Lake Horowhenua epitomises the New Zealand Government's disdain for its indigenous people – both past and present.

Throughout the history of Aotearoa, Mua-Upoko has always been at the mercy of a Crown intent on suppressing the cultural and environmental concerns of the indigenous owners of this lake in order to enhance the recreational and economic pursuits of the Pakeha.

Most recently, it was the crux of a case appealed to the Supreme Court, a court supposedly attuned to the nuances of the Treaty of Waitangi.

In effect, the Supreme Court has invalidated itself.

And Parliament as well.

By ceding sovereignty, the Chiefs of New Zealand were guaranteed by the Queen of England 'full, exclusive and undisturbed possession' of lands and other property they and their descendents individually or collectively possess.

The Crown's jurisdiction, its authority to govern therefore rests upon compliance with the Treaty.

Before all nations at the United Nations human rights hearing in Geneva on 30 January 2014, the Minister of Justice affirmed the Treaty of Waitangi to be New Zealand's founding document.

Without compliance, this Treaty disintegrates.

And so does governance by Parliament and jurisdiction from the courts.

In terms of ownership, Lake Horowhenua is unique.

It is, and always has been owned by Mua-Upoko; since 1886 in English title.

But there is more to the legend of the lake than constitutional matters of property rights.

Lake Horowhenua was purchased not in cash. It was bought in blood.

Here on the artificial islands Muaupoko created for their own refuge, Te Rauparaha and his Ngati Toa raiders stockaded men, women and children 'killing some from day to day as required for food'. Concealed in clearings nearby, Taueki and the remnants of Mua-Upoko would hear their kin, across the silence of the lake; unable to rescue them if their tribe was to survive.

In Te Rauparaha's brutal quest to exterminate Mua-Upoko, the waters of the lake ran red with the blood and the bones of many mighty warriors rest on the bed of this privately-owned property.

But the Pakeha arrived with greed in their hearts, and by their avarice, they deprived a gentle people of that which was theirs by right, by the blood spilt and by a spiritual affinity that reflects the *mauri*, the *wairua* that immerses the *kaitiaki* into their natural environment.

It is ancestral land, land nurtured by Mua-Upoko for generations.

If Abraham Lincoln had stood on the shores of Lake Horowhenua, contemplating the waters running red with blood and the seagulls pecking the bones of little children clean, he could so easily have eulogised: .. *in a larger sense, we cannot dedicate, we cannot consecrate, we cannot hallow this ground or this lake. The men, women and children, living and dead, who struggled here have consecrated it far above our poor power to add or detract*.

Despite the sensitivity of this lake, Parliament passed a statute making this privately-owned lake available as a place of resort for His Majesty's subjects of both races, and placed it under the control of a Board appointed by Government; only a third to be Maori and not necessarily Mua-Upoko.

Parliament did so, without the approval of the owners and without any form of compensation. They did so in violation of property laws then and now, an 'alienation' order imposed by the Native Appellate Court upheld by the Supreme Court of that era, and of course the Treaty of Waitangi.

The 1905 legislation was replaced by the ROLD Act in 1956.

With this transition, unlawful law remains in force to this day.

Under the control of the Crown, this once-pristine lake that was once a major food source for Mua-Upoko has deteriorated to the extent it is now rated one of the worst lakes in the country.

On 15 January 2014, Phil Taueki as an owner and direct descendent of the Treaty signatory on behalf of Mua-Upoko, was arrested by police after he parked his vehicle lawfully on his own land to try and stop Horizons Regional Council and NIWA launching unwashed boats onto his tribe's lake, and placing it at risk of irreversible damage from the introduction of invasive weeds. Warnings of this risk were included in a report commissioned by Horizons from NIWA's most experienced scientist, Dr Max Gibbs.

Dr Gibbs also reported that the lake at certain times is so toxic, a mouthful would be lethal enough to kill a child or small animal.

Yet it is Taueki who faces three months in jail and a total of $3,000 in fines.

New Zealand prides itself on its treatment of Maori as its indigenous people.

That pride is unjustified.

This then, is the legend of the lake...

In the beginning..

Not content with the land they lived on, it wasn't long before the settlers of Levin coveted the lake as well.

Lake Horowhenua belongs to Mua-Upoko who had been forced to watch helplessly as ancestral lands, placed in ordinary property titles, disappeared through scurrilous means.

A Parliamentary Commission of Inquiry had ferreted out fraudulent activities, not only by those purporting to represent the tribe but by Central Government itself.

But the way in which the Government acquired control of this privately-owned lake was particularly sneaky.

Parliament simply stole the land by statute.

In 1905, a law was passed making the lake available as a place of resort for His Majesty's subjects of both races, and placing it under the control of a Domain Board, appointed by the Governor. Of these members, only a third were to be Maori, and not necessarily from Mua-Upoko.

Sir James Carroll had warned Parliament, and reassured natives that Government could not acquire this property without the approval of the owners and without some form of compensation.

But that is precisely what they did.

In doing so, they violated the property law of the time, an 'inalienation' order imposed by the Native Appellate Court upheld by the Supreme Court and the Treaty of Waitangi itself.

Since supplanted by the ROLD Act of 1956, unlawful law prevails to this day.

And under the control of the Crown for the past century or more, this once pristine lake has deteriorated to such as extent that it is now rated one of the worst lakes in the country.

The fish life that was once an abundant source of *kai* for Mua-Upoko is depleted; the waters strangled by weed and now so toxic that a mere mouthful could be lethal enough to kill a child.

Lake Horowhenua is undoubtedly facing an environmental crisis.

According to experts, it is at risk of irreversible damage.

But despite a report from respected NIWA scientist Dr Max Gibbs being presented to Horizons two years ago warning of the dangers of launching unwashed boats onto the lake, Phil Taueki was recently arrested by police officers for lawfully parking his vehicle on his own land to try and stop NIWA and Horizons launching motorised boats onto the lake, contravening conventional bio-security measures.

Manhandled by four or five police officers, handcuffed and incarcerated in a police cell until he could be processed, Taueki now faces three months in jail and fines totalling $3,000.

The most disturbing aspect however is the prospect that police intervention may have placed this privately-owned lake beyond redemption.

With only a small fragment being enough to infect an area, bio-security consultant Bill Chisholm warns that the weed will then spread rapidly throughout the entire lake and downstream waterways. ‘Once infected, it is extremely difficult and prohibitively expensive to eradicate these aquatic weed species from the lake, even if the infection is localised to a small area.’

He recommends a complete ban on allowing trailer-mounted boats of any type from entering the lake.

‘I understand that the lake is not used by motor boats’, he wrote. ‘This is probably the main reason these three lakeweeds are not yet present, because these weeds can easily hitch a ride on motor boat trailers and outboard propellers.’

And while a boat ban may sound Draconian, he says that boaties should be reminded that if these aquatic weeds enter the lake, there will probably be no boating at all in the future because the weed mats will make boating physically impossible in the future.

Is this the way this country rewards an *iwi* forced by law to allow the public to trample all over their land and enjoy the pastime of boating on their lake for the past hundred years or more, free of charge?

So how did a privately-owned lake of such cultural sensitivity fall into the hands of a Government that has treated both the lake and the owners with such disdain?

How did the Government manage to acquire this property, without paying the owners a cent, not even a shilling in compensation?

It is a sordid saga, once that brings shame upon a country that trumpets its treatment of its indigenous peoples and its clean green image.

But let’s go back to the beginning.

Lake Horowhenua was indeed a haven for Mua-Upoko.

Long before the white man stepped on the shores of Aoteraroa, they had created an idyllic lifestyle for themselves, feasting on the bountiful harvest of the lake and sheltered within a lush forest where the native pigeon winged soundlessly through the foliage in their thousands.

As an early settler by the name Hector McDonald eloquently portrays it:

> The lake lay clasped in the emerald arms of bush which surrounded it on every side save immediately about where we stood.. straight and tall timber grew to the water’s edge, fringed with flax and nodding manuka, and over the bush, pigeons flew literally in their thousands.

Ben White, a researcher for the Waitangi Tribunal is equally complimentary: ‘Once surrounded by a podocarp forest, the lake was by all accounts ‘a place of wondrous beauty’.’

Author Leslie Adkins would write about ‘a scene of industrious and joyful activity’, due to the twenty eel weirs along Hokio stream, the lake’s sole outlet. Such was the abundance of *kai*, surplus eel would either be dried or kept alive in artificial ponds established nearby.

This bountiful harvest from the lake of a wide range of delicacies had, Adkins continued, 'excited the dangerous envy not only of neighbouring tribes but also of those occupying territory far distant'.

Renowned for their technological advancement, Mua-Upoko forged artefacts that were not only ingenious but intricate in their beauty. The large numbers of artefacts salvaged from the bed of the lake - ko spears, paddles, adze handles, clubs, pounders, burial chests, god sticks, fish hooks, spinning tops, net flats, pumice bowls and stone patu - are now stored at Te Papa, New Zealand's national museum in Wellington. They are likely to be among the oldest objects ever made in this country.

As a people, Mua-Upoko were considered to be strong, well-trained and disciplined. They were imposing in appearance, and relatively unscathed by past conflicts that had decimated neighbouring tribes. Without doubt, they were one of the most powerful *iwi* in the southern North Island.

Their security lay in their intimate knowledge of the land that had been their home for generations, and in the inaccessibility of their fortresses, whether these be in the forests of the Tararua Ranges or on the lake itself where there were 21 named landing sites for their canoes.

Of these, the most notable were the seven artificial islands they had constructed as a refuge in times of crisis.

These artificial islands were evidence of their engineering expertise and capacity for collective hard labour. Once a spot has been chosen out in the lake, stakes were driven down to the bed, close together and in circular form. These were then bound cross-wise making an enclosure. All pitched in as some dug out earth and flax roots, carrying their spoil to the canoes while others ferried this cargo across the waters to unload it within the stakes. As the layers rose to the surface, men laid down flax leaves and pounded the spoil into a solid mass until it was packed a metre above the water line. Once the foundation had dried out, they would erect their *whares* or sleeping quarters; the fighting men sleeping near the arsenal where their spears and other weapons were kept in readiness. Before long, their homes would be hidden behind tall lush vegetation.

No invaders could haul their war canoes through the dense bush that enclosed the lake, nor could they mount a successful raid by swimming across the lake with weapons strapped to their back.

Here, Mua-Upoko lived safe and content.

That is until the day Ngati Toa attacked.

Te Rauparaha had been warned not to mess with Mua-Upoko, but a Mua-Upoko woman had been murdered while wandering alone along the shores of a nearby river.

In retaliation, her relatives had invited Te Rauparaha and close members of his family to their *marae* with the lure of a fine canoe as a gift.

Roused by a fortuitous warning, Te Rauparaha wrenched apart the raupo reeds of his hut, scampering back to his *pa* quite naked. He left behind his favoured son who had also escaped but who returned to

save his sister who cried out for help. His son bludgeoned two men, before he in turn was hit on the back of the head and fell. By dawn, Te Rauparaha's son, two daughters and a son-in-law were dead.

Inconsolable with grief and incensed with rage, he threatened to exterminate Mua-Upoko.

Gruesome were the recollections.

As Travers recounts in his life and times of Te Rauparaha:

> The Mua-Upoko took refuge on the Lake Pas, which Ngatitoa however determined to attack. Their first attempt was on that named Waipata, and having no canoes, they swam out to it, and succeeded in taking it, slaughtering many of the defenders, though the greater number escaped in their canoes to a larger pa on the same lake, named Wai-kie-kie. This pa was occupied in such force by the enemy that the party which had taken Waipata felt themselves too weak to assault it, and therefore returned to Ohau for reinforcements.
>
> Having obtained the requisite assistance, they again proceeded to Horowhenua, and attacked Wai-kie-kie, using a number of canes which they had taken at Waipata, for the purpose of crossing the lake.
>
> After a desperate, but vain resistance, they took the pa, slaughtering nearly 200 of the inhabitants, including women and children, the remainder escaping in their canoes.

Those that fled, Ngati Toa pursued. After a desperate struggle from these fugitives, Ngati Toa settled down for a month or so to consume the bodies of those they had slain and their stores of provisions.

Despite being aware of the particularly torturous death he would face as paramount chief if captured, Taueki defiantly refused to flee, unable to abandon the lands and the lake that were a legacy to him from his ancestors.

In Maori tradition, he maintained *ahi kaa*. He kept the home fires burning.

And thus he preserved his tribe's *mana* over the *whenua.*

And thus, he was alive to sign the Treaty of Waitangi as the sole signatory on behalf of Mua-Upoko.

Perhaps the most callous account of the brutality of this era comes from James Cowan, a young man who had been commissioned in 1903 to prepare a report for the Department of Tourist and Health Resorts about a proposal to acquire the lake as a national park for the public to use.

He says simply: 'On Nainu-iti isle, near the northern end of the lake, Rauparaha shut up a number of Muaupoko prisoners, killing some from day to day as required for food'.

The slaughter on the lake had been so great, he would report, that 'as the old Maoris describe it, the waters of the lake were red with blood, and the seagulls came in from the coast to feast on what Ngatitoa left'.

Yet despite being aware of the sensitivity of this site, he recommended that: 'The land could, no doubt, be taken under the proposed new act dealing with scenic reserves'.

So why was he asked to write this report in the first place?

After Major Kemp had sold 4,000 acres of land that belonged to Mua-Upoko and pocketed the proceeds himself, settlers were arriving and building homes on the land that became Levin.

And with colonial arrogance, they assumed that the lake was for all to enjoy.

Without any formal lease, they had erected a boatshed down by the lake in 1896, complete with a rooftop stand for spectators, a jetty and roller slipway.

A local businessman, Mr Chas Niven, had built another jetty and tearooms over the water, and was taking passengers for trips around the lake on his launch the *Lake Queen*.

They had even held a regatta on the lake in 1901, serving refreshments at the boatshed, before the official party rowed out to the southern starting line between two artificial islands for the course two miles in length. Amongst them was a delegation from the Wellington Rowing Association, including its president William Field who also happened to be the Member of Parliament for Otaki.

Mr Nation, the editor of the local newspaper, penned a report on this event.

> *The mirror-like surface of the lake, silence of nature, broken by the sound of oars as they dipped in the water, the native bush on every hand except on the west, where the inhabitations of the Maoris could be seen dotted about on the low green hills, made the outing one to be remembered.*

They then embarked not far from the home of 'Muaupoko chief Te Rangimairehau' and followed the track to McDonald's old homestead.

So these good citizens of Levin were already using the lake as if it was their own, and it wasn't long before they were getting huffy about the rudeness of the Maoris spoiling their outings.

And as good citizens of Levin, they knew how to get their own way on these matters.

By late 1897, the Government was already receiving reports recommending the lake's acquisition.

In Parliament, John Stevens as the MP for Manawatu asked the Minister of Lands if the Government could, as soon as the title had been ascertained, acquire by purchase from the Native owners the whole of the Horowhenua lake.

Or in the formal language posed during November 1987:

> *If he will, so soon as title there to has been ascertained acquire by purchase from the Native owners the whole of the Horowhenua Lake, together with a stable area of land around it shores, for the purpose of a public park, reserving to the Native owners and their descendents 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?*

Stevens felt that the lake would be eminently suitable for local recreation including regattas, as there was not a place so well suited within two or three hundred miles of Wellington.

> *Pakeha eyes had been drawn towards the lake, and it had been suggested that it be purchased for regattas and other recreational purposes, preserving of course, Maori fishing rights*.

In response, Lands Minister John McKenzie confirmed reports had been received advising Government to acquire the lake. If Parliament was prepared to negotiate the necessary funds, he saw no difficulty in the Crown acquiring it.

And thus, John Cowan was commissioned to visit the area and write up a report.

Cowan was known to be a keen rower and yachtie, so from the Department perspective, he was the ideal candidate to produce the report that suited their purposes.

Cowan commenced with statistical data such as the lake being two and a quarter miles in length and one mile at greatest width. The greatest depth was not much over 20 feet, although the average depth was seven feet. In the deepest part of the lake, large springs gush up to help feed it.

But then he ventured into territory that was far from impartial.

He was worried that the public were, 'at any time liable to be denied the privilege even of access to the Levin people's boat shed on the lake side'.

'As this sheet of water is likely to become a favourite pleasure resort for Wellington people and other visitors', he would report, 'it is desirable that the present unsatisfactory state of affairs should be terminated.'

As he explained: 'The public can only cross the reserve or use the lake on the sufferance of the Maoris'.

Warned that Ngatiapa were sure to disagree with whatever Muaupoko did, Cowan said it was not much use arguing with the two factions.

The best plan, he suggested, would be to set aside the reserve, 'and explain to the Maoris afterwards that their ancestral rights will not be interfered with beyond forbidding them to destroy the bush or other vegetation'.

This approach would become typical of the way the Pakeha dealt with Maori issues.

As Ngati Apa were not owners of the lake, what role would they fulfil in negotiations?

But Cowan conjured up a potential for friction between the two tribes to accommodate his recommendation to take the land, and then 'explain to the Maoris afterwards' their rights would not be infringed upon.

What about the right of Mua-Upoko as owners to be forewarned of plans to seize their property, their tribe's most-prized *taonga*? Was not an English title sacrosanct?

Wandering along the shores of the lake, Cowan met up with 'the old Chief Te Rangimairehau' whom he escorted around the lake with him on the boat to point out the various localities.

Amongst the Pakeha, Te Rangimairehau had acquired a reputation a chief, and more particularly an old chief of Mua-Upoko.

But was he really? Had anybody checked his *whakapapa*?

