where the Crown had waged a twenty-year campaign from the mid-1870s to assert ownership of the beds of Lake Wairarapa and Lake Onoke⁸⁹). The Minister, John McKenzie, replied that the Government had already been advised to acquire Lake Horowhenua and was favourably disposed to the idea.⁹⁰

Shortly after this, on 21 December 1897, a public meeting was held in the Levin Town Hall to discuss the matter. This meeting, which was chaired by P Bartholomew, passed four resolutions. First, it resolved to thank James Prouse (the chair of the Levin Domain Board), ‘for writing’; Stevens ‘for bringing the matter of acquiring the Lakes in this District before the House of Representatives; and McKenzie ‘for favourably considering the suggestion’. Secondly, it resolved

That this meeting urgently request the Government to lose no time in acquiring the Horowhenua and Waiwera Lakes and so providing the people of Wellington and the Town of the West Coast with most conveniently situated attractive and beautiful pleasure resorts And that this resolution be at once forwarded to the Minister of Lands.⁹¹

Thirdly, it resolved to form a committee ‘to further the securing of the Lakes of this District for the Public’. The 15 residents named on this committee included two – Prouse and Marco Fosella – who later went on to be lake domain board members. Lastly, the meeting resolved ‘That the Papaitonga Lake be applied for as well as the Horowhenua and Waiwera Lakes’. On 24 December 1897 McKenzie annotated a note on the first resolution to Patrick Sheridan of the Native Land Purchase Department: ‘Mr Sheridan to take action to secure that Lakes be purchased and reserved’.⁹²

A task of the committee was to gather signatures on a petition to McKenzie.⁹³ This was largely worded the same as the second resolution passed at the meeting, although it added ‘at

⁸⁷ Anderson and Pickens, *Wellington*, p 271

⁸⁸ NZPD, 1897, vol 100, pp 143-144, cited in White, *Inland Waterways: Lakes*, pp 68-69

⁸⁹ See White, pp 29-61.

⁹⁰ NZPD, 1897, vol 100, pp 143-144, cited in White, pp 68-69

⁹¹ Copy of resolutions passed at the 21 December 1897 meeting. Archives New Zealand file ACIH 16082 MA75 4/21. Thanks are due to Jane Luiten for drawing attention to the material on this file.

⁹² Copy of resolutions passed at the 21 December 1897 meeting. Archives New Zealand file ACIH 16082 MA75 4/21

⁹³ ‘The lakes near Levin’, *Evening Post*, 22 December 1897, p 5

the same time we have no wish to interfere with the rights of the natives'. Muaūpoko, however, were unimpressed, and the two sides confronted each other at the lake on 27 December, as the *Evening Post* reported:

Horowhenua troubles seem interminable. The latest phase arises out of the action of last week's meeting of Levin residents, promoted with the object of inducing the Government to acquire the Horowhenua, Papaitonga, and Waiwera Lakes, so that they may be thrown open as pleasure resorts for the public. At the present time Papaitonga, a beautiful piece of water with two historic islands within it, is on Sir Walter Buller's estate, and the other two lakes are reserved as eeling grounds for the natives. The latter have 'got back' upon the Pakehas in the most effective manner – by blockading the water. On Sunday last the Maoris of the lake district held a *korero*, and as the Pakehas had advertised a picnic and water sports on the lake under the auspices of the Horowhenua Boating Club, it was decided that four wahines should hold a barricade against all white comers. On Monday morning the picnickers rolled up in force, but the quartet, under the leadership of Mrs. Simeon, bravely and wordily held the gates against a large force of disappointed barrackers. The reading of the petition failed to have the effect of a Riot Act. ... After a lengthy debate across the gateway, and the exchange of many hot words – the angry portion of the debate taking place between friendly and opposition natives, the Europeans waiting quietly without – it was ultimately arranged that the entrance money at the gates should be taken by a Pakeha and a Maori, and an equal division made. But disgust came over the visitors, for just after they had succeeded in winning entrance into the paradise, a drenching rain came down upon native and alien alike. The Lake Committee is still furthering the agitation for the opening of the lakes.⁹⁴

By 1902, however, no action had been taken and settler resentment remained. The *Manawatu Standard* reported in February 1902 that

The Maoris at Horowhenua have got a soft thing on. They encouraged the pakehas to make every provision for boating on the Horowhenua Lake, and contented themselves with a moderate payment for the privilege, but having ascertained that there is a prospect of that resort becoming popular, they have increased their demands exorbitantly. Those concerned have no option but to comply with the innocent Maoris' request, but the language does not contain sufficient 'saddenness' to express the feelings of the pakeha.⁹⁵

The intended acquisition under scenery preservation law

On 13 August 1903 the Member for Otaki, William Field, asked the Minister of Lands when the Government 'planned to proceed with the promised nationalisation of the Horowhenua Lake and the dedication of the same as a public park'. Field related how the Premier, Richard Seddon, had been struck by the lake's beauty on a recent visit and had made a commitment to initiate the necessary action to make it a national park. The Minister, Thomas Duncan, replied that legislation would soon be introduced 'empowering the Government to acquire such

⁹⁴ 'Local and general', *Evening Post*, 31 December 1897, p 4

⁹⁵ 'The Premier astonished', *Manawatu Standard*, 13 February 1902, p 2

places as this' for the preservation of their scenery.⁹⁶ This was clearly a reference to the Scenery Preservation Bill, which passed into law in November that year. The Act empowered the Government, upon the recommendation of a Scenery Preservation Commission, to compulsorily acquire Māori and other lands for scenic purposes. As David Young observed, 'The settler wish for scenic reserves often meant a new round of dispossession for Maori.'⁹⁷

About two weeks after Field's question in the House, the journalist James Cowan visited lakes Horowhenua and Papaitonga at the request of the Superintendent of the Department of Tourist and Health Resorts, both to obtain information for guide books and 'to look into the question of preserving their forest sanctuary'.⁹⁸ The upshot of this was Cowan's report to the Superintendent of 1 September 1903, part of which (pertaining to Lake Horowhenua) was published in the *Appendices to the Journal of the House of Representatives* in 1908. In his report Cowan explained that

The main road from Levin gives access to the Native Reserve (inalienable) surrounding Lake Horowhenua, but the public can only cross this reserve or use the lake on the sufferance of the Maoris. The local rowing club pays a small rent for the site of a boatshed on the shores of the lake, but has been unable to obtain a legal lease. For several years there has been more or less friction between the residents and the Natives over the question of the right of access to the lake and, as this sheet of water is likely to become a favourite pleasure resort for Wellington people and other visitors, it is desirable that the present unsatisfactory state of affairs should be terminated.⁹⁹

Cowan cautioned that access arrangements meant that 'the public are at any time liable to be denied the privilege even of access to the Levin people's boat-shed on the lake-side'.¹⁰⁰

Cowan also noted the scenic qualities of the man-made islands in the lake and the stands of native bush on the lake's margins, and remarked that 'The Maoris have been cutting the flax surrounding the lake, and if they are allowed to interfere with the islands the beauty of these interesting spots will be greatly marred, and the unprotected soil (which is only a foot or two above the level of the lake) will gradually wash away.'¹⁰¹ The Māori owners had also been selling timber from the lakeshore reserve to a local firm of sawmillers. Cowan recommended that

... steps be taken to reserve the native vegetation on all the eastern and southern foreshore of the lake for a distance of about four miles, from the vicinity of the Kaweu Bush, near the

⁹⁶ NZPD, vol 124, 1903, p 477

⁹⁷ David Young, *Our Islands, Our Selves: A History of Conservation in New Zealand* (Dunedin, Otago University Press), 2004, p 124

⁹⁸ Superintendent, Department of Tourist and Health Resorts, to Minister in Charge of the Tourist Department, 3 September 1903. Archives New Zealand file AECB 8615 TO1 142 20/148 part 1

⁹⁹ 'Horowhenua Lake (Report on) to the Department of Tourist and Health Resorts, by Mr. James Cowan', AJHR, 1908, H-2A, p 1

¹⁰⁰ AJHR, 1908, H-2A, p 2

¹⁰¹ AJHR, 1908, H-2A, p 1

north end, down to the Hokino Stream, and including the Poriro-a-te-Wera Bush, at the southern end.

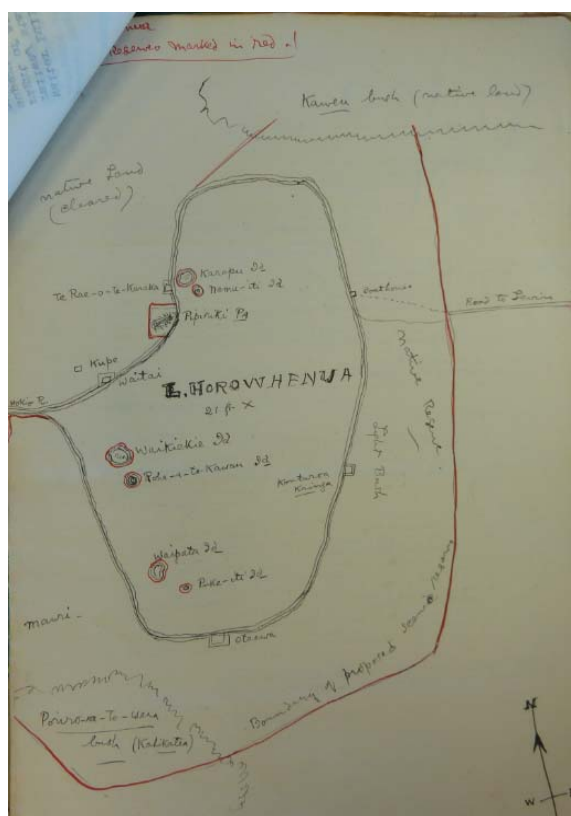
This is all included within the Native reserve, which has a width on this side varying from 15 to 20 chains. The islands and the Pipiriki Pa site should also be reserved.

The land could, no doubt, be taken under the proposed new Act dealing with scenic reserves.

The Maoris should, at the same time, be guaranteed their present rights of fishing for eels, dredging with their rou-kakahi for the shellfish which abound on the bottom of the lake, and of snaring and shooting wild ducks, &c.¹⁰²

Cowan did not envisage the Māori settlements at the lake disappearing under these arrangements, which he believed Te Rangimairehau would agree to. Rather, he anticipated that ‘The Native life, the canoeing, &c, should enhance the interest of the lake in the eyes of visitors’. He did note, however, that he had been advised that Wilson Hunia of Ngāti Apa would be bound to disagree ‘with whatever Muaupoko did’.¹⁰³

Figure 2.1: James Cowan’s sketch of proposed scenic reserves at Lake Horowhenua, September 1903¹⁰⁴



¹⁰² AJHR, 1908, H-2A, p 2

¹⁰³ AJHR, 1908, H-2A, p 2. Hunia was also Muaūpoko, as a direct descendant from Pāriri. Pers. comm. from Charles Rudd, 13 January 2015.

¹⁰⁴ Attachment to James Cowan to Superintendent, Department of Tourist and Health Resorts, 1 September 1903. Archives New Zealand file AECB 8615 TO1 142 20/148 part 1

Despite Cowan's confidence, Muaūpoko were clearly not willing to submit to such a proposal. Hoani Puihi and 31 others petitioned the Government in 1903 praying 'that the present title to the Horowhenua Lake may remain undisturbed' ('ko te taitara e mau nei i naianei o Horowhenua Roto me kati tonu kua e whakakorikoria'). This is presumably the same petition reported on by the *Evening Post* in November 1903 as follows:

The Muaupoko Tribe, which owns the Horowhenua Lake, is concerned about the Government's proposal to acquire the lake for national purposes, and yesterday presented a petition to the House, through Sir William Russell, protesting against the proposal. The tribe states that the lake was given to it as a food reserve, and that the produce of the lake has from time immemorial been the main food reserve of the tribe. They go on to point out that the late Meiha Keepa Te Rangihwinui, as trustee for the tribe, from 1873 till 1897 jealously conserved and guarded the lake and its produce exclusively for the use of the tribe, and which has heard with profound alarm that the House will be asked to pass legislation which may result in interference with the title to this food reserve and the waters of the lake. The petitioners rely upon the good feeling of the House to the Maori race, and to its sense of common justice, to prevent the passage of legislation which would have the effect of interfering with the tribal food supply, a legacy to them from their ancestors confirmed by a certificate under the Land Transfer Act in trust for an expressed specific purpose. They therefore ask that the lake and its produce may remain undisturbed under the present title.¹⁰⁵

The Native Affairs Committee received a note on the matter from the Native Land Purchase Department. This drew attention to 'the existing Native title which declares the Lake to be incapable of alienation in any manner whatsoever', and observed that 'the restriction is imposed under the provisions of a special Act and cannot therefore be removed by the Governor as in the case of ordinary restrictions on Native estates'.¹⁰⁶ The Native Affairs Committee reported on 17 August 1904 that it had no recommendation to make.¹⁰⁷

In the meantime, in May 1904 – at Cowan's urging¹⁰⁸ – the Minister in Charge of the Tourist Department, Joseph Ward, wrote to the Chairman of the Scenery Preservation Commission drawing the commission's attention to 'the desirableness of reserving as historic places a number of small islands in Lake Horowhenua' as well as the bush on the eastern shore.¹⁰⁹ Field also kept lobbying on behalf of his constituents, asking the Premier in the House on 6 July 1904 just when the lake and its shores would be made a national park. Seddon replied that the Government had no power to take native land for such purposes, although he hoped that legislation would soon be introduced that allowed for it.¹¹⁰ It seems that Seddon's reply – which on its face appeared to overlook the existence of the Scenery Preservation Act – may

¹⁰⁵ 'Political notes', *Evening Post*, 18 November 1903, p 5

¹⁰⁶ Land Purchase Officer to Chairman, Native Affairs Committee, 2 August 1904. Archives New Zealand file ACIH 16082 MA75 4/24. Thanks are due to Jane Luiten for drawing attention to the material on this file.

¹⁰⁷ Petition no. 891/1903, AJHR, 1904, I3, p 19

¹⁰⁸ Cowan to Superintendent, Tourist Department, 12 April 1904. Archives New Zealand file AECB 8615 TO1 142 20/148 part 1

¹⁰⁹ J G Ward, Minister in Charge of Tourist Department, to Chairman, Scenery Preservation Commission, 2 May 1904. Archives New Zealand file AECB 8615 TO1 142 20/148 part 1

¹¹⁰ NZPD, vol 128, 1904, p 141

have been influenced by very similar advice to that provided to the Native Affairs Committee by the Native Land Purchase Department. A document that appears to be a proposed reply to Field's question contained the same wording as the purchase department's note, adding that 'Nothing short of an Act of Parliament can give effect to any proposal to Nationalize the Lake.'¹¹¹

As it happens, the Government also initiated an attempt to obtain control of Lake Horowhenua through negotiation with Muaūpoko. Native Minister James Carroll went to Levin in December 1904 to broker an access deal with Muaūpoko for Pākehā wishing to use the lake. The *Evening Post* reported that

There is every reason to hope that the Government will be able to come to some satisfactory arrangement with the Maoris regarding the control of Horowhenua Lake. On Monday last the Native Minister met the Mauopoko chiefs at Levin and obtained from them a promise that the local boating club would be allowed to use the lake and shores for its sports, free of charge, until some permanent arrangement between the Government and the natives has been made. The Wellington Regatta [sic] Association has long been anxious that the Government should secure possession of the lake, which would provide an ideal straight course of two miles, and Mr. Field, M.H.R., has been interesting himself on behalf of that body, with the result that both the Premier and the Native Minister have promised to use their best efforts to induce the native owners to place the control of the lake in the hands of the Government on certain conditions.¹¹²

There was no particular incompatibility between obtaining control of the lake and taking lakeside land for scenery purposes, and these objectives were often conflated. For its part, the Scenery Preservation Commission proceeded with its investigation regardless, and in due course recommended the acquisition of 150 acres of land adjoining the lake as well as all six islands for scenic purposes.¹¹³ By the end of 1904 the Lands Department had provided a schedule of the Māori owners of the land blocks in question.¹¹⁴ Cabinet considered the matter on 27 January 1905 and agreed to the acquisition.¹¹⁵ Field appears to have regarded the lake itself as being part of the scenery for the taking. On 15 May 1905 he spoke to a gathering of 150-200 constituents in Ōtaki which was recorded by the *Evening Post*:

Amongst other Acts of 1903 of which Mr. Field spoke with approval was the Scenery Preservation Act. There were places in [the] Otaki Electorate that ought to be secured under that Act. The Otaki Gorge was an instance; and though there were difficulties in the way of securing Horowhenua Lake, he thought that it too, should be acquired. It was his intention to

¹¹¹ Copy of Field's question (with date 28 June 1904) and what appears to be a proposed reply. Archives New Zealand file ACIH 16082 MA75 4/24

¹¹² 'Retrenchment in New South Wales', *Evening Post*, 15 December 1904, p 5

¹¹³ C R C Robieson, Acting Superintendent, Tourist Department, to Under Secretary, Department of Lands and Survey, 29 July 1904. Archives New Zealand file AECB 8615 TO1 142 20/148 part 1

¹¹⁴ Under Secretary of Lands to Acting Superintendent, Tourist Department, 30 December 1904. Archives New Zealand file AECB 8615 TO1 142 20/148 part 1

¹¹⁵ See annotation on Acting Superintendent to Minister for Tourist and Health Resorts, 10 January 1905, and Acting Superintendent to Under Secretary, Department of Lands and Survey, 1 February 1905. Archives New Zealand file AECB 8615 TO1 142 20/148 part 1

try next session to so arrange matters that the lake would be taken over for the benefit of one and all, at the same time retaining to the Maoris the ‘mana’ which they set such great store by.¹¹⁶

Field had in fact struck here upon what became the major contradiction in the Government’s approach to Lake Horowhenua: the lake was both to be ‘taken over’ *and* Muaūpoko were to retain their ‘mana’ over it. The two intentions were incompatible, for mana inherently meant control. In any event, Field’s speech reveals that, in mid-1905, Muaūpoko were determined to retain their authority and thus only prepared to yield a limited right to the Government under any negotiated agreement.

Image 2.2: William Hughes Field, c. 1900¹¹⁷



The taking under the Scenery Preservation Act had not been finalised by August 1905, in part because the surveyed area more than doubled the 150 acres recommended for acquisition by the commission and partly because the Lands Department placed a low priority on scenery preservation work.¹¹⁸ Field – who, although a member of the Liberal Government was,

¹¹⁶ ‘A pre-sessional address. Mr. Field at Otaki’, *Evening Post*, 16 May 1905, p 5

¹¹⁷ William Hughes Field. General Assembly Library: Parliamentary portraits. Ref: PAColl-0838-2-539. Alexander Turnbull Library, Wellington, New Zealand. <http://natlib.govt.nz/records/23092830>

¹¹⁸ Acting Superintendent to Under Secretary, Department of Lands and Survey, 20 June 1905. Archives New Zealand file AECB 8615 TO1 142 20/148 part 1. In explaining the delay in adjusting the surveyed area, the Under Secretary for Lands explained to the Tourist Department on 22 August that the ‘important and urgent land settlement work’ had to take priority over the demands of scenery preservation. Under Secretary of Lands to Acting Superintendent, Tourist Department, 22 August 1905. Archives New Zealand file AECB 8615 TO1 142 20/148 part 1

according to his biographer, ‘more concerned with constituency than with party issues’¹¹⁹ – again asked the Premier in Parliament on 2 August

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

The reply from Carroll confirmed the change in approach. He explained that it would be necessary to obtain the Māori owners’ consent before the lake and its surrounds were acquired, and a meeting would be held with them at ‘the first favourable opportunity’.¹²¹ Pickens considered it possible that the agreement and legislation that followed – neither of which mentioned the islands, for example – were a Native Department attempt to ‘head off’ the ‘far more disruptive’ Tourist Department proposals.¹²²

Field continued to apply pressure. He stressed the political consequences of the Government failing to acquire the lake’s scenery, warning Seddon that it would cost him (and the Liberal Government) his seat at the forthcoming election, which was held on 6 December. As he wrote to the Premier on 4 September 1905:

If nothing is done of a definite character about the Horowhenua Lake, as promised by you, it will go hard with the Government candidate in Levin at next election.

I have done my best, but I must of course take the blame, and if I am the candidate I must bear the brunt of the Government’s neglect.

...

There is a universal feeling in Levin that the Native Minister stands in the way, and that I am not strong enough to fight the battle.

There is no desire to do the natives an atom of injustice, and it will not only seriously prejudice the Government, but it will be a sin and a stain if the destruction of the native bush on the shores of the Lake is allowed to be completed. I hope you will do something before it is too late.¹²³

Field’s motivation about the lake was probably not just because of his desire to preserve the bush or fear of losing his seat. He was also a keen rower¹²⁴ and in February 1905 was made vice president of the Horowhenua Boating Club. As he told the club’s secretary at the time:

¹¹⁹ Joan Maclean. ‘Field, William Hughes’, from the Dictionary of New Zealand Biography. Te Ara – the Encyclopedia of New Zealand, updated 18-Sep-2013.

URL: <http://www.TeAra.govt.nz/en/biographies/3f6/field-william-hughes>

¹²⁰ NZPD, vol 133, 1905, pp 551-552

¹²¹ NZPD, vol 133, 1905, p 552

¹²² Anderson and Pickens, p 274

¹²³ Field to Seddon, 4 September 1905. Field Family: Field and Hodgkins family papers. Series -0982, letter book (11), June 1904-September 1905, qMS-0737 Alexander Turnbull Library

¹²⁴ Joan Maclean. ‘Field, William Hughes’, from the Dictionary of New Zealand Biography. Te Ara – the Encyclopedia of New Zealand, updated 18-Sep-2013.

I doubt if there is any place in the colony better suited for boat racing than the Horowhenua Lake and there should be an abundance of athletic young men in Levin ready to share in the sport. For many years I took a very active interest in rowing in the Colony ... , and though the pressure of other duties has during the past few years rendered my active participation in rowing matters an impossibility, I am as full of interest as ever. I don't know if I can be of much service to your Club, but if I can I trust the committee will not hesitate to command me. ... [A]s you have the water, the men, and the boats, I see no reason why the Club should not turn out crews to hold their own with the older clubs of the Colony.¹²⁵

The 1905 'agreement'

On 8 September 1905 Field arranged for a deputation from the Levin Chamber of Commerce to meet with Seddon to discuss the lake, among various other matters.¹²⁶ The meeting took place on 11 September. According to a report in the *Evening Post*:

A Levin deputation approached the Premier yesterday afternoon to ask that steps be taken by the Government to secure for the pakeha rights of access to the shores and surface of Lake Horowhenua; also to prevent spoliation of the beautiful native bush on the northern shore of the lake that was now going on. It was urged that draining of the lake was also necessary, to prevent the stench from decaying vegetable matter that under present conditions prevailed at certain seasons of the year, and it was incidentally shown that the drainage when carried out would make 8000 acres of land fit for cultivation. Apropos of the suggestion to preserve the land around the lake for scenery purposes, Mr. Seddon advised the deputation to approach the Scenery Commissioners with a request to acquire the land; they had the power, and they had the money available. In respect to the lake, Mr. Seddon reiterated a previously-expressed opinion that the lake should be made a national property. He believed an agreement could be arrived at if a korero between the natives and Mr. Carroll and himself were arranged, as was done in the case of the Wairarapa Lake. He would send for the leaders of the Moetoropuku [sic] tribe, and endeavour to get them down to Wellington, so that an agreement might be arrived at. If the Europeans agreed to recognise the mana of the natives over the lake there were not likely to be many objections raised, he thought. The Scenery Commissioners should see to the land around the lake, and he would give notice to them to inspect the place forthwith, and report on the advisableness of acquiring it.¹²⁷

Seddon had possibly forgotten that Cabinet had already approved the acquisition of land at the lake after an investigation by the Scenery Preservation Commission. More likely, however, is that he did not wish to make any delay appear to be the fault of the Government. His comments were notable for his confidence that a deal could be struck if 'the mana of the

URL: <http://www.TeAra.govt.nz/en/biographies/3f6/field-william-hughes>

¹²⁵ Field to Theo Perry, 2 February 1905. Field Family: Field and Hodgkins family papers. Series -0982, letter book (11), June 1904-September 1905, qMS-0737 Alexander Turnbull Library

¹²⁶ Field to Seddon, 9 September 1905. Field Family: Field and Hodgkins family papers. Series -0982, letter book (11), June 1904-September 1905, qMS-0737 Alexander Turnbull Library

¹²⁷ Untitled, *Evening Post*, 12 September 1905, p 6

natives over the lake' was recognised. This was in keeping with Field's assessment in May, and suggests that Muaūpoko had a firm expectation of maintaining control.

On 10 October 1905 Seddon wrote to Field and told him 'I am as you know endeavouring to obtain the Horowhenua Lake and negotiations are well advanced.'¹²⁸ It was around this time that Seddon, Carroll, and Field attended a meeting at the boatshed by the lake at which an unknown number of Muaūpoko were present, including Wiki Kemp (the late Major Kemp's daughter), Wirihana Hunia, and a young man called Wi Reihana, who would later recall details of the meeting. Presumably Carroll interpreted matters for the lake's owners.

At this point we know that the Government wished to obtain a formal and lasting agreement with Muaūpoko for Pākehā access to the lake for boating, and to secure the preservation of the lakeside bush. Muaūpoko in turn wished to safeguard their fishing rights and food supply as well as their ultimate control or mana over the lake. But the tribe had also been through years of dispute in the Native Land Court and were disunited. Fourteen trustees had been appointed in 1898 but only one of their number – Wirihana Hunia – is known to be been at the boatshed meeting. It is with this in mind that we need to consider the 'agreement' that arose at the meeting. An undated list of its terms appears on a file of miscellaneous papers concerning Horowhenua XI, as follows:

HOROWHENUA LAKE AGREEMENT

Between the Muaupokos and the Levin pakehas.

The Maoris were represented by Wiki Kemp and others, and the Europeans by Mr. Field,
M.H.R.

-----oO-----

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

¹²⁸ Seddon to Field, 10 October 1905. Field, William Hughes, 1861-1944: Papers. 73-128-117 Local issues, June-October 1905, including letter from Seddon on local issues. Alexander Turnbull Library

9. Subject to the foregoing, in all other respects, the Mana and rights of the Natives in association with the Lake to be assured to them.¹²⁹

The terms appear to have been examined by Sheridan of the Native Land Purchase Department. In an undated note, he wrote that

These proposals seem quite feasible, but they can only be given effect to by legislation.

The lake is held by trustees appointed under Section 7 of 'The Native Trusts and Claims Definition and Registration Act, 1893', who are registered as proprietors under the Land Transfer Act.

The Wairarapa lakes when ceded to the Crown were held by the Natives under their customs and usages and were therefore easily dealt with.¹³⁰

Reference to the 'cession' of the Wairarapa lakes and the need for legislation in this case tend to suggest the Crown thought the agreement was a firm step towards acquiring ownership of the lake. It may be for that reason that the Native Land Purchase Department was involved, although Sheridan noted at the same time that the cost of purchasing the nine acres for the boatshed would be 'about £300'.¹³¹

As it happens, however, it was subsequently made clear that the lake's ownership had not been ceded. The terms of the agreement were read in the Legislative Council by the Attorney-General, Albert Pitt, on 28 October 1905. Pitt's statement included minor variations only, except for the final clause, which he gave as 'Subject to the foregoing, in all other respects the mana and rights, and ownership of the Natives to the Horowhenua Lake Reserve to be assured to them.'¹³² Pitt explained that the owners of the lake had been represented by Wiki Kemp, Wirihana Hunia (whose name had been added by hand to the copy of the typed agreement), and others, and he 'believed' the 'pakehas were represented at the time by Mr Field, M.H.R'. Reliant as he appears to have been on the typed copy, he did not seem aware that the Premier himself had been present.¹³³

Pickens concluded that it might be a 'misnomer' to refer to the arrangements set out by Pitt as an agreement. He felt they were 'more in the nature of a set of decisions imposed on the owners'.¹³⁴ White too noted that it was unclear whether Muaūpoko entered the agreement willingly or not.¹³⁵ It seems, from this, that both White and Pickens felt that the terms too readily suited the Crown for there to have been a genuine agreement, or even an attempt at one.

¹²⁹ 'Horowhenua Lake Agreement'. Archives New Zealand file ACIH 16082 MA75 4/24

¹³⁰ 'Horowhenua Lake', undated note by Patrick Sheridan. Archives New Zealand file ACIH 16082 MA75 4/24

¹³¹ 'Horowhenua Lake', undated note by Patrick Sheridan. Archives New Zealand file ACIH 16082 MA75 4/24

¹³² NZPD, 1905, vol 135, p 1206

¹³³ NZPD, 1905, vol 135, p 1205

¹³⁴ Anderson and Pickens, p 273

¹³⁵ White, p 72

Another way of regarding the ‘agreement’, perhaps, is to consider that some arrangement was made but that the Muaūpoko understanding was not properly recorded. In other words, the historical record is too one-sided. Any negotiation would presumably have taken place orally and been written down by the Crown’s representatives (or even by Field). Furthermore, the discussion would almost certainly have been in Māori, and the agreed terms themselves would thus have necessarily been somewhat different to their translation into English. At the very least, therefore, what was typed up in the Native Department and read out in Parliament by the Attorney-General is likely to have been an approximation of what Muaūpoko agreed to, coloured by the Crown’s interpretation of the arrangement.

Still another possibility is that an arrangement was made by the Crown and Muaūpoko representatives but that, regardless of whether the recorded terms were a faithful summary of any such agreement, it was made with the wrong people.¹³⁶ Such a conclusion is not one that can be made with any confidence on the basis of the information drawn upon for this report, but others with an in-depth understanding of the title disputes of the preceding years may have a view of its likelihood. Ultimately, however, so little information exists about the 1905 agreement that it will remain something of an enigma unless more can be discovered about it.¹³⁷

Taking the agreement at face value, the nine clauses contain several notable features. For a start, and above all, Muaūpoko were guaranteed their mana over the lake, which both Seddon and Field had noted previously was so important to them. Yet this mana was said to be qualified, in that it was subject to the ‘control and management of the lake’ by a board upon which there would be only ‘some’ Māori representation. How Muaūpoko could exercise their mana over the lake while it was controlled by a Pākehā-dominated board is not clear. What Muaūpoko might have intended here is perhaps discerned by Māori references to the agreement that appeared in subsequent years.

In 1907 Eparaima Te Pahi sent a letter to the Horowhenua Lake Domain Board in the midst of a dispute about whether Pākehā had the right to fish for trout in the lake. He wrote that

the only word I was told by some of the member of the Tribe that for me and Hunia not to admit to put the fish in the lake because [sic] they only allowed the European have a boat Race in the lake, no more.¹³⁸

At around the same time the Muaūpoko members of the board, including Te Pahi, maintained that ‘when the Lake was taken over by the Government they understood distinctly it was to

¹³⁶ See, for example, Anne Hunt, ‘The Legend of Lake Horowhenua’, Wai 2200 document #A17, pp 14-15

¹³⁷ There may possibly be some record left of it by Seddon or Carroll, or perhaps an item about it in the local newspaper of the time, the *Manawatu Farmer and Horowhenua County Chronicle*.

¹³⁸ Eparaima Te Pahi to B R Gardener, Chairman, Horowhenua Lake Domain Board, 23 September 1907. Archives New Zealand file AANS W5883 25344 Box 115 NYA003751 part 1. See also untitled clipping from the *Manawatu Farmer*, 7 October 1907, attached to Field to Minister of Lands, 11 October 1907. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

be used for the purpose of rowing, boating and sports generally – certainly not for fishing’.¹³⁹ Later, in 1915, board Chairman Major George Burlinson – this time during a discussion about lowering the lake level – related how, in 1905, Wiki Kemp

consented to give the town the use of all the water of the Lake, but said ‘we will keep the fish to ourselves’. It was understood that the Natives gave them the Lake to use the surface of the water. It was merely for the purpose of a boating ground and nothing was to be touched below or above the water.¹⁴⁰

In 1931, the then board secretary F H Hudson reported that Muaūpoko appeared to believe that the tribe still owned the lake ‘and all the Board can do is to preserve their fishing and other rights and control the privileges conferred on Europeans under the Horowhenua Lake Act, 1905’.¹⁴¹

It appears therefore that Muaūpoko essentially regarded (or came to regard, if they were not party to it at the time) the 1905 agreement as one by which they ceded the limited right to Pākehā to use the lake surface for boating, with a board tasked with controlling these activities and safeguarding Māori rights. Principal among these rights was of course fishing. Notably, the agreement seems clear in clause 4 that Muaūpoko’s fishing rights in the lake were to be exclusive. White felt that the reference to the lake not being suitable for trout suggests that, if it had been, exclusive fishing rights may not have been guaranteed,¹⁴² but the intention of the aside is unclear. As it happened, trout were successfully introduced into the lake and the question of who enjoyed the right to fish for them soon became a bone of contention, as we shall see.

Cowan had remarked in his 1903 report about the ducks Muaūpoko shot for food on the lake.¹⁴³ White therefore regarded the clause in the agreement that the lake would become a bird sanctuary as appearing to be ‘either an expropriation or a cession of an important right’.¹⁴⁴ Indeed, in mid-1905 the Wellington Acclimatisation Society had noted that, at Lake Horowhenua, ‘the Maoris had, under the treaty of Waitangi, the right to shoot all year round, but would not permit Europeans to do so’.¹⁴⁵ It appears that two Māori were charged with

¹³⁹ ‘Notes on the question of allowing Europeans to fish in the Horowhenua Lake’, undated and unsigned summary. Archives Central file A/2012/6 : 5002212201 : 10 (Horowhenua Lake Domain Board 1906-1923)

¹⁴⁰ ‘Notes of a deputation that waited on the Hon. H.D. Bell, Minister of Internal Affairs, at Levin on the 9th April, 1915, with reference to the Horowhenua Lake’. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

¹⁴¹ Hudson, Secretary, Horowhenua Lake Domain Board, to Under Secretary for Lands, 26 June 1931. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3

¹⁴² White, p 72

¹⁴³ AJHR, 1908, H-2A, p 2

¹⁴⁴ White, p 72. When long-time resident John McDonald spoke on the subject of the lake’s lowering in 1911 (see below), he remarked that the lake’s owners never caught ducks on the lake but herded them when moulting in 20 or 30 canoes to the shore and caught them there. ‘The Horowhenua Lake’, Archives Central file A/2012/6 : 5002212201 : 10 (Horowhenua Lake Domain Board 1906-1923)

¹⁴⁵ ‘Local and general’, *Wairarapa Daily Times*, 2 June 1905, p 4

shooting ducks on the lake in 1929.¹⁴⁶ The clause allowing the opening of the mouth of the lake and construction of a flood-gate to regulate the lake level was also potentially a significant concession by Muaūpoko, although there was no detail here about how such an arrangement would operate. Judging by Muaūpoko concern about such matters in later years, it is quite unlikely that the tribe agreed to unilateral Pākehā decision-making on the matter. One final issue worth noting is that – significantly both for the time and for later years, to the extent that the 1905 agreement was intended to be a lasting charter of Muaūpoko rights – there was to be no discharge of pollution into the lake.

In sum, the dearth of evidence invites the speculation that Muaūpoko did not enter the reported terms of the agreement on the basis of fully informed consent. On the other hand, however, it is by no means inconceivable that some Muaūpoko, at least, agreed with Carroll and Seddon on conditions upon which Pākehā could enjoy lasting access to and use of the lake. Muaūpoko were not averse to the idea of sharing the lake *per se*. What they were concerned about – both at the time and in the years to come – was that Pākehā use of the lake might interfere with their fishing or other rights. In other words, the ‘agreement’ may have been one in which Muaūpoko were asked for a limited cession in exchange for the guarantee of their rights, and agreed cautiously but with the reassurance that the Crown would act in good faith and safeguard their interests.

The Horowhenua Lake Act 1905

Carroll quickly had the agreement written up in the Horowhenua Lake Bill. The preamble explained that ‘it is expedient that the Horowhenua Lake should be made available as a place of resort for His Majesty’s subjects of both races in as far as it is possible to do so without unduly interfering with the fishing and other rights of the Native owners thereof’. However, important differences existed between the Bill and the agreement read to the House by Pitt. The area of the lake was described in the Bill as 951 acres, which was in fact the area of the lake and its surrounding chain strip, even though there was no mention of the chain strip in the terms of the agreement. This was later to cause a considerable amount of confusion.

The 951 acres were declared a public recreation reserve under the control of a board, ‘one third at least of the members of which shall be Maoris’. Two key provisions were set out: first, ‘The Native owners shall at all times have the free and unrestricted use of the lake and of their fishing rights over the lake’; and, secondly, the board was to exercise all the functions and powers of a domain board under the Public Domains Act 1881. The lake was also declared a bird sanctuary, and provision was made for the Governor to acquire an area not exceeding nine acres for a boat shed and other buildings.¹⁴⁷

¹⁴⁶ ‘A bird sanctuary. Special Act covers Horowhenua Lake’. Unsourced clipping of 7 May 1947 on Archives New Zealand file AANS W5883 25344 Box 115 NYA003753 part 3

¹⁴⁷ A copy of the Bill is on Archives New Zealand file AECB 8615 TO1 142 20/148 part 1. The back of this is annotated ‘This Bill renders null and void the Scenery Commn recomdn to preserve native bush round this Lake now in hand’.

As can be seen, there was no reference to the guarantee of Muaūpoko's mana over the lake – undoubtedly the key term of the agreement for them. Other clauses were also omitted, such as the preservation of the bush, the regulation of the lake level, and the ban on any form of pollution. Pickens speculated that these may have been considered matters that could be addressed by the newly created board, and thus not required in the statute.¹⁴⁸

At the committee stage two important changes were made to the Bill. At Seddon's suggestion, the words 'but so as not to interfere with the full and free use of the lake for aquatic sports and pleasures' were inserted immediately after 'over the lake'. This created the contradictory situation that the guarantee to Muaūpoko of 'the free and unrestricted use of the lake' was qualified by the 'full and free use' by the public. The other significant change was that, on the motion of Field, the reference to the Governor being able to acquire up to nine acres from the Muaūpoko owners was changed to ten acres.¹⁴⁹ As both Pickens and White noted, this seemingly small change was a departure from the 1905 agreement and made without any apparent consultation with Muaūpoko.¹⁵⁰

There was some discussion of the Bill when it reached the Legislative Council on 28 October 1905. As noted, Pitt read out agreed terms, and remarked that 'it would be seen that under the terms of the agreement and of the Bill the Native rights were fully assured'. The socialist John Rigg, however, gave a rather more insightful assessment, noting in particular the contradiction between the guarantee of mana in the agreement and the provision for control by a board in the Bill:

The Hon. Mr. RIGG said that this Bill should not be allowed to pass without some remark. There was no consideration provided for the great advantage given to the Europeans, and it practically meant that the Natives of Muaupoko Tribe were making a splendid and generous gift to the people of this colony. When the value of the property was considered it was really surprising that something more had not been said in recognition of the generosity of the Natives in this matter. He should have preferred that the Government had purchased the lake outright from the Natives and make it a public reserve. The mana of the Natives – whatever that might mean – they were told, was preserved. What is that mana worth when this Bill is passed and the control of the lake handed over to a Board? Nothing. They have, of course, their fishing rights in the lake, and under the Treaty of Waitangi those could not be taken from them. He did not, of course, oppose the Bill, but he marvelled at the generosity of the Natives in making such an arrangement for the benefit of the people of this colony.¹⁵¹

Another member, Thomas Kelly, suggested that Muaūpoko's generosity be recognised 'either by giving them a grant of land or by monetary consideration'. Pitt agreed that he might well have noted the act of generosity, and undertook to bring the matter to the attention of the

¹⁴⁸ Anderson and Pickens, p 274

¹⁴⁹ NZPD, vol 135, 1905, p 1134

¹⁵⁰ Anderson and Pickens, p 274; White, p 73

¹⁵¹ NZPD, 1905, vol 135, p 1206

Native Minister ‘if it should be necessary for anything to be done in the matter’.¹⁵² This emphasis on Muaūpoko’s generosity, however, rather obscured the fact that, while the tribe had been generous, their ‘gift’ was not of the magnitude depicted. In retaining their mana over the lake they would have regarded themselves as ceding relatively little. In their own words, it was access for ‘a boat race’ or to ‘a boating ground’.

AN ACT to make the Horowhenua Lake available as a Place of Public Resort.

[30th October, 1905.

WHEREAS it is expedient that the Horowhenua Lake should be made available as a place of resort for His Majesty’s subjects of both races, in as far as it is possible to do so without unduly interfering with the fishing and other rights of the Native owners thereof:

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. The Short Title of this Act is “The Horowhenua Lake Act, 1905.”
2. The Horowhenua Lake, containing nine hundred and fifty-one acres, more or less, is hereby declared to be a public recreation reserve, to be under the control of a Board, one-third at least of the members of which shall be Maoris, to be appointed by the Governor, subject to the provisions following:—
 - (a.) The Native owners shall at all times have the free and unrestricted use of the lake and of their fishing rights over the lake, but so as not to interfere with the full and free use of the lake for aquatic sports and pleasures.
 - (b.) No person shall be allowed to shoot or destroy birds or game of any kind on the lake or within the area of the said lake reserve.
3. The Governor may acquire from the Native owners any area not exceeding ten acres adjacent to the lake as a site for boat-sheds and other buildings necessary to more effectually carry out the provisions of this Act.
4. The Board shall have and may exercise all the powers and functions of a Domain Board under “The Public Domains Act, 1881.”

The Act was passed on 30 October 1905 (see the box above for its final form) – the penultimate day of the Parliamentary session before the House rose for the 1905 election. It was a remarkably short piece of legislation for what became a complicated management and ownership regime, and its shortcomings and ambiguities were to provide ample scope for misinterpretation in the years to come. White thought that the Government may have wished ‘to avoid the inclusion of any terms in the Act that could be construed as an overt acknowledgement that either the bed or the waters of the lake were Maori property’, and so left ‘the question of ownership somewhat ambiguous’.¹⁵³ However, this perhaps overlooks

¹⁵² NZPD, 1905, vol 135, p 1206. Despite the debate in the Legislative Council, Muaūpoko were not offered any compensation.

¹⁵³ White, p 73

the fact that both the preamble and section 2(a) clearly referred to the ‘Native owners’ of the lake.¹⁵⁴

Early confusion over the effect of the legislation

Despite the references in the Act to Māori ‘owners’, confusion was soon apparent. On 14 February 1906, the Levin newspaper proprietor, William Nation (a member of the 1897 committee of Pākehā residents), wrote to Field and noted that some Levin settlers had raised capital to ‘put an up-to-date pleasure launch on the lake’:

But today we hear that the Mauopokos are dead against the launch and threaten to smash it up if one goes on the water. ... Can you inform us whether the lake is now ‘public’ property; whether we can at once put any boat upon it; whether any act, as I have stated, carried out by the natives can be legally suppressed? There appears to be an impression that the lake has not been taken over for public purposes by the Government as agreed to, at least as we thought the natives had agreed to.¹⁵⁵ [Emphasis in original.]

On 15 February Field annotated a note to Seddon on the reverse of the letter. He wrote that an official statement ‘that the lake is, under the Act, public property, subject to the limits and safeguards laid down’ would ‘doubtless have the effect of convincing the natives of the futility of attempts at obstruction’. He suggested that Seddon ‘had better hasten the appointment of the Board of Control of the lake’. Seddon asked Carroll on 27 February to give the matter his immediate attention. In a further (undated) annotation, Carroll expressed doubt as to whether any private business should be allowed to exploit the lake, but in any event suggested that ‘Private syndicates should hold their hand until Board is set up and we have declared lake *the property of the public*’ (emphasis added).¹⁵⁶ On 6 March 1906 the *New Zealand Times* referred to the lake as having been recently ‘nationalised’.¹⁵⁷ Later, on 12 September 1906, the MP for Southern Maori, Tame Parata, asked Carroll in the House whether he would ‘introduce legislation this session to effect the repeal of “The Horowhenua Lake Act, 1905,” which appropriates a valuable estate without the concurrence of the Native owners’. Carroll said the matter would be considered to see whether any grievance existed, but ‘It is not proposed to interfere with the Act.’¹⁵⁸ He said nothing to refute Parata’s notion that the Act passed ownership of the lake to the Crown.

The membership of the board

Cabinet considered the constitution of the board on 3 March 1906 and decided that there would be six Pākehā and four Māori members, with the local MP to be consulted on the

¹⁵⁴ Section 3 did as well, albeit more in the context of the land around the lake.

¹⁵⁵ W C Nation to Field, 14 February 1906. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

¹⁵⁶ Field to Seddon, 15 February 1906; Seddon to Carroll, 27 February 1906; Carroll to Seddon, undated. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

¹⁵⁷ Untitled extract from the *New Zealand Times*, 6 March 1906, on Archives New Zealand file AADS W3562 Box 251 1/220 part 1

¹⁵⁸ NZPD, 1906, vol 137, p 508

names of the Pākehā appointees and the ‘natives mentioned by Mr Carroll to be placed on Board’.¹⁵⁹ It seems that Muaūpoko had nominated these individuals themselves.¹⁶⁰ As a result of the Cabinet decision, the Minister of Lands asked Field to nominate four ‘suitable European gentlemen’ for appointment to the board.¹⁶¹ These were to be in addition to the respective managers of the Levin state farm and the Weraroa boys’ training farm, James Drysdale and George Burlinson, who were also to be appointed members.¹⁶² After a public meeting in Levin, Field supplied the names of Basil Gardener, the newly elected first mayor of Levin; James Prouse, a sawmiller; Henry Mackenzie, a medical practitioner; and Edward Prendergast, a solicitor.¹⁶³ Eventually the appointment of the 10 board members was gazetted on 10 May 1906. The Māori members were Wiki Keepa, Wirihana Hunia, Paraima Te Paki, and Waata Muruahi.¹⁶⁴

Waata Muruahi resigned before even attending a board meeting. In his letter of resignation he nominated John R McDonald to succeed him, describing him as ‘Sheepfarmer’ and ‘Maori linguist’. The letter was annotated on 18 June 1906 that Carroll had arranged this, and that McDonald was understood to be a half-caste.¹⁶⁵ Yet he was not; he was the son of the Hector and Agnes McDonald, the prominent early Scottish settlers who had leased land near the lake from Muaūpoko and Ngāti Raukawa.¹⁶⁶ Despite this, McDonald’s appointment was gazetted on 2 August 1906.¹⁶⁷ This seems to have breached the requirement in the Act for at least a third of the board’s members to be Māori. There can be no doubt that McDonald was placed on the board to represent Muaūpoko interests – he was described as fulfilling this role in a letter Burlinson (who had been elected as the board’s first chairman) wrote to the Lands Department on 28 August.¹⁶⁸ McDonald was also little more than an intermittent representative, attending only 10 of 33 board meetings between August 1906 and September 1916.¹⁶⁹

Arguably, the failure to have at least one third Māori representation made the board inquorate, a situation that was never fixed before the legal requirement for the balance between Māori and Pākehā members was amended in 1916. In July 1914 the then board

¹⁵⁹ Hand-written note entitled ‘In Cabinet, 3 March 1906’. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

¹⁶⁰ Untitled extract from the *New Zealand Times*, 6 March 1906, on Archives New Zealand file AADS W3562 Box 251 1/220 part 1

¹⁶¹ Minister of Lands to Field, 5 March 1906. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

¹⁶² Annotation by W S Hardy, 6 March 1906, on Minister of Lands to Field, 5 March 1906. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

¹⁶³ Field to Minister of Lands, 28 April 1906. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

¹⁶⁴ *NZ Gazette*, No. 36, 10 May 1906, p 1196

¹⁶⁵ Waata Muruahi to Under Secretary for Lands, no date. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

¹⁶⁶ Anthony Dreaver. ‘McDonald, Agnes and McDonald, Hector’, from the Dictionary of New Zealand Biography. Te Ara – the Encyclopedia of New Zealand, updated 13-Nov-2013 URL: <http://www.TeAra.govt.nz/en/biographies/1m2/mcdonald-agnes>

¹⁶⁷ *NZ Gazette*, No. 65, 2 August 1906, p 2097

¹⁶⁸ Burlinson to Under Secretary for Lands, 28 August 1906. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

¹⁶⁹ Archives Central file A/2012/6 : 5002212201 : 10 (Horowhenua Lake Domain Board minute book 1906-1918)

chairman, Gardener, noted that the members of the board had been in office for over seven years and needed to be reappointed. He added that ‘one at least must be Natives’,¹⁷⁰ which invites the interpretation that he was not even familiar with the terms of the (short) statute that governed his board’s activities.

The deficiency in Muaūpoko representation after McDonald’s appointment was exacerbated by Wiki Keepa’s failure to attend board meetings. After being present at the first two meetings, in July and August 1906, she did not attend again, although one apology was recorded for her in June 1908.¹⁷¹ The Lands Department advised Burlinson in April 1911 – practically five years after her last appearance – that he would need to find a suitable replacement who ‘will require to be a Maori to maintain the strength of the Maori members and comply with the provisions of Section 2 of the Horowhenua Lake Act, 1905’.¹⁷² It was still not apparent to the department, therefore, that the board’s composition already failed to comply with section 2. Burlinson wrote on 24 April 1911 that ‘the Natives’ had been informed of the vacancy and asked to select a replacement. ‘Should they not do so by the next meeting [which was held on 17 June]’, he added, ‘the Board will probably nominate a suitable person for appointment’.¹⁷³

On 16 June 1911 Wirihihana Hunia wrote to the domain board chairman advising that ‘I hereby give you notice that I appoint John Broughton in place of Wiki Kemp to fill the position heretofore held by Wiki Kemp as member of the Board.’¹⁷⁴ Burlinson reported on this to the Under Secretary for Lands at the end of July, adding that ‘the Natives had a meeting and recommend Hanita Henare. The number signing the nomination of Hanita Henare is twentytwo [sic].’¹⁷⁵ At the board meeting of 2 September 1911 Burlinson reported that 35 had in fact signed the petition calling for Hanita Henare to be appointed ‘to fill the vacancy created by the continual absence of Wiki Keepa’.¹⁷⁶ Burlinson’s initial impatience and the competing recommendations from the lake’s owners were both early indications of the difficulties that would continue to beset Muaūpoko board appointments, particularly given the lack of clarity over how they should be selected.

¹⁷⁰ Minutes of board meeting of 20 July 1914. Archives Central file A/2012/6 : 5002212201 : 10 (Horowhenua Lake Domain Board minute book 1906-1918, folio 52).

¹⁷¹ Archives Central file A/2012/6 : 5002212201 : 10 (Horowhenua Lake Domain Board minute book 1906-1918). Wirihihana Hunia’s attendance record was also particularly poor (10 out of 34 meetings between 1906 and 1916), while Pairama Te Paki’s was not significantly better (16 out of 29 before his resignation was noted in 1914).

¹⁷² Under Secretary for Lands to Burlinson, 1 April 1911. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

¹⁷³ Burlinson to Under Secretary for Lands, 24 April 1911. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

¹⁷⁴ Wirihihana Hunia to Chairman, Horowhenua Lake Domain Board, 16 June 1911. Archives New Zealand file AANS W5885 25344 Box 115 NYA003751 part 1

¹⁷⁵ Burlinson to Under Secretary for Lands, 31 July 1911. Archives New Zealand file AADS W3562 Box 251 1/220 part 1. The Muaūpoko letter, dated 22 July 1911, is held on Archives Central file A/2012/6 : 5002212201 : 10 (Horowhenua Lake Domain Board 1906-1923).

¹⁷⁶ Archives Central file A/2012/6 : 5002212201 : 10 (Horowhenua Lake Domain Board minute book 1906-1918, folio 41).

Early meetings of the board must have been difficult because of the language barrier. At its first meeting, on 21 July 1906, Burlinson noted that the Muaūpoko members supported his nomination as chairman through an interpreter.¹⁷⁷ It seems likely that the business of the meetings was conducted in English, with interpretation of decision points for the Māori members. The board needed to adopt a set of by-laws and on 31 July 1906 the Under Secretary for Lands provided, as an example, a copy of the by-laws of the Patea Domain Board.¹⁷⁸ Burlinson had to ask for a translation of them into Māori for the Muaūpoko members.¹⁷⁹

Image 2.3: The islands Roha a te Kawau and Waikiekie, near the lake outlet, 1908¹⁸⁰



¹⁷⁷ Burlinson to Under Secretary for Lands, 23 July 1906. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

¹⁷⁸ Under Secretary for Lands to Burlinson, 31 July 1906. Archives New Zealand file AADS W3562 Box 251 1/220 part 1. It is not clear whether the Pātea by-laws were chosen for any particular reason.

¹⁷⁹ Burlinson to Under Secretary for Lands, 2 August 1906. Archives New Zealand file AADS W3562 Box 251 1/220 part 1. The Patea Domain Board by-laws were adopted in full by the board with an addendum stating that nothing in the by-laws 'shall be construed to prevent the native owners having at all times the free and unrestricted use of the lake and their fishing-rights over the lake, but so as not to interfere with the full and free use of the lake for aquatic sports and pleasures'. See Burlinson to Under Secretary for Lands, 28 August 1906, and the printed by-laws forwarded by the Under Secretary to Burlinson on 16 November 1906. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

¹⁸⁰ Photograph by Leslie Adkin. Te Papa Tongarewa, reference A.005860.
<http://collections.tepapa.govt.nz/Object/123422>

The water race

Quite aside from the effects of deforestation, by this stage the Pākehā settlers of the district had already had a significant environmental impact on Lake Horowhenua. Around 1900 plans were developed for a water race to be constructed to bring water to the town from the Ōhau River, since Levin had no natural surface streams. The discharge point would be the lake. Dreaver – who did not provide a reference – noted that Muaūpoko objected with good reason, fearing the pollution of the lake.¹⁸¹ But for the citizens of Levin, the water race marked what they believed to be a significant advance. The Premier came to town for the official opening ceremony on 5 February 1902. The race comprised 50 miles of open channels and served 500 properties, eventually flowing into the lake through 13 separate outlets.¹⁸²

Not all were quite so enthusiastic. The Sanitary Commissioner for Wellington province pointed out that the first house the race passed would throw its slop into the race, polluting it for all downstream. A resident later recalled that, on hot days in summer, ‘the Levin street water races would be clogged with pigs’. They were also polluted by ducks and geese and rubbish swept from shop doorways. It did not take the authorities long to realise that a high pressure pipeline system was needed to bring clean water instead, although the old races continued to serve as open drainage channels for many decades.¹⁸³

Evidence of Muaūpoko protesting against the water race scheme at the time can be found in later recollections. In 1934 a member of the tribe called Hurunui (probably Tutaua Hurunui, a longstanding domain board member) told an inquiry into Muaūpoko’s grievances about the lake that:

I remember a meeting at the Town Hall at Levin when the question of water race matters was gone into. The water-races were coming from Ohau. The person who spoke to the Maoris was a man named Gardiner [presumably Basil Gardener, then of the Chamber of Commerce]. The natives at the time said the water was to be used by the Europeans and must not come to the Horowhenua Lake. The Maoris would not agree to the water coming to the Lake. They objected but the pakeha people took no notice of them.¹⁸⁴

The tribe’s counsel at the time, David Morison, said that Muaūpoko had been opposed to the water race because it would raise the level of the lake.¹⁸⁵ But pollution of the lake’s waters was probably also a concern. The town effectively had a set of open surface drains emptying into the lake, as well as the seepage of effluent from pit toilets into the groundwater and from there also into the lake.¹⁸⁶ The 1905 agreement stated that there would be no pollution of the

¹⁸¹ A J Dreaver, *Horowhenua County and Its People: A Centennial History*, The Dunmore Press on behalf of the Horowhenua County Council, Levin 1984, p 209

¹⁸² ‘Levin water race’, *Manawatu Standard*, 6 February 1902, p 4

¹⁸³ Dreaver, *Levin*, pp 102, 105; Dreaver, *Horowhenua County*, pp 209-210

¹⁸⁴ Minutes of the Harvey-Mackintosh inquiry held at Levin on 11 July 1934. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

¹⁸⁵ ‘Committee of inquiry – Levin, 11th July 1934’ (minutes of the Harvey-Mackintosh inquiry). Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

¹⁸⁶ Dreaver, *Horowhenua County*, pp 206, 209

lake, and it seems that Muaūpoko could have mounted an argument at the time on that ground alone that the discharge from the water race therefore needed to stop.

The acquisition of lakeside land for the domain

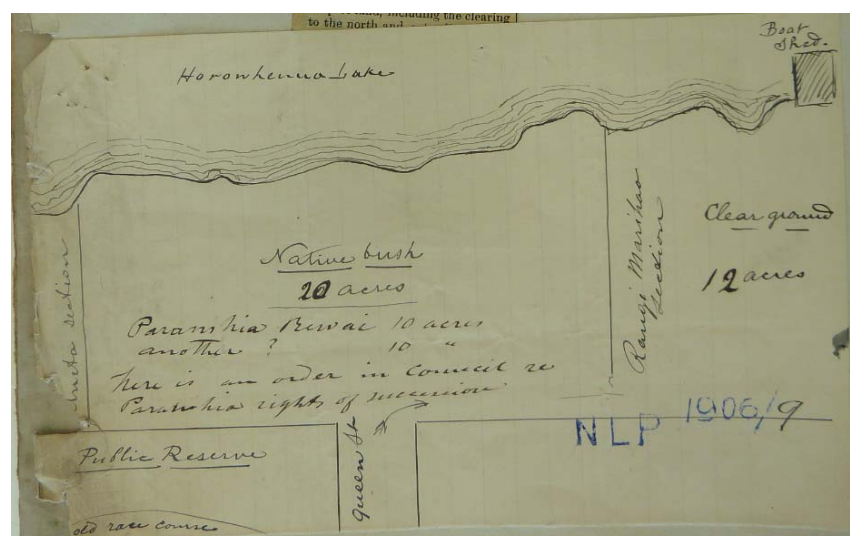
Even before the formal establishment of the board, Levin's settler population had given thought to where the 10 acres of lakeside land should be located that the Government was permitted to acquire under the Horowhenua Lake Act for the erection of boatsheds and other buildings. A public meeting was held for this purpose on 9 January 1906. The *Manawatu Farmer* reported the next day that:

The opinion of the meeting was that the clearing where the boat shed is situated ought to be reserved, but that in order to preserve the bush the Government be asked to acquire the whole of the land, including the clearing to the north and extending southwards as far as Henita's [sic] boundary, making thirty-two acres in all.

A resolution to this effect was carried unanimously.

It was also decided to forward a copy of the resolution to Mr Field, with the request that he at once bring the matter under the notice of the Premier.¹⁸⁷

Figure 2.2: Sketch plan of the 32 acres sought by Levin settlers alongside the lake, January 1906¹⁸⁸



Nation wrote to Field about the meeting the day it took place. He put it that the ten acres were insufficient to include both a nice clearing, an attractive stand of bush, and a right of way at the end of Queen Street, and so 'the opinion was unanimous that it would be wise for the Government to take over the land of three native owners, in all 32 acres'. As he explained,

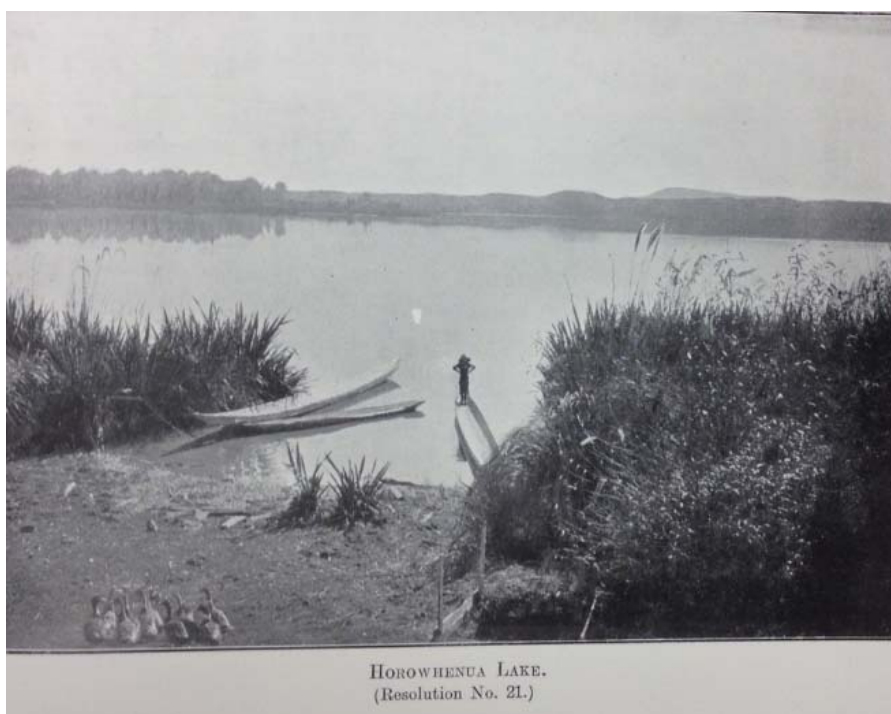
¹⁸⁷ 'The lake' *Manawatu Farmer*, 10 January 1906. Clipping on Archives New Zealand file AECZ 18714 MA-MLP1 76 d 1906/9

¹⁸⁸ This sketch may have been prepared by Nation. It was forwarded by Field to Sheridan in the Native Land Purchase Department on 11 January 1906. Archives New Zealand file AECZ 18714 MA-MLP1 76 d 1906/9

I, personally, am deeply interested in the development of the Horowhenua Lake and land adjoining as a public resort. While sympathising with the Natives in their feelings of regard for a place that has so many old associations for them, I feel that under judicious European and Maori control this beautiful sheet of water and the stretch of native bush on the eastern shore can be made a very great attraction.¹⁸⁹

The provision for the acquisition of lakeside land in the 1905 Act appears to have presented those advocating the taking of Māori land for scenic purposes with a new opportunity to press their case. Field forwarded the news report and Nation's letter to Sheridan of the Native Land Purchase Department, noting that the Premier in fact already had an idea of taking 150 acres for scenery preservation, including the 32 acres in question.¹⁹⁰ On 25 February 1906 the district surveyor, Charles Adnam Mountford, reported that he had completed his survey and urged the acquisition of 107 acres of lakeside land for scenic purposes.¹⁹¹ Mountford's survey was presumably the culmination of the work first initiated after Cabinet approved the taking of lakeside land under the Scenery Preservation Act in early 1905.

Image 2.4: Photograph of the lake used to illustrate the intended scenery acquisition, 1906¹⁹²



The board itself considered the matter at its meeting of 24 July 1906. The 10 acres it identified for acquisition were mainly owned by Te Rangimairehau and were part of the same

¹⁸⁹ Nation to Field, 9 January 1906. Archives New Zealand file AECZ 18714 MA-MLP1 76 d 1906/9

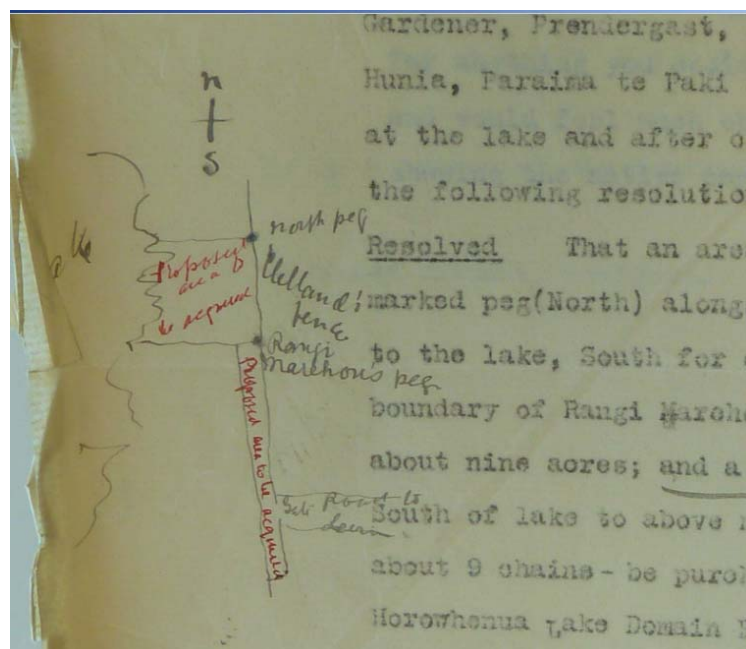
¹⁹⁰ Field to Sheridan, 11 January 1906. Archives New Zealand file AECZ 18714 MA-MLP1 76 d 1906/9

¹⁹¹ Mountford to Chief Surveyor, 25 February 1906. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

¹⁹² AJHR, 1906, C-6, opposite p 6. Resolution 21 noted that, with regard to 157 acres at the lake, 'Survey now being made of area to be taken and reserved' (p 6).

area sought at the January public meeting. Burlinson noted to the Under Secretary for Lands that until the land was acquired ‘the boating club and others are unable to make use of the facilities of the lake’. He drew a sketch of the area in question in his report on the 24 July meeting to the Under Secretary for Lands (see figure 2.2 below). But the board also identified a further eight acres to the south of Te Rangimairehou’s boundary, which included ‘a beautiful piece of Native bush which otherwise be [sic] destroyed. If preserved would form an ideal ground – indeed does at present – for pioneers.’¹⁹³ This too was a subset of the 32 acres Nation and others argued should be obtained. In the Lands Department, W S Hardy, a clerk, remarked to the Chief Clerk on 8 August that ‘there is no provision in the Act for the purchase of more than 10 acres’. An annotation appeared in the margin that ‘This might be done under Scenery Act if considered desirable.’¹⁹⁴

Figure 2.3: Burlinson’s sketch of the lakeside land sought for the Horowhenua Lake Domain.¹⁹⁵



On 28 August Burlinson reported that he and John McDonald (who would probably have acted as interpreter) ‘interviewed Te Rangimairehou [sic] with regard to the value of his land’:

At first he would not sell, and asked for an offer. I suggested £15 an acre as an outside value, and this he agreed as a fair price, but a few minutes afterwards, he wanted £55 an acre.

He is very old and getting in his dotage. It is almost impossible to transact any business with him, for he does not know his own mind for five minutes.¹⁹⁶

¹⁹³ Burlinson to Under Secretary for Lands, 25 July 1906. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

¹⁹⁴ Hardy to Chief Clerk, 8 August 1906. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

¹⁹⁵ Burlinson to Under Secretary for Lands, 25 July 1906. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

After some confusion as to the location of the 10 acres the board had selected, Mountfort visited the site with Mayor Gardener. He reported to the Chief Surveyor that the board now wanted all of B38 (Te Rangimairehau's block), which contained about 13 acres. He added that 'natives are willing to sell' this – that is, not just the 10 acres the Act provided for – as 'the remaining three acres are useless to them'. The board also wanted all of B39 to the south, which comprised about 20 acres (which they stated the owners were also willing to sell) or at least the eight acres of it immediately adjoining B38.¹⁹⁷ Thus the board's position now matched that reached at the public meeting on 9 January 1906 in favouring the acquisition of 32 acres.

A deputation from Levin met the Minister of Lands on 3 September. According to a news report they stressed that the ten acres provided for in the Act was 'not quite sufficient, and in order to give proper road access, it was necessary to acquire some adjoining property'. At the same time the Government 'was recommended to take advantage of the opportunity to secure twenty acres of beautiful native bush'. The Minister said the Act limited the acquisition to ten acres and nothing could be done until the now-lapsed powers of the Scenery Preservation Commissioners had been renewed through legislation.¹⁹⁸ Shortly after this, on 12 September 1906, Field asked the Government in the House whether the 1905 Act would be amended to permit the acquisition of a larger area than the ten acres provided for in the legislation. The Minister of Lands said there was no plan to do so, as the Native Department opposed the idea.¹⁹⁹ Field responded that the area was worthless to its Māori owners and that they were anxious to sell. He called Carroll's actions 'obstructive' and suggested that 'The Native Minister had all along been against granting the lake for public purposes, and it was only because of the sympathetic action of the late Mr. Seddon that they were enabled last session to declare the lake a public park'.²⁰⁰

Carroll observed that Field had 'almost questioned the right of the Native Department to be interested in such a question'. He wondered whether Field thought the department 'had no right to take care of the interests of the Natives whenever such interests were liable to appropriation'. And he queried why, if the owners were so eager to sell, they did not make an application themselves.²⁰¹ As it happened, however, Field met with Carroll separately and 'obtained his assurance that he is not averse to the increasing of the area'. But Carroll apparently thought it would be better to wait 'until we have a meeting, in the nature of a picnic, of both Native and Europeans, on the shore of the lake, after the session closes'. Field

¹⁹⁶ Burlinson to Under Secretary for Lands, 28 August 1906. Archives New Zealand file AADS W3562 Box 251 1/220 part 1. It did not appear to occur to Burlinson that Te Rangimairehau needed trusted advice so that he was not taken advantage of in such a state.

¹⁹⁷ Mountfort to Chief Surveyor, 1 September 1906. Archives New Zealand file AADS W3562 Box 251 1/220 part 1. B39 belonged to Paranihia Riwai and Roka Hakopa.

¹⁹⁸ 'Horowhenua reserve', *New Zealand Times*, 5 September 1906. Clipping on Archives New Zealand file AADS W3562 Box 251 1/220 part 1

¹⁹⁹ NZPD, vol 137, 1906, p 510

²⁰⁰ NZPD, vol 137, 1906, p 514

²⁰¹ NZPD, vol 137, 1906, p 523

saw no good reason for waiting and remarked to Burlinson that Carroll as ‘usually proceeds by very easy stages’.²⁰²

At this point a delay occurred in the acquisition of the ten acres, because the Lands Department assumed any further action would need to wait on the passage of legislation. Burlinson was exasperated. He wrote on 5 December 1906 that:

The land referred to is individualised – the only obstacle is an intractable Maori over 88 years of age who believes he can squeeze more out of the Government because he knows it is needed by the Board.²⁰³

When it learnt of the department’s position, the board impatiently asked for the acquisition of the ten acres to proceed immediately.²⁰⁴ Carroll assured Gardener that ‘there need be no apprehension as to the ultimate result. Everything is being done to bring about a speedy settlement of the difficulty.’²⁰⁵ A purchase agent was duly appointed and by May 1907 valuations had been obtained.

Presumably for the sake of expediency, the Under Secretary for Lands wrote to his counterpart in the Public Works Department on 11 July 1907 that it was proposed to take the land in question under the Public Works Act, and asking for this to be actioned.²⁰⁶ The Under Secretary for Public Works, however, considered that the word ‘acquire’ in the Horowhenua Lake Act did not carry that meaning. He suggested that the Lands Department seek an opinion from the Crown Law Office or purchase the land ‘by private treaty’.²⁰⁷ The Under Secretary for Lands was persistent. He wrote again, explaining that:

It is found difficult to arrange mutually satisfactory prices for land acquired from the Natives, and as the Public Works Act provides for the Native Land Court fixing the compensation to be paid for the land so taken, it is deemed advisable to secure the land in this way.

I shall, therefore, be obliged if you will kindly take the necessary action as previously requested.²⁰⁸

²⁰² Field to Burlinson, 20 September 1906. Archives Central file A/2012/6 : 5002212201 : 10 (Horowhenua Lake Domain Board 1906-1923)

²⁰³ ‘Memorandum from the Chairman of the Horowhenua Lake Domain Board detailing steps taken up to December 5th 1906 with regard to urging on the Native Department the purchase of ten acres at Horowhenua Lake’, 5 December 1906. Archives Central file A/2012/6 : 5002212201 : 10 (Horowhenua Lake Domain Board 1906-1923)

²⁰⁴ Burlinson to Under Secretary for Lands, 15 December 1906. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

²⁰⁵ Native Minister to B R Gardener, Chairman, Horowhenua Lake Domain Board, 11 March 1907. Archives New Zealand file AANS W5883 25344 Box 115 NYA003751 part 1

²⁰⁶ Under Secretary for Lands to Under Secretary for Public Works, 11 July 1907. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

²⁰⁷ Under Secretary for Public Works to Under Secretary for Lands, 15 July 1907. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

²⁰⁸ Under Secretary for Lands to Under Secretary for Public Works, 19 July 1907. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

The Under Secretary for Public Works took the initiative himself and referred the question to the Solicitor-General, expressing doubt that the construction of boatsheds could be considered a public work. The Solicitor-General agreed.²⁰⁹

The Lands Department was thus forced to revert to the option of negotiating a purchase. As it transpired there were few difficulties. The native land purchase officer, H Dunbar Johnson, reported that he had bought 9¼ acres of B38 for £196.11.3, with Te Rangimairehau undertaking at the time to sell the remainder of B38 (comprising 3 acres, 3 roods, and 37 perches) to the Crown at the same rate per acre (of £21.5.-).²¹⁰ Carroll approved of this course on 27 August 1907, remarking that ‘I think it would be as well to secure the balance of the section. It will clear up the site for the sheds in obviating the nuisance of divided ownership.’²¹¹ Johnson returned to Levin on 4 September and purchased the three roods of B39 from Paranihia Riwai and Roka Hakopa that were required to give access to the rest of the reserve from Queen Street for £17.8.-, as well as the remaining section of B38 from Te Rangimairehau for £84.12.-. He noted that he had arranged for a certificate of title to be issued in favour of the Crown for the entire area, comprising 13 acres, 3 roods, and 37 perches.²¹² Gardener wrote to Carroll to pass on a ‘hearty note of thanks’ from the domain board.²¹³

It seems that there may have been some ceremony to mark the transfer of the land to the Crown. Hector McDonald – the grandson of Hector and Agnes McDonald – recalled in 1946 that:

I was there at Te Nguru Nguru when the ceremony of the handing over of the property took place. There was a great holiday. Maori chiefs strutted about in their native finery. Hakas were given by stalwart men of Muaupoko, led by Hopa Heremaia. Speeches were made assuring the Pakehas of the Maoris’ friendship, and also pointing out the fact that they, the Pakeha, now had a real interest in the lake, and would henceforth have unrestricted access to it. The lake, to the Maori, had always been as a mother, because of its wealth of food and its associations as a refuge in time of danger and adversity.

The recipients of this magnificent gift, or at least their spokesmen, said that the gift was a noble gesture.²¹⁴

²⁰⁹ Under Secretary for Public Works to Solicitor General, 25 July 1907, and annotated reply of the Solicitor General on the same, 9 August 1907. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

²¹⁰ H Dunbar Johnson to Under Secretary for Lands, 24 August 1907. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

²¹¹ Under Secretary for Lands to Native Minister, 26 August 1907, with Carroll’s annotation of 27 August 1907. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

²¹² H Dunbar Johnson to Under Secretary for Lands, 5 September 1907. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

²¹³ B R Gardener, Chairman, Horowhenua Lake Domain Board, to Native Minister, 7 September 1907. Archives New Zealand file AANS W5883 25344 Box 115 NYA003751 part 1

²¹⁴ ‘Horowhenua Lake’, letter to the editor from Hector McDonald, *Chronicle*, 29 April 1946. Clipping on Archives New Zealand file AANS W5883 25344 Box 115 NYA003753 part 3

There is presumably a chance that McDonald was referring here to the occasion of the 1905 agreement itself, as he mentioned both the ‘present of ten acres’ as well as ‘the right to use the lake for boating and whatever aquatic [sic] sports the town’s residents cared to indulge in’.²¹⁵ But there is no clear evidence to support this possibility.

In the end, therefore, the provision in the 1905 Act limiting the Crown to the purchase of a maximum area of 10 acres proved meaningless. There was no thought even given to creating a separate title for the additional area of B38 purchased from Te Rangimairehau. On the other hand, the Crown had not yet been able to acquire the other areas of the eastern shore that it had its sights on. On 17 June 1908 Field wrote to the Minister of Lands and expressed his great disappointment that the additional 20 acres had not been acquired. As he put it:

I am of course aware of the difficulty of securing native land for scenery purposes, but I feel satisfied that the owner of this piece would readily sell at a reasonable price if judiciously approached. ... I would strongly urge too that this session be not allowed to go by without legislating to render lawful the taking of native land for scenery purposes.²¹⁶

The Surveyor-General, Thomas Humphries, also believed that the 20 acres ‘contains a very picturesque piece of Native bush and should at all hazards be preserved from destruction’.²¹⁷ The Wellington Scenery Preservation Board visited the lake and resolved that it was ‘advisable to acquire the 33 acres of native land south-west of the boat-shed site and west of the present Lake Domain, as an addition to the Domain, provided that the local authorities find half the purchase money’.²¹⁸ In 1908 and 1909 the board repeatedly urged that the lake front from the section 38 as far as the Makomako Road extension be purchased by the Government. In response to a further representation on the subject from Field, the Minister of Lands repeated that no action would be taken unless half the purchase money was found locally. This, he explained, was the standard policy.²¹⁹

In its annual report for the year ended 31 December 1909, the board again urged the acquisition of the 20 acres. Hardy annotated a note to F T O’Neill, the Assistant Under Secretary, on 28 May 1910 that ‘The acquisition of additional land is recommended in each Annual Report.’ O’Neill responded that ‘The price asked for the land is high and no agreement could be arrived at with the Native Owner. I do not think we need take any action at present.’²²⁰ There matters sat for the time being. However, this was by no means the end of the Crown’s ambitions to acquire further Muaūpoko land to add to the lake domain. As will

²¹⁵ ‘Horowhenua Lake’, letter to the editor from Hector McDonald, *Chronicle*, 29 April 1946. Clipping on Archives New Zealand file AANS W5883 25344 Box 115 NYA003753 part 3

²¹⁶ Field to Minister of Lands, 17 June 1908. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

²¹⁷ ‘Notes on Horowhenua Lake’, 10 September 1908. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

²¹⁸ Extract from the minutes of the Wellington Scenery Preservation Board, 11 September 1908. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

²¹⁹ Minister of Lands to Field, 22 March 1909. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

²²⁰ Extract from the annual report of the Horowhenua Lake Domain Board for the year ended 31 December 1909, with annotations by W S Hardy on 28 May 1910 and F T O’Neill on 30 May 1910. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

be seen, the Crown's insistence on this point proved a stumbling block in later decades to the settlement of Muaūpoko's growing list of grievances over the lake.

The 'theft' of boats

In December 1906 Burlinson received a letter from W B Macintosh, the captain of the Horowhenua Boating Club. He claimed that the club's boatshed had been 'repeatedly broken open' and that 'the natives' had taken out boats for their own use. Jack Broughton had had a boat for 18 months which he claimed he had been loaned, but Macintosh had no recollection of 'any such arrangement'.²²¹ The same day the vice-captain of the club, Thomas Jenman, also wrote to say that he had recently located the boat Broughton had been using on and off for the past 18 months on the other side of the lake. He had locked it inside the shed but the next day the shed had again been broken open and the boat was gone. Jenman also claimed that 'Three weeks ago a native was seen to gallop down to the shed, take an oar away with him and it has not been returned.' Jenman said they had been told that one of the lost boats was 'lying in the rushes in front of Mr. Proctors but no reliance can be placed on this statement as the natives told us before where to find it, but it was not there'.²²²

Macintosh and Jenman attended the board meeting on 15 December 1906 and presented their case. After considering the matter the board resolved 'That the by-laws would be strictly enforced and all property of Europeans & Natives would be protected.' A Muaūpoko perspective on the matter was not recorded since only Burlinson, Gardener, Prouse, and Drysdale were present.²²³

On 14 December a letter was published in the *Manawatu Farmer* from an 'Old member of the club'. The correspondent claimed that the boating club had been robbed and that it was 'a disgrace to the Mauopoko tribe that such doings are allowed'. With few exceptions, he continued:

the tribe is indifferent to any friendship between themselves and the Europeans, utterly selfish with regard to the lake; and what is worse – if the tribe knows that the boats have been taken, the more intelligent of that tribe are a party to the theft if they do not insist on the boats being returned.²²⁴

The 'old member' went on to criticise the Native Department, the Native Minister, the Levin police, and the domain board for their lack of action in dealing with 'native thieves'. He

²²¹ W B Macintosh to Burlinson, 10 December 1906. Archives Central file A/2012/6 : 5002212201 : 10 (Horowhenua Lake Domain Board 1906-1923)

²²² Letter from Thomas Jenman addressed 'Dear Sir' (probably to Burlinson), 10 December 1906. Archives Central file A/2012/6 : 5002212201 : 10 (Horowhenua Lake Domain Board 1906-1923)

²²³ Minutes of the board meeting of 15 December 1906. Archives Central file A/2012/6 : 5002212201 : 10 (Horowhenua Lake Domain Board minute book 1906-1918, folio 9). It does not appear that a board meeting lacked a quorum if no Māori members were present.

²²⁴ 'The Horowhenua Lake difficulty', *Manawatu Farmer*, 14 December 1906. Clipping on Archives Central file A/2012/6 : 5002212201 : 10 (Horowhenua Lake Domain Board 1906-1923)

asked whether ‘the Levin people will take quietly the affronts of the natives who are doing all they can to keep them from using the lake?’ He claimed that Māori in the past had ‘killed’ the holding of regattas with their ‘greed’ for half the gate money, and suggested that boating club members would resort to violent confrontation to get their boats back. He finished with this warning:

I warn the Maoris that the public of Levin will get too irritated with them over the lake business and refuse to grant them much courtesy when matters are settled. It is too much to expect that fifty or sixty of all ages of a tribe of whom very few have aspirations beyond the eels they get in the lake, can long go on as they are going. If they will hold to prejudice against the white people; if they will be selfish instead of honourable; if they wink at those who have stolen the boats, then a struggle will begin and they will be worsted.²²⁵

It is difficult to say what was happening between Muaūpoko and the boating club in late 1906. Without further evidence there must be limits to any speculation, but there is certainly a good chance that it was not simply a case of opportunistic theft. The boating club may have given some offence or breached some tapu and were being punished accordingly. Alternatively, the tribe may have been attempting to demonstrate that they still held authority over the lake. As can be seen from the letter of the ‘old member’, the Pākehā public included some who were not only contemptuous of Muaūpoko but also aggressively opposed to any Muaūpoko attempts to assert their own mana or control over the lake.

Image 2.5: The annual moonlight carnival held by the Horowhenua Boating Club, c. 1909²²⁶



²²⁵ ‘The Horowhenua Lake difficulty’, *Manawatu Farmer*, 14 December 1906. Clipping on Archives Central file A/2012/6 : 5002212201 : 10 (Horowhenua Lake Domain Board 1906-1923)

²²⁶ Horowhenua Historical Society Inc. <http://horowhenua.kete.net.nz/en/site/images/5382-boating-carnival-1909-lake-horowhenua>. See also ‘Levin’, *Dominion*, 3 February 1909, p 8.

Fishing rights in the lake

As noted above, Muaūpoko secured exclusive fishing rights in the 1905 agreement, in part perhaps because Levin's settlers did not regard the lake as being suitable for trout. The 1905 Act was not so specific: it did not mention any public fishing rights, merely referring to the public's free use of the lake for 'aquatic sports and pleasures', but nor did it state categorically that the native fishing rights were exclusive. However, when interpreted in the context of the 1905 agreement, it seems most likely that the intent behind the legislation was to confer exclusive fishing rights upon Muaūpoko. That was certainly the tribe's understanding.

The reference to the lake being unsuitable for trout suggests either that early attempts to introduce the fish had failed or that the waters were simply deemed too shallow or the spawning grounds too limited. In July 1907, however – and presumably without any consultation with Muaūpoko – the Levin branch of the Wellington Acclimatisation Society liberated 750 yearling rainbow trout and 50,000 sea run trout into the local waterways. These were in addition to the 10,000 trout that had been liberated by the Wellington branch. An officer of the Levin sub-committee was Henry Mackenzie, who of course was now also a domain board member.²²⁷ The society wrote to the board and requested that permission be granted to fish for trout in the lake.²²⁸ The matter was considered at a special meeting of the board on 16 September 1907, at which Mr W Andrew, the secretary of the local branch of the Acclimatisation Society, was present. The board resolved that the chairman (who was then Mayor Gardener) would seek a legal opinion in Wellington.²²⁹

After the meeting a board member – probably Burlinson – held a separate meeting with Wirihana Hunia and Pairama Te Paki, as well as 'a leading man on the Lake' named Simeon, with a G Phillips acting as interpreter. They explained that the lake provided them with a variety of fish which were caught at different times of the year. There had been large numbers of what they described as 'mountain trout' or 'native trout', but these had been 'destroyed by the imported trout'. The meeting notes then recorded that:

The feeling of the Natives is distinctly adverse to Europeans fishing on the Lake for they say that they have to depend for sustenance a great deal on the fish in the Lake and if the fish were driven away [or] interfered with it would be a very serious matter for them and I can see a great deal of force in this. It would be a great pity if the Natives were to suffer through a few Europeans wishing to enjoy the sport of fishing, moreover the Natives contend that when the Lake was taken over by the Government they understood distinctly it was to be used for the purpose of rowing, boating and sports generally – certainly not for fishing and they say that if these new things are sprung on them they will not know how they stand. It would be a

²²⁷ 'Levin matters', *Evening Post*, 8 January 1908, p 2

²²⁸ Minutes of the board meeting of 7 September 1907. Archives Central file A/2012/6 : 5002212201 : 10 (Horowhenua Lake Domain Board minute book 1906-1918, folio 16).

²²⁹ Minutes of the board meeting of 16 September 1907. Archives Central file A/2012/6 : 5002212201 : 10 (Horowhenua Lake Domain Board minute book 1906-1918, folio 17).

great pity if the harmonious relations at present existing between the two races were destroyed through such a small matter as a few persons fishing on the Lake.²³⁰

At the next board meeting, on 5 October 1907, the aforementioned letter was received from Pairama Te Paki. It will be recalled that Te Paki wrote that other members of the tribe had told him not to allow fish to be put into the lake and that the Pākehā were only allowed to use the lake for a boat race. Te Paki added ‘and now the European like to have more about the lake, so they told me they not going to have it. So I left to lake Domain Board to fix things up, or put it off[f].’²³¹ At the 5 October meeting Burlinson proposed (and the meeting agreed) that the Acclimatisation Society be written to and told that, ‘In view of the doubts existing as to the Native fishing rights, that this Board is not prepared to deal with the Society’s request to allow holders of fishing Licenses access to the Lake for the purpose of fishing.’²³² Field in turn drew the Minister’s attention to ‘the difficulty the Board is in as to their right to issue licences for trout fishing, and their decision not to issue licences so long as the uncertainty exists’.²³³

According to the news account that reported on Te Paki’s letter to the board, Gardener said he had discussed the matter with Leonard Reid, an assistant law officer at the Crown Law Office, who said ‘the question of the natives having any right to fish for trout was never thought of when the Act was passed. The only thing to do was to get a special Act passed dealing with the whole matter.’²³⁴ Field suggested to the Minister that ‘An amendment of the “Horowhenua Lake Act 1905” may be necessary to set the doubt at rest.’²³⁵ The Minister replied that he agreed that this might be needed to ‘effectively deal with the question’.²³⁶

By January 1908 the press reported that the lake was ‘teeming with magnificent trout’ and that local anglers were frustrated.²³⁷ Mackenzie hoped the lake would soon be opened to Pākehā for fishing, probably after the passage of legislation.²³⁸ At some point Field wrote again to the Minister of Lands and asked him whether a trout fishing licence issued by the domain board could be used on the lake without the consent of the Māori owners of the surrounding lands. The letter was referred for a reply to John Millar, the Minister of Marine,

²³⁰ ‘Notes on the question of allowing Europeans to fish in the Horowhenua Lake’, undated and unsigned summary. Archives Central file A/2012/6 : 5002212201 : 10 (Horowhenua Lake Domain Board 1906-1923)

²³¹ Epairama Te Paki to B R Gardener, Chairman, Horowhenua Lake Domain Board, 23 September 1907. Archives New Zealand file AANS W5883 25344 Box 115 NYA003751 part 1

²³² Minutes of the board meeting of 5 October 1907. Archives Central file A/2012/6 : 5002212201 : 10 (Horowhenua Lake Domain Board minute book 1906-1918, folio 19)

²³³ Field to Minister of Lands, 11 October 1907. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

²³⁴ Untitled clipping from the *Manawatu Farmer*, 7 October 1907, attached to Field to Minister of Lands, 11 October 1907. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

²³⁵ Field to Minister of Lands, 11 October 1907. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

²³⁶ Minister of Lands to Field, 21 October 1907. Archives New Zealand file AADS W3562 Box 251 1/220 part 1. Such euphemisms, which usually referred to a ‘satisfactory’ arrangement or conclusion, always meant an outcome that was satisfactory to the Crown or local Pākehā community.

²³⁷ ‘Otaki and Levin’, *Evening Post*, 3 January 1908, p 8

²³⁸ ‘Levin matters’, *Evening Post*, 8 January 1908, p 2

who told Field on 24 January 1908 that the matter had been referred to the law officers for an opinion. Their advice (which must also have come from Leonard Reid – see below) was that ‘the Native owners’ consent is required, as “The Horowhenua Lake Act, 1905,” reserves to such owners “the free and unrestricted use of the Lake, and of their fishing rights over the lake”’.²³⁹ Field annotated a message on the back of this letter to the chair of the board. He noted the board’s likely disappointment and asked, if the Act was to be amended, whether there was anything else the board wished to have changed at the same time.²⁴⁰

The exclusion of Pākehā anglers became a source of growing resentment. In April 1909 the local branch of the Acclimatisation Society was said to be gathering ‘a great many signatures’ on a petition to the Prime Minister calling for the lake to be opened to anglers.²⁴¹ In February the same year the *Evening Post* had commented that:

Pakehas may visit the Horowhenua Lake and admire the play of sunbeams or moonbeams upon the pretty waters, but they are not allowed to make a cast for fish. The Maori regards the lake as one of his sacred reserves, and exclaims, ‘Te Treaty Waitangi’ when the white man expresses a desire to toss a dry fly upon the placid waters. Also the Maori, in a vain hope to divert the European holder of the fishing license to other waters, declares that there are no trout in the lake. A correspondent, ‘Lift the Ban,’ writes, however, that ‘from having spent many pleasant hours on the lake’s lovely bosom he can contradict that statement most emphatically. Many tempting displays of large silvery fish, disturbed when feeding, have been seen and recognised, without the slightest doubt, as fine trout.’ After commenting forcibly on the apathy of the authorities and townspeople of Levin in allowing the use of the lake to be irritatingly restricted, the complainant concludes:– ‘There is little doubt that one of the finest sheets of water in the Dominion is locked up and of no use, when a correct reading of an old treaty, combined with a common-sense view of the matter, would place it within the reach of fishermen[.]’²⁴²

By January 1911, however, the *Chronicle* was more optimistic that the new generation of ‘educated’ and ‘clear-sighted’ Māori would not cling so jealously to their privileges:

If the present embargo against fishing the lake waters (which operates in the case of all but men with Maori blood) were removed, a great deal would be done to attract week-end visitors to our midst. Already Horowhenua Lake contains trout in large numbers and of abnormal size; and there is no good reason why perch should not be acclimatised and made numerous in its waters, pending the time when Natives of the district shall consent to a widening of the present privileges which they possess. The old type of Maori – jealous of all his privileges, of life habits remote, and of disposition exceedingly exclusive – has passed away; and his educated successor is clear-sighted enough to know that a prosperous community means more to him than any jealously-guarded but seldomly-used privilege could do. We have very little

²³⁹ Minister of Marine to Field, 24 January 1908. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

²⁴⁰ Field to Chairman, Horowhenua Lake Domain Board, 30 January 1908. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

²⁴¹ ‘Rod and gun’, *Evening Post*, 17 April 1909, p 14

²⁴² ‘Tapu to Pakehas. The Horowhenua Lake’, *Evening Post*, 9 February 1909, p 3

doubt that the present embargo will be lifted amicably as soon as the endeavurers develop sufficient strenuousness.²⁴³

In other words, the *Chronicle* was calling for more authoritative action. Field sent this clipping to Carroll on 24 January 1911. In his covering letter Field wrote that:

As you are aware there is a good deal of discontent among the European population arising from the fact that only Natives can fish in this lake. At least that is the generally accepted view of the law on the subject. It would be of immense advantage to Levin, and add considerably to the attractiveness of the place, without in any way I think prejudicing the Native interests, if the lake were thrown open to Sportsmen of whatever race. The object of the European would of course be to tangle for the trout and other imported fish, if any. The Natives on the other hand, as far as I know, make no attempt to catch these fish, but confine their attention almost entirely to eels. I should be glad if you could institute steps necessary to effect the desired change so far as fishing rights in this lake are concerned. It would be an exceedingly popular thing to do.²⁴⁴

The board itself called for Muaūpoko to be won over through the offer of money. In its annual report for 1911 it wrote that 'it would be a good thing if the Natives allowed Europeans holding licences to fish for trout on the Lake on payment to the Natives of a sum to be mutually agreed on'.²⁴⁵

In January 1914 the matter was taken up by the Minister of Internal Affairs, Francis Henry Dillon Bell, who had been told about the situation when in conversation with members of the Levin Borough Council.²⁴⁶ Bell wrote to the Solicitor-General, explaining that, while the lake was 'said to be full of trout', Pākehā anglers appeared to be excluded by section 2(a) of the 1905 Act. He asked both whether 'free and unrestricted' Māori fishing rights would really be interfered with if others were allowed also to fish, and whether the Māori right to fish should be the same as that conferred by the Treaty of Waitangi, namely 'confined to eels and Native fish'. If section 2 conferred 'upon the Native owners the sole right to poach trout in the Lake', he said, 'then the Act requires amendment'.²⁴⁷

Bell received an instant reply from H H Ostler, Assistant Law Officer. Ostler's legal opinion had significant consequences and is worth setting out in full:

The Horowhenua Lake Act 1905 is not an Act conferring any rights on Natives; its purpose is to take away all rights previously held by the Native owners, except those expressly reserved.

²⁴³ 'Horowhenua Lake', *Horowhenua Chronicle*, 17 January 1911, p 2. Cited also in White, p 74

²⁴⁴ Field to Native Minister, 24 January 1911. Archives New Zealand file ACIH 16036 W2459 Box 45 5/13/173 part 1

²⁴⁵ 'Extract from the Annual Report of the Horowhenua Lake Domain Board for the year ended 31st December 1911'. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

²⁴⁶ P W Goldsmith, Town Clerk, to Minister of Internal Affairs, 8 January 1914. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

²⁴⁷ Minister of Internal Affairs to Solicitor-General, 14 January 1914. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

Prior to the passing of the Act the Lake, being a comparatively small one, probably belonged to the owners of the adjoining land ad medium filum,²⁴⁸ but in 1905 some of those owners were Europeans, and no Native owner of adjoining land could point to any defined portion of the Lake as owned or lawfully occupied by him. All that is preserved to the Native owners by the Act is that they shall at all times have the free and unrestricted use of the Lake and of their fishing rights over it. Natives never had the right to fish for trout without a license except on land in their lawful occupation, by virtue of section 90 of the Fisheries Act 1908, a section which applies to Natives and Europeans alike. Therefore as the Horowhenua Lake Act only preserves such rights as they had and grants no new rights, and as no Native is in lawful occupation of any part of the bed of the Lake now, no Native can fish for trout in the lake without a license without committing an offence against Part II of the Fisheries Act 1908.

Moreover the Act made the Lake a public recreation ground, and available as a place of resort for all His Majesty's subjects. I see no reason why the provisions of the Fisheries Act should not apply to this lake as well as to all lakes which are not 'private waters'. The fishing rights preserved to the Native owners over the Lake are rights to fish for eels, flounders, mullet and all other fresh-water fish except salmon and trout. The fishing for trout there by Europeans will not interfere with that right, and is therefore, in my opinion, governed by the Fisheries Act 1908, and not prohibited even impliedly by the Horowhenua Lake Act.²⁴⁹

Bell noted to the Levin Town Clerk the following month that he had passed the information on to John Robertson (the new Otaki MP who had unseated Field in 1911), who in turn would convey it to Levin's mayor.²⁵⁰ At around the very same time, the *Chronicle* reproduced much of the opinion, triumphantly proclaiming that the notion that only Māori could fish for trout in the lake was 'an exploded fiction'.²⁵¹

Ostler's opinion was seriously flawed. For example, he seemed unaware of the chain strip and therefore made the erroneous assertion that some riparian owners were Pākehā. More fundamentally, his claim that the 1905 Act was designed to take away all previously held rights except those expressly reserved showed no understanding whatsoever of the purpose of the Act, which had been to implement the terms of the 1905 agreement. It would have been impossible for Ostler to reach these conclusions if he had studied the terms of the agreement. Ostler's opinion could not have been based on any investigation, as he responded to Bell's request within a day.

Oddly, the Lands Department was not informed directly about Ostler's interpretation of the statute they administered. In May 1914, F T O'Neill, the Assistant Under Secretary for Lands, wrote that he had been told that Pākehā residing near Lake Horowhenua had been informed that they had the right to fish in the lake. He suggested to Hardy that he might inquire of the Department of Internal Affairs to see if officials there knew anything of it.

²⁴⁸ Here a marginal note states 'This is not correct – See provisions of Horowhenua Block Act 1896 & orders issued thereunder'.

²⁴⁹ H H Ostler, Assistant Law Officer, to Minister of Internal Affairs, 15 January 1914. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

²⁵⁰ Minister of Internal Affairs to Town Clerk, 14 February 1914. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

²⁵¹ 'Horowhenua Lake and the Maoris' trout rights: an exploded fiction', *Chronicle*, 13/2/14, p 2

However, and even more surprisingly, Internal Affairs staff knew nothing of any such right. Accordingly, O'Neill suggested that the chairman of the domain board be informed that no such right existed.²⁵²

A letter from the Under Secretary to the chairman of the board dated 7 May 1914 stated simply, 'I have the honour to inform you that Europeans have no right to fish in Horowhenua Lake.' It is not entirely certain that this was sent, however. A copy was annotated by O'Neill on 15 May:

Refer to your interview with me in regard to permission or the right to fish in H Lake having been granted to Europeans. I have to state that I have been unable to obtain any information that such permission has been given or authorised. Before writing please ring up Mr Black P.S. to Hon Mr Bell and ask if he is aware of the granting of permission[.]

Hardy must have done so and at last discovered Ostler's opinion, which he passed on to O'Neill.²⁵³ O'Neill accordingly wrote to Burlinson on 26 May letting him know that the Crown Law Office had given an opinion that Pākehā were permitted to fish in Lake Horowhenua under licence.²⁵⁴

In the meantime, Burlinson had taken it upon himself to write to Bell directly. He explained that the *Chronicle* had recently reported that Pākehā could fish on the lake with licences. He felt it his duty as chairman of the board to forward the opinion provided by the Minister of Marine on the subject in 1908. Moreover, he supplied some of the context that had been entirely missing from Ostler's consideration:

I should like to point out that the whole of the lake is Native property and it is only by an act of grace on the part of the natives that the permission contained in the Act 1905 was granted for Europeans to use the surface of the lake for aquatic and other purposes. The matter of fishing has on several occasions been brought before my Board, and it has always been held that Europeans had no right to fish on the lake without the consent of the native owners.

I should be extremely obliged if you would kindly let me know what the actual position is in regard to the fishing rights as the matter is sure to come up before my Board very shortly. Some of the natives I am given to understand are much concerned.²⁵⁵

Burlinson's letter demonstrated the existence of at least some official qualms over the general usurpation of Māori rights over the lake.

²⁵² O'Neill to Hardy, 2 May 1914; Hardy to O'Neill, 4 May 1914; and O'Neill to Hardy, 5 May 1914. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

²⁵³ Under Secretary for Lands to Chairman, Horowhenua Lake Domain Board, 7 May 1914, annotated with notes from O'Neill to Hardy, 15 May 1914; Hardy to O'Neill, 22 May 1914; and O'Neill to Hardy, 23 May 1914. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

²⁵⁴ O'Neill to Burlinson, 26 May 1914. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

²⁵⁵ Burlinson to Minister of Internal Affairs, 15 May 1914. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

Ostler soon received back-up, however, from the Solicitor-General, John Salmond. Salmond wrote to Bell on 4 June 1914 and asserted that the Pākehā right to fish in the lake was clearly covered by the reference to ‘aquatic sports and pleasures’. He wrote:

I regret that I am unable to agree with the contrary opinion given by Mr. Leonard Reid on the 21st January 1908. ... Section 2(a) clearly indicates that the Lake is to be available to the public fully and freely for aquatic sports and pleasures. Fishing must be taken to be one of the aquatic sports and pleasures so indicated. Whatever the precise scope may be of the saving clause providing that Native owners shall have the free and unrestricted use of the Lake and of their fishing rights over the Lake, I do not think that it can be so interpreted to confer upon the Natives the exclusive right of fishing for trout and the right of preventing the public from enjoying this particular ‘aquatic sport and pleasure’.²⁵⁶

Once again, an opinion had been provided about the meaning of the 1905 Act without any consideration of the agreement it was meant to give effect to. But, short of a determination by the courts, Salmond’s opinion was definitive. Bell subsequently wrote to Burlinson quoting from Salmond’s letter and noting that ‘The opinion of the Solicitor-General must be taken as a guide by the local authorities and by the public. If the Natives desire to question it they can have every facility.’²⁵⁷

That was by no means the end of the matter, however. In October 1917 the secretary of the Wellington Acclimatisation Society reported that Māori had ‘warned white anglers against attempting to fish in the Lake’ despite ‘the chain of No Man’s land all around the Lake edge’. He asked the Minister of Internal Affairs (George Russell), on behalf of the society’s council, to obtain an opinion on the matter from the Attorney-General.²⁵⁸ The *Dominion* repeated the substance of the society’s concerns the following week, contending that ‘a chain of land has been reserved round its edge in order that the public shall always have access to the water’.²⁵⁹ The society’s letter was referred to the Lands Department for a response. On 2 November 1917 O’Neill wrote to the secretary of the society and quoted Ostler’s 1914 opinion.²⁶⁰ Unsurprisingly, the secretary replied that ‘The tenor of the opinion is quite satisfactory from the Council’s point of view’.²⁶¹

²⁵⁶ Solicitor General to Minister of Internal Affairs, 4 June 1914. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

²⁵⁷ Minister of Internal Affairs to Burlinson, 8 June 1914. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

²⁵⁸ Secretary, Wellington Acclimatisation Society, to Minister of Internal Affairs, 11 October 1917. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

²⁵⁹ ‘Horowhenua Lake: Maori and Pakeha fishing rights’, *Dominion*, 18/10/17, p 9

²⁶⁰ F T O’Neill to Secretary, Wellington Acclimatisation Society, 2 November 1917. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

²⁶¹ Secretary, Wellington Acclimatisation Society, to Under Secretary for Lands, 23 November 1917. Archives New Zealand file AADS W3562 Box 251 1/220 part 2. This good news would have pleased the society in a year in which the Levin branch had reported poor trout fishing at the lake. Hot weather and shags were blamed, and the society offered a bounty of 1s 6d for every pair of shag legs brought to the branch secretary, so long as the birds were shot over the rivers (shooting on the lake itself being disallowed). By contrast that year, protected species in the Wellington Acclimatisation Society’s district included opossums. See ‘Feather, fur and fin’, *Chronicle*, 5 May 1917, p 2

Local supporters of acclimatisation had received a boost earlier in the year. In February, board secretary Gardener asked the Chief Inspector of Fisheries, Lake Ayson, which fish would be ‘most suitable’ to stock in the lake. The board also wanted to know what damage large trout did to smaller fish species, with Gardener explaining that there were thousands of eels in the lake and some trout weighing between six and 15 pounds. This part of the query was possibly due to concerns expressed by the Muaūpoko members, as Gardener added by way of explanation that ‘one of the functions of the Board is to protect the fishing rights of the Native Race’.²⁶² Ayson visited Levin in March 1917 and boated over the lake with the mayor and three members of the local acclimatisation society. He concluded that the lake could be ‘fully stocked’ with rainbow trout if 1,000 to 2,000 yearlings were released each year. He also regarded the lake as well suited to perch, and recommended their introduction.²⁶³ Long a trout-fishing enthusiast,²⁶⁴ he recorded no comment on the possible predations of larger trout.

Lowering the lake

Pākehā interest in lowering the lake had existed for some time. As early as 1902, it was reported that ‘Residents of Levin are considering the possibility of lowering the Horowhenua Lake to permit of draining 3000 acres of land suitable for dairy farms’.²⁶⁵ Drainage was also mentioned by the deputation to Seddon in 1905. In 1906, when he was surveying the land to be acquired for boatsheds and the like, Mountford mentioned that the lake could be lowered by up to a foot and a half ‘clearing out and deepening any shallows in the Hokio Stream, for the first 30 or 40 chains’. This would dry up swamp alongside the lake and make a road practicable, but also destroy the beauty of the lake as, once dried, fires would run through the swamps.²⁶⁶

The push to lower the water level gained some momentum in June 1911 when a deputation from the Chamber of Commerce met the board on the subject. At this stage Wiki Keepa had not been replaced as a board member and thus the board only had two Māori members out of the eight who attended the meeting. The Chamber of Commerce put forward its case. Mr Vincent, its secretary, said that the lake was higher than it had been before and that it had a pebbly foreshore. If the water level was lowered, he said, the shore could be converted into a walkway or drive ‘and make the lake more attractive to visitors and pic-nic parties’. Mr Brown, the editor and manager of the *Chronicle*, said ‘it would be a good thing for the district if a large area could be recovered for agricultural purposes’. Mr W M Clark, a draper, said

²⁶² Gardener to L F Ayson, Chief Inspector of Fisheries, 17 February 1917. Archives New Zealand file ADOE 16612 M1 178 2/12/133 part 1. The domain board minute book does not explain what discussion may have led to this part of the approach to Ayson.

²⁶³ Ayson, Chief Inspector of Fisheries, to Secretary, Marine Department, 23 March 1917. Archives New Zealand file ADOE 16612 M1 178 2/12/133 part 1

²⁶⁴ R. M. McDowall. ‘Ayson, Lake Falconer’, from the Dictionary of New Zealand Biography. Te Ara – the Encyclopedia of New Zealand, updated 4-Jun-2013
URL: <http://www.TeAra.govt.nz/en/biographies/3a25/ayson-lake-falconer>

²⁶⁵ ‘News in brief’, *New Zealand Herald*, 3 September 1902, p 6

²⁶⁶ Mountford to Chief Surveyor, 25 February 1906. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

that ‘it all hinged on whether the natives and the Domain Board would be agreeable to the lake being lowered’.²⁶⁷

The deputation stayed on while the members of the board discussed the idea. Peter Bartholomew was in favour, venturing that the lake was higher than it had been for years because the outlet had not been cleared. He said that he had ‘never seen the Lake in such a serious state which is simply full of filth and neither man nor beast can drink from it’.²⁶⁸ He felt that ‘a good deal of the growth about the lake would be got rid of and that the effect would be to cleanse the lake’. Henry Mackenzie worried about algae round the edge of the lake decaying if the level was lowered, leaving an unpleasant smell. James Prouse and Basil Gardener were cautious and said the proposal needed to be carefully evaluated, but recognised what they saw as significant advantages.²⁶⁹

John McDonald was then reported by Burlinson to have said that:

... he had resided in the district for over fifty years, that he was born near the mouth of the Horowhenua Lake and therefore had a thorough knowledge of it. In the early days the then native chief had the outlet of the Hokio Stream cleared out every year, just before the season arrived for catching eels. He had the eel pas renewed, had all the rapau [sic] cleared away, and if there was anything interfering with the stream, it was dug out and cleared off; since these days the same interest has not been taken, nor was there any single individual who had authority to make the natives do the work.²⁷⁰

McDonald said there had previously been other species of fish in the lake that had thrived because it was kept ‘nice and clean’, but that these species were now extinct.²⁷¹ Burlinson recorded that McDonald:

... believed that the cause was the pollution of the water through it becoming partly stagnant. He closed by saying that the foreshore of the lake would be much improved, and he did not think it would be detrimental to any solitary individual in the town or to anybody else.²⁷²

McDonald’s statement was remarkable given that he, albeit a Pākehā, was theoretically on the board to represent Muaūpoko’s interests. Yet he appeared to blame the tribe for failing to keep the outlet clear and thus making the lake ‘stagnant’ and harming the fishery. Moreover, he was in favour of the lake being lowered, arguing that it would cause no detriment. In this

²⁶⁷ Burlinson to Under Secretary for Lands, 28 June 2011. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

²⁶⁸ ‘The Horowhenua Lake’, Archives Central file A/2012/6 : 5002212201 : 10 (Horowhenua Lake Domain Board 1906-1923)

²⁶⁹ Burlinson to Under Secretary for Lands, 28 June 2011. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

²⁷⁰ Burlinson to Under Secretary for Lands, 28 June 2011. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

²⁷¹ ‘The Horowhenua Lake’, Archives Central file A/2012/6 : 5002212201 : 10 (Horowhenua Lake Domain Board 1906-1923)

²⁷² Burlinson to Under Secretary for Lands, 28 June 2011. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

regard he could hardly have been representing Muaūpoko's interests, because this was the opposite of what the tribe wanted.

Paraima Te Paki spoke next, revealing Muaūpoko's actual position. Burlinson noted Te Paki's explanation that:

the tribe had met, he had laid before them the proposal to lower the lake and asked them what answer he was to give, and the tribe said that they did not wish the lake to be lowered. On two successive occasions he had met them again and he told them that they had better think the matter over and on each occasion they gave the same answer.²⁷³

Te Paki made the obvious point that what may well be causing the lake waters to be so high were the water races. He added that lowering the lake would make no difference to the smell and 'green stuff' around the lake, which he said appeared every autumn.²⁷⁴ Ultimately, however, Te Paki deferred to McDonald, stating that 'Mr. McDonald had said all that was to be said about the lowering of the lake'. Wirihana Hunia did the same, saying that 'he had nothing much to add, but he coincided with what Mr. MacDonald [sic] had said'. This lack of assertiveness appears to have been a repeating pattern. It will be remembered that, after expressing the tribe's concern about fishing rights in 1907, Te Paki had deferred to the board as well with his remark that he 'left to Lake Domain Board to fix things up'.

The meeting closed with an agreement that Burlinson would write to the Minister of Lands and seek his views, including on whether a public meeting of townspeople and Māori should be held. In his report on the meeting Burlinson concluded by setting out his requests of the Lands Department:

I should feel much obliged if you would, at as early a date as possible, let me have your advice as to whether:

- (1) The Board has the power to alter the level of the lake.
- (2) Whether, if it has the power, the Board would be liable in any way.
- (3) Whether, if the Board had the power, and the Board incurred no liability, it would be advisable on the information that it has before it, to lower the lake.
- (4) Whether the chain reserve showed on the map has been dedicated to the Government.
- (5) If so please give particulars.
- (6) If the land referred to has been dedicated to the Government and forms portion of the Lake under the control of the Board, would the owners of the properties abutting on the chain reserve have any riparian rites [sic].²⁷⁵

²⁷³ Burlinson to Under Secretary for Lands, 28 June 2011. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

²⁷⁴ McDonald stated that this was due to a taniwha, which both Te Paki and Wirihana Hunia confirmed. Burlinson to Under Secretary for Lands, 28 June 2011. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

²⁷⁵ Burlinson to Under Secretary for Lands, 28 June 2011. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

The issue of ownership of the chain reserve is discussed separately below.

The Solicitor-General was asked for his opinion on the board's questions.²⁷⁶ With respect to lowering the level of the lake, he concluded that, aside from lacking any funds for the purpose, the board had no power to do so or to enter onto adjoining lands to carry out work on the outlet. Moreover, 'Any attempt by the Board to interfere with the level of the Lake could be prevented by legal proceedings taken by the dissenting Native owners.'²⁷⁷

The *Chronicle* reported on this state of affairs after the board met on 2 September 1911. At the meeting Gardener and Bartholomew remained adamant that the lake level had to be lowered. Gardener even contended that lowering the lake would be to Muaūpoko's advantage, since the raised level was a 'source of trouble and inconvenience', while Bartholomew argued that the water races had raised the lake level by three and a half feet and that the lake was rising still. He felt that, until the level was lowered, there was nothing to stop Muaūpoko getting an order from the Supreme Court to prevent the water from the high pressure system and water races entering the lake. Indeed, in this regard Hanita Henare said 'If the pakehas of Levin wanted the level altered let them turn their water races and high pressure water supply into the Ohau.' Both Te Paki and Henare were in favour of the outlet being 'cleaned out', but Henare said 'he would not let a spade go in anywhere'. Perhaps in the hope of finding a compromise, Burlinson proposed that those most affected by the lake level should pay Muaūpoko to clear out the obstructions in the outlet and thus reduce the water level. Burlinson was sure that 'the Natives could be trusted to do satisfactorily the work of clearing the outlet'.²⁷⁸ In March 1917 Hanita Henare was paid £12 by the board 'for drainage work in the Hokio Stream'.²⁷⁹ This was for the 'cleaning out' of two eel weirs and other clearance work.²⁸⁰

The county council appears in 1913 to have sought a legal opinion on its rights over the Hōkio Stream. It was advised by William Stewart Park, a Levin lawyer, that it could exercise the powers of a drainage board under section 17 of the Land Drainage Act 1908. Park added:

It is purely a question of fact as to whether the exercise by the Council of its powers under the above mentioned Act will prejudicially affect any rights of the Natives, and even though such rights may be affected, I am of opinion that the Council may exercise its powers. A statute of the kind under review affects the vested interests of Europeans and I see no reason for the interest of natives being exempt unless expressly stated to be exempt by the statute.²⁸¹

²⁷⁶ Under Secretary for Lands to Solicitor General, 21 July 1911. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

²⁷⁷ Solicitor General to Under Secretary for Lands, 16 August 1911. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

²⁷⁸ 'Horowhenua Lake', *Chronicle*, 4 September 1911, p 2

²⁷⁹ Henare's receipt dated 12 March 1917. Archives Central file A/2012/6 : 5002212201 : 10 (Horowhenua Lake Domain Board vouchers 1916-1921)

²⁸⁰ Secretary, Horowhenua Lake Domain Board to James Malcom, County Engineer, 19 December 1916. Archives New Zealand file AANS W5883 25344 Box 115 NYA003751 part 1

²⁸¹ William Stewart Park to County Clerk, 6 March 1913. Archives Central file HDC 00018: 15: 2/4/1

Of course not all Pākehā interests wished the lake to be lowered. In 1915 the secretary of the Horowhenua Boating Club complained to Bell that the lake had been ‘illegally lowered’ by the owners of swamp land at the southern end of the lake, with the County Engineer’s consent. As a result of this happening thieves had been able to enter the club’s boatshed and steal gear and the club no longer had the ‘workable depth of water’ round the shed they had always enjoyed. The mayor argued in response, however, that the lake was not below its normal level. Field – who was now back in Parliament as a Reform MP, and thus again part of the Government – recommended that before Bell respond a ‘competent public officer’ should proceed to Levin and make a full inquiry.²⁸²

As it transpired the following month Bell made his own way to Levin for what was a pivotal meeting (see below). He came to discuss not only the lake’s lowering but also the ownership of the chain strip and the role on the board of the Levin Borough Council.

The ownership of the chain strip

In 1907 the board chairman, Mayor Gardener, inquired as to the ownership of the chain strip around the lake. Was it a road reserve vested in the Government, or did Muaūpoko hold some right over it?²⁸³ The Chief Surveyor advised that the chain strip had been included in the area reserved by the 1905 Act:

This places it in a somewhat anomalous position, for that Act reserves merely the lake, of an area of 951 acres, without specifying the one chain strip as part of it. To make up the area it is necessary to include the one chain strip, and it was intended by Judge Mackay in making his Court Order on which the Act was based, that the strip should be included, as he specifically says so therein. The Act is defective in not specifying it. That can be amended no doubt, but the strip is subject to the disabilities imposed by the Act and the Domain Board Act of 1881.²⁸⁴ [Emphasis in original.]

It evidently did not occur to the Chief Surveyor that the Act was defective in implicitly including the 50-acre chain strip. In any event, the Under Secretary advised Gardener that the chain strip was subject to the Act but it was ‘doubtful if your Board has power to sell or cut the flax thereon, though it is pretty certain that the natives have not’.²⁸⁵

²⁸² H B France, Secretary, Horowhenua Boating Club, to Minister of Internal Affairs, 26 February 1915, and Field to Bell, 2 March 1915. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

²⁸³ Under Secretary of Lands to Commissioner of Crown Lands, 14 October 1907. Archives New Zealand file AADS W3562 Box 251 1/220 part 1. **In his comments on the 1905 agreement Sheridan had stated that ‘A public road is reserved around the HOROWHENUA Lake’ (emphasis in original). ‘Horowhenua Lake’, undated note by Patrick Sheridan. Archives New Zealand file ACIH 16082 MA75 4/24**

²⁸⁴ Chief Surveyor to Under Secretary for Lands, 15 October 1907. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

²⁸⁵ Under Secretary to Gardener, 18 October 1907. Archives New Zealand file AADS W3562 Box 251 1/220 part 1

As noted, in 1911 the board asked for confirmation as to ‘Whether the chain reserve showed on the map has been dedicated to the Government’. On this occasion the Solicitor-General’s advice was that:

This reserve is not in any way referred to in the Horowhenua Lake Act and is therefore not subject to that Act or to the control of the Board. I have no information as to the Native title to this land, but I presume that the reserve is Native land reserved and held in common ownership under some order of the Native Land Court.²⁸⁶

Despite this setback the board continued to seek control over the chain strip, and it remained a live issue when Bell visited Levin in April 1915.

The role on the board of the Levin Borough Council

In July 1914 Burlinson reported to the Lands Department that the board felt it would be preferable if its Pākehā members were members of the Levin Borough Council. The members would then ‘be able to bring a greater amount of influence and interest to bear’. Burlinson related how it had been difficult in the past to get a quorum ‘and owing to having only the surface of the water to deal with and having practically no funds to do anything with, it is no wonder there is a good deal of lethargy’. The seven-year terms of all members had expired, and two Māori vacancies existed. He recommended John Broughton and Hare Tuaki to fill these positions. Both he and the other government-appointed member, James Drysdale, wished to step down, and he supported the four nominees put forward by the mayor, Gardener (who included Gardener himself).²⁸⁷ Burlinson’s suggestion was evidently agreed to. He was informed the following month that a board would be constituted consisting of Gardener, France, Dempsey, Lancaster, Mathieson, John Broughton, Hare Tuaki, and Hanita Henare.²⁸⁸ However, this board does not seem to have been appointed.

At some point Gardener approached Bell about the subject. Then, on 21 December 1914, the Levin Borough Council resolved:

THAT the Minister of Internal Affairs be again approached in the matter of the Borough Council control of the Lake Domain, suggesting that a Committee be appointed from the Levin Borough Council to sit with the Natives, as a Lake Domain Board, under the Horowhenua Lake Domain Act.²⁸⁹

²⁸⁶ Solicitor-General to Under Secretary for Lands, 16 August 1911. Archives New Zealand file AADS W3562 Box 251 1/220 part 1. As noted above, the Under Secretary relayed the Solicitor-General’s opinions to Burlinson on 25 August 1911. Curiously, he omitted to mention the conclusion come to about the chain reserve, although we can assume that the information reached the board soon enough.

²⁸⁷ Burlinson to Under Secretary for Lands, 27 July 1914. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

²⁸⁸ O’Neill, Assistant Under Secretary, to Burlinson, 10 August 1914. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

²⁸⁹ P W Goldsmith, Town Clerk, to Minister of Internal Affairs, 23 December 1914. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

This resolution was forwarded to Bell by the Town Clerk, Philip Goldsmith. He stated that the board had not met for 18 months and at its last meeting had passed a resolution ‘recommending that the Borough take over the Domain’. The council, he said, was much better suited to running the domain ‘in conjunction with the Native members of the old Board’.²⁹⁰

Bell annotated the back of this letter stating he was content for the Levin Borough Council to nominate the Pākehā members in future, although he did not wish any suitable current members to be displaced. He added that the Act would need to be amended with respect to the board’s constitution.²⁹¹ In January 1915 the Under Secretary for Lands, James Mackenzie, informed Bell that the borough council’s suggestion was a good one, although he noted that there might be local opposition, since ‘there has been a good deal of feeling in Levin over Reserve matters’.²⁹² Bell’s private secretary, J W Black, wrote to Goldsmith on 6 March 1915 and advised that the Minister intended to visit Levin shortly, but ‘fears that nothing can be done without some amendment of the present law’.²⁹³

Bell’s visit to Levin in April 1915

In 1915, therefore, there were three key issues of concern to the local authorities and the Pākehā members of the board: the lack of board ownership and control of the chain strip, the lack of authority to lower the lake level, and the perceived need to create an enhanced role for the Levin Borough Council in the running of the board. All these supposed problems could be fixed by the introduction of amending legislation.

Bell made his promised visit to Levin on 9 April 1915. According to the notes of his meeting, he was met by a deputation of Field and representatives of the Levin Borough Council, the Horowhenua County Council, the domain board, the Horowhenua Boating Club, ‘and the citizens of Levin generally who were interested in lake matters’. Hanita Henare attended, perhaps in his capacity as a domain board member. There is no indication of any other Muaūpoko presence.²⁹⁴

Field opened by calling the 1905 Act ‘a somewhat crude Statute’ adding that ‘an amendment of the Law was necessary if the Lake were to be properly controlled’. On the subject of the lake’s lowering he could see reasons for and against, but was particularly sympathetic to the boating club, and personally believed the best interests of the district would be served by

²⁹⁰ P W Goldsmith, Town Clerk, to Minister of Internal Affairs, 23 December 1914. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

²⁹¹ Minister of Internal Affairs to Under Secretary for Internal Affairs, 26 December 1914. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

²⁹² Under Secretary for Lands to Minister of Internal Affairs, 15 January 1915. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

²⁹³ J W Black, private secretary to the Minister of Internal Affairs, to Town Clerk, 6 March 1915. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

²⁹⁴ ‘Notes of a deputation which waited upon the Hon. H.D. Bell, Minister of Internal Affairs, at Levin on the 9th April, 1915, with reference to the Horowhenua Lake.’ Archives New Zealand file AADS W3562 Box 251 1/220 part 2

keeping the lake at its original level. He did not acknowledge any Māori viewpoint on the subject. The mayor, Gardener, favoured the borough council having jurisdiction over the domain, adding that his council did not wish to interfere with the provision for at least a third of the board members to be Māori. 'They were quite willing to sit with the natives', he said, 'provided that the Council generally could supervise the operations.'²⁹⁵

Gardener continued by explaining that the boating club, adjoining landowners, the council and others had agreed that the simplest solution to the issue of the lake level was to establish what its 'normal' level was and maintain that. He asked in this regard whether a legal level could be set, and questioned the jurisdiction over the Hōkio Stream:

It was a native reserve and set aside for the benefit of the natives generally. The natives were supposed to get the full benefit of it. This being so, would the Lake Domain Board have any jurisdiction over the creek, or could the natives do just what they liked with it? It was understood that no-one had the right to swamp his neighbour's property – could the natives block the creek by allowing vegetation to grow?²⁹⁶

Gardener then switched his attention to the chain strip. He suggested that 'nobody knew just where it was' and called for a new survey. The board had established that it had no control of the strip, but 'they would like the Minister to look into the matter as to who had control'. He concluded by venturing that:

The natives apparently held the key to the position by controlling the Lake. The Board had been told that its power was confined to the surface of the water. The town could not afford to have too much of its town under water. The natives did not care, but the Europeans wanted to utilise the full extent of their purchase.²⁹⁷

Dr Davies of the boating club said the recent lowering of the lake was going too far. Bartholomew said he had seen the lake a foot lower in the past and it should be lowered so a road around it could be formed and 'women and children' could thus 'get round it'. France, also of the boating club, said he had never seen the lake as low as Bartholomew claimed. He wanted compensation, since he had paid rent for the site of his shed but the lowering had left him 'high and dry'. The opposite view was expressed by one F E Parker, who said that 'Every acre that could be brought under cultivation was a source of benefit to the town.'²⁹⁸

²⁹⁵ 'Notes of a deputation which waited upon the Hon. H.D. Bell, Minister of Internal Affairs, at Levin on the 9th April, 1915, with reference to the Horowhenua Lake.' Archives New Zealand file AADS W3562 Box 251 1/220 part 2

²⁹⁶ 'Notes of a deputation which waited upon the Hon. H.D. Bell, Minister of Internal Affairs, at Levin on the 9th April, 1915, with reference to the Horowhenua Lake.' Archives New Zealand file AADS W3562 Box 251 1/220 part 2

²⁹⁷ 'Notes of a deputation which waited upon the Hon. H.D. Bell, Minister of Internal Affairs, at Levin on the 9th April, 1915, with reference to the Horowhenua Lake.' Archives New Zealand file AADS W3562 Box 251 1/220 part 2

²⁹⁸ 'Notes of a deputation which waited upon the Hon. H.D. Bell, Minister of Internal Affairs, at Levin on the 9th April, 1915, with reference to the Horowhenua Lake.' Archives New Zealand file AADS W3562 Box 251 1/220 part 2

As he had on the subject of fishing rights the previous year, Burlinson gave an important reminder about the origins of Pākehā access to and use of the lake:

He had conceived it his duty to study the interests of the Natives. When the Act was passed there was no question of the European asking for permission to use the Lake. Wiki Kemp consented to give the town the use of all the water of the Lake, but said ‘we will keep the fish to ourselves’. It was understood that the Natives gave them the Lake to use the surface of the water. It was merely for the purpose of a boating ground and nothing was to be touched below or above the water.²⁹⁹

This statement has already been quoted above as providing a telling insight into the Muaūpoko understanding of the 1905 agreement.

‘Another speaker’ added that no rights should be taken from the lake’s Māori owners unless the district were prepared to pay them compensation. They had only ceded use of the surface, and ‘It was never understood that people would want to fish in it.’ Hanita Henare then spoke on behalf of Muaūpoko. He agreed with what Burlinson and the previous speaker had said, but then remarked – in another example of Muaūpoko deferring to Pākehā authority in Pākehā-dominated settings – that ‘he was content to leave the matter entirely to the Minister’. Given what Bell had to say on the subject, this was hardly a wise policy.³⁰⁰

Bell then spoke. He expressed surprise at the suggestion that Pākehā were not entitled to fish in the lake and concluded that, for the sake of clarity, ‘The Act must be amended.’ Thus rather than make the Act reflect the exclusive Muaūpoko right intended in the original agreement, Bell preferred to make the Act fit the Solicitor-General’s interpretation of what it meant. He was quite prepared for the Levin Borough Council to provide the Pākehā board members, if the Horowhenua County Council agreed. It was ‘obvious’ to him that the borough council and its ratepayers ‘should undertake the responsibility of controlling the Domain’.³⁰¹

With respect to the level of the lake, Bell showed that he had not listened to either Burlinson or Hanita Henare. He said he

did not see what the question of the normal or original level had to do with it. The question was – what was the best level to keep the Lake at now. The Maoris had no interest in this

²⁹⁹ ‘Notes of a deputation which waited upon the Hon. H.D. Bell, Minister of Internal Affairs, at Levin on the 9th April, 1915, with reference to the Horowhenua Lake.’ Archives New Zealand file AADS W3562 Box 251 1/220 part 2

³⁰⁰ ‘Notes of a deputation which waited upon the Hon. H.D. Bell, Minister of Internal Affairs, at Levin on the 9th April, 1915, with reference to the Horowhenua Lake.’ Archives New Zealand file AADS W3562 Box 251 1/220 part 2

³⁰¹ ‘Notes of a deputation which waited upon the Hon. H.D. Bell, Minister of Internal Affairs, at Levin on the 9th April, 1915, with reference to the Horowhenua Lake.’ Archives New Zealand file AADS W3562 Box 251 1/220 part 2

subject. It was the same to them so long as their fishing rights were preserved, as they must be.³⁰²

Bell also asserted that, with respect to the Hōkio Stream, the county council or drainage board had the right to do what it wished, and ‘no man had any right to prevent a creek on his property being dealt with by the public authority’. He had little sympathy for the concerns of the boating club, suggesting that as long as the lake remained ‘of substantial area’ it was immaterial if it was slightly smaller:

If the reduction of the level meant the reclamation of a large area of land, he had not the slightest doubt that the Lake to that extent must give way, subject to the provision for the due expenditure of money to place the boating club and private boatmen in exactly the same position as they were now, except that they might have to walk another fifty yards or so.³⁰³

This compensation could take the form of ‘equal access to equal buildings further out’.³⁰⁴

Bell concluded by undertaking, upon the approval of the local bodies and Field, to submit legislation to Parliament that constituted a ‘live’ board, financed by the borough council; gave the board ‘the usual powers of drainage, subject to the provision that there was to be the preservation of a real Lake, which must not be diminished except by an insignificant area’; and provided for the ‘due control of the Hokio Stream’.³⁰⁵

Bell’s position at this meeting really represented the death of any semblance of the 1905 agreement. No provision existed for the exercise by Muaūpoko of their mana over the lake, and in fact the Crown now intended to legislate away any suggestion of an exclusive Muaūpoko right to fish. Māori concerns seem to have been almost invisible to Bell, who presumably regarded the Muaūpoko presence on the board as of no particular consequence. He casually assumed that a lowered lake level through drainage works on the outlet stream would have no detrimental effect on the tribe’s fishery, and wrongly claimed that Muaūpoko did not even care about the level of the lake. He was concerned to ensure that the local bodies and the local MP approved of the legislation he promised, but did not spare a thought in this regard to the lake’s owners. He spoke of compensation but for Pākehā boatmen, not for Muaūpoko.

³⁰² ‘Notes of a deputation which waited upon the Hon. H.D. Bell, Minister of Internal Affairs, at Levin on the 9th April, 1915, with reference to the Horowhenua Lake.’ Archives New Zealand file AADS W3562 Box 251 1/220 part 2

³⁰³ ‘Notes of a deputation which waited upon the Hon. H.D. Bell, Minister of Internal Affairs, at Levin on the 9th April, 1915, with reference to the Horowhenua Lake.’ Archives New Zealand file AADS W3562 Box 251 1/220 part 2

³⁰⁴ ‘Notes of a deputation which waited upon the Hon. H.D. Bell, Minister of Internal Affairs, at Levin on the 9th April, 1915, with reference to the Horowhenua Lake.’ Archives New Zealand file AADS W3562 Box 251 1/220 part 2

³⁰⁵ ‘Notes of a deputation which waited upon the Hon. H.D. Bell, Minister of Internal Affairs, at Levin on the 9th April, 1915, with reference to the Horowhenua Lake.’ Archives New Zealand file AADS W3562 Box 251 1/220 part 2

The passage of the 1916 and 1917 legislation

In August 1915 Bell annotated the back of the summary notes of the 9 April meeting ‘It will be seen that I have promised the necessary legislation’ (emphasis in original),³⁰⁶ and the Under Secretary for Internal Affairs requested his counterpart in the Lands Department to prepare a bill ‘to give effect to Sir Francis Bell’s promises’.³⁰⁷ Prime Minister William Massey, who was also Minister of Lands, asked Field to set out the exact powers the board was to have in the new bill.³⁰⁸ This led to Gardener writing to Field and setting out that the legislation should provide for:

1. The constitution of a live Board with finance provided by the Borough of Levin.
 2. That the members of the Levin Borough Council together with four Maori members shall constitute the board.
 3. Giving that Board in conjunction with the County Council, the usual powers of drainage; subject to the provision that there was to be the preservation of a real Lake which must not be diminished except by an insignificant area.
 4. Provision for due control of the Hokio Stream.
 5. (If possible.) The control of the Chain Reserve which bounds the Lake.³⁰⁹
- [Emphasis in original.]

