

CHAPTER 10

MUAUPOKO AND HOROWHENUA 1873 TO 1956

10.1 UNDIVIDED LAND 1873 TO 1886

The order made on 10 April 1873 was for a certificate of title (issued 27 June 1881) under section 17 of the Native Lands Act 1867. This section directed that no more than 10 persons were to be listed on a certificate. The names of the other persons found to have an interest in the land were to be registered, however: the common practice was to write their names on the back of the certificate. Land held under a section 17 certificate could not be alienated by sale or gift, but it could be leased out for a period of up to 21 years. Only the persons named on the front of the certificate had the power to do this, however; the other owners, those listed on the back of the certificate, had no power to deal with the land in any way. Once the land was subdivided, different provisions applied, and it was possible for the land to be alienated. According to the 1867 Act, those with an interest in the land, or a majority of them, could make application for a subdivision. The practice, however, may have been to restrict the right of application to those named on the front of the certificate. At least this is what seems to have happened with respect to Horowhenua.

The certificate of title for Horowhenua contained 143 names on the back. On the front only one name appeared: Kēpa Te Rangihīwinui. The effect was to leave Kēpa in total control. Only he could lease the land: he alone could apply for a subdivision.

In December 1873, when the situation at Horowhenua was still very volatile, Hunia wrote to Smith, asking for a survey to be made, so that the land could be subdivided.¹ Both T C Williams and A McDonald say that signs of dissatisfaction with the terms of the 1873 certificate of title emerged very early, and the letter cited above is a tangible expression of this early discontent.² However, as McDonald pointed out, the certificate left Kēpa in an unchallengeable position. Since nothing could be done, the initial resentment died down. However, animosity flared up again in the late 1870s over Kēpa's leasing of the land. In 1878 Hunia wrote to J Sheehan, Native Minister, applying on behalf of 30 members of his Mauapoko hapu, Ngāti Pariri, for a survey and a subdivision.³ He complained that the certificate issued in 1873 was wrong, that Kēpa had been leasing the land by himself and that he

1. Hunia and 21 others to Smith, 8 December 1873, MA series 75/14, NA Wellington

2. Native Affairs Committee, T C Williams, 20 August 1896, JALC, 1896, no 5, p 18; Alexander McDonald, 'A True History of the Horowhenua Block, By Alexander McDonald, Native Agent and Licensed Interpreter: Being a Reply to Sir Walter Buller's Pamphlet', AJHR, 1897, G-2, p 145

3. Hunia and others to Sheehan, 13 April 1878, MA series 75/14, NA Wellington

(Hunia) was 'distressed at these hidden doings'. Some sort of reply was sent to Hunia, and he responded, in May 1878, by threatening to drive the sheep of the leased land, stating that 'I will cause evil to arise between Keepa (Kemp) and myself.'⁴ In the same month he wrote to Sheehan, denying that he had been interfering with the survey for the railroad. He did think the land should be subdivided before anything else was done, however, since this would facilitate the construction of the railway. In July 1878 he complained to Sheehan that it was not right for surveys of road and railway lines to be going on while the land was still unsettled, saying that he had applied to the Government for a survey so the land could be subdivided.⁵ In October Hunia wrote again, seeking permission to carry out a survey of his own. In April 1879 he wrote yet again, still on the matter of a survey and a subdivision.⁶ Booth was asked to make inquiries, and informed Lewis that a subdivisional survey could be made if all of the owners asked for it, or 'on the application of Meiha Keepa, who is in the position of trustee for the tribe'.⁷ Hunia was informed accordingly. In effect, Booth had said that nothing could happen without Kemp's approval, and no doubt Hunia realised that Kemp would never give the approval required. In any event, correspondence with the Government on the matter of a survey and a subdivision appears to have ceased from about this time. However, before Hunia received this reply, in late August 1879, he had already attempted to fence off some of the land for his own use, an action which provoked spirited resistance from almost the entire Muaupoko tribe.⁸ Hunia had the support of his own tribe, and of some of his Muaupoko hapu, the Ngati Pariri, but a confrontation between the fencing party and several hundred Muaupoko ended badly for Hunia. There was a heated argument with a group of Muaupoko women, one of whom was a former wife. The bullocks pulling the carts were unnerved by the commotion, and all the pushing and shoving. They bolted, scattering the fencing timber near and far. According to evidence before the Horowhenua Commission, it was left to rot on the ground.⁹ Hunia was made to look extremely foolish. S Baker, Ward's interpreter, reported that Hunia had been so angry over the involvement of the women that he had attacked the hut of one of them with a tomahawk.¹⁰

Ward wanted Hunia bound over to keep the peace: Ballance thought the Maori should be left to settle their own difficulties.¹¹ The occupant of the hut apparently

4. Hunia to Clarke, 4 May 1878, MA series 75/14, p 2, NA Wellington

5. Hunia to Sheehan, 28 July 1878, MA series 75/14, NA Wellington

6. Hunia to Sheehan, 2 April 1879, MA series 75/14, NA Wellington

7. Booth to Lewis, 13 August 1879, MA series 75/14, NA Wellington

8. E O'Donnell, *Te Hekenga: Early Days in Horowhenua; Being the Reminiscences of Mr Rod McDonald*, Palmerston North, Bennett and Co, 1929, p 161

9. Horowhenua Commission, Meiha Keepa, 10 March 1896, AJHR, 1896, G-2, p 25

10. Baker to Ward, 7 June 1879, MA series 75/14, p 2, NA Wellington

11. Ward to Morpeth, 9 June 1879, MA series 75/14, NA Wellington

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considered that the Pakeha court would provide the best remedy; she laid a complaint, alleging a breach of the peace. Hunia appeared in court in late June 1878, to answer the charge.¹² After these events had run their course, Hunia, according to Kemp, never again attempted to interfere with Horowhenua.¹³

Baker's opinion was that Hunia, in Kemp's absence, had been attempting to gain possession of one of the better areas. He reported, as well, that everyone except Kemp wanted the land divided. That may have been the case, but the Muaupoko, none the less, were clearly not prepared to have the land divided in an informal or customary way by Hunia: nor did they seem to accept that Hunia had any chiefly or other rights over Horowhenua.

12. MA series 75/14, NA Wellington

13. Horowhenua Commission, Meiha Keepa, 10 March 1896, AJHR, 1896, G-2, p 25

Kemp seems to have been firmly of the opinion through the 1870s and early 1880s that the land should not be subdivided, and for more than a decade he resisted all pressures coming from the Hunia family, from the descendants of Te Whatanui, and from the Government purchase agents to do so. McDonald, Hector's son, said that this decade was a kind of golden age for the Horowhenua Muaupoko. By the mid-1880s, however, Kemp was under increasing financial pressure. In particular he had incurred a large debt with W Sievwright, a Gisborne lawyer, which was causing him considerable anxiety. Subdivision would enable him to sell part of the land, and thus reduce his debts. While the Government agents had made little headway with Kemp, the Wellington and Manawatu Railways had appointed A McDonald as their agent. McDonald was able to persuade Kemp that there were advantages to be gained in subdividing the land in a way that would promote European settlement along the coast, and the success of the Wellington and Manawatu Railway Company. There is little doubt, however, that while Kemp may have believed that subdivision would benefit the tribe, the need to deal with his debt situation was of equal if not greater importance. Indeed, before Kemp could leave Wanganui with McDonald, to travel to Wellington to discuss the proposed subdivision, McDonald had to deposit money with the Wanganui police, because Kemp had been summoned for failure to pay a debt.¹⁴

The discussions in Wellington centred around a proposal that the Government would buy 4000 acres at Horowhenua to establish a town settlement. According to McDonald, Kemp was satisfied with the tenor of these talks, and signed an application for partition.

10.2 DIVIDED LAND 1886 TO 1896

The application to partition Horowhenua came before the Native Land Court at Palmerston North late in 1886. During the hearing, and as a result of discussions and arrangements made outside the court by Kemp and the Muaupoko, Horowhenua was divided in 14 separate subdivisions or blocks.

Block 1 was a long strip running roughly north and south. Containing 76 acres, this block was intended for the Wellington and Manawatu Railway Company, and the certificate was issued in Kemp's name, so that the land could be transferred to the company without hindrance. The company did not pay for the land as such; it was said to be a gift from Kemp and the Muaupoko. Following the transfer, Kemp received a number of Wellington and Manawatu Railway Company shares. These were said to be a gift as well.

Block 2 was an area of 4000 acres to the east of the lake, surrounded on all sides by other subdivisions. This was the land earmarked for the Government township.

14. Horowhenua Commission, A McDonald, 13 March 1896, AJHR, 1896, G-2, p 73

Again, the certificate was issued in Kemp's name, to facilitate completion of the sale.

Block 3 contained some 12,000 acres. It lay to the north, contiguous with block 12 on the east and block 6 on the south. The certificate was issued in the name of the Muaupoko chief, Ihaia Taueki, and over 130 others.¹⁵ Block 4 (512 acres) was issued to Hirote Teihi and 29 others. Block 5 was a small plot of four acres, on the northern boundary high in the hills. It was issued to Tamati Taopuku and Tupii Kotuka.