Or was he was nothing but a self-styled chief, somebody who had discovered how to profit from the gullibility of the Europeans by strutting around full of self-importance and pocketing the proceeds from little deceptions on the sly?

Giving evidence in the Native Land Court, all he could say of a significant arrangement between Taueki and Te Whatanui is that he had heard of it. 'I saw Taueki myself', he boasted.

If he had any *mana* within Mua-Upoko, would he not have fought and lived alongside Taueki?

During their tour around the lake, Cowan beheld several Maori settlements belonging to the Mua-Upoko and Ngati Apa tribes on the shores of the lake, and a number of canoes in use.

At the northern end of the lake, he observed one particular canoe, 'a large one, an old war canoe, capable of carrying fifty or sixty men'.

He also located the old Pipiriki Pa on a grassy ridge on the western side of the lake. This had been built by the late Major Kemp in 1872.

And thus Cowan came up with another bright idea. 'The Native life, the canoeing etc should enhance the interest of the lake in the eyes of visitors, and if care is taken to guarantee their rights of fishing etc, they could no doubt, be induced to co-operate with the Europeans in preserving the attractive features of the place for all time.'

In other words, he felt that the traditional lifestyle of Mua-Upoko would appeal to tourists.

Their artificial islands, their war canoe and a fighting *pa* preserved for curiosity value.

In his report however, in brackets, he inserted one single word: 'inalienable'.

It is the most important word in his entire report, overlooked by everybody excited by the potential of this lake.

'Inalienable' was the status of the land, imposed by order of the Native Land Court, and upheld by the Supreme Court. This meant that the remaining land in Block 11, including the lake, could not be sold.

In its judgement dated 20 September 1898 and as recorded in the minute book (35 Otaki MB 379), the Native Appellate Court agreed that the whole of the land included in this order be inalienable.

On 19 October 1898, the lake and surrounding one-chain strip of 901 acres was partitioned off as a fishing easement for all Mua-Upoko and vested in fourteen trustees.

On 19 March 1899, CT 121/121 was issued for this subdivision.

It was now official. Horowhenua Bloc 11B (Lake) was privately-owned property, belonging to Mua-Upoko – as both customary land and in English title, fee simple estate.

There had been a very good reason for the 'inalienable' status imposed upon his land. When the Horowhenua Block of 52,000 acres was subdivided in 1886, Major Kemp from Whanganui and Ngati Apa chief Hunia had swooped in to shunt aside the legitimate claimants, including Taueki as *Rangatira* of Mua-Upoko, and set themselves up as the trustees of Mua-Upoko's ancestral lands.

Between them, they were having a field day, selling up tribal land and pocketing the proceeds.

Kemp for instance, had sold the 4,000 acres that became Levin, and when asked by the court to account for this revenue, was unable to do so.

Hunia had been equally devious, selling land to the Government for a State Farm. The first Mua-Upoko knew about this deal was the day they encountered a working party on their property.

During the feud that arose between the pair, Hunia appealed to the Court of Appeal who also concurred without doubt or hesitation that Block 11 was held in trust for the tribe.

This Court of Appeal found it inconceivable that Block 11 - the land on which the tribe lived and cultivated the soil and that contained the lake, 'a main source of their livelihood' - was the land that Hunia contended 'the Natives agreed spontaneously, unanimously and cheerfully to hand over the Kemp and the defendant unconditionally'.

'The absurdity of such a proposition will be apparent to any one in any way familiar with Maori feelings and methods.'

With *Warena Hunia v Meiha Keepa (Major Kemp) and others (1895) 14 NZLR 71 (CA) 94,* members of Mua-Upoko finally had a reprieve from the incessant pressure from both Hunia and Kemp to dispose of their tribal land.

> *On the whole the conclusion we come to is that the land was confided in Kemp and Hunia on the understanding that they were to hold it for the benefit of all the members of the tribe, according to Maori custom; that the main object was to prevent alienation by any individual member and that the land was to be administered very much on the principles which the property of the tribe was held and dealt with before the introduction of English law*.

Block 11 was therefore declared by the courts to be inalienable to protect Mua-Upoko from anybody else trying to carve off pieces of land which held ancestral and customary importance for the owners.

But as we will discover, that 'inalienation' status did not deter Parliamentarians.

During this era, the remnants of Mua-Upoko met and thrashed out a list of 81 owners who were apportioned relative interests of land in Block 11; Ihaia Taueki's portion of 10% reflecting his *mana*.

It is interesting to note that even though a Parliamentary Commission of Inquiry had extinguished any further claims over Block 11 by Hunia and Kemp, they still managed to get their names to the top of the list, although their relative interest was well below that of Ihaia Taueki as paramount chief.

Meanwhile in the Pakeha world, the Scenery Preservation Act was passed in 1903.

Despite the 'inalienation' order, this law left Mua-Upoko vulnerable.

During a public meeting that year, the local MP and residents supported plans to turn the lake into a reserve for the public to use.

Support amongst Pakeha politicians was also escalating.

Mua-Upoko was quite rightly becoming anxious about the fate of the lake, that they owned.

They had a certificate of title to prove it!

That year, a trustee by the name of Hoana Puhi and 31 other owners petitioned Parliament that same year, asking for Lake Horowhenua to be left alone.

As per usual, the Native Affairs Committee decided to ignore this petition.

Meanwhile, William Field as the MP for Otaki was keeping up pressure on plans for the reserve. In Parliament, he put forward a question to find out when they proposed 'to proceed with the promised nationalisation of the Horowhenua Lake and the dedication of the same as a public park?'.

Playing his political patronage, he revealed that Prime Minister Seddon had been taken out for a row on the lake and was captivated by the beauty of this splendid sheet of water. So much so, that at a function later than evening, Seddon had announced that steps would be taken to acquire the lake and turn it into a national park.

So now, Seddon's honour was at stake.

So let's pause while we reflect on the networks operating here.

We know Cowan was a keen rower and yachtie.

We know Field was the president of the Wellington Rowing Club, and that he had already participated in a regatta on the lake as a member of the delegation from that club.

We also know that Field was a founding member of the Tararua Tramping Club, as was Leslie Adkins, an author who wielded considerable influence. It was Adkin who took a photo of WH Field and nine others on 4 March 1929 at the opening of Waiopehu Hut.

Incidentally the Tararua Ranges had been confiscated by Parliament to pay for the Commission of Inquiry that McKenzie had instigated as part of his own personal vendetta against Sir Walter Buller, Kemp's lawyer. Kemp's legal fees allowed Buller to get his hands on the adjoining Lake Papaitonga.

Now Lake Horowhenua was under threat, and Mua-Upoko knew how ruthless the Pakeha could be when they wanted lands owned by Maori, even if they did hold a certificate of title that was supposed to protect their property rights.

Following the receipt of Cowan's report and empowered by the Scenery Protection Act of 1903, plans were set in motion by the tourist department to convert Lake Horowhenua into a public reserve. Officials planned to include about 150 acres of bush on southern and eastern shores and the artificial islands but not the lake itself.

A senior official confirms this proposal was approved by Cabinet.

But before any such reserve could formally be proclaimed, the Department of Lands and Survey would first have to produce the survey plans, but they were inundated with land settlement surveys that took precedence.

But the good citizens of Levin were becoming impatient, as reports in the local paper recounted:

> The early settlers had much trouble with the Maoris to get permission to go even near the water. They were jealous of the lake, for it was thence that they got their supply of eels.

The Natives would not even let innocent children picnic on its near shore..

> On one occasion, a public school picnic was determined, and forms, tent poles crockery and edibles were taken down upon a dray but the carter found the gates that existed at the foot of Queen street tied up with flax, and he had to wait until a representative of the school committee had a parlay over the gate with six portly native women who paced to and fro and declared that no Europeans should come upon their land – for before one could get upon the surveyed road, there was a little strip of native land lying between this road and Queen street.
>
> However a male Maori came upon the scene, and he succumbed to the Pakeha argument that as the Maoris used our streets they ought to be friendly and allow access to the lake. Taking out his knife, he cut the flax lashings on the gate and let the dray through.
>
> This act of barring the way to the lake led to representations being made to the Government and after long waiting a strip of land from the gate to the boathouse was taken by the powers that be. So now vehicles of all kinds can drive in through this strip of ten and a half acres and drop their cargoes upon the green flat by the boatshed.

The correspondent who prepared this report claimed to be knowledgeable on these matters, and yet he obviously believed that the Maori owned only this 'little strip of native land', and this little strip of land was all that deterred those who wanted to picnic and have access to the boatshed down by the lake.

By 1904, Levin's boating club had gone into recess, and no doubt the Natives were being blamed for this setback as well.

During August 1905, the tenacious Field wanted to know when a public meeting would be taking place to 'secure free public use' of Lake Horowhenua and preservation of the fast-vanishing bush scenery of the lake.

Native Minister James Carroll replied; rather than compulsorily acquiring it, the concurrence of the lake owners would have to be obtained before the lake could be secured for public use. He gave an assurance that this matter would raised with the owners at the next favourable opportunity.

In hindsight this declaration by Carroll is significant, because he knew only too well the procedures that needed to be followed to acquire Maori land and diligently relayed this information to the Parliament.

So what happened next to circumvent these procedures could not be attributed to ignorance of the law.

Sometime within the next few weeks, Seddon and Carroll found time to travel up to Levin.

There, in the little boatshed built on the shores of the lake, there was to be a clandestine meeting with a delegation of Levin citizens and various Natives.

Seddon emerged triumphant, and raced back to Parliament to rush through legislation by the end of October.

In Parliament, the conditions of an agreement supposedly reached that night were read out:

1. All native bush within the reserve to be preserved.
2. Nine acres adjoining the lake – where the boatsheds and a nice titoki bush are standing – to be purchased as 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 of 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 sports and other pleasure disportments 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 to be recognised.
9. Subject to the foregoing, in all other respects, the *mana*, rights and ownership of the Natives to the Horowhenua Lake reserve to be assured to them.

But had Seddon obtained the agreement of Maori, as he claimed he had?

Ben White, a researcher for the Waitangi Tribunal has not been able to uncover any record of this meeting. Therefore, he says it remains unclear whether the terms were freely negotiated or if they were imposed upon Muaupoko by the Government.

Can we even be certain that those few Maori attending the meeting were actually from Mua-Upoko?

Or was the invitees a selective group, Natives known to be receptive to the proposal, the self-styled chiefs that had plagued Mua-Upoko with grandeur of stature?

The list of conditions appears to be more likely those thrashed out by Pakeha, with the fishing rights conserved to the Maori fortuitously and solely on the grounds that the lake was not suited to trout.

Why would Maori cede absolutely, 'free of charge' to the public full use and enjoyment of the waters of the lake for aquatic sports and other pleasure disportments?

And why would Maori yield control and management of the lake in a Board to be appointed by the Governor, when there was only a vague mention of some Maori representation to be recognised?

The legislation that was passed on 30 October 1905 declared that it was expedient that the Horowhenua Lake should be made 'available as a place of resort for His Majesty's subjects of both races, in so far as it is possible to do so without unduly interfering with the fishing and other rights of the Native owners thereof'.

Control of the lake was placed under the control of a Domain Board to be appointed by a Government, only a third of them to be Maori – and not necessarily from Mua-Upoko.

Of all the conditions in this supposed agreement, the only one that survived prohibited the shooting of birds or game of any kind on the lake or within the area of the said reserve.

That condition eliminated a food source for Mua-Upoko.

And Parliament deftly alleviated the small problem of a boatshed built on private land. The Government authorised itself to purchase any area of land not exceeding ten acres adjacent to the lake as a site for boat-shed and other buildings.

But even this condition was not met. Even though the law sanctioned the purchase of land 'not exceeding' ten acres, the Crown managed to acquire thirteen acres.

Before the Bill was passed into legislation, John Rigg, as the Member of Parliament for Wellington had expressed some reservations.

He would have preferred that the Government had purchased the lake outright from the Natives and made into a public reserve.

The Natives had been told their *mana* was to be 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.

Mr Rigg did not, of course, oppose the Bill, but he did marvel at the generosity of the Natives in making such an arrangement for the benefit of the people of this colony.

Of course, he could not and did not oppose the Bill.

Members of the legislative council enthused that the Bill ' practically meant that the Natives of the Muaupoko Tribe were making a splendid and generous gift to this colony'.

But were they?

Of this meeting, there is no date, no minutes, no list of those present.

Is there even a copy of the agreement, Seddon claimed they had negotiated?

I doubt it, for if it existed, surely somebody would have found it by now.

It is the sole basis upon which this legislation was enacted.

By passing this legislation, Seddon was claiming that he had obtained the approval of the owners during this meeting, and that these owners were not seeking any compensation for the gift of their lake, their most-prized *taonga*.

Remember that only a few years beforehand, the Court of Appeal had found it inconceivable that Block 11 - the land on which the tribe lived and cultivated the soil and that contained the lake, 'a main source of their livelihood' - was the land that Hunia contended 'the Natives agreed spontaneously, unanimously and cheerfully to hand over the Kemp and the defendant unconditionally'.

'The absurdity of such a proposition will be apparent to any one in any way familiar with Maori feelings and methods.'

So why should the owners hand it over to the Crown free of charge; the Crown that had already duped them out of the Tararua ranges, the land that was Levin, and various other subdivisions?

Would Seddon be capable of such duplicity?

The answer is, unreservedly yes.

He had done it before.

For this was not the first time Seddon's government had acted fraudulently to deprive Mua-Upoko of their ancestral lands.

During a Commission of Inquiry instigated by Parliament, Judge Wilson had revealed in 1897 that it had been a doctrine of the Native Land Court since its instigation that any actions of the court that were wrong would be rectified by legislation.

> There was a promise from the Minister for the time being, which went from Minister to Minister that by special powers and contracts or in some other way, special legislation should make anything that seemed to require it valid, so much so that in 1873, Mr McClean, the Native Minister thanked Judge Rogan for acting outside the law so as to get the country settled.
>
> All that he did was legalised afterwards I have no doubt. Of the five Judges, Smith was the one who heard the (Horowhenua) Block in the first instance, and he said to me, 'They will legalise what we have done'.

So by the time the Lake Horowhenua acquisition came before Parliament, there was a well-entrenched tradition that the law was of no consequence and therefore of no protection for Maori Freehold Land.

The Inquiry identified a classic example of this with another part of Block 11, when Hunia entered into an agreement with the Crown to sell 1,500 acres of this block for £6,000.

In September 1894, the Crown paid £2,000 - even though the purchase officer knew it was a trust property and therefore could not be sold by Hunia This situation was verified by two questions asked in Parliament and also a memo from the Native Under-Secretary.

In Parliament, Lands Minister John McKenzie was asked if the rumours about a Government purchase in Horowhenua were true, and if so, ***would the Government ensure that it had obtained the consent of the beneficiaries, Mua-Upoko before completing this purchase***.

The first Mua-Upoko knew about this deal was the day a working party arrived to survey off the land Government wanted. Naturally the owners told the surveyors in no uncertain terms to get off their land.

In court, Hunia's agent dropped a bombshell by announcing that the Government had already advanced Hunia £2,000.

This contradicted McKenzie's assurances in Parliament that no money would be paid until clear title had been arranged.

Seddon moved swiftly to validate Government's skulduggery.

Within days he introduced a bill to prohibit further purchases, tucking in a clause to legitimise the payments already made to Hunia.

Undeterred, Government officials persevered with their negotiations and occupied the Farm Block – even though they were well aware that the issue of trusteeship was still up in the air, and without title for the land. But most importantly, it was against the wishes of the large majority of Mua-Upoko in whose name this subdivision was held in trust.

A deputation went to see Seddon. But to no avail.

The Commissioners meanwhile mollified their politician masters by sanctioning the sale of 1,500 acres allocated for the State Farm, and recommending that the remaining amount owing be paid to Hunia and his heirs in extinguishment of all their claims over Block 11.

Despite being held in trust, none of this money was passed on to Mua-Upoko.

In effect, the Commissioners rewarded both Hunia and the Government for their fraudulent behaviour, while depriving Mua-Upoko of customary lands that belonged to them and any revenue that was generated, without their approval, from the sale of that land.

On top of that, the Commissioners punished Mua-Upoko by confiscating 13,000 acres in the Tararua Ranges to cover the cost of their inquiry and furthermore, authorising the Crown to obtain another chunk of land from Block 11, an area of 1,500 acres that the Commissioners felt was cut off from the rest of the block by an area of swamp.

Had they forgotten that Mua-Upoko travelled by canoe, and had 21 landing sites around the lake?

At least with Lake Horowhenua, Mua-Upoko managed to retain their name on the certificate of title.

Tame Parata the MP for Southern Maori put it plainly when he said it seemed to him that 'all legislation passed by this House affecting Native lands had contained some objectionable provision legalising, or in some way dealing with questionable transactions in the past'.

Given the significance of the boatshed meeting, is there anybody who can give any insight into what transpired at that clandestine meeting?

Fortunately there is.

Before a Committee of Inquiry headed by the Commissioner of Crown Lands and a Maori Land Court Judge in 1934, this account was forthcoming:

> In 1905 the Europeans were using the lake for boating and I understand boat jetties were erected there then.
>
> Apparently some difficulties ensued between Europeans and natives because a meeting was held in the boats shed where Messer R J Seddon and James Carroll were present to discuss the question of the use of the lake by the Europeans.
>
> I only know of one man who was present – Wi Reihana. 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 extend beyond the edge of the water and the Maoris understand that the Lake was their property also the chain strip. They were entitled, if they wished to prevent any persons coming onto that strip or the lake.
>
> If the government or local body wished to take the land they would have been obliged to pay compensation. The government would never have agreed to take the land from the natives which land had been set apart as a means of food supply, so that what was done was only a voluntary concession by the native owners to allow the Europeans to use the Lake for boating.