Field in turn forwarded these requirements to Massey, urging quick action as ‘the administration of the Lake is and has for a very long time past been a very burning question in the district’.³¹⁰

The Chief Surveyor provided a tracing and description of the lake. The area comprised 951 acres, including the lake of 900 acres and the 50-acre chain strip.³¹¹ Omitted in error was the area of 13 acres 3 roods and 37 perches on the lakeshore purchased in 1907. A Bill was then drafted to repeal the 1905 Act. It stated that the board should comprise nine members, with ‘six to be nominated by the Levin Borough Council and three to be members of the Native race’. It is not clear when this change occurred and why Gardener’s suggestion for four Māori members was ignored. The Bill gave the board control of the reserve subject to the provision that ‘The Native owners shall at all times have the free and unrestricted use of the lake and of their fishing rights over the lake, but so as to not interfere with the full and free use of the lake for aquatic [sic] sports and pleasures.’ The board was to be deemed a local authority within the meaning of Part III of the Land Drainage Act 1908 with powers over both the lake

³⁰⁶ Annotation by Bell, 5 August 1915, on ‘Notes of a deputation which waited upon the Hon. H.D. Bell, Minister of Internal Affairs, at Levin on the 9th April, 1915, with reference to the Horowhenua Lake.’ Archives New Zealand file AADS W3562 Box 251 1/220 part 2

³⁰⁷ Under Secretary for Internal Affairs to Under Secretary for Lands, 31 August 1915. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

³⁰⁸ Minister of Lands to Field, 6 September 1915. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

³⁰⁹ Gardener to Field, 12 September 1915. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

³¹⁰ Field to Minister of Lands, 16 September 1915. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

³¹¹ Chief Surveyor to Under Secretary for Lands, 23 September 1915. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

and the Hōkio Stream ‘provided that the waters of the said lake must not be diminished to any appreciable extent by any of the operations of the combined drainage board’.³¹²

The Bill was not proceeded with in 1915 but was back before the House in 1916.³¹³ In May 1916 Field urged it to be given priority that session despite ‘the Government’s wish to deal only with matters relating to the War’. He explained that, given the death or departure from the district of board members it was ‘impossible to attend to the welfare of the lake’.³¹⁴

Also in May 1916, Hanita Henare and ten others of Muaūpoko approached Māui Pōmare, who was their Member of Parliament (that is, for Western Maori). They wrote (as translated) ‘We particularly ask you to advise us as to when the petition of the Levin Pakehas is likely to be under discussion, in connection with the Horowhenua Lake and 11 B, 42.’³¹⁵ Pōmare forwarded the translation on to the Minister of Lands in July, asking for information on ‘any proposed action by the Levin Borough Council or other parties in connection with this matter’.³¹⁶ For one thing, this revealed that the local Māori MP – and fellow member of the Reform Government – knew nothing about the Government’s plans for the lake. Massey told Pōmare that Henare’s request must refer to the proposed amendment to the 1905 Act. He provided a copy of the clause, which it was now planned to include in the Reserves and Other Lands Disposal and Public Bodies Empowering Bill 1916.³¹⁷

Presumably as an upshot of this, Hemi Henare and 33 others petitioned Parliament asking that the clause in the Bill relating to Lake Horowhenua and the Hōkio Stream not be passed:

No. 251 (1916). —Pitihana a Hema Henare me etahi atu e toru tekau ma toru.

E INOI ana kia kua e paahitia tetahi rarangi kei roto kei te Pire Tuku Rahui me era atu Whenua, Whakamana hoki i nga Ropu Whakahaere mo te Katoa e pa ana mo te Awa o Hokio me te Moana o Horowhenua.

The Native Affairs committee reported on 4 August 1916 that ‘this petition having been considered in connection with the abovementioned Bill, the Committee has no recommendation to make’.³¹⁸ The Bill was passed directly thereafter.³¹⁹

Lake Horowhenua was addressed in section 97 of the Act (that is, the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1916). This removed the reference to at

³¹² ‘Horowhenua Lake Act, 1915’. Draft Bill on Archives New Zealand file AADS W3562 Box 251 1/220 part 2

³¹³ Field referred to it having been delayed ‘owing to an oversight’. Field to Minister of Lands, 17 May 1916. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

³¹⁴ Field to Minister of Lands, 17 May 1916. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

³¹⁵ Hanita Henare ‘and 10 others In fact all Muaupoko’ to Pōmare, Mei 1916. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

³¹⁶ Pōmare to Minister of Lands, 12 July 1916. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

³¹⁷ Minister of Lands to Pōmare, 25 July 1916. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

³¹⁸ AJHR, 1916, I-3, p 30

³¹⁹ The Reserves and Other Lands Disposal and Public Bodies Empowering Act bears the date of 7 August 1916, although it was reported in the press that it was passed on 4 August 1916 – see, for example, ‘Parliament’, *New Zealand Herald*, 5 August 1916, p 8

least a third of the board members being Māori in the 1905 Act and replaced it with the aforementioned provision for the board to include nine members, of whom six were to be nominated by the Levin Borough Council with the three other members being Māori (subsections 1 and 2). It was not stated how the Māori members would be nominated. In contrast to the earlier seven-year appointments, board members were to hold office for a term of two years, although they were eligible for reappointment (subsection 3). The board was declared a local authority within the meaning of Part III of the Land Drainage Act 1908 ‘with respect to the reserve under its control and the Hokio Stream, together with a strip of land one chain in width on each side of the waters of the said Hokio Stream’ (subsection 7). The provision in the 1905 Act reserving to the Māori owners the free and unrestricted use of the lake and of their fishing rights over the lake’ was amended by the addition of the words ‘and the Hokio Stream’ (subsection 9). The boundaries of the reserve subject to the Act were defined as including the chain strip (subsection 10). The borough council was to expend its money on improving the reserve as it saw fit (subsection 6), and it was to exercise its powers under the Act in conjunction with the Horowhenua County Council (subsection 8).

Pickens observed that the control of the Hōkio Stream and chain strip on either side had not been conceded in 1905, and nor had the reserve been agreed to include the chain strip round the lake. As he put it, the effect of the 1916 Act, ‘whether intended or not, was that a substantial and strategically placed area of land was removed from Maori control’.³²⁰ Massey claimed in the House that the clause ‘settled an old dispute between the local bodies of the district concerned with respect to Horowhenua Lake’. Perhaps defensively, he added that ‘The Native members had had an opportunity of looking into the proposal, and he understood, no objection was raised’.³²¹

With the Act passed the Levin Town Clerk was invited to nominate ‘six suitable gentlemen’.³²² The Lands Department also prepared a letter for the Minister’s signature to Field, asking him to nominate the three Māori members. To his credit Bell, who was Acting Minister of Lands, remarked that Field should be asked for his opinion only and ‘the Native names shd be also submitted to the Native Minister & the Hon Dr Pomare for their consideration’. He then suggested, as an alternative, that ‘As Hon Dr Pomare is member for the Native District would it not be better to write to him for suggestion and not to W Field MP[?]’ (emphasis in original).³²³ The latter option was decided upon and Bell wrote to Pōmare, asking him, as the MP for Western Maori, ‘to kindly nominate three suitable Natives

³²⁰ Anderson and Pickens, p 275

³²¹ NZPD, 1916, vol 177, p 795. See also White, p 76

³²² Under Secretary for Lands to Town Clerk, 31 August 1916. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

³²³ Bell’s annotations on draft letter to Field, submitted by O’Neill on 1 September 1916. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

to appointment as members of the Board'.³²⁴ Pōmare, in turn, put forward the names of Matai Porotene, Eparaima Paki, and Hanita Henare.³²⁵

In the meantime the Town Clerk had nominated borough councillors Henry Butler France (that is, the secretary of the Horowhenua Boating Club), John Robertson (the deposed Otaki MP), Marco Fosella (who had served on the previous board), Alfred Dempsey, Edward Montgomery Herrick, and Charles Blenkhorn (who had succeeded Gardener as mayor in 1915).³²⁶ All nine members were gazetted on 16 November 1916.³²⁷

In February 1917 it was noticed that the 13 acres, 3 roods, and 37 perches acquired in 1907 had been omitted from the description of the reserve in the 1916 Act. It was quickly concluded that the Act would need to be amended.³²⁸ The inclusion of the lakeshore land in the reserve's boundaries was effected by section 64 of the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1917, which was passed at the end of October. This turn of events stands somewhat in contrast to the 1905 error of describing the lake's surface as 951 acres, which eventually led to an amendment not to the total but to the reserve's description so that it included the chain strip to match.

In 1917 Muaūpoko petitioned again, with Hanita Henare and four others asking that section 97 of the 1916 Act be repealed. The petition was referred to the Under Secretary for Lands for a report. He told the Native Affairs Committee that the clause in question had been considered by the same committee on 2 August 1916 'when representatives of the local bodies and of the Maoris, duly attended and explained their views'. Hanita Henare had, he said, been supplied with a copy of the proposed legislation at the time. Furthermore, the clause had been discussed in the House (a reference to Massey's comments) and it had been stated 'that the Native members raised no objection to it'. The Under Secretary also claimed – misleadingly – that, under the 1905 Act, the board controlling the lake had included one third Māori representation, and that this remained unaltered under the 1916 Act.³²⁹ Predictably enough, the Native Affairs Committee reported in December 1916 that it had no recommendation to make on the petition – even though the petitioner was a member of the board himself.³³⁰

³²⁴ Minister of Lands to Pōmare, 6 September 1915. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

³²⁵ Pōmare to Minister of Lands, 7 November 1916. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

³²⁶ Town Clerk to Under Secretary for Lands, 19 September 1916. Archives New Zealand file AADS W3562 Box 251 1/220 part 2. See also Dreaver's list of Levin Borough Council officebearers in *Levin*, p 369.

³²⁷ *NZ Gazette*, No. 128, 16 November 1916, p 3578

³²⁸ Hardy to Under Secretary for Lands, 28 February 1917. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

³²⁹ Under Secretary for Lands to Clerk, Native Affairs Committee, 1 October 1917. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

³³⁰ AJHR, 1918, I-3, pp 7-8. The petitioner's name was recorded as Hania Henare, which was presumably in error.

The further pursuit of drainage powers

Hanita Henare refused to allow the board to proceed with its drainage plans unchallenged. In January 1918 Henare's solicitors wrote to the board protesting against its decision of 12 November 1917 (when Henare had been absent) to 'deepen, straighten and divert the Hokio stream', since it 'would seriously interfere with the eel fisheries of the Natives in the stream there being some nine or ten Eel Pahs in the portion of the stream which it is proposed to interfere with'. More to the point, the lawyers argued that the board had no authority to undertake such works. The powers of a local authority under Part III of the Land Drainage Act only involved 'the cleaning, repairing or otherwise maintaining of watercourses or drains'. If the board persisted with its intentions, therefore, proceedings would be commenced in the Supreme Court. Finally, the lawyers pointed out that Māori fishing rights in the Hōkio Stream were expressly protected by the 1905 Act as amended in 1916.³³¹

This letter was read to the board at its meeting on 14 January 1918 by Gardener, who by now had retired as mayor and was employed as Town Clerk and board secretary. Gardener had already drafted a reply, which he also read, that contended that no such proposal had been adopted by the board and that Hanita Henare had misled his legal representatives. All that had been resolved, said Gardener, was that the secretary was to write to the county council and request that the county engineer be permitted 'to proceed with his ideas of keeping the Lake at a permanent level'. At this point board members turned on Henare and demanded he apologise. A moderating voice, however, came from the chairman,³³² who felt that 'they could not blame the natives for looking after their rights' since 'there was a scheme in the air for doing some work'. When challenged that there was no such scheme as the one outlined in the lawyers' letter, the chairman said:

We asked the County Council to prepare a scheme. You seem inclined to blame Hanita for moving in the matter, but I believe the natives are perfectly within their rights in taking legal advice.³³³

Throughout this Hanita Henare maintained his silence. Eventually, under increasing pressure to provide an explanation, he said that he had not instructed that the letter be sent, 'but had only asked the solicitors to watch the native interests'.³³⁴

Gardener suggested that, while the response of the county council was awaited, work be done at least to clear the outlet of the Hōkio Stream to release some of the lake's waters. The board agreed that the Māori members be asked to organise this work, 'it being pointed out that the County Council would not be able to get labour and the natives would see that none of their

³³¹ Wilford Levi & Jackson to B R Gardener, Secretary, Horowhenua Lake Domain Board, 11 January 1918. Archives New Zealand file AANS W5883 25344 Box 115 NYA003751 part 1

³³² The chairman of the board was Mayor Blenkhorn, but according to the board's minute book he was absent from this meeting. The chairman may have been Henry France, who was listed first among the attendees. See Archives Central file A/2012/6 : 5002212201 : 10 (Horowhenua Lake Domain Board minute book 1906-1918, folio 90).

³³³ 'Control of the lake', *Chronicle*, 15 January 1918, p 3

³³⁴ 'Control of the lake', *Chronicle*, 15 January 1918, p 3

rights were interfered with'.³³⁵ In February 1918, therefore, the board paid Ruku Paki £5 'for Cleaning Hokio Stream as arranged' and in April 1918 Eparaima Paki £5 For Drainage work in Lake – as arranged with County Council'.³³⁶

After the board meeting, Henare's solicitors accepted that there may have been a misunderstanding, explaining that Henare had been 'certainly under the impression that a definite decision had been arrived at by the Board at a meeting held in his absence'.³³⁷ Henare himself wrote to Gardener and suggested that 'for the future meetings the Board engage the services of an interpreter so as to do away with the chance of any misunderstandings between the native members of the Board and the other members'.³³⁸

Nevertheless, it seems entirely likely that the County Engineer's plans for maintaining a fixed lake level involved work of the nature Hanita Henare feared.³³⁹ In fact the key legal point made by Henare's solicitors – about the limited powers of a local authority under Part III of the Land Drainage Act – was quickly identified as a serious hindrance to the board's drainage ambitions.

After the usual winter floods, a special meeting of the board was held on 23 August 1918 to consider the issue of the lake's level. The County Engineer's expensive plan for a series of locks on the Hōkio Stream was noted. Pairama Te Paki said that the water races were a significant contributor to the lake's level and that the only option was to continue to clean the lake's outlet. He had no sympathy with the land-owners. One had bought swampy land off Hanita Henare 'for the price of land under water – £10 15s per acre' – and now, ironically, urged the council to drain it rather than pay for the channel being cleared himself. Asked why Muaūpoko objected to the locks, Te Paki explained that they would prevent eels from migrating and cause the fishery to suffer. France remarked rather patronisingly that elvers would climb any obstacle when coming upstream and 'If the natives could be got to understand that, their difficulties would be resolved.' In the event, the meeting resolved to clear a wider channel from the lake to the Hōkio Stream when the moment was right.³⁴⁰

The concern about the board's limited drainage powers led to a 1919 deputation of representatives of the board and the county council to Bell, who was now Attorney-General, and George Russell, the Minister of Internal Affairs. According to a press report, Field, who was also present:

³³⁵ 'Control of the lake', *Chronicle*, 15 January 1918, p 3

³³⁶ Receipts from Ruku Paki dated 11 February 1918 and from Eparaima Paki dated 10 April 1918. Archives Central file A/2012/6 : 5002212201 : 10 (Horowhenua Lake Domain Board vouchers 1916-1921)

³³⁷ Wilford Levi & Jackson to B R Gardener, Secretary, Horowhenua Lake Domain Board, 16 January 1918. Archives New Zealand file AANS W5883 25344 Box 115 NYA003751 part 1

³³⁸ Hanita Henare to B R Gardener, Secretary, Horowhenua Lake Domain Board, 21 January 1918. Archives New Zealand file AANS W5883 25344 Box 115 NYA003751 part 1

³³⁹ Gardener's hand-written minutes of the domain board meeting of 12 November 1917 originally stated only 'to proceed with his ideas'. The words 'of keeping the waters of the Lake at a permanent level' appear to have been inserted by Gardener at a later point. See Archives Central file A/2012/6 : 5002212201 : 10 (Horowhenua Lake Domain Board minute book 1906-1918, folio 86).

³⁴⁰ 'Lowering the lake', *Chronicle*, 27 August 1918, pp 3-4

... explained that the two bodies in 1916 were given certain powers of a drainage board in order that they might preserve a thousand acres of very valuable land on the borders of the lake, which had become waterlogged. To drain the land the bodies proposed to lower the level of the lake by 18 inches by clearing the outlet, the Hokio Stream. It now appeared that they had no power, as drainage boards had, to deepen the watercourse, and they were threatened with an injunction to restrain them from injuring the fishing rights which the Natives had in the stream. It was proposed only to clear the stream for three or four chains, and this would not affect the fishing rights in any way.³⁴¹

Bell said the matter only concerned his department indirectly, 'but personally he could not see how the Native fishing rights would suffer at all by lowering the level of the lake'. This echoed his position in 1915, and showed, once again, that Bell was either poorly advised or lacked an inquisitive mind (or perhaps simply did not care). Russell told the deputation to ascertain the exact extent of their powers and advise him if they were insufficient, and he would then consider the matter. He added, however – in contrast to Bell – that he was generally opposed to the drainage of lakes, 'which would destroy natural beauty spots'.³⁴²

In February 1920 the County Engineer, J Malcolm, reported that he had 'made arrangements with the natives to do the usual cleaning at the outlet of the Horowhenua Lake',³⁴³ and this regime may have remained the status quo for the next few years. However, pressure continued to build for a legislative solution to the limitations on the board's drainage powers. When Field told the Horowhenua County Council in September that a 'washing-up' bill would soon be before the House, and asked whether the council wished it to deal with any urgent matter, the County Chairman, G Monk, 'suggested that something should be done about lowering the Horowhenua Lake'. One councillor called for the lake to be lowered by four and a half feet.³⁴⁴ In the end the council wrote to Field requesting a clause be inserted in the bill giving it power to lower the lake by a foot below 'normal level'. It is not clear what became of this initiative, although Field did warn the council that it would have to go before the Native Affairs Committee, where there was 'always a difficulty', the domain board would have to agree, and the boating club would also have a say. The 'main difficulty', he assumed, 'would be with the natives', and he suggested the council 'devise some means of securing their concurrence'.³⁴⁵

It did not take much longer for local pressure to result in legislative action, as we shall see below.

³⁴¹ 'Horowhenua Lake. Drainage and Fishing Rights', *Evening Post*, 9 May 1919, p 8

³⁴² 'Horowhenua Lake. Drainage and Fishing Rights', *Evening Post*, 9 May 1919, p 8

³⁴³ 'Horowhenua County Council', *Chronicle*, 16 February 1920, p 4

³⁴⁴ 'Lowering Lake Horowhenua', *Chronicle*, 11 September 1920, p 3

³⁴⁵ 'Lowering Lake Horowhenua', *Chronicle*, 12 October 1920, p 3

Board appointments

It is as well to keep note of the ongoing process of Muaūpoko board appointments. That is because, over the course of the board's history from its inception until the closing point of this study, the appointments were routinely a matter of some controversy or challenge. Keeping note of the methods of appointment also allows for some concluding comments on the Crown's consistency and fairness in the matter.

By the end of 1918 the two-year terms of board members were due to expire, and the Minister of Lands again asked Pōmare for his nominations.³⁴⁶ He replied that he was 'advised that present native members should be reappointed'.³⁴⁷ However, Hanita Henare died in August 1919 and, after calling a special hui, Muaūpoko nominated Mohi Rakuraku to replace him.³⁴⁸ This was approved upon Pōmare's recommendation.³⁴⁹ But then Mohi Rakuraku himself died in August 1920. The remaining members of the board nominated Tutaua Hurunui to replace him 'in accordance with the wishes of the natives'.³⁵⁰ Again, Pōmare approved.³⁵¹

At the end of 1922 the Minister of Lands told Pōmare that the board appointments would expire shortly and the question was whether the current Māori members should be reappointed. The Minister noted that John Broughton was 'living out of town and is at present in rather a frail state of health; but although he has not yet expressed his wishes it would probably be advisable to re-appoint him'.³⁵² Pōmare cabled a response that 'agree that in best interest to re-appoint the three present native members'.³⁵³ Field had already been sent a letter on asking for his approval of all nine members, which he gave.³⁵⁴

Broughton did not sound like an ideal appointment. It was the new board secretary, F H Hudson (who was to retain the role for decades), who had told the Under Secretary for Lands that Broughton was living out of town and in rather frail health, and that he had written Broughton several letters without reply. Hudson added that 'As you doubtless are aware matters of this kind in connection with the natives have to be carefully handled' but

³⁴⁶ Minister of Lands to Pōmare, 26 October 1918. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

³⁴⁷ Pōmare to Minister of Lands, 30 November 1918. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

³⁴⁸ Gardener, Secretary, Horowhenua Lake Domain Board, to Under Secretary for Internal Affairs, 9 September 1919. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

³⁴⁹ Pōmare to Bell, 29 August 1919. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

³⁵⁰ Gardener, Secretary, Horowhenua Lake Domain Board, to Under Secretary for Lands, 26 August 1920. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

³⁵¹ Annotation on Minister of Lands to Pōmare, 3 September 1920. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

³⁵² Minister of Lands to Pōmare, 15 November 1922. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

³⁵³ Pōmare to Minister of Lands, 21 November 1922. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

³⁵⁴ Minister of Lands to Field, 2 November 1922; Field to Minister of Lands, 2 November 1922. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

appointing Broughton would ‘complete the native membership’.³⁵⁵ It would be instructive to know how many board meetings Broughton attended over the next two years.

In 1924 Field and Manawatu MP Joseph Linklater – whose electorate included the larger part of the lake and domain than Field’s – were again asked for their opinion on all nine nominees, whereas Pōmare was only asked about the Muaūpoko ones.³⁵⁶ Jack Hopa became a board member at this time in place of John Broughton.³⁵⁷ The following year Pōmare himself informed the Minister of Lands that Pairama Te Paki was dead. Pōmare recommended that he be replaced with Warena Kerehi, whose appointment was gazetted shortly after.³⁵⁸ It is not clear whether Pōmare consulted with Muaūpoko beforehand.

By this point in time, therefore, the process of the local Māori Member of Parliament nominating or at least approving Muaūpoko board appointments had become standard. Usually, evidence exists that Muaūpoko selected the nominees themselves. A double standard existed whereby the local Pākehā MP was consulted about all board appointments but the Māori MP was consulted about only the Māori ones. Nevertheless, Bell’s 1916 intervention had at least ensured that the Māori member was involved in the process.

The 1923 death of eels in the lake

In July 1923 Hudson wrote to Ayson, the Chief Inspector of Fisheries, to report on the unexplained deaths of hundreds of eels that had washed up on the lake’s shoreline. He sent four specimens so that Ayson might establish the cause of their demise, and asked that Ayson pay a visit to the lake.³⁵⁹ Muaūpoko informed Pōmare about the situation, who was of course also the Minister of Health. Pōmare wrote to the Minister of Marine and noted that Muaūpoko considered that the eels had succumbed because of the effect of the wool scouring plant situated near the lake. He passed on the tribe’s request that an officer visit the lake and identify the cause of the apparent disease.³⁶⁰

Hudson wrote again to Ayson at the start of the following month reminding him of the request for a response and attaching the circular ‘distributed among the Natives from which you will see the Board are desirous of ascertaining if possible the cause of mortality amongst the eels etc before advising the Natives to resume fishing in the Lake’. The attached notice was in English and stated that ‘Natives and Europeans are warned against taking eels and

³⁵⁵ Hudson to Under Secretary for Lands, 18 October 1922. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

³⁵⁶ Minister of Lands to Field, 16 October 1924; Minister of Lands to Pōmare, 16 October 1924; Linklater to Minister of Lands, 21 October 1924; Field to Minister of Lands, 21 October 1924; Pōmare to Minister of Lands, 25 November 1924. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

³⁵⁷ *NZ Gazette*, No. 81, 11 December 1924, p 2916

³⁵⁸ Pōmare to Minister of Lands, 17 April 1925. Archives New Zealand file AADS W3562 Box 251 1/220 part 2. *NZ Gazette*, No. 38, 21 May 1925, p 1557

³⁵⁹ Hudson to L F Ayson, Chief Inspector of Fisheries, 4 July 1923. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

³⁶⁰ Pōmare to Minister of Marine, 12 July 1923. Archives New Zealand file ADOE 16612 M1 74 1/7/53

other fish from the Lake until the cause of the mortality is found out'.³⁶¹ After continuing to receive no response, Hudson wrote to the Under Secretary for Lands to see whether he could follow the matter up.³⁶² The Under Secretary replied on 28 August advising that Ayson was writing to the board and suggested that specimens be sent to the Government Bacteriologist for examination.³⁶³ In clear despair, Hudson wrote to the Minister of Marine on 23 October 1923 to complain about the lack of any response. Unsurprisingly, he noted that 'the mortality amongst the eels etc.' was not 'quite so noticeable at the present time'.³⁶⁴ This at least prompted a telegram from the Minister for Marine that inquiries would be made.³⁶⁵

Pōmare – perhaps prompted by Muaūpoko – had also become impatient. He inquired about the report on the eels' condition that he had been told would be obtained in July.³⁶⁶ Ayson finally gave a report to the Secretary of Marine on 13 December 1923. He had visited the lake two days before in the company of Hudson and board members MacIntosh and Walkley. He stated that Māori had first noticed dead eels (and trout) in March, 'and from then on until the end of July very large numbers were found dead'. Since then the mortality rate had dropped away, and had appeared to cease in November. Muaūpoko had regained their confidence in the fishery and begun catching eels for food again. Ayson observed that there were no streams flowing into the lake, which he surmised must be fed by the surrounding swamps. His principal conclusion was that it was 'difficult to account for the mortality, as there is no pollution from flaxmills, wool-scouring works or town sewerage'. He had arranged for specimens of freshly caught eels, trout and perch to be sent to Wellington for examination by the Government Bacteriologist.³⁶⁷ Ayson's report was forwarded for his information to Pōmare,³⁶⁸ who in turn appears to have passed its conclusions on to Muaūpoko.

In what was quite a devastating critique, Hema Henare (and unnamed others) responded to Pōmare on 16 January 1924. They noted that, when Ayson visited, the Muaūpoko board members Eparaima Paki and Tutaua Hurunui had been unable to attend because of private business. They set out their view that

a visit of inspection by the Inspector then was useless as he should have come about five months ago when he could have examined the eels and other fish affected. It was obvious that he could not find any eel to examine when he came on the 11th ultimo.³⁶⁹

³⁶¹ Hudson to Ayson, 4 August 1923. Archives New Zealand file ADOE 16612 M1 74 1/7/53

³⁶² Hudson to Under Secretary for Lands, 20 August 1923. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

³⁶³ Under Secretary for Lands to Hudson, 28 August 1923. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

³⁶⁴ Hudson to Minister of Marine, 23 October 1923. Archives New Zealand file ADOE 16612 M1 74 1/7/53

³⁶⁵ George Anderson, Minister of Marine, to Hudson, 26 October 1923. Archives New Zealand file ADOE 16612 M1 74 1/7/53

³⁶⁶ Pōmare to Minister of Marine, 19 November 1923. Archives New Zealand file ADOE 16612 M1 74 1/7/53

³⁶⁷ Ayson to Secretary of Marine, 13 December 1923. Archives New Zealand file ADOE 16612 M1 74 1/7/53

³⁶⁸ Minister of Marine to Pōmare, 21 December 1923. Archives New Zealand file ADOE 16612 M1 74 1/7/53

³⁶⁹ Hema Henare and others to Pōmare, 16 January 1924. Archives New Zealand file ADOE 16612 M1 74 1/7/53

Henare et al noted that eels had been sent to Ayson for examination on 4 July and that on 10 July pamphlets had been given to Māori schoolchildren ‘for distribution in the kaingas’ warning against the consumption of eels. They pointed out that Ayson was completely wrong to believe that no streams flowed into the lake: three did, namely the Arawhata, the Mangaroa, and the Pātiki, and in addition to these were the water races. One stream in fact ran from the wool-scouring works directly to the lake. They were emphatic that ‘the cause of mortality amongst the eels and other fish came from this Wool Scouring Work’. If the visit to the lake had occurred at the time the eels were dying then ‘perhaps legal action would have been taken’. Instead there was now only ‘a small supply of eels in the lake’ and the ‘harm done is almost irreparable’.³⁷⁰

It seems that Ayson had spoken to J M Milne, the manager of the wool-scouring works, and had pronounced himself content with Milne’s explanations. Henare et al added, however, that it was not ‘generally known that the chemicals used in the process of scouring were emptied into the Patiki Stream owing to the rusted conditions of the tanks and thence to the Lake’. They had been asked to pass on fish for bacteriological examination but this was now redundant, as the wool-scouring works had closed. They concluded their letter like this:

We bewail our loss occasioned by the poisoning of our eels and fish. Owing to the maladministration of the lake by the Board which resulted in the poisoning of the eels and fish therein we earnestly request that the said Lake be returned to the Maories who are owners.³⁷¹

The letter made its way to Ayson, who was asked to comment. He defended himself on the basis that he had been too busy with work elsewhere; that the eels forwarded him in July had arrived in too putrid a state to make examination possible; that it was the members of the board who accompanied him who told him no streams entered the lake; and that the wool-scouring works had closed long before he visited the lake. Furthermore, the ranger for the Wellington Acclimatisation society had twice previously visited the wool-scouring works and inspected its discharge into the adjacent swamp, and on each occasion had concluded that it was not likely to be harmful to trout in the lake.³⁷²

Ayson may well have been overstretched and unable to attend to the situation at Lake Horowhenua in time. However, in the overall scheme of things, the death, first, of so many eels – such a core staple of the Muaūpoko diet, as explained by them time and again – and, secondly, the failure to make a prompt and adequate investigation, represented failures by the Crown to fulfil the terms of the 1905 agreement. Māori fishing rights were to be preserved and no pollution was to enter the lake. The fishing rights in the lake were of course also protected by statute. It is not clear whether the wool-scouring works’ pollution had ever been

³⁷⁰ Hema Henare and others to Pōmare, 16 January 1924. Archives New Zealand file ADOE 16612 M1 74 1/7/53

³⁷¹ Hema Henare and others to Pōmare, 16 January 1924. Archives New Zealand file ADOE 16612 M1 74 1/7/53

³⁷² Ayson to Secretary of Marine, 20 March 1924. Archives New Zealand file ADOE 16612 M1 74 1/7/53

subject to much oversight, and it is telling that the two known inspections of it in this account were made in the interests of trout. The Muaūpoko letter was a call for the reinstatement of their mana or control over the lake in the face of the failure of Pākehā stewardship.

Ayson's tardiness can also be contrasted with the relative speed with which he visited the lake in 1917 after the domain board asked him to give them his advice on the best fish species with which to stock the lake.

The establishment of the Hokio Drainage Board

A petition by ratepayers holding property in the vicinity of the lake calling for the constitution of a drainage district under the Land Drainage Act 1908 was forwarded to the Lands Department by the County Clerk (who was F H Hudson) on 9 July 1924.³⁷³ Two lists of signatories appear on file, one of which includes the names of two members of Muaūpoko, Keke Taueki and Hema Taueki.³⁷⁴ As an upshot of this petition, the Department of Internal Affairs set up a commission to inquire into the matter comprising John Hannah, the District Engineer of the Public Works Department, Wellington; Norman Mackie, the District Valuer, Wellington; and Samuel Jickell, civil engineer of Palmerston North.³⁷⁵ They heard submissions in Levin on 26 March 1925.

Among the objectors was Rere Nicholson of Ngāti Raukawa, who told the commission that he owned land on the south side of the Hōkio Stream near the lake outlet. The land on the opposite side, he said, 'belongs to the other Natives, who, I understand, did not know this Commission was sitting here today, as they do not pick up the papers and read things in the way the Pakeha does'. His key message was that:

If the Board is going to lower the lake ... then they will want to take up all the eel-weirs in order to get a clear run right out to the sea. Now the eel is the main food of the Natives. Year after year they do their fishing from January to April and they feel very sore at the thought of their rights to the creek being taken away.³⁷⁶

Nicholson told the commission that 'As long as they do not touch the eel-weirs, the Maoris will keep quiet.' Thomas Vincent, one of the leading petitioners calling for the drainage district, said that, if any weirs 'are interfered with, they will be put back again', to which Nicholson responded 'But you don't know how to put the eel-weirs back.'³⁷⁷

³⁷³ County Clerk to Assistant Under Secretary for Internal Affairs, 9 July 1924. Archives Central file HRC 00076: 1: 1

³⁷⁴ Lists of signatories. Archives Central file HRC 00076: 1: 1. A copy of the petition (dated 25 June 1924) on a Department of Internal Affairs file also includes the names of Keke and Hema Taueki. Archives New Zealand file ACGO 8333 IA1 1380 19/10/51

³⁷⁵ Assistant Under Secretary for Internal Affairs to County Clerk, 5 February 1925. Archives Central file HRC 00076: 1: 1

³⁷⁶ Minutes of the commission of inquiry, Levin, 26 March 1925, p 11. Archives New Zealand file ACGO 8333 IA1 1380 19/10/51

³⁷⁷ Minutes of the commission of inquiry, Levin, 26 March 1925, p 13. Archives New Zealand file ACGO 8333 IA1 1380 19/10/51

Image 2.6: Ruataniwha eel weir on the Hōkio Stream, November 1925³⁷⁸



The importance of the eel fishery was stressed by another witness, W Hannan. As he explained:

The crux of the matter is the interfering with the native eel-weirs. If you interfere with them you are going to get opposition, because once you touch a native's eel-weir, you touch his living. I know there is going to be a lot of opposition from the Ngati Morpuku [sic] tribe, and in fact from the Natives in general if their eel-weirs are in danger of being molested.³⁷⁹

Hema Henare was invited to address the commission. He said, through an interpreter, that:

In the first place I am here to support the remarks made by Mr Nicholson previously. With reference to the statements of my European friends, I would say that this matter has been dealt with now for some time past, and we Maoris have no objection to the clearing of the creek provided you do not dig out the creek or interfere with the land adjoining. To my mind there would be no harm, done if the creek were cleared out. Where I reside you will find that the lake has gone down 20'. We build our eel-weirs from bank to bank, and by digging away the banks you will certainly affect them. That is our objection.³⁸⁰

³⁷⁸ Eel weir on Hōkio Stream. Adkin, George Leslie, 1888-1964: Photographs of New Zealand geology, geography, and the Maori history of Horowhenua. Ref: PA1-q-002-082. Alexander Turnbull Library, Wellington, New Zealand. <http://natlib.govt.nz/records/22517212>

³⁷⁹ Minutes of the commission of inquiry, Levin, 26 March 1925, pp 16-17. Archives New Zealand file ACGO 8333 IA1 1380 19/10/51

³⁸⁰ Minutes of the commission of inquiry, Levin, 26 March 1925, p 18. Archives New Zealand file ACGO 8333 IA1 1380 19/10/51

The commissioners concluded nevertheless that a drainage district should be established within the boundaries suggested by the petitioners.³⁸¹ Hudson offered his services as returning officer for the election of trustees for the drainage district.³⁸² But the scheme hit an immediate snag, with the realisation that there was no legal authority to include the Hōkio Stream in the district, since the 1916 Act had made special provision for the Hōkio Stream and a chain strip on either side. A legislative amendment was required but opposed by the Lands Department, and so the Internal Affairs Department advised that the district would have to remain as gazetted on 25 June 1925.³⁸³

Perhaps because Muaūpoko had been unaware of the commission's inquiry, it seems that the Māori opposition to the drainage plans was led by Ngāti Raukawa. Not only was Rere Nicholson an objector before the commission, but he wrote to Native Minister (and Prime Minister) Gordon Coates attaching a petition signed by 105 'aboriginal Natives of Horowhenua' ('tangata maori o Horowhenua') objecting to the constitution of the drainage board. Both Muaūpoko and Ngāti Raukawa names featured among the signatories. Nicholson said the decision to allow the proposed drainage work was 'a great calamity which has fallen upon us'.³⁸⁴ He may also have led the deputation that waited on the Minister of Internal Affairs, Richard Bollard, on 14 July.³⁸⁵

Coates replied to Nicholson on 15 July and confirmed that the Hōkio Stream could not be included in the drainage district without a legislative amendment, and that the Lands Department objected to that prospect. Coates told Nicholson that 'I trust that the above position will meet the objections raised by yourself and the other natives concerned.'³⁸⁶ As a press report observed, 'This must present a serious obstacle to the Board functioning, as well as an interesting problem for the recently-elected body to consider.'³⁸⁷ The names of the first trustees, who had been elected on 14 July, were published in the *Gazette* on 6 August. Unsurprisingly, all five had been among the petitioners who had called for the establishment of the drainage district.³⁸⁸

³⁸¹ 'Report of John Hannah, Norman Henry Mackie and Samuel Jickell, Commissioners, to his Excellency, the Governor-General of the Dominion of New Zealand', April 1925. Archives Central file HRC 00076: 1: 1

³⁸² Assistant Under Secretary for Internal Affairs to County Clerk, 25 May 1925. Archives Central file HRC 00076: 1: 1

³⁸³ Assistant Under Secretary for Internal Affairs to County Clerk, 8 July 1925. Archives Central file HRC 00076: 1: 1. The notice described the district as being bordered by 'the boundary of the Horowhenua Lake Reserve as described in section 97 of the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1916. *NZ Gazette*, No. 49, 25 June 1925, p 1955

³⁸⁴ Rere Nicholson to Native Minister, 9 July 1925. Archives New Zealand file ACGO 8333 IA1 1380 19/10/51

³⁸⁵ G P Newton to Minister of Internal Affairs, 15 July 1925. Archives New Zealand file ACGO 8333 IA1 1380 19/10/51

³⁸⁶ Native Minister to Rere Nicholson, 15 July 1925. Archives New Zealand file ACGO 8333 IA1 1380 19/10/51

³⁸⁷ 'Hokio Drainage District', *Chronicle*, 20 July 1925. Clipping on Archives Central file HRC 00076: 1: 1

³⁸⁸ They were Cyril Bartholomew, Francis Henry Best, Lindsay Graham McDonald, John William Proctor, and George Thompson. *NZ Gazette*, No. 56, 6 August 1925, p 2265. Drainage board members were utterly self-interested and conflicted. In March 1927, for example, Cyril Bartholomew (on behalf of Bartholomew Brothers) wrote to the board asking it to clear the entry of the Arawhata Stream into Lake Horowhenua so that he might gain the full benefit of the lake's lowering (Cyril Bartholomew to Chairman, Hokio Drainage Board, 8 March

Image 2.7: The Hōkio Stream below the lake outlet, c. 1910s³⁸⁹



It is not clear why the Lands Department objected to a legislative amendment. The Under Secretary for Lands suggested to his counterpart in Internal Affairs on 2 September 1925 that the drainage board, the country council, and the domain board ‘should confer with a view to a proposal being put forward that has the support of all three Bodies’.³⁹⁰ This meeting was duly held and resolved that the Department of Internal Affairs be asked to appoint a commission under section 65 of the Land Drainage act ‘to determine the control and management of the Hokio Stream, in the best interests of all parties concerned, and that care be taken to give the natives interested due notice and opportunity to submit evidence’.³⁹¹ The meeting must have been an unusual one for Hudson, who was County Clerk, secretary of the domain board, and now also clerk to the drainage board.³⁹²

1927. Archives Central file HRC 00076: 1: 1). By September 1928 Bartholomew had got himself elected to a vacancy on the drainage board (Under Secretary for Internal Affairs to Clerk, Hokio Drainage Board, 25 September 1928. Archives Central file HRC 00076: 1: 1). In 1931 he along with two family members wrote to the board – on which he remained a member – seeking the services of eight unemployed men to work on the drains on their property (F C, I J and C Bartholomew to Clerk, Hokio Drainage Board, 9 June 1931. Archives Central file HRC 00076: 1: 2). In like fashion, in March 1926 board member Lyndsay McDonald signed a petition to the board calling for additional drainage work on the Hōkio Stream (see below) (P[?] B Bartholomew and others to Chairman and Members, Hokio Drainage Board, 15 March 1926. Archives Central file HRC 00076: 1: 1

³⁸⁹ Hōkio Stream and the outlet of Lake Horowhenua. Adkin, George Leslie, 1888-1964: Photographs of New Zealand geology, geography, and the Maori history of Horowhenua. Ref: PA1-q-002-007. Alexander Turnbull Library, Wellington, New Zealand. <http://natlib.govt.nz/records/22348651>

³⁹⁰ Under Secretary for Lands to Under Secretary for Internal Affairs, 2 September 1925. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

³⁹¹ Assistant Under Secretary for Internal Affairs to Under Secretary for Lands, 1 October 1925. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

³⁹² In this regard Hudson must have occasionally addressed letters from one organisation to himself in another. In 1928, for example, he wrote as the clerk of the drainage board to the Country Clerk, and as the County Clerk

On 26 October 1925 the Department of Internal Affairs appointed a commission under R M Watson, Stipendiary Magistrate of Feilding. All parties were advised, including ‘representatives of the natives’.³⁹³ Rere Nicholson wrote to Coates again on 4 November after receiving notice of the new commission. He supposed ‘it is due to the fact that we are Maoris that we have been ignored in this matter’. He requested that, as Native Minister, Coates

defend our rights and set aside this commission. We are grieved, for no sooner one commission is dispensed with another is appointed.³⁹⁴

Watson’s report was completed on 28 November 1925, the day after he conducted a public hearing at Levin. At the inquiry Rere Nicholson represented ‘himself and the majority of the Native owners bordering the Hokio Stream’. He also translated the order of reference into Māori at the magistrate’s request. The stream’s outfall from the lake was inspected and the flow was found to be obstructed by raupō, willows, and at least five eel weirs over its first half mile. Discussions occurred between Nicholson and the representatives of the county council, drainage board, and domain board, and several resolutions were read out when the commission reconvened in Levin.

The resolutions were as follows: the board will have ‘the exclusive care, control, management and maintenance of that part of the Hokio Stream commencing at its outlet from the Horowhenua Lake’ and encompassing the ‘short length’ of ‘slow flowing waters’ at the head; the board will remove the eel weirs for the purpose of ‘clearing out’ the stream, and then ‘the natives’ will replace the weirs with the board remunerating them for their time; the board will refrain from altering the actual banks of the stream and prevent erosion of the banks through groynes; and, lastly, ‘It is the intention of the Board this resolution shall in the interests of the natives be irrevocable.’ Nicholson translated these resolutions to the assembled Māori owners, who indicated that they had no objection. Watson reported on the agreement reached and concluded that it was ‘inexpedient in my opinion to vest the exclusive care, control management and maintenance of that part of the Hokio Stream between the said line and the Sea in any local authority’.³⁹⁵ Nicholson also wrote to Coates the day after the public hearing and conveyed news of ‘the amicable settlement of this matter’.³⁹⁶

back to the clerk of the drainage board. Clerk, Hokio Drainage Board to County Clerk, 7 September 1928; County Clerk to Clerk, Hokio Drainage Board, 11 September 1928. Archives Central file HDC 00018: 15: 2/4/1

³⁹³ Assistant Under Secretary for Internal Affairs to Under Secretary for Lands, 28 October 1925. Archives New Zealand file AADS W3562 Box 251 1/220 part 2

³⁹⁴ Rere Nicholson to Native Minister, 4 November 1925. Archives New Zealand file ACGO 8333 IA1 1380 19/10/51

³⁹⁵ ‘Hokio Stream’, *Chronicle*, 27 November 1925, and ‘Hokio drainage problem’, *Chronicle*, 28 November 1925. Clippings on Archives Central file HRC 00076: 1: 1; ‘In re Hokio Stream: Horowhenua County’ (Watson’s report). Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

³⁹⁶ Rere Nicholson to Native Minister, 28 November 1925. Archives New Zealand file ACGO 8333 IA1 1380 19/10/51

Protests about the drainage works

The Chief Drainage Engineer, Auckland, inspected the lake and its outlet at the end of 1925 and felt that the lake level could easily be reduced by three to four feet if the head of the stream was cleared of swamp vegetation, willows, and eel weirs. He added that there might 'be some difficulty in meeting the requirements of the Natives in their eel fishing right but a Board will be in a much better position to deal with this than an individual and I do not anticipate any serious trouble'.³⁹⁷

Hay, a Foxton civil engineer, wrote to the drainage board on 16 February 1926 describing the proposed works. Amongst other things this involved cutting a channel 14 feet wide 'generally following the present channel bed'. The lake would first be dammed so that the stream would practically dry up during the course of the works, and when the earth dam was removed and the lake water released, the bottom of the lake outlet would be scarified for a width of at least 20 feet. All work was estimated to be completed by 20 March.³⁹⁸ It must have commenced soon after Hay wrote to the drainage board, and clearly went much too far for Muaūpoko. Puku Wirihana and Hori Wirihana were arrested for destroying the dam and obstructing the drainage workers on 19 February. When they appeared before the Magistrate's Court in Palmerston North on 24 February, the lawyer for the drainage board asked for an adjournment on the ground that the charges might be withdrawn. In doing so he made a remarkable statement:

He said the natives were under the impression that their fishing rights in the Hokio stream took precedence of drainage rights. The Minister of Internal Affairs had now intervened and assured the natives that they had no fishing rights in the stream and, even if they had, drainage rights would supersede them. The natives had now given an undertaking that they would not interfere with any further works that were being carried out by the Board, and the Minister had every confidence that the Maoris would carry out their promise.³⁹⁹

Officials noted – with regard to the Bollard's reported comments about fishing and drainage rights – that the Minister 'denies having made such a statement'.⁴⁰⁰

On 26 February the solicitors who had previously acted for Hanita Henare – Wilford, Levi and Jackson – wrote to the chairman of the drainage board. They explained that they were instructed by James Hurunui Junior and J H Heremaia, 'who are acting for the whole of the natives interested in the Hokio Stream'. They made the point that the board's current works were a 'direct breach' of the agreement made before the commissioner in Levin on 27 November 1925 that there would be no interference with the banks except in specified ways.

³⁹⁷ Chief Drainage Engineer, Auckland, to Under Secretary for Lands, 12 December 1925. Archives New Zealand file BAIE A799 1178 Box 135 h 10/126

³⁹⁸ F C Hay, civil engineer, to Chairman, Hokio Drainage Board, 16 February 1926. Archives Central file HRC 00076: 1: 1

³⁹⁹ 'Maoris give pledge not to molest work', *Chronicle*, 24 February 1926. Clipping on Archives Central file HRC 00076: 1: 1

⁴⁰⁰ Annotation alongside clipping of 'Native fishing rights. Power of Drainage Board in question', *Dominion*, 25 February 1926. Archives New Zealand file ACGO 8333 IA1 1380 19/10/51

There had been no reference to deepening the stream but merely to ‘clearing out’. The perspective of the owners was that the deepening works proposed ‘would render the eel weirs, when replaced, utterly useless for the purposes of a fishery’. The solicitors threatened an injunction under section 30 of the Land Drainage Act if the works did not cease at once, and expressed disbelief ‘that your Board desires to wilfully commit a breach of the arrangement made between all parties before the Commissioner’.⁴⁰¹

On 22 February the Minister of Internal Affairs had despatched A G Harper of his department to Levin to investigate the matter.⁴⁰² Harper met with the drainage board members the following day. He wrote to Hudson on 1 March to say that he was ‘glad to hear that the work on the Stream is progressing satisfactorily, and I hope that the disgruntled natives will see fit to fall in with the arrangements made by Mr. Nicholson’.⁴⁰³ Then, on 3 March, members of the drainage board and ‘certain natives’⁴⁰⁴ also met with the Minister of Internal Affairs about the matter in Wellington. Levi, the solicitor representing the Muaūpoko owners, explained at this meeting that his clients wanted to assist with the drainage work but would not tolerate any disruption to their ‘ancient and separate fishing rights’. However, William Park, representing the drainage board, contended that

The rights of the other Natives are subservient to the rights of No. 9 block. The owners of No. 9 block are whole-heartedly in favour of this work being done. They were not at first I admit but they have seen the wisdom of it.⁴⁰⁵

It seems that the drainage board was exploiting a divergence in priorities between Muaūpoko, who caught eels at the head of the Hōkio Stream, and Ngāti Raukawa, whose block 9 ran parallel to half the stream’s length and was therefore susceptible to flooding.

A Muaūpoko representative at the meeting argued that ‘We have been doing the cleaning work for several years, and if still allowed to do it there would have been no trouble at all.’ G P Newton, the Assistant Under Secretary for Internal Affairs, was unsympathetic. He too pointed to Ngāti Raukawa support for the work and claimed that ‘the majority of people there are clearly of opinion that the work is of benefit’. He did not consider that the ‘actual’ fishing rights ‘are interfered with at all’. The only question was ‘whether they will catch as many eels as they did before operations commenced’. In other words, Newton was putting forward the creative argument that Muaūpoko’s fishing rights were unaffected, even if – as a result of the works – they might not catch any fish. Levi asked that the work be halted temporarily but Park was adamant this would not happen. Bollard agreed in the circumstances to send

⁴⁰¹ Wilford, Levi & Jackson to G Thompson, Chairman, Hokio Drainage Board, 26 February 1926. Archives Central file HRC 00076: 1: 1

⁴⁰² Telegram from the Department of Internal Affairs to Hudson, Hokio Drainage Board, 22 February 1926. Archives Central file HRC 00076: 1: 1

⁴⁰³ A G Harper to Hudson, Clerk, Hokio Drainage Board, 1 March 1926. Archives Central file HRC 00076: 1: 1

⁴⁰⁴ These appear to have been James Hurunui and Jack Hopa. ‘Chairman’s report’, 16 March 1926. Archives Central file HRC 00076: 1: 1

⁴⁰⁵ Minutes of meeting of 3 March 1926. Archives New Zealand file ACGO 8333 IA1 1380 19/10/51

Harper and the Native Minister's private secretary, Henare Balneavis, to the Hōkio Stream the following day 'to endeavour to settle the matter'.⁴⁰⁶

Hudson wrote to Hay on 4 March, noting that 'The chief cause of contention is the removal of bars or banks in the centre of the Hokio Stream which the natives state will seriously interfere with the operations involved in the catching of eels.' He added that the drainage board were confident that 'the reasons advanced by the natives are more or less moonshine', but felt that Hay's presence would nevertheless be valuable at the meeting to be held that day at the Hōkio Stream which Harper and Balneavis would attend.⁴⁰⁷

Balneavis gave Bollard an account of this meeting. Representatives of the drainage board and Rere Nicholson met Harper and Balneavis and 'several members of the Muaupoko Tribe' on Raumatangi Road. Together they inspected the stream from the point where the Watson commission had decided that drainage operations should terminate (marked 'A' on the sketch below) as far as Nicholson's cowshed. They heard from Mrs Miriama Patu Watson, who complained that the drainage operations had gone on as far down the stream as Nicholson's cowshed, which contravened the resolutions of the Watson commission. The drainage board had also broken that agreement by deepening the stream rather than simply clearing weeds. Mrs Tapita Himiona agreed and suggested that, as a compromise, the drainage work be completed but in future the board undertake no further deepening without the consent of those Māori with fishing rights in the stream.⁴⁰⁸

Balneavis then asked Mrs Ngapera Ihaia-Taueki, the user of the Tūturi eel weir, if she would object to the removal of its midstream wing to allow the free passage of water. She refused at first but subsequently agreed when the drainage board chairman, Thompson, promised to put in place 'a concrete wall sufficient for the purpose of a wing'. Thompson also undertook to do the same for the Pukaahu weir if his engineer thought it necessary. Balneavis, Hurunui, and Nicholson agreed 'on behalf of the Natives' that, if no Māori agreement was forthcoming for any future drainage board plans to deepen the stream, the Minister of Internal Affairs should arbitrate. Balneavis 'strongly' recommended that the Minister introduce legislation setting out the requirement for Māori consent to future deepening in 'order to set at rest the fears of the Natives'.⁴⁰⁹

The upshot of the meeting was an agreement dated 5 March 1926 and signed for and on behalf of the drainage board by Hudson and 'for the native interests' by Balneavis and, in an apparent show of Muaupoko-Ngāti Raukawa bilateralism, Rere Nicholson and James Hurunui. It set out that the work was to be completed 'in accordance with the Engineer's plan and levels'. Secondly, no further deepening was to be carried out without Māori consent, and

⁴⁰⁶ Minutes of meeting of 3 March 1926. Archives New Zealand file ACGO 8333 IA1 1380 19/10/51

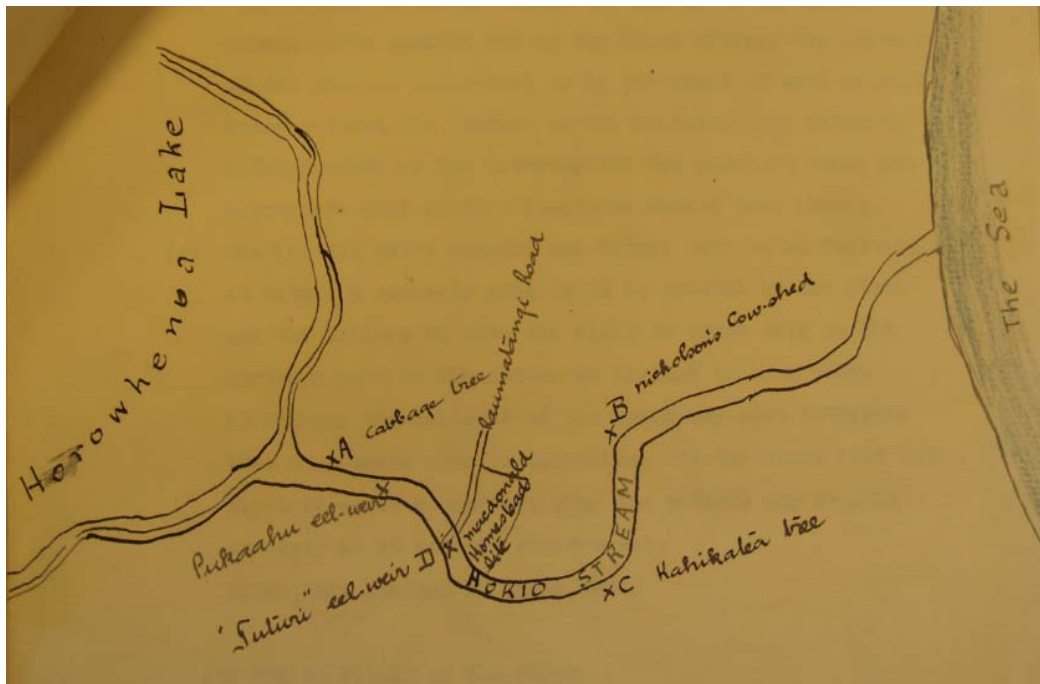
⁴⁰⁷ Clerk, Hokio Drainage Board, to F C Hay, 4 March 1926; 'Chairman's report', 16 March 1926. Archives Central file HRC 00076: 1: 1

⁴⁰⁸ Henare Balneavis to Minister of Internal Affairs, 8 March 1926. Archives New Zealand file ACGO 8333 IA1 1380 19/10/51

⁴⁰⁹ Henare Balneavis to Minister of Internal Affairs, 8 March 1926. Archives New Zealand file ACGO 8333 IA1 1380 19/10/51

if such consent was refused the matter was to be referred for a decision to the Minister of Internal Affairs, who would make an investigation. Thirdly, the two eel weirs Pukaahu and Tūturi, were both to be removed. At Tūturi a concrete wing would be created and the Māori owners could construct a new eel weir on the northern part of the stream as divided by it. At Pukaahu either another concrete wing would be built or the Māori owners could replace the weir as currently constructed.⁴¹⁰

Figure 2.4: Sketch plan showing places mentioned in the 5 March 1926 drainage agreement⁴¹¹



Bollard was ‘very pleased to learn that the matter has thus been amicably settled’. He told the drainage board that he supposed that the prosecutions would now be withdrawn and that ‘there will be no further interference on the part of the natives’.⁴¹² At the same time Bollard also wrote to Hurunui and thanked him ‘for your efforts in preventing the natives from taking the law into their own hands and interfering with the works of the Board on the stream’. He was sure that Muaūpoko now realised that they should always ‘endeavour to come to an amicable agreement when any matter of dispute arises’.⁴¹³

In later years Muaūpoko were thoroughly critical of the circumstances in which this agreement was signed, as we shall see below and in chapter 3.

⁴¹⁰ ‘Memorandum of Terms of Settlement of Dispute between the Hokio Drainage Board and the Natives’. Archives Central file HRC 00076: 1: 1

⁴¹¹ Sketch plan attached to Henare Balneavis to Minister of Internal Affairs, 8 March 1926. Archives New Zealand file ACGO 8333 IA1 1380 19/10/51

⁴¹² Minister of Internal Affairs to Clerk, Hokio Drainage Board, 11 March 1926. Archives Central file HRC 00076: 1: 1. The case against Puku and Hori Wirihana was indeed struck out. ‘Chairman’s report’, 16 March 1926. Archives Central file HRC 00076: 1: 1

⁴¹³ Minister of Internal Affairs to James Hurunui Jnr, 11 March 1926. Archives New Zealand file ACGO 8333 IA1 1380 19/10/51

The passage of legislation in 1926

This resolution may not have pleased Pākehā land-owners, however. On 15 March 1926 ten of them petitioned the drainage board asking for a scheme of drainage that would benefit their lands in the northern part of the drainage district.⁴¹⁴ And despite the domain board reporting in May that drainage activities had dropped the level of the lake by more than three feet,⁴¹⁵ the Lands Department now wanted to do more. The Deputy Commissioner of Crown Lands reported to the Under Secretary for Lands that, to give proper benefit to land in the drainage district, there would need to a widening and deepening of the upper reaches of the Hōkio Stream. To enable this he advocated that an area that Commissioner Watson may have regarded as part of the outlet of the lake be placed under the control of the drainage board. Work already undertaken, he explained, had arguably shifted the location of the true ‘outlet’ towards the lake.⁴¹⁶ He attached a plan showing the area in question (see figure 2.3 below). The Under Secretary forwarded this proposal on to the Department of Internal Affairs, stating that the Lands Department had no objection to it as long as the domain board agreed.⁴¹⁷

The Department of Internal Affairs did not reply to this proposal immediately. Instead, by August 1926 it had prepared the text of a clause dealing with the Hōkio drainage operations for inclusion in the washing-up Bill due to be introduced to the House. The clause passed the House without comment on 11 September as section 53 of the Local legislation Act 1926. It contained a preamble that referred to the need to conduct drainage operations on the Hōkio Stream, while at the same time ‘reasonably’ safeguarding and preserving Māori fishing rights and rights of user of Lake Horowhenua, as conferred by the Horowhenua Block Act 1896 and the Horowhenua Lake Act 1905. It therefore provided for drainage operations to be carried out, by proclamation under section 64 of the Land Drainage Act 1908, that included the widening or deepening of the stream, the removal or replacement of eel weirs, the regulating of the lake level, and so on, provided provisions were made ‘to protect any existing Native fishing rights as aforesaid, and to secure to the public the user of Horowhenua Lake as a recreation reserve without undue interference with existing rights of user’. As the Department of Internal Affairs explained to the drainage board, it was thought simplest to create a general power to deal with any drainage issues by proclamation rather than be overly specific about such powers in the Act.⁴¹⁸

⁴¹⁴ P [?] B Bartholomew and others to Chairman and Members, Hokio Drainage Board, 15 March 1926. Archives Central file HRC 00076: 1: 1

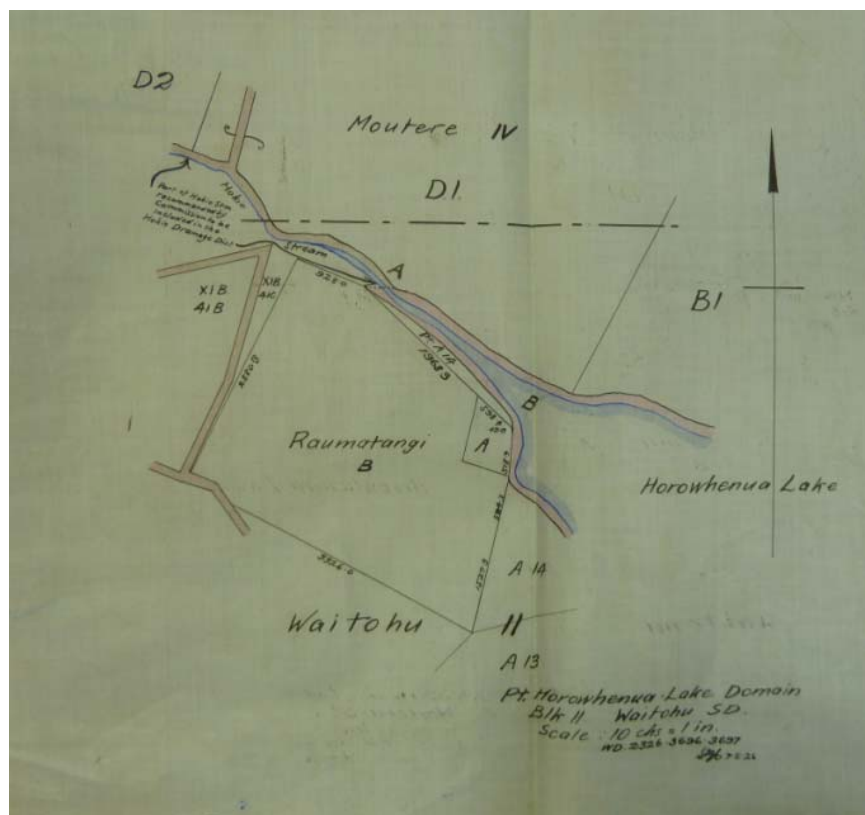
⁴¹⁵ Given the amount of foreshore land reclaimed the board described this as ‘a decided improvement’. ‘General remarks’. Insertion in the Horowhenua Lake Domain Board Annual Report for the year ended 31 March 1926, 26 May 1926. Archives New Zealand file AADS W5491 6095Box 158 1/220 part 3

⁴¹⁶ Deputy Commissioner of Crown Lands to Under Secretary for Lands, 8 May 1926. Archives New Zealand file AADS W5491 6095Box 158 1/220 part 3

⁴¹⁷ Under Secretary for Lands to Under Secretary for Internal Affairs, 24 May 1926. Archives New Zealand file AADS W5491 6095Box 158 1/220 part 3

⁴¹⁸ Assistant Under Secretary for Internal Affairs to Clerk, Hokio Drainage Board, 19 August 1926. Archives Central file HRC 00076: 1: 1

Figure 2.5: Sketch plan forwarded by the Deputy Commissioner of Crown Lands on 8 May 1926 showing the lake outlet at the time of Commissioner Watson's inspection (A) and the current 'true outlet' (B)⁴¹⁹



With the Act passed the Department of Internal Affairs informed the Lands Department that a proclamation would be issued giving the drainage board the control of not just the area of the stream recommended by Commissioner Watson but also the area at the lake outlet suggested by the Deputy Commissioner of Crown Lands.⁴²⁰ The proclamation to this effect was published in the *Gazette* on 16 December 1926, with the boundary of the district running in a line from the south-western corner of Horowhenua XIB41 North B1 to the eastern-most corner of Raumatangi A.⁴²¹ With this, the Crown had conferred on the Hokio Drainage Board the power to deepen the head of the Hōkio Stream in such a way that that 'reasonably' protected Māori fishing and other rights. On the face of it, the drainage board's previous failure to comply with the terms of the agreement concluded on 27 November 1925 made it unlikely that the fishing rights of Muaūpoko and Ngāti Raukawa would be safeguarded. The board had intended that agreement to be 'irrevocable'. Forgotten, too, was the agreement with the two iwi of 5 March 1926 that had been brokered by the Crown (and signed by a senior official) and contained a requirement for Māori consent to any further deepening.

⁴¹⁹ Deputy Commissioner of Crown Lands to Under Secretary for Lands, 8 May 1926. Archives New Zealand file AADS W5491 6095Box 158 1/220 part 3

⁴²⁰ Assistant Under Secretary for Internal Affairs to Under Secretary for Lands, 16 September 1926. Archives New Zealand file AADS W5491 6095Box 158 1/220 part 3

⁴²¹ *NZ Gazette*, No. 81, 16 December 1926, p 3410

Essentially, Muaūpoko had twice engaged lawyers to protect their interests from drainage operations – in 1918 and again in 1926. On both occasions their legal counsel had pointed out to, first, the domain board and, secondly, the drainage board, that there was no authority for the drainage works being contemplated. With the passage of legislation in September 1926 – and the provision therein for ‘widening or deepening’ – the Crown had taken a significant step towards overcoming these obstacles. However, there remained a statutory obligation to reasonably safeguard Māori fishing rights, and the legal struggle continued. In 1927 Muaūpoko engaged the services of Morison, Smith and Morison (soon Morison, Spratt and Morison) – the firm of future Native/Māori Land Court Chief Judge David Morison – in what was to become a long association in the tribe’s efforts to reassert its mana over the lake.⁴²²

The exposure of the lakebed and trespass by farmers

Some of the detail of the immediate impact of the drainage works can be found later, in submissions to a 1934 inquiry into Muaūpoko’s rights over the lake (see chapter 3). David Morison, as counsel for the tribe, claimed that in 1926 the drainage board had

cut a channel, narrow and with perpendicular sides, and with a shingly bottom and with a rapid flow of water. The result is that the eel weirs now cannot properly be used. Only two can now be used where there were thirteen. Part of the trouble is that originally the creek was wide with weirs on either side now these are high and dry and they cannot have weirs on each side of the channel as it is too narrow.⁴²³

Morison argued that the drainage board had ‘ridden rough shod over the rights of the natives to benefit adjoining farmers’. Significantly, he claimed that neither had the 1926 Act been passed nor had the December proclamation been issued when the work was done. As he put it, ‘The Board trampled on native rights and then got legislation to justify their action.’ He summed up the result of its work like this:

Not only was the Hokio Stream in the Muoupoko area [that is, presumably, as opposed to Ngāti Raukawa’s area of interest further downstream] made unsuitable for eel weirs but the level of the Lake was dropped considerably, three or four feet, and the edge of the water receded from one to two chains. In many parts of the Lake that left a stony beach whereas prior to that the edge was covered with flax, nigger-heads, etc. under the water, which was a great feeding ground for eels. ... In addition they had kakahi and when the Lake was lowered numbers of these were left high and dry and were not available as before.⁴²⁴

By early February 1927, Hudson – in his capacity as secretary of the domain board – advised the Lands Department that the drainage board’s work had lowered the lake ‘a considerable

⁴²² Morison, Smith & Morison to Secretary, Hokio Drainage Board, 2 November 1927. Archives Central file HRC 00076: 1: 1

⁴²³ Minutes of the Harvey-Mackintosh inquiry held at Levin on 11 July 1934. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

⁴²⁴ Minutes of the Harvey-Mackintosh inquiry held at Levin on 11 July 1934. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

distance'. In what was to prove another considerable difficulty for Muaūpoko, farmers had erected fences 'on what might be termed their reclaimed land'. Hudson asked for a plan showing the exact boundary between the reserve and the settlers' land, in order to help ensure that the fencing did not encroach on the former.⁴²⁵ Another unfortunate outcome of the lake's lowering was the 'considerable damage' caused by 'numerous grass fires' at the domain in January 1928.⁴²⁶ It will be remembered that the surveyor, Mountford, had predicted in 1906 that grass fires would sweep through the swamps as a result of any drainage of the lake.

Image 2.8: Taueki family on 'Hamaria' canoe, Lake Horowhenua, June 1926⁴²⁷



On 30 October 1929 Te Tuku Matakatea and others wrote to Native Minister Āpirana Ngata (in Māori) to complain that the Pākehā living on lands around the lake were (as translated) 'burning the flax growing near by and digging drains to take the water away'. They were also claiming the chain strip as their own. Matakatea reported that, as a result of this, Muaūpoko had decided to fence the strip off. They had paid for the survey of a boundary line but, on 2 September, one of the Pākehā had ploughed through it, despite Warena Kerehi (who was of course a domain board member) trying to dissuade him from doing so. This farmer had said that if a fence was built he would cut it down. Matakatea explained that the lessees Hana Rata and J W Procter had been asked to contribute half the cost of building the fence, but through their solicitors had refused 'as the Board is the vested owner of the Lake'. Matakatea concluded by telling Ngata that 'The purpose of our letter really is to ask you to advise us as to whether we were within our rights to erect a fence and to serve the lessees of the land

⁴²⁵ Hudson to Under Secretary for Lands, 4 February 1927. Archives New Zealand file AADS W5491 6095Box 158 1/220 part 3

⁴²⁶ 'Annual Report of the Horowhenua Lake Domain Board for the year ended 31st March 1928', 9 May 1928. Archives New Zealand file AADS W5491 6095Box 158 1/220 part 3

⁴²⁷ Hamaria canoe on Lake Horowhenua. Adkin, George Leslie, 1888-1964: Photographs of New Zealand geology, geography, and the Maori history of Horowhenua. Ref: PA1-q-002-072. Alexander Turnbull Library, Wellington, New Zealand. <http://natlib.govt.nz/records/22667212>

adjoining this portion with a notice to do half the fencing.’ He asked Ngata to ‘protect your Maori people’.⁴²⁸

Ngata replied in on 11 November 1929. As translated into English, his letter stated that inquiries had been made and ‘the Act’ (presumably the 1916 Act) referred to a chain strip all around the lake and ‘the Board is a drainage Board within the boundaries of the reserve’. Ngata suggested that Muaūpoko’s surveyors should ‘see if the disputed land comes within this boundary’ (‘Me titiro e ta koutou Kai-ruuri mehemea to whenua e tautohetia nei kei roto, kei waho ranei o taua rahui’).⁴²⁹ As it stood this was a reasonably unhelpful reply, because it appeared that Ngata was unaware of the advent of the drainage board. It also advised Muaūpoko to get their surveyors to check a boundary that had already been surveyed.

Matakatea and others wrote to Ngata again on 14 November. They clarified that it was indeed the chain strip around the lake they were referring to, and the person causing the trouble had an area of land adjoining the chain strip. He had been advised to build a fence to keep his land separate from the reserve. As Matakatea explained, ‘We feel that we are helpless against the ... Drainage Board’. The board’s help had been sought to compel the farmer to fence his land off as per section 21 of the Public Reserves Domain and National Park Act 1928, but

The person in question has threatened to destroy the fence if one is erected. He is a member of the Horowhenua Drainage Board. Kindly advise us when the Drainage Board had jurisdiction over this land around the Lake being one chain wide.⁴³⁰

The farmer may possibly have been Thomas Vincent, who was elected to the drainage board in 1928⁴³¹ and owned several blocks of land which bordered the chain strip.⁴³² More likely, perhaps, is that it was John Proctor, who was also a drainage board member and whose family owned land abutting the chain strip. At the inquiry in 1934 (see below) a man named Proctor was described as having been the sole land-owner who had objected to fencing his land.

Ngata replied to Matakatea on 23 December. He stated that section 97 of the 1916 Act vested control of the chain reserve in the board and ‘There is no way I know of by which you can take proceedings in connection with the Reserve. The Native members of the Board could

⁴²⁸ Tuku Matakatea and others to Āpirana Ngata, 30 October 1929. Original letter (in Māori) and translation both on Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1. The translation into English is clearly an abbreviation of the letter.

⁴²⁹ Ngata to Puku (sic) Matakatea, 11 November 1929. English draft and translated letter in Māori both on Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

⁴³⁰ Tuku Matakatea and others to Ngata, 14 November 1929. Original letter (in Māori) and translation both on Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1. Again, the translation into English was far from perfect. For example, it stated that the person in question was advised to erect a fence on the 14th but the original says ‘i te tekau matoru o te marama’. Nor did the original letter did not refer to the ‘Horowhenua Lake Drainage Board – it referred simply to ‘te Paori [sic – should be Poari] Kariawa’, that is ‘the Drainage Board’. There is likewise no reference later to the person being a member of the ‘Horowhenua’ Drainage Board.

⁴³¹ Hudson, Clerk, Hokio Drainage Board, to Assistant Under Secretary for Lands, 22 February 1928. Archives New Zealand file ACGO 8333 IA1 2184 103/18/27

⁴³² See plan on Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1.

bring the matter before the Board.’ Again, a letter about the drainage board had been answered about the domain board. Ironically, in his reply in Māori the word Ngata used for ‘control’ was ‘mana’ – that is, the very authority that Muaūpoko had been promised in 1905 (he wrote ‘Ko te ture nana i whakawhiwhi te Poari ki te mana mo taua whenua ...’).⁴³³

The domain board itself received a letter dated 2 December 1929 from Hori Wirihihana and 24 others seeking permission to fence the border of the lake in order to plant flax, sow grass, and cultivate where possible.⁴³⁴ Hudson sought the advice of the Lands Department on how to respond. He noted that the chain strip was now ‘high and dry in places’ and being used for grazing by adjoining owners. The Muaūpoko request, therefore, ‘brings the position to a head’. He asked if the domain board could: (1) compel land owners to fence without the board having to share the cost; (2) allow the land-owners to graze the chain reserve neighbouring their property through fencing to the water’s edge; or (3) allow anyone to fence off and use the chain reserve either free of charge or through the payment of a lease.⁴³⁵

The Under Secretary for Lands responded that the chain strip was ‘evidently included in the domain so as to ensure free and unrestricted access around the shores of the lake at all times and in the opinion of this office any dealing which might tend to restrict the public rights in that connection would not be in order’. The answers to Hudson’s queries were therefore all in the negative.⁴³⁶ Hudson duly wrote back to Hori Wirihihana – in a letter which never reached him, but was returned by the dead letter office – that the board had ‘no power to allow any persons to fence and use portions of the chain strip, either free of charge or by lease at a rental to be determined’.⁴³⁷

Muaūpoko had therefore appealed to both the Native Minister and the domain board (and by extension the Lands Department) for assistance with the problem of encroachment by Pākehā farmers onto the chain strip and dewatered area, but had been told either that there was nothing that could be done or that they themselves had no right to use the strip. In September 1930 they turned to Chief Judge Jones of the Native Land Court, whom Parawhenua Matakatea cabled with respect to ‘my complaint last year Horowhenua lake property still being destroyed by various farmers. Please advise me re action to take.’⁴³⁸ Jones replied by telegram the same day, advising Matakatea that ‘Only way is to complain to Horowhenua

⁴³³ Ngata to Tuku Matakatea, 23 December 1929. English draft and translated letter in Māori both on Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

⁴³⁴ Hori Wirihihana and 24 others to Secretary, Horowhenua Lake Domain Board, 2 December 1929. Archives New Zealand file AADS W5491 6095Box 158 1/220 part 3

⁴³⁵ Hudson to Under Secretary for Lands, 4 December 1929. Archives New Zealand file AADS W5491 6095Box 158 1/220 part 3

⁴³⁶ Under Secretary for Lands to Hudson, 13 December 1929. Archives New Zealand file AADS W5491 6095Box 158 1/220 part 3

⁴³⁷ Hudson to Hori Wirihihana, 16 December 1929. Archives Central file A/2012/6 : 5002212201 : 10 (Horowhenua Lake Domain Board 1923-1934)

⁴³⁸ Telegram Parawhenua Mataka (sic) to Chief Judge Jones, Native Land Court, 17 September 1930. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

Lake Board who can prevent trespass.’⁴³⁹ Matakatea persisted, writing to Jones again on 14 April 1931. Jones told him on 15 May 1931 – this time signed in his capacity as Under Secretary of the Native Department – that ‘your complaint with regard to grazing stock and fencing the chain reserve around the lake should be made to the Board of Control on which there are three Maori members’.⁴⁴⁰

Matakatea also approached former Prime Minister and then leader of the opposition, Gordon Coates. He asked Coates what could be done about Pākehā grazing their stock to the edge of the lake.⁴⁴¹ Coates asked Ngata to make inquiries and advise how he should reply. Ngata told Coates that there was a one-chain strip around the lake provided for by section 97 of the 1916 Act, but – like Jones – advised that ‘The question of preventing the grazing of stock and fencing the chain reserve is a matter which should be taken up with the Board of Control, on which there are three Maori members’.⁴⁴²

On 1 October 1930 – shortly after Matakatea’s first letter to Jones – Hudson noted to the Under Secretary for Lands that ‘representations’ had been ‘made by certain Natives that portions of the chain reserve around the Lake were being improperly used by the occupiers of land adjacent thereto’. As a result, the board had made an inspection of the southern end of the lake. However, it had proved impossible to locate the actual boundaries of the reserve and Hudson asked if an officer of the department could assist.⁴⁴³ The Under Secretary promised that an official would shortly ‘investigate the position on the ground’.⁴⁴⁴ To this end he wrote to the Commissioner of Crown Lands explaining the situation, noting that the board could not afford to fence the reserve and adjoining land-owners could therefore not be prevented from using it.⁴⁴⁵

In the meantime, on 14 October, a Muaūpoko deputation also met with the Minister of Internal Affairs, Philip de la Perrelle, specifically to discuss the Hōkio Stream. Also present were Coates, Balneavis, Harper, and Morison. Morison contended that a lot of the trouble had begun when Ngāti Raukawa were admitted to ownership of a small part of the Horowhenua Block in 1873. He claimed that Rere Nicholson had talked James Hurunui into signing the 5 March 1926 agreement without Hurunui fully understanding it, and that Nicholson had ‘purported to represent them [Muaūpoko] when he had no right to represent them’. Hereora Hatuamaha set out (as interpreted by Balneavis) ‘the griefs and burden’ Muaūpoko were

⁴³⁹ Jones to Parawhenua Mataka (sic), 17 September 1930. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

⁴⁴⁰ Parawhenua Matakatea to Jones, 14 April 1931; Jones to Parawhenua Matakatea, 15 May 1931. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

⁴⁴¹ Parawhenua Matakatea to Gordon Coates, 4 May 1931. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

⁴⁴² Coates to Ngata, 11 May 1931; Ngata to Coates, 14 May 1931. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

⁴⁴³ Hudson to Under Secretary for Lands, 1 October 1930. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3

⁴⁴⁴ Under Secretary for Lands to Hudson, 3 October 1930. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3

⁴⁴⁵ Under Secretary for Lands to Commissioner of Crown Lands, 3 October 1930. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3

carrying with regard to the lake. His fisheries had ‘disappeared’, his eel weirs were ‘high and dry’, and his flax had been ‘dug up and destroyed by Europeans’. Morison also argued that the loss was one of ‘prestige’. At the recent tangihanga for sir Māui Pōmare Muaūpoko ‘had to go practically empty handed and that, to them, was a disgrace’. The Minister said ‘it seemed to him an unfortunate thing that the Natives should be deprived of their food supplies from that Lake by a drainage system which did not clear much ground and did a lot of injustice to the people’. He promised that his officials would look into the matter ‘carefully’.⁴⁴⁶

Harper and F H Waters, the Chief Surveyor, thus travelled to Levin together to make inquiries on behalf of their respective departments with regard to the lake and stream. On 5 November 1930 they ‘conferred with the Horowhenua Lake Domain Board, the Hokio Drainage Board, and the Natives of the Mauapoko Tribe’. The Chief Surveyor reported back to the Under Secretary on 7 January 1931, noting that the drainage operations had made the lake waters recede by two chains, with consequential impacts on the fishery. He wrote that the land-owners he spoke to were willing for the chain reserve to be fenced, as long as the domain board or Muaūpoko paid half the cost. In his opinion, neither could afford to do so, ‘and further to this I do not think the land is worth the fencing’. But even if it was, locating the correct boundary would be very difficult because the domain boundary was ‘a very irregular curvilinear line’, and the work involved would be ‘extremely tortuous’. He therefore did not recommend that the department undertake the survey unless it could recoup the cost. Finally, he remarked that he did

not attach much importance to the Natives’ desire to become possessed of the reclaimed land, for I feel that there is much more behind their claim than that. As stated previously the discussions centred mostly round the matter of loss of food supplies from the Lake etc. For if it is admitted that they have sustained a loss, they will readily follow this up with a claim for compensation.⁴⁴⁷

The Assistant Under Secretary for Lands in turn advised Muaūpoko’s lawyers – who had written repeatedly asking for the outcome of this investigation – that the department did not intend to undertake any survey of the chain strip boundary, since ‘From a report received from the Chief Surveyor, Wellington, it appears that such a work would be very costly.’⁴⁴⁸

⁴⁴⁶ Notes of a meeting between Muaūpoko representatives and the Minister of Internal Affairs, 21 October 1930. Archives New Zealand file ACGO 8333 IA1 1380 19/10/51. The names of the members of Muaūpoko present were recorded as Parawhenua, Ruirā Parawhenua, Ngāpera Tauheke, Hereora Hatuamaha, Tutaua Hatuamaha, Te One Hōpa (J. Hurunui), and Piko Wirihana.

⁴⁴⁷ Chief Surveyor to Under Secretary for Lands, 7 January 1931. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3. The Chief Surveyor wrote 4 November, but other documents suggest it was 5 November. See ‘Memorandum of a meeting held at Levin on Wednesday and Thursday, November 5th and 6th 1930’. Archives Central file A/2012/6 : 5002212201 : 10 (Horowhenua Lake Domain Board 1923-1934)

⁴⁴⁸ Assistant Under Secretary to Morison, Spratt and Morison, 28 January 1931. See also letters from Morison Spratt and Morison of 8 and 18 December 1930 and 26 January 1931. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3

With regard to the Hōkio Stream, Harper reported that Muaūpoko wanted the lake reinstated to its former level to restore its eel habitat. The drainage board refused but the two sides did agree upon a resolution:

THAT the Board consider the question of a floodgate at the outlet of the Horowhenua Lake, that the Board report to the Internal Affairs Department when it has considered the question and that a further meeting to be arranged by the Internal Affairs Department be held before Christmas between the Board and the Natives.⁴⁴⁹

However, Hudson wrote on behalf of the drainage board shortly afterwards to inform Internal Affairs that ‘the Board are not prepared to install a floodgate as requested by the Natives’.⁴⁵⁰

The Marine Department investigation, 1931

At the same time as Muaūpoko were appealing to those in power about the improper use of their land surrounding the lake, they were also protesting about the effect of drainage on the fisheries in the lake. On 19 November 1930 the Department of Internal Affairs wrote to the Marine Department and explained that

The natives ... contend that the operations of the Board have been such that the eels no longer congregate in their accustomed places in the Horowhenua Lake and that the replacing of eel weirs would be of no use to them as the eels no longer come down the Hokio Stream.⁴⁵¹

The drainage board, by contrast, denied that there had been any effect on eel numbers. Harper had recently presided over a discussion in Levin between the drainage board and Muaūpoko on the subject, but this did not yield any resolution. Internal Affairs thus asked if the Fisheries Branch of the Marine Department could investigate both whether eel stocks in the lake had been depleted and whether eels would still migrate down the stream annually and be able to be caught in traps placed in the stream. The fate of kakahi around the lake’s margins also needed investigation.⁴⁵²

As a result of this request, A E Hefford – Ayson’s successor as Chief Inspector of Fisheries – and Captain L Hayes inspected Lake Horowhenua and the Hōkio Stream on 13 February 1931. They were driven about by the domain board chairman, William Jenson, and picked up J (presumably Tutaua) Hurunui, ‘a leading member of the Maori community’. They first visited the Hōkio Stream and observed the two eel weirs in operation (named Tūturi and Ruataniwha). Hurunui explained that these were the only weirs in use, ‘not because it was

⁴⁴⁹ A G Harper to Under Secretary for Internal Affairs, 14 November 1930. Archives New Zealand file ACGO 8333 IA1 1380 19/10/51. The resolution was moved by Hannan of the drainage board and seconded by J Heremaia of Muaūpoko.

⁴⁵⁰ F H Hudson, Clerk, Hokio Drainage Board, to Under Secretary, Department of Internal affairs, 15 November 1930. Archives New Zealand file ACGO 8333 IA1 1380 19/10/51

⁴⁵¹ Under Secretary for Internal Affairs to Secretary, Marine Department, 29 November 1930. Archives New Zealand file ADOE 16612 M1 76 1/7/102

⁴⁵² Under Secretary for Internal Affairs to Secretary, Marine Department, 29 November 1930. Archives New Zealand file ADOE 16612 M1 76 1/7/102

impossible to fix up traps in other places but because it was not worth while increasing the number of traps owing to the diminution in the quantities of eels which descended the stream'. Interestingly, Hefford concluded that it was 'thus the alteration in the Lake and not in the stream, which is the source of the trouble.'⁴⁵³

The group then visited the lakeshore on the Levin side near where the old boatshed had stood. From the exposed concrete piles of the old jetty Hefford calculated that the lake level had dropped by around four feet below its original level. The lake bottom at the water's edge was stony and comparatively clean, but Hefford and Hayes were informed that 'a great deal of the bottom is now covered with a fine silt brought down by drains which were made prior to the deepening of the Hokio stream by the Drainage Board'. Hefford then concluded confidently that 'I think it is an undoubted fact that the eel supply in the lake is diminished.' He listed the 'probable causes' as:

(1) the decrease in the area of the lake subsequent to the Drainage Works (2) The deposit of silt on the lake bottom caused by drains leading down to it. (3) Possibly also the presence of acclimatised perch which fish we were informed were becoming rather abundant. These would probably devour considerable numbers of young eels.⁴⁵⁴

Hefford also thought that the decline of kakahi 'could also have been brought about by any or all of the above mentioned factors'.⁴⁵⁵

Before Hefford could gauge the extent of the loss of fish stocks in the lake he said he would need more time to carry out a more comprehensive investigation. He warned that the loss of eels would not simply equate to the decrease, in proportion, of the area of the lake. Rather, that 'computation would probably give the minimum amount of depreciation'. He added in conclusion that 'If it should become absolutely necessary to make some compensation to the Maori community it will be necessary to make the investigations suggested above.'⁴⁵⁶ The Department of Internal Affairs agreed that it appeared 'desirable that a more detailed investigation should be carried out by Mr. Hefford', and to that end a copy of his report had been distributed 'to each of the parties concerned' with a request for suggestions on the detail of such an investigation.⁴⁵⁷

It is not clear if Hefford's proposed investigation ever took place. In July 1931 Morison told the Department of Internal Affairs that he had 'received no instructions from the Natives to

⁴⁵³ A E Hefford, Chief Inspector of Fisheries, to Secretary, Marine Department, 17 February 1931. Archives New Zealand file ADOE 16612 M1 76 1/7/102

⁴⁵⁴ A E Hefford, Chief Inspector of Fisheries, to Secretary, Marine Department, 17 February 1931. Archives New Zealand file ADOE 16612 M1 76 1/7/102

⁴⁵⁵ A E Hefford, Chief Inspector of Fisheries, to Secretary, Marine Department, 17 February 1931. Archives New Zealand file ADOE 16612 M1 76 1/7/102

⁴⁵⁶ A E Hefford, Chief Inspector of Fisheries, to Secretary, Marine Department, 17 February 1931. Archives New Zealand file ADOE 16612 M1 76 1/7/102

⁴⁵⁷ Under Secretary for Internal Affairs to Secretary, Marine Department, 10 March 1931. Archives New Zealand file ADOE 16612 M1 76 1/7/102

take any further action'.⁴⁵⁸ Nevertheless, Hefford's admittedly brief inspection and report in February 1931 was something of a vindication for Muaūpoko. Hurunui's notion – which Hefford appeared to accept – that the problem with catching eels in the stream was not so much its altered condition as the reduced eel population in the lake, appeared to contradict later Muaūpoko claims about the stream, such as those made by Morison in 1934. At that time, however, Morison claimed Hurunui had been misinterpreted, and had in fact stated that the impossibility of setting traps was another reason why only two hīnaki were used. Either way, a senior government official in 1931 had not only concluded that drainage work on the lake had harmed Muaūpoko's fishery, but suggested also that they might need to be compensated for it.

The resort to a Crown Law Office opinion, 1931-1932

Muaūpoko's next step was a petition to the Minister of Internal Affairs. This alleged that the domain board wished to put a road around the chain strip, which was strongly objected to.⁴⁵⁹ This notion appears to have stemmed from some earthworks at the reserve carried out by the board in April and May 1931 (see below). The Deputy Commissioner of Crown Lands wrote to the board on 17 June 1931 and asked whether the board was 'contemplating carrying out this work or any other work on the Domain of a nature likely to disturb the minds of the Natives'.⁴⁶⁰ While Hudson later denied the works were part of a road construction, he did note a month after the petition was submitted that 'the dry strip of land around the lake now makes possible the construction of a drive which, it is considered, would add to the attractiveness of the Reserve'.⁴⁶¹

At the same time, the domain board sought further advice about the chain strip. Hudson wrote to the Lands Department and asked whether the board could impound stock wandering on the foreshore, whether Māori could cut flax around the lake, and whether owners of land around the lake had riparian rights.⁴⁶² The Under Secretary replied that it would be 'most unwise' to take action over wandering stock while it remained impracticable to arrange the fencing of the chain reserve. He noted that the 1905 Act said nothing about cutting flax but it was 'very doubtful whether the Natives have the right to cut or remove' it. He conceded, however, that 'the Natives have been in the habit of cutting flax for very many years along the Lake' and 'no doubt' see it 'as one of their rights'. With regard to the third matter, the Under Secretary stated that no riparian rights were attached to foreshore land because of the chain strip.⁴⁶³

⁴⁵⁸ Morison to Under Secretary, Department of Internal Affairs, 9 July 1931. Archives New Zealand file ACGO 8333 IA1 1380 19/10/51

⁴⁵⁹ Under Secretary for Internal Affairs to Under Secretary for Lands, 8 June 1931, attaching petition of 25 May 1931. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3

⁴⁶⁰ 'Development of Horowhenua Lake. Rights of the Native race. Evidence submitted at an enquiry', *Chronicle*, 13 July 1934. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3

⁴⁶¹ Hudson to Under Secretary for Lands, 26 June 1931. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3

⁴⁶² Hudson to Under Secretary for Lands, 16 June 1931. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3

⁴⁶³ Under Secretary for Lands to Hudson, 19 June 1931. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3

The domain board still felt it needed further advice. It resolved at its meeting of 24 June 1931 to submit further questions with a view to obtaining the opinion of the Crown Law Office. Parawhenua Matakatea forwarded this resolution with alarm to Jones and invited him to visit them so ‘we can show you what is being done to the lake ... they are putting drains through to the lake without consent from us’.⁴⁶⁴ Hudson followed up the resolution by writing back to the Lands Department and asking whether (1) ‘the Horowhenua Lake Reserve is the property of the Crown or is it still owned by certain Natives’; (2) if by the latter, was the board’s role restricted ‘to the oversight of the privileges’ set out in the 1905 Act; and (3) what steps could the board take to have the fences removed. Hudson explained that:

It appears that at the back of the minds of the Natives, the Lake and the chain strip are still owned by them and all the Board can do is to preserve their fishing and other rights and control the privileges conferred on Europeans under the Horowhenua Lake Act, 1905.⁴⁶⁵

The Lands Department sought the Native Department’s assistance with the domain board’s request. It noted that the 1905 Act declared a public reserve but the lake’s ownership ‘seems to be somewhat obscure’. Before submitting the question to the Crown Law Office, the Lands Department hoped the Native Department would have some record of the original agreement.⁴⁶⁶ It did not, with Jones replying that his department had no papers on the subject but noting petitions by Major Kemp in 1898 and Hanita Henare in 1917.⁴⁶⁷ The Under Secretary for Lands at last approached the Solicitor- General for an opinion on the reserve’s ownership in January 1932. He noted that there was little information and the 1905 Act was vague, and that past legal opinions had focused on fishing rights rather than the ownership of the lakebed.⁴⁶⁸

Crown Solicitor J Prenderville delivered his opinion on the matter on 31 May 1932. It was not good news for Muaūpoko. Prenderville recapped on the 1905 and 1916 Acts and concluded that, while it was ‘not stated in express words that the ownership of the land has been resumed by the Crown’, he thought this was ‘the effect of the legislation’ (by which he presumably meant both Acts). Apart from the fishing rights reserved under section 2(a) of the 1905 Act, he considered that ‘all other rights of ownership have by the Act been resumed by the Crown’. The ‘general tenor’ of the Public Reserves Acts from 1881 to 1928 led him to the conclusion that ‘that where a public reserve is not expressly vested in a local authority or

⁴⁶⁴ Parawhenua Matakatea to Jones, 6 July 1931. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

⁴⁶⁵ Hudson to Under Secretary for Lands, 26 June 1931. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3

⁴⁶⁶ Under Secretary for Lands to Under Secretary, Native Department, 30 July 1931. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3

⁴⁶⁷ Under Secretary, Native Department to Under Secretary for Lands, 21 October 1931. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3

⁴⁶⁸ Under Secretary for Lands to Solicitor General, 30 January 1932. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3

trustees it is vested in the Crown'. He regarded this view as supported by the opinions in 1914 of Ostler and Salmond.⁴⁶⁹

Prenderville considered that the lowering of the lake had not altered the reserve boundary. The 1916 reservation of the chain strip, he felt, was 'no doubt' designed

to block any claims by adjacent owners to riparian rights so that any alteration in the water-line does not benefit adjacent owners. The dewatered land remains part of the reserve. If adjacent owners are grazing this area including the chain strip they are trespassers.⁴⁷⁰

In sum, he proposed that the domain board be advised that (1) by the 1905 Act the ownership of the lake was vested in the Crown subject to the reservation to 'the previous Native owners' of their fishing and use rights; (2) subject to these reservations the board has all the powers of a domain board as set out under the Public Reserves Act 1928; and (3) the board can give notice to adjacent owners to remove fences on the reserve and give them notice under the Fencing Act to fence on the boundary with the board meeting half the cost.⁴⁷¹

The Under Secretary for Lands informed the domain board of Prenderville's three points. He expressed regret for the delay in responding to the board's request for a legal opinion, but explained that this had been caused 'to a large extent by the necessity for an exhaustive search of the old records in an attempt to ascertain the nature of the negotiations leading up to the acquisition of this area'.⁴⁷² But the search for information was anything but exhaustive. As we shall see, it became clear in due course that Prenderville had not even considered the Attorney-General's summary of the 1905 agreement in the Legislative Council that year. His opinion – as other Crown Law opinions before his had been – was therefore seriously deficient.

Conclusion

Before 1905, Pākehā settlers in Levin urged government action to acquire Lake Horowhenua as a public resort. The Scenery Preservation Commission also interested itself in acquiring the lake's bush surrounds and islands. Some, like the local MP William Field, wanted both of these objectives. The Government, for its part, decided to negotiate with Muaūpoko. The result was the 1905 agreement between representatives of the Crown and the tribe, which – as recorded at the time – granted a Pākehā-dominated board the 'control and management' of the lake but otherwise reserved to Muaūpoko their exclusive fishing rights and their 'mana'.

⁴⁶⁹ J Prenderville, Crown Solicitor, to Under Secretary for Lands, 31 May 1932. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3

⁴⁷⁰ J Prenderville, Crown Solicitor, to Under Secretary for Lands, 31 May 1932. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3

⁴⁷¹ J Prenderville, Crown Solicitor, to Under Secretary for Lands, 31 May 1932. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3

⁴⁷² Under Secretary for Lands to Secretary, Horowhenua Lake Domain Board, 14 June 1932. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3

It is not clear whether those members of Muaūpoko who entered into this agreement did so with the backing of the lake's beneficial owners. The identity of just three members of the tribe at the discussion that led to the agreement is known. Only one of these three – Wirihana Hunia – was a trustee appointed by the Native Land Court in 1898. While the tribe had just endured bitter disputes over title to the Horowhenua Block, there is insufficient information in this report to make a firm conclusion on whether the Crown failed to ensure that it entered the agreement with the correct people.

On the other hand, nor is it clear whether the terms recorded by the Crown were ones that the Muaūpoko representatives had even consented to. There is no known written record of the discussion held at the boatshed in October 1905, and no recollection of it by any attendee present on behalf of the Crown. The lack of certainty about the circumstances surrounding the agreement has led to conjecture that there was no real agreement at all, or at least not one made with those who had the right to enter it.

Muaūpoko did not argue in these terms to the domain board in the years and decades following 1905. Rather, the tribe maintained that agreement had been granted for the Pākehā use of the surface of the lake, and that the board was to control this and nothing more. This may well have been how the agreement was conveyed to Muaūpoko at the time. If this is so, then the agreement is best understood as a limited cession of access and use in exchange for the safeguarding of Muaūpoko's interests and authority. It seems a fair assumption that the tribe would have been willing to allow some Pākehā use of the lake as long as their own mana over it was confirmed.

Once the meeting at the lake with Seddon and Carroll had concluded, the tribe was entirely dependent on how Parliament chose to represent the agreement. By 1929 there was no talk of their 'mana'; instead, that year Ngata used the term to describe the authority the domain board enjoyed, in the same way that in 1922 he had told Māori generally that they had ceded 'te tino mana' to the Queen under te Tiriti o Waitangi.⁴⁷³ As with te Tiriti, the Māori understanding of the original agreement was largely ignored by both Levin settlers and the Government. What became important, in their eyes, was not the 1905 agreement but the 1905 Act. The agreement – when it was mentioned – was regarded as involving a 'gift' of control by Muaūpoko, much as te Tiriti was seen as a willing cession of sovereignty.

Muaūpoko never participated in the domain board as equals. For years there was also a bare Muaūpoko presence on the board, with one member continually absent and the Crown allowing a Pākehā to take one of Muaūpoko's positions. Until the legislation was amended in 1916, the board's membership failed to comply with the legislative requirement for at least a third of the board to be Māori. After the board was reconstituted under the amended legislation, the local general MP was consulted on all board appointments, but the local Māori MP on only the Muaūpoko ones.

⁴⁷³ Waitangi Tribunal, *He Whakaputanga me te Tiriti: The Declaration and the Treaty* (Wellington: Legislation Direct, 2014), p 394

Beyond 1905 Muaūpoko had little control over the lake. The county council ran water races into it that raised its level and brought some pollution; land was purchased for the lakeside domain that exceeded what the 1905 agreement or Act permitted; the exclusive Muaūpoko fishing right of the 1905 agreement was rejected by Ministers and Crown Law opinions, and the lake stocked with acclimatised fish; the Muaūpoko chain strip around the lake was declared part of the lake domain; and a drainage board was empowered to excavate the Hōkio Stream to lower the lake, damaging Muaūpoko's fishery in the process and allowing farmers access to the resultant dewatered area to graze their stock. The Crown Law Office even held that the 1905 Act had ended Muaūpoko's ownership of the lakebed itself. All this continued without Muaūpoko's consent and despite their protests.

Counsel for Muaūpoko was correct in 1934 to assert that the tribe's rights had been 'whittled' away. That year Muaūpoko began a protracted negotiation to obtain redress.

3. The protracted negotiation, 1934-1956

Introduction

The previous chapter described how Muaūpoko rights over Lake Horowhenua, including those of ownership, were ‘whittled’ away from 1905 to 1934. It concluded that Muaūpoko were left with little if any control over the lake and its surrounds by the end of this period, despite having made a verbal agreement with Ministers of the Crown in 1905 that their mana over the lake would be safeguarded in exchange for the local Pākehā population being permitted to access and use the lake for boating. That agreement was largely forgotten as the Crown and its delegated authorities assumed Crown ownership of both the lake and marginal strip and routinely acted without any consultation with Muaūpoko.

This chapter relates Muaūpoko’s long process of negotiating a settlement of their grievances with the Crown. It begins with the 1934 inquiry into the extent of their rights over the lake, and culminates in the passage of legislation in 1956. It will be seen that, during this 18-year period, there were many opportunities for the Crown to settle the matter. As early as 1934, for example, the 1905 agreement was at last acknowledged and the Crown was forced to recognise that Muaūpoko had never relinquished their ownership. That a final settlement took so long after that is a reflection on the Crown’s determination for many years to secure itself the most favourable outcome. That the terms of the eventual settlement were acceptable to Muaūpoko is itself a reflection on the tribe’s own determination during this period not to accept the Crown’s ‘compromise’ proposals.

The chapter addresses questions 2(b) and 2(c) of the research commission, concerning the Crown’s and Muaūpoko’s expectations and understandings of the 1905 agreement and advent of the domain board; the extent to which Muaūpoko participated in the board; the actions of the Crown and local bodies to extend their control over the lake and its surrounds; the extent to which the Crown consulted with Muaūpoko over legislation that affected the lake; the Crown’s oversight of the various powers it had delegated; and the nature of any Muaūpoko opposition to Crown or local body actions.

The Harvey-Mackintosh inquiry and report of 1934

In September 1933 the borough councillors discussed what they saw as the need for council to run the domain so as to turn it into a ‘pleasure resort’, as one councillor put it. The mayor, Philip Goldsmith (the former Town Clerk), said the borough was most unlikely to gain control because it was ‘very mixed up with the Native question’. Another councillor blamed the Native Department, while the view was also expressed that the board must by now have a considerable amount of money that was not being applied to any particular purpose.⁴⁷⁴ It was true that the board had been leasing the area of 13 acres, 3 roods and 37 perches – which it

⁴⁷⁴ ‘An idle asset. The Horowhenua Lake. Question of securing powers of development. Borough Council to make inquiries’, *Chronicle*, 19 September 1933. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3

had been so desperate to acquire in 1906 – for some time to a farmer for grazing for £26 per annum. In 1933 the board’s Post Office Savings Bank balance was £176.⁴⁷⁵

Later that year the borough council met with the domain board to discuss how the use of boats on the lake could be facilitated. Jenson explained that there were difficulties in developing the foreshore ‘in view of the Natives’ objection’. Two Muaūpoko members were present – Tutaua Hurunui and Tuku Matakatea – but no comments were attributed to them. As a result of this meeting the board resolved to ask the Lands Department to set up an inquiry ‘with a view to defining the Natives’ area and the general powers of the Board’.⁴⁷⁶ Hudson wrote accordingly to the Under Secretary for Lands on 6 November 1933, setting out the resolution. He explained that, while the legislation appeared to give the board wide powers to develop the domain,

they are confronted with ‘the fishing and other rights’ of the Native and until these rights are defined and the Native interests in the Lake cleared up the Board are reluctant to proceed upon any enterprise which is likely to provoke the resentment of the Natives.⁴⁷⁷

The Under Secretary then wrote to the Minister of Lands, setting out the background and concluding by saying that ‘This Department is of opinion that the Domain must be developed as a pleasure resort in so far as such development does not conflict with the lawful rights of the Natives.’ He recommended that the Minister institute a public inquiry presided over by a Native Land Court judge and the Commissioner of Crown Lands.⁴⁷⁸ After an approach from the Minister of Lands, Ngata offered the services of Judge John Harvey.⁴⁷⁹ After some delay finding a convenient date, Harvey and Commissioner of Crown Lands HWC Mackintosh convened their inquiry in Levin on 11 July 1934. They were commissioned to hear the domain board, the borough council, and any others on their plans to develop the domain as a pleasure resort; to hear from Muaūpoko on their rights under the 1905 Act as amended in 1916 and 1917, and whether such rights would be affected by any development; and any other relevant matters.⁴⁸⁰

⁴⁷⁵ Annual Report of the Horowhenua Lake Domain Board for the year ended 31 March 1933. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3. In fact sheep were not finally removed from the reserve until 1969. See M J Connell, Secretary, Horowhenua Lake Domain Board, to Town Clerk, Levin, 10 October 1969. Archives Central file HDC 00009 : 22 : 6/8 1965-1970

⁴⁷⁶ ‘Horowhenua Lake. Development proposal. Aid of Lands Department sought. Scope for thorough organisation’, *Chronicle*, 4 November 1933. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3

⁴⁷⁷ Hudson to Under Secretary for Lands, 6 November 1933. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3. Jenson and Hudson had in fact already called on the Lands Department on 18 October to discuss development hurdles at the lake and been told to seek advice from the department in writing. File note, 18 October 1933. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3

⁴⁷⁸ Under Secretary for Lands to Minister of Lands, 15 November 1933. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3

⁴⁷⁹ Native Minister to Minister of Lands, 1 March 1934. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3

⁴⁸⁰ See report of Judge Harvey and Commissioner of Crown Lands Mackintosh, 10 October 1934, p 1. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

There are two records of the evidence and submissions made to Harvey and Mackintosh: an account that was published in the *Chronicle* two days later and minutes that appear on the Native Department file.⁴⁸¹ The following summary is drawn from both these sources.

Hudson began by summarising matters from the perspective of the domain board. He said that the board had levelled part of the 13 acres in April and May 1931 and had not touched the chain strip ‘beyond cutting a few rushes to provide a turning place for traffic’. The Minister of Internal Affairs had then received a petition from a large number of members of Muaūpoko protesting against what they believed was construction of a planned road. Hudson then listed the points the board wished the inquiry to cover: (1) clarification of whether and how Māori ‘ownership’ and ‘rights’ restricted the board’s operation under the Public Reserves, Domains, and National Parks Act 1928; (2) suitable provision for the fencing of marginal lands; (3) suitable powers of leasing marginal lands; (4) whether there should be restrictions on motor boats; and (5) anything else of relevance.⁴⁸²

Mayor Goldsmith then spoke. He said that lake should be under the absolute control of the domain board, reasoning that this would in no way affect Māori rights because, first, there was Māori representation on the board and, secondly, the Crown retained overall control of the board. His argument was clearly contradicted by the fact that neither Muaūpoko representation on the board nor the Crown’s ultimate control had been remotely effective in protecting the tribe’s rights hitherto. Councillor D P Todd, also President of the Levin Chamber of Commerce, contended that the ‘whole area’ should be brought under the board’s control. Then a road could be built around the lake, which he argued would benefit Māori as well. The foreshore could also be improved through a jetty, boat harbour, and swimming pools and the lake could even be a seaplane base. He cited the example of developments at Hamilton’s Lake Rotoroa. He did not believe any of this would interfere with Māori rights. In the same vein, councillor F E Parker wanted a stop bank along the water’s edge to enable boats to be easily launched, as well as mosquito pools, a footpath, and a road. W B Macintosh also spoke on behalf of boating enthusiasts.⁴⁸³

A lone voice not calling for lakeside development was E S Crisp of the Wellington Acclimatisation Society, who was recorded only as saying that the foreshore needed protection from cattle, and that, while he did not object to them catching eels, Māori should not be taking ducks.⁴⁸⁴

⁴⁸¹ ‘Development of Horowhenua Lake. Rights of the Native race. Evidence submitted at an enquiry’, *Chronicle*, 13 July 1934. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3; ‘Committee of inquiry – Levin, 11th July 1934’. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

⁴⁸² ‘Development of Horowhenua Lake. Rights of the Native race. Evidence submitted at an enquiry’, *Chronicle*, 13 July 1934. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3

⁴⁸³ ‘Development of Horowhenua Lake. Rights of the Native race. Evidence submitted at an enquiry’, *Chronicle*, 13 July 1934. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3; ‘Committee of inquiry – Levin, 11th July 1934’. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

⁴⁸⁴ ‘Development of Horowhenua Lake. Rights of the Native race. Evidence submitted at an enquiry’, *Chronicle*, 13 July 1934. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3; ‘Committee of inquiry – Levin, 11th July 1934’. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

The commission then made a site inspection to the lake. When it returned, Morison presented the case for Muaūpoko. He described the tribe as around 400-500 strong. He put it that Muaūpoko title of the lakebed, the chain strip around it, and the chain strip along the north bank of the Hōkio Stream were all clearly recognised in 1898 and vested in 14 trustees. With respect to the 1905 meeting that led to the Horowhenua Lake Act, he said there was one man alive who could recall that gathering, which was Wi Reihana. As Morison put it:

He says there was much discussion and finally Mr. Carroll translated to the Maoris the decision come to. Mr. Carroll told the Maoris that they were agreeing to allow boating by the Europeans to continue but that the rights of the Europeans were not to extend beyond the edge of the water and the Maoris understand that that was the original protection at that time.⁴⁸⁵

Morison added that it was ‘a voluntary cession by the native owners to allow the Europeans to use the Lake for boating’. The provision for the Governor to acquire land for boatsheds would have been quite unnecessary if the chain strip had been included; instead, only the lake was included.⁴⁸⁶

Morison then related the ‘gradual whittling down of their rights’ that Muaūpoko had suffered in the time since. The first interference with their rights had been the discharge into the lake of the water races, which they had strongly opposed. Then the 1916 Act had included the chain strip in the lake domain. The 1917 Act included an area of over 13 acres for boat sheds, but the 1905 Act had only specified ten. Morison added that the tribe had no objection to boating, as this is what their ancestors had agreed to in 1905. He then related the 1925 plan to lower the lake through interference with the Hōkio Stream and a petition against such action from 105 Māori, who feared the loss of their food supplies. He explained that work on the stream had gone beyond what Muaūpoko had agreed, with the consequences described above. Moreover, he said,

At the outset of the depression, when the Lake would have been of the utmost value, such value was taken away by the action of the Drainage Board, and the suffering of the Maoris would have been relieved if the supply had been normal.⁴⁸⁷

Once again, Morison attempted to portray Rere Nicholson as somehow complicit in what had happened. He noted that Nicholson was Ngāti Raukawa ‘and had land which would benefit from the proposed drainage operation.’ With regard to the 5 March 1926 agreement signed by Hudson, Balneavis, Nicholson, and James (Tutaua) Hurunui, Morison stated that ‘The natives say that this Memorandum was not to their satisfaction.’ Balneavis was a representative of the Native Minister, and Nicholson was not Muaūpoko ‘and was benefiting by the drainage work on account of the position of his property’. Morison explained that Hurunui had missed

⁴⁸⁵ ‘Committee of inquiry – Levin, 11th July 1934’. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

⁴⁸⁶ ‘Committee of inquiry – Levin, 11th July 1934’. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

⁴⁸⁷ ‘Development of Horowhenua Lake. Rights of the Native race. Evidence submitted at an enquiry’, *Chronicle*, 13 July 1934. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3

the conclusion to the meeting and signed on behalf of Muaūpoko without knowing what had been agreed. The agreement, he added, ‘was not signed by the elders of Muoupoko tribe but by the Secretary to the Native Minister, Mr. Nicholson and Hurunui under the circumstances stated’.⁴⁸⁸

Morison also repeated the comment he had made to de la Perrelle in 1930 that, such was the impact on their fishery, Muaūpoko did not have any eels to contribute to Māui Pōmare’s tangihanga in 1930. That year the Chief Surveyor and Mr Harper from the Department of Internal Affairs had come to Levin. Muaūpoko had proposed that a concrete control gate with accompanying eel race at the lake outlet could be used to regulate the lake level, but this had not been pursued. Morison then related Hefford’s inspection and report. He claimed that Hurunui had been misinterpreted, as noted above.⁴⁸⁹

Morison had advised Muaūpoko at this point to seek compensation from the drainage board and petition the Supreme Court. They had only not done so for lack of funds. The tribe was not wealthy and therefore needed the lake and stream for their food supply – which was the reason the reserve had been created in the first place.⁴⁹⁰

Morison then called Wi Reihana, who said:

I was present at the meeting in 1905 when Seddon and Carroll were present. Carroll spoke in Maori at that meeting and said that the power of the European was over the top of the water only, not to go below. It was agreed by the elders present at the meeting. I do not know what was said afterwards by Carroll – he told us afterwards what I have already said. I do not know anything about the land around the Lake.⁴⁹¹

Morison in turn got Hurunui to speak about the water races, as noted above.

This concluded Muaūpoko’s case. Judge Harvey then handed back to the domain board and borough council for any further comment. Todd said that Muaūpoko should ‘admit that numbers of eels are not affected to any great extent. Informed that natives took half a ton of eels in one night.’ He suggested that the chain strip might ‘only be the usual chain strip around all enclosed water’. With respect to the Māori willingness for the lake to be used for boating, he said ‘we have [the] extraordinary position that we cannot get over the chain strip to the water.’ Overall he felt that ‘the natives must allow the district to progress’ and praised the foresight of Nicholson ‘who saw advantage in draining the land’. Perhaps in hope of a changed attitude towards his development plans, he suggested that ‘The Native of to-day ...

⁴⁸⁸ ‘Committee of inquiry – Levin, 11th July 1934’. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

⁴⁸⁹ ‘Committee of inquiry – Levin, 11th July 1934’. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

⁴⁹⁰ ‘Committee of inquiry – Levin, 11th July 1934’. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

⁴⁹¹ ‘Committee of inquiry – Levin, 11th July 1934’. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

is becoming more Europeanised'. Hudson summed up the position for the board as one where its operations were hampered by 'the unknown quantity of native rights', and it therefore wanted its powers defined. Finally, a Mr Hammond said that the majority of farmers had been willing to fence their properties. Only one had objected: 'Mr. Proctor who got his land from his mother's side'.⁴⁹²

Before Harvey and Mackintosh completed their report, Parawhenua Matakatea again wrote to the Government (possibly to Gordon Coates), asking that someone be sent to see the damage to the lake, as well as 'to take valuation damages'.⁴⁹³ Matakatea was told by the Native Department to send further particulars of the alleged damage.⁴⁹⁴ He wrote again to Coates on 12 October 1934, complaining of damage to the lake, the flax, the eel weirs, the Hōkio Stream, the Arawhata Stream, and so. 'Every thing', he said, 'has been damaged for 18 years.' Coates, who was then Minister of Finance, replied advising Matakatea to 'be patient', as the Harvey-Mackintosh report was being considered by the government.⁴⁹⁵

Harvey and Mackintosh completed their report on 10 October 1934. In it they noted that the Native Appellate Court had awarded title to the lake in 1898. The schedule to this award consisted of 1006 acres, being the lake with the chain strip around it. The court ordered the lake be vested in 14 trustees 'for the purpose of a fishing easement for all the members of the Muaupoko tribe who may now or hereafter own any part of Horowhenua No. 11'. The chain strip was not specified in this order but Harvey and Mackintosh thought it was evidently meant to have been included given the earlier inclusion of the chain strip with the lake. They remarked that up until this point, therefore, 'the rights of the Natives appear clear'.⁴⁹⁶

They turned to the 1905 Act and noted Carroll and Seddon's meeting with the tribe for the purpose of 'finding a means whereby the lake could be used by the residents for aquatic sports etc'. They then quoted Wi Reihana's account of the agreement and concluded that:

This appears to us to have been the solution of the 1905 situation and it fits very closely into the 1905 Act. An Act which has for its preamble a protestation that it wishes to do something 'in as far as it is possible to do so without unduly interfering with the fishing and other rights of the Native owners' would hardly be expected to contain the machinery for depriving the owners of their other rights which as we have seen are all the rights of the holder of the Land Transfer Certificate of Title.

This position as we see it is stated with all deference to a Crown Law Office opinion contained in a memorandum from the Lands Department to the Horowhenua Lake Domain

⁴⁹² 'Committee of inquiry – Levin, 11th July 1934'. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

⁴⁹³ Unaddressed letter from Parawhenua Matakatea, 6 August 1934 (referred to the Native Minister for reply). Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

⁴⁹⁴ Under Secretary, Native Department to Parawhenua Matakatea, 12 September 1934. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

⁴⁹⁵ Coates to Parawhenua Matakatea, 20 October 1934. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

⁴⁹⁶ Report of Judge Harvey and Commissioner of Crown Lands Mackintosh, 10 October 1934. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

Board dated 14th June, 1932. If the land has passed to the Crown it seems only right that the Natives should expect it to pass in a manner of which they had notice, both from aspects of their right of objection and their right of compensation. However to our minds the situation appears to be more in the way of a grant of user of the water surface by the Natives with fishing specially reserved than that it is an alienation of the land with a free right of fishing common to both Europeans and Maori.⁴⁹⁷ [Emphasis in original.]

Harvey and Mackintosh noted that section 2 of the 1905 Act referred to the native ‘owners’ and ‘their’ fishing rights, and that the Act had been amended by section 97 of the 1916 Act, section 64 of the 1917 Act, and section 53 of the 1926 Act. They remarked that:

It may be that these amendments have taken away the Natives’ title, if so they have done it in a subtle manner mystifying alike to Domain Board and Natives.⁴⁹⁸

They then noted the tension between the domain board’s desire for development and the owners’ suspicion ‘that some sinister move was in progress to deprive them of some of their rights’. Muaūpoko had therefore petitioned for redress. Harvey and Mackintosh also noted that the owners were very concerned about the drainage work on the Hōkio Stream, which had lowered the lake, and – for Muaūpoko – ruined the eel and kakahi fishery and allowed stock to wander to the shoreline and depleted the lakeside of its ‘natural growths’. They noted that Muaūpoko were adamant that they had yielded rights over the lake surface only, and that the chain strip and dewatered area were theirs and had never been relinquished.⁴⁹⁹

Harvey and Mackintosh then turned to the issue of what should be done about the situation, They felt ‘that the solution of this problem may lay more in the direction of a compromise than in any definition of rights at law’. Their proposal was for:

1. the domain board to have ‘absolute control’ of the surface but not so as to interfere with Muaūpoko’s rights of fishing;
2. the domain board to have title to all land between the chain strip and the water’s edge (and including the chain strip) between Makomako Road and the north-eastern corner of the recreation reserve;
3. the land covered by the lake to be owned by the trustees appointed in trust for the owners of Horowhenua 11, subject to the domain board’s rights to the surface;
4. the dewatered area and chain strip apart from the portion for the domain board to be owned by the trustees and to be administered to enable the owners to access the lake to fish and for any other purpose ‘decreed for the benefit of the tribe’.⁵⁰⁰

⁴⁹⁷ Report of Judge Harvey and Commissioner of Crown Lands Mackintosh, 10 October 1934. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

⁴⁹⁸ Report of Judge Harvey and Commissioner of Crown Lands Mackintosh, 10 October 1934. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

⁴⁹⁹ Report of Judge Harvey and Commissioner of Crown Lands Mackintosh, 10 October 1934. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

⁵⁰⁰ Report of Judge Harvey and Commissioner of Crown Lands Mackintosh, 10 October 1934. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

Harvey and Mackintosh explained that the matter of the Hōkio Stream had been left in abeyance, as it was not an issue between the Muaūpoko and the domain board. They noted that the board might want title to other sections of the foreshore for ‘picnic spots etc’ and ‘we feel sure that if the Maori people are met fairly they will deal generously with the proposals’.⁵⁰¹

As can be seen, the Harvey-Mackintosh report represented a significant advance for Muaūpoko. It actually considered the evidence of what was agreed in 1905 and established that Prenderville’s 1932 Crown Law Office opinion was wrong. It also did nothing to refute Muaūpoko’s claims that the lowering of the lake level had damaged their land and fisheries. But despite going this far, it recommended a ‘compromise’ in which the only compromise the Crown would have to make would be to give back what was rightfully Muaūpoko’s. By contrast, Muaūpoko were expected to give up to the Crown a sizeable area of their chain strip and dewatered area. The emphasis, too, on the domain board’s ‘absolute control’ was a long way from the 1905 agreement that Muaūpoko would retain their mana over the lake.

The proposal that Muaūpoko give up the extended length of chain strip and dewatered area did not come from thin air. As set out in the previous chapter, the townspeople of Levin had lobbied for the Crown to acquire Māori land for scenic purposes to the south of the area sold for the reserve in 1907. Now title to an extended area of foreshore appealed to the borough council as necessary to complete its development plans. In May 1934 Councillor Parker had argued that land south of the reserve be purchased for this purpose. It was ‘cleaner and clearer’ and less exposed to the weather, he said, arguing that if the borough only looked to develop the existing reserve ‘they would be wasting time and money’.⁵⁰²

The formulation of the Crown’s negotiating position

After the Harvey-Mackintosh report was submitted, the Crown would not share it. Morison asked for a copy in November 1934 but was told only that his request would ‘receive consideration in due course’. He wrote again in January 1935 asking for a copy,⁵⁰³ but it seems that the Crown wished to put proposals to Muaūpoko and the local authorities at a sitting of the Native Land Court. Correspondence between Mayor Goldsmith and the Minister of Lands suggests that the borough council and domain board were not shown a copy of the report either.⁵⁰⁴

⁵⁰¹ Report of Judge Harvey and Commissioner of Crown Lands Mackintosh, 10 October 1934. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

⁵⁰² ‘Horowhenua Lake Domain. Question of rights’, *Chronicle*, 23 May 1934. Clipping on Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3

⁵⁰³ Morison to Minister of Lands, 7 November 1934; Under Secretary for Lands to Morison, 16 November 1934; Morison to Under Secretary for Lands, 25 January 1935. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3

⁵⁰⁴ Mayor Goldsmith to Minister of Lands, 5 December 1934; Minister of Lands to Goldsmith, 12 December 1934. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3. Goldsmith to Minister of Lands, 5 February 1935; Minister of Lands to Goldsmith, 6 February 1935; Under Secretary for Lands to Goldsmith, 14 March 1935. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

In the meantime the Solicitor-General was asked for an opinion.⁵⁰⁵ The response came from Prenderville. He said he had considered the report and now saw things differently:

I admit that the ownership of the lake and the chain strip is a difficult legal issue. After reading the history of the Block as detailed in the report and the statement made by the Attorney-General in the Legislative Council on 28 October 1905, Hansard Vol. CXXXV (1905) pp. 1205-6, I am now inclined to agree with the Commission that the title to the bed of the lake and the chain strip remains with the Native owners, but the general public have full and free use of the same.

I think that the recommendation made by the Commission may be a happy solution of the difficulties that have arisen. I suggest that the land described under paragraph four of the recommendations remain under the control of the Doman Board so that the Board can prevent any unlawful trespass or disfigurement of the shores and, if necessary, appoint landing places.

If the proposals are approved by all parties it will no doubt require further legislation to carry them out.

This settlement would not affect the general issue of the Lakes question as the wrong, if any, has already been done.⁵⁰⁶

There are several points to make about this quite important passage. Prenderville essentially reversed his opinion of two years previously, which the Crown had relied upon at the time (notwithstanding the fact that it then commissioned an inquiry). Prenderville made this realisation after considering the detail of the inquiry's report, which shows that he had based his confident 1932 opinion on insufficient information. Tellingly, a key aspect of his new understanding was the 1905 statement in the Legislative Council by the Attorney-General, Albert Pitt, of what Muaūpoko had agreed to. This had been routinely ignored in the past in ascertaining what the 1905 Act meant.

Prenderville's new understanding, as well as the commission's report itself, should have been the catalyst for the Crown to make amends, but Prenderville joined with Harvey and Mackintosh in calling for a 'compromise' solution that failed to offer the owners any justice. The clear opportunity was lost, no doubt because the Pākehā interest in the lake was so strong. Prenderville's suggestion that the dewatered area and chain strip remain under board control seems incompatible with his new understanding and scarcely justifiable. His closing remark about the general lakes issue is enigmatic. The 'general issue of the Lakes question' presumably related to the Crown's intention to defeat Māori claims to lake ownership, but in the Horowhenua case the commission had found that Māori ownership of the bed remained intact. Prenderville's remark did suggest, however, that he did not necessarily believe Muaūpoko had been wronged.

⁵⁰⁵ Under Secretary for Lands to Solicitor-General, 16 November 1934. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3

⁵⁰⁶ J Prenderville, Crown Solicitor, to Under Secretary for Lands, 29 November 1934. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3. The letter is dated 29 October but this must be an error, as it was received by the Lands Department on 29 November and is clearly a response to the invitation of 16 November to the Crown Law Office to comment.

The Under Secretary for Lands put Prenderville's letter before the Minister of Lands. The Under Secretary noted that Prenderville regarded the report's recommendations as offering a 'happy solution', but that he also suggested that the chain strip and dewatered area remain under board control. This, it was observed, was a rather different recommendation to the one made by the committee. The Under Secretary proposed that Harvey and Mackintosh be asked to discuss a solution with the interested parties along the lines recommended in their report 'but with regard paid to the Crown Solicitor's suggestion', since Muaūpoko activities that led to the 'disfigurement' of the shores would be a 'disadvantage'. The Minister approved.⁵⁰⁷

The Under Secretary in turn passed this direction on to Mackintosh, who replied on 6 December 1934 that 'It would appear that the main point made by the Maoris and that which was most exhaustively gone into by myself and Judge Harvey before sending forward our recommendations has been overlooked.' Muaūpoko contended that the chain strip had been wrongly taken from them and wanted it back, and both Harvey and Mackintosh supported them in this. He went on:

If a wrong has been committed and it is intended that any wrong should be rectified then there would be no question of control of the strip by the Domain Board however much that might be desirable.

To go back again to the Maoris and start a-fresh discussions on the subject would only make them more suspicious than they are at present.

To go to the Maoris and tell them that it is recognised that a wrong has been done and that it is the intention of the Government to see this wrong rectified is a different matter and would put the Maoris in such a humour that I am sure they would favourably consider handing over portion of the dry land for inclusion in the Domain.⁵⁰⁸

This was an enlightened response from Mackintosh. But while he rejected Prenderville's unjustifiable proposal, he then took far too much for granted himself. This was to be a continuing weakness in the Crown's negotiating stance over the lake for years to come; Muaūpoko were much more resilient than officials or Ministers realised.

Mayor Goldsmith wrote to the Minister of Lands around the same time and displayed a similar over-confidence. He also equated a 'satisfactory outcome' with one that saw Pākehā interests met. As he put it:

I very much hope that, as an outcome of the work of Judge Harvey and Mr. Mackintosh, matters can be arranged satisfactorily as between the local Board and the Natives.

If this is the happy issue, some very useful work could at once be provided for our local unemployed.

⁵⁰⁷ Under Secretary for Lands to Minister of Lands, 3 December 1934. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3

⁵⁰⁸ Commissioner of Crown Lands to Under Secretary for Lands, 6 December 1934. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3

...

If you can give the Horowhenua Lake matter a push forward, we shall be very grateful. It would fulfil the double purpose of creating a public asset of considerable value and would help to find useful work.⁵⁰⁹

The Under Secretary for Lands did warn the Minister, however, that while the borough council and domain board wanted to obtain an early settlement of the matter, it would be as well to discuss the options first with Harvey and Mackintosh.⁵¹⁰ The Minister agreed and met with the report's authors and other officials on 14 December 1934. At this meeting the Under Secretary ventured that Muaūpoko were 'deserving of favourable consideration'. Harvey and Mackintosh thought that Cabinet approval should be sought for a settlement with them along the lines proposed in the report, to be followed by a further meeting in Levin with all parties aimed at obtaining an agreement that could be effected through legislation. Harvey thought the Crown and domain board should have the right to undertake earthworks to facilitate the launching of boats across the entire area referred to in clause 2 (the chain strip and dewatered area down to Makomako Road). He also noted that he and Mackintosh had proposed the possible acquisition of picnic spots, which 'to some extent meets the point raised in the Crown Solicitor's memorandum of the 29th ultimo' (presumably of securing the lake surrounds from disfigurement).⁵¹¹

Before taking the matter to Cabinet the Minister wished first to lay the proposals before before the Native Minister. The latter was in full agreement,⁵¹² and Cabinet gave its own endorsement on 8 March 1935.⁵¹³

The negotiations of 1935

A meeting to arrange the settlement of the Lake Horowhenua issues was held in the Levin Borough Council chambers on 23 March 1935. Two accounts of the conference exist – rather brief notes by the Under Secretary for Lands, and a much longer account published in the *Chronicle*.⁵¹⁴ The following summary is drawn from the latter. The meeting was attended by Harvey, Mackintosh, Morison, Joseph Linklater (the MP for Manawatu), Kingi Tahiwī (as interpreter), a variety of borough and county councillors, and 'a large attendance of Natives'.

⁵⁰⁹ Mayor Goldsmith to Minister of Lands, 5 December 1934. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3

⁵¹⁰ Under Secretary for Lands to Minister of Lands, 11 December 1934. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3

⁵¹¹ Notes of the 14 December 1934 meeting by S Gambrill, Chief Clerk, Head Office. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3

⁵¹² Minister of Lands to Native Minister, 31 January 1935. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3. Native Minister to Minister of Lands, 4 February 1935. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁵¹³ See annotation on Under Secretary for Lands to Minister of Lands, 13 February 1935. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁵¹⁴ 'The future of Lake Horowhenua. Deadlock reached in proceedings. Natives unable to concede land required for improvements', *Chronicle*, 26 March 1935. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

The Under Secretary opened by outlining the proposals put forward by Harvey and Mackintosh and suggesting that

it would be a nice gesture on the part of the Maoris if they would make a gift of this particular portion [of the chain reserve and dewatered area as far as Makomako Road] to the Government. My Department has felt that the Native considered his rights were being whittled away; I can assure them that if this matter is amicably settled there will be no further whittling of their privileges.⁵¹⁵

Presumably by this the Under Secretary was not threatening that there might be ‘further whittling’ if there was no amicable settlement.

Morison replied, saying the department had informed him only earlier that week of the report’s recommendations. Only the day before had he been able to put the proposed offer to Muaūpoko for their response yesterday, and there had been little chance to discuss it. He therefore asked for an adjournment after he had first sought a clarification about the chain strip and dewatered area. He explained that Muaūpoko regarded the building of jetties or boatsheds over the water as a further infringement of their rights. The Under Secretary replied that ‘the Government would require certain assurances regarding the water frontage’ on the ceded length of chain strip and dewatered area only – that is from Makomako Road to the end of the current reserve. The meeting then adjourned so that Muaūpoko could discuss the proposals among themselves.⁵¹⁶

When the meeting resumed Morison stated that, in 1905, Muaūpoko had voluntarily gifted the people of Levin boating facilities on the lake surface, ‘but anyone who said he [a member of Muaūpoko] had not the right to the bed of the lake antagonised him’. Morison then traversed the encroachments on Muaūpoko rights by the water races, the 1916 legislation, and the 1926 drainage works. He explained that Muaūpoko were

from the opinions expressed by a number of them, concerned about where this whittling down of their rights was to cease. They cannot concede the area of land suggested, which would be about twenty-four acres, but would offer the piece from Queen Street to the other end of the reserve.⁵¹⁷

Mrs Hurunui then addressed the meeting in what the *Chronicle* called ‘characteristic native oration’. She said, as translated by Tahiwī,

⁵¹⁵ ‘The future of Lake Horowhenua. Deadlock reached in proceedings. Natives unable to concede land required for improvements’, *Chronicle*, 26 March 1935. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁵¹⁶ ‘The future of Lake Horowhenua. Deadlock reached in proceedings. Natives unable to concede land required for improvements’, *Chronicle*, 26 March 1935. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁵¹⁷ ‘The future of Lake Horowhenua. Deadlock reached in proceedings. Natives unable to concede land required for improvements’, *Chronicle*, 26 March 1935. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

I want to explain what I feel about my take. An injustice has been suffered by us by the draining of the lake and we have been deprived of our food. During the lifetime of my forebears we have had an ample supply of eels, flounders and whitebait. To-day, they are all gone. I was one of a deputation to the Ministers to request that my stream and lake be restored to the condition which God made it. Since the lake receded the farmers had the benefit and their dairy herds consumed my flax. When the flax was on the lake took £600 in three years. To-day most of my people are on relief work. When my forefathers gave over the right to use the surface of the water that is all they gave. To-day, I hear the Board has authority over the reserve. I resent this. Another injustice is that the farmers have fenced off their farms, fenced the chain strip and constructed drains. I have observed these actions and I specially ask that the activities of the Board be confined solely to that portion we are prepared to concede. Let the chain strip be restored to the 14 trustees appointed by Judge Mackay. Most of these are dead, but some remain and I can suggest others to take their place. Let the mana of the lake be returned to them.⁵¹⁸

At this point Mrs Hurunui turned to the assembled Muaūpoko and asked if they agreed with what she had said, and they ‘unanimously signified their assent.’ The Under Secretary then said he had authority to settle on the basis of the Commission’s recommendations as approved by Cabinet only, and could do no more than refer the tribe’s proposals to the Minister.⁵¹⁹

The Under Secretary observed in his report on the meeting, rather churlishly, that the area offered by Muaūpoko was ‘about half of the area asked for and is the worst part of the area for bathing, sports, etc’. He said he had told Morison this was unacceptable to the Crown and adjourned the meeting. After the meeting, however, he had conferred with Morison and offered him a deal whereby the Crown would survey the chain reserve and dewatered area for Muaūpoko for free if the requested area was ceded. He made the argument to Morison that the old survey was useless without boundary pegs, and without a new survey the tribe would not be able ‘to deal satisfactorily with the adjoining farmers’. He claimed that Morison thought this an ‘excellent’ offer and would put it to his clients.⁵²⁰ However, by mid-August the Under Secretary had heard nothing more from Muaūpoko and told his counterpart in the Native Department that ‘I think it advisable to leave matters in abeyance for the present’.⁵²¹

A plan of the area in question was made (see figure 3.1). The strip between Makomako Road and the northern end of the domain was described on it as ‘Portion of dry land and chain strip

⁵¹⁸ ‘The future of Lake Horowhenua. Deadlock reached in proceedings. Natives unable to concede land required for improvements’, *Chronicle*, 26 March 1935. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

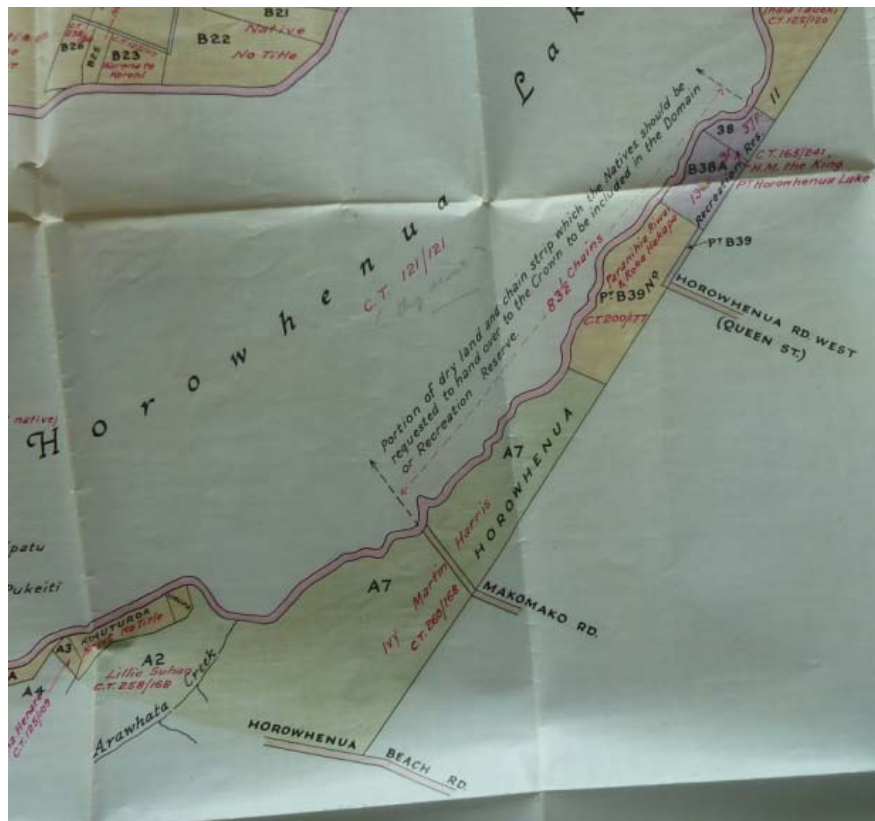
⁵¹⁹ ‘The future of Lake Horowhenua. Deadlock reached in proceedings. Natives unable to concede land required for improvements’, *Chronicle*, 26 March 1935. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁵²⁰ ‘Horowhenua Lake Domain’, notes of the 23 March 1935 meeting by W Robertson. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁵²¹ Under Secretary for Lands to Under Secretary, Native Department, 15 August 1935. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

which the Natives should be requested to hand over to the Crown to be included in the Domain or Recreation Reserve’.⁵²²

Figure 3.1: Detail from plan of Lake Horowhenua⁵²³



In sum, the Crown’s approach to settling Muaūpoko’s grievances at this meeting was less than satisfactory. The Crown advised Muaūpoko of its proposals at practically the last minute, leaving little time for the tribe to come to a considered position. Nevertheless, Muaūpoko were prepared to compromise, and offered the Crown a significant length of chain strip and dewatered area that extended well beyond the boundary of the existing reserve. But the Under Secretary had not come prepared to deal with a counter offer, presumably because of the Crown’s over-confidence about the ease with which Muaūpoko would be won over. Mrs Hurunui then eloquently set out what Muaūpoko had lost and what they were now prepared to concede, but in his report of the meeting the Under Secretary did not even mention her speech. Her call for the mana of the lake to be returned to Muaūpoko was a request for the 1905 agreement to be honoured. In theory, the Crown now recognised the need to honour at least the terms of the 1905 Act, but it could not see its way to doing so without requiring Muaūpoko to make further concessions.