Block 6 contained 4620 acres, and was intended for those who had been inadvertently omitted from the list of owners drawn up in 1873. It lay on the southern side of Horowhenua, bound on the east by block 11 and on the west by block 12. Title was issued to Kemp. Block 7 was an area of 311 acres given to the Rangitane chiefs Waata Tamatea, Te Peeti Te Aweawe, and Hoani Meihana. Block 8 was a small area of 264 acres, the certificate being issued to Mere Karena Te Manaotuwahaki, Ruakota, and Karena Tarawhao. Blocks 4, 7, and 8 lay towards the north, on the eastern side of the line dividing blocks 3 and 12. Block 9 was an area of 1200 acres set aside for the descendants of Te Whatanui. Title was issued to Kemp, to facilitate transfer once various matters connected with this grant had been settled. Block 10 was an area of 800 acres, given to Kemp to enable him to clear his debts with Sievwright. It lay on the south side of block 2, parallel to it, and was bisected, as was block 2, by the railway line. Block 11 contained nearly 15,000 acres, including all the areas where the Muaupoko had their home and cultivations. It covered the western half of Horowhenua, surrounding the lake and stretching to the coast. Within this block were the two Ngati Raukawa blocks, block 9, and Raumatangi. Kemp intended that the title to this area should be issued in his name, but there was some objection from Hunia's hapu, and it was agreed that Warena Hunia should be a certificated owner of block 11 as well. Block 12 lay to the east of blocks 3 and 6. The certificate for the 13,000 mountainous acres in this block was issued to Ihaia Taueki. Block 13 was a tiny patch of one square foot located in the extreme north east corner of the Horowhenua block, high in the mountains. Among the list of registered owners was a man (Wiremu Matakara) no one could identify, and this land was set aside for him. It seems that the individual concerned was on the list of owners twice, in one place with a misspelt name. But to avoid any possible legal complications, or any suggestion that a register owner had received no allocation of land, block 13 was solemnly set aside.

Block 14 was an allocation of 1200 acres issued in Kemp's name. It lay on the southern boundary of Horowhenua, originally to the east of the railway line. When surveyed, however, it was short, so it was extended across the railway as far as the western shore of Lake Papaitonga. It was one of several Horowhenua blocks that

15. Horowhenua Commission, AJHR, 1896, G-2, p 282

was to attract increasing levels of scrutiny, and be subjected to searching investigation in the 1890s.

Under the certificate ordered in 1873 Kemp held Horowhenua in trust for the registered owners. These owners could not deal with the land in any way, only Kemp, the certificated owner, having any power in this respect. But Kemp's powers were quite limited in that he could lease the land for a period of 21 years but he could not sell or otherwise dispose of it.

Under the certificates issued following the subdivision of 1886, the situation changed entirely. These certificates were issued under different legislation, and they conferred on the listed persons, and only the listed persons, the full and unrestricted rights of ownership, including the ability to sell the land without reference to any other person. In 1890, when the dispute with Warena Hunia got underway, Kemp claimed that neither he nor the Muaupoko had known that the legal effect of the new certificates was to convey the land in such a total and absolute way to the certificate holders. Nor had the Muaupoko understood that in consenting to these arrangements they had, in law, given away their right to a share of the tribal estate.¹⁶

Kemp seems to have believed that the situation after 1886 would be the same as the situation after 1873, namely that he would continue to make all decisions concerning the land held in his name, including block 11, despite the fact that the certificate for this particular block had two names on it: his and Warena Hunia. Warena, however, took his position of co-owner seriously, and he asked for an accounting of the rent monies that been received with respect to block 11. He then decided that he and Kemp were absolute owners, and he asked for the land to be partitioned between them.¹⁷ Kemp argued that he and Warena were not the owners of block 11 but trustees for the Muaupoko tribe. The court, however, took note of the names on the certificate, and in early 1890 partitioned Horowhenua 11 into two parts – Horowhenua 11A and 11B, allocated to Kemp and Hunia respectively. This, said Kemp, was when the legal effects of the 1886 certificates were first made manifest. Kemp petitioned for a rehearing, but the judges who presided over the rehearing, while convinced that a trust had been intended, and that an injustice was being done to the Muaupoko, had to decide the case in accordance with the law. The partition stood.¹⁸ However, having applied the law, the judges expressed the view that the proceedings of 1886 had created a situation of 'severe loss' to the Muaupoko tribe, and that they felt obliged, under the circumstances, to make a report to the Chief Judge, Native Land Court, with the view of obtaining 'ultimate justice' for all parties.

16. 'Petition of Major Kemp Te Rangihwinui', AJHR, 1894, J-1

17. *Statement of Warena Te Hakeke (Sometimes called Warena Hunia) With reference to the Horowhenua Block Subdivision No 11*, Wanganui, 1892, p 4

18. 'Horowhenua No 11 Judgment', 9 May 1891, MA accession 1369, box 17, NA Wellington

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This report reiterated what had been said in the judgment: the real owners of block 11 were the Muaupoko, but the effect of the 1886 certificate was to give the land absolutely to Kemp and Hunia, and there was no legal way around this situation. Kemp, they said, believed himself to be a trustee for the tribe, not the owner, and that while the inclusion of Warena's name on the certificate had been done to satisfy the Hunia family, it had not been intended by either the tribe or Kemp that Warena should exercise any power over the land. Kemp alone was to have the powers of trusteeship. The judges then went on to describe what they perceived to be Kemp's notation of trusteeship:

a power of doing exactly what he choses with it, that it was understood he would hand the land to the people, but as he puts it, only to such persons as he chose, and in what areas he chose; it entirely depended on what he chose to consider the good behaviour of individuals, whether he gave them a large portion or a small one or none at all, and that Warena Te Hakeke's name being conjoined with his made no practical difference.¹⁹

Kemp, they said, admitted that his own personal claim on the block was a small one, and, according to Kemp, Warena's claim was even less. There was no doubt at all that the land really belonged to the people who lived on it, but as a by-product of the way the 1886 partition had been managed, legal ownership had passed away from these people and into the hands of Kemp and Warena. If steps were to be taken to determine who the real owners were, so that legal title to the land could be

19. *Memorandum for Chief Judge Native Land Court: Horowhenua No 11*, 11 May 1891, MA accession 1369, box 17, pp 10–11, NA Wellington

restored to them, this work should be undertaken ‘by some impartial tribunal . . . and not left to the caprice or favouritism of either of the so-called trustees’.²⁰

The judges also mentioned that block 12 was in a similar position to block 11. That is to say, there was only one legal owner, who was said to be a trustee for others who were not identified and who, in any case, no longer had any legal claim to the land.

While these views were being considered in Wellington, Kemp petitioned Parliament, seeking legislation that would restore to the Mauapoko their equitable rights.²¹ A large number of Mauapoko petitioned in support of Kemp.²² Warena counter-petitioned, seeking an affirmation that Horowhenua had been vested in Kemp and himself as absolute owners.²³ All of these petitions were referred to the Government.

To gain time to consider the matter, the Government passed legislation, the Native Land Court Amendment Act 1891, which provided that blocks 6, 11, and 12 would be inalienable until the end of the 1892 parliamentary session. The same clause stayed for the same period of time any actions commenced or pending in relation to any of these blocks, or in relation to any payments, rents, or profits derived from them.

The reason for block 11 being covered was obvious enough. This was the block that all the trouble was about. As for block 12, there is nothing in the files to indicate why it was included. There had been no trouble over this block, and there are no complaints about the actions of the certificate holder, Ihaia Taueki, on record. Block

20. Ibid, p 13

21. ‘Report of Native Affairs Committee’, AJHR, 1892, I-3, p 16

22. Ibid

23. Ibid

12 was probably added to the list because the judges had pointed out the similarities between the situation with respect to this block and the situation pertaining in block 11. On this analysis, block 12 had the same potential for trouble as block 11, and the Government decided it would be prudent to lock it up as well.

The other block covered by the 1891 legislation was block 6, another block being held, it was claimed, in trust for others but on a certificate that conferred absolute ownership on Kemp. The Government may have had prior indications of discontent concerning this block when it passed the suspensory legislation in the closing days of the 1891 session, although there seems to be nothing on the files. It seems more likely that block 6 was included in the 1891 legislation for the same reasons that block 12 had been included: it was another trust block, and the judges had alerted the Government to the potential these block had to produce difficulties and problems. In 1894, as it happens, block 6 block did generate a petition for a rehearing.²⁴ The report of the Native Affairs Committee on this petition recommended that legislation be passed that would allow the Native Land Court to deal with the matter of the trust. The committee said that, while Kemp admitted he held the block in trust, he did not recognise the petitioners as having any right to a share of the land. This was the kind of attitude, and notion of trusteeship, the judges had been critical of in their 1891 report to the chief judge, and it seems that whoever had decided, in that year, that block 6 was likely to cause problems in the future, had guessed right.

24. *Ibid*, p 5

Wellington

Block 9 was the only one of the trust blocks not covered by the 1891 Act. This was probably because the Native Land Court had already been directed, by Order in Council, to inquire into the ownership of this particular block.

Kemp never denied that blocks 6, 9, 11, and 12 were trust blocks, but there was one other block which his opponents said was a trust block also – block 14. Kemp said 14 was his own personal property, and during the mid-1890s Kemp, and his champion Walter Buller, successfully defended Kemp's title against all comers. In view of the later difficulties that ensued over the status of block 14, its omission from the list of blocks covered by the 1891 legislation calls for comment. The inference to be drawn is perhaps that in 1891 block 14 was not considered to be a trust block, and that no complaints about this particular block had reached the ears of Government and none were anticipated.