This differs totally from the impression given in Parliament, that the owners were making 'a splendid and generous gift to this colony'.

And it was a cunning move by a bi-lingual and half-caste Maori to ingratiate himself with his Prime Minister.

But first, the only person known to be present was a person by the name of Wi Reihana. His name does not appear in the list of owners, although there is a woman by the name of Parahi Reihana who has a minor relative interest. Wi Reihana was therefore neither an owner nor trustee.

Reihana does not mention who else was present, and he would have done so if anybody of *mana* had been there. That is the Maori way.

As with the Native Land Court hearings of the previous century, invitations were obviously selective and only those receptive to the proposal would have gathered in the boatshed that particular night.

Second, Reihana says there was 'much discussion' - presumably by the Pakeha thrashing out the conditions they wanted, nay demanded.

a) They hadn't managed to obtain a lease for the land upon which they had built a boat shed, so the second condition resolved that dilemma quite nicely.

b) They had not only achieved their objective of 'full use and enjoyment of the waters of the lake for aquatic sports and other pleasure disportments' but they had managed to secure this concession 'free of charge'.

c) They had wrested control of the lake from the Maori by the establishment of a Domain Board.

d) And the only reason they had let the Natives keep their fishing rights, was due to an assumption that the lake wasn't conducive for trout.

Ben White reckons that the comment that the lake was not suitable for trout suggested that, had this not been the case, even Mua-Upoko tribe's fishing rights would not have been preserved.

In his report, Cowan had pointed out that local rowing club pays a small rent for the site of boatshed but was unable to get a legal lease. Apparently two pounds a year was paid to the conniving chief Te Rangimairehau. But who else knew of this little arrangement?

However the most compelling component of this account is the admission that Carroll had translated into Maori the decision that had been reached.

In Maori, he stated that if the government or local body wished to take the land they would have been obliged to pay compensation. This statement mirrors the warning he had given Parliament.

He also commented that the government would never have agreed to take the land from the natives which land had been set apart as a means of food supply, so that what was done was only a voluntary concession by the native owners to allow the Europeans to use the lake for boating. Voluntary?

In other words, 'the decision' that Carroll translated into Maori was nothing like the decision the Pakeha had reached after their own debate amongst themselves.

Relieved by the reassurances given by their Native Minister, the Natives would have nodded their heads in approval and relief.

But Sir James Carroll, the supposed champion of Maori land rights, had blatantly lied to them.

So to reiterate the situation:

The Pakeha had thrashed out, in English, a set of conditions that suited them.

Carroll had then given the Natives, in Maori, the reassurances they sought, supported by law.

Seddon had got what he came for, a deal he could take to Parliament to pacify the tenacious Mr Field.

So Carroll was happy, because everybody would be able to leave the meeting satisfied that they had got what they came for. Was this Seddon's idea? Or Carroll's?

It was not until the Horowhenua Lake Act was passed on 30 October that year, that those Natives at the meeting would discover they had been duped – by the very Minister who was supposed to be representing them.

By then, it would be too late.

But more importantly, Mua-Upoko had been betrayed by the very English law that was supposed to protect them from such devious dealings.

Indeed, the weapons of law were proving far more ruthless than Te Rauparaha's weapons of war.

In 1906 Tame Parata, member for Southern Maori asked Carroll if the Government would repeal legislation ***'which appropriates a valuable estate without the consent of the Native owners'.***

Carroll responded that the matter would be looked into, but it was not proposed to interfere with the Act in any way.

So what was the point of agreeing to investigate the matter, if he wasn't prepared to rectify matters?

Tame Parata knew that the owners had not agreed to the proposition that had never been put to them.

And it's not surprising that the Attorney-General would delicately announce in Parliament he was certain that the Native Minister had already acknowledged the generosity of the lake's owners.

Why would anybody in Parliament be silly enough to acknowledge 'a gift' that didn't exist?

It was 'theft'. And Parata knew that.

The full extent of the Crown's treachery would not become apparent until a century later when Crown Law argued in the Supreme Court that the owners had forfeited all ownership rights in 1905 when this particular legislation was passed.

In their 'expediency' to convert this privately-owned lake into a public resort, did they not realise that a hundred years on, their duplicity would continue to deprive an *iwi* of their ancestral lands?

There is no Treaty claim over the lake.

There is no need for Mua-Upoko to approach the Waitangi Tribunal to reclaim their own lake and their own ancestral lands.

They already own it.

But Parliament is reluctant to acknowledge that their predecessors broke the law.

An application under the Te Ture Whenua Maori Act of 1993 was filed with the Minister of Maori Affairs during December 2010, but this application has been buried under a mound of excuses.

The applicant has been fobbed off by Ministers who refuse to meet with him.

Nothing has changed.

Parliament continues to treat the indigenous people with disdain, because they know they can.

On 5 September 1907, a certificate of title was issued in favour of the Crown for three parcels of land totalling 13 acres in size – exceeding incidentally the ten acres specified in the legislation. The Crown agreed to two payments; one of £196 11s 3p and the other £84 12s.

Though there is no record of any payment ever being made, MP Euruera Tirakatane would inform Parliament some years later.

This small area of land gave them access to the lake, and the Pakeha were back in business!

The local newspaper, the Chronicle, would keep the public apprised of activities on the lake.

On 17 March 1910, the rowing scribe would write: 'Keen interest being taken in the double-scull race which is to take place on Lake Horowhenua. I have in my mind's eye a big regatta on the lake before very long'.

On 8 February 1911, there was a final reminder of the Levin Boating Club's Moonlight Carnival to be held on Horowhenua Lake that evening. 'The attractions of a moonlight outing amidst pleasant surroundings and in congenial company should attract large numbers of townsfolk to the lake... Nevin's steam launches will ply the lake throughout the evening, and the club will provide refreshments at nominal charges – to the music of a strong orchestra.'

C Nevin, boat proprietor and builder was happily advertising oil launch trips at one shilling. Boats for hire cost gents a shilling while ladies paid only sixpence per hour. Bathing accommodation was provided in a covered-in punt for threepence, the same price for costume hireage. 'Bathers must be attired in neck-to-knee costumes.' Did this rule also apply to the Native owners?

Occasionally, there would be an article, such as the one published on 25 January 1911, that describes the lake, but also offers a glimpse into the proprietary rights displayed by the citizens of Levin.

> No one questions that the Horowhenua Lake is Levin's chief attraction for visitors during the holiday season... The local paper has time and again written the lake up; literary men from beyond have dilated upon its beauty and congratulated Levin on possessing such an asset; holiday visitors have taken boats and gone out upon the water to view the places – the tragic spots where the Natives of seventy or eighty years ago fought bloody battles and indulged in wild midnight cannibal orgies – but they have learned little because there are few of the people of Levin who have found time to look up the history of the past in connection with this lake.
>
> The lake is about one mile from the town of Levin and can be reached in a direct line by way of Queen Street or from Weraroa by the Mako Mako Road, The sheet of water is two and a quarter miles long by about three-quarters of a mile wide; the average depth is eight feet but nearer to the further shore, there is a channel fifteen deep. The lake is bordered by low hills on the western side and by grass flats and clumps of bush on the Levin side, where many delightful picnics have been held for years past, and where the Boating Club has a building capable of holding a number of boats.
>
> Nearby, Mr Nevan has a boathouse and refreshment room and he has a jetty and launches of his own.

Occasionally there was a hint of friction. On 27 February 1915:

> The Levin Boating Club committee reported that a new boat built by Mr Macintosh had been added to the plant, also new oars and rowlocks.. It was proposed to hold a picnic during the Easter holidays and take the public over free of charge in a motor boat but owing to the uncertainty as to whether there would be a sufficient depth of water at the boat per to enable loaded boats to approach with safety, the project was abandoned.
>
> ***It was decided to petition the Minister of Internal Affairs on the matter of the infringement of public rights on the Horowhenua Domain.***

And so it becomes apparent that there were already signs of resentment brewing amongst the owners.

At a Levin Borough Council meeting on 8 April 1915, councillors heard that the Government intended to sanction the sale of the Lake Domain, hand over the proceeds to the Horowhenua A and P Association and invest the money in the society's own name. There was a view that it would be a sorry thing if this was done, and that the council should take steps to see that it was not lost to the people.

> Cr France said it would be a crime and an injustice of the domain was sold. If the domain was vested in the Borough Council it would be safe.

The Levin Borough Council was sitting as the Levin Domain Board on 20 August 1918 when it received a delegation representing the Horowhenua A and P Association.

> The proposition was this: The Park Committee was prepared to exchange 40 acres of the present showground acre for acre for 40 acres of the Board's Domain fronting the Horowhenua Lake... It would of course require a special Act of Parliament to enable the exchange to be made but local bodies could get a private bill through with very little expense.

Again on 17 February 1917 there is an assumption that Lake Horowhenua was owned by the public.

> Much could be done by improving the access and uses of Horowhenua Lake, to make it of pecuniary advantage to Levin. Lake Horowhenua is the more accessible tract of water; it is public property whereas Lake Papaitonga is privately-owned and the publicly-owned lake is the nearer water to town of Levin. If facilities for the pleasure-seekers were given, this lake would attract holiday-makers from far and near.
>
> The Chronicle is pleased to learn that the newly-constituted Lake Domain Board has under consideration a proposal to acquire the property of the Horowhenua Boating Club and in the event of the shed and craft of that club being acquired by the board, to add a motor launch to the plant, and finally to induce some suitable family to settle on the margin of the lake and establish there a refreshment room for the convenience of visitors.

In 1918, the club was busy soliciting donations for the re-building of the boat shed and other improvements.

The Chronicle was complicit in this fund-raising campaign by listing donors, and the precise amount of their contribution.

On 9 October 1917 there was a report that:

> At the Lake Domain Board meeting last evening the question of the natives' rights and privileges regarding Lake Horowhenua and the Hokio stream again cropped up.
>
> The secretary, Mr B R Gardener stated that he had heard that the natives interested in the Lake had recently visited Wellington with the idea of getting the Act amended, so that the chain reserve on either side of the Hokio stream which was vested in the Board might revert to its original owners. He also understood that one of the native members of the Board had accompanied the deputation. If the report were correct, he considered the native members of the Board owed some explanation to the other members. It was a wrong thing for a member of the Board to go behind the Board's back and take such action as had been taken without notifying the Board.
>
> The Mayor (Mr Blenkhorn) said if such action had been taken it was not right. A member of the Board should work in the interests of the Board and if he could not do that, he should resign.
>
> One of the native members, Hunita Henare admitted that he had been down to Wellington. He contended that the tribe had put him on the Board to look after its interests but as there were only three native members against six Europeans they were always outvoted. He considered he had found out something wrong for the tribe. The Maori had now nothing at all to do with the lake and that was why he went to Wellington.
>
> Mr Broughton said he thought Hunita was under a misapprehension...
>
> Mr Aitken said, in the hope of preventing further trouble the native member should be told he had taken up an entirely wrong position.
>
> The Mayor agreed. He said no doubt differences would arise and they were there to thrash those differences out, but members should first be loyal to the Board.

From the tenor of these reports, it seems that the Natives were being given the message loud and clear; that they were to behave themselves, both on the lake and in the boardroom.

Even though Hunita Henare was an owner, his first loyalty, according to the Mayor was to his colleagues on the Domain Board.

Mr Henare could not even count on the assistance of his Native colleague, Mr Broughton, who helped make up the minority Maori quota.

Both John Broughton's parents are buried near Whanganui, and in the Anglican church yard in Wicksteed Street, there is a memorial to his father Captain Charles Broughton, an English settler who was killed by the Maori for what they perceived to be a betrayal of their people.

But the 1905 Act referred only to Maori, not Mua-Upoko.

And John Broughton's mother happened to be Maori.

The enthusiasm for boating proved to be short-lived. By 1916, the Levin Boating Club was defunct.

In his report, Cowan had pointed out that the Maoris derive a considerable portion of their food supplies – eels, kakahi, shellfish, ducks – from the lake and have large eel weirs in the stream. 'Flounders come up the stream from the sea and are caught near the outlet.'

During 1904, Tame Parata had issued a poignant plea: 'The land is the lifeblood of the Maori. If a man, Sir had no land what does he live for? We Maoris do not want to see ourselves put in the position that some Europeans are in – having absolutely nothing, begging for subsistence and looking for work.'

So bountiful were the waters of the lake that Mua-Upoko were not reliant upon horticulture for their food supplies.

The fisheries that Mua-Upoko enjoyed were the *kokopu* and *koaro* (a native trout), *kakaki* (freshwater mussels) *koura* (freshwater crayfish) *inanga* (whitebait), *patiki* (flounder) and eel, a type of tuna that was part of their staple diet.

And with an abundance of food sources, Mua-Upoko could be generous as hosts and welcome as visitors due to the delicacies they could serve.

Consultant Susan Forbes refers to the giving of food gifts and expressions of hospitality as being 'critical for Maori social cohesion and for maintenance of *manawhenua*'.

Therefore the fishing rights that belonged to Mua-Upoko were more than just a recreational activity; the tribe was dependent on the bounty of the lake and stream both for their sustenance and their *mana.*

Six years after the 1905 act was passed, Pakeha were once again whinging about preferential treatment for Maori, this time in relation to the very fishing rights upon which the Maori reserve was established in 1898.

Pakeha resented the fact that the right to fish on the lake was restricted to Maori owners. And they were annoyed that Maori were preventing Pakeha fishing in the lake.

During January 1911 the Chronicle reported

> If the present embargo against fishing the lake waters (which operates on the case of all but men with Maori blood) were removed, a great deal would be done to attract weekend-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...
>
> We have very little doubt that the present embargo will be lifted amicably as soon as the endeavourers develop sufficient strenuosity.

Later that month, Field wrote to the Native Minister enclosing this article and advocating a change to the law.

By 19 April 1911, the campaign was starting to gain some momentum, treating Mua-Upoko's fishing rights as no more than 'class privilege'..

> Our fishing advantages should prove to be a wonderful lodestone for attracting desirable visitors. Trout already are abundant in the streams and it has been shown by correspondence and news items in our columns that the 'speckled beauties' are numerous in Horowhenua Lake also.
>
> But there exists an embargo against any fishing in the lake waters except by the Maori owners. This class privilege which the law allows them is little or nothing availed of by the Maoris, so far as we have been able to see or hear. Why should it be? The true Maori would prefer one yard of smoked tuna to a whole hundredweight of soused trout!
>
> He values his treaty right merely as a dignified adornment wrung from reluctant Pakeha aggressors; and it is stated by competent observers that if judiciously approached and reasoned with the present Maori owners of the fishing rights would willingly abrogate them for the general good...
>
> Some endeavours already have been made to secure from the natives a concession in regard to these fishing rights, but the unwritten law of '*taihoa'* by which the Maori loves to proceed (or rather, remain stationary) prevents any present progress towards the desired end.

Once again, the citizens of Levin were resorting to condescending tactics to get their own way.

And how they applauded the leadership of the Mayor, and his diplomacy when dealing with the obstinate Natives.

As reported on 13 February 1912:

> Much satisfaction has been caused in Levin and district at the action of the Mayor in moving at the Lake Board's meeting on Saturday that a conference should be called to consider the question of popularising Lake Horowhenua.
>
> Anglers in particular express satisfaction, as they hold that excellent sport could be obtained from its waters.
>
> It is felt that the Mayor made a tactful move in saying that the Maori tribe interested should be fully consulted on the matter. No doubt some minor objections will be raised but there is reason to believe that when the case is placed in a conciliatory manner before them the natives will recognised the reasonableness of the proposal.

And oh the relief, when they were able to read an article headlined 'exploded fiction' on 13 February 1914, based on communication from the Minister of Internal Affairs:

> There has been a contention (for years past) that only Maoris possessed the rights to fish for trout in Lake Horowhenua but it is now believed – on the authority of the Crown Law Office that every holder of a licence to fish for trout is entitled to fish in the lake and no others.

> The opinion from Crown Law Officer: '***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'.***
>
> Prior to passing of the Act, the Lake, being a comparatively small one probably belonged to the owners of the adjoining land, *ad medium filum*, but in 1905 some of those owners were Europeans and no native owner of any 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 free and unrestricted us of the Lake and of their fishing rights over it.
>
> Natives never had the right to fish for trout without a licence 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 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 licence without committing an offense 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 apply to the Lake as well as all other 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. (Crown Law Officer 16 January 1914.)

This legal opinion was based on flawed information. Mua-Upoko's certificate of title confirmed ownership not only of the bed of the lake but also the one chain strip surrounding the lake.

There was a further blow for the Mua-Upoko owners when the Solicitor General came up with a further opinion on 4 June 1914.

> Fishing must be taken to be one of the aquatic sports and pleasures so indicated. Whatever the precise scopes may be of the saving clause providing that native owners shall have the free and unrestricted use of the Lake and their fishing rights over the Lake, I do not think that this is can be so interpreted as to confer upon the natives the exclusive right of fishing for trout and the right from preventing the public from enjoying this particular 'aquatic sport and pleasure'.

In other words, the last vestige of rights that the Mua-Upoko owners thought they had retained by this disastrous legislation, the Solicitor-General had swiped away with his ill-informed pronouncement.

On 22 May 2017 the Chronicle was able to report on the recent visit of Mr Ayson, fisheries expert who came at the invitation of the newly-formed Lake Domain Board to inspect Lake Horowhenua with a view to reporting upon the varieties of fish most suitable.