⁵²² ‘Plan of Horowhenua Lake’, no date. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

⁵²³ Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

In May and July 1935 the Native Department inquired as to what was being done to settle the issues concerning Lake Horowhenua. The Under Secretary for Lands annotated a note on the Native Department's second letter as follows:

We are not doing anything & don't intend to. I have made offers to the Natives & it is now for them to move. I don't intend to take any action.⁵²⁴

This attitude suggested both that the Crown felt it was being generous in offering back to Muaūpoko what was rightfully theirs (as well, of course, as the survey), and that the Under Secretary was indignant that Muaūpoko had not willingly accepted and relinquished the 81 chains of lakeside land.

The flax-cutting of late 1935

Muaūpoko themselves were at this time wondering what to do with the chain strip and dewatered area. Flax had recently increased in value, and some of the younger members of the tribe – including P Hurunui, the brother of board member Tutaua Hurunui – had begun cutting it. Others felt that nothing should be done until the ownership issues had been resolved, and had asked the domain board to stop them.⁵²⁵ Hudson told the Under Secretary for Lands that this placed the board in a difficult position 'between one section of the Natives and another whose feelings of ownership have been considerably strengthened as a result of the meeting in Levin on the 24th [sic] March last'.⁵²⁶

The Native Department's field officer in Levin, J H Flowers, was asked for comment. He explained that the tribe as a whole had decided to cut the flax some two months earlier and the objectors had been overruled. A decision had not yet been made on how to spend the proceeds but ideas being contemplated were fencing to keep the stock away from the flax and the opening of the Raukawa meeting house in Ōtaki, to which Muaūpoko had been invited. Flowers concluded that

As far as I can see no damage is being done & the proposed allocation of the money seems reasonable & furthermore it seems to be a tribal matter over which we possibly have no control.⁵²⁷

In forwarding this to the Lands Department, the Native Department Under Secretary remarked that 'It would appear that the only solution to this matter is the completion of

⁵²⁴ Under Secretary, Native Department, to Under Secretary for Lands, 10 July 1935. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁵²⁵ Tuki Matakatea, Wi Reihana, and others to Hudson, letter dated '6. 1935' (and stamped as received on 7 November 1935). Archives New Zealand file W5883 25344 Box 115 NYA003753 part 3

⁵²⁶ Tuku Matakatea, Wi Reihana, and others to Hudson, 6 1935 (sic), and Hudson to Under Secretary for Lands, 7 November 1935. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁵²⁷ J H Flowers to Registrar, Native Land Court, Wellington, 14 November 1935. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

arrangements in train for the creating of a reserve along the shores of the Lake.⁵²⁸ While his meaning is somewhat obscure, he seems to have meant by this that the Government could prevent the cutting of flax if it obtained clear title to the lake surrounds.

Flowers wrote again shortly afterwards to note that stock were doing the flax considerable damage and the proceeds of sale should really be put toward fencing.⁵²⁹ The Under Secretary for Lands advised Hudson to let the matter lie.⁵³⁰ Notably, at no point did any official openly question Muaūpoko's right to cut the flax in the first place. To that extent this episode represented a marked improvement over the attitudes that had been expressed only a few years earlier.

The negotiations of 1936

In early 1936 the Town Clerk noted that the dispute surrounding the lake had 'drifted along for a further twelve months, and is no further advanced'. He asked if the proposal put to Muaūpoko at the March 1935 meeting could now be given effect to.⁵³¹ Hudson also asked the Lands Department for an update.⁵³² The Under Secretary told both of them that the department had been waiting on Muaūpoko to respond to the Crown's offer, and could do nothing in the meantime.⁵³³

As it happened Muaūpoko appear to have taken matters into their own hands, as a deputation from the tribe met with the Prime Minister in Wellington on 29 May 1936. Michael Joseph Savage was also the Native Minister and probably met them in that capacity. Also present were Eruera Tirikatene, the MP for Southern Maori; Toko Rātana, the MP for Western Maori; and Rangi Mawhete, a member of the Legislative Council. Mr R Williams for Muaūpoko recited the usual list of grievances the tribe had suffered since the 1905 Act and noted that no compensation had ever been offered. Jack Hopa, a former Muaūpoko member of the domain board, said that when a previous deputation had met Coates and de la Perrelle 'the oldest lady present' had been asked what she wanted. She had asked for 'her lake back the same as God had given it'. This is what the tribe wanted, as 'No compensation could repay them.' He added that the owners would have brought Morison with them to the meeting if they could have afforded to.⁵³⁴

⁵²⁸ Under Secretary, Native Department, to Under Secretary for Lands, 22 November 1935. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁵²⁹ Flowers to Registrar, Native Land Court, Wellington, 26 November 1935. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

⁵³⁰ Under Secretary for Lands to Hudson, 20 December 1935. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁵³¹ Town Clerk to Under Secretary for Lands, 26 February 1936. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁵³² Hudson to Under Secretary for Lands, 16 March 1936. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁵³³ Under Secretary for Lands to Town Clerk, 18 March 1936, and Under Secretary for Lands to Hudson, 18 March 1936. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁵³⁴ Notes on the meeting between the Muaūpoko deputation and the Prime Minister, 29 May 1936. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

Savage assured them that ‘Whatever is involved in doing justice to the Native Race will be done.’ He added that ‘we can’t be responsible for the sins of previous Governments’, but promised that ‘as long as your interests are in my hands, they are not likely to suffer’. The PM urged them to meet departmental officers without lawyers and come to an arrangement; they should embrace ‘the idea of not fighting legal battles, but simply human battles, round a table in a friendly way’. Tirikatene chimed in by remarking that ‘endeavouring to get away from legal expense by meeting departmental officers at some future date and discussing the whole matter with them’ would be ‘something to look forward to’. Savage told them that

You could get anybody to come with the Native owners. It is only a question of a human problem that has to be straightened out in a manly fashion and I think we can rise to that.⁵³⁵

Williams replied that Muaūpoko agreed with the approach. Savage added that the tribe should not feel pressured and could engage its lawyer if it wished, or ask Morison to check matters over before any settlement. He urged Muaūpoko to

feel you are dealing with friends, friends wanting to help you as well as help ourselves. It is a difficulty we don’t want hanging around us. We don’t want injustice done to the Native Race.⁵³⁶

In the notes of this meeting on the Native Department file there is no suggestion that Savage said he would personally attend such a meeting. That, however, is the distinct impression that Muaūpoko went away with. R Williams wrote to him on 4 October 1936 and told him that Muaūpoko were ready now for ‘the Round Table Conference with you, and your colleagues, which you suggested we should hold in the near future’.⁵³⁷

The meeting took place at Levin on 9 December 1936 and was chaired by Harvey. Records were made of proceedings by both Harvey and the Under Secretary for Lands. No Minister was in attendance, with the local MP, C L Hunter, apologising for the Prime Minister’s absence. The meeting was also attended by representatives of the local authorities. None of this impressed Muaūpoko. Morison was present, however, which perhaps indicates what Muaūpoko thought of Savage’s suggestion that they meet to settle their grievances without legal representation.

Morison said that his clients had understood the meeting would be with Ministers of the Crown in Wellington. Furthermore, the tribe had received very little notice of the hui. As we have seen, Morison had complained of a lack of preparation time before the meeting of 23 March the previous year, and it seems to have been a Crown tactic to spring information or meetings on Muaūpoko at the last minute. Morison conferred with Muaūpoko and said there

⁵³⁵ Notes on the meeting between the Muaūpoko deputation and the Prime Minister, 29 May 1936. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

⁵³⁶ Notes on the meeting between the Muaūpoko deputation and the Prime Minister, 29 May 1936. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

⁵³⁷ R Williams to Savage, 4 October 1936. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

had been a ‘complete misunderstanding’. He recounted what had occurred at the meeting of 23 March 1935 and how he had, afterwards, put the Under Secretary for Lands’ proposal to Muaūpoko for the chain strip to be surveyed free of charge. However, they had rejected that suggestion out of hand. Instead, at the 29 May meeting with Savage, Muaūpoko had made proposals of their own. While Morison had not been there, he understood that they had asked Savage to amend the legislation to exclude the chain strip and land between it and the water’s edge from the domain. Their own offer to cede a smaller area of chain strip was not discussed, and since the Crown had not accepted this offer, they now considered that matter closed. Morison requested the Under Secretary to reiterate Muaūpoko’s request to Savage, and suggested that ‘it will be apparent that no good purpose can be served by a discussion with the local bodies’.⁵³⁸ It was clear from this that Muaūpoko regarded the interests of the local authorities as directly opposed to their own, and looked to the Crown to mediate between the two sides.

Hunter regretted this stance and said that the whole matter ‘must be costing the Natives hundreds of pounds’ (presumably a reference to legal fees). The Government ‘wanted to be reasonable with the Natives’, he said, but ‘the Natives must be reasonable with the Government. ... If you do not attempt to meet the Prime Minister, you cannot expect the Prime Minister to meet you.’⁵³⁹ He emphasised that all that was being sought was the portion of chain strip down to Makomako Road, adding that the survey the Department of Lands was prepared to carry out might cost £1000. He asked Muaūpoko ‘very sincerely to reconsider your request – otherwise the matter might go on indefinitely. I think you can do something today.’ To this a Muaūpoko woman responded ‘Not today my son.’ Hunter then said ‘Very well I must report to the Prime Minister that you are not prepared to negotiate.’ Harvey then closed the meeting by stating that the next move was Muaūpoko’s: when they were ready with ‘concrete proposals’ for the Native Minister they should advise him of that.⁵⁴⁰ The subtext here seemed to be that there was nothing further to discuss until Muaūpoko were prepared to compromise.

Harvey forwarded his record of the meeting to the Native Department a few days later. He suggested that the way forward might be found in revesting the chain strip in Muaūpoko and then taking ‘the piece required for domain purposes by the Levin people’ under the Public Works Act. He suggested that the benefit of this approach would be that ‘it is open and above-board’ and might not be as costly as other options.⁵⁴¹

⁵³⁸ Minutes of the 9 December 1936 meeting made by Judge Harvey. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁵³⁹ Minutes of the 9 December 1936 meeting made by W Robertson. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁵⁴⁰ Minutes of the 9 December 1936 meeting made by Judge Harvey. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁵⁴¹ Harvey to Under Secretary, Native Department, 15 December 1936. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

Board appointments

The process of making appointments to the board had continued to follow the pattern set out previously. In 1926 and 1928 Field and Linklater were consulted on the reappointment of all nine board members, while Pōmare was consulted about the three Muaūpoko members. In 1930 the only difference was that the MP for Western Maori was now Taite Te Tomo following Pōmare's death that year.⁵⁴²

In mid-1931 Warena Kerehi had died and Jack Hopa had resigned so there were two Māori vacancies. Hudson told the Under Secretary for Lands that the board had recommended that they be replaced by Himiona Warena Kerehi and Tuku Matakatea. It is not clear what input had been sought directly from Muaūpoko, and it may be that the names had been proposed by Tutaua Hurunui. The Minister of Lands put the two nominees to Te Tomo on 4 August 1931 but received no reply. It took a query from Hudson in March 1932 for the Lands Department to realise that the matter needed to be followed up. The Under Secretary told Hudson that the issue was 'receiving attention'. After further prompting Te Tomo agreed with the names put forward, and their appointment was gazetted on 7 April, more than nine months after the Lands Department had first been notified of the vacancies. In the intervening period the board operated with only one Muaūpoko member.⁵⁴³

At the end of 1932 Hudson indicated that the board members were all willing to be reappointed, and this sufficed. The same thing happened when the appointments expired at the end of 1934, although in that case the Lands Department did not act until May 1925 and the appointments had to be made retrospective to the previous November. In March 1937 the members were also all willing to be reappointed, and were so.⁵⁴⁴

By the late 1930s, however, Muaūpoko's attitude towards membership of the board was unsurprisingly changing. In late 1938 the Under Secretary for Lands asked Hudson if all members were willing to be reappointed.⁵⁴⁵ At the start of January 1939 Hudson reported that, while Tutaua Hurunui was willing to accept another term, Tuku Matakatea was now deceased and Himiona Warena Kerehi did not wish to be reappointed.⁵⁴⁶ In June the Lands Department wrote to the Native Department and explained that, despite the efforts of the board secretary, 'there does not appear to be an immediate prospect of the Native vacancies being filled by local effort'. It was suggested that 'two Native representatives should be

⁵⁴² Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3

⁵⁴³ Hudson to Under Secretary for Lands, 26 June 1931; Minister of Lands to Taite Te Tomo, 4 August 1931; Hudson to Under Secretary for Lands, 5 March 1932; Under Secretary for Lands to Hudson, 11 March 1932; Minister of Lands to Te Tomo, 15 March 1932; Te Tomo to Minister of Lands, 16 March 1932. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3

⁵⁴⁴ Archives New Zealand files AANS W5491 6095 Box 158 1/220 part 3 and AANS W5491 6095 Box 158 1/220 part 4

⁵⁴⁵ Under Secretary for Lands to Hudson, 15 November and 22 December 1938. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁵⁴⁶ Hudson to Under Secretary for Lands, 3 January 1939. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

nominated through your Department'.⁵⁴⁷ After a series of requests for updates the Lands Department wrote again a year later asking what progress had been made. This letter was annotated in the Native Department as follows:

It appears that this may be involved in the dispute concerning the rights of the ownership, which became of more import with the draining of the lake and therefore the matter of appointing Maori members to the Bd is not such a simple matter as it appears.⁵⁴⁸

Muaūpoko had decided not to participate on the board. A later internal Native Department memorandum was annotated:

Until the dispute is settled regarding the ownership of the lake and the chain strip, the Maoris will not be likely to accept representation on the Domain Bd. Active administration by Maori reps of Domain Bd affairs might conflict with the Natives attitude to the main issue. It does not appear therefore that this Dept can assist in the matter of filling the 2 vacancies on the Domain Bd.⁵⁴⁹

The Lands Department was informed of this in December 1940.⁵⁵⁰

Further attempts to negotiate a solution, 1937-1943

The Native Department made regular inquiries over the next two years as to whether there had been any progress made in resolving the dispute over the lake, but the Lands Department's response remained the same: there were no further developments.⁵⁵¹ In late 1937 Toko Rātana wrote to Savage and asked him to consider Lake Horowhenua at the same time as other Māori grievances were being addressed, such as those involving Parihaka, Waikato, and Waipuku-Patea.⁵⁵² The Minister of Lands replied on Savage's behalf, noting that only matters that had been recommended for compensation by a 'lawful tribunal' could be considered, and that other claims would have to wait until a tribunal was set up to inquire into their merits.⁵⁵³

Official interest in the lake was revived in May 1943, when Morison, Tutaua Hurunui and Tihi-o-te-rangi visited the Native Minister's office to complain that farmers with land around

⁵⁴⁷ Under Secretary for Lands to Under Secretary, Native Department, 21 June 1939. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

⁵⁴⁸ Annotation on Under Secretary for Lands to Under Secretary, Native Department, 13 June 1940. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

⁵⁴⁹ Annotation dated 4 December 1940 on Registrar to Under Secretary, Native Department, 28 November 1940. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

⁵⁵⁰ Under Secretary, Native Department to Under Secretary for Lands, 16 December 1940. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

⁵⁵¹ Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁵⁵² Rātana to Savage, 22 November 1937. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

⁵⁵³ Frank Langstone to Rātana, 26 November 1937. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

the lake were attempting to get the chain strip and dewatered area included in their titles.⁵⁵⁴ The upshot of this was that a deputation from Muaūpoko met the Native Minister – who was now Rex Mason – in Wellington on 8 June 1943. The discussion began with the familiar recitation by Morison of the history of the matter. He explained that ‘The Natives were not asking for payment of money but that the land be restored.’ Nor did they seek the lake to be returned to its original level. In the meantime there should be no further inquiries and expense to Muaūpoko. The matter had dragged on ‘for a number of years and unfortunately had created feeling between the Maori and the pakehas of Levin’. Muaūpoko, for their part, were ‘labouring under a deep sense of injustice’. Morison noted that the entire matter could have been settled in 1935 if the Under Secretary for Lands had been given the discretion to negotiate.⁵⁵⁵

How the Minister responded to this is unknown, because the surviving account of the discussion only records what Morison had to say. It appears that the whole question was then referred to the Chief Judge of the Native Land Court, George Shepherd. Shepherd reported on 10 October 1943 that

The Maoris throughout appear to have been quite reasonable in their reactions to the Public’s use of the Lake, and in my view the present complaint arises out of the failure of the Board controlling the Lake and Chain strip to fence the areas off from the lands of the adjoining owners and thus allowing the farmers’ stock to roam at will over the chain strip and the dry area between that strip and the Lake. No attempt appears to have been made by the Board to make the adjoining owners fence or to prevent them using the chain strip for grazing their stock.⁵⁵⁶

However, Shepherd’s proposed solution was the same as Harvey and Mackintosh’s (something Shepherd even noted): the return of the chain strip to Muaūpoko subject to the retention by the Crown of 83.5 chains from Makomako Road to the edge of the recreation reserve. If the Crown defined the boundaries through survey and passed legislation clarifying the rights of the board and the owners, then Shepherd considered that ‘a solution satisfactory to all parties would probably be reached’. Shepherd suggested that Morison – who, perhaps appropriately, replaced Shepherd as Chief Judge in August 1945 – ask whether his clients would accept this.⁵⁵⁷ Without noting Shepherd’s involvement, Mason set out this proposal – the return of the chain strip and dewatered area subject to the Crown’s retention of the 83.5 chains of it, albeit with no mention of the survey – in a letter to Morison on 17 November 1943.⁵⁵⁸

⁵⁵⁴ Private Secretary to the Native Minister to Under Secretary, Native Department, 25 May 1943. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

⁵⁵⁵ Record of the 8 June 1943 meeting on Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

⁵⁵⁶ Chief Judge Shepherd to the Under Secretary for Lands, 21 October 1943. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

⁵⁵⁷ Chief Judge Shepherd to the Under Secretary for Lands, 21 October 1943. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1. It was Mason, as Native Minister, who announced Morison’s appointment. ‘New Chief Judge’, *Evening Post*, 29 August 1945, p 8

⁵⁵⁸ Native Minister to Morison, 17 November 1943. Archives New Zealand file ACIH MAW2459 Box 45 5/13/173 part 1

Shepherd's consideration of the matter was a waste of time, as Morison's firm pointed out in April 1944:

The people are very disappointed to find that the proposal in your letter that they should give up 83½ chains of the chain strip and dry land around the lake is only the same as the proposal put forward by the Under Secretary for Lands on behalf of the Native Minister at the meeting held at Levin in 1935.⁵⁵⁹

It was noted that Muaūpoko had been willing to cede 50 chains, but had never parted with the chain strip. They found 'it very difficult to understand why they should be asked to pay a price for having restored to them the control and use of their land which has been taken from them without their consent, and unjustly'. Then there was the further injustice of the domain board having failed to keep control of the strip, with adjoining farmers having 'overrun these lands' and 'destroyed the flax which was the property of the Natives; and the Domain Board has declared that it is helpless to do anything about it'.⁵⁶⁰

New lake trustees and the establishment of the Muaupoko Tribal Committee

It is not always clear when 'Muaūpoko' made representations or met with the Crown at this point or into the 1950s whether they did so as the tribe generally or through a representative body. There had been lake trustees in place since 1898, but these had all died by around 1943. On 8 August 1951 the Maori Land Court heard an application for the appointment of new trustees. James Hurunui told the court on 8 August 1951 that he had chaired a meeting of the beneficial owners of the lake on 19 March that year and proposed the appointment of new trustees. The meeting agreed to a successor being appointed for each original trustee. These names were read out and confirmed by those present, and the court in turn made an order appointing them. The 14 were as follows:

1. Ihaia Porotene
2. Ruku Hanita
3. Wiremu Kowhai
4. James Hurunui Tukapua
5. Puhipuhi Tukapua
6. Hemi Warena Kerehi
7. Rau Kawakawa Muruahi

⁵⁵⁹ Morison, Spratt Morison and Taylor to Native Minister, 17 April 1944. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4. The copy of the letter on the Lands Department file gives a date of 17 April 1945. However, a 30 April 1945 piece of correspondence between the Native and Lands departments (quoted in chapter 5) appears to indicate that this letter was actually written on 17 April 1944 and then misplaced in the Native Department. This would be a more logical timeframe for Muaūpoko's reply to the Minister's offer. The original of the letter will presumably be on the Maori Affairs file concerning the lake that Te Puni Kōkiri cannot locate (see chapter 1).

⁵⁶⁰ Morison, Spratt Morison and Taylor to Native Minister, 17 April 1944. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

8. Tamati Hetariki
9. Ngahuia Wirihana
10. Edward Kingi
11. Tau Ranginui
12. Rangi Phillip Kingi
13. Rumatiki Timu

The owners were represented by Neville Simpson of Morison Spratt & Taylor.⁵⁶¹

In September 1947 the Muaupoko Tribal Committee was established under the Maori Social and Economic Advancement Act 1945.⁵⁶² Its first chair appears to have been James Hurunui.⁵⁶³ It ceased to function at some point over the next few years and was renewed in November 1951 at a special meeting of the lake trustees. The Department of Maori Affairs welfare officer in Levin remarked in December 1951 that the committee had been ‘most difficult to bring together for the purpose of renewal’. The tribe was divided into the two sub-tribes of Ngāti Pāiri and Ngāti Hine, he explained, who acted independently of each other in improving and developing their respective marae. He suggested that ‘Lack of co-operation by these parties may be attributed to these factors.’⁵⁶⁴

In 1952 the tribal committee representatives were as follows:

1. Rangi Hill (chairman)
2. Thompson Tukapua (vice chairman)
3. James Tukapua (treasurer)
4. Sonny Tukapua (secretary)
5. Wiki Rikihana
6. Lizzy Paki
7. Richard Reuben
8. William Kohai
9. Tamati Hetariki
10. Ruku Paki
11. Pitiwai Nahona
12. John Hill (warden)⁵⁶⁵

⁵⁶¹ Maori Land Court Wellington Minute Book 38, 8 August 1951, fols 65-66

⁵⁶² T T Ropiha, Under Secretary of Maori Affairs, to John Mason, Wellington, 4 December 1951. Archives New Zealand file ABJZ W4615 6878 Box 20 25/6/2/1 part 1

⁵⁶³ Harry Jacob, Maori Welfare Officer, Levin, to District Welfare Officer, 21 December 1951. Archives New Zealand file ABJZ W4615 6878 Box 20 25/6/2/1 part 1

⁵⁶⁴ District Welfare Officer to Harry Jacob, Maori Welfare Officer, Levin, 11 December 1951; Jacob to District Welfare Officer, 21 December 1951. Archives New Zealand file ABJZ W4615 6878 Box 20 25/6/2/1 part 1

⁵⁶⁵ Names of committee members, no date but stamped as received by the Department of Maori Affairs on 21 February 1952. Archives New Zealand file ABJZ W4615 6878 Box 20 25/6/2/1 part 1

As can be seen, there was a fair amount of cross-over in terms of membership and initiative between the lake trustees and the tribal committee. However, this dual representation of Muaūpoko interests was to cause some difficulty in later years, as we shall see.

Ongoing borough council agitation to revive the domain board

The Town Clerk wrote to the Lands Department again in July 1946, arguing that the domain board should be revived. The lake ‘should be a wonderful attraction and resort for the people of Levin and District’, he said, ‘but for some reason or other nothing has been done to develop [its] amenities and my Council are anxious that something in this matter should be done’.⁵⁶⁶ The Town Clerk had prepared a background paper on the subject for the council, which noted that the only surviving board members were S A Broadbelt, W G Clark, and Tutaua Hurunui.⁵⁶⁷ No reply exists on file and it seems that the department felt nothing could be done until a political settlement had been reached.

In March 1951 the council tried again. At a public meeting Mayor Parton called for the re-formation of the board. If land had to be bought from the Māori owners for this to take place, he said, then ‘such land should be bought’. The meeting noted that ‘speed boat racing circles’ were interested in any resolution ‘as it was felt that the lake would be ideal for the running of the Australasian speed boat championships.’ At this point Hudson, who remained the County Clerk, was still nominally the board secretary, and the only surviving member referred to by the mayor was W G Clark (although Tutaua Hurunui was in fact also still alive).⁵⁶⁸ Parton was asked by the press to explain exactly what had caused the delay in the lake’s development. He said it was all to do with the lake’s lowering, which had exposed land that Muaūpoko regarded as their own and would not allow others to cross.⁵⁶⁹ The following month Mayor Parton wrote to Jim Maher, the MP for Otaki, asking him to arrange for the mayor to meet Minister of Lands Ernest Corbett ‘to discuss the reforming of the Lake Domain Board at the earliest possible moment’.⁵⁷⁰

Corbett met Parton and Maher on 8 May 1951. Parton was ‘anxious to get hold of’ land lying between the domain board property and the lake, and Corbett – whose understanding of the situation was evidently limited at this point – responded that, if the council took ‘the necessary action to revive and re-form the old Domain Board’, he would ‘see if it was

⁵⁶⁶ Town Clerk to Commissioner of Crown Lands, 17 July 1946. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4. See also ‘Future of Lake Horowhenua discussed. Council wants Domain Board reconstituted. Matter to be represented’, *Chronicle*, 17 July 1946. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁵⁶⁷ H L Jenkins, ‘Levin Borough Council Report on Lake Horowhenua Domain’, 3 May 1946. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁵⁶⁸ ‘Committee to pursue development of Lake Horowhenua’, *Chronicle*, 30 March 1951. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁵⁶⁹ ‘Salient reasons which hold up lake development’, *Chronicle*, 6 April 1951. Archives Central file HDC 00010: 6: 10/11

⁵⁷⁰ Parton to Maher, 20 April 1951. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

possible to acquire the land for inclusion in the domain'.⁵⁷¹ In January 1952 Parton said the council was 'ready to go ahead with the reformation of the Lake Domain Board' and another meeting with Corbett was arranged, for 19 February 1952.⁵⁷² On this occasion, Corbett realised – as he put it – that 'a difficulty has arisen regarding the access to the lake'. Corbett, who was also Minister of Maori Affairs, asked the Under Secretary of Maori Affairs to see about organising 'a meeting of the local Maori residents' and the local authority 'with the idea of having the matter ironed out'.⁵⁷³ His very turn of phrase exhibited the standard Crown over-confidence about the ease with which the issues might be resolved.

Parton reported locally on his 19 February meeting with Corbett. He said that, while he had found 'a serious deadlock when it came to negotiating with the Maoris over the lake problem', Corbett would 'be coming up to Levin to help us'.⁵⁷⁴ The Town Clerk also soon made another approach to the Lands Department, stressing that an active domain board was needed so that the lake could be made – as the 1905 Act had termed it – 'a place of resort'. He said that the council was ready to nominate six representatives to the board at any time, who would be a mixture of borough and county councillors and 'representative citizens of the town and district'. He looked forward to learning what steps were being taken 'to resuscitate the Board'.⁵⁷⁵ The Director-General of Lands replied on 25 March 1952 that 'it is hoped to arrange an early discussion with representative Maoris in the District ... to try and settle the question of access to the Lake and the ownership of certain strips of land which are in dispute'. In the meantime, he suggested that revival of the board be delayed 'until the discussion with the Maoris has transpired'.⁵⁷⁶

Muaūpoko opposition to motorboats on the lake

It is worth noting that, at around the same time, Muaūpoko had become concerned about the use of motorised craft on the lake. The deputy chairman of the lake trustees and two other trustees had placed an advertisement in the *Chronicle* in March 1952 advising that this was not permitted. It seems that this followed on from an 'incident', in which – according to Parton, who discussed the matter at a meeting of the borough council – 'a man who took a boat on the lake ... was allegedly threatened with a big stick and ordered off the lake by a Maori woman'. Parton said the notice had 'no legal standing', as the lake surface was controlled by the domain board. In response to another councillor, who said that Māori rights should not be overlooked, Parton attempted to claim he had a record of being consultative.

⁵⁷¹ Corbett to Director-General of Lands, 8 May 1951. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁵⁷² Parton to Maher, 28 January 1952. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁵⁷³ Corbett to Under Secretary of Maori Affairs, 19 February 1952. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁵⁷⁴ 'Some progress reported on Horowhenua Lake question', *Chronicle*, 28 February 1952. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁵⁷⁵ Town Clerk to Under Secretary for Lands (sic), 19 March 1952. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁵⁷⁶ Director-General of Lands to Town Clerk, 25 March 1952. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

He had been at several Maori gatherings, ‘seeking their co-operation’, and had only ‘gone over their heads’ to the Minister of Maori Affairs.⁵⁷⁷

Muaūpoko leaders felt the need to explain the reasons for their opposition to motorboats. On 26 March 1952 Wiki Rikihana (who may well have been the woman with the big stick – see the letter of the Commissioner of Crown Lands to the Director-General of Lands of 20 June 1952 quoted below) and Rangi Hill wrote to the *Chronicle* as follows:

Some time ago we advertised in your paper that the practice of using launches on the Horowhenua Lake was prohibited, but some people think as it is only Maoris that object, they can just ignore it. The same people have the habit of putting dead carcasses of animals in the two streams, the Arawhata and the Hokio respectively, polluting the water. The lake is commonly known among the Maoris here as ‘the butcher shop.’

As they catch eels, flounder and carp, and since the pakehas insist on putting launches on the lake, these fish are going to be tainted by oil from the engines.⁵⁷⁸

The opposition of Muaūpoko to the use of motor boats on the lake was a longstanding one. In 1906, as noted above, they were ‘dead against’ an ‘up-to-date pleasure launch’ going on the lake. It may well be the fact that it had a motor that particularly irked them (the press referred to the boat rather unappealingly as an ‘oil launch’).⁵⁷⁹ The domain board’s original by-laws did not mention motor boats but did state that no boat was permitted ‘within the precincts of the Domain without the permission of the board’.⁵⁸⁰ In December 1930 the *Chronicle* reported that members of the Wellington Outboard Motor Club had visited the lake and held a series of races. The group, which had been taken to the lake by domain board member W B Mackintosh, were said to be eyeing the lake for the New Zealand championship regatta.⁵⁸¹ No Muaūpoko reaction was noted, although it seems likely that, once again, the tribe were neither consulted nor in favour.

The use of outboard motors on the lake must have been curtailed at around this point, because in 1934 Hudson – following on from a letter from boating enthusiasts asking for improved facilities at the lake for launching boats – asked the Under Secretary for Lands whether outboard motors could be used on the lake. The Under Secretary replied that the board should defer providing any facilities for boat-launching until after the Harvey-Mackintosh inquiry. He added that ‘In any case it is doubtful whether motor launches and outboard motor boats

⁵⁷⁷ ‘Mayor declines to recognise ban on use of lake’, *Chronicle*, 18 March 1952. Clipping on Archives Central file HDC 00010: 6: 10/11

⁵⁷⁸ ‘Use of Horowhenua Lake’ (letter to the editor from Wiki Rikihana and Rangi Hill), *Chronicle*, 28 March 1952. Clipping on Archives Central file HDC 00010: 6: 10/11

⁵⁷⁹ Untitled extract, *New Zealand Times*, 6 March 1906. Clipping on Archives New Zealand file AADS W3562 Box 251 1/220 part 1

⁵⁸⁰ See copy of Horowhenua Lake Domain by-laws on Archives New Zealand file AADS W3562 Box 251 1/220 part 1

⁵⁸¹ ‘Outboard motor boating’, *Chronicle*, 2 December 1930. Clipping on Archives Central file A/2012/6 : 5002212201 : 10 (Horowhenua Lake Domain Board 1923-1934)

should be allowed to use the Lake.⁵⁸² As mentioned, Hudson asked Harvey and Mackintosh to clarify whether motor boats could be used on the lake, but the commissioners do not seem to have offered any guidance on the matter. In 1952, however, it was clear that if the Crown was going to finally settle the lake dispute, the issue was going to have to be resolved satisfactorily from Muaūpoko's perspective.

Image 3.1: James Hughes in his speedboat 'Comet' on Lake Horowhenua in 1933, shortly before the use of motorised boats on the lake was curtailed⁵⁸³



The meeting of 13 June 1952

Lands officials had already begun discussions with their counterparts in Maori Affairs on a way forward over the lake. On 19 March 1952 F T Barber discussed the matter with Jock McEwen of Maori Affairs⁵⁸⁴ and B W Cooper, formerly Chief Administration Officer (presumably of Lands and Survey). For some reason these three concluded that, under statute, the Crown owned the lake bed and chain strip and that this position had been confirmed by Prenderville in 1932. Whereas they considered that the 'former' Māori owners had no claim to the dewatered area or chain strip, however, they did note that they had a claim to compensation. Barber concluded that the Crown should 'deal with the Maoris on a compromise basis'. Neither he nor the others at the meeting could see what use the chain strip was to the lake other than the area fronting the recreation reserve. Barber noted that Maori

⁵⁸² Hudson to Under Secretary for Lands, 31 January 1934; Under Secretary for Lands to Hudson, 7 February 1934. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 3

⁵⁸³ Horowhenua Historical Society Inc. <http://horowhenua.kete.net.nz/site/images/show/7658-james-hughes-in-his-speedboat-comet-1933>

⁵⁸⁴ McEwen went on to be Secretary of Maori Affairs from 1963 to 1975.

Affairs was organising a meeting of owners ‘to see what their demands are so that our two Departments and Local Body can then discuss an equitable solution’.⁵⁸⁵

This did not represent a good start to the Crown’s latest attempt to unravel the ownership confusion and reach a fair solution. Not only did these officials fail to note that the Crown’s understanding of the lake’s ownership had moved on considerably since the early 1930s, but once again they spoke of a ‘compromise’ solution, despite that strategy having proved a singular failure ever since Harvey and Mackintosh had first proposed it. Barber’s file note was annotated, however, with the observation that the Crown Law Opinion of 29 October 1934 had agreed ‘with the findings of the commission that the bed of the Lake is vested in the Maori owners of the Block’.⁵⁸⁶

Prior to meeting with Muaūpoko, Lands and Maori Affairs officials were assigned the task of researching the history of the matter in detail. This was carried out by E McKenzie, the Assistant Commissioner of Crown Lands; J A Mills, district officer; and McEwen, whose job title was Assistant Controller Trusts, Titles and Claims Division. These three issued a short report some time around early June 1952.⁵⁸⁷ In it they remarked that ‘Although the Crown Law Office has expressed an opinion that the Title was vested in the Crown by this [1905] Act – this contention is at least doubtful.’ Instead, they stated, the account of the 1905 agreement recorded in *Hansard* the same year made clear that the ‘Mana rights and ownership of the Natives’ over the lake were to be retained. Ongoing disputes led to the 1934 commission of inquiry, which made recommendations that were not accepted. They concluded that:

The main trouble seems to be the ignoring of the Maori Owners by the Domain Board which is predominantly European. This Board has even asked for the Maori representatives to be removed from the Board.

We understand the Maori owners claim that some of the negotiations were conducted with the government by a leading Maori who was a member of the Ngate [sic] Raukawa Tribe which had no interest in the Lake.

It is quite definite that trouble will continue unless a determined effort is made to reach a satisfactory conclusion.

We feel that the Maoris have a definite grievance, specially with regard to the chain strip.

If the Title to the land was vested in the Crown originally then some compensation should in equity have been paid. Incidentally owing to drainage operations there is considerably more than a chain strip concerned around the edge of the Lake.

The only solution seems to be to endeavour to acquire the Reserve including the chain strip.⁵⁸⁸

⁵⁸⁵ Note for file by F T Barber, 19 March 1952. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁵⁸⁶ Note for file by F T Barber, 19 March 1952. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁵⁸⁷ The report is undated but refers to the meeting which is to be held with Muaūpoko on 13 June 1952.

⁵⁸⁸ ‘Horowhenua Lake Domain: Brief History and Recommendation’, undated report by E McKenzie, J A Mills, and J M McEwen. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

A meeting had been arranged with Muaūpoko, and McKenzie, Mills, and McEwen asked for authority 'to discuss the sale of the reserve to the Crown'. Notably, they added that this had been discussed with the solicitor acting for Muaūpoko, 'and he feels this is the only solution'. Finally, they expressed the view that it was 'impossible at this stage to estimate what the compensation might amount to'.⁵⁸⁹

The investigation by McKenzie et al was another step forward in the Crown's understanding of the problems Muaūpoko had faced in maintaining their rights at the lake. But – much like Harvey and Mackintosh in 1934 – despite having reached this understanding, the officials did not see that their proposed solution was likely to be profoundly unacceptable to Muaūpoko. Worryingly for Muaūpoko too, McKenzie et al had also managed to win the tribe's solicitor over to their way of thinking.

The meeting was set down to be held in Levin on 13 June 1952. The Commissioner of Crown Lands, D A Paterson, had already arranged for the Under Secretary of Maori Affairs, Tipi Ropiha, to take the chair, explaining to him that 'such an act will contribute largely to the success of the discussions'.⁵⁹⁰ On 11 June Paterson made a file note about the Crown's preparations. As he set out:

- (1) Mr N. F. Simpson is to discuss with the Maori Owners the question of transferring the title of the Lake and chain strip to the Crown on a compensation basis, with a possible surrender of rights. He has intimated that he hopes to complete his discussions by 7pm.
- (2) His Worship the Mayor has been told that there would be merit in his not attending the 7p.m. meeting. He agrees with the view.
- (3) After discussion with Head Officer it is contended that there is adequate authority for the meeting to receive some concrete proposals to overcome existing problems for subsequent Ministerial consideration.⁵⁹¹

It seems from this that Simpson was not just to propose to Muaūpoko that they sell the lakebed and chain strip to the Crown, but also that they give up their fishing rights. If the Crown believed there was much chance of a settlement along such lines it really showed it had learnt nothing from the steadfast position Muaūpoko had maintained for decades. Once again, officials were guilty of singular over-confidence about what Muaūpoko would be prepared to settle for.

⁵⁸⁹ 'Horowhenua Lake Domain: Brief History and Recommendation', undated report by E McKenzie, J A Mills, and J M McEwen. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁵⁹⁰ Commissioner of Crown Lands to Under Secretary of Maori Affairs, 20 May 1952. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁵⁹¹ File note by D A Paterson, 11 June 1952. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

Earlier in the day before the evening meeting with Muaūpoko, a meeting was held in the borough council chambers. Those present included Mayor Parton, six councillors, Hudson's son, Ropiha, Mills, McEwen, McKenzie, Simpson, and Hoeroa Marumaru, who had briefly been a member of the Legislative Council before its abolition and had stood several times for the National Party in Western Maori. Parton welcomed the visitors and said that the domain board 'desired to function as an effective body'. He produced photographs to 'prove' that 'power craft' had been on the lake in the early part of the century, and argued that the lake waters were as high as they ever had been. McKenzie said the board would not be reinstated until 'settlement of the existing problems had been effected'. He hoped the later meeting with the Māori owners would produce an outcome acceptable to all.

It was presumably McKenzie himself who made the brief record of this meeting. A footnote to it stated that:

While it is true that power boats were on the Lake early this century the type of engine used then was a slow running Marine engine and was quite a different proposition from the fast noisy outboard motor boats which I believe is the subject of the complaint. There is no doubt that little objection, if any, would be raised by the Maori Owners to slow moving powered craft. However, this is a matter which the newly constituted Board can discuss and determine.⁵⁹²

McKenzie seemed to be overlooking here the explanation for the tribe's prohibition of motor boats given by Wiki Rikihana and Rangi Hill three months earlier.

The meeting with Muaūpoko was held that evening at Kawiu Hall. McKenzie set out his view that the bed and chain strip belonged to Muaūpoko, and he intended to advise the Minister of Lands accordingly. He then turned to the issue of the respective rights of both Māori and Pākehā agreed to in 1905, such as those involving fishing, public use of the lake for recreation, regulation of the lake level, the preservation of native bush and the non-pollution of the lake, and so on. He referred to the past split in representation on the board between Māori and Pākehā and conceded that this might not have worked as well as it should have. He said he would 'not hesitate to make any reasonable recommendation to Minister to change the control to something better'.⁵⁹³

This opening by McKenzie may have been designed to soften Muaūpoko up for what came next: his argument as to why they should now part with the lake. As he put it:

Maoris owning the lake have responsibilities. Might it not be a good idea for owners to throw these responsibilities off their shoulders? Would therefore suggest that you consider passing lake over to the Crown on a compensation basis. Crown to administer for people of Levin.

⁵⁹² 'Brief notes of meeting held in the Levin Borough Council on Friday 13th June, 1952, at 2p.m.' Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁵⁹³ 'Minutes of meeting held at Kawiu Hall, Levin, 13th June, 1952'. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

Compensation could be used for some purpose or benefit to tribe. Pakeha and Maori have got to cleave together as closely as possible.⁵⁹⁴

The Muaūpoko reaction to this could only be described as polite. The minutes record the following:

T W Ranginui: Mr McKenzie you have outlined a very big proposal to consider, and I do not think we should try to reach a decision in such a short time.

Hanita: Leave it to my lawyer to answer questions. Have been trying to get rent for chain reserves.

Hurunui: Wish you had been here in 1934. Pleased to hear you say the title to the lake in the Maoris. If you had been here in 1928 you would have seen standing bush. Destroyed by pakeha land holders. I am surviving member of Domain Board. When Hokio was drained water receded and Pakeha claimed dry area. I went to lawyers and stopped that. We were prepared to co-operate with Pakehas but they were not prepared to co-operate with us. If any new Board should be 6 Maoris 3 Pakehas. Board ruined our rights. They and Drainage Board. Used to get 3 to £400 per year for flax – now none. Do not agree to Crown purchase. We do not want money. Lake is our food supply. Only source of food in slump. Agree with previous speaker we should have time to discuss this important matter.

Himiona Warena: Agreed with Hurinui [sic]. Regarding pollution – Maoris do not want it. You know what I am talking about – wool scourer at top of Kawiu road and killed eels and fish. Domain Bd. published notices in paper asking Maoris not to eat eels, but did nothing else.

D. Rikihana asked if Mr. Simpson could enlighten them on certain matters regarding title.⁵⁹⁵

At this point the meeting adjourned to allow Muaūpoko to discuss matters with Simpson. When they returned Raniera (Dan) Rikihana said Simpson would explain their position, which he did as follows:

Regarding proposal to sell lake, they feel it is their heritage and they would not in any circumstances agree to sell. But fully realise importance of lake and they would fully consider any reasonable request Crown may put forward regarding acquisition of further rights over lake and chain strip to enable people of district to use the lake in the way it should be used.⁵⁹⁶

McKenzie responded on behalf of the Crown:

I can appreciate your views although I am somewhat disappointed with your decision. Will give much consideration to your suggestion and when we return to Wellington I will get in touch with your lawyer. My final word is that if you, in the future, consider leaning towards

⁵⁹⁴ 'Minutes of meeting held at Kawiu Hall, Levin, 13th June, 1952'. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁵⁹⁵ 'Minutes of meeting held at Kawiu Hall, Levin, 13th June, 1952'. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁵⁹⁶ 'Minutes of meeting held at Kawiu Hall, Levin, 13th June, 1952'. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

my proposal, I put forward tonight, that you will let Mr. Simpson know or let me know, and I will take appropriate action. My reason for coming was to try and clarify this matter and try to find some solution. Wished the tribe every success.⁵⁹⁷

Hoeroa Marumarū also ‘advised them to consider the matter fully’:

Consider an annual sum per year. Understands wish to retain heritage but world is going ahead. Do not blindly and definitely close the negotiations. You can still retain certain rights and at the same time negotiate for Crown.⁵⁹⁸

Wiki Rikihana, however, was adamant. She said she would:

not agree to sell to the Pakeha. They are a bad crowd of Pakeha. They dump all their rubbish in the lake – dead stock and all. Thank you for coming nevertheless.⁵⁹⁹

Ropiha closed the meeting by suggesting ‘that the matter be now left to Mr. McKenzie to discuss with their lawyer, Mr. Simpson’.⁶⁰⁰

If Muaūpoko’s reaction was a disappointment to McKenzie, one can well imagine that the Crown’s position was profoundly disappointing to Muaūpoko. The Crown had at last recognised Muaūpoko’s title only with the intention of purchasing it.

The Crown readjusts its position

A few days after the meeting, Dan Rikihana wrote to McKenzie on behalf of his wife. He related the grievances Muaūpoko had suffered over the years, including the 1916 Act and the effects of the lowering of the lake. All these injustices’, he explained,

were perpetrated against the wishes of the Muaupoko Tribe who were impotent because of the preponderance of Pakeha members of this Board.

The Board has been defunct for the past fifteen years, and the revenue which we enjoyed has disappeared, because there is no one to administer the affairs of the Lake.

At least I feel this Board should be reformed giving controlling representation to the Muaupoko Tribe, because after all this lake is theirs by birth right and by the Act of 1873.⁶⁰¹

⁵⁹⁷ ‘Minutes of meeting held at Kawiu Hall, Levin, 13th June, 1952’. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁵⁹⁸ ‘Minutes of meeting held at Kawiu Hall, Levin, 13th June, 1952’. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁵⁹⁹ ‘Minutes of meeting held at Kawiu Hall, Levin, 13th June, 1952’. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶⁰⁰ ‘Minutes of meeting held at Kawiu Hall, Levin, 13th June, 1952’. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶⁰¹ Raniera Dan Rikihana to McKenzie, 16 June 1952. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

McKenzie's reply was somewhat patronising (or at least comes across as such), thanking Rikihana for his 'most interesting letter' (which was a fairly accurate summation of past events) and trusting that 'the Muaupoko people will co-operate to their utmost in helping to solve the long-standing problems'.⁶⁰² The irony of this is that it was a solution along the very lines that Rikihana proposed that was eventually adopted by the Crown. Paterson forwarded the exchange between McKenzie and Rikihana to the Director-General of Lands, remarking that 'Mrs Rikihana is a woman of very strong personality and is reputed to be the woman who has made her presence felt in connection with recent disputes.'⁶⁰³

In the same letter Paterson updated the Director-General on what had taken place in the week since the 13 June meeting:

It will be of interest to know that Mr Simpson, acting for the Maoris is to meet them again.

Mr Simpson says that although he is aware of the chain strip being offered, he is strongly of the opinion that the Lake Bed as well should be sold to the Crown. He proposes to advise the Maori Owners accordingly.

I need not say that this information is extremely confidential.⁶⁰⁴

It is no wonder that Paterson stressed that this news should be kept under wraps. On the face of it, the Crown was colluding with counsel for Muaūpoko to have them change their minds only days after their unequivocal rejection of the Crown's proposal. It would not have been inappropriate for the Crown to attempt to negotiate with Muaūpoko through their lawyer, but during these events Simpson seems almost to have acted as an agent for the Crown rather than an advocate for his clients. At the very least, he and the Crown appear to have shared an attitude of knowing what was right for Muaūpoko.

On the same day as he wrote the foregoing, Paterson sent the Director-General a comprehensive briefing on the negotiations over the lake. In this he explained that officials had held a meeting with Simpson in Wellington on 9 June 1952:

The resultant discussion was helpful in that it clarified ideas already held by departmental representatives and established a basis of goodwill and a desire on the part of each person present to do whatever was possible to solve existing difficulties.⁶⁰⁵

Given Simpson's later actions, one can only imagine the nature of this discussion. It is true that Morison seems to have favoured the suggestion made privately in March 1935 by the Under Secretary for Lands, W Robertson, that Muaūpoko cede to the Crown the requested

⁶⁰² McKenzie to Dan Rikihana, 20 June 1952. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶⁰³ Commissioner of Crown Lands to Director-General of Lands, 20 June 1952. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶⁰⁴ Commissioner of Crown Lands to Director-General of Lands, 20 June 1952. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶⁰⁵ Commissioner of Crown Lands to Director-General of Lands, 20 June 1952. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

83.5 chains of chain strip and dewatered area in exchange for the Crown making an expensive survey around the lake. However, it seems doubtful that Morison would have gone as far to help the Crown as did Simpson – who took over the most of his firm’s Māori practice when Morison was made Chief Judge of the Maori Land Court in 1945⁶⁰⁶ – in 1952.

Paterson then related the meeting held in the council chambers earlier in the day on 13 June. He noted that the mayor had been ‘somewhat disappointed’ by the news that the domain board would not be reconstituted before a settlement had been achieved, although he added that a subsequent inspection of the lake and Hōkio Stream had revealed that the mayor was incorrect in his claim that the lake was back to its original level. Turning to the evening meeting with Muaūpoko, Paterson explained that the Crown’s approach had been to stress ‘the troubles that had arisen and would possibly continue to arise’ if passing the lake to the Crown ‘on a compensation basis’ did not occur. The Crown, it was explained, ‘would have greater power and machinery to deal with any such difficulties thus benefitting the Maoris and Pakehas alike’. Paterson added that it was clear that title to the lakebed and chain strip was vested in Muaūpoko.⁶⁰⁷

However, in respect of Marumaru’s pleas for Muaūpoko not to close off negotiations, Paterson said ‘it is understood that the Crown is shortly to be offered the chain strip around the Lake’. It is not clear where this misplaced confidence came from; possibly it stemmed from a misreading of Muaūpoko’s intentions by Simpson. Paterson noted that, if this offer firmed up, the boundary would have to be ‘elastic’ in order to always align with the fluctuating level of the lake and not leave a Māori-owned strip in between.⁶⁰⁸

Paterson described relations between the Māori owners and borough council as strained. It was clear that Pākehā board members had not consulted with Muaūpoko, while ‘some of the Maoris are so jealous of their rights that they read more into the actions of the Pakehas than was ever intended’. The adjoining Pākehā farmers had made things worse with ‘thoughtless actions’. The 1916 Act’s provision for a two-thirds majority of borough representatives had left Muaūpoko in ‘an impossible position’. It appeared that, as a result, they did not nominate ‘their most efficient members’. On the matter of future representation on the domain board Paterson felt that ‘some consideration’ should be given to the fact that the lake was most accurately described as ‘Maori land set aside for Recreational purposes’.⁶⁰⁹

Under the subheading of ‘Title to the Lake Bed and Chain strip’, Paterson made an astonishing remark:

⁶⁰⁶ Waitangi Tribunal, *Whanganui River Report* (Wellington: GP Publications, 1999), p 209

⁶⁰⁷ Commissioner of Crown Lands to Director-General of Lands, 20 June 1952. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶⁰⁸ Commissioner of Crown Lands to Director-General of Lands, 20 June 1952. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶⁰⁹ Commissioner of Crown Lands to Director-General of Lands, 20 June 1952. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

Obviously if the Maoris would sell the title to the Lake Bed and waive all their rights, this would create an ideal set up. It is felt however, that if the Crown is offered the chain strip, this should be purchased on the most favourable terms and the purchase price agreed to, discharged by a lump sum payment.⁶¹⁰

He reasoned that Crown title to the chain strip ‘will overcome the complaints as to destruction of bush, loss of shell fish and loss of flax revenue’.⁶¹¹

In other words, a senior Crown official considered that the best thing would simply be for Muaūpoko to yield entirely. When he referred to ‘the most favourable terms’ for purchasing the chain strip, he clearly meant terms most favourable to the Crown. He was essentially making the point that, conveniently, Muaūpoko could no longer complain about the damage to their property if they no longer owned it. Paterson’s attitude suggests that there remained a clear disconnect in the Crown’s thinking between the grievances it recognised and the solutions it put forward.

On the crucial question of representation on a reformed domain board, Paterson proposed that there be three Pākehā members, representing the borough council, the county council, and Levin sports bodies respectively. There should also be three ‘Maori Owner representatives’. In this regard Paterson proposed that ‘three of the most responsible and capable Maoris clothed with full responsibility and powers by the Maori owners be chosen by the Maori Affairs Department after consultation with the elders of the Muaupoko tribe’. He also recommended an ‘independent Chairman, of necessity a Pakeha, who by reputation can effectively hold such a position with credit’. Paterson did not spell out why the chairman had to be Pākehā, but this contrasts with what he saw as the desirability for Ropiha to chair the 13 June 1952 meeting, presumably because he was Māori. In that instance Paterson had been trying to win Muaūpoko over; in this case, perhaps, he was trying to do the same with the local authorities. He ‘realised that the Levin Borough Council will be somewhat upset should this proposal be acceptable’, but at the same time he reasoned that

if the Mayor and Councillors are sincere in their desire to achieve action towards the goal they are looking to they will have little to complain of, after all they will have one representative on the Board.⁶¹²

The Crown’s wheels ground ahead slowly as the entire matter was then considered by a Lands Department head office committee comprising of the Assistant Director-General, the Surveyor-General, the Fields Director, and the Chief Clerk. The submission to it reflected a greater degree of realism in the Crown’s ambitions, although officials remained wedded to ideas that had previously been rejected by Muaūpoko:

⁶¹⁰ Commissioner of Crown Lands to Director-General of Lands, 20 June 1952. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶¹¹ Commissioner of Crown Lands to Director-General of Lands, 20 June 1952. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶¹² Commissioner of Crown Lands to Director-General of Lands, 20 June 1952. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

No definite decision was arrived at by the meeting but Mr. Simpson of Morison, Spratt and Taylor, Solicitors, for the Maori owners thought that the Maoris may be prepared to sell the chain strip to the Crown provided their title to the lake bed was confirmed. He is negotiating with his clients for this and if possible for the same of the lake bed to the Crown.

COMMENTS: It is questioned, however, whether it is necessary for the development of the Horowhenua Lake as a recreational area, for the purchase by the Crown of the lake bed and the whole of the chain reserve and strip of former lake bed between the waters edge and the chain reserve. The compensation required by the Maori owners would no doubt amount to a large sum particularly if claims were sustained for compensation for damage allegedly suffered and infringement of their rights in the past.⁶¹³

The submission noted that 83.5 chains had previously been regarded – along with control of the lake surface – as sufficient for development purposes, and Muaūpoko might ‘be prepared to sell the 83½ chain area to the Crown instead of merely ceding it by way of gift’.⁶¹⁴

The four recommendations made to the committee were all endorsed and recommended for the Minister’s approval. These were:

- (1) that the Lands Department – ‘in conjunction with Maori Affairs Department and the Solicitor for the Maoris’ – negotiate for the purchase of the 83.5 chains, with its lakeward boundary to be movable as the lake level fluctuated and the landward boundary to be static (as can be seen from this and the previous reference to Simpson, he still seemed to be acting as if he was in fact a Crown agent);
- (2) that in return for this, the balance of lake bed, chain strip and dewatered area be confirmed as Māori-owned by statute;
- (3) that – as a condition of (2), the Māori owners agree to the surface being subject to the Public Reserves, Domains and National Parks Act 1928 and under the control of a domain board, with the Māori owners able to exercise ‘any reasonable rights of user’; and
- (4) that representation on the reconstituted domain board to be as proposed by the Commissioner of Crown Lands, which was ‘likely be more acceptable to the Maoris and promote a better co-operative spirit among the Board members and among the residents of the district’.⁶¹⁵

The Director-General in turn forwarded the submission stamped with the committee’s approval to the Minister of Lands on 22 October 1952. He noted that there remained some misgivings about recommendation (3) ‘because of the potential conflict of interests which might possibly arise’, adding that

⁶¹³ ‘Head Office Committee, Horowhenua Lake. Case No. 6621’. Undated submission on Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶¹⁴ ‘Head Office Committee, Horowhenua Lake. Case No. 6621’. Undated submission on Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶¹⁵ ‘Head Office Committee, Horowhenua Lake. Case No. 6621’. Undated submission on Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

It would certainly be simpler to administer from the Domain Board's point of view if the whole of the Lake were purchased from the Maoris and it is understood, from the latest advice available, that they might entertain a sale at about £20,000 [\$1.1m in 2015 dollars⁶¹⁶]. If the Government decided that purchase should be attempted, no doubt it would have to be prepared to find the bulk of the purchase price as it is unlikely that any very considerable contribution would be available from the local authority.⁶¹⁷

On 29 October Corbett annotated the Director-General's letter that there was 'little chance of approval to purchase at £20,000', and approved the recommendations accordingly.⁶¹⁸

It is difficult to tell from this whether money remained the stumbling block to the Lands Department's preferred outcome of extinguishing Māori title over the lake. Certainly, both officials and Muaūpoko's own lawyer regarded a sale to the Crown as the best way forward. The Crown had, however, fallen back on a more realistic negotiating position of seeking title to just the 83.5 chains of chain strip and dewatered area, although of course this had previously been rejected by Muaūpoko in the 1930s and 1940s.

The Minister of Lands' meeting with parties in November 1952

Corbett met with Maher, the borough council, county council, Manawatu Catchment Board, and Hokio Drainage Board in Levin on 6 November 1952. Before he left he was reminded of the recommendations he had agreed to and the fact that the borough council would probably 'not be very happy about the proposed change in the domain board'. His officials preferred the council to be left in the dark about this until some further progress had been made in the discussions with Muaūpoko.⁶¹⁹

At the meeting Corbett challenged Parton as to the efforts the council had actually made to resolve the impasse:

'Have you made any attempt to negotiate with the Maoris or are you just looking for another Daniel to go into the lion's den?'

The feeling of distrust would never be dispelled 'while you sit back here and the Maoris sit back in their maraes'.⁶²⁰

⁶¹⁶ The calculation was made using the Reserve Bank inflation calculator at http://www.rbnz.govt.nz/monetary_policy/inflation_calculator/.

⁶¹⁷ Director-General of Lands to Minister of Lands, 22 October 1952. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶¹⁸ Director-General of Lands to Minister of Lands, 22 October 1952. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶¹⁹ Director-General of Lands to Minister of Lands, 4 November 1952. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶²⁰ 'Horowhenua Lake proposal under discussion. Conference with Maoris proposed', *Manawatu Herald*, 11 November 1952. Clipping on Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

Parton claimed there was ‘no attempt to pass the buck’. He had a lot of contact with Māori through his job and he ‘always got on very well with them’.⁶²¹

Corbett said he was confident that a reasonable approach to Muaūpoko would lead to a solution. The *Manawatu Herald* reported Corbett’s comments as follows:

Under the Treaty of Waitangi the lake bed belonged to the Maori people. Any attempt to disprove this would get nowhere, he said. Such claims by Maoris had been clearly established by precedent and had been confirmed in other similar cases by Royal Commissions. ‘You just cannot contest the Maoris’ right to the lake beds in New Zealand,’ he said. No court would uphold it and it should not be challenged. He personally would not be prepared to sponsor any legislation along such lines.⁶²²

Corbett proposed that a meeting be held with Muaūpoko and officials from the Maori Affairs and Lands departments as well as representatives of the local authorities. He understood that Muaūpoko were soon to come to a decision as to whether they would sell a portion of the 83.5 chains of chain strip and dewatered area.⁶²³

Some of the Minister’s assertions were disputed from a legal point by Mr N M Thomson, ‘a member of the citizens’ committee of investigation’, who said it was ‘absurd’ that ‘Europeans had full rights to use the surface of the lake for aquatic pleasures but were denied access to the water’s edge’. Thomson claimed that, prior to drainage work on the lake, Pākehā had enjoyed access to the water via the chain strip. However, after the lake was lowered and Muaūpoko claimed the dewatered area, access had become impossible. Corbett’s retort was ‘Well, who exposed the lake bed?’ He felt that all difficulties with Muaūpoko could ‘be got over by negotiation’. He added that the drainage board would need to give a clear indication of its planned activities during the negotiations, as ‘their effect on the lake was a very important factor’.⁶²⁴

The Director-General of Lands informed the Commissioner of Crown Lands on 12 November 1952 about the discussion at the meeting at Levin. He had also spoken to Corbett two days previously. From this he passed on the Minister’s wish that discussions be held with all parties about drainage operations on the Hōkio Stream and his hope that the 83.5 chains of lakeside land could be purchased through ‘friendly negotiations’. He further noted that:

Another point on which the Minister was most emphatic is that Horowhenua Lake is not to be used as a dumping place for sewer affluent [sic].

⁶²¹ ‘Horowhenua Lake proposal under discussion. Conference with Maoris proposed’, *Manawatu Herald*, 11 November 1952. Clipping on Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶²² ‘Horowhenua Lake proposal under discussion. Conference with Maoris proposed’, *Manawatu Herald*, 11 November 1952. Clipping on Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶²³ ‘Horowhenua Lake proposal under discussion. Conference with Maoris proposed’, *Manawatu Herald*, 11 November 1952. Clipping on Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶²⁴ ‘Horowhenua Lake proposal under discussion. Conference with Maoris proposed’, *Manawatu Herald*, 11 November 1952. Clipping on Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

The Minister made it clear that he would not have speed-boats on the Lake. He would prefer it to be a wild life sanctuary.⁶²⁵

At the end of 1952 Muaūpoko instructed Simpson ‘to discuss with Chief Judge Morison the line of action the Maoris should take’.⁶²⁶ A meeting was held in Chief Judge’s chambers on 22 December between Lands and Maori Affairs officials and Simpson. Afterwards Paterson wrote to Simpson and set out what had been agreed. Simpson was to ask Muaūpoko to consider selling the 83.5 chains of chain strip and dewatered area with an elastic lakeward boundary; having title to the remainder confirmed by legislation; having three Māori and three Pākehā representatives on the domain board; and the domain board giving consent to any work on the Hōkio Stream. Furthermore:

The Maori owners can be assured that the Crown is opposed to speed boats being on the Lake and would like the original intention of wild life sanctuary adhered to as much as possible. Again, the Lake is not to be used as a dumping ground for sewer effluent. The Hon. Minister of Lands and Maori Affairs has already made these two points clear.⁶²⁷

Paterson concluded by expressing his hope that ‘the Maori owners will be sympathetic to this approach. They, themselves, will have such representation on the new Board as will ensure their viewpoint being always fully considered.’⁶²⁸ He recorded in a separate note to the Director-General on a copy of this letter that ‘You will see from the above that a conference of all parties has been held and the outcome of this should mean that an amicable settlement with the Maori owners will be possible.’ Here Paterson was again exhibiting the Crown’s same longstanding over-optimism about what it would take to meet Muaūpoko’s concerns.

The Minister’s determination that the borough’s sewage effluent would not enter the lake is returned to in chapter 5.

Agreement is reached with Muaūpoko, 1953

The Town Clerk wrote to Corbett on 6 February 1953, asking just when the conference of all interested parties would be held that the Minister had referred to in Levin the previous

⁶²⁵ Director-General of Lands to Commissioner of Crown Lands, 12 November 1952. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4. Both these positions were in keeping with Corbett’s outlook as a conservationist. For example, Corbett oversaw the creation of several national parks and a large number of scenic reserves and took pleasure from being able to ‘lock up beautiful areas’. Graham Butterworth. ‘Corbett, Ernest Bowyer’, from the Dictionary of New Zealand Biography. Te Ara – the Encyclopedia of New Zealand, updated 30-Oct-2012

URL: <http://www.TeAra.govt.nz/en/biographies/5c34/corbett-ernest-bowyer>

⁶²⁶ Commissioner of Crown Lands to Director-General of Lands, 16 December 1952. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶²⁷ Commissioner of Crown Lands to Simpson, 22 December 1952. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶²⁸ Commissioner of Crown Lands to Simpson, 22 December 1952. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

November.⁶²⁹ Corbett explained that a meeting had been held in Chief Judge's chambers at which a set of proposals that would be put to Muaūpoko were agreed upon, and 'this method of dealing with the Maoris is much to be preferred to an open conference at Levin'.⁶³⁰ This angered the mayor, who said that 'the council had been promised certain things, such as the conference, and all the arrangements had been "thrown overboard" in Wellington'.⁶³¹

At this point Parton seems to have engaged the services of Henry Bennett of Te Arawa. Bennett was a former farmer and the younger brother of the late Bishop Frederick Bennett, and had been prominent in Wellington civic and business life.⁶³² Bennett wrote to Tau Ranginui, the chair of the lake trustees, and suggested that the terms recorded by the Lands Department in its 22 December letter set out what, to him and Simpson, 'appears to us to be a reasonable and satisfactory basis for settlement'. Bennett said he and Simpson 'recommend your favourable consideration. If we lose no time we might be able to get the scheme through before the Minister leaves on his trip for the Coronation'.⁶³³ Bennett forwarded this letter to the Commissioner of Crown Lands, claiming that he had been asked by both the borough council and Muaūpoko 'to act as an intermediary with a view to finding a solution to the present hold-up and thus to bring about the reestablishment of the dormant Domain Board'.⁶³⁴ Paterson was initially enthused, believing that 'Mr Bennett's interest in the problem may mean an earlier settlement'.⁶³⁵

But Bennett's involvement had had the opposite effect. Tau Ranginui came to see McKenzie in June 1953 and 'made it quite clear that the intervention of Mr H. D. Bennett was completely unacceptable' to Muaūpoko. First of all he was not Muaūpoko himself, 'and secondly his intervention was the result of an approach made by the Mayor of Levin'. Ranginui considered that 'the best method of settling matters was for Mr McEwen and myself [McKenzie] to meet the Maoris at an early date' and discuss the points arising the department's letter of 22 December. According to Ranginui, there should be four Muaūpoko on the board, not three, and the independent chairman, who should be the Commissioner of Crown Lands, should have the casting vote.

With regard to the 83.5 chains, Ranginui doubted the Crown really needed it but, if it did, said that any transfer should only be on a lease-in-perpetuity basis. However, the land was swampy and the nearly 14 acres already in Crown ownership should suffice for the Crown's

⁶²⁹ Town Clerk to Minister of Lands, 6 February 1953. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶³⁰ Minister of Lands to Town Clerk, 11 February 1953. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶³¹ 'Minister's action on lake disappointing to mayor', *Chronicle*, 27 February 1953. Clipping on Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶³² See 'Haere ki o koutou tipuna', *Te Ao Hou*, vol 2 no 2, 1953, p 3

⁶³³ H D Bennett to Tau Ranginui, 14 April 1953. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶³⁴ H D Bennett to Commissioner of Crown Lands, 15 April 1953. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶³⁵ Commissioner of Crown Lands to Director-General of Lands, 17 April 1953. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

purposes. If the Crown wanted more land later they could always approach the trustees. Ranginui agreed that the boundary of the Crown land should 'move to and fro with the rise and fall of the water'. Ranginui did express concern that the 1905 Act had provided for 10 acres and the Crown land was nearly 14 acres in size, but McKenzie advised that there was 'no need to worry' about this, as Muaūpoko had been paid for the land and 'it was there for the general enjoyment of all'. At Ranginui's request, it was arranged that McKenzie and McEwen only would meet the trustees and Simpson at the boatshed on 28 June 1953 to inspect the 83.5 chains.⁶³⁶

On 15 June McKenzie provided a copy of his notes from the meeting with Ranginui to the Director-General of Lands. He added:

For your confidential information the difficulties that have arisen have been due to the intervention of the Mayor of Levin, Mr Parton. In his desire to solve the Horowhenua Lake problem he has, I feel, retarded a solution of the difficulties. The forthcoming meeting with the Maoris will have to be carefully handled to overcome the suspicions that have already been created in the minds of the Muaupoko [sic] tribe.⁶³⁷

The planned inspection of the 83.5 chains took place on 5 July 1953. McKenzie reported that most of the land was 'boggy' and 'quite unsuitable for the reconstituted domain board to handle', and he and the others present agreed that 'the 22 chains fronting the Reserve would be adequate for the general public in reaching the Lake and it was therefore decided to approach the Maoris in the afternoon on the basis of the 22 chain strip only'. The meeting with Muaūpoko then took place at Weraroa Hall. McKenzie explained that, from the Crown's perspective, the outstanding issues were acquisition of the 22 chains of chain strip; agreement to cross the dewatered area to enter the lake; the balance of representation on the reconstituted board; and control of the Hōkio Stream. McKenzie and McEwen retired to give Muaūpoko the opportunity to discuss these matters among themselves. Before doing so McKenzie was told by kaumātua that the tribe had in fact once offered the Crown title to the chain strip in front of the reserve in the 1930s, but the Crown had refused.⁶³⁸

When the Crown representatives returned the 'Chief Elder' said decisions had been made on all four points. First, on the issue of the chain strip and dewatered area, Muaūpoko would 'not sell this area to the Crown but will agree to lease it free of charge in perpetuity'. With respect to the domain board, the four Muaūpoko representatives would be Tau Watson Ranginui, James Hurunui Tukapua, Himiona Warena, and Rangi Hill. Thirdly, Muaūpoko asked McKenzie if he would be the board chairman. They wanted someone they had confidence in and who did not live in Levin. McKenzie noted that 'In view of the delicate situation I could not do otherwise than agree.' With regard to the Hōkio Stream, Muaūpoko would be 'quite

⁶³⁶ 'Note for file. Horowhenua Lake', by E McKenzie, 12 June 1953. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶³⁷ McKenzie to Director General of Lands, 15 June 1953. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶³⁸ 'Note for file. Horowhenua Lake', by E McKenzie, 6 July 1953. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

satisfied provided the Manawatu Catchment Board did nothing to this stream, without the consent of the reconstituted Domain Board and they felt that this and all the other points should be clarified by legislation'.⁶³⁹ Clearly, Muaūpoko believed that their numerical dominance on the new board would safeguard their interests.

McKenzie agreed to submit the following to the Minister of Lands for his consent:

The Maoris will own the Lake bed, the chain strip around the Lake, the Hokio Stream and the Reserve on the northern side of the stream. The Crown will own the waters of the lake and the existing Reserve of 13 acres 3 roods 35 [sic] perches. To enable access to be obtained from the Reserve to the waters of the Lake, the Maoris will grant, free of any encumbrance whatsoever, the right to pass and re-pass over the strip from the edge of the Domain to the waters of the Lake.⁶⁴⁰

It can be seen that, in the course of a one-day (admittedly mid-winter) visit to Levin and actual inspection of the 83.5 chains that the Crown had been determined to acquire since 1934, it was now on the verge of relinquishing this ambition. This shows that settlement could have been achieved the best part of two decades earlier, especially when Muaūpoko offered the Crown title to the chain strip and dewatered area between the north-eastern edge of the reserve and Queen Street in 1935. The Crown turned that down as unacceptable at the time; 17 years later it now seemed likely to accept a mere access agreement over an even smaller length of lakefront.

After the meeting, McKenzie called on Parton and found him to be 'quite satisfied' despite knowing that the borough would only have one representative on the new board.⁶⁴¹ Parton was almost certainly not happy, however. In October 1953 he said, with regard to the Crown's insistence on there being four Māori and three local body members on the new board, that he would 'never agree to that', arguing that there should be equal numbers of Māori and Pākehā members with an independent chair.⁶⁴² For Muaūpoko, Simpson wrote to the Commissioner of Crown Lands on 9 July and formally listed the agreed points from the meeting. These included a ban on speed boats. Simpson added that a weir could be built to keep the lake at a constant level with a 'suitable spillway' so that 'there will be no interference with the fishing rights either in the stream or in the lake'. Once legislation had been drafted, he said, it should be sent to Māori owners for their 'perusal and approval'.⁶⁴³

⁶³⁹ 'Note for file. Horowhenua Lake', by E McKenzie, 6 July 1953. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶⁴⁰ 'Note for file. Horowhenua Lake', by E McKenzie, 6 July 1953. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶⁴¹ 'Note for file. Horowhenua Lake', by E McKenzie, 6 July 1953. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶⁴² 'Balance of power', *Levin Weekly News*, 15 October 1953. Clipping on Archives New Zealand file AANS W5883 25344 Box 115 NYA003753 part 3

⁶⁴³ Simpson to Commissioner of Crown Lands, 9 July 1953. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

The proposed terms of the agreement were put to Corbett on 3 August 1953, once he had returned from attendance at the Queen's Coronation in Britain. He gave his approval on 12 August.⁶⁴⁴ The next stage in the process, however, was obtaining the consent of the borough council, county council, catchment board, and Soil Conservation and Rivers Control Council.

The agreement of the local bodies, 1953-1955

McKenzie held a meeting in Levin on 1 December 1953 with Muaūpoko, the drainage and catchment boards, and the county council.⁶⁴⁵ The key matters to resolve were maintaining the lake at a set level and the need for the prior consent of the domain board for any works carried out on the Hōkio Stream by the catchment board. Simpson indicated that Muaūpoko would agree to the lake level being maintained at 30 feet above low water spring tides at Foxton Beach – that is, the level obtained after the drainage work of 1926. To achieve this they agreed to clearance work being carried out on the Hōkio Stream and even 'some straightening being done if necessary', although they wanted to be consulted first on any 'material' straightening or deepening. They wanted facilities on the lake outlet weir 'for fish and eels to go up and down stream'.⁶⁴⁶

Those present from the local authorities agreed with these points 'and expressed appreciation of the co-operative attitude adopted by the Maori representatives'. The drainage board was 'happy to go out of existence' as soon as the catchment board was ready to take over its responsibilities. The meeting then 'agreed that the prior consent of the Domain Board should be given before any work is carried out on the Stream and, with the proposed Maori representation on the Board, this would ensure the co-operation of the Muaupoko Tribe'. However, the catchment board was short of funds and would first have to establish a new rating area larger than the one that supported the work of the drainage board.⁶⁴⁷ This made sense in any event, as the then drainage district did not include the entire length of the Hōkio Stream, a point made by the chairman of the Soil Conservation and Rivers Control Council, William Newnham.⁶⁴⁸

On behalf of the Lands Department, McKenzie met with the borough council on 28 January 1954. He acknowledged that the borough council's representation on the domain board would be reduced from six to one, but he asked that the council 'accept the proposed settlement and give the proposed Board a chance to prove itself'. The council rejected the agreement for

⁶⁴⁴ Director-General of Lands to Minister of Lands, 3 August 1953. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶⁴⁵ Muaūpoko attendees were Richard Simeon, Tau Ranginui, and Joe Tukapua. See attendance sheet on Archives Central file HRC 00076: 1: 7

⁶⁴⁶ Commissioner of Crown Lands to Director-General of Lands, 26 January 1954. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶⁴⁷ Commissioner of Crown Lands to Director-General of Lands, 26 January 1954. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶⁴⁸ W L Newnham, Chairman, Soil Conservation and Rivers Control Council, to Chief Engineer, Manawatu Catchment Board, 22 December 1953. Archives Central file HRC 00076: 1: 7

several reasons. For a start, 'its residents would be making the most use of the Lake' and it felt it 'would be called on to contribute the bulk of the finance required'. By contrast,

There was no indication of what finance the Maoris would contribute but the general feeling was that with the suggested representation the Maoris would be controlling the Board but the Pakehas would be providing the finance. Council felt that it could not accept the proposed representation and rather than do so, it would let things lie in the hope that time would bring the solution.⁶⁴⁹

The council's preference was for four Māori and four Pākehā on the board with an independent chairman, which 'would give the Maoris equality with the Pakehas and this should satisfy them'. It suggested that this structure be trialled first for three years before being locked in by legislation. The council considered the 22 chains of frontage inadequate and thought the domain board should control at least the 83.5 chains, but it accepted McKenzie's point that the board could always negotiate with the owners in future for the use of more land. With regard to speed boats, the council felt that 'the time may come when the Maoris themselves would wish to operate speed-boats on the Lake', so the restriction on their use should be addressed in a by-law rather than legislation. It called for a meeting of all parties to be held.⁶⁵⁰

The Commissioner of Crown Lands (now D W R Webb) reported on the meeting to the Director-General of Lands on 17 May 1954. He explained that the borough council felt it should have three members on the board and the country council one, with no need for a representative of Levin sports bodies. The council's opposition had been discussed with Simpson, who

was emphatic that it would be useless going back to the Maoris for increased pakeha representation. He said the Tribe had made a decision and would lose faith if any attempt were made to alter the previous arrangements. As he saw it, the Maoris would never agree to again put themselves in a position where the balance of power would be lost and they would do nothing that would bring about a loss of prestige.⁶⁵¹

Webb felt that the council's desire for a meeting of all parties should be avoided. As he put it:

At no stage during the negotiations have all parties met, and I feel that no progress would have been made if they had, particularly as the Maoris are suspicious of the Council.⁶⁵²

⁶⁴⁹ Summary of the 28 January 1954 meeting. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶⁵⁰ Summary of the 28 January 1954 meeting. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶⁵¹ Commissioner of Crown Lands to Director-General of Lands, 17 May 1954. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶⁵² Commissioner of Crown Lands to Director-General of Lands, 17 May 1954. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

He thought that the council should be told it could have two representatives, with its extra member on the board coming at the expense of the sports bodies. ‘Failing agreement on this basis’, he added, ‘I consider that no further progress will be possible at the present time.’⁶⁵³

A further approach was made to the borough council asking if it would accept two seats on the board, but it refused.⁶⁵⁴ Corbett was informed in September 1954 that matters had been resolved satisfactorily between the Muaūpoko and the drainage and catchment boards with respect to the Hōkio Stream and the lake level, but the borough council would not agree on the proposed mix of board representation. Corbett was told that it was therefore ‘proposed, subject to your concurrence, to advise the Levin Borough Council that, in the circumstances, this matter will be allowed to lapse until it is brought up again by local interests’.⁶⁵⁵ Corbett agreed.⁶⁵⁶

The borough council seemed prepared to carry on without a functioning domain board rather than one with a Māori majority. In November 1954 it informed the Lands Department that ‘some local boating enthusiasts have got on friendly terms with the Maoris’ and ‘boating is now taking place on the Lake’. It reasoned that, since ‘matters are progressing quite satisfactorily, albeit on an unofficial basis’, ‘no further action be taken in the meantime and that matters should be left to take their course’.⁶⁵⁷ In August 1955, however, the borough council changed its stance and at last agreed to have two seats on an eight-member board that included four Muaūpoko representatives and an independent chairman.⁶⁵⁸ Corbett was informed in February 1956 that the deadlock had been broken. Furthermore, a committee of members of Muaūpoko had agreed to co-operate with the catchment board on the latter’s work on the Hōkio Stream until the new board was constituted. He approved of the progress made and agreed to a clause to be drafted for inclusion in that year’s Reserves and Other Lands Disposal Bill. If it were passed that year, the Director-General told him, ‘it will mean that a long outstanding matter will have been settled’.⁶⁵⁹

The 1956 legislation

In the lead-up to the passage of new legislation governing the lake, some uncertainty existed as to who exercised actual authority over it. In February 1956 the Horowhenua Boating Club obtained the approval of Jimmy Hurunui, whom the Commissioner of Crown Lands called

⁶⁵³ Commissioner of Crown Lands to Director-General of Lands, 17 May 1954. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶⁵⁴ Commissioner of Crown Lands to Director-General of Lands, 2 July 1954. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶⁵⁵ Director-General of Lands to Minister of Lands, 13 September 1954. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶⁵⁶ Director-General of Lands to Commissioner of Crown Lands, 12 October 1954. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶⁵⁷ Commissioner of Crown Lands to Director-General of Lands, 15 November 1954. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶⁵⁸ Commissioner of Crown Lands to Director-General of Lands, 22 December 1955. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶⁵⁹ Director-General of Lands to Minister of Lands, 2 February 1956. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

‘Head of the Muaupoko tribe’, to bulldoze a channel to its jetty. The contractor, however, would not start on the work without written permission. Hurunui advised the boating club it should approach the reconstituted domain board, but when it attempted to do so it was informed that the board had no formal power until the passage of legislation. Instead it would have to obtain the owners’ permission. Corbett repeated this message to the boating club representatives who met with him on 1 June 1956. When they asked for a seat on the domain board, he directed them with their request to the borough council.⁶⁶⁰

The clause and explanatory note for the bill had been drafted by early April 1956.⁶⁶¹ At some point agreement had been reached that the prohibition on speed boats would be catered for in the by-laws, as the borough council had requested.⁶⁶² At the start of June, the Commissioner of Crown Lands noted that agreement had been reached on where the Hōkio Stream would be defined as terminating under the Bill:

It was intended that the Maoris should have fishing rights over the Lake and the Stream. In this connection it will be noted that for the purposes of this legislation the Hokio Stream finishes where it turns left and runs southward for half a mile before discharging into the sea. The intention is that a request will be made subsequently to the Manawatu Catchment Board to put a direct cut through to the sea. Mr. Simpson supplied this information and stated he was satisfied with the extent of the stream shown on the plan as this coincided with the original request of the Maoris.⁶⁶³

As discussed in chapter 4, this agreement was to be a cause of some difficulty in later years.

By the end of July the legislation was ready. The Director-General of Lands noted that reference had been made to the fishing rights of the owners of Horowhenua Block 9 because of the prior provision for this in section 9 of the Horowhenua Block Act 1896. He also noted that it would be ‘unwise’ to declare the bed of the Hōkio Stream Māori-owned because sales on the southern side would have given non-Māori owners rights to the middle of the stream through the application of *ad medium filum*. The legislation would therefore need to be clear that it applied only to the bed of the stream which had not been legally alienated or disposed of.⁶⁶⁴

Copies of the clause and explanatory note were then sent to the county and borough councils, the catchment board, the Department of Maori Affairs, the Soil Conservation and Rivers

⁶⁶⁰ C I Devonshire, Secretary-Treasurer, Horowhenua Boating Club, to J J Maher MP, 14 April 1956; Commissioner of Crown Lands to Director-General of Lands, 28 May 1956; Director-General of Lands to Minister of Lands, 30 May 1956; and notes of the meeting between the Horowhenua Boating Club and the Minister of Lands, 1 June 1956. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶⁶¹ Director-General of Lands to Commissioner of Crown Lands, 5 April 1956. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶⁶² Commissioner of Crown Lands to Director-General of Lands, 28 May 1956. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶⁶³ Commissioner of Crown Lands to Director-General of Lands, 1 June 1956. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶⁶⁴ Director-General of Lands to Commissioner of Crown Lands, 31 July 1956. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

Control Council, and counsel for the Muaūpoko owners. By 20 September 1956 all parties had agreed.⁶⁶⁵ The difficulty of maintaining the lake specifically at the 30-foot level at different times of the year was resolved through the addition of the words ‘under normal conditions’. At the same time the Chief Surveyor clarified how the 30 foot level came into being. After the drainage board’s work on the stream had concluded in April 1926 the level was measured the following month as 30 feet above low water ordinary spring tides at Foxton, and this became ‘accepted as the level of the new lake’.⁶⁶⁶ To this extent, in agreeing the 30-foot level Muaūpoko were accepting that the lake would remain considerably lower than it had been before the drainage activities of 1926. This was either an act of some generosity on their part towards the farmers ever fearful of flooding, or perhaps a reflection that they might be able to make some use of the dewatered area now that their title to it was being affirmed.

The Secretary of Maori Affairs wondered whether section 84(1)(m) of the Reserves and Domains Act 1953 ‘might be examined to determine whether the provisions are wide enough to prevent pollution of the Lake. It is thought that there are sufficient powers there.’⁶⁶⁷ The section in question made it an offence for anyone, without official authorisation, to deposit or throw on any public reserve

any substance or article of a dangerous or offensive nature or likely to be of a dangerous or offensive nature, except in a place or receptacle approved or provided by the Minister or the Commissioner or the administering body for the purpose[.]⁶⁶⁸

The Secretary of Maori Affairs was presumably not thinking of the treated sewage, and it seems unlikely that a legal challenge under section 84(1)(m) would have succeeded against the discharge of effluent to the lake given the official approval of it. But, by the 1970s, it would at least have been difficult for anyone to argue that the effluent was not ‘dangerous or offensive’ or ‘likely’ to be so. To Māori, of course, the discharge was offensive from the outset (see chapter 5).

The new statutory provisions concerning the lake were passed into law on 25 October 1956 in section 18 of the Reserves and Other Lands Disposal Act 1956. It (in subsection 12) repealed the 1905 Act, section 97 of the 1916 Act, section 64 of the 1917 Act, and section 53 of the 1926 Act. The explanatory note traversed the effect of the previous legislation, and explained that ‘agreement has now been reached between the Maori owners and other interested bodies in respect of the ownership and control of’ the lake, the chain strip around it, the dewatered area, and the Hōkio Stream and chain strip along its northern bank. These areas (including the

⁶⁶⁵ Commissioner of Crown Lands to Director-General of Lands, 11 September 1956, and Town Clerk to Assistant Commissioner of Crown Lands, 20 September 1956. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶⁶⁶ Note by Chief Surveyor, 6 September 1956. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶⁶⁷ Commissioner of Crown Lands to Director-General of Lands, 11 September 1956. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁶⁶⁸ Section 84(1)(m), Reserves and Domains Act 1953

islands in the lake) were declared under subsections 2 and 3 ‘to be and to have always been owned by the Maori owners’ (except for those parts of the Hōkio Stream that ‘may have at any time been legally alienated or disposed of by the Maori owners’) and were vested in the new lake trustees appointed by the Maori Land Court in 1951.

Subsection 4 provided for the public to at all times to have ‘the free right of access over and the use and enjoyment of’ the area of chain strip and dewatered area between the lake and the 13-acre, three-rood, 37-perch area purchased for boatsheds and the like. Subsection 5 declared the surface waters of the lake along with the boatshed area and the chain strip and dewatered area between it and the lake to be a public domain. It also provided that the Maori title to the bed of the lake would be unaffected, and that

the Maori owners shall at all times and from time to time have the free and unrestricted use of the lake and [the land between the boatshed area and the lake] and of their fishing rights over the lake and the Hokio Stream, but so as not to interfere with the reasonable rights of the public, as may be determined by the Domain Board constituted under this section, to use as a public domain the lake and [the land between the boatshed area and the lake.]⁶⁶⁹

Subsection 6 stated that nothing in the Act should affect the fishing rights granted under section 9 of the Horowhenua Block Act 1896. Subsection 7 provided for the Minister of Lands to appoint a board to control the domain consisting of four persons recommended for appointment by ‘the Muaupoko Maori Tribe’, along with two recommended for appointment by the Levin Borough Council and one recommended by the Horowhenua County council. Subsection 9 abolished the Hokio Drainage Board and provided for the Manawatu Catchment Board to assume its role and responsibilities. These now included, under subsection 10, maintaining the lake level at 30 feet above mean low water spring tides at Foxton Beach. However, the catchment board had first to obtain the consent of the domain board before carrying out any works affecting the lake or stream, although its right of access along the banks of the Hōkio Stream to carry out such works was confirmed.

In introducing the legislation to Parliament, Corbett noted that it ‘meets fully the wishes of the Maori owners’ and resolved a matter that had been ‘the subject of controversy for the last fifty years’.⁶⁷⁰ Eruera Tirikatene – whose Southern Maori electorate now encompassed the lake⁶⁷¹ – reflected that

The people of the Muaupoko Tribe have been very generous down through the years. Thirteen acres have been transferred, without any record of its being a financial transaction, to form a domain including the frontage to the lake. So the Maori people have played their part in recognising the requirements of later generations for the provision of recreational areas. I ask the Minister to give an assurance if he can that there will be no further encroachment on the rights of the Maoris to the bed of the lake and over the waters of the lake. The Maori

⁶⁶⁹ Section 18(4), Reserves and Other Lands Disposal Act 1956

⁶⁷⁰ NZPD, vol 310, 23 October 1956, p 2712

⁶⁷¹ It will be recalled that the local Māori MP had previously been the member for Western Maori.

owners have felt that motor boat racing on the lake is detrimental to the waterfowl and other birdlife there, and that the lake should be retained as a bird sanctuary.⁶⁷²

Tirikatene's suggestion that Muaūpoko were never paid for the area acquired by the Crown for boatsheds and the like was incorrect. It contributed to the Muaūpoko sense of grievance about the lake decades later, as we shall see. However, Tirikatene described the Muaūpoko majority on the board as 'a fairly genuine attempt to give the Maori a say in matters concerning the lake and the property around it'. He wondered why, though, a Māori could not be chairman of the board since there were 'many Maoris capable of holding that office'.⁶⁷³

Conclusion

In 1934 Harvey and Mackintosh considered the full history of the lake since 1905, including – crucially – the 1905 agreement. They recognised that, after the 1905 Act, the lakebed and chain strip belonged to Muaūpoko, and that Prenderville's 1932 opinion for the Crown Law Office was wrong. Prenderville himself was forced to acknowledge the same. Yet Harvey and Mackintosh proposed that, as a 'compromise', title to the bed and chain strip be restored to Muaūpoko on the condition that the tribe surrender 83.5 chains' length of foreshore (including both chain strip and dewatered area). Prenderville favoured this 'happy solution'.

The Crown's negotiating stance was informed by a misplaced confidence that Muaūpoko would readily acquiesce and accept the terms offered. After the meeting with the tribe of 23 March 1935 – at which Muaūpoko unequivocally rejected the Crown's offer – the Crown should have accepted the impracticality of this approach. Yet it persisted in it, making it clear to Muaūpoko that the choice was to take it or leave it. The irony, too, is that Muaūpoko made a counter-offer to the Crown of an area of foreshore that was well in excess of what the Crown secured in 1956. Yet this was unacceptable to the Crown in 1935.

In May 1936, Muaūpoko approached the Native Minister (and Prime Minister), Michael Joseph Savage, who encouraged them to come to an agreement without their lawyer. When Crown and tribal representatives met again later that year the Crown offer was no different to 1935, and the Muaūpoko rejection of it just as emphatic. They wanted their land returned and not even the enticement of payment for an expensive survey could sway them. As the 1930s wore on Muaūpoko gave up participation on the domain board, which consequently fell into abeyance. It is little wonder this happened, since the Crown's stance in the negotiations and the guaranteed majority of local body representatives on the board left the Muaūpoko board members in an impossible position.

In 1943 another Muaūpoko deputation met the Native Minister, Rex Mason. This led to a consideration of the matter by Native Land Court Chief Judge George Shepherd. Yet Shepherd's proposed solution was no different to that put forward by Harvey and Mackintosh

⁶⁷² NZPD, vol 310, 23 October 1956, pp 2713-2714

⁶⁷³ NZPD, vol 310, 23 October 1956, p 2714

in 1934. In the late 1940s and early 1950s some pressure for a settlement of the matter came from the Levin Borough Council, which was anxious to develop the foreshore, see the lake used for boating, and – as we shall see in chapter 5 – find somewhere to discharge its sewage effluent.

In 1952 Crown officials looked into the matter anew, and recommended that the Crown simply purchase up Muaūpoko's interests. They even co-opted Muaūpoko's own lawyer to help convince the tribe that this was the best outcome. Officials put these proposals to Muaūpoko at a meeting in June 1952, but again the tribe rejected them. One member of the tribe made the point that it was now time that Muaūpoko had the controlling representation on the board. Such was the tribe's distrust of the local bodies that it refused to put itself again in the position of being outnumbered on the domain board.

In October 1952 the Crown backed away from the idea of purchasing from Muaūpoko the lakebed and surrounds because of the likely cost. Then, in June 1953, Crown officials visited the lake and abruptly came to the view that the area of foreshore the Crown had held out for since 1934 was actually not even worth acquiring. The singular most important obstacle to a settlement for nearly 20 years had suddenly evaporated.

Over the subsequent two years the Crown obtained the agreement of the local bodies to the proposed settlement with Muaūpoko. A domain board would control the lake with four Muaūpoko members and three local body representatives. A Crown official would serve as the independent chair. The lake level would be controlled by the Manawatu Catchment Board at an agreed height; Muaūpoko's exclusive fishing rights and ownership of the bed, chain strip, dewatered area, and Hōkio Stream would be confirmed; and public access to the lake from the boatshed area across Muaūpoko's land would be guaranteed. These points were all given legislative effect in section 18 of the Reserves and Other Lands Disposal Act 1956.

The Crown, therefore, had gone a significant way towards making amends for the grievances Muaūpoko had suffered since 1905. Yet it had come to this point very slowly and somewhat reluctantly, having as late as 1952 still preferred to extinguish Muaūpoko's title. Moreover, the provisions of the 1956 Act now had to be put into practice, and it remained to be seen whether the confidence Muaūpoko now felt was well founded. The first decade of the new board is described in the next chapter. Ironically, Muaūpoko's achievement in 1956 was practically simultaneous with the commencement of sewage effluent discharge into the lake, which is covered in chapter 5. The title the tribe won back in 1956 was that of a rapidly deteriorating asset.

4. Putting the 1956 settlement into effect

Introduction

The previous chapter described the drawn-out negotiation between the Crown and Muaūpoko – as well, later, as between the Crown and various local bodies – to resolve Muaūpoko’s grievances over the lake. This had taken much longer than was necessary, mainly because of the Crown’s stubborn determination only to recognise Muaūpoko title to the tribe’s rightful property if Muaūpoko gave it something valuable in return. Eventually, after Muaūpoko refused to yield, agreement among all parties was reached in 1955. This was set out in section 18 of the Reserves and Other Lands Disposal Act 1956.

Muaūpoko regarded the passage of the legislation as a turning point and a restoration of their mana. This chapter relates how the newly appointed board, which included a Muaūpoko majority, set about implementing the settlement. This required it to liaise with all parties over the ‘stabilisation’ of the lake through the work of the catchment board on the Hōkio Stream; adopt and apply by-laws, giving particular consideration to the question of whether motorised craft should be permitted on the lake; and establish a development plan and make provision for the establishment of facilities for various lake-users. Inevitably other issues concerned it as well in its first decade or so, such as whether to make the lake a wildlife refuge and whether to introduce additional species of fish into the lake. The question of the board’s chairmanship and indeed the scope of its role in Muaūpoko tribal affairs also arose.

Not all of the matters addressed in this chapter caused controversy at the time, but how they were addressed is essential context for understanding some of the disputes that arose later and which are covered in chapter 6 in particular. The report returns in the following chapter to consider the growing problems caused by the borough council’s disposal of stormwater and sewage effluent.

This chapter addresses questions 2(b), 2(c), and 2(e) of the research commission, concerning the Crown’s and Muaūpoko’s expectations and understandings of the 1956 legislation; the extent to which Muaūpoko participated in the board; the Crown’s oversight of the various powers it had delegated; the nature of any Muaūpoko opposition to Crown or local body actions; and the extent to which the Crown or delegated local bodies took account of Muaūpoko interests, consulted them, or sought their consent.

The establishment of the new board and signing of the development plan

On 7 February 1957 a *Gazette* notice declared the Horowhenua Lake Domain a reserve and appointed its members. These were the Commissioner of Crown Lands for the Wellington district, who was ex officio the chairman; two members of the borough council, ex officio, to be appointed by the council; Frederick Hudson for the county council (who thus became a board member after having served for decades as its secretary); and Rangi Hill, Tau Watson

Ranginui, Wiremu Tukapua, and Himiona Warena for Muaūpoko. The appointments were for seven years.⁶⁷⁴ Wiremu Tukapua resigned soon after due to having other meetings that clashed with those of the domain board. After a ‘tribal meeting’ Muaūpoko nominated Hohepa Mei Tatere to take his place, and Tatere’s appointment was gazetted on 14 November 1957.⁶⁷⁵ In November 1958 Tatere resigned himself due to ill health and was replaced by Hori Kingi Hipango.⁶⁷⁶

The first two borough council members were councillors Alfred Allen and Nepia Winiata. The *Chronicle* noted the irony that Winiata was, ‘in fact, a Pakeha representative on the new board’ and remarked that:

It is improbable that the legislators foresaw the appointment of a Maori as one of the Pakeha representatives even though the nominee is not in this case a member of the Muaupoko Tribe. Informed opinion is that the appointment will be beneficial nevertheless.⁶⁷⁷

The *Chronicle* noted that the Act would also theoretically allow Muaūpoko to nominate Māori who were not members of the tribe or even Pākehā to represent them on the board, and that the county council had a similar leeway to appoint whom it chose.⁶⁷⁸ A Pākehā had already been selected to represent Muaūpoko, as noted in chapter 2. As we shall see in chapter 6, a Māori who was not Muaūpoko was later chosen to represent them as a board member, which caused some disquiet within the tribe.

The new board inspected the domain on 21 March 1957. Oddly, for McKenzie, it was the first time he had ever seen it.⁶⁷⁹ A photograph of the board members standing on the boating club’s jetty appeared that day in the *Chronicle* (see image 4.1). From left to right it shows J S Macdonald (the board’s secretary), Hudson, E A Byrne (temporary secretary), Hill, Winiata, R P Gough from the Department of Lands and Survey, Allen, Warena, and McKenzie.⁶⁸⁰

⁶⁷⁴ *NZ Gazette*, 7 February 1957, No. 10, p 182. See also Director-General of Lands to Minister of Lands, 5 February 1957. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

⁶⁷⁵ *New Zealand Gazette*, 14 November 1957, No. 86, p 2142. See also Director-General of Lands to Minister of Lands, 29 October 1957. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

⁶⁷⁶ *NZ Gazette*, 4 December 1958, No. 74, p 1751

⁶⁷⁷ ‘Interesting complexities in Lake Board’s set-up’, *Chronicle*, 10 December 1956. Clipping on Archives Central file HDC 00010: 6: 10/11. Winiata was presumably Ngāti Raukawa. He was probably the same Nepia Winiata whose name appeared on the petition (signed by 105 Māori in total) presented to Gordon Coates by Rere Nicholson on 9 July 1925 concerning proposed drainage activities on the Hōkio Stream. Rere Nicholson to Native Minister, 9 July 1925. Archives New Zealand file ACGO 8333 IA1 1380 19/10/51 (see chapter 2).

⁶⁷⁸ ‘Interesting complexities in Lake Board’s set-up’, *Chronicle*, 10 December 1956. Clipping on Archives Central file HDC 00010: 6: 10/11

⁶⁷⁹ ‘Inspection of Lake Domain to be made by new board’, *Chronicle*, 20 February 1957. Clipping on Archives Central file HDC 00010: 6: 10/11

⁶⁸⁰ ‘Initial inspection of Lake Domain’, *Chronicle*, 21 March 1957. Clipping on Archives Central file HDC 00010: 6: 10/11

Image 4.1: Inspection of Lake Horowhenua by the new domain board, 21 March 1957⁶⁸¹



An early issue was what to call the domain land by the side of the lake. The Muaupoko Tribal Committee proposed that it be called ‘Major Kemp Memorial Park’. The domain board had no objection to this, but felt there would be merit instead in naming it ‘Muaupoko Park’. As the board explained in a letter to Nora McMillan, the Secretary of the Muaupoko Tribal Committee:

As far as the Board is aware there is nothing in or around Levin which perpetuates the name of your Tribe and it was therefore considered that opportunity now presents itself of rectifying this matter. Would you please arrange for the proposition to be discussed and let me know what you think about it. Could it be proposed that the proposed fountain be named Major Kemp Memorial fountain – and would this not give the results you are wishing to achieve.⁶⁸²

At the board’s meeting of 10 October 1957 a ‘letter from the Muaupoko Tribe was read stating that the Tribe agreed to the Domain being named Muaupoko Park’.⁶⁸³

A more significant early task for the board was to establish a development plan for the domain. It was considered that the past barriers to development had now been overcome, and work could now commence on the long-held (borough council) desire to beautify and improve and the lakeshore. Gough, who served as the board’s planning officer, devised an initial scheme which was adopted at the board’s meeting of 16 April 1957. It provided for the

⁶⁸¹ A print of the photograph is in Archives Central file A/2012/6 : 5002212201 : 10. It was published to illustrate ‘Initial inspection of Lake Domain’, *Chronicle*, 21 March 1957, a clipping of which is on Archives Central file HDC 00010: 6: 10/11.

⁶⁸² J S Macdonald, Board Secretary, to Nora McMillan, 12 August 1957. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

⁶⁸³ Minutes of meeting of Horowhenua Lake Domain Board, 10 October 1957. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

diversion of a stream running through the domain, the planting of trees, and the provision of boat-launching and swimming areas. Gough's plan (see figure 4.2 below) was displayed in the window of Allen's shop.⁶⁸⁴ Ranginui drew an alternative, which provided for croquet greens, tennis courts, miniature golf, a skating rink, and a children's playground.⁶⁸⁵

Figure 4.1: R P Gough's 1957 sketch plan of proposed development of the domain⁶⁸⁶



Hudson noted at the April meeting that 'more expansive operations' could follow at a later time.⁶⁸⁷ Indeed, at its 11 July meeting the Department of Lands provided six plans of the domain for board members to consider.⁶⁸⁸ The board adopted a version of the plan in principle at its 12 September meeting, and referred it to Muaūpoko for comment and approval.⁶⁸⁹ This plan included provision for a caretaker's residence, miniature Māori pā, dance hall and tea rooms, fountain, sound shell, skating rink, tennis courts, boating facilities for both yachting and rowing, a picnic area, a promenade, and a beach.⁶⁹⁰

⁶⁸⁴ The nature of Allen's business is unknown.

⁶⁸⁵ Minutes of meeting of Horowhenua Lake Domain Board, 9 May 1957. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson); 'Long-term development plan for lake and surrounding domain adopted by board', *Chronicle*, 17 April 1957. Clipping on Archives Central file HDC 00010: 6: 10/11

⁶⁸⁶ This plan was considered by the domain board at its meeting of 16 April 1957. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

⁶⁸⁷ 'Long-term development plan for lake and surrounding domain adopted by board', *Chronicle*, 17 April 1957. Clipping on Archives Central file HDC 00010: 6: 10/11

⁶⁸⁸ Minutes of meeting of Horowhenua Lake Domain Board, 11 July 1957. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

⁶⁸⁹ Minutes of meeting of Horowhenua Lake Domain Board, 12 September 1957. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

⁶⁹⁰ 'Maoris to consider plans to develop Lake Domain', *Chronicle*, 16 November 1957; 'Development plan for Lake Domain approved by tribe', *Chronicle*, 15 February 1958. Clippings on Archives Central file HDC 00010: 6: 10/11

The approval of ‘Muaupoko’ in this case was taken to mean the Muaupoko Tribal Committee. It gave its approval of the development plan in February 1958. The idea was that the plan would be signed by members of Muaūpoko and the domain board at a special ceremony. The plan bore a depiction of a kotuku on its front cover, which Ranginui explained as a symbol of peace. He added:

This is a symbol the tribe have been seeking for some time ... It is like the Treaty of Waitangi – it will be sacred to the tribe when signatures are on it.⁶⁹¹

The ceremony to mark the plan’s signing and – according to McKenzie – ‘to give the Muaupoko tribe the opportunity of thanking Parliament for the passing of the recent legislation ... which restored to the Maoris certain lands and rights’⁶⁹² was held at Kawiu Pā on 10 May 1958. It was certainly taken seriously by Muaūpoko. Many distinguished guests were invited, including the Prime Minister, Walter Nash, and Chief Judge Morison. The occasion must have caused the latter mixed feelings: he would surely have been pleased to see his former clients vindicated, but also mindful that it had taken unnecessarily long.

Image 4.2: The Kawiu dining hall being decorated for the development plan ceremony by (from left) Ritihira Paki, Elizabeth Paki, Amelia Warren, and K Graham⁶⁹³



The dining hall ceiling was decorated with crepe paper in the pattern of the Union Jack under the direction of Mrs Ritihira Paki, president of the Muaūpoko branch of the Māori Women’s Welfare League. Nash was welcomed with a wero from James Tukapua. Nash told those gathered that ‘Never inside my memory have I attended a more important function than this’.

⁶⁹¹ ‘Development plan for Lake Domain approved by tribe’, *Chronicle*, 15 February 1958. Clipping on Archives Central file HDC 00010: 6: 10/11

⁶⁹² Assistant Commissioner of Crown Lands to Director-General of Lands, 16 June 1958. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

⁶⁹³ ‘Marae is decorated for historic function’, *Chronicle*, 8 May 1958. Clipping on Archives Central file HDC 00010: 6: 10/11

He noted the memorial planned for Major Kemp in the domain grounds, calling Kemp ‘one of the most magnificent characters in the history of this country’. In another excessive tribute, Eruera Tirikatene, the Minister of Forests, described the plan as ‘a beacon and a mark to posterity’ which people would later look upon and say ‘if the world could only do this there would be no more misunderstanding’.⁶⁹⁴

Ranginui responded on behalf of Muaūpoko:

This is a day of significance, humility and deep satisfaction because our long outstanding grievance has been settled and our lands have been restored to us. We can now take an honoured place in the community.⁶⁹⁵

The signed document itself carried the following declaration:

The Trustees and members of the Muaupoko tribe gladly acknowledge the recent legislation whereby:

The bed of Lake Horowhenua
The islands in the Lake
The dewatered area
The chain strip around the Lake
The bed of the Hokio Stream, and
The chain strip on the northern bank of the Hokio Stream, are granted in ownership to its people.

In gratitude of the confirmation of its lands rights and privileges and the restoration of its prestige, the tribe is determined to work with its Pakeha Brethren on the Horowhenua Lake Domain Board to beautify and provide the amenities as illustrated in this document.⁶⁹⁶

The document was signed in agreement by the lake trustees, the members of the domain board, and representatives of the tribe (with a number signing in more than one column). A further page of the document included the signatures of the invited guests, who subscribed ‘our names hereon to signify our goodwill and concurrence with this solemn agreement between the Horowhenua Lake Domain Board and the Muaupoko Tribe’. The first of the 25 or so signatures was Nash’s.⁶⁹⁷

⁶⁹⁴ ‘Big ceremony arranged for signing of Horowhenua Lake development plan’, *Chronicle*, 5 May 1958; ‘Maoris preparing for big day at Kawiu Pa for historic signing’, *Chronicle*, 8 May 1958; ‘Marae is decorated for historic function’, *Chronicle*, 10 May 1958; ‘Lake development plan signed during colourful ceremony’, *Chronicle*, 12 May 1958; ‘Members of Muaupoko tribe spend week preparing for Saturday’s big function’, *Chronicle*, 13 May 1958; ‘Development plan is signed’, *Chronicle*, 13 May 1958; ‘Maori tribute to N.Z. leader’, *Dominion*, 13 May 1958. Clippings on Archives Central file HDC 00010: 6: 10/11

⁶⁹⁵ ‘Lake development plan signed during colourful ceremony’, *Chronicle*, 12 May 1958. Clipping on Archives Central file HDC 00010: 6: 10/11

⁶⁹⁶ Facsimile of the document (entitled ‘Declaration’) on Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

⁶⁹⁷ Facsimile of the document (entitled ‘Declaration’) on Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

The reference to the restoration of Muaūpoko's prestige perhaps shows that the tribe's view at the time was that the 1956 Act had restored to them the mana over the lake that had been guaranteed to them in 1905. It remained to be seen, however, whether this would work out in practice.

Muaūpoko had intended to pay for the entire event out of their own pockets. However, the total cost of £58,111.16 ended up being beyond what they could afford, and the domain board had to 'step in and assist with the organisation and supply of certain requirements'. McKenzie asked the Director-General of Lands if a grant could be made to cover the board's expenses. As he put it,

To my mind this is a small price to pay for the forward move that has been made. The Board has the cooperation of the Muaupoko people and the half-century dispute involving as it did, much suspicion, bitterness and strife, has been successfully settled and both Maori and Pakeha are moving forward toward the implementation of the development proposals.⁶⁹⁸

Now the plan was approved the work of development could begin. The key problem faced by the board was a lack of finance – Nash having made quite clear in his speech that little or none was available from central government.⁶⁹⁹ The cost of the development programme was estimated at many thousands of pounds. A lake carnival was held over six weeks in late 1958 to raise funds, with the Government promising to contribute £1 for every £3 made, but whereas it had been hoped to raise £6000 the carnival made only £2000. The Lands Department felt development work had to begin to keep faith with the public, so in 1959 the Government made an unconditional grant of £2000.⁷⁰⁰ Over time, however, the Crown became increasingly frustrated by the cost of development of the domain.

One of the problems was excessive ambition, particularly (but not only) from local Pākehā interests, as to what could or should be achieved at the lake – a phenomenon that was observable in the Chamber of Commerce's vision for the lake before the Harvey-Mackintosh inquiry in 1934. At the end of 1958 the *Levin Weekly News* suggested that the domain board 'come out of the clouds a little' and be more realistic about what could be achieved.⁷⁰¹ It had changed its own tune from the middle of the year, when it had questioned whether the development plan went 'far enough' and called for 'the development of the lake under private enterprise'.⁷⁰²

⁶⁹⁸ Assistant Commissioner of Crown Lands to Director-General of Lands, 16 June 1958. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5. It is not clear how this was resolved, but the board's expense was probably covered by the Crown's 1959 grant of £2,000 (see below).

⁶⁹⁹ 'Lake development plan is signed off during colourful ceremony', *Chronicle*, 12 May 1958. Archives Central file HDC 00010: 6: 10/11. Nash said that 'Finance for the domain project was not a Government task'. He felt it 'inevitable they should come to the Government but we have no money at present'.

⁷⁰⁰ Director-General of Lands to Minister of Lands, 24 June 1958; Assistant Commissioner of Crown Lands (McKenzie) to Director-General of Lands, 3 December 1958; Director-General to Minister of Lands, 7 January 1959. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

⁷⁰¹ 'Come out of the clouds', *Levin Weekly News*, 4 December 1958. Archives Central file HDC 00010: 6: 10/11

⁷⁰² 'A common aim', *Levin Weekly News*, 19 June 1958. Archives Central file HDC 00010: 6: 10/11. At the board meeting on 9 April 1959 Norman Thornley (Winiata's replacement) suggested a 'map of the world' be

The board's membership and role in Muaūpoko affairs

Wiremu Tukapua resigned as a member of the board in October 1957.⁷⁰³ He had clearly had some difficulty attending board meetings, having been present at only two of the first eight meetings between February and September 1957. He was replaced in November 1957 by Hohepa Mei Tatere, who himself only managed to attend three meetings out of the following ten before resigning due to poor health. He was replaced in turn by Hori Kingi Hipango. Hipango attended six straight meetings between October 1958 and April 1959 but then departed on a 'world tour' for nearly the rest of 1959, being granted leave of absence by the board.⁷⁰⁴ At this point, therefore, Muaūpoko had lost its majority on the board. McKenzie invited the tribe to nominate a substitute for Hipango, but made clear that the person would have no voting powers – or, as Hudson put it, 'In cricket parlance he can field but not bat'.⁷⁰⁵

In fact Muaūpoko members on the board were often in poor health and regularly absent, sometimes in hospital.⁷⁰⁶ Of the 28 board meetings between February 1957 and July 1959, Hill attended 24, Warena 22, Ranginui 20, and Tukapua, Tatere and Hipango 15 between them, for an overall attendance rate of 72.3 per cent. Winiata's health was certainly no better, and he died in office in March 1958. But Allen, Hudson, Winiata, and Winiata's replacement, Norman Thornley, attended 83.3 per cent of the meetings during the same period. One can see how the nominal majority Muaūpoko enjoyed could be undone through absences. There was also a key difference between the Muaūpoko and local body representatives: the former tended to be kaumātua, while the latter were elected councillors whose job was to attend meetings and sit on committees. The problem of relatively poor Muaūpoko attendance at board meetings worsened over the coming years, as is described in chapter 6. The tribe's confidence in 1956 that the new board structure would safeguard its interests was to that extent unfulfilled.

At the same time, however, Muaūpoko were clearly satisfied with the new board's activities, and particularly the role played by its chairman. McKenzie had of course become the new board's first chairman at Muaūpoko's request. He was someone they knew and trusted, and he was not from Levin. Therefore, his impending retirement in 1958 caused the Muaūpoko members some concern. Ranginui, who signed off as chairman of both the lake trustees and

built in earthworks in the lake in the same manner as one developed in Jutland in Denmark, which attracted tens of thousands of visitors a year. Minutes of meeting of Horowhenua Lake Domain Board, 9 April 1959. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

⁷⁰³ Minutes of meeting of Horowhenua Lake Domain Board, 10 October 1957. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

⁷⁰⁴ Minutes of meeting of Horowhenua Lake Domain Board, 12 March 1959. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

⁷⁰⁵ 'His substitute can "field, not bat"', *Chronicle*, 13 April 1959. Archives Central file HDC 00010: 6: 10/11. The 'Muaupoko Tribe' nominated H T Taueki to sit on the board as an observer in Hipango's absence. Minutes of meeting of Horowhenua Lake Domain Board, 9 July 1959. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

⁷⁰⁶ For example, Hill was in hospital during the meeting of 9 May 1957, and Ranginui was in hospital during the meeting of 14 August 1958. In March 1958 Tatere was given leave of absence for the duration of his illness.

‘the Muaupoko Tribe’, wrote to the Minister of Lands on the subject on 30 July 1958. McKenzie, he said, had been ‘of such help to us with his knowledge, tact, firmness and those other attributes that are so necessary in bringing together as a working combination two races, the pakeha and the Maori’. If possible, Muaūpoko wanted to retain his services as chairman. The current legislation would not allow this unless it was amended to read, after ‘Commissioner of Crown Lands for the Land District of Wellington’, ‘or his appointee’.⁷⁰⁷

The same day as his letter was dated, Ranginui called to see the Director-General of Lands on the matter. Ranginui explained that Muaūpoko ‘were very difficult to handle and that if Mr McKenzie were displaced as chairman, he thought that there would be trouble and all the present harmonious relationships would be disturbed’. The Director-General felt that caution was needed, since taking such a step could be seen as signalling a lack of confidence in McKenzie’s departmental successor. However, he ‘realised that there were particular problems surrounding Lake Horowhenua’ and agreed to put the matter to the Minister.⁷⁰⁸ In due course the Director-General told the Minister that

there are particular problems relating to Horowhenua Lake and to prevent any breakdown in relations with the Maoris it would be in the Crown’s interests to retain Mr. McKenzie’s services on the Board as an additional member. The Commissioner of Crown Lands would remain on the Board.⁷⁰⁹

The Director-General recommended that a clause be drafted for inclusion in that year’s Reserves and Other Lands Disposal Bill providing for an additional member to be appointed who may be chairman. The Minister approved on 18 August 1958 and a clause and explanatory note were drafted.⁷¹⁰

The domain board and local authorities were invited to comment. However, the Commissioner of Crown Lands, E J Lynskey, raised an objection himself. In his view the proposed solution could set a difficult precedent and could leave the board secretary and departmental representative on the board ‘in somewhat embarrassing positions at times’. Furthermore, he did ‘not like the tacit admission which this legislation infers that the Department cannot provide from its own resources an adequate replacement for the present Chairman’.⁷¹¹

A special meeting of the board was held to consider the issue on 28 August 1958, with Allen temporarily taking the chair. The members agreed, in light of various uncertainties and the

⁷⁰⁷ Tau Ranginui to Minister of Lands, 30 July 1958. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

⁷⁰⁸ File note by Director-General of Lands, 31 July 1958. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

⁷⁰⁹ Director-General of Lands to Minister of Lands, 15 August 1958. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

⁷¹⁰ Director-General of Lands to Minister of Lands, 15 August 1958, and draft clause and explanatory note. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

⁷¹¹ Commissioner of Crown Lands to Director-General of Lands, 22 August 1958. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

fact that McKenzie's retirement was still a number of months off, that the matter be held over for inclusion in the 1959 washing-up bill.⁷¹² The borough council also thought the board worked well as currently constituted and saw no need for an amendment. As the Town Clerk put it,

The present basis of representation was arrived at after a good deal of negotiation and consideration, has apparently worked quite well, and to appoint a further member must upset the 'balance of power' on the Board which was not easily agreed upon.⁷¹³

The county council was also of the opinion that no change should be made.⁷¹⁴ With the Minister's approval, the clause was withdrawn from the Reserves and Other Lands Disposal Bill.⁷¹⁵

Nothing further came of the matter and it seems that Ranginui must have quietly abandoned the idea. At one level, it can be seen that the proposal to keep McKenzie on as board chairman raised practical difficulties, and the final outcome was no doubt a sensible one. On the other hand, it was a victory for bureaucratic rules over a Māori emphasis on the importance of relationships.

Ranginui's suggestion also revealed the tensions within Muaūpoko that McKenzie had apparently been helping to smooth. These were brought into further relief at the meeting of 13 November 1958, when Hipango 'asked whether the administration of the Tribe could be taken over by the Board as there were several factors involving unclaimed monies and tribal problems which the Tribe at present was not happy with'. McKenzie did not dismiss the idea, but just noted that it could not be done without an amendment to the board's legislation and further discussion should be held over until 1959.⁷¹⁶

Before the first meeting of 1959 McKenzie sent out a confidential note to each board member. He began by expressing gratitude that Muaūpoko should make such a request of the board, as it indicated that its members regarded the board's work highly. He observed that Muaūpoko was clearly 'endeavouring to dispense with many committees and other bodies which exist for their general welfare and streamline all problems and activities through one organisation, namely the board'. However, the board had a specific function with respect to the lake, and this required the members' full attention. He thought it 'much better for it to

⁷¹² Minutes of special meeting of Horowhenua Lake Domain Board, 28 August 1958. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

⁷¹³ Town Clerk to Commissioner of Crown Lands, 27 August 1958. Archives Central file HDC 00010: 6: 10/11

⁷¹⁴ Commissioner of Crown Lands to Director-General of Lands, 24 September 1958. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

⁷¹⁵ Director-General of Lands to Minister of Lands, 3 September 1958. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

⁷¹⁶ Minutes of meeting of Horowhenua Lake Domain Board, 13 November 1958. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

concentrate on the job and make a success of it than to have other pressing problems retarding this action'.⁷¹⁷

Friction within Muaūpoko, particularly over the lake, became a regular theme throughout the second half of the twentieth century. It is difficult to establish a link between it and the original allocation of title to the lake, or appointment of trustees. If such tensions prevailed during the first half of the twentieth century they are not apparent in departmental files. Perhaps the Crown had better antennae after 1950. What is clear, however, is that the establishment of the Muaupoko Tribal Committee in 1947 created an alternative voice for the tribe on matters concerning the lake, to go with the lake trustees and the Muaūpoko members of the domain board itself. The tribal committee took a keen interest in board affairs, writing in July 1957 to inquire how Muaūpoko members on the board could be permanently replaced and again in September 1957 to ask if a tribal member could attend the board meeting.⁷¹⁸ While overlap existed in the membership of the respective bodies (as noted above) their purposes could remain relatively uniform, although some tensions clearly already existed in the 1950s and became more serious in due course, as we shall see in chapter 6.

Fish and fishing in the lake

The 1956 legislation did not finally settle the question of fishing in the lake and the Hōkio Stream. For one thing, the Act was silent on whether new fish species could be introduced into the lake. In July 1958 Allen wrote to Robert Falla, the Director of the Dominion Museum, to ask what could be done about the 'millions of small flies' resembling mosquitoes 'which come from the lake in such quantities that windows of all houses within about half a mile have to be closed after dark'. He wondered if a species of fish could be introduced to the lake that might eat the flies or their larvae.⁷¹⁹ Falla replied that the inquiry was better directed to the Marine Department, to whom McKenzie then wrote. In response, the Secretary for Marine, G L O'Halloran, considered that tench would be the best option. All that was needed first was his own written consent and that of the Wellington Acclimatisation Society.⁷²⁰

The board discussed this response on 13 November 1958 and resolved that O'Halloran's recommendation be approved, 'subject to the consent of the Muaupoko Tribe'.⁷²¹ It is not known whether the tribal committee was approached, as perhaps the resolution suggested, but at the subsequent board meeting Hill, Ranginui, and Warena all agreed to tench being

⁷¹⁷ Confidential note from McKenzie to board members, no date. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

⁷¹⁸ Minutes of meeting of Horowhenua Lake Domain Board, 11 July 1957; J S Macdonald, Board Secretary, to Nora McMillan, 26 July 1957; minutes of meeting of Horowhenua Lake Domain Board, 8 August 1957; minutes of meeting of Horowhenua Lake Domain Board, 12 September 1957. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

⁷¹⁹ Allen to Dr Falla, Dominion Museum, 7 July 1958. Archives New Zealand file ADOE 16612 W2402 MW2402 Box 9 25/3067

⁷²⁰ Secretary for Marine to Chairman, Horowhenua Lake Domain Board, 6 November 1958. Archives New Zealand file ADOE 16612 W2402 MW2402 Box 9 25/3067

⁷²¹ Minutes of meeting of Horowhenua Lake Domain Board, 13 November 1958. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

released into the lake.⁷²² McKenzie in turn sought and obtained approval from O'Halloran and the Acclimatisation Society and, on 5 February 1959, 37 tench were released into the lake that had been obtained from the Waitaki Acclimatisation Society in Oamaru. However, these fish all perished.⁷²³ O'Halloran suggested that another attempt be made, this time with smaller fish. He even speculated that the board might 'arrange for say the Air Force to fly the fish up to Milson or Ohakia [sic] aerodromes'.⁷²⁴ As it transpired, three more tench were flown from Oamaru in January 1960 and released into the lake,⁷²⁵ and a third attempted liberation of 14 tench was made in March of that year.⁷²⁶

In the meantime, one section of the local press had been agitating for bass to be introduced into the lake. In December 1958 the *Levin Weekly News* argued that, if Muaūpoko would agree, 'the lake should be cleared of eels and stocked with Bass'. At the same time the right to fish in the lake should be thrown open to all, with the sale of fishing licences providing 'a good revenue earner for the Maori people'.⁷²⁷ The following month, bolstered by many readers having 'commended the idea', the *Levin Weekly News* urged action on the matter. The lake could be transformed into 'a fisherman's paradise' that would be of 'immense monetary value to the Maori people'.⁷²⁸ The fact that the lake was receiving the town's effluent was not mentioned, which may have reflected the invisibility of the subject to most Pākehā in Levin. Perhaps influenced by the clamour, Thornley proposed at the board's February 1960 meeting that bass be introduced to the lake, and Ranginui was said to agree.⁷²⁹ The board thus wrote to the Marine Department again, asking if bass would help with the extermination of the lake fly.⁷³⁰ The Marine Department thought not, explaining that bass were 'vicious predators' that would probably eat the fish species that would feed on the midge larvae.⁷³¹

In 1961 yet another attempt was made to introduce tench to the lake, although the extent to which they prospered remained unclear. The lake had been shallower and warmer in summer and dead fish – perhaps tench – had been seen in large numbers around the lakeshore at times

⁷²² Minutes of meeting of Horowhenua Lake Domain Board, 1 December 1958. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

⁷²³ Minutes of meeting of Horowhenua Lake Domain Board, 10 February 1959. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson). The *Chronicle* reported in January 1960 that 41 fish had been flown to Levin a year earlier, but all had been dead on arrival. 'Tench fish placed in lake to combat flies', *Chronicle*, 27 January 1960. Archives Central file HDC 00010: 6: 10/11

⁷²⁴ Secretary for Marine to Secretary, Horowhenua Lake Domain Board, 13 July 1959. Archives New Zealand file ADOE 16612 W2402 MW2402 Box 9 25/3067

⁷²⁵ 'Tench fish placed in lake to combat flies', *Chronicle*, 27 January 1960. Clipping on Archives Central file HDC 00010: 6: 10/11

⁷²⁶ 'Briefs from meeting of Lake Domain Board', *Chronicle*, 28 April 1960. Clipping on Archives Central file HDC 00010: 6: 10/11

⁷²⁷ 'Come out of the clouds', *Levin Weekly News*, 4 December 1958. Archives Central file HDC 00010: 6: 10/11

⁷²⁸ 'Lake Horowhenua – and fishing', *Levin Weekly News*, 22 January 1959. Archives Central file HDC 00010: 6: 10/11

⁷²⁹ 'Suggestion that bass be established in lake', *Chronicle*, 16 February 1960. Archives Central file HDC 00010: 6: 10/11

⁷³⁰ J S Macdonald, Board Secretary, to Fisheries Branch, Marine Department, 18 February 1960. Archives New Zealand file ADOE 16612 W2402 MW2402 Box 9 25/3067

⁷³¹ Secretary for Marine to Secretary, Horowhenua Lake Domain Board, 23 February 1960. Archives New Zealand file ADOE 16612 W2402 MW2402 Box 9 25/3067

in the mid-1960s. In 1968 the domain board again asked the Marine Department whether any species of fish could be introduced to the lake which could both withstand the conditions and eat the midge larvae, noting that gambusia had been mentioned as a possibility.⁷³² The Secretary for Marine replied that gambusia were ‘the best midge eaters’ but were not recommended, since they struggled to survive in waters with high eel populations, and if the hardy tench had not survived the lake then it was unlikely other species would.⁷³³

In considering the acclimatisation of bass or gambusia no apparent thought was given to the potential effects on the lake’s eel population or on Māori fishing rights. Bass would presumably have been a threat to eels or at least a competitor with them, and gambusia are now known both not to eat mosquitoes but also to nip the eyes and fins of native fish and eat native fish eggs.⁷³⁴ That some of this may not have been known in the 1950s and 1960s is beside the point. Both the Crown and domain board had an overriding obligation to safeguard Muaūpoko’s fishing rights, but do not appear to have considered them in these initial discussions.⁷³⁵ The board’s Muaūpoko members and the tribal committee did agree to the release of tench and may in due course have been similarly approached about the other species. But it was the eels’ potential impact on gambusia, and not the other way around, that the Marine Department first remarked upon in 1968.

The agitation by the *Levin Weekly News* for fishing rights to be open to all was reminiscent of the Pākehā fishing lobby of half a century earlier. The new board, however, was determined that the exclusive Muaūpoko right to fish would be maintained. It was noted at its November 1957 meeting that licences had been issued that covered the lake, and that they would therefore be invalid.⁷³⁶ After an investigation, the board wrote to the Wellington Acclimatisation Society and stated that there was ‘no authority to have Horowhenua Lake shown on any fishing licence’.⁷³⁷ The society replied in March 1959 that since ‘there was no worthwhile trout or perch fishing in the lake the contention that the waters of the lake could be fished only by the Maoris would not be disputed’. This was an echo of the implication in the 1905 agreement that, since the lake was not suitable for trout, the Māori fishing right would be exclusive. Despite this lukewarm acknowledgement, the society gave no indication

⁷³² A T Dobbs, Board Secretary, to B Cunningham, Marine Department, 9 February 1961; M J McConnell, Board Secretary, to Secretary for Marine, 6 May 1968. Archives New Zealand file ADOE 16612 W2402 MW2402 Box 9 25/3067

⁷³³ Secretary for Marine to Secretary, Horowhenua Lake Domain Board, 13 May 1968. Archives New Zealand file ADOE 16612 W2402 MW2402 Box 9 25/3067

⁷³⁴ ‘Gambusia’, <http://www.doc.govt.nz/conservation/threats-and-impacts/animal-pests/animal-pests-a-z/fish/gambusia/>, accessed on 10 February 2015

⁷³⁵ This was in contrast to 1917, when the board had implicitly inquired about the impact of large trout on eels.

⁷³⁶ Minutes of meeting of Horowhenua Lake Domain Board, 14 November 1957. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

⁷³⁷ Minutes of meeting of Horowhenua Lake Domain Board, 13 November 1958. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

that the words 'Lake Horowhenua' would be removed from its licences.⁷³⁸ After the involvement of the board's solicitor, however, the society finally gave this assurance.⁷³⁹

The adoption of by-laws and the use of motor boats

The new board had to adopt by-laws, and were given the standard by-laws for reserves and domains to consider as a basis. They applied to the Government to adopt these with several additions, as follows:

- Regattas: Regattas or other similar organised water sport events will only be allowed on the written permission of the Board and subject to such conditions as the Board determines.
- Speed Boats: The use of any speed boat on the lake is absolutely prohibited.
- Motor Driven Boats: The use of any boat driven by a motor of any description is prohibited, provided however that the Board may from time to time approve in writing of the use of a power driven boat for such purposes as the Board may deem fit and on such terms as the Board may stipulate.⁷⁴⁰

The Lands Department head office reserves committee considered the board's request. It was advised by the Commissioner of Crown Lands on 29 March 1957 that 'The additions are considered essential in view of the representations made to the Minister of Lands by members of the Muaupoko Tribe and also in view of the area being a sanctuary.'⁷⁴¹ The departmental solicitor, however, proposed some amendments and the consolidation of the three additional by-laws into two.⁷⁴² The changes were agreed by the board at its meeting of 16 April 1957. The proposed two additional by-laws now read as follows:

25. No person shall organise, arrange for, or take part in any regatta or other organised water sports on Horowhenua Lake, except with the written permission of the Board and subject to such conditions as the Board determines.
26. No person shall use or be a passenger in any boat driven by a motor engine on Horowhenua Lake, except with the written consent of the Board and then only for such purposes and subject to such conditions as the Board determines and specifies in such written consent, but under no circumstances shall consent be given by the

⁷³⁸ Minutes of meeting of Horowhenua Lake Domain Board, 12 March 1959. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

⁷³⁹ Minutes of meetings of Horowhenua Lake Domain Board on 18 June and 9 July 1959. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

⁷⁴⁰ Minutes of meeting of Horowhenua Lake Domain Board, 21 March 1957. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

⁷⁴¹ 'Head Office Committee – Reserves. Approval of By-laws for Domain.' Case no. R57/281. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

⁷⁴² Note from Office Solicitor, 4 April 1957. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

Board in respect of a boat driven by a motor which the Board determines can reasonably be described as a speed boat.⁷⁴³

The Director-General advised the Commissioner of Crown Lands that public notice would now need to be given under section 94 of the Reserves and Domains Act 1953.⁷⁴⁴ This information was in turn passed on to the board, including the need for a formal resolution by the board adopting the by-laws after they had been notified. The board's minutes show that the proposed by-laws were then advertised and, at its 13 June 1957 meeting, the board resolved that 'the By-laws as circulated be made'.⁷⁴⁵ For reasons that are not apparent, however, the by-laws were not put to the Minister of Lands until 1963. This was perhaps a procedural oversight, because the board formally resolved to adopt the by-laws at its meeting on 16 May 1963 and, in advising the Director-General that the by-laws were ready for the Minister's approval, the Commissioner of Crown Lands referred to the Director-General's previous correspondence of 1 May 1957. The Minister signed his approval on 2 November 1963.⁷⁴⁶

Even though the by-laws do not appear to have been formally sanctioned, it seems that the board nonetheless applied them from 1957 (and indeed believed that the Minister had approved them – see below). The Muaūpoko position was reasonably clear. Wiki Hanita had written to the *Chronicle* in January 1957 to express firm opposition to any suggestion of speedboat racing on the lake:

I, for one, will not give my consent for boats racing on the lake, and will do all I can to stop them. The fumes and oil from the boats will kill the eels and we still depend on the lake for eels, our natural food.⁷⁴⁷

There is no recorded mention at this point in time that speedboats were inappropriate on the lake that contained the remains of Muaūpoko's ancestors.