No solution to the problem of block 11 emerged from the Government during 1892, and as the end of the parliamentary session approached, and with it the end of the protection provided by the suspensory Act, Kemp's lawyer, Buller, arranged for Horowhenua to be proclaimed. This was a common enough procedure, which worked in the following way. The owner or owners of the land accepted a deposit from the Government, in this case £5.²⁵ The Government issued a proclamation that the Crown was negotiating to buy the land.²⁶ The effect was to prevent anyone other than the Government dealing with the land in question.

25. Horowhenua Commission, AJHR, 1896, G-2, exhibit x, p 314

26. Horowhenua Commission, AJHR, 1896, G-2, exhibit q, pp 309–310; *New Zealand Gazette*, no 78, 10 October 1892, p 1362

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About the same time (October 1892) Buller also arranged for a document to be drawn up releasing Kemp from any obligations to account for any monies he had received as a trustee.²⁷ Many of the Muaupoko were persuaded to sign, and it was hoped that the existence of this document would prevent Warena from taking legal action against Kemp to recover any of the funds in question, once the suspensory Act had lapsed, and such matters became actionable again.

Buller hoped that these steps would leave Warena with no room to move, but Warena countered by offering to sell part of block 11 to the Government. This was the area that became known as the State farm, intended for a project close to the Government's heart. In August 1893 Parata asked McKenzie if the rumours about a Government purchase of Horowhenua were true and, if so, would the Government ensure that it had the consent of the beneficiaries (the Muaupoko) before it completed the purchase. McKenzie replied the Government had received overtures and was at present considering if it would enter into negotiations. As far as title was concerned, it was believed that title was vested in Kemp and Warena. Then McKenzie went on to say:

he could promise the honourable gentleman this: that if the Government did negotiate for the purchase of that block they would take very good care, before a purchase was made, or before any money was paid over, that the interests of the beneficiaries should be protected, and that they should get the proper value for this land.²⁸

27. Horowhenua Commission, AJHR, 1896, G-2, exhibit f, pp 287–292

28. 4 August 1893, NZPD, vol 80, p 461

Despite this promise, the Government purchased the 1500-acre State farm block in October 1893.²⁹ The Muaupoko only learnt of the sale when a survey or some other kind of working party went on to the land a short time later. They made their objection plain.³⁰ During a meeting in late January 1894 with a deputation from the tribe, Seddon refused to void the sale, refused to impound the purchase money, and refused to accept that there were any imperfections in either Warena's or the Government's title to the State farm block. He threaten to lift the proclamation, and allow all of the land to be sold, if the Muaupoko did not cease their opposition.³¹ The Muaupoko did not oppose the sale in principle: their objections seemed to have been that they had not been consulted, that they would not received the purchase money, and, above all, that the sale seemed to recognise that the land belonged to Warena. This might mean that they would eventually be deprived of all of the land, or left with only the inferior areas. Indeed, Warena had apparently already offered them a share of block 11 which, on examination, proved to be a collection of all the sandy and swampy places in the block.³² However, for all Seddon's bluster and bullying the Government was in a difficult position: caveats preventing transfer of the land had been lodged against the title.³³ The Government was thus not only faced with the minor annoyance of having been caught breaking a promise concerning Maori land; it also had on its hands a major embarrassment – a purchase it could not legally complete, and a purchase, moreover, which was eminently actionable. Buller was overseas at this stage, and Kemp was taking advice from another lawyer, W B Edwards. Edwards thought the best thing to do was to get the

29. Horowhenua Commission, AJHR, 1896, G-2, exhibit c, p 286

30. Horowhenua Commission, AJHR, 1896, G-2, exhibit u, p 311

31. Horowhenua Commission, AJHR, 1896, G-2, exhibit v, pp 311–314

32. *Ibid*, p 313

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Supreme Court to declare that a trust existed, since this would destroy the positions of both Warena and the Government. In the run-up to the Supreme Court hearing, which was set down for October at Wanganui, Edwards attempted to obtain from the Government a copy of the agreement with Hunia, and any other documents pertaining to the purchase. He wrote a number of letters to C J A Haselden, Under-Secretary, Department of Justice. The minutes associated with these letter leave little doubt that the Government had something to hide.³⁴ By October 1894 Buller was back in the country and he, Kemp, and Edwards assembled at Wanganui. On the eve of the hearing Edwards decided he must have his fee before he would continue. Kemp had no funds available, and Buller agreed to loan the money, on the security of a mortgage over block 14.³⁵

33. Edwards to Controller and Auditor General, 24 October 1894, MA series 75/15, NA Wellington

34. Edwards to Haselden, many dates 1894, MA series 75/15, NA Wellington

35. Horowhenua Commission, AJHR, 1896, G-2, exhibit ar, pp 322–324

During the hearing it was revealed that the Government had made a payment (£2000) on the State farm block at the beginning of September, despite the lack of certainty about title, and despite the assurance given to Parliament a year earlier by McKenzie, and repeated as late as July 1894, that no payments would be made until the interests of the beneficiaries had been protected.³⁶ This admission caused further embarrassment to the Government, suggesting as it did that Parliament had been misled, and that the Government was dealing with land in disputed ownership in an underhand manner. In November 1894 the Supreme Court ruled in Kemp's favour: a trust did exist. Warena appealed. In May 1895 the Appeal Court rejected his appeal. Block 11, the block from which the State farm block had been cut, was a trust block. The Government's position had now gone from bad to worse. Before it had a purchase it could not complete: now there was, as well, a large sum of money that it could not recover. Warena made plans to take the matter to the Privy Council. Before this could be done, however, the Government announced that a royal commission would be appointed to investigate dealings in Horowhenua land.

When the legislation setting up the commission emerged it listed the blocks that were the subject of concern, declaring them to be inalienable until the end of the 1896 parliamentary session, and staying all proceedings with respect to any of them for the same period of time. The list of blocks included 6, 11, and 12, the same block covered by the 1891 suspensory Act. Block 9, the trust block earmarked for Ngati Raukawa, was included as well. This block had become, like block 11, troublesome during 1895, and its inclusion was no surprise. The other block listed in the Horowhenua Block Act 1895 was block 14, the block held by Kemp as his own

36. McKenzie, 10 July 1894, NZPD, vol 83, p 362

property, parts of which he had sold or leased to Buller. This was also the block that secured the loan Buller had made to Kemp just before the 1894 Wanganui Supreme Court hearing. Block 14 had not been covered by the 1891 suspensory Act, and on the face of it there seemed to be no good reason for it to be covered by the 1895 Act. However, Buller did have a reputation for sharp dealing, and in 1891 he had had no stake in block 14. This may be why this block received attention in 1895 that it had not received in 1891. Again, by 1895 more and more information about Kemp's stewardship was coming to hand, and this information may have persuaded the Government to push the investigations of Horowhenua, and of Kemp, to the fullest extent possible. And, of course, Kemp and Buller, in defending block 11, and undercutting the Government's purchase of the State farm block, had become powerful sources of irritation to McKenzie, and perhaps others in Seddon's cabinet. Subjecting block 14 to the scrutiny of a royal commission would make difficulties for them, and perhaps deflect attention away from the Government's own dealings with Horowhenua land.

During the debate on the Bill, McKenzie responded to opposition criticism by referring to Buller's dealings with Maori land, Horowhenua included, in highly uncomplimentary terms.³⁷ Buller responded immediately by letter, inviting McKenzie to repeat these 'slandorous statements' outside the House.³⁸ McKenzie claimed a breach of privilege had occurred, and Buller asked to be heard at the Bar of the House in his own defence.³⁹ Buller, by all accounts, acquitted himself well,

37. W L Buller, 'At the Bar of the House: Sir Walter Buller at the Bar of the House; and the History of the Horowhenua Block', Wellington, *Evening Post*, 1895, p 15

38. McKenzie, 28 October 1895, NZPD, vol 91, p 741

39. 28 October 1895, NZPD, vol 91, pp 741, 770

but McKenzie continued to make the same allegations at frequent intervals.⁴⁰ From this time on, the Horowhenua dispute took on the character of a personal vendetta.

When the Report of the Horowhenua Commission was tabled, in June 1896, Buller and Kemp were both criticised. Both men petitioned Parliament. In early September, the Horowhenua Block Bill 1896 was introduced into the House.⁴¹ This seems to have been something of a draconian measure, and apparently was much amended before emerging in the closing stage of the 1896 session as the Horowhenua Block Act 1896. Under this legislation most, but not all, of the issues raised by the Report of the Horowhenua Commission were to be settled by the courts. For example, the Appellate Court was to determine who the owners of blocks 6, 11, 12, and 14 might be. The underlying rationale was quite clear – the holding of land as an informal trust for an unspecified number of beneficiaries, whose entitlements had yet to be calculated, had created far too many problems. The owners, therefore, were to be identified, their shares determined, and certificates issued to them. The court was also to decide who should be given block 9, what part of block 11 should be cut off for the reserves promised to Ngati Raukawa in 1874, and who should receive these reserves. Again, the underlying rationale was the same.