> Mr Ayson who has not been on the lake before was favourably impressed with its possibilities. Among suggested varieties was a species of carp which is very common in Europe and used as a food supply; it grows to a fair size. Mr Ayson who has gathered information concerning this carp while on a visit to Europe, said the fish had been introduced into the United States and at first not been regarded with favour but lately opinion had changed.
>
> This carp had not yet been introduced into New Zealand.
>
> Perch was mentioned by Mr Ayson as a fish that would succeed very well in the lake.
>
> Of the varieties of trout at present in New Zealand, Mr Ayson mentioned the rainbow trout as one that would thrive in the lake but owing to needing clear running streams with a shingle bottom to spawn in, all fish would have to be hatched out in fish hatcheries and placed in the lake..

A report would in due course be sent to the Lake Domain Board 'and no doubt some effort will be made to make the lake a popular anglers' resort and an asset to the community'.

Only five members attended the Lake Domain Board meeting on 15 May 1917, and the only Native present was the half-caste John Broughton. A report had been received from Mr Ayson, the chief inspector of fisheries who was of the opinion that Horowhenua Lake could be successfully stocked with rainbow trout if the work was persevered with.

> As the spawning grounds around the lake were limited, it would be necessary to 'plant' every year from one thousand to two thousand yearling fish. If this was carried out he had every reason to hope that good sport with this fish could be obtained on the lake.
>
> He considered the lake very well suited for perch also, and he recommended that they should be introduced.

After a discussion, the Board resolved on the motion of France and Broughton: 'That the secretary to the board obtain a supply of perch for liberation in the lake at a cost not exceeding £5'.

As a result of the various legal opinions, it was held that:

> a) the fishing rights by Maori applied to freshwater fish except salmon and trout
>
> b) that fishing for trout by Pakeha could not interfere with those rights.

So therefore, even if the Mua-Upoko owners had signed up to the agreement touted by Prime Minister Seddon, within a decade senior Crown lawyers had already reneged on the agreement that all fishing rights be conserved to the Native owners.

The word 'all' in the law suggested that no exceptions would be countenanced.

As one commentator shook his head: It is hard to see how the claim that the Horowhenua Lake Act extinguished all the rights of Maori other than those it expressly confirmed can be sustained. Admittedly the issue of ownership was obfuscated somewhat by the Act but nowhere does it say that the ownership of the lake ceased to reside with Maori.

But worse was to come.

Not only were Mua-Upoko's fishing rights compromised by legal opinions from Crown Law, but Parliament was now planning to amend the law so that the shores of the lake, the very land upon which Mua-Upoko lived, would also be placed under the control of the Domain Board.

The first inkling came during September 1915 when the local MP William Field wrote to the Horowhenua Country Council about the Horowhenua Lake Domain Bill, suggesting that the Council confer with the Mayor of Levin and the president of the Boating Club to come to some agreement as to what they wished inserted in this bill.

The points to be dealt in this proposed bill, he pointed out would be a board with finance provided by the borough, that board in conjunction with the Borough Council given the usual powers of drainage, (subject to the preservation of a real lake which must not be diminished except by an insignificant area) and provision for due control of the Hokio stream.

Accordingly, the 1905 legislation was amended by s97 of the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1916 which amongst other aspects changed the composition of the domain board to nine, six from the Levin Borough Council.

It appears that the Pakeha members of this Board had the audacity to ask that the Maori positions be abolished altogether.

The Levin Borough Council was now authorised to spend money on the lake reserve.

The Domain Board became a local authority within the meaning of the Land Drainage Act 1908.

And finally the recreation reserve was enlarged to encompass the one chain strip that encircled the lake.

Although this last provision did not affect the ownership of the chain strip or lake bed, it enhanced the impression that if the legal concept of *ad medium filum aquae* applied, Maori did not own the adjoining land and therefore could not own the lake either.

And although the local Member of Parliament had approached the Levin Borough Council, the Horowhenua Country Council and the Levin Boating Club for input, he had not consulted the Mua-Upoko owners about amendments affecting their own land.

In other words, Parliament had taken over control of the chain strip around the lake, this time without even a veneer of consultation with the very people whose owned this particular land.

It is yet another example that the Government were not prepared to respect the property rights of Maori, even though they owned this land in English title. Once again, no compensation was paid.

Drainage was rapidly becoming a big issue as farmers were keen to develop new pastures to graze.

Much of the Horowhenua, particularly the land around the lake, was wetlands.

In the Maori eyes, this was land where flax flourished.

For Pakeha, swamps were nothing but fertile land that was wasted.

As early as May 1911, the Chronicle was churning out its usual propaganda.

> The draining of Horowhenua Lake is a need of Levin and district..
>
> If the level of the lake were lowered appreciably there would be many hundreds of acres of valuable land made fit for pastoral or agricultural use; the remaining area of the lake would be deeper and better for sailing and rowing upon: and the occasional foulness of the foreshore that offends citizen's noses at certain times of the year would be obviated...
>
> For many years the Maori as a body strenuously opposed all and any endeavours to have the level of the lake altered. To-day we are credibly informed there is a petition in circulation amongst the Maoris praying the Government to undertake the lowering of the lake.

It was not until five years later, on 7 December 1916 that there was any optimism about this issue.

> The newly-constituted Horowhenua Lake Domain Board's initial meeting on Tuesday evening last, was characterised by a degree of reasonableness that did not always display itself when the matter of draining the Hokio stream and consequently the Horowhenua Lake came up for discussion.
>
> It is true that the new board has not resolved to have the drainage done yet, but that was apparent in the debate held last Tuesday a mutual resolve by the Maori and Pakeha members to do justice to all concerned, so far as the board could manage it.

Three years later, Mr Henare had once again earned a reprimand from his colleagues.

This time the Board received a solicitor's letter, written under instructions from Mr Hanita Henare as representing the Native owners, protesting against a proposal to deepen, straighten and divert the Hokio stream which they understood had been adopted by the Domain Board at its last meeting.

> Our clients' special objection to the proposed work is that it will seriously interfered 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.
>
> It is however quite clear that your Board has no power to carry out the proposed works... the proposals of your Board are expressly within the words of subclause (b) of Section 17 of the Land Drainage Act 1908 and your Board is not given the powers under that subclause..
>
> We are therefore instructed to give your Board notice that should your Board persists in its intention to commence the works proceedings will be immediately commenced in the Supreme Court to restrain the Board by injunction.

On behalf of the Board, the Secretary had already replied to this solicitor claiming that his client has misinformed him, as no such proposal had been adopted.

> Mr Henare who is a native member of the board was present at the meeting and did not oppose the following and only motion passed on the matter, namely that it writes to the Horowhenua County Council and ask if it would allow their engineer to proceed with his ideas of keeping the lake at a permanent level.
>
> The Board Secretary explained that the lake was to be kept at a permanent level to avoid 'continually flooding the land surrounding the lakes'.

But the final sting in the tail came in the final paragraph:

> You are also aware that no owners of the lake or any others are allowed to flood the neighbouring lands.

It was a cruel barb. It was one of those rare occasions when the Board recognised that the lake was privately-owned but in this instance it was purely to threaten owners with accountability for something that occurs naturally - flooding. It was a supercilious sneer upon which to end the correspondence.

The debate that ensued is indicative of the strained relationship between the predominant number of Levin Borough Councillors and those whose loyalty was to their tribe, the owners of the lake.

> Cr Parker said he felt that Mr Hanita certainly owed the meeting an apology. 'He was present when the resolution was passed and so had no excuse. I do not think it fair for any member to go outside the Board and put the position unfairly and incorrectly to anyone, let alone a solicitor'.
>
> The Chairman tried a conciliatory approach: 'I believe the natives are perfectly within their rights in taking legal advice'.
>
> Cr Dempsey differed. As far as he was concerned, 'Hanita should give the board an explanation'.
>
> The members made another effort to get Hanita's views on the subject but he had nothing to say.

It is not surprising he had nothing to say. The whole episode had been designed to humiliate him and of course, the council representatives were well accustomed to the cut-and-thrust of Westminster debate.

But Henare's concern about tampering with the lake level was soon to be well justified.

During May 1919, and once the Great War was behind them, a deputation representing the Horowhenua County Council and the Horowhenua Lake Domain Board waited upon Sir Francis Bell and Internal Affairs Minister George Russell to discuss a difficulty which had arisen regarding the lowering of Horowhenua Lake level.

William Field, as the local Member of Parliament, explained that these two bodies were given certain powers of a drainage board in 1916 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.

As he stated: ‘It now appeared that they had no power as a drainage board 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.’

By now, Mua-Upoko were well aware that they could not trust anybody in Parliament, because everything politicians did was to their detriment.

In 1925 Horowhenua was constituted as a land drainage area under the control of the Hokio Drainage Board. Local farmers were suffering losses from flooding, and wanted the clout to protect their livelihood.

The legislation allowed a district to be proclaimed a drainage area if the majority of ratepayers in an area petitioned Parliament for a drainage area to be established. Once again, Maori were disadvantaged because their large tracts of land were generally held in a trust.

The Hokio drainage district covered the whole of the original Horowhenua Block 11, including Lake Horowhenua. Even though Mua-Upoko owned the property most affected by the drainage scheme, 901 acres of lake and surrounding land, Horowhenua 11B (Lake) would secure them only one vote.

At the time the Hokio Drainage Board was constituted, Mua-Upoko raised concerns about the possibility of interference with the Hokio Stream and the impact this would have on their eel weirs.

The Local Legislation Act of 1926 empowered this Hokio Drainage Board to carry out land drainage work, such as the widening and deepening of the Hokio Stream as a flood protection work project to protect the neighbouring farms.

Since it was necessary to carry out works on the Hokio stream and lake itself, section 53 of this legislation made provision for the protection of Maori fishing rights and public access but there was no arrangement for consultation, nor compensation for anybody adversely affected by the scheme.

To pacify the farmers, the level of the lake was to be permanently lowered.

There was however provision for mandatory proclamations to be issued before work commenced.

The Board failed to follow this procedure but then obtained legislation to validate their actions.

Mua-Upoko arranged to meet with an official from the Department of Lands, but when work started on the scene, they discovered that their agreement had been totally ignored.

Naturally they intervened, because their longstanding eel weirs were at risk.

Another meeting was held and another agreement signed.

Any statutory provision to protect their fisheries was ineffectual because the first round of drainage had destroyed all but two of their thirteen eel weirs.

The lake margins that were once muddy and heavily vegetated became arid.

And in this way an important *kakahi*, eel and flax habitat was ruined.

Furthermore, the Pakeha farmers now allowed their stock to graze down to the water's edge, trampling down the flax in the recently dewatered area that had previously been the bed of the lake.

Some farmers were even burning flax bushes and ploughing them under.

This was a time when there was still a high demand for flax, with fifty mills along the nearby Manawatu River, and therefore a lucrative income was crushed.

Maori now found themselves embattled with Pakeha and these grievances sparked a series of petitions, complaints and a deputation to Wellington in 1930.

As the chain strip had been placed under the control of the Domain Board by the 1916 amendment, during 1931, the Domain Board sought an opinion whether the domain was the property of the Crown or of Mua-Upoko.

Crown Law responded that if adjoining landowners were grazing on the dewatered area they were trespassing. Furthermore the Domain Board could require landowners to fence their lands and impound any stock.

Not surprisingly, the Domain Board ignored this advice.

Instead in 1933, after meeting with the Levin Borough Council, the Domain Board decided to ask the the Department of Lands and Survey to set up an inquiry into the Board's rights.

Amongst other things, the committee of inquiry was asked to consider how the rights of Maori could be affected by further development of the reserve as a public resort.

Mua-Upoko managed to find a sympathetic ear from a committee that had an affiliation to the Labour party, and who was prepared to embark upon an extensive research programme to produce a report, which unfortunately was undated.

Nevertheless their findings are timeless, and deserve to be reproduced almost in their entirety.

> Since the Act of 1905, their rights have been encroached upon.
>
> It appears that the greater part of the interference with their rights of which the Maoris complaint is due to the powers given the different local boards.
>
> The Legislature can hardly have contemplated the serious effects upon the fishing rights of the Natives that would result from the works of these local Boards.
>
> In the year 1916, due to some of the 1905 Act being amended, our rights to the Horowhenua Lake had practically disappeared insofar as .. in 1916 had deprives us of the rights to the chain strip surrounding the lake and Hokio Stream.
>
> The Natives took active steps to protect their rights until it appeared hopeless to continue; on account of these local Boards ignoring all protests from the Natives, and also due to the fact that these local Boards called in the Police to prevent the Natives from obstructing their work.

The first interference with the Natives rights was in the year 1911 – on this occasion as certain local Authority were desirous of constructing water-races for irrigation purposes and that the terminus of these races was to be the Horowhenua Lake.

A representative meeting of the Natives was held to protest against this undertaking but the protest from the Natives was ignored. The consequences were that the Lake-level rose and no compensation whatsoever was given; furthermore by the rising of the Lake-level it flooded the adjacent farm.

The next note of interference was the acquiring of a further three acres 37 perched by the Crown in favour of the Lake Domain Board. The Act of 1905 gave the Crown an area of 10 acres for a Boating site but today the area controlled by this Board is 13 acres, 37 perches.

We understand that the Natives were not aware that further land had been acquired and they have no knowledge of ever giving this area to the Crown.

The principle rights concerned are as follows:

1. Rights to the ownership of the Horowhenua Lake
2. Rights to flax royalties
3. Compensation to rights, damage by interference
4. Compensation for Lands taken for Scenic Purposes
5. Compensation for Eel weirs destroyed
6. Compensation for Shell Fish destroyed.

We are of the opinion that the only way the Crown could have acquired the Horowhenua Lake from the Maoris would be in the following way:

a) By purchase

b) Ceding by the Maoris to the Crown or by an Implied Surrender arising from their conduct

c) By proclamation under Section 113 of the Native Land Act 1931

d) By Act of Parliament

We have made an extensive search and a careful inquiry into this matter and the Maoris have assured us that not to their knowledge do they remember giving up their rights to the Horowhenua Lake under these conditions.

They have assured us that if their rights had been taken away under these conditions, then it had to have been done so without their consent.

> Furthermore we have ascertained that since 1846, it has been illegal for any persons, other than the Crown, to acquire any rights or interests from the Maoris, in properties held under their Customs and Usages, ie Customary Land.
>
> It might be claimed that the public has acquired a right to the Lake but this could not be so, for the reasons stated.
>
> It is possible that some of their rights have been taken away by Act of Parliament, although such an Act would amount to a breach of the terms of the Treaty of Waitangi.

Members of this committee could find not a single Maori who could recall anybody consenting to the conditions under which the lake now operated.

This committee then conducted an extensive search of old records and any Acts of Parliament that might have a bearing on this matter.

Eventually the committee was forced to concede that it was possible some of their rights had been taken away by Act of Parliament, 'although such an Act would amount to a breach of the terms of the Treaty of Waitangi'.

It was also apparent to this committee that due to construction works undertaken by local Boards, the Native's fishing rights have been seriously interfered with, particularly by the destruction of their *partunas* situated in the Hokio Stream. This construction work was undertaken by the Drainage Board to lower the lake so that the waters flooding the lake would recede and to overcome the flooding upsetting the European farmers.

> This situation was regarded by Mua-Upoko as a 'national calamity' because these *partunas* or eel-weirs were of great value to them - they were valuable properties handed down to them by their ancestors. They were the means by which they earned their livelihood.
>
> With the receding of the waters, the shell fish or *kakaho*, which was another national food source and harvested in abundance from the foreshore of the lake, was left high and dry. As a consequence, they died in millions.
>
> An Officer of the Fisheries sent by Government to investigate, confirmed this was not an exaggeration.
>
> The Maoris also earned a large revenue from the flax that flourished around the foreshore.
>
> With the receding of the waters, the flax was also left high and dry. Wandering stock from adjacent farms trampled through the flax and destroyed it.
>
> Farmers adjacent to the lake built their fences into the lake, thus allowing cattle the free and unrestricted use of the foreshore, and providing an average of approximately twenty acres or more of good grazing land, free of rental.

Ultimately, this committee reached the conclusion that this land be returned to the original owners because:

a) These were ancestral lands

b) Having been acquired for scenic purposes their title to same became eliminated and in consequence they were deprived of any benefit occurring from them.

c) These lands did not belong to the Europeans but to the Maoris and were practically confiscated for scenic purposes.

The committee also pointed out that by section 89 of the Native Land Act 1909, 'no persons, by will or otherwise, could make any alienation of customary lands'.

Lake Horowhenua and environs, by the rulings of the Native Lands Court, the Supreme Court and the Court of Appeal, clearly met the criteria to be considered 'customary lands'.

The overall findings of this committee are of importance because they remain relevant today.

a) We are of the opinion that the Horowhenua Lake is still the property of the Muaupoko tribe and they did not on any occasion surrender their ancestral rights to any person or persons whatsoever.

b) ***That the Muaupoko Tribe are unanimous in that the 1905 Act and the 1916 Amending Act should be abolished as far as the Horowhenua Lake is concerned***, because they are sincere in their opinion that these Acts have been the cause of all their grievances an injustices in allowing too much power to Local Authorities, thereby causing destruction and havoc to their properties, to their *partunas* and to their fishing rights.

c) ***The Muaupoko Tribe are of the opinion that the Administration of the Horowhenua Lake be vested back to its original owners***, that a new Board be formed with members to be nominated by the owners of the Horowhenua Lake, for the express purpose of catering for and reviving the boating facilities of the Horowhenua lake, which according to the laxity of the present boards, this form of recreation has deteriorated.

d) The Muaupoko Tribe are unanimous in their opinion that compensation be paid to them for the destruction of their fishing and other rights and they agree that £1,500 per annum for the rest of their lives would be a reasonable amount to compensate them for their loss.