The use of motor-driven boats, however, was soon requested by members of the Otaki-Levin branch of the Wellington Acclimatisation Society, who were co-opted as honorary rangers to help the board control the lake. It was arranged for representatives of the Muaupoko Tribal Committee to first check the level of engine noise from the boats and give their approval. This test took place on 17 November 1957. Afterwards, the secretary of the tribal committee

⁷⁴³ Minutes of meeting of Horowhenua Lake Domain Board, 16 April 1957. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

⁷⁴⁴ Director-General of Lands to Commissioner of Crown Lands, 1 May 1957. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

⁷⁴⁵ Minutes of meetings of Horowhenua Lake Domain Board, 9 May and 13 June 1957. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

⁷⁴⁶ Commissioner of Crown Lands to Director-General of Lands, 7 October 1963; Director-General of Lands to Minister of Lands, 23 October 1963; copy of signed and approved by-laws; Director-General of Lands to Commissioner of Crown Lands, 5 November 1963. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

⁷⁴⁷ 'Boats on the lake', letter to the editor from Wiki Hanita, *Chronicle*, 29 January 1957. Clipping on Archives Central file HDC 00010: 6: 10/11

wrote to the board and advised that approval was not given, and that additional rangers should be appointed instead. This was later clarified as approval for the use of only one boat on the lake at the time.⁷⁴⁸

Nine honorary rangers were appointed in February 1958. At the suggestion of Ranginui, the board also decided that W Simeon – presumably a member of Muaūpoko – be appointed to the role as well.⁷⁴⁹ This was the least the board could do. As we have seen, the Acclimatisation Society had barely acknowledged that fishing on the lake was not open to all, and yet it was Muaūpoko's exclusive right that its members were now set to police. In February 1960 E Nahona, who was presumably another member of the tribe, was also appointed as a ranger,⁷⁵⁰ while Ranginui himself became one in May 1960.⁷⁵¹

A further application of the by-laws came in December 1958, when the Horowhenua Boating Club applied, as a fund-raising project, to use an amphibious plane on the lake the following March 'for joy rides'.⁷⁵² The board declined the request.⁷⁵³ As its secretary explained to the club commodore, E L Gillies,

The Chairman has directed me to inform you that speed boats are excluded from the Lake waters in terms of the Board's By-laws for the main reason that the noise of these craft has an undesirable effect on wild life.

As the amphibian plane would have a similar effect as speed boats it was reluctantly determined that the use of the plane would infringe Section 26 of the By-laws which precludes the Board from agreeing to such a proposition. Might I conclude by saying that the Hon. Minister approved the By-laws after these were advertised and no objections received.⁷⁵⁴

Arrangements with the boating club

Muaūpoko were generally very accommodating towards Pākehā groups wanting to use the lake for (non-motorised) boating. We have already seen how Jimmy Hurunui gave his approval to the boating club to bulldoze a channel to its jetty in 1956. Then, in January 1957, before the Minister of Lands had approved the nominations to the new board, the Wellington Amateur Rowing Association applied for permission to conduct a regatta on the lake at the

⁷⁴⁸ Minutes of meetings of Horowhenua Lake Domain Board, 14 November 1957 and 13 February and 13 March 1958. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

⁷⁴⁹ Minutes of meeting of Horowhenua Lake Domain Board, 13 February 1958. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

⁷⁵⁰ 'Briefs from meeting of Lake Domain Board', *Chronicle*, 13 February 1960. Clipping on Archives Central file HDC 00010: 6: 10/11

⁷⁵¹ 'Items from meeting of Lake Domain Board', *Chronicle*, 14 May 1960. Clipping on Archives Central file HDC 00010: 6: 10/11

⁷⁵² Minutes of meeting of Horowhenua Lake Domain Board, 1 December 1958. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

⁷⁵³ Minutes of meeting of Horowhenua Lake Domain Board, 12 March 1959. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

⁷⁵⁴ J S Macdonald, Board Secretary, to E L Gillies, 26 May 1959. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

start of the following month. Ranginui – who was chairman of the lake trustees – was particularly determined that permission should be granted, and it seems that the rest of Muaūpoko agreed.⁷⁵⁵ The fact of Muaūpoko’s consent was noted in the press, although the *Evening Post* incorrectly reported that the approval had been given by Ngāti Raukawa.⁷⁵⁶

At its inspection of the lake on 21 March 1957 the board heard directly from Gillies on the boating club’s plans for launching facilities at the lake.⁷⁵⁷ At the board’s subsequent meeting it was noted that the current development plan provided for an area at the southern end of the domain for use by the club, although a small stream would need to be diverted away from it. The rowing club would use the northern end of the domain, from which ‘Rushes and nigger heads will have to be cleared.’ Gough drew a plan of the area, as shown in figure 4.2 above, which depicted the proposed launching areas for both clubs, the current wooden jetty, and the location of a proposed pier for use by swimmers and small boats.⁷⁵⁸ The plan was sent to the boating club for its comment.⁷⁵⁹ At its annual meeting the club noted the proposed southward repositioning of its jetty and clubrooms. It hoped that the stream would be diverted, and it expressed its longer-term plan to build clubrooms as a top storey for its proposed new boatsheds. It also foresaw taking out a lease over the site ‘at a small rental’. Gillies was confident that the club would ‘get what we want when the time comes’.⁷⁶⁰

The boating club’s proposal was to build three embankments through which boats would be put in and taken out of the lake. The board approved the club’s plan at its meeting of 8 May 1958, although Gough was asked to explain the proposals to the tribal committee. The terms and conditions negotiated in due course included a ten-year lease with a right of renewal for a further ten years.⁷⁶¹ In August 1959 the club reacted calmly to a report that, when the lake level was stabilised, the bays set aside for it to launch its boats would be dry land. Gillies remarked that ‘it would only result in “scraping more out of the bottom”’.⁷⁶² That November it was reported that a final agreement between the club and board had been reached for a lease of 21 years at £2 per annum, with the board also having approved the design of the club’s building.⁷⁶³

⁷⁵⁵ McKenzie to Hudson, 17 January 1957. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

⁷⁵⁶ See ‘Muaupokos give permission to hold rowing on lake’, *Chronicle*, 19 January 1957, and ‘Regatta on Lake Horowhenua’, *Evening Post*, 18 January 1957. Clippings on Archives Central file HDC 00010: 6: 10/11

⁷⁵⁷ Notes from the board’s inspection of the lake domain on Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

⁷⁵⁸ ‘Horowhenua Lake Domain. Report by planning officer for meeting on 16th April, 1957’. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

⁷⁵⁹ Minutes of meeting of Horowhenua Lake Domain Board, 16 April 1957. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

⁷⁶⁰ ‘Boating club requires new facilities at lakeside’, *Chronicle*, 29 May 1957. Clipping on Archives Central file HDC 00010: 6: 10/11

⁷⁶¹ Minutes of meetings of Horowhenua Lake Domain Board, 10 April, 8 May, and 10 July 1958. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

⁷⁶² ‘Commodore not worried about dry boat bays at Horowhenua Lake’, *Chronicle*, August 1959 (exact date obscured). Clipping on Archives Central file HDC 00010: 6: 10/11

⁷⁶³ ‘Boating club shed plan approved in principle’, *Chronicle*, November 1959 (exact date obscured). Clipping on Archives Central file HDC 00010: 6: 10/11

In February 1960 the boating club had a change of heart, and ‘now wished to build out into the Lake’. The board noted that this required the permission of the lake’s owners as it would entail building out over the bed of the lake. However, Ranginui and the other lake trustees were reported to have come to a satisfactory arrangement over the matter, and now all that was needed was an order from the Maori Land Court. Ranginui explained that the owners’ preference was for the land to be leased to the board.⁷⁶⁴

The Commissioner of Crown Lands reported on the matter to the Director-General of Lands on 12 May 1960. He explained that the boating club had come to regard the area set aside for it as too far back from the lake, and so wished to build a clubhouse over the lakebed. He suggested that the best method might be for the Crown to lease a small area under section 15 of the Reserves and Domains Act 1953, with subsequent control being given to the domain board. He added that ‘Representatives of the Tribe on the Board have indicated that agreement to this proposal is available from the Tribe.’ He attached a sketch plan depicting the boatshed at the very edge of the lake’s projected 30-foot level, as shown below in figure 4.3.⁷⁶⁵ This was not, in fact, where the building ended up; it was erected on the dewatered area on the edge of the chain strip.

The Director-General approved of the amendment and consented to new negotiations taking place. He noted that the domain board would need to guarantee the boating club’s rent payments.⁷⁶⁶ A valuation was required of the 8.6-perch⁷⁶⁷ section of lakebed, and in December 1960 the district valuer assessed that it ‘would have practically no demand from an ordinary buyer’s angle’ and had a capital value of £20. The valuer noted that, when the lake level was stabilised by the catchment board, the water level would drop by around two feet.⁷⁶⁸

The Chief Surveyor reported in February 1961 that, since some of the lake trustees appointed in 1951 had died, a new trustee order had had to be obtained. This had been done, and arrangements were now being made for a lease in perpetuity from the trustees under the terms of the Maoris Affairs Act 1953, after final approval from the Minister of Lands and Board of Maori Affairs. He noted that ‘negotiations have been based on a peppercorn rental of say £1 per annum’, which the domain board had guaranteed.⁷⁶⁹ The Minister gave his approval on 17

⁷⁶⁴ ‘Briefs from meeting of Lake Domain Board’, *Chronicle*, 13 February 1960. Clipping on Archives Central file HDC 00010: 6: 10/11

⁷⁶⁵ Commissioner of Crown Lands to Director-General of Lands, 12 May 1960. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

⁷⁶⁶ Director-General of Lands to Commissioner of Crown Lands, 25 May 1960. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

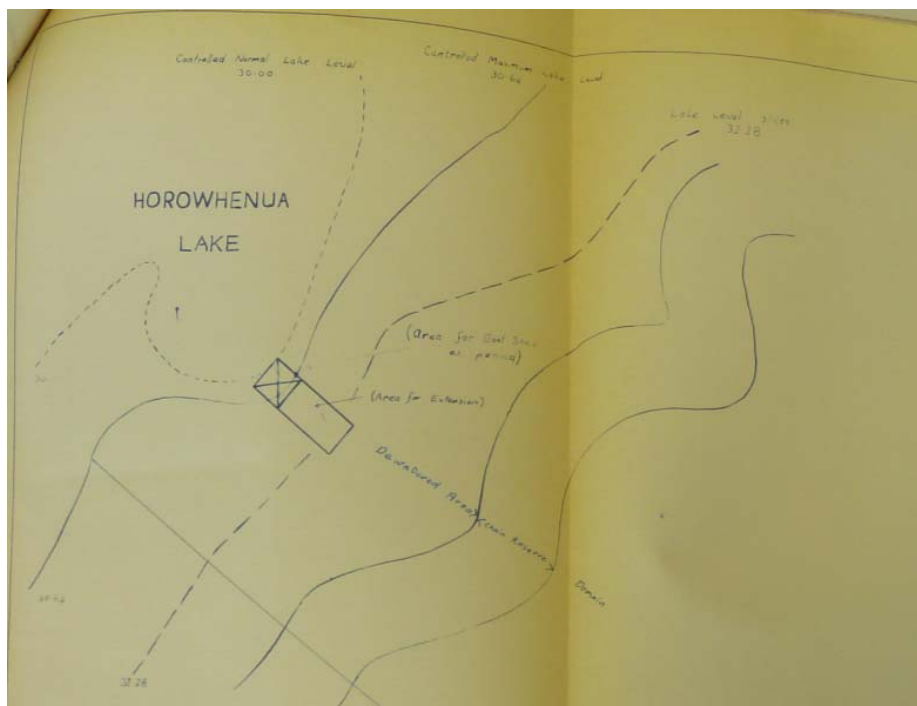
⁷⁶⁷ This equates to around 217.5 m².

⁷⁶⁸ Branch Manager, Valuation Department, to Chief Surveyor, 1 December 1960. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

⁷⁶⁹ Chief Surveyor to Director-General of Lands, 9 February 1961. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

February 1961 and the Board of Maori Affairs on 20 April 1961.⁷⁷⁰ On 30 June 1961 the Chief Surveyor reported that the lease – for 32 perches of chain strip, dewatered area, and lakebed – had been signed by all 14 trustees.⁷⁷¹

Figure 4.2: Sketch plan of area to be leased to the Horowhenua Boating Club for its boatshed, May 1960⁷⁷²



Irregularities with this arrangement were a cause of some difficulties in later years. In 1985 it was argued by the then chair of the lake trustees that the appointment of five new trustees by Judge Geoffrey Jeune in November 1960 was invalid because they had merely been elected by the existing trustees and no meeting of beneficial owners had been called. Furthermore, the court order had not been registered.⁷⁷³ Officials accepted that the facts as stated were correct, although they also felt that section 68 of the Maori Affairs Act validated the appointment of the trustees and any action they took. However, officials now recognised that a perpetual lease had been permitted by neither the Trustee Act nor the Maori Affairs Act; that the lease was never registered against the title to the land; and that the lease had been for the specific purpose of the boating club building a boatshed over the lakebed, but this had

⁷⁷⁰ Director-General of Lands to Minister of Lands, 14 February 1961, and Secretary of Maori Affairs to Director-General of Lands, 24 April 1961. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

⁷⁷¹ Chief Surveyor to Director-General of Lands, 30 June 1961. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

⁷⁷² Commissioner of Crown Lands to Director-General of Lands, 12 May 1960. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

⁷⁷³ Ada Tatana to Commissioner of Crown Lands, 3 April 1985, and Tatana to Assistant Commissioner of Crown Lands, 13 May 1985. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

never happened, as the shed was well away from the lake.⁷⁷⁴ How the Crown addressed these issues is returned to in chapter 6 below.

Image 4.3: Sailing regatta at the lake, with boating clubhouse in background, no date⁷⁷⁵



At the same time as the boating club was negotiating the formalisation of its presence at the lake, other clubs were doing the same. In September 1958 the Wellington Amateur Rowing Association expressed an interest in establishing a rowing club in Levin and erecting a building at the lake on the site designated for a rowing clubhouse.⁷⁷⁶ Members of the association thought the lake an ideal stretch of water, describing it as ‘manna from heaven’.⁷⁷⁷ A club was eventually formed in 1964.⁷⁷⁸ A letter from the local scouting movement also requested an area for use by a sea scout troop, and an agreement had been signed with the Boy Scouts Association by November 1958.⁷⁷⁹

⁷⁷⁴ Commissioner of Crown Lands to Director-General of Lands, 11 June 1985. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

⁷⁷⁵ Photograph by Gladys Goodall. Horowhenua Historical Society Inc.

<http://horowhenua.kete.net.nz/en/site/images/5076-yachting-lake-horowhenua>

⁷⁷⁶ Minutes of meeting of Horowhenua Lake Domain Board, 11 September 1958. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

⁷⁷⁷ ‘Wellington rowers keen to use lake for regattas’, *Chronicle*, 13 September 1958. Clipping on Archives Central file HDC 00010: 6: 10/11

⁷⁷⁸ D F Weal, Secretary, Horowhenua Rowing Club, to Wellington Acclimatisation Society, 20 August 1964. Archives New Zealand file AANS W3832 Box 18 30/1/19

⁷⁷⁹ Minutes of meetings of Horowhenua Lake Domain Board, 14 August and 13 November 1958. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

Plans for a wildlife refuge

Under section 2(b) of the 1905 Act, no-one was permitted to shoot or destroy birds within the lake domain boundaries. The status of the lake as a bird sanctuary applied not just to game birds but to other species as well. In February 1937, for example, the Wellington Acclimatisation Society said it had ‘entered on a crusade against the depredation of shags destroying trout in the rivers and streams of our District’. Its secretary asked for a permit to destroy ‘a shaggery of seventy to eighty birds ... established on Horowhenua Lake’.⁷⁸⁰ Hudson referred the request to the Lands Department for advice, which considered that permission could only be granted ‘where the bird or animal is dangerous or causing damage’. The Under Secretary for Lands added that

This Department holds the view that indiscriminate destruction of shags is to be deplored and that the slaughtering of these birds in their nesting places is not a commendable practice. It is thought that the shag, as a native of New Zealand, is entitled to some consideration[.]⁷⁸¹

Hudson told the Acclimatisation Society that permission was not granted, since the domain was a sanctuary and the shags had committed ‘no offence’ within it. He added that this domain was also different to other domains, ‘in that there are Native rights to be observed in its administration which the proposal of your Society would immediately offend or put into operation’.⁷⁸²

Muaūpoko do not appear to have been averse to duck shooting, however. In 1947 it was reported that the tribe ‘desired to open [the lake] up for other than as a bird sanctuary and lease certain parts round it for shooting, using part of the revenue derived therefrom to beautify the lake and make it something worthwhile in time to come’.⁷⁸³

The Department of Internal Affairs, which administered the Wildlife Act 1953, evidently valued the lake as a sanctuary. Having heard that the lake might be considerably lowered or even drained entirely under the terms of the 1956 settlement (see below), the Secretary for Internal Affairs wrote to the Lands Department in September 1956 to emphasise its status:

This lake is of great importance for the preservation of waterfowl as the only major official refuge available for their protection in the Rangitikei – Horowhenua – Palmerston North area.

Any injudicious manipulation of levels might destroy this role of the lake.

⁷⁸⁰ Ernest Wiffin, Secretary, Wellington Acclimatisation Society, to Hudson, 15 February 1937. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁷⁸¹ Under Secretary for Lands to Hudson, 5 March 1937. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁷⁸² Hudson to Ernest Wiffin, Secretary, Wellington Acclimatisation Society, 17 March 1937. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁷⁸³ ‘Horowhenua Lake’s future. Mayor reports on progress in negotiations’. Unsourced clipping of 21 May 1947 on Archives New Zealand file AANS W5883 25344 Box 115 NYA003753 part 3

This Department accordingly asks that careful checking be made to ensure that altered levels do not impair the sanctuary role of Lake Horowhenua.⁷⁸⁴

The Director-General replied that the requirement to keep the lake at a constant level of 30 feet above mean low water spring tides at Foxton Heads, together with the provisions of the Reserves and Domains Act 1953, should provide ‘a sufficient safeguard from the sanctuary angle’.⁷⁸⁵

At the domain board’s April 1957 meeting Hudson reported that he had received a visit from a representative of the Acclimatisation Society, which wanted better definition of the boundaries ‘of the area’ so that action could be taken against any duck shooters ‘in this area’. It seems that this referred not just to the land that became known as Muaūpoko Park but also the entire surrounds of the lake. In any event, at its subsequent meeting the board agreed to place notices ‘along the foreshore’ warning against shooting. In July, the board secretary noted that the domain was neither a sanctuary nor a refuge within the meaning of the Wildlife Act, and it was decided that McKenzie would investigate how the domain could be declared a sanctuary. The resolution to this effect was proposed by Warena. In due course the members agreed to obtain a legal opinion.⁷⁸⁶

It is not clear who provided this opinion, but it was circulated to members within a week of the board’s meeting. Its author was of the opinion that the board had sufficient powers to control wildlife without the domain being designated as a wildlife refuge. Doing so could create some conflict between the purposes of public recreation and wildlife protection, and indeed between the respective authorities of the Acclimatisation Society and the board.⁷⁸⁷ In the light of this advice, it seems that the board preferred to retain its autonomy. However, one of the first honorary rangers appointed, from the local branch of the Acclimatisation Society, asked ‘that the matter of a boundary approximately 100 yards from the lake edge be looked into so that a better definition would be available’. The Acclimatisation Society appears to have discussed this with Internal Affairs. There appeared to be no legal impediment to a wildlife refuge being declared that encompassed land 100 yards from the water, but the consent of all surrounding land-owners would be needed.⁷⁸⁸

This objective was pursued by the board, and by March 1958 McKenzie reported to the board that ‘a number of signatures’ had been obtained. By April this had grown to all the required signatures apart from ‘the Maori owners and Mrs Vincent’ (the latter being probably related

⁷⁸⁴ Secretary for Internal Affairs to Director-General of Lands, 4 September 1956. Archives New Zealand file AANS W3832 Box 18 30/1/19

⁷⁸⁵ Director-General of Lands to Secretary for Internal Affairs, 18 October 1956. Archives New Zealand file AANS W3832 Box 18 30/1/19

⁷⁸⁶ Minutes of meetings of Horowhenua Lake Domain Board, 16 April, 9 May, 11 July, and 8 August 1957. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

⁷⁸⁷ Macdonald, Board Secretary, to Hudson, attaching legal opinion, 15 August 1957. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

⁷⁸⁸ Minutes of meetings of Horowhenua Lake Domain Board, 12 September and 14 November 1957. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

to drainage board member Thomas Vincent, whose land abutted the chain strip).⁷⁸⁹ The following month the board secretary reported that shooting had been taking place in the vicinity of the domain. It appeared to him that

until we get the wild life refuge of 100 yards through, the rangers to a certain extent are powerless. I have stressed this point with Mr Ranginui and Mrs Paki and they have assured me that they will get the remaining Maori signatures as soon as possible. I am also arranging for advertisements to be inserted in the newspapers indicating that shooting is prohibited on the domain.⁷⁹⁰

By February 1959 the Māori owners had still not signed. McKenzie asked Hipango if he would expedite the matter, but this does not appear to have made a difference. Ranginui reported in June that shooting over the lake from surrounding lands continued to be a problem.⁷⁹¹

The Wellington Acclimatisation Society was interested not just in helping create a 100-yard refuge around the edge of the water, however. In December 1961 a game management officer, R W S Cavanagh, noted that the society had suggested that ‘if the lake could be opened to shooting a further opportunity would be afforded licence holders to exploit the annual crop of ducks, in particular mallards, which are numerous in this district’. Cavanagh recommended that a 100-yard strip of water right around the lake be opened to shooters, leaving the centre portion as a refuge’.⁷⁹² This was of course the opposite of what the domain board had been attempting to achieve. An assistant game officer counted the waterfowl on the lake in May 1962 and observed up to 4000 ducks and 100 swans, as well as one kotuku. Around 85 per cent of the ducks were mallards, with the rest grey and shoveler. His report was annotated ‘Should approach now be made to Lands along lines of Mr Cavanagh’s recommendation?’⁷⁹³

In an interesting twist, Joe Tukapua, the secretary of the lake trustees, wrote to the Acclimatisation Society at the end of 1962 advising that the lake trustees wished to open the lake for shooting since they had heard that ‘the mallard ducks [are] becoming a nuisance to the surrounding farmers of the district’.⁷⁹⁴ The society enthusiastically forwarded a copy of his letter to the Commissioner of Crown Lands, stating that

⁷⁸⁹ Minutes of meetings of Horowhenua Lake Domain Board, 13 March and 10 April 1958. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

⁷⁹⁰ Macdonald, Board Secretary, to Hudson, 13 May 1958. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

⁷⁹¹ Minutes of meetings of Horowhenua Lake Domain Board, 10 February and 18 June 1959. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

⁷⁹² R W S Cavanagh, Game Management Officer, to Conservator of Wildlife, 14 December 1961. Archives New Zealand file AANS W3832 Box 18 30/1/19

⁷⁹³ Hogarth, Assistant Game Officer, to Game Management Officer, Wellington, 29 May 1962. Archives New Zealand file AANS W3832 Box 18 30/1/19

⁷⁹⁴ Joe Tukapua to Wellington Acclimatisation Society, 3 December 1962. Archives New Zealand file AANS W3832 Box 18 30/1/19

As a Society we are particularly interested and are definitely in favour of the Lake being opened for shooting provided of course the rest of the community are priveleged [sic] to share.

We are in favour of a certain number of selected stands to be set aside for members of both the Reserve Board and the Lake Trustees, and the rest to be balloted for with the Lands Department conducting the ballot.

The Society suggests that half the lake, that of the eastern side be opened for shooting, and the other half to be a Refuge.

We as the administering authority for the Wildlife Act will police the Lake during and after the shooting season to see that the Regulations are adhered to.

We are in favour of the request and wish you would kindly bring this matter to the notice of the Reserve Board for their consideration and we hope their approval.⁷⁹⁵

The board wrote to the Department of Internal Affairs in February 1963, enclosing the foregoing correspondence. Board members had ‘an open mind on the matter’ but thought it best to obtain the Wildlife Division’s views given ‘the possible far-reaching effects shooting on the Lake could bring’. The board also intended to advertise its intention to make a decision and call for submissions.⁷⁹⁶ The Secretary for Internal Affairs told the board that it was not clear whether the ducks were a nuisance, but it was probably best to keep their numbers under control. Therefore the department saw some merit in part of the lake being opened for shooting, as the Acclimatisation Society suggested.⁷⁹⁷

The Forest and Bird Protection Society responded to the domain board’s call for submissions by requesting the lake be maintained as a sanctuary for wetland birds.⁷⁹⁸ It is not clear what other submissions were received but, at its meeting of 14 March 1963, the board decided that the lake would not be opened for shooting. This was ‘in view of the objections received and as the Horowhenua Lake Trustees do not now wish the Lake to be opened’.⁷⁹⁹

In sum, therefore, the lake and its surrounds were not made into a formal wildlife refuge but the board continued to administer the domain as a bird sanctuary. The Muaūpoko position was probably not united: the tribe’s board members seemed quite opposed to shooting on the lake, but the lake’s owners (and/or the trustees – it was not clear) would not agree to the lands surrounding the lake being a refuge, and in late 1962 the trustees expressed a willingness for the lake to be opened to shooting. While the situation resolved itself without any difficulty, it

⁷⁹⁵ F S Robinson, Secretary, Wellington Acclimatisation Society, to Commissioner of Crown Lands, 6 December 1962. Archives New Zealand file AANS W3832 Box 18 30/1/19

⁷⁹⁶ A T Dobbs, Secretary, Horowhenua Lake Domain Board, to Secretary, Internal Affairs Department, 19 February 1963. Archives New Zealand file AANS W3832 Box 18 30/1/19

⁷⁹⁷ Secretary for Internal Affairs to Secretary, Horowhenua Lake Domain Board, 22 February 1963. Archives New Zealand file AANS W3832 Box 18 30/1/19

⁷⁹⁸ President, Forest and Bird Protection Society, to Secretary, Horowhenua Lake Domain Board, 28 February 1963. Archives New Zealand file AANS W3832 Box 18 30/1/19

⁷⁹⁹ Dobbs, Board Secretary, to Secretary for Internal Affairs, 19 March 1963. Archives New Zealand file AANS W3832 Box 18 30/1/19

was a precursor to a more serious dispute over shooting on the lake that took place a decade later.

Lake ‘stabilisation’ and the Hōkio Stream

Perhaps the biggest issue facing those with responsibility for the lake under the 1956 Act was the requirement for the Manawatu Catchment Board to ‘control and improve the Hōkio Stream and maintain the lake level under normal conditions at thirty feet above mean low water spring tides at Foxton Heads’ (sub-section 10). It will be remembered that the Harvey-Mackintosh inquiry had not made recommendations about the Hōkio Stream, as they saw their brief as relating only to matters at issue between Muaūpoko and the domain board. In the meantime, the drainage board continued to control the stream, rating land-owners (a small minority of whom were Māori) and paying for stream clearance. In fact its largest annual expenditure items were stream clearance and Hudson’s salary (£60 and £45 respectively in 1949-1950).⁸⁰⁰

In the late 1940s the latter work seems to have been performed by Muaūpoko, in much the same way that the domain board paid members of Muaūpoko to clear the stream in the late 1910s. Paying Muaūpoko to clear the stream was also seen as the solution to flooding problems in the 1930s. In 1935 Hudson, as County Clerk, wrote to the Under Secretary of the Native Department and described the flooding of the Hōkio Beach Road. He explained that the matter was ‘somewhat delicate in view of tribal rights’ since the stream flowed through Māori land, but wondered whether

overtures could be made to the Natives through the Native Department which has in the past rendered good service in this manner.

The Council have in mind that possibly the Natives interested might be induced to clean the Stream and be paid wages per medium of the Unemployment Fund, the Council assisting say with the provision of tools etc..⁸⁰¹

In February 1946, then, Richard Simeon tendered the sum of £57.2.10 ‘for clearing a channel of raupo and obstructing growth for a minimum width of 50 feet in the two patches of raupo at the outlet of the Horowhenua Lake’. In March 1947 Ruku Hanita wrote to the drainage board to say that he would clear the Hōkio Stream for £50. As he put it, ‘The work will commence immediately and will consist of clearing the side and centre from approximately 3 chains below the concrete weir up to the island in the Lake’. In August 1947 Hudson noted that he and drainage board member Thomas Vincent had visited the Hōkio Stream ‘and arranged with Dick Timu to clear debris around [the] concrete eel weir’. Ruku Hanita was also employed to clear the stream in early 1948 for the same sum as the previous year. In December 1948 he undertook again ‘to clear the Hōkio Stream in a satisfactory manner and to make a good job of the same from Ruataniwha Eel Pa to the island at the outlet of the Lake

⁸⁰⁰ Accounts paid for confirmation, board meeting 19 October 1950. Archives Central file HRC 00076: 1: 7

⁸⁰¹ Hudson, County Clerk, to Under Secretary, Native Department, 15 July 1935. Archives Central file 00018: 15: 2/4/1

for the sum of £50 clear of tax'.⁸⁰² The board paid him £60 for the same work again in 1950.⁸⁰³

Despite this work, Hokio Beach Road remained subject to regular flooding – and regular complaints. In August 1947 a Grace Macfarlane of Levin urged that work be carried out on the Hōkio Stream, which she called 'nothing more than a dirty overgrown watercourse'.⁸⁰⁴ In March 1948 she told the County Clerk that 'The whole drawback is the Maori element and people like dealers getting the land, they have no wish to improve it.'⁸⁰⁵ In 1949 the catchment board received several requests for flooding relief along the Hokio Beach Road, including one from the local bus company.⁸⁰⁶ The catchment board told the Soil Conservation and Rivers Control Council (SCRCC) that

In reply to these requests this Board has advised the complainants that the Board is reluctant to carry out any work on the stream for the reason that there appear to be insurmountable legal difficulties precluding such action. That there are legal difficulties is evidenced by the fact that other local authorities namely, the Hokio Drainage Board and the Horowhenua County Council are reluctant to interfere with the stream with a view to improving drainage and minimising flooding.⁸⁰⁷

It was clearly for these reasons that the drainage board had been employing members of Muaūpoko to undertake clearance work. The catchment board suggested that the SCRCC investigate the issue in conjunction with the Lands and Native departments and arrive at a solution which both safeguarded Māori rights and alleviated the flooding for residents.⁸⁰⁸

In 1950 some Māori owners of land along the banks of the Hōkio Stream wrote to the catchment board that they had 'no objection' to it

carrying out improvement work in the said stream which will prevent the flooding of the Hokio Beach Road and adjacent lands. Such work may consist of straightening and deepening the said Stream in whatsoever manner may be approved by the Manawatu Catchment Board provided the level of Lake Horowhenua is not lowered by such improvement work below a level to be agreed upon by a committee representing the signatories hereto.⁸⁰⁹

⁸⁰² See Hudson's hand-written notes and copies of these commitments on Archives Central file HRC 00076: 1: 7

⁸⁰³ Accounts paid for confirmation, board meeting 19 October 1950. Archives Central file HRC 00076: 1: 7

⁸⁰⁴ Grace Macfarlane to Secretary, Levin Chamber of Commerce, 12 August 1947. Archives Central file HDC 00018: 15: 2/4/1

⁸⁰⁵ Grace Macfarlane to County Clerk, 15 March 1948. Archives Central file HDC 00018: 15: 2/4/1

⁸⁰⁶ W F Cribb, Manager, Watts Motors Ltd, to Secretary, Manawatu Catchment Board, 21 September 1949. Archives Central file HRC 00024: 57: 19/10 part 1

⁸⁰⁷ Secretary, Manawatu Catchment Board, to Chairman, Soil Conservation and Rivers Control Council, 24 November 1949. Archives Central file HRC 00024: 57: 19/10 part 1

⁸⁰⁸ Secretary, Manawatu Catchment Board, to Chairman, Soil Conservation and Rivers Control Council, 24 November 1949. Archives Central file HRC 00024: 57: 19/10 part 1

⁸⁰⁹ Unsigned and undated letter to the Chairman, Manawatu Catchment Board. Archives Central file HDC 00018: 15: 2/4/1

It is not known who wrote this letter as only an unsigned copy exists on a county council file. It is annotated to the effect that Riki Hanita had called on 16 June 1950 and

stated that he had been asked to sign this petition but is not prepared to do so until he knows more about who is behind the idea. He stated he represents a number of Maoris with similar views. He would like a meeting to be held to discuss the matter.⁸¹⁰

There is no more information about this approach on file. In time, of course, any such considerations were superseded by the Crown's negotiations with Muaūpoko that are discussed in the previous chapter.

In the meantime, the flooding persisted, and the catchment board continued to fend off the complaints. In June 1952 a request for action from a resident of Hokio Beach Road was met with a reply full of reminders about Māori rights:

I should ... point out ... that legal difficulties have in the past prevented this Board from considering any work in connection with this stream which, as you say, drains Lake Horowhenua, over which lake certain native rights exist. Any attempt to clear the stream could be viewed by the natives concerned as an attempt to lower the lake level with consequent infringement of native rights, which rights include portion of the Hokio Stream.⁸¹¹

Flooding was particularly bad in 1955. Around 100 residents and businesses – all members of the Hokio Progressive Association (HPA) – petitioned the catchment board on the matter, stating that 300 yards of public road were submerged beneath flood waters, a bridge had been damaged, and 30 acres of valuable land was under water. It was, they said, the fourth time in the last five years that the stream had flooded.⁸¹² Federated Farmers issued a similar complaint.⁸¹³ The County Engineer wrote to the District Commissioner of Works and stated that the regular flooding could be alleviated 'by cleaning the Hokio Stream, which unfortunately is impossible owing to Maori control'. He asked whether authorisation could be given, while negotiations for a settlement were ongoing, to have the road raised by two feet.⁸¹⁴ The *Levin Weekly News* apportioned some blame for the situation on the borough council, given its dissent on the issue of its representation on the domain board.⁸¹⁵

⁸¹⁰ Unsigned and undated letter to the Chairman, Manawatu Catchment Board. Archives Central file HDC 00018: 15: 2/4/1

⁸¹¹ Secretary, Manawatu Catchment Board, to F W Gane, 2 July 1952. Archives Central file HRC 00076: 1: 7

⁸¹² Petition of 21 June 1955. Archives Central file HRC 00024: 57: 19/10 part 1

⁸¹³ J R Goodwin, Secretary, Manawatu Branch, Federated Farmers, to Secretary, Manawatu Catchment Board, 13 July 1955. Archives Central file HRC 00024: 57: 19/10 part 1

⁸¹⁴ W H Fraser, County Engineer, to District Commissioner of Works, 5 August 1955. Archives Central file HRC 00024: 57: 19/10 part 1

⁸¹⁵ 'Tolerance and goodwill', *Levin Weekly News*, 28 July 1955. Clipping on Archives Central file HDC 00009: 82: 23/1 1948-1963

There was further flooding again in the winter of 1956. On 4 July the stream burst its banks three miles from its mouth and covered half a mile of Hokio Beach Road.⁸¹⁶ The settlement with all parties and passage of legislation, therefore, would have brought a sense of relief to many. But it was a cause of some concern to staff in the Wildlife Division of the Department of Internal Affairs. One official, Hallam Secker, wrote that he had discussed the matter with the secretary of the catchment board, Hagan, on 3 August 1956:

... the Secretary for the Board told me, I think confidentially, that the completion of this work would enable the board to drain all the lake in time. Though the Maoris had asked for the lake to be lowered, the work as proposed would end in its fishing potential being rendered negative, thus giving an argument for absolute drainage (c/f rights provided for in Lake Horowhenua Act 1905). The state the lake would be in after the work had been done would provide a case for its entire elimination to provide further farming land.

The Catchment Board appears to be planning ahead.⁸¹⁷

Secker felt that the 'whole position has changed for the worse in the South Manawatu due to the operation of this Board', and he suggested that the effects of drainage on the duck population in the lake should be exposed. Doing so, said Secker, would mean the catchment board 'would find its desire for the lake's ultimate drainage less easy to put into effect'.⁸¹⁸

Secker then contacted the Lands Department and 'broadly indicated Mr Hagen's remarks in order to get further details stressing they are oral and unconfirmed'. He was told that 'if such action were taken the Board would contravene the proposed legislation'.⁸¹⁹ In a further filenote in September 1956, Secker wrote that the Lands Department's advice had negated the information from the secretary of the catchment board that 'the situation would arise making feasible the absolute drainage of Lake Horowhenua'. He still felt that

There was possibly nevertheless some truth in what was said by the Catchment Board representative.

Since then Mr Nevin's Soil Conservation and Rivers Control Council has indicated orally that due to the fall of the Lake level over the last few years farmers have encroached on land which was previously under water, and have laid claim to this area. The latter accordingly are in favour of seeing the area drained to increase the size of their properties. This, therefore, is the background of the remark made by the Secretary of the Manawatu Catchment Board on 3 August 1956.⁸²⁰

There was clearly some confusion here. Secker was referring to the kind of situation that prevailed in the late 1920s, not the mid-1950s. There is no other suggestion that the lake level had fallen rapidly or that farmers were exploiting this. Two years later, in October 1958, the

⁸¹⁶ 'Beach Road flooded', *Chronicle*, 4 July 1956. Clipping on Archives Central file HDC 00009: 82: 23/1 1948-1963

⁸¹⁷ H Secker to Senior Field Supervisor, no date. Archives New Zealand file AANS W3832 Box 18 30/1/19

⁸¹⁸ H Secker to Senior Field Supervisor, no date. Archives New Zealand file AANS W3832 Box 18 30/1/19

⁸¹⁹ Filenote by Hallam Secker, 16 August 1956. Archives New Zealand file AANS W3832 Box 18 30/1/19

⁸²⁰ Filenote by Hallam Secker, 18 September 1956. Archives New Zealand file AANS W3832 Box 18 30/1/19

lake level was as high as 34 feet.⁸²¹ However, the secretary of the catchment board may well have made some private remark about wishing to drain the lake entirely. As noted above, the catchment board had certainly been pressured to take action by farmers. In response to Federated Farmers' July 1955 letter, catchment board chairman J D Aitchison said

The Catchment Board would be only too happy to go on and rectify the position, ... but we just haven't got the green light. There are Native rights in respect to the level to be dealt with before any action could be taken, and there are eels in the stream too. The matter is beyond our reach. People in the area who blame the Board just don't realise the position.⁸²²

At its second meeting then, in March 1957, the domain board welcomed four representatives of the catchment board – the aforementioned Hagan and Aitchison; P G Evans, the Chief Engineer; and Fancourt, an engineer – and sought their opinion on the way forward. Aitchison said that the catchment board would prefer to simply survey the area, classify it, notify the proposals and call for objections, raise loans, and then complete the work. He was not in favour of any complications such as public meetings. Hagan explained that this would take about a year. Ranginui, with support from Hill and Warena, said that Muaūpoko supported the stabilisation of the lake at the 30-foot level. He raised a concern about the fate of the eel weirs in the stream, however, and pointed out that the work was needed at the outlet of the stream at the beach. Aitchison 're-assured Mr. Ranginui that the eel weirs would be respected'. The domain board resolved that the catchment board proceed with the work as quickly as possible.⁸²³

Throughout 1957 the domain board continued to press the catchment board to make haste. At the board's June 1957 meeting, Allen blamed the lake level for the ongoing flooding in the town (see chapter 5). As he put it, 'If we have another winter like last year we would be in the cart properly. There is no doubt about it, the lake is causing the drainage trouble in Levin.'⁸²⁴

In April 1958 the catchment board arranged to meet with the domain board to put forward its proposals for controlling the lake level. It explained to the domain board in a prior letter that it would be 'of considerable assistance if some, at least, of the eel weirs between the lake and the first mile downstream could be removed'.⁸²⁵ The domain board's 8 May 1958 meeting was attended by Fancourt. He explained that the lake would be lowered by approximately two and a half feet, and a gauge board had been put in place to establish the level of the lake with accuracy. The catchment board proposed to install a concrete weir at the lake outlet at a height of 29' 9" (that is, 29' 9" above mean low water spring tides at Foxton Heads), which

⁸²¹ McKenzie to Secretary for Marine, 13 October 1958. Archives New Zealand file ADOE 16612 W2402 MW2402 Box 9 25/3067

⁸²² 'Legal complication over Lake Horowhenua level', *Levin Weekly News*, 28 July 1955. Clipping on Archives Central file HDC 00009: 82: 23/1 1948-1963

⁸²³ Minutes of meeting of Horowhenua Lake Domain Board, 21 March 1957. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

⁸²⁴ 'Stabilisation of level of lake discussed by board', *Chronicle*, 21 June 1957. Clipping on Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

⁸²⁵ Chief Engineer, Manawatu Catchment Board, to Secretary, Horowhenua Lake Domain Board, 16 April 1958. Archives Central file HRC 00024: 57: 19/10 part 1

should control the lake very close to the 30-foot level prescribed in the statute. However, the cost of the scheme was estimated at £6000, and the Government would not subsidise the work by more than £1 for £1. Nor would the work prevent flooding of the Hokio Beach Road. A fish ladder on the concrete weir would be included though. The domain board thought it much preferable for the entire length of the Hōkio Stream to be included in the scheme, in order to prevent flooding along the road and at the stream outlet. The members also agreed that a meeting of the eel weir owners should be convened. Fancourt said work would begin in nine to 12 months.⁸²⁶

In September 1958 the Chief Surveyor in the Lands Department asked Fancourt for some information that might help resolve the issue of the eel weirs:

In order to make some progress on the lowering of the lake and to save future arguments with the Maori people I suggest that you submit plans of your proposed work on the Hokio Stream – these to show the location and type of structure of eel weirs – to the Horowhenua Domain Board for their approval and for the approval of the Maoris. I feel that it is necessary to get the written consent of the Maoris to the location and number of eel weirs before any work is started.⁸²⁷

At the domain board's request, in order that 'some finality should be reached',⁸²⁸ Fancourt attended the domain board's meeting of 1 December 1958, as did Mrs Paki and Mrs Heta of Muaūpoko. Fancourt reported that three eel weirs only would be required in the one mile length of the stream controlled by the board, which was confirmed by the four Muaūpoko board members present (that is, Ranginui, Warena, Hill and Hipango), Mrs Paki, and Mrs Heta. Fancourt explained that the catchment board would meet the cost of installing the weirs, and after that the cost of maintaining them would fall on the weir owners. He said that the plans for the stabilisation of the lake level were now complete and would be put before the SCRCC in February 1959. After that, he said, progress 'would then depend on the amount of subsidy available'. He did not consider that sufficient gain for ratepayers for the cost involved would result from the inclusion of the remainder of the stream in the forthcoming work.⁸²⁹

The domain board secretary confirmed the outcomes of this meeting in writing. This included the rejection of the proposal to place the original eel weirs back in the stream in favour of 'the modern plan', as this would make it much easier for the owners to set the weirs. The ongoing personal or family ownership of the weirs in the Hōkio Stream was reflected in Ranginui's

⁸²⁶ Minutes of meeting of Horowhenua Lake Domain Board, 8 May 1958. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson). See also J S Macdonald, Board Secretary, to Chief Engineer, Manawatu Catchment Board, 13 May 1958. Archives Central file HRC 00024: 57: 19/10 part 1

⁸²⁷ R P Gough, Chief Surveyor, to Fancourt, 5 September 1958. Archives Central file HRC 00024: 57: 19/10 part 1

⁸²⁸ McKenzie to Evans, Manawatu Catchment Board, 28 November 1958. Archives Central file HRC 00024: 57: 19/10 part 1

⁸²⁹ Minutes of meeting of Horowhenua Lake Domain Board, 1 December 1958. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

request that the catchment board replace his own weir with ‘one of these modern eel weirs’, at his private expense.⁸³⁰

Immediately after this meeting the catchment board approached the Marine Department, for advice on how to construct a ‘fish ladder’ to enable eels to get past the planned concrete weir at the lake outlet. As the Chief Engineer explained, ‘Our experience with fish ladders is nil’.⁸³¹ The Secretary for Marine agreed for his officials to comment on the catchment board’s design, but stated that only two basic principles needed to be adhered to: first, there should be ‘no projecting lip on the downstream side’ and, secondly, the design should allow for only a small amount of water to flow over the weir at any time.⁸³² The catchment board then sent the Marine Department its proposed design for the weir.⁸³³ The department’s technical officers proposed that an abutment be built at the each end of the lip to ‘ensure that at all lake levels a film of water will be present over a portion of the dam face’. The reason for this was that, while elvers could not pass up a rapid stream of water, they could climb a damp wall, and thus ‘the suggested alteration should ensure that the upstream migrants can reach the lake’.⁸³⁴ In February 1959 the Secretary for Marine also notified the catchment board that, according to the Fish Pass Regulations 1947, the board needed to forward a copy of its final plans so that the Minister of Marine could ‘determine whether a fish pass is required’.⁸³⁵ As it happened, however, the catchment board was still years away from reaching finality.

The owners of the eel weirs gave their approval in writing for the catchment board’s plan of the new weirs in April 1959. Four weirs were listed: one for the Witihana (Wilson) family, one for the Simeon family, one for Mrs Wiki Rikihana, and one for the Winiata family.⁸³⁶ After some confusion as to whether Rikihana’s was within the proposed area Ranginui wrote to the catchment board, ‘as Senior Elder’, to clarify the matter. He explained that the catchment board should only construct two eels weirs: Rua-o-te-taniwha, for the Simeon family, and the weir for the Winiata family. He suggested that the Wilson family may wish to construct a weir called Tawa at some point at their own expense, but ‘it is not desired that you should take any action whatever in respect of this’. Referring to himself in the third person, he added that

⁸³⁰ J S Macdonald, Board Secretary, to Engineer, Manawatu Catchment Board, 3 December 1958. Archives Central file HRC 00024: 57: 19/10 part 1

⁸³¹ Chief Engineer to Secretary, Marine Department, 2 December 1958. Archives Central file HRC 00024: 57: 19/10 part 1

⁸³² G L O’Halloran, Secretary for Marine, to Chief Engineer, Manawatu Catchment Board, 9 December 1958. Archives Central file HRC 00024: 57: 19/10 part 1

⁸³³ Chief Engineer to Secretary for Marine, 17 December 1958. Archives New Zealand file ADOE 16612 W2402 MW2402 Box 9 25/3067

⁸³⁴ G L O’Halloran, Secretary for Marine, to Chief Engineer, Manawatu Catchment Board, 24 December 1958. Archives New Zealand file ADOE 16612 W2402 MW2402 Box 9 25/3067

⁸³⁵ G L O’Halloran, Secretary for Marine, to Chief Engineer, Manawatu Catchment Board, 23 February 1959. Archives New Zealand file ADOE 16612 W2402 MW2402 Box 9 25/3067

⁸³⁶ Rangi Hill to Secretary, Manawatu Catchment Board, 20 April 1959. Archives Central file HRC 00024: 57: 19/10 part 1

Much further downstream Mr Taueki Ranginui has an official position which has always been regarded as his. He proposes to see you at some future date regarding the construction of a Weir at the point which he will make clear to you and he will, if you can do the work on his behalf, meet the cost personally.⁸³⁷

This explanation was satisfactory to the catchment board. It would only need to construct two eel weirs at its own expense within the prescribed area, with another possibly to be added there at a later date but only at the Wilson family's expense.⁸³⁸

In June 1960 the SCRCC approved a subsidy for the drainage scheme (which included not just the lake outlet but also work on the Arawhata and Mairua drainage systems) of £4,758, leaving over £3,000 to be raised locally.⁸³⁹ The classification of the scheme was completed by the end of 1960, but in April 1961 the catchment board resolved that, before proceeding, it would first need to obtain the agreement of both the Department of Lands and Survey and borough council (both of which would be expected to make an annual contribution, in the department's case because it was a large land-owner and in the council's case because the drainage work was seen as benefiting its sewerage scheme) and allow ratepayers an opportunity to lodge appeals. If none were forthcoming, an application to the Local Government Loans Board to raise a loan could be made.⁸⁴⁰

Bad flooding in 1962 made the scheme seem more imperative. Eventually, as required by section 34(1) of the Local Authorities Loans Act 1956, a poll was taken in 1963 of ratepayers in the Hōkio drainage district to gauge support for raising a loan of £3,200.⁸⁴¹ Thirty-nine individuals were eligible to vote but only 18 did so, with a vote against the proposal by a majority of two-thirds.⁸⁴² Cyril Crawford, of the local branch of Federated Farmers, told the catchment board that farmers wanted the Hōkio Stream 'cleaned from the sea to the lake'. Their issue was 'not the problem of paying rates so much as the unnecessary drains north of Lindsay Road'.⁸⁴³ Regardless, as the catchment board secretary put it to the SCRCC, 'after some ten years of negotiating the proposal was turned down by the ratepayers'. This brought the catchment board's entire commitment as set out in the 1956 Act into question, as it could not control the lake level without the funds to do so. Nor could the domain board achieve its aims and 'the sewerage problem of the Levin Borough will be made more difficult'.⁸⁴⁴

⁸³⁷ Ranginui to Chief Engineer, Manawatu Catchment Board, 26 June 1959. Archives Central file HRC 00024: 57: 19/10 part 1

⁸³⁸ Chief Engineer to Ranginui, 29 June 1959. Archives Central file HRC 00024: 57: 19/10 part 1

⁸³⁹ B Ivory, Secretary, SCRCC to Chief Engineer, Manawatu Catchment Board, 23 June 1960. Archives Central file HRC 00024: 57: 19/10 part 1

⁸⁴⁰ Secretary, Manawatu Catchment Board to Town Clerk, 17 August 1962. Archives Central file HRC 00024: 57: 19/10 part 1

⁸⁴¹ Secretary, Local Authorities Loans Board to Secretary, Manawatu Catchment Board, 9 July 1963. Archives Central file HRC 00024: 57: 19/10 part 1. See also notices advertising the loan poll in the *Chronicle* on 17 August and 31 August 1963. Archives Central file HRC 00024: 57: 19/10 part 1

⁸⁴² J W J Anderson, Returning Officer, to Secretary, Manawatu Catchment Board, 10 September 1963. Archives Central file HRC 00024: 57: 19/10 part 1

⁸⁴³ Cyril Crawford to Secretary, Manawatu Catchment Board, 10 September 1963. Archives Central file HRC 00024: 57: 19/10 part 1

⁸⁴⁴ Secretary, Manawatu Catchment Board to Secretary, SCRCC, 23 September 1963. Archives Central file HRC 00024: 57: 19/10 part 1

The farmers' position is elaborated by other correspondence, and shows that not all farmers simply wanted the lake lowered. On 21 October 1964 the chairman of the Levin branch of Federated Farmers, P B Bartholomew, wrote to Federated Farmers' representative on the SCRCC, R F Wardlaw. He stated that, the last time the lake level was lowered to the 30-foot mark, in the 1920s, several farmers' wells ran dry due to the lowering of the water table. He felt that the proposed lowering would benefit 400 acres and over-drain 3,000 acres.⁸⁴⁵ Wardlaw then inspected the proposed works with Bartholomew and Evans, the catchment board's Chief Engineer. Evans apparently gave an assurance the lake's lowering would have 'no adverse effects on any farms in the vicinity'. The Federated Farmers Manawatu Provincial Executive asked to receive this undertaking from the catchment board in writing.⁸⁴⁶ But the catchment board refused, resolving that 'the Board does not consider it can give any such assurance neither is it bound by the opinion of the Chief Engineer'.⁸⁴⁷

In 1964 the deadlock over the drainage scheme was broken by the borough and country councils offering to contribute £2,000 between them (£1,500 and £500 respectively) to fund the drainage scheme, with the remainder to come from the special rating district.⁸⁴⁸ In January 1966 the catchment board informed the domain board that it was at last installing the weir on the Hōkio Stream to maintain the lake at the level fixed by statute. The domain board was called upon to make its £250 contribution to this work, which the Lands Department had approved in 1961.⁸⁴⁹ But the lake trustees were not satisfied with the proposed weir, as Joe Tukapua, the trustees' secretary, wrote to the catchment board on 2 February 1966:

... the flood gates of Hokio Stream must be built, to preserve fish life. Fish won't be able to come back up stream over the flood gates back into the lake. The type of fish we have in the lake are Eels, Carp, flounder, whitebait, fresh water Crayfish.⁸⁵⁰

On 18 February 1966 the catchment board secretary replied, somewhat abruptly, that 'you are assured that the Board is aware of the necessity to preserve fishlife in the Hokio Stream and Lake Horowhenua'.⁸⁵¹ On the same date, the catchment board at last – seven years after being advised to do so – forwarded to the Marine Department copies of its plans for the concrete

⁸⁴⁵ P B Bartholomew, Chairman, Levin Branch of Federated Farmers, to R F Wardlaw, SCRCC, 21 October 1964. Archives Central file HRC 00024: 57: 19/10 part 2

⁸⁴⁶ B K Plimmer, Manawatu Provincial Secretary, Federated Farmers, to Secretary, Manawatu Catchment Board, 16 March 1965. Archives Central file HRC 00024: 57: 19/10 part 2

⁸⁴⁷ Secretary, Manawatu Catchment Board to Manawatu Provincial Secretary, Federated Farmers, 21 April 1965. Archives Central file HRC 00024: 57: 19/10 part 2

⁸⁴⁸ J H Hudson, County Clerk, to Secretary, Manawatu Catchment Board, 7 October 1964. Archives Central file HRC 00024: 57: 19/10 part 2

⁸⁴⁹ Secretary, Manawatu Catchment Board to Secretary, Horowhenua Lake Domain Board, 19 January 1966. Archives Central file HRC 00024: 57: 19/10 part 2. See also the 30 October 1961 Lands Department head office reserves committee decision to contribute £250 to the £1,500 cost of the weir on Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

⁸⁵⁰ Joe Tukapua to Secretary, Manawatu Catchment Board, 2 February 1966. Archives Central file HRC 00024: 57: 19/10 part 2

⁸⁵¹ Secretary, Manawatu Catchment Board to Secretary, Horowhenua Lake Trustees, 18 February 1966. Archives Central file HRC 00024: 57: 19/10 part 2

weir and removable eel weirs to be erected in the Hōkio Stream. It stated that the ‘The Maoris have been approached and their consent obtained to the eel weirs’. However, it noted that the lake trustees were now concerned that the weir would not allow the full range of fish species to pass. It asked the Secretary for Marine whether there would need to be any modifications made to the design.⁸⁵² The Secretary for Marine replied that the only species mentioned in previous correspondence was eels, but the design did present an insurmountable obstacle for other species:

It is considered that the Weir at Lake Horowhenua would affectively block ingress to the lake for all the species of fish listed in the letter⁸⁵³ except elvers. Although a fish pass could be constructed it is doubtful whether flounders would or could use it and the same would apply to whitebait as to whether they would get over the pass itself would depend on current flow and height of steps. The stocks of carp and freshwater crayfish are probably self supporting within the lake itself and there would be no need to worry about the ingress of these species.⁸⁵⁴

Image 4.4: The concrete control weir at the lake outlet, September 2014⁸⁵⁵



The catchment board considered this response and, at its meeting of 19 April 1966, it resolved ‘That in the meantime no action be taken to allow other fish to pass up the stream until the effects are full known.’⁸⁵⁶ It does not appear that any action has ever taken place to address the barrier to the ingress of certain native fish species into the lake. Henry Williams pointed out to the Tribunal in February 2014 that the name of the Pātiki Stream was

⁸⁵² Secretary, Manawatu Catchment Board to Secretary for Marine, 18 February 1966. Archives New Zealand file ADOE 16612 W2402 MW2402 Box 9 25/3067

⁸⁵³ This referred to the catchment board’s letter of 18 February 1966, which listed all the fish species named by Tukapua in his letter of 2 February 1966.

⁸⁵⁴ Secretary for Marine to Secretary, Manawatu Catchment Board, 8 March 1966. Archives New Zealand file ADOE 16612 W2402 MW2402 Box 9 25/3067

⁸⁵⁵ Photograph by @danbloomer1, 18 September 2014.

<https://twitter.com/danbloomer1/status/512353065660198912>

⁸⁵⁶ Extract from report of works and machinery committee confirmed at board meeting of 19 April 1966. Archives Central file HRC 00024: 57: 19/10 part 2

connected to its supply of flounders,⁸⁵⁷ but pātiki have been unable to enter the lake since the construction of the weir.

The mouth of the Hōkio Stream

Under the 1956 Act the Hōkio Stream was defined, under sub-section 1, as flowing from the lake outlet ‘to the sea’. On the survey plan that depicted this point, the stream was shown to finish in the vicinity of Hokio Township before it turned left and ran for a mile or so to the south before entering the sea. As noted in chapter 3, this termination point of the stream – for the purposes of the Act – was agreed to by counsel for Muaūpoko, Neville Simpson.⁸⁵⁸

How well this was understood by the Māori owners of the bed is unclear. After all, disputes about the respective whitebaiting rights of Māori and Pākehā had been going on at this point for several decades. To take one early example, in 1932 a Levin resident complained to the Marine Department that Māori were using unfair means to catch whitebait at the mouth of the Hōkio Stream, and were ‘inclined to be vindictive’.⁸⁵⁹ The Chief Inspector of Fisheries investigated and reported that the whitebaiting regulations were being ‘transgressed by the fishing methods habitually practised by Maoris at the mouth of the Hokio’. He suggested that it was ‘very desirable ... that light should be obtained on the legal position with regard to special rights and privileges claimed by these Maoris’.⁸⁶⁰

That Muaūpoko may not have been in unison about the agreed termination point of the Hōkio Stream was revealed shortly before the passage of the Reserves and Other lands Disposal Act 1956. On 15 October 1956 – ten days before the legislation was passed – E Smith and A D Wootton of Levin wrote to the MP for Otaki, Jim Maher, drawing his attention ‘to a position which has arisen in regard to the Hokio stream and fishing rights pertaining to the stream’:

For the past two years both Maori and Pakeha have used both sides of the stream, from ... the bridge giving access to the beach right out to the sea. Now the Maoris claim that they have sole rights to the fishing in the stream right out to the mouth.

We would like to point out that practically the whole of the right bank of the stream, from the aforementioned bridge to the sea, borders the beach which at spring tide is covered by the sea.⁸⁶¹

Smith and Wootton asked that the matter be investigated. They were concerned that, if access to beach across the stream were blocked, ‘one of the best toheroa beds on the west coast will

⁸⁵⁷ Wai 2200 paper #2.5.86(a), pp 33-34

⁸⁵⁸ See Commissioner of Crown Lands to Director-General of Lands, 1 June 1956. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁸⁵⁹ Anonymous letter to Inspector of Fisheries, 22 October 1932, forwarded to Secretary, Marine Department by Chief Inspector of Fisheries, 25 October 1932. Archives New Zealand file AAFZ W2253 7910 Box 47 42/10/2

⁸⁶⁰ Chief Inspector of Fisheries to Secretary, Marine Department, 1 July 1933. Archives New Zealand file AAFZ W2253 7910 Box 47 42/10/2

⁸⁶¹ E Smith, JP, and A D Wootton, Levin, to Jim Maher MP, 15 October 1956. Archives New Zealand file ABWN W5021 6095 Box 259 7/934 part 1

be denied to Europeans’, who would then have to make the ‘treacherous crossing’ at the stream’s mouth’. They concluded by noting the significant use of the beach by the public and claiming that

in bringing this matter before you we are expressing the sentiments of the residents of Levin and surrounding districts. We understand this matter is to be before the House this session, so would be pleased if you would treat this matter as urgent.⁸⁶²

Smith and Wootton’s letter was referred to the Director-General of Lands. He in turn wrote to the Commissioner of Crown Lands and remarked that Simpson had been content with the agreed termination point of the stream, as he had said it complied with the owners’ wishes. Smith and Wootton, he continued,

are concerned about fishing and beach access from the bridge to the sea. My view on these representations is that the Maori owners own the bed of the Stream (excepting those parts which have been legally alienated or disposed of by the owners) from the Lake outlet to the point where the Stream is affected by tidal influence. However the Maori ownership of the one chain strip in terms of the legislation and as defined on the plan finishes at the point where it turns. As regards the stream bed the point where it enters the sea would depend on mean high water mark and how far up the Stream it goes. It seems, therefore, that the bed of the Stream belongs to the Maori owners excepting any portion disposed of and the beach area alongside the Stream i.e. from the bridge to the sea is Crown land.⁸⁶³

On 4 December 1956 officials from the Lands Department and the county council visited the Hōkio mouth to ascertain the high water mark. On 17 December 1956 the Commissioner of Crown Lands reported to the Director-General of Lands that

The Bill vesting the bed of the Hokio Stream in the Maoris described the ‘Hokio Stream’ as from the outlet of the lake to the ‘sea’. The point where the river meets the sea is defined as the position up the stream that the mean high water mark reaches. This interpretation is based on the case in English Law – ‘Horne v McKenzie’ (1839) Clark and Fennelly 628.

The application of this case to New Zealand could well be the subject of an opinion from the Crown Law office.

It may be thought by the Maoris that the ‘sea’ is where the waves break and that they have the ownership of the stream down to that point.

There appears to be no case for the Maoris to claim fishing rights over the tidal waters of the Hokio Stream. This principle was apparently decided in the case of *Waipapakura v. Hempton* (1914) 33 N.Z.L.R. 1065.⁸⁶⁴

⁸⁶² E Smith, JP, and A D Wootton, Levin, to Jim Maher MP, 15 October 1956. Archives New Zealand file ABWN W5021 6095 Box 259 7/934 part 1

⁸⁶³ Director-General of Lands to Commissioner of Crown Lands, 27 November 1956. Archives New Zealand file ABWN W5021 6095 Box 259 7/934 part 1

⁸⁶⁴ Commissioner of Crown Lands to Director-General of Lands, 17 December 1956. Archives New Zealand file ABWN W5021 6095 Box 259 7/934 part 1

The Commissioner of Crown Lands did conclude, however, that the left bank of the stream from the bridge in the township to the sea was restricted to Māori access only, unless the Maori Land Court declared it a public road. The Minister of Lands, Corbett, informed Maher that Smith and Wootton could be told that the bridge over the stream from Muaupoko Street was a legal road which the public had a right to use; that the strip along the left bank of the stream from Muaupoko Street was restricted to the use of its Māori owners by virtue of the Māori ownership of the adjacent lands; and the bed of the stream below the bridge was an arm of the sea and thus vested in the Crown. He added that

The Maoris have no claim to sole fishing rights over the tidal waters of the Hokio Stream i.e. up to the point of mean high water mark. Any fishing up to this point may be engaged in by both Maoris and Europeans alike.⁸⁶⁵

Muaūpoko clearly did not view matters the same way. In 1957 the HPA wrote to the Marine Department to say that ‘the local Maori Tribal Committee has decided to invoke the Treaty of Waitangi and close the Hokio Stream to all European fishermen’.⁸⁶⁶ The District Inspector of Fisheries replied that he had ‘no knowledge of exclusive whitebait fishing rights for Maoris on the Hokio Stream, and the onus would rest with them to prove that such rights exist’.⁸⁶⁷ In May 1959 H F Webb, an honorary fisheries officer in Levin, told the Marine Department that ‘The Maori’s maintain their rights extend to low water mark and other ridiculous [sic] claims and, on account of this claim, throw Europeans net out, block the stream and cause endless trouble’.⁸⁶⁸ The District Inspector of Fisheries told him that Māori had no exclusive whitebaiting rights in the stream; that the stream below the high water mark was controlled by the Marine Department; and that ‘All whitebaiters, both Maori and European, are required to fish within the terms of the Whitebait Fishing regulations 1951’.⁸⁶⁹

The dispute rumbled on into the 1960s and drew in the local police. In September 1961 a Levin senior sergeant asked the District Inspector of Fisheries whether the wording of the 1956 Act meant Muaūpoko had exclusive fishing rights in the stream and, if they did, whether these extended to the point where the stream entered the sea at low tide.⁸⁷⁰ The answer hardly clarified the matter. The District Inspector thought that Muaūpoko’s ‘fishing rights’ in the stream had previously referred only to eels and that the current reference to whitebait was ‘extraordinary’. He noted the provisions of the 1956 Act and the Crown’s

⁸⁶⁵ Minister of Lands to Jim Maher MP, 4 February 1957. Archives New Zealand file ABWN W5021 6095 Box 259 7/934 part 1

⁸⁶⁶ R M Silver, Secretary, Hokio Progressive Association (HPA), to Inspector of Fisheries, Marine Department, 18 June 1957. Archives New Zealand file AAFZ W2253 7910 Box 47 42/10/2

⁸⁶⁷ District Inspector of Fisheries to R M Silver, Secretary, HPA, 25 June 1957. Archives New Zealand file AAFZ W2253 7910 Box 47 42/10/2

⁸⁶⁸ H F Webb to Secretary for Marine, 20 May 1959. Archives New Zealand file AAFZ W2253 7910 Box 47 42/10/2

⁸⁶⁹ District Inspector of Fisheries to H F Webb, 27 May 1959. Archives New Zealand file AAFZ W2253 7910 Box 47 42/10/2

⁸⁷⁰ G O Donnelly, Senior Sergeant, Levin, to District Inspector of Fisheries, 16 September 1961. Archives New Zealand file AAFZ W2253 7910 Box 47 42/10/2

assumption of control over tidal waters, but conceded that ‘The above may not answer your main question, which seems almost hopelessly involved.’⁸⁷¹

Image 4.5: Mona Williams whitebaiting at Hōkio Beach, November 1969⁸⁷²



In September 1966 an H F Evans wrote to the Marine Department to say that Māori had been ordering him and other whitebaiters off the Hōkio Stream. The previous day he had been ‘abused by one of the Maoris & threatened with physical violence’. He added that

we are tired of Mr Williams and others putting a multiple number of nets in the river at one time & your inspectors doing nothing about it. Why isn’t this man being prosecuted[?] ⁸⁷³

Evans was assured that ‘There is no discrimination between Maori and European in the Marine Department’s Whitebait Regulations, the Regulations apply equally to both races.’⁸⁷⁴ It is possible that the Mr Williams Evans referred to was Ike Williams, a member of Muaūpoko. If so, Evans belatedly got his wish a decade later, as we shall see in chapter 6, although the judgment of the courts would not have been to Evans’ liking.

⁸⁷¹ District Inspector of Fisheries to Senior Sergeant, Levin, 30 November 1961. Archives New Zealand file AAFZ W2253 7910 Box 47 42/10/2

⁸⁷² *Chronicle* photograph collection. Horowhenua Historical Society Inc.

<http://horowhenua.kete.net.nz/site/images/show/1591-mona-williams-sorts-whitebait-from-rubbish-in-her-catch-1969>

⁸⁷³ H F Evans to Secretary, Marine Department, 30 September 1966. Archives New Zealand file AAFZ W2253 7910 Box 47 42/10/2

⁸⁷⁴ Secretary for Marine to H F Evans, 11 October 1966. Archives New Zealand file AAFZ W2253 7910 Box 47 42/10/2

The similarly complex and fraught land ownership issues around the tidal reach and mouth of the Hōkio Stream have been the subject of research undertaken in recent years for the Māori Land Court by David Alexander, and are not traversed here.⁸⁷⁵

Conclusion

The new domain board was constituted in February 1957, and its members inspected the domain the following month. The optimism of the moment was reflected in the smiles on the board members' faces as they posed for a photograph on the boating club's jetty. Muaūpoko certainly seem to have been satisfied with the new arrangements. Not only had title to the lakebed, chain strip, dewatered area, Hōkio Stream, and chain strip on the stream's northern bank been declared to be theirs – and to always have been theirs – but they now held a numerical majority on the domain board itself. Overall, Muaūpoko felt their mana had been restored, as was demonstrated by their statements in May 1958 at the symbolic function to mark the signing of the domain development plan. Board members like Tau Ranginui performed their governance roles diligently and co-operatively.

But there were some signs that the Muaūpoko position was not as strong as it might have appeared. The attendance of Muaūpoko members was generally satisfactory but it was not as consistent as the local body representatives. When a Muaūpoko member was given seven months' leave of absence in April 1959 the tribe effectively lost its majority on the board for an extended period. By 1958, too, the board's first chairman – whom Muaūpoko had specifically requested fulfil the role – neared retirement, and the Muaūpoko members were anxious about the prospect of him being replaced by an official with whom they had no relationship. Discussion of this also demonstrated some growing tension within Muaūpoko itself. This may have related to the divisions between the two principal hapū, Ngāti Pāiri and Ngāti Hine (which is mentioned in chapter 3), or it may have stemmed from the advent of the Muaupoko Tribal Committee and its ambiguous relationship with both the lake trustees and the Muaūpoko members of the domain board.

It is clear, too, that the Pākehā members of the board – together with the secretariat provided by the Lands Department – took most of the initiative on domain board business. In other words, the board did not suddenly begin to function as a Māori organisation because of its Muaūpoko majority. On the other hand, there were significant differences between this board's approach and the way the board constituted under the 1905 and 1916 legislation operated. The tribe were evidently consulted on a range of issues, including – for example – the use of motorboats on the lake by honorary rangers and the removal and replacement of eel weirs on the Hōkio Stream by the Manawatu Catchment Board.

⁸⁷⁵ See 'Final Historical Report dated June 2008 prepared by David Alexander Filed in the Maori Land Court Application by Hokio A and Part Hokio Land Trusts (A20050009249)', Wai 2200 document A12, and 'Further Historical Report on Hokio Beach Land Definition and Status Issues: A report prepared for the Maori Land Court', April 2010.

Arguably the single most important task delegated under the 1956 Act was the catchment board's responsibility to stabilise the lake level at 30 feet above mean low water spring tides at Foxton Heads. Muaūpoko agreed to this level, but it is not entirely clear why. The ecological consequences of a smaller, shallower lake were not contemplated at the time. The catchment board's construction of a control weir to control the lake level was much delayed and not completed until 1966. Just before it was built the lake trustees pointed out that its design needed to allow for other species besides eels to migrate upstream, such as whitebait and flounder. But no accommodation was ever made for this and ingress to the lake of these species was therefore permanently blocked. Section 18(5) of the 1956 Act provided that the lake's owners should have the 'free and unrestricted' exercise of their fishing rights in the lake and stream to the extent that this did not interfere with the 'reasonable rights of the public'. The weir's impact on the fishery would appear to have been contrary to this provision.

Other matters the domain board considered during its first decade included shooting rights over the lake, by-laws concerning the use of motorboats, and the lease of an area of Muaūpoko land to the boating club. The Lands Department also considered where Muaūpoko's exclusive fishing rights terminated at the mouth of the Hōkio Stream. While most of these matters – including the construction of the control weir – were not points of particular controversy at the time, all of them became so in the decades to come, as is discussed particularly in chapter 6.

5. The pollution of the lake, 1952-1987

Introduction

The previous chapter considered the first decade of the reconstituted domain board's existence after the passage of legislation in 1956. It noted the relatively harmonious relationship between Muaūpoko and the domain board during this period, as a series of actions and decisions were made to implement the 1956 settlement.

Throughout this period, however, a growing shadow loomed over the lake. This was the discharge of the borough council's effluent into it from 1952, despite Muaūpoko's strong objection and an assurance from the Minister of Lands that it would not happen. This chapter traverses the history of the pollution of the lake from the 1950s until the 1980s, when the effluent was finally diverted away from the lake and disposed of onto land. It also considers the discharge of unfiltered stormwater into the lake and the contribution of that source of pollution to the lake's problems.

As with the unnecessary delay in returning clear title to Muaūpoko of the lakebed and chain strip – with the Crown being aware that it had no rightful claim on these lands in 1934 but not making final amends until 1956 – so was the removal of the effluent from the lake unjustifiably delayed. As early as 1969 officials were aware that the effluent would have to be diverted, yet it took nearly a further two decades for this to occur. This chapter explains why this was. In doing so it addresses questions 2(c), and 2(e) of the research commission, concerning the circumstances surrounding the discharge of sewage effluent and unfiltered stormwater into the lake; measures taken by the Crown and local bodies to extend their control over the lake; the Crown's oversight of the various powers it had delegated; the nature of any Muaūpoko opposition to Crown or local body actions; and the extent to which the Crown or delegated local bodies took account of Muaūpoko interests, consulted them, or sought their consent.

Levin's sewerage plans and Muaūpoko opposition

As Levin grew in size⁸⁷⁶, questions began to arise about the disposal of its human waste. Long drops were in use, along with a nightsoil cart, but such measures were only appropriate as long as the population remained relatively sparse and evenly dispersed. In 1925 the Medical Officer of Health in Wellington responded to questions the Town Clerk had posed. These reveal that the borough had been interested in discharging effluent from tanks into the water races. The Medical Officer of Health's advice was that 'the Borough will sooner or later have to adopt a drainage scheme'. The council should also 'seriously consider the question of the advisability of continuing to allow owners of property to install septic tanks,

⁸⁷⁶ The population of 2,650 in 1936 had expanded to 6,000 by 1956. By 1965 it was 11,000. See Dreaver, *Levin*, pp 196, 259

no matter how satisfactorily the effluent from such tanks can be disposed of in the shingle on which the town stands'.⁸⁷⁷

In 1933 the Medical Officer of Health wrote again, as follows:

I feel that the time has arrived when I should call the attention of your Council to the need for a proper drainage system in Levin. So far as I know it is the only town of its size in New Zealand without a sewage system, and it is only the peculiarly absorbent nature of the soil that has prevented this defect from attracting attention.⁸⁷⁸

The business part of town, in particular, was now at the point where it was 'pregnant with dangerous possibilities'.

The Medical Officer of Health's reference to the disposal of waste from any future sewerage system shows the mindset that prevailed at the time:

As the Borough is not close to the sea or to any large river, the installation of a sewage system will present the difficulty of disposal of the sewage. Similar problems have, however, been overcome in other places, and this one will not be without its solution.⁸⁷⁹

The Board of Health wrote to the borough council again in 1936 and 1937 asking what steps had been taken to provide for 'modern drainage facilities'.⁸⁸⁰ In 1939, after further correspondence on the subject, Mayor Goldsmith wrote to the Minister of Health and offered a range of excuses for the lack of progress, including Levin's small size and modest base of ratepayers.⁸⁸¹

It was not mentioned by the Medical Officer of Health in 1933 that the lake might present the solution to the question of sewage disposal, but it was clearly a likely option. With reference to the period around 1940, Dreaver wrote that:

The unspoken dilemma was that the obvious way to dispose of wastewater was into the lake, so often touted as a jewel in the borough's crown. Although the night cart continued its visitations, increasing numbers of septic tanks were installed, especially in the low-lying parts of town without a shingle foundation. Their seepage along with rubbish swept down by the

⁸⁷⁷ Medical Officer of Health, Wellington, to Town Clerk, 7 April 1925. Archives Central file HDC 00010: 14: 26/2. Dreaver noted that the first call for a proper sewerage system in Levin had been made by Dr Mackenzie (who was one of the original domain board members) in 1908. Dreaver, *Levin*, p 245

⁸⁷⁸ Medical Officer of Health, Wellington, to Town Clerk, 29 August 1933. Archives Central file HDC 00010: 14: 26/2

⁸⁷⁹ Medical Officer of Health, Wellington, to Town Clerk, 29 August 1933. Archives Central file HDC 00010: 14: 26/2

⁸⁸⁰ Secretary to the Board of Health to Town Clerk, 7 August 1936 and 17 August 1937. Archives Central file HDC 00010: 14: 26/2

⁸⁸¹ Minister of Health to Mayor Goldsmith, 20 January 1939, and Goldsmith to Minister of Health, 24 January 1939. Archives Central file HDC 00010: 14: 26/2

water races was steadily polluting the lake's waters, still used as a food source by its Maori owners.⁸⁸²

On 11 May 1943 the Board of Health lost patience with Levin, and prepared a requisition under section 22 of the Health Act for the borough council to install a system of drainage. It indicated, however, that – owing to the current war conditions – it expected at the very least that the council would engage the services of a ‘competent engineer’ to report on the borough’s drainage needs, with the actual drainage work being carried out at a more favourable date.⁸⁸³ This led directly to the engagement of the Wellington engineering firm of Vickerman and Lancaster to design the town’s sewerage scheme.

It was possibly no coincidence, therefore, that on 17 May 1943 – only a few days after the letter from the Board of Health – the borough council resolved that ‘the necessary steps be taken to have the Horowhenua Lake Domain vested in the Levin Borough Council in place of the Domain Board as at present constituted’. As the Town Clerk explained to the Lands Department,

For some years now the Lake Domain Board has been most inactive and my Council feel that such a wonderful asset as the lake and its surroundings should be developed for the benefit of the people of Levin and District, and it is considered that the best body to handle the matter would be the Levin Borough Council.⁸⁸⁴

It is impossible to know whether the borough council was primarily motivated in making this approach by its desire to ‘improve’ what was often regarded as Levin’s primary attraction, or whether it was mainly concerned by the need to dispose of the borough’s sewage.

As it happened, the Under Secretary for Lands replied to the Town Clerk pointing out that in 1905 legislative provision had been made for Māori representation on the board and the safeguarding of Māori rights. In view of this, he continued, ‘and seeing that questions raised in recent years by the Maoris as to the ownership of the Lake and surrounding lands are still under discussion, the suggestion made by the Council could not receive favourable consideration’.⁸⁸⁵

Muaūpoko learnt about the borough council’s sewerage plans and were most alarmed. In late 1944 a deputation met with the Native Minister on the subject. The Native Department reported to the Director-General of Health that:

The people are strongly opposed to the sewerage being drained into the lake, first, because it is their property, and, secondly, because an important source of food supply will be polluted.

⁸⁸² Dreaver, *Levin*, p 224

⁸⁸³ Secretary to the Board of Health to Town Clerk, 11 May 1943. Archives Central file HDC 00010: 14: 26/2

⁸⁸⁴ Town Clerk to Under Secretary for Lands, 22 June 1943. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁸⁸⁵ Under Secretary for Lands to Town Clerk, 16 July 1943. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

They say that there are in the lake five species of eels, flounders, tikihemi, inanga, whitebait, carp and fresh water shell fish. They advert to the fact, which is the fact, that the administration and control of the lake is under consideration and they do not wish the sewerage scheme to be gone on with.

Would you kindly advise me what the position is so far as your Department is concerned and also let me have your comments on the likelihood of the pollution or destruction of the food supply.⁸⁸⁶

The Native Department wrote at the same time to the Town Clerk and pointed out the Muaūpoko opposition. The Under Secretary asked how advanced the borough's scheme was in its planning, what it would mean for the lake, and what the statutory basis for this was. He also wrote that

While the legal position of the ownership of the lake is not very clear, I incline to think that the ownership does rest on certain Natives, and it may be that they have rights which, as freeholders, they can assert. Another aspect is that the future administration and control of the lake is at present the subject of discussion with the Natives and the Departments concerned.⁸⁸⁷

The Town Clerk responded on 16 January 1945. He said his council were 'very surprised' to hear that the deputation had gone to see the Minister 'without being aware of their facts'. He explained that, the previous year, Vickerman and Lancaster had investigated 'the engineering questions' and submitted a report to the council. This had proposed that the sewage be liquefied in settlement tanks and then filtered, 'and thus purified so as to be harmless and free from smell, and finally disposed of by passing into Lake Horowhenua'. He continued:

This proposal to discharge the final effluent into Lake Horowhenua was not lightly put forward, but was the result of very serious consideration and lengthy consultation with the officers of the Health Department, who have given their consent to the proposal, thoroughly convinced that there would be no risk of danger to health, at the same time having regard to any likely effect on the fish life in the Lake.

This report has never yet been made public, as it was desired in the first instance to approach the natives and thoroughly explain the proposals to them. His Worship the Mayor accordingly approached some of the leading Natives in this locality, asking that a meeting of the leading men should be arranged so that the proposals could be explained. This was promised and we have daily been waiting to hear when the meeting was fixed, Instead, we get this letter from you advising that a deputation has been to the Native Minister.

We feel that we have been badly side-tacked on this matter, as we endeavoured to do the decent thing by first meeting the Natives and explaining the proposals to them, information

⁸⁸⁶ Under Secretary, Native Department, to Director-General of Health, 15 December 1944. Archives Central file HDC 00010: 14: 26/3

⁸⁸⁷ Under Secretary, Native Department, to Town Clerk, 18 December 1944. Archives Central file HDC 00010: 14: 26/3

which at present is not in their possession, nor in the possession of the Hon. Minister or the Department.⁸⁸⁸

With Health Department approval, the council clearly believed that the disposal to the lake was a *fait accompli*. *Muaūpoko* were to be consulted so they could have the scheme explained to them, not so that they could object. It seems clear from a letter from the Medical Officer of Health in February 1945 (see below) that the Health Department would not have taken into account their views in making its initial decision.⁸⁸⁹

The Town Clerk went on to quote what the Vickerman and Lancaster report had to say about the disposal of the effluent. The engineers related how the science of sewage treatment was new but had quickly developed to the point where treated effluent could be ‘discharged into even small streams without causing objectionable pollution’:

It is for such reason that we have no hesitation in recommending ... discharge into Lake Horowhenua. This could, indeed, we consider, well be done after merely liquefying the solids in a settlement tank, but to remove the slightest chance of creating any nuisance, we recommend that, as well as liquefying the solids, the liquid effluent should, before entering the Lake, be further and completely stabilised and rendered quite non-putrescible by passing it over modern type biological filters.⁸⁹⁰

Vickerman and Lancaster said that the lake’s volume of 360,000,000 cubic feet would easily cope with the discharge of 120,000 cubic feet of effluent per day, ‘and this would certainly ensure there being not the slightest reasonable cause for objection’. The effluent would have no detrimental effect on fish life but ‘would, if anything, be beneficial’. Nor would boating or swimming be adversely affected. The engineers concluded that

Seeing therefore that no harmful pollution nor objectionable smell would result, there should be no reason, if the interests of the community generally are to be met, why advantage ought not to be taken of this readily available means of disposal.⁸⁹¹

Having quoted this extensive extract, the Town Clerk finished by again expressing the council’s ‘desire to take the Natives into our confidence over this matter’.⁸⁹²

⁸⁸⁸ Town Clerk to Under Secretary, Native Department, 16 January 1945. Archives Central file HDC 00010: 14: 26/3

⁸⁸⁹ There is a Department of Health file on Levin’s sewerage system covering the years 1936 to 1951 held by Archives New Zealand. However, after a request was made to view this file Archives staff decided it must remain restricted due to ‘some Patient details on a piece of reused paper’. Archives New Zealand staff note to the author, 28 October 1914

⁸⁹⁰ Town Clerk to Under Secretary, Native Department, 16 January 1945. Archives Central file HDC 00010: 14: 26/3

⁸⁹¹ Town Clerk to Under Secretary, Native Department, 16 January 1945. Archives Central file HDC 00010: 14: 26/3

⁸⁹² Town Clerk to Under Secretary, Native Department, 16 January 1945. Archives Central file HDC 00010: 14: 26/3

While the Health Department had already approved of the effluent disposal into the lake, the Medical Officer of Health in Palmerston North wrote to the Town Clerk on 15 February 1945, in light of Muaūpoko's objections, asking to be kept informed of any negotiation entered into by the council with them.⁸⁹³

The Native Department put the borough council's information before its Minister, and told the Town Clerk that the Minister's response would soon be forthcoming.⁸⁹⁴ In the meantime, however, Muaūpoko's 17 April 1944 response to the Minister's November 1943 offer over the chain strip had come to light (see chapter 3). In forwarding this letter to the Lands Department, the Under Secretary of the Native Department gave the following background:

The Levin Borough Council has recently become interested in the lake from another angle. They are considering a scheme for draining treated sewage into the lake, and they have reached a point where they want to have a discussion with the Natives on the question of ways and means. The Native Department heard of the scheme through complaints made by some of the Maoris, and as the other matter seemed to be outstanding – the solicitors' letter of the 17th April, 1944 not having come under notice – a suggestion was put to the solicitors that a conference be held to deal with the whole business.

If the temper of the Maoris is to be gauged from the solicitors' letter, it seems useless talking to them about sewerage schemes before the chain strip affair is fixed up. It appears equally useless endeavouring to settle that otherwise than on the basis of giving them all the land except perhaps for the piece between Queen Street and the Recreation Reserve. A suggestion was made by Judge Harvey some years ago that the whole of the chain strip be returned to the Maoris, leaving the piece required for domain purposes to be taken under the Public Works Act.

With the added circumstance that attention is being focused on the sewerage scheme, I question whether a settlement can be left over much longer.⁸⁹⁵

On 6 July 1945, therefore, the Native Department wrote to the Town Clerk and advised him that Muaūpoko had 'virtually said that it is of not much use talking about drainage schemes unless there is going to be a settlement of the other issue'. The borough council would be informed once there was something to report.⁸⁹⁶

This all represented a most unsatisfactory state of affairs for Muaūpoko. Because of the unwillingness on either side to give ground over the issue of the chain strip, officials appear to have paid insufficient attention to the borough council's plans to proceed with its sewerage scheme. There is no evidence that the council felt it had to wait to see what happened with the ownership of lakeside land before it firmed up any of its plans. And while it did receive

⁸⁹³ Medical Officer of Health to Town Clerk, 15 February 1945. Archives Central file HDC 00010: 14: 26/3

⁸⁹⁴ Under Secretary, Native Department, to Town Clerk, 15 February 1945. Archives Central file HDC 00010: 14: 26/3

⁸⁹⁵ Under Secretary, Native Department, to Under Secretary for Lands, 30 April 1945. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

⁸⁹⁶ Under Secretary, Native Department, to Town Clerk, 6 July 1945. Archives Central file HDC 00010: 14: 26/3

some pressure from the Health authorities to conclude an agreement with the lake's Māori owners, there is no evidence that it did so. In November 1947 the Board of Health wrote to the Town Clerk expressing concern at the council's lack of progress:

It was understood [by the Board of Health at its 31 October 1947 meeting] that the principal cause of delay was the inability of the Council to secure the consent of the Maoris to the proposals. Acting on this premise, the Board instructed that your Council be requested to arrange a meeting between representatives of the Native Department, the local Maoris, the Borough Council and the Board of Health to endeavour to reconcile the views of the interested parties – the meeting to be held subsequent to the Municipal elections. As your letter of the 29th October makes no reference to the delay being caused by the failure of the Maoris to co-operate it seems that the difference may have been already reconciled, in which case the proposed meeting will no longer be necessary.⁸⁹⁷

The Town Clerk replied as follows:

My Council were surprised to learn that your Board held the opinion that delay was being caused by the failure of the Maoris to co-operate and that differences existed between the Council and the Maoris.

My Council knows of no such difficulties and would be pleased to know what were the grounds which caused the Board to feel that there was some friction with the Maoris.⁸⁹⁸

It is hard to understand, given the council's full knowledge of the 1944 Muaūpoko deputation to the Native Minister, just why this Muaūpoko opposition was news to the council. In fact the Town Clerk's letter marked the second time in three years that the council had expressed 'surprise' at the news of Māori objections to its sewerage plans. The Board of Health replied to the Town Clerk by noting the council's 1945 surprise and desire at the time to meet with Muaūpoko leaders. The Board of Health assumed that, perhaps, the differences had by now been 'reconciled'.⁸⁹⁹

It seems, regardless, that the council's wish to meet with Muaūpoko over the sewage disposal was only to inform them of its plans, and that it assumed that this would be sufficient to dispel any opposition. When the Department of Maori Affairs asked it in August 1948 as to where its proposals had got to, after the expression of further Muaūpoko concern about the sewerage scheme,⁹⁰⁰ the Town Clerk reported that

⁸⁹⁷ Secretary to the Board of Health to Town Clerk, 6 November 1947. Archives Central file HDC 00010: 14: 26/2

⁸⁹⁸ Town Clerk to Secretary to the Board of Health, 18 November 1947. Archives Central file HDC 00010: 14: 26/2

⁸⁹⁹ Secretary to the Board of Health to Town Clerk, 26 November 1947. Archives Central file HDC 00010: 14: 26/2

⁹⁰⁰ Under Secretary, Department of Maori Affairs, to Town Clerk, 25 August 1948. Archives Central file HDC 00010: 14: 26/3

The position is substantially the same as it has been for some time past. At the moment our Engineers are investigating the question of disposal of the effluent after it has been liquefied and purified in the tanks and filters.⁹⁰¹

To some extent Muaūpoko's interests in the lake were simply imperceptible to planners and engineers. A good example of this is to be found in a letter from the District Engineer of the Public Works Department to his head office in Wellington in June 1946. He wrote that

The point of effluent disposal in Lake Horowhenua is about 70 chains west of the nearest boundary of the area to be seweraged, which is sufficient to eliminate any nuisance danger, also the lake is approx 1½ square miles in area, with a capacity of roughly 360,000,000 cubic feet of water which will ensure ample dilution. The Lake so far has not been developed for recreational purposes and apparently is little frequented by local inhabitants, – consequently no objection on this score can be put forward.⁹⁰²

Here Māori use of the lake – let alone Māori cultural values – were invisible. By contrast, the District Engineer did foresee a potential problem if the Pākehā population and use of the lake continued to grow:

There is ... a possibility that long before the Township of Levin reached the population envisaged in the Consulting Engineer's Report (15,000) – there is a rapid upward movement now – the development of the Lake foreshore and the use of the Lake itself for recreational purposes will be seriously considered, and whilst the proximity of the treatment plant will require the isolation of only that part of the foreshore immediately surrounding the plant, the presence of effluent in the waters may present a serious obstacle to the popularising of the Lake generally. If this position should eventuate, the Borough Council may possibly be faced with pumping the effluent directly from the treatment plant to the Lake overflow stream – some four miles to the western side of the Lake. This, however, need not be faced up to until the occasion arises and in the meantime, I see no reason why the effluent should not be disposed of as originally intended.⁹⁰³

To Vickerman and Lancaster, the objection to sewage effluent entering the lake was simply not rational. At the start of March 1948 Vickerman attended a borough council meeting to answer questions from the councillors about the sewerage scheme. One exchange was about the lake:

[Q] In view of your knowledge of the position regarding the disposal of effluent into Lake Horowhenua, what alternative methods of purification and disposal of the effluent do you suggest or recommend? – [A] There is no visual alternative. It might be possible to put the

⁹⁰¹ Town Clerk to Under Secretary, Department of Maori Affairs, 9 September 1948. Archives Central file HDC 00010: 14: 26/3

⁹⁰² District Engineer to Permanent Head, Public Works, Wellington, 11 June 1946. Archives New Zealand file ABKK W4357 889 Box 326 50/856 part 1

⁹⁰³ District Engineer to Permanent Head, Public Works, Wellington, 11 June 1946. Archives New Zealand file ABKK W4357 889 Box 326 50/856 part 1

effluent into the Hokio Stream or out on to the sand hills. Only liquid that had been purified and gone through the filters would be put into the lake.

...

[Q] In view of the possible development of the lake as a pleasure resort, does it not seem desirable that sewerage effluent should be kept out of the lake? – [A] It would not make any material difference. The reaction of people to this is only a psychological one.⁹⁰⁴

Muaūpoko's concerns, however, were very real. In 1951, Morison Spratt & Taylor were again approached by the tribe about the sewerage scheme. The firm wrote to the Town Clerk on 11 June 1951 as follows:

It has come to the knowledge of the Maoris that in connection with its drainage scheme your Council contemplates carrying a sewer drain through the chain strip for the purpose of emptying sewer effluent into the lake. If this action takes place the Maoris will regard it as an infringement of their fishing and other rights in connection with the lake.

We shall be obliged if you will let us know whether the drainage work referred to is contemplated by the Council. If not, then there will be no need to proceed further but the Maoris wish it to be understood that they will contest any interference with their rights.⁹⁰⁵

In the meantime, however, the council may have felt that it had circumvented Muaūpoko's objections by a new method of effluent disposal. In February 1949 Vickerman and Lancaster had told the Town Clerk that, in their May 1944 report, they had considered that the best method of sewage disposal was by discharge to the lake, and had 'recommended accordingly, though we realised that objections, but which we did not think warranted, might be raised against so doing'. They now considered that their favoured option was to dig deep trenches in porous country and let the effluent percolate away into the ground.⁹⁰⁶ It seems that these 'soak pits' or 'sludge beds' were indeed employed, although the net result of them was that the effluent still reached the lake anyway. In 1956 an inspection was made of the borough's treatment plant by R H Thomas of the Public Works Department. He found that the effluent did percolate underground in summer, but that in winter groundwater broke the surface. He concluded that 'The treated sewage is thus carried down towards Lake Horowhenua by the underground water in summer and above ground in winter.'⁹⁰⁷

A borough council reply to the June 1951 letter from Morison, Spratt & Taylor has not been located. In providing an update to the Medical Officer of Health in September 1951 on progress with the sewerage scheme, the Town Clerk did not mention any issues of contention with Muaūpoko.⁹⁰⁸

⁹⁰⁴ 'Levin's sewerage. Engineer and council talk over proposals', *Chronicle*, 2 March 1948. Clipping on Archives New Zealand file ABKK W4357 889 Box 326 50/856 part 1

⁹⁰⁵ Herbert Taylor, Morison Spratt & Taylor, to Town Clerk, 11 June 1951. Archives Central file HDC 00010: 6: 10/11

⁹⁰⁶ Vickerman and Lancaster to Town Clerk, 3 February 1949. Archives New Zealand file ABKK W4357 889 Box 326 50/856 part 1

⁹⁰⁷ Report of R H Thomas. Archives New Zealand file ABKK W4357 889 Box 326 50/856 part 1

⁹⁰⁸ Town Clerk to Medical Officer of Health, 5 September 1951. Archives Central file HDC 00010: 14: 26/2

The Town Clerk's letter did reveal, however, that the council was experiencing considerable delays in getting the sewerage system up and running. The following June he sternly wrote to Vickerman and Lancaster expressing the council's dismay at the state of affairs. As he put it, the council was 'very perturbed and most disappointed at the apparent lack of progress in the sewerage scheme for the Borough'. The council required Vickerman and Lancaster to urgently expedite progress, including on the final plans and specifications for the first phase of the reticulation so that the Board of Health could give its approval and the actual work could commence.⁹⁰⁹

What further action the Department of Maori Affairs took is unknown, because the Maori Affairs file on Lake Horowhenua for the post-1943 period is missing.⁹¹⁰ Combined with Archives New Zealand's restriction on access to the Health Department file for the period up to 1951 (see note above), and the absence of reference to Māori concerns on the subsequent Health Department file before 1957, we are left unsure as to how either the Crown or the borough council actually chose to address Muaūpoko opposition before the effluent disposal began. We do know, however, that the Minister of Lands assured Muaūpoko the effluent would not enter the lake, as we shall see below.

Corbett's promise: no 'dumping ground for sewer effluent'

As noted in chapter 3, Minister of Lands Corbett was emphatic, when meeting Jim Maher, the borough council, county council, Manawatu Catchment Board, and Hokio Drainage Board in Levin on 6 November 1952, that sewage effluent would not enter the lake. Later, in a meeting in Chief Judge's chambers on 22 December 1952 between officials and Muaūpoko's solicitor, the Minister's position that 'the Lake is not to be used as a dumping ground for sewer effluent' was reiterated. There is no other way to take this statement than as a promise by the Crown to Muaūpoko. Yet it was an empty one.

The consensus among secondary sources appears to be that treated sewage first entered Lake Horowhenua in 1952.⁹¹¹ Dreaver, in his history of Levin, was unspecific about the date but referred to the '1952 scheme' as involving 'processing all effluent in a series of trickle filters and oxidation ponds before discharging it into the lake'.⁹¹² It seems, however, that oxidation ponds were not used until 1967 (see below). Indeed, in 1949 Vickerman and Lancaster amended their proposal for direct discharge into the lake in favour of disposal via percolation in sludge pits. But, as we have seen, these caused the effluent to be carried to the lake via groundwater (in summer) or above ground (in winter) anyway. Whether that was understood in 1952 is not clear, and it may be that Corbett did not believe that effluent was going to enter

⁹⁰⁹ Town Clerk to Vickerman & Lancaster, 11 June 1952. Archives Central file HDC 00011: 1: 1/4

⁹¹⁰ Molly Kino, Senior Information Officer, Te Puni Kōkiri, to the author, 22 January 2015

⁹¹¹ See, for example, Horizons Regional Council, *Lake Horowhenua and Hokio Stream Catchment Management Strategy*, Palmerston North, 1998, p 12; Ministry for the Environment, *Managing Waterways on Farms: A guide to sustainable water and riparian management in rural New Zealand*, Wellington, 2001, p 108; and Horowhenua District Council, *Outstanding Natural Landscapes & Features Review*, Levin, 2011, p 8.

⁹¹² Dreaver, *Levin*, p 272

the lake under the existing regime. Regardless, his determination that treated sewage would not enter the lake came much too late. A treatment plant had already been built almost immediately next to the lake, and a simple understanding of local geology might have suggested that the effluent would find its way to the lake. Moreover, before Vickerman and Lancaster's plans changed in 1949 there had been no ministerial opposition to effluent being pumped directly to the lake, despite the Muaūpoko deputation to the Native Minister in 1944.

In sum, there is a distinct possibility that effluent was already entering the lake, either above or below ground, when Corbett made his promise in late 1952. The record is practically silent on the subject of effluent during the next two crucial years of negotiations between the Crown and Muaūpoko over control of the lake. One mention is worth noting, however: after the 5 July 1953 meeting between Lands officials and Muaūpoko, where it became apparent that the Crown would have to abandon its hope of obtaining the 83.5 chains of chain strip and dewatered area it had been with holding out for nearly two decades, McKenzie recorded how he had called on Mayor Parton and given him the news:

I have some reason to think that he [Parton] was possibly not quite happy about the restricted area obtained from the Maoris, that is the 22 chains. I felt that he was hoping that that the 83 chains could have been secured for he has some plan covering the sewage deposits. If I understand the position correctly he desired to utilise part of the 83 chains strip for this purpose. However, this is entirely a matter beyond this Department's control and the Levin Borough Council will have to bring this question up to the correct authorities sometime in the future.⁹¹³

It is not clear exactly what Parton was referring to here. It may have been that the mayor wished the Crown to control the land around the outfall from the treatment works, given the letter he had received from counsel for Muaūpoko in June 1951 opposing the council's plans. In any event, it arguably provides further context for understanding the borough council's pressure for a resolution to the issue of the lake's management in the period after 1943. What is more confusing, however, is why officials said nothing about the disposal of the effluent after Corbett had been so adamant on the matter in 1952. It seems likely that diffuse intrusion into the lake was neither understood nor, at the time, observed. By the time the entry of effluent into the lake was identified, it may well be that the Minister's promise was quietly shelved.

The first serious problems from the effluent discharge

At the domain board meeting of 9 May 1957, Tau Ranginui stated that some farmers had complained of a foul smell coming from the sewage treatment plant, and wondered if chemicals being used at the plant were causing eels and other fish to die, 'but he was assured that this would not be the cause'. Allen said it was 'general knowledge there is a problem at the Treatment Works but this only applies in winter when the lake level is up and the

⁹¹³ 'Note for file. Horowhenua Lake', by E McKenzie, 6 July 1953. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

sewerage does not soak away'. McKenzie characterised the issue as 'a catchment board problem' and agreed to write to the catchment board accordingly.⁹¹⁴ Nothing seems to have come of this but, at the board's meeting on 11 July 1957, the matter was raised again after a letter was received from Nora McMillan. The minutes record that

As a result of representations from the Muaupoko Tribe that they are concerned at the seepage from the sewer works into the lake and affecting their food supply, it was resolved to write to the District Medical Officer of Health at Palmerston North and ask if an inspection can be made and report furnished.⁹¹⁵

The response of the Medical Officer of Health, L F Jepson, was received and read at the next board meeting. The minutes record that Jepson's advice was that

if the overflow from the lake was cleared the ground water level would be lowered and the soakage pit would then function satisfactorily. In his opinion pollution that has occurred due to abnormal wet weather conditions, though not desirable, is not a serious health hazard nor is it likely to have been responsible for the death of eels and fish.⁹¹⁶

Further detail of this letter can be found in the press coverage of the board's meeting. According to this, Jepson explained that the abnormally wet weather had meant 'a breakdown occurred in the plant and some seepage into the lake resulted'. Groundwater had infiltrated the sewerage system, causing the overflow.⁹¹⁷

The problem does not seem to have been an isolated incident. At its 14 November 1957 meeting the board noted that a further letter had been received 'from the Muaupoko Tribe' stating that 'pollution from sewerage and a drain of the Boiling Down Works was occurring'. The death of eels was also being investigated by the Fishery Research Institute, which had made tests of 'the lake and stream' (which stream was not specified). The matter was also to be referred to the Pollution Advisory Council for a report.⁹¹⁸ Muaupoko placed the following notice in the *Chronicle* on 5 December:

WARNING – RE LAKE HOROWHENUA

To the People of the Muaupoko Tribe

⁹¹⁴ Minutes of meeting of Horowhenua Lake Domain Board, 9 May 1957. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

⁹¹⁵ Minutes of meeting of Horowhenua Lake Domain Board, 11 July 1957; J S Macdonald, Board Secretary, to Nora McMillan, 26 July 1957. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson). Warena proposed this motion and Tukapua seconded it.

⁹¹⁶ Minutes of meeting of Horowhenua Lake Domain Board, 8 August 1957. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

⁹¹⁷ 'Sewage seepage into lake unlikely to form hazard', *Chronicle*, 10 August 1957. Clipping on Archives Central file HDC 00010: 6: 10/11

⁹¹⁸ Minutes of meeting of Horowhenua Lake Domain Board, 14 November 1957. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson)

PLEASE refrain from eating eels or any other fish from Lake Horowhenua, till further notice, owing to human waste being seen down the drain of lake and foreshore.⁹¹⁹

The investigation into the pollution was made by Mr A Hirsch, a pollution biologist, who inspected the sewage works with Mr R Watson of the Fisheries Laboratory. In his report, dated 18 December 1957, Hirsch wrote that ‘it was apparent that the plant was operating properly and giving a satisfactory effluent’. He went on:

We discussed the matter with Mrs R. Paki, member of the tribal committee at Kawiu Pa, Levin. The committee had inserted newspaper advertisements, advising Maoris not to eat eels or fish from the lake. She stated that eels had been dying for several months and she thought it was due to pollution from the treatment works. We pointed out that the oxygen tests had shown the effluent to be satisfactory for eels and that fish were surviving in undiluted effluent.⁹²⁰ We offered to take her to the works and demonstrate conditions there. Mrs Paki said that she was willing to accept our appraisal of present conditions, but that conditions were worse at other times. She stated that eels were continually dying, and that she was willing to demonstrate this, although was unable to take the time until after New Year. We had been unable to examine the area near the works for dead eels because of the marshy margins and because of lack of a boat. We explained that eel mortality could occur through natural causes. Mrs Paki stated that, in addition to eels and fish, the Maoris used to take freshwater shellfish and watercress from the lake, but this was no longer done because of pollution. We were unable to comment on this, not knowing the extent of bacterial contamination or in what areas of the lake the shellfish and watercress were collected.

Mrs Paki’s strongest objection was that damage to fisheries or public health considerations aside, it was against tribal custom to eat fish from an area where human wastes were discharged. For this reason, more than any other, she was of the very decided opinion that the discharge of effluent to the lake was harmful to Maori interests and should be stopped. She said she would again recommend this to the tribal committee when they met in January, although she did not question the validity of our findings and would place these before the committee as well.⁹²¹

Hirsch’s report was received and distributed at the board’s meeting of 13 February 1958, where it was noted that it ‘completely exonerated the Levin Borough Council, and there was no doubt whatsoever that pollution was not entering the Lake’.⁹²² It was not long, however, before such a conclusion had become untenable.

⁹¹⁹ ‘Public notices – Levin’, *Chronicle*, 5 December 1957. Clipping on Archives Central file HDC 00010: 6: 10/11

⁹²⁰ Hirsch had placed a bully and an inanga in a bucket of undiluted effluent for 48 hours and both were apparently unaffected.

⁹²¹ Director, Division of Public Hygiene, to Medical Officer of Health, Palmerston North, 30 December 1957, forwarding Hirsch’s report. Archives New Zealand file AAFB W3563 632 Box 16 32/175

⁹²² Minutes of meeting of Horowhenua Lake Domain Board, 13 February 1958. Archives Central file A/2012/6 : 5002212201 : 10 (Personal file – F H Hudson). Despite the confusing double negative, it seems the board was convinced that no pollution was entering the lake.

The discharge of raw sewage in 1962 and 1964

The winter of 1962 in Levin was particularly wet, even by Levin standards (flooding had been a routine occurrence in the district during the first six decades of the twentieth century). On 12 July such was the inundation and infiltration of pipes from subterranean water that the sewerage system could not cope, and raw sewage began overflowing around people's home from gully traps and running through the streets. Delays in the Hōkio drainage scheme (see chapter 4) were blamed for the problems. Mayor Wally Wise demanded the catchment board take some action, to which the catchment board replied by stating that responsibility lay with the Lands Department, which had not yet agreed to pay a significant burden of rates towards the new scheme.⁹²³

Raw sewage soon entered the lake via the water races. In fact, the Medical Officer of Health in Palmerston North encouraged this. He wrote to the Town Clerk on 17 August 1962 authorising the borough council to construct an emergency overflow channel and 'until such time as more permanent measures can be taken to deal with the present emergency I further authorise your Council to channel the sewage flow directly into the lake via the water races from those parts of the sewer which are overloaded'.⁹²⁴ The situation was most distressing to Muaūpoko. The tribal committee passed a motion that 'The lake is a 100 per cent source of the Maori's natural food ... and emergency or not, it should not have happened.'⁹²⁵ At a combined meeting of the lake trustees and tribal committee shortly after this Muaūpoko placed a tapu

on the whole of Lake Horowhenua and the Hokio Stream outlet because of pollution and offensive effluents. ... The meeting felt that fishing of any kind in the lake or its outlets would endanger the health of the Maori people. The resolution passed stated that the ban would operate as from yesterday and remain in force until the tribe considered it safe to lift it.⁹²⁶

Hemi Warena Kerehi, a lake trustee, then applied to the Supreme Court for an interim injunction to stop the borough council discharging the raw sewage into the lake. The case was heard by Justice Leicester, who said that

it appeared vital for the Court to know whether there was any possibility of an immediate discontinuance of the back flow of sewage into houses in the borough, which was a serious

⁹²³ 'Will combat effects of subterranean water "by all means possible"', *Chronicle*, 17 July 1962, and 'Cannot lower lake level until payment of rates board advises mayor', *Chronicle*, 20 July 1962. Clippings on Archives New Zealand file AAFB W3563 632 Box 16 32/175

⁹²⁴ Medical Officer of Health to Town Clerk, 17 August 1962. Archives New Zealand file AAFB W3563 632 Box 16 32/175

⁹²⁵ 'Strong protests lodged on pollution by sewage', *Chronicle*, 15 August 1962. Clipping on Archives New Zealand file AAFB W3563 632 Box 16 32/175. The Horowhenua Boating Club also protested about the discharge.

⁹²⁶ 'Tapu placed on lake', undated clipping from unknown newspaper, although probably from the *Dominion* as the item begins 'LEVIN, Aug. 23 ("The Dominion Correspondent")'. Archives New Zealand file AAFB W3563 632 Box 16 32/175

health matter, and which might be of more importance in the long run than fishing rights in the lake.⁹²⁷

Counsel for Kerehi agreed ‘that an immediate stoppage of the sewage flow would cause hardship to the people of the borough. His client would not seriously want to oppose an adjournment.’ Leicester therefore granted an adjournment but admonished the mayor and his council for having been slow to respond when the crisis developed. He observed that ‘the Maoris were entitled to insist on ... immediate attention to the trouble’. He was ‘content with counsel’s assurance that experts were now able to investigate and that the matter would be rectified at the earliest possible date’.⁹²⁸ Unfortunately, this proved to be far too optimistic an assessment.

The Medical Officer of Health, Dr N T Barnett, defended the emergency discharge of raw sewage to the lake at a public meeting on 31 August. He argued that this action had prevented serious health risks, and claimed that, ‘if it were true that most of the offensive matter was cast up on the shores of the lake, then the area used by the Maoris for fishing would not be affected’. On behalf of the lake trustees, H Warena asked Barnett how polluted the lake was, but Barnett would not accept it was polluted until this had been proven by bacteriological tests.⁹²⁹

Works officials considered that the lake level, which was sitting at more than 34 ½ feet above mean low water spring tides at Foxton Heads, should be controlled, the Hōkio Stream maintained, and rubber ring jointing should be fitted to all sewage pipes to reduce infiltration. An engineer’s report noted that ‘There could be some opposition to the lowering of the lake level from Maori people, but I suggest that this would not become effective unless a level lower than 30’ were contemplated.’⁹³⁰ As far as the Medical Officer of Health was concerned, the sewerage system and treatment plant needed upgrading or expansion, and if this did not occur then a similar discharge of raw sewage to the lake was ‘inevitable’. He recommended in February 1963 that a loan proposal of £35,000 for this work ‘be given urgent priority as it is desirable that this work be under way before the winter’.⁹³¹

In December 1963 the Medical Officer of Health also suggested to the Town Clerk that an application be made to the Pollution Advisory Council to classify the lake’s waters ‘so that any work carried out to improve the plant efficiency could be done with a view to producing an effluent that will not interfere with the normal usage of the lake for recreational

⁹²⁷ ‘Attempt to stop Levin sewage polluting lake’, *Evening Post*, 5 September 1962, p 17. Clipping on Archives New Zealand file ABKK W4357 889 Box 326 50/856 part 2

⁹²⁸ ‘Attempt to stop Levin sewage polluting lake’, *Evening Post*, 5 September 1962, p 17. Clipping on Archives New Zealand file ABKK W4357 889 Box 326 50/856 part 2

⁹²⁹ ‘Serious danger to health alleviated by action over sewage’, *Chronicle*, 1 September 1962. Clipping on Archives New Zealand file AAFB W3563 632 Box 16 32/175

⁹³⁰ Report of B W James, 13 August 1962, attached to Resident Engineer to District Commissioner of Works, 20 August 1962. Archives New Zealand file AAFB W3563 632 Box 16 32/175

⁹³¹ Medical Officer of Health to Director-General of Health, 12 February 1963. Archives New Zealand file ABKK W4357 889 Box 326 50/856 part 2

purposes'.⁹³² This presumably relates to the regulations introduced in 1963 under the Waters Pollution Act 1953 that permitted the Pollution Advisory Council 'to classify inland and coastal waters according to their established or potential uses'.⁹³³

In August 1964, however, the 'inevitable' duly occurred, when particularly wet weather caused the sewerage system to overflow. Raw sewage was seen both flowing over the land between the treatment plant and the lake as well as down the adjoining water race. The *Chronicle* made an inspection of the discharge alongside Joe Tukapua and J F Moses (who was shortly to become a Muaūpoko domain board representative – see chapter 6). Mayor Wise said he 'had heard no-one raising any objections as far as the lake was concerned until approached by "The Chronicle" for a statement.'⁹³⁴ Soon enough, however, he had to concede what was occurring. He blamed the fact that Levin had grown much more quickly than expected and the existing works had been overloaded sooner than anticipated. He said a scheme to increase the capacity of the treatment plant was under preparation.⁹³⁵

Image 5.1: Raw sewage flooding fields adjoining the lake, August 1964⁹³⁶



More than a week after the inspection made by the *Chronicle*, the discharge continued. The *Manawatu Evening Standard* reported as follows:

⁹³² Medical Officer of Health to Town Clerk, 17 December 1963. Archives New Zealand file ABKK W4357 889 Box 326 50/856 part 2

⁹³³ Denis Ferrier, 'Waters Pollution Act 1953', from An Encyclopaedia of New Zealand, edited by A. H. McLintock, originally published in 1966. Te Ara - the Encyclopedia of New Zealand, updated 23-Apr-09 URL: <http://www.TeAra.govt.nz/en/1966/waterborne-wastes-disposal-of/page-2>

⁹³⁴ 'Sewerage plant extensions in Levin are planned', *Chronicle*, 19 August 1964. Clipping on Archives New Zealand file AAFB W3563 632 Box 16 32/175

⁹³⁵ 'Raw sewage into Lake Horowhenua – Maoris concerned', *Manawatu Evening Standard*, 27 August 1964. Clipping on Archives New Zealand file AAFB W3563 632 Box 16 32/175

⁹³⁶ 'Raw sewage into Lake Horowhenua – Maoris concerned', *Manawatu Evening Standard*, 27 August 1964. Clipping on Archives New Zealand file AAFB W3563 632 Box 16 32/175

Lake Horowhenua is fast becoming a massive oxidation pond for raw sewage. For some time now thousands of gallons of sewage has flowed daily down an open trench discharging into the 1000-acre lake.

Why has this situation been allowed to develop ... because the Levin Borough Council's treatment works is too small to cope with the discharge. This is especially so in winter when the flow through the sewers is accelerated by subterranean waters from the Tararua Range seeping into the borough's sewer network.⁹³⁷

It seems that much of this sewage never entered the treatment plant, but was diverted around it through 'a crude spillway'. The lake trustees resolved to seek an immediate injunction to stop the council from allowing sewage to enter the lake. The *Standard* noted that the court had ordered the council to take remedial action two years earlier, but then 'a dry spell had set in and consequently the situation was no longer a menace'.⁹³⁸

The Medical Officer of Health did not regard the renewed discharge as an acute problem, since – this time – it was taking place well away from houses. He felt that, until the borough council had completed its upgrade, the occasional discharge of raw sewage to the lake would have to be accepted during periods of wet weather.⁹³⁹ He reasoned also that the sewage entering the lake was diluted by both the groundwater infiltrating the pipes and by the volume of water in the races.

Apart from sludge in the creek near the lake edge there is no visible sign of this pollution in the lake. At this discharge point it is well away from the domain area and at present the lake is not used for boating.

As to what effect the sewage would have on the eel life or its habits I do not know. In any case the works out-fall is at this point. Also no-one seems to know to what extent the Maoris rely on the eels and how often they catch them.⁹⁴⁰

The Medical Officer of Health may as well have noted that no-one had bothered to ask Muaūpoko this very question. In any event, he felt it entirely possible that 'the nuisance may solve itself in a few weeks time'. He intended to tell the Supreme Court at the forthcoming hearing to consider Muaūpoko's renewed application for an injunction that 'the lake is only polluted in the area immediately adjacent to the inflow of the water race and the main body of water in the lake would not be affected, and in my opinion no danger to health is being

⁹³⁷ 'Raw sewage into Lake Horowhenua – Maoris concerned', *Manawatu Evening Standard*, 27 August 1964. Clipping on Archives New Zealand file AAFB W3563 632 Box 16 32/175

⁹³⁸ 'Raw sewage into Lake Horowhenua – Maoris concerned', *Manawatu Evening Standard*, 27 August 1964. Clipping on Archives New Zealand file AAFB W3563 632 Box 16 32/175

⁹³⁹ Medical Officer of Health to Director-General of Health, 1 September 1964. Archives New Zealand file AAFB W3563 632 Box 16 32/175

⁹⁴⁰ Medical Officer of Health to Director-General of Health, 8 September 1964. Archives New Zealand file AAFB W3563 632 Box 16 32/175

created'. However, if the outflow was blocked off 'it would create a grave danger to 'health in the township'.⁹⁴¹

It is clear from this that Māori cultural concerns remained invisible to officials. Moreover, the council effectively had a failsafe argument against it ever being prevented from discharging sewage to the lake when its treatment plant could not cope: the alternative, of allowing sewage to flow across suburban paths and lawns, was demonstrably more hazardous to human health. This placed Muaūpoko in a no-win position and ultimately meant the tribe was entirely dependent on the speed with which the council was forced to move to devise a more adequate sewerage scheme.

By the time the Supreme Court considered the application of Joe Tukapua on behalf of the lake trustees, the sewage discharge had ceased. Tukapua's counsel, K H Mason, explained that the 1962 application had been withdrawn upon the undertaking of the borough council to take remedial action, but then there had been a repeat event that winter. Counsel for the borough council, J A L Bennett, put it to Tukapua that in 1962 properties had been inundated with sewage. He asked 'Would you like to see this happen again? Do you not think it is preferable for raw sewage to run into the lake [?]' . Tukapua responded that the council should ensure neither happened, adding 'It is not my job to say where the sewage should run. I just want to see fair play all round.' Re-examined by Mason, Tukapua said the council had failed to consult the trustees before the 1962 or 1964 discharges.⁹⁴²

Mayor Wise agreed with Mason 'that what the council did probably caused considerable distress among the Maori people and was aware the lake had special significance to them'. Wise said that the council had no permission to discharge into the lake but had been told to do so by the Department of Health in 1962. J W Parker for the Department of Health said that people using the lake around the outlet would only endanger their health if they drank the water, although he did concede that 'It was possibly unwise for a person to fish there.' In closing, Mason submitted that 'the relief of private persons was not subservient to public welfare. There had been an invasion of the plaintiff's private right to use and enjoy and take.' In response, Bennett submitted that the reason for the injunction had passed, the council was doing what it could, and the council did not necessarily accept that Māori fishing rights had been interfered with. In essence, Bennett's argument was that Tukapua had complained because his fishing rights had been interfered with. The council 'admitted that sewage flowed into the lake, but denied anything else'.⁹⁴³

The Supreme Court, perhaps inevitably, disallowed the interim injunction the lake trustees had been seeking. It did, however, criticise the council for how long it was taking to fix the

⁹⁴¹ Medical Officer of Health to Director-General of Health, 8 September 1964. Archives New Zealand file AAFB W3563 632 Box 16 32/175

⁹⁴² 'Supreme Court: Maoris seek to stop sewage flowing to Lake Horowhenua', *Manawatu Evening Standard*, 13 October 1964. Clipping on Archives New Zealand file AAFB W3563 632 Box 16 32/175

⁹⁴³ 'Supreme Court: Maoris seek to stop sewage flowing to Lake Horowhenua', *Manawatu Evening Standard*, 13 October 1964. Clipping on Archives New Zealand file AAFB W3563 632 Box 16 32/175

problem. The Town Clerk wrote to the Director-General of Health stating that a loan was needed urgently, for if the lake trustees were successful with another application to prevent the discharge of sewage overflow into the lake there would be ‘serious consequences for the Borough of Levin’.⁹⁴⁴ With regard to the required upgrade, the Assistant Medical Officer of Health told the Director-General of Health that ‘Local Maoris enjoy the fishing rights of the Lake, so the final effluent would have to be such that there would be no noticeable solid matter, and the oxygen demand to be of a level that it would support fish life.’⁹⁴⁵ Here was the perfect opportunity to raise the overriding cultural offence that Mrs Paki had referred to in 1957, but – again – it simply did not occur to officials.

A degree of urgency to make headway was evident in 1965. In January of that year the Medical Officer of Health noted the fear that if work on the new expanded treatment plant did not begin soon there would be ‘further episodes of lake pollution ... with the usual reaction from the Maori people in the area’. He recommended that the loan to the borough council be expedited.⁹⁴⁶ In July 1965 he noted that the council had been loaned £35,000 after the 1962 problems for initial work and in November 1964 applied for a further loan of £123,000 for the treatment plant itself. Given past problems, he wrote, ‘approval of a maximum subsidy based on population size is recommended’.⁹⁴⁷

It seems that the new treatment plant signalled the end to the ineffective soakage pits. As Mayor Laurie Roberts – who, as a drainage contractor, had installed the original treatment plant in 1951⁹⁴⁸ – recalled in 1979,

There is no evidence of them on the site now, but in the 50’s and 60’s much of the area between what I shall describe as the mechanical installations of the present plant and the western boundary of the treatment plant reserve was taken up by a series of very large soak pits into which the treated effluent was discharged.

The underground structure of clean, running shingle was admirable for that disposal purpose, but the incidence of suspended fatty substances in the treated effluent proved to be a factor which had not been given the attention it warranted.

By the end of that decade the reserve had become like an untidy quarry site, new soak pits having to be dug regularly to overcome the continuing problems of fatty deposits creating an impermeable barrier to the free soakage of effluent into the surrounding shingle bed.

...

That disposal difficulty in itself was bad enough, since the Council was rapidly running out of suitable ground for those soak pits.⁹⁴⁹

⁹⁴⁴ Town Clerk to Director-General of Health, 3 November 1964. Archives New Zealand file AAFB W3563 632 Box 16 32/175

⁹⁴⁵ Acting Medical Officer of Health to Director-General of Health, 18 November 1964. Archives New Zealand file AAFB W3563 632 Box 16 32/175

⁹⁴⁶ Medical Officer of Health to Director-General of Health, 29 January 1965. Archives New Zealand file AAFB W3563 632 Box 16 32/175

⁹⁴⁷ Medical Officer of Health to Director-General of Health, 20 July 1965. Archives New Zealand file AAFB W3563 632 Box 16 32/175

⁹⁴⁸ Dreaver, *Levin*, p 243

Roberts explained that ‘eventually consultants were engaged to design an up-to-date plant which in the final construction contained some of the original plant, but incorporated the modern system of oxidation ponds’.⁹⁵⁰

Identifying the scale of pollution

The upgrade to the treatment plant was delayed during 1967 due to insufficient loan money. That September the Medical Officer of Health noted that nothing more had been heard from the tribal committee, and that the lake outlet had now been deepened. He reported that samples had been taken from the lake in February that year to test for bacteria. One, from near the domain, showed 253 coliform per 100ml. (The official standards are discussed below). These were E Coli type 1 of human or animal origin. He observed that the sample had been taken from near a point where a water race discharged and many swans congregated. He raised the issue of lake classification, noting that the issue had been raised with the borough council before but ‘they decided they would be better off without it. At that time they were not aware that they would have to provide for further treatment of their sewage.’ He added that any classification would have to include the Hōkio Stream, where there had been problems for some years with the disposal of sewage from the Hokio Beach Boys’ School (a social welfare home for delinquent boys, with about 60 pupils).⁹⁵¹

The Director of the Public Health Division replied that nothing was to be gained by classifying the waters, as the method of sewage treatment was being improved and most of the Medical Officer of Health’s lake samples had been of bathing standard.⁹⁵² However, the argument that the water quality in the lake was essentially fine was increasingly being brought into question. In April 1969 the Secretary for Internal Affairs wrote to the Medical Officer of Health to advise that his department had conducted some testing of its own. As he explained, the domain board had wanted to deepen the lake to improve facilities for boating and rowing. However, ‘The local Maori people who own the bed of the lake are opposed to any deepening as they fear the effect this would have on beds of freshwater mussels and other fish life in the lake.’ Internal Affairs had been approached by Lands Department officials for an opinion. Tests of the oxygen content of the waters had been carried out ‘and it seems that fairly heavy pollution is occurring’. He then made a rather important statement:

⁹⁴⁹ Submission of L B Roberts to Water Resources Council hearing on preliminary reclassification of Lake Horowhenua to class CX, Levin, 29 November 1979. Archives New Zealand file AAYY W4182 18152 Box 63 32/3/3 part 1

⁹⁵⁰ Submission of L B Roberts to Water Resources Council hearing on preliminary reclassification of Lake Horowhenua to class CX, Levin, 29 November 1979. Archives New Zealand file AAYY W4182 18152 Box 63 32/3/3 part 1

⁹⁵¹ Medical Officer of Health to Director-General of Health, 14 September 1967. Archives New Zealand file ABDZ 16163 H1 W2262 Box 9 126/2/29

⁹⁵² Director, Division of Public Health, to Medical Officer of Health, 11 October 1967. Archives New Zealand file ABDZ 16163 H1 W2262 Box 9 126/2/29

With the increase of Nutrients entering the water it is obvious that if the Lake is to be retained for recreational purposes some method of bypassing the Lake with this effluent will have to be found.⁹⁵³

This was in 1969. As we know, effluent did not cease entering the lake until 1987, nearly two decades later. Yet despite the Crown's knowledge of the harm the borough's effluent was doing the lake, action was painfully slow, for a variety of reasons that are traversed below. For the time being, the Secretary for Internal Affairs added that 'I personally consider this matter requires serious investigation as the health risk to the Maoris who are known to take fish life from the lake for food is need for concern.'⁹⁵⁴

The Health Department then conducted testing of its own. It found three main sources of pollution: Levin's sewage effluent, Levin's stormwater, and 'The Catchment Board drains at the northern and southern ends of the lake which drain many miles of swampy land and carry substantial quantities of farm effluent.' Six sampling points had been used, with the results varying from 3 to 5,500 coliform per 100 ml (and 40 per cent of the samples exceeding the 1000 coliform per 100 ml prescribed by the Water Pollution Regulations). Moreover, 'The total coliform count of the northern and southern catchment drains on one sample exceeded 18,000 per 100 millimetres.'⁹⁵⁵ A Health official in head office queried whether it was appropriate to use the standard for bathing waters to measure the lake, but the Medical Officer of Health pointed out that the lake was used for recreation and children did paddle in it. He added that

At this stage there appears to be no standard from which fresh water shellfish are taken, and it may be that a satisfactory standard would be impractical to meet, but in cases where the Maori people own the bed of a lake such as Lake Horowhenua, and are likely to take shellfish, this matter may warrant consideration.⁹⁵⁶

In June 1970 a senior Health Department official echoed the concern expressed by the Secretary for Internal Affairs the previous year. The Director of the Division of Public Hygiene noted that the pollution of the lake was of particular interest to the department, since it had subsidised the borough council's treatment plant. He added 'Perhaps consideration should be given to removal of the Levin Borough Council's effluent from the Lake.'⁹⁵⁷ That same month the Department of Health carried out further testing of the lake waters. Compared to 1969 there were lower coliform levels, suggesting that the new treatment plant

⁹⁵³ Secretary for Internal Affairs to District Officer of Health, 15 April 1969. Archives New Zealand file ABDZ 16163 H1 W2262 Box 9 126/2/29

⁹⁵⁴ Secretary for Internal Affairs to District Officer of Health, 15 April 1969. Archives New Zealand file ABDZ 16163 H1 W2262 Box 9 126/2/29

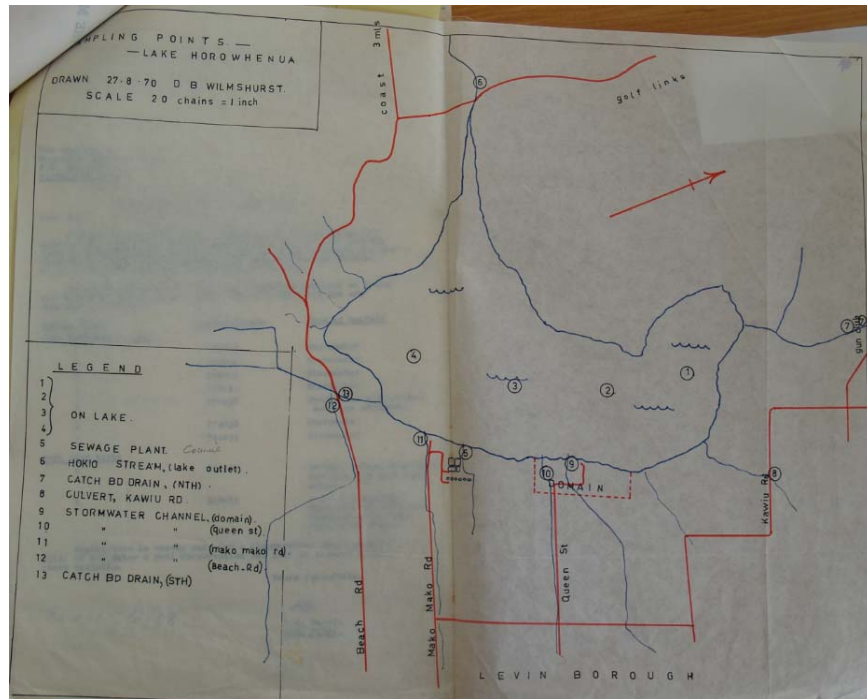
⁹⁵⁵ Medical Officer of Health to Secretary for Internal Affairs, 19 September 1969. Archives New Zealand file ABDZ 16163 H1 W2262 Box 9 126/2/29

⁹⁵⁶ Deputy Director-General of Health to Medical Officer of Health, 29 September 1969, and Medical Officer of Health to Director-General of Health, 9 October 1969. Archives New Zealand file ABDZ 16163 H1 W2262 Box 9 126/2/29

⁹⁵⁷ Director, Division of Public Health, to Medical Officer of Health, 10 June 1970. Archives New Zealand file ABDZ 16163 H1 W2262 Box 9 126/2/29

was ‘now producing an acceptable effluent’. However, the dissolved oxygen content had reduced.⁹⁵⁸

Figure 5.1: 1971 Department of Health lake water sampling survey testing points⁹⁵⁹



More testing was carried out over a six-week period beginning 17 February 1971, with the samples analysed by the Department of Scientific and Industrial Research (DSIR). A University of Canterbury botanist, Elizabeth Flint, tested a sample and detected the presence of two forms of algae, one of which was microcystis, an ‘obnoxious’ pest poisonous to some animals.⁹⁶⁰ In October the Medical Officer of Health reported on the overall testing results to the Director-General. The presence of microcystis ‘was disturbing’. To their credit, though, he noted that the county and borough councils had suggested a ‘C’ classification for the lake (meaning that the waters could be used for public bathing), as they felt the aim should be to retrieve the lake as a recreational amenity for the public. However, he suggested that whether ‘C’ water quality would ever be achievable in warmer weather ‘is at present debateable’.⁹⁶¹ There was some good news, however. The 1971 testing showed improvements in

⁹⁵⁸ Supervising Inspector of Health, for Medical Officer of Health, to Director-General of Health, 9 November 1970. Archives New Zealand file ABDZ 16163 H1 W2262 Box 9 126/2/29

⁹⁵⁹ Plan (in colour) on Archives Central file HDC 00009: 86: 23/4 1976-1989. Black and white copy, attached to Medical Officer of Health to Director-General of Health, 26 October 1971, on Archives New Zealand file ADBZ 16163 H1 W2262 H1W2262 Box 9 126/2/29

⁹⁶⁰ Elizabeth A Flint to Medical Officer of Health, 10 March 1971. Archives New Zealand file ABDZ 16163 H1 W2262 Box 9 126/2/29

⁹⁶¹ Medical Office of Health to Director-General of Health, 26 October 1971. Archives New Zealand file ABDZ 16163 H1 W2262 Box 9 126/2/29

bacteriological counts and dissolved oxygen levels since 1969. The Health Department put this down to the installation of new tertiary treatment units at the sewerage plant in 1969.⁹⁶²

The advance of information about the state of the lake precipitated interest from other agencies. In April 1971 an inspection of the lake was made by an officer of the Nature Conservation Council (NCC), an advisory body established by the Government in 1962. He was accompanied by the chairman and secretary of the domain board and officials from the Lands Department.⁹⁶³ The NCC subsequently sought the results of the Health Department's latest testing of the lake,⁹⁶⁴ and on 30 November 1971 its secretary wrote to the domain board 'strongly' recommending that the board 'start some action if it is desired to prevent further eutrophication of Lake Horowhenua'.⁹⁶⁵ It seems that the domain board failed to heed this advice at the time.⁹⁶⁶

In October 1971, too, the catchment board's Chief Engineer, A G Leenards, produced an influential report about the extent of the lake's problems and how to address them, which was often referred to by those involved in discussions about the lake's pollution. It is worth setting out what Leenards wrote in some detail.