40. McKenzie, 25 September 1896, NZPD, vol 96, p 230

41. 2 September 1896, NZPD, vol 95, p 251

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The Horowhenua Commission had referred to some unnamed ‘officers of the Crown’ who had purchased the State farm block, knowing as they did so that it was trust property.⁴² But McKenzie and his Department received no rap over the knuckles for doing exactly what McKenzie had accused Buller of doing. Nor did the commission want the sale voided and the land returned. To the contrary, the commission commended the purchase, claimed that everyone admitted that it ‘was an excellent thing for the district’.⁴³ There was a difficulty, of course, and the commission got around this by recommending that the State farm block be considered to have been Kawana Hunia’s share of block 11. The Horowhenua Block Act 1896 contained a declaration to this effect, and it was left to the Appellate Court to determine in the ordinary way who Hunia’s heirs might be, so that the balance of the purchase money could be paid to them. The Hunia family thus had their claim to block 11 defined and validated by legislation. Everyone else had to have their claim tested in the courts.

It is possible to argue that the 1896 legislation provided for the forcible completion of the State farm block purchase from the Muaupoko, since they were certainly the legal owners but they were not allowed to contest the purchase. The fact that they received none of the purchase money simply added injury to insult. On the other hand, if it was accepted that Kemp was entitled to receive a disproportionate share of Horowhenua on the grounds that he was a chief, then Kawana Hunia was entitled to a similar degree of consideration. Following this line of thinking, the commission and then the Government decided that the State farm block would be the measure of Hunia’s entitlement in block 11, and in this rough

42. Horowhenua Commission, AJHR, 1896, G-2, p 12

and ready way it was intended that the claims of the Hunia family to any other large areas within this block would be extinguished. Whether Hunia had had, in the first place, any claim to land at Horowhenua was not addressed, the commission not following through on the observation made in its report that after the arrival of Ngati Toa and Ngati Raukawa:

the right of the Muaupoko to the land was practically extinguished. It is important to bear this in mind, because, when subsequently members of the Muaupoko claim rights based on a foundation prior to their dispersal, the arguments in support of those rights are founded on an extinguished basis.⁴⁴

The Native Appellate Court, however, operated on a different set of premises. In September 1898, when it had finished taking evidence on the relative merits of the different claims made for an interest in block 11, it awarded the Hunia family 1503 acres, in recognition of the important role Kawana Hunia had played in connection with Horowhenua.

Block 12 was a block that was treated by the legislation in a similar way to the State farm. It was declared to be Crown land, the court being asked to ascertain exactly who the owners were so that the purchase money could be given to them. There had never been any difficulties associated with block 12, and there seems to have been little real justification for its compulsory purchase. Again, injury was added to insult; the costs of the Horowhenua Commission were to be deducted from the money to be paid for block 12. Block 12 was valued for the purpose of purchase at £1619 5s. When the cost of the Horowhenua Commission (£1266 19s 5d) and the

43. *Ibid*, p 13

44. *Ibid*, p 4

commission charged by the Public Trust Office (£3 10s 10d) were deducted, the 82 owners were left with £348 and a few coins: a little more than £4 each.⁴⁵

10.3 BULLER AND KEMP: 1897 TO 1899

Early in 1897 the Appellate Court began to consider the applications that had been made concerning various matters to do with Horowhenua. In May it settled the ownership of block 9.⁴⁶ In July it reached decisions concerning the ownership of block 6.⁴⁷ In September it rendered judgment with respect to the reserves that had been set aside for Ngati Raukawa in 1874.⁴⁸ In September 1898 it determined who the owners of block 11 were, allocating the Hunia family 1500 acres, in recognition of the important role Kawana Hunia had played in the recent history of Horowhenua.

Under the 1896 legislation, Buller and Kemp were to be dealt with in related actions in two separate courts. The Appellate Court was to determine the status of block 14, that is to say, whether it was Kemp's personal property or held in trust for the Muaupoko. In a separate action, to be initiated by the Public Trustee within six months of the passing of the Act, the Supreme Court was to be asked to determine

45. 'Miscellaneous Papers re Payment Block 12', MA accession 1369, box 17, NA Wellington

46. 'Minutes of Native Appellate Court', 12–19 May 1898, MA series 75/19, NA Wellington

47. 'Proceedings and Evidence in Native Appellate Court', AJHR, 1898, G-2A, p 142

the validity of Buller's dealing with Kemp over block 14 land. There were two questions to be answered. Was block 14 trust land? If it was, had Buller known or suspected it was trust land? If the Appellate Court should decide that block 14 was not trust land, then there would be no point in commencing an action in the Supreme Court. Everything depended therefore on the Appellate Court producing a timely decision on the matter of the trust.

The Appellate Court began its work in late February 1897. After a week or so, the court announced that it wished to refer some matters to the Supreme Court for decision, but that the giving of evidence could proceed in the meantime.⁴⁹ On 18 March the court took the time to point out some of the difficulties that had been created by the Horowhenua Block Act 1896. The Appellate Court had jurisdiction as far as determining the status of block 14 was concerned. The Supreme Court had had conferred on it jurisdiction with respect to the alienations that had occurred on block 14. Both courts were to make final decisions from which no appeal was possible. It could:

happen, therefore, that the decision given by the two Courts in respect of Subdivision No 14 may clash, and should that happen neither Court can reverse the decision of the other. The result, therefore, would be that two conflicting decisions will co-exist about the same matter.⁵⁰

48. Otaki Native Land Court MB 35, 19 September 1898, p 369

49. 'Minutes of Native Appellate Court', AJHR, 1897, G-2, p 13

50. Ibid, p 51

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The arrangements made rather hastily to settle the issues concerning block 14 were in fact quite clumsy. This became obvious as the deadline approached for the initiation of the Supreme Court action. At the eleventh hour Stafford, the Government's lawyer, set the wheels in motion, but then tried to delay the matter proceeding. These efforts were ultimately unsuccessful and in August 1897 the Supreme Court sat to hear the case. Since the Appellate Court had not at that stage determined the question relating to the existence of a trust, Stafford had to admit that there was no evidence against Buller. Judgment was thereupon given in favour of the defendants, Buller and Kemp, and costs were awarded to them as well. McKenzie was a poor loser and continued to attack Buller.⁵¹ The Government refused to provide the funds so the Public Trustee could pay the costs awarded to Buller and Kemp. Buller obtained a Supreme Court opinion which indicated that, whatever the specifics of the situation, the executive had an obligation to provide the funds.⁵² In December 1897 a further Horowhenua Block Amendment Bill was introduced. This Bill set aside the decision of the Supreme Court, flatly declared that block 14 was trust land and directed the Public Trustee to take further legal action. The Public Trustee protested privately to Seddon that politically-motivated activity of this kind was not the business of his office.⁵³ McKenzie, however, was determined to pass the Bill. Kemp and Buller both petitioned to be heard at the bar. Rolleston moved a motion to this effect. Some of the liberal backbench voted with the opposition. By the narrowest of margins (30 to 29) it was agreed that Buller and Kemp would be

51. McKenzie, 25 October 1895, NZPD, vol 91, p 684; 'Memorandum by the Minister of Land', AJHR, 1897, G-2A, p 1

52. *The Public Trustee v Buller and Another* [1898] 16, NZLR 513, 522; 'Examination of Mr J C Martin, Public Trustee, Before His Honour the Chief Justice, 16 October 1897', MA series 1 6/14, NA Wellington

53. Public Trustee to Premier, 16 December 1897, MA series 1 6/14, NA Wellington

heard.⁵⁴ A time was set, but it passed while the House was preoccupied with other business. When it was made plain to the Government none the less that if the Bill were to proceed, Kemp and Buller must be heard, and heard first, the Bill was left to fall off the order paper. Buller took up the question of the costs again, and petitioned Parliament on the subject. The Public Petitions Committee took evidence, but made no recommendation to Government.⁵⁵ The money was not in fact paid until 1901, and then probably only because Kemp's daughter, Wikitoria, petitioned on behalf of her father's estate.⁵⁶

In April 1898 the Native Appellate Court finally delivered its decision on block 14.⁵⁷ It was Kemp's own property; the allegation of trust was a fabrication, dating from the time of the beginning of the dispute over block 11. In upholding Kemp's title to block 14, the court also upheld Buller's claims as well. However, when Buller tried to have his titles re-registered on the strength of this judgment, the judges decided the 14 April decision was interlocutory, and not a final order at all.⁵⁸ It was January 1899 before Buller was able to persuade the court to make a final order, and he was able to re-register his titles and other claims to block 14.⁵⁹

Kemp had died on 15 April 1898, the day after the Native Appellate Court had issued its interlocutory decision. It does not seem to be known if Kemp knew of this decision before he died.

54. 16 December 1897, NZPD, vol 100, p 820

55. Sir W L Buller, 'Report of Committee on Petition of, for Payment of Costs in Horowhenua Case', AJHR, 1898, I-1B, p i

56. 'Report of Native Affairs Committee', AJHR, 1900, I-3, p 13; AJHR, 1901, B-7A, p 70

57. 'Proceedings and Evidence in Native Appellate Court', AJHR, 1898, G-2A, pp 156-184

58. 'Proceedings in Native Appellate Court on Application of Hetariki Matao and Others', AJHR, 1898, G-2B, pp 2-4

59. Wellington Appellate Court MB 7, 12 January 1899, p 112

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Kemp had fought for Horowhenua in 1873, and he had preserved it inviolate until 1886. In that year he permitted a limited alienation to occur – a few acres for the railroad, a larger area for the Government village, 800 acres to pay off legal fees incurred elsewhere, some other areas to settle long-standing debts of honour, the largest of which was the subdivision set aside for the descendants of Te Whatanui. It is clear that Kemp intended that no more of Horowhenua would be lost, and that in particular he wished to safeguard and preserve subdivision 11, the block that contained the lake, and the homes and cultivations of the Muaupoko. Unfortunately, a decade of litigation, which divided the tribe and weakened both sides financially, followed. Both sides also took their dispute to Parliament and to the Government. Both solicited Government intervention. Having, in effect, been invited in the door, the Government sized the opportunity to ‘bust up’ Horowhenua; first by buying the State farm, then by appropriating block 12. With the owners divided and in disarray, these encroachments could not be easily resisted.