And one other final matter, the committee raised.

During this era, there was a strong proposal to develop the lake as a base for seaplanes.

Mua-Upoko strongly objected to this purpose, on the grounds that refuse from these crafts, waste oil etc would further deplete their eel supply.

They would not, however, raise any objection for aircraft used in the defence of New Zealand.

Whether this committee's report had any influence in the corridors of power, or whether it was the concerted effort by Mua-Upoko themselves through a flurry of submissions, Central Government finally exerted themselves to appoint a Committee of Inquiry under the jurisdiction of Judge Harvey and Mr H Mackintosh who was the Commissioner of Crown Lands.

The official Inquiry commenced on 11 July 1934, and in attendance were Levin's Mayor Goldsmith, Mr Jensen and Mr Hudson as chair and secretary of the Lake Domain, representatives of the Wellington Acclimatisation Society, and a lawyer, Mr Morison representing the Mua-Upoko tribe.

Mayor Goldsmith commenced the evidence, stating that he was very pleased this inquiry was being held and reported that Council was of the opinion that the lake should be under absolute control of the Domain Board.

He believed that if this control was vested in the Board, the interests of the Maori people with regard to fishing rights would not be affected as the Maoris have representation on this Board, and also the Crown exercised oversight of boards all over New Zealand.

'We value the lake as an asset to Levin as a sports ground', he said, 'and look forward to its development for the benefit of the public generally.'

Cr Todd, who was also the President of the Chamber of Commerce suggested that the inquiry would have to concentrate on ownership of the lake itself, as it was not clear. 'If it is Native land, the operation of the Board will be restricted to 13 acres put under it in 1916 from the Crown.'

He wanted to see a drive right around lake. 'This would benefit the Natives as it would give access to a big part of Native land without suitable access. All local bodies consider the road would be of benefit to all, including the natives.'

'Local people do not wish to disturb native rights, but wish to take advantage of present cheap labour to effect necessary improvements. They wish to improve the foreshore. Some want a jetty, boat harbour and swimming pools.

'There were jetties once but they were allowed to get into disrepair. The suggested development rights do not interfere with native rights. There is much boating going on now, and the lake also has possibilities as a seaplane base.'

Mr Crisp from the Acclimatisation Society referred to the scarcity of whitebait which was entirely due to cattle on the foreshore during the spawning season. He did not mind Natives fishing but not for ducks. He wanted protection of the foreshore as swans once nested on the edge of the lake but do not do so now. The Society could possibly assist with fencing.

Cr Parker, who was once a member of the Board, testified that 28 years ago there had been considerable boating on the lake and reasonable enjoyment of it. There was once a boat house but now it had all gone. These days people have to take craft down in lorries and get them into the water with great difficulties, then bring them home at nights.

It is 'a good stretch of water', he said but with the poorest possible access of anywhere in New Zealand.

He proposed a stop bank along the edge to prevent wash and mosquito pools, also a footpath and road. 'The Natives should not object to any of these'.

Cr Parker then produced a sketch of these proposals in a rough form and also photographs taken of the lake in Hamilton.

Mr McIntosh, who was once the president of the Levin Boating Club spoke about the jetty that was there once but not now. 'There are 12 to 15 boats around here owned by young people who are entitled to consideration. We have had regattas here in the past.'

Mr Wakley, as a member of the board advocated excavating a site for a boat harbour.

It is interesting to note how frequently these witnesses made comments along the lines that the Natives would not object, as if the Natives had no right to speak on their own behalf. It was patronising in tone.

And then Mr Morison rose. He would be the voice of a tribe consisting of 400 to 500 natives.

He said there had been trouble for many years. 'The attitude of the Natives is not perhaps properly understood by the people of Levin, Perhaps they do not appreciate the importance of native land rights in the eyes of the Natives. Some matters may appear trivial to European minds. Natives welcome the opportunity of putting their views forward. Various attempts have been made in the past to substantiate their rights which, through lack of funds, they have not been able to impress.'

He then catalogued a litany of grievances from the perspective of those he represented.

> In 1905 the Europeans were using the lake for boating and I understand boat jetties were erected there then. Apparently some difficulties ensued between Europeans and natives because a meeting was held in the boats shed where Messer R J Seddon and James Carroll were present to discuss the question of the use of the lake by the Europeans...
>
> I only know of one man who was present – Wi Reihana. 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 extend beyond the edge of the water and the Maoris understand that the Lake was their property also the chain strip. They were entitled, if they wished to prevent any persons coming onto that strip or the lake.
>
> If the government or local body wished to take the land they would have been obliged to pay compensation. The government would never have agreed to take the land from the natives which land had been set apart as a means of food supply, so that what was done was only a voluntary concession by the native owners to allow the Europeans to use the Lake for boating. Following upon that meeting the Act of 1905 was passed.

Mr Morison pointed out that this legislation refers to the lake only and does not refer to any stretch of land. There is provision for the Governor to acquire land for boat sheds. If the chain strip was included in that legislation, there would be no necessity for this provision.

He was adamant: ***The Natives want this gradual whittling down of their rights to stop***.

First, the Europeans wanted to hold aquatic sports, now they want it for roading, scenery and other purposes.

The next step in the history is this. About 1905 a local authority in this district wished to construct water-races for the district, bringing water from the Ohau River and to run a number of water races into the lake. One native here today can remember a meeting in the Town Hall, and the Maoris present strenuously opposed this suggestion.

Notwithstanding this, the water races were proceeded with and as a result the water rose over the chain strip.

In 1911 some correspondence passed between the Lands Department and the Domain Board regarding ownership of the lake. A letter was written by the Under-Secretary of Lands that the chain strip was not included in the Domain Board's area nor was the lake vested in the Board.

The next step was in 1916 when under s97 of the Reserves Disposal Act, amendments were made. The need for the addition of 'and the Hokio stream' was apparently on account of the land being put under the Board as a drainage authority. Sub-section 10 is important as it sets out to describe the reserve under the Horowhenua Reserve Act 1905. This Act included the chain strip which the 1905 Act did not include.

Natives say they were not consulted prior to the passing of this legislation and that they never consented to the chain strip being included.

He then went on to the next step of importance in 1925. The lake had risen. In the winter time it flooded the lands of adjoining land holders and a Drainage Board was formed to control the level of the lake.

That year, a letter from 105 owners was sent to Mr Coates the Naive Minister praying that the Hokio Stream should not be interfered with as it would destroy their food supplies.

On 28 October 1925, Rere Nicholson had written to Mr Coates stressing that the bed only was being cleaned and that the banks not being interfered with.

But Mr Nicholson was not from Mua-Upoko and owned land that would benefit from proposed drainage.

During October 1925 a Commission was set up to report on the proposed scheme.

It was resolved not to destroy banks apart from cutting jutting willows etc. But the Board did in fact cut new channels leaving the eel weirs high and dry. It was a definite breach of this arrangement.

In 1926, the Board started to dig a dam and dig out a channel.

Natives objected on the grounds that they were not keeping to the agreement and proceeded to pull down the dam.

Trouble ensued and summons were issued against the Natives for interfering with the Board's work.

A deputation went down to Wellington and Mr Balneavis as a representative of the Native Minister travelled to Levin to try and settle the dispute.

A memorandum was drawn up by Mr Hudson on behalf of the Drainage Board and on behalf of the Natives, Mr Nicholson, Mr Balneavis and Mr Hurunui, a member of the Lake Domain Board.

The Natives say this memorandum was not to their satisfaction, Mr Morrison told the Committee of Inquiry.

It must be remembered that once again it was not those with the *mana* to represent Mua-Upoko who were endorsing these so-called agreements.

At the meeting to discuss the proposed works, Nicholson had told the Natives that they could not stop the board because the Board had too wide powers. There had been considerable wrangling all day and feelings ran high.

Despite his conflict of interests, Nicholson was one of the three Natives who signed an agreement next morning at the office of Mr Park. Nicholson was not from Mua-Upoko.

The second signatory was a Government representative, also not from Mua-Upoko.

Hurunui, the third signatory was told this was what was agreed at the meeting and thereupon signed. He had not been there for the conclusion of the meeting, nor was the agreement signed by any of the elders. He was from Mua-Upoko but he was also a member of the Domain Board, who expected even Native members to be loyal first and foremost to their colleagues on the Board.

As for his *mana* within Mua-Upoko? Although a woman by the name of Kahukore Hurunui is listed on the register of owners, her relative interest is within the lower echelons.

So once again, nobody of any *mana* within Mua-Upoko signed this document.

Mr Morison continued: The Board went ahead with the works and the Natives relied upon an assurance that the eel weirs would be protected. What happened is that the Board cut out a channel, narrow and with perpendicular sides and with a shingly bottom and rapid flow of water. The result is that only two eel weirs can be used.

‘I feel that members of the Board did not realise the deep-rooted rights they were interfering with’, he said. ‘There again the Drainage Board has ridden rough shod over the rights of the natives to benefit adjoining farmers.’

Under Local Legislation Act 1926, provision was made for a proclamation authorising the work to be done. ‘I feel I am right in saying that when the proclamation was issued in December 1926, the work was done.’

> No compensation was paid and I think the Drainage Board now considers natives can still catch their eels there. That Act and Proclamation were not passed until after the work was done.
>
> The Board trampled on native rights and then got legislation to justify their action.
>
> The natives were very dissatisfied; they had no amount of money and it took time for them to get together to deal with their grievances.

Not only was the Hokio Stream made unsuitable for eel weirs, the level of the lake dropped three or four feet and the edge receded one or two chains. In many parts, that left a stony beach whereas prior to that, it was covered with flax, nigger-heads etc under the water which was a great feeding ground for eels.

In addition, when the lake was lowered numbers of kakahi were left high and dry.

At the Pomare hui in 1930, the Muaupoko people had to attend empty-handed because they could not get the usual offering of eels.

A deputation had gone to the Minister of Internal Affairs in 1930.

Mr Harper from Internal Affairs and Mr Waters as Chief Surveyor came to Levin that year to canvas for a solution. At that time, the question of lake boundary arose.

A conference was held with the Drainage Board that afternoon, but it made no progress. The Board was adamant that the farmers wanted the land drained so consequently the lake had to be lowered and that was the end of it.

Mr Morison then received a letter from Internal Affairs on 29 November 1930 advising that: 'It was suggested the Inspector of Fisheries should inspect as it was alleged by some that there were plenty of eels in the lake and that they had not been affected by the work of the Drainage Board'.

Mr Morison then advised the Natives to seek compensation from the Drainage Board upon a petition to the Supreme Court. This course was not taken as there were no funds to pay the costs of this action.

'Fishing is a serious matter', Mr Morison told the Committee of Inquiry. 'The lake is set aside as a food supply by the elders and just at the time it should have been of greatest value, the value was taken away by action of the drainage board.'

He then went on to the next topic, the flax industry.

In the past, they used to get quite a revenue from flax around the lake, he said.

Farmers encroached on this land, and particularly after the lake was lowered.

Flax was burned and some was ploughed up.

In 1930, Mr Waters located pegs and it was quite clear that much of this destroyed flax was within the chain strip.

The Maoris approached the Board in 1928 to be allowed to fence off a portion of this stretch of land and get a surveyor at their own expense to define the boundary. Farmers objected.

They then approached the Minister and the Under-Secretary.

The Natives wanted land preserved and wanted to do the fencing.

The farmers, Europeans, said they would pull the posts up if put in.

> They had 53 chains surveyed at their own expense. The Natives claim that the title to the chain reserve is vested in themselves. 1916 Act put that portion under the control of the Board without consent.
>
> They strongly protest against the proposal for a road around the chain reserve.

As soon as Mr Morison had concluded his presentation, the Pakeha contingent went on the attack.

'The Natives should admit that the numbers of eels have not been affected to any great extent', retorted Cr Todd from the Chamber of Commerce. Furthermore, 'native suggestions conflict with the suggested policy of the Board in putting in roads and completing jetties. Then we have extraordinary position that we cannot get over the chain strip to the water.'

> Re: Ancestral rights. Natives must remember that it has equal rights with Europeans in all ways and the Domain Board is not asking them to give up anything. The district is progressing and the natives must allow the district to progress.
>
> They have no objection to boating on lake so we must have access to that lake. We suggest a stop-bank, and no objection to that has been made.

Morison replied: At present, while natives are claiming the chain strip and are being denied, they object to any work being done.

Mr Todd continued this exchange:

> If the Natives are upheld in their contention, then the 13 acre-piece would be useless.
>
> Title to this is in the name of the King.
>
> The road around the lake would enhance the value of the native land.

He then argued that the people were well represented by Mr Nicholson who saw the advantage in draining the land.

Mr Hudson, secretary of the Domain Board then referred to a joint letter received on 24 January 1934 from the people who boat on the lake protesting against the muddy state of the lake. 'They want facilities for launching and they want a wharf and a road to it.'

Mr Hammond provided one small conciliatory note, explaining that only one farmer had objected to the fencing, a Mr Proctor who got his land from his mother's side. 'I feel the majority would have been glad to fence if proper arrangements could have been made.'

From the tone of the responses, it was obvious that the Pakeha contingent failed to grasp the fundamental issue and that was one of property rights.

And Cr Todd displayed his ignorance by asserting that the people were well represented by Mr Nicholson, who was not of Mua-Upoko.

How would he feel if a councillor from Palmerston North claimed to represent the Levin Borough Council?

But all that aside, Mr Morison put it clearly when he said: ‘The Natives claim it is their lake and their land’.

In fact the Natives did not even have to claim it was their property. It was their property, and Mua-Upoko held a certificate of title to prove it.

During his protestations, Cr Todd made a major slip up, by revealing what he described as the extraordinary position that the public could not get over the chain strip to the water.

This was an admission of the one positive spin-off from the Drainage Board’s lowering of the lake level.

The land that the Crown had purchased to allow access to the lake was now left high and dry, separated by the dewatered area and chain strip. No member of the public could reach the lake without crossing land that was Maori Freehold.

In a presentation that was both detailed and impeccably researched, Mr Morison made one small flaw.

As far as he was concerned, the Natives: ‘have no objection to the agreement of 1905, no objection to the use of 13 acres for boats shed etc, but they claim they never gave anybody the right to the chain around the lake.’

> I may say that the natives have never objected to the use of the lake as a boating place. They appreciate that their elders made an agreement and they are prepared to stick to it.

Wi Reihana gave evidence, but it was concise. Probably he was intimidated by the presence of a Judge, a Mayor, a Commissioner from Wellington and others. The only words he uttered were:

> I am a member of the Mua-Upoko tribe. 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 to by the elders present. I do not know what was said afterwards by Carroll. He told us afterward what I have already said. I do not know anything about the land around the lake.

The crucial words in his brief testimony were: It was agreed to by the elders present.

Obviously, Reihana was not going to be as forthcoming in this forum as he had been in the haven of a solicitor’s office, but even if he now concedes an agreement, it was only by those elders present.

The name of Reihana was a small fry in the Mua-Upoko hierarchy. Who did he mean by elders?

Where is this precious piece of paper that proves an agreement was reached?

If it does exist, who signed it?

On the one hand, Mua-Upoko hold a certificate of title to prove they own the lake bed and chain strip.

On the other, where is the piece of paper upon which Parliament based its legislation to remove all control from the legitimate owners?

The burden of proof rests with the Crown.

Judge Harvey delivered a nine-page report to the Minister of Lands.

He was able to confirm that the Horowhenua lake and a reservation of one chain strip around the said lake was held by Mua-Upoko in an estate of freehold in fee simple.

> 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 the aspects of their right of objection and their right of compensation.
>
> However to our minds that situation appears to more in the way of a grant of users 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 European and Maori.

He then referred to the legislation affecting the lake: Horowhenua Lake 1905, amendments in 1916 and 1917 together with s53 of the Local Legislation Act of 1926.

> It may be that these amendments have taken away the Native's title; if so they have done it in a subtle manner mystifying alike to Domain Board and Natives.

Judge Harvey felt it was gratifying to find that the Domain Board had no desire to ride rough shod over Native rights and Native sentiment but wished to obtain a clear definition of the respective rights of the parties in order to obtain a proper functioning of the Board. He put the primary issue succinctly.

> The Board owns a recreation ground of 13 acres (the possibility of acquiring which is referred to in the 1905 Act) but when it proceeded to develop this recreation ground by improving it so as to give access to the waters edge, complaint was made by the Maoris that the Board was trespassing on the chain strip.

After hearing all that the parties wished to say upon the matter and after inspecting the lake and foreshore, he felt that the solution of this problem may lie 'more in the direction of a compromise' than in any definition of rights at law'.

He put forward four recommendations:

1) That the Domain Board has absolute control over the surface waters of the lake but so as not to interfere with natives who are on their fishing pursuits.

2) That the Domain Board be given a title to all the land bounded by the waters edge and the chain strip from Mako Mako Road to the north-eastern corner of the recreation reserve.

3) That the land covered by the waters of the lake is owned by the trustees in trust for the owners of Horowhenua 11, subject to the rights of the Domain Board to the surface of the water.

4) The dry land between the waters edge and outer boundary of the chain strip with the exception of the land described in the fourth recommendation would also be owned by the trustees in trust for the owners of Horowhenua 11.

Judge Harvey concluded with a comment that it is possible that the Domain Board may wish other points on the lake's front to be vested in them – picnic spots etc. 'In this respect we feel sure that if the Maori people are met fairly, they will deal generously with such proposals'.

But where was the compromise?