Leenards reported that, over the years, the lake had been subjected to various works that had all had been focused on economic gain, 'but little attention was paid to the fact that the natural balance was slowly destroyed'. The concrete weir had been completed in 1966⁹⁶⁷ and had since maintained the lake at a constant level, but the weir's presence had aggravated the presence of silt, especially around the outlet, which could not be flushed out. The lake was polluted, not just from the effluent, which he described as of a reasonable standard, but also from the stormwater and streams that discharged into it from surrounding farmland. Drawing on the results of the testing of water samples in recent years, Leenards wrote that 'The extent of pollution of lake water varies from acceptable levels, but still not very inviting for swimmers, to conditions under which fish etc. will have a struggle to survive.' A lot of nutrients were entering the lake through the effluent, and together with the silt and sludge this was leading to the presence of a large amount of algae, which discoloured the lake and depleted the oxygen. The bed had once been hard gravel, but was now covered in 'silt, mud, and sludge'. Aspects of the lake's life cycle had been 'destroyed or distorted'. Leenards observed that the Hōkio Stream also had problems, as parts were swampy and prone to flooding:

⁹⁶² Director, Division of Public Hygiene, to Secretary, NCC, 8 November 1971. Archives New Zealand file ABDZ 16163 H1 W2262 Box 9 126/2/29

⁹⁶³ Paper produced for NCC meeting of 16-17 November 1971 by C L Purdie, advisory officer, 21 October 1971. Archives New Zealand file AAZU W3619 Box 13 31/11/71

⁹⁶⁴ See, for example, Secretary, NCC, to Director-General of Health, 13 July 1971. Archives New Zealand file ABDZ 16163 H1 W2262 Box 9 126/2/29

⁹⁶⁵ Secretary, NCC, to Secretary, Horowhenua Lake Domain Board, 30 November 1971. Archives New Zealand file AAZU W3619 Box 13 31/11/71

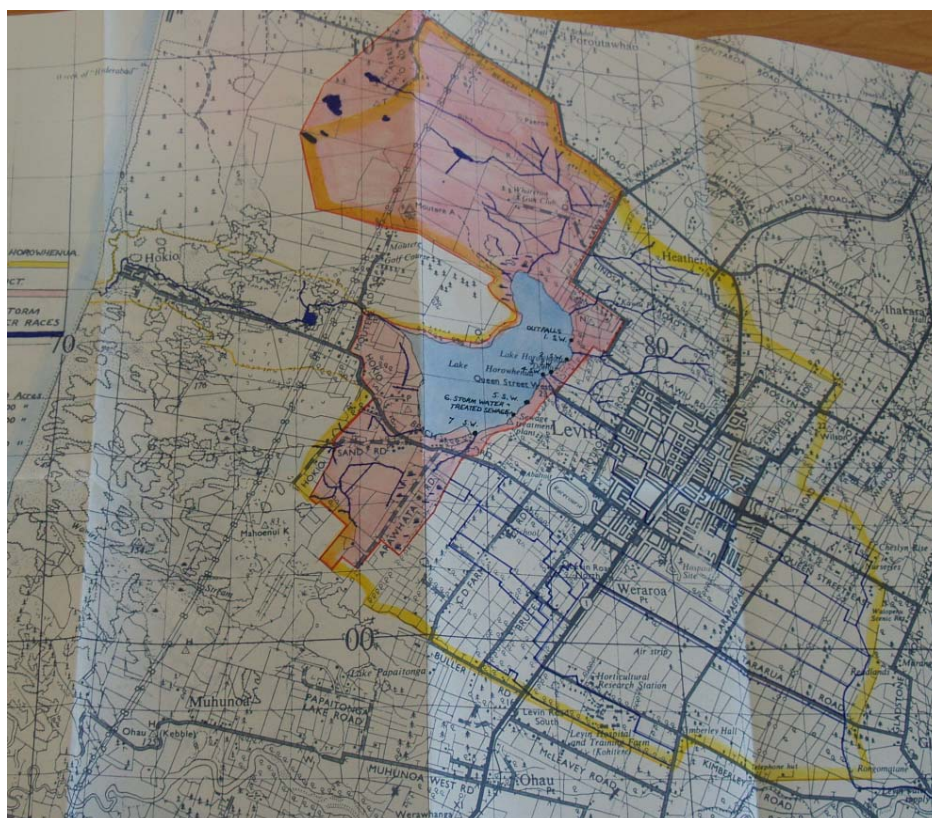
⁹⁶⁶ Paper produced for NCC meeting of 17 September 1975 by C L Purdie, advisory officer, 29 August 1975. Archives New Zealand file AAZU W3619 Box 13 31/11/71

⁹⁶⁷ Leenards thought 1967.

The stretch of the stream near Hokio Beach is not a very pretty picture, with some pollution, overgrown trees etc. Access to the beach is often obstructed and blocked by the changing meander pattern of the stream mouth.⁹⁶⁸

Turning to the question of how to rectify the situation, Leenards suggested shifting the concrete weir downstream and allowing the silt therefore to build up on a narrower stretch of water where it could more easily be removed through sluicing or through the use of an excavator. He added that ‘Special arrangements will be made for the use and operation of the eel weirs in the stream.’ Removing silt would also make the lake more attractive, through its clear bottom, and better suited for shellfish. Greater depth would also be advantageous for boating and mean that the lake would be more likely to ‘self-purify’. With less sludge to store nutrients, there would be less algae. Leenards also thought that silt could be removed through the use of a small suction dredge, which would operate alongside a barge in the middle of the lake. Around the margins, however, the silt could be unloaded straight to land. He estimated it would take six or seven years to remove all the silt.⁹⁶⁹

Figure 5.2: Lake Horowhenua catchment and Hokio Drainage District boundaries, 1980s⁹⁷⁰



⁹⁶⁸ ‘Preliminary Report on the Conditions of Lake Horowhenua’, report by Leenards to Chairman, Manawatu Catchment Board, 1 October 1971. Archives New Zealand file AAZU W3619 Box 13 31/11/71

⁹⁶⁹ ‘Preliminary Report on the Conditions of Lake Horowhenua’, report by Leenards to Chairman, Manawatu Catchment Board, 1 October 1971. Archives New Zealand file AAZU W3619 Box 13 31/11/71

⁹⁷⁰ Manawatu Catchment Board plan 1795. Archives Central file HDC 00018: 97: 23/6/1 part 2 1987-1988

Leenards also felt it important to note that the entire catchment of 15,400 acres needed addressing, not just the comparatively small (4,800-acre) Hokio Drainage District. Hill erosion, for example, increased the amount of silt in the lake, and of course the water races administered by the county council still discharged into it. The Hōkio Stream needed improvement through ‘regrading, cleaning and straightening’. In sum, Leenards proposed that all streams and drains entering the lake could first be diverted to oxidation ponds; the concrete weir to control the lake level could be moved; the lake could be dredged; the outlet stream could be cleaned and re-graded; and the drainage district could be extended to cover the entire catchment. Leenards estimated that the total cost would be \$404,000, spread over several stages (which equates to around \$5.3m in 2015 money).⁹⁷¹

The following month the secretary of the catchment board wrote to the chairman, noting that the board had no financial resources of its own, and the work Leenards proposed would have to be paid for out of local rates or government subsidy. However, he noted:

It is the Government’s view that the alleviation of polluted areas is the responsibility of the local population and consequently the prospects of Government assistance is not hopeful.⁹⁷²

He calculated that the work could be undertaken over a ten-year period and paid for by way of a 6 per cent increase in borough council rates. He added that ‘The figures could be placed another way in that everyone in the area pays \$2 per head per annum to clean up pollution, is this too much to ask if a fine local amenity is created.’⁹⁷³ The board’s secretary had identified perhaps the key question facing the lake’s restoration: who would pay?

The search for a solution

It is unclear whether raw sewage found its way into the lake in the years after 1964. In January 1971 the Medical Officer of Health reported that

Overflowing sewage as a result of the ingress of underground water into sewers has been experienced in certain areas of Levin which includes a low-lying area of Cambridge Street for some years. ... The problem has occurred at four yearly intervals[.]⁹⁷⁴

It is possible that gravity and the water races combined to send this waste into the lake. Certainly, in 1974 the Muaūpoko members of the domain board were convinced that raw sewage was entering the lake, and suspected it came from the treatment plant. Mayor (and

⁹⁷¹ ‘Preliminary Report on the Conditions of Lake Horowhenua’, report by Leenards to Chairman, Manawatu Catchment Board, 1 October 1971. Archives New Zealand file AAZU W3619 Box 13 31/11/71. The calculation was made using the Reserve Bank inflation calculator at

http://www.rbnz.govt.nz/monetary_policy/inflation_calculator/.

⁹⁷² Secretary/Treasurer, Manawatu Catchment Board, to Chairman, Manawatu Catchment Board, 15 November 1971. Archives New Zealand file AAYY W4182 18152 Box 63 32/3/3 part 1

⁹⁷³ Secretary/Treasurer, Manawatu Catchment Board, to Chairman, Manawatu Catchment Board, 15 November 1971. Archives New Zealand file AAYY W4182 18152 Box 63 32/3/3 part 1

⁹⁷⁴ Medical Officer of Health to Director-General of Health, 26 January 1971. Archives New Zealand file AAFB W3563 632 Box 16 32/175

board member) Roberts claimed that it was impossible for raw sewage to escape the plant. Board member John Hanita Paki claimed he had ‘seen the discharge with his own eyes’ one morning, and J F Moses said that, despite being shown around the plant, he ‘supposed that under adverse conditions’ an escape might be possible. The board minutes record the chairman, W A Harwood, saying that ‘the statements made concerning untreated effluent entering the lake were completely unsupported’ and ‘the members of the Board should accept the Borough Council’s assurance that this had not occurred’.⁹⁷⁵

The Muaūpoko members evidently did not accept the council’s word on it. Moses and Joe Tukapua were reported to have informed the New Zealand Māori Council in July 1975 that raw sewage was being discharged to the lake. This was conveyed to the NCC by one of its members.⁹⁷⁶ The NCC were advised, however, that the assertion was incorrect:

No raw sewage is entering the lake from the Levin Borough Sewage Treatment Plant. The design makes this impossible. It has a three stage system with no emergency overflow into the lake.⁹⁷⁷

By 1975 the domain board as a whole had become concerned about the worsening state of the lake. In May that year it approached the Commission for the Environment – which had been established in 1972 – to seek its technical assistance.⁹⁷⁸ One of the commission’s officers, Alasdair Hutchison met the board at the lake shortly after. He noted that the lake received only a limited amount of clean water, with most of its inflow coming from the sewage effluent, stormwater, and two farm drains; and in summer so little water entered the lake that the outlet ran dry as the water could not get past the weir. Hutchison’s implication seemed to be that, if all sources of polluted water were cut off from entering the lake, it would simply become a stagnant pond. He felt that Leenards’ suggestion that the weir be relocated downstream would not solve the underlying problems, and gave particular consideration to the Māori perspective:

The situation is complicated because the local Maori tribe have exclusive fishing rights to the lake and are concerned to see that the fishing is not jeopardized by any works. They consider the fishing has deteriorated over the years. In addition the Maoris own the bed of the lake so their permission is required before nutrient-rich sediment could be excavated. The Maoris are unhappy about the existing weir because it prevents the fish coming up the stream into the lake. (The proposed new weir has provision to overcome this problem.) They are also unhappy about the pollution of the lake because it makes the fresh water mussels (Kakahi) unsafe to eat. (The Health Dept. have issued warnings but these have largely been ignored.)

⁹⁷⁵ Minutes of meeting of the Horowhenua Lake Domain Board, 28 November 1974. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

⁹⁷⁶ John Bennett, Havelock North, to ‘Stafford’, 8 July 1975. Archives New Zealand file AAZU W3619 Box 13 31/11/71

⁹⁷⁷ Paper produced for NCC meeting of 17 September 1975 by C L Purdie, advisory officer, 29 August 1975. Archives New Zealand file AAZU W3619 Box 13 31/11/71

⁹⁷⁸ C A McIlroy, Chairman, Domain Board, to Commissioner for the Environment, 5 May 1975. Archives New Zealand file AAUM W4043 Box 221 NRS 3/6/Z part 1

Eels and mussels are the two principle food sources, although in earlier days carp and trout were also important.

The lake lies in Horowhenua County although it is on the outskirts of Levin Borough. Neither the County nor the Borough are happy to spend money on its improvement until the Maoris relinquish some of their exclusive rights to it. (It has been suggested that the Maoris might lease the lake bottom to the Crown in perpetuity.)⁹⁷⁹ [Emphasis in original.]

Hutchison concluded that no engineering work should be undertaken until the lake had been properly studied.⁹⁸⁰

The reference to the idea of a lease of the lakebed to the Crown appears to have stemmed from the increasingly common view among officials that the divided administration of the lake – with the domain board, the lake trustees, and the catchment board all having formal roles – was impeding plans for restoration. On 30 June 1975 the secretary of the domain board advised the catchment board that the lake trustees were being approached

to ascertain whether they would be amenable to a proposal that the Domain, Lake bed, 1 chain strip and dewatered area be administered as an entity. The idea behind this is that unified control would facilitate effective action to improve the Lake.⁹⁸¹

The domain board secretary also asked that the catchment board undertake a water quality investigation. He noted that an unlicensed abattoir had apparently begun operating at the northern end of the lake and was polluting the water with blood and offal. He also asked for a view on diverting the effluent away from the lake, either direct to the Hōkio Stream or on to land. The domain board was now in favour of a ‘CX’ classification for the lake, the ‘X’ referring to waters sensitive to enrichment.⁹⁸² This classification would effectively compel the borough council to discharge its effluent elsewhere.

A further push for ‘unified control’ came from the NCC. In September 1975 the NCC was told by its advisory officer, C L Purdie, that

Council in 1971 strongly recommended that the Domain Body act as a coordinating body to start some action to ensure clearing the lake of pollution. As the bed of the lake is owned by the Maoris it is suggested that the Board now requires administrative control over the bed of the lake and Hokio stream to the weir enabling it to undertake suitable management. It may

⁹⁷⁹ File note by Alasdair Hutchison, 30 May 1975. Archives New Zealand file AAUM W4043 Box 221 NRS 3/6/Z part 1

⁹⁸⁰ File note by Alasdair Hutchison, 30 May 1975. Archives New Zealand file AAUM W4043 Box 221 NRS 3/6/Z part 1

⁹⁸¹ R J Franks, Secretary, Horowhenua Lake Domain Board, to Chair, Manawatu Catchment Board and Regional Water Board, 30 June 1975. Archives New Zealand file AAUM W4043 Box 221 NRS 3/6/Z part 1. The board chairman wrote to the secretary of the lake trustees to this effect on 8 July 1975. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

⁹⁸² R J Franks, Secretary, Horowhenua Lake Domain Board, to Chair, Manawatu Catchment Board and Regional Water Board, 30 June 1975. Archives New Zealand file AAUM W4043 Box 221 NRS 3/6/Z part 1

well be argued that this will affect fishing rights, but as the water is now so polluted that nothing should be taken for food, the argument is not valid.⁹⁸³

On 8 September 1975 the secretary of the NCC wrote to the domain board in a similar vein, recommending that the sewage effluent and farm drains be diverted to the Hōkio Stream below the weir and the beds of the lake and stream be dredged. He also emphasised that the administration of the ‘entire area’ should be under the control of one body.⁹⁸⁴

Purdie’s advice to the NCC was quite remarkable, for two reasons. First, the belief was that united governance meant the Muaūpoko owners would essentially fade out of the picture. Secondly, Purdie reasoned that it would not matter if Muaūpoko lost their fishing rights because the fish were not fit to eat anyway. The attitude about lake governance can also be contrasted with that of the Minister of Lands a decade later, whose instinct was that the benefits of unified control would probably mean that the lake trustees – as owners of the lake – would need the overarching control themselves (see chapter 6).

As it happened, fish from the lake were certainly still being consumed, perhaps only with temporary intervals when dangerous levels of pollution caused rāhui to be put in place. The Secretary for Internal Affairs’ 1969 remark that Māori were ‘known’ to eat fish from the lake is quoted above. Other evidence abounds: Joe Tukapua was confronted by a fisheries officer at the lake in April 1974 when about to set nets to catch eels (see chapter 6); in May 1975 Hutchison noted that the Health Department’s warnings not to consume kakahi had ‘largely been ignored’;⁹⁸⁵ in 1981 J F Moses told a meeting of the domain board ‘that despite pollution the Maori people still ate the fish from the lake’;⁹⁸⁶ and, in 1984, Hohepa Warena Kerehi, a lake trustee, told the *Evening Post*:

That little bog out there, some people call it. I call it my food source because I still eat the eels, the kakahi, the carp, the watercress that comes through.⁹⁸⁷

Despite this ongoing harvest, there is no record of any specific investigation into the health effects on Māori of consuming food from the lake.

In 1975 the DSIR was considering its approach to the lake. Bob McColl of the Soil Bureau told Helen Hughes⁹⁸⁸ at head office that the lake was eutrophic and thus susceptible to toxic

⁹⁸³ Paper produced for NCC meeting of 17 September 1975 by C L Purdie, advisory officer, 29 August 1975. Archives New Zealand file AAZU W3619 Box 13 31/11/71

⁹⁸⁴ Secretary, NCC, to Chairman, Horowhenua Lake Domain Board, 8 September 1975. Archives New Zealand file AAZU W3619 Box 13 31/11/71

⁹⁸⁵ File note by Alasdair Hutchison, 30 May 1975. Archives New Zealand file AAUM W4043 Box 221 NRS 3/6/Z part 1

⁹⁸⁶ ‘Lake owners change minds on use of speed boats’, *Chronicle*, 21 August 1981. Clipping on Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

⁹⁸⁷ ‘Troubled waters’, *Evening Post*, 1 December 1984. Clipping on Archives New Zealand file AAUM W4043 Box 221 NRS 3/6/Z part 1

⁹⁸⁸ Hughes would later (from 1987 to 1996) serve as New Zealand’s first Parliamentary Commissioner for the Environment.

algal blooms, high sedimentation, ‘unsightly and unsavoury waters’, and so on. He believed that ‘the chances of restoring the lake to oligotrophic conditions, where none of these could arise, are very slim and would undoubtedly require massive modifications to present catchment use’. More realistic was to aim for eutrophic or mesotrophic conditions in which aquatic animals could grow, algal blooms were rare, and swimming was possible. However, since the lake was so shallow, improvements in water clarity would probably promote excessive weed growth. McColl thought the sediment should ideally be removed but doubted that relocating the weir would make any difference. He favoured stock being kept out of all waterways throughout the catchment and swamps being retained for coarser solids to settle in. It was imperative, he said, to divert the effluent away from the lake, address the issue of cowshed waste, and control use of fertilisers around waterways. He also thought a technical advisory committee should be established.⁹⁸⁹

Hughes conveyed these views to the Commissioner for the Environment, adding that a unified body should control the lake and its catchment. She noted that massive loads of phosphorus and nitrogen were entering the water via the effluent and other sources, and this was a particular problem in summer when there was no outflow. Half of all water entering the lake in summer came from the effluent. The lake’s nutrient concentrations exceeded those of other notoriously polluted lakes, such as Ellesmere and the mean for seven of the Rotorua lakes. She concluded that ‘There does not appear to be any need for a further research programme to indicate what is wrong with Lake Horowhenua.’⁹⁹⁰

The DSIR assessment was typical of the way most Government officials treated the lake’s environmental problems at the time. The issues were analysed and means identified to address them, but absent was much if any consideration of where the lake’s owners fitted into the picture. To an extent Muaūpoko were being pushed out of the way in plans for the lake’s restoration, just as they had been in its pollution.

At the same time, though, there was also a sense on the part of some officials that local government did not understand the serious situation facing the lake. At the end of October 1975 Hutchison noted to the District Commissioner of Works and Development that the borough council’s ‘Preliminary Statement of Objectives and Policies’ had made no mention of Lake Horowhenua but had contemplated greatly increased residential and industrial development. He conveyed the commission’s recommendation that a condition of any further expansion by the borough council should be either to strip its effluent of nutrients or to remove its discharge from the lake entirely.⁹⁹¹ The catchment board’s Water Resources Officer, Kevin Currie, was similarly critical, observing that the borough council’s document was ‘very general’ and ‘short sighted’. He went as far as to conclude that

⁹⁸⁹ R H S McColl, DSIR Soil Bureau, to Helen Hughes, DSIR head office, 4 August 1975. Archives New Zealand file AAYY W4182 18152 Box 63 32/3/3 part 1

⁹⁹⁰ H R Hughes, for Director-General, DSIR, to Commissioner for the Environment, 12 August 1975. Archives New Zealand file AAUM W4043 Box 221 NRS 3/6/Z part 1

⁹⁹¹ Hutchison to District Commissioner of Works and Development, 30 October 1975. Archives New Zealand file AAUM W4043 Box 221 NRS 3/6/Z part 1

While the Statement is designed to be general in nature, the fact that Lake Horowhenua is not mentioned at all is disturbing, particularly in view of the significant effect the Borough is having and will continue to have on the lake, plus the recreational amenity it provides for ratepayers.⁹⁹²

In October 1975 the catchment board formulated its plan to investigate the lake's quality. Currie explained that hydrological, chemical, and biological testing would be done, and he hoped that funding for it would be found:

A study of this nature has been repeatedly requested by many bodies having an interest in the lake. Now that a comprehensive investigation programme has been prepared, it is hoped that it will not be curtailed by a lack of finance and co-operation.⁹⁹³

Hughes, however, repeated her belief to Hutchison that she regarded further research as unnecessary. As Hutchison noted:

She is of the view that no further research needs to be done & that the program outlined by the Manawatu Regional Water Board is largely unnecessary. She considers that the most important thing is to get the Effluent from Levin Borough out of the lake pronto.⁹⁹⁴
[Emphasis in original.]

Hutchison told her that the Commission for the Environment had written to the water board suggesting that the Water Resources Council might consider placing an 'X' classification on the lake.⁹⁹⁵ Shortly after this, the Commissioner for the Environment wrote to the Chairman of the National Water and Soil Conservation Authority on the subject:

I have been advised orally that the Eutrophication Committee (DSIR) is of the opinion that no further research needs to be done on this lake. It therefore follows that the programme of study suggested by the Manawatu Regional Water Board may not be necessary.

What does seem to be needed is some action to prevent further possible deterioration of the lake, and it has been suggested that removal of the Levin Borough sewerage plant effluent is the most important and urgent step.⁹⁹⁶

Classifying the lake as 'X' 'would probably hasten resolution of the sewage problem'.⁹⁹⁷

⁹⁹² K J Currie, Water Resources Officer: 'Levin Borough: Review of District Scheme', 4 December 1975. Currie's report was adopted by the board – see Currie to Hutchison, 26 January 1976. Archives New Zealand file AAUM W4043 Box 221 NRS 3/6/Z part 1

⁹⁹³ K J Currie, Water Resources Officer, Manawatu Catchment Board, 'Suggested Programme for the Investigation of Lake Horowhenua', 9 October 1975. Archives New Zealand file AAYY W4182 18152 Box 63 32/3/3 part 1

⁹⁹⁴ File note by Alasdair Hutchison, 1 December 1975. Archives New Zealand file AAUM W4043 Box 221 NRS 3/6/Z part 1

⁹⁹⁵ File note by Alasdair Hutchison, 1 December 1975. Archives New Zealand file AAUM W4043 Box 221 NRS 3/6/Z part 1

⁹⁹⁶ W J Wendelken, for Commissioner for the Environment, to Chairman, National Water and Soil Conservation Authority, 8 December 1975. Archives New Zealand file AAUM W4043 Box 221 NRS 3/6/Z part 1

As per DSIR's suggestion in August, a Lake Horowhenua Technical Committee was convened by the domain board, and held its first meeting on 6 November 1975. It was presided over by C A McIllroy, the chair of the domain board, and comprised Hughes, Borough Engineer K T Dee, Currie, and W A Walker of the county council. The meeting noted that the Lands Department had approached the lake trustees and asked whether they would be agreeable to the lakewater, bed, chain strip, dewatered area, Hōkio Stream, and the stream's bed and chain strip being 'administered as an entity'. No reply had been received from the trustees. The committee was told that, if the trustees agreed to this, the domain board would be able to control access to the chain strip and prevent stock grazing. This clearly showed what the euphemism 'administered as an entity' meant: a full cession of any control of the lake or its environs by the owners to the domain board. However, on the subject of dredging the committee did note that the trustees' consent 'would, in the first instance, be required before any such work was undertaken'.⁹⁹⁸

After the meeting Hughes told McIllroy that 'It should be clear to the Borough Council that restoration of Lake Horowhenua is dependent on an alternative scheme for sewage effluent treatment or disposal.'⁹⁹⁹ Dee was invited by the committee to analyse the alternatives. He identified three: nutrient-stripping before entry to the lake, which he considered very expensive and not entirely effective; spray irrigation of the effluent to land, which he considered taking place only adjacent to the treatment plant; and piping the effluent either around or across the lake to the Hōkio Stream. He did not mention the potential views of the lakebed owners in regard to laying a pipe across the lakebed.¹⁰⁰⁰

In February 1976, Dr Eddie White – of the Freshwater Section in the Ecology Division of DSIR – prepared a report on the lake. He estimated that the low level of 'throughput' meant that waters stayed in it for 0.18 years. As a result, the minimum load of phosphorus that would create eutrophic conditions was 1,465 kg per year. However, at the time the lake was receiving annually 8,030 kg from the sewage effluent and at least 1,142 kg from other sources. White concluded that the sewage effluent had to be piped round the lake and discharged into the Hōkio Stream as the first step in the lake's restoration. Since the lake

⁹⁹⁷ W J Wendelken, for Commissioner for the Environment, to Chairman, National Water and Soil Conservation Authority, 8 December 1975. Archives New Zealand file AAUM W4043 Box 221 NRS 3/6/Z part 1

⁹⁹⁸ Minutes of the inaugural meeting of the Lake Horowhenua Technical Advisory Committee, 6 November 1975. Archives New Zealand file AAZU W3619 Box 13 31/11/71

⁹⁹⁹ Hughes to McIllroy, 11 November 1975. Archives New Zealand file AAYY W4182 18152 Box 63 32/3/3 part 1

¹⁰⁰⁰ Dee, 'Report to the Technical Advisory Committee on Lake Horowhenua', no date. Archives New Zealand file AAYY W4182 18152 Box 63 32/3/3 part 1. Another option was suggested by a Palmerston North resident in March 1976: a P J Murphy proposed to the borough council that the blue-green algal growth could be controlled by the introduction of a flock of African pink flamingos, which would eat it. P J Murphy to mayor and borough councillors, 23 March 1976. Archives New Zealand file AAYY W4182 18152 Box 63 32/3/3 part 1. The technical advisory committee considered the suggestion at its 11 May 1976 meeting but felt quarantine rules made it impractical. Minutes of Lake Horowhenua Technical Advisory Committee meeting, 11 May 1976. Archives New Zealand file AAYY W4182 18152 Box 63 32/3/3 part 1. A 1986 *Dominion* story that crocodiles were to be introduced to a fenced-off section of the lake was an April Fools' Day joke. 'First crocodile shipment due', *Dominion*, 1 April 1986. Clipping on Archives New Zealand file AANS W5883 619 Box 41 8/3/144/24

level had to be maintained by statute, he thought the discharge could be made above the existing weir with a new, slightly lower weir placed a little upstream.¹⁰⁰¹ Again, the assumption was that the stream could simply receive the effluent instead. The unfounded conviction that this option was always available was a significant reason why the diversion of effluent away from the lake took so many years, as we shall see.

At the technical advisory committee meeting of 11 May 1976 it was noted that the domain board was continuing to press for the unified control of the lake and stream and their environs, but the lake trustees had still not responded. The trustees were to be invited to the domain board's meeting on 10 June, and the support of both the MP for Southern Maori and the Minister of Maori Affairs for the proposal would be requested.¹⁰⁰² The meeting also heard that the borough council would not be prepared to divert its effluent unless other organisations contributed to the cost. The committee considered how to address the weed problem before the national rowing championships were held in the lake in early 1977. Sprays, mechanical dragging, and the introduction of grass or silver carp were all discussed. As a further alternative to nutrient-stripping or diversion of the effluent away from the lake, 'the Committee felt that a corner of the Lake could be sacrificed and used as an extra oxidation pond'.¹⁰⁰³

Image 5.2: Warning sign being erected at the lake, March 1976¹⁰⁰⁴



¹⁰⁰¹ Hughes to Secretary, Horowhenua Lake Domain Board, 4 May 1976. Archives New Zealand file AAYY W4182 18152 Box 63 32/3/3 part 1

¹⁰⁰² Appendix A to agenda for 11 May 1976 Lake Horowhenua Technical Advisory Committee meeting. Archives New Zealand file AAYY W4182 18152 Box 63 32/3/3 part 1

¹⁰⁰³ Minutes of Lake Horowhenua Technical Advisory Committee meeting, 11 May 1976. Archives New Zealand file AAYY W4182 18152 Box 63 32/3/3 part 1

¹⁰⁰⁴ Print on Archives Central file HRC 00024: 33/9/6 part 2

On 12 August 1976 an important meeting took place in Levin to learn the progress of the regional water board's investigation into the lake's quality. It was attended by five representatives from the regional water board, four from the catchment board, five from the county council, six from borough council, six from the domain board (including J F Moses), and five of the lake trustees (Nora McMillan, Ritihira H Paki, R Hunia, Joe Tukapua, and Thompson Tukapua). The meeting began with Currie giving a summary of his report. Mayor Roberts said that, 'since 1967 the control of the lake has been chaotic and confusing with 3 bodies controlling the lake and while this position continues we will never solve the problems'. He warned that the borough council 'would not commit itself to large sums of money until all other groups so co-operate'.¹⁰⁰⁵

The Muaūpoko perspective was put next. The minutes record that

The Maoris were hurt because of what is being done to the lake. Fishing rights had gone because pollution is poisoning the fish. They would welcome the facts being brought to them at the Pa. ... Their concern was also expressed that the lake now covered 230 acres less. The meeting was advised that if the lake title was tampered with it would create a war.¹⁰⁰⁶

The meeting discussed the sums of money involved in restoring the lake and was 'in favour of holding the situation – we cannot restore what is lost. Therefore a moderate scheme was needed.' Three resolutions were passed: first, the Water Resources Council should be asked about the cost of removal of all pollutants discussed in Currie's report. Secondly, a steering committee should be formed with one member from each organisation represented at the meeting. It would look into the problems in Currie's study and report to the Manawatu Regional Water Board. Thirdly, it was carried

That this meeting of interested parties make representation to the Minister of Works setting out the need for amending the Lake Horowhenua Domain Board Act to exclude their control from aspects of the waters of the lake and that the Manawatu Catchment Board be the effective body and any re-written Act completely protect the Maori owners.¹⁰⁰⁷

At the same time, it was agreed in discussion that the catchment board should be 'in complete collaboration with the Maori Owners'.¹⁰⁰⁸

It would be wrong to conclude that Muaūpoko were comfortable with these developments. While the tribe may appear to have agreed to co-operate with the catchment board to rectify the lake's problems, it is likely that its representatives had a difficult task at the meeting of

¹⁰⁰⁵ Minutes of the 12 August 1976 meeting. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹⁰⁰⁶ Minutes of the 12 August 1976 meeting. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹⁰⁰⁷ Minutes of the 12 August 1976 meeting. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹⁰⁰⁸ Minutes of the 12 August 1976 meeting. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

maintaining their interests. In the face of overwhelming feeling that the catchment board should have overarching control, Muaūpoko seem at least to have won an agreement that the board could not act without their consent. In April 1977 the Commissioner of Crown Lands summed up the outcome of the meeting like this:

It is anticipated, if the Act is amended, that the Water Board, in collaboration with the Maori trustees could take effective steps to protect the Lake from further deterioration. In this respect any rewritten Act would need to protect the rights presently enjoyed by the Maori people and to provide for the Domain Board's lessees who use the Lake for aquatic activities being allowed to continue doing so.¹⁰⁰⁹

The true Muaūpoko sentiment was perhaps demonstrated a short time later. Joe Tukapua was 'so angered by the tenor of the meeting he decided it was high time the Maoris united and told the pakehas the owners would be the ones to decide'. He announced that he was calling his own meeting so that the lake's owners could decide what to do about the lake. He said that 'the Pakeha-dominated authorities have "called the shots" for too long so he plans to get the Maoris behind him to resolve the issue'. He said it was 'time the local bodies realised the Maoris have the last say in the lake's future'. He blamed the borough council 'for the putrid state of the dying lake and believes it is trying to avoid its responsibilities'. The lake had been polluted and choked with weed and the council did not 'even consider that they have ruined what has been an important source of food to us for many years'. He explained that, at the meeting on 12 August, 'the mayor, Mr L. B. Roberts, suggested it should be handed over to the catchment board. But we're not giving up the title. It's a cunning move on their part to get both feet in'. Tukapua advertised that the meeting would discuss whether to 'restore the lake, fill it in or sell it'. He had done this 'to "shake" the Maoris into moving on the issue'.¹⁰¹⁰

When the steering committee held its first meeting on 30 September 1976 no representative of the lake trustees attended. The steering committee reconstituted the domain board's technical committee with the same personnel to act as an advisory body to it.¹⁰¹¹ The technical committee met on 3 November. It thought that 'a combination of Land Disposal with a discharge into the Hokio Stream may be a suitable method of disposal of the effluent. It was noted that the Hokio Stream is extensively used for fishing purposes and that these interests would have to be borne in mind'.¹⁰¹²

At the steering committee's second meeting, on 14 December 1976, Joe Tukapua did attend on behalf of the lake trustees (by this stage, as we shall see, he had also become a member of the domain board). He explained that 'the Maori people had held a meeting and discussed the

¹⁰⁰⁹ Commissioner of Crown Lands to Director-General of Lands, 14 April 1977. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹⁰¹⁰ 'Lake state irks owner', *Dominion*, 25 August 1976. Clipping on Archives New Zealand file AAUM W4303 Box 221 NRS 3/6/Z part 1

¹⁰¹¹ Minutes of the meeting of the Lake Horowhenua Steering Committee, 30 September 1976. Archives New Zealand file AAYY W4182 18152 Box 63 32/3/3 part 1

¹⁰¹² Minutes of the meeting of the Lake Horowhenua Technical Committee, 3 November 1976. Archives New Zealand file AAYY W4182 18152 Box 63 32/3/3 part 1

matter’ and ‘they felt that the effluent entering the lake had to go’. According to the meeting’s minutes, he had an alternative solution to offer:

Mr Tukapua advised that the Maori people have a large area of land in the Hokio area and they would be prepared to give a portion of this land for land-disposal of the Borough effluent. It should be possible to pipe it from there to the sea if necessary.¹⁰¹³

The borough council’s representative, D H Tomlinson (also then a domain board member) raised a concern about the cost, and said the Government would have to help fund it. The possibility of a loan was raised with ‘rating over a wide area’. In any event, the committee ‘placed on record its gratitude to the Maori Trustees for the generous offer’.¹⁰¹⁴ In March 1977 the Commissioner of Crown Lands also wrote to Tau Ranginui to thank him for ‘the willingness of your self and your co-owners to make the Hokio A Block available for land disposal of the Levin Borough’s effluent from the sewerage plant’.¹⁰¹⁵

At this point in time, therefore – some seven years after the Secretary for Internal Affairs had noted that the effluent would have to be removed from the lake and five years after water testing had revealed the extent of the lake’s problems – a solution had been proposed by Muaūpoko themselves that would be acceptable to all parties. The only problem was who was going to pay for it – and until that was resolved, the official preference remained discharge direct to the Hōkio Stream.

Reclassification and the Hōkio Stream

In early 1977 the Superintendent of Wastewater Treatment at the Ministry of Works and Development noted the heavy phosphorus load entering the lake via the sewage effluent. He accepted that the effluent had to be diverted but was unconvinced of the merits of land irrigation. This required not only a large land area but also the added expense of pumping the waste to the disposal point. From his perspective:

The diversion of the effluent to the Hokio Stream would be very acceptable as an economic and engineering solution to the problem, but would cause an emotional outburst from the local people. The only change is the loss of any benefit obtained by holding the effluent in the lake before it discharges into the stream. This would mainly affect the bacteriological quality of the stream; the B.O.D. [biochemical oxygen demand] and suspended solids would remain about the same, as the quality of water in the lake would be higher than at present.¹⁰¹⁶

¹⁰¹³ Minutes of the meeting of the Lake Horowhenua Steering Committee, 14 December 1976. Archives New Zealand file AAYY W4182 18152 Box 63 32/3/3 part 1

¹⁰¹⁴ Minutes of the meeting of the Lake Horowhenua Steering Committee, 14 December 1976. Archives New Zealand file AAYY W4182 18152 Box 63 32/3/3 part 1

¹⁰¹⁵ Commissioner of Crown Lands to Tau Ranginui, 29 March 1977. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹⁰¹⁶ Superintendent Wastewater Treatment, Ministry of Works and Development, to Public Health Engineer, Ministry of Works and Development, 26 January 1977. Archives New Zealand file ABKK W4357 889 Box 326 50/856 part 2

He noted that the borough council could also try removing the phosphorus in its treatment plant. Regardless, he considered that ‘As soon as information is available that confirms the future policy a public relations operation should be mounted, to enlighten the people liable to be affected.’¹⁰¹⁷

This attitude rather echoed that of Vickerman and Lancaster in 1948, that aversion to the discharge of sewage effluent to waterways was not based on rational thought. But it was not just engineers who held such narrow views. Health officials also tended to regard waterways as convenient ways of diluting waste or carrying it away from centres of population where it could form a health hazard. In 1972, for example, the Director-General of Health had reacted indignantly to opposition to the use of lagoons north of Waikanae as oxidation ponds. As he wrote at the time, with reference to an unfavourable newspaper article,

The rationale of converting an area of useless swampland with negligible economic potential into a much-needed public utility is one which deserves to be highly commended.

... Far from causing ‘suffering to present and future generations of New Zealanders’ the provision of improved public health engineering services will encourage orderly development and improve property values in the area.¹⁰¹⁸

As we shall see, Health officials were not sympathetic to what others saw as the urgent need to dispose of Levin’s effluent to land rather than to water.

Senior officials in the Lands Department soon concluded that there was little merit in the local bodies’ call for the domain board’s authority over the lake surface to be transferred to the water board. The Assistant Director Reserves noted that the change would run against the principle of co-ordinated management, in that it would sever control of the domain land from the surface water. Moreover, the domain board’s role in controlling surface recreation should not conflict in any way with the water board’s responsibility to improve water quality. He also sensed there had been ‘a degree of uncertainty’ at the 12 August 1976 meeting, and pointed out that ‘in any case no counter-arguments appear to have been considered’.¹⁰¹⁹ In July 1977 The Director-General of Lands told the Commissioner of Crown Lands that the water board was ill-equipped to manage recreational use and had no real barriers to its operations because of the domain board.¹⁰²⁰ The status quo remained.

In March 1978 the technical committee presented its report on the lake’s condition to the steering committee. The technical committee had been requested by the steering committee in

¹⁰¹⁷ Superintendent Wastewater Treatment, Ministry of Works and Development, to Public Health Engineer, Ministry of Works and Development, 26 January 1977. Archives New Zealand file ABKK W4357 889 Box 326 50/856 part 2

¹⁰¹⁸ Director-General of Health to Minister of Health, 21 September 1972. Archives New Zealand file AAFB W3463 632 Box 101 32/44

¹⁰¹⁹ File note by Assistant Director Reserves, 30 June 1977. Archives New Zealand AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹⁰²⁰ Director-General of Lands to Commissioner of Crown Lands, 6 July 1977. Archives New Zealand AANS W5491 7613 Box 564 RES 7/2/50 part 1

November 1977 ‘to formulate a case for an “X” classification to the lake’. The technical committee reported that the lake was

very eutrophic as characterised by frequent blooms of blue-green algae, high nutrient concentrations, large fluctuations in dissolved oxygen concentrations (including severe oxygen depletion in the bottom waters), extensive macrophytic growth, etc.¹⁰²¹

The technical committee explained that eutrophication was a natural process that was being greatly accelerated through the deposit of such large volumes of nutrients into the lake. The borough council’s sewage was accounting for 9,140 of the 10,600 kg of phosphorus entering the lake each year, with the rest coming from cowshed effluent (around 645 to 807 kg per year), rural and urban run-off (600 to 760 kg per year), and rainfall (48 kg per year). To reduce the nutrient load to a manageable level the cowshed effluent and sewage had to be removed. Work on reducing the former was ‘virtually completed’, and of the several options for removing the sewage effluent the technical committee considered that ‘diversion round the lake with a discharge to the Hokio Stream is considered to be the most viable’. The committee noted that the stream already had high bacteriological levels due to two piggeries near it and suspected that, if the sewage effluent was diverted to the stream, it would have to have reduced bacteriological content. The committee rejected land-based disposal (at the 263-hectare site south of Hokio Township) as both costly and difficult. Sea outfall was also considered too expensive.¹⁰²²

Image 5.3: School children with dead eels found at the lake’s edge, March 1978¹⁰²³



¹⁰²¹ Lake Horowhenua Technical Committee, *Lake Horowhenua: Current Condition, Nutrient Budget and Future Management*, March 1978, p 3

¹⁰²² Lake Horowhenua Technical Committee, *Lake Horowhenua: Current Condition, Nutrient Budget and Future Management*, March 1978, pp 3, 39

¹⁰²³ ‘Toxic substance in lake dangerous to human life’, *Chronicle*, 10 March 1978. Clipping on Archives Central file HDC 00018: 97: 23/6/1 1975-1982

The technical committee met on 9 March 1978 to consider how a pipeline would actually reach the Hōkio Stream. It considered the practical challenges of piping the effluent to the stream mouth, such as swampy ground and a lack of fall. Moreover, the committee ‘was disturbed at the visual impact of a surface pipeline around the lake, but concluded that public access around the lake was limited and likely to remain so in the future.’ Alternatives were considered such as a pipeline ‘under the lake’, or the camouflaging of the pipeline by trees.¹⁰²⁴

Currie submitted the technical committee report to the steering committee on 21 March 1978. He explained that the technical committee members had not understood the full implications of the ‘X’ classification so had chosen simply to present a case for the lake’s rehabilitation instead. He suggested that the technical committee’s work was complete and that it might now be disbanded.¹⁰²⁵

On 11 June 1979, under section 26 I of the Water and Soil Conservation Act 1967, the Water Resources Council notified its preliminary reclassification of Lake Horowhenua as ‘CX’. It called for objections.¹⁰²⁶ One came from the borough council, dated 9 August 1979. This stated that the council supported the reclassification ‘as a matter of principle’, but objected on the grounds that ‘a review of water rights to discharge wastes, and particularly nutrients, into the lake, consequent upon a final reclassification as advertised will impose an undue financial burden upon the Council and the inhabitants of the Borough’.¹⁰²⁷ The HPA was also worried. It told the Commissioner of Works on 14 June 1979 that it was ‘extremely concerned’ about the technical committee’s proposal that Levin’s sewage effluent be piped direct to the Hōkio Stream.¹⁰²⁸ In a submission to the Water Resources Council it accepted that the lake should be reclassified, but added that ‘Any improvement in water quality in the lake must also apply to the Hokio Stream, in fact they should be treated as one problem.’¹⁰²⁹

In search of support and advice, the HPA had already written to the NCC on 28 March 1979.¹⁰³⁰ However, the NCC replied that it had previously backed the diversion of the effluent to the Hōkio Stream in 1971 and could see no reason to change its mind. It felt that the HPA should focus instead on the piggeries polluting the stream and that, if the HPA

¹⁰²⁴ Lake Horowhenua Technical Committee meeting minutes, 9 March 1978. ABKK W4357 889 Box 326 50/856 part 2

¹⁰²⁵ Currie to Chair and Members of the Lake Horowhenua Steering Committee, 21 March 1978. Archives New Zealand file AAYY W4182 18152 Box 63 32/3/3 part 1

¹⁰²⁶ K S O’Sullivan, Secretary, Water Resources Council, notification dated 11 June 1979. Archives New Zealand file AAYY W4182 18152 Box 63 32/3/3 part 1

¹⁰²⁷ Submission of the Town Clerk to the Water Resources Council, 9 August 1979. Archives New Zealand file AAYY W4182 18152 Box 63 32/3/3 part 1

¹⁰²⁸ Secretary/Treasurer, HPA, to Commissioner of Works, 14 June 1979. Archives New Zealand file AAYY W4182 18152 Box 63 32/3/3 part 1

¹⁰²⁹ Secretary/Treasurer, HPA, to Water Resources Council, 5 August 1979. Archives New Zealand file AAYY W4182 18152 Box 63 32/3/3 part 1

¹⁰³⁰ Secretary/Treasurer, HPA, to NCC, 28 March 1979. Archives New Zealand file AAZU W3619 Box 13 31/11/71

objected to the borough council receiving a water right to discharge into the Hōkio Stream it would be ‘slowing the ultimate goal’.¹⁰³¹

On 27 September 1979, the HPA also wrote to the catchment board. It contended that the stream had a very low flow in summer and, if the effluent were discharged directly to it, this would account for nearly half of the stream’s flow at that time of the year. This, said the HPA, ‘would be totally unacceptable to people in the Hokio area’. It further questioned the proposal on the basis that ‘it would put a polluted stream straight through eel pas used by local people for food’. It argued that the stream was already heavily polluted, and the discharge would only make matters worse.¹⁰³²

A sub-committee of the Water Resources Council – comprising K Conway, M Dunning, and Helen Hughes – heard submissions on the proposed reclassification in Levin on 29 November 1979. Mayor Roberts was among those who addressed the committee. He explained that the treatment plant, when it was established in 1952, was

described at the time as being one of the most advanced in the country. It may have been for the population for which it had been planned, but in the event, it proved to be hopelessly inadequate to cope with the town’s overall growth ... [B]y 1960 the town had taken off on a boom unprecedented among country centres such as Levin then was[.]¹⁰³³

Roberts then related how the system could not cope with the subterranean water levels in 1962, and as a result raw sewage by-passed the treatment plant and entered the lake, ‘which in a relatively short time and to the dismay of the Maori owners became grossly polluted’. After further troubles an ‘up-to-date plant’ was built, which – as noted above – made use of oxidation ponds. This system had ‘achieved the sought-after target of almost complete purification’ (emphasis in original). This had all been achieved, he said, ‘at very considerable cost to the Borough of Levin’. However, added Roberts, the impact of nutrients entering the lake had been overlooked.¹⁰³⁴

Roberts stressed that the sewage effluent was not the only source of the nutrient load. He made it clear, in this regard, that the borough council would not act to reduce the nutrient load unilaterally: restoration ‘must be on an all or nothing basis’. Since the borough’s effluent was contributing over 85 per cent of the phosphorus entering the lake, this seemed a rather tenuous bargaining position. But Roberts also made it clear that the borough expected a significant subsidy. As he put it:

¹⁰³¹ Secretary, NCC, to Secretary, HPA, 8 June 1979. Archives New Zealand file AAZU W3619 Box 13 31/11/71

¹⁰³² Secretary/Treasurer, HPA, to Secretary, Manawatu Catchment Board, 27 September 1979. Archives New Zealand file AAYY W4182 18152 Box 63 32/3/3 part 1

¹⁰³³ Submission of L B Roberts to Water Resources Council hearing on preliminary reclassification of Lake Horowhenua to class CX, Levin, 29 November 1979. Archives New Zealand file AAYY W4182 18152 Box 63 32/3/3 part 1

¹⁰³⁴ Submission of L B Roberts to Water Resources Council hearing on preliminary reclassification of Lake Horowhenua to class CX, Levin, 29 November 1979. Archives New Zealand file AAYY W4182 18152 Box 63 32/3/3 part 1

We are prepared to take part in the restoration process by diverting our sewage effluent into the head of the Hokio Stream. Always, though, in the course of our deliberations and discussions on this big and important issue we have reached favourable agreement in the clear understanding and expectation, NOT HOPE, that the heavy cost which this operation would entail would be adequately and properly subsidised as is legislatively provided.

And therein, as our Engineer has explained lies the reason for our very ‘pro forma’ objection which in reality is an opportunity seized to emphasise the two determining factors – the first, our ready willingness to face up to our responsibilities on this issue; the second, our readiness to move quickly, provided we are fairly treated on the very important question of adequate subsidy.¹⁰³⁵ [Emphasis in original.]

The mayor was backed up by a submission from Noel Williams, the Borough Engineer, who also pleaded Levin’s poverty over the issue:

Without substantial assistance from Central Government, the probable conditions imposed in the grant of this right will cause the residents of Levin undue hardship, and the purpose of this objection is to register the need for this substantial assistance.¹⁰³⁶

Like Roberts, Williams made it clear that the borough’s intention was to lay a pipeline and discharge directly to the Hōkio Stream.¹⁰³⁷

The committee then heard from four representatives of the HPA. One – a Mr Toy – said he thought that Lake Horowhenua should be brought up to C standard first before being reclassified CX, as the X could lead to discharge of effluent directly into the Hōkio Stream. He considered there had been much concern about the lake and little about the stream’. However, Joe Tukapua, for the lake trustees, was recorded as supporting the borough council’s submission. In his opinion, ‘the Hokio Progressive Association submissions were five years too late.’¹⁰³⁸ Tukapua’s position was clarified by notes made at the hearing by Hughes. She wrote that

Mr J Tukapua representing the Maori Owners made it clear they support reclassification of the lake and that it should take place now – even if this meant danger to the Hokio Stream. He was personally in favour of land disposal.¹⁰³⁹

¹⁰³⁵ Submission of L B Roberts to Water Resources Council hearing on preliminary reclassification of Lake Horowhenua to class CX, Levin, 29 November 1979. Archives New Zealand file AAYY W4182 18152 Box 63 32/3/3 part 1

¹⁰³⁶ Submission of N E Williams to Water Resources Council hearing on preliminary reclassification of Lake Horowhenua to class CX, Levin, 29 November 1979. Archives New Zealand file AAYY W4182 18152 Box 63 32/3/3 part 1

¹⁰³⁷ Submission of N E Williams to Water Resources Council hearing on preliminary reclassification of Lake Horowhenua to class CX, Levin, 29 November 1979. Archives New Zealand file AAYY W4182 18152 Box 63 32/3/3 part 1

¹⁰³⁸ Record of proceedings at hearing of submissions on the preliminary reclassification of Lake Horowhenua to class CX, 29 November 1979. Archives New Zealand file AAYY W4182 18152 Box 63 32/3/3 part 1

¹⁰³⁹ Hughes to Chairman, Water Resources Council, 5 December 1979. Archives New Zealand file AAYY W4182 18152 Box 63 32/3/3 part 1

In other words, Tukapua still preferred the idea of land disposal that he had put forward to the steering committee meeting in December 1976, but his priority was to get the effluent out of the lake as quickly as possible. He also seems to have had little sympathy for the HPA, which he may have felt should have been joining in protest earlier against the disposal of effluent into the lake. For her part, Hughes favoured 'an immediate reclassification of Lake Horowhenua to CX'. She had some sympathy for the HPA, but felt that 'a satisfactory state' could be achieved for the Hōkio Stream after it began to receive the effluent.¹⁰⁴⁰

Hughes' hoped-for immediate reclassification was not forthcoming. For some reason, her sub-committee made no formal report to the Water Resources Council. Instead, Ministry of Works and Development staff (presumably in the Water and Soil Conservation Organisation) recommended against reclassification. Hughes was exasperated. She wrote that she was 'deeply concerned at the recommendation made by Staff on the reclassification of Lake Horowhenua'. She asked that the Water Resources Council 'now fully consider the implications of NOT reclassifying Lake Horowhenua', which she described as 'the most eutrophic water body in New Zealand'. If 'X' class was not applied this would be

- (a) Inconsistent with previous Council policy on Lake Rotorua.
- (b) Inconsistent with the Eutrophication Control Policy adopted by Council.
- (c) Will undermine local confidence in NWASCO and the aims of the organisation.
- (d) Will destroy the present co-operative attitude of Borough, County, Maori Trustees and Regional Water Board.
- (e) Will not result in restoration of Lake Horowhenua to a nutrient level acceptable to the recreational amenity users.
- (f) Failure to implement sewage discharge diversion will quickly result in a noxious lake. Restoration costs will increase dramatically the longer restoration procedures are delayed.¹⁰⁴¹ [Emphasis in original.]

For the avoidance of doubt, Hughes recommended that the Water Resources Council approve the CX classification for the lake and direct the Manawatu Regional Water Board to prepare 'a catchment control scheme for eutrophication control'.¹⁰⁴²

It is not clear why Works and Development staff made their recommendation (which has not been located). On 30 April 1980 Hughes was written to by Cecil Anderson, the president of the Ashburton Acclimatisation Society and a Water Resources Council 'deputy representative

¹⁰⁴⁰ Hughes to Chairman, Water Resources Council, 5 December 1979. Archives New Zealand file AAYY W4182 18152 Box 63 32/3/3 part 1

¹⁰⁴¹ 'Lake Horowhenua Reclassification'. Statement by Helen Hughes, April 1980. Archives New Zealand file AAYY W4182 18152 Box 63 32/3/3 part 1

¹⁰⁴² 'Lake Horowhenua Reclassification'. Statement by Helen Hughes, April 1980. Archives New Zealand file AAYY W4182 18152 Box 63 32/3/3 part 1

of recreation interests'. He told her that something similar had happened with the allocation plan for the Rangitata River:

Here, too, after much labour a local consensus was reached but Wellington MOWD [Ministry of Works and Development] staff didn't seem to like it, although we succeeded in the end. There were indications that delays had been due to submissions by local Federated Farmers behind the back of the regional water board, and maybe something similar is going on at Levin.¹⁰⁴³

This was mere speculation, but a tangled web of competing interests certainly complicated decision-making over the lake. For one thing, it appears that Muaūpoko and Ngāti Raukawa now had somewhat opposed priorities – or at least Ngāti Pareraukawa had a different perspective to that given by Joe Tukapua in November 1979. At around the same time that Hughes was urging the Water Resources Council to reclassify the lake, Ngāti Raukawa became increasingly involved in efforts to keep Levin's effluent out of the Hōkio Stream. On 9 April 1980 Horiana Joyce, the secretary of the Raukawa Trustees, wrote to the Water Resources Council asking it to urgently reclassify the lake as CX. She explained that

Your speedy attention to the application for reclassification would be appreciated by our member hapu (sub-tribe), Ngati Pareraukawa most directly affected by the threat to the health, recreation, environment and history of Levin's present and proposed schemes for sewerage outlets. In addition the other eighteen iwi (tribes) whose membership is concentrated in the region between the Rangitikei River and Porirua would be grateful also. Lake Horowhenua, Hokio Stream and Hokio Beach are of great significance to us all.¹⁰⁴⁴

On the same day Joyce wrote to the Commission for the Environment to seek its assistance. She noted the borough council's desire to divert its effluent into the Hōkio Stream if the lake was reclassified and explained that 'Ngatokowaru Marae and its community, Ngati Pareraukawa – one of our member sub-tribes, has expressed strong opposition to the Council's plans and the Raukawa Trustees have done the same.'¹⁰⁴⁵ The Director of the Water and Soil Conservation Organisation wrote to the Commissioner for the Environment shortly afterwards to stress that the points Joyce made had already been thoroughly considered through the statutory processes of the Water and Soil Conservation Act 1967.¹⁰⁴⁶

The decision to reclassify the lake as CX was made on 19 May 1980. A Commission for the Environment official noted that the borough council would need to apply for a water right. Since the Hōkio Stream was classified D – which meant it should be suitable for wildlife, fishing, and agricultural use – the coliform level in effluent would need to be lowered if the

¹⁰⁴³ Cecil Anderson to Hughes, 30 April 1980. Archives New Zealand file AAYY W4182 18152 Box 63 32/3/3 part 1

¹⁰⁴⁴ Horiana Joyce, Secretary, Raukawa Trustees, to Water Resources Council, 9 April 1980. Archives New Zealand file AAUM W4043 Box 221 NRS 3/6/Z part 1

¹⁰⁴⁵ Horiana Joyce, Secretary, Raukawa Trustees, to Council (sic) for the Environment, 9 April 1980. Archives New Zealand file AAUM W4043 Box 221 NRS 3/6/Z part 1

¹⁰⁴⁶ Director, Water and Soil Conservation Organisation, Ministry of Works, to Commissioner for the Environment, 18 April 1980. Archives New Zealand file AAUM W4043 Box 221 NRS 3/6/Z part 1

stream was now to receive it. The official noted that ‘Maori people offered about 1000 acres near Hokio for a land disposal system. Borough baulking at \$750,000 required to pipe effluent to site.’¹⁰⁴⁷ Of all the agencies considering the matter, the Commission for the Environment was the most sympathetic to those arguing that the stream should not receive the effluent. One official told Joyce that, while the stream was the ‘most obvious’ and ‘probably the cheapest’ alternative to the lake, there was a danger that the stream could similarly ‘succumb to the effluent’.¹⁰⁴⁸

It now remained to be seen what conditions would be placed both on the borough council’s ongoing (and certainly temporary) discharge to Lake Horowhenua and its future disposal of the effluent elsewhere.

The new water right

On 15 June 1980, a meeting was held at Ngātokowaru marae to discuss the reclassification. It was attended by Ngāti Pareraukawa, Ngāti Raukawa, Ngāti Toa, Te Atiawa, Muaūpoko, the Raukawa Trustees, the Raukawa Māori Executive, the Values Party, the HPA, the Wellington Acclimatisation Society, ECO, and various concerned individuals. The meeting resolved to form ‘The Muaupoko-Pareraukawa Action Committee to Preserve Lake Horowhenua and the Hokio Stream’ (the Action Committee). Those present supported the reclassification of the lake, but not if it did not also include the stream. It is not clear who attended on behalf of either Muaūpoko or the lake trustees, but – on its face – it appears that the Muaūpoko and Raukawa positions were now unified. D W G Moore wrote on behalf of the Action Committee to the Commission for the Environment on 7 July 1980. He explained that ‘We believe that the Hokio Stream is a natural extension to Lake Horowhenua as it is the only outlet to the sea, and in terms of ecology and natural food resources (especially eels) is a part of the lake.’ The Ngāti Pareraukawa concern was particularly that polluted waters should not flow directly past its marae, especially waters polluted ‘by human waste to which there is a particularly strong emotional abhorrence by our people’.¹⁰⁴⁹

Philip Tortell of the Commission for the Environment met with Action Committee representatives and members of Ngāti Raukawa in Ōtaki on 24 September 1980. He ‘heard dismay and frustration at the unwillingness to do anything about Hokio Stream and in fact cause it to degenerate in order to improve the Lake’.¹⁰⁵⁰

On 30 January 1981 the Borough Engineer, Noel Williams, wrote to the Manawatu Catchment Board and Regional Water Board to apply for a temporary right for the borough to

¹⁰⁴⁷ File note by Philip Tortell, May 1980 (exact date obscured). Archives New Zealand file AAUM W4043 Box 221 NRS 3/6/Z part 1

¹⁰⁴⁸ Philip Tortell, for Commissioner for the Environment, to Horia Joyce, 12 June 1980. Archives New Zealand file AAUM W4043 Box 221 NRS 3/6/Z part 1

¹⁰⁴⁹ D W G Moore, for Action Committee, to Philip Tortell, Commission for the Environment, 7 July 1980. Archives New Zealand file AAUM W4043 Box 221 NRS 3/6/Z part 1

¹⁰⁵⁰ File note by Philip Tortell, 26 September 1980. Archives New Zealand file AAUM W4043 Box 221 NRS 3/6/Z part 1

continue to discharge its effluent into the lake for a further five years.¹⁰⁵¹ The same month Williams wrote to the Chief Public Health Officer at the Ministry of Works and Development. He noted that his council would now have to seek a new water right to dispose of the effluent from its treatment plant. He added that

The two groups who have most recently been vocal in their objection to a discharge into the head of the Hokio Stream, are the Hokio Progressive Association, (a group of residents living at Hokio Township), and the Muaupoko-Pareraukawa Action Committee. It is proposed to invite two representatives from each of these organisations [to the forthcoming meeting of the Lake Horowhenua Steering Committee] and to offer them speaking rights. While general agreement may not be reached at this meeting, it is to be hoped that at least a better understanding of the technical aspects may result.¹⁰⁵²

The reference to a 'better understanding of the technical aspects' again revealed, perhaps, the notion that objectors had no rational or scientific basis for their concern. However, if they could understand the technical details they might be more accepting. Moore and Gary Blake of the Action Committee, though, were technically savvy in their own right.¹⁰⁵³ In March 1981 they put together a discussion paper on Levin's effluent disposal options. They argued that discharging into the head of the stream would not really help the lake, as the fall of the coastal plain was so slight that the waters of the stream and lake would remain of a similar standard. In the circumstances, they claimed, 'the Hokio Stream can be considered as merely a natural extension of Lake Horowhenua, and certainly these are two inter-dependent parts of the same water eco-system'. They added that

The Hokio Stream is the sole migratory pathway to and from the sea for the large eel fishery of Lake Horowhenua, and in the past was also an important source of other foods such as whitebait, inanga, flounder, carp, shellfish, crustacea, and watercress. The stream has also been used as a source of drinking and washing water, and as a recreational facility, but the obvious pollution and high coliform bacteria concentrations (particularly during summer reduced flow periods) have made the stream a danger to those people who wish to continue utilising it as a source of food and recreation. The considerable shellfish resources at the mouth of the stream and along Hokio beach are also at risk from pollution of the stream.

It is a universal human trait not to want to live amongst human effluent, no matter how well treated it may be, and if some effort is made to clean up the lake it would seem short-sighted to risk further damage to Hokio Stream and beach in the process.

Certainly, Hokio residents, Maori people, who treasure their traditional fishing rights in the stream and lake, and environmentalists would not see the Hokio Stream as an acceptable

¹⁰⁵¹ Borough Engineer to Secretary, Manwatu Catchment Board and Regional Water Board, 30 January 1981. Archives Central file HDC 0009: 83: 23/2 1978-1982

¹⁰⁵² Borough Engineer to Chief Public Health Officer, Ministry of Works and Development, 26 January 1981. Archives New Zealand file ABKK W4357 889 Box 326 50/856 part 2

¹⁰⁵³ Blake held an MSc in earth sciences and a certificate in water resources management. See Blake's 4 October 1982 submission to the 1982 Water Rights Tribunal considering the borough council's application for a water right to discharge effluent to the Hōkio Stream. Archives Central file HDC 00009: 83: 23/2 1978-1982. Moore was a biochemist (see 'More research needed advises lake committee', the *News*, 11 February 1981. Clipping on Archives Central file HDC 00018: 97: 23/6/1 1975-1982).

discharge point for Levin sewage effluent. The recent emergence of a considerable amount of public concern and debate would indicate that a permanent, environmentally sound disposal system is required to bring about an acceptable solution to the effluent disposal question.

In these circumstances, it would seem that diversion of secondary treated effluent into the Hokio Stream is not a viable option.¹⁰⁵⁴

Nor, they added, would an ocean outfall be an acceptable option 'to the many people who wish to preserve the shellfish resources along this stretch of the coast'.¹⁰⁵⁵

The following month Moore and Blake received a response to their paper from D R Cameron, the Chief Public Health Officer at the Ministry of Works and Development. He put it bluntly that 'undoubtedly the final decision must be based on cost effectiveness. Therefore I question the strong opposition expressed to allowing a discharge into the Hokio Stream.' He was critical of Moore and Blake's proposal to dispose of the effluent onto land. As Cameron put it, 'Unless some return is obtained from this operation, it could be looked on as an expensive way of soaking away effluent.' Cameron's attitude was further revealed by his annotation on the file copy of his reply. He wrote 'I would like to know how the Levin ratepayers would view the costs of some of these ideas.'¹⁰⁵⁶

Image 5.4: D W G Moore and Gary Blake of the Muaupoko-Pareraukawa Action Committee to Preserve Lake Horowhenua and the Hokio Stream, February 1981¹⁰⁵⁷



A sub-committee of the Manawatu Regional Water Board met with objectors in Palmerston North on 12 May 1981 to consider the borough's application for the new water right. Those appearing as objectors included Toy on behalf of the HPA, J S Blenkhorn on behalf of the

¹⁰⁵⁴ 'Sewage Effluent Disposal Options for Levin: A Discussion Paper', by Blake and Moore for the Action Committee, 26 March 1981. Archives New Zealand file ABKK W4357 889 Box 326 50/856 part 2

¹⁰⁵⁵ 'Sewage Effluent Disposal Options for Levin: A Discussion Paper', by Blake and Moore for the Action Committee, 26 March 1981. Archives New Zealand file ABKK W4357 889 Box 326 50/856 part 2

¹⁰⁵⁶ D R Cameron, Chief Public Health Officer, Ministry of Works and Development, to G Blake, 22 April 1981. Archives New Zealand file ABKK W4357 889 Box 326 50/856 part 2

¹⁰⁵⁷ 'More research needed advises lake committee', the *News*, 11 February 1981. Clipping on Archives Central file HDC 00018: 97: 23/6/1 1975-1982

county council, Moore on behalf of the Action Committee, J Moses on behalf of the Muaupoko Maori Committee, and Joe Tukapua on behalf of the lake trustees. The objectors were mainly concerned ‘that guards be set up against inaction’. In the end, all objectors agreed that the borough should be given a five-year extension to its right to discharge to the lake, albeit with strict conditions. These included the borough providing six-monthly progress reports and there being a thorough review of its progress after two years. Mayor Jack Bolderson accepted the conditions, but Borough Engineer Noel Williams ‘would not undertake that there would be no discharge into the Hōkio Stream’.¹⁰⁵⁸

The sub-committee recommended the conditions to the full board, which agreed to them the following week.¹⁰⁵⁹ In turn, the Water Resources Council confirmed the granting of the water right subject to nine conditions. These concerned the maximum rate of discharge; the maximum amounts of organic matter, suspended solids, phosphorus, ammonia nitrogen, and nitrate nitrogen that could be discharged; the testing that would need to be conducted about quantity and quality; and the timeframe for developing a plan for an alternative discharge. The key condition was as follows: ‘That by the expiry date of this discharge treated sewage effluent to Lake Horowhenua shall have ceased’.¹⁰⁶⁰

The end of the discharge of sewage effluent to Lake Horowhenua now had a timeframe. The borough council had five years to find not only an alternative method of disposal, but an acceptable method of disposal. Yet despite the growing opposition – including from the two local iwi – to its plan to discharge into the Hōkio Stream, the council clearly still preferred the convenience of this option. It will be recalled that Mayor Roberts and Borough Engineer Noel Williams had spoken of the financial hardship the council would face if it merely had to divert the effluent from the lake. The council clearly did not wish to contemplate the cost and complexity of disposing of the effluent onto land.

Discharge to the Hōkio Stream is defeated

The steering committee held a meeting on 8 September 1981. It came at a time of growing tension with Muaupoko over recreational use of the lake, and particularly racing by speedboats (see chapter 6). County chairman Blenkhorn referred at the meeting to the ‘hundreds of thousands of dollars’ that would have to be spent to divert the effluent and restore the lake. He was reported as warning that ‘Unless a binding agreement on the future recreational uses of Lake Horowhenua can be decided upon the town’s sewerage effluent may as well go into it forever’.¹⁰⁶¹ This was perhaps a revealing insight into the attitude of the local authorities towards the lake and Māori rights over it: if its surface could not be used for

¹⁰⁵⁸ ‘Borough gets five-year extension on sewage discharge into lake’, *Chronicle*, 13 May 1981. Clipping on Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹⁰⁵⁹ ‘Will check on lake problem’, *Chronicle*, 20 May 1981. Clipping on Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹⁰⁶⁰ Minutes of the Water Resources Council meeting of 12 August 1981. Archives New Zealand file AAUM W4043 Box 221 NRS 3/6/Z part 1

¹⁰⁶¹ ‘Lake’s future hinges on firm decision’, *Chronicle*, 10 September 1981. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

speedboats, it may as well be used for effluent disposal. Thankfully Blenkhorn had no say in that matter – the decision was already made that the effluent would have to be removed.

In the meantime, the borough council developed its plans for an alternative method of disposal. By March 1982 these had firmed up as discharge to the Hōkio Stream with some secondary discharge by rapid infiltration to the tip site on Hokio Beach Road. An official from the Ministry of Works and Development considered this ‘the best of the available options’ and one that ‘should be supported for loan and subsidy’.¹⁰⁶² The borough council resolved accordingly to apply for a water right. It received letters of protest from both the Ngatokowaru Maori Committee and the Action Committee.¹⁰⁶³ The lake trustees also expressed their opposition to any effluent disposal to the Hōkio Stream. On 3 May 1982 their secretary conveyed their resolution to the chair of the steering committee that ‘We unanimously object to any form of disposal of treated effluent into Lake Horowhenua or into the adjoining Hokio Stream.’¹⁰⁶⁴ Bolderson told the Minister of Lands, Jonathan Elworthy, that the council was making the application ‘in an urgent endeavour to implement an early removal of treated effluent disposal from Lake Horowhenua’.¹⁰⁶⁵

Eight objections were received to the borough’s application for disposal to the Hōkio Stream and a further eight to the proposed discharge onto land. These came from the Action Committee, Ngāti Pareraukawa, the Raukawa Trustees, the Ministry of Agriculture and Fisheries, the Values Party, the HPA, the Raukawa District Council, and two individuals, Rangi Jacob (a member of Ngāti Pareraukawa) and R C W Zander.¹⁰⁶⁶ A pro forma objection was also lodged by the county council as a means of expressing concern about the potential impact on county ratepayers such as those in Hokio Township.¹⁰⁶⁷ In written submissions to the special tribunal hearing that considered the application, the borough’s counsel explained that the Health Department had advised that the borough ‘must choose the most economic, but satisfactory method of disposing of its effluent’. Counsel submitted that the Māori ownership of the bed of the Hōkio Stream was of little relevance, from a legal standpoint. Nor was there any provision in the Water and Soil Conservation Act for ‘cultural and spiritual values’ which go ‘beyond the mere physical environment’. In sum, said counsel, ‘The claims of the Maori people as a matter of law are to be considered no differently than from those of the Pakeha.’¹⁰⁶⁸ Counsel added that

¹⁰⁶² J C Fletcher, for Commissioner of Works, to District Commissioner of Works, 22 July 1982, and file note by Fletcher of visit to Levin on 19 July 1982, 22 July 1982. Archives New Zealand file ABKK W4357 889 Box 326 50/856 part 2

¹⁰⁶³ Rachel Moore, Action Committee, to Levin mayor and councillors, 19 May 1982, and I Nicholson, Chairman, Ngatokowaru Maori Committee, to Town Clerk, 20 May 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹⁰⁶⁴ Secretary, lake trustees, to chairman, steering committee, 3 May 1982. Archives Central file HRC 00024: 33: 9/6 part 4

¹⁰⁶⁵ Bolderson to Minister of Lands, 2 June 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹⁰⁶⁶ Borough Engineer’s report to council meeting, 26 July 1982. Archives Central file HDC 00009: 83: 23/2 1978-1982

¹⁰⁶⁷ County Clerk to Town Clerk, 23 August 1982. Archives Central file HDC 00009: 83: 23/2 1978-1982

¹⁰⁶⁸ Submission of J J M Wiltshire, 15 October 1982, pp 3, 13, 14. Archives Central file HDC 00009: 83: 23/2 1978-1982

It may perhaps be argued for objectors that the guarantee of ‘... full exclusive and undisturbed possession of their ... fisheries ...’ by the Treaty of Waitangi 1840 might lead to a different conclusion. Apart from uncertainties arising from translation as to whether fisheries were in fact referred to in the Treaty, it is submitted that it makes no difference. The Treaty of Waitangi Act 1975 makes provision for claims founded on the Treaty. That is a matter between the Crown and the Maori people.

A very pragmatic reason for preserving that position may be put as follows. The Levin borough council is, in broad terms, faced with expenditure in the order of \$1 million or \$3 million. If it volunteered to go beyond what Parliament regards as the reasonable requirement (as laid down in the Water and Soil Conservation Act 1967) and to spend \$3 million of which \$2 million was to safeguard Maori interests only, and funds were made available, it would be charging a small community of 14,000 people with an extra \$2 million that arguably should be borne by the wider community. On the other hand were the Waitangi Tribunal to find a claim relating to the fishery to be well founded and, were the Crown to accept that and require work involving the expenditure of \$2 million to safeguard that claim, then the Council would have a good case for inviting the Crown to provide the extra funds needed.

In short, claims in any way founded on the Treaty of Waitangi are between the parties to the treaty and are not for Local Government or this Tribunal.¹⁰⁶⁹ [Emphasis in original.]

Among the submitters against the council’s application, Blake criticised the council for relying on ‘inappropriate or out-dated effluent disposal techniques’. His preference was that ‘a fully developed land disposal technique is operating 4 years from now’.¹⁰⁷⁰

During the wait for the special tribunal to make its decision the council must have realised that its application might be unsuccessful. In December 1982 the MP for Horowhenua, Geoff Thompson, told the Minister of Works that

The Levin Borough Council is anxious that their alternative proceeds but it has been put to me that an alternative that avoids the sensitive Maori areas should also be looked at. Your own officers may be aware of this but it may well be valid to raise the possibility in discussions with the tribunal at this point.

It has been suggested that instead of the pipe coming to the rubbish tip, it instead go down Sand Road for discharge into an open drain which heads south, and be available for irrigation on very primitive sand tussock country before discharging into a stream which acts as the outlet for Lake Papaitonga. This stream apparently has no Maori interests and land owners in the area have indicated an interest in using the Waiwirri [sic] Stream. There are no residents within many kilometres of the stream and its discharge into the sea is on a relatively isolated part of the coast.¹⁰⁷¹

¹⁰⁶⁹ Submission of J J M Wiltshire, 15 October 1982, pp 14-15. Archives Central file HDC 00009: 83: 23/2 1978-1982

¹⁰⁷⁰ Submission of G J Blake to the 1982 Water Rights Tribunal considering the borough council’s application for a water right to discharge effluent to the Hōkio Stream, 4 October 1982. Archives Central file HDC 00009: 83: 23/2 1978-1982

¹⁰⁷¹ Geoff Thompson, MP for Horowhenua, to Minister of Works, 14 December 1982. Archives New Zealand file ABKK W4357 889 Box 326 50/856 part 2

Thompson's suggestion was misguided. The Waiwiri Stream was certainly an important waterway for hapū of Ngāti Raukawa. A 2012 publication by Manaaki Taha Moana on the stream noted that the coastal area around its mouth had been 'Revered in recent memory by kaumātua and resource gathering kaitiaki as an abundant food resource'.¹⁰⁷²

The special tribunal made its decision in March 1983. As the Commissioner of Works noted – and despite the submissions for counsel for the borough council – the importance of the Hōkio Stream to Māori had been influential:

The conditions applied to these water rights are fairly stringent as the Hokio Stream is an important fishing area for the local people and also the local Maori people place considerable importance on it. In fact at the hearing both Fisheries Management Division of MAF and the local Maori people used forceful arguments against a discharge to the Hokio. At this stage it is not known if there will be an appeal against these rights.¹⁰⁷³

Clearly, an alternative means of disposal was now necessary. The borough council – usually encouraged during the 1970s by Crown officials – had for too long operated on the basis that it would be permitted to discharge to the Hōkio Stream. Worryingly, Thompson's vague assertion that there were no Māori interests in the Waiwiri Stream was in danger of becoming accepted as fact. The Commissioner of Works told the District Commissioner of Works that

During the Water Right Tribunal Hearing an alternative disposal site further south where the Wairiri [sic] Stream drains Lake Papaitonga was promoted. There has also been a Ministerial on the same proposal. The conditions on the present rights may result in this option being investigated. It is reputed to be well isolated from any dwellings and the Wairiri [sic] Stream is of no interest to the Maoris. If there is the opportunity this department should encourage an investigation of this alternative.¹⁰⁷⁴

The borough council's quest for funding

A delay now inevitably occurred while the borough council identified where its effluent should be disposed of. Its focus turned to the Māori-owned land known as 'the Pot' at the end of Hokio Sand Road. This natural depression in the sandhills and surrounding lands earmarked for spray irrigation comprised Horowhenua X1B41 South N1 and XIB41 South P. In May 1984 trustees for the land were confirmed by the Maori Land Court, which enabled

¹⁰⁷² Craig Allen, Jim Sinner, Jonathan Banks, and Kati Doehring, *Waiwiri Stream: Sources of Poor Water Quality and Impacts*, Manaaki Taha Moana Research Team, 29 October 2012, p 4. The kaumātua relied on for this information was Tipene Perawiti.

¹⁰⁷³ D R Cameron for Commissioner of Works to District Commissioner of Works, 23 March 1983. Archives New Zealand file ABKK W4357 889 Box 326 50/856 part 2

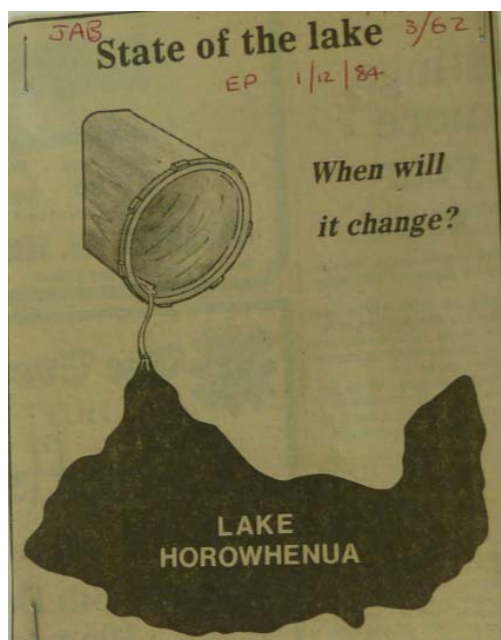
¹⁰⁷⁴ D R Cameron for Commissioner of Works to District Commissioner of Works, 23 March 1983. Archives New Zealand file ABKK W4357 889 Box 326 50/856 part 2

the council to negotiate an agreement to carry out testing at the site.¹⁰⁷⁵ Muaūpoko were generally philosophical about their land being used for the effluent disposal. In a December 1984 news story, the secretary of the lake trustees, Wally Dyson, was quoted as saying that ‘As far as I’m concerned the Maoridom of the district either cooperates with the borough in this manner (leasing the land) or has to live with the pollution of their lake and stream.’¹⁰⁷⁶

More particulars of the Muaūpoko perspective were recorded in June 1985 by Brian Herlihy, the Deputy Registrar of the Maori Land Court in Whanganui. By way of background, he explained that

I think it would be fair to say that the question of the disposal of effluent into Lake Horowhenua has been a festering sore for many years insofar as the Muaupoko people are concerned and some of the older people become extremely emotional when the pollution of the lake is discussed.¹⁰⁷⁷

Figure 5.3: ‘The State of the Lake’, 1984¹⁰⁷⁸



Herlihy noted that he had been helping the trustees of Horowhenua XIB41 South N1, XIB41 South P, and now also Hokio A gain the additional powers needed for long-term leases. It appeared to him

¹⁰⁷⁵ Note by Brian Herlihy, Deputy Registrar, Maori Land Court, on application to vest Horowhenua XIB41 South N1 and XIB41 South P in trustees, 16 May 1984; T R Green, Borough Engineer, to Works Committee, 18 May 1984. Archives Central file HDC 00009: 83: 23/2 1982-1984

¹⁰⁷⁶ ‘Troubled waters’, *Evening Post*, 1 December 1984, p 11. Clipping on Archives Central file HRC 00024: 33: 9/6 part 5. Dyson himself was Pākehā. See T R Green, Borough Engineer, to Works Committee, 18 May 1984. Archives Central file HDC 00009: 83: 23/2 1982-1984

¹⁰⁷⁷ Brian Herlihy, Deputy Registrar, Wanganui, to Chief Registrar, Head Office, 25 June 1985. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁰⁷⁸ ‘State of the lake: when will it change?’, *Evening Post*, 1 December 1984, p 11. Clipping on Archives Central file HRC 00024: 33: 9/6 part 5

that generally Maori owners are conscious of, and are in agreement with, the several advantages of the scheme. These are inter alia:-

(a) Probably by far the most important is that effluent would no longer be allowed to flow into Lake Horowhenua; (b) Blocks of unattractive Maori land consisting mainly of sandhills would produce a rental; (c) The spraying of effluent onto the land would build up nutrients in the soil and thus make it more valuable in the future; (d) If an afforestation programme is carried out in conjunction with effluent disposal the Maori owners could benefit from a share in the royalty and from increased work opportunities.¹⁰⁷⁹

The owners of Hokio A did object to the borough council's scheme. Before they would agree the trustees wanted the council to pay for an audit so they could be certain that disposal at the Pot with spray irrigation was the best possible solution.¹⁰⁸⁰

The borough's priority now became obtaining a significant subsidy from the Crown to complete the works. There were two sources of funding: the NWSCA and the Department of Health. There was an early indication, however, that the latter was unlikely to be a substantial contributor. A Ministry of Works and Development official, J C Fletcher, noted on 12 December 1984 that Russell Renton of the Manawatu Catchment Board had contacted him. Renton had spoken with Graham Curtis of the Department of Health in Palmerston North, who had

indicated that the Health Dept would be unlikely to grant the project a subsidy on the grounds that it meets no health need. (This attitude appalls [sic] me as illogical and based on what I consider to be a misrepresentation of the subsidy scheme!).¹⁰⁸¹

The Health Department's view on the matter was rigid. The Acting Medical Officer of Health told the Director-General of Health on 23 April 1985 that 'it is not expected that the Lake can ever return to a "pure" water resource'. Furthermore, the borough council was 'not likely to receive subsidy for this project from the Department of Health as no public health need can be demonstrated and the existing disposal system was sufficient to meet existing public health needs and those projected for the future'. The Acting Medical Officer of Health did recognise, however, that 'The existing situation is politically very sensitive' and the 'discontinuation of the effluent discharge is essential to maintain faith with the local Maori people'. He therefore recommended that the department use its influence to assist the borough to obtain a 1:1 subsidy from the NWSCA of \$1.5 million (that is, half of the projected \$3 million cost).¹⁰⁸²

¹⁰⁷⁹ Brian Herlihy, Deputy Registrar, Wanganui, to Chief Registrar, Head Office, 25 June 1985. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁰⁸⁰ 'Effluent rejected', *Evening Post*, 16 April 1985. Clipping on Archives New Zealand file ABQU W4452 632 Box 171 22/175; District Commissioner of Works to Commissioner of Works, 29 April 1985. Archives New Zealand file ABKK W4357 889 Box 346 50/2090

¹⁰⁸¹ File note by J C Fletcher, 12 December 1984. Archives New Zealand file ABKK W4357 889 Box 326 50/856 part 2

¹⁰⁸² Acting Medical Officer of Health to Director-General of Health, 23 April 1985. Archives New Zealand file ABKK W4357 889 Box 346 50/2090

The borough applied to the Local Authorities Loans Board for the \$1.5 million loan on 26 February 1985. In doing so the Borough Engineer stressed the urgency of the situation, given the deadline of 15 September 1986 to cease the disposal of effluent to the lake.¹⁰⁸³ The borough council was not the only organisation concerned about the deadline; the catchment board was also worried about the prospect that it would have to instigate legal proceedings against the council if it failed to meet the target.¹⁰⁸⁴ The Ministry of Works and Development also continued to disagree with the Department of Health's position. The District Commissioner of Works reasoned that, without the new scheme, the borough council would have to shut down its treatment plant, which would certainly constitute a health hazard. He felt that the borough council should go through with an application for a Health Department subsidy.¹⁰⁸⁵

Image 5.5: Aerial view of the treatment plant, c. mid-1980s¹⁰⁸⁶



The borough council duly made its case for a Health Department subsidy. In doing so it essentially presented many of the arguments that had unsuccessfully been made to it for so long to remove its effluent from the lake. Now, for example – following several widely publicised Waitangi Tribunal rulings on environmental issues – it stressed the cultural

¹⁰⁸³ Borough Engineer to Secretary, Local Authorities Loans Board, 26 February 1985. Archives New Zealand file ABKK W4357 889 Box 346 50/2090

¹⁰⁸⁴ Acting Medical Officer of Health to Director-General of Health, 23 April 1985. Archives New Zealand file ABKK W4357 889 Box 346 50/2090

¹⁰⁸⁵ District Commissioner of Works to Commissioner of Works, 29 April 1985. Archives New Zealand file ABKK W4357 889 Box 346 50/2090

¹⁰⁸⁶ Print on Archives Central file HRC 00027: 52: 2068c

offence to Māori of disposing of human waste (however well treated) to waterways in which food was gathered:

Foods gathered from the lake include (at least) eels, watercress and koura. Evidence presented at the Waitangi Tribunal's hearing of the Kaituna claim last year dwelt at length on the gathering of food from polluted water. It was asserted that to mix waters that had been contaminated by human wastes with waters that were used for gathering food was deeply objectionable on Maori spiritual grounds. The tribunal was told of Maori custom that requires water used for the preparation of food to be kept strictly separate from any kind of other purposes.

There are good scientific reasons to back up these spiritual beliefs. The taking of food such as koura or eels from the lake would be foolish. It could be argued that the present outfall into the lake puts watercress as far away as the Hokio Stream at risk from entero-virus pollution. The discharge of treated sewage into Lake Horowhenua is regarded as objectionable by Maoris and Europeans alike. There is a psychological revulsion from human waste that is probably common to all peoples of the world. No one would willingly go bathing or boating in waters containing sewage effluent.¹⁰⁸⁷

The council argued that the concept of 'public health' needed to be seen in broad terms, not narrow ones, as quality of life required a good environment. 'For these reasons', it said, 'a Department of Health subsidy for these works should be granted.' If the deadline expired and the council could not legally discharge to the lake any longer, that would be a risk to public health. The current proposal is the most cost effective and has the broadest level of support. Disposal to the Hōkio Stream would have been cheaper, but this was 'effectively rejected at the 1982 water right hearing on the grounds of risk to public health and offence to Maori spiritual values'.¹⁰⁸⁸

The view of the Ministry of Works and Development was that the borough council had overstated the public health issues with regard to water sports and food gathering. One official wrote, for example, that 'Risks from fishing and food gathering are minimal so long as the fish and food are rinsed prior to consumption.'¹⁰⁸⁹ However, the Commissioner of Works still believed that there should be a Health Department subsidy.¹⁰⁹⁰ Predictably, however, the Department of Health was unimpressed. Graham Curtis, the Senior Inspector of Health, found the Ministry of Works and Development's argument of a public health risk arising from the expiry of the existing water right 'nonsensical'. Curtis wrote that

Of course this would never happen. What would happen would be that the Manawatu Catchment Board would take legal action against the borough but disposal would have to

¹⁰⁸⁷ 'Levin Effluent Disposal: Addendum to design report', 8 May 1985. Archives New Zealand file ABKK W4357 889 Box 346 50/2090

¹⁰⁸⁸ 'Levin Effluent Disposal: Addendum to design report', 8 May 1985. Archives New Zealand file ABKK W4357 889 Box 346 50/2090

¹⁰⁸⁹ File note by E G Fox, 4 June 1985. Archives New Zealand file ABKK W4357 889 Box 346 50/2090

¹⁰⁹⁰ Commissioner of Works to District Commissioner of Works, 6 June 1985. Archives New Zealand file ABKK W4357 889 Box 346 50/2090

continue. The public interest of 14,000 residents would come before a contravention of water right.¹⁰⁹¹

There were echoes here of 1964. The Health Department logically regarded the cessation of the operation of the treatment plant as an infinitely worse problem than discharge of waste to the lake, and therefore the borough council effectively had as long as it needed to find an alternative means of effluent disposal. From a health perspective the department did not even regard the discharge of effluent as a problem in the first place. Muaūpoko – having first proposed disposal to their own land in 1976 – would have no option but to wait and hope that the council made the 15 September 1986 ‘deadline’.

If the Department of Health could not contemplate the public health issue from a Māori cultural perspective, the Ministry of Works and Development at least tried. The District Commissioner of Works wrote on 10 June 1985 that:

We ... know that Maoris have strong cultural and traditional objections to mixing waters that have been contaminated by human wastes with waters from which food is gathered. The continued discharge of the treated effluent to the lake is therefore putting the local Maori community (which is significant and owns the lake bottom) under some stress (clearly a public health matter) as they either have to forgo a traditional food source or go against cultural and traditional values.¹⁰⁹²

The Health Department, however, remained unmoved by such arguments. In direct response to the borough council’s request for a subsidy, Curtis argued that the lake was bacteriologically safe. Besides, he added:

Bishop Octavius Hadfield, in the 1850’s reported that Lake Horowhenua was shallow and swampy and unclean in nature. Given that the Lake was never that good we cannot expect better things for it in the future.¹⁰⁹³

It has not been possible to trace such a statement by Hadfield. Curtis may have remembered reading something vaguely along these lines elsewhere. In March 1976 Currie had reported to the Regional Water Board on the presence of blue-green algae in coastal lakes. He told the board that it was ‘interesting to note that Rev. O. Hadfield, an early missionary to the area commented on the smell of Lake Waitawa, comparing it to the smell of ‘a swine herd’.¹⁰⁹⁴ That statement has not been located either. A dune lake like Horowhenua was naturally swampy and marshy, but that hardly made its nineteenth-century condition comparable to its

¹⁰⁹¹ Curtis for Acting Medical Officer of Health to Director-General of Health, 6 June 1985. Archives New Zealand file ABKK W4357 889 Box 346 50/2090

¹⁰⁹² District Commissioner of Works to Commissioner of Works, 10 June 1985. Archives New Zealand file ABKK W4357 889 Box 346 50/2090

¹⁰⁹³ Submission by G J Curtis on the borough council’s application for subsidy. Undated, but forwarded to the District Commissioner of Works on 30 May 1985. Archives New Zealand file ABKK W4357 889 Box 346 50/2090

¹⁰⁹⁴ K J Currie, Water Resources Officer, to chairman and members, Manawatu Regional Water Board, 16 March 1976. Archives Central file HRC 00024: 32: 9/5

1980s state after receiving three decades of sewage effluent, to say nothing of its pollution from other sources such as stormwater.

The Director of the Division of Public Health told the Commissioner of Works on 28 June 1985 that there was no justification for a subsidy as the current method of effluent disposal was quite acceptable in public health terms. He added that ‘The trophic state of lakes is a matter of little, if any public health significance if they are not used for public water supplies, and for this reason I see little, if any, justification for subsidy assistance from Vote: Health.’¹⁰⁹⁵ Undeterred, the Commissioner of Works maintained that the scheme was deserving of a public health survey.¹⁰⁹⁶ Finally, in July 1985, the Department of Health informed the borough that the Minister of Health had approved a subsidy of \$44,370.¹⁰⁹⁷

Compared to the Health Department, obtaining the 1:1 subsidy from the NWSCA was comparatively straightforward. The Director of Water and Soil Conservation recommended that the NWSCA recommend to the Minister of Works and Development a 50 per cent grant of the projected scheme cost of \$2.678 million. He remarked that ‘The benefits of the scheme to the Maori community will be to their mana and to their cultural and spiritual values. These are not tangible benefits in dollar terms.’¹⁰⁹⁸ In putting this to his Cabinet colleagues, Minister of Works and Development Fraser Colman noted Māori use of the lake and stated that ‘It is offensive to their cultural and spiritual values that sewage effluent although treated, is discharged into these waters’.¹⁰⁹⁹ The grant to the borough council was \$1.339 million. Colman and MP for Horowhenua Annette King issued a press release on 3 December 1985 proclaiming ‘Huge subsidy for Lake Horowhenua Effluent Disposal’.¹¹⁰⁰

The 1986 ‘deadline’ and further litigation

Despite securing funding, the borough council had essentially run out of time to comply with the deadline of ceasing its discharge of effluent into the lake by 15 September 1986. On 24 June, in anticipation of failing to meet the set date, the borough council lodged an application for an extension of its water right. In the application the council stated that work on its

¹⁰⁹⁵ Director, Division of Public Health, to Commissioner of Works, 28 June 1985. Archives New Zealand file ABKK W4357 889 Box 346 50/2090

¹⁰⁹⁶ Commissioner of Works to Director, Division of Public Health, 8 July 1985. Archives New Zealand file ABKK W4357 889 Box 346 50/2090

¹⁰⁹⁷ Director, Division of Public Health, to Town Clerk, 25 July 1985. Archives New Zealand file ABKK W4357 889 Box 346 50/2090. The \$44,370 was much less than the potential maximum of \$300,000 (i.e. 20 per cent of \$1.5 million or the cost to the borough of the scheme after subtracting the 1:1 subsidy from the NWSCA) that Works officials had been advocating.

¹⁰⁹⁸ ‘Manawatu Catchment Board: Levin Borough Council: Lake Horowhenua CX Classification: Effluent Disposal Scheme’, undated paper by P F Prendergast for Director of Water and Soil Conservation. Archives New Zealand file ABQU W4452 632 Box 171 22/175

¹⁰⁹⁹ ‘Manawatu Catchment Board: Levin Borough Council Effluent Disposal Scheme’, undated memorandum to Cabinet Development and Marketing Committee from the Minister of Works and Development. Archives New Zealand file ABQU W4452 632 Box 171 22/175

¹¹⁰⁰ ‘Huge subsidy for Lake Horowhenua Effluent Disposal’, press release by Minister for Works and Development, Fraser Colman, and Horowhenua MP, Annette King, 3 December 1985. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

alternative means of disposal – to land at the site on Hokio Sand Road – had commenced in May 1986 and would take ten months.¹¹⁰¹ The lake trustees filed an objection on 22 September. They argued that the lake’s water quality and fish life would be further harmed and that, in any event, there was no legal right for the borough council to run its pipes over land vested in the trustees. The discharge of effluent thus constituted a trespass. Moreover, the previous right to discharge had been granted on the basis that, on its expiry, ‘the discharge of all treated sewerage into Lake Horowhenua would have ceased’.¹¹⁰²

The lake trustees had raised the issue of trespass the previous year. On 3 April 1985 the secretary of the trustees, Ada Tatana, wrote to the Town Clerk asking for ‘a copy of any agreement between the Levin Borough Council and the Horowhenua Lake Trustees giving access over our property the chains trip and dewatered area to the lake for the disposal of sewerage effluent and stormwater etc’.¹¹⁰³ The Town Clerk replied on 30 April 1985 that:

Drainage into Lake Horowhenua from the catchment in and around Levin was a natural event long before Levin was constituted a Borough and all Levin Borough has done is to direct that natural drainage into drains so that it does not dispose itself over everyone’s land.¹¹⁰⁴

Tatana pointed out the drain carrying the effluent to the lake was not a natural drain, as it had been dug to allow the effluent to enter the lake. She invited the borough to negotiate with the trustees over what she regarded as encroachment on the trustees’ property.¹¹⁰⁵ The council wrote to both its solicitors and the district land surveyor to inquire whether they were aware of any formal agreement or authority.¹¹⁰⁶ It is not clear whether any response was received from the latter; the solicitors could find no record of any such documentation.¹¹⁰⁷ It is possible that the district land surveyor was of no help either, given that the trustees continued to allege a trespass the following year.

A meeting of all interested parties was held in Levin on 31 October 1986. It was chaired by Ted Tyler, who was both chairman of the domain board and a member of the Manawatu Regional Water Board. Groups or organisations represented among the 32 attendees included borough council, the lake trustees, Te Runanga ki Muaupoko, Ngāti Pareraukawa, the domain board, Ngāti Pāiriri, Ngāti Hine, Becca Carter Hollings & Furner (the borough council’s consultants) and the Regional Water Board. The Māori concern was that ‘the waste of the town was going onto their land and defiling their treasure’. Borough council representatives stated that

¹¹⁰¹ ‘Application(s) for right(s) in respect of natural water’, 23 June 1986. Archives New Zealand file AADM W5064 7538 Box 24 TCP 0218/87

¹¹⁰² Notice of objection to the borough council’s application, signed by the Secretary of the Horowhenua Lake Trustees, 22 September 1986. Archives New Zealand file AADM W5064 7538 Box 24 TCP 0218/87

¹¹⁰³ Ada Tatana to Town Clerk, 3 April 1985. Archives Central file HDC 00009: 22: 6/8 1984-1987

¹¹⁰⁴ Town Clerk to Ada Tatana, 30 April 1985. Archives Central file HDC 00009: 22: 6/8 1984-1987

¹¹⁰⁵ Ada Tatana to Town Clerk, 1 May 1985. Archives Central file HDC 00009: 22: 6/8 1984-1987

¹¹⁰⁶ Town Clerk to Cullinane Turnbull Steele & Partners, 7 May 1985, and Town Clerk to District Land Surveyor, 3 July 1985. Archives Central file HDC 00009: 22: 6/8 1984-1987

¹¹⁰⁷ Cullinane Turnbull Steele & Partners to Town Clerk, 28 June 1985. Archives Central file HDC 00009: 22: 6/8 1984-1987

this project had been Number One priority, but there had been many time delays in reaching and obtaining decisions. Had the council been able to proceed with the Hokio scheme, the deadline would almost certainly have been met.

The Mayor agreed that there are no words that can answer the concerns of these people. It is the Council's wish to get the effluent out of Lake Horowhenua, and over the past 4 years it has been a major item on the agenda. He noted that compensation had been talked of, and noted that the new project would be for the betterment of land – this is perhaps some tangible form of compensation in return; there was a need to do something tangible.¹¹⁰⁸

The chairman of the water board felt that prosecuting the borough council would achieve little, but did not believe that the borough council would be given 'an open-ended water right'. He 'noted' that 'the Borough had broken an agreement in good faith and accepts responsibility'. The lake trustees reiterated the six aspects of their complaint (relating to the build-up of sediment in the lake; the damage to water and aquatic life; the lack of an easement for the discharge; the discharge constituting a trespass; the grant of the earlier right having been on the basis that the discharge would be finished by now; and the need for the grant of any further right to be conditional on the council removing the sediment from the lake). Among the other objectors, Ngāti Pāriri objected that the deadline had not been met; Ngāti Pareraukawa and Ngatokowaru Maori Committee contended that the borough council had breached faith and should have done more; and Te Runanga ki Muaupoko argued that there should be compensation.¹¹⁰⁹

Counsel for the lake trustees wrote to the secretary of the Manawatu Catchment Board on 12 November 1986. He claimed that, at the 31 October meeting, the mayor had accepted responsibility for the sediment in the lake, although the council engineer had qualified this by adding that the sediment deposits for which the borough council was responsible were minimal. Nevertheless, the meeting had ended with the borough council representatives stating that the council would consider an agreement about removing sediment and addressing the issue of compensation. However, the council had now indicated it was not considering any agreement. Therefore, wrote counsel, the trustees would now formally require the catchment board to act on the fact that discharge was ongoing without a water right. In other words, the catchment board should 'ensure that this unauthorised discharge ceases forthwith'.¹¹¹⁰

A special tribunal of the Manawatu Catchment Board and Regional Water Board held a hearing on 15 December 1986 to consider the application and objections. Evidence was provided by Ada Tatana. She expressed her sadness at the diminution of fisheries in the lake. It was not possible, she said, to 'regard the Lake as the major source of our food. A part of

¹¹⁰⁸ Notes of the 31 October 1986 meeting made by E V P Tyler. Archives New Zealand file AADM W5064 7538 Box 24 TCP 0218/87

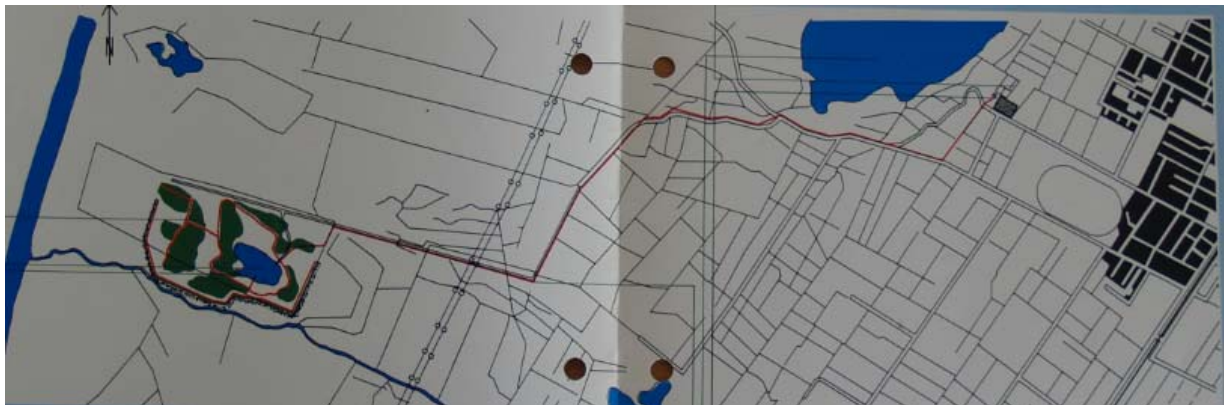
¹¹⁰⁹ Notes of the 31 October 1986 meeting made by E V P Tyler. Archives New Zealand file AADM W5064 7538 Box 24 TCP 0218/87

¹¹¹⁰ Roger Clark, Stace Hammond Grace & Partners, to Secretary, Manawatu Catchment Board, 12 November 1986. Archives New Zealand file AADM W5064 7538 Box 24 TCP 0218/87

our heritage and mana has been eroded away.’ She told the tribunal that it ‘must be able to understand how a Maori feels when the Lake waters from which food should be harvested are used to discharge sewage’. The application for an extension by the council had led to a loss of faith in it, as it had not honoured its commitment. She said that the council had been

dealing with our treasure, a sacred place, and above all something which has tremendous spiritual and cultural value to our people and our family. The Lake is our mana. ... The Trustees believe they had at that point tolerated an unacceptable situation for too long and resented the Council taking their Lake for granted and continuing to discharge into it as if it had a right to do so. ... The Trustees believed they could not silently submit yet again to the will of the Council.¹¹¹¹

Figure 5.4: Plan showing the new Levin sewerage scheme, with a pipeline from the treatment plant to the ‘Pot’¹¹¹²



Rachael Moore, the Secretary of the Ngatokowaru Maori Committee, made an important submission. She contented that

this Tribunal is monocultural in the face of a bicultural issue. We are concerned that the Tribunal may well not understand the cultural attitudes and values which have formed the background of this issue.¹¹¹³

She may well have been comparing the tribunal – which comprised two farmers, a forester, an official from the Ministry of Agriculture and Fisheries, and an engineer, all of whom were Pākehā – with the Waitangi Tribunal, which had adopted a bicultural approach under the chairmanship of Chief Judge E T J Durie. She was supported in her point by Ron Taueki, the secretary of Te Runanga ki Muaupoko. He told the secretary of the Manawatu Catchment

¹¹¹¹ Submission of Ada Tatana. Archives New Zealand file AADM W5064 7538 Box 24 TCP 0218/87. This is dated 10 February 1988 and was submitted for the trustees’ appeal against the decision on costs. However, it is clearly based on Tatana’s submission to the December 1986 hearing. For example, it states at one point that ‘since 15 September 1986 the council has not had a Water Right but has continued to discharge into the Lake’, an assertion that was incorrect in February 1988.

¹¹¹² Plan taken from the centrespread of the borough council brochure ‘Levin Borough Council Effluent Disposal Scheme’, c. 1987. Archives Central file HRC 00024: 33: 9/6 part 5

¹¹¹³ Submission of Rachael Moore to the regional water board tribunal. Archives Central file HRC 00027: 52: 2068c

Board and Regional Water Board that his organisation would not be taking part in the hearing. As he explained,

We do not believe either, one, that the Tribunal will be impartial or, two that the case has any realistic chance of succeeding. It was very obvious to us in the first informal meeting between the various parties, which took place in the Horowhenua County Council's Board room, that the Water Board representative was there to support the Borough Council and in fact most of the input from this representative was as an apologist of the Boroughs [sic] position! As well, the precedents in other similar cases would indicate to us that the Catchment Board would find for the Council any way, on the grounds of the needs of the wider community.¹¹¹⁴

During the 15 December hearing a member of the tribunal – G W N Johansen, the Palmerston North City representative on the catchment board and a civil engineer – took exception to Moore's suggestion that the tribunal might not have the requisite understanding. As if to make her point, he said he had fought alongside Māori in World War II and had 'lifelong friendships and understandings with people of the Maori race'. Moore explained that she did not doubt the tribunal's impartiality, but had simply wanted 'someone bicultural sitting on it'.¹¹¹⁵

As it transpired, the decisive evidence was again provided by Graham Curtis, the Principal Health Protection Officer at the Department of Health. He contended that it made no sense for the catchment board to impose a fine on the borough council, as this would be unjust given the expense of the work to the borough. It would also penalise ratepayers, who included 'the Maori people of the Horowhenua'. Curtis thought the immediate cessation of the discharge 'a non issue although I am told that there has been a call for this to happen'. If it were stopped then raw sewage could overflow into the lake, which was 'clearly less desirable than that which occurs at this time'. People would have to 'dig pit privies and dispose of sink and bath water on their lawns', and the risk of disease outbreak would be 'immense'. He imagined that both the borough council and the Department of Health would seek an injunction, and he felt 'certain one would be granted'. In sum, said Curtis,

I can but reflect that the preceding horrific scenario should be something left in one's nightmares. ... The immediate interests of the 14,000 Levin residents must come first at this time.¹¹¹⁶

Curtis added that, if the objectors appealed the catchment board's decision to allow the discharge to continue for an extended period, then the need to discharge to the lake would probably have been removed by the time the appeal was heard. He concluded that

¹¹¹⁴ Ron Taueki to Secretary, Manawatu Catchment Board and Regional Water Board, 5 December 1986. Archives Central file HRC 00027: 52: 2068c

¹¹¹⁵ Transcript of the 15 December 1986 hearing, p 10. Archives Central file HRC 00027: 52: 2068c

¹¹¹⁶ Undated submission to Manawatu Catchment Board by G J Curtis, Principal Health Protection Officer, for Acting Medical Officer of Health. Archives New Zealand file AADM W5064 7538 Box 24 TCP 0218/87

The matter of discharge to Lake Horowhenua is one that arouses concern in many people not the least of whom are the Maori for whom the Lake has cultural and ancestral significance, including the gathering of foods from in and around its waters.

I have much sympathy for their concerns and the cultural offensiveness when sewage material (even though treated) are mixed with food gathering areas. I would ask that they be tolerant in this matter in that their hopes and wishes are soon to be realised.¹¹¹⁷

Image 5.6: Dead eels at the lake's edge, 22 December 1986¹¹¹⁸



Curtis made it sound like sewage – treated or otherwise – would never enter the lake again if only the objectors would wait a few months longer. As we shall see in chapter 7, this hope was somewhat forlorn. Moreover, Curtis's submission was a reminder that both Muaūpoko and Ngāti Raukawa were powerless in the matter and utterly dependent upon the borough council acting with haste. If the council failed to meet the so-called deadline, there was no alternative but for it to continue its discharge. Curtis's request for the Māori objectors to be tolerant was also ironic, as they had been forced to tolerate the pollution of their taonga for decades. Now, with the end theoretically in sight, they were being asked to wait longer.

In its decision the special tribunal said that it had had

particular regard to the historical, cultural and spiritual values of Lake Horowhenua to the Maori owners that go beyond the physical environment but it is necessary to consider the practical realism of the situation as presented in the evidence of Mr G.J. Curtis of the Department of Health.¹¹¹⁹

¹¹¹⁷ Undated submission to Manawatu Catchment Board by G J Curtis, Principal Health Protection Officer, for Acting Medical Officer of Health. Archives New Zealand file AADM W5064 7538 Box 24 TCP 0218/87

¹¹¹⁸ Print on Archives Central file HDC 00018: 97: 23/6/1 part 1 1982-1986

¹¹¹⁹ Undated decision of the tribunal hearing into water right application No. 86/98. Archives New Zealand file AADM W5064 7538 Box 24 TCP 0218/87

It granted the borough council an extension of its water right to expire on 30 June 1987. It recommended, however, 'that the Levin Borough Council be reminded of the urgency of removing the discharge from the lake and to ensure that it is diverted as soon as practicable prior to the expiry date of this Right'.¹¹²⁰ In a separate ruling, the applicant's and objectors' costs were deemed to 'lie where they fall'.¹¹²¹

On 14 April 1987 the lake trustees appealed to the Planning Tribunal not the decision itself but the ruling on costs. Counsel argued that it was 'just and reasonable that the Applicant, who initiated the proceedings, should bear the objectors [sic] costs'.¹¹²² Counsel for the catchment board opposed the appeal, arguing that the trustees had been 'uncompromising', particularly in their letter of 12 November 1986, and 'unreasonable and unrealistic'. Moreover, said counsel, it was 'astounding' that the trustees would demand an immediate cessation to the discharge given Curtis's evidence. In fact, counsel was harshly critical of the trustees' entire approach. Their limited evidence had failed to engage with the substantive issues and indeed had

proceeded in a vacuum. It was concerned with its Water Rights and protection to its land without any reference to the needs of the wider community. The Appellants had no regard to the needs of others. ... To satisfy its aims the Appellants were prepared to endanger the health of the wider community.¹¹²³

In response to this, counsel for the trustees argued for the precedence of a Bay of Plenty case (Shaw and others v Bay of Plenty Regional Water Board and others 6NZTPA 158), in which the objectors to a power development had lost their case but still been awarded costs on the basis that their objection had tested matters of national importance and they had no other forum in which to make it.¹¹²⁴

The Planning Tribunal, under Judge W J M Treadwell, issued its brief judgment in June 1988. It sided firmly with counsel for the catchment board (indeed almost echoing counsel's submissions):

The appellants called no evidence of a scientific, spiritual or cultural nature. The evidence presented was that of a member of the trust who merely gave an account of the history of the lake, its present pollution and the value of the lake to her and the people she represented.

¹¹²⁰ Undated decision of the tribunal hearing into water right application No. 86/98. Archives New Zealand file AADM W5064 7538 Box 24 TCP 0218/87

¹¹²¹ Decision on the allocation of costs, 17 March 1987. Archives New Zealand file AADM W5064 7538 Box 24 TCP 0218/87

¹¹²² Notice of appeal by Roger Clark of Stace Hammond Grace & Partners, 14 April 1987. Archives New Zealand file AADM W5064 7538 Box 24 TCP 0218/87

¹¹²³ Submission for the Manawatu Catchment Board of T C Thackery, Opie & Dron (attached to letter from Thackery to the Registrar, Planning Tribunal, 4 September 1987). Archives New Zealand file AADM W5064 7538 Box 24 TCP 0218/87

¹¹²⁴ Submission of Roger Clark, Stace Hammond Grace & Partners, 14 March 1988. Archives New Zealand file AADM W5064 7538 Box 24 TCP 0218/87

Groups of interested people are perfectly entitled to make such representations in relation to water rights, but we see no reason in the present circumstances why the council should be called upon to pay the costs of that exercise. The appeal is therefore dismissed and the ruling of the Special Tribunal confirmed.¹¹²⁵

Image 5.7: Levin mayor Sonny Sciascia and his predecessor Jack Bolderson above the Pot, no date¹¹²⁶



It was notable that the lake trustees were regarded as merely a ‘group of interested people’. Perhaps unsurprisingly, in that context, their argument that they had been obliged to appeal – given the borough council’s failure to comply with the terms of the five-year right issued in 1981 – fell on deaf ears. It is not clear why Muaūpoko did not follow the Motunui, Kaituna River, and Manukau Harbour claimants in filing a claim about the lake’s pollution with the Waitangi Tribunal. As we shall see in chapter 6, the lake trustees threatened to lodge a claim with the Tribunal over the control of the lake in 1985. When Wai 52 was lodged by Tamihana Tukapua on 5 December 1988, however, it only raised land issues.¹¹²⁷

Stormwater

It has already been seen that stormwater was a key source of nutrients and sediment entering the lake. In 1976 it was calculated that stormwater accounted for 40 per cent of the phosphorus in the lake that did not come from the sewage effluent. The remaining 60 per cent came from the catchment board’s north drain, the Kawiu drain, and the Arawhata Steam.¹¹²⁸

¹¹²⁵ Judgment of W J M Treadwell, 13 June 1988. Archives New Zealand file AADM W5064 7538 Box 24 TCP 0218/87. The other members of the Planning Tribunal were E M Jakobsson and A L McMillan.

¹¹²⁶ Photograph by Mike Walker for the Horowhenua District Council. Taken from Dreaver, *Levin*, colour plates opposite p 182

¹¹²⁷ Wai 52 claim #1.1

¹¹²⁸ Paper produced for NCC meeting of 8-9 June 1976 by C L Purdie, advisory officer, 28 May 1976. Archives New Zealand file AAZU W3619 Box 13 31/11/71

More generally, as has also been noted, Levin and the surrounding district were routinely subjected heavy rains and flooding, especially during winter. The water races served as supplementary drains, but also brought additional water to the borough. At the same time that Vickerman and Lancaster were engaged to design the borough's sewerage system, therefore, they were also asked to consider a scheme for the modern disposal of stormwater. Vickerman reported to the Town Clerk on the matter in October 1948. He thought that the aim should be to have all the water races 'cut off as early as possible', and the existing stormwater pipes and culverts replaced with larger ones.¹¹²⁹ The borough council resolved in February 1949 to approach the county council about eliminating the water races,¹¹³⁰ but otherwise made little progress for lack of funds.

In 1952, after exceptionally bad flooding in the town, geologists Leslie Adkin and Horace Fyfe produced a report on Levin's propensity for flooding. They reported that the flooding had two causes: rapid run-off from heavy rainfall and the surface outflow of subterranean water as a result of the high water table. They doubted that a conventional stormwater system could cope with the latter and thought a secondary method of drainage would be needed to address it. In any event, they suggested that groundwater levels be measured over a period of years in order to give data to enable an engineer to design a suitable solution.¹¹³¹

But by 1953 the borough was no nearer a solution. Flooding was acute and Mayor Parton described stormwater as 'probably Levin's greatest problem today'.¹¹³² As noted in chapter 4, flooding was again heavy in 1955 and 1956, both in Levin and along Hokio Beach Road. In 1960 the Town Clerk wrote to the County Clerk and asked that the water race that flowed from the county and entered the borough at Oxford Street be diverted away from the borough, as it had become 'a distinct embarrassment to my Council' and was causing flooding in the town.¹¹³³ In 1961 the stormwater problems were still being addressed piecemeal rather than comprehensively,¹¹³⁴ and the inundation of rain in 1962 that led to the overflow of raw sewage to the lake was also too much for the stormwater drains to cope with. In 1963 heavy rain brought further flooding to central Levin.¹¹³⁵

Almost annual stories of heavy flooding fill the files of the borough council in the following years. The key problem remained the same: the lack of finance to carry out a comprehensive

¹¹²⁹ H Vickerman to Town Clerk, 15 October 1948. Archives Central file HDC 00009: 82: 23/1: 1948-1963

¹¹³⁰ 'Storm water drainage. Council to seek permission for scheme to proceed', *Chronicle*, 2 February 1949. Clipping on Archives Central file HDC 00009: 82: 23/1: 1948-1963

¹¹³¹ 'Flooding at Levin, June 1952', undated report by H E Fyfe and G L Adkin. Archives Central file HDC 00009: 82: 23/1: 1948-1963

¹¹³² 'Major project required for storm water', *Chronicle*, 23 September 1953. Clipping on Archives Central file HDC 00009: 82: 23/1: 1948-1963

¹¹³³ Town Clerk to County Clerk, 15 December 1960. Archives Central file HDC 00009: 82: 23/1: 1948-1963

¹¹³⁴ 'Urged action on stormwater problem', *Chronicle*, 24 February 1961. Clipping on Archives Central file HDC 00009: 82: 23/1: 1948-1963

¹¹³⁵ 'Miniature "Hawke's Bay" in some parts of town yesterday', *Chronicle*, 7 June 1963. Clipping on Archives Central file HDC 00009: 82: 23/1: 1948-1963

scheme.¹¹³⁶ Absent was any consideration of what the stormwater might have been bringing into the lake. This changed, however, after the passage of the Water and Soil Conservation Act 1967, which was designed to bring some order to the use and conservation of natural water. Under the terms of the Act, the Secretary of the Manawatu Catchment Board wrote to the Town Clerk in August 1968 and invited him to give notice of all the borough's stormwater outfalls.¹¹³⁷ The Town Clerk responded with a list of these outfalls the following month,¹¹³⁸ and in February 1969 the NWSCA granted a dispensation to the borough to discharge its stormwater 'provided the water does not contain pollutants'.¹¹³⁹

Image 5.8: Road flooding in Levin, July 1966¹¹⁴⁰



The borough may not have been fully aware at this particular point of the polluting nature of its stormwater. The testing of lake water that began in the late 1960s, however, would have soon alerted it to this problem. On 4 September 1969 the secretary of the domain board wrote to the Town Clerk about the board's concerns about the discharge of stormwater. As he explained,

The silt in the storm water could have a detrimental effect on the Lake in that it would settle in the Lake and have the effect of raising the bed or in other words making the Lake water shallower. This is detrimental to the yachting, rowing and also the fish life in the Lake. The Domain Board has asked me to inquire about your plans relating to the discharge of storm

¹¹³⁶ See, for example, 'Loan money crux of flooding problem solution, says mayor', *Chronicle*, 25 January 1967. Clipping on Archives Central file HDC 00009: 82: 23/1: 1964-1971

¹¹³⁷ Secretary, Manawatu Catchment Board, to Town Clerk, 29 August 1968. Archives Central file HDC 00009: 86: 23/4 1976-1989

¹¹³⁸ Town Clerk to Secretary, Manawatu Catchment Board, 27 September 1968. Archives Central file HDC 00009: 86: 23/4 1976-1989

¹¹³⁹ Secretary, Manawatu Catchment Board, to Town Clerk, 24 February 1969. Archives Central file HDC 00009: 86: 23/4 1976-1989

¹¹⁴⁰ 'Heaviest flooding for years', unsourced clipping of 7 July 1966 on Archives Central file HDC 00009: 82: 23/1 1964-1971

water in the Lake. Are there any plans for the extraction of the silt etc. before it reaches the lake itself?¹¹⁴¹

This letter was annotated, probably by Mayor Claude Fuller:¹¹⁴² ‘What next? maybe they should take this up with the County which might (?) then close the water races.’¹¹⁴³ The Town Clerk’s reply to the domain board secretary on 16 September 1969 made clear that the borough washed its hands of the problem:

The Council considers that it is entirely impracticable for it to consider the extraction of silt from stormwater which has been flowing into the lake for many years past and the quantity of which will not be altered because the Council has decided to pipe it through the Borough.

The Council considers that a large proportion of the silt is carried by water-races which originate in the Horowhenua County, but in any case, does not consider the request of your Board is practical from the Council’s point of view. Nor does the Council feel that it has any responsibility in this respect.¹¹⁴⁴

The press reported the following day that the council’s works committee had considered that ‘the suggestion that the council extract silt from the storm water is wholly impracticable and, in any case, not the council’s responsibility’. Councillor Allen – himself a domain board member – said he could not see what the domain board was concerned about. He remarked that ‘It is just one of those things, that the lake has silted up over the years, and until we reach the stage of dredging it deeper, all we’ll have is a glorified swamp’.¹¹⁴⁵

In the meantime, the council continued with plans to upgrade its stormwater system. It identified several parcels of Māori land, including the chain strip itself, through which its planned new stormwater drain would need to run in place of the existing open drain. Its lawyers, Park Cullinane & Turnbull, advised the Town Clerk in January 1968 that ‘it will be an involved procedure to buy from the Maoris’ and the council ‘would probably find it a simpler procedure to take the land under the Public Works Act’.¹¹⁴⁶ The following month the Town Clerk replied that the council had decided to heed this advice, and intended to take the lands in question ‘for reserve purposes’.¹¹⁴⁷ A complication arose, however, because the consent of the Minister of Maori Affairs was needed to take Māori land for a recreation ground.¹¹⁴⁸ The council also wondered how it would access the lake if an area of dry land

¹¹⁴¹ Secretary, domain board, to Town Clerk, 4 September 1969. Archives Central file HDC 00009: 22: 6/8 1965-1970

¹¹⁴² The writer’s initials appear to be ‘C.E.F.’.

¹¹⁴³ Secretary, domain board, to Town Clerk, 4 September 1969. Archives Central file HDC 00009: 22: 6/8 1965-1970

¹¹⁴⁴ Town Clerk to secretary, domain board, 16 September 1969. Archives Central file HDC 00009: 22: 6/8 1965-1970

¹¹⁴⁵ “‘Impractical’ to extract silt’, clipping from unknown newspaper, 17 September 1969. Clipping on Archives Central file HDC 00009: 86: 23/9

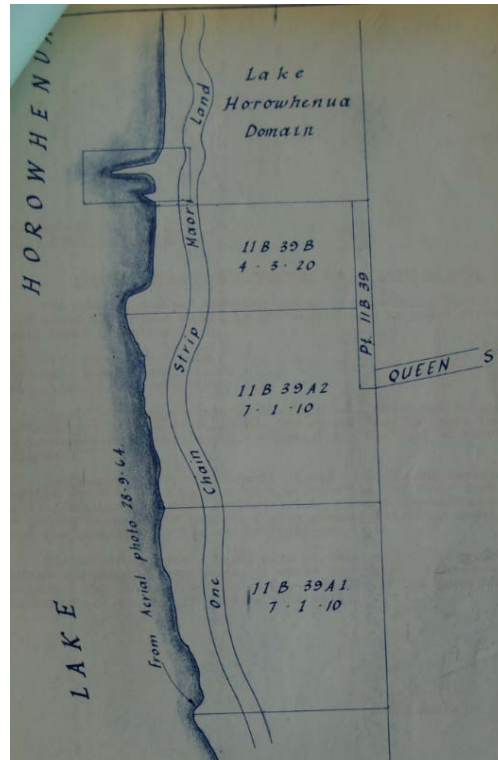
¹¹⁴⁶ Park Cullinane & Turnbull to Town Clerk, 10 January 1968. Archives Central file HDC 00009: 48: 14/23

¹¹⁴⁷ Town Clerk to Park Cullinane & Turnbull, 27 February 1968. Archives Central file HDC 00009: 48: 14/23

¹¹⁴⁸ Park Cullinane & Turnbull to Town Clerk, 23 August 1968. Archives Central file HDC 00009: 48: 14/23

existed between the boundary of the chain strip and the edge of the water.¹¹⁴⁹ In May 1970 Park Cullinane & Turnbull advised the Town Clerk to apply to the Minister to take the dewatered area as well as the chain strip and the other blocks in question, Horowhenua XIB39A1, 39A2, and 39B.¹¹⁵⁰

Figure 5.5: Māori land blocks sought by the Levin Borough Council in 1969 for stormwater drains¹¹⁵¹



It is clear that the council's original motivation for the taking involved the laying of stormwater drains, and the council may have decided – somewhat opportunistically – to take a much larger area for recreation purposes. Given the history of contention over ownership of the foreshore area on the eastern side of the lake, this was a rather incredible turn of events. The Town Clerk approached the Secretary for Māori and Island Affairs with the proposal on 1 July 1970. He explained that

The position with respect to the above-mentioned land is that the Council at present disposes of stormwater through 11 B 39 and 11 B 39 A2 and has done so for many years past. It is now necessary for the Council to commence a major stormwater scheme which will cost in excess of \$500,000; the Council having loan authority of \$290,000 for sometime past, but has only recently been in a position to raise some of this loan.

¹¹⁴⁹ Town Clerk to Park Cullinane & Turnbull, 24 March 1969. Archives Central file HDC 00009: 48: 14/23

¹¹⁵⁰ Park Cullinane & Turnbull to Town Clerk, 14 May 1970. Archives Central file HDC 00009: 48: 14/23

¹¹⁵¹ Borough council plan dated 20 March 1969. Archives Central file HDC 00009: 48: 14/23

It will be necessary in the course of the stormwater scheme to construct an outlet in to the Horowhenua Lake in place of the existing outlet and extensive works are proposed over these two blocks.

In view of the fact that all of the land referred to is at the best rough grazing land, the Council considers it would be in the best interests of all concerned, if it was converted to public reserve and gradually improved over a period of years as to be an asset to the Horowhenua district.¹¹⁵²

The Town Clerk asked that the matter be put to the Minister ‘at the earliest opportunity’.¹¹⁵³

The district officer of the Department of Māori and Island Affairs told the Town Clerk that the views of the owners would first need to be ascertained before any proposal was put to the Minister. He advised the Town Clerk to hold meetings with the owners and explain the proposals to them. A representative of the department would attend these meetings to gauge the owners’ attitude.¹¹⁵⁴ On 4 November 1970 the council contacted all owners on the schedule provided by the department asking them to attend a meeting on 19 November.¹¹⁵⁵ A record of this meeting has not been located. However, Joe Tukapua wrote to the Town Clerk on behalf of the lake trustees a week later to say that the trustees would like to meet the council on the matter.¹¹⁵⁶

Up until this point, the council’s proposals do not appear to have been reported in the press. On 4 May 1971, though, the *Chronicle* reported that negotiations had been needed with the lake trustees to secure their agreement to the council’s pipes crossing the chain strip to the lake. These had begun in November 1970 but ‘the council had been unable to get the Maori people involved back to the negotiating table’.¹¹⁵⁷ On 10 May 1971, however, the borough council and lake trustees had what Mayor Fuller called ‘very amicable discussions’ on the subject. Given the revelations that year about the lake’s deteriorating water quality, the trustees raised the issue of pollution. Presumably mindful of the build-up of sediment, they queried the possible use of a sluice gate at the outlet instead of or in conjunction with the concrete weir.¹¹⁵⁸ The Town Clerk reported on this meeting to Park Cullinane & Turnbull. He said that the five lake trustees who attended had ‘reached agreement ... whereby they will permit the Council to lay a pipe drain through the one chain strip and de-watered area immediately opposite the western end of Queen Street West to the edge of the Horowhenua Lake’. Once a formal agreement had been made with the lake trustees the council would then

¹¹⁵² Town Clerk to Secretary for Maori and Island Affairs, 1 July 1970. Archives Central file HDC 00009: 48: 14/23

¹¹⁵³ Town Clerk to Secretary for Maori and Island Affairs, 1 July 1970. Archives Central file HDC 00009: 48: 14/23

¹¹⁵⁴ District Officer to Town Clerk, 16 July 1970. Archives Central file HDC 00009: 48: 14/23

¹¹⁵⁵ Form letter of 4 November 1970. Archives Central file HDC 00009: 48: 14/23

¹¹⁵⁶ Joe Tukapua, Secretary, Horowhenua Lake Trustees, to Levin Borough Council, 26 November 1970. Archives Central file HDC 00009: 48: 14/23

¹¹⁵⁷ ‘Strip is key to stormwater’, *Chronicle*, 4 May 1971. Clipping on Archives Central file HDC 00009: 82: 23/1: 1964-1971

¹¹⁵⁸ ‘Council and trustees discuss stormwater’, *Chronicle*, 11 May 1971. Clipping on Archives Central file HDC 00009: 82: 23/1: 1964-1971

commence negotiations with the owners of the other Māori-owned blocks.¹¹⁵⁹ Park Cullinane & Turnbull drew up a draft agreement that provided for the council to lay concrete pipes through the chain strip and dewatered area, and reinstate the land thereafter. The council would in turn undertake not to discharge ‘any industrial or trade wastes’ into the lake via the pipes.¹¹⁶⁰ The Town Clerk noted that he, the mayor, and the Borough Engineer all considered the draft to be satisfactory.¹¹⁶¹

Figure 5.6: Undated borough council plan showing ‘existing open channel’ and ‘proposed open stormwater channel’ (in bolder lines) running through Horowhenua 11B 39 and 11B 39 A2¹¹⁶²



Lake trustees Rangi Hill, S W Kerehi, and Joe Tukapua signed the agreement at a meeting with the borough council at Kawiu Pā on 5 December 1971. Hill expressed disappointment that only three of the 14 trustees had attended the meeting. He felt sure, though, that ‘what we are trying to put through today is for the benefit of our tribe and our beautiful town of Levin’. The new Levin mayor, Laurie Roberts, was reported as telling Muaūpoko that ‘he personally hoped the council would have a system of preventing rubbish entering the lake through the stormwater system’. He also stressed his determination that trade waste would not enter the

¹¹⁵⁹ Town Clerk to Park Cullinane & Turnbull, 20 May 1971. Archives Central file HDC 00009: 86: 23/4 1976-1989

¹¹⁶⁰ Draft of operative clauses forwarded to the Town Clerk by Park Cullinane & Turnbull, 12 July 1971. Archives Central file HDC 00009: 86: 23/4 1976-1989

¹¹⁶¹ Town Clerk to Park Cullinane & Turnbull, 15 July 1971. Archives Central file HDC 00009: 86: 23/4 1976-1989

¹¹⁶² Undated plan on Archives Central file HDC 00009: 86: 23/4 1976-1989

lake, stating ‘We can’t give guarantees against acts of God ... but we will do all in our power to ensure noxious material does not enter the lake.’¹¹⁶³

In April 1973 the borough council ‘expressed concern that some signatures were still required from Maori owners’.¹¹⁶⁴ The following month Park Cullinane & Turnbull advised that

The agreement has now been signed by all the trustee Maori Owners. We are attending to stamping and will send you a stamped copy of the agreement as soon as it becomes available from the Inland Revenue Department.¹¹⁶⁵

For some reason the agreement was never signed by the council itself, which became a focus of legal attention beyond the period covered by this report.¹¹⁶⁶ It is not clear how the borough council’s negotiations proceeded with the owners of Horowhenua XIB39A1, 39A2, and 39B.