Kemp had argued that the problem was Hunia’s refusal to accept that the land was being held in trust. The Horowhenua Commission decided that the problem was in fact the trust idea itself, despite the fact that this was the arrangement the Muaupoko had decided on in 1886. In the commission’s opinion, it was inherently unsatisfactory for one person to hold legal title on behalf of others who had not had their share determined, and who had no legal say concerning the land. Their solution, implemented by the Horowhenua Block Act 1896, was that every owner would have his or her share of the tribal estate determined, and a certificate issued accordingly. It was a solution that would facilitate the migration of the land from Maori to Pakeha hands.

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In the 1890s Kemp had selected Buller as his lawyer. On the basis of results obtained, this had been an excellent choice. But because of the animosity that developed between McKenzie and Buller, block 14, the land in which Buller had a particular interest, was targeted by McKenzie. Block 14 was claimed by Kemp as his own property. If it could be proved that Kemp held this block as a trust, and not as his own property, a case could be made that Buller had dealt in trust land, in a way that amounted to fraud. Thus if Kemp lost, so did Buller. In defending Kemp against McKenzie, Buller found himself in the fortunate position of being able to defend himself, while billing Kemp. Whatever else he may have done, Buller gave no discounts. But he did extend credit. When Kemp died, he owed Buller nearly £7000.

In due course Kemp's heir, his daughter Wikitoria, decided to let Buller exercise his rights as mortgagee. Block 14 would be auctioned; the highest bidder would become the owner.⁶⁰ It seems that Wikitoria and Buller had agreed that Buller would bid enough to clear the debt, now grown to nearly £8000, plus a little more for Wikitoria.⁶¹ This figure was considerably more than the land was worth, which ensured that Buller would have, in the ordinary course of things, no competitors for the land. McKenzie wanted the Government to outbid Buller, to the tune of nearly twice the valuation. In the end, however, this last-ditch attempt to deprive Buller of block 14 came to nothing.⁶² In May 1899, at public auction, Kemp's land passed into Pakeha hands.

60. Wiki Keepa to Sheridan, 26 January 1899, MA series 75/24, NA Wellington

61. Goffe to Sheridan, 29 December 1898, MA series 75/24, NA Wellington

62. Sheridan to Fitchett, 8 February 1899, MA series 75/24, NA Wellington; McKenzie to Sheridan, 12 April 1899, MA series 75/24, NA Wellington

It looked like a familiar and rather simple tale; a Maori pressured into debt, a European ending up with his land. But it had been a far a more complicated story than that.

10.4 LAKE HOROWHENUA 1898 TO 1856

Kemp had proposed, when planning the sale of the land earmarked for the town of Levin, that 100 acres along the foreshore of the lake be set aside as a public reserve and garden.⁶³ The Government displayed no interest. Later, during the subdivision of Horowhenua, the lake and a one chain strip surrounding it were set aside as a tribal fishing reserve, to be held in trust for the Muaupoko residents.⁶⁴ Even before the certificate of title had been issued, however, 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.⁶⁵

In 1903 the Department of Tourist and Health Resorts commissioned James Cowan to visit and report on Lake Horowhenua.⁶⁶ Cowan noted in his report that while the main road from Levin gave access to the native reserve surrounding the lake, the public could only cross the reserve with the permission of, and at the

63. Horowhenua Commission, AJHR, 1896, G-2, p 6

64. Reserves and Other Lands Disposal Act 1956, s 18

65. Stevens, 26 November 1897, NZPD, vol 100, pp 143–144

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sufferance of, the Maori owners. According to Cowan, there had been a degree of friction between the Pakeha residents and the Maori over rights of access for a number of years, and he felt it was desirable that this unsatisfactory state of affairs should be terminated. As for the lake itself, he reported that flax grew thickly along the water edge, and that the Maori derived a considerable food supply from it: eels, kakahi shellfish, ducks, and flounders that came up the Hokio Stream. The Hokio was itself a major source of eels, and large eel weirs were to be observed. He also noted that the stream was choked in places by raupo and flax. Cowan made special mention of the islands in the lake and of the remains of Kemp's pa at Papiriki, on the western shore of the lake, recounting the history of both Papiriki and the lake islands. The latter were heavily covered with flax and other vegetation. Some of the islands were slowly decreasing in size, which seemed to be related to diminishing vegetation. Cowan said that the Maori had been cutting flax around the lake edge, and 'if they are allowed to interfere with the islands the beauty of these interesting spots would be greatly marred, and the unprotected soil (which is only a foot or two above the level of the lake) will gradually wash away'.⁶⁷

Much of the bush and forest surrounding the lake had been destroyed, but there was a considerable area of light bush on the eastern side and at the south-eastern end. This bush lay on Maori land, but the timber rights had been sold, and most of the millable timber taken. At the southern end of the lake he noted that a fair-sized clump of milling timber (the Poriro-a-te-Wera bush) was still standing. Some of the

66. James Cowan, 'Report on Lake Horowhenua to Department of Tourist and Health Resorts', AJHR, 1908, H-2A

67. *Ibid*, p 1

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biggest trees had been felled, but he thought there was still time to save the rest. The western side of the lake was mainly cleared land, except for a few lakeside places. Cowan thought these spots should be carefully preserved as well.

Cowan concluded his report by recommending that steps should be taken to protect and preserve Papiriki, the islands, and the native bush and vegetation around the lake. Particular attention should be paid to the eastern and southern shores, from Kaweu bush, at the northern end, to the Hokio Stream at the extreme south-eastern corner, and including the Poriro-a-te-Wera bush on the south-western shore, a distance of about four miles. All of this land lay within the native reserves, which Cowan describes as varying from 15 to 20 chains in width. He also recommended that the lake be taken, under proposed new legislation which would have as its purpose the establishment and protection of scenic reserves. If this was done, Maori fishing and hunting rights would have to be guaranteed.

Cowan reported that he had spoken to the Muaupoko chief, Te Rangimairehau, who seemed agreeable to some sort of arrangement being made. Te Rangimairehau was particularly anxious to preserve what was left of the bush, lamenting the disappearance of native birds from the lakesides as the forest had been destroyed. Cowan also reported that the Ngati Apa tribe lived on the shores of Lake Horowhenua, and that his information was that their principal man, Wilson Hunia, would be sure to disagree with whatever the Muaupoko did. Accordingly, 'the best

plan is to set the reserve apart and explain to the Maoris afterwards that their ancestral rights will not be interfered with beyond forbidding them to destroy the bush and other vegetation'.⁶⁸

Following Cowan's report, plans were set in motion to acquire, under the Scenery Preservation Act 1903, 150 or so acres of bush land adjoining the eastern edge of the lake, and the islands in the lake, but not the lake itself.⁶⁹ The views of the Native Department on this scheme have not survived, but it appears that Cabinet approved the plan in January 1905.⁷⁰ However, before the land could be proclaimed, maps had to be drawn by the Department of Lands and Surveys. There was a delay in getting this work done, Lands and Survey taking the view that scenery preservation could not take precedence over work needed for land settlement purposes.⁷¹

68. *Ibid*, p 2

69. Acting Superintendent of Department of Tourists to Under-Secretary of Lands and Survey, 29 July 1904, Tourist and Publicity Department (TO) series 1, 20/148, NA Wellington; Acting Superintendent to Minister of Tourist and Health Resorts, 10 January 1905, Tourist and Publicity Department (TO) series 1, 20/148, NA Wellington; 'Scenery Preservation, Department of Lands', AJHR, C-6, 1906, p 6

70. Acting Superintendent of Department of Tourists to Under-Secretary of Lands and Survey, 1 February 1905, Tourist and Publicity Department (TO) series 1, 20/148, NA Wellington

71. Under-Secretary of Lands and Survey to Acting Superintendent of Department of Tourists, 22 August 1905, Tourist and Publicity Department (TO) series 1, 20/148, NA Wellington

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During this period, 1903 to 1905, W H Field, the member for Otaki, seems to have played an important role in keeping the idea of making Lake Horowhenua a public reserve before the Government, asking questions on the topic in 1903, 1904 and 1905.⁷² In 1903 he was told that the Government was nearly ready to introduce legislation (the Scenery Preservation Act 1903) that would give the power to acquire and preserve scenic spots. In 1904 Seddon said that unless power was given to acquire land compulsorily, no action could be taken on the matter. In point of fact, the Scenery Preservation Act 1903 did give the Government power to acquire land compulsorily, but the Government apparently did not want to take Lake Horowhenua on that basis, or perhaps just did not want to announce that it had that possibility in mind. In 1905 the Minister replied that to secure the lake it was necessary to obtain the consent of the Maori owners, and that it was the intention of the Government to approach them on the subject at the first favourable opportunity.