After reaching the conclusion that Mua-Upoko owned the lake bed and the chain strip completely surrounding the lake, Judge Harvey and Mr Mackintosh felt it would be a compromise to 'give' title of 83.5 chains of lake shore to the Domain Board, and perhaps some more as well for picnic spots.

During March 1935, these proposals were put to Mua-Upoko. They were unacceptable.

In May 1936, a deputation of Mua-Upoko met with Prime Minister Savage in Wellington. ***They requested that all legislation affecting the lake be repealed, and that ownership of the lake and riparian strip be returned to Mua-Upoko.***

All this delegation achieved was yet another meeting, seven months later.

At this meeting on 9 December 1936, they had expected the relevant ministers to be in attendance.

Admittedly, Mr Hunter pointed out that he had to apologise for the absence of the Native Minister. 'Mr Savage is unable to leave Wellington for reasons which are apparent to everyone.'

Instead, Mr Macintosh as Commissioner of Lands, Mr Robertson as Under-Secretary for Lands and Council representatives turned up.

'My own position is merely that I am here to assist in any way I can', intimated Judge Harvey who was to chair this meeting.

Acting on behalf of Mua-Upoko again, Mr Morison reported that they had little notice of this meeting, although Judge Harvey inserted a note beside this comment in the official minutes that the native owners of the lake were fully represented.

Mr Robertson said there appeared to be a misunderstanding of the purpose of this meeting, and produced a copy of the notes recorded by Prime Minister Savage (who was also the Native Minister), that it was to be a round table conference.

Judge Harvey, perhaps sensing that the meeting was not going according to plan, announced that the Minister does not want two independent displays of shadow sparring. 'A round table conference is a round table conference', he declared. 'Either we get together or we do not. Can I expect that the Maori people will then be prepared to get down to business at this meeting?'

Mr Morison retired to confer with his clients. They returned.

Mr Morison reported that it seems most unfortunate that there are appears to be a complete misunderstanding in Wellington. 'It was not understood that there was to be a conference with local bodies and people of Levin. They think that no good purpose will be served by embarking on such a discussion at this time.'

Mr Morison's presentation on this occasion was brief and to the point.

> It was represented that the frontage was required to enlarge the domain, to allow of a scheme of beautifying and to relieve unemployment.
>
> That proposal was not acceptable to the Maoris..
>
> I am advised by the Native representatives that as permission to use the lake was given by them voluntarily and did not include the chain strip, they see no reason why they should give up any land.
>
> The question of the proposal to cede a portion to the Crown was not discussed and as that offer of theirs was not accepted, they consider that portion of this matter closed.

Mr Hunter replied that he was sorry they could not come to some arrangement.

> The proposals put to the Maori people were not for the purpose of taking their land away or their rights away. At present a strip round the lake has been taken by the Crown – put it that way. All that is asked for now is the portion from Queen Street and Makomako Road – remaining portion was promised to be put back to the Maori people.. I think you can do something today.

At this point, there was an interjection from a Maori: Not today, my son.

Mr Hunter continued: 'Very well, I must report to the Prime Minister that you are not prepared to negotiate.'

Judge Harvey closed the meeting by declaring: 'When the Maoris are ready with the proposal they wish to put to the Right Honourable Native Affairs Minister, they will put a proposal to that effect.'

The meeting was accordingly abandoned.

Judge Harvey was then forced to report that the settlement as proposed in his report was unlikely to be achieved through further meetings.

As an alternative, there was the prospect of taking the part wanted for the proposed Domain under the Public Works Act.

It was becoming apparent that the Domain Board was determined to get their hands on land that belonged to Mua-Upoko for their elaborate beautification plans.

More disturbingly, the Mua-Upoko deputation to the Prime Minister to repeal the legislation giving the Board control over their own lands had backfired on them. All it had achieved was yet another land grab, with the clout of the Public Works Act if the owners refused to give away their title voluntarily.

History was repeating itself.

Last time it had been the Scenery Protection Act of 1903 that was used to coerce Natives to yield up land that the Pakeha felt was their entitlement, due to its suitability for their own ‘aquatic sports and pleasures’.

In 1943, there was another meeting, this time between the Natives and Native Minister, Mr Mason. Nothing was achieved.

The Chief Maori Land Court Judge’s views were sought. He considered that to a large degree the Domain Board’s failure to fence off the chain strip or stop stock grazing on Maori land was to blame for the impasse.

By 1949, the Domain Board had gone into recess; the reason being that no Maori was prepared to accept nomination.

In 1950, the Minister of Maori Affairs Mr Corbett met a delegation of Mua-Upoko in an attempt to obtain some solution to ‘this vexed problem of control’ and to clear up if possible the ownership of the lake and Hokio stream.

So by the middle of the century, the Lake Domain Board was in recess, the fourteen lake trustees had all died, and it was unlikely that any of the registered 81 original owners were still alive.

Such was the stalemate surrounding the lake.

In 1951, Maori Land Court Judge Whitehead appointed new trustees, though there is no record how these people were selected. Who picked them? A Judge? A government official?

Given the contentious nature of recent dealings with the Maori Land Court, the Government and the Domain Board, wouldn’t it be reasonable to assume that those selected were cherry-picked by those who would prefer trustees more amenable to the demands of their political masters.

In 1952 Mr McKenzie as the new Commissioner of Crown Lands and Mr Mills and Mr McEwen of the Department of Internal Affairs, produced yet another report.

In spite of Crown Law opinions to the contrary, these men considered that the 1905 Act had not vested the lake in the Crown. And they identified the Domain Board as the main cause for many of the problems, because the majority repeatedly ignored the views of the Maori members. They even had the audacity to ask that Maori representatives be removed from the Board altogether.

But this report once again disadvantaged the owners, because it was their opinion that the only solution was to try and purchase the additional land wanted for the reserve.

By now, amendments to the legislation were inevitable.

But what consultation occurred as the Bill was being formulated, and with whom?

The Trustees a Maori Land Court Judge had appointed?

While introducing part of the bill affecting the lake, Corbett repeatedly stressed that this legislation met ‘fully the wishes of the Maori owners’.

But what proof did he have of this?

Wouldn’t it have been appropriate to convene a meeting of the four or five hundred Mua-Upoko to discuss with them law changes affecting their lake?

And if there was no such meeting, how could he declare that this proposed legislation met ‘fully the wishes of the Maori owners’?

This situation was no better than the circumstances that led to the debacle of the legislation Parliament was now attempting to rectify.

Eruera Tirakatene, as the member for Southern Maori, rose to give a brief overview of the legislative history, and various acts of Parliament which resulted in the owners losing some of the rights guaranteed them in the original 1898 deed. He commented that 13 acres for the domain had been ceded by Mua-Upoko but there was no record of any payment being made for this land.

He pointed out that the Maori owners felt ‘that motor boat racing on the lake was detrimental to the waterfowl and other bird life there, and that the lake should be retained as a bird sanctuary’.

And finally he wanted to know why could a Maori not be chairman of the Board. ‘There are many Maoris capable of holding that office.’

The bill that became law as s18 of the 1956 Reserves and Other Lands Disposal Act admittedly contained a long-overdue concession that the lake bed, the islands therein, the dewatered area and chain strip are declared to be and to have always been owned by the Maori owners.

Nevertheless it also retained many of the characteristics of the 1905 legislation that had taken control of their lands from the owners and placed it in the hands of a Domain Board.

This time, the composition of the Domain Board was more specific.

There were to be two people appointed by the Minister on the recommendation of the Levin Borough Council, one from the Horowhenua County Council and four appointed by the Minister on the recommendation of the Muaupoko Maori Tribe. The final member was to be the Director-General of Conservation who, ex officio would be chairman.

The Maori owners were granted ‘free and unrestricted use of the lake and land’ and their fishing rights, ‘but so as not to interfere with the reasonable rights of the public as may be determined by the Domain Board’.

And even though they had failed to convince the owners to give them title to this land, the Crown had still managed to obtain control of the crucial portion of chain strip and dewatered area between the Crown-owned portion of land and the lake itself, allowing public access to the lake.

Once again, it was just a matter of politicians declaring this area to be a Domain.

From the correspondence passing between a legal firm and the Government there were to be two conditions of agreement:

a) The lake to remain a bird sanctuary

b) No speed boats were to permitted on lake.

Neither of these conditions were met.

They also wanted the lake levels to remain the same. The lake level was, fortunately, prescribed.

But how did the Crown once again succeed in passing legislation where they acquired all the benefits of ownership without paying the owners some form of compensation for the use of their land?

Had they browbeaten the trustees into submission, powerless against the weight of the state?

Or had Judge Whitehead simply selected some trustees who had no *mana* within Mua-Upoko but who would be more amenable to the terms imposed by the Crown?

Where are there any records of meetings with the trustees or more importantly the actual owners?

Looking through the list of trustees who signed this document, it is interesting to read their names.

There are two with the surname of 'Hunia', obviously from Ngati Apa.

There is somebody by the name of Tukapua, who had married Charles Broughton's daughter, Emily.

But there is nobody by the name of Taueki or anybody else with *mana* within Mua-Upoko.

Had threats of the Public Works Act from a Maori Land Court judge forced them to capitulate?

The Crown thrives on ceremonial occasions.

Then there are Maori who relish sumptuous feasts and the theatre of the *powhiri* welcoming onto the *marae* people of importance.

Within Mua-Upoko, there are generations of *kupapa,* people who have cloaked themselves with the *mana* of Mua-Upoko, even though they are no more than cuckoos in the nest.

Two years after the legislation was passed, on the 10th day of May 1958, Prime Minister Walter Nash, the Minister of Forests and the Chief Judge were welcomed onto the Kawiu Marae overlooking the lake.

They were there to witness the signing of a declaration, ornately transcribed:

> The trustees and members of the Muaupoko tribe gladly acknowledge the recent legislation whereby the bed of the 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 conformation of its lands, rights and privileges and the restoration of its prestige, the tribe is determined to work with its Pakeha Brethren on the Hokio Lake Domain Board to beautify and provide the amenities as illustrated in this document.

It was signed by the Prime Minister, twelve trustees, nine Lake Domain Board members and ten members of the tribe – a mere 2% of them.

Three years later, the Board of Maori Affairs received an application:

> To acquire a lease in perpetuity of an area of 8.6 perches as the site for a boatshed and clubhouse. The Horowhenua Boat Cub has approached the Domain Board for the use of a portion of the lake bed comprising 8.6 hectares on which the club wishes to erect a boat shed and clubhouse. To meet the wishes of the Boat Club the Domain Board desires to acquire a lease in perpetuity of an area concerned. Valuation twenty pound.

On 24 April 1961, the Maori Affairs Board approved the commencement of negotiations and sent out a memo setting in place procedures to summon a meeting of owners to consider the Crown's offer.

It was also noted that a 'search should be done here'.

On 3 May 1961, this application was withdrawn.

> Less than one month later, in place was a 'perpetual lease of 32 perches from 1 June 1961 with perpetual right of renewal to the Crown £1 pa'.

Within a month, the Lake Domain Board had issued a licence for the Horowhenua Sailing Club to erect a pavilion on 33.3 perches of Maori Freehold Land overlooking the lake.

The right to use and occupy the said land was for 21 years from the 1st day of July 1961. There was also to be a right of renewal for a further 21 years.

In 1981, Mr Devine as executive officer of Land Management, reported that the Board agreed to pay the rental on behalf of the Crown but 'the Trustees have generously never charged it and it has been treated as a leasehold gift'.

This appears to be a recurring theme.

Despite the cultural significance of Block 11, and particularly the lake that many of their ancestors died defending, the Crown repeatedly managed to take control of this property, ostensibly as a 'gift'; with no documents or records or meetings to verify this position.

Would a more pertinent explanation be that there was no obligation for the Crown to pay the pound lease per annum, because there was no lease arrangement in the first place?

Once again, there appears to be no record of any lease negotiations or agreement for the Crown to lease a portion of customary land that belongs to Mua-Upoko.

And yet the Crown in turn pockets the revenue from leasing out land that doesn't belong to the Crown.

It is an extraordinary situation; one that should not be tolerated in any civilised society.

But requests to repeal legislation allowing this anomaly to continue are brushed aside.

On 12 June 1981, Lake Horowhenua was classified as a reserve for recreation purposes subject to the provisions of the new Reserves Act passed in 1977.

But once again there would be confusion operating under both the ROLD Act of 1956, and the Reserves Act of 1977.

For instance the Lake Domain Board minutes 12 July 1993 records that the chairperson had voting rights as a member of the Board and was also entitled to a casting vote.

The revised composition of the Board had at least improved the ratio of Maori and Local Authority representation, but whenever there was a stalemate, it was the conservation department representative who always had the casting vote as *ex officio* chair.

The Board sought an amendment to the ROLD Act to transfer the Board chairmanship to the Mayor, while retaining the regional conservator as member.

When Cr Munford confirmed he had observed boat with an outboard motor the previous weekend, it was suggested that signs be erected prohibiting the use of motors on the lake.

At least, this particular Board was prepared to respect the sensitivity of the lake, unlike previous boards who have sanctioned speedboat regattas, even though this activity was supposed to be prohibited.

In more recent years, the Board tried to manipulate the membership of the Lake Domain Board by allowing representatives from the regional council and the clubs using the lake to sit around the board table. Meanwhile owners are obliged to seek speaking rights which are limited to five minutes.

It was not until 2005 that somebody pointed out that there was no formal list of owners in the normal Maori Land Court records and it was agreed that a lawyer should be assigned to look into this.

A century after the 1905 Act was passed, Horowhenua 11B (Lake) was still officially in the name of the original 81 owners.

By now, Phil Taueki, a direct descendent of Taueki who has signed the Treaty on behalf of Mua-Upoko had returned from a lucrative career as an accountant in London and popular pub manager.

He had been raised on the stories of his father's frustrations dealing with the Crown, although visits to the local *marae* were usually limited to *tangi.* It is only now that he understands the reason that as a child, he never felt welcome in the Pakeha world, nor in the Maori world on a *marae*.

The Taueki *whanau* had been shunted aside by those his father labelled, 'imposters and thieves'.

As a child, he had never understood the reason for these labels, nor had he understood the frustrations faced by his father as he tried to protect his property the best he could.

At the time, he had no idea how seriously the infiltration of *kupapa* had undermined the traditional leadership of Mua-Upoko, and how these people succeeded in block-voting their own into positions of influence. These *kupapa* were treated as true Mua-Upoko, while the Taueki *whanau* was ostracised.

On 23 November 2005, Phil Taueki had written to Minister of Conservation asking about 'the legality of the leases particularly that to the Horowhenua Sailing Club, which is on land not owned by the Lake Domain Board but the owners of the Maori reservation'.

A few months later, on 21 February 2006 the Lake Domain Board resolved that the expired leases for site occupancy at Muaupoko Park remain on a month by month rental arrangement for all expired licences until the Board was fully reinstated with its membership.

The Domain Board was once again faltering without Maori representation.

On 3 September 2006, Phil Taueki wrote another letter about the sailing club lease, this time to the Lake Domain Board chair. This letter was blunt.

> I require proof of ownership of the land and building that you 'lease' to a third party and a copy of any existing lease
>
> An account of total rents received for said building
>
> A building or site plan from council ensuring all regulations have been met.

He then stated that: 'Unless some documentation or other proof of your right to lease our land and building to a third party is received within 14 days, we will take necessary steps to evict any squatters.'

After waiting several years for an adequate response, he then took direct action.

He and other members of Mua-Upoko simply occupied the building.

During May 2009, fourteen police stormed this pavilion to evict 'squatters' who have lived in the clubrooms for months.

But the media reports that the 'squatters', some associated with the Nomads gang, were not phased by the trespass notices issued during Wednesday's raid, and were outside the clubhouse yesterday.

Rural area Commander Mark Harrison said twelve trespass notices were issued and more would be served. 'It's just for the building. We're not saying that they can't go on the land because we acknowledge that they have some access rights.'

The media reported that the Lake Horowhenua is the subject of a Treaty of Waitangi settlement claim.

That was not the case at all.

The 'squatters' were in fact owners who were fed up with the sailors squatting in the buildings six years after their lease had expired.

A month later, the media were declaring that 'yachts will once again race on Lake Horowhenua as sailing club members take a stand and reclaim their rights'.

'The Club will hold its first regatta in eight months this weekend after being forced to flee by squatters who claimed ownership of the lakeside clubhouse.'

The media also reported that the club house was allegedly first occupied last December for eight days by Philip Taueki who is now before the courts.

On 23 July, the very morning his case was due to be heard in court, the charges were suddenly dropped on legal advice.

However, he was again arrested for trying to stop a meeting of the sailing club, and on this occasion club members threw him to the ground and started kicking him in the stomach.

Without making any inquiries to establish what happened, the police arrested him and led him away so that the club could proceed with their meeting in a building, years after their lease had expired.

Lacking the resources to defend five assault charges and one of possession with an offensive weapon, he pleaded guilty on the advice of his legal aid lawyer.

Judge Barber admonished Taueki for driving members of the club away from using the lake with his frightening behaviour. 'You have deprived the members of this sailing club of an enjoyable recreation', he said, 'because they're scared of you and the trouble you've caused'.

Club membership had dropped from thirty in 2008 to seven.

On 29 August 2009, Taueki was arrested and charged with unlawful entry. He was handcuffed, shoved into a fence and strapped into the back of the car in an awkward and painful position, causing injuries to his shoulder and back. This charge was dropped when the police accepted he was trying to fix a broken window.

And so started a series of incidents that can only be described as a concerted campaign of police persecution, each arrest consolidating his reputation as 'a Mad Maori'.

But the court cases became an opportunity for him to ferret out information that he had not been able to obtain through more conventional sources.