Roberts was probably the first local body politician dedicated to improving the quality of the stormwater discharged to the lake. While still a councillor (and a domain board member) he had written to the Town Clerk on 19 July 1971 seeking to place before the council the following motion:

THAT the Council forthwith instruct its Engineer to arrange for inclusion in its plans for municipal stormwater disposal into the Horowhenua Lake, satisfactory devices or construction for completely separating and retaining solids, grit, coarse silt, trash and debris generally from water discharged into the Lake at any outlet, the channel of which courses from or through the Borough.¹¹⁶⁷

The borough’s works committee decided to refer Roberts’ suggestion to Borough Engineer Dee for a report.¹¹⁶⁸ Shortly after this, Roberts also asked the domain board to pass a resolution about keeping silt and debris out of the lake.¹¹⁶⁹ At its October 1971 meeting the board adopted a motion put forward by Roberts calling on the borough council to take action along the very same lines as Roberts’ suggested motion for the council.¹¹⁷⁰

It appears that Dee’s report was not forthcoming until 1974. In May that year the Associate Engineer told Dee what would be involved in installing a mechanical grit trap on the Queen

¹¹⁶³ ‘Tribal group ratifies access agreement’, *Chronicle*, 7 December 1971. Clipping on Archives Central file HDC 00009: 22: 6/8 1970-1974

¹¹⁶⁴ Town Clerk to Park Cullinane & Turnbull, 17 April 1973. Archives Central file HDC 00009: 59: 16/10

¹¹⁶⁵ Park Cullinane & Turnbull to Town Clerk, 7 May 1973. Archives Central file HDC 00009: 59: 16/10

¹¹⁶⁶ See ‘District Council ratifies old document’, *Manawatu Standard*, 4 October 2013. <http://www.stuff.co.nz/manawatu-standard/news/9238919/District-council-ratifies-old-document> accessed 4 March 2015

¹¹⁶⁷ L B Roberts to Town Clerk, 19 July 1971. Archives Central file HDC 00009: 23/4 1976-1989

¹¹⁶⁸ Town Clerk to L B Roberts, 13 August 1971. Archives Central file HDC 00009: 23/4 1976-1989

¹¹⁶⁹ ‘Silt in stormwater not wanted in lake’ *Chronicle*, 25 August 1971. Clipping on Archives New Zealand file HDC 00009: 22: 6/8 1970-1974

¹¹⁷⁰ ‘Wants debris screened from Levin stormwater channels’, *Chronicle*, 2 October 1971. Clipping on Archives New Zealand file HDC 00009: 22: 6/8 1970-1974

Street drain.¹¹⁷¹ Dee then reported back to the council on the matter, including the likely cost of \$50,000 to \$60,000 to install three grit removal units. He considered this too expensive and suggested that a cheaper alternative could be considered, such as a settling pond on Māori-owned land adjacent to the lake. However, this would be unsightly, and potentially ‘the more economical and less adverse effect on the environment would be periodical dredging of parts of the lake’, although this would not overcome the problem of floating debris.¹¹⁷²

This report resulted in two letters being sent to the catchment board. On 29 August 1974 Dee asked the catchment board’s Chief Engineer (Leenards) for advice on how to prevent floating debris such as plastic bottles entering the lake. He explained that he had investigated the mechanical means of doing this, ‘but the cost is far too high’. He had also considered a concrete structure at the outflow complete with screens that would be cleared by hand, but ‘to locate this structure at its logical point is not feasible because of difficulties with Maori owners’.¹¹⁷³ Two days later borough councillor Jack Lines wrote to the secretary of the catchment board to say that ‘The thought of spending the huge sum of \$60,000/80,000, when loan monies are so hard to procure on a silt come [sic] trash trap just leaves me cold’. As far as he was concerned, the amount of rubbish being brought to the lake through stormwater was ‘nothing that a couple of Council employees could not clean up in one hour’. He felt the idea of there being a problem was a ‘myth’ and that a rubbish trap could prove to be a ‘white elephant’.¹¹⁷⁴

Leenards replied to Lines on 19 September 1974. He diplomatically suggested that the issue was ‘more a question of Council policy than an engineering problem’. He did make an observation, however, that could apply to most of the contents of this chapter:

It will always be difficult to justify any expenditure for improvements to the environment on economical grounds and depends for a large part on the people who have to pay for it.¹¹⁷⁵

It is not clear how Leenards replied to Dee, but he may well have suggested that the borough experiment with a temporary netting screen. On 26 November 1974 Dee wrote to J Taueki, the chair of the lake trustees, asking for permission to erect a 50- or 60-yard length screen of fine wire mesh in a fan shape around the Queen Street drain where it entered the lake.¹¹⁷⁶ The

¹¹⁷¹ E Quinn, Associate Engineer, to Borough Engineer, 23 May 1974. Archives Central file 00009: 86: 23/9

¹¹⁷² See undated and unsourced newspaper clippings headed ‘Council’s plans on protecting Horowhenua Lake’ and ‘Filter a first step’ attached to Councillor Jack Lines’ letter of 31 August 1974 to the Secretary of the Manawatu Catchment Board. Archives Central file HRC 00024: 57: 19/10 part 3

¹¹⁷³ Borough Engineer to Chief Engineer, Manawatu Catchment Board, 29 August 1974. Archives Central file HRC 00024: 57: 19/10 part 3

¹¹⁷⁴ Jack Lines to Secretary, Manawatu Catchment Board, 31 August 1974. Archives Central file HRC 00024: 57: 19/10 part 3

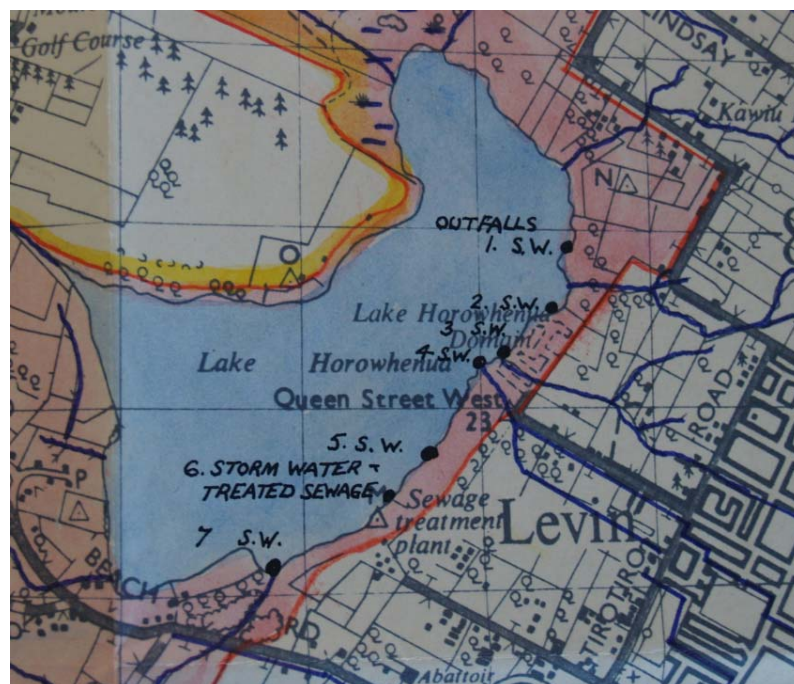
¹¹⁷⁵ Leenards to Lines, 19 September 1974. Archives Central file HRC 00024: 57: 19/10 part 3

¹¹⁷⁶ Borough Engineer to J Taueki, chairman, Horowhenua Lake Trustees, 26 November 1974. Archives Central file HDC 00009: 86: 23/9

trustees must have agreed to this because the borough council was soon using a temporary wire mesh fence.¹¹⁷⁷

The majority of councillors were, unlike Lines, not in open denial of the harmful impacts of stormwater. In response to Dee's August 1974 report the council had agreed to ask him to identify a suitable device.¹¹⁷⁸ In September 1976, however, Dee suggested that the temporary mesh fence simply be upgraded, at a cost of \$350. While Lines felt vindicated by this, the other councillors rejected it, and asked Dee to come up with another alternative. Roberts said that he had inspected the outflow and 'the whole surrounding delta is a mess of debris'.¹¹⁷⁹

Figure 5.7: Entry points to the lake of stormwater drains, effluent, and streams, mid-1980s¹¹⁸⁰



There was more to the councillors' concern though than simply the environment. It is clear that – beyond his 'hope' reported at the time – Roberts had made explicit assurances to the lake trustees in late 1971 and 1972 that, if the trustees agreed to the laying of the stormwater pipe across their land, steps would be taken to address the harmful effects of the discharge. In August 1974, for example, Roberts said that by installing a grit trap 'the council would be honouring an agreement made three years ago with the property owners around the lake that satisfactory safeguards would be taken with the stormwater being discharged into the

¹¹⁷⁷ 'Council wants quality stormwater screening', unsourced clipping of 21 September 1976. Clipping on Archives Central file HDC 00009: 86: 23/9

¹¹⁷⁸ See undated and unsourced newspaper clipping 'Filter a first step' attached to Councillor Jack Lines' letter of 31 August 1974 to the Secretary of the Manawatu Catchment Board. Archives Central file HRC 00024: 57: 19/10 part 3

¹¹⁷⁹ 'Council wants quality stormwater screening', unsourced clipping of 21 September 1976. Clipping on Archives Central file HDC 00009: 86: 23/9

¹¹⁸⁰ Manawatu Catchment Board plan 1795. Archives Central file HDC 00018: 97: 23/6/1 part 2 1987-1988

lake'.¹¹⁸¹ Councillor Kevin Fleming said that failing to install the device would be 'a breach of faith'.¹¹⁸² In August 1976 Roberts reminded his councillors of the undertaking and suggested that 'Perhaps council is being too nonchalant over the matter'. Councillors Allen and D H Tomlinson – past and present domain board members respectively – both referred to a 'solemn promise'.¹¹⁸³

Image 5.9: Malfunctioning stormwater rubbish trap, February 1977¹¹⁸⁴



Action must have been taken soon after, because by early 1977 the press reported on the operation of the 'newly constructed' rubbish trap at the lake outlet from the Queen Street drain. The trap was not working satisfactorily, however, with the grill becoming quickly blocked in heavy rain and turning the structure into a weir, with rubbish flowing over the top. Roberts reflected that at least this confirmed how much rubbish was entering the lake through the stormwater system. He said the council would look at the matter anew.¹¹⁸⁵ But the trap was still ineffective a decade later. In January 1987 it was reported that 'bottles, cans rubbish and sediment' were washing 'through and over the grill' and into the lake.¹¹⁸⁶ Other drains caused problems as well. In September 1984, in response to rubbish entering the lake via an open drain on Makomako Road the lake trustees asked the borough council if a similar screen

¹¹⁸¹ See undated and unsourced newspaper clipping 'Filter a first step' attached to Councillor Jack Lines' letter of 31 August 1974 to the Secretary of the Manawatu Catchment Board. Archives Central file HRC 00024: 57: 19/10 part 3

¹¹⁸² See undated and unsourced newspaper clipping 'Council's plans on protecting Horowhenua Lake' attached to Councillor Jack Lines' letter of 31 August 1974 to the Secretary of the Manawatu Catchment Board. Archives Central file HRC 00024: 57: 19/10 part 3

¹¹⁸³ 'Concern over stormwater trash in lake', unsourced clipping of 17 August 1976. Clipping on Archives Central file HDC 00009: 86: 23/9

¹¹⁸⁴ See untitled and unsourced newspaper clipping of 22 February 1977. Archives Central file HDC 00009: 83: 23/1 1974-1979

¹¹⁸⁵ See untitled and unsourced newspaper clipping of 22 February 1977. Archives Central file HDC 00009: 83: 23/1 1974-1979

¹¹⁸⁶ Untitled and unsourced clipping of 24 January 1987 on Ministry for the Environment head office file EPL 7/2/1 part 1

could be installed to the one in operation on the Queen Street drain.¹¹⁸⁷ At its meeting of 1 May 1989 the domain board resolved to write to the borough council concerning the ‘rubbish from drains ending up in the lake’.¹¹⁸⁸

In the period covered by this chapter no comprehensive programme to trap sediment and remove nutrients from the stormwater entering the lake was established. In 1988/89, with the sewage effluent diverted, 80 per cent of the phosphorus entering the lake came via the Queen Street drain.¹¹⁸⁹ By the late 1980s tension had also developed between the council and lake trustees over the issue of the stormwater system’s very access to the lake. In February 1987 Ada Tatana claimed to the Borough Engineer that the stormwater from the Queen Street drain was entering the lake illegally as the council had no water right. She advised that ‘The Council is hereby directed to cease using the trustee’s [sic] land to gain access to the waters.’¹¹⁹⁰ The Borough Engineer, T R Green, reported to council that the trustees’ view had no basis:

There is no doubt the drain crosses the Trustees [sic] land, but it is a natural watercourse which will have been in existence for a considerable period of time. It is likely the drain was in existence before the lake and one chain strip around it around its edge came into its present ownership, so consent of the owners would not have been required. Furthermore, no consent is required for a natural drain to cross land.¹¹⁹¹

He added that the council had applied to register all its drains entering the lake in 1968, and the NWSA’s approval of the application in February 1969 ‘rendered the discharges to be lawful’.¹¹⁹²

Green’s position here was reminiscent of the council’s stance in 1969: the water course was natural and all the council was doing was channelling water to it that would have flowed to the lake anyway. But this entirely overlooked the fact that Levin’s existence meant that a sizeable area of land next to the lake was sealed by roads, buildings, and driveways. As a result, much of the borough’s rain water could not enter the soil, and instead it flowed above ground to the lake. Blaming the inflow from the county for most of the stormwater entering the lake, therefore, was probably incorrect. Moreover, as it made its way to the lake, the stormwater took with it rubbish, grit, and nutrients from the roads. This was the council’s responsibility – something which some councillors recognised – but by the end of the 1980s little effective action had been taken to deal with the problem.

¹¹⁸⁷ ‘Rubbish coming into lake concerns trustees’, *Chronicle*, 20 September 1984. Clipping on Archives Central file HRC 00024: 33: 9/6 part 5

¹¹⁸⁸ Minutes of meeting of Horowhenua Lake Domain Board, 1 May 1989. Archives New Zealand file AANS W5883 25344 Box 116 NYA003154 part 2

¹¹⁸⁹ *He Hokioi Rerenga Tahī: The Lake Horowhenua Accord Action Plan, 2014-2016*, Horizons Regional Council, no date, p 9

¹¹⁹⁰ Ada Tatana to Borough Engineer, 19 February 1987. Archives Central file HDC 00009: 86: 23/15

¹¹⁹¹ Borough Engineer paper for February 1987 borough council meeting. Archives Central file HDC 00009: 86: 23/15

¹¹⁹² Borough Engineer paper for February 1987 borough council meeting. Archives Central file HDC 00009: 86: 23/15

Conclusion

In 1943 Levin was forced to begin planning a proper sewerage system. Both the borough council and the consultants it employed envisaged that the treated effluent from such a scheme would end up in the lake, 'this readily available means of disposal'. As early as 1944, however, Muaūpoko made it abundantly clear that this was unacceptable, being particularly concerned about the pollution of their fishery. But Muaūpoko's concerns – particularly their cultural beliefs – were scarcely perceptible to local and central government engineers, who regarded the lake as seldom used and considered objections to effluent disposal merely emotional or irrational. Another factor counting against Muaūpoko was that officials from other departments were preoccupied by the need to settle the long-running dispute over the chain strip (see chapter 3).

As it happened, the borough's consultants changed their approach in 1949 and decided that the effluent should be discharged to sludge or soakage pits adjacent to the treatment plant rather than channelled directly into the lake. This may have led the Minister of Lands to assure Muaūpoko in 1952 that the lake would not be used as a dump for the town's effluent. However, the soakage pits could not handle the volume of effluent, especially in winter when groundwater routinely broke the surface, and by 1956 it had been established that effluent was entering the lake above ground regardless. Not only that, but the treatment plant could not cope with periods of extremely wet weather, and in 1962 and 1964 discharges of raw sewage were made to the lake on the instruction of the Health Department. Muaūpoko protested but were entirely dependent on the borough to upgrade its plant, since blocking the flow of sewage to the lake in an emergency would create a serious health problem in the town.

This set the pattern for the next two decades: Muaūpoko had to wait for Crown or local body action in the knowledge that the lake would take the brunt of any pollution in the meantime. The scale of that pollution began to become apparent from the late 1960s. Bacterial levels were high, the water was laden with nutrients and prone to algal blooms, and the bed was being covered in an ever deeper layer of sludge. The concrete outlet weir was effectively preventing silt from being washed away. Officials recognised as early as 1969 that the effluent, in particular, would need to be diverted away from the lake. But the bureaucratic wheels turned slowly, and it was not until 1987 that this finally occurred.

There are various reasons for this delay. Scientific analysis took time and it was not until 1978 that the influential technical committee report setting out the lake's problems in detail was released. Procedurally, also, the first challenge was to obtain a reclassification of the lake that would force the borough council to find an alternative means of disposing of the effluent. This did not occur until 1980. In 1981 the borough council was given a five-year extension to its right to discharge effluent into the lake on the condition that it find an acceptable alternative and cease the discharge to the lake before the deadline. But this 'deadline' was relatively meaningless because – as in the 1960s – the outflow to the lake would never be

prevented if it meant residents of Levin digging 'pit privies' on their lawns or having raw sewage lapping at their doors. Muaūpoko protested when the deadline passed but the Health Department in particular ensured that their concerns were relegated in importance.

A key reason why the deadline was not met was that the borough council remained convinced that it would be able to divert the effluent to the Hōkio Stream. It had been encouraged in this view by scientists and officials, including the members of the technical committee. However, this was strongly opposed by an array of community groups, with Ngāti Raukawa prominent among them, and in 1983 a special tribunal of the regional water board imposed such stringent conditions on any such discharge that the borough council was at last forced to abandon the idea. Ironically it decided to dispose of the effluent to Māori-owned land near Hokio Township via spray irrigation, an option that had been generously suggested by Muaūpoko in 1976. In a further irony, in seeking a significant Health Department subsidy the council stressed the importance of Māori cultural values.

Overall, during the period from 1952 to 1987, Muaūpoko's concerns were given little attention by officials and local body representatives. Muaūpoko were excluded from the decisions made that polluted the lake, and largely excluded too from the key discussions over the lake's restoration. The tribe's ownership of the lakebed and surrounds was even seen as an impediment to restoration because of the lake's lack of 'unified control'. The authorities' definition of 'unified control' essentially meant the trustees yielding their rights. Another striking factor about the period is the lack of central government compulsion on local government to act. Pollution was generally seen as a local issue to be addressed at the local level. This enabled the borough council, in particular, to resist fundamental steps such as the lake's reclassification.

The same could be said about the disposal of stormwater. The problem was not taken seriously by the borough council until Laurie Roberts was elected mayor, and even then its attempts to address it were inadequate. The council's initial reaction in the 1960s to the prospect of needing to run its new pipes over Māori-owned land to the lake was, first, to buy the land and, soon thereafter, simply to take it under the Public Works Act. It eventually negotiated an agreement with the lake trustees to lay its pipes over their land but promised at the same time to prevent unwanted material entering the lake via the stormwater system. It failed to make good on this promise.

It would be easy to assume that pollution was the sole focus of attention for the Crown and Muaūpoko with regard to the lake from the mid-1960s to the mid-1980s. However, there was a considerable amount of friction over other issues of administration and control. These are addressed in chapter 6.

6. Disunity and delay: Muaūpoko, the Crown, and the domain board, 1964-1988

Introduction

Chapter 4 described the measures taken from 1956 to the mid-1960s to implement the settlement between Muaūpoko and the Crown over the lake that was reflected in section 18 of the Reserves and Other Lands Disposal Act 1956. These measures included the identification by the domain board of a development plan, the stabilisation of the lake level by the catchment board, and the adoption by the domain board of by-laws. The previous chapter covered a longer period, from 1952 to 1987, during which the lake became heavily polluted, particularly by sewage effluent. This chapter picks up where chapter 4 left off and describes the administration and control of the lake domain from the mid-1960s to the late 1980s, thus overlapping much of the time period covered by chapter 5.

If the first decade of the new domain board's existence after the 1956 agreement was relatively smooth, the same could not be said for the next twenty years. Aspects of the 1956 agreement – or more precisely, their subsequent implementation – became increasingly dissatisfactory not only to Muaūpoko but also to the Crown and the local bodies. Disagreement surfaced about the method of Muaūpoko board appointments, shooting rights over the lake, and – particularly – the operation of speedboats on it. Tension caused by the lake's pollution was of course a significant contributing factor to all this. The friction culminated – in an echo of Muaūpoko's abandonment of the domain board in the late 1930s and 1940s – in a walk-out by the Muaūpoko members of the board in 1982. There then followed years of negotiation over how disputes over the lake might be settled, which included unexpected offers from both sides. The period concludes with Muaūpoko finally rejoining the board in 1988.

The chapter addresses questions 2(b), 2(c), and 2(d) of the research commission concerning: Muaūpoko's engagement with and participation in the domain board; the relationship between the lake trustees, the domain board, and the Crown; the measures the Crown and local authorities took to extend their control over the lake and its surrounds; the Crown's oversight of the various powers it delegated; the extent to which the Crown or delegated local bodies took account of Muaūpoko interests, consulted them, or sought their consent; the circumstances surrounding the declaration of the lake as a recreation reserve in 1981; and the nature and extent of any Muaūpoko opposition.

The appointment and attendance of new Muaūpoko board members, 1964-1965

Despite the terms of the domain board members appointed in 1957 not expiring until early 1964, the lake trustees and Muaupoko Tribal Committee held a meeting in around September 1962 to select new representatives. It will be recalled that the Muaūpoko members of the board at this point were Rangi Hill, Hori Hipango, Tau Ranginui, and Himiona Warena. At

the 1962 hui Joe Tukapua and Noel Hurunui were elected alongside Warena and Hipango. The view of the Commissioner of Crown Lands, E J Lynskey, was that Hill and Ranginui were perfectly entitled to stay on until their terms expired in 1964. Lynskey was also worried about Joe Tukapua, telling the Director-General of Lands that both the Department of Maori Affairs at Palmerston North and the Foxton police constable had confided concerns about his character. He suggested that

In view of this and also because the present Board has been appointed for a term of [seven] years I would suggest that the Minister be recommended to take no action until the expiry of the present Board. At that time the Muaupoko Maori Tribe will have the opportunity of nominating four members for appointment for a further term of seven years.¹¹⁹³

The Director-General agreed that Muaūpoko be told that ‘it is not intended to ask the Minister of Lands to review the appointment at this stage and that the Board as at present constituted should remain in office for its normal term’.¹¹⁹⁴

In 1964, after the members’ terms expired, the domain board wrote to the lake trustees concerning the nomination of four members of the tribe to the board for its next seven-year term. The trustees replied that the four members previously named had been elected. Given the earlier concern about Joe Tukapua, the Commissioner of Crown Lands told the Director-General,

the matter was discussed with the Assistant Secretary of the Department of Maori Affairs. He requested his Welfare Officer to make enquiries regarding the suitability and acceptability of the nominees. The latter subsequently advised that they are all acceptable.

He also pointed out that Mr Tuakpua holds a Government appointment as a Maori Warden and would not hold that office if he was not a respected member of the tribe. He is a discharged bankrupt but the Maori people do not regard bankruptcy as a very serious matter. It is understood that there are probably domestic troubles within the Tribe and the nominations made may not have the support of all members. However, official notification of the nominations has come from the governing authority of the Tribe and in the circumstances there is no reason for not accepting them.¹¹⁹⁵

The Minister approved the appointments on 5 June 1964.¹¹⁹⁶ This should in theory have been the end of the matter, but the Commissioner of Crown Lands was then rung by Mrs Ranginui (apparently on behalf of her husband), who claimed that some of the nominations were not supported by the tribe and a meeting had not been called to consider the nominations. The Commissioner accepted that ‘this is really a domestic matter within the Tribe’ but, in view of

¹¹⁹³ Commissioner of Crown Lands to Director-General of Lands, 24 September 1962. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹¹⁹⁴ Director-General of Lands to Commissioner of Crown Lands, 24 September 1962. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹¹⁹⁵ Commissioner of Crown Lands to Director-General of Lands, 27 May 1964. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹¹⁹⁶ Director-General of Lands to Minister of Lands, 3 June 1964. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

the ‘circumstances’ – which possibly included lingering suspicions about Joe Tukapua’s character – he proposed

that although the Minister has approved of the appointment of Board Members as recommended ... the gazettal action be withheld until the representations have been received and the matter considered.¹¹⁹⁷

The lake trustees held an additional meeting on 20 July because Warena wanted to withdraw his nomination. For some reason, this hui opened up the entire process again and elected Joseph Taueki, James Okeroa Broughton, J F Moses, and Kawaurukuroa Hanita-Paki. Two days later Mrs E Paki wrote alleging irregularities with the meeting, such as inadequate notice and voting by some who were not Muaūpoko. She also objected to the selection of Moses, who was not a member of the tribe, and argued that the Muaupoko Maori Committee should have no formal role in electing domain board members. At this point the advice of the Department of Maori Affairs’ welfare officer at Palmerston North, T S Mihaere, was enlisted. He made inquiries and concluded that the 1962 nominations had been made ‘at a properly constituted meeting of the Lake Trustees and that at the time received the full backing of the Tribe’. He regarded the nominations as ‘the correct ones’. Of the four elected at the 20 July meeting he said the only nomination he would support was that of Moses, whom he would include in place of Joe Tukapua, with Warena being encouraged to remain on the board. In sum, he recommended the appointment of Hipango, Hurunui, Moses, and Warena.¹¹⁹⁸

Needless to say, this advice only served to confuse the situation. On 12 August, too, Nora McMillan – the secretary of the Muaupoko Maori Committee and Joe Tukapua’s sister – wrote to the Minister of Lands indicating her committee’s interest in the nomination process.¹¹⁹⁹ The following month the Commissioner of Crown lands sought approval to write to the various bodies representing Muaūpoko, the Department of Maori Affairs, ‘and Mrs Paki as Chieftainess and suggest that a special meeting of the Tribe be held to clear the matter of nominations for once and for all’.¹²⁰⁰ This meeting was arranged and held at Kawiu Pā on 15 November 1964. The Commissioner of Crown Lands reported in January 1965 that Joe Tukapua had advertised it with proper notice and that the meeting had nominated the same four who had been selected at the 20 July meeting. But Mrs Paki had again claimed that only 17 of those in attendance ‘qualified for tribal status’, and that the meeting had only been asked to confirm the July nominations. She also objected to the nomination of Moses on the grounds that he was not Muaūpoko, as she felt ‘the spirit of section 18 (8) (a)’ suggested he

¹¹⁹⁷ Commissioner of Crown Lands to Director-General of Lands, 12 June 1964. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹¹⁹⁸ T S Mihaere, Māori Welfare Officer, Department of Maori Affairs, Palmerston North, to Mr Dobbs, Department of Lands and Survey, 29 July 1964; Commissioner of Crown Lands to Director-General of Lands, 7 September 1964. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹¹⁹⁹ Nora McMillan, Secretary, Muaupoko Maori Committee, to Minister of Lands, 12 August 1964. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²⁰⁰ Commissioner of Crown Lands to Director-General of Lands, 7 September 1964. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

should be.¹²⁰¹ Mrs Paki also organised a petition to the Minister of Lands signed by around 38 people calling for a requirement for the Muaūpoko representatives on the domain board to be Muaūpoko tribal members only. It read:

At the present time a non-member or non-members of the Muaupoko Tribe (whom we feel were not nominated at a full meeting of or elected with the full sanction of a fully representative meeting of the Muaupoko Tribe) are serving on the Board in such capacity. It is felt that such representation by non-members of the Muaupoko Tribe is at variance with the originally intended representation of the Muaupoko Tribe on the said Lake Domain Board.¹²⁰²

The Commissioner of Crown Lands felt that, all things considered, the Minister should go ahead and approve the nominations made at the 15 November meeting. He also reasoned that limiting nominees to members of Muaūpoko would be too restrictive. He told the Director-General that ‘The confused situation has arisen because of the domestic differences within the Tribe and if this question of appointment of members of the Board is not settled now it could go on indefinitely.’¹²⁰³

The following month, in February 1965, the Commissioner of Crown Lands received further information from Mihaere, who ‘advised [that] the Muaupoko Tribe is a difficult group of people to reach unanimity on any proposition’. However, Nora McMillan and the trustees’ chairman, Himiona Warena, had both agreed to the nomination of Taueki, Broughton, Moses, and Hanita-Paki. Maori Affairs’ advice was that Moses had married into Muaūpoko and was ‘one of the most interested in Maori Affairs’. Mrs Paki apparently represented only ‘a small group’.¹²⁰⁴ In April 1965 the Director-General of Lands briefed the Minister and recommended that the four be appointed.¹²⁰⁵ The Minister replied to Mrs Paki shortly thereafter, telling her that he did not favour the Muaūpoko representation on the board being restricted to members of Muaūpoko.¹²⁰⁶ He also wrote to Allan McCready, the MP for Otaki, to say that he would not be meeting Mrs Paki ‘as she represents only a minority interest’.¹²⁰⁷ The appointments were gazetted on 13 May 1965,¹²⁰⁸ some 15 months after the term of the previous board had expired.

¹²⁰¹ Commissioner of Crown Lands to Director-General of Lands, 20 January 1965. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²⁰² Undated petition to the Minister of Lands, received in his office on 14 December 1964. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²⁰³ Commissioner of Crown Lands to Director-General of Lands, 20 January 1965. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²⁰⁴ Commissioner of Crown Lands to Director-General of Lands, 8 February 1965. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²⁰⁵ Director-General of Lands to Minister of Lands, 28 April 1965. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²⁰⁶ Minister of Lands to Mrs E Paki, 5 May 1965. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²⁰⁷ Minister of Lands to Allan McCready, 4 May 1965. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²⁰⁸ *NZ Gazette*, No. 24, 13 May 1965, p 748

The Minister had told Mrs Paki that he believed that the board would be revived by the new appointments. However, by July 1968 the attendance of Broughton, Hanita-Paki, and Taueki had been so poor that the Director-General of Lands brought it to the Minister's attention. Since the members' appointment in May 1965 there had been 15 board meetings. Taueki had attended eight (with three apologies), Broughton five (with five apologies), and Hanita-Paki three (with three apologies). Moses, by contrast, had attended 14 meetings and offered an apology for his one absence, but even so the overall attendance rate by the board's Māori members over this period was only 50 per cent. Hanita-Paki had not attended a meeting during the previous 31 months and Broughton not one in 27 months. Several times board meetings had been delayed or unable to be held for lack of a quorum. An attached table showed that at only one meeting – the first, on 14 May 1965 – did all four Māori members attend, while at five of the 15 meetings only one Māori member attended.¹²⁰⁹

Image 6.1: Nora McMillan, 1972¹²¹⁰



The Director-General explained that, in January 1968, the lake trustees had been approached about the situation and

asked to try and revive the interest of the three members.

Because the members were no longer interested in serving on the Board, a joint meeting arranged by the Trustees was held with the tribe at Kawiu Pa on 18 February 1968 and tribal members were made aware that vacancies were to be filled. This meeting had been advertised by an agenda being delivered by hand to all members of the tribe, and the Board's Secretary, after discussion with the Trustees, is completely satisfied that all members had adequate notice of the meeting.¹²¹¹

¹²⁰⁹ Director-General of Lands to Minister of Lands, 12 July 1968. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²¹⁰ <http://horowhenua.kete.net.nz/site/images/show/17142-nora-matewai-mcmillan>

¹²¹¹ Director-General of Lands to Minister of Lands, 12 July 1968. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

The meeting selected three new nominees: Nora McMillan, Sonny Tukapua, and Thompson Tukapua. The Minister approved their appointment on 18 July 1968.¹²¹²

Once again, therefore, Muaūpoko's poor attendance at board meetings meant the tribe had effectively surrendered its numerical superiority on the domain board. This time, however, the members' rate of attendance was much worse than it had been in the late 1950s and was more comparable to the participation rate of Muaūpoko representatives in the very early years of the existence of the domain board. It is not entirely clear why this was so. It may have been that the three members in question quickly became alienated by the style of a Pākehā-oriented board. Certainly, in later years, this was how some members of Muaūpoko explained the tribe's failure ever really to capitalise on its nominal board majority (see below).

There were also changes among the other members. In June 1963 the Assistant Commissioner of Crown Lands, N S Coad, stepped down after four years as chairman. He described the board as 'a symbol of friendship and cooperation between Maori and Pakeha in the Horowhenua district', adding 'There are no Maori and Pakeha here, ... we are all members of the board, working for the common good of the district.'¹²¹³ The new chair, Commissioner of Crown Lands V P McGlone, told the next board meeting that he had 'read the history of the lake area and had been most impressed by the very fine gestures of the Maori people that made the domain possible'.¹²¹⁴ When the new Māori members joined the board in July 1965 McGlone said he was 'sure that they would serve the board well and watch over the interests of the Maori people in the spirit of co-operation envisaged in the 1956 legislation, which had been carried forward in the wording of the plaques on the entrance gates'.¹²¹⁵

The twin gate pillars, which had been constructed in 1961,¹²¹⁶ bore the following inscriptions:

This park, developed jointly by the Maori and European people of Horowhenua, is a visible symbol of the co-operation and brotherhood of the races and is for the use and enjoyment of all.

Ko tenei rahui he mea whakapai e nga Maori me nga Pakeha o Horowhenua he tohu tuturu o te kotahitanga me te whanaunga-tanga i waenganui o nga iwi a hei painga hoki mo te katoa.

¹²¹² Director-General of Lands to Minister of Lands, 12 July 1968. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²¹³ 'Domain Board "symbol of Maori, Pakeha link"', *Chronicle*, 15 June 1963. Clipping on Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²¹⁴ 'Further area of lake frontage will be cleared', *Chronicle*, 31 July 1963. Clipping on Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²¹⁵ 'Lake domain feature "playground" of Levin soon', *Chronicle*, 12 July 1965. Clipping on Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²¹⁶ 'Mill stone as park gate feature' *Chronicle*, 11 October 1961. Clipping on Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

As discussed in the conclusion to chapter 2, the supposed 1905 agreement over the lake was not remembered by Levin settlers and the Government for the provision it made for Muaūpoko to retain their mana. Instead, what was emphasised was the Muaūpoko ‘gift’ and the ensuing harmonious race relations. Coad and McGlone’s statements and the words chosen for the entrances plaques were classic examples of this.

Image 6.2: Muaūpoko Park entrance gates¹²¹⁷



The Lands Department’s attempt to shed its responsibility for the domain

As development of the domain took place, the board routinely looked to the Department of Lands and Survey for financial assistance. Increasingly, the department became frustrated by this, and began to hatch plans for its involvement in the reserve to be fully delegated to the local authorities. In May 1966, for example, the Assistant Director-General reported that he had discussed the subject with the Commissioner of Crown Lands:

The Commissioner raised the question of control and I agreed with him that we should be working towards the Borough taking over control with of course the consent of the County and the Maori people. I said that we would be more sympathetic to providing further finance for development to cover the next three years if we had an assurance that the Borough would be taking over at the end of that time. I said that there might be something in the legislation hindering the department from getting out but this would be looked at.¹²¹⁸

The Assistant Director-General annotated his own note a few days later: ‘It will have to be with consent of Maoris. If we can’t sell the idea just too bad, but we should gently try.’ The department’s solicitor also annotated the note with his own advice that special legislation

¹²¹⁷ Photographs by the author, 30 November 2014.

¹²¹⁸ File note by Assistant Director-General of Lands, 6 May 1966. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

would be needed to effect any such change.¹²¹⁹ The Director-General gave his view shortly afterwards. He told the Commissioner of Crown Lands that

I feel you should be working towards control by the local body. This will of course have to be with the consent of the members of the Muaupoko Maori tribe. It will no doubt be necessary to sell the idea to all concerned and I should be pleased if you would make the necessary approaches. If the parties are not responsive to the suggestion I do not think you should push the matter unduly.¹²²⁰

Upon receiving this advice, McGlone wrote to his fellow board members. He said the three-way partnership between Māori, the local authorities, and the Crown had worked well during the development phase, but ‘the Board as at present constituted is poorly equipped to manage the Domain once the development has been completed’. The board had little revenue and would have to continue to appeal to central government for funding. The board should plan now for a permanent solution. He proposed that a push be made to have all domain development work completed within the next three years (including a Major Kemp memorial and possibly assisting ‘the Maori Community in the construction of the model Pa’). After that ‘consideration should be given to vesting control of the Domain in the Levin Borough Council’. The borough, he said, had the facilities for maintenance and most domain users would be borough residents.¹²²¹

In March 1967 an application was made for financial assistance for the board to the department’s head office reserves committee. It explained that

Because the Board has little revenue, maintenance is becoming a problem with the development progress and the provision of amenities by the Lions Club etc. Preliminary investigations are being made & informal talks are being held with a view to “selling” the idea of the Domain being leased by the Local Authorities for future development. This approach is necessary in view of the nature of the Board membership and the legislation under which it was established.¹²²²

The document bears the following annotation from an unidentified official:

Normally we would not be keen to meet the £70 maintenance expenditure. In this case however the Bd is not in a position to meet this itself and it is necessary to tide them over until some permanent arrangement can be made for the two local bodies to develop and maintain the domain by way of a lease under sec 27(9) [of the Reserves and Domains Act 1953]. The ideal solution is for the area to ultimately be controlled by the local bodies and the

¹²¹⁹ File note by Assistant Director-General of Lands, 6 May 1966. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²²⁰ Director-General of Lands to Commissioner of Crown Lands, 11 May 1966. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²²¹ McGlone to all board members, 12 May 1966. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²²² Head Office Committee: Reserves. Application for financial assistance. Case no. R67/65. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

intention is to work towards this end. In the meantime however the Maoris have an interest in the control which is difficult to usurp.¹²²³

What was happening here was that the Crown wanted to divest itself of the burden of running and maintaining the domain. It knew the local bodies – and particularly the borough council – would prefer to manage the domain themselves, but it could not transfer ownership to them without a change in the legislation. So instead it pursued the option of a lease. It seemed initially that the idea might win favour with Muaūpoko: the Director-General of Lands told the Minister on 10 January 1968 that ‘The Maori people have generally agreed in principle with the proposal.’¹²²⁴ The same month he passed on to the Commissioner of Crown Lands the head office reserves committee’s view that

it will be difficult for this Department owing to the present stringency on funds to provide further grants for this Domain for what is purely a local matter unless the Department can be given an assurance that the Maoris will agree to the local bodies taking over control of the Domain, and of course, to the local bodies also agreeing.¹²²⁵

The general concept of a transfer of the Crown’s role to the borough council would almost certainly have been regarded with concern by Muaūpoko, despite the Director-General’s confidence that the tribe was in broad agreement. The idea became infinitely harder to sell, however, when the local authorities outlined the terms upon which they would be prepared to enter a lease. These were for a joint committee (of three members from the county and three from the borough) to administer the domain through a 21-year lease with a right of renewal for a further 21 years, and subject to

- (a) Sufficient powers being transferred to the lessees to administer the Domain without recourse to the Board, but capital works to be proceeded with according to a plan to be approved by the Board from time to time.
- (b) The powers to be delegated to the lessees to include the administration of all By-laws at present in operation and any future By-laws which may be negotiated between the lessees and the Board, these powers to be subject to the Board agreeing to an amendment to the existing By-laws to permit the lessees to authorise the operation of motor launches and speed boats on the Lake, under such conditions as the lessees may see fit.
- (c) Delegated powers to include a right for the lessees to dredge portions of the lake if considered necessary from time to time.
- (d) A grant of \$10,000 towards capital improvements to be made by the Lands and Survey department in consideration of the lessees assuming responsibility for administration, maintenance and improvements, during the period of 21 years, with provision for such grant to be paid over a period not exceeding 6 years.

¹²²³ Head Office Committee: Reserves. Application for financial assistance (case no. R67/65). Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²²⁴ Director-General of Lands to Minister of Lands, 10 January 1968. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²²⁵ Director-General of Lands to Commissioner of Crown Lands, 26 January 1968. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

It is appreciated that legislation may be needed to implement some of these proposals and that item ... (b) may cause difficulties.¹²²⁶

The councils clearly saw an opportunity to leverage advantage off the Crown's desire to 'get out', as the Assistant Director-General had put it. They wanted a large degree of independent control and the ability to both allow speedboats and dredge the lake as well as a significant grant for capital works. There was an optimistic wish-list and, in the context of the longstanding Muaūpoko suspicion of the local authorities, a somewhat counterproductive negotiating strategy. The Commissioner of Crown Lands told the Director-General in April 1968 that Muaūpoko had not yet been told of the councils' proposal, but he already anticipated that the tribe would doubtless object to any change to the by-law concerning speedboats.¹²²⁷

The view of one reserves official was that 'the local bodies are obviously trying to obtain the powers of the Domain Board without the Maori's participation'.¹²²⁸ The office solicitor did not believe a lease could be drafted that would provide for such a transfer of control. Instead, special legislation would be required.¹²²⁹ The Director-General wrote to the Minister on 8 August 1968 seeking his agreement to a clause being put into that year's Reserves and Other Lands Disposal Bill enabling the two councils to lease the domain 'for the purpose of carrying out the "day to day" administration of the Domain as well as its development and maintenance'. The domain board, he explained, had virtually no income and it was becoming increasingly difficult for the Crown to continue to provide funding for what was a local asset. Delegating functions to the local bodies 'would be a step further in accordance with policy of handing over the administration of Domains to local authorities'. He acknowledged, however, that, 'While it is preferred that the local bodies assume all the powers of a Domain Board this would not meet the approval of the Muaupoko Tribe'.¹²³⁰

It seems remarkable that the Crown even contemplated that Muaūpoko might willingly surrender the theoretical control of the domain they had finally achieved in 1956. It was also somewhat inappropriate for the Crown to regard this as its 'preferred' option. In any event, on 15 August 1968 the Minister approved the proposal to draft a clause for that year's washing-up legislation 'subject to the concurrence of the Muaupoko Tribal [sic] Committee and subject to details of the leasing proposals being finalised'.¹²³¹ But even this was over-

¹²²⁶ Town Clerk to Commissioner of Crown Lands, 20 March 1968. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²²⁷ Commissioner of Crown Lands to Director-General of Lands, 19 April 1968. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²²⁸ Johnston, Reserves, to the Assistant Director, National Parks and Reserves, 2 May 1968. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²²⁹ Director-General of Lands to Commissioner of Crown Lands, 8 July 1968. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²³⁰ Director-General of Lands to Minister of Lands, 8 August 1968. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²³¹ Director-General of Lands to Minister of Lands, 8 August 1968. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

confident. The most likely scenario, at this point, was that the councils would seek too much control in the details of the lease and Muaupoko would not agree.

It is worth noting that the Director-General referred here to the Muaupoko Maori Committee instead of the lake trustees. This was an early example of the Crown's increasing tendency to defer to the committee over lake matters instead of the trustees. It seems likely that the ambiguous wording of section 18(7) of the 1956 Act – which referred to the Minister making board appointments on the recommendation of 'the Muaupoko Maori Tribe' – was having an effect. It was as recently as 1964 that the Commissioner of Crown Lands had given the opinion that 'The Lake Trustees are the governing body for the Muaupoko Tribe'.¹²³² Another instance of deference to the committee on lake matters came in the early 1970s, after chairman of the lake trustees, Joseph Taueki, wrote to the Manawatu Catchment Board seeking its assistance in the erection of an eel weir in the Hōkio Stream.¹²³³ Before giving approval the catchment board first wished 'to be sure that it has the appropriate tribal approval before action takes place' and thus wrote to Nora McMillan to obtain the committee's approval.¹²³⁴

The domain board discussed the local bodies' proposed terms 'at length' at its meeting of 3 October 1968. According to the Commissioner of Crown Lands,

it was stressed that the sole purpose behind this move was to enable the local authorities to take over the day to day administration of the domain and to use their resources of man power plant and finance for this purpose. The Domain Board and its membership would remain unaltered.¹²³⁵

The board's Māori members, the Commissioner of Crown Lands continued,

doubted whether such proposals would receive tribal approval, as they felt that the question of fishing rights with the allied problems of dredging and power boats would be foremost in the Maori owners' minds. The Chairman offered to associate himself with the proposals at any tribal meetings. This offer was not accepted[.]¹²³⁶

¹²³² Commissioner of Crown lands to Director-General of Lands, 27 May 1964. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²³³ This followed an earlier request to allow the trustees to construct their own weir, which Taueki reported had been a 'flop'. Joseph Taueki to George Gray, Foreman, Manawatu Catchment Board, 8 March 1973. Archives Central file HRC 00024: 57: 19/10 part 3. See also Joseph Taueki to Secretary, Manawatu Catchment Board, 9 November 1970. Archives Central file HRC 00024: 57: 19/10 part 3

¹²³⁴ Secretary, Manawatu Catchment Board, to Secretary, Maori Tribal (sic) Committee, 21 March 1974. Archives Central file HRC 00024: 57: 19/10 part 3. There is no record of McMillan replying, despite follow-up letters from the catchment board asking for a response on 6 May, 23 July, and 22 October 1974 and 29 January 1975.

¹²³⁵ Commissioner of Crown Lands to Director-General of Lands, 14 March 1969. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²³⁶ Commissioner of Crown Lands to Director-General of Lands, 14 March 1969. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

A more optimistic account of the outcome of this meeting was that the ‘full Board was happy with the proposals’ and had agreed that the Māori members would

take the leasing proposals back to the Muaupoko Tribe for consideration. When discussed in a preliminary way with the Maori people they agreed generally with the principle of the proposal but there are several points which are now being negotiated in detail.¹²³⁷

The tribal meeting was held at Kawiu Pā on 10 November 1968. It was attended by the MP for Southern Maori, Whetu Tirikatene-Sullivan, whose electorate encompassed the district. She subsequently wrote to the Minister of Lands, Duncan MacIntyre, in what proved to be a telling intervention. She said that the meeting had been called in part to consider proposals ‘to completely change the administration of the Domain’, through which ‘effective control to these two Councils would result’. The document the tribe was asked to consider began by stating that the domain board ‘was seeking some way of giving the two local authorities concerned with the development of the Domain some proprietorial interest which would regularise their financial assistance to the Domain Board and yet leave the Domain Board as the policy making body’. The only way to achieve this was said to be by special legislation.¹²³⁸

Tirikatene-Sullivan claimed that Muaūpoko had given up the potential for commercialising the lake as a private resort by making it available to the public in ‘a kind of partnership’. In her view Muaūpoko had ‘thus sacrificed a great potentiality in entering into this community arrangement’. She explained that the tribe did not agree to any of the councils’ proposals which would change the legislation governing the lake’s administration ‘either in law or in spirit’. She emphasised that

the Muaupoko tribe – by unanimous decision of those present, including their 4 representatives on the Domain Board – are entirely opposed to any ‘proprietary interest’ being conferred upon these Councils directly, and to any leasing to either of these Councils. ... Similarly, the tribe is opposed to any delegation of powers to either Council, or to any committee of the two Councils, as the tribe believes all these matters should effectively remain with the Domain Board. It seems clear that the proposals of these 2 Councils are an extraordinary inter-involved piece of administrative circumlocution, of which the late Sir Winston Churchill might well have said ‘up with which I will not put’.¹²³⁹

The reference to ‘administrative circumlocution’ stemmed from Tirikatene-Sullivan’s understanding that the entire move had been prompted by audit problems caused by improper council payments for finances and works. There does not appear to have been any basis for

¹²³⁷ Head Office Committee: Reserves. Application for financial authority (case no. R68/265). Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²³⁸ Whetu Tirikatene-Sullivan, MP for Southern Maori, to Minister of Lands, 11 November 1968. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²³⁹ Whetu Tirikatene-Sullivan, MP for Southern Maori, to Minister of Lands, 11 November 1968. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

this belief. Be that as it may, Tirikatene-Sullivan was adamant that the proposals were unacceptable:

I am sure you will agree that, by far the major contribution in this kind of partnership, has been that of the Maori tribal owners, when one contemplates what the market value of a lake might be today, and also considers the income that might have been derived had the lake been developed commercially as a resort. No contribution that has been made by either Council, todate [sic], or is likely to be made over a period of many years hence, can match that of the Muaupoko tribal owners. Their position, therefore, should be treated with the utmost respect, and proposals such as those that have been advanced by the 2 Councils merit Ministerial rejection.¹²⁴⁰

She added that Muaūpoko had retained their fishing rights in the lake and the Hōkio Stream and would not tolerate any dredging without their consent. She concluded by suggesting that the local bodies' proposals 'were aptly described at the meeting as "a special invention of a Heath Robinson steam shovel to crack a caraway seed"'.¹²⁴¹

Tirikatene-Sullivan did not grasp what was actually behind the proposals, which was an encouragement by central government – including by the Minister – of the local bodies' proposals. Her argument about the lost potential for the lake to have been a private and lucrative resort also seems weaker than alternative points she could have made about, say, the lack of compensation for all the past injustices the tribe had suffered over the lake. But her forthright advocacy was timely and effective. Indeed, it was perhaps the most influential intervention on behalf of Muaūpoko over the lake by any Māori MP, before or after.

Tirikatene-Sullivan's account of the 10 November meeting also gives something of an insight into Muaūpoko participation on the domain board, given the contrast between the Lands Department's understanding of domain board unanimity and what she described. Far from being 'happy' with the local bodies' proposals, the domain board members were apparently as opposed to them as the rest of the tribe. It seems likely that Muaūpoko representatives may have seen their primary role at domain board meetings as conduits for Crown or local-body proposals to be taken back to the tribe. Alternatively, they may not have been properly listened to or – as we have seen in earlier decades (see chapter 2) – they simply did not feel sufficiently comfortable to assert themselves forcefully in that environment.

Tirikatene-Sullivan followed up her letter to the Minister with a question of him in the House on 10 December 1968 that revealed her suspicion of financial irregularities. MacIntyre had explained that clause 5 of the Reserves and Domains Amendment Bill would allow local bodies to make loans to domain boards rather than just 'straight-out grants'. Tirikatene-Sullivan asked

¹²⁴⁰ Whetu Tirikatene-Sullivan, MP for Southern Maori, to Minister of Lands, 11 November 1968. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²⁴¹ Whetu Tirikatene-Sullivan, MP for Southern Maori, to Minister of Lands, 11 November 1968. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

In view of the provision in clause 5, will the Horowhenua County Council and the Levin Borough Council now be able to contribute from their works accounts to the maintenance of the Horowhenua Domain without requiring special legislation?¹²⁴²

MacIntyre replied that he would answer her question at the committee stage.¹²⁴³ He told her there that the proposed special legislation had related to the two councils carrying out the day-to-day administration of the domain through a lease, and that he would not sponsor such legislation unless all parties agreed. He added in a letter in January 1969 that his reference to ‘all interested parties’ included ‘the Muaupoko Tribal [sic] Committee’.¹²⁴⁴

The Commissioner of Crown Lands reported to head office on the discussion at the domain board meeting of 14 March 1969. He explained that the tribe ‘feared the dredging and special legislation the most’, as it was concerned both about its fishing rights and that the whole lake might be dredged and it would be saddled with the cost. Muaūpoko were also said to be concerned that dredged spoil would be dumped on the dewatered area and chain strip. It was explained to them that the local authorities would meet the expense of dredging and that any deepening of the lake would be beneficial to the fish in the lake by keeping the water cooler in summer.¹²⁴⁵ But there the matter lay for the time being. In December 1969 the head office reserves committee was told that

Negotiations relating to the leasing of the domain to the local authorities for development and day to day running have not proved very successful due to the opposition by the Muaupoko Maori Tribe.¹²⁴⁶

In January 1971, in another application for financial assistance, the head office reserves committee was told that moves in 1968 ‘to put control of Domain under the joint local authorities’ had been ‘frustrated by the Maori people through the Maori Member of Parliament, Mrs Tirikatene-Sullivan’.¹²⁴⁷

The ongoing expense associated with the domain board was beginning to irritate Lands Department officials. The Director-General told the Commissioner of Crown Lands in December 1969 that

The continued failure of negotiations for leasing to the local bodies means the Crown is still footing the bill for the difference between local body grants and total expenditure. The Crown

¹²⁴² NZPD, vol 359, 1968, pp 3770-3771

¹²⁴³ NZPD, vol 359, 1968, p 3771

¹²⁴⁴ Text of the Minister of Lands’ explanation, 11 December 1968, and Minister of Lands to Whetu Tirikatene-Sullivan, 21 January 1969. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²⁴⁵ Commissioner of Crown Lands to Director-General of Lands, 14 March 1969. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²⁴⁶ Head Office Committee: Reserves. Application for financial authority (case no. R69/323). Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²⁴⁷ Head Office Committee: Reserves. Application for financial authority (case no. R71/25). Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

cannot make up these differences indefinitely. The Board should try to find some means of increasing its revenue from users such as organised picnics and you should take this matter up with the Board.¹²⁴⁸

In March 1970, however, the local bodies entered into an informal agreement with the domain board to take responsibility for the domain's essential maintenance, excluding development costs. A condition of this agreement was that the councils could discuss certain matters with the board, including 'The use of low powered motor boats on the Lake' and 'The possibility of being able to dredge certain portions of the Lake.'¹²⁴⁹ This development heartened the Commissioner of Crown Lands, who told the Director-General in January 1971 that

The fact that the Local Authorities have now taken over the day to day maintenance, lawn mowing etc is a great step forward and this generation of Maoris is much more civic minded than the previous one. The local Maoris are raising cash for the development of the Maori area on the Domain and I hope to see some tangible results shortly.¹²⁵⁰

In July 1971 W A Harwood, the domain board chairman and the Assistant Commissioner of Crown Lands, prepared a memorandum for the Minister's approval seeking a \$3,000 loan and \$3,470 grant for the domain board to complete its roading project. He noted that the earlier leasing proposal had not been implemented due to the intervention of Tirikatene-Sullivan, and that the new, informal arrangement with the local bodies was 'acceptable to the Maoris who were against giving [them] any tenure'. The two councils were now contributing \$1,500 per annum. Without the roading being completed, however, the domain board would lose an opportunity for revenue from the Levin Go-Kart Association, which wished to use the domain for races. He added that 'This Department was a prime mover in the setting up of the Domain' and that criticism had been levelled at it for the non-completion of the domain roads.¹²⁵¹

However, more senior officials in the Lands Department were far from impressed. The Director-General told the Commissioner of Crown Lands in August 1971 that

The [head office reserves] Committee found it difficult to appreciate how and why the department has become in this position of being a party to an agreement entered in March 1970 which puts the Crown in the position of having to accept responsibility for future development costs. The Committee is aware of the advice given to your office by memo. dated 22 August 1968 but the situation seems to have been allowed to develop far beyond

¹²⁴⁸ Director-General of Lands to Commissioner of Crown Lands, 17 December 1969. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²⁴⁹ J H Hudson, County Clerk, to Secretary, Horowhenua Lake Domain Board, 24 April 1970, and attached statement of proposals. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²⁵⁰ Commissioner of Crown Lands to Director-General of Lands to, 22 January 1971. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²⁵¹ 'Application by Horowhenua Lake Domain Board for financial assistance', signed by the Assistant Commissioner of Crown Lands on 5 July 1971. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

what was envisaged and I would have thought that the department's representative on the Board would have ensured that we were not committed in this way, or at least warned Head Office of how things were developing.

Perhaps the department is not legally committed but it seems perfectly clear that it is morally committed and from the wording of your submission I take it that we would be subject to very real criticism if financial assistance were not now made available. This is far from satisfactory.¹²⁵²

The Director-General advised that the committee had decided to grant the full \$6,470 because it had no confidence the board could repay a loan, but the board must then understand that no further finance would come from the department for 'the foreseeable future'. He concluded that the 'case highlights, I think, some deficiency on the handling of Reserves matters in your office'.¹²⁵³ It no doubt also reflected the conflict of interest of the Assistant Commissioner of Crown Lands, who had to appease both his colleagues in the Lands and Survey Department as well as his fellow domain board members. As it happened, the domain board was soon asking for another \$1,600 for a second coat of sealing on the domain's roads, without which it was feared the surface would break up. The head office reserves committee approved this on 21 March 1974, although an official noted that the request had come not long after the board had been told not to expect any more money.¹²⁵⁴

Later that year, however, the board sought a further \$674 to clear rushes to make the launching of boats easier and to 'help solve a persistent and irritating fly problem'. Harwood noted – presumably in reference to the 1958 development plan – that 'the crown is expected to honour its obligation to assist with capital works as set out in the document signed in 1956'.¹²⁵⁵ The Director-General of Lands sent the Commissioner of Crown Lands a terse letter about the application, warning him that, if costs kept rising,

I tell you now that the department will not make any further money available.

I am only prepared to put the present case to the Head Office Committee – Reserves if you can make an equivalent saving elsewhere.

No subsequent case for money is to be submitted by you for this Domain.¹²⁵⁶

The reserves committee approved the grant of a smaller amount (\$424) in February 1975, with one official annotating the application that the approval was 'subject to proviso that no further obligation by the Dept is accepted'.¹²⁵⁷

¹²⁵² Director-General of Lands to Commissioner of Crown Lands, 16 August 1971. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²⁵³ Director-General of Lands to Commissioner of Crown Lands, 16 August 1971. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²⁵⁴ Head Office Committee: Reserves. Application for financial authority (case no. R74/141). Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²⁵⁵ Head Office Committee: Reserves. Application for financial authority (case no. R75/96). Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²⁵⁶ Director-General of Lands to Commissioner of Crown Lands, 18 November 1974. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

In sum, the Crown was effectively stuck with the lake domain against its will. It wanted to transfer control and management to the local authorities, but faced too much opposition from Muaūpoko to do so. For their part, the local authorities would not put significant sums into the development of the domain if they could avoid it, and certainly would not without the control they sought. They eventually took over responsibility for day-to-day maintenance, but clearly wanted to control the by-laws and dredge the lake if they saw fit. It would be wrong to conclude that the status quo in relation to the control of the domain was ultimately maintained because the Crown respected Muaūpoko's position. Rather, the Crown went along with this in spite of its clearly held preference to extricate itself from the affairs of the domain and delegate control to the local councils, which was in any case in keeping with overall government policy. This would be a repeating pattern in later years, as officials continued to raise the possibility of the Crown's role being minimised (see chapter 7).

Shooting on the lake

It will be recalled in chapter 4 that, in the late 1950s and early 1960s, discussions were held as to whether the lake should be made a formal wildlife refuge or whether shooting should be allowed on it. The lake trustees were open to the idea of ducks being shot, particularly given the suggestion that mallards were becoming a nuisance. Eventually, though, both the domain board and the trustees were in agreement that the lake should not be opened for shooting.

In March 1973, however, the debate was reignited when chairman of the lake trustees, Hohepa Te Pae Taueki, placed an advertisement in the *Chronicle* declaring 'on behalf of the Muaupoko tribe that we the people of Muaupoko will be shooting on and around Lake Horowhenua during the forthcoming duck shooting', albeit not in the area from the Patiki Stream to Makomako Road.¹²⁵⁸ Taueki told the *Evening Post* that 'We are the title owners, and we firmly believe that we, as the owners, have every right to shoot on the lake – and we intend to shoot'. He could not find 'where the Muaupoko Tribe ever gave permission for the lake to be a bird sanctuary'. His intention seems to have almost been to test the limits of the trustees' legal rights and to assert Muaūpoko's rangatiratanga. As he put it,

A lot of Maoris have been fined for shooting there, but I can't see where it is illegal if you hold the title. We have just been bluffed. This is why the trustees decided this week to advertise our intention to shoot – so any organisation or body that thinks they can legally stop us from shooting can make their objections. We want to find out who objects and why.¹²⁵⁹

Harwood provided a lengthy briefing on the subject. He pointed out that the domain board had previously determined that shooting would interfere with the reasonable rights of the

¹²⁵⁷ Head Office Committee: Reserves. Application for financial authority (case no. R75/96). Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²⁵⁸ 'To who ever [sic] it may concern', notice in the *Chronicle*, 29 March 1973. Clipping on Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²⁵⁹ 'Maoris say they own lake and will defy duck-shooting ban', *Evening Post*, 30 March 1973. Clipping on Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

public ... to use as a public domain', and had included the following by-law, which was approved by the Minister in November 1963:

7. No person shall within the limits of the Domain shoot, snare, destroy, or interfere with any bird, animal or fish, or destroy the nests or eggs of any birds, without the written permission of the Board.

Provided that in the case of any bird or animal covered by the Wildlife Act 1953 no such permission shall be granted unless and until the provisions of that Act have been complied with.¹²⁶⁰

Harwood said that 'little' had come of the issue since the domain board had decided not to open the lake to shooting in 1963, and noted that the board's resolution to that effect at the time had been moved by one of its Muaūpoko members. The lake trustees, he suggested, 'represent only those tribe members having an interest in the land referred to in the 1956 legislation' and 'have no legal right to shoot on, into and over the domain which includes the lake waters'. The lake had been a sanctuary for birds for many years and, if shooting were permitted, 'there would be mass slaughter'. Harwood noted that Nora McMillan – who was no longer a domain board member but still the secretary of the Muaupoko Maori Committee – had telephoned to express her opposition to the trustees' plans. She had also told him 'that Maori members of the Domain Board have also expressed the same opinion'. He said he would be threatening prosecution under both the by-laws and the terms of the Reserves and Domains Act, and claimed that 'if the Domain Board now after so many years fails to take a stand then any efforts that the Department makes on conservation and recreation could be nullified'.¹²⁶¹

Harwood's dismissal of the lake trustees as representing 'only' those members of Muaūpoko with an interest in the lakebed, dewatered area, and chain strip seems rather ill-judged. It was clear, however, that Hohepa Taueki by no means enjoyed universal support within Muaūpoko for his stance.

The opinion of the Lands Department's district solicitor was obtained. His view was that the domain board had, through its by-laws, made a 'determination' as to the 'reasonable rights of the public' that Māori rights over the lake should not interfere with. Under the by-laws, the board's permission was required for firearms to be carried in the domain and for the erection of structures such as maimai. He noted that there had been no challenge to the by-laws since their approval by the Minister in 1963, but that this was 'not surprising as 50% of the Board members represent the Maori owners'. In other words, the district solicitor was suggesting that the board in theory represented the owners' interests. He also noted that unauthorised

¹²⁶⁰ Commissioner of Crown Lands to Director-General of Lands, 6 April 1973. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²⁶¹ Commissioner of Crown Lands to Director-General of Lands, 6 April 1973. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

shooting in the domain would also be in breach of section 84 of the Reserves and Domains Act 1953.¹²⁶²

The domain board discussed the matter on 12 April 1973. Sonny Tukapua reported that, at a recent tribal hui, it had been put to Taueki that he ‘had used the name of the tribe in his statement but on no occasion had the matter been discussed with the tribe and the trustees had no right to use the name of tribe as a whole’. Thompson Tukapua also criticised Taueki for not having raised his plan with the Māori domain board members first. However, John Hanita-Paki – who had been appointed as a domain board member the previous year – said he ‘thought the matter too confused’ and did not support the resolution carried by the other members that ‘no shooting be allowed on the Domain’.¹²⁶³ The Commissioner of Crown Lands explained to the Director-General that Hanita-Paki thought the legal position ‘obscure’ and ‘was not convinced the Board could legally stop the owners from shooting in the Domain’ However, ‘if a shooter was successfully prosecuted he [Hanita-Paki] would be convinced and would support the motion wholeheartedly’.¹²⁶⁴ The Director-General in turn briefed the Minister and assured him that the domain board was acting legally, despite the lake being owned ‘by the Maoris’.¹²⁶⁵

Nora McMillan then wrote to the Minister of Lands on behalf of the Muaupoko Maori Committee to express a lack of confidence in the lake trustees. The Commissioner of Crown Lands told the Director-General that he believed ‘the Department should not become involved in this issue and as the Domain Board does not have the authority, the matter should be referred back to the Maori and Island Affairs Department for action’.¹²⁶⁶ The issue appears to have resolved itself when the Minister of Maori Affairs, Matiu Rata, ‘intervened ... to oblige the Trustees to comply with the Board’s decision not to allow shooting over the lake’.¹²⁶⁷

Seven years later, however, the shooting issue returned with more vigour. At its meeting on 14 February 1980, the domain board considered a request from the lake trustees for shooting to be permitted on the lake. The trustees intended to shoot around the entire edge of the lake aside from the area from Queen Street to the Patiki Stream, thus again excluding Muaūpoko Park. The meeting was also attended by Messrs Croad and Barry from the Levin branch of the Wellington Acclimatisation Society. They favoured shooting, though only by licensed shooters. The chairman moved, and Joe Tukapua (now a board member – see below)

¹²⁶² Opinion of R J McIntosh, district solicitor, 3 April 1973. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²⁶³ Minutes of meeting of Horowhenua Lake Domain Board, 12 April 1973. Archives New Zealand file AANS W5883 25344 Box 114 NYA003735

¹²⁶⁴ Commissioner of Crown Lands to Director-General of Lands, 18 April 1973. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²⁶⁵ Director-General of Lands to Minister of Lands, 18 April 1973. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²⁶⁶ Commissioner of Crown Lands to Director-General of Lands, 25 July 1973. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹²⁶⁷ Commissioner of Crown Lands to Director-General of Lands, 14 March 1980. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

seconded, ‘That the Board accepts the Horowhenua Lake Trustees’ application to allow shooting on or over the Lake to those who hold fishing rights.’ Only Joe Tukapua voted in favour of this motion, with three voting against (Thompson Tukapua, Larry Prior, and Mayor Laurie Roberts) and three abstentions (the chair, Moses, and John Hanita-Paki). The county representative on the board, Jeff Law, was absent.¹²⁶⁸

Another motion was put by Roberts and seconded by Prior. This was

That duck shooting on or over lake Horowhenua Domain (excluding the area known as Muaupoko Park and a buffer zone) be authorised and the Lake Trustees’ application for exclusive shooting rights be declined. The prohibition on carrying firearms in or across Muaupoko Park to be retained.¹²⁶⁹

This time John Hanita-Paki and Joe Tukapua both abstained, as did acting chairman Wayne Devine. Hanita-Paki abstained from both votes on the grounds that he held an interest in the shooting issue. But Prior, Roberts and Moses all voted in favour, and the motion was carried. Only Thompson Tukapua voted against, believing that the lake should remain a bird sanctuary.¹²⁷⁰

The decision effectively gave the lake trustees absolute control over shooting on the lake in any event, as no-one could carry firearms across Muaupoko Park. To shoot on or over the lake would therefore require gaining permission from the trustees to access the lake via the chain strip. The *Chronicle* noted this, adding that Croad said the Acclimatisation Society ‘would have been reasonably happy with just the Maori owners shooting as this would have reduced the numbers of duck, but as a New Zealander I was concerned that there should be no discrimination’.¹²⁷¹

News of the decision drew strong protests from members of the Royal Forest and Bird Protection Society. One claimed the decision had been made ‘in secret’ in the presence of two members of the Acclimatisation Society, an organisation ‘dedicated to killing anything with wings’.¹²⁷² The chairman of the Levin branch of Forest and Bird argued that no notice of such an important decision being made had been given, and that it was most unsatisfactory for the

¹²⁶⁸ Extract from minutes of meeting of the Horowhenua Lake Domain Board, 14 February 1980; ‘Shooting to be allowed on Lake Horowhenua’, *Chronicle*, 15 February 1980; ‘Duck shooting decision was not unanimous’, *Chronicle*, 15 February 1980. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹²⁶⁹ Extract from minutes of meeting of the Horowhenua Lake Domain Board, 14 February 1980; ‘Shooting to be allowed on Lake Horowhenua’, *Chronicle*, 15 February 1980; ‘Duck shooting decision was not unanimous’, *Chronicle*, 15 February 1980. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹²⁷⁰ Extract from minutes of meeting of the Horowhenua Lake Domain Board, 14 February 1980; ‘Shooting to be allowed on Lake Horowhenua’, *Chronicle*, 15 February 1980; ‘Duck shooting decision was not unanimous’, *Chronicle*, 15 February 1980. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹²⁷¹ ‘Shooting to be allowed on Lake Horowhenua’, *Chronicle*, 15 February 1980. Clipping on Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹²⁷² ‘Shooting on lake’, letter to editor by Sylvia Lovell, *Chronicle*, 21 February 1980. Clipping on Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

motion to have been passed with three abstentions.¹²⁷³ Devine felt obliged to write to the *Chronicle* to explain that the lake had never been a formal sanctuary and that the board ‘considered it only democratic, in allowing shooting on the lake, to give the public in general the opportunity to participate if they could obtain access rights’.¹²⁷⁴ He also wrote to Forest and Bird to explain that the Acclimatisation Society members had not been allowed to lobby the board, and that the board had had a quorum of members present.¹²⁷⁵

The Commissioner of Crown Lands briefed the Director-General on 14 March 1980, explaining the reasoning behind the board’s decision:

Given the special nature of its power over the lake waters the Board decided that it should not refuse to allow shooting by the Maori owners but considers that all members of the public should have the same right. There will be no firearms or shooting permitted in the environs of Muaupoko Park. As this is the only public access to the lake the Board’s decision in effect means that only those who can obtain the permission of the Maori owners will be able to shoot. This could include Pakeha spouses of the fishing right holders.

The lake is not a statutory sanctuary and opening it up to duck shooting is supported by the Wellington Acclimatisation Society. It is believed that the mallard population could be cropped to advantage.¹²⁷⁶

The domain board also approached the Wildlife Service of the Department of Internal Affairs for comment. It replied that it had no objection to hunting being allowed on the lake during the open season.¹²⁷⁷

On 12 April 1980 Hohepa Taueki placed a notice in the *Chronicle*. It read:

We, the people of Muaupoko Tribe will be shooting on Lake Horowhenua.

Non Tribal members and Europeans caught shooting on the lake or trespassing over Maori Land surrounding the lake will be prosecuted.¹²⁷⁸

The local body representatives on the domain board were outraged. Law considered that the board’s decision to open shooting to all should not have been contradicted, and was ‘worried’

¹²⁷³ A M Maunder, chairman, Levin Branch of Royal Forest and Bird Protection Society, to Secretary, Horowhenua Lake Domain Board, 25 February 1980. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹²⁷⁴ Devine to editor, *Chronicle*, 28 February 1980. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹²⁷⁵ Devine to A M Maunder, chairman, Levin Branch of Royal Forest and Bird Protection Society, 29 February 1980. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹²⁷⁶ Commissioner of Crown Lands to Director-General of Lands, 14 March 1980. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹²⁷⁷ M E Crombie, for Secretary for Internal Affairs, to Secretary, Horowhenua Lake Domain Board, 14 March 1980. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹²⁷⁸ ‘Re: Shooting Lake Horowhenua’, notice in the *Chronicle*, 12 April 1980. Clipping on Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

by the fact that the Muaūpoko representatives on the board were divided. Roberts said he was being subjected to personal abuse over the issue:

The attitude taken is ugly and abusive and the wording of the advertisement was truculent. I take real exception to all this and will have to consider whether I can seriously remain a member of the board if this attitude persists.

At meetings last year, when Trustee members were present, we came to an amicable agreement that all shooters should have access to the lake.

It is clear from the act that the tribe members have unrestricted use of the lake and shooting rights are not specifically excluded. We agreed they have shooting rights. But it appears that some of them hold thoughts that the European members of the board are here to thwart Maori rights.

We are not here to do that and we felt that the decision was in the best interests of everyone.¹²⁷⁹

Moses considered that ‘the decision had overcome a lot of problems’, and agreed with Thompson Tukapua that Hohepa Taueki was conducting ‘a one man message in the Press and in the advertisement’.¹²⁸⁰

Roberts followed up with a letter to the Commissioner of Crown Lands. He said the board members had been ‘fair and reasonable’, but, despite this, ‘from that small section of Maori representation, we’re still confronted with the cry the claim, “The Lake is ours!”’. He asked how exactly the trustees held their office, and added that he was ‘submitting a complaint to the Race Relations Commissioner on the subject of Mr. Taueki’s advertisement’. He added that the duck shooting season would begin within a few weeks and ‘the Levin police should be informed of the Board’s concern at what may eventuate in this public domain’.¹²⁸¹

It does not appear that there was any conflict during the shooting season. Croad noted later that year that there had been ‘no problems’ but the harvest had been ‘minimal’ because of the restriction of shooting to members of Muaūpoko. Law said that the trustees had been ‘a bit selfish and we hope they will allow others to shoot in future’. Mario Hori-Te-Pa, who had replaced Moses as board member, denied that the trustees’ stance had been selfish. He explained that ‘We wanted to see what it would be like for the first year, on our own, and I’m sure thought will be given to opening it up for all shooters in future.’ Croad said the Acclimatisation Society would approach the trustees with proposals for the next season.¹²⁸² The upshot of this was an agreement between the trustees and the society that was announced

¹²⁷⁹ ‘Critical of chairman’s stand on shooting’, *Chronicle*, 12 April 1980. Clipping on Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹²⁸⁰ ‘Critical of chairman’s stand on shooting’, *Chronicle*, 12 April 1980. Clipping on Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹²⁸¹ Roberts to Commissioner of Crown Lands, 14 April 1980. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹²⁸² ‘May open lake to all duck shooters’, *Chronicle*, 16 December 1980. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

in March 1981 and appears to have provided for access to the lake for shooters via the chain strip. However, neither Joe Tukapua nor John Hanita-Paki would accept it, arguing that they represented the majority of trustees who opposed the agreement.¹²⁸³

The trustees met and agreed that access through the chain strip would not be opened, and that the agreement would not proceed. Joe Tukapua said that the arrangement had been negotiated with the Acclimatisation Society by only ‘three or four’ trustees, and ‘not the whole group’. Croad accepted the decision and ‘hoped as many members of the tribe as possible would shoot on the lake’ given what he regarded as ‘the alarming increase in the mallard population’.¹²⁸⁴

It is not clear whether the matter of duck shooting arose again during the 1980s. It had been an issue that inflamed tensions within the community, including within Muaūpoko itself. Some members of the tribe felt that the original wish of their tūpuna that the lake be a bird sanctuary should be respected, while others saw an opportunity to use the issue as a means of asserting rangatiratanga over the lake. The Pākehā community was similarly conflicted, with some wanting shooting to take place, others opposing it, and a third group being in favour of shooting as long as it was open to all. The irony was that the birds in question were an introduced species, not native, and were not present at the lake when the sanctuary was first declared in the 1905 agreement. As we saw in chapter 4, by 1962 there were thousands of mallards on the lake, comprising the great majority of all waterfowl. Native bird species were heavily outnumbered.

The trustees’ actions – however well supported by the tribe – need to be understood in the broader context of the growing assertiveness by Māori about their rights in the 1980s. Hohepa Taueki’s logic appears to have been that, since the tribe owned the lakebed, it should be able to shoot on or over it if it so wished. The trustees were also clearly determined not to allow access through their land to the lake. As Joe Tukapua explained, Muaūpoko were ‘jealous of their rights for which they had fought so long to get back’.¹²⁸⁵ The Crown largely stayed out of the matter, apart from the intervention by the Minister of Maori Affairs to settle the dispute in 1973. In doing so it left decision-making up to its delegate, the domain board. This was a reasonable position for it, although its own official, the domain board chair, was too dismissive of the standing of the trustees. As we shall see, a feeling among the trustees that they were being routinely overlooked led to a much more serious disagreement in 1982.

¹²⁸³ ‘Upset over ducks’, *Chronicle*, 27 March 1981. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹²⁸⁴ ‘No shooting on lake’, *Chronicle*, 21 April 1981. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1. This increase was nobody’s fault but the Acclimatisation Society’s, which had introduced mallard ducks to the lake in the first place, almost certainly without any consultation with Muaūpoko. For example, the society was trying to establish the birds at the lake in 1907. See *Manawatu Daily Times* (untitled story), 3 May 1907, p 4.

¹²⁸⁵ ‘May open lake to all duck shooters’, *Chronicle*, 16 December 1980. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

Fishing rights in the lake and Hōkio Stream

Muaūpoko activism over the lake found a fruitful outlet in the 1970s with two important Supreme Court victories over fishing rights in the lake and the Hōkio Stream respectively. Almost inevitably, the lake case involved Joe Tukapua, who appears to have been the tribe's most vocal protagonist in its disputes with authority over lake issues. On 13 April 1974 Tukapua was removing a net he had set in the lake for eels and putting it into a shed near the stream outlet. A fisheries officer suspected that the net was illegal and approached Tukapua to question him. Tukapua reacted – in the words of Justice Robin Cooke – ‘quite violently’, and was charged with assaulting a fisheries officer ‘in the execution of his powers and duties under Part II of the Fisheries Act 1908’; using threatening language towards the officer while the officer was exercising his powers and duties; and preventing the officer ‘from measuring a net which the officer had reasonable cause to believe was intended to be used for fishing purposes’. The charges were laid under section 82(1)(a) and (c) of the Fisheries Act and regulation 10 of the Fisheries (General) Regulations 1950.¹²⁸⁶

The case was first heard in the Magistrate's Court. Tukapua's defence was that the matter was covered by section 88(d) and (e) of the Fisheries Act which allowed a person to fish in ‘private waters of which he is the owner’ or in such waters ‘when authorised by such owner’. The judge agreed with the defence and dismissed the charges, whereupon the Crown appealed to the Supreme Court. Justice Cooke heard the case at Palmerston North on 16 May 1975 and issued his decision on 13 June.¹²⁸⁷

Cooke reflected, memorably, that ‘The modern legal history of the lake and the stream and the Horowhenua Block is a tangled skein.’ He noted the provisions of section 18 of the Reserves and Other Lands Disposal Act 1956 as well as the wording of the certificate of title issued in 1959 vesting the fee simple of the lands described in the Act in named trustees for the owners identified in 1898 and their successors. He noted that section 9 of the Horowhenua Block Act 1896 had vested in the Ngāti Raukawa owners of Horowhenua 9 rights of fishing in the lake and stream, but the distinction between those rights and the rights of the Muaūpoko owners of the lakebed was ‘obscure’. Cooke noted, however, that the point was not pursued in argument and nothing turns on it for the purposes of the present case’.¹²⁸⁸

Cooke concluded that not only did the Muaūpoko owners own the lakebed, the dewatered area, the chain strip around the lake, the chain strip on the north bank of the Hōkio Stream, and those sections of the bed of the stream where riparian lands had not been alienated, but they also held fishing rights in the lake and stream waters. He added

¹²⁸⁶ Regional Fisheries Officer v Tukapua. Unreported decision, Supreme Court, Palmerston North, 13 June 1975 (M33/75). Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹²⁸⁷ Regional Fisheries Officer v Tukapua. Unreported decision, Supreme Court, Palmerston North, 13 June 1975 (M33/75). Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹²⁸⁸ Regional Fisheries Officer v Tukapua. Unreported decision, Supreme Court, Palmerston North, 13 June 1975 (M33/75). Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

And they are exclusive rights: the general public have no right to fish there. But the Maori owners must exercise their rights so as not to interfere with the reasonable rights of the public, as determined by the Domain Board, to use the lake and land as a public domain. The fishing rights of the Maori owners arose originally because the bed of the lake and the bed of the stream belonged to them. Although they agreed in 1905 to the general public having rights to use the surface of the lake and certain other rights, they have never given up to the general public any of their fishing rights.¹²⁸⁹

Cooke felt that it would be inconsistent with the 1956 Act's provision for the Muaūpoko owners to 'at all times' have the 'free and unrestricted' exercise of their fishing rights

to hold that the Maori owners are nevertheless restricted in the use of their rights by the Fisheries Act and Regulations, including requirements as to permissible equipment, close seasons, licences and so forth. The rights under the 1956 section are special statutory rights. (Incidentally, they are therefore not 'Maori fishing rights' of the kind contemplated by s.77(2) of the Fisheries Act: see Inspector of Fisheries v. Weepu 1956 N.Z.L.R. 920, 922 per F.B. Adams J.). They are rights reserved to the Maori owners because of the special history of this area. They may be unique. I think the result that best accords with the spirit and words of the 1956 section and with the history is to treat the maxim generalia specialibus non derogant as applicable. No doubt this is not the first time a Latin tag has been found to solve a Polynesian problem. That is to say, the general provisions of the Fisheries Act and Regulations do not apply to the special rights of the Maori owners to fish in Lake Horowhenua and the Hokio Stream.¹²⁹⁰

Cooke felt that this 'would be sufficient to dispose of the case', but 'the same result can be reached by another route, and as much of the argument was directed to this route I will deal with it'. He explained that Crown counsel had argued that neither the lake nor stream had one owner but many, and so they were not the property of a private person as referred to in the Fisheries Act. Cooke could not

accept that argument. It would be absurd if the bed of a lake or stream the whole of which was owned jointly by a husband and wife or in common by business partners were for that reason alone taken out of the definition of 'private waters'. Here the whole of the lake bed and the whole of the marginal land belongs beneficially to numerous Maori owners, who derive their rights from the same Act of Parliament and for whom there is one set of trustees. If the Fisheries Act did apply, the waters of the lake would therefore be 'private waters' within the meaning of that Act.¹²⁹¹

In Cooke's judgment, Tukapua's net could not be illegal

¹²⁸⁹ Regional Fisheries Officer v Tukapua. Unreported decision, Supreme Court, Palmerston North, 13 June 1975 (M33/75). Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹²⁹⁰ Regional Fisheries Officer v Tukapua. Unreported decision, Supreme Court, Palmerston North, 13 June 1975 (M33/75). Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹²⁹¹ Regional Fisheries Officer v Tukapua. Unreported decision, Supreme Court, Palmerston North, 13 June 1975 (M33/75). Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

because the Act and the regulations could not on any view apply to the Maori owners when taking fish from their own lake. So, from a common sense point of view, what the respondent was doing when approached by the officer meant to question him was exempt from the legislation.

If the Fisheries Act were relevant, these questions about ‘private waters’ might be more complicated as regards the Hokio Stream, as the 1956 section implies that some parts of the bed of the stream may have been alienated by the Maori owners, although there was no evidence on the point. Moreover, the banks of the stream may be in different ownership. However, the facts of this case make it unnecessary to explore the matter further. And, in any event, my decision that the general Fisheries legislation does not restrict the Maori owners applies to both the lake and the stream.

For those reasons, which are quite unrelated to the ones which moved the learned Magistrate when confronted with this case towards the end of a day’s sitting in Levin, his dismissal of the charges will be confirmed and the formal question in the case stated will be answered No.

Mr Tukapua, who says he was trying to catch eels by a traditional method of his tribe, has proved the right of the Maori owners to fish in these waters free from disturbance by fishery officers.¹²⁹²

However, since Tukapua’s violent response to the fisheries officer could not be condoned, Cooke refused to award him any costs.¹²⁹³

Writing in 1994, when President of the Court of Appeal, Cooke reflected that ‘in my earlier years on the Bench Treaty issues were not something with which one had to wrestle. The nearest approach in my experience was perhaps *Regional Fisheries Officer v Tukapua*, an understandably unreported case of 1975’.¹²⁹⁴

The second Supreme Court vindication of Muaūpoko fishing rights involved the Hōkio Stream. It will be recalled in chapter 4 that, in 1956, the Lands Department had concluded that Muaūpoko did not hold the sole fishing rights to the tidal reaches of the stream, despite the assertion by unknown members of the tribe at the time that they did. Whitebaiting disputes carried on in the decade after the 1956 settlement, with Muaūpoko continuing to assert their exclusive rights. Then, on 7 December 1976, Ike Williams of Muaūpoko was charged with fishing for whitebait in the stream during the North Island closed season in contravention of Regulation 6 of the Whitebait Fishing Regulations 1964. It was undisputed that he had been fishing for whitebait in a channel which ‘either formed part of the Hokio Stream or which ran from the outlet of the Hokio Stream to the sea’. However, Williams argued that he held fishing rights in the stream which were unaffected by the regulations. The Crown, on the other hand, alleged that, notwithstanding the decision in *Regional Fisheries*

¹²⁹² *Regional Fisheries Officer v Tukapua*. Unreported decision, Supreme Court, Palmerston North, 13 June 1975 (M33/75). Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹²⁹³ *Regional Fisheries Officer v Tukapua*. Unreported decision, Supreme Court, Palmerston North, 13 June 1975 (M33/75). Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹²⁹⁴ Sir Robin Cooke, ‘The Harkness Henry Lecture: The Challenge of Treaty of Waitangi Jurisprudence’, *Waikato Law Review*, vol 2, 1994.

http://www.waikato.ac.nz/law/research/waikato_law_review/volume_2_1994/2 accessed 9 March 2015

Officer v Tukapua, Williams was fishing outside the boundaries referred to in section 18 of the 1956 Act and was therefore subject to the regulations.¹²⁹⁵

The case was first heard in the Magistrate's Court in Levin, and appealed by the Crown to the Supreme Court.¹²⁹⁶ It was considered there by Justice O'Regan on 13 October 1978. He found that the plan attached to the certificate of title issued in 1959 did not show the location of 'the sea' and was of little assistance in resolving the issue. Ultimately, however, this was immaterial, for O'Regan concluded that the 1956 Act did not create or grant the fishing rights but merely preserved them. Therefore, 's. 18 of the Reserves and Other Lands Disposal Act 1956 does not establish or define the precise nature of the territorial limitations (if any) of such rights'. In this regard O'Regan noted the fishing rights preserved to members of Ngāti Raukawa by section 9 of the Horowhenua Block Act 1896. These rights were to be recognised on the title of any subdivision of Horowhenua XI 'in such portions of the Hokio Stream and the Horowhenua Lake as are included in the said certificate'. O'Regan contrasted this arrangement to section 18 of the 1956 Act, which recognised Muaūpoko fishing rights 'without express limitation to the metes and bounds of the title'. As he put it,

The Legislature if it considered such a course appropriate could well have limited the fishing rights referred to in s.18 to the land comprised in the title to the Muaupoko land through which the Hokio flows. I think it significant that it did not do so.¹²⁹⁷ [Emphasis in original.]

O'Regan noted the Crown's submission that Williams had been fishing from the foreshore, which was Crown-owned by virtue of section 150 of the Harbours Act 1950. The key part of his judgment followed:

I do not accept that submission. The rights of piscary which he and the other members of the Muaupoko who own Horowhenua XI Block are as Cooke J. remarked in *Tukapua's* case unique rights. They are also, insofar as the history of New Zealand and its legislation are concerned old rights. Research by counsel and by me have [sic] not unearthed their genesis. I do not find that surprising. They might well have existed prior to the coming of the pakeha. They were asserted in necessarily general terms throughout the years over which the settlement of the land was made and in the end they were given statutory recognition. That statute enacted that the Hokio Stream 'means the stream flowing from outlet of the lake ... to the sea.' It declared that the bed of the stream (excepting parts alienated or disposed of by the Maori owners) 'to be and to have always been owned by the Maori owners.' The declaration that such was always owned by them, so it seems to me, is statutory recognition that such ownership preceded the advent of the pakeha and the introduction of his artifice for the making of laws and for creating and recording property rights. The statute provided further ... that the Maori owners 'shall at all times ... have their fishing rights over such stream' – that is from the outlet of the lake to the sea.

¹²⁹⁵ Regional Fisheries Officer v Williams. Unreported decision, Supreme Court, Palmerston North, 12 December 1978 (M116/78). Ministry for the Environment file EPL 7/2/1 vol 1

¹²⁹⁶ Confusingly, the Supreme Court judgment referred to both Williams and the Crown as the appellant, but it appears in fact that it was the Crown that appealed.

¹²⁹⁷ Regional Fisheries Officer v Williams. Unreported decision, Supreme Court, Palmerston North, 12 December 1978 (M116/78). Ministry for the Environment file EPL 7/2/1 vol 1

I think, therefore, that the right of the Crown to the foreshore at the outlet of the Hokio Stream to the sea is subject to the rights of piscary of the Maori owners in that part of the stream, and where it forks, to those parts of the stream, which cross the foreshore to the sea. The Reserves and Other Lands Disposal Act ... is, in my view, an Act of Parliament providing contrary to the provision of s.150 of the Harbours Act 1950.¹²⁹⁸ [Emphasis in original.]

O'Regan accordingly dismissed the appeal and ordered the Crown to pay Williams' costs.¹²⁹⁹ Williams later attempted to assert the exclusive rights that the courts had recognised. In August 1982, for example, he placed a notice in the *Chronicle* which stated

Public are not allowed to whitebait in Hokio Stream, only Mua-Upoko tribe and Ngatokowaru tribe. No outside Maoris.¹³⁰⁰

In subsequent years it appears that Muaūpoko kept the Hōkio Stream closed to whitebaiting by those not part of the tribe, although it did give permission to some members of the public to fish in it.¹³⁰¹

Collectively, therefore, these two 1970s Supreme Court judgments ruled, first, that Muaūpoko had exclusive fishing rights in Lake Horowhenua and the Hōkio Stream (Cooke) and, secondly, that those rights extended below the tidal reaches of the stream and across the foreshore to the breaking waves of the sea (O'Regan). It is not clear whether O'Regan was presented with argument about the legal precedent that drew the Lands Department to conclude in 1956 that Muaūpoko did not have exclusive fishing rights over the tidal reaches of the stream. If he was, he did not mention it. But given his comment about artifice, he may well have dismissed it as a legal subterfuge.

Board attendance, appointments, and terms

There were clearly periods in the board's history when attendances by the Muaūpoko representatives were very good. Between May 1970 and September 1975, for example, there were 30 ordinary and special meetings of the board. Thompson Tukapua attended 27, J F Moses attended 26, and Nora McMillan and her successor in December 1972, John Hanita-Paki, attended 24 between them. Sonny Tukapua attended 24 out of 27 before he resigned in June 1975. This compared well with the attendance records of the local body representatives. Laurie Roberts attended 27 meetings during this period, while Alfred Allen and his

¹²⁹⁸ Regional Fisheries Officer v Williams. Unreported decision, Supreme Court, Palmerston North, 12 December 1978 (M116/78). Ministry for the Environment file EPL 7/2/1 vol 1

¹²⁹⁹ Regional Fisheries Officer v Williams. Unreported decision, Supreme Court, Palmerston North, 12 December 1978 (M116/78). Ministry for the Environment file EPL 7/2/1 vol 1

¹³⁰⁰ 'Please take notice', notice placed in the *Chronicle* by Ike Williams, 21 August 1982. Clipping on Archives Central file HRC 00024: 33: 9/6 part 4

¹³⁰¹ 'Whitebait row turns nasty', *Dominion*, 24 September 1996, p 3

replacement in November 1971, D H Tomlinson, attended 26 between them. The county council representative, Richard Denton, attended 26.¹³⁰²

However, no doubt because of the cross purposes of the domain board members and lake trustees over issues such as shooting,¹³⁰³ serious tensions arose over the process to be undertaken for the nomination of board members. When Sonny Tukapua resigned, the domain board wrote to the Department of Maori Affairs asking for it to confirm his successor. Kai Hui, a district community officer of the department in Palmerston North, wrote in turn to Nora McMillan asking for the Muaupoko Maori Committee to make the arrangements. As he put it,

It would appear that in the past nominations for this particular position on the Board have been decided by a meeting of the Muaupoko Tribe representatives. The last one held for such a purpose and on which Mr S Tukapua was nominated, was in October 1972 at Kawiu Pa, Levin.

As this is largely a matter as between the Muaupoko Tribe and the Board, I would suggest therefore that anything you can do as an interested party to arrange a meeting to nominate a successor to Mr S Tukapua would go a long way towards finalising matters as far as full Board representation for the people is concerned.¹³⁰⁴

Hui asked McMillan to inform the domain board in due course who ‘the successful nominee’ was.¹³⁰⁵ He also wrote to the domain board to advise that the ‘Muaupoko Tribe’ would ‘make the necessary arrangements’.¹³⁰⁶

The prospect of holding the meeting must have concerned McMillan, because she asked if Hui would chair it.¹³⁰⁷ He declined, saying that ‘it is entirely something between members of the Muaupoko Tribe and the Board itself’ and he preferred ‘not to act as Chairman at your tribal meeting when this matter is considered’.¹³⁰⁸ After some prompting from both the domain board and Hui, the meeting finally took place at Kawiu Pā on 2 May 1976, with Joe Tukapua and Tamati Hetariki representing the lake trustees. McMillan’s record of the proceedings probably reveals why she wanted an independent chair. Joe Tukapua began by rising ‘with hostility’ against the meeting proceeding, arguing that there had been ‘a lack of communication towards Lake Trustees and the people’. He was adamant that ‘the nomination

¹³⁰² See Archives New Zealand file AANS W5883 25344 Box 114 NYA003735.

¹³⁰³ Another probable example of these cross purposes was that, in mid-1975, the domain board approached the lake trustees to see if they would agree to ‘unified control’ of the lake and its surrounding land – see chapter 5.

¹³⁰⁴ K Hui, for District Officer, to Nora McMillan, Secretary, Muaupoko Maori Committee, 3 July 1975. Archives New Zealand file ABJZ W4615 6878 Box 20 25/6/2/1 part 2

¹³⁰⁵ K Hui, for District Officer, to Nora McMillan, Secretary, Muaupoko Maori Committee, 3 July 1975. Archives New Zealand file ABJZ W4615 6878 Box 20 25/6/2/1 part 2

¹³⁰⁶ K Hui, for District Officer, to R J Franks, Secretary, Horowhenua Lake Domain Board, 3 July 1975. Archives New Zealand file ABJZ W4615 6878 Box 20 25/6/2/1 part 2

¹³⁰⁷ Nora McMillan, Secretary, Muaupoko Maori Committee, to K Hui, District Community Officer, 17 July 1975. Archives New Zealand file ABJZ W4615 6878 Box 20 25/6/2/1 part 2

¹³⁰⁸ K Hui, for District Officer, to Nora McMillan, 24 July 1975. Archives New Zealand file ABJZ W4615 6878 Box 20 25/6/2/1 part 2

to the board must be a Lake Trustee'. He reportedly 'made abusive remarks to Chairman and T. Tukapua that they were not worthy board members and should step down'. At this point McMillan's minutes state 'Meeting began to be uncontrollable' (sic).¹³⁰⁹

The (unnamed) chairman responded that some considerable cost had gone into advertising the meeting, and the majority of those present resolved to continue. Joe Tukapua warned that 'if the nomination is not a Lake Trustee, he will see to it that he is removed, or he will be in serious circumstances'. Tamati Hetariki added that 'as long as there is no Lake Trustee on the board, they will not attend a meeting'. Mary Hetariki then proposed Joe Tukapua himself as the nominee. Thompson Tukapua and another committee member asked that their names be recorded as having no confidence in Joe Tukapua, which others present indicated by a show of hands. There being no other nomination, however, Joe Tukapua was declared elected to fill the vacancy on the domain board.¹³¹⁰

In December 1979 the seven-year terms of the board members expired. But the appointment of a new board was deferred while the findings of the Caucus Committee on the restructuring of National Parks and Reserves were considered. On 4 September 1980 the Director-General of Lands forwarded a briefing to the Minister of Lands on the subject. The Director-General explained that

Under the restructuring proposals for national parks and reserves, this former domain will be one area which the department would seek to transfer control to regional or local government administration. No discussions have taken place with the Board about transfer of control and in view of this and the separate legislation establishing the Board it is expected that any formal decision about this is expected to be some time away. It is therefore considered desirable that a new Board be appointed for a term of three years by which time the matter of transfer of control should be resolved.¹³¹¹

In his covering letter to the briefing paper, the Director-General told the Minister that the domain 'could logically be administered by regional or local government', but this would require Māori consent. The two councils were approached for nominations 'and a public meeting of the Muaupoko Tribe was organised by the Department of Maori and Island Affairs, Palmerston North to seek nominations'. This hui elected George Harris, Mario William Hori-Te-Pa, Joe Tukapua (who was of course on the previous board), and Jack Warren.¹³¹² The Minister of Lands, Venn Young, approved the appointments on 5 September 1980¹³¹³ and they were gazetted on 9 October.¹³¹⁴

¹³⁰⁹ Minutes of meeting of 2 May 1976. Archives New Zealand file ABJZ W4615 6878 Box 20 25/6/2/1 part 2

¹³¹⁰ Minutes of meeting of 2 May 1976. Archives New Zealand file ABJZ W4615 6878 Box 20 25/6/2/1 part 2

¹³¹¹ Director-General of Lands to Minister of Lands, 4 September 1980. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹³¹² Director-General of Lands to Minister of Lands, 4 September 1980. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹³¹³ Board appointments sheet signed by the Minister of Lands, 5 September 1980. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹³¹⁴ *NZ Gazette*, No. 118, 9 October 1980, p 2986

As can be seen, the Government's desire to cease its involvement with the administration of the domain was undiminished. This intent now had the effect of altering the length of board members appointments. It does not appear that there was any consultation with Muaūpoko about this change, even if it was considered that Muaūpoko would have to agree to any transfer of administration from the Crown to the local bodies.

Because officials regarded the 'Maori involvement' as 'important to the smooth operation of Board affairs', the Minister was encouraged to write letters to each of the incoming and outgoing (and, in Joe Tukapua's case, returning) Māori members.¹³¹⁵ Young signed these on 16 October 1980. To the new members he wrote 'The work of the Maori members of this Board is very important to the operations of the Board and I am sure your contribution will prove to be worthwhile and your term of office a happy and rewarding one.'¹³¹⁶ Unfortunately, one of these letters was sent a Pākehā resident of Ōtaki named George Harris rather than the member of Muaūpoko who had been nominated, although the mistake was rectified after the former brought it to officials' attention.¹³¹⁷

At the same time as these changes were taking place, the domain was also reclassified as a recreation reserve. This action stemmed from the passage of the Reserves Act 1977, under which lands that had been administered as domains under the Reserves and Domains Act 1953 were to be administered as reserves pending classification under the new legislation. It will be noted that the Director-General's 4 September 1980 briefing to the Minister had referred to 'this former domain'. At its meeting of 14 August 1980, the domain board members were told by the chairman that 'under the Reserves Act 1977 the Department of Lands and Survey was required to classify each reserve according to its current use'. The board resolved that 'the Reserve be classified in terms of Section 16 and 17 of the Reserves Act as a Reserve for Recreation purposes'.¹³¹⁸

The proposed reclassification was notified and no objections were received.¹³¹⁹ The domain's new status was gazetted on 9 July 1981. However, the notice contained an error, as it defined the reserve as including 'the land between the north-western boundary of the said Horowhenua 11B 38 and the surface waters of the said lake', thus encompassing the chain strip and dewatered area.¹³²⁰ This was recognised as a mistake in 1989 (see chapter 7). In the meantime, and despite being referred to occasionally as a 'reserve board' (or 'reserves board'), the domain board retained its original name.

¹³¹⁵ Director-General of Lands to Minister of Lands, 7 October 1980. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹³¹⁶ See, for example, the letter to Jack Warren. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹³¹⁷ File note by I D Campbell, Assistant Director of National Parks and Reserves, 15 October 1980. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹³¹⁸ Extract from minutes of meeting of the Horowhenua Lake Domain Board, 14 August 1980. Archives New Zealand file AANS W5883 25344 Box 115 NYA003148

¹³¹⁹ 'Proposed reclassification of a reserve' (case No. 81/90). Archives New Zealand file AANS W5883 25344 Box 115 NYA003148

¹³²⁰ *NZ Gazette*, No. 80, 9 July 1981, p 1920

Fluctuating the lake level

In March 1966 the Manawatu Catchment Board temporarily raised the level of the lake to enable the Horowhenua Boating Club to hold its annual yachting regatta.¹³²¹ In October that year the club noted how shallow the lake was in parts and asked again that the level be specifically raised to coincide with its regatta to be held on 4-5 March 1967.¹³²² The board's chief engineer pointed out to the boating club that the board had a statutory obligation to maintain the lake at a particular level, but had agreed the previous year 'to the raising of the lake during your regatta provided the farmers agreed with this'. To this end the board supplied the boating club with a list of such landowners,¹³²³ and the boating club sent each a letter seeking permission for the lake to be raised by a foot. It told the farmers that 'If no reply is received from you by the 17/2/67 we would assume you have no objection.'¹³²⁴

On 18 February 1967 the boating club informed the catchment board that approval had been received from R R Mexted, J J Kidd, M H Knight, R H Bryant, C H Crawford, M Vincent, W Proctor, and the county council. Only Mrs R H Paki had objected. The club therefore asked the board to go ahead and raise the lake level. P G Evans, the board's chief engineer, annotated this letter with a note that Mrs Paki had since agreed to the level being raised.¹³²⁵ The board confirmed to the boating club that the lake level would be raised and wished it well with its regatta.¹³²⁶

In January 1968 the secretary of the domain board asked the catchment board if the lake level could be raised annually over the summer months. The boating club was apparently 'having its worst year' because of weed growth in the lake and it was felt that the problem could be overcome by a higher water level.¹³²⁷ The catchment board wrote confirming that the lake level would be raised for the boating club's regatta at the start of March. This was achieved by the placement of dam boards on top of the concrete weir, which had been completed the previous year.¹³²⁸ The catchment board did not answer the question about an annual rise in the water level, however, so in May 1968 the domain board asked again. It explained that

There has [sic] been times, because of the low lake level, that the water in the Lake has become much warmer than is usual. This has resulted in many of the fish dying through not

¹³²¹ Secretary, Horowhenua Boating Club, to Secretary, Manawatu Catchment Board, 17 March 1966. Archives Central file HRC 00024: 57: 19/10 part 2

¹³²² Secretary, Horowhenua Boating Club, to Chief Engineer, Manawatu Catchment Board, 6 October 1966. Archives Central file HRC 00024: 57: 19/10 part 2

¹³²³ P G Evans, Chief Engineer, Manawatu Catchment Board, to Secretary, Horowhenua Boating Club, 27 January 1967. Archives Central file HRC 00024: 57: 19/10 part 2

¹³²⁴ Form letter from D G Beck, Commodore, Horowhenua Boating Club, no date. Archives Central file HRC 00024: 57: 19/10 part 2

¹³²⁵ Hon Secretary, Horowhenua Boating Club, to Chief Engineer, Manawatu Catchment Board, 18 February 1967. Archives Central file HRC 00024: 57: 19/10 part 2

¹³²⁶ Secretary, Manawatu Catchment Board, to Secretary, Horowhenua Boating Club, 2 March 1967. Archives Central file HRC 00024: 57: 19/10 part 2

¹³²⁷ Secretary, Horowhenua Lake Domain Board, to Secretary, Manawatu Catchment Board, 19 January 1968. Archives Central file HRC 00024: 57: 19/10 part 2

¹³²⁸ Secretary, Manawatu Catchment Board, to Secretary, Horowhenua Lake Domain Board, 27 February 1968. Archives Central file HRC 00024: 57: 19/10 part 2

being able to cope with these extreme conditions. Having the Lake raised during the summer months, it is felt, would tend to keep the water temperature more even and could possibly also have a beneficial effect in overcoming the weed problem for the boating club.¹³²⁹

The catchment board agreed to the request, subject to the domain board obtaining the consent of all affected ratepayers.¹³³⁰ However, an objection was received from Cyril Crawford, who observed that ‘There is no provision in the scheme for holding waters for the Boating Club.’¹³³¹ In December 1968, too, he pointed out to the catchment board that it was failing to maintain the lake at the statutory level as the dam boards had been left in place on the top of the weir.¹³³² In the circumstances, the catchment board had little option but to take ‘immediate steps ... to restore the level of the lake to the correct height’.¹³³³

Figure 6.1: Neville Lodge cartoon about weed in Lake Horowhenua, c. 1977¹³³⁴



There the matter lay, for the time being at least. The catchment board had endeavoured to get around its legal responsibility to keep the level of the lake at 30 feet above mean low water spring tides at Foxton Heads by gaining the consent of all surrounding landowners, but had been forced to fall back on its obligation by one objector. It is notable that the lake trustees were not among those the catchment board felt had to be consulted about fluctuating the lake's level. Nor were landowners alongside the Hōkio Stream, who could be affected by any alteration in the flow from the lake. Most significantly, however, the issue revealed that the

¹³²⁹ Secretary, Horowhenua Lake Domain Board, to Secretary, Manawatu Catchment Board, 23 May 1968. Archives Central file HRC 00024: 57: 19/10 part 2

¹³³⁰ Secretary, Manawatu Catchment Board, to Secretary, Horowhenua Lake Domain Board, 24 June 1968. Archives Central file HRC 00024: 57: 19/10 part 2

¹³³¹ Cyril Crawford to Ian Park, member of the Manawatu Catchment Board, 1 July 1968. Archives Central file HRC 00024: 57: 19/10 part 2

¹³³² Cyril Crawford to Secretary, Manawatu Catchment Board, 19 December 1968. Archives Central file HRC 00024: 57: 19/10 part 3

¹³³³ Secretary, Manawatu Catchment Board, to Cyril Crawford, 21 January 1969. Archives Central file HRC 00024: 57: 19/10 part 3

¹³³⁴ Clipping on Archives Central file HRC 00024: 33: 9/6 part 2

level agreed to in 1956 had been set too low in that it was resulting in the death of fish in the lake, a matter of natural concern to the wider Muaūpoko tribe.

In 1979 Crawford (and H M Proctor) wrote again to the catchment board and claimed that the boating club had taken to inserting planks on the top of the weir to raise the lake level for its summer regattas. They did accept that it was 'an advantage to Horowhenua to have boating in Summer', but asked that the planks be removed at the start of each autumn, noting that the lake's level at that time was 31¼ feet.¹³³⁵ The catchment board's chief engineer, G G Brougham, replied that an inspection on 24 May 1979 had revealed that the level was 30.5 feet. Brougham did not mention the boating club's use of planks. Their key challenge in controlling the lake level, he indicated, was the lack of funds to maintain the Hōkio Stream.¹³³⁶ As discussed below, the catchment board eventually undertook clearance work on the stream in late 1981, which was the subject of dispute with the lake trustees.

By 1982, therefore, the stream clearance had again reduced the lake's level. In March that year the Wellington Amateur Rowing Association (WARA) wrote to the catchment board to advise that the New Zealand Rowing Championship regatta would be held at the lake in March 1983. The Wellington provincial championships had just been held there and WARA had 'found that the lake level was the lowest it has ever been'. When it applied to host the 1983 regatta WARA had been counting on a lake level similar to that in 1977 and 1980 when it had previously hosted the national regatta. WARA asked the catchment board to permit 'the boards at the weir being put back in place before Christmas 1982 so that the level of the lake will be at levels as in previous years'. WARA advised that the lake trustees were in full support of the request.¹³³⁷

It is not clear what response WARA received. However, on 1 February 1983 A G Johnson wrote to the catchment board on behalf of the organising committee for the national regatta requesting that the lake be maintained at a constant level from 28 February to 6 March 1983. Johnson noted that 'In the past the Catchment Board has been very co-operative in using boards at the Domain to keep the levels constant and we would ask for your help on this occasion'. This letter was annotated by catchment board secretary, R W Bennitt, 'N.B. We cannot breach the provisions of the Act, setting the lake level!'.¹³³⁸ Johnson was told on 14 February 1983 that the request could not be granted until the catchment board had received

¹³³⁵ Cyril Crawford and H M Proctor to Secretary, Manawatu Catchment Board, 15 May 1979. Archives Central file HRC 00024: 33: 9/6 part 3

¹³³⁶ G G Brougham, Chief Engineer, Manawatu Catchment Board, to Cyril Crawford, 28 May 1979. Archives Central file HRC 00024: 33: 9/6 part 3

¹³³⁷ P B O'Brien, Secretary, Wellington Amateur Rowing Association, to Chief Engineer, Manawatu Catchment Board, 30 March 1982. Archives Central file HRC 00024: 33: 9/6 part 4

¹³³⁸ A G Johnson, Rules Convenor, Organising Committee for the 1983 New Zealand Rowing Championships, to Chief Engineer, Manawatu Catchment Board, 1 February 1983. Archives Central file HRC 00024: 33: 9/6 part 4

confirmation from both the domain board and the lake trustees.¹³³⁹ Approval was obtained from the trustees and, on this basis, the boards were installed on 18 February.¹³⁴⁰

Figure 6.2: Logos for the 1980 and 1983 New Zealand Rowing Championships at Lake Horowhenua¹³⁴¹



The effect on the Hōkio Stream, however, was dramatic. Its level dropped very quickly with only the water that leaked through the boards on top of the weir flowing down it for a two-week period. Landowners adjoining the stream were caught unaware and lost stock which were able to cross the stream and wander around the ends of fences.¹³⁴² The catchment board received numerous complaints and Brougham accepted that ‘the boards were installed too late to give a controlled rise in the water level and ... the stream flow was probably totally cut-off [sic] for some period’. He proposed that the lake trustees apply for a water right to dam the lake from time to time, which would enable the trustees to advise the catchment board when to act.¹³⁴³

One of the complainants was Rangi Jacob, the member of Ngāti Pareraukawa who had opposed the borough council’s application for a water right to discharge effluent to the Hōkio Stream in 1982. He was a farmer of land adjoining the stream. He described the catchment board’s actions as ‘unnecessary, inconsiderate and irresponsible’. Aside from the dispersal of his stock and what he saw as concentration of coliform levels in the stream through the reduced flow, he explained the grievance from his hapū perspective. As he put it, ‘I and my extended family (and others) are entitled to the same exclusive fishing rights to the stream and Lake as the Muaupoko people as provided for in the Horowhenua Block Act.’ He

¹³³⁹ Chief Engineer, Manawatu Catchment Board, to A G Johnson, Organising Committee, New Zealand Rowing Championships, 14 February 1983. Archives Central file HRC 00024: 33: 9/6 part 4

¹³⁴⁰ Telegram, Horowhenua Lake Trustees to Manawatu Catchment Board, 18 February 1983; Chief Engineer, Manawatu Catchment Board, to Secretary, Horowhenua Lake Trustees, 9 March 1983. Archives Central file HRC 00024: 33: 9/6 part 4

¹³⁴¹ Taken from letterhead on Archives Central files HDC 00018: 97: 23/6/1 1975-1982 and HRC 00024: 33: 9/6 part 4.

¹³⁴² ‘Hokio dropped as lake rose’, *Chronicle*, 8 March 1983. Clipping on Archives Central file HDC 00018: 15: 2/4/1

¹³⁴³ Chief Engineer, Manawatu Catchment Board, to Secretary, Horowhenua Lake Trustees, 9 March 1983. Archives Central file HRC 00024: 33: 9/6 part 4

doubted whether fish life could survive in such low stream flows and advised that a downstream neighbour, D McGregor, had ‘observed dead inanga and small flounders in the stream during the period it was dammed’. Jacob suggested that another neighbour, who had been most inconvenienced, should be compensated.¹³⁴⁴

Brougham replied to Jacob on 14 March that it was ‘now recognised that [t]here is a distinct communications and methodology problem associated with the installation of the boards into the Lake Horowhenua weir’. He advised that he had proposed that the trustees apply for a water right, which ‘would then allow objections to the application to be voiced as well as ensuring that sufficient conditions are placed on any granted Right safeguarding users of the Hokio Stream’. He added that any claim for compensation should be directed at the trustees, as the board did not install the boards without the trustees’ written permission.¹³⁴⁵ Jacob told the catchment board that this response was ‘unacceptable’, pointing out that ‘it was your Board which was responsible for damming the stream & nobody else’. Noting the reported comments of the domain board chairman, A N McGowan – who had mentioned the catchment board’s statutory duty to maintain the lake level¹³⁴⁶ – Jacob added that the catchment board may have acted illegally.¹³⁴⁷ Brougham did not accept this, but reiterated that a potential long-term solution had been identified if the trustees obtained a water right for any future raising of the lake level.¹³⁴⁸ He noted in May 1983 that no application for a water right had been received from the lake trustees.¹³⁴⁹ It is not clear if the trustees ever did make such an application.

The catchment board’s temporary raising of the lake level highlighted several issues. The lake’s water quality and weed problems were exacerbated by its shallowness, and raising the level in hotter times of the year brought some relief and improved conditions for boating. However, the catchment board was bound by the 1956 Act to maintain a level that suited ratepayers contributing to local drainage activities. Muaūpoko had agreed to this level in 1956 but would not have contemplated the deterioration of water quality that would follow in the next quarter century or indeed how much the lake would fill with sediment. Within two years of the concrete weir being installed in 1966 there were reports of fish dying in the lake because of the high water temperature during summer. The raising of the level in 1983 was also a reminder of the integral connection between the lake and Hōkio Stream, and the need to consult those with interests in both waterways about decisions affecting the lake.

¹³⁴⁴ Rangi Jacob to Secretary, Manawatu Catchment Board, 3 March 1983. Archives Central file HRC 00024: 33: 9/6 part 4

¹³⁴⁵ Chief Engineer, Manawatu Catchment Board, to Rangi Jacob, 14 March 1983. Archives Central file HRC 00024: 33: 9/6 part 4

¹³⁴⁶ ‘Stricter controls on lake levels. May have been illegal’, *Chronicle*, 21 March 1983. Clipping on Archives Central file HRC 00024: 33: 9/6 part 4

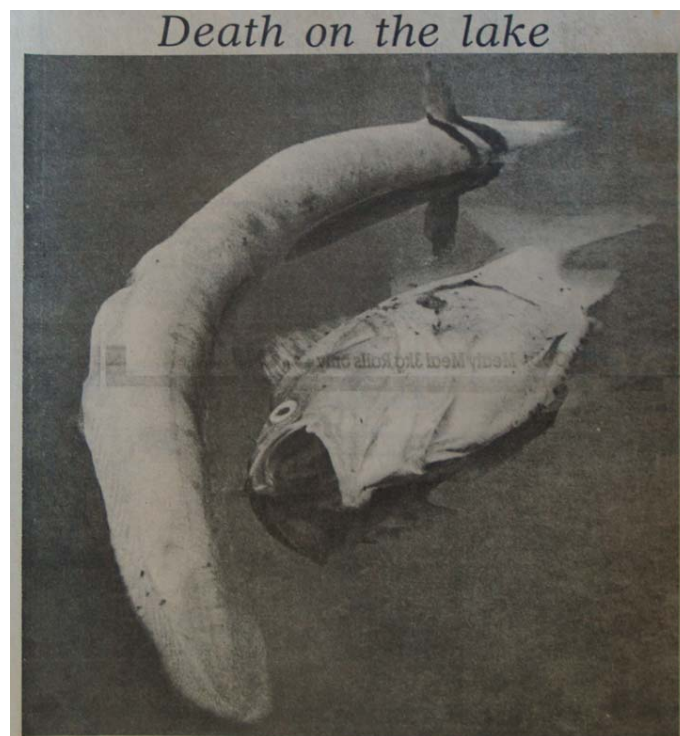
¹³⁴⁷ Rangi Jacob to Secretary, Manawatu Catchment Board, 23 March 1983. Archives Central file HRC 00024: 33: 9/6 part 4

¹³⁴⁸ Chief Engineer, Manawatu Catchment Board, to Rangi Jacob, 20 April 1983. Archives Central file HRC 00024: 33: 9/6 part 4

¹³⁴⁹ Chief Engineer, Manawatu Catchment Board, to Secretary, Horowhenua Lake Domain Board, 19 May 1983. Archives Central file HRC 00024: 33: 9/6 part 4

It is also perhaps a little ironic that the needs of boating prompted some summer respite for fish, despite the 1956 Act's provision for the 'free and unrestricted' exercise of Māori fishing rights over the lake and stream. It seems that the domain board's 1968 concern could well have justified a legislative amendment to allow for a carefully raised lake level in the hotter, drier times of the year, but there is no indication of this being considered. The warmer lake temperatures in summer continued to have an impact on fish in the lake in subsequent years. In January 1987 the *Chronicle* published a picture of dead fish found in the lake and reported that the recent heat and calmness of the water was 'killing off aquatic life in lake Horowhenua.'

Image 6.3: Dead fish found in Lake Horowhenua, January 1987¹³⁵⁰



Speedboats on the lake

It has already been seen that, in the late 1960s, the local bodies had hoped to enter into a lease of the domain that enabled them to amend the by-laws and permit speedboats on the lake. While their plans were thwarted, the interest of the speedboat lobby never went away. In November 1974 the Levin Cruising Club wrote to the domain board asking for 'permission to operate power boats on Lake Horowhenua'. The club claimed to have the support of the tribal committee, although John Hanita-Paki considered that it must have been referring to the lake trustees.¹³⁵¹ The following June, a representative of the Levin Cruising Club named Pritchard attended a public meeting of the board and inquired as to what kinds of boating were

¹³⁵⁰ 'Death on the lake', *Chronicle*, 12 January 1987. Clipping on Archives Central file HDC 00018: 97: 23/6/1 part 2 1987-1988

¹³⁵¹ Minutes of meeting of Horowhenua Lake Domain Board, 28 November 1974. Archives New Zealand file AANS W5883 25344 Box 114 NYA003735

permitted on the lake. He was told by Tomlinson that ‘there was no question of the Lake being used for powered pleasure boating’, but the minutes record he was also reassured that ‘the Maori people had no control over the lake waters’.¹³⁵² In theory, of course, this was not true, given the Muaūpoko majority on the domain board.¹³⁵³

In August 1980 the New Zealand Power Boat Association applied to the domain board to hold a regatta on the lake. The press reported in December that year that the domain board had ‘unanimously agreed’ that the by-law should be amended to allow speedboat racing to take place with board approval. Hori-Te-Pa was confident that the lake trustees were similarly in favour.¹³⁵⁴ The request was referred to the trustees, who asked first for there to be trials to ascertain the impact on eels. These were held in January 1981, and were apparently positive.¹³⁵⁵ On 20 March 1981 the trustees thus gave their permission in writing, with their only condition that the regatta be held at such a time of year that it did not interfere with the migration of the eels.¹³⁵⁶ Accordingly, the board notified its intention to have the domain by-laws amended to permit the racing. This alarmed the Muaupoko Maori Committee, which wrote to the board setting out its concerns. As the committee’s secretary, Theresa Shadlock, put it,

We see the amendment to the bylaw as a further encroachment on our authority as [sic] an asset left to us for the benefit of our people.

We would like a written guarantee from your board that our rights would never be affected by the proposed amendment and seek clarification before committing ourselves to the proposal.¹³⁵⁷

The letter was discussed at a domain board meeting in April 1981. Joe Tukapua – who was also a lake trustee – agreed that Muaūpoko needed a guarantee from the speedboat users that eels in the lake would not be harmed. This drew a sharp reaction from Jeff Law, who described such a condition as ‘unreasonable’ and said he was ‘getting angry at the changing attitudes of the Maori people’.¹³⁵⁸

The domain board heard submissions on the proposed by-law change on 20 August 1982. These had been received from the Muaupoko Maori Committee (which was opposed), the Central Zone of the New Zealand Power Boat Association (in favour), and the Horowhenua

¹³⁵² Minutes of meeting of Horowhenua Lake Domain Board, 12 June 1975. Archives New Zealand file AANS W5883 25344 Box 114 NYA003735

¹³⁵³ The comment, which was not attributed, perhaps reveals that some members of the board regarded their relationship with Muaūpoko as competing or distant, rather than close and collaborative.

¹³⁵⁴ ‘Powerboat breakthrough on Lake Horowhenua’, *Chronicle*, 10 December 1980. Clipping on Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹³⁵⁵ ‘Lake owners change minds on use of speed boats’, *Chronicle*, 21 August 1981. Clipping on Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹³⁵⁶ Commissioner of Crown Lands to Director-General of Lands, 8 April 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹³⁵⁷ ‘Maori committee wants guarantee’, *Chronicle*, 1 May 1981. Clipping on Archives Central file HDC 00018: 97: 23 6/1 1975-1982

¹³⁵⁸ ‘Maori committee wants guarantee’, *Chronicle*, 1 May 1981. Clipping on Archives Central file HDC 00018: 97: 23 6/1 1975-1982

Boating Club (which was concerned about the potential conflict between yachting and speedboats but did not object per se).¹³⁵⁹ The press reported on the meeting, at which there was ‘an indication from the Maori members of the board and the representatives of the Muaupoko Tribe that they were still not happy with the idea of speedboats using the lake’:

Board member Mr J.J. [Joe] Tukapua, maintained that the earlier decision of the Trustees did not represent the views of all members.

He acknowledged that the Power Boat Assn had made very good submissions and that a regatta would attract a lot of interest to the district.

But he referred to the sacredness of the lake to the Maori people, something that other people would never understand.

He feared that each move to widen the use of the lake was pushing the Maori people further out of their heritage.

‘It is sad that we cannot all work together, but to change the by - law [sic] and allow speedboats will further affect the sacredness and value of the place to us.’

Mr T. [Thompson] Tukapua for the Muaupoko Maori Committee, said they were concerned about the fishing rights and the possible damage to eels, carp, trout, flounder, whitebait and shellfish.

Mr J.F. Moses said that despite pollution the Maori people still ate the fish from the lake. They both said they acknowledged the need to co-operate with the community to develop the lake in harmony but they had to protect their ancient rights.¹³⁶⁰

The representative of the Power Boat Association, B Walsh, said that his organisation had used a lake for 25 years in Taranaki and not harmed the eel population there. Board members Law and Prior also argued that changing the by-law was necessary as it would only legalise what was now current practice of, say, speedboats using the lake as rescue craft during yachting regattas. In this they contended that a ‘speedboat’ was defined in maritime regulations as a craft that could travel faster than five knots.¹³⁶¹ They seem to have purposefully overlooked the fact that the by-law did not rely on any such definition. Instead, the board was not to give consent to any boat using the lake which the board felt could ‘reasonably be described as a speed boat’ (see chapter 4).

It was at this point – at a meeting of the Lake Horowhenua Steering Committee on 8 September 1981 – that the Horowhenua County Chairman, J S Blenkhorn, issued his warning that, unless ‘a binding agreement on the future recreational uses of Lake Horowhenua can be decided upon the town’s sewerage effluent may as well go into it forever’ (see chapter 5). Blenkhorn felt that ‘a management plan and efforts to improve the quality of the water would

¹³⁵⁹ Director-General of Lands to Minister of Lands, no date (annotated ‘Recd. 13/10/81’ and ‘To Min by hand 21/10’). Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹³⁶⁰ ‘Lake owners change minds on use of speed boats’, *Chronicle*, 21 August 1981. Clipping on Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹³⁶¹ ‘Lake owners change minds on use of speed boats’, *Chronicle*, 21 August 1981. Clipping on Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

only be worthwhile if permission for recreational and sporting activities could be guaranteed'. Levin Mayor Jack Bolderson also criticised the apparent Muaūpoko indecision about the speedboat regatta. He said

There are different systems between Maori and Pakeha They have different ideas. Maori people believe they should all have a say – that's why agreement is given and then taken back.¹³⁶²

Bolderson added that 'national sporting bodies wanting to use the lake had to be given a definite yes or no'. But Joe Tukapua said that the lake was 'our last piece of land' and 'a very sacred item'. He would 'protect it until I close my eyes'.¹³⁶³

Given the evident lack of comfort from Muaūpoko, board chairman Wayne Devine asked if he could attend a meeting of the trustees 'to try and achieve a better understanding between the board and trustees'. He did so and reported that the meeting was 'controversial' but 'it went very well', with the trustees confirming their earlier written approval of the speedboat racing. At its meeting of 1 October 1981 the board then unanimously agreed to approve both the Power Boat Association's application and the corresponding amendment needed to the by-laws.¹³⁶⁴

All that remained was for the Minister of Lands to approve an amendment to by-law 26. On 7 October 1981 Young was written to on the matter by the MP for Horowhenua, Geoff Thompson, who was perhaps the most active advocate among the district's MPs for local (Pākehā) interests since William Field. Thompson told Young that the matter had been resolved after a 'tortuous negotiation', adding that 'Apparently this is a very old by-law which nobody has given much attention to in the past, but which is now clearly out of date.'¹³⁶⁵ The following day, however, a Levin solicitor, Julia Cahill, telegraphed the Minister:

Request opportunity to make representation on behalf of Muaupoko tribe before your consent given to alteration of Horowhenua lake Domain Board bylaw number 26. Tribal members not consulted by lake trustees and consent given does not represent wishes of Muaupoko people. Domain Board Chairman refused to disclose consent signed by trustees.¹³⁶⁶

¹³⁶² 'Lake's future hinges on firm decision', *Chronicle*, 10 September 1981. Clipping on Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹³⁶³ 'Lake's future hinges on firm decision', *Chronicle*, 10 September 1981. Clipping on Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹³⁶⁴ Commissioner of Crown Lands to Director-General of Lands, 8 April 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2; 'Power boats can now plan to use lake', *Chronicle*, 2 October 1981. Clipping on Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹³⁶⁵ Thompson to Minister of Lands, 6 October 1981. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹³⁶⁶ Julia Cahill, Philip & Co, to Minister of Lands (telegram), 7 October 1981. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

Young replied the next day suggesting she make a written submission as soon as possible, as approval had not yet been given to the amendment.¹³⁶⁷

Cahill replied on 13 October. Her submission expressed concern that speedboat racing would damage the artificial islands in the lake as well as the commercial eeling operation which was a source of much-needed revenue for expenses such as marae upkeep. Because the lake was so shallow Muaūpoko feared that ‘the intensive noise, turbulence and fuel spillage of power boats may disturb the tranquility [sic] of the lake as an eel feeding ground, and will drive the eels away from Lake Horowhenua’. She noted the proposed change to the wording of by-law 26 to allow speedboats with the written consent of the lake trustees and submitted that:

It is feared that [this] wording ... will render the members of the Muaupoko Community or the Horowhenua Lake Trustees susceptible to unfair local pressure with regard to the use of the Lake. We believe that the proposed alteration, if approved, may bring about a situation where local interests and the Maori Trustees may enter into a bargaining situation which may well be in the short term interest of both parties, but may in the long term irretrievably damage the nature of the lake as it stands today.¹³⁶⁸

Cahill also attached a petition that had been circulated and signed over the previous six days, and included around 184 names.¹³⁶⁹ It stated:

We the undersigned members of the Muaupoko Tribe do not support the decision of the Horowhenua Lake Trustees to give their consent on our behalf to the change to be made to Bylaw no. 26 of the Horowhenua Lake Domain Board Bylaws ...

We believe that this clause as it stands, and for which purpose it was created properly protects the quality of our fishing rights.

We believe that the proposed change to clause 26 will render the Muaupoko Community susceptible to pressure in regard to the use of the Lake.

We believe that the continuing goodwill of the Muaupoko Tribe toward the Levin Community has been demonstrated in our past gifts. We do not believe the Levin Community would expect a gift which would jeopardise our ancestral rights and our ancestral fishing grounds.¹³⁷⁰

The Muaūpoko signatories of this petition won some support from the press. The editorial in the *Chronicle* on 14 October said the petition ‘shows that all is not well with the decision to change the by-law’. The *Chronicle* thought the importance of the lake to the tribe ‘does seem to have been overlooked by the Domain Board in its most recent decision’. It added:

¹³⁶⁷ Minister of Lands to Julia Cahill (telegram), 8 October 1981. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹³⁶⁸ Julia Cahill to Minister of Lands, 13 October 1981. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹³⁶⁹ From a count, it is hard to be specific about the total. There are also a further 12 names lacking signatures.

¹³⁷⁰ Original petition on Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

If 160 members of the tribe are prepared to sign a document calling for the status quo, then the Minister should take a close look at it.

The petitioners have a valid point. If speed boats are to be allowed on the lake, then some damage will, inevitably, result.

The Lake Domain Board may not have considered this aspect in its deliberations; indeed it may well have been underplayed by those seeking to have the by-law changed.

Whatever the case, there are enough people – legal owners – involved to require the board to stop and think again. We agree with the signatories to the petition: The lake is too important to the people of this district to be damaged in any additional way by a decision as insensitive to the owners' feelings as this.¹³⁷¹

The domain board would no doubt have defended itself at this point on the grounds that its Muaūpoko members – as well as the lake trustees – had agreed to the decision. At this point, in sum, the initial approval for speedboat racing had come from both the domain board and the lake trustees. The Muaupoko Maori Committee had then filed a submission opposing any amendment to the by-laws and the Muaūpoko board members had also expressed serious concerns. The board chairman had then met the trustees, who confirmed their earlier agreement, and the board again gave unanimous approval. But members of the tribe then claimed, through counsel, that the owners had not been consulted by the trustees, and a hastily circulated petition attracted a significant number of signatures.

Young was briefed on the matter by the Director-General of Lands, who appears to have written before the petition came to light. The Director-General explained that use of the reserve had changed since the by-laws were approved in 1962. There was 'a current interest in the use of speed boats on the Lake and the Board no longer thinks such use should be mandatorily excluded'. He noted that the amendment would give the board more flexibility and still allow it 'to regulate this type of boat use'. He explained that the proposed amendment had been advertised and submissions considered, and that the lake trustees approved of it. The DSIR and the New Zealand Power Boat Association had given 'expert advice' that 'the limited use of power boats is unlikely to cause damage to the eel fishing'. He noted also that, while the Muaupoko Maori Committee had objected, the domain board included members nominated by the committee.¹³⁷²

On 23 October 1981 Young met at the Beehive with Thompson, Devine, Mayor Bolderson, and Levin's Town Clerk, Robert Little. Bolderson said that 'speedboats' routinely used the lake as rescue craft and the by-law needed changing for that reason alone. He claimed that the lake trustees had voted 11 to one in favour of amending the by-law. Young wondered why, given that majority, 'there could be a resulting petition containing 160 signatures'. The discussion then went as follows:

¹³⁷¹ 'Protecting the lake', *Chronicle*, 14 October 1981. Clipping on Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 1

¹³⁷² Director-General of Lands to Minister of Lands, no date (annotated 'Recd. 13/10/81' and 'To Min by hand 21/10'). Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

Mr Bolderson said there were four Maori members of the trustees on the Reserve Board. Three of these members agreed with the proposal submitted and one was against it. Mr Thompson described that person [a reference to Joe Tukapua] as a Maori activist. Mr Bolderson added that he believed only a few of the signatories to the petition were genuinely involved in the Lake.¹³⁷³

Young said he ‘did not feel like over-ruling decisions which had been made by responsible people’. He said he would approve the amendment on the condition that the board ‘make a provision in its management plan for power boats not to be used on more than eight days per annum and in each case with the specific prior consent of the Lake Trustees’.¹³⁷⁴ Young informed Cahill of his decision in a letter on 28 October.¹³⁷⁵

It is questionable whether Young should have made his decision at this meeting, in the presence of a group of vested local interests representing one side of the argument only. Bolderson’s claim that the petitioners did not represent the lake’s owners should ideally have been tested, perhaps through the provision of advice from the Department of Maori Affairs. The written advice Young had from his officials did not discuss the petition. Instead, he seems to have relied for his analysis of it on Bolderson and Thompson.

In the days leading up to the speedboat regatta on 1-2 January 1982, Hapeta Taueki wrote to the *Chronicle* and warned that event participants would be trespassing if they crossed the chain strip and dewatered area to launch their boats. He declared a tapu on the lake reserve. However, after a discussion with the regatta organisers, he apparently agreed to lift the tapu.¹³⁷⁶ The event was nevertheless marked by protests. Just before racing began on 1 January protestors entered the lake on a kayak, two rowboats, and ‘an old Maori canoe’. Seven protestors were arrested for assault or obstruction. Joe Tukapua expressed his concern that ‘some of the young protestors had been arrested in their own environment’. Tukapua and other kaumātua displayed a dead eel found after the first day’s racing, while spectators brought ashore another. Tukapua predicted that the regatta would have a negative impact upon ‘a whole generation of eels’.¹³⁷⁷

When the seven arrested men appeared in the Levin District Court on 13 January 1982, members of Muaūpoko held a silent protest, led by Joe Tukapua. He said that the decision to hold the speedboat regatta had pushed the tribe ‘into a corner and we are fighting for control of the lake’. He would like to see ‘unity between the board and the Maori people’, but said

¹³⁷³ Notes of the meeting by G M Grant, 28 October 1981. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹³⁷⁴ Notes of the meeting by G M Grant, 28 October 1981. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹³⁷⁵ Minister of Lands to Julia Cahill, 28 October 1981. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹³⁷⁶ ‘Lake tapu lifted’, *Chronicle*, 31 December 1981. Clipping on Archives Central file HDC 00018: 97: 23: 6/1 1975-1982

¹³⁷⁷ ‘Seven lake protestors arrested’, *Chronicle*, 4 January 1982. Clipping on Archives Central file HDC 00018: 97: 23: 6/1 1975-1982

‘We will take over the domain board if necessary’.¹³⁷⁸ It seems by this that Tukapua had his sights on much more control than could be delivered by a simple majority of board members.

Image 6.4: Wally Tukapua holds a dead eel killed during the speedboat races on 1-2 January 1982.¹³⁷⁹



Clearance work on the Hōkio Stream

Muaūpoko were not only unhappy about the speedboat regatta. In 1981 the Hōkio Stream had become overgrown and in need of being cleaned. The control weir at the outlet, for example, had been ‘drowned’.¹³⁸⁰ Before it could carry out any works, the Manawatu Catchment Board was required – under section 18(10) of the 1956 Act – to first obtain the agreement of the domain board. This infuriated catchment board chairman Keith Davies, who told his chief executive that

Under the Act the Domain Board have to give permission for the work to be done which is B..... ridiculous. Divine [sic] is supposed to arrange. ... If having any trouble go to the top in Wellington, they are not going to stop it after all the trouble we have had.¹³⁸¹

¹³⁷⁸ ‘Battling for lake control’, *Chronicle*, 14 January 1982. Clipping on Archives Central file HDC 00018: 97: 23: 6/1 1975-1982

¹³⁷⁹ ‘Seven lake protestors arrested’, *Chronicle*, 4 January 1982. Clipping on Archives Central file HDC 00018: 97: 23: 6/1 1975-1982

¹³⁸⁰ Secretary, Manawatu Catchment Board to Secretary, Horowhenua Lake Domain Board, 9 September 1981. Archives Central file HRC 00024: 57: 19/10 part 4

¹³⁸¹ Keith Davies to Chief Executive Officer, Manawatu Catchment Board, 9 September 1981. Archives Central file HRC 00024: 57: 19/10 part 4

The domain board approved the catchment board's request at its meeting on 1 October 1981.¹³⁸² The resolution it passed was worded as follows:

that the Board approve the Manawatu Catchment Board's application subject to it getting the fullest co-operation [of] the Horowhenua Lake Trustees and provided that the Lake is maintained at the level provided for in The Reserves and Other Lands Disposal Act 1956.¹³⁸³

Image 6.5: Catchment Board chairman Keith Davies tests the water depth at the control weir, August 1981¹³⁸⁴



The lake trustees were concerned about the catchment board's intentions. Their accountant and secretary, Robin Barrie, wrote to the catchment board stating that the trustees objected to any work being undertaken unless 'a guarantee could be given for protection in continuity in flow of water'.¹³⁸⁵ G G Brougham, the Chief Engineer, replied that the chance of the stream drying up was 'extremely remote'. Besides, he pointed out, the catchment board had a statutory responsibility to maintain the lake level and 'cannot avoid its responsibility to do this work any longer'.¹³⁸⁶ The catchment board began clearing the stream on 17 November, damaging one of the eel weirs in the stream on 4 December.¹³⁸⁷

¹³⁸² Secretary, Horowhenua Lake Domain Board to Secretary, Manawatu Catchment Board 28 October 1981. Archives Central file HRC 00024: 57: 19/10 part 4

¹³⁸³ High Court affidavit of Kawaurukora Hanita Paki, 11 December 1981. Archives Central file HRC 00024: 57: 19/10 part 4

¹³⁸⁴ 'Big clean-up for stream gets nod', *Chronicle*, 25 August 1981. Clipping on Archives Central file HDC 00018: 15: 2/4/1

¹³⁸⁵ Robin Barrie to Chief Engineer, Manawatu Catchment Board, 20 October 1981. Archives Central file HRC 00024: 57: 19/10 part 4

¹³⁸⁶ G G Brougham, Chief Engineer, Manawatu Catchment Board, to R J Barrie, 29 October 1981. Archives Central file HRC 00024: 57: 19/10 part 4

¹³⁸⁷ Timetable prepared by G G Brougham, 21 December 1981. Archives Central file HRC 00024: 57: 19/10 part 4

The trustees instructed counsel to seek an interim injunction against the clearance work in the High Court. On 11 December counsel claimed that his clients ‘have not received the fullest co-operation required by the Horowhenua Lake Domain Board’s resolution and in particular have not been consulted about any proposals to alter the course of the Hokio Stream on the seaward side of the bridge adjacent to the Hokio Township’.¹³⁸⁸ Kawaurukuroa Hanita-Paki stated that the catchment board had told the trustees that it would carry out the work regardless of their objections. No notice had been given of any work to be carried out on the seaward side of the bridge. In Hanita-Paki’s summation, ‘The Board’s attitude to the trustees has been consistently one of telling us what they were going to do and there has been no attempt at co-operation with the Trustees.’¹³⁸⁹ Justice Jefferies granted the interim injunction the same day.¹³⁹⁰

The domain board brokered a meeting between the trustees and the catchment board on 11 February 1982 (the date on which the interim injunction expired).¹³⁹¹ It seems that this meeting led to a satisfactory resolution of the dispute.¹³⁹² However – as we shall see – the trustees clearly remained upset at the manner in which the catchment board had acted.