Later that year Field seems to have been responsible for arranging a meeting between Seddon and Sir James Carroll on one hand, and Muaupoko on the other. This meeting may have been the meeting Carroll had promised earlier, or it may have come about after there had been further difficulties over Pakeha boating on the lake. The meeting apparently took place in the boat shed that had been erected by the Levin boating club sometime before 1903, when Cowan visited the lake and reported the existence of this structure. The outcome of this meeting was an agreement which permitted Pakeha use of the surface of the lake, while preserving

72. Field, 13 August 1903, NZPD, vol 124, p 477; Field, 6 July 1904, NZPD, vol 128, p 141; Field, 9 August 1905,

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Maori ownership and fishing rights generally. There were nine clauses in the agreement, dealing with the preservation of native bush within the one chain zone, forbidding the dumping of rubbish, granting the Governor the right to acquire up to nine acres of the lakefront for a public domain and boat shed, permitting the construction of a flood gate, so the lake flow and level could be regulated, confirming fishing rights exclusively to the Muaupoko, forbidding the shooting of birds over the lake, ceding, with the provisos already noted, the full use and enjoyment of the lake to the public, setting up a Board of Management, on which Maori were to be represented, and, finally, confirming, subject to what had been agreed, that rights and mana over the lake stayed with the Muaupoko.⁷³

NZPD, vol 133, pp 551–552

73. 28 October 1905, NZPD, vol 135, p 1206 (cf MA series 75/24, NA Wellington)

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It may be a misnomer to describe these arrangements as an agreement between the Government and the Muaupoko; it may be that they were more in the nature of a set of decisions imposed on the owners. In any event, these terms formed the basis of the Horowhenua Lake Act 1905. The preamble stated 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 as far as it is possible to do so without unduly interfering with the fishing and other rights of the Native owners'.⁷⁴ The Act then went on to declare the lake a public recreation reserve, subject to the provision that the 'owners shall at all times have the free and unrestricted use of the lake and of their fishing rights over the lake but so as not to interfere with the full and free use of the lake for aquatic sports and pleasures'.⁷⁵ Other sections set up a controlling board, of which at least one-third of the members were to be Maori, and prohibited shooting on the reserve and over the lake. Although the original agreement had given the Governor the right to acquire up to nine acres for boat sheds and so on, the Act permitted 10 acres to be purchased for these purposes. This admittedly small change was made while the Bill was in the committee stage, but apparently without obtaining the consent of the Muaupoko. Some of the other matters covered by the agreement, for example, the preservation of native bush on the one chain strip, and the flood gates, were not mentioned in the Act, but possibly were matters that were considered to come under the control of the board, and so did not require specific enumeration. The other clause of the agreement that was not mentioned in the Act was the acknowledgment that rights and mana over the lake remained with the Muaupoko owners. During the debate on the Bill, Rigg had pointed out that this part of the

74. Preamble to the Horowhenua Lake Act 1905

agreement would mean very little once control of the lake was handed over to the board.⁷⁶ Finally, the 1905 Act made no mention of the one chain strip, restricting the coverage of the Act to the surface of the lake, and to the small area of nine to 10 acres on the foreshore where the boat sheds were to be built. This was in accordance with Muaupoko understanding of the Seddon–Carroll agreement.

The Scenery Preservation Commissioners and the Tourist and Health Resorts Department had been working during 1905 towards taking 150 acres of lakeside bush, along with the islands in the lake, for the purposes of preservation, and the enhancement of Lake Horowhenua as a tourist site. Compensation for the Maori owners concerned was to be determined by the Native Land Court. The Horowhenua Lake Act 1905 was a far less ambitious scheme. Concerned mainly with giving the local Pakeha population access to the water, the legislation displayed little interest in the matters that were driving the Scenery Preservation Commission and the Tourist and Health Resorts Department. The new Act called for the taking of only 10 acres of land, for the purpose of building boat shed; it left the islands in Maori hands, and there was little mention in the Act of preservation or conservation in the sense that the Cowan Report had used these notions. It is possible that the Horowhenua Lake Act 1905 was promoted by the Native Department as a way of heading off the far more disruptive Tourist and Health Resorts Department proposals. Certainly the

75. Horowhenua Lake Act 1905, s 12A

76. Rigg, 28 October 1905, NZPD, vol 135, p 1206

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passage of the Act seems to have caught the latter department by surprise, and led to the abandonment of their own plans for the lake.⁷⁷

77. C R C Robinson to Superintendent of Department of Tourists, 30 October 1905, Tourist and Publicity Department (TO) series 1, 20/148, NA Wellington

The Muaupoko had become aware around 1904 that the lake was under some kind of threat. In that year, there was a petition asking that no change in the title to the Lake be permitted.⁷⁸ Following passage of the 1905 Act, T Parata, Southern Maori, asked Carroll if the Government would repeal the legislation, on the grounds that it had appropriated valuable Maori property without the consent of the owners.⁷⁹ Carroll said he would look into the situation, to see if any grievance existed, but that the Government had no intention of interfering with the Act. The petition of 1904, and the exchange between Parata and Carroll during the 1906 parliamentary session, indicates that at least some of the owners of Lake Horowhenua were anxious to retain full control of the lake and unhappy with the legislation that had been passed.

During the same 1906 parliamentary session, Field, the member for Otaki, asked if the Government would amend the Act so that another 20 acres of the foreshore could be acquired for 'preservation'.⁸⁰ According to Field, this was land of no value to Maori, and land they were anxious to sell.⁸¹ Carroll declined to make amendment, on the grounds that the Native Department were opposed. He also asked if the Maori were willing to sell, why did they themselves not make application to do so.⁸²

78. 'Report of Native Affairs Committee', AJHR, 1904, I-3, p 19, no 891

79. Parata, 12 September 1906, NZPD, vol 137, p 508

80. Field, 12 September 1906, NZPD, vol 137, p 510

81. *Ibid*, pp 514–515

82. Carroll, 12 September 1906, NZPD, vol 137, p 523

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Around 1911 difficulties started to emerge over fishing rights in the lake. There appeared to be some Pakeha resentment over the fact that fishing rights were confined to the Maori owners. There were reports that Maori were actively preventing Europeans fishing for trout in the lake, while refusing themselves to obtain licenses.⁸³ An opinion was obtained from the Crown Law Office in 1914, to the effect that the lake had 'probably' once belonged to the adjoining landowners but that currently there was no Maori claim to any part of the lake bed. As for European rights, the 1905 Act had not prohibited European fishing in the lake. But to fish for trout a license was required, whether one was Pakeha or Maori.⁸⁴

In 1916 the Government introduced the Reserves and Other Lands Disposal and Public Bodies Empowering Bill 1916, a miscellany of legislative changes, some of which were amendments to the Horowhenua Lake Act 1905. There was a petition by Hemi Henare and 33 others that the clause in this Bill covering Horowhenua Lake and the Hokio Stream not proceed. The Native Affairs Committee considered the matter, but made no recommendation to Government, and the Bill was passed.⁸⁵ The 1905 Act had said that Maori members should constitute as least one-third of the board; now Maori membership was to be no more than one-third.⁸⁶ The authority of the board was now extended to the Hokio Stream, and the one-chain reserve on either side of the stream as well, areas that had not been conceded in 1905. Finally, the reserve was defined as the lake plus the one-chain strip surrounding it. The

83. Field to Native Minister, 24 January 1911, MA accession W2459 5/13/173, NA Wellington

84. 'Horowhenua Lake: The Question of Fishing Right', MA accession W2459 5/13/173, NA Wellington

85. 'Report of Native Affairs Committee', AJHR, 1916, I-3, p 30, no 251

Wellington

inclusion of the latter had not been agreed to in 1905, and it had not been mentioned in the 1905 Act. The effect, whether intended or not, was that a substantial and strategically placed area of land was removed from Maori control.

86. Reserves and Other Lands Disposal and Public Bodies Empowering Act 1916, s 97

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In 1917 a similar Act, the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1917, transferred to the control of the board a 13-acre area of lakefront land. This was land that had been purchased, although during debate on the Reserves and Other Lands Disposal Act 1956 it was suggested that it had perhaps simply been taken, and no compensation paid.⁸⁷ According to the Harvey report of 1934, this area of 13 acres did not extend to the water edge, apparently stopping at the chain strip.⁸⁸

In 1926 further legislation affecting Lake Horowhenua was passed, the Local Legislation Act 1926 containing among its many miscellaneous clauses one giving the Hokio Drainage Board authority, upon proclamation, to carry out land-drainage operations involving the Hokio Stream and Lake Horowhenua. Provisions had to be made to protect fishing rights before any drainage work could be commenced, matter noted for special attention being any widening or deepening of the Hokio Stream, the removal or replacement of eel weirs in the stream, and any lowering of the level of the lake itself.

The Hokio Drainage Board proceeded to widen and deepen the Hokio Stream, in the process, according to Maori testimony, all but destroying the stream as a source of eels. The deepening of the stream also allowed the level of the lake to fall,

87. Section 64 of the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1917; Tirikatene, 23 October 1956, NZPD, vol 310, p 2713; memoranda attached to Crown Purchase Deed 972

88. 'Judge Harvey's Report to the Honourable The Minister of Lands', 10 October 1943, MA accession W2459 5/13/173,

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exposing and damaging the shellfish beds, and changing the nature of the water edge. Where once this area had been muddy, and rich in vegetation, it became stony and free of vegetation, and so less attractive to eels. The lake margin had also produced a rich crop of flax. This resource was diminished as well.