For instance, amongst the documents disclosed by the police was a Quotable Value NZ statement listing the Lake Domain Board as the owner of the lake, with separate values for land and capital.

When he applied to the Maori Land Court for a determination on ownership of the land and buildings occupied by the rowing and sailing clubs, evidence began to emerge that Mua-Upoko had lost all rights of ownership, despite retaining title.

'Any interpretation that the reserve is not vested in the Crown would make the intentions of the ROLD Act and the provisions of the Reserves Act unworkable", wrote James Hardy, as counsel for the Director-General of Conservation on 23 September 2009.

'Whilst the land comprising the Domain is not vested in the Domain Board, the reserve is vested in the Domain Board for the intents and purposes of the Reserves Act 1977', he wrote on 7 December 2009.

A map produced by DOC earmarked only a small portion of lake bed as being the area subject to the perpetual lease of the Crown.

But even if there is a perpetual lease over that small area of lake bed, it did not extend much beyond the shoreline.

When the Sailing Club dumped tonnes of rocks and gravel into the lake to create a causeway long, wide and compact enough to drive vehicles and boat trailers 70 metres out into the midst of the lake, the Chairman of the Board claimed this was consistent with the recreational use of the area (sailing facilities in front of the sailing club) and was not unduly impacting on other users or landscape or conservation values.

Permission had been given without any consultation with the *tangata whenua* or any consideration of the cultural values of the lake.

Vivienne Taueki was so incensed with the cultural affront that she persuaded another trust to finance the cost of a contractor to remove it, while the police sat in parked cars amongst the trees watching.

The police allegiance to the rowers and sailors unlawfully occupying the buildings is well-documented.

When the question of toilets in the rowing club arose during a Maori Land Court hearing, and the Mayor insisted there were toilets in the building, Phil Taueki and a companion entered the building to take photographs to prove who was telling the truth on oath. When the companion was arrested by the police who seized his camera, they pounced upon proof Phil Taueki had been inside the building, and obtained a warrant for his arrest.

Then there was the rowing club member who threatened, in the presence of two police officers and a trustee, to burn the building down after he discovered he was not the owner he claimed to be, to burn it down. Despite an official complaint from the trustee, this was shrugged off as an off-the-cuff comment.

But surveillance would be increased in case Phil Taueki saw this as an opportunity to burn the building down himself as the more likely scenario.

There would be situations when Phil was arrested the day before his Mum's *tangi* because he objected to a regatta being held without the required permit, and worse this unlawful event had been organised by a police officer.

There would be a time when the officer in charge of a case would also be the complainant. A camera containing photographs of another unlawful event was confiscated and these photographs deleted.

There would be a time when the police refused to allow him to lock up his house and car before arresting him and taking him to the police station, and somebody returned, knowing that he was being held in custody overnight, to smash every window and every panel of his beloved Merc, leaving it a write-off.

And there would be a time when a police inspector and other officers stood around, having first arrested him and taken him into custody, while people started demolishing his home without the required building consent, and damaged his property. When he returned, he defiantly lived in this home, without electricity – cold, in the dark and unable to recharge his cell phone to call for assistance if attacked.

He is assaulted on a regular basis, but knows he cannot call upon the police for protection.

He has been hit over the back of the head from behind and pinioned to the ground while his face pummelled into the rocks. And yet the police refuse to prosecute the assailants.

Those who exploit the lake, know they can summon the police and have Phil Taueki led away in handcuffs to be held in custody so that they can enjoy their activities on the lake, without disruption.

And when Phil Taueki makes a formal application to use the buildings on his own tribe's land to commemorate the Treaty that his ancestor had signed, the Lake Domain Board declined his application, on the grounds that:

> The northern building is a storage facility and not suitable for social occasions.
>
> The southern building is still undergoing repairs to vandalism, and does not yet have working toilets, showers, electricity, water and safety rails.

The Domain Board has still not issued notices for the sailing and rowing clubs to vacate these buildings, even though their leases had expired nine and five years ago, and neither building is fit for use.

But it is not the buildings that are Phil Taueki's primary concern.

It is the state of the lake.

It was in pristine condition when the Crown acquired control of the reserve in 1905.

It was a place of wondrous beauty.

It was also a bountiful *kai* basket that had nourished Mua-Upoko for generations.

Prior to the Great War, it was clean enough for a young Levin dentist by the name of Bernie Freyberg to go swimming there every day. His stamina in the water was to earn him accolades at Anzac Cove.

So why is it now so toxic that a mouthful could be lethal enough to kill a child?

Over the years, there have been numerous reports on the state of the lake.

As Phil Taueki often says, how many more reports do we need? It is now time to do something.

In essence there are five main reasons that the lake is now so polluted:

a) From 1952 until 1987 Levin's treated sewage was discharged into the lake

b) Levin's stormwater continues to drain into the lake

c) Farmers allowed stock to graze on the shores of the lake

d) Market gardeners fertilise lands adjacent to the Arawhata stream which flows into the lake

e) And finally there are no-wash down facilities to prevent the introduction of invasive weeds

Let's start with stormwater.

Horizons Regional Council had commissioned Dr Max Gibbs from NIWA to produce a report on Lake Horowhenua which was presented to the Environmental Committee on 8 February 2012.

He refers to the Queen Street storm water drain which, in 1989, was estimated to contribute more than 80% of the external phosphorous load to the lake in particulate form.

> The P stored in the sediment can be released under anoxic conditions in summer, and can be recycled again and again each year. It is that seasonal release of P from the lake sediments which results in cyanobacteria (blue-green algae) blooms in summer.

When Phil Taueki was questioned on the stormwater entering the lake as a witness in a Maori Land Court hearing during March 2012, he was shown an agreement that the local authority claimed granted them permission to discharge stormwater into the lake.

He handed back. 'It is not signed', he said.

This sent the Horowhenua District Council into a state of panic, because they could not find a signed copy of this agreement.

Eventually they located an agreement, but it was not signed by both parties.

This agreement stems back to 1971, when the Levin Borough Council's works committee met with the Lake Trustees to discuss the construction of a pipe line through the one chain strip and the dewatered area controlled by the Trustees adjoining the Horowhenua Lake. After the proposal had been outlined by the Committee the Trustees agreed that the Council's proposals were in order, subject to certain safeguards in respect of trade waters etc which may pollute the Lake.

The Works Committee had given the Trustees an assurance that it would not permit any water passing through the stormwater drain to be polluted in this manner. The Trustees indicated that they would be prepared to sign an agreement provided it included these safeguards.

The Committee then resolved that these arrangements with the Trustees be approved and that authority be given to affix the seal of the Council to the necessary documents covering the agreement.

The document was signed in 1973 by the Trustees, presumably in the belief that it would safeguard their lake from pollutants entering the lake.

It was not signed, however by the Mayor and councillors, and therefore the Council had gone ahead with this project without providing the Trustees with the assurances they had sought.

Once again, they had been duped.

But to rectify something that was now being labelled an 'oversight', the Horowhenua District Council voted on 2 October 2013 to ratify the 1973 agreement authorising the former Levin Borough Council to drain stormwater across the one chain strip/dewatered area from the Queen Street drain to discharge into the Lake.

The Mayor, the Deputy Mayor and the Chief Executive were duly authorised to sign the forty-year old document.

The fact that at the very same meeting council adopted a district plan change classifying Lake Horowhenua as an outstanding landscape was immaterial.

The fact that the law has changed and resource consents are now required was immaterial.

The fact that the law has changed and local authorities are not authorised to create a nuisance was also immaterial.

So much for their commitment to lake restoration.

And the Lake Accord they had signed less than two months beforehand to clean up the lake.

The signing of the Lake Accord on 4 August 2013 was yet another of those ceremonial occasions so beloved of those who prefer to flaunt their commitment to lake restoration with the flourish of a signature that eventually proves to be meaningless. And the apologies lack sincerity.

On this occasion, in the large marquee where a lavish banquet was being served to the dignitaries was seated the council lawyer, who only two days later would be filing documents in court objecting to the latest attempt by owners to stop stormwater entering the lake.

The hypocrisy of this event was therefore not lost on those owners who walked away in disgust.

While working for Horizons, Greg Carlyon, had warned that the water quality would not get any better 'while stormwater was allowed to pour into the sick lake unchecked'.

> About 80% of the external phosphorous that enters the lake comes via the Queen Street drain which includes Levin's stormwater. This phosphorous then sits on the lake bed until the conditions are right for it to be released, creating a cynobacterial bloom that can be toxic to humans and dogs.'

But despite a submission from the Lake Trustees in 2006 asking for Levin's stormwater to be diverted or filtered, stormwater diversion is obviously not a priority for the Horowhenua District Council.

The council's track record in terms of effluent disposal is not much better.

Until the 1950's, Levin residents had relied on septic tanks to dispose of their sewage.

But a growth surge, and the presence of two large institutions on the periphery of Levin placed pressure on the Levin Borough Council to install a proper sewage system.

The system installed in 1952 was rather basic, processing raw sewage through a series of trickle filters and oxidation ponds before discharging this 'treated effluent' into lake.

The Drainage Board's weir had no flushing system and grit sank to the lake floor.

Beds of silt choked outlet around historic islands.

For Ngati Raukawa, the installation of the sewage system had a devastating impact. It was no longer safe to swim in the Hokio stream, and there was 'a steady exodus away from the *marae*'.

> When members of the hapu waded into the stream to set *hinaki* eel traps in the autumn in anticipation of the eel migration out to sea, toilet paper and human faeces floated around them.
>
> The *marae* became primarily a place to mark death, a place where the lives of the dead were celebrated before they were carried away to be interred.

The discharge of treated sewage directly into the lake continued unabated from 1952 until 1987.

How did the local authority get the approval of the Lake Trust to carry out this activity?

Rumours circulated about trustees driving around in flash new vehicles, while those with a conscience opted to resign.

During August 1962, both the Muaupoko Tribal Committee and Lake Trust declared a tapu over Lake Horowhenua and the Hokio stream. Obviously they were concerned about the offensive effluent flowing into the lake and its effect on the *kai moana* that was their diminishing food source.

In 1964, the Lake Trust sought an injunction from the Supreme Court in Palmerston North to try and prevent Levin Borough Council from releasing raw sewage into the lake. An adjournment was allowed to give council time to prepare a defence.

Horowhenua's local government has mastered the art of deferment.

It was not until 1972, when Rachael Selby-Moore of Ngati Raukawa took up the issue as a Values candidate, that the issue started to attract national attention.

1972 was a year of protest, when Maori swimmers on floats disrupted powerboat racing on the lake.

And Te Matakite o Aotearoa wrote a scathing letter stating that the excuse about costs is 'totally inexcusable' and council's ploy to avoid their responsibilities was 'the ultimate cause of the destruction of the lake and environment and the generating of an unhappy and divided community. May we point out that Maoris never ever believed in conveying filth from one part of the community and depositing it in another clean path.'

Finally, the Levin Borough Council found some Maori Freehold land to lease, and from 1987, treated effluent was piped out to land that became known as 'the Pot'.

But even so, Lake Horowhenua was not entirely immune from further contamination.

There was a huge furore in 1998, when the Horowhenua District Council was forced to apply for a retrospective consent to sanction emergency discharges from 10 July to 16 August and from 28 October to 12 November.

This application to discharge excess treated wastewater from oxidation ponds onto land adjoining the plant before entering Lake Horowhenua as a result of heavy rainfall, followed formal notification of emergency works on 15 July as required by section 300A of RMA.

There were 16 submissions.

MidCentral Health referred to the risk of disease from a diverse range of pathogenic micro-organisms associated with effluent, contamination of the ground and infection of grazing stock.

The Lake Trustees expressed frustration with the apparent uncaring attitude of the Council and mentioned the cultural significance.

Vivienne Taueki, Phil's sister, said that the Council's relationship with Mua-Upoko lacked respect for the values and practices that *tangata whenua* associate to *waahi* and *taonga tapu*.

A nearby farmer reported 200,000 cubic metres of wastewater flowing onto farm, disrupting grazing.

Landcorp also claimed that it affected production, caused damage to water races and raised the potential of health risks to stock.

As the Council's engineer Greg Boyle explained, the pump station had flooded. To relieve the situation a breach had been formed to control the point of discharge through northern embankment over council land into Lake Horowhenua.

He said that the decision to make the breach had been made in consultation with representatives of lake trustees.

When questioned about this consultation, Mr Boyle admitted that only Mr Broughton and the adjacent farmer had been present on site.

An environmental scientist reported that the rainfall not exceptionally large and could be expected five years.

But another expert indicated that the 1998 sewage overflows did not have any short term effect.

However Gerrard Albert, the regional council's manager of iwi relationships, informed the hearings committee that the spiritual affront from this discharge constituted *poke* – or 'spiritual uncleanliness'.

'Given Mua-Upoko's relationship with the lake, tribal members may deteriorate physically from *mate* Maori (unexplained physical illness) or *mate apakura* (death attributable to spiritual causes).

The volume , he said is irrelevant. 'These metaphysical effects are, in my experience, real and cannot be underestimated.'

In their decision, the hearings committee comment on the evidence that the discharge of human sewage to Lake Horowhenua was an abhorrence and constituted a desecration of a sacred *waahi tapu* and *taonga* of *tangata whenua.*

Therefore, they concluded that they were unable to approve resource consent conditions that would adequately remedy or mitigate ongoing and significant adverse cultural effects of the three 1998 sewage discharges to the lake.

They therefore had no option other than to decline the consent application.

The penalty for the Horowhenua District Council would merely be the recovered costs of to application amounting to $9,538.83 – less than ten thousand dollars.

It was not enough to make sure that the Horowhenua District Council didn't allow it to happen again.

Lake Horowhenua was polluted when treated effluent seeped from Levin's wastewater treatment plant during July deluge, the media reported on 31 September 2008

Vivienne Taueki said she watched as the lake she had once swum in as a child become polluted again.

'We saw it going into the lake with out own eyes', she said. 'We're not stupid.'

She had phoned the council and asked to be informed on developments.

But the council's chief executive officer, David Ward said he was 'absolutely staggered' by the claims made in the media.

However he refused to release any results from their sampling because they might be used as evidence in court.

His council had lodged an appeal two weeks beforehand to Environment Court against an abatement notice issued by Horizons in July to cease any unauthorised discharges from their treatment plant.

He had also applied for retrospective consent for the emergency measures taken to prevent contamination of lake.

The Greens Co-Leader Russel Norman travelled to Levin and viewed the plume of pollution from the air, taking photographs that he released to the media.

'This is turning out to be one of New Zealand's worst sewage disasters in years', he said, 'yet Horowhenua Mayor Brendan Duffy is still in denial. He needs to accept there is a major problem and take leadership on it or resign.'

He said that Mua-Upoko were deeply upset they were not forewarned by council of the overflow nor were they consulted before Mr Duffy's staff built two make-shift ponds on paddocks outside the plant to try and contain the partly-treated sewage.

Mr Norman also had no hesitation pointing out that this comes two years after council spent $10.4m on a huge council building, and a month after the PCE report on a council landfill which pollutes groundwater near Hokio Stream.

Mayor Duffy retaliated, accusing him of being 'completely out of order and ill-informed.'

Meanwhile Horizons confirmed there had been lack of a consent before council built the make-shift ponds on reserve land.

Mr Norman was fully vindicated when Horizons confirmed on 3 October 2008 that Lake Horowhenua had been contaminated by Levin's wastewater treatment plant during winter flooding. Samples taken from the plant near the lake on 4 September showed high levels of E coli which confirms faecal contamination occurred. These results were not unexpected by their staff.

Another problem identified by Dr Gibbs from NIWA was weed infestation.

A scientific study carried out by Fisheries Research Laboratory and DSIR in January 1949 found only light weed growth and a good population of long and short-finned eel, bully, carp and trout. There was no algal bloom.

By 1995, three species were identified; namely *potamogeton crispus, lagarosiphon makor* and *elodea canadensis.*

This time it was Vivienne Taueki who alerted the Lake Domain Board to the risks of weed invasion.

She had sent the Domain Board a letter on 26 June 2006, reporting that the Sailing Club has no wash-down facilities. Nor does it have facilities for checking for the spread of purple loose strife through seeds of this plant being transferred via boat sails as identified by Horizons information on this weed.

Purple loosestrife, according to Horizons is classified as one of the worst semi aquatic weeds in the world. It strangles and suffocates surrounding plant life, creating a mat of impenetrable purple.

Horizons group manger Craig Mitchell informed the media he was unsure how this plant, which is a major problem in South America, arrived in Lake Horowhenua.

It had obviously entered the lake sometime in the past decade, because it hadn't been detected in 1995.

Horizons decided to tackle the purple loosestrife problem with a major chemical spraying programme, which Vivienne Taueki tried to halt with two interlocutory applications, both successfully appealed.

The research she had undertaken heightened her concerns about the long-term impact of introducing chemicals from the spray into the already fragile lake waters.

As early as 1997, however, Horizons, the Horowhenua District Council, DOC and the Lake Trustees had been starting to acknowledge the risks of weed infestation as it is mentioned in Lake Horowhenua and Hokio Stream Catchment Management Strategy adopted by these four organisations that year.

> The introduction of *egeria densa* to the lake would adversely affect water quality. Management of *egeria densa* appears to be restricted to quarantine measures as once introduced to a lake there appears to be very limited means of controlling it.

It was also noted that by-law restricts the use of motor engines on any craft on the lake.

This by-law did not stop the Sailing Club Vice Commodore from allowing unwashed motorised boats to be launched on the lake for a regatta, even though he works as a hydrologist for Horizons.