The Muaūpoko walkout from the domain board

On 16 February 1982 the lake trustees wrote to the new Minister of Lands, Jonathan Elworthy. The letter was signed by 11 trustees, including Hohepa Taueki, Tau Ranginui, Joe Tukapua, Mario Hori-Te-Pa, Tamati Hetariki, R Simeon, James Broughton, S Wakefield, and J W Kerehi. They explained that, at their meeting the previous day, they had resolved to request that Elworthy promulgate legislation to:

- (a) dissolve the Horowhenua Lake Domain Board and transfer any authority and property it has to us;
- (b) make the Manawatu Catchment Board’s right of access to the lake and Hokio stream subject to obtaining our approval first.¹³⁹³

The trustees explained that the historical origins of their grievance went right back to the 1905 agreement:

¹³⁸⁸ Statement of Claim by Philip Comber, 11 December 1981. Archives Central file HRC 00024: 57: 19/10 part 4

¹³⁸⁹ High Court affidavit of Kawaurukoro Hanita Paki, 11 December 1981. Archives Central file HRC 00024: 57: 19/10 part 4

¹³⁹⁰ Notice of R J Seton, Deputy Registrar, 11 December 1981. Archives Central file HRC 00024: 57: 19/10 part 4

¹³⁹¹ Secretary, Horowhenua Lake Domain Board, to Whitehouse Comber & Mackay, 19 January 1982. Archives Central file HRC 00024: 57: 19/10 part 4

¹³⁹² Secretary, Horowhenua Lake Domain Board, to Secretary, Manawatu Catchment Board, 12 March 1982. Archives Central file HRC 00024: 57: 19/10 part 4

¹³⁹³ Horowhenua Lake Trustees to Minister of Lands, 16 February 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

This Board has been in existence in some form or another since 1905. In 1905 the Hon Seddon and Carroll apparently told Muaupoko elders that if they allowed pakeha boating to continue on the lake (there had been some trouble) the tribal rights to use the lake and chain strip would be preserved. We have no record whether or not the elders agreed or even recognised Seddon and Carroll's right to make these 'suggestions' – we doubt it. In any case the Government enacted the Horowhenua Lake Act 1905 and declared the lake to be a public recreation reserve under the control of a board which proceeded to take very little notice of the rights of the tribe.¹³⁹⁴

Furthermore, the board had 'acquired without proper payment 14 acres of Muaupoko lakeside land'. The trustees stated that, even if the board – which 'was born out of a vile threat to Muaupoko in 1905' – had done 'a good job over the years', it was still time for it to be dissolved. As they put it, 'We are not children and we are able to look after our own property.' There were other reasons why the status quo was no longer acceptable:

Apart from racial discrimination the board should be removed for incompetence, negligence, vested interest and causing confusion as follows:-

Incompetence and negligence

The water is in a mess – highly polluted and dangerous to drink;

Kakahi beds polluted and flax stands ruined;

complaints from the tribe at least since 1944 about pollution have virtually been ignored. The board has allowed, [sic] sewerage, drainage waste, stock and farm waste and abattoir waste to run into the lake unimpeded.

The board has done next to nothing about advice from the Nature Conservation Council or the Commission for the Environment. The report by the Manawatu Catchment Board and Regional Water Board in April 1976 which recommended immediate restoration action particularly stoppage of sewerage effluent has been virtually ignored.

Vested interest

The masterpiece of this is the Levin Borough Council's action of putting its Borough Council sewerage into the lake and giving its approval as a member of the Domain Board while ignoring the protests of the tribe. This has been going on for at least 40 years.

Causing confusion

Although the title of Muaupoko to the lake and the stream is clear, legislation, particularly in 1905 and 1916 (Reserves and other [sic] Lands Disposal and Public Bodies Empowering Act) confused matters. There was even talk of the tribe not owning the lake. Muaupoko themselves were confused as to what rights they had and what rights the board had. This confusion still exists today – witness the demonstrations and arrests on New Years Day 1982 on the lake concerning the speed boats. The lake and stream should be administered by one body – namely ourselves the legal owners.¹³⁹⁵

¹³⁹⁴ Horowhenua Lake Trustees to Minister of Lands, 16 February 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹³⁹⁵ Horowhenua Lake Trustees to Minister of Lands, 16 February 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

The letter concluded by explaining that, since the speedboat regatta,

it has been suggested to us by members of the tribe that as trustees we should be taking the Crown to Court for 75 years damage by the Domain Board. However, we reiterate that our only wish is to have our lake and stream back fully under the control of our own people and to get on with looking after the lake and stream ourselves[.]¹³⁹⁶ [Emphasis in original.]

This letter could hardly be dismissed as the work of a radical few. A week later Elworthy was sent a letter expressing full support for the trustees' position by representatives of the Kawiu Marae Trustees, the Pariri Marae Trustees, the Muaupoko Maori Committee, the Muaupoko Maori Women's Welfare League, and the Muaupoko Kokiri Management Committee.¹³⁹⁷

Elworthy sent the trustees a holding reply on 8 March 1982.¹³⁹⁸ On 8 April the Commissioner of Crown Lands briefed the Director-General, setting out the history of the reserve and noting that the trustees had 'accepted that the Crown had paid a reasonable price for the area of recreation reserve' after being provided with evidence of this the previous year. He concluded that 'Although the department is prepared to continue its role it is becoming more and more evident that this reserve is of regional significance and as such the reserve should be administered at Regional level.' He accepted that the reserve had 'from time to time distinctly unusual problems in its administration', but felt that such problems 'have in the past been overcome and it is expected that the problems encountered with the bylaw amendment will also follow a similar course'.¹³⁹⁹

The Director-General of Lands in turn briefed the Minister on 15 April. He explained that the land known as Muaupoko Park had been legally purchased in 1907 and 'The Trustees were given documentary evidence of this sale and purchase in 1981 when they alleged it had been gifted by the Tribe.' However, 'their sense of injury and grievance tend to colour their approach to the matter'. He predicted that, if the trustees were given control and management of the reserve, the two councils would probably withdraw their financial support and maintenance work and that the trustees' control would be characterised by 'continuing conflicts of interest in which the Department would still become embroiled'. At the same time he recognised that

public access to the Lake only exists because of Maori generosity and if the Trustees cannot re-negotiate the 1956 agreement they may press for these access rights to cease. While

¹³⁹⁶ Horowhenua Lake Trustees to Minister of Lands, 16 February 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹³⁹⁷ Representatives of Kawiu Marae Trustees, Pariri Marae Trustees, Muaupoko Maori Women's Welfare League, Muaupoko Kokiri Management Committee, and Muaupoko Maori Committee to Minister of Lands, 24 February 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

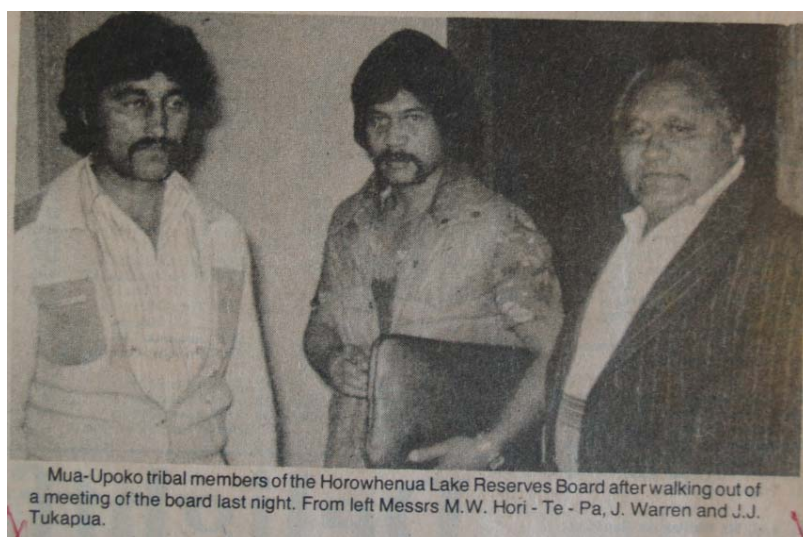
¹³⁹⁸ Minister of Lands to the Horowhenua Lake Trustees, 8 March 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹³⁹⁹ Commissioner of Crown Lands to Director-General of Lands, 8 April 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

morally this would be a breach of agreement it would also be difficult to refuse in the emotional climate of Maori land rights.¹⁴⁰⁰

The very same day – 15 April – there was a much more dramatic turn of events at the meeting of the domain board. The Assistant Commissioner of Crown Lands, Tony McGowan – who was assuming the chair for the first time – reported what took place. McGowan introduced himself but was soon ‘interrupted by Mr J J Tukapua who was waving a letter and said that he had been instructed by the Horowhenua Lake Trustees to read a letter and then with the other two Maori members of the Board retire from the meeting’. The letter was the one that had been sent to Elworthy on 16 February. After Tukapua had read it aloud he, Hori-Te-Pa, and Warren ‘rose to leave’.¹⁴⁰¹ McGowan asked them whether their action meant they were resigning and Tukapua replied ‘I suppose it does’. When the three had left the local body representatives asked to continue with the meeting but McGowan thought it ‘perhaps unwise’.¹⁴⁰²

Image 6.6: Mario Hori-Te-Pa, Jack Warren, and Joe Tukapua after walking out of the domain board meeting, 15 April 1982¹⁴⁰³



The *Chronicle* also carried a report. It quoted Tukapua as saying – after reading the letter – that

We have got ideas for running our own affairs. It is part of the resurgence of Maoridom and we have the young people to carry this thing along.¹⁴⁰⁴

¹⁴⁰⁰ Director-General of Lands to Minister of Lands, 15 April 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹⁴⁰¹ The fourth Muaūpoko board member, George Harris, had recently died. ‘Full control of lake sought by Mua-Upoko’, *Chronicle*, 16 April 1982. Clipping on Archives Central file HDC 00018: 97: 23: 6/1 1975-1982

¹⁴⁰² Report on the meeting of the domain board held on 15 April 1982 by A N McGowan. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹⁴⁰³ ‘Full control of lake sought by Mua-Upoko’, *Chronicle*, 16 April 1982. Clipping on Archives Central file HDC 00018: 97: 23: 6/1 1975-1982

Hori-Te-Pa added that the letter was dated 16 February and the Minister had had long enough to respond, but had not done so.¹⁴⁰⁵

In the days that followed, as they awaited a reply from Elworthy, tribal spokesman Matt McMillan said that there had been confusion before the speedboat regatta as to whether the trustees or domain board had control of the lake. The trustees' call for their own full control would end such confusion. McMillan explained the trustees' goal was self-determination: it was 'the right of anyone to run their own affairs'. To that extent, he said, the trustees' action was 'a reflection of what was happening in Maoridom throughout New Zealand', and he predicted that the dispute 'could be worse than Bastion Point because there is no doubt about the ownership of this lake'. But Tukapua said that trustees did not want to stop the public using the lake, and Prior said he would support the trustees administering the lake if this condition was met.¹⁴⁰⁶ In response to Thompson calling the trustees' actions 'a blunt approach', McMillan said 'It is certainly time we were blunt'.¹⁴⁰⁷

Image 6.7: Matt McMillan and Joe Tukapua at the lake, April 1982¹⁴⁰⁸



¹⁴⁰⁴ 'Full control of lake sought by Mua-Upoko', *Chronicle*, 16 April 1982. Clipping on Archives Central file HDC 00018: 97: 23: 6/1 1975-1982

¹⁴⁰⁵ 'Full control of lake sought by Mua-Upoko', *Chronicle*, 16 April 1982. Clipping on Archives Central file HDC 00018: 97: 23: 6/1 1975-1982

¹⁴⁰⁶ 'Horowhenua "another Bastion Pt"', *Manawatu Evening Standard*, 21 April 1982. Clipping on Archives Central file HDC 00018: 97: 23: 6/1 1975-1982

¹⁴⁰⁷ 'Does not agree with views of MP on lake', *Chronicle*, 22 April 1982. Clipping on Archives Central file HDC 00018: 97: 23: 6/1 1975-1982

¹⁴⁰⁸ 'Horowhenua "another Bastion Pt"', *Manawatu Evening Standard*, 21 April 1982. Clipping on Archives Central file HDC 00018: 97: 23: 6/1 1975-1982

The counter-offer of the Minister of Lands

Elworthy eventually replied to the trustees on 22 April. He said he had informed himself of the special history of the domain, but was non-committal on the trustees' requests until he had reviewed the board's work more thoroughly. He said he would visit Levin during the next parliamentary recess and meet the trustees in person. With respect to that part of the letter that referred to the role of the catchment board, he said he would refer this to the Minister of Works and Development.¹⁴⁰⁹ Elworthy duly forwarded the trustees' letter to his colleague a few days later, noting that the concern about the catchment board stemmed from the recent clearance work done on the Hōkio Stream.¹⁴¹⁰

Figure 6.3: A 1983 protest poster concerning sewage disposal in Porirua linking Lake Horowhenua to past and current disputes over Parihaka, Bastion Point, Waitara, and Raglan¹⁴¹¹



Thompson was quick to start pointing out the potential pitfalls of agreeing to the trustees' requests. He made sure that Elworthy saw any news clippings that reflected poorly on the trustees' judgement or character. For example, he forwarded a story about a hui that had

¹⁴⁰⁹ Minister of Lands to Horowhenua Lake Trustees, 22 April 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹⁴¹⁰ Minister of Lands to Minister of Works and Development, 26 April 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹⁴¹¹ 'The Waitangi connection 1840-1983'. Posters relating to the Treaty of Waitangi, 1800-1999, Alexander Turnbull Library. Reference: Eph-C-WAITANGI-1983-02

taken place at Pāiri Marae on 24 April to discuss Muaūpoko land development. At it, Joe Tukapua's explanation of the trustees' actions in resigning from the domain board and calling for complete Muaūpoko control of the lake was supported by the 100 or so members of Muaūpoko present. Kingi Hurinui, a trustee, did concede, however, that the Māori members of the board 'had not used their power'. As he put it, 'It's our own fault. It's not that the pakehas have taken over.' And despite the meeting's support for the trustees' actions, Hapeta Taueki alleged that only two properly appointed trustees were still alive and the rest had all been appointed improperly. Joe Tukapua, Jim Broughton and Hurinui asked him not to pursue the matter, but Taueki 'vowed to go ahead and take action'.¹⁴¹²

In sending this to Elworthy Thompson noted the trustees' references to Bastion Point. He suggested that 'there has to be a great deal of care applied to an issue which the local Maori interests are endeavouring to whip up to fever pitch'. He also passed on that he had

conferred with local body interests and they express deep concern at the Maoris approach as it does not reflect at all the commitment that has been made by local ratepayers to the development of the park and also ignores totally the contractual obligations and the legislation which has been developed over many years often resulting from detailed enquiries.¹⁴¹³

Elworthy's trip to Levin was arranged for 28 May. He and Thompson met the domain board at the lake, then were welcomed onto Pāiri Marae and had lunch with the trustees, before meeting representatives of the local bodies. At Pāiri the trustees handed Elworthy another letter. This restated the key objectives they had set out in their 16 February letter of returning full control of the lake and stream, dissolving the board, and ending the catchment board's right of entry to undertake works without the trustees' approval. The trustees told Elworthy that

Lake Horowhenua has always been an essential part of our people despite the fact that our control over it over the last 80 years has been very limited. Now however we intend to resume full control – not only to stop the depredations on our lake and ancestors but also to protect the lake and also to make better use of it ourselves. We have plans for the beautification of the lake and stream and for both to continue to provide for our people – whether by food or revenue. ... As indicated we see no further need for the Domain Board and regard the giving back to us of the 14 acres domain park as little enough when one considers the damage done to the lake. Also as stated publicly we have no intention of removing occupants of the park who have suitable leases or licences. The general public would also continue to have access.¹⁴¹⁴

¹⁴¹² 'Maori land to be developed', *Chronicle*, 27 April 1982. Clipping on Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹⁴¹³ Thompson to Minister of Lands, 29 April 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹⁴¹⁴ Horowhenua Lake Trustees to Minister of Lands, 28 May 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

Image 6.8: Jonathan Elworthy greets lake trustee Jim Broughton at Pāriri Marae, May 1982¹⁴¹⁵



At the meeting Tukapua said that the board did not provide for the owners to exercise control. The Māori members of the board had been ‘under pressure’ and it was ‘no good for us because of the local authorities’ representation’.¹⁴¹⁶ This was perhaps an attempt to answer the obvious question of just why the Muaūpoko representatives would walk out on a board that they would in theory control when the Muaūpoko vacancy was filled. What Tukapua seemed to be saying was that the Muaūpoko representatives could not match the local body members in that forum – that they did not assert themselves or set the agenda. Possibly, Tukapua was also explaining why the Muaūpoko majority on the board had never been properly exploited, and why the attendance of Muaūpoko board members had often been so poor.

The trustees, however, were not entirely united. Brothers John and Tani Hanita-Paki favoured a retention of the board, albeit with the trustees filling the four Muaūpoko board seats rather than ‘tribal members’.¹⁴¹⁷ For his part, Elworthy conceded that the 1956 Act ‘doesn’t seem to be working as it was designed to work’ and hoped to find a solution ‘acceptable on all sides’.¹⁴¹⁸

¹⁴¹⁵ ‘Lake visit by Minister, the *News*, 2 June 1982. Clipping on Archives Central file HDC 00018: 97: 23/6/1 1975-1982

¹⁴¹⁶ ‘Lake visit by Minister’, the *News*, 2 June 1982. Clipping on Archives Central file HDC 00018: 97: 23: 6/1 1975-1982

¹⁴¹⁷ ‘Lake visit by Minister’, the *News*, 2 June 1982. Clipping on Archives Central file HDC 00018: 97: 23: 6/1 1975-1982

¹⁴¹⁸ ‘Lake trustees meeting splits’, unidentified newspaper (but probably the *Manawatu Evening Standard*, as the slogan ‘No.1 in the Manawatu’ appears at the top of the clipping), 29 May 1982. Clipping on Archives Central file HDC 00018: 97: 23: 6/1 1975-1982

Thompson wrote to Elworthy shortly after the visit to Levin, again drawing the Minister's attention to the drawbacks of the trustees' case. He referred to the 'aging of many of the formerly influential leaders and a more impatient group coming through'; the 'energising of this impatience and pursuit by outside interests'; the 'manoeuvring within the Muaupoko tribe about the lake administration' (a reference to Hapeta Taueki's allegations about certain trustees, scheduled to be heard in the Maori Land Court); and the 'obvious differences between tribal members, some of whom prefer to ignore facts'. Thompson concluded that

I feel our Marae meeting failed to determine the proper lines of authority for further communication. ...

There is much proveable [sic] historical material about the status of the ownership and the public use. I think this should be regularly spelled out to reinforce the actions and honourable intent of respected former elders. Stirrers may prefer to ignore all this to cover up for a fairly obvious lack of attention by Lake Trustees or Maori Domain Board members in recent times. It could be as well to find out more about the Court claim.

Finally I think we should seek to promote a coming together of the public bodies and the Tribe for further discussions. There are strongly conflicting views and proposals but they would be more satisfactorily dealt with, in joint consultations, not in separate camps, with the Government in the potential position of being shelled from both.¹⁴¹⁹

Despite Thompson's negativity, Elworthy seems to have been open-minded about the prospect of the trustees assuming the role of the domain board. The Director-General of Lands noted that the Minister 'realises local authorities would not be happy but considers there is a case and would like an outline of implications for Mr Geoff Thompson and him to consider'.¹⁴²⁰ The Director-General provided Elworthy with this briefing on 4 June. He advised that

Abolishing the Board would be in keeping with Government policy of reducing the number of such bodies. The main thrust of this policy is to get reserves under local Government control.¹⁴²¹

The fact that the Crown wished to divest itself of the responsibility for running reserves probably made the idea of a transfer to the trustees much easier to contemplate. The Director-General said that, 'Provided the Trustees abide by the Act and the management plan, once approved, and honour the existing tenancies, leases and licences, I have only minor concerns about the change in control.' These included the lack of finance to maintain Muaupoko Park, since the local authorities would presumably refuse to continue the arrangement whereby they did this at their own expense; the need for the trustees to approve a new set of by-laws; and the fact that each trustee would be deemed to be an honorary ranger for the reserve, and

¹⁴¹⁹ Thompson to Minister of Lands, 31 May 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹⁴²⁰ File note by the Director-General of Lands, 1 June 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹⁴²¹ Director-General of Lands to Minister of Lands, 4 June 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

‘the commissioner of Crown lands Wellington, is concerned that not all trustees might be suitable for carrying out this responsibility’. The Director-General explained that the board chairman intended to call a special meeting of the board to consider a motion to go into recess while Elworthy considered his decision. He noted that interim arrangements for running Muaūpoko Park would be needed, perhaps involving the local authorities and the trustees.¹⁴²²

Elworthy wrote to the trustees, care of Barrie, on 10 June 1982. He explained that, with respect to the trustees’ request for the catchment board to be denied access to undertake control works without their consent, the matter was outside his jurisdiction, and something for the Minister of Works and Development. He could not support the request in any case, as the Soil Conservation and River Control Act 1941 applied to all New Zealanders. However, he was ‘more sympathetic’ to the other requests and ‘would not be averse’ to dissolving the board ‘and the return of Lake Horowhenua and the Hokio Stream to the Maori owners’. It is not entirely clear what Elworthy meant by ‘returning’, but given he was responding positively to the trustees’ request for ‘full control’ he must at least have meant control of the lake’s surface. He added, however, that he needed to receive some ‘firm management proposals’ from the trustees. Nor would he be able to accept ‘any change in ownership of the area known as Muaupoko Park’, and if the domain board was dissolved he would hope that one or both of the local bodies would ‘assume day to day control and management of that area’. He noted that public access to the lake would need to continue, the ongoing discharge of effluent would be necessary until an alternative means of disposal was operating, and that he had some minor concerns about by-laws and the appointment of rangers.¹⁴²³

On the same day Elworthy also wrote to Blenkhorn and Bolderson. He told them that

I have given this matter considerable thought, and provided the Trustees can satisfy me on the points I have raised then I believe I have no option but to hand the reserve, excluding Muaupoko Park, over to the Trustees.¹⁴²⁴

Elworthy also asked if both councils would ‘be prepared to administer Muaupoko Park’.¹⁴²⁵

Elworthy’s office then issued a press release. The copy on file is undated, but it was received in the Lands Department on 17 June. It stated that ‘The Minister of Lands, Mr Jonathan Elworthy, is willing to return control of Lake Horowhenua to the Maori owners.’ There would need to be conditions, such as continued public access and use, the continuation of current licences and leases, and Muaūpoko Park remaining in public ownership, ‘although

¹⁴²² Director-General of Lands to Minister of Lands, 4 June 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹⁴²³ Minister of Lands to Robin Barrie, 10 June 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹⁴²⁴ Minister of Lands to Mayor Bolderson, 10 June 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2. Blenkhorn was sent a near-identical letter.

¹⁴²⁵ Minister of Lands to Mayor Bolderson, 10 June 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

control could be assumed by the Levin Borough Council or the Horowhenua County Council'. Elworthy said that, if the Trustees accepted his proposals 'for the return of the lake to their full control it could be accomplished this year'. He added that there was no alternative to the ongoing discharge of treated effluent until a new scheme was in place. The Department of Lands and Survey would soon call a meeting to consider the board going into recess.¹⁴²⁶

On the face of it, the package the trustees were being offered was a mixed bag. They would have the responsibilities of the domain board but have to carry on without its Lands Department secretariat; the councils were being offered 'control' of Muaūpoko Park; the effluent discharge could not be stopped; and the trustees would have to agree to continuing full public access to the lake, or at least to the extent allowed for in the by-laws. They had won no concession over the operations of the catchment board and their desire for title of Muaūpoko Park. Administration of the reserve would thus be split between water and land, which would inevitably result in confusion. However, no longer would Muaūpoko have to deal with the local body representatives over issues such as speedboat regattas.

The news made a significant impact in Levin. The *Chronicle* led with the story on its front page under the headline 'Minister ready to bow to trustees' demands'. This quoted Tukapua saying 'The trustees are very happy with the decision – it's what we've been fighting for'.¹⁴²⁷ But it seems that Elworthy's letters to the local bodies had not been received in time, and nor had the existing domain board members been notified. Law said he did not mind 'what happens to the lake as long as it is looked after properly' but he was 'most angry that the Minister has lacked courtesy and normal etiquette in his high-handed disregard of the Ministerial appointees of the board in not advising them of his intentions'. He said that the county council would have to reconsider its involvement with Muaūpoko Park and warned that, if the lake was privately owned, it would be subject to rates and these would be 'fairly substantial'. Bolderson and Prior would not comment until they had further information.¹⁴²⁸

Thompson forwarded these clippings to Elworthy on 18 June. He said 'There is a furor [sic] going on in Levin about who was contacted with the letter, but this will settle down.' The main purpose of his letter, however, was again to stress that Muaūpoko were disunited:

What is more important is that the Maoris are fighting amongst themselves. I am suspicious of Matt McMillan who, to some people, is holding himself out as an officer of the Maori Affairs Department but, of course, is very partisan on this issue. I think you should be very

¹⁴²⁶ Minister of Lands press release, no date. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹⁴²⁷ 'Minister ready to bow to trustees' demands', *Chronicle*, 17 June 1982, p 1. Clipping on Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹⁴²⁸ 'Member sees red ...', *Chronicle*, 17 June 1982, p 1. Clipping on Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2. Law was also quoted as describing Elworthy's sympathy for the trustees' demands as 'the greatest example of racism' and the Minister's actions as 'hysterical' and 'immature'. 'Law: angered by government move', the *Times*, 22 June 1982. Archives Central file HDC 00018: 97: 23/6/1 1975-1982

careful who you give papers to if you are visited in the office. I have heard that some of the tribe members acknowledge that your offer is very strictly circumscribed, which is what we intended, and there will be considerable discussion early next week about how to respond. I will report to you as more information comes to hand.

We should also be careful about the point that the inter-tribal dispute involves a Maori Land Court enquiry to be heard in November. We have to take the deep divisions into account or else the dispute will keep boiling, with the Government meat in the sandwich.¹⁴²⁹

News also appeared at this time of Joe Tukapua's difficulties with the law, although it is not clear if Thompson drew them immediately to Elworthy's attention. They did provide Thompson with further ammunition, however, in his campaign to discredit the trustees. Tukapua was discharged without conviction on a charge of stealing cattle after agreeing to pay \$303 restitution and court costs. This related to an informal lease by Tukapua of chain strip and dewatered area to a farmer, Challis Mark. After paying rent to Tukapua for several years, Mark's accountant had advised him to stop because Tukapua was no longer secretary of the trustees. Mark removed some of his stock and left the rest with the intention of arranging a new lease with the trustees, but in February 1982 he saw two of his cattle at the Levin Stock sale. The judge found the charge proven but did not believe that Tukapua should be convicted.¹⁴³⁰

The Minister of Works and Development, Tony Friedlander, replied to Elworthy on the role of the Manawatu Catchment Board on 16 June. He contended that the catchment board had given the 'fullest cooperation' to the lake trustees before and during the previous year's clearance work on the Hōkio Stream, although he conceded that 'the full understanding' had not been reached before the work commenced. However, subsequent discussions had resulted in 'an agreeable solution'. He concluded that to 'enable long term effective management' of the lake and stream waters under the Soil Conservation and Rivers Control Act 1941 and the Water and Soil Conservation Act 1967 the catchment board needed to retain its powers, which Friedlander was 'sure will be conscientiously and fairly exercised'.¹⁴³¹ Thompson, who was forwarded a copy of this letter, emphasised to Elworthy that it highlighted 'the difficulties that authorities have had in dealing with representatives of the tribe whether they are trustees or otherwise'.¹⁴³²

The trustees gave their response to Elworthy on 25 June. They would be glad to assume the full control of the lake and stream, and would also be prepared to administer Muaūpoko Park so that there could be one body controlling lake, stream, and park. They preferred that the effluent be diverted as soon as possible but were prepared to be accommodating 'in the best

¹⁴²⁹ Thompson to Minister of Lands, 18 June 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹⁴³⁰ 'Man discharged in cattle theft charge', *Chronicle*, 12 June 1982. Clipping on Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹⁴³¹ Minister of Works and Development to Minister of Lands, 16 June 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹⁴³² Thompson to Minister of Lands, 14 July 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

interests of the Levin community as a whole'.¹⁴³³ The Town Clerk told Elworthy that the borough would consider the suggestion that it administer the park.¹⁴³⁴ Bolderson also wrote to Elworthy and accused him of treating the local body representatives on the domain board 'with a real lack of consideration'. He added that news reports of 'questionable activities' by certain trustees meant that 'an in depth investigation should be conducted into aspects of ownership, and trustee representation'.¹⁴³⁵ The county council's eventual response was that it had 'no strong objection to the Maoris having control of the Lake'. However, it would expect a financial contribution from central government to the cost of maintaining Muaūpoko Park.¹⁴³⁶

Thompson sent Elworthy more clippings on 13 July. He suggested that 'two main points arise':

Firstly, the very grave concern being expressed by local body leaders etc. about the position, but secondly, and perhaps most importantly, the comments about the tribal division and in particular the court case being pursued by the Taueki's [sic].

It would seem we should not push for a conclusion while the tribal division is so serious and obviously the somewhat bland reply you have received from representatives so far does not address itself to the problem either[.]¹⁴³⁷

One of Thompson's clippings outlined a statement issued by the Taueki whānau that criticised Elworthy's condition that Muaūpoko Park remain in public ownership. They explained that

If we sound sceptical as to just what we're supposed to have gained, allow us to point out that the trustees are going to be nothing more than scapegoats for the Minister and local government representatives over the dormancy of what could be, if it were allowed to be developed, the town's biggest asset.

It is the development that is coveted by local government representatives and the reason for these conditions, that makes any sort of governing of the lake by the Maori owners impossible[.]¹⁴³⁸

Another clipping quoted criticism of the Minister by Levin Borough councillors. Prior argued that the Minister had been 'too quick with his answer to the Lake Trustees demand' and had

¹⁴³³ Barrie to Minister of Lands, 25 June 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹⁴³⁴ Town Clerk to Minister of Lands, 8 July 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹⁴³⁵ Bolderson to Minister of Lands, 7 July 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹⁴³⁶ County Clerk to Minister of Lands, 1 September 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹⁴³⁷ Thompson to Minister of Lands, 13 July 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹⁴³⁸ 'Decision no good, says Maori family', *Chronicle*, 21 June 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

‘not looked at the matter closely enough’. He was ‘away with the fairies’ to ‘divide control of the lake from control of the domain’. M Truebridge said Elworthy had ‘given a short-sighted answer without all the matters considered’, and Allen remarked that the ‘development of the domain has taken years and then he spends a day in Levin and then writes and tells us what to do’.¹⁴³⁹

Thompson also included two clippings from the *Times*, a regional weekly. On 22 June this publication covered its front page with stories critical of the Minister’s offer. It quoted John Hanita-Paki arguing that the majority of the lake’s owners saw ‘no benefit’ in the proposed change in arrangements, and questioned whether ‘certain activists’ had ‘been able to manipulate the trust and goodwill fostered by the Lake Domain Board over a great number of years’.¹⁴⁴⁰ The following week it led again with the lake controversy, outlining Hapeta Taueki’s allegations of impropriety against Joe Tukapua and Hohepa Taueki. These were ‘generally prompting nervousness by Borough and County representatives about giving any commitment to Trustees on the future management of the lake’.¹⁴⁴¹

By late August it became clear to officials that nothing would be resolved in time for a clause in the 1982 Reserves and Other Lands Disposal Bill.¹⁴⁴² Thompson continued to stress to Elworthy that the trustees had not ‘satisfied the questions on how their administration would be undertaken and particularly how the interests of users would be preserved if there was a change’.¹⁴⁴³ The Director-General of Lands noted, however, that the trustees were willing to honour the existing leases and licences and committed to operating ‘a suitable Management Plan’. He advised Elworthy that they could not be pressed in the manner Thompson suggested ‘without impugning their integrity’.¹⁴⁴⁴

On 21 October 1982 a special meeting of the domain board was held to discuss the Crown’s suggestion that it go into recess. The local body representatives refused to agree to this, arguing that there was a quorum and the board should simply carry on. Bolderson said that as ‘a representative of the community’ he ‘had an obligation to continue to work for this asset of the region’, and Law reiterated the same points.¹⁴⁴⁵ Around 15 lake owners led by Tau

¹⁴³⁹ ‘Minister gets blast on lake control’, undated and unsourced clipping on Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹⁴⁴⁰ ‘Fight for lake control – Maori’s [sic] divided’, ‘Lake Trustee wants no change’, ‘The Times says: Lake Horowhenua ... A Just cause? Or just a cause?’, *Times*, 22 June 1982, p 1. Clipping on Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹⁴⁴¹ ‘Lake Horowhenua – trustees face impropriety charges’, ‘Lake row – authorities “nervous”’, *Times*, 29 June 1982. Clipping on Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹⁴⁴² The Director-General of Lands noted the delay in the county’s response and the Minister instruction not to force the issue. He described the chance of getting a clause into that year’s legislation a ‘dead duck’. File note by Director-General of Lands, 25 August 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹⁴⁴³ Thompson to Minister of Lands, 14 September 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹⁴⁴⁴ Director-General of Lands to Minister of Lands, 23 September 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹⁴⁴⁵ Minutes of the domain board special meeting, 21 October 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

Ranginui were present at the meeting and called for the board to continue but with the tribe's representatives chosen by the trustees rather than 'the Mua-Upoko Tribe as in the past'.¹⁴⁴⁶ Two days after the meeting, Josephine Hanita-Paki and Mirita Ranginui wrote Elworthy a lengthy letter on the subject. They blamed Matt McMillan for putting the three Muaūpoko domain board members up to quitting the board. The tribe still held the majority on the board but McMillan 'poisoned their minds'. McMillan was 'directed' in all this 'by his Superiors [in] Maori Affairs'. They alleged that the Muaupoko Maori Committee was causing 'dissension' within the tribe, adding that the committee was governed by the New Zealand Māori Council, whose president – Jim Moses – was McMillan's uncle. They told Elworthy that Moses and McMillan had 'a very very strong influence over the Minister of Maori Affairs and you alone can save the situation'.¹⁴⁴⁷

On 26 November the Director-General suggested to Elworthy that there were three options: proceed along the lines of the existing offer to the trustees, which was opposed by the local bodies and would lead to dual control of the existing reserve; change the method of selection of the Muaūpoko representatives on the board to nomination by the trustees rather than by the Muaupoko Maori Committee, as Tau Ranginui suggested; or 'some compromise between the two', perhaps involving a requirement for the catchment board to obtain the trustees' approval for its works rather than the domain board's, or a prohibition on speedboats without the trustees' consent. He suggested that these ideas 'could be bargaining factors in retracting the original offer and would eliminate the main points of conflict which lead to the present unrest over the Board'.¹⁴⁴⁸

It is notable that, at this point, officials had joined the chorus suggesting that the Minister retract his offer to the trustees. Elworthy may well have begun to agree with them. As it happened, the Maori Land Court's investigation into the allegations made by Hapeta Taueki provided him with the rationale to do so.

The Maori Land Court inquiry into the trusteeship over the lake

Judge Melville Smith of the Maori Land Court considered Hapeta Taueki's application – that the court enforce the obligations of their trust on the lake trustees and require them to file accounts – at a hearing in Levin on 23 November 1982. More specifically, Hapeta Taueki's allegation was that Joe Tukapua and Hohepa Te Pae Taueki had failed to account for money they had received and otherwise failed to perform their duties as trustees.¹⁴⁴⁹ Before the judge's decision was released on 10 December, Thompson continued to tell Elworthy that

¹⁴⁴⁶ 'New tack by Maoris on lake issue', undated and unsourced clipping on Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹⁴⁴⁷ Josephine Hanita-Paki and Mirita Ranginui to Minister of Lands, 23 October 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹⁴⁴⁸ Director-General of Lands to Minister of Lands, 26 November 1982, attaching a report by the Commissioner of Crown lands of 8 November 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹⁴⁴⁹ Findings and recommendations of the Court, 10 December 1982. Extract from Otaki minute book 84, fols 258-272. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

granting the trustees control of the lake would be quite unwise. He forwarded further clippings which described the court proceedings. In one of these, the chair of the trustees, James Broughton, was quoted stating that there could be no return to the past board structure, in which the owners had had to go ‘cap in hand’ to the board on matters concerning the use of the lake. As Broughton put it,

We feel as if we haven’t had enough say. If one of our (tribal) members goes against the wishes of the rest, we’ve lost our control.¹⁴⁵⁰

Thompson told Elworthy that the news stories ‘confirm the discredit applying to Joe Tukapua in particular’. He advised the Minister that

we have to be very careful in considering any decision about the administration of Lake Horowhenua to take into account the trouble within the tribe. A hasty decision will exacerbate tribal feelings and it is vital that the public interest in the facility is not overwhelmed by intertribal [sic] jealousies and administrative inadequacies.¹⁴⁵¹

Two days later Thompson wrote to Elworthy yet again, for perhaps the 12th time since the end of April. He noted a report on the situation that had been prepared by the Commissioner of Crown Lands on 8 November. This had suggested, as one possibility, that Muaūpoko representation on the domain board could be increased to five seats. Thompson wrote:

I cannot follow ... the justification of the Maoris being given the majority on a controlling board. This fails to make the distinction which I think must be maintained to the effect that the Muaupoko Reserve is public property and there is no validity in having this returned to Maori control. Also, the surface waters of the lake were a gift and while the continuation of a Maori interest is entirely valid the giving away of control is still not being justified locally. I wonder, therefore, whether a distinction could be drawn between the control of the two interests so that if a Maori majority had to be pursued for political reasons or whatever, it could only apply to the water and not to Muaupoko Park.¹⁴⁵²

Judge Smith’s findings and recommendations were then released. He considered the general nature of the trusteeship over the lake rather than just the specific allegations of impropriety. He noted that neither the 1905 Act nor the 1956 Act were ‘models of law drafting’ as each contained the contradiction of Muaūpoko’s ‘free and unrestricted use’ of the lake being restricted by the use of others. He felt that these ‘ambiguous provisions’ had ‘added to the trustees’ difficulties in carrying out their functions’. He observed that, in theory, the four to three board majority (that is, with the chairman having only a casting vote) gave Muaūpoko

¹⁴⁵⁰ ‘Lake trustees to get together with owners’, undated and unsourced clipping. See also ‘Lake trusteeship under review by Maori Land Court’, 4 November 1982, and ‘Does not deny he sold lake eels’, 24 November 1982. Both these clippings are probably from the *Chronicle*, as they are annotated ‘C. 4.11.82’ and ‘C. 24.11.82’ respectively. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹⁴⁵¹ Thompson to Minister of Lands, 6 December 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹⁴⁵² Thompson to Minister of Lands, 8 December 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

control of the board. However, he noted the evidence that the nomination of board members by the Muaupoko Maori Committee rather than by the trustees had led to ‘dissension among the Maori members of the Board appointed following such recommendations, with the result that such Maori members do not effectively control Board policy’. A witness, whom the court minutes referred to as Mere Te (Mirita?) Ranginui, said that the problems began when the committee became active and selected ‘whomever they wished, and left the Lake Trustees in the air’.¹⁴⁵³

Turning to the more specific allegations, Judge Smith found that no evidence had been adduced that Hohepa Taueki had acted improperly except to the extent that the trustees collectively had done so. In Joe Tukapua’s case, Smith noted that Tukapua had openly admitted that he had sold eels he had caught in the lake and kept the proceeds. These had been used, according to Tukapua, to ‘defray the costs of litigation in which he had been involved, aimed at protection of the Lake’. Smith noted that, in the year ended 31 March 1979, Messrs Tukapua and Kerehi had been paid by the trustees to fish the lake commercially, which the judge thought ‘an unwitting breach’ of trust law by the trustees. James Broughton admitted that most of Tukapua’s litigation had not been undertaken at the trustees’ request, although he agreed that one case (presumably the Supreme Court litigation over fishing rights) had been ‘of great importance to the owners’. Overall, Smith concluded that, with regard to Tukapua selling eels, ‘the past should be “buried”’.¹⁴⁵⁴

However, Smith found the evidence about Tukapua’s dealings with the lakeside land ‘much clearer’. Tukapua had occupied 40 acres of chain strip and dewatered area in 1973, and the trustees – who were unsure if they could lease to him – accepted an annual ‘donation’ from him of \$50. But Tukapua on-leased the land to Challis Mark, initially for \$800 per annum and later for \$1,200, giving Tukapua a profit over four years of \$4,745. Tukapua told the court the matter was ‘my business’ and ‘nothing to do with anyone’. Smith called his actions ‘a blatant breach of the basic principles of trustee law’ and found that Tukapua ‘was liable to account to the body of trustees for the profit’.¹⁴⁵⁵

Smith felt that the case revealed ‘a number of unsatisfactory features of the administration of the Lake, chain strip and dewatered area’. The trustees, for example, had never obtained a legal opinion on whether they could lease, but had instead accepted ‘donations’ from farmers or let others occupy without payment. He felt they would have had the power to lease, and that a ‘substantial sum must have been lost through legal leases not having been concluded’. He criticised the trustees for allowing one of their number to occupy land they administered

¹⁴⁵³ Findings and recommendations of the Court, 10 December 1982. Extract from Otaki minute book 84, fols 258-272. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹⁴⁵⁴ Findings and recommendations of the Court, 10 December 1982. Extract from Otaki minute book 84, fols 258-272. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹⁴⁵⁵ Findings and recommendations of the Court, 10 December 1982. Extract from Otaki minute book 84, fols 258-272. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

and for failing to call a meeting of beneficiaries for ‘many years’. Nor had they kept proper books until Barrie was engaged as their accountant in 1978.¹⁴⁵⁶

Smith then turned to his recommendations. For a start, there were ‘far too many trustees’. As he explained,

There is a tendency in Maoridom ... to nominate a large number of persons for appointment as trustees. Such a practice no doubt springs from a commendable intention to have all matters requiring decision disposed of in as democratic a manner as possible, but the appointment of many trustees does not make for ease of administration. Probably many laypersons assume that trustees may act by a majority: with certain statutory exceptions they cannot so act.¹⁴⁵⁷

Smith therefore recommended as follows. The trustees should promote amending legislation that would give them full control of the lake, chain strip, and dewatered area and would define the limits of the trustees’ power to alienate the chain strip and dewatered area; clarify whether the trustees could fish commercially; clarify how any proceeds of land alienation or fishing could be spent by the trustees; provide that the number of trustees ‘shall at no time exceed seven’; and provide for proper book-keeping. The trustees should also take and act on legal advice about recovering moneys from Joe Tukapua, obtain professional advice concerning their options in leasing the chain strip and dewatered area, retain the services of Barrie as accountant, and strictly control any commercial fishing of eels, if it were permitted by law.¹⁴⁵⁸

Lands Department officials suspected that the judgment would mean that the trustees would harden their negotiating position. McGowan, for example, predicted that ‘the question of control’ would return ‘to the forefront’. At the same time he emphasised that the reserve was designed to provide for the interaction between land and water and splitting administration of the two would detract from this. Thompson’s idea of board members having differing powers with respect to land or water was thus ‘not a practical solution’. McGowan wondered if it might be worth revisiting the idea of increasing Muaūpoko representation on the board to five seats ‘in order to achieve a satisfactory conclusion’.¹⁴⁵⁹

Thompson forwarded a copy of the judgment to Elworthy on 12 January 1983. While acknowledging that the judge had supported ‘the claim of the maori [sic] owners for control of the lake waters’, Thompson stressed that

¹⁴⁵⁶ Findings and recommendations of the Court, 10 December 1982. Extract from Otaki minute book 84, fols 258-272. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹⁴⁵⁷ Findings and recommendations of the Court, 10 December 1982. Extract from Otaki minute book 84, fols 258-272. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹⁴⁵⁸ Findings and recommendations of the Court, 10 December 1982. Extract from Otaki minute book 84, fols 258-272. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹⁴⁵⁹ Director-General of Lands to Minister of Lands, 21 December 1982; A N McGowan for Commissioner of Crown Lands to Director-General of Lands, 23 December 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

the general evidence certainly discloses problems within the tribe up till this point and it will be the Government's responsibility to ensure that whatever arrangements are made for this asset in the future that the public interest can be adequately protected in respect of those items which are clearly public assets.¹⁴⁶⁰

The Deputy Director-General annotated the letter that the Minister had discussed the matter on 21 January and was now 'of opinion that in the light of the MLC's recommendations herein there is a need for a complete re-think of the approach to this matter'.¹⁴⁶¹

The Minister's revised offer

During this re-think the remaining members of the board became impatient. Board secretary A W Leslie wrote to Elworthy on 30 March 1983 to say that the board was 'now concerned with the elapse of time since the loss of Maori representation on the board that important matters such as preparation of a management plan are being held in abeyance'.¹⁴⁶² Law, Bolderson, and Prior had all vented their frustration at the board meeting on 17 March, at which Law called Elworthy's attitude 'nonchalant, despicable and not befitting a Minister of the Crown'. Law said he had 'a terrific regard for our Maori friends, but there is uncertainty and hostility among them because of the Minister's delay'.¹⁴⁶³

On 8 April 1983 Elworthy at last wrote to the trustees and set out his new position. He explained that he now believed the best solution would be for the domain board to be retained but for its constitution to be altered so that the Muaūpoko representatives were nominated by the trustees rather than by the Muaupoko Maori Committee. He also thought that the contradiction Judge Smith had identified in the 1956 Act between fishing rights and public use should be reworded, and that the trustees – not the domain board – should consent to works carried out by the catchment board. The approval of the trustees should also be required for any by-laws.¹⁴⁶⁴ Similar letters were sent on 14 April to the catchment board, borough council, and county council.

Bolderson responded on 4 May. He said he could accept most of Elworthy's proposals, but considered that the lake surrounds should also be made stock-free. He wondered perhaps if the chain strip and dewatered area could be leased from the owners for restoration purposes. He felt that the majority of Muaūpoko 'would support positive planning and genuine moves

¹⁴⁶⁰ Thompson to Minister of Lands, 12 January 1983. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁴⁶¹ Note from the Deputy Director-General to the Director of National Parks and Reserves, 25 January 1983, on Thompson to Minister of Lands, 12 January 1983. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁴⁶² A W Leslie, Secretary, Horowhenua Lake Domain Board, to Minister of Lands, 30 March 1983. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁴⁶³ 'Board members criticise Minister of Lands', *Chronicle*, 18 March 1983. Clipping on Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁴⁶⁴ Minister of Lands to Robin Barrie, 8 April 1983. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

towards saving Lake Horowhenua from becoming a future swamp'.¹⁴⁶⁵ Thompson weighed in, noting that the borough was moving ahead with its plans to remove its effluent from the lake and 'it would be a good time to suggest as part of the reorganisation, that the cleaning up of the surrounding area should be taken on board' by the Māori owners.¹⁴⁶⁶ In his reply to Elworthy, Blenkhorn also described the chain strip and dewatered area as sources of pollution which should be 'isolated and incorporated into the overall Reserve and developed for the benefit of both races'.¹⁴⁶⁷ In other words, the need to improve the quality of the lake struck both Bolderson and Blenkhorn as a reason to alter the tenure of the surrounding Muaūpoko land. For its part, the catchment board said its preference was for there to be one body for it to liaise with about controlling the lake and stream. It feared a situation where the trustees did not consent to needed works, or where the agreement of every trustee was required.¹⁴⁶⁸

Elworthy was also being lobbied by different groups within Muaūpoko. On 4 March 1983 Josephine Hanita-Paki wrote to him on behalf of the Muaūpoko Land Trust submitting four names to replace the Muaūpoko board members who had resigned (or, in George Harris's case, died).¹⁴⁶⁹ On 31 May she told him that there were 'foreigners' among the Muaupoko Maori Committee, who were not descended from the original 81 owners and were the 'cause of dissension'.¹⁴⁷⁰ On 7 June the Minister of Maori Affairs, Ben Couch, offered Elworthy some background on the different bodies claiming to represent Muaūpoko interests. These were the Muaupoko Maori Committee, which had been established under the Maori Welfare Act 1962 'and thus could well be regarded as the true spokesman of the tribe'; the Muaūpoko representatives on the domain board; the lake trustees, who had originally numbered 15 but now, through 'natural attrition', numbered around ten; and various lands trusts, all established under section 438 of the Maori Affairs Act 1953, which had no formal role with respect to the lake.¹⁴⁷¹

Elworthy remained steadfast in his view that the trustees should select the domain board representatives. As he explained to Couch,

The reasoning behind my proposal that the Horowhenua Lake Trustees be the body to recommend the Mua Upoko representatives on the Reserve Board was that the body that has the one chain strip, the dewatered area, bed of the lake etc. vested in it (the Lake Trustees) be the same body that recommends the Board representatives in the hope that previous problems

¹⁴⁶⁵ Bolderson to Minister of Lands, 4 May 1983. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁴⁶⁶ Thompson to Minister of Lands, 12 May 1983. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁴⁶⁷ Blenkhorn to Minister of Lands, 12 May 1983. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁴⁶⁸ Secretary, Manawatu Catchment Board, to Minister of Lands, 17 May 1983. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁴⁶⁹ Josephine Hanita-Paki to Minister of Lands, 4 March 1983. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁴⁷⁰ Josephine Hanita-Paki to Minister of Lands, 31 May 1983. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁴⁷¹ Minister of Maori Affairs to Minister of Lands, 7 June 1983. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

associated with the common use of the lake waters and adjoining land, the reserve, one chain strip, etc. would be overcome.¹⁴⁷²

Elworthy used similar logic to rebuff local body opposition to his idea of the trustees having an effective veto over by-laws. As he put it to Blenkhorn, ‘What has to be remembered is that the underlying status of those parts of the Reserve [the lake surface and chain strip and dewatered area between the lake and Muaūpoko Park] is Maori and not Crown land.’¹⁴⁷³ He also told Bolderson that the trustees had made some changes in the light of Judge Smith’s comments and he did not envisage any problems in them responding to catchment board proposals for works on the lake or stream.¹⁴⁷⁴ He did, however, inform the catchment board that he would make provision in the new legislation that, if the catchment board and the trustees disagreed, ‘the matter will be decided at a Ministerial level’.¹⁴⁷⁵

What Elworthy was hoping to achieve was co-ordinated control, rather than having opposing Muaūpoko interests contradict each other over lake matters. It seemed logical to him in the circumstances that the lake trustees should have a greater involvement, given their trusteeship over the lands in question. Elworthy’s approach can be contrasted with the widespread view of officials in the 1970s, discussed in chapter 5, that the need for ‘unified control’ to address the pollution problems essentially meant that the lake’s Māori owners should yield to a local authority such as the catchment board.

With the trustees having given their agreement in principle to Elworthy’s proposals in his 8 April letter,¹⁴⁷⁶ and the responses of the local bodies having been considered, Parliamentary Counsel was issued with drafting instructions for a clause in the 1983 Reserves and Other Lands Disposal Bill.¹⁴⁷⁷ However, the Department of Maori Affairs believed that the legislation should be held over until 1984 so that the trustees could ‘put their house in order’ following Judge Smith’s recommendations. The New Zealand Insurance Company had agreed to act as interim trustee, but the court would not consider an application until November.¹⁴⁷⁸ Elworthy eventually agreed and wrote to parties accordingly at the end of October.¹⁴⁷⁹

¹⁴⁷² Minister of Lands to Minister of Maori Affairs, 8 June 1983. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁴⁷³ Minister of Lands to Blenkhorn, 7 September 1983. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁴⁷⁴ Minister of Lands to Bolderson, 7 September 1983. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁴⁷⁵ Minister of Lands to Secretary, Manawatu Catchment Board and Regional Water Board, 7 September 1983. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁴⁷⁶ R J Barrie to Minister of Lands, 1 July 1983. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁴⁷⁷ Director-General of Lands to D J Cochrane, Parliamentary Counsel, 31 August 1983. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁴⁷⁸ G D Fouhy for Secretary, Department of Maori Affairs, to Director-General of Lands, 20 July 1983. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁴⁷⁹ See, for example, Minister of Lands to R J Barrie, 27 October 1983. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

As it transpired, the New Zealand Insurance Company withdrew its offer,¹⁴⁸⁰ and the focus instead shifted to a tribal hui at which new trustees could be selected. However, this meeting was continually postponed during the first few months of 1984 because of the unavailability of certain members of Muaūpoko and the need to ensure that all with an interest had been contacted. It soon became too late for inclusion in that year's Reserves and other Lands Disposal Bill, which had a cut-off date for including clauses of 31 May 1984, and the amending legislation was thus deferred again until 1985. On 24 May 1984 Tau Ranginui told Elworthy that he had despaired of the meeting ever being organised by the trustees so had called one himself. He had no faith in the current trustees, whom he said were not 'capable or honest'.¹⁴⁸¹ The meeting took place at Levin's Memorial Hall on 10 June 1984 and was independently chaired by Brian Herlihy of the Maori Land Court in Whanganui. A report on it was made by John Stewart, the chair of the domain board. He recorded that

It was apparent from the discussion that there was considerable friction within the tribe, particularly over the trustees' administration of the trust's land. It was also apparent that the Muaupoko people in general were not aware in any detail of the discussions that have been taking place between the trustees, the local authorities and the Minister following the 'walk out' by the four Maori members from the Lake Domain Board.¹⁴⁸²

However, there was 'an element of support for the proposals the Minister has put to the trustees'. The meeting elected 16 new trustees, whose names would be put to the Maori Land Court. Further delay was inevitable, however, because the court was not due to sit in Levin for another six months. In the meantime, noted Stewart, the domain board would need to continue to act in its 'caretaker' role. He wrote that he had 'gained the impression from the meeting that the Muaupoko people are anxious to get their affairs in order but I suspect that it will take sometime [sic] and we will need to exercise some patience in the matter'.¹⁴⁸³

In July 1984 the National Government lost power, and indeed Elworthy lost his own seat of Waitaki. The Elworthy era in Lake Horowhenua matters thus came to a close. It had been an eventful three years, which began with the controversy over the speedboat racing on the lake and, shortly after this, the walkout on the domain board by its Muaūpoko members. Elworthy, a liberal and open-minded man,¹⁴⁸⁴ offered the trustees a settlement of the dispute that would see the domain board dissolved and its role assumed by the trustees. While this offer was circumscribed in important respects, it was clearly regarded as going too far by the Levin press, the local authorities, and Elworthy's colleague, the MP for Horowhenua. However, the fall-out from the 1982 Maori Land Court investigation into the trusteeship over the lake, as

¹⁴⁸⁰ Minister of Maori Affairs to Minister of Lands, 27 October 1983. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁴⁸¹ Tau Ranginui to Minister of Lands, 24 May 1984. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁴⁸² Note of the 10 June 1984 meeting by John Stewart, 12 June 1984. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁴⁸³ Note of the 10 June 1984 meeting by John Stewart, 12 June 1984. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁴⁸⁴ See 'Elworthy dies, aged 68', *Press*, 18 June 2005

well as the emergence of dissenting voices within Muaūpoko, led Elworthy to scale back his offer.

Some members of Muaūpoko may have felt it was an act of bad faith on Elworthy's part that he retracted his agreement that the domain board should be dissolved. He probably is liable to some criticism on this score. While the tribe were clearly not united in their position on the matter, he could have attempted to convene a hui to discuss it rather than simply change his mind. However, he remained convinced throughout that the trustees should have greater power over both the by-laws and the activities of the catchment board, and it was due to matters largely beyond his control that he did not have the opportunity to put this – at least – into legislative effect.

Negotiations between the lake trustees and the Crown over a lease of the lakebed, 1985-1988

The new Minister of both Maori Affairs and Lands was Koro Wetere. Department of Maori Affairs staff briefed him on 31 August 1984 and explained that the previous Minister of Lands had favoured the lake trustees serving as the Muaūpoko domain board members. Officials regarded this 'as a sensible move', although 'the wishes of the Muaupoko people themselves' should be respected.¹⁴⁸⁵ Wetere had been visited by Joe Tukapua on the subject of the lake trustees on 21 August (in the light of Judge Smith's findings, the trustees had been attempting to get Tukapua to resign and repay the money received from Challis Mark¹⁴⁸⁶). Wetere wrote to Tukapua on 5 September stating that the appointment of trustees was a matter for the Maori Land Court and not something that he as Minister could be involved in, although he assured Tukapua of his 'personal interest' in the issue.¹⁴⁸⁷

Judge Smith appointed new lake trustees at a sitting of the Maori Land Court on 2 November 1984. He noted that the hui called by Tau Ranginui (who had since died) on 10 June had elected 16 trustees, despite his earlier recommendation that the number should not exceed seven. Those 16 had subsequently met, on 9 September, and agreed that the court should be asked to appoint only seven. He noted that, at the hearing just held, Hapeta Taueki had proposed that the number of trustees be as few as five. Smith was quite sympathetic to this idea, given the need for the trustees to act jointly, but in recognition of the owners' interests he was prepared to appoint seven. Those he appointed were James Broughton, Hohepa Kerehi, Alex Maremare, Rangipo Metekingi, Kawaurukuroa Hanita-Paki, Rita Ranginui, and Ada Tatana. Three – Broughton, Kerehi, and Hanita-Paki – were among the previous set of trustees. Smith remarked that, 'Not being possessed of the wisdom of Solomon, I cannot be sure that my choice of the seven persons now to be appointed is the best choice that could

¹⁴⁸⁵ G D Fouhy for Secretary, Department of Maori Affairs, to Minister of Maori Affairs, 31 August 1984. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁴⁸⁶ Todd Whitehouse Comber & Mackay to J J Tukapua, 10 May 1983. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁴⁸⁷ Minister of Maori Affairs to Joe Tukapua, 5 September 1984. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

have been made.’ He added that the appointments were not for life and could be overturned upon application to the court, although vexatious applicants ‘could be on the wrong end of an award of costs’.¹⁴⁸⁸

With the trustees’ appointment, the Commissioner of Crown Lands suggested that the time was now ‘most opportune’ for the Minister of Lands to introduce new legislation ‘to improve the representative structure and future management of the lake’.¹⁴⁸⁹ The new trustees met on 16 December and elected Tatana as secretary and Hanita-Paki as chairman. Tatana quickly addressed the matters in hand. On 2 January 1985 she wrote both to the secretary of the domain board, whom she told that four trustees would henceforth attend board meetings ‘on a rotational basis’,¹⁴⁹⁰ and to Wetere, requesting an early meeting to discuss matters.¹⁴⁹¹ The Minister’s press secretary had already stated that there was no barrier to four of the trustees sitting on the domain board before their formal appointment,¹⁴⁹² although Stewart pointed out to Tatana that the trustees would have no ‘legal standing’ on the board until the legislation had been amended.¹⁴⁹³

Bolderson wrote to Wetere on 17 January 1985 expressing hope that the disputes over the lake could soon be settled. He blamed Elworthy and Muaūpoko for the delays. As he put it, the resolution of matters concerning over the lake

appear to have been subject to procrastination by your predecessor and/or the Maori interests for far too long.

It is of grave concern to me personally and I believe, also a large portion of our community, that for the last twenty years a lot of talking but no positive action has been taken towards improving, not only the water condition, but general attractiveness of Lake Horowhenua, as an asset, both of the Maori owners, and the region as a whole.¹⁴⁹⁴

Needless to say, the borough council was hardly in a position to criticise a lack of action to improve the water quality, although Bolderson noted that the borough would soon be disposing of its effluent to land. His clear implication though was that the Māori tenure of the lake surrounds was an impediment to the lake’s restoration. He called, for example, for the

¹⁴⁸⁸ Decision of Judge Smith, 2 November 1984. Extract from Otaki minute book 87, fols 252-256. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁴⁸⁹ Commissioner of Crown Lands to Director-General of Lands, 10 December 1984. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁴⁹⁰ Tatana to A W Leslie, Secretary, Horowhenua Lake Domain Board, 2 January 1985. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁴⁹¹ Tatana to Minister of Lands, 2 January 1985. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁴⁹² ‘Lake trustees named’, *Chronicle*, 5 December 1984. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁴⁹³ J Stewart, Chairman, Horowhenua Lake Domain Board, to Tatana, 14 February 1985. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3. Had he been F H Hudson Stewart might have said that the trustees could field but not bat.

¹⁴⁹⁴ Bolderson to Minister of Lands, 17 January 1985. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

‘Public purchase or lease of chain strip and dewatered area to provide walkways, tree plantations and picnic areas at suitably developed lake edges’.¹⁴⁹⁵

Despite their reduction to a more manageable number, the new trustees do not appear to have worked together well. Tatana wrote to Wetere in a personal capacity on 17 February 1985 and explained that they were divided, with the three reappointed members ‘very suspicious of the women Trustees’. She remarked that

For many years I have watched the Lake slowly ebbing away from the grip of Maori Ownership. Squabbling within the Muaupoko Tribe became an on-going issue and the problem is still there to-day. Social Groups within the Tribe were endless stirrers and the present Group have acquired the same techniques[.]¹⁴⁹⁶

She gave Wetere a two-page list of proposed changes to the 1956 legislation. These included that beneficial owners would have to satisfy the Maori Land Court they were Muaūpoko and had suitable qualifications before becoming trustees, and that all seven trustees would be board members but with only four attending any meetings. She laid some emphasis upon the requirement for trustees to be Muaūpoko, describing this as a ‘troublesome area’. With respect to Bolderson’s proposal that the chain strip and dewatered area be purchased or leased, she indicated that she was agreeable as long as the Māori owners retained their ownership ‘for all times’. She also expected that the owners would have their exclusive fishing rights guaranteed, receive a third of any commercial revenue raised by the lessees (and here she mentioned not just the chain strip and the dewatered area but also the lakebed), and be gifted ‘all the properties in Government Title or Ownership adjoining the lake’.¹⁴⁹⁷

Wetere met with five of the trustees (Kerehi, Broughton, Maremare, Ranginui, and Tatana) in Wellington on 12 March 1985. The trustees were adamant that section 18(8)(a) of the 1956 Act needed amendment so that it was not the ‘Muaupoko Maori tribe’ that nominated domain board representatives but the trustees. The Deputy Director-General of Lands, G McMillan, agreed that the Māori membership of the domain board ‘should come from the Lake Trustees’. According to McMillan, ‘The Minister said that on the face of it, this seemed correct to him also and he would seek to have the legislation change pushed along’. Tatana’s suggestion that all seven trustees be domain board members was also discussed. Officials thought this impractical and Wetere was non-committal. Oddly, given her proposal that the lake surrounds – and implicitly also the lakebed – could be leased in perpetuity in exchange for title to adjoining Crown lands, McMillan recorded that ‘Other matters in the enclosure to

¹⁴⁹⁵ Bolderson to Minister of Lands, 17 January 1985. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁴⁹⁶ Tatana to Minister of Lands, 17 February 1985. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁴⁹⁷ Tatana to Minister of Lands, 17 February 1985. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

Mrs Tatana's letter [of 17 February 1985] were discussed but there was nothing really significant in them.¹⁴⁹⁸

Despite this, McMillan then recorded that Mirita Ranginui

invited the departmental representatives to state whether the Crown would be prepared to accept a lease of the bed of the Lake, the dewatered area and the frontage strip, ie all of the Maori-owned lands. The Minister indicated that the Crown would be prepared to talk about anything which they wanted us to talk about, but it was clear from the reaction of the other Trustees that Mrs Ranginui had thrown this suggestion into the discussion without prior consultation with her co-Trustees. There was clearly a lot of diffidence about her proposal and it was tacitly agreed that we would not take that one further unless and until the trustees came back in formal fashion.¹⁴⁹⁹

McMillan here seemed to overlook Tatana's reference to such an idea in her 17 February letter. It may well be that, at this point, Tatana and Ranginui did not enjoy the support of the other trustees for what may well have appeared a radical idea. However, they must have won the others over, for on 22 May Tatana sent Wetere the trustees' proposal for a perpetual lease 'for beautification' of the chain strip, dewatered area, and lakebed. The terms of the trustees' offer included that the leased areas would be administered by the domain board and, more significantly, that the Crown transfer ten parcels of Crown land totalling 429 acres and 27 perches (or 173.6 hectares) – together with 'all improvements' – to the trustees as 'the goodwill for the lease'.¹⁵⁰⁰ The Crown's initial response to this idea was decidedly lukewarm. The Assistant Commissioner of Crown Lands and domain board chairman, Ted Tyler, told the Director-General that the lands sought by the trustees in exchange included the Horowhenua Farm Settlement ('valued at some \$3/4 million). In his view,

the department should not in any way foster this proposal. The provision of additional recreational facilities in the Levin area is surely a regional/local matter and one the department would not normally be involved in. If the local authority wishes to pursue the idea it should be its responsibility and not that of the Crown.

The proposal by the Lake Trustees is that the various areas be leased in perpetuity to the Crown for addition to the present domain. The development costs for the additional area would be enormous and the complexities of administering the enlarged area would be beyond the scope of the present board. The Trustees naturally wish to involve the Crown in the proposal however I would strongly suggest that we attempt to get out of involvement in this matter immediately.¹⁵⁰¹

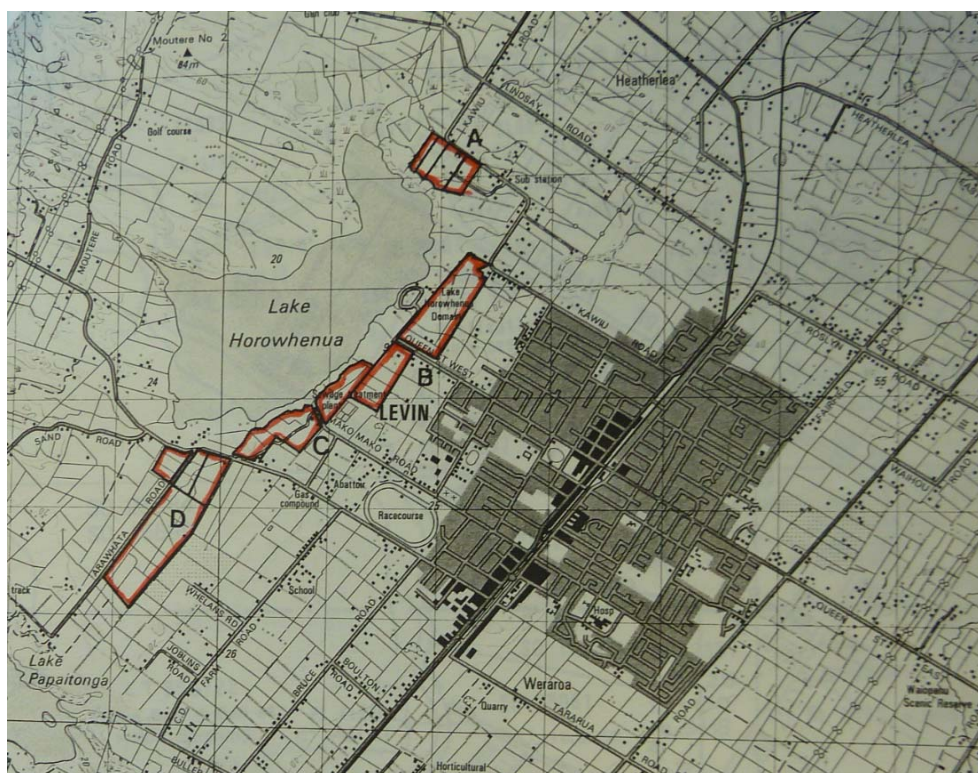
¹⁴⁹⁸ File note summary of 12 March 1985 meeting by G McMillan, 13 March 1985. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁴⁹⁹ File note summary of 12 March 1985 meeting by G McMillan, 13 March 1985. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁵⁰⁰ Tatana to Minister of Lands, 22 May 1985. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁵⁰¹ E V Tyler for Commissioner of Crown Lands to Director-General of Lands, 11 June 1985. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

Figure 6.4: Lands (outlined and labelled A-D) sought by the Horowhenua Lake Trustees in exchange for a perpetual lease of the lakebed, chain strip, and dewatered area, 1985.¹⁵⁰²



Wetere replied on 26 June 1985, referring to ‘government policy that it directs its resources to the provision of reserve land and facilities of national importance’. He saw improvements to the lake and its surroundings as of local benefit only and considered, therefore, that ‘the allocation of any substantial government contribution cannot be justified’.¹⁵⁰³ In response to this, on 22 July, Tatana effectively raised the stakes. She remarked that, while Muaūpoko permitted access to the lake at Muaūpoko Park over the chain strip and dewatered area, the lakebed remained Māori-owned, and anyone who stepped on it was trespassing. As she put it, ‘A ridiculous situation exists; the water (Lake Horowhenua) is a Recreational Reserve, the Bed of the Lake is Private Property, and the Public trespass in order to utilize their recreation.’ At the same time she noted the lake’s pollution and the tribe’s corresponding loss of its fishery. What the trustees now sought was some kind of compensation:

Local authorities do not have the resources to compensate for our asset; only the Crown is in this position. The trustees believe that we have given substantially, and it is time for our generosity to be acknowledged.

¹⁵⁰² Plan attached to E V Tyler for Commissioner of Crown Lands to Director-General of Lands, 11 June 1985. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁵⁰³ Minister of Lands to Tatana, 26 June 1985. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

We have made a positive move to become Incorporated. In the best interests of our shareholders we must expand and utilize our asset; develop our land to generate an income.¹⁵⁰⁴

Tatana also referred to the disagreement she was having with officials over the validity of the 1961 lease of 32 perches of lakebed, dewatered area, and chain strip to the boating club (see chapter 4). She concluded that ‘We are hoping for a peaceful solution; if none can be found we will have to exercise our rights.’¹⁵⁰⁵

One way in which the trustees chose to ‘exercise their rights’ was to instigate an annual fee for any lake users who walked on the lakebed. The rowing club was advised of this on 26 November 1985,¹⁵⁰⁶ and asked Wetere if the proposed fee was legal.¹⁵⁰⁷ Before he answered that question, Wetere at last replied to Tatana’s July letter on 13 December 1985. He told her that he stood by his earlier position that the beautification of the lake was a local issue only, and advised that his officials were continuing to examine the circumstances of the 1961 lease. He suggested that the 1956 legislation may well have authorised people to walk on the lakebed. He also misinterpreted her remark about the ‘ridiculous situation’ as a suggestion that the lakebed be included in the domain. This, he thought, was an issue for the Crown because of the 1905 agreement, and so he had asked his department to investigate.¹⁵⁰⁸ Tatana promptly corrected him, explaining that she had been referring to ‘the non inclusion of the reserve in maori [sic] ownership where it rightfully belongs’.¹⁵⁰⁹

In this reply, Tatana remarked upon what appeared to her to be

reluctance on the Government’s part to transfer Crown lands for the lease of Trust land. Mr Tyler has said that the equity in the Trust Land is not equal to the equity in the Crown Lands. Trust land without the water would be far more valuable than the Crown Lands. Your polluted waters are a liability; it has long term effects on our fish and fishing grounds.¹⁵¹⁰

She also could not understand where provision was made for the public to walk on the bed of the lake. More generally, she described the way that the difficulties over the lake had caused acrimony over the years: ‘I saw family fight family, trustees fight trustees, maori [sic] committees trying to squeeze [sic] out the trustees and my parents constantly at one another’s

¹⁵⁰⁴ Tatana to Minister of Lands, 22 July 1985. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁵⁰⁵ Tatana to Minister of Lands, 22 July 1985. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁵⁰⁶ Tatana to Horowhenua Rowing Club, 26 November 1985. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵⁰⁷ Shirley Williams, Secretary, Horowhenua Rowing Club, to Minister of Lands, 4 December 1985. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵⁰⁸ Minister of Lands to Tatana, 13 December 1985. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵⁰⁹ Tatana to Minister of Lands, 19 December 1985. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵¹⁰ Tatana to Minister of Lands, 19 December 1985. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

throat'. With apparent reference to the 1905 agreement, she asked how a divided people – as Muaūpoko were at the time – could 'enter into any agreement'. Only a minority would have done so. The 1905 Act 'was force, the maoris [sic] lost control of their land'. The current trustees, however, were 'not about to back down and will fight this issue right into the High Courts if need be'. The Crown had to compensate the owners 'for the cold, calculated and deliberate act' of taking 'the lake by force'.¹⁵¹¹

Tatana went on to state that the majority of the lake's owners would not accept that they did not own the lake's waters. The 1961 lease, she said, had been 'signed in ignorance'. The boating club had not built over the lakebed as proposed but instead on the dewatered area, and 'the lease of maori [sic] land was a safety measure for the organization to walk on the lake bed'. Since the land had not been used for the intended purpose she argued that 'the Crown has a duty to return the land to the owners'. She concluded by asking Wetere 'once again to consider the Lease Proposal otherwise we will approach the Waitangi Tribunal to help us reclaim the lake'.¹⁵¹²

Tyler updated the Director-General on the matter on 16 January 1986. He advised that the office solicitor had confirmed that the trustees were quite within their rights to charge a fee for lake users to walk over the lakebed. In Tyler's view, it was now 'essential that a lease of the bed of the lake is agreed to. This will however be extremely costly and you will be aware of the trustees demands.'¹⁵¹³ Wetere in turn informed the rowing club that the lakebed was 'private land and the owners can exercise their fee simple rights'. He noted, however, that he was 'at present corresponding with the trustees on the possibility of leasing the bed of the lake for public use'.¹⁵¹⁴

Wetere also replied again to Tatana, and appeared to be running out of patience. He told her that 'You have put forward a proposal and if agreement cannot be reached that will be the end of the matter.' The only legislative change he was prepared to make would be the amendment to the provision in the 1956 about how Muaūpoko board members were nominated. He went on:

Your letter makes reference to past injustices and advises that if the lease proposed is not reconsidered you will approach the Waitangi Tribunal. This is of course your right, as it would be over previous grievances which you consider remain unresolved. However I hope it will not come to this.¹⁵¹⁵

¹⁵¹¹ Tatana to Minister of Lands, 19 December 1985. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵¹² Tatana to Minister of Lands, 19 December 1985. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵¹³ E V Tyler for Commissioner of Crown Lands to Director-General of Lands, 16 January 1986. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵¹⁴ Minister of Lands to Shirley Williams, Horowhenua Rowing Club, 24 January 1986. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵¹⁵ Minister of Lands to Tatana, 23 January 1986. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

Wetere acknowledged, however, that the trustees had a legal right to charge those who walked on the lakebed. He said that he was waiting on a response from the boating club about its leased area, but he noted that if a lease of the lakebed could be negotiated then this could 'resolve the problem'. He also touched on the nature of the 1905 agreement, remarking that 'As far as we know today, this agreement was freely entered into and was intended to open the lake to legal public use subject to some safeguards which the owners specified.'¹⁵¹⁶ This was a simplistic characterisation even of the summary of the agreement made by the Attorney-General in Parliament at the time, which of course referred not just to a few 'safeguards' but to the owners' 'mana' over the lake.

Tatana noted in reply that the Crown had previously rejected the idea of leasing the lakebed, but had now indicated that it was 'essential' for the Crown to conclude such a lease. The trustees would have to 'reassess their position also'.¹⁵¹⁷ Devine, the Assistant Director (Reserves), proposed at this point that a meeting be arranged with the trustees, rather than the Minister simply send another reply.¹⁵¹⁸ At around this time the Minister also received a letter from W J Taueki, the son of Hohepa Te Pae Taueki. He disputed the standing of the seven 'court-appointed' trustees, especially since Mirita Ranginui was not Muaūpoko. He referred to his father still chairing the '14 Trustee's', 'who had reached there [sic] appointments by the Rakau of the 14 original Trustee's'.¹⁵¹⁹ The Department of Maori Affairs considered that Hohepa Te Pae Taueki 'probably represents a dissident group'.¹⁵²⁰

A meeting between the (seven) trustees and the Crown did not take place for a number of months. In the meantime, at a meeting on 12 March 1986, Lands Department officials discussed the Crown's negotiating strategy over the trustees' proposal for the land exchange.¹⁵²¹ Among them was Devine (the hand-written notes appear to be in his writing), who – referring to himself in the third person – stressed that the Crown's interest was in preserving access for lake users, such as the sea scouts and rowing and boating clubs,

in the spirit of the 1905 Act. He suggested the Minister should indicate to the Trustees and tribe exactly where the Crown stood. The Maoris could then determine whether they accepted the Crown's position or take the matter up with the Waitangi Tribunal.¹⁵²²

¹⁵¹⁶ Minister of Lands to Tatana, 23 January 1986. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵¹⁷ Tatana to Minister of Lands, 16 February 1986. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵¹⁸ Annotation of the Assistant Director Reserves, 20 February 1986, on Private Secretary to Minister of Lands to Tatana, 19 February 1986. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵¹⁹ W J Taueki to Minister of Lands, 18 February 1986. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵²⁰ G Fouhy for Secretary, Maori Affairs, to Director-General of Lands, 27 January 1986. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵²¹ Those present were Wayne Devine, Assistant Director (Reserves); I R H Whitwell, Assistant Director (National Parks); Ted Tyler, Assistant Commissioner of Crown Lands; P J Wiley, Maori Investigating Officer, Maori Section, Wellington office; and D S Bayly, Secretary, Reserves Division, Head Office.

¹⁵²² Notes of meeting held to discuss Lake Horowhenua issues, 12 March 1986. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

Lake Horowhenua was agreed to be of regional significance only, so the chances of the land exchange taking place were 'slim'. Devine regarded the trustees' offer as 'unfeasible', and considered that the Crown could make a counter-offer', such as Muaūpoko Park becoming 'a Maori reservation'. Devine was said to believe that

the Crown should take a firm stand. The Crown should adopt the position that the existing public rights had been given by the 1905 Act & accepted in good faith. These rights were to be preserved in perpetuity.¹⁵²³

Those present were agreed that 'If an offer was made to the Maoris and their rejection of it deemed unreasonable it would be seen publicly to be so.' Again, it was noted that the trustees 'would then proceed to the Waitangi Tribunal'. One of the agreed action points, therefore, was that

the Minister inform the Trustees & the Muaupoko tribe of the Crown's obligation to preserving the rights of the existing lessees & the public and express disappointment at the reluctance by some of the current Trustees & tribal members to accept the rights of public access provided by the original owners. If the Maoris disagreed they could approach the Waitangi Tribunal.¹⁵²⁴

Officials believed that, since Muaūpoko had consented to access in 1905 (and here they confused the purported agreement with the legislation that followed it), it was wrong of the tribe to take any action to undermine that access in 1986. This rather ignored the events of the intervening 80 years, including the Crown's frequent breach of the terms of the 1905 agreement itself, such as non-pollution of the lake. Devine followed up the meeting with a memorandum to the Commissioner of Crown Lands that set out the 'negotiating philosophy' that Tyler should take into his meeting with the trustees. Devine considered that

Our approach should be one of extreme disappointment that the present-day trustees should want to repudiate the agreement made by the owners in 1905. On the basis of our research, the arrangements made over the lake were at the request of the owners in interests of protecting their fishery against uncontrolled boating use. We therefore have grounds to contest the claim of coercion by the Crown.¹⁵²⁵

It is unlikely that Devine was privy to any more research than was available in the writing of this report. He was not necessarily on safe ground in assuming the lake's owners had made the agreement, let alone in suggesting that the initiative had come from Muaūpoko. The pressure for an agreement to allow Pākehā access to or control of the lake had very much

¹⁵²³ Notes of meeting held to discuss Lake Horowhenua issues, 12 March 1986. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵²⁴ Notes of meeting held to discuss Lake Horowhenua issues, 12 March 1986. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵²⁵ Devine for Director-General of Lands to Commissioner of Crown Lands, 27 March 1986. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

been the other way, be it from the William Field MP, the citizens of Levin, or the advocates or scenery preservation.

Devine felt the Lands Department should accept no responsibility for the pollution of the lake, believing 'it is very important that we do not accept co-responsibility for the "sins" of others by default'. He then set out the department's more specific 'negotiating brief'. The department would not accept the proposed exchange and

should make a counter-proposal, without prejudice, to lease the 1 chain strip and dewatered area fronting Muaupoko Park and a sufficient area of lakebed fronting the Park to enable the launching of boats from the Park. This would be on the basis of continuing use of the surface waters by the public. The department would expect the local authorities to be major contributors to the payment of the rental. The department's role should be as broker of such a deal, with no financial commitment at this stage.¹⁵²⁶

He considered that a lease of the entire lakebed 'is likely to look very unattractive financially for the Department'.¹⁵²⁷

The Lands Department's Wellington district office staff put the Crown's terms to the trustees. According to the Commissioner of Crown Lands, who reported on 23 May 1986, the trustees 'reluctantly' accepted that the land exchange would not take place and were prepared to consider a lease of the lakebed for payment instead (although not the chain strip or the dewatered area, which they would only lease if offered land in exchange). However, the trustees 'rejected out of hand' the Crown's counter-offer of a lease over an area of lakebed adjacent to Muaupoko Park to allow for the launching of boats, regarding it as 'piecemeal' and 'entirely unsatisfactory'. Any settlement had to include 'the entire lake bed'. The Commissioner of Crown Lands was thus arranging for valuations of the lakebed in order to calculate the rental payable to the trustees. The local bodies were 'lukewarm to say the least' on being 'a major contributor' to any such lease.¹⁵²⁸

After valuations had been obtained, Tyler proposed on 24 November 1986 that the lakebed be leased for 25 years for a total of \$100,000 to be paid in one lump sum in 1987. After that, responsibility for any further leasing would rest with the local bodies. The arrangement would 'solve the present public access rights' and should be acceptable to the trustees. However, officials in head office were not convinced. G J Goodwin annotated Tyler's note on 28 January 1987 that 'The matter is a local problem despite the Crown's involvement in the past and perhaps the time is right to cease to be so closely involved'. Devine agreed, annotating on 2 February 1987 that, 'While Mr Tyler's proposal may pave the way for a

¹⁵²⁶ Devine for Director-General of Lands to Commissioner of Crown Lands, 27 March 1986. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵²⁷ Devine for Director-General of Lands to Commissioner of Crown Lands, 27 March 1986. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵²⁸ Commissioner of Crown Lands to Director-General of Lands, 23 May 1986. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

settlement, it is too generous an approach'. He did not believe that 'our frustrations should give way to unmerited generosity'.¹⁵²⁹

The Crown's attention to the issue was then further delayed by the creation of the Department of Conservation and the transfer of responsibilities over the lake to it. Wetere conveyed this to Tatana on 12 March 1987.¹⁵³⁰ When the new department's Wanganui regional office staff came up to speed on the issue, their advice to head office was that there was 'no intent to follow up this Lands and Survey idea unless the Maori owners propose otherwise'.¹⁵³¹ In response to a query on the matter from Winston Peters MP, the Minister of Conservation, Helen Clark, gave the same advice.¹⁵³²

At this point the idea of a lease of the lakebed appears to have been abandoned by both sides, although in March 1988 officials noted to the Minister of Conservation that 'The inclusion of the lake bed itself in the reserve would solve some of the problems affecting the lake.'¹⁵³³ This presumably included the unresolved irregularities with the 32-perch lease of Māori-owned land to the boating club. As a Department of Conservation official had noted in May 1987, 'The completion of a lease by the Crown of the lake bed would solve this problem.'¹⁵³⁴

In the end, much energy had been expended over the leasing proposal for no result. Lands Department officials were not prepared to consider the issue as a potential settlement of Muaūpoko's broader grievances over the lake. Instead, they approached the matter solely from the perspective of their own department. That perspective was that local problems had largely to be solved with local money, and that central government's commitment should be minimised. Indeed, Lands officials also thought their own department should bear no responsibility for the lake's pollution. Such an approach would eventually become obsolete with the advent of the treaty settlement process, which required government departments to work collectively to resolve the full range of a tribe's grievances. This was of no help to the trustees, however, who were effectively looking for a treaty settlement before such redress was on offer. Instead, officials thought the correct approach was to take a tough stance in negotiations. If the trustees did not like it, they should go to the Waitangi Tribunal.

Whether the lease of the lakebed to the Crown would have been acceptable either to the beneficial owners or the Maori Land Court is a moot point. But the negotiations still seemed like a lost opportunity to making some headway on the interminable problems affecting the

¹⁵²⁹ Tyler for Commissioner of Crown Lands to Director-General of Lands, 24 November 1986. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵³⁰ Minister of Lands to Tatana, 12 March 1987. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵³¹ Dave Jane, Senior Conservation Officer, to Director-General, 21 August 1987. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵³² Minister of Conservation to Winston Peters MP, 29 September 1987. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵³³ Director-General of Conservation to Minister of Conservation, 31 March 1988. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵³⁴ Peter Bollmann, Conservation Officer, to Director, Land and Fauna, 26 May 1987. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

lake. The disappointment was expressed by Tyler, who appears to have written a frustrated and rather melancholy hand-written note to Goodwin ('Graham') in around March 1987. It read:

Graham

I give up.

The crunch of the problem is to get someone to clean up the bed of the lake. It has too many possible political connotations for me to suggest a result.

I tried and failed, like many others in the past. I thought I might have been able to solve the problem for \$100,000[.] I think it will cost \$1 million at least some time in the future.

Sorry

Ted¹⁵³⁵

The failure to legislate the promised changes to the 1956 Act

If the saga over the potential lease of the lakebed to the Crown was drawn-out and unsatisfactory, this was nothing on the Crown's longstanding resolve to amend the 1956 Act. The principal intended change would of course provide for the lake trustees, rather than the 'Muaupoko Maori Tribe', to nominate domain board members. The requirement for the trustees' consent to by-law changes and to catchment board works was also to be included. An undertaking to amend the law to this effect had originally come from Elworthy. At his 12 March 1985 with the trustees, Wetere also promised to have amending legislation drafted and provided to all interested parties (including the local bodies and the Muaupoko Maori Committee) for comment.¹⁵³⁶

In 1985 there was some discussion between Lands and Maori Affairs officials and Parliamentary Counsel as to whether the trustees should continue to have indefinite terms and what section of the Maori Affairs Act 1953 the trustees should be appointed under. The delays in providing a draft of the legislation became a source of frustration. Tyler relayed on 20 September 1985 that 'The trustees cannot understand the reasons for the delay in this matter.'¹⁵³⁷ On 16 January 1986 he remarked that, with regard to the proposed amendment, 'the Ministers attention should be drawn to the urgent need for the trustees to be able to take their place on the board'.¹⁵³⁸ Wetere told Tatana on 23 January 1986 that he regretted the delay 'but Parliament has a very heavy legislative programme'.¹⁵³⁹ He asked Parliamentary

¹⁵³⁵ Undated hand-written note from 'Ted' to 'Graham'. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵³⁶ File note summary of 12 March 1985 meeting by G McMillan, 13 March 1985. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁵³⁷ Tyler for Commissioner of Crown Lands to Director-General of Lands, 20 September 1985. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁵³⁸ Tyler for Commissioner of Crown Lands to Director-General of Lands, 16 January 1986. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵³⁹ Minister of Lands to Tatana, 23 January 1986. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

Counsel shortly thereafter to attempt to expedite the matter, as ‘the Muaupoko tribe is losing patience’.¹⁵⁴⁰

Parliamentary Counsel, however, saw the opportunity to clarify the leasing powers of the trustees, as Judge Smith had suggested in 1982. He also queried the ongoing relevance of subsection 18(6) of the 1956 Act, which safeguarded the fishing rights of the owners of Horowhenua block 9, since the Horowhenua Block Act 1896 had been repealed in 1931. He asked, too, whether the legislation should also set out the extent of commercial fishing rights in the lake (which, again, had been raised by Judge Smith in 1982).¹⁵⁴¹

By April 1986 the domain board was also expressing its frustration at the ongoing delay. Its secretary asked the Minister that the matter be accorded urgency.¹⁵⁴² Wetere explained that the introduction of the amendment was ‘dependent on the passage of other priority legislation’.¹⁵⁴³ In June 1986, however, the trustees added an extra dimension to the issue when they inquired whether any four of their number could be appointed in an *ex officio* capacity. They too indicated their desire to repeal section 18(6).¹⁵⁴⁴

The Director-General of Lands finally replied to Parliamentary Counsel on 1 August 1986, responding to the latter’s queries and asking about the trustees’ request for *ex officio* appointments.¹⁵⁴⁵ In October 1986 officials briefed the Minister of Lands and advised that the draft legislation was still with Parliamentary Counsel. The proposed legislation, they explained, would have four aspects: the lake trustees would nominate four members of the board; by-laws made by the board would need the trustees’ consent before approval by the Minister; the wording of the previous legislation would be improved ‘to clarify fishing and public use rights’ (including the repeal of subsection 18(6)); and the trustees, and not the domain board, would consent to any works undertaken by the catchment board.¹⁵⁴⁶

By November 1986 it seemed to Tatana that the amending legislation was ‘delayed indefinitely’. She requested that Wetere simply appoint herself, Warena Kerehi, Kawaurukuroa Hanita-Paki, and Mirita Ranginui to the domain board. Her letter was annotated by Tyle: he had advised her that a further meeting of the tribe would first be

¹⁵⁴⁰ Minister of Lands to Chief Parliamentary Counsel, no date (stamped received in the Lands Department on 29 January 1986). Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵⁴¹ D J Cochrane, Parliamentary Counsel, to Director-General of Lands, 4 February 1986. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵⁴² K Dowling, Secretary, Horowhenua Lake Domain Board, to Minister of Lands, 29 April 1986. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵⁴³ Minister of Lands to Secretary, Horowhenua Lake Domain Board, 14 July 1986. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵⁴⁴ Notes by D S Bayley of a meeting between the Horowhenua Lake Trustees and Lands officials, 20 June 1986. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵⁴⁵ Director-General of Lands to Parliamentary Counsel, 1 August 1986. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵⁴⁶ Director-General of Lands to Minister of Lands, 22 October 1986. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

needed. Tatana accordingly agreed to ‘drop [the] matter’.¹⁵⁴⁷ In February 1987 Tyler told the Director-General that ‘The continued delay in changing the legislation to permit the trustees to be represented on the Board is now becoming a joke in Levin.’¹⁵⁴⁸ It was at this time that the board chose not to object to the borough council’s application for an extension to its right to discharge sewage effluent into the lake. Tatana pointed out that the board had made this decision without any Māori representation. She warned Wetere that ‘If your department continues to play a passive role the trustees will go public and believe me the can holds many filthy worms.’¹⁵⁴⁹

Wetere told Tatana he was ‘as disappointed as you are’ that the required legislation had not been passed. He assured her that ‘provision has been made on the 1986/87 Legislative Programme for the introduction of the Reserves and Other Lands Disposal Bill’.¹⁵⁵⁰ With the switch of administrative responsibility from the Department of Lands to Conservation, however, further delays became inevitable. In April the Director-General of Conservation asked Parliamentary Counsel for a copy of the revised draft clause.¹⁵⁵¹ Parliamentary Counsel, however, saw problems in the trustees’ request that any four of their number be able to attend meetings. Were ‘the first four through the door ... the trust members for that meeting?’ he asked. He also noted that the Reserves and Other Lands Disposal Bill was not on ‘the list of bills essential or desirable for introduction this session’.¹⁵⁵²

The passage of the Conservation Act on 1 April 1987 automatically amended the 1956 Act to replace references to the Minister of Lands with ones to the Minister of Conservation. So was the chair of the domain board now, *ex officio*, the Director-General of Conservation. However, by August 1987 the Director-General had still not decided to whom he would delegate this role, as thought had been given to appointing a fully independent chair (that is, someone from outside the Department of Conservation). What with this uncertainty and the ongoing absence of Māori representation, the board had not met since 1 April 1987 and officials considered it was unlikely to do so until both issues were resolved.¹⁵⁵³

The trustees held a hui for members of Muaūpoko in Levin on 4 October 1987. One of the meeting’s advertised purposes was to ‘Confirm the appointment of the lake trustees onto the lake Domain Board’. Tatana explained to Muaūpoko that the trustees would not accept any other method of selecting board members than appointment by the trustees themselves. The

¹⁵⁴⁷ Tatana to Minister of Lands, 11 November 1986. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵⁴⁸ Tyler for Commissioner of Crown Lands to Director-General of Lands, 3 February 1987. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵⁴⁹ Tatana to Minister of Lands, 9 December 1986. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵⁵⁰ Minister of Lands to Tatana, 12 March 1987. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵⁵¹ G J Goodwin, for Director-General of Conservation, to Parliamentary Counsel, no date. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵⁵² David Cochrane, Parliamentary Counsel, to G J Goodwin, Department of Conservation, 27 April 1987. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵⁵³ Dave Jane, Senior Conservation Officer, to Director-General, 21 August 1987. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

process was, however, entirely approved of by the newly formed Runanga ki Muaupoko, and the hui agreed to the appointment of Tatana, Kerehi, Hanita-Paki, and Ranginui.¹⁵⁵⁴ In December 1987 the Director-General of Conservation informed his Minister, Helen Clark, that ‘The way is now clear for you to formally appoint the recommended nominations.’¹⁵⁵⁵ A further stumbling block to the resumption of board meetings was finally cleared in March 1988, when the Director-General formally delegated his functions and duties as chairman of the domain board to the District Conservator of the Raukawa District.¹⁵⁵⁶ This unnecessarily protracted process was finally brought to a close on 16 May 1988 when Clark signed a notice for inclusion in the *Gazette* appointing Hanita-Paki, Kerehi, Ranginui, and Tatana as members of the domain board.¹⁵⁵⁷

In sum, the Muaūpoko members of the domain board had resigned in April 1982. In June 1982 Elworthy told the trustees that he was not ‘averse’ to dissolving the domain board and having the trustees assume its functions. After representations from members of Muaūpoko and criticism of the trusteeship over the lake by a Maori Land Court judge, Elworthy changed his mind, and in April 1983 told the trustees he now thought the board should be retained but the Muaūpoko members selected not by the Muaupoko Maori Committee but by the trustees. He also said that the trustees should have to approve by-laws, and that they – and not the domain board – should be required to consent to the operations on the lake or Hōkio Stream of the Manawatu Catchment Board.

What then followed was years of delay as the wording of the legislation was considered and given a low legislative priority. During this period the trustees were eager to join the board, and concerned that it continued to meet without Māori representation. The entire issue was also a matter of regret for the board itself. But the trustees were continually told that nothing could be done before the amending legislation was passed. In the end that legislation failed to materialise, and the appointment of four trustees as domain board members in May 1988 gave the lie to the belief that the reference in the 1956 Act to the ‘Muaupoko Maori Tribe’ had ever needed changing in the first place. That term was not defined in the Act and clearly open to interpretation. While officials referred to Muaūpoko having ‘boycotted’ the board since 1982,¹⁵⁵⁸ the reality was very different. The absence of Muaūpoko representation on the board from 1982 to 1988 was largely caused by Crown inaction and indecision.

¹⁵⁵⁴ Notice signed by Tatana, no date, with newspaper advertisements affixed; S Williams, Chairperson, Te Runanga ki Muaupoko, to Minister of Lands, no date (received 12 October 1987); and Private Secretary to Minister of Survey and Land Information to Private Secretary to Minister of Conservation, 20 October 1987. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵⁵⁵ Director-General of Conservation to Minister of Conservation, 9 December 1987. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵⁵⁶ Instrument of Delegation, signed by the Director-General of Conservation on 10 March 1988. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵⁵⁷ Notice for inclusion in *Gazette* signed by Minister of Conservation on 16 May 1988. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵⁵⁸ See, for example, Peter Bollmann, for Director, Land and Fauna, to Director-General of Conservation, 10 December 1987. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

The return of speedboats in 1986

While the appointment of Muaūpoko domain board members in May 1988 marked the culmination of the twenty-year period covered by this chapter, it is necessary to note one further issue of significant controversy in the mid-1980s. This was the return of the speedboat racing to the lake in 1986. Elworthy's object in 1983 had been that the requirement for the trustees to agree to by-law changes before ministerial approval would mean that the acrimonious dispute about speedboat racing in 1982, that precipitated the walkout of the Muaūpoko domain board members, would not be repeated. Yet, within a short space of time, the prospect of speedboat racing on the lake was again looming as an issue for the trustees and domain board to confront.

In April 1984 the secretary of the Central Zone Powerboat Association, J J Greening, told Elworthy that it was hoped that Lake Horowhenua would again host the national regatta in January 1985. He claimed there had been no environmental damage from the 1982 racing and asked Elworthy to advise 'if there is any reason why we should not approach the trustees at this time and perhaps force them into a meeting with us[?]'.¹⁵⁵⁹ Elworthy did not point out that it would be unwise to 'force' the trustees to meet, but helpfully replied that he had asked the domain board if it could obtain an early decision on the matter.¹⁵⁶⁰ The Director-General of Lands did note, however, that speedboat racing on the lake was 'a very sensitive social issue in Horowhenua'.¹⁵⁶¹

Nothing more came of the proposal for racing in January 1985, but in August that year the Central Zone Powerboat Association informed Tyler (as chair of the domain board) that lengthy negotiations with the lake trustees had resulted in their permission for racing to go ahead in January 1986.¹⁵⁶² The domain board then gave its consent on 29 August 1985.¹⁵⁶³ Tatana wrote to Tyler on 7 November to confirm that the trustees had agreed to speedboat competitors walking on the lakebed in order to 'become mobile'. The trustees requested five stalls at the event.¹⁵⁶⁴

By this stage, however, the domain board had already begun receiving complaints about the proposed racing. A group of concerned Māori and Pākehā citizens, who called themselves 'Friends of Lake Horowhenua', wrote to the domain board on 25 October 1985 claiming that the racing would 'decimate' the eel population and increase weed growth through 'artificial

¹⁵⁵⁹ J J Greening, Secretary, Central Zone Powerboat Association to Minister of Lands, 4 April 1984. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁵⁶⁰ Minister of Lands to J J Greening, Secretary, Central Zone Powerboat Association, 9 April 1984. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁵⁶¹ Director-General of Lands to Commissioner of Crown Lands, 12 April 1984. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁵⁶² D Dustin, President, Central Zone Power Board Association, to Chairman, Horowhenua Lake Domain Board, 20 August 1985. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵⁶³ Minister of Lands to Peter Henderson, 24 January 1986. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵⁶⁴ Tatana to Chairman, Horowhenua Lake Domain Board, 7 November 1985. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

oxygenation'.¹⁵⁶⁵ Wetere, who received a copy of this letter, told the writers that any decision on speedboat racing was up to the domain board and the lake trustees.¹⁵⁶⁶ On 6 December 1985 Whetu Tirikatene-Sullivan also became involved, writing to Wetere and the Minister for the Environment, Russell Marshall, and asking them 'to investigate this matter with a view to preventing unnecessary pollution of this Lake, which is one of the few lakes in New Zealand owned by Maori people'.¹⁵⁶⁷ Wetere replied that 'this is essentially a local matter for which there is an accepted procedure and an established policy'.¹⁵⁶⁸

On 27 November 1985 the domain board received a second letter from the Friends of Lake Horowhenua, and its meeting was attended by Sue and Peter Henderson as representatives of the group. The local body representatives on the board were unsympathetic. Law said he was 'looking for a letter from the friends of the powerboat people' and considered that the board had 'acted correctly in approaching the owners of the lake, the Maori people, and they say OK'. He claimed that 'Last time there was no damage to fish and the water was clearer after a powerboat regatta.'¹⁵⁶⁹ For their part, the trustees appear to have been growing increasingly divided on the issue. Tatana now claimed that all the trustees had agreed to was access across the lakebed, and nothing more. According to the *Chronicle*,

The secretary of the Lake Trustees, Ada Tatana, says: 'We have told the board and the boating association that we agree to the use of trust property, that is the bed of the lake. In other words, we have given permission to the association to cut a channel in the bed to allow better access to boats and to allow people to walk on the bed, but cannot say whether boats should race on the surface, that is over to the board.'

Mrs Tatana agreed that their first letter to the association did approve of the regatta but at a subsequent meeting of the trustees some members disagreed and a second letter was sent making it clear that the trustees had no powers to agree to the surface waters being used for a regatta.

'The trustees are divided over this and I think there would be a majority in favour of powerboats but it is not our decision to make. But some members are very opposed to it and there could be an explosion at the regatta.'

Mrs Tatana said it was a pity the Minister had not yet cleared the way for representatives of the owners of the lake to take their place on the reserves board.¹⁵⁷⁰

¹⁵⁶⁵ Friends of Lake Horowhenua to Secretary, Horowhenua Lake Domain Board, 25 October 1985. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3. The letter's signatories included Thompson Tukapua, J F Moses, Warren Kerehi, Laurie Roberts, N M Steeds, P Anderson, Collis Blake, C A J Cockburn, and J Mitchell.

¹⁵⁶⁶ Minister of Lands to P Anderson, 30 October 1985. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁵⁶⁷ Whetu Tirikatene-Sullivan MP to Ministers for the Environment, Maori Affairs, and Lands, 6 December 1985. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵⁶⁸ Minister of Lands to Whetu Tirikatene-Sullivan, 10 December 1985. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵⁶⁹ 'Friends of Lake show opposition', *Chronicle*, 18 December 1985. Clipping on Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵⁷⁰ 'Regatta could be anything but plain sailing', *Chronicle*, 18 December 1985. Clipping on Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

Tyler – who wore the hats of both a Lands Department official and chairman of the board – considered that

Since the original approval by the trustees to the regatta organisers, it appears that the trustees have got cold feet and are trying to place the full responsibility on the board. The boards attitude is that the trustees letter of 7 November and the original letter to the Regatta Committee constitute the necessary approval. This matter may well be subject to an injunction to stop the regatta or there may be protest action at the regatta itself.¹⁵⁷¹

In mid-January 1986 Wetere received a letter from Peter Henderson on behalf of the Friends of Lake Horowhenua. He reported on a hui he had just attended at Kawiu Marae, at which dissatisfaction had been expressed with the current members of the domain board. Henderson said the general feeling was that ‘the three Board Members who have voting rights have demonstrated a complete disregard for environmental and traditional Maori values, particularly so far as powerboat racing is concerned’. He noted that the arguments made by Muaūpoko people were ‘diverse and to some extent complicated by personality factors, but these things aside, it is perhaps questionable whether the Board should have the authority to make any decisions regarding the use of the surface of the lake or the reserve’. He predicted that, if the regatta went ahead on 25-26 January as planned, ‘the spectacle of young Maori people being processed through the Courts (as in 1982 when powerboats raced on the lake) will be repeated’.¹⁵⁷²

As the racing drew nearer members of Muaūpoko continued to protest. A group of 12 led by Philip Taueki explained that they wanted to stop the regatta ‘for environmental reasons and because so many members of the tribe died in battles on the lake between Muaupoko and Te Rauparaha’. Taueki described the lake as ‘basically ... a grave for all of those people’. Since the lake was so shallow ‘it would be just racing around (in power boats) above all those bones’. Taueki planned to file an application for a court injunction against the racing that week. He described the approval that Mayor Bolderson claimed had been given as far from ‘actual consent’.¹⁵⁷³ However, the application for an injunction came too late.¹⁵⁷⁴ The day before the racing began, Wetere wrote to Henderson and denied that the board had showed any insensitivity. The consent of the trustees had been obtained, he said, and this was what had mattered. He contended that

¹⁵⁷¹ Tyler, for Commissioner of Crown Lands, to Director-General of Lands, 16 January 1986. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵⁷² Peter Henderson to Minister of Lands, 12 January 1986. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵⁷³ ‘Regatta infringes lake tapu’, *Evening Post*, 22 January 1986. Clipping on Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵⁷⁴ ‘Lake racing on – again’, *Evening Post*, 24 January 1986. Clipping on Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

Evidence of environmental degradation, or expert opinion on its likelihood, will be necessary before the board can consider declining recreational use of the surface waters of the lake on such grounds, given the support of the trustees for the regatta.¹⁵⁷⁵

Henderson's retort was that it did not 'take "an intellectual giant" to prove powerboat racing could be harmful to the lake'.¹⁵⁷⁶ For her part, Tatana 'categorically' denied that her 'letter 7 November 1985 and the one following which were both sent to the Chairman of the Domain approved of the Speedboat Regatta. The letters simply stated that the trustees approved the use of trust property.'¹⁵⁷⁷

It does not seem that speedboat racing has ever returned to Lake Horowhenua. Given the fallout from it in 1982, it is remarkable that it took place again as soon as 1986. It is clear that the trustees did give mixed messages about it. While Tatana was adamant that she had never given formal approval, it seemed rather as if she was resorting to a technical distinction. The trustees could have simply said no to race competitors walking across the lakebed. Instead, a proportion of the trustees were clearly in favour of the racing, and some may well also have seen it as an opportunity to take some much-needed revenue from the lake (as suggested by Tatana's request for five stalls over the weekend of racing).

As for the Crown, its failure to take steps to restore Muaūpoko membership of the domain board created a situation where the board approved of the racing in the absence of any Māori members. Even if the board did so in compliance with the wishes of the trustees, this left some with the perception of a Pākehā board making a decision on an important issue to Muaūpoko without their direct involvement. Weterere's position was that the issue had nothing to do with him. More broadly, given the level of Muaūpoko discontent with the board and the Government's ongoing failure to deliver the promised amending legislation – which was to deal also with the issue of changes to the by-laws – it did.

Conclusion

From the mid-1960s onwards, the domain board should in theory have been operating without much difficulty. Its development plans for Muaūpoko Park were well in hand, by-laws had been formally approved, the agreed means of stabilising the lake level had been at last put in place, and the local bodies had accepted their minority representation on the board. Attendance by Muaūpoko domain board members, however, was very poor. In some ways this was counter-intuitive, since the 1956 Act had given the tribe a board member majority and in theory a great opportunity existed to dictate policy over the lake. It may be that the Muaūpoko representatives appointed in 1965 found the board environment not to their liking,

¹⁵⁷⁵ Minister of Lands to Peter Henderson, 24 January 1986. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵⁷⁶ Peter Henderson to Minister of Lands, 25 January 1986. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵⁷⁷ Tatana to Minister of Lands, 16 February 1986. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

and that the local body members dominated despite being one fewer in number. In any event, the attendance of the Muaūpoko members in the early 1970s was much better.

The 1965 appointment process was somewhat fraught, with different hui selecting different nominees. The lake trustees were regarded at the time, by the Commissioner of Crown Lands at least, as ‘the governing body for the Muaupoko Tribe’. But by 1968 the Minister of Lands was deferring to the Muaupoko Maori Committee over issues concerning the administration of the lake. This would have stemmed in part from the Minister being required under the 1956 Act to appoint domain board members nominated by the ‘Muaupoko Maori Tribe’. This must have exacerbated a tension within the tribe, and may – for example – have contributed to the acrimony over the replacement of a board member in 1976. The replacement on that occasion was a lake trustee, but resentment over the committee’s role in selecting nominees became a cause of further complaint in the 1980s.

By the mid-1960s the Crown was making plans as to how it might extricate itself from the running of the domain board. Its policy was that such domains should be controlled and managed at the local level, and it particularly resented how much it was having to spend on development costs. It hoped that the local bodies would take over administration and bear the development expenses, and the local bodies were prepared to do so if they acquired the powers of the domain board over matters such as by-laws into the bargain. But Muaūpoko – who held a lasting distrust of the local authorities – were opposed, and in Whetu Tirikatene-Sullivan they found a forceful advocate. This was perhaps the first time a Māori Member of Parliament had intervened on their behalf, and certainly the first time of any note. As a result of her involvement the Crown had to abandon its plans – for now – to divest itself of responsibility for the domain, and remained grudgingly saddled with ongoing development costs. In the late 1970s, however, the Crown referred again to the inevitable transfer of the domain to local control, regarding the reclassification of the domain as a recreation reserve in 1981 as part of that process. Because of its intention to transfer control at some point in the near future, in 1980 the Crown reduced the board members’ terms from seven to three years, without any apparent discussion with Muaūpoko.

Into the 1970s and 1980s Muaūpoko joined with other Māori around the country in being much more assertive about proclaiming their rights and protesting their losses. The lake trustees’ determination to shoot over the lake in 1973 and again in 1980 needs to be seen in this context. Members of Muaūpoko also fought successful Supreme Court battles in 1975 and 1978 over their fishing rights in the lake and Hōkio Stream. The court’s 1975 decision confirmed that the tribe’s exclusive and unique fishing rights in the lake and stream were not subject to fisheries regulations. The 1978 decision also clarified that, contrary to the Crown’s assertion that Muaūpoko did not hold exclusive fishing rights in the tidal reaches of the stream, these exclusive and unique rights extended across the foreshore and were not territorially limited by the 1956 Act. As seen in chapter 4, Muaūpoko had been asserting these rights before the 1956 Act and continued to do so after its passage.

In 1981 those interested in holding speedboat races on the lake obtained the agreement of the lake trustees and the domain board to hold a regatta in January 1982. The Muaupoko Maori committee was opposed to the idea, the trustees became uncertain, and the Māori members of the domain board also had clear second thoughts. Around 180 members of the tribe signed a petition against the idea. But Venn Young, the Minister of Lands – lobbied by the local MP and Levin’s mayor – agreed to approve a change to the domain by-laws that would enable the racing to go ahead. There was no investigation of the relationship of the petition signatories to the lake. Members of the tribe protested at the races and seven were arrested.

The entire episode brought tensions to the surface. In February 1982 – in a continuation of the activism seen over shooting, fishing rights, and the speedboat racing – the trustees wrote a letter to the new Minister of Lands, Jonathan Elworthy, asking that he dissolve the board and return control of the lake waters to them. The Muaūpoko domain board representatives quit the domain board soon thereafter by reading this letter aloud and walking out of its meeting. The walkout demonstrated a new uncompromising attitude on the part of the trustees to achieving nothing less than full control – perhaps the mana Muaūpoko had been promised in 1905 – over the lake. They clearly did not believe that this could be delivered by holding a simple majority of seats on the domain board. As the chair of the trustees put it, if one Muaūpoko member went against the wishes of the others ‘we’ve lost our control’.

What followed, over the next six years, was a drawn-out process of the Crown over-promising and under-delivering over a settlement of Muaūpoko’s concerns. At first Elworthy made the relatively circumscribed, but perhaps somewhat courageous, decision that the trustees should indeed control the surface of the lake. However, he was pressured to retract this offer by the local bodies, the local MP, and the local press. He eventually did so after some members of Muaūpoko joined those calling for the domain board to be retained and the Maori Land Court criticised the performance of the trustees. Instead, he undertook to amend the 1956 Act so that the trustees would nominate board members, consent to any by-law changes before their approval by the Minister, and give consent to works carried out by the Manawatu Catchment Board.

Years passed, however, and no legislative amendment was ever made. Eventually, in 1988, four lake trustees were simply appointed as board members under the existing legislation. This showed that there had been no need to amend the legislation in order to return Muaūpoko membership to the board. The board had thus operated for several years without Māori representation quite unnecessarily.

During these years there were also negotiations between the Crown and the trustees over a possible lease to the Crown of the lakebed. The lease was the trustees’ suggestion: they appear to have hoped that the Crown would take on the responsibility of restoring the lake while also paying Muaūpoko monetary compensation for their losses. The idea of lease appealed to the Crown, which hoped to resolve the issue of an irregular lease of a 32-perch section of dewatered area and lakebed to the boating club in 1961 and ensure lake users could walk over the bed without trespassing on trust property. But officials, particularly Wayne

Devine, were adamant that the Crown would be much too generous to Muaūpoko to enter a lease on the terms calculated via a government valuation of the bed. Eventually the Crown let the matter lapse.

Devine warned the Crown against ‘unmerited generosity’ towards the lake trustees. But arguably it was the trustees who were being generous. They wanted the Crown and local authorities to restore the lake and were prepared to lease the bed to achieve that. Such an alienation may well have been unpalatable for many within the tribe. In return, they wanted compensation for the significant grievances Muaūpoko had suffered over the lake. In essence, they wanted a treaty settlement. But in this the trustees’ thinking was two decades ahead of the Crown’s. The Land Department preferred to play tough, and regarded other lake issues – such as the pollution described in chapter 5 – as none of its concern.

7. Restoration amid dispute, 1988-2000

Introduction

Chapter 5 described the pollution of the lake from 1952 to 1987, the span of time during which Levin's sewage effluent was deliberately put into the lake by the borough council. Chapter 6 covered the control and management of the lake from 1964 to 1988, a period in which both Muaūpoko discontent about that pollution as well as the tribe's desire to assert authority over the lake culminated in the non-participation by Muaūpoko in the domain board for six years. This chapter picks up where chapters 5 and 6 left off, and describes the final dozen years of the twentieth century, bringing the report's coverage up to its end point of the year 2000.

The year 1988 was potentially a key moment in the lake's twentieth-century history – a turning point, as 1956 had been. The effluent was no longer being pumped to the lake and Muaūpoko (or more specifically the lake trustees) returned to the domain board. Restoration of the lake could begin in earnest. Now, perhaps, too, the tribe could at last capitalise on the numerical majority its members on the board had over the representatives of the local bodies. But on matters of administration and control the Muaūpoko members won few battles beyond effectively forcing the Crown to maintain its involvement with the reserve and board. One factor working against the trustees was their own internal divisions, although Muaūpoko were united in their anger over the continued entry of effluent to the lake in periods of exceptionally wet weather, particularly in 1998. The only notable achievement in the lake's restoration was the trustees-led replanting programme, in which the Crown and local bodies acted in a supporting role.

This chapter addresses questions 2(b), 2(c), and 2(d) of the research commission concerning: Muaūpoko's engagement with and participation in the domain board; the relationship between the lake trustees, the domain board, and the Crown; the measures the Crown and local authorities took to extend their control over the lake and its surrounds; the Crown's oversight of the various powers it delegated; the extent to which the Crown or delegated local bodies took account of Muaūpoko interests, consulted them, or sought their consent; the discharge of unfiltered stormwater (and emergency discharge of sewage) into the lake; and the nature and extent of any Muaūpoko opposition.

The question of the ownership of the lake waters

The newly constituted domain board met for the first time on 31 August 1988. At the meeting Tatana claimed that Justice Cooke's 1975 Supreme Court decision in *Regional Fisheries Officer v Tukapua* had confirmed Muaūpoko ownership of the lake's waters. Board chairman

Colin Hosking remarked that ‘The ownership of the lake waters will need to be clarified. We will initiate a Crown ruling and hopefully have some response by our next meeting.’¹⁵⁷⁸

Image 7.1: The first meeting of the domain board with Muaūpoko representation since April 1982, 31 August 1988¹⁵⁷⁹



This was by no means the first time that ownership of the lake’s water had been considered by Crown officials. In September 1981, for example, Wayne Devine – then Executive Officer (Land Management) in the Lands Department in Wellington – prepared a history of the domain board. In this he stated that the water in the lake was deemed by the common law to be owned by the Crown but subject to use rights under section 21 of the Water and Soil Conservation Act 1967.¹⁵⁸⁰ In December 1982, however, when the Crown and lake trustees were effectively in negotiations over control of the lake surface, Devine told the Commissioner of Crown Lands that

It has come to my attention that in *Johnston versus O’Neill* (1911) AC 553 in the course of several wordy judgements the following propositions were stated with authority:

- a the Crown is not of common right entitled to the soil or waters of an inland, non-tidal Lake;
- b no right can exist in the public to fish in the waters of an inland, non-tidal Lake.

Lake Waikaremoana is such a Lake.

¹⁵⁷⁸ Minutes of meeting of Horowhenua Lake Domain Board, 31 August 1988. Archives New Zealand file AANS W5883 25344 Box 116 NYA003154 part 2

¹⁵⁷⁹ ‘Domain Board agrees lake is privately owned’, *Chronicle*, 1 September 1988, p 1. Clipping on Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁵⁸⁰ W T Devine, ‘Origins and Role of the Horowhenua Lake Reserve Board’, September 1981. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

Would you please let me have the District Solicitor's further comments. This is a fairly important issue in the Maori bargaining position both over control of the Lake for recreation purposes and rights for other water uses.¹⁵⁸¹

The district solicitor responded the following year. His opinion was that Devine's citing of the English common law was redundant, as the Water and Soil Conservation Act had 'overlaid common law concepts' and 'vested almost all rights in respect of natural water in the Crown'. Subsection 18(5) of the Reserves and Other Lands Disposal Act 1956 was 'structured on the basis of Crown ownership of the waters'. The lake surface was declared to be a domain and under section 43 of the Reserves and Domains Act 1953 all domains were declared to be the property of the Crown. The district solicitor concluded that

I am quite sure that if there had been any other prevailing view of the ownership of the lake's waters S 18 R and O L D Act 1956 would not be in the form it is. In other words subs 5 was not a 'land grab' but a further dealing with a Crown asset.¹⁵⁸²

In 1988, however, the Muaūpoko domain board members were not prepared to accept such an interpretation. On 7 September 1988, therefore, board secretary Julia Brady wrote to Dave Jane, the principal Conservation Officer in the Department of Conservation's Whanganui regional office and explained the claim the trustees had made about ownership of the lake's waters. She asked if Jane could initiate a Crown Law opinion on the issue. She noted that section 18(2) of the Reserves and Other Lands Disposal Act 1956 stated that 'the said lake, islands, dewatered area, and strip of land are hereby vested in the trustees', while subsection 5 stated that 'the surface waters of the lake ... are hereby declared to be a public domain'.¹⁵⁸³ A reply was sent on 16 September by the regional Manager, Jeff Connell, who considered that

The expense incurred in obtaining a Crown Law Office opinion is not justified. I consider the matter to be clear cut; the Act is definite on the 'ownership' issue and cannot be over-ruled by Court decision.¹⁵⁸⁴

According to Connell,

New Zealand law does not apply ownership to molecules of water in a large lake. The lake bed is owned by the Trustees, the Maori people have exclusive fishing rights and the public have reasonable rights of recreation on the lake. All of these things are guaranteed by statute.

¹⁵⁸¹ Devine for Director-General of Lands to Commissioner of Crown Lands, 22 December 1982. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

¹⁵⁸² A W Leslie, for Commissioner of Crown Lands, to Director-General of Lands, 14 April 1983. Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 3

¹⁵⁸³ Julia Brady for Chairman, Horowhenua Lake Domain Board, to Dave Jane, Wanganui Regional Office, 7 September 1988. Department of Conservation head office file G04 104

¹⁵⁸⁴ J Connell, Manager, Regional Manager, to District Conservator, Raukawa, 16 September 1988. Department of Conservation head office file G04 104

The abstractive or destructive use of water is controlled by the Water and Soil Conservation Act 1967.¹⁵⁸⁵

At the next meeting of the domain board, on 3 October 1988, board chairman Colin Hosking read out Connell's response. Tatana disagreed with it, and remained adamant that the Cooke and O'Regan Supreme Court decisions had clearly stated that the lake's waters were owned by Māori. She warned that

the whole episode is just riding rough shod over the Maori again and this will lead to the same outcome as in 1982, when the Trustees walked off the board.¹⁵⁸⁶

The board resolved to ask the Crown Law Office 'Who owns Lake Horowhenua?'¹⁵⁸⁷

Brady wrote again to Connell on 27 October. She explained that this resolution had been the only thing that had prevented the Muaūpoko domain board members walking out.¹⁵⁸⁸ Jane replied asking Brady who was going to pay for the opinion.¹⁵⁸⁹ In response, Hosking set out the potential disintegration of the board if the department did not pay for it. As he put it:

We have a fundamental problem with the Maori members of this Board. This is, that the Maori members claim ownership to the lake (not just the bed, but the waters also), while other Board members claim this is not the case. As you will see from the minutes of the last Board meeting, a considerable amount of the meeting time is taken in discussion of this matter.

There are in our opinion, some slight flaws in the legislation where it could be interpreted as having the lake and its waters, Maori owned. All the Board agree that it is unclear and needs a Crown Law Office opinion/ruling. We only just averted a walkout by Maori Board members at the last meeting over the issue.

What it boils down to, is how much the Department wants to keep this Board together and operational. This matter will not only split the Board if not resolved, but will almost definitely mean we lose the Maori members again.

The Board has no funds, to speak of. Small amounts are granted by the Local Authorities but this is for the operations of the domain only.

D.O.C. would have to pay. We are doing our best to keep this board operational in a constructive way.

As I see it, we need some help from Central Legal. If the Department doesn't think this is appropriate, or important enough – so be it.

¹⁵⁸⁵ J Connell, Manager, Regional Manager, to District Conservator, Raukawa, 16 September 1988. Department of Conservation head office file G04 104

¹⁵⁸⁶ Minutes of meeting of Horowhenua Lake Domain Board, 3 October 1988. Archives New Zealand file AANS W5883 25344 Box 116 NYA003154 part 2

¹⁵⁸⁷ Minutes of meeting of Horowhenua Lake Domain Board, 3 October 1988. Archives New Zealand file AANS W5883 25344 Box 116 NYA003154 part 2

¹⁵⁸⁸ Brady for District Conservator, to Regional Manager, Wanganui Regional Office, 27 October 1988. Department of Conservation head office file G04 104

¹⁵⁸⁹ Jane to Brady, 1 November 1988. Department of Conservation head office file G04 104

I know that this board has placed D.O.C. in a difficult position, but we intend to give it our best shot until legislative changes are made.¹⁵⁹⁰ [Emphasis in original.]

Hosking wondered if perhaps the reserve status over the lake should be revoked. In any case, he felt that the department might ‘need to take a radical approach over Lake Horowhenua and The Domain Board, or we will continue to be saddled with the ongoing problems which Lands and Survey had’.¹⁵⁹¹

The domain board met again on 5 December 1988. According to the minutes, the members ‘voiced their extreme disappointment’ that the department might not meet ‘the costs involved in clarifying such a fundamental issue as lake ownership’. Hosking noted that the Minister of Conservation was contemplating a review of the legislation governing the lake ‘as a move to have Central Government’s input removed’. He suggested that any such review could look at all aspects of the legislation. Board members agreed, though, that a review or legal opinion ‘may not resolve the conflict’.¹⁵⁹²

On 7 February 1989 Jane wrote to the department’s head office legal team formally requesting a Crown Law opinion on the proposition ‘That the waters of Lake Horowhenua are legally owned by members of the Muaupoko Tribe and administered by the lake Horowhenua Trustees.’ He noted that the 1956 Act was ambiguous about ownership of the water, but was clear that Māori owned the bed and had rights to fish and the public could use the surface waters.¹⁵⁹³ On 4 April 1989 the office solicitor, T K Mansfield, wrote to the Solicitor-General requesting an opinion on three specific questions:

1. Are the waters of Lake Horowhenua legally owned by members of the Muaupoko Tribe and if not, by whom are they owned?
2. Who has responsibility for administering the waters in the Lake?
3. Is section 18 of the Reserves and Other Lands Disposal Act 1956 subject to the Water and Soil Conservation Act 1867 and to the Reserves Act 1977?¹⁵⁹⁴

Mansfield noted that subsection 18(2) of the 1956 Act declared the ‘lake’ to be vested in the lake trustees, but added that ‘Presumably it was not intended by the use of that phrasing in the subsection to vest the lake in the trustees but simply to vest the bed of the lake’.¹⁵⁹⁵

¹⁵⁹⁰ Hosking to Jane, 10 November 1988. Department of Conservation head office file G04 104

¹⁵⁹¹ Hosking to Jane, 10 November 1988. Department of Conservation head office file G04 104

¹⁵⁹² Minutes of meeting of Horowhenua Lake Domain Board, 5 December 1988. Archives New Zealand file AANS W5883 25344 Box 116 NYA003154 part 2

¹⁵⁹³ Dave Jane, Principal Conservation Officer, to Central Office/Legal Section, 7 February 1989. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

¹⁵⁹⁴ T K Mansfield, for Director-General of Conservation to Solicitor-General, 4 April 1989. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

¹⁵⁹⁵ T K Mansfield, for Director-General of Conservation to Solicitor-General, 4 April 1989. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

At the domain board's 1 May 1989 meeting the Muaūpoko members were sceptical as to the value of a Crown Law opinion. They referred, for example, to Prenderville's opinion of 1934 which had soon been found to be incorrect (see chapter 2). Since they were certain that the lake waters were vested in the trustees, they favoured the matter being put directly before the High Court for a declaratory judgment. A motion was put to this effect and carried by four votes to three, with Hosking abstaining.¹⁵⁹⁶ Mayor Sonny Sciascia told his councillors that he and the two other local body representatives were 'particularly concerned' at this development and hoped to meet with the Ministers of Conservation and Maori Affairs 'to bring some sanity to the future responsibilities of the Domain Board and Lake Horowhenua generally'.¹⁵⁹⁷ He obtained an opinion from the borough solicitor, P J R Comber, who concluded that 'there is no benefit to the Domain Board in litigation to establish the ownership of the waters' and, therefore, 'that is not a proper use of Domain Board funds'.¹⁵⁹⁸ At the board's subsequent meeting, however, Hosking advised that the board would have to seek the judicial review itself rather than through the department, no doubt with attendant costs. The members thus agreed to await the Crown Law Office opinion.¹⁵⁹⁹

The opinion was prepared by Shonagh Kenderdine. She regarded the use of the term 'lake' in subsection 18(2) as of passing interest only. In her opinion, nothing 'turns on this point – the references in the latter part of the subsection [are] to the first part and just expressed in a shortened form'. More significantly, in her view, the declaration of the surface waters as a public domain in the 1956 Act 'places boundaries on what would then have been common law rights to water and Maori customary title'. In other words, it 'cuts across the full incidents of ownership envisaged by Muaupoko's title to the lake bed'. She explained that

Given that ... Section 2 of the Horowhenua Lake Act 1905 declared the lake to be a recreation reserve (all 951 acres) and therefore passing to Crown ownership as a public domain and given that the same 951 acres under Section 18 (2) [of the 1956 Act] specifically vests that land in Maori ownership, it is hard to escape the conclusion that the legislation was designed to take away the ownership to the lake once it had granted it back again. This is reinforced by the second proviso to Section 18 (5) that the declaration of the surface waters as a public domain is not to affect Maori title to the bed of the lake. Further the Maori owners have at all times and from time to time, free and unrestricted use. It is a greater right than the public's which is restricted by the grounds of reasonableness.

The emphasis in the legislation is for control by the Domains [sic] Board and use by the public.¹⁶⁰⁰ [Emphasis in original.]

¹⁵⁹⁶ Minutes of meeting of Horowhenua Lake Domain Board, 1 May 1989. Archives New Zealand file AANS W5883 25344 Box 116 NYA003154 part 2

¹⁵⁹⁷ H N Sciascia to all councillors, May 1989. Archives Central file HDC 00009: 22: 6/8 1970-1974

¹⁵⁹⁸ 'Opinion for Levin Borough Council: obligations relating to Lake Domain Board', by P J R Comber, 8 May 1989. Archives Central file HDC 00009: 22: 6/8 1970-1974

¹⁵⁹⁹ Minutes of meeting of Horowhenua Lake Domain Board, 3 July 1989. Archives New Zealand file AANS W5883 25344 Box 116 NYA003154 part 2

¹⁶⁰⁰ S E Kenderdine, Crown Counsel, to Director-General of Conservation, 13 July 1989. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

Kenderdine noted that the Reserves and Domains Act 1953 had declared any lands forming part of a public domain to be the property of the Crown. However, it did not mention waters. Section 18(5) of the 1956 Act got round this by beginning ‘Notwithstanding anything to the contrary in any Act or rule of law ...’. Kenderdine therefore found it ‘equally hard to escape the conclusion that the legislature, in an effort to control the public’s rights to use the lake deliberately allowed Crown ownership of the surface waters in what can only be said to be a most unusual piece of legislative manoeuvring’.¹⁶⁰¹

In conclusion Kenderdine proposed that ‘it would be much more profitable to steer this matter away from “ownership” questions and to look at it from the way Maori held rights to their lands’. Subsection 18(5), she reasoned,

affirms the Tribe as Tangata whenua and overall affirms their manawhenua to the lake (power, influence, prestige, control, authority). Their rangatiratanga to the lake is more important than who ‘owns’ the surface waters.¹⁶⁰²

Muaūpoko also had unrestricted use of the lake, including fishing rights. This, she said, was ‘in keeping with title and manawhenua’. On the other hand, the public had rights to use the lake and

The reasonable exercise by the public of its rights demonstrates the reciprocal duties involved in the grant by the tribe of use rights to the lake.¹⁶⁰³

She further considered that the domain board ‘with its representatives of the Tribe is an acknowledgement by both Crown and Tribe that to accommodate the public’s use rights, the lake should be appropriately managed’. In sum, she felt that taking the debate ‘away from ownership’ in this way should lessen the chances of legal action.¹⁶⁰⁴

The domain board members considered Kenderdine’s opinion at their meeting on 4 September 1989. They do not seem to have regarded it as helpful, being in general agreement that ‘the opinion provided little actual legal interpretation’ and that the board still needed ‘a definite decision on the water ownership’. Jeff Law and Sciascia moved that Kenderdine be invited to meet the board and speak to her opinion in person but were voted down by the four Muaūpoko members. The latter reasoned that they in turn would need to have legal representation present, but the trustees had no funds for this.¹⁶⁰⁵

¹⁶⁰¹ S E Kenderdine, Crown Counsel, to Director-General of Conservation, 13 July 1989. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

¹⁶⁰² S E Kenderdine, Crown Counsel, to Director-General of Conservation, 13 July 1989. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

¹⁶⁰³ S E Kenderdine, Crown Counsel, to Director-General of Conservation, 13 July 1989. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

¹⁶⁰⁴ S E Kenderdine, Crown Counsel, to Director-General of Conservation, 13 July 1989. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

¹⁶⁰⁵ Minutes of meeting of Horowhenua Lake Domain Board, 4 September 1989. Archives New Zealand file AANS W5883 25344 Box 116 NYA003154 part 2

It is not clear if the issue of ownership of the lake's waters was raised again. The Crown Law opinion evidently left the Muaūpoko members dissatisfied. Without either the domain board or the trustees having the financial resources to seek a judicial review, however, there was little more that they could do.

Reserve classification

Besides the ownership of the water, the Muaūpoko domain board members were also concerned at this time about a number of administrative issues. At the 31 August 1988 meeting, for example, Tatana expressed her opposition to the application to the domain of the Reserves Act 1977, explaining that it had been a factor that had caused the Muaūpoko members to quit the board in 1982.¹⁶⁰⁶ She expanded on her concern in a paper she wrote in July 1991 proposing amendments to the legislation governing the lake. As she put it:

What I see and fear is a drive to over-ride section 18 of the ROLD Act 1956 and govern with the Reserves Act 1977 which will bring the entire lake and its surrounds under the complete control of the Government.

General rules and regulations will apply and the Maori owners will no longer have their Mana.¹⁶⁰⁷ [Emphasis in original.]