The drainage work was undertaken at the representation of Pakeha and apparently Ngati Raukawa farmers with land adjoining the stream. Rere Nicholson was one of these farmers, and he had made it plain that he wanted the stream cleared, but not deepened.⁸⁹ There was considerable Muaupoko opposition and even active intervention to stop the work proceeding, but these objections were overridden.

According to Morison's submission to the 1934 committee of inquiry, there had been an earlier case of inference with the level of the lake, around 1905, when water races had been built by an unnamed local authority. Some of these races discharged into the lake, making it prone to flooding during winter, submerging the chain strip and adjoining land.⁹⁰ Apparently it was this tendency to flood during winter than led to the 1926 drainage scheme.

p 3, NA Wellington

89. Nicholson to Ngata, 15 August 1930, MA accession W2459 5/13/173, NA Wellington

90. 'Minutes of Committee of Inquiry, Levin', 11 July 1934, MA accession W2459 5/13/173, pp 3-4, NA Wellington

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The receding of the lake in 1926 had produced an additional area of unfenced land, the dewatered area, and the farmers bordering the lake proceeded to use this extra land, allowing their stock to wander along the foreshore, eating and trampling the vegetation. It had apparently always been the practice for fences to run down to the water edge, and across the chain reserve. This may or may not have been a source of grievance in the past. However, because the flax and other vegetation extended out past the water's edge, stock damage had been limited. However, after the lake level was lowered, the farmers apparently extended their fences down to the new water edge, obtaining in the process an extra area of land. Additionally, because the flax and vegetation had been left high and dry by the receding water line, stock damage quickly reached unacceptable levels. The Muaupoko wanted to fence the flax off, but when they tried to oblige the property owners bordering the reserve to fence off their land, they were told that the Domain Board was the vested owner, not the tribe.⁹¹ They also reported that one of the adjoining landowners threatened to pull any fence erected down.⁹²

A long series of complaints, petitions, and deputations began to the Domain Board, Government departments, and to the Government. In 1931 the Domain Board sought an opinion as to the legal situation from the Department of Land and Survey. Was the domain Crown or native property?⁹³ This letter was referred to the Crown Solicitor for advice. His opinion was that by the 1905 legislation the Crown had

91. Puku Matakatea and others to Ngata, 30 October 1929, MA accession W2459 5/13/173, NA Wellington

92. Puku Matakatea to Ngata, 14 November 1929, MA accession W2459 5/13/173, NA Wellington

93. Under-Secretary Lands and Survey to Under-Secretary Native Department, 30 July 1931, MA accession W2459

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effectively resumed ownership of the lake, except for the fishing and other rights set out in the Act.⁹⁴ Since the lake had been declared to be a public reserve, not a domain, the lake had not been vested in the board. But the board had all the powers of a Domain Board, and it could require adjacent landowners to fence their land, and it could impound stock left to wander on the reserve. The fact that the lake level had been lowered did not effect the legal boundaries defined in subsection 10 of section 97 of the 1916 Act. If adjoining landowners were grazing stock in the dewatered area and on the chain strip, they were trespassing.

It seems that the board did not care to act on this advice, but resolved, after a meeting with the Levin Borough Council, to ask the department to set up an inquiry into its rights with respect to the lake and chain strip.⁹⁵ Finally, in 1934, J Harvey, judge of the Native Land Court, and H W C Mackintosh, Commissioner of Crown Lands, were appointed to conduct this inquiry. Their terms of reference were to hear and consider the views of the Domain Board, the Levin Borough Council, and other local bodies or individuals with respect to the development of the Lake Domain as a public resort; to hear and consider the representations of the Maori with respect to the rights they possessed under the Horowhenua Lake Act, 1905, and the subsequent amending legislation, and to consider how these rights might be affected by the carrying out of any proposals for development; to consider any other matters which might emerge connected with the administration of the Domain in relation to the

5/13/173, NA Wellington

94. Crown Solicitor to Under-Secretary, Department of Lands and Survey, 31 May 1932, Tourist and Publicity Department (TO) series 1, 20/148, p 2, NA Wellington

legal or equitable rights of the Maori; and, finally, to furnish a report to the Minister of Lands.⁹⁶

The Committee of Inquiry held a meeting in Levin on 11 July 1934. A number of local bodies and other interested Pakeha groups were represented: the Domain Board, the Levin Borough Council, the Chamber of Commerce, and the Wellington Acclimatisation Society. Two Pakeha residents gave their views as well. Morison presented the views of the Muaupoko, and two members of the tribe spoke as well.

With the exception of the representative of the Acclimatisation Society the Pakeha all desired improvement and development, and to this end wanted the legal position with respect to ownership, particularly of the chain strip, clarified. The Borough Council thought the lake should be under the absolute control of the Domain Board. The Chamber of Commerce wanted to see a road built around the edge of the lake, which would, they thought, benefit everyone, Maori in particular, by providing access to Maori land on the western side of the lake. They also suggested that jetties, a boat harbour, and swimming pools, and possibly even a base for seaplanes might be worthwhile developments of the lakefront area. The Pakeha individuals were both concerned to see facilities in place that would foster the use of the lake for boating;

95. Under-Secretary, Department of Lands and Survey, to Minister of Lands, 15 November 1933, MA accession W2459 5/13/173, NA Wellington

96. 'Judge Harvey's Report to the Honourable The Minister of Lands', 10 October 1943, MA accession W2459 5/13/173, p 1, NA Wellington

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their submissions made it plain that the lowering of the lake level had had an adverse effect on this type of use as well, and that the boat sheds and jetties that had once existed now no longer did so. The Domain Board was in favour of developing the facilities for boating, but seems to feel that it could not act while its powers, and Maori rights, were undefined.

The Acclimatisation Society were most concerned with the effect that the running of stock along the foreshore was having on the food supplies of the game and fish in the lake, and on the wildlife generally. They wanted the water edge protected, so it could be re-vegetated, and indicated that the society might be able to assist with the necessary fencing. The society had no comments to make on proposals for roading or chain strip development, but since the thrust of their submission was towards preserving the lake as a game reserve and wildlife refuge, they would probably not have favoured developments of this kind. They ‘did not mind natives fishing’, but opposed them taking ducks.

Morison then stated the views of the Muaupoko. The lake was their property, held in trust since 1898 as a common food source. The Maori understood the 1905 agreement had permitted Pakeha boating on the lake, nothing more. The 1905 Act did not vest ownership of the lake in the Domain Board; nor did it affect Maori ownership of the chain strip. The Domain Board had been advised by the Department of Lands in 1911 that it did not own the lake, or have any control over

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the chain strip. The 1916 Act had included the chain strip in the definition of the reserve it contained: the Muaupoko had not been consulted about this, and they had never given their consent. This legislation was a breach of the 1905 agreement with Seddon and Carroll.

In 1925 there had been some agitation to establish a Drainage Board and to control the level of the lake. The Muaupoko raised concerns about any interference with the Hokio Stream, and the effect that this would have on their food supply. There was a meeting with a representative of the Department of Lands, and some kind of agreement was reached. When the Drainage Board commenced work, the Muaupoko felt that the terms of the agreement were not being observed and intervened to stop the work. There was a second meeting and a further agreement signed.⁹⁷ The board then went ahead with its work, cutting a narrow, deep, and fast-flowing channel with high perpendicular banks. As a result, where once there had been 13 eel weirs, only two sites survived. Work of this kind was only meant to be done after proclamation. According to Morison, the Drainage Board did the work before the proclamation was issued: ‘the board trampled on native rights and then got legislation to justify their action’.⁹⁸

97. R M Watson, ‘Re Hokio Steam’, 28 November 1925, MA accession W2459 5/13/173, p 2, NA Wellington

98. ‘Minutes of Committee of Inquiry, Levin’, 11 July 1934, MA accession W2459 5/13/173, p 5, NA Wellington; *New Zealand Gazette*, no 81, 16 December 1926, p 3410

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The work on the Hokio spoilt it as a food source, and the lake was spoilt also, as a result of its level being lowered. In 1930 a deputation went to Wellington to complain about the damage that had been done to the Hokio and the lake, and there was another meeting at Horowhenua, to examine the situation and discuss the situation with local interests. There was also an investigation of the numbers of eels in the lake. Nothing seems to come of these investigations, the Muaupoko were unable to afford to take legal action, and the situation remained the same until the present committee of inquiry was set up.

The Muaupoko's position was that the lake and the surrounding lands were their property. They did not object to the 1905 agreement or to the 13 acres that had been taken by later legislation. But they had never given up their ownership of the chain strip. Previously they had obtained a considerable revenue from the flax, but the lowering of the lake allowed stock onto the foreshore, and this damaged the flax. In other cases, Pakeha farmers burnt the flax or ploughed it under. They now wanted control of this land to be returned to them, and they wanted to fence it off for their own use. They strongly objected to the road proposal.

Harvey's report to the Minister listed the clear evidence that the lake and the one chain strip were considered Maori property up to the time of the passage of the 1916 legislation, and the later legislation of 1926. He then noted that 'it may be that these

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amendments have taken away the Native's title if so they have done it a subtle manner mystifying alike to Domain Board and Natives'.⁹⁹

The Domain Board wanted to make improvements along the waterfront, beyond the extent of the 13 acres they controlled, but at the present time could not even improve that site by giving access to the water without infringing on the chain strip and attracting Maori objections. The board's main concern was to clarify and define Maori rights and ownership with respect both to the lake and the chain strip.