Nor did it stop Horizons staff from launching unwashed motorised boats on the lake, and then criticising Phil Taueki for challenging their right to do so.

This incident created a furore in the media, and it was not for some time later that a senior staff member conceded Horizons had been at fault.

The joint Management Strategy contains some interesting information:

> In 1949, there was only a slight density of submerged vegetation
>
> Lake weed *egeria densa* is one surface-reaching weed that could have significant implications for lake restoration. Even removal of inactivation of nutrient-rich sediment is unlikely to control this weed as it is extremely vigorous, even in nutrient-poor conditions.
>
> The introduction of *egeria densa* would also adversely affect water quality as once introduced, there is a limited means of controlling it.

There is another weed of concern, *hornwort*.

A NIWA assessment of lakes in the Wairarapa warned that the greatest impact on these highly-rated lakes would be from the introduction of the exotic weed *hornwort*. This could occur through human activity via contaminated boats, nets, fish liberations and intentional pathways which are major pathways not transported by biota.

In NIWA ratings, Lake Horowhenua is ranked 107th out of 116 lakes in terms of water quality.

When Dr Gibbs from NIWA presented his report to the Horizons Environmental Committee, he was most forthright.

Two days later, the Dominion Post headlined a warning that the lake water toxicity could be deadly to children.

'If you let someone swim in it, at the very least they're going to get rashes', he said but he added that they could also become very ill with respiratory problems.

The worst case scenario: if they actually drank a quantity of water, it could be lethal.

The water quality in the lake is bad, he said.

The lake is riddled with algae blooms, cyanobacteria and toxins. Washed-up, the alga begins forming a white scum on the shoreline and as this dried, it gives off a putrid smell that could cause respiratory problems if inhaled.

One of the eleven solutions he recommended was diverting Levin's entire stormwater into a spill drain.

Since 2008, Phil Taueki had been trying to prevent people from launching unwashed boats on the lake, and been ridiculed for his tough stance. But the report from Dr Gibbs vindicated his anxiety.

Another solution proposed by Dr Gibbs was to construct a wash-down facility for boats at the domain launching area; one where water cannot the lake or other water bodies via overland flow, drains or the stormwater system.

'The 'danger' to the lake from the introduction of exotic weeds such as *egeria densa* and/or *hornwort* is that they have 'aggressive' growth habits which would irreversibly change the water quality and character of Lake Horowhenua', he warned in his report.

Despite these warnings, the headlines and the photographs of a murky lake that ensued, the media had more disturbing developments to impart.

> A meeting of the Board that oversees Lake Horowhenua was postponed for lack of attendance after it was revealed that drinking water from the lake had the potential to kill. It was adjourned when four iwi representatives were missing.

Then there was a squabble over who was responsible for erecting signs warning the public of the dangers the lake posed.

Eventually, anonymous signs were erected

> Lake Open for Recreational Use
>
> No Restrictions Apply

These signs completely contradicted the message Dr Gibbs had conveyed to Horizons and others.

During November 2013, Bill Chisholm happened by chance to visit Lake Horowhenua.

As an independent consultant ecologist specialising in freshwater ecology, resource management and biosecurity, he provided Phil Taueki with a brief report on his findings.

He pointed out that there were three species of invasive aquatic weed that could find their way into the lake - *hornwart, egeria* and *lagarosiphon.*

These weeds were all highly invasive, he said, 'with only a small fragment being needed to infect an area which will then spread rapidly throughout the entire lake, and downstream waterways. Once infected, it is extremely difficult and prohibitively expensive to eradicate these aquatic weed species from the lake, even if the infection is localised to a small area.'

> I believe that the mere presence of the sign near the boat club, warning boaties and other recreational users of the lake about the dangers of lakeweed speak is insufficient to manage the present threat of aquatic weed invasions. I understand the lake is not used by motor boats. This is probably the main reason why these three lakeweeds are not yet present, because these weeds can easily hitch a ride on motor boat trailers and outboard propellers.

He recommended a complete ban on allowing trailer-mounted boats of any type from entering the lake, unless they are confined to Lake Horowhenua itself. 'While this may seem Draconian, boaties should be reminded that if these aquatic weeds enter the lake, then there will probably be no boating at all in the future because the weed mats will make boating physically impossible.'

He then commented on water quality issues and referred to a phenomenon known as 'flipping'; when a lake was in serious strife. 'In the short term the best and cheapest remedy is to prevent the lake from 'flipping' before it actually happens.'

‘It is disheartening to see that nearly two years have passed since Max Gibbs’ report was produced’, he said.

‘If anybody is of the belief that the lake can withstand business as usual, they are very much mistaken.’

On the basis of this report, Phil Taueki prepared and filed a submission to the Maori Land Court for an urgent injunction to ban boating on the lake and for the rowing and sailing clubs, who refused to budge, to be formally evicted so that these Maori-owned buildings could be used for the storage of craft and equipment required for lake restoration work.

As far as he was concerned, the Lake Domain Board had not done anything about installing the wash-down facility that Dr Gibbs advocated two years previously.

The Rowing Club opposed his application, saying that they washed their boats off-site at local club member’s homes. Their submission confirmed that their boats were transported to regattas to places such as Rotorua’s Blue Lake or Hamilton’s lake.

If this is the case, the risk of transferring purple loosestrife to these other waterways is disturbing.

James Hardy as counsel for the Director-General of Conservation also opposed this application, stating this was not a new issue. ‘Prohibiting boats from using the lake will not eliminate the issue’, he said. ‘For example the Applicant will be aware that invasive weed species can migrate by other measures, including via water inlets and by birds using the Lake.’

The hearing was brief, and Judge Doogan issued his decision on the spot, claiming there was a lack of evidence to support this application.

Less than a fortnight after this hearing, Phil Taueki was able to take photographs of a trailer that Horizons had hauled out of the lake, festooned with far more weed than the example NIWA scientist Dr Gibbs managed to find for insertion in his report – a trailer emerging from Lake Rotoehu.

These photographs were presented to the Environment Committee of Horizons during a meeting on 11 December. No response was forthcoming, but Phil Taueki was philosophical. None was expected.

On 15 January 2014, Horizons and NIWA turned up at the lake, each hauling a trailer with a motorised boat on board, ready to launch these boats on the lake. They had applied for a permit to use motorised boats on the lake only two days beforehand, which the Chairman of the Lake Domain Board granted.

Desperate to protect his lake from further weed infestation, Phil Taueki parked his vehicle down by the water’s edge, on his own land.

Within minutes, the place was swarming with police, and five or six police officers manhandled him out of his cab, arrested him and hauled him down to the police station to be processed. He was charged with obstruction and resisting the police.

He faces three months in jail, and a total of $3,000 in fines.

Meanwhile he cannot be certain that Horizons and NIWA have not introduced any of these virulent weeds into the lake, nor transferred the equally virulent loosestrife to another lake.

As motorised boating is not permitted to the lake without a permit, Horizons, the Sailing Club and the Rowing Club are the most likely sources of the current weed infestation.

So what are the rights of owners to protect their property from the risk of irreversible damage?

'The results of legislation are somewhat messy', according to a Crown Law opinion given in 13 July 1989. That is an understatement.

'The Board has a duty to determine the public's rights to the lake in accordance with the inherent principles of reasonableness', Crown Law said. 'These principles are determinable at law.'

But the most compelling comment in this report would have to be this one:

> **It is hard to escape the conclusion that the legislation was designed to take away ownership once it had granted it back again**.

Ben White, a researcher who prepared a comprehensive report on New Zealand lakes for the Waitangi Tribunal was equally blunt.

> Unlike many other lakes in the North Island of New Zealand, Horowhenua has always been in Maori ownership.
>
> ***However at various times confusion has existed as to the legal status of the lake. This confusion appears to have resulted from some rather haphazard, incremental legislation, and the predilection of various Government officials to try and limit the rights of Maori.***
>
> In that no serious attempt has been made by the Crown to extinguish the rights of Maori to the bed of Horowhenua, and that its ownership by Muaupoko has been confirmed by legislation, the case of Lake Horowhenua represents something of an aberration in the history of the ownership and control of New Zealand's lakes.

And in another Crown Law opinion, this time prepared for the Director-General of Conservation during 1989:

> ***It is hard to escape the conclusion that the legislature****, in an effort to control the public's rights to use the lake, deliberately allow Crown ownership of the surface waters* ***in what can only be said to be a most unusual piece of legislative manoeuvring.***

In other words, the legislation Parliament passed was nothing but a sleight of hand, nothing but an attempt to create an impression politicians were respecting the property rights of the indigenous people, but in reality, their commitment to their rights is nothing but a sham.

It was to be hoped that when a relatively minor, non-injury assault conviction was appealed on the grounds that Phil Taueki wanted to be able to rely on a defence of 'peaceable possession' that the Supreme Court would be able to shed some insight into this legislative debacle.

As the case traversed the various courts, his knowledge on the issues relating to the sailing club's use of land that belonged to his iwi in fee simple estate, increased.

When the matter came before the District Court for instance, it seemed inconceivable that the Crown could lease out land that did not belong to the Crown, and therefore it was only natural to presume that the 33 perches that the Crown leased to the club on Maori Freehold Land was the 32 perches in the perpetual lease of one pound per annum.

By the time, the matter came before the Court of Appeal, maps prepared by DOC labelled a portion of lake bed as being the land subject to this perpetual lease.

The building that the sailing club had erected was not on this land.

So firstly, it became apparent that the Crown had leased out land to a third party that the Crown neither owned nor leased.

As there was no lease whatsoever relating to the land upon which the Rowing Club erected their building, this breach of property law by the Crown applied to both buildings.

Secondly, a joint memorandum to the Maori Land Court confirmed that both these buildings belonged to the Maori owners, and the attempt by the Lake Domain Board to roll over their leases on a month by month basis was *ultra vires* the Reserves Act of 1977.

As a direct descendent of a Treaty signatory, Phil Taueki had also produced evidence to confirm he was an owner of Horowhenua 11B (Lake). These facts were never disputed.

Whilst the detail of the application seeking leave to appeal to the Supreme Court was complex, the written submission filed on 22 October 2012 by Phil Taueki, representing himself, was quite simple.

It is worthwhile reproducing this submission verbatim.

1. Whilst this may appear to be nothing more than an insignificant assault case, this appeal strikes at the very heart of the jurisdiction of this Court and those who create New Zealand law.
2. The appellant, as a Treaty partner and owner of Horowhenua 11 (Lake), is calling upon this Court to honour the guarantee made by the Queen of England under whose jurisdiction this Court sits.
3. The appellant is effectively asking this Court to define 'peaceable possession' in a manner that recognises the unique circumstances in New Zealand due to the existence of the Treaty of Waitangi.
4. In *Singh v the Police*, at para 17, Judge Joe Williams says that: *'peaceable possession is a phrase that is not defined in the Crimes Act, and there appear to be no authorities on the topic*".
5. In *Hadden* at 44, the Court of Appeal agrees that the element of peaceable possession does not appear to have been considered by a New Zealand Court.

6. Due to the existence of the Treaty of Waitangi, reliance on the Canadian case of *Born with a Tooth* defining peaceable possession as 'possession acquiesced by all' contravenes New Zealand's founding document that guarantees the Treaty signatories and their descendents 'full, exclusive and undisturbed possession' of land collectively or individually owned.
7. In defining 'peaceable possession' this Court should also take cognisance of the interpretation of 'claim of right' in section 2 of the Crimes Act 1961 which means '*a belief at the time of the act in a proprietary or possessory right in property in relation to which the offence is alleged to be committed, although that belief may be based on ignorance or mistake of fact or any matter of law etc'*.

Much to the surprise of many people, given that Taueki was a lay litigant and this offence was minor, his leave to appeal was granted.

But the objective of this court of last resort is set out very clearly in the Supreme Court Act of 2003:

> The purpose of this Act is to establish within New Zealand a new court of final appeal comprising New Zealand judges –
>
> i) To recognise that New Zealand is an independent nation with its own history and traditions; and
>
> ii) To enable important legal matters, ***including legal matters relating to the Treaty of Waitangi***, to be resolved with an understanding of New Zealand conditions, history and traditions; and
>
> iii) To improve access to justice

Such was the significance of this case in terms of both generic property right issues and the Treaty of Waitangi that Dr Gerard McCoy QC, who was currently on secondment to the Hong Kong government, offered to fly back to New Zealand with his legal team to argue this case *pro bono*.

This case relates to his area of expertise – he lectured on it at Canterbury University.

In his written submissions, he reported that the ROLD Act of 1956 'recognises and reaffirms ancestral rights in and of the land in Muaupoko in a deeply-etched way, beyond the consequences that can be achieved by declaratory legislation'.

> In relation to the particular Lake and the land in this case, recognised by Parliament as <u>always</u> having been owned by Muaupoko, then an *autochthonous* approach to the concept of possession is mandated. *A fortiori*, in the context of the criminal law, such an approach is required to understand the justification to defend the Lake and the land from an actual or apprehended trespass.

Dr McCoy QC referred to two previous judgements relating to the lake, in 1974 *Regional Fisheries v Tukapua*, when Cooke J said that:

> These strong words 'at all times' and 'free and unrestricted' first appeared in the 1905 Act.. they are rights reserved to the Maori owners because of the special history of this area. They may be unique.

And in 1978, *Regional Officer v Williams*, O'Regan J established that:

> The declaration that such was always owned by them, so it seems to me is statutory recognition that such ownership proceeded the advent of the Pakeha and the introduction of his artifices for making or laws and creating and recording property rights.

Other statements extracted from his submissions were equally convincing:

> As those last few phrases state, to 'create' any notion of possession' (a property right in Muaupoko) that denied any substantive content of that right to be the beneficial owners beyond that of the public is an error of law under ROLD. It would also violate the promise and spirit of the Treaty of Waitangi...

With reference to the Treaty of Waitangi, and the term 'full, exclusive and undisturbed possession'

> If that provision is to have a meaningful and transcending value for Maori, it must apply to historic Muaupoko land, beneficially owned by Muaupoko and recognised uniquely by statute as always owned by Muaupoko.

And then to clarify the distinction between the trustees and the beneficiaries of that trust:

> The legal owners of the land and Lake – the trustees – hold the land in trust for the appellant and beneficial owners. It would be a sterilisation of the rights of beneficial ownership to conclude that they amounted to little more than the ordinary rights of the public.

The hearing took place before five judges of the Supreme Court, including the Chief Justice Sian Elias on 11 March 2012.

During the hearing, Dr McCoy QC cited case law from international authorities and responded to questions with the authority of a university professor.

Crown Law meanwhile stumbled, obstinately sticking to his stance that the owners had forfeited all ownership rights in 1905 when control was passed over to the Crown through legislation.

During the debriefing afterwards, there was a sense of jubilance that a significant legal precedent would be established, not only in validating the property rights guaranteed by the Treaty but also in affirming the right of people to protect their own property from those harming it.

Returning from Wellington though, Phil Taueki fretted that despite all the prestige of an appearance before a full bench of the Supreme Court, not a bucket of water had yet been cleaned up.

The long period of waiting was to begin...

Ben White also provides some interesting insights in his well-respected report:

> The legislation pertaining to Lake Horowhenua that followed the vesting of the lake in Muaupoko served to obfuscate the issue of who held title to the lake.
>
> The history of the lake in the twentieth century serves to illustrate how such ownership rights can in fact mean very little in connection with the control and management of the lake.
>
> Although it could be argued that Muaupoko's ownership of the lake is reduced to a purely symbolic phenomenon, their status as tangata whenua , and the fact that they exercise mana whenua over the lake is formally recognised.

But the statement that resonates most is this one:

> In light of the uses made of Horowhenua by Mua-Upoko and that many of their number died in the defence of their pa situated on it, it would be hard to overstate the importance of the lake to them.

On 26 July 2010, a brisk Monday morning, 265 people packed into a small hall to discuss issues surrounding the lake. Others were turned away because the hall had exceeded its capacity. Amongst them were politicians such as National MP Nathan Guy, Labour MP Darren Hughes, regional and district councillors, lake trustees, owners and the good citizens of Levin.

Towards the end of the meeting, Phil Taueki stepped forward and formally moved a motion:

> To restore the lake to its natural unpolluted state and create a beautiful park for the wider community.

It was passed unanimously.

When the Supreme Court judgement finally came through, sneaked through on 13 December 2013 when all the academics showing an interest in this case would already be on leave, it proved to Phil Taueki that he had been wasting his time expecting the courts to recognise his basic property rights, let alone his special status as a Treaty partner.

In effect, the members of the sailing club who were unlawfully occupying the land upon which this incident occurred, they were still in control of it.

And therefore, Phil Taueki could not rely on a defence of peaceable possession of his ancestral lands, customary property his *iwi* owned in English title.

As far as he is concerned, the Supreme Court trampled the Treaty into the dust that day.

In their unanimous decision which was not much more than a cut-and-paste of previous court decisions, they failed to mention the Treaty – not once!

In impact, the Supreme Court has invalidated itself.

Upon the Treaty, and the Treaty alone, its jurisdiction is founded.

On 29 August 2009, Phil Taueki had written a passionate plea to a judge by the name of Layne Harvey, which deserves to be the final word in this report, due to its sincerity:

> Muaupoko are suffering, their *wairua* has been degraded, their *taonga* stolen, destroyed or desecrated.
>
> As *kaitiaki*'s for a relatively brief moment in time, we have to protect and safeguard our taonga, no compromises.
>
> The responsibility is eternal, like the *awa*, the *ehnua*, our *maonga*'s, streams and rivers. That is why the sovereignty of the *tangata* to the *whenua* must also be eternal...