At the 5 December 1988 meeting Tatana moved that the Ministers of Lands and Conservation be approached to have the 1981 gazettal of the domain as a reserve revoked before any further meetings of the board. Hosking suggested instead that the board present a draft bill updating the current legislation governing the lake. Tatana's motion was held over while the board considered the issue.¹⁶⁰⁸

In February 1989 Brady wrote to Wanganui Regional Office on the subject. She explained the members' wish to have the gazettal revoked but considered that this would leave the reserve as 'unclassified Crown land'. What the members really wanted, she explained, was to lift the application of the Reserves Act 1977 to the domain and 'revert back to the [Reserves] and Other Lands Disposal Act'. She asked for advice on whether this would be legally possible.¹⁶⁰⁹ It is not clear what response was made on this matter. However, the department was unsympathetic to the Tatana's concerns. An analysis made of her July 1991 proposals for legislative amendments remarked that section 18 of the 1956 Act

¹⁶⁰⁶ Minutes of meeting of Horowhenua Lake Domain Board, 31 August 1988. Archives New Zealand file AANS W5883 25344 Box 116 NYA003154 part 2; 'Domain Board agrees lake is privately owned', *Chronicle*, 1 September 1988, p 1. Clipping on Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

¹⁶⁰⁷ Tatana to chairman and members of the domain board, 2 July 1991. Archives New Zealand file AANS W5883 25344 Box 116 NYA003194

¹⁶⁰⁸ Minutes of meeting of Horowhenua Lake Domain Board, 5 December 1988. Archives New Zealand file AANS W5883 25344 Box 116 NYA003154 part 2

¹⁶⁰⁹ J Brady, Secretary, Horowhenua Lake Domain Board, to Regional Manager, Wanganui Regional Office, February 1989 (date of letter obscured but stamped as received on 16 February 1989). Department of Conservation head office file G04 104

is paramount and the Reserves Act 1977 provides in effect the mechanism to implement management objectives for the reserve. For example, there are no provisions in the 1956 ROLD Act for leasing of the reserve (the reserve is subject to several leases, all issued in terms of the prevailing reserves legislation); nor are there offence provisions in the ROLD Act. There are however, such provisions in the 1977 Reserves Act. For these reasons it is not accepted that the Horowhenua Lake Domain should be brought outside the provisions of the Reserves Act 1977.¹⁶¹⁰

After Kawaurukuroa Hanita-Paki questioned the relevance of the Reserves Act to the lake at the board's meeting of 23 January 1991,¹⁶¹¹ new board chairman David McKerchar wrote a letter to the lake trustees that made the same points.¹⁶¹²

There was one problem with the 1981 gazettal, however. At the board meeting in May 1989 the members identified that it had wrongly included Māori-owned land within the reserve boundary (as noted in chapter 6).¹⁶¹³ At an informal board meeting in December 1989, therefore, the members agreed that the *Gazette* notice should be revoked and the Muaūpoko Park section of the reserve reclassified.¹⁶¹⁴ An undated document prepared by Department of Conservation officials noted that the chain strip and dewatered area had 'evidently' been included in the notice 'in error', and that a recommendation would be put to the Minister that the notice be revoked and a new reclassification gazetted.¹⁶¹⁵ It is not clear when and if this took place.

Local government changes

On 14 November 1989 the secretary of the trustees, Terry Hanita-Paki, told the Minister of Lands (now Peter Tapsell) that the 1956 Act would need amending if the new Horowhenua District Council were to provide three members for the domain board. Nor did the trustees recognise the transfer of responsibility from the Minister of Lands to the Minister of Conservation.¹⁶¹⁶ The Regional Conservator's view on the matter of local body representation was that 'the Local Government (Manawatu-Wanganui Region) Reorganisation Order 1989 provides sufficient legal authority for the appointment of the Horowhenua District Council nominees to proceed', in that 'Horowhenua District Council' could be read in place of the

¹⁶¹⁰ 'Analysis of the proposed amendments to section 18 Reserves and Other Lands Disposal Act 1956, as proposed by Mrs Ada Tatana in a paper dated 2 July 1991'. Archives New Zealand file AANS W5883 25344 Box 115 NYA003148. The authorship of this document is unclear.

¹⁶¹¹ Minutes of meeting of Horowhenua Lake Domain Board, 23 January 1991. Archives New Zealand file AANS W5883 25344 Box 116 NYA003263 part 4

¹⁶¹² N D R McKerchar, Chairman, to Kawaurukuroa Hanita-Paki, 29 January 1991. Archives New Zealand file AANS W5883 25344 Box 115 NYA003149

¹⁶¹³ Minutes of meeting of Horowhenua Lake Domain Board, 1 May 1989. Archives New Zealand file AANS W5883 25344 Box 116 NYA003154 part 2

¹⁶¹⁴ Minutes of informal meeting of Horowhenua Lake Domain Board, 4 December 1989. Archives New Zealand file AANS W5883 25344 Box 116 NYA003154 part 2

¹⁶¹⁵ 'Revocation of classification of notice 1981/1920', no date. Archives New Zealand file AANS W5883 25344 Box 115 NYA003148

¹⁶¹⁶ Terry Hanita-Paki to Minister of Lands, 14 November 1989. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

names of the previous bodies. However, it was noted that Tatana and the other trustees were adamant that this could not occur, since the ‘contract’ between Muaūpoko and the Crown was ‘enshrined’ in the 1956 Act, and any changes had to be negotiated. Since the trustees had also disputed the validity of the classification under the Reserves Act, the Regional Conservator was reluctant to take the local authority appointments further ‘in the face of Muaupoko opposition’.¹⁶¹⁷

The department’s Legal Services Division was unsure as to whether the Local Government Reorganisation Orders of June 1989 remained in force and thus allowed the district council to nominate three members for appointment to the domain board. Despite being assured by the Department of Internal Affairs that this was the case,¹⁶¹⁸ the office solicitor sought an opinion from the Crown law Office. She asked three questions: were the orders still valid; were the trustees correct in arguing that the membership of the board could only be altered by an amendment to the 1956 Act; and whose role was it to recommend board appointments to the Minister?¹⁶¹⁹

An opinion was provided by J A L Oliver, Crown Counsel, on 29 August 1990. He confirmed that the orders remained valid, noting that the alternative was ‘simply too horrific to contemplate’ (as there would be ‘no system of local government in place’). He noted that the Department of Conservation was the solitary organisation to raise the concern. Oliver also considered the answer to the second question to be ‘no’. He explained that, if the total number of members changed, for example, this would require legislative amendment, but the changes occasioned by the local government reorganisation were not fundamental enough to require it. The district council was authorised by the Local Government (Manawatu-Wanganui Region) Reorganisation Order 1989 to exercise all the former powers of the borough and county councils. This included the power to appoint to the domain board.¹⁶²⁰ After being briefed by his officials, the new Minister of Conservation, Dennis Marshall, appointed the three district council nominees in December 1990.¹⁶²¹ They were Malcolm Guy, the mayor, and councillors Michael Munford and Anthony Ryder.

The trustees clearly regarded the 1956 legislation as a form of solemn compact that could not be changed without consent, even over minor matters of detail. The Crown may well not have thought to discuss the impact of the local government changes on the domain board with the trustees before they went ahead. The changes were compliant with government policy and a logical upshot of the local government reorganisation, yet apparently unexpected by the

¹⁶¹⁷ A Griffiths, for Regional Conservator, to Director-General of Conservation, 29 May 1990. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

¹⁶¹⁸ Tracy L Lamb, for Secretary for Internal Affairs, to Andrew Macpherson, Department of Conservation, 19 July 1990. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

¹⁶¹⁹ T K Mansfield, Office Solicitor, to Solicitor-General, 10 August 1990. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

¹⁶²⁰ J A L Oliver, Crown Counsel, to Director-General of Conservation, 29 August 1990. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

¹⁶²¹ Notice for inclusion in the *Gazette*, signed by the Minister on 17 December 1990. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

trustees. It is not clear, either, whether or not Muaūpoko had been consulted over the switch of responsibility from the Lands and Survey Department to the Department of Conservation.

Appointment of board members

At the 4 December 1989 meeting of the domain board the members all agreed that ‘section 18 of the Reserves and Other Land[s] Disposal Act needed to be amended to incorporate changes taking place in the board’s administration and management’. They resolved to discuss their proposals for legislative change the following year.¹⁶²² It seems that the principal proponent for change was Tatana. She continued to favour lake trustees being given the power to nominate the four Muaūpoko board members. She also thought that board appointees should have fixed three-year terms, that a defined term should be introduced for the lake trustees themselves, and that the lakebed and dewatered area should have their status changed from Māori to general land.¹⁶²³

No progress was made on any amendment in 1990. In March 1991 the Department of Survey and Land Information – which was compiling the annual Reserves and Other Lands Disposal Bill – noted that Parliamentary Counsel had, since 1987, been withholding the drafting of a clause dealing with the domain board ‘pending an agreement being reached over the method of appointment of the four Trustees’. It asked the Department of Conservation if an amendment was still being planned.¹⁶²⁴ The Director-General responded that there was still ‘a likely requirement’ for a legislative amendment, but ‘the exact nature of the changes is still uncertain’. He speculated that the clause may have to be deferred again.¹⁶²⁵

At the domain board’s meeting on 2 July 1991 Tatana tabled the specific wording changes she proposed for the legislation. Notable among her suggestions were the deletion of reference in subsections 18(2) and (3) to the trustees being specifically those appointed in 1951; the vesting of Muaūpoko Park in the district council (see below for the genesis of this suggestion); the deletion of reference to the Reserves and Domains Act 1953 (and thereby, in effect, also the Reserves Act 1977); and the provision for the domain board (and not the Minister) to appoint ‘Four trustee owners appointed at the recommendation of the owners’ and a further ‘Four persons at the recommendation of the Horowhenua District Council’. The chair would be selected by the board from within the eight members. Tatana also proposed that the board would ‘appoint on the recommendation of the owners, replacement trustees (for a specified term)’. She also favoured a lengthy addition to the preamble that drew from

¹⁶²² Minutes of informal meeting of Horowhenua Lake Domain Board, 4 December 1989. Archives New Zealand file AANS W5883 25344 Box 116 NYA003154 part 2

¹⁶²³ ‘Lake Horowhenua: Issues arising from discussion with Ada and Alec Tatana on 11 September 1990’. Summary by Adrian Griffiths. Archives New Zealand file AANS W5883 25344 Box 115 NYA003149

¹⁶²⁴ A N H Chinn for Director-General/Surveyor-General, Department of Survey and Land Information, to Director-General, Department of Conservation, 13 March 1991. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

¹⁶²⁵ G J Goodwin for Director-General of Conservation to Director-General, Department of Survey and Land Information, no date. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

the wording of the Cooke and O'Regan Supreme Court decisions.¹⁶²⁶ The board resolved to consider Tatana's proposals and refer them in the meantime to the lake trustees, the district council, and the Department of Conservation.¹⁶²⁷

On 12 August 1991 the secretary of the Hōkio A Trust – 'the biggest land Trust from the tribe of Muaupoko', representing 'every owner of the lake Horowhenua' – wrote expressing support for Tatana's suggestions.¹⁶²⁸ However, Kawaurukuroa Hanita-Paki – the chair of the lake trustees as well as a board member, and absent from the 2 July meeting – told the board secretary that, at their meeting on 31 August,

the trustees resolved ... to tell you that the trustees as the legal owners of the Horowhenua Lake and Hokio Stream will oppose any legislative changes in respect of the lake or stream proposed without the full consideration and approval of the trustees. They have little confidence in changes suggested by Mrs Ada Tatana and resent also what seems to be the Conservation Department's promotion of such changes without proper consultation with the trustees.¹⁶²⁹

Hanita-Paki followed this letter up with another to the Minister of Conservation in which he stated that the lake trustees on the domain board were 'there in their capacity as representatives for Mua-Upoko'. He added that, if 'any [legislative] changes are envisaged a separate formal approach needs to be made to the lake trustees as the legal owners of the lake and stream'.¹⁶³⁰ He was assured by both the Minister and the secretary of the domain board that the trustees would be fully consulted before any changes were made.¹⁶³¹

Hanita-Paki's reaction was discussed by the board at its 2 September 1991 meeting (Hanita-Paki himself again being absent). Tatana and Ranginui disputed that he had correctly described the reaction of the trustees at their 31 August meeting. It was noted also that the trustees had made no submissions on any changes needed to the legislation.¹⁶³² In May 1992 the board's secretary advised the Regional Conservator that Tatana's were the only suggested

¹⁶²⁶ Submission of Ada Tatana to the 2 July 1991 meeting of the Horowhenua Lake Domain Board. Archives New Zealand file AANS W5883 25344 Box 116 NYA003194

¹⁶²⁷ Minutes of meeting of Horowhenua Lake Domain Board, 2 July 1991. Archives New Zealand file AANS W5883 25344 Box 116 NYA003263 part 4

¹⁶²⁸ Vanessa Paul, Secretary, Hokio A Trust, to Malcolm Guy, Horowhenua Lake Domain Board, 12 August 1991. Archives New Zealand file AANS W5883 25344 Box 116 NYA003263 part 4

¹⁶²⁹ K H Paki, Chairman, to Secretary, Horowhenua Lake Domain Board, 2 September 1991. Archives New Zealand file AANS W5883 25344 Box 116 NYA003263 part 4. The letter was signed on Hanita-Paki's behalf by Matt McMillan.

¹⁶³⁰ K H Paki, Chairman, to Minister of Conservation, 9 September 1991. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

¹⁶³¹ Minister of Conservation to K H Paki, Chairman, Horowhenua Lake Trustees, 25 October 1991. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1; Judy Robinson, Secretary, Horowhenua lake Domain Board, to K H Paki, Chairman, Horowhenua Lake Trustees, 2 September 1991. Archives New Zealand file AANS W5883 25344 Box 116 NYA003194

¹⁶³² Minutes of meeting of Horowhenua Lake Domain Board, 2 September 1991. Archives New Zealand file AANS W5883 25344 Box 116 NYA003263 part 4

changes. He asked the Department of Conservation to make ‘a positive response in order that this can be further considered by the Board’.¹⁶³³

In June 1992 G P Hulbert, the Department of Conservation’s regional solicitor, Hawke’s Bay, gave the domain board secretary detailed comments on Tatana’s proposals. He disagreed with the suggestion to delete the date of appointment of the trustees, ‘as that was how the Trustees were in fact appointed’, and provisions existed under the Maori Affairs Act 1953 for the appointment or removal of trustees. He also stressed the importance of maintaining a reference to the overarching reserves legislation, which allowed for leasing among other matters. With regard to Tatana’s proposed methods of board appointments, he did ‘not think that the Board should appoint itself’. He saw no reason why the trustees should not be appointed for fixed terms instead of for life, but foresaw ‘enormous practical difficulties in following that through’, as each new appointment would necessitate ‘a fresh vesting order of the property in the Trustees’. He also thought it might cause affront to the trustees by implying that ‘others think that they are incapable of preserving the mana of the land’.¹⁶³⁴

In short, the only one of Tatana’s proposed changes that the Department of Conservation accepted was the vesting of Muaūpoko Park in the district council. At this stage, therefore, Tatana (and to some extent the other Muaūpoko members of the board and/or the trustees), had been rebuffed over their concerns about the application of the Reserves Act, the appointment to the board of members of the district council, the transfer of responsibility from the Minister of Lands to the Minister of Conservation, and the method of Muaūpoko board member appointments. The trustees – and Tatana in particular – had of course also been unsuccessful in pursuing a claim to ownership of the lake’s waters. At every turn officials or Ministers could point to legal provisions or opinions that backed the Crown’s position. While the Crown was generally on firm ground in terms of the law, it should have done more to communicate adequately with Muaūpoko about the administrative changes that occurred.

As in the 1980s, no amendment was made to the 1956 Act before the next set of Muaūpoko board appointments were made. In October 1992, in response to calls from the beneficial owners for the trustees to be more broadly representative, the Māori Land Court appointed 11 new trustees to bring the total up to 17.¹⁶³⁵ Judge Melville Smith’s strong recommendation that the number of trustees be kept as low as possible was thereby rejected. Given this markedly changed composition of the trustees, it was decided to hold a meeting to elect new domain board representatives. This took place at Kawiu Marae on 12 December 1992 and was advertised as being for all members of the tribe. At it, the new trustees’ chairman Matt McMillan explained that the trustees had already met among themselves and had four names

¹⁶³³ D C Cole, Secretary, Horowhenua Lake Domain Board, to Regional Conservator, 12 May 1992. Archives New Zealand file AANS W5883 25344 Box 115 NYA003148

¹⁶³⁴ G P Hulbert, Regional Solicitor, Hawke’s Bay, to Regional Conservator, Wellington, 22 June 1992. Archives New Zealand file AANS W5883 25344 Box 116 NYA003265

¹⁶³⁵ M J McMillan, Chairman, Lake Horowhenua Trustees, to Minister of Conservation, 11 November 1992. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

to nominate. One of these four, Marokopa Wiremu-Matakatea, told the hui – in response to a call by Derek Timu for the nominees to be beneficial owners only – ‘that the new Trustees wanted to project a new image and old-style objections should not be tolerated’. The other three nominees were Shody Warren-Kerehi (that is, an existing board member), Bill Taueki, and Tom Waho. A motion that their names be forwarded to the Minister of Conservation for appointment was carried.¹⁶³⁶ McMillan told Marshall that the trustees had agreed, at their subsequent meeting, that the trustees should be appointed to the board for terms of three years only.¹⁶³⁷

Thompson Tukapua, the chairman of Te Rūnanga ki Muaūpoko, wrote to Marshall expressing support for the nominees as well as the actions of the trustees in calling the hui.¹⁶³⁸ Josephine Hanita-Paki, however, strongly disputed the propriety of the trustees’ process. She claimed few owners had been present and that most beneficial owners would not attend hui at Kawiu Marae, which she called ‘Tukapua Marae’ in reference to Matt McMillan’s whānau.¹⁶³⁹ Of the deposed members, Mirita Ranginui asked Marshall if she could remain on the board as a kaumātua member,¹⁶⁴⁰ while Tatana doubted that the Minister ‘had the power under legislation to remove domain board members unless there was some reason such as criminal behaviour’.¹⁶⁴¹

The Department of Conservation proceeded cautiously. Staff ascertained that 36 people had attended the hui,¹⁶⁴² and – presumably because of the allegations being made about certain individuals – Hulbert advised on the potential revocation of board member appointments.¹⁶⁴³ John Holloway – the Director, Estate Protection – briefed Marshall on the decision he now faced:

You have received five ministerials principally concerning Mua-Upoko tribal representation on the Horowhenua lake Domain Board. The deeply entrenched factions within Mua-Upoko have frequently surfaced within the domain board forum and made the administration of the

¹⁶³⁶ Minutes of the 12 December 1992 Kawiu Marae hui, signed by Matt McMillan (trustees chairman) and Brian Rose (secretary) on 19 December 1992. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1. See also ‘Three names forwarded for board’, *Chronicle*, 14 December 1992. Clipping on Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

¹⁶³⁷ M J McMillan, Chairman, Lake Horowhenua Trustees, to Minister of Conservation, 18 January 1993. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

¹⁶³⁸ Tamihana Tukapua to Minister of Conservation, 14 January 1993. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

¹⁶³⁹ Josephine Hanita-Paki to Minister of Conservation, 30 November 1992. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

¹⁶⁴⁰ Mirita Ranginui to Minister of Conservation, 15 December 1992. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1. The Minister politely declined her request. Minister of Conservation to Mirita Ranginui, 25 March 1993. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

¹⁶⁴¹ ‘Three names forwarded for board’, *Chronicle*, 14 December 1992. Clipping on Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

¹⁶⁴² Attendance list faxed by Sandra Williams, Te Rūnanga ki Muaūpoko, to Peter Hapeta, Kaupapa Atawhai manager, Wellington office, 26 February 1993. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

¹⁶⁴³ Geoff Hulbert, Napier office, to Richard Anderson, Wellington office, 12 January 1993. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

responsibilities of the board difficult. The representativeness of the members of the board was questioned, along with that of the Lake Horowhenua Trustees.¹⁶⁴⁴

Holloway explained, however, that the Kaupapa Atawhai (Department of Conservation iwi liaison) managers in both Wellington and Whanganui considered that the new nominees ‘fairly represent the will of the tribe’. Nonetheless,

it can be anticipated that the past ill-feeling which has been apparent on this issue is unlikely to be resolved by the new appointments and that at the conservancy level the department is likely to receive continuing representations about the membership of the board. The department considers, however, that, taking the recommendation from the hui as the basis for legitimate tribal authority, it is now appropriate to move towards formalising the new appointments.¹⁶⁴⁵

Marshall accordingly wrote on 25 March 1993 informing McMillan, Ranginui, Tatana, and Josephine Hanita-Paki of his decision to appoint the trustees’ nominees.¹⁶⁴⁶ The department issued a press release expressing the Regional Conservator’s pleasure at the implementation of ‘the wishes of the Muaupoko people expressed at recent hui’.¹⁶⁴⁷ Marshall signed the notice appointing the new board (including Barbara Hager in place of Ryder) for inclusion in the *Gazette* on 3 May 1993.¹⁶⁴⁸ That marked the end of Ada Tatana’s membership of the domain board – a five-year period in which she had sought to challenge many of the underlying assumptions the Crown relied on with regard to the lake, just as she had over matters such as walking on the lakebed before she became a board member. While largely unsuccessful, Tatana’s challenge from within the board over ownership of the lake’s waters did, at the very least, succeed in forcing the Department of Conservation to obtain a Crown Law opinion.

The new members’ terms expired on 31 October 1995, and at that point the lake trustees advertised a tribal hui to select new nominees. This took place at Kawiu Marae on 5 November 1995, with 43 members of Muaūpoko voting. Three of the existing members were re-elected but Bill Taueki polled fifth, thus losing his nomination to Te Aorere Cecilia Hurinui.¹⁶⁴⁹ The outcome was disputed by Vivienne Taueki, who claimed that the hui had been called for the descendants of the 81 owners of Horowhenua XI and was therefore ‘an exclusive gathering’. She asked Marshall to hold over making any appointments until a full

¹⁶⁴⁴ John Holloway, Director, Estate Protection, to Minister of Conservation, 23 March 1993. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

¹⁶⁴⁵ John Holloway, Director, Estate Protection, to Minister of Conservation, 23 March 1993. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

¹⁶⁴⁶ Copies of these letters are on Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1.

¹⁶⁴⁷ ‘Horowhenua Lake Domain Board reappointment’, press release, 16 April 1993. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

¹⁶⁴⁸ Notice for inclusion in the *Gazette*, signed by Minister of Conservation on 3 May 1993. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

¹⁶⁴⁹ Minutes, public notices, record of votes for each candidate, and attendance list for 5 November 1995 hui, forwarded to the Regional Conservator by J O Broughton, Secretary, Horowhenua Lake Trustees, 13 November 1995. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

meeting of the tribe had been held.¹⁶⁵⁰ Marshall refused on the basis that the advertisements for the hui had requested the attendance of all members of the tribe,¹⁶⁵¹ and on 23 January 1996 signed the notice (re-)appointing the members for inclusion in the *Gazette*.¹⁶⁵² Hurinui, Wiremu-Matakatea, and Waho were all reappointed in April 1999, with James Broughton replacing Warren-Kerehi.¹⁶⁵³ It is not known how the nominees were selected on that occasion.

The renewed Crown initiative to reduce or cease its involvement

If Tatana and the trustees were unable to press the Crown into making any concessions over the administration of the lake, they did have some bargaining power. That was because the Department of Conservation also had an issue it wanted to resolve. Like the Lands Department before it, its strong preference was to end its involvement with the domain board. If anything, it was even more committed to the idea. At the new board's first meeting, on 31 August 1988, Hosking explained that 'the intention of the Crown was to take the Central Government involvement out of these Committees and let the administrative and management responsibility be locally managed'.¹⁶⁵⁴ He raised the matter again at the meeting of 4 December 1989. The trustees were reported not to consider central government involvement in the board as necessary, but did regard central government as having a responsibility to pay for the lake's restoration. But Hosking said there was no money for that purpose, and that the department would 'only take on the management of reserve areas of national significance'.¹⁶⁵⁵

In January 1990 Brady noted that 'it had been intended to terminate DOC involvement with this Board later in the year but there are some issues to be resolved including an amendment to the legislation before this can happen'.¹⁶⁵⁶ A year later, in January 1991, the department produced a paper for consideration by the domain board members entitled 'Future Administration of the Lake Horowhenua Domain Board'. In it, the department explained that its problem was largely one of resourcing. It had been subjected to further restructuring since its inception and it was 'becoming more and more necessary' for it 'to rationalise its involvement in those matters which are more a matter of local or regional significance'. The department thus saw five options. The first was to maintain the current arrangements, although this 'would not be in keeping with Department's priorities and the Department

¹⁶⁵⁰ Vivienne Taueki to Minister of Conservation, 20 November 1995. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

¹⁶⁵¹ Minister of Conservation to Vivienne Taueki, 15 January 1996. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

¹⁶⁵² Notice for inclusion in the *Gazette*, signed by the Minister of Conservation on 23 January 1996. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

¹⁶⁵³ *NZ Gazette*, No. 45, 15 April 1999, p 1067

¹⁶⁵⁴ Minutes of meeting of Horowhenua Lake Domain Board, 31 August 1988. Archives New Zealand file AANS W5883 25344 Box 116 NYA003154 part 2

¹⁶⁵⁵ Minutes of meeting of Horowhenua Lake Domain Board, 4 December 1989. Archives New Zealand file AANS W5883 25344 Box 116 NYA003154 part 2

¹⁶⁵⁶ J Brady, Secretary, Horowhenua Lake Domain Board, to Director-General of Conservation, 25 January 1990. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

could give no committment [sic] to make the necessary resources available to Lake Horowhenua'. The second option was to dissolve the board and transfer administration to the district council. This in theory would mean that the local people, including Māori, would administer the lake through their council. However, the paper conceded that this would not 'provide for transparent Maori input in the same manner as the Domain Board set up under the ROLD [Reserves and Other Lands Disposal] Act 1956'. The paper did not say, but this option would presumably also end the Muaūpoko majority in the lake's governance arrangements.¹⁶⁵⁷

The third option identified was to disband the board and transfer the administration to the lake trustees. The drawback of this was seen as the lack of provision, conversely, for direct input from the district council. The fourth option was to retain the board in its current form but transfer the chairmanship and 'all associated servicing' from the department to the district council. This was seen as 'a logical progression from the day to day management which the Council has already assumed', and would bring the advantage of local knowledge and input. The paper argued that this would also comply 'with the spirit of the ROLD Act 1956 and the presence of a Crown representative (ie the Regional conservator) on the Board gives full effect to the Crown's agreement with the Maori owners'. The fifth and final option identified was for the board to be retained but with the Crown to vacate its role entirely, 'and all decision-making concerning the reserve would be undertaken by those most closely involved with the reserve at a local level and as a partnership between the two peoples of the area'. In conclusion, the paper recommended that the domain board members accept option four.¹⁶⁵⁸

The 'Future Administration' paper was considered by the domain board at its meeting on 23 January 1991 – its first meeting since December 1989. McKerchar explained that he favoured option four because local servicing would promote greater efficiency and there was also a 'general convention that Chairmanship of any such Board be with the agency that undertakes the servicing'. He therefore proposed that the mayor become the chairman. The meeting minutes record that the board members expressed disappointment that the lake was not considered of national significance, and 'indicated that some Crown involvement, through the continued presence of the Regional Conservator on the Board, was preferred, particularly so with regard to the reinstatement of the lake'. The trustees were also concerned about the potential impact on their title, and McKerchar undertook to write to them explaining the proposal in more detail. However, the board passed the following resolution:

That the Board recommends to the Horowhenua District Council and the Horowhenua Lake Trustees that Option 4 of the report be adopted ie. that subject to the necessary legislative changes, the Board Chairmanship [be] transferred to the Horowhenua District Council with the

¹⁶⁵⁷ 'Future administration of the Lake Horowhenua Domain Board', no date. Paper tabled by the Department of Conservation at the meeting of the board on 23 January 1991. Archives New Zealand file AANS W5883 25344 Box 116 NYA003263 part 4

¹⁶⁵⁸ 'Future administration of the Lake Horowhenua Domain Board', no date. Paper tabled by the Department of Conservation at the meeting of the board on 23 January 1991. Archives New Zealand file AANS W5883 25344 Box 116 NYA003263 part 4

Regional Conservator to be retained on the Board. Servicing of the Board to be transferred to the Horowhenua District Council.¹⁶⁵⁹

McKerchar wrote to the trustees on 29 January. He explained that, over the last decade, ‘endeavours have been made to rationalise Crown involvement in reserves administration to only those reserves (and national parks) of national significance’. The department had continued this policy, which had become ‘even more of an imperative since the department’s latest restructuring in 1989’. Lake Horowhenua was of local significance only, and so ‘it is felt that management and servicing of the Board would be more appropriately locally based’. He stressed that the Minister of Conservation would still administer the 1956 legislation governing the lake ‘and the Lake Trustees would still have recourse to the Minister should any issues arise in the future which require central government consideration’.¹⁶⁶⁰

Whereas the Crown had recommended option four to the domain board, which had an ongoing (albeit heavily reduced) role for the Crown in the running of the board, it seems likely that the Crown’s actual preference was option five. This seemed the closest match to what the department routinely described as Crown policy. It is likely that the department considered that proposing option five would be too provocative to the Muaūpoko members. The Crown’s involvement in the domain board was certainly regarded as something of an anomaly. Oliver had remarked in August 1990 in his Crown Law Office opinion on the local government changes that

given the widespread extent of local government reorganisation undertaken by the Local Government Commission, I am somewhat surprised that the Commission did not take some action to abolish the Lake Horowhenua Domain Board and absorb its functions into the Horowhenua District Council[.]¹⁶⁶¹

The matter was discussed again at the next board meeting, on 2 July 1991. Tatana, who had been absent from the January meeting, agreed to the proposal, but emphasised that the Muaūpoko members would need to remain in the majority on the board. She accepted ‘that there was presently a good working relationship with the local body representatives, but her responsibility was to ensure that future Maori interests were not eroded away’. McKerchar warned that ‘There had to be harmonious agreement in order to promote the legislation to transfer the Board Chairmanship’ and that ‘The Crown was unlikely to put funds into the reserve if bickering continued.’ It is not entirely clear whom this statement was aimed at, but it is likely to have been the Muaūpoko members. In any event, the board resolved that Mayor Guy be made deputy chairman and that ‘servicing of the Horowhenua Lake Domain Board be transferred to the Horowhenua District Council effective from 1 August 1993’. The board also resolved that an amendment to section 18 of the 1956 Act be sought to transfer the board

¹⁶⁵⁹ Minutes of meeting of Horowhenua Lake Domain Board, 23 January 1991. Archives New Zealand file AANS W5883 25344 Box 116 NYA003263 part 4

¹⁶⁶⁰ N D R McKerchar, Chairman, to Kawaurukuroa Hanita-Paki, 29 January 1991. Archives New Zealand file AANS W5883 25344 Box 115 NYA003149

¹⁶⁶¹ J A L Oliver, Crown Counsel, to Director-General of Conservation, 29 August 1990. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

chairmanship to the mayor of the district council, with the regional conservator remaining on the board as an ordinary member but with no voting rights.¹⁶⁶² On 21 October 1991 board secretary Judy Robinson sent the district council departmental files relating to the lake reserve as well as copies of recent correspondence.¹⁶⁶³

The new Muaūpoko board members appointed in 1993, however, saw matters somewhat differently. On 8 June 1993 Bill Taueki wrote to Marshall stating that they had requested a special meeting of the board to ‘return to the “status quo”’. He worried that the work being done on the lake’s restoration (see below) ‘could be undone if the ownership of the chainstrip [sic] be transferred to the District Council’. He asked the Minister

please! do not resign as the chairman of the Horowhenua Lake Domain Board.

We would like you to stay and lead the restoration of the Lake Horowheuna project.¹⁶⁶⁴

He attached a motion that would be put to the board at the forthcoming meeting, effectively undoing the resolutions of the board at its 2 July 1991 meeting and appointing Taueki himself as board secretary.¹⁶⁶⁵

Marshall replied on 5 July. He said that Taueki’s proposals would ‘no doubt’ be considered by the board at its meeting the following week. He pointed out that the Regional Conservator – and before him, the Commissioner of Crown Lands – had served as board chair, not the Minister. He added that he saw no problem with the chairmanship sitting with the district council, and noted that in fact the mayor had in recent years been passed the role of chair ‘in recognition of the fact that perhaps the most important factor in the progress of lake and board matters is the relationship between the district council and the Maori owners’.¹⁶⁶⁶ It is not known what discussion took place subsequently at the board meeting. However, the Muaūpoko members had the numbers to pass their motion, and may well have succeeded in forcing the Crown to abandon its plan to statutorily transfer the chairmanship from the delegate of the Director-General of Conservation to the mayor. In August 1994 the Regional Conservator, Allan Ross, remarked that ‘The Department and myself as Chair is to a large degree a mediator on the Board and a facilitator for the local parties (HDC and the iwi) to make progress’.¹⁶⁶⁷ This was perhaps belated recognition on the Crown’s part that its fulfilment of this role was as necessary in the 1990s as it had been in the 1950s, when it had been a sticking point for Muaūpoko in the negotiations that led to the passage of the 1956

¹⁶⁶² Minutes of meeting of Horowhenua Lake Domain Board, 2 July 1991. Archives New Zealand file AANS W5883 25344 Box 116 NYA003263 part 4

¹⁶⁶³ Judy Robinson, for Regional Conservator, to General Manager, Horowhenua District Council, 21 October 1991. Archives New Zealand file AANS W5883 25344 Box 116 NYA003263 part 4

¹⁶⁶⁴ W J Taueki to Minister of Conservation, 8 June 1993. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

¹⁶⁶⁵ ‘Notice of motion’, 8 June 1993. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

¹⁶⁶⁶ Minister of Conservation to W J Taueki, 5 July 1993 (first page of letter only on file). Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

¹⁶⁶⁷ Allan Ross, Regional Conservator, to Piri Sciascia, head office, 24 August 1994. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

Act. Essentially, the Crown remained saddled to the domain board despite its attempts to cease or at least greatly reduce its involvement.

Attempts at restoration of the lake

At its 23 January 1991 meeting, the domain board received a discussion paper about a potential conservation management strategy for the lake, authored by Department of Conservation staff member Richard Anderson. This noted the lake's importance for the weweia or dabchick population, the traditional fishery in the lake, the cultural importance of it to Muaūpoko, and the importance of its waters to recreational users. The paper noted that

Horowhenua as a natural resource has suffered considerably from human impacts. This has resulted in substantial diminution of the cultural and natural resource. It could be said that the health of the lake water and surrounding wetland is degrading to the point beyond recovery.¹⁶⁶⁸

The paper listed the current environmental problems, which included high levels of sediment (which the lake trustees had agreed in 1987 should be removed); farm run-off; the ongoing drainage of wetlands; the high oxidisation levels of the lake water, which had inhibited the natural predation of lake flies (which had in turn become a nuisance); the reduction in the water level and the lack of lake level fluctuation, which had exacerbated the sedimentation and pollution; the destruction of marginal vegetation and the entry of stock into the lake; and 'The poor recognition and insensitivity of cultural and spiritual values'.¹⁶⁶⁹

However, the paper stated that water quality could be improved 'by close cooperation between local, regional and central government, iwi and user groups'. Browsing animals should be fenced out of key sites as a first step, with the entire lake eventually fenced off. Drains from the town or rural lands should pass through wetlands before entering the lake. The lake level should be raised, or at least allowed to fluctuate, and vegetation should be planted around the shores. The paper recommended that 'a technical working group with representatives from Horowhenua District Council, Manawatu Wanganui Regional Council, Lake Trustees, Department of Conservation, Federated Farmers to be established to develop the conservation management strategy'.¹⁶⁷⁰

The domain board considered the paper's recommendations more fully at its meeting on 2 July 1991. It noted Anderson's advice that the owners and trustees had been consulted and

¹⁶⁶⁸ 'Horowhenua: A conservation strategy', no date. Archives New Zealand file AANS W5883 25344 Box 116 NYA003263 part 4

¹⁶⁶⁹ 'Horowhenua: A conservation strategy', no date. Archives New Zealand file AANS W5883 25344 Box 116 NYA003263 part 4

¹⁶⁷⁰ 'Horowhenua: A conservation strategy', no date. Archives New Zealand file AANS W5883 25344 Box 116 NYA003263 part 4

had given general approval to the restoration strategy, and resolved to establish an advisory (rather than ‘technical’) group to report back to the board.¹⁶⁷¹

In the meantime, however, the lake trustees had begun a restoration project of their own. With their backing, a visiting American Fulbright scholar based at Waikato University, Dean Cycon, obtained a \$40,000 grant from the Poutama Trust to carry out an environmental and economic study of the lake.¹⁶⁷² Cycon’s ensuing report – ‘Revitalising Lake Horowhenua – an environmental assessment and management strategy’ – proposed discing or harrowing the bed of the lake to break up the sediment, the theory being that this would increase ‘aerobic digestion’ of the sediment and its dispersal into the water would allow it to be flushed out of the lake.¹⁶⁷³ The Department of Conservation commissioned two scientists, Eddie White and Max Gibbs, to report on the likely impact of Cycon’s proposals. They concluded that the discing would have little impact on the oxygen levels in the sediment; that any sediment stirred up was unlikely to be flushed out of the lake unless directly near the weir; that the discing would ‘achieve very little in terms of phosphorus cleansing’; and that the planned discing might even ‘disrupt the denitrification capacity of the lake’.¹⁶⁷⁴

With the trustees’ approval, a trial of the discing went ahead around the lake outlet in June 1991, with a harrow being dragged across the lakebed. Neither the board nor department were informed. Anderson and Peter Hapeta, the Kaupapa Atawhai Manager of the department’s Wellington regional office, met with Cycon and the trustees about this on 21 June 1991. The officials expressed concern that ‘there was a complete absence of any base material upon which to anticipate likely effects or outcomes resulting from the discing’. A number of owners present also voiced concerns about the impact ‘on the cultural and spiritual values the Lake contains’. The trustees and Cycon agreed to stop the discing operation pending further studies.¹⁶⁷⁵ Hapeta informed the board at its 2 July meeting that ‘it had been agreed at a recent meeting to hold the discing until scientific study could be undertaken’.¹⁶⁷⁶ Given the view of White and Gibbs, it is unlikely that there was any further attempt at discing. Anderson told the board at its 2 September 1991 meeting that Cycon’s proposal ‘would not be effective’.¹⁶⁷⁷

¹⁶⁷¹ Minutes of meeting of Horowhenua Lake Domain Board, 2 July 1991. Archives New Zealand file AANS W5883 25344 Box 116 NYA003263 part 4

¹⁶⁷² ‘\$40,000 grant allows lake study to begin’, undated and unsourced clipping from March 1991 on Archives New Zealand file AANS W5883 25344 Box 115 NYA003149. The Poutama Trust – which still exists – was administered at the time by the Māori Development Corporation to provide government funds to Māori business enterprises.

¹⁶⁷³ See E White and M M Gibbs, ‘The Probable Impact of discing the sediments of L. Horowhenua: A report to the Regional Conservator, Wellington Region, Department of Conservation’, July 1991, p 2. Archives New Zealand file AANS W5883 25344 Box 115 NYA003149

¹⁶⁷⁴ White and Gibbs, ‘The Probable Impact of discing the sediments of L. Horowhenua’, executive summary. Archives New Zealand file AANS W5883 25344 Box 115 NYA003149

¹⁶⁷⁵ File note of 21 June 1991 meeting by Peter Hapeta. Archives New Zealand file AANS W5883 25344 Box 115 NYA003149

¹⁶⁷⁶ Minutes of meeting of Horowhenua Lake Domain Board, 2 July 1991. Archives New Zealand file AANS W5883 25344 Box 116 NYA003263 part 4

¹⁶⁷⁷ Minutes of meeting of Horowhenua Lake Domain Board, 2 September 1991. Archives New Zealand file AANS W5883 25344 Box 116 NYA003263 part 4

At around the same time, Gibbs and White produced a separate report entitled 'Lake Horowhenua and its restoration'. This concluded that the lake was releasing more phosphorus from the sediment than it was receiving from inflows, and so was 'cleansing itself naturally'. They calculated it might take another 30 years before 'a new equilibrium' was achieved in this way, and considered several options for enhancing the restoration process. These included flushing the lake with water diverted from the Ōhau River, which would involve a 'substantial cost', as well as diverting groundwater or stripping the lakewater of phosphorus in a special plant, which were discounted as 'inappropriate and inadequate respectively'. The phosphorus load entering the lake from Levin (presumably through the stormwater) appeared 'to be very substantial' and in need of further investigation. Other methods of reducing the nutrient load in the lake included 'inactivation' of the phosphorus in the lake sediment or even the sediment's removal, although the latter would be 'a very costly operation'. If cost were no barrier they recommended inactivation of the lake sediment through chemical treatment and reduction of phosphorus entering the lake from Levin, and if little could be spent then they recommended supplementing the 'natural cleansing' through reducing the phosphorus load from the town and seasonally flushing the lake by varying its level.¹⁶⁷⁸

The domain board discussed this report and other matters relating to the lake's restoration at its meeting on 2 September 1991. This included a letter from the Hōkio A Trust of 9 August 1991, which demanded the removal of the 'sewer sludge' from the lake as soon as possible, the sediment being regarded as 'a gross obstruction to our fishing rights'.¹⁶⁷⁹ Anderson, who referred to the likely \$20 million cost for dredging the lake, 'believed that the Board could lock up the nutrients within the Lake through a natural healing process without any requirements to pump' it from the lake. But Tatana, who had been a strong advocate for removing the sediment from the lake for some time, thought 'the Board should obtain costing for the pumping of sludge out of the Lake even if it was directed into the Hokio Stream'. Munford thought it pointless to talk about sediment removal unless there was funding available to undertake it. James Broughton, appearing as a representative of the lake trustees, said that the trustees favoured raising the lake level and placing 'power boats on it to stir up the lake bottom sediment which could then be flushed through the Hokio Stream'.¹⁶⁸⁰

One thing that all agreed upon, however, was the desirability of calling a meeting of the trustees of lands around the lake to discuss forming of an advisory group.¹⁶⁸¹ This gathering took place on 26 September 1991 and was attended by 70 Māori and Pākehā landowners. It unanimously agreed to establish an advisory group with representation of the kind envisaged by Anderson in his January discussion paper. Guy hailed the meeting as 'historical' and the

¹⁶⁷⁸ M M Gibbs and E White, 'Lake Horowhenua and its restoration', undated draft, pp 2-3. Archives New Zealand file AANS W5883 25344 Box 115 NYA003149

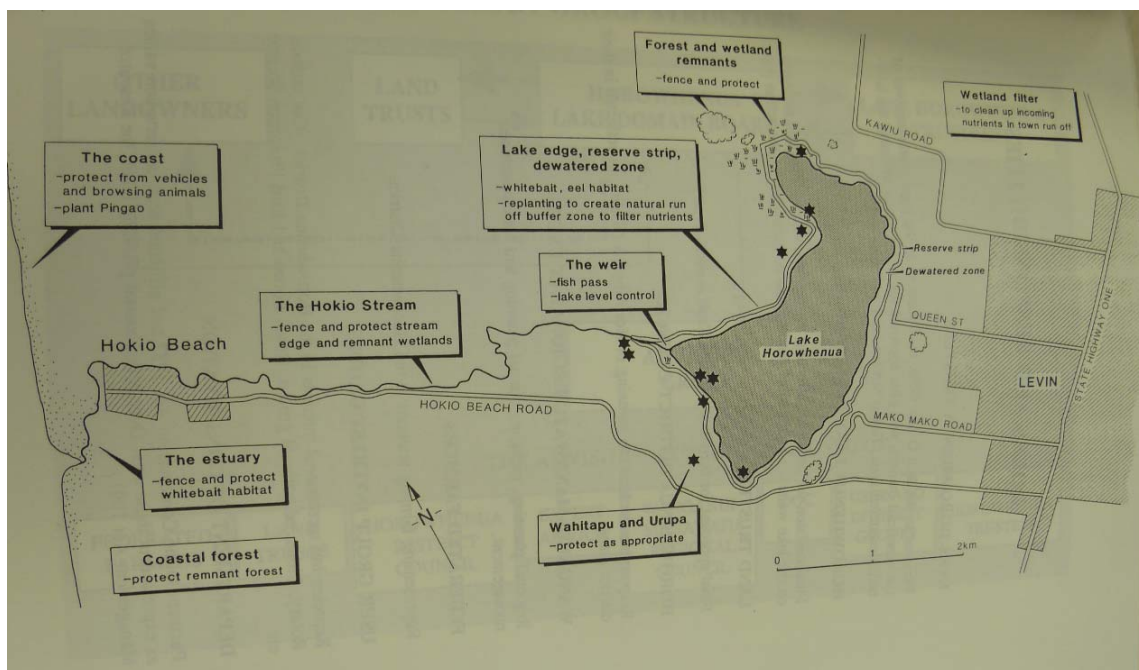
¹⁶⁷⁹ Vanessa Paul, Secretary, Hokio A Trust, to Malcolm Guy, Horowhenua Lake Domain Board, 9 August 1991. Archives New Zealand file AANS W5883 25344 Box 116 NYA003263 part 4

¹⁶⁸⁰ Minutes of meeting of Horowhenua Lake Domain Board, 2 September 1991. Archives New Zealand file AANS W5883 25344 Box 116 NYA003263 part 4

¹⁶⁸¹ Minutes of meeting of Horowhenua Lake Domain Board, 2 September 1991. Archives New Zealand file AANS W5883 25344 Box 116 NYA003263 part 4

formation of the advisory group as ‘a very significant move’. The press described it as a ‘breakthrough’ and ‘the first tentative step in the clean-up of the dying lake’.¹⁶⁸² Arising from this development the domain board published a conservation management proposal entitled *Revitalising Horowhenua: Conserving the Lake Horowhenua and Hokiō Stream Wetlands*. It set out the challenges involved in restoring the lake and the roles each of the members of the advisory group would play. A map depicted the areas of proposed conservation activity. These included constructing a fish pass at the weir and planting around the entire circumference of the lake and length of the Hōkiō Stream.¹⁶⁸³

Figure 7.1: Proposed restoration activities at Lake Horowhenua, c. 1992¹⁶⁸⁴



All was not well, however, in the relationship between members of Muaūpoko and the Department of Conservation. On 5 March 1992 Helen Potaka, a solicitor at Ngā Kaiwhakamārama i Ngā Ture (the Wellington Māori Legal Service), wrote to the Minister to set out the tribe’s concerns. It was not made clear who exactly had instructed her. She explained that

the concern of the Muaupoko people is that although there are representatives from the tribe on [the Domain] Board, the tribe is a separate entity which has different perspectives from the Board when it comes to dealing with matters pertaining to the Lake. That perspective is based on wairua, mana, tino rangatiratanga and a respect and relationship with the Lake, which has passed down through the generations.

¹⁶⁸² ‘Breakthrough on lake clean-up’, unsourced clipping of 27 September 1991 on Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

¹⁶⁸³ Horowhenua Lake Domain Board, *Revitalising Horowhenua: Conserving the Lake Horowhenua and Hokiō Stream Wetlands*, no date. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

¹⁶⁸⁴ Horowhenua Lake Domain Board, *Revitalising Horowhenua: Conserving the Lake Horowhenua and Hokiō Stream Wetlands*, no date. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

The Muaupoko people have been the kaitiaki of the Lake since pre-European times. Since European colonisation any authority they had in regard to their kaitiakitanga has been eroded to the extent that other bodies are now the principle [sic] administrators and controllers of the Lake.¹⁶⁸⁵

Potaka's point was that the department should have a relationship with the tribe, rather than with the domain board or Muaūpoko representatives on the board. It was another signal from Muaūpoko that the board was not regarded as an adequate forum for a partnership between Muaūpoko and the Crown (and its delegates) over the lake. Potaka pointed to the various provisions of the Resource Management Act 1991, such as the need to provide for 'the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga' (section 6(e)); have regard to kaitiakitanga (section 7(a)); and 'take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)' (section 8). She concluded that

The people of the Muaupoko tribe ... hope that a working partnership can be established with your department and suggest that a meeting be arranged whereby both groups can discuss how a working partnership could operate in practical terms.¹⁶⁸⁶

At the 21 March 1992 advisory committee meeting the department was criticised for failing to consult with the iwi over the restoration project. Regional Conservator McKerchar had not been present, but wrote to take issue with Kawaurukuroa Hanita-Paki over the criticism on 3 April. He said the primary object had been to consult with the land trusts representing owners around the lake before moving forward to wider consultation with the iwi as a whole. He added that it was 'hard to accept criticism levelled at the department, when it is the inability of Muaupoko to achieve consensus as to who should represent the iwi, which has frustrated constructive dialogue'. He explained that the department had prioritised destocking and revegetating the lake surrounds over removing both the sludge from the lake and the outlet weir. He accepted these were issues of great concern to many, but felt they were 'more complex technical and scientific matters which need more study and expertise'. He then attempted to dispel the notion that the department had ulterior motives:

We are aware that there is a feeling that the Crown has some hidden agenda and that once the dewatered zone etc is planted then the Crown might somehow lay claim to the land. I can only re-iterate again that the Crown has no such aspirations. Such action would be contrary to the Treaty of Waitangi and common law. I have stated repeatedly that legal agreements can be executed giving this categorical assurance. So saying I am not sure how we can get over this inherent distrust. Clearly the restoration project cannot proceed any further while the lake bed owners and their trustees have this lack of trust in the Crown and its agents.¹⁶⁸⁷

¹⁶⁸⁵ Helen M Potaka to Minister of Conservation, 5 March 1992. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

¹⁶⁸⁶ Helen M Potaka to Minister of Conservation, 5 March 1992. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

¹⁶⁸⁷ Dave McKerchar, Regional Conservator, to K H Paki, Chairman, Lake Horowhenua Trustees, 3 April 1992. Archives New Zealand file AANS W5883 25344 Box 113 NYA003567

He warned that he would redirect staff to other work unless there was ‘a very clear indication of support from the lake owners and trustees’, and expressed disappointment that ‘once again the personal grievances within the Iwi and a lack of cohesion between owners and their trustees have led to this impasse’.¹⁶⁸⁸

At the same time McKerchar offered his view on how the Minister should respond to Potaka’s letter, including her suggestion that the department and tribe hold a meeting:

Quite frankly I would not personally be prepared to arrange such a meeting, and I would not expect my staff to be subjected to the abuse and offensive behaviour which has been the norm for recent meetings with Muaupoko. I think in this regard you need to know a little bit more of the background. Over the last eighteen months departmental staff have held frequent meetings with Muaupoko and the Levin District Council with a view to reaching agreement on a restoration and enhancement programme for the dewatered area, the one chain strip and some private land surrounding the lake. The objective is to establish artificial wetland and revegetate the pasture land surrounding the lake with a view of improving water quality. At the present time storm water run-off from the Levin Borough and agricultural run-off from the surrounding land, is fed directly into the lake by man made [sic] drains. The department has offered technical expertise and supervision of the programme, and the local authority has offered to provide its plant nursery and a substantial amount of finance for the scheme. Despite this generous gesture, factions within the iwi are strongly opposed to this. Dialogue culminated in a meeting on Saturday 21 March where two departmental staff who supported the Council, were subjected to what I consider to be totally unacceptable abuse and criticism. The dialogue over the last eighteen months has been carried out with people we consider to be the senior Kaumatua of Muaupoko. There is no clearly accepted rangatira for the iwi, and we have been dealing with the various factions who enjoy Kaumatua status. There is however a young radical element within the iwi who no longer accept the status of the Kaumatua and seem to oppose everything the Kaumatua either suggest or agree too [sic]. I presume that is this radical element which has gone to Nga Kaiwhakamarama I Ngature [sic]. To accede to their request for a wider iwi meeting would be to give this element a status which they do not and should not enjoy.

While accepting the departments [sic] obligations under the Treaty of Waitangi, I think there is a limit to the situations one can reasonably expect public servants to be subjected too [sic], and further abuse and insults from some elements within Muaupoko goes beyond the limit as far as I am concerned. ... [T]here will certainly be ongoing dialogue but it will be with senior Kaumatua of the iwi. Should they wish to call a meeting of the whole iwi, then I would be quite relaxed, but it is certainly not something that I intended to initiate.¹⁶⁸⁹

On 27 April 1992 a Ministry for the Environment official, Christine Foster, met with the domain board to advise them about how the passage of the Resource Management Act 1991

¹⁶⁸⁸ Dave McKerchar, Regional Conservator, to K H Paki, Chairman, Lake Horowhenua Trustees, 3 April 1992. Archives New Zealand file AANS W5883 25344 Box 113 NYA003567

¹⁶⁸⁹ Dave McKerchar, Regional Conservator, to Director-General of Conservation, 9 April 1992. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

affected their responsibilities. The board's request for her to meet them had stemmed from a concern by local Māori that the Act 'usurped some of their rights'. She wrote that she

got the impression, when I arrived, that their meeting had been discussing stressful things like membership of the Board – it was all pretty tense when I arrived. I had expected lots of questions. They asked none.... It is clear ... that the Board is experiencing great difficulties relating with the Maori owners of the lake.¹⁶⁹⁰

She outlined the difficulties McKerchar had been having with some of the owners and remarked that 'The restoration was an attempt at doing things by cooperation. It looks like failing'.¹⁶⁹¹

Marshall replied to Potaka on 7 May 1992. He said the department was conscious of its obligations under not just the Resource Management Act 1991 but also section 4 of the Conservation Act 1987, which required it to give effect to the treaty's principles. He confirmed that the department did see the domain board as the forum at which Muaupoko should be consulted. As he put it,

In the case of Lake Horowhenua and the Hokio Stream, the department's role has been to facilitate the conservation of those intrinsic values which belong to those places, through consultation with iwi representatives who are the elected trustees on the Horowhenua Lake Domain Board. It would appear that in some quarters, those trustees are seen as not adequately providing the '*width of cover*' to represent the totality of Muaupoko iwi. If that be the case, then clearly it would be unwise for the department to continue the consultation process until such time as the iwi agree who their elected spokespersons are to be.¹⁶⁹²
[Emphasis in original.]

This was not quite a response to the issue Potaka had raised. She had not mentioned the need for different and more representative domain board members. Her point had been instead that the department also needed to have a relationship with the tribe itself. Nevertheless, Marshall concluded that

the department cannot proceed any further with its advocacy and consultative roles for Lake Horowhenua and Hokio Stream until such time as Muaupoko have identified, approved and elected those persons who are to be their representatives. As this is a process which does not warrant departmental participation, there is therefore no reason for us to meet.¹⁶⁹³

¹⁶⁹⁰ File note about the 27 April 1992 meeting by Christine Foster, 29 April 1992. Ministry of the Environment head office file EPL 7/2/1 part 2

¹⁶⁹¹ File note about the 27 April 1992 meeting by Christine Foster, 29 April 1992. Ministry of the Environment head office file EPL 7/2/1 part 2

¹⁶⁹² Minister of Conservation to Helen M Potaka, 7 May 1992. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

¹⁶⁹³ Minister of Conservation to Helen M Potaka, 7 May 1992. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

It is clear that much of the Muaūpoko hostility towards the Department of Conservation was misplaced, but at the same time it is perhaps understandable that certain ‘elements’ within the tribe were suspicious of the department’s actions given the lack of trust in the Crown and its delegates over lake matters. It was, at this point, only five years since the cessation of effluent discharge into the lake and only a year after the council had been forced to make an emergency discharge to the lake during a period of exceptionally wet weather (see below). Both the drawn-out negotiations over a possible lease of the lakebed and the ongoing failure to deliver an amendment to the governing legislation concerning the appointment of domain board members may also have been to the fore in the minds of some members of the tribe. The Crown probably bore some responsibility for tribal disunity over the control and management of the lake, both because of its mixed messages over whom within the tribe it regarded as having the authority to speak on lake issues as well as its ultimate failure to protect the lake from pollution. The health and management of the lake were evidently issues that caused or worsened divisions within Muaūpoko.

In June 1992 the Horowhenua MP, Hamish Hancock, asked for a briefing on the restoration project.¹⁶⁹⁴ The Acting Regional Conservator told him that, earlier in the year, ‘a faction within Muaupoko’ had advised that the project ‘wait until the iwi resolved their issue of representation of beneficial owners of the Lake Horowhenua Trustees’. The department and district council had ‘postponed further activities’ accordingly. However, some land trusts around the lake had subsequently said that they wished to carry on with restoration activities regardless. The domain board had been ‘advised by the trusts in support of the proposal, and privately by many others including trustees, to quietly proceed where restoration can happen’. The intention was ‘to show by example the benefits of restoration work’.¹⁶⁹⁵

The appointment of new lake trustees in October 1992 and new Muaūpoko domain board representatives in March 1993 (see above) marked a turning point, with these changes appearing to result in the tribe coming on board with the restoration project. The project was officially launched by Hancock and Minister of Tourism John Banks in April 1993. Ross wrote that ‘The event was the culmination of years of fostering the issue by the Department and frustrating delays while Muaupoko restructured and assessed their commitment’. The launch included a crew padding the Kurahaupo waka across the lake, and Ross felt it to be ‘a very serious endorsement of the project by iwi’.¹⁶⁹⁶

The trustees commissioned both a revegetation plan for the lake, which was produced by Diane Lucas, and an archaeological survey, which was written by Susan Forbes. On 29 July 1996 a ceremonial tree-planting took place at the lake to mark the start of a five-year replanting programme. By this stage a 13-kilometre fence had already been constructed

¹⁶⁹⁴ Hamish Hancock to Minister of Conservation, 22 June 1992. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

¹⁶⁹⁵ Acting Regional Conservator for Allan Ross, Regional Conservator, to Hamish Hancock, 20 August 1992. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

¹⁶⁹⁶ Allan Ross, Wellington Conservancy Status report, 29 April 1993. Archives New Zealand file AANS W5883 25344 Box 113 NYA003567

around the lake. However, the ceremony was interrupted by protest from two of the lake trustees. Charles Rudd said he had not been informed about the planting, and thought ‘local Maori politics’ had played a part. He was also suspicious of the Department of Conservation’s motive, remarking that ‘I believe DOC’s trying to take this lake off us.’¹⁶⁹⁷ Ross responded to this suggestion directly, telling the *Evening Standard* that it was ‘ridiculous and totally wrong’.¹⁶⁹⁸

The other protestor was Bill Taueki, now of course a former domain board member. The day of the planting ceremony he wrote to the Director-General of Conservation to argue that the department should be fulfilling its duties under the Resource Management and Conservation Acts by consulting with the Ngāti Tama-i-Rangi hapū, of which he was the representative.¹⁶⁹⁹ Taueki expanded on his views a few days later. He explained that, while the planting was a cause for celebration, he had been ‘forced to protest on behalf of my ancestors because hapu, the traditional inhabitants of the lake’s shores since pre-European times, were totally excluded from the consultation process’. He accepted that the local bodies and the Crown had made genuine attempts to consult but ‘they don’t realise the complicated politics and special relationship with resources – rangatiratanga – of hapu rather than iwi’. The other trustees, he said, ‘don’t consult past themselves about things pertaining to the lake’s history’. His hapū had ‘had its ancestral foodbowl destroyed’ and it ‘would be a tragic irony if government bodies now excluded us from the healing process’.¹⁷⁰⁰

The planting programme carried on regardless, indeed at ‘a furious rate’. The shoreline was divided into seven separate ecosystems and 75 individual segments of around one hectare each, with every segment having its own planting plan. The planting was conducted in stages to allow less hardy species to be planted behind natural windbreaks such as flax. The trustees received funding and other support for the project from a variety of organisations, including the Lottery Grants Board, local and central government agencies, Forest and Bird, and local schools. Joe Tukapua called the planting ‘a beautiful beginning, the bringing back and embracing of mother earth’. Lucas thought it ‘the biggest replanting project being undertaken in the country’.¹⁷⁰¹ Domain board member Wiremu-Matakatea acted as project manager. By March 2000 120,000 flax plants had been planted, ringing the lake ten rows deep, and that month a \$70,000 nursery was opened on lake trust land adjoining Muaūpoko Park.¹⁷⁰² On 5 June 2000, to mark Arbor Day, around 200 members of the public participated in the planting of 2,000 trees around the lake.¹⁷⁰³ On 2 August 2000 the lake trustees were presented with a conservation award at Parliament in recognition of their achievements.¹⁷⁰⁴

¹⁶⁹⁷ ‘Tree planting goes ahead after hitch’, *Evening Standard*, 30 July 1996, p 2

¹⁶⁹⁸ ‘No “hidden agenda”’, *Evening Standard*, 1 August 1996, p 2

¹⁶⁹⁹ W J Taueki to Chief Executive, Department of Conservation, 29 July 1996. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

¹⁷⁰⁰ ‘Failure to consult over lake causes friction’, *Dominion*, 8 August 1996, p 10

¹⁷⁰¹ Diane Lucas, ‘Ancient lake to live again’, in *Forest & Bird*, n. 288, May 1998, pp 20-21

¹⁷⁰² ‘Lake project flourishes’, *Evening Standard*, 7 March 2000, p 8

¹⁷⁰³ ‘Hundreds turn up for tree-planting’, *Evening Standard*, 6 June 2000, p 1

¹⁷⁰⁴ ‘Lake trust planting earns green award’, *Evening Post*, 4 August 2000, p 18

From what can be deduced, the lakeside planting was – by the end of the period covered by this report – a notable success. In large part this will have stemmed from the Crown and local bodies supporting the Muaūpoko landowners to lead the project, rather than attempting to direct it as they may have done in previous decades.

Image 7.2: Marokopa Wiremu-Matakatea planting trees between rows of flax, no date¹⁷⁰⁵



Planting the lakeshore was only one aspect of the lake's restoration, however, and more substantial challenges lay ahead, as McKerchar had told Hanita-Paki in April 1992 (see above). In 1997 the district and regional councils, the Department of Conservation, and the lake trustees agreed to a five-year conservation management strategy for the lake's catchment. As part of this agreement the trustees would continue their planting programme, the district council would reduce the nutrient load entering the lake from its stormwater, and the regional council would monitor water quality. Regional council resource director Brent Cowie said that the lake's water quality had improved since it ceased to receive the town's effluent, but it remained in an advanced state of eutrophication, with 'massive algal growths and strong green colour to the water'.¹⁷⁰⁶ There had been no advance on removing the sediment from the lake – noted in 1988 to be the owners' regularly expressed priority¹⁷⁰⁷ – since a dredging demonstration had been held with the agreement of the lake trustees and domain board on 10 February 1989, and the deposits tested for suitability as fertiliser. The lack of follow-up action was almost certainly because of the cost, which had been estimated

¹⁷⁰⁵ Darren Reid. 'Muaūpoko - Muaūpoko today', Te Ara - the Encyclopedia of New Zealand, updated 15-Nov-12

URL: <http://www.TeAra.govt.nz/en/photograph/1311/marokopa-wiremu-matakatea-at-lake-horowhenua>

¹⁷⁰⁶ 'Groups agree on lake clean-up strategy', *Evening Standard*, 20 June 1997, p 3

¹⁷⁰⁷ 'Lake Horowhenua: Options for water quality and lakefly management', Report of the Lake Horowhenua Technical Committee, October 1988, p 5. Ministry for the Environment head office file EPL 7/2/1 part 2

the previous year as at least \$22 million.¹⁷⁰⁸ As Lake Horowhenua Steering Group chairman Laurie Speirs observed in February 1989, ‘it is very doubtful that either Central Government or the present Councils will commit themselves to the required expenditure to remove the deposits which the Maori people are requesting’.¹⁷⁰⁹

Nor had any action been taken over the concrete control weir, despite the general consensus that it prevented sediment being flushed from the lake. Again, cost – as well as some uncertainty about the consequences of its removal and what might replace it – prevented action. However, one tangible and relatively straightforward difference could have been the addition of a fish ladder. The regional council’s operations manager, R G Brown, told the domain board in November 1992 that a fish ladder could be built to enable access to the lake by species such as whitebait and inanga, although he was ‘sceptical at the benefits of this’. Munford made the point that a fish ladder had been a condition of the weir’s original construction, and ‘if one was not present now, then it should be provided’. Brown thought that the regional council ‘was not responsible for the provision of fish ladders’.¹⁷¹⁰ This response rather overlooked the fact that the Manawatu Catchment Board had assumed responsibility for the construction of a fish ladder in the 1960s (see chapter 4).

Clearly, therefore, in 2000 there remained considerable work ahead in the effort to restore the lake. Key tasks, such as removing phosphorus from the town’s stormwater, remained to be undertaken. At the same time, too, Muaūpoko’s goodwill and the quality of the lake water were being compromised by a problem that by now should have long been consigned to the past: the discharge of sewage effluent into the lake.

Sewage in the lake

It was probably assumed in most quarters that, with the diversion of the borough’s effluent to the land-based disposal at the Pot in 1987, the lake would be free of sewage, treated or otherwise. But this did not long remain the case. In August 1991, after heavy rainfall and infiltration of the sewage system with groundwater, neither the treatment plant nor the pumping station could cope and treated effluent was discharged into the lake. The council attempted to construct a soakage pit to catch the nutrients in the effluent but this was unsuccessful. The district council’s manager of operations, Greg Boyle, told the board on 2 September 1991 that:

The problem was primarily a stormwater/sewage/heavy rainfall situation which was such that existing services were unable to cope with the added flow in an emergency type situation. The Council was now addressing the cause of the problem rather than the effect and would arrange for a booster pump to be installed to assist in transferring treated waste to the Pot area

¹⁷⁰⁸ ‘Lake Horowhenua: Options for water quality and lakefly management’, Report of the Lake Horowhenua Technical Committee, October 1988, pp 5-6. Ministry for the Environment head office file EPL 7/2/1 part 2

¹⁷⁰⁹ ‘Lake Horowhenua dredging demonstration’, Laurie Speirs, 10 February 1989. Archives New Zealand file AANS W5883 25344 Box 116 NYA003193 part 3

¹⁷¹⁰ Minutes of meeting of Horowhenua Lake Domain Board, 16 November 1992. Archives New Zealand file AANS W5883 25344 Box 115 NYA003150

as well as identifying areas through a survey as to where infiltration into the system is occurring. Such a survey would have to be carried out over a 2-3 year period.¹⁷¹¹

Tatana hoped there would be no reoccurrence and proposed that the board write to the regional council and request it prosecute the district council over the discharge. Ranginui 'expressed her sadness to see treated effluent flowing into the Lake' again. Broughton, on behalf of the lake trustees, explained that some of the trustees 'felt that compensation should be sought from the Horowhenua District Council as a result' and noted 'the need for the protection of the owners' fishing rights and observance of the terms of the Treaty of Waitangi'. He had some doubt as to whether the booster pump would prevent 'a similar situation occurring in 10 years time'.¹⁷¹² Boyle assured the board that the council would look 'to upgrade the system to meet a 20 – 50 year return flood situation by providing sufficient capacity within the system to meet higher than normal flows'. Ryder accepted that the council 'had broke[n] the rules', but hoped that any conviction or fine would not reflect on Council's officers'.¹⁷¹³

This discharge was discussed at the 26 September hui that led to the formation of the advisory group (see above). At the meeting the district council was severely criticised for the overflow, 'with speakers seeking, and getting, assurances the incident would not be repeated'.¹⁷¹⁴ Presumably these assurances came from Mayor Guy, who was present.

In November 1992 Guy told the board that the problem that had caused the August 1991 discharge 'had now been rectified'.¹⁷¹⁵ But the problems were far from over. In August 1994 Charles Rudd wrote to the domain board citing numerous news items in the *Chronicle* about the unpleasant odour emanating from the treatment plant and, apparently, an admission from Boyle that the plant had been having to cope with some daily sewage loads well in excess of its capacity.¹⁷¹⁶

In 1998 the winter was particularly wet – so much so that, in July, as the subterranean flows created what Boyle called 'an extraordinarily high water table', the council urged Levin residents to reduce their water use so that less entered the wastewater system. Boyle reported that the treatment plant was having to cope with 50 per cent more fluid on a daily basis than its maximum capacity.¹⁷¹⁷ Eventually the infiltration of the sewer pipes by ground- and

¹⁷¹¹ Minutes of meeting of Horowhenua Lake Domain Board, 2 September 1991. Archives New Zealand file AANS W5883 25344 Box 116 NYA003263 part 4

¹⁷¹² Minutes of meeting of Horowhenua Lake Domain Board, 2 September 1991. Archives New Zealand file AANS W5883 25344 Box 116 NYA003263 part 4

¹⁷¹³ Minutes of meeting of Horowhenua Lake Domain Board, 2 September 1991. Archives New Zealand file AANS W5883 25344 Box 116 NYA003263 part 4

¹⁷¹⁴ 'Breakthrough on lake clean-up', unsourced clipping of 27 September 1991 on Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

¹⁷¹⁵ Minutes of meeting of Horowhenua Lake Domain Board, 16 November 1992. Archives New Zealand file AANS W5883 25344 Box 115 NYA003150

¹⁷¹⁶ Charles Rudd to Horowhenua Lake Domain Board, 7 August 1994. Archives New Zealand file AANS W5951 25421 Box 325 RRC-0992 part 1

¹⁷¹⁷ 'Water, water everywhere but ...', *Dominion*, 25 July 1998, p 7

stormwater became too much for the system to bear, and in July and August the council was forced to discharge effluent directly into the lake.¹⁷¹⁸ In October the situation was repeated. To stop the oxidation ponds overflowing the council made a ‘controlled’ breach of the stopbanks surrounding the ponds to allow sewage to flow directly into the lake. At the same time the council applied for a retrospective emergency resource consent under section 330A of the Resource Management Act 1991. Boyle explained that ‘We’ve done our best to keep it out, but the danger is that a power transformer is under threat, and if we lose that, we have no way of pumping to our land-based disposal system.’¹⁷¹⁹

In all, the district council discharged 207,000 cubic metres of wastewater into the lake in 1998. Boyle pointed to the fact that Horowhenua had received four times the usual October rainfall, and Mayor Tom Robinson claimed that the effluent discharged to the lake was ‘fully treated’ and ‘80-90 per cent’ water.¹⁷²⁰ Before the October discharge, council Chief Executive Rosemary Barrington reported that the council was actively considering solutions, which ranged in cost from a \$700,000 upgrade of the current transfer pipeline to up to \$25 million to relocate the treatment plant. She thought the latter unlikely, because of both the cost and ‘the problems involved in finding a suitable site’.¹⁷²¹ She later claimed that the council had consulted with the lake trustees about the emergency situation and trustees had been present when the stopbanks were breached. However, Matt McMillan – who remained chairman of the lake trustees – said that the council had only sought the trustees’ permission for the sewage overflow to be discharged onto land adjoining the lake.¹⁷²²

A committee of the Manawatu-Wanganui Regional Council considered the district council’s application at a hearing on 7 December 1998. There were 16 submitters, ten of whom were Māori. The district council argued that its application should be considered not under section 330A of the Resource Management Act but under section 107(2), which would allow it to find a longer-term solution. Boyle explained that there were ‘no guarantees’ the \$250,000 worth of repairs the council had made would prevent a recurrence, and what was required was a ‘long-term fix’. Muaūpoko were unimpressed. Matt McMillan was ‘dismayed and angry’ about the council’s change of approach, with submitters only learning of it when the hearing began. He feared a permit under section 107(2) ‘would give open-ended rights of discharge on a “supposed emergency” pretext, and take Maori back to the bad old days’. He put it that ‘We’ve heard of this many times before, we’ve heard the same excuses now for 34 years.’¹⁷²³

Eugene Henare, on behalf of Te Warena Kerehi Trust, argued that ‘The dramatic loss of the ecosystem has meant the end of our traditional way of life and culture. If we want fish we now go to the fish and chip shop.’ He felt that the treatment plant had to be relocated, because

¹⁷¹⁸ ‘Council is given time to get more information’, *Evening Standard*, 9 October 1998, p 3

¹⁷¹⁹ Residents flee rising river’, *Evening Standard*, 29 October 1998, p 1

¹⁷²⁰ ‘Weather proves costly’ *Evening Standard*, 5 November 1998, p 19; ‘Lake Horowhenua trust deserts sewage talks’, *Evening Post*, 16 December 1998, p 34

¹⁷²¹ ‘Council is given time to get more information’, *Evening Standard*, 9 October 1998, p 3

¹⁷²² ‘Tribe fights council plan to put sewage into lake’, *Dominion*, 10 December 1998, p 7

¹⁷²³ ‘Angry Maori demand end to council’s pollution of lake’, *Evening Standard*, 8 December 1998, p 2

there could be no guarantee that such extreme weather would not recur. This was a point well made, in that Levin had experienced rainfall and groundwater levels beyond the capacity of its drainage systems for decades, despite the regular upgrade of facilities. Among other submitters, MidCentral Health did not oppose the adjournment but said that the bacteria levels in the lake would need monitoring and the affected Landcorp paddocks would need to be cleared of stock for six months. A Landcorp representative opposed the adjournment and said civil action would be taken against the district council. Domain board chair Ross spoke in his role as Regional Conservator. He thought that the situation could have been predicted, and he would support the application being considered under section 107(2) if a ‘long-term solution’ could be found after ‘adequate consultation with iwi’.¹⁷²⁴

The claim by counsel appearing for the district council that ‘Muaupoko lacked unity when it came to the consultation process’ (an echo of the Department of Conservation’s criticism in 1992) was met with an angry response. McMillan retorted ‘This is the usual red herring’. He put it that ‘The fact that there are six (Maori) groups here saying the same thing gives [the] lie to your statement.’ In the end, however, the commissioners agreed to grant the district council’s request for an adjournment. Chairman Ron van Voorthysen criticised the district council in doing so, however, noting the ‘extreme lateness’ of its application and the community’s ‘widespread concern’.¹⁷²⁵ The committee expected that the parties enter discussions in the meantime.¹⁷²⁶

However, Muaūpoko did not want talk, but action, and withdrew from the consultation before it began. McMillan wrote to the district council and said the tribe had already experienced decades of ‘useless talk and delays’, and now simply required the council to cease any discharges to the lake.¹⁷²⁷ As he put it:

We will not agree to any further sewage discharges into the lake and we want action to start immediately to ensure there are no further discharges[.] ... In our view further consultation and talkfests are a waste of time. The issue for us is a simple one – as it has been for almost 50 years when the Levin Borough Council first started desecrating our food source and taonga with raw sewage.¹⁷²⁸

The chairman of Te Kaunihera Kamātua me ngā Kuia o Muaūpoko, Bunny Greenland, also said that the discharges to the lake that year had been ‘simply a repeat of what has gone before, the talk is continuing, but the problem is not being addressed’. The only option was for relocation of the plant.¹⁷²⁹

On 27 April 1999 a group of about 20 young Muaūpoko protested the council’s discharges by blocking a drain that led from the treatment plant to the lake. MTA secretary Jean Budd said

¹⁷²⁴ ‘Angry Maori demand end to council’s pollution of lake’, *Evening Standard*, 8 December 1998, p 2

¹⁷²⁵ ‘Angry Maori demand end to council’s pollution of lake’, *Evening Standard*, 8 December 1998, p 2

¹⁷²⁶ ‘Tribe fights council plan to put sewage into lake’, *Dominion*, 10 December 1998, p 7

¹⁷²⁷ ‘Trust pulls out of talks with council’, *Evening Standard*, 15 December 1998, p 1

¹⁷²⁸ ‘Tribe rebuffs council’s lakeside sewage plan’, *Dominion*, 16 December 1998, p 10

¹⁷²⁹ ‘Trust pulls out of talks with council’, *Evening Standard*, 15 December 1998, p 1

the council was failing to meet its obligations under the Treaty of Waitangi, and the people were fed up with the ongoing discharges of sewage. The action of the protestors was ‘our way of saying enough is enough’, and the idea that the council might be granted another decade of emergency discharges was ‘completely unacceptable’.¹⁷³⁰ Boyle urged Muaūpoko to enter negotiations to identify a long-term solution. He noted a variety of options, including the construction of an \$800,000 storage pit alongside the treatment plant, a \$1.8 million improvement to the council’s pipes to prevent groundwater infiltration, a \$10 million upgrading of the existing plant, or a \$12.9 million construction of a new (and more basic) plant beyond the lake’s catchment. Each had advantages and disadvantages. Boyle pointed out that the idea of relocation was far from straightforward:

Shifting the plant out of the lake catchment solves some problems, but what about cultural issues raised in transferring to the Waiwiri Stream catchment?

This also has food gathering and wahi tapu values, and who will volunteer the land for a new plant? What will the neighbours think?¹⁷³¹

A major consideration for the council – as it had been in previous decades – was cost. Boyle put it that, while the council had obligations to Māori, it also had ‘responsibilities to the whole community’:

Other groups will express their views, and for some, spending \$12 million would not auger [sic] well with a ratepayer base which is already looking at a 20 percent increase this year. Striking a balance will be important.¹⁷³²

This reference to ‘balance’ sounded ominously like the lake would continue to serve as an outlet for the town’s wastewater when the treatment plant could not cope. Boyle felt that the ultimate solution would be found in a combination of the identified options.¹⁷³³ Palmerston North’s *Evening Standard*, for its part, was in no doubt that the council should relocate the treatment plant. An editorial noted that much was ‘said about the spirit of partnership under the Treaty of Waitangi’, but this was ‘an opportunity to walk the talk’.¹⁷³⁴

When the district council’s services committee met in July 1999, however, the option of relocating the treatment plant was not even considered. Boyle did accept though that shifting the plant away from the lake would address issues such as ‘the cultural significance of having a plant close to the lake’, and remained a future option. The committee considered options such as an ocean outfall and pipeline to the Hōkio Stream, but rejected them given the difficulty in gaining resource consents. It recommended to the full council that the options continue to be investigated.¹⁷³⁵

¹⁷³⁰ ‘Protestors block lake sewage drain’, *Evening Standard*, 27 April 1999, p 1

¹⁷³¹ ‘Lake protestors urged to talk’, *Evening Standard* 29 April 1999, p 3

¹⁷³² ‘Lake protestors urged to talk’, *Evening Standard* 29 April 1999, p 3

¹⁷³³ ‘Lake protestors urged to talk’, *Evening Standard* 29 April 1999, p 3

¹⁷³⁴ ‘It’s time to walk the talk’, *Evening Standard*, 5 May 1999, p 13

¹⁷³⁵ ‘Treatment plant shift not option’, *Evening Standard*, 12 July 1999, p 3

The regional council committee issued its decision on the district council's consent application on 2 February 2000. The committee denied the district council a retrospective consent, reasoning that – since it could not impose any prohibition on future discharges – refusing the application was its only way to ‘remedy the hurt and wrong-doing that has been caused by the discharges’.¹⁷³⁶ However, it also considered that the district council should not be prosecuted over the matter. Muaūpoko were deeply frustrated by this. McMillan argued that those who break the law generally had to face the consequences. As he put it:

It has caused our people a lot of pain and anger. Non-Maori might understand it better if they imagine that it's like having someone come into your family home and excrete and urinate in your pantry and vegetable garden[.]

The lake was one of our main food sources and people should respect that and understand why we feel so deeply about the matter.

The trust's position is that any overflow or leakage from the sewage treatment plant must not be allowed to happen again.

We will be pushing for the treatment plant and ponds to be moved from the vicinity of the lake altogether.¹⁷³⁷

Barrington noted that the council had established a working party to address the problems and that the lake trustees were members of it. She hoped ‘they will help shape the future capital works that will ensure the situation does not happen again’.¹⁷³⁸ The following month she told working party members that the council had acted ‘legally and appropriately’ during the emergency discharges the previous year but had decided not to appeal against the committee's decision not to grant a consent. This would be unwarranted, she noted, both because of the cost and since the council remained able to rely on section 330A of the Resource Management Act in the case of another emergency.¹⁷³⁹

The situation must have reminded Muaūpoko of the 1960s, when emergency discharges of raw sewage were made into the lake, and the 1980s, when the borough council was considering a new method of effluent disposal. On each of those occasions Muaūpoko had been entirely dependent on the council to take action. No amount of pressure could force the council to ensure sewage did not enter the lake in the 1960s, because the alternative was sewage backing up around the town. Likewise, in the 1980s, the effluent continued to flow into the lake because the council had arranged no other acceptable means of disposal. Now, in the 1990s, the tribe had come to realise that the past assurances of a long-term solution were meaningless unless the treatment site was actually moved well away from the lake, but the council could not – or would not – spend the money to do so. Muaūpoko had to hope that the solutions the council identified would fix the problem. The council assured the tribe that

¹⁷³⁶ ‘Council declined resource consent’, *Evening Standard*, 3 February 2000, p 2

¹⁷³⁷ ‘Row as sewage discharge unpunished’, *Dominion*, 3 February 2000, p 8

¹⁷³⁸ ‘Row as sewage discharge unpunished’, *Dominion*, 3 February 2000, p 8

¹⁷³⁹ ‘Council says it won't appeal’, *Evening Standard*, 9 March 2000, p 2

such a solution would be found. As is noted below, however (in the epilogue), these assurances would again count for nothing when the treatment plant failed to cope and another overflow occurred in 2008.

The realignment of the Hōkio Stream mouth

Because of the prevailing wind direction, the mouth of the Hōkio Stream continued to move further to the south. It will be recalled in chapter 3 that, in 1956, the Commissioner of Crown Lands had remarked that, while the stream turned and ran ‘southward for a mile before discharging into the sea’, the ‘intention is that a request will be made subsequently to the Manawatu Catchment Board to put a direct cut through to the sea’.¹⁷⁴⁰ It is not clear whether this specific idea was discussed at the time with either Muaūpoko or their counsel.

Figure 7.2: Realignment of the Hōkio Stream below the road bridge proposed by the HPA, December 1981¹⁷⁴¹



As the years went by the movement of the stream began causing problems at Hōkio Township. It appears that some realignment did occur in late 1982 or early 1983,¹⁷⁴² but its effect was clearly insufficient as far as the local authorities were concerned. In September 1990 Boyle wrote to the regional council enclosing the district council’s application for a water right to cut a new path for the stream to the sea. As he explained,

¹⁷⁴⁰ Commissioner of Crown Lands to Director-General of Lands, 1 June 1956. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

¹⁷⁴¹ Sketch attached to President, HPA, to Secretary, Manawatu Catchment Board, 10 December 1981. Archives Central file HDC 00018: 15: 2/4/1

¹⁷⁴² Secretary, Horowhenua Lake Trustees, to Chief Engineer, Manawatu Catchment Board, 22 December 1982; Chief Engineer, Manawatu Catchment Board, to Secretary, Horowhenua Lake Trustees, 25 January 1983. Archives Central file HRC 00024: 57: 19/10 part 4

The reason for the application is because the mouth of the stream has progressively migrated to the south, and the increased stream distance, together with high groundwater levels resulting from recent heavy rainfall, have combined to effect an elevated hydraulic gradient of the stream. The direct impact of this situation is that residential properties, particularly those bordering the stream, are experiencing some inundation, with detriment to safe operation of septic tank disposal systems.¹⁷⁴³

Image 7.3: The Hōkio Stream looking downstream below the road bridge, April 2015¹⁷⁴⁴



No objections were received and the water right was granted. However, Boyle also sought the specific approval of the lake trustees. Kawaurukuroa Hanita-Paki asked for more information, including on the potential impact on fish life in the stream estuary.¹⁷⁴⁵ Boyle assured him that fish in the stream would readjust to its new course and, further, that there would be no impact on the lake.¹⁷⁴⁶ Tatana contradicted Hanita-Paki and gave approval on behalf of the trustees shortly after this, although she pointed out that the domain board would first need to consent to the works under the terms of the 1956 Act.¹⁷⁴⁷ The board considered the matter at its meeting on 23 January 1991 and agreed that the decision lay ultimately with the trustees.¹⁷⁴⁸

¹⁷⁴³ G S Boyle, Director – Operations, Horowhenua District Council, to Brent Cowie, Director Planning and Environment, Manwatu-Wanganui Regional Council, 5 September 1990. Archives New Zealand file AANS W5883 25344 Box 116 NYA003263 part 4

¹⁷⁴⁴ Photograph by the author, 4 April 2015

¹⁷⁴⁵ Kawaurukuroa Hanita-Paki, Chairman, Horowhenua Lake Trustees, to G S Boyle, 19 November 1990. Archives New Zealand file AANS W5883 25344 Box 116 NYA003263 part 4

¹⁷⁴⁶ G S Boyle, Director – Operations, Horowhenua District Council, to Kawaurukuroa Hanita-Paki, 21 November 1990. Archives New Zealand file AANS W5883 25344 Box 116 NYA003263 part 4

¹⁷⁴⁷ Ada Tatana to G S Boyle, 28 November 1990. Archives New Zealand file AANS W5883 25344 Box 116 NYA003263 part 4. There was evidently a dispute within the trustees at this time as to who held the chair. Tatana signed this letter as chairperson and noted that ‘decisions said to be made on behalf of the trustees by others be it trustees or otherwise will not have my approval’.

¹⁷⁴⁸ Minutes of meeting of Horowhenua Lake Domain Board, 23 January 1991. Archives New Zealand file AANS W5883 25344 Box 116 NYA003263 part 4

It confirmed to the district council in writing in July 1991, however, that the board itself had given its own approval to the proposed realignment.¹⁷⁴⁹

To add to the complexity, the trustees of Hōkio A Block were in favour of the realignment. This was mainly because they had been attempting to stabilise the dunes to the south of Hōkio Township and thereby protect their land. According to a Department of Conservation file note, block trustee Peter Huria had ‘observed the swinging of the Hokio Stream mouth for many years, and believes the current state is the worst he has seen’.¹⁷⁵⁰

For some unknown reason – perhaps because of the lack of a clear direction from the lake trustees – the district council applied again for a water right in August 1991.¹⁷⁵¹ The application was discussed at the domain board meeting on 2 September 1991. Mc Kerchar regarded the claimed benefits of the stream diversion as ‘dubious’. Richard Anderson told the board that the cut would ‘remove an established wetland area between Lake Horowhenua and the sea’ and could also ‘remove a whitebait spawning habitat’. Trustees’ representative James Broughton told the board that he was personally against the proposed diversion because of the possible effect on eel and whitebait numbers. In a split decision, with the chairman using his casting vote (and both Tatana and Ranginui voting against), the board resolved that an interim objection be made against the proposed diversion ‘to enable the views of Lake Trustees to be sought and further considered by the Board at its next meeting’.¹⁷⁵²

On 26 November 1991 a meeting of lake trustees and Department of Conservation, district council, and regional council staff was held in the hope of resolving the issue in advance of a hearing of objections to the district council’s application. The meeting concurred with Anderson’s suggestion that the problem lay primarily with malfunctioning septic tanks and agreed that the diversion would not be a long-term solution. That would lie in some improved form of sewage treatment in Hōkio Township.¹⁷⁵³

It does not appear, however – in the period covered by this report – that the stream mouth was diverted or that a sewerage scheme was instituted at the Hōkio Beach settlement. In 1996, for example, a submission on a regional council discussion document noted that the stream’s path and height were causing septic tank problems in the village and that the ‘Strong local desire to have the stream cut directly to [the] sea raised conflict with local Maori.’¹⁷⁵⁴

¹⁷⁴⁹ Judy Robinson, Secretary, Horowhenua Lake Domain Board, to General Manager, Horowhenua District Council, 8 July 1991. Archives New Zealand file AANS W5883 25344 Box 116 NYA003263 part 4

¹⁷⁵⁰ Undated file note by Bruce Dix. Archives New Zealand file AANS W5883 25344 Box 115 NYA003149

¹⁷⁵¹ Consent application attached to Susan Neal, Consents Administrator, Manawatu-Wanganui Regional Council, to J Robinson, Secretary, Horowhenua Lake Domain Board, 15 August 1991. Archives New Zealand file AANS W5883 25344 Box 116 NYA003263 part 4

¹⁷⁵² Minutes of meeting of Horowhenua Lake Domain Board, 2 September 1991. Archives New Zealand file AANS W5883 25344 Box 116 NYA003263 part 4

¹⁷⁵³ Notes of the Hokio Stream water right objection pre-hearing meeting, held at the Hokio Stream, 26 November 1991. Archives New Zealand file AANS W5883 25344 Box 115 NYA003151

¹⁷⁵⁴ ‘Joint effort clean-up for Lake Horowhenua’, *Evening Standard*, 16 October 1996, p 3

The effect of the 1992 fisheries settlement

In the 1992 fisheries settlement with the Crown, Māori negotiators agreed to an end to Māori commercial fishing claims and the replacement of customary fishing rights by regulations. This was in exchange for \$150 million for the promotion of Māori commercial fishing through the joint venture purchase of Sealord Products Ltd, and 20 per cent of all new fish species quota.¹⁷⁵⁵ The settlement was given legislative effect in the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 ('the Settlement Act'). The issue of how this impacted on the fishing rights set out in section 18 of the 1956 Act was considered by the Department of Conservation the following year. G P Hulbert's view was that the rights referred to in the 1956 legislation 'would not extend to commercial fishing', and so 'the need to obtain a quota would apply here with respect to eels'.¹⁷⁵⁶

Hulbert went on to note that section 10 of the Settlement Act declared that non-commercial fishing rights subject to the Fisheries Act 1983 were henceforth 'not enforceable in civil proceedings' and 'shall not provide a defence to any criminal, regulatory, or other proceeding ... except to the extent that such rights or interests are provided for in regulations made under section 89 of the Fisheries Act 1983'.¹⁷⁵⁷ Since fishing for eels was controlled by the Fisheries Act, Hulbert also thought that non-commercial fishing for eels was 'subject to the Fisheries Act' and

Accordingly the ROLD Act provisions with respect to eels no longer have any legal effect. The identified owners will now have to comply with the Fisheries Act and Regulations.¹⁷⁵⁸

However, Hulbert considered that, since the existing controls on whitebait fishing were 'within the realm of the Conservation Act, not the Fisheries Act', the Settlement Act would not apply. Therefore, 'the ROLD Act provisions will continue to apply and the Whitebait Fishing Regulations 1991 will not apply to the identified Maori in this area'.¹⁷⁵⁹ [Emphasis in original.]

It has not been possible to ascertain whether Hulbert's opinion was adopted by the Crown or, if so, how Muaūpoko reacted. However, in 1997 Te Rūnanga ki Muaūpoko did challenge one aspect of the 1992 fisheries settlement through the courts. Tatana, who had become the rūnanga chairperson, explained that the tribe was seeking an injunction to stop the distribution of fisheries assets to iwi on the west coast of the North Island on the basis that the Muaūpoko's fishing rights had been confirmed both in legislation and in the Cooke and O'Regan Supreme Court decisions in the 1970s as extending 'to the sea'. This meant, she

¹⁷⁵⁵ Waitangi Tribunal, *The Fisheries Settlement Report 1992* (Wellington: Waitangi Tribunal, 1992), p 1

¹⁷⁵⁶ G P Hulbert, Regional Solicitor, Hawke's Bay, to Office Solicitor, head office, 12 May 1993. Archives New Zealand file AANS W5883 25344 Box 115 NYA003151

¹⁷⁵⁷ G P Hulbert, Regional Solicitor, Hawke's Bay, to Office Solicitor, head office, 12 May 1993. Archives New Zealand file AANS W5883 25344 Box 115 NYA003151

¹⁷⁵⁸ G P Hulbert, Regional Solicitor, Hawke's Bay, to Office Solicitor, head office, 12 May 1993. Archives New Zealand file AANS W5883 25344 Box 115 NYA003151

¹⁷⁵⁹ G P Hulbert, Regional Solicitor, Hawke's Bay, to Office Solicitor, head office, 12 May 1993. Archives New Zealand file AANS W5883 25344 Box 115 NYA003151

claimed, that the tribe had unrestricted rights to fish in the sea as well as the lake and Hōkio Stream. She contended that ‘we can fish for as far as we can see, as we did before the Pakeha came’, and other tribes should negotiate with Muaūpoko over commercial fishing boundaries.¹⁷⁶⁰

The rūnanga’s case was heard by Justice Ellis in the High Court in Wellington. The rūnanga argued that the 1956 Act encompassed rights to fish commercially in the sea and that these rights continued, despite the reference in section 9 of the Settlement Act to them being ‘finally settled’.¹⁷⁶¹ However, Ellis ruled that it was ‘plain beyond argument’ that Muaūpoko’s fishing rights, as defined by the 1956 Act, did not extend beyond the mouth of the stream. With regard to the Muaūpoko argument that fish in the stream were dependent on the sea and the distinction between land and seas fisheries was artificial, Ellis considered ‘In terms of fish that is no doubt so, but it is fisheries not fish that is defined’ in the legislation.¹⁷⁶²

Ellis noted that the effect of section 9 of the Settlement Act did not need to be established in this case. As the *Māori Law Review* reported, however, Ellis observed that ‘while that “hastily drafted and enacted” provision could be read as terminating the fishing rights of the Muaupoko formerly protected under the 1956 Act, the court would need a “very great deal of convincing” that such an implied repeal had taken place’.¹⁷⁶³ This view may have contradicted Hulbert’s opinion about the effect of section 10.

Epilogue

The following summary is, by necessity, a simple overview only. In broad terms, in 2015, little has changed at the lake since 2000. The domain board still operates under the same legislation, including the provision for recommendation to the Minister of nominees for appointment to the board by the ‘Muaupoko Maori Tribe’. The Department of Conservation’s Regional Conservator remains the board chair. The Crown, therefore, has continued to be tied to the management of the lake reserve.

The lake itself remains in a parlous condition. A 2011 study by Max Gibbs for the regional council found that ‘the water quality ... is currently very poor and is declining due to increasing nutrient and sediment loads from the catchment’. In other words the health of the lake has deteriorated since the era of restoration began, rather than improved. Gibbs explained that nitrogen entering the lake was increasing because of ‘leaching of fertilizer from the horticulture, market gardening and intensive dairy farming in the catchment’. He

¹⁷⁶⁰ ‘Tribe calls for fisheries review’, *Dominion*, 19 June 1997, p 10

¹⁷⁶¹ ‘Runanga ki Muaupoko v The Treaty of Waitangi Fisheries Commission & Attorney General’, *Māori Law Review*, November 1997. <http://maorilawreview.co.nz/1997/11/november-1997-contents/> accessed 27 March 2015

¹⁷⁶² ‘Levin tribe loses sea fishery claim’, *Dominion*, 26 November 1997, p 10

¹⁷⁶³ ‘Runanga ki Muaupoko v The Treaty of Waitangi Fisheries Commission & Attorney General’, *Māori Law Review*, November 1997. <http://maorilawreview.co.nz/1997/11/november-1997-contents/> accessed 27 March 2015

described a complex nutrient cycle, in which the concentration of nitrogen in winter feeds massive weed growth from October to December. Then, when the weed collapses onto the lakebed in February, the sediment becomes anoxic and releases phosphorus, the high concentration of which in turn leads to blue-green algal blooms. Some of this flows off down the Hōkio Stream while the rest settles back into the sediment when winter brings an end to the blooms. The cycle then begins again. Gibbs noted that the phosphorus in the lake thus came mainly from the existing sediment, in which the phosphorus load had decreased by nearly half since 1989. About 80 per cent of the phosphorus flowing into the lake came from one source, the Queen Street drain.¹⁷⁶⁴

Image 7.4: Claimants Charles Rudd and Philip Taueki at the lakeside, 2013¹⁷⁶⁵



Overall, Gibbs described the lake as ‘a very large settling pond with about half of its original volume filled with sediment’. He noted that the outlet weir lacked a passage to allow entry – when the lake water improves – of fish species such as black flounder, grey mullet, and smelt. Two pest fish species were found in the lake: goldfish, which feed on plants providing habitat for koura and inanga, and perch, which are carnivorous and eat zooplankton that would control the lake’s algae. Gibbs’ proposed solutions for the lake were familiar: reduce the inflow of nutrients and sediment from groundwater, stormwater, and run-off; improve access to the lake for fish; and reduce pest fish and the conditions which allow the growth of weeds.¹⁷⁶⁶

The sewage treatment plant remains in the same location, adjacent to the lake. In the winter of 2008 the plant was inundated by heavy rainfall and effluent spilled from the oxidation ponds and over surrounding paddocks. Subsequent tests revealed it had leached into the

¹⁷⁶⁴ Max Gibbs, *Lake Horowhenua Review: Assessment of opportunities to address water quality issues in lake Horowhenua*, NIWA client report for Horizons Regional Council, National Institute of Water and Atmospheric Research, June 2011, pp 9-11

¹⁷⁶⁵ ‘Lake’s woes go beyond simple’, *Manawatu Standard*, 22 March 2013, p 2 (Rudd story); ‘Lake of shame’, *New Zealand Listener*, 22 February 2013. <http://www.listener.co.nz/current-affairs/horowhenuas-lake-of-shame/> (Taueki story)

¹⁷⁶⁶ Max Gibbs, *Lake Horowhenua Review: Assessment of opportunities to address water quality issues in lake Horowhenua*, NIWA client report for Horizons Regional Council, National Institute of Water and Atmospheric Research, June 2011, pp 11-12

lake.¹⁷⁶⁷ Mayor Brendon Duffy confirmed at the time that the council intended to build a new treatment plant on land it had acquired on Hokio Sand Road near the Pot, and referred to a 10-year time frame.¹⁷⁶⁸ The proximity of the plant to the lake – a convenience when the plant was first constructed in the 1950s – is now clearly regarded even by the council as a liability.

Image 7.5: Overflow of effluent from the treatment plant, August 2008¹⁷⁶⁹



Image 7.6: Green algae at the lakeside, March 2015¹⁷⁷⁰



¹⁷⁶⁷ 'Lake Horowhenua contamination from sewage plant confirmed', *Evening Standard*, 3 October 2008, p 1

¹⁷⁶⁸ 'Sewerage move on the cards', *Evening Standard*, 16 September 2008, p 3

¹⁷⁶⁹ 'Sewage ponds overflow at Lake Horowhenua', Green Party press release, 21 August 2008. <http://www.scoop.co.nz/stories/PA0808/S00311/sewage-ponds-overflow-at-lake-horowhenua.htm>

¹⁷⁷⁰ Photograph by the author, 16 March 2015

In August 2013 the lake trustees, domain board, Department of Conservation, district council, and regional council signed the ‘He Hokio Rerenga Tahi’ (the Horowhenua Lake Accord), a statement of intent to improve the quality of the lake. Notably, one of its objectives was to ‘Enhance the social, recreational, cultural and environmental aspects of Lake Horowhenua *in a fiscally responsible manner* that will be acceptable to the community of Horowhenua’ (emphasis added). A further reference was made later in the document for the need for actions taken to be ‘affordable’.¹⁷⁷¹ Evidently, there are limits to the amount of money that will be spent on the restoration. In February 2014 the fund for restoration activities amounted to \$1.275 million, made up of \$540,000 provided by central government and \$730,500 from local government and industry.¹⁷⁷² If the objectives in the Accord’s action plan are met, however, there should soon be a fish pass at the weir, a stormwater treatment system on the Queen Street drain, and a sediment trap on the Arawhata Stream.¹⁷⁷³

Image 7.7: The new path of the Hōkio Stream to the sea after the December 2014 realignment¹⁷⁷⁴



Since 2000 the lake and its environs have regularly been the subject of court action. For example, litigation over the expired rowing and sailing club leases at Muaūpoko Park led to a ruling by a Māori Land Court judge that neither club had any right to occupy.¹⁷⁷⁵ Court action

¹⁷⁷¹ *He Hokioi Rerenga Tahi: The Lake Horowhenua Accord*, August 2013, pp 8, 16.

<http://www.horizons.govt.nz/assets/managing-our-environment/water-quality-2/9083-Lake-Horowhenua-Accord-Signing-BookWEB.pdf> accessed 27 March 2015

¹⁷⁷² ‘Lake Horowhenua Accord’. <http://www.horizons.govt.nz/managing-environment/resource-management/water/freshwater/lake-horowhenua-accord/> accessed 27 March 2015

¹⁷⁷³ *He Hokioi Rerenga Tahi: The Lake Horowhenua Accord Action Plan, 2014-2016*, no date. <http://www.horizons.govt.nz/assets/publications/managing-our-environment/water-quality/lake-horowhenua/Action-Plan-for-Lake-Horowhenua.pdf> accessed 27 March 2015

¹⁷⁷⁴ Photograph by the author, 4 April 2015

¹⁷⁷⁵ See, for example, ‘Rowing club has “no right” to be at lake – judge’, *Manawatu Standard*, 12 January 2013, p 1

also preceded the December 2014 realignment by the district council of the Hōkio Stream mouth under emergency provisions (section 330) of the Resource Management Act.¹⁷⁷⁶ Membership of the Horowhenua Lake Trust has also been subject to regular litigation, as many of the divisions within Muaūpoko continue to be focused on the management of the lake. Many of the legal battles over access to and use of the lake have been fought by Philip Taueki, a claimant in this Tribunal inquiry.

Conclusion

With the end of the discharge of sewage effluent to the lake in 1987, and the return of participation of Muaūpoko on the domain board in 1988, the focus at the lake should have turned to its restoration. This occurred, but only in part. Matters left unresolved from the 1980s continued to occupy much of the attention of the domain board: would central government continue to participate in the administration of the reserve? When would the 1956 Act be amended to formally provide for the long-awaited nomination of board members by the lake trustees? Why was the Reserves Act 1977 applied to the lake, and did it matter? What if any complications arose from the switch from the Lands and Survey Department to the Department of Conservation, and from the former borough and county councils to the new district council?

The Muaūpoko members were confused by some of the developments, in part no doubt because they had had little input into them. But they ultimately made clear that they expected the Crown to maintain its involvement with the board and to share in the responsibility for the lake's clean-up. They also introduced a new and difficult issue for the board to consider: who owned the waters of the lake? This was addressed through a Crown Law Office opinion in 1989 that concluded that the 1956 Act had in fact taken away Māori rights of ownership of the waters. This left the Muaūpoko board members and trustees dissatisfied but without the financial means to take the matter further.

Initial attempts to begin the process of restoring the lake were hampered by poor relations between the Department of Conservation and some members of Muaūpoko. The Crown felt it was fulfilling its obligations under the Resource Management Act 1991 by dealing with the Muaūpoko members on the domain board, but there was a growing feeling within Muaūpoko that this was outdated and insufficient. Their view was that the legislation required the Crown to consult with tangata whenua, not with a small number of representatives on a government-created board. There was also a fair degree of distrust in the Government's motives – a hang-over, it would seem, of the regular disregard for Muaūpoko interests in previous decades. Relations grew so tense that officials warned that the restoration work would have to be abandoned. The Crown and trustees also had competing priorities. The Crown wanted to commence the restoration with relatively low-cost projects such as riparian planting, while the Muaūpoko board members and the trustees had an overwhelming preference to begin the expensive process of dredging sediment from the lake.

¹⁷⁷⁶ 'Stream redirected despite lone protest', *Manawatu Standard*, 19 December 2014, p 4

The relationship between Muaūpoko and the Crown appeared to change after the appointment of new trustees in October 1992 and the nomination of new Muaūpoko domain board members in March 1993. The replanting programme ran for the rest of the decade and was led by the trustees, with Crown and local body support. Its success – borne out by it winning a conservation award in 2000 – probably stemmed from the Crown and its delegates funding but not attempting to direct the work.

At the same time as this positive progress was being made, however, the lake's health continued to deteriorate. Stormwater entering the lake remained untreated, the weir still blocked the flushing of sediment from the lake, and changes in catchment land-use – such as the intensification of dairying – brought added nutrients into the waters. Moreover, in 1991 and again in 1998 the sewage treatment plant could not cope with the inflow of wastewater at times of especially wet weather and was forced to make emergency discharges of effluent to the lake. The 1998 discharge occurred after assurances in 1991 and 1992 that the overflow would not be repeated. As in the 1960s – when raw sewage entered the lake in emergency conditions – and the 1980s – when the town's effluent could not be diverted until the borough council had finally found an acceptable alternative method of disposal – Muaūpoko were powerless to act, despite symbolically blocking a drain from the treatment plant. They were reliant on the district council to upgrade its facilities yet again or go one step further and relocate its plant away from the lake. In 2008, when there was a further overflow and entry to the lake of effluent, even the council spoke openly of building a new plant elsewhere. Again, however, Muaūpoko have no choice in the matter but to wait.

In 2015 the quality of the lake's waters remains very poor. Litigation has continued to surround the lake, be it over control of the Hōkio Stream, access to the waters, the expired rowing and sailing club leases, or the membership of the lake trustees. Further progress has been made on restoration plans, but it would seem that significant investment of money and time and changed land-use practices in the catchment are needed before the lake will improve its hypertrophic status.

8. Conclusion

The story of Lake Horowhenua in the twentieth century is little short of tragic. From being a bounteous food basket surrounded by dense native bush in the late nineteenth century, over the next 100 years the lake suffered almost every imaginable indignity. Not only were its margins ruined and its waters significantly reduced by drainage, but it was heavily polluted by the entry of nutrient-laden effluent, run-off, and stormwater. It has also been steadily filled by almost incalculable volumes of sediment, to the extent to which at least as much depth of silt sits above its bed as water. Its native fish life of 1900 has been damaged or displaced by this loss of habitat and pollution, as well as a crude concrete control weir that traps the sediment but excludes certain diadromous varieties of fish.

For Muaūpoko – the owners of this singularly important taonga – this has amounted to a desecration. Their mana accruing from ownership of the lake has been severely compromised. Time and again, the Crown took decisions or passed laws over the lake that the tribe opposed and which favoured Pākehā settlers rather than the lake's owners. As Ben White put it with respect to the Wairarapa case in his 1998 research report on lakes, the contest essentially boiled down to eel versus sheep, with one inevitable winner:

As Pakeha began farming recently acquired land that abutted waterways controlled and used by Maori, the right to control waterways became a hotly contested issue. In the case of the Wairarapa lakes, the desire of Pakeha settlers to end the periodic inundation of their lands caused by the lake flooding was in direct opposition to the interests of Maori whose major fishery was centred on the annual flooding of the lakes; in short, a conflict that can be typified as one between eel and sheep.¹⁷⁷⁷

Yet it was the maintenance of Muaūpoko's mana over the lake that was promised to the tribe when Pākehā settlers and the Crown first began to seek access to and use of the lake's surface. As a member of the Legislative Council presciently wondered in 1905: 'What is that mana worth ... when control of the lake [is] handed to a Board? Nothing.'¹⁷⁷⁸

On one level the twentieth-century history of the lake's administration and control can be divided up into two distinct phases: the era of legal uncertainty before 1956, and the period of relative legal clarity thereafter. Whereas there are imperfections in such a division – there were constant proposals to tinker with the law governing the lake after 1956, for example – it is certainly true that the skein that Justice Cooke referred to was at its most tangled before 1956. While the lake and its marginal strip were vested in trustees on behalf of the Māori owners in 1898, in 1905 a very short Act of Parliament was hastily passed that made the lake a public recreation reserve subject to ongoing Māori rights of use, including fishing. The Act said nothing about the ownership of the bed and was not clear whether the Māori fishing rights were to be exclusive. Its stated area for the lake was the same acreage as the lake and

¹⁷⁷⁷ White, p 58

¹⁷⁷⁸ NZPD, 1905, vol 135, p 1206

surrounding chain strip combined. It required at least a third of the members of the board it constituted to be Māori, but then existed for a decade with less than a third Māori membership. It provided for the Crown to purchase ten acres of lakeside land for a reserve, but the Crown then bought nearly 14.

When confronted with some of these irregularities or uncertainties, the Crown did one of two things. It sometimes relied on Crown Law opinions to confirm that its interpretation was correct – or, rather, that the Muaūpoko perspective was incorrect – as occurred in 1914 over fishing rights and in 1932 over the ownership of the lakebed and chain strip. Alternatively, it introduced legislation to validate its position. In 1916, for example, Parliament clarified – without justification – that the chain strip was part of the domain. It provided that Māori membership of the domain board would be no more than a third. It declared the board a local authority with drainage powers and – when these were found to be wanting – passed new legislation in 1926 to allow the newly formed Hokio Drainage Board to widen and deepen the Hōkio Stream.

At certain times Muaūpoko obtained the explicit agreement of the Crown or its delegates that the tribe's interests would be protected. The 1905 agreement could well be placed in this category. If we accept it at face value, then Muaūpoko were promised their mana over the lake and their exclusive fishing rights, and assured that the lake would be kept free of pollution. None of this came to pass. In November 1925 the local authorities agreed that any drainage work undertaken on the Hōkio Stream would avoid interference with the stream banks, but the ensuing work in February 1926 did just that. A new agreement of 5 March 1926 – signed by a senior Native Department official – stated that no further deepening of the stream would occur without Māori consent. However, legislation passed later that year gave the drainage board the power to deepen and widen the stream without any reference to Māori at all.

The pattern continued in later years. In late 1952 the Minister of Lands was categorical in his assurance to Muaūpoko that the lake would not be a 'dumping ground for sewer effluent'. That, however, is exactly what occurred. In 1962 the borough's legal counsel gave an assurance before the Supreme Court that the deficiencies in the treatment plant that had allowed raw sewage to enter the lake would be 'rectified at the earliest possible date'.¹⁷⁷⁹ Within two years, however, the situation had been repeated. In the early 1970s the borough council obtained the lake trustees' agreement to lay stormwater pipes across their land in exchange for what two borough councillors called the 'solemn promise' that the council would take steps to ensure its stormwater did no harm to the lake.¹⁷⁸⁰ This promise was not kept. In the 1980s Ministers made repeated promises that the legislation governing the lake would be amended to make clear that the lake trustees would nominate the Muaūpoko board members, but this amendment was never made. And in 1992 the mayor again used the word

¹⁷⁷⁹ 'Attempt to stop Levin sewage polluting lake', *Evening Post*, 5 September 1962, p 17. Clipping on Archives New Zealand file ABKK W4357 889 Box 326 50/856 part 2

¹⁷⁸⁰ 'Concern over stormwater trash in lake', unsourced clipping of 17 August 1976. Clipping on Archives Central file HDC 00009: 86: 23/9

‘rectified’ in effectively giving an assurance that the 1991 overflow of effluent to the lake would not be repeated.¹⁷⁸¹ However, emergency discharges occurred again in 1998 and 2008.

In their dealings with the Crown and local bodies, Muaūpoko tended to get the best results when they had legal representation, even though this cost them money they could barely afford. A letter from Hanita Henare’s lawyers in January 1918 certainly hindered the domain board’s plans to effect the lake’s drainage by widening and deepening the bed of the Hōkio Stream, and the intervention of the same firm helped put an interim stop to the board’s drainage activities in 1926. Muaūpoko also benefited considerably from the advocacy of David Morison from 1927, particularly so in their dealings with the 1934 inquiry and with Crown representatives thereafter. It is disturbing, therefore, that Prime Minister Savage attempted to entice the tribe to cut a deal over their lake interests in 1936 without the presence of their lawyer. In 1952, as well, the Crown essentially treated Muaūpoko’s lawyer as its own agent in its efforts to convince the tribe to abandon their campaign and sell the Crown the lakebed.

The period from the 1960s onwards was characterised by legal disputes over the pollution of the lake. Here the benefits of legal representation for Muaūpoko had real limits. No matter how compelling the case against the degradation of the waters, the borough council always had a failsafe position that, if the raw sewage or treated effluent did not flow to the lake, it would inundate the suburban homes and business district of Levin. No judge or tribunal would or could force the borough council to remove its waste from the lake in those circumstances. Muaūpoko were entirely reliant in the 1960s on the borough council – with central government support – to ensure its plant did not discharge raw sewage to the lake. In the 1970s and 1980s, Muaūpoko were similarly reliant on the council – and the Crown’s funding – to find alternative means of disposing of the effluent. It is no different today, even though the effluent is now discharged to land at the ‘Pot’ in the Waiwiri Stream catchment. That is because Muaūpoko realise that another overflow of effluent to the lake will inevitably occur unless the treatment plant is moved away from the lake.

The local authority’s primary concern about sewerage was always about cost, and there were clear limits as well on what the Crown was prepared to spend. Coupled with this concern about obtaining the best outcome for the ratepayers and taxpayers was, for decades, a concurrent inability to comprehend Māori cultural concerns about the pollution of food-gathering places. If these were understood, they were dismissed as irrational. Into the 1980s, when greater awareness of Māori cultural perspectives had developed, the bodies making decisions on the council’s effluent disposal remained – as a member of Ngāti Raukawa told the 1986 water rights special tribunal – ‘monocultural in the face of a bicultural issue’.¹⁷⁸²

¹⁷⁸¹ Minutes of meeting of Horowhenua Lake Domain Board, 16 November 1992. Archives New Zealand file AANS W5883 25344 Box 115 NYA003150

¹⁷⁸² Submission of Rachael Moore to the regional water board tribunal. Archives Central file HRC 00027: 52: 2068c

The twentieth-century history of the lake was also characterised by extraordinary and unjustified delays on the part of the Crown and its delegates to make amends for acknowledged wrongdoings. In 1934 the Harvey-Mackintosh inquiry made clear to the Crown that it did not own the lakebed and that the chain strip around the lake should not have been included in the domain in 1916. Yet it took a further 22 years for the law to be amended to make clear that title to these areas was – and always had been – Māori owned. The delay is partly explicable by the Crown's entirely misplaced confidence that Muaūpoko would simply settle on its terms. In this regard it carelessly underestimated Muaūpoko's determination to keep hold of the lake. The Crown did not just do this in 1935, when it attempted to secure a sizeable strip of lakeside land for itself as part of the bargain for recognising that it had no right to the rest of the chain strip or lakebed, but again in 1952, when it decided it would be for the best if it simply bought up all Muaūpoko's interests. And while it held out stubbornly for the cession by Muaūpoko of the lakeside land, it abruptly abandoned the idea as impractical and unnecessary in 1953.

Another interminable delay occurred over the cessation of the flow of sewage effluent to the lake. The problems associated with this ongoing discharge were well known to Crown officials in 1969, yet the effluent was not finally diverted until 1987. Much of the delay was caused by the borough council's unwillingness to contemplate a more expensive alternative to simply diverting the discharge direct to the Hōkio Stream. Yet the overall regime that allowed an unsatisfactory situation to drag on for so long was one of the Crown's making. It is worth reflecting that Muaūpoko offered their own property for land-based disposal as early as 1976. Rather than leap at this opportunity at the time, the council – and by extension the Crown, which would have to subsidise any new sewerage disposal scheme – held tight in the hope of a less expensive option. When the effluent was finally diverted it was indeed to sand dunes obtained from Māori near Hōkio Beach.

A third delay began in 1982, when Muaūpoko quit the domain board and the Minister of Lands undertook to return control of the lake's surface waters to them. The Minister backtracked on this commitment the following year, but in doing so promised that the 1956 Act would be amended to make clear that the Muaūpoko representatives on the domain board were to be nominated by the lake trustees. Years passed, during which Muaūpoko went unrepresented on the domain board because of the lack of the amendment. When Muaūpoko simply rejoined the board without the law having been changed in 1988 it showed that the delay had been quite unnecessary. An amendment to the legislation was still being discussed by officials in the 1990s, but today the reference in the statute to how Muaūpoko members will be nominated for appointment remains no different from 1956.

At times the Crown's actions over the lake were dubious at best and occasionally better described as unconscionable. The negotiating tactics of the mid-1930s are a case in point. Officials in 1935 asked Muaūpoko for a 'nice gesture' of a 'gift' of 83.5 chains of dewatered area and chain strip. If this 'amicable settlement' were reached, Muaūpoko were told, there

would be no further ‘whittling of their privileges’.¹⁷⁸³ But the ‘gesture’ would itself have been a further ‘whittling’ of their rights. When Muaūpoko refused, the Under Secretary of Lands assumed a petulant tone, maintaining that the Crown had made its offer and Muaūpoko would have to come back to it ready to accept the bargain. Savage’s proclaimed ‘friendliness’ the following year, which involved suggesting that Muaūpoko come to an arrangement without their lawyer present, has already been mentioned. Then, after Muaūpoko had refused to cave in for so many years, the Commissioner of Crown Lands observed in 1952 that ‘Obviously if the Maoris would sell the title to the Lake Bed and waive all their rights, this would create an ideal set up.’¹⁷⁸⁴

The Crown and local bodies continued to pay insufficient respect to Muaūpoko’s steadfast determination to maintain hold of their lake in later years. In 1968 the Director-General of Lands told his Minister that the department’s preference was for the local bodies to assume ‘all the powers of a Domain Board’, even though he acknowledged this was unacceptable to Muaūpoko.¹⁷⁸⁵ In 1970 – despite the decades-long dispute over title to the chain strip – the borough council decided it would take a section of the strip as well as adjoining Māori-owned blocks under the Public Works Act for its stormwater drains. The council – like the Commissioner of Crown Lands in 1952 – seemed to have no memory of what had gone before it. In the mid-1970s, when the split governance over the lake was seen as an impediment to its successful restoration, officials used the term ‘unified control’ as a means of expressing the need for the lake trustees to yield their rights to an overarching authority, such as the catchment board. A Nature Conservation Council official thought it would matter little if this involved a loss of fishing rights, since the water was too polluted for such rights to be worth much. This was the counterpart to the attitude of a Department of Internal Affairs official in 1926 that Muaūpoko’s fishing rights themselves were unaffected by drainage activities, even if those works meant the tribe were no longer able to catch fish.

Perhaps most striking of all – given the litany of grievances that Muaūpoko had suffered over the lake since 1905 – was the attitude of Lands officials in the mid-1980s to the lake trustees’ proposal that the Crown pay a significant sum for a perpetual lease of the lakebed. While this would solve any question of access by the public to the lake’s waters, said one official, he did not believe that ‘our frustrations should give way to unmerited generosity’.¹⁷⁸⁶ No doubt, from Muaūpoko’s perspective, the generosity had for too long come the other way.

The Crown agreed to participate in the reconstituted domain board in the 1950s because of Muaūpoko’s deep distrust of the local authorities. By the 1960s, however, the Crown was

¹⁷⁸³ ‘The future of Lake Horowhenua. Deadlock reached in proceedings. Natives unable to concede land required for improvements’, *Chronicle*, 26 March 1935. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

¹⁷⁸⁴ Commissioner of Crown Lands to Director-General of Lands, 20 June 1952. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 4

¹⁷⁸⁵ Director-General of Lands to Minister of Lands, 8 August 1968. Archives New Zealand file AANS W5491 6095 Box 158 1/220 part 5

¹⁷⁸⁶ Devine’s annotation on Tyler for Commissioner of Crown Lands to Director-General of Lands, 24 November 1986. Archives New Zealand file AANS W5942 7613 Box 138 RES 7/2/50 part 4

seeking ways of extracting itself from this responsibility, and over the next 30 years it continued to raise the possibility of exiting. At every turn, however, it was foiled by Muaūpoko's resistance, and a Crown official remains chair of the domain board to this day. In many ways, however, the board itself has become an outmoded forum for the Crown and Muaūpoko to interact over the management and restoration of the lake. In 1992 the Minister of Conservation confirmed that his department's role was to consult with the elected Muaūpoko representatives on the board. If Muaūpoko felt this was inadequate, he said, they should elect some new representatives. On behalf of certain members of Muaūpoko, however, a lawyer put it to the Minister that his department should develop a working relationship or partnership with the tribe itself. No doubt the role of the board in the management of the lake will be a key facet of treaty settlement negotiations with Muaūpoko.

It should be added that neither has the board format particularly suited Muaūpoko. Despite its numerical majority of members prescribed in the 1956 Act – that is, four as opposed to the local bodies' three, with an independent chair – Muaūpoko failed to capitalise on this. Members were absent much more regularly than the local body members, both before and after 1956. Some members may have struggled to adjust to the board's style of running on Pākehā lines, with a Crown chair and Crown or local body secretariat, as well as council representatives experienced in the world of local body politics. Muaūpoko voices probably lost their assertiveness in that environment. Furthermore, the tribe's internal divisions were all too readily exacerbated by the split responsibilities and roles of the lake trustees, the Muaūpoko domain board members, and the tribal body (be it the Muaupoko Tribal Committee or its successors, the Muaupoko Maori committee, Te Runanga ki Muaupoko, and the MTA). As the chair of the lake trustees put it in 1982, 'We feel as if we haven't had enough say. If one of our (tribal) members goes against the wishes of the rest, we've lost our control.'¹⁷⁸⁷

When restoration of the lake began in the 1990s, the greatest success occurred with the planting of the chain strip. It will have been no coincidence that this project was led by Muaūpoko, with the Crown and others providing financial support rather than attempting to dictate terms. Yet for all this progress some major challenges remain, not in the least because the state of the lake is an issue affected by the entire catchment, rather than just its environs. Intensive dairying and market gardening and the paved expanse of Levin appear to be key determinants of the lake's quality, as well as its general depth and flow. Reinstating the lake to anything like its past glory will be a long and expensive process in which some difficult decisions will clearly need to be made. The lake and Hōkio Stream remain in Māori ownership, and history suggests it will be essential for their owners to take full part in the decisions over the ongoing restoration.

¹⁷⁸⁷ 'Lake trustees to get together with owners', undated and unsourced clipping on Archives New Zealand file AANS W5491 7613 Box 564 RES 7/2/50 part 2

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AANS W5883 619 Box 41 8/3/144/7 part 3 Recreational Reserves – Lake Horowhenua – [Domain And Lake General] – Pollution [And Water] 1981-1988

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AATE: Ministry of Works and Development Residual Management Unit, Head Office

AATE W3392 Box 77 96/325000 Soil Conservation/River Control – Hokio Stream 1925-1985

AAUM: Ministry for the Environment, Head Office

AAUM W4043 Box 221 NRS 3/6/Z part 1 Lake Horowhenua 1975-1985

AAYY: Department of Scientific and Industrial Research, Residual Management Unit

AAYY W4182 18152 Box 63 32/3/3 part 1 Biology and Environment – Freshwater – Lake Horowhenua 1971-1980

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AAZU: Nature Conservation Council

AAZU W3619 Box 13 31/11/71 Lake Horowhenua: Pollution 1971-1979

ABJZ: Te Puni Kōkiri, Head Office

ABJZ W4615 6878 Box 20 25/6/2/1 part 1 Committees & Councils – Muaupoko Tribal Committee – Receipts Payments & Subsidies 1951-1961

ABJZ W4615 6878 Box 20 25/6/2/1 part 2 Committees & Councils – Muaupoko Maori Committee 1962-1980

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ABJZ W4644 869 Box 267 96/6 part 1 Iwi Development – Western Region – Mua Upoko 1989-1992

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ABKK: Works Consultancy Services Ltd, Head Office

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Stormwater Drainage, Swimming Pools, Solid Waste Disposal – Levin Borough
Council 1985-1986

ABQU: Ministry of Health, Head Office

ABQU W4452 632 Box 171 22/175 Drainage – Sewerage – Levin Borough 1982-1992

ABWN: Land Information New Zealand, National Office

ABWN W5021 6095 Box 259 7/934 part 1 Wellington Land District – Hokio Stream &
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ACGO: Department of Internal Affairs, Head Office

ACGO 8333 IA1 2184 103/18/27 Local Bodies Miscellaneous – Land Drainage Boards
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ACIH: Department of Māori Affairs

ACIH 16036 W2459 Box 45 5/13/173 part 1 Lake Horowhenua 1929-1943

ACIH 16082 MA75 4/21 General file relating to Horowhenua 1880-1899

ACIH 16082 MA75 4/24 Miscellaneous papers, including a sketch plan of subdivisions of
No. 11 Block, Horowhenua, 1893, 1896-1905

ACIH 18593 W1369 29 [96] Horowhenua Lake (report to Department of Tourist and Health
resorts) (AJHR 1908 h 2a) 1908-1908

ADBZ: Department of Health, Head Office

ADBZ 16163 H1 W2262 Box 9 126/2/29 Water Classification – Horowhenua Lake of Hokio Stream 1967-1972

ADKM: Horowhenua District Council

ADKM W5905 Box 1 Closed file 5209 Horowhenua Lake Domain Newspaper Articles 1958

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ADOE: Marine Department

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ADOE 16612 M1 178 2/12/133 part 1 Sea Fisheries – Horowhenua lake – Suitable fish for 1917

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AECB: Tourist and Publicity Department

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AECZ: Native Land Purchase Department

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AEKN: Department of Scientific and Industrial Research

AEKN 19619 W2622 SIRW2622 Box 21 15/42 part 1 Horowhenua Lake Domain Board 1958

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A/2012/6: 5002212201: 10 (file accessioned but not yet processed, containing: Personal file – F H Hudson; Horowhenua Lake Domain Board Minute Book, 1906-1918; Horowhenua Lake Domain Board, 1906-1923; Horowhenua Lake Domain Board, 1923-1934; and Horowhenua Lake Domain Board vouchers, 1916-1921)

HDC 00009: 22: 6/8 Domains and Lands held in trust as Reserves: Horowhenua Lake Domain 1965-1970

HDC 00009: 22: 6/8 Domains and Lands held in trust as Reserves: Lake Horowhenua Domain 1970-1974

HDC 00009: 22: 6/8 Domains and Lands held in trust as Reserves: Lake Horowhenua Domain, Levin Borough Council 1975-1983

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HDC 00009: 48: 14/23 Land: Acquisition of Land Between Queen Street West and Lake Horowhenua Domain, Levin Borough Council 1968-1976

HDC 00009: 59: 16/10 Stormwater easements

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HDC 00009: 83: 23/2 Stormwater Drainage: Horowhenua Lake Control Scheme (Disposal of Sewerage), Levin Borough Council 1976-1981

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HDC 00010: 6: 10/11 Domains: Horowhenua Lake Domain, Levin Borough Council 1930-1964

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HRC: Horizons Regional Council

- HRC 00020: 11: 347 Subsidy Claims – Hokio Drainage – Levin, Manawatu Catchment Board and Regional Water Board, 1959-1971
- HRC 00024: 32: 9/5 Horowhenua Coastal Lakes – Waitawa – Kopuriherehere – Wairongomai – Papaitonga, Manawatu Catchment Board and Regional Water Board, 1973-1989
- HRC 00024: 32: 9/6 part 1 Lake Horowhenua, Manawatu Catchment Board and Regional Water Board, 1969-1976
- HRC 00024: 33: 9/6 part 2 Lake Horowhenua, Manawatu Catchment Board and Regional Water Board, 1976-1977
- HRC 00024: 33: 9/6 part 3 Lake Horowhenua, Manawatu Catchment Board and Regional Water Board, 1977-1980
- HRC 00024: 33: 9/6 part 4 Lake Horowhenua, Manawatu Catchment Board and Regional Water Board, 1980-1983
- HRC 00024: 33: 9/6 part 5 Lake Horowhenua, Manawatu Catchment Board and Regional Water Board, 1984-1988
- HRC 00024: 33: 9/6a Lake Horowhenua – Domain Board, Manawatu Catchment Board and Regional Water Board, 1958
- HRC 00024: 33: 9/6/1 Lake Horowhenua – Steering Committee, Manawatu Catchment Board and Regional Water Board, 1987-1989
- HRC 00024: 34: 9/6/2 Lake Horowhenua – Technical Committee
- HRC 00024: 57: 19/10 part 1 Hokio Drainage District – General, Manawatu Catchment Board and Regional Water Board, 1947-1964
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- HRC 00024: 115: 30/AU Rating - Hokio Drainage
- HRC 00024: 177: 53/11/B River Classification – Hokio Stream – Lake Horowhenua – Lake Papaitonga, Manawatu Catchment Board and Regional Water Board, 1971
- HRC 00027: 42: 1676 Water Right: Horowhenua Lake Trustees – Levin, Manawatu Wanganui Regional Council, 1983-1984
- HRC 00027: 49: 1991 Water Right: Lake Fly Petition Committee – Lake Horowhenua – Levin, Manawatu Wanganui Regional Council, 1988-1989

- HRC 00027 : 52: 2067 Water Right: Levin Borough and Horowhenua County Councils – Lake Horowhenua Midge Control – Levin, Manawatu Wanganui Regional Council, 1987-1990
- HRC 00027: 52: 2068c Water Right: Levin Borough Council – Lake Horowhenua sewage discharge, Hokio Sand Road sewage discharge, Manawatu Wanganui Regional Council, 1986-1987
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WAITANGI TRIBUNAL

CONCERNING the Treaty of Waitangi Act 1975

AND the Porirua ki Manawatū District
Inquiry

DIRECTION COMMISSIONING RESEARCH

1. Pursuant to clause 5A of the second schedule of the Treaty of Waitangi Act 1975, the Waitangi Tribunal commissions Paul Hamer, historian, to prepare a research report on Muaūpoko claim issues relating to Lake Horowhenua.
2. The report will provide a study of Muaūpoko's customary interests in Lake Horowhenua and the Hokio Stream, the history of increasing Crown and local body control of the lake since 1898, and the impact of management schemes implemented by the Crown, covering the following matters:
 - a) What was the Crown's understanding and perception of the nature of Muaūpoko traditional and customary associations with and usage of Lake Horowhenua and adjoining waterways, in particular the Hokio Stream, and of the significance of the lake to Muaūpoko tribal identity in the pre- and post-Treaty era?
 - b) What were the circumstances surrounding the grant of a Crown-derived title by the Native Land Court in 1898 and the reservation of the fishery easement? What were the functions of the trustees in whom Lake Horowhenua was vested by the Native Land Court in 1898? How did the trustees' functions relate to the Domain Board and the Crown? What were the Crown's and Muaūpoko's expectations and understandings regarding this development? To what extent did Muaūpoko subsequently engage with and participate in the Domain Board?
 - c) To what extent did the Crown consult Muaūpoko and/or obtain their consent to the passing of legislative measures concerning Lake Horowhenua in the twentieth century? What further measures did the Crown or delegated local bodies seek or take to extend their control over the lake and its surrounds? What were the Crown's and Muaūpoko's expectations and understandings of these legislative and other measures? Did Muaūpoko express any opposition to them and if so, how did the Crown respond? What monitoring and oversight has the Crown exerted over the exercise of delegated powers, and with what outcomes?

- d) What were the circumstances surrounding the establishment of the Hokio Drainage Board? Were any Crown assurances given to Muaūpoko in relation to its establishment and if so, were they kept? Did Muaūpoko express any opposition to the Board's operations and if so, how did the Crown respond?
 - e) What were the circumstances surrounding the declaration of the lake as a recreation reserve in 1981, and the discharge of treated sewage (up until 1987) and storm water into Lake Horowhenua? To what extent did the Crown or delegated local bodies take account of any Muaūpoko interests in the lake, consult Muaūpoko and seek their consent? With what outcomes?
 - f) What was the position by 2000 regarding the governance and administration of Lake Horowhenua? How were the interests of Muaūpoko lake owners recognised and provided for to that point? To what extent were Muaūpoko lake owners able to participate in management decisions affecting the lake made by the Crown or delegated local bodies?
3. The commission commenced on 13 October 2014. A complete draft of the report is to be submitted by 2 March 2015 and will be circulated to claimants and the Crown for comment.
 4. The commission ends on 19 June 2015, at which time one copy of the final report must be submitted for filing in unbound form, together with indexed copies of supporting documents or transcripts. An electronic copy of the report should also be provided in Word or Adobe Acrobat PDF format. An electronic copy of supporting documents should also be provided in Adobe Acrobat PDF format. The report and any subsequent evidential material based on it must be filed through the Registrar.
 5. The report may be received as evidence and the author may be cross-examined on it.
 6. The Registrar is to send copies of this direction to:
 - Paul Hamer
 - Claimant counsel and unrepresented claimants in the Porirua ki Manawatū District Inquiry
 - Chief Historian, Waitangi Tribunal Unit
 - Manager Research and Inquiry Facilitation, Waitangi Tribunal Unit
 - Principal Research Analyst, Waitangi Tribunal Unit
 - Inquiry Supervisor, Waitangi Tribunal Unit
 - Inquiry Facilitator, Waitangi Tribunal Unit
 - Solicitor General, Crown Law Office
 - Director, Office of Treaty Settlements
 - Chief Executive, Crown Forestry Rental Trust

Chief Executive, Te Puni Kōkiri

Dated at Gisborne this 9th day of December 2014

A handwritten signature in black ink, appearing to read 'C L Fox'.

Deputy Chief Judge C L Fox
Presiding Officer
WAITANGI TRIBUNAL