The Muaupoko conceded that the Crown had rights over the surface of the lake. But they contended that the chain strip had never been handed over, and that there had never been any agreement or understanding that it would be handed over. They wanted control of this land handed back to them.

Harvey felt that the solution might lie in a compromise rather than in any legal definition of rights, and suggested that the parties be invited to consider the following propositions: that the board would have control over the surface of the lake, subject to the fishing rights; that the lake bed would be owned by the trustees appointed in trust for the owners of Horowhenua 11; that the Domain Board would

99. 'Judge Harvey's Report to the Honourable The Minister of Lands', 10 October 1943, MA accession W2459 5/13/173, p 3, NA Wellington

be given title to the dewatered area, and adjacent section of the chain strip along the Levin side of the lake; that the rest of the dewatered area and the chain strip would be owned by the trustees, and administered as the tribe determined.

G W Forbes, the Native Minister, felt that the report provided a basis for ‘final negotiations’ and for draft legislation.¹⁰⁰ In March 1935, the proposals were put to the Muaupoko. The Harvey scheme called for the Muaupoko to concede an area of about 83½ chains to the Domain Board, but they were prepared to give an area of only about half this size, and the meeting was adjourned.¹⁰¹ The Department of Lands and Surveys and the Native Department agreed that the matter should be left to settle.¹⁰²

Later that year some difficulties arose over the cutting of flax on the foreshore, apparently a dispute between rival sections within the tribe. One side appealed to the Domain Board.¹⁰³ The board sought advice from the Department of Lands and Surveys.¹⁰⁴ The Native Department was asked to investigate, and decided that ‘the

100. Forbes to Minister of Lands, 4 February 1935, MA accession W2459 5/13/173, NA Wellington

101. Horowhenua Lake Domain, minutes of meeting, 23 March 1935, MA accession W2459 5/13/173, NA Wellington

102. Under-Secretary, Lands and Survey to Under-Secretary, Native Department, 15 August 1935, MA accession W2459 5/13/173, NA Wellington

103. Tuku Matakatea and Others to Hudson, 6 November 1935, MA accession W2459 5/13/173, NA Wellington

104. Hudson to Under-Secretary, Lands and Survey, 7 November 1935, MA accession W2459 5/13/173, NA Wellington

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only solution to this matter is the completion of arrangements in train for the creating of a reserves along the shores of the Lake'.¹⁰⁵

In May 1936 a deputation travelled to Wellington to see the Prime Minister, M J Savage. After reciting the difficulties and hardship caused by the legislation of 1905 and 1916 they made a simple request: that these Acts be repealed and the ownership of the lake and the foreshore be returned to the original owners. Savage suggested that they meet with departmental officers, to see if a solution could not be worked out.¹⁰⁶

105. Under-Secretary, Native Department to Under-Secretary, Lands and Survey, 22 November 1935, MA accession W2459 5/13/173, NA Wellington

106. 'Minutes of Meeting of Deputation of Muaupoko Tribe and Prime Minister, 29 May 1936', MA accession W2459 5/13/173, p 6, NA Wellington

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In December 1936, two Government officers travelled to Levin, to meet with the Muaupoko. Representatives of local bodies were invited. Harvey chaired the meetings. The Muaupoko began by taking umbrage; this was not the kind of meeting they had expected. They had thought the meeting would be in Wellington, with the Minister and his officials, and that the topic of discussion would be the legislation that disturbed their ownership of the chain strip. The officials, on the other hand, wanted to discuss Harvey's original proposals for settlement of the dispute. When it became obvious that an impasse had developed, the meeting lapsed.¹⁰⁷ Harvey later advised the Native Department that nothing was likely to be achieved by further meetings.¹⁰⁸ He suggested that if a solution was urgently required, that the chain strip be re-vested in the trustees, and that the Government then take, under the Public Works Act, the land required for the proposed domain. This would be an honest and straightforward approach.

By the late 1930s early 1940s the Domain Board had effectively ceased to function, no Maori being willing to accept nomination.¹⁰⁹ The grievances over the lake, the Hokio, and the chain strip remained, and so had the bad feelings between Maori and Pakeha. In 1943 another deputation travelled to Wellington, this time to meet H G R Mason, then Native Minister. They covered the same ground that had been cover before, and had the same request; that control of the chain strip, and the dewatered area between the strip and the water edge, be returned to them. There is

107. 'Minutes of a Meeting Between the Native Owners of Horowhenua Lake and Departmental Officers and Representatives of Local Bodies, Levin', 9 December 1936, MA accession W2459 5/13/173, NA Wellington

108. Harvey to Under-Secretary, Native Department, 15 December 1936, MA accession W2459 5/13/173, NA Wellington

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very little in the files concerning any actions taken after this meeting. G P Shepherd, chief judge of the Native Land Court, was asked to comment, and laid a good deal of the blame on the Domain Board for failing to fence off the chain strip, and for taking no action to prevent adjoining landowners from running their stock on the reserve. He expressed the view that, while the legal position with respect to the ownership of the lake and the chain strip had become confused, they were still the property of the Maori owners, pursuant to the Native Land Court orders.¹¹⁰ Mason wrote to Morison, offering the Harvey solution.¹¹¹ The reply is not on file. It may be that the war delayed attention to the matter, or that the impasse over the Harvey proposals continued to prevent progress towards a resolution. In any event, the grievance remained.

In the 1950s a new series of meetings, deputations, and representations to Government began. In 1952 a report by E McKenzie, Assistant Commissioner of Crown Lands and J A Mills and J M McEwan, both of Maori Affairs, was produced. The authors doubted that the 1905 Act had vested the lake in the Crown, despite Crown Law Office opinions to the contrary. The main source of difficulty was the Domain Board, which had ignored Maori views and wishes, and had even asked that

109. Under-Secretary, Lands and Survey to Under-Secretary, Native Department, 13 June 1940, MA accession W2459 5/13/173, NA Wellington

110. Shepherd to Under-Secretary, Native Department, 21 October 1943, MA accession W2459 5/13/173, NA Wellington

111. Mason to Morison, 17 November 1943, MA accession W2459 5/13/173, NA Wellington

the Maori representatives be removed from the board. The only solution seemed to be to attempt to purchase the land wanted for the domain reserve.¹¹²

It is not clear what the link, if any, between this report and the clauses dealing with Lake Horowhenua in the Reserves and Other Lands Disposal Act 1956 might be. There may have been no particular association. On the other hand, both documents seem to focus on the constitution of the Domain Board, and both started from the position that the lake and the chain strip were Maori property. In introducing the legislation the Minister of Lands and Maori Affairs, E B Corbett, remarked that it dealt with a matter, namely the ownership and control of Lake Horowhenua, that had been a subject of controversy for over 50 years. After much discussion, it had been decided to set up a new Domain board with a Maori majority, and to repeal all previous legislation relating to the lake. E T Tirakatene, the member for Southern Maori, wanted to know if the legislation would deal with the central issue, the ownership of the lake, the Hokio Stream, and the surrounding one chain strip. This question had been confused by a series of acts, all of which had restricted or denied the rights of the original owners. Corbett replied that he could assure:

112. E McKenzie, J A Mills, and J M McEwan, 'Horowhenua Lake Domain Brief History and Recommendation', 1952, MA accession W2459 5/13/173, NA Wellington

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the Member for Southern Maori that the Bill safeguards the rights of the Maoris to the ownership of the lake bed, to the bed of the Hokio Stream, the chain strip, and the dewatered area around the Lake, as well as those lands for which title had been granted by the Court in days gone by.¹¹³

Section 18(2) and (3), declared that the lake bed, the islands on the lake, the dewatered area and the one chain strip, the bed of the Hokio Stream and the one chain strip along (part) of the northern bank of the stream were, and had always been, owned by the Maori owners, vesting these areas in the trustees appointed by the Maori Land Court. Subsection (5) vested a much smaller area of the chain strip and dewatered area than Harvey had originally proposed in the Domain Board. Subsection (9) abolished the Hokio Drainage Board. Subsection (10) transferred responsibility for maintenance of the Hokio Stream and the lake to the Manawatu Catchment Board, but directed that no work be done without the prior consent of the Domain Board. Subsection (8) laid down how the board was to be constituted: four members of the Muaupoko tribe, one member recommended by the Horowhenua County Council, two members recommended by the Levin Borough Council, and in an ex officio capacity the Commissioner of Crown Lands, who was also to chair the board. Subsection (12) repealed the Horowhenua Lake Act 1905; section 97 of the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1916; section 64 the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1917; and section 53 of the Local Legislation Act 1926.

Subsection (4) ‘reserved to the public at all times and from time to time the free right of access over and the use and enjoyment of the land’ that is to say, to the 13-acre reserve, the chain strip, and the lake bed; subsection (5) declared the surface

113. Corbett, 23 October 1956, NZPD, vol 310, p 2714

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waters of the lake and the original 13-acre lake frontage to be a public domain. The same section provided:

that the Maori owners shall at all times and from time to time have the free and unrestricted use of the lake and the land . . . and of their fishing rights over the lake and the Hokio Steam, but so as not to interfere with the reasonable rights of the public, as may be determined by the Domain Board.¹¹⁴

It was legislation, said Corbett, ‘which meet fully the wishes of the Maori owners’.¹¹⁵

114. Reserves and Other Lands Disposal Act 1956, s 18, subs 5

115. Corbett, 23 October 1956, NZPD, vol 310, p 